

IN THE
Supreme Court of the United States

KER'SEAN OLAJUWA RAMEY,
Petitioner,

v.

STATE OF TEXAS,
Respondent–Appellee.

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

**RESPONDENT'S BRIEF IN OPPOSITION TO
PETITION FOR A WRIT OF CERTIORARI AND
MOTION FOR STAY OF EXECUTION**

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

AMBER PLATT
Associate Deputy Attorney General
for Criminal Justice

TOMEE M. HEINING
Chief, Criminal Appeals Division

TRAVIS G. BRAGG
Assistant Attorney General
Counsel of Record

Post Office Box 12548
Capitol Station
Austin, Texas 78711
512.936.1400
Travis.Bragg@oag.texas.gov

Counsel for Respondent

CAPITAL CASE QUESTIONS PRESENTED

1. Whether the Court has jurisdiction over claims that were disposed of on an adequate and independent state law ground.

2. Whether the Court should expend its limited resources to consider fact-bound questions, raised on the eve of Ramey's impending execution date, where the claims are procedurally defaulted, dilatory, and meritless.

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INTRODUCTION

In August 2005, Petitioner Ker'Sean Olajuwa Ramey, along with LeJames Norman, entered a neighbor's home with the intention of stealing cocaine. They shot and killed the home's occupants, Celso Lopez, Tiffani Peacock, and Sam Roberts. Tiffani was shot in the back of the head as she was begging on her knees, her boyfriend Sam was shot multiple times as he tried to defend himself, and Celso was left to bleed out from an "accidental" shot to his cheek.

After the Texas jury found Ramey guilty of capital murder, they learned that Ramey procured the guns used in the crime by leading a crew to conduct multiple raids of another person's house (the Narin residence) in an effort to clean out his cache (three raids in total). The jury also learned of Ramey's lengthy violent and criminal history, which began at a young age but then took a particularly dark turn at sixteen and escalated from there. Based on these and other egregious facts, the jury voted in favor of death.

Pursuant to the order of the trial court, Ramey is **scheduled to be executed sometime after 6:00 P.M. on September 23, 2026**. As shown below, he has already availed himself of the full state and federal

appeals available to death-row inmates in Texas. Now, over four years after his federal habeas proceedings concluded and one day before his scheduled execution, Ramey seeks certiorari review of the Texas Court of Criminal Appeal's (CCA) decision to dismiss his subsequent state habeas application, which itself was only filed two weeks prior. *See* App.328a, 319–20a.

In the question presented in the instant petition for certiorari, Ramey argues that review is warranted because the trial court violated *Batson v. Kentucky*¹ during jury selection, his trial counsel was ineffective (IATC) during the punishment phase of trial, and the CCA's dismissal of these claims on procedural grounds was neither adequate nor independent. *See generally* Pet. Writ Cert. (Pet.). However, his petition is not worthy of the Court's review. The CCA's abuse-of-the-writ bar has long been recognized as adequate and independent state law grounds on which to dismiss a subsequent habeas application. Ramey's petition simply does not demonstrate any special or important reason for this Court to review that decision, and this Court does not typically

¹ 476 U.S. 79 (1986)

engage in routine error correction. Certiorari review is therefore unwarranted.

Similarly, Ramey's request for a stay is meritless. He has the burden of persuasion on his stay request, and he is required to make "a clear showing" that he is entitled to one. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "Last-minute stays should be the extreme exception, not the norm[.]" *Bucklew v. Precythe*, 587 U.S. 119, 150 (2019); *see also Barr v. Lee*, 591 U.S. 979, 981 (2020). As the Court has explained:

"the last-minute nature of an application" that "could have been brought" earlier, or "an applicant's attempt at manipulation," "may be grounds for denial of a stay."

* * * *

If litigation is allowed to proceed, federal courts "can and should" protect settled state judgments from "undue interference" by invoking their "equitable powers" to dismiss or curtail suits that are pursued in a "dilatory" fashion or based on "speculative" theories.

Bucklew, 587 U.S. at 150 (quoting *Hill*, 547 U.S. at 584–85).

By delaying until the last minute to raise his claim, Ramey fails to make the requisite showing to justify interference by the federal courts. Twenty-one years have passed since Ramey killed three people in their home. The ensuing delay in carrying out his sentence should weigh

heavily in the evaluation of this application for a stay, and justice for Ramey's victims should be denied no longer. Simply put, "[t]he people of [Texas], the surviving victims of Mr. [Ramey]'s crimes, and others like them deserve better." *Id.* at 149. The strong interest of the State in the timely enforcement of Ramey's sentence is not outweighed by the unlikely possibility that certiorari will be granted. Ramey thus fails to demonstrate that he is entitled to a stay of execution under this Court's precedent. Accordingly, Ramey's request for a stay should be denied.

STATEMENT OF THE CASE

I. Ramey's Trial

On direct appeal the CCA summarized the facts of the crime:

The bodies of Celso Lopez, Tiffany [sic] Peacock, and Sam Roberts were found in Roberts's residence by his parents on August 25, 2005. Lopez had been shot four times: once in the cheek and three times in the back of the head. Peacock was shot twice in the head. Roberts was shot five times: once in the chest, once in the neck, and three times in the back of the head. They had been killed on or about August 24.

Stacy Johnson, [Ramey's] former girlfriend, testified that he called her at 12:29 a.m. and 12:59 a.m. on August 25. He went to her house after their conversation, and slept there until shortly before 6 a.m. She said that he seemed "distant."

Two days later, Johnson accompanied [Ramey] to his house where he dug up "something" from his backyard. Johnson drove him to a dam. While Johnson was driving,

[Ramey] called his former step-father, Lonny Lyte. (Both Johnson and Lyte testified about this conversation.) [Ramey] asked Lyte, “If you was to kill somebody, what would you do with the guns?” Lyte responded by saying that he would throw them in the river.

When they reached the dam, Johnson saw [Ramey] throw two pistols into the water. She later returned to the dam with the police and pointed out to the dive team the place where she remembered him throwing the pistols. They were found in the approximate location she indicated.

After he threw the pistols in the water, [Ramey] admitted to Johnson that he had committed a murder. He first said, “You know what this is about,” to which she responded in the affirmative. When they returned to her house, he admitted to everything in detail, and he threatened to kill her if she told anyone.

A firearms examiner from the Department of Public Safety testified that markings on the bullets that were recovered from the victims’ bodies were consistent with the bullets having been fired from the pistols that were recovered from the water at the dam.

The pistols had been stolen from a residence on August 19, 2005. The owner of the pistols identified them, and one of the pistols was further identified by records of registration. Gerald Manzanalez and Christopher Times testified that, on August 19, they and [Ramey] had broken into a residence where they stole the pistols and some other firearms.

LeJames Norman testified that, on August 24, he and [Ramey] had gone to the scene of the murders, Sam Roberts’s residence. Their objective was to steal 100 kilograms of cocaine they believed to be inside.

He said that he and [Ramey] prepared by stealing masks from a discount store. The jury saw the store's surveillance videotape which showed them stealing the masks at 9:22 p.m. on August 24.

Norman testified that they also prepared by wrapping tape around their shoes so as not to leave a trail. They donned their masks and cocked their guns before entering the house. They knocked on the door. Celso Lopez answered, and the two men forced their way inside. Norman held a gun on Lopez, while [Ramey] ran to the rear of the home, where he hoped to find the cocaine. As [Ramey] searched for the drugs, Norman accidentally shot Lopez in the cheek. [Ramey] quickly returned to the front room and forced Lopez, bleeding and begging for help, to move to a bedroom and lie on the floor.

At that point Roberts came home, accompanied by Peacock (his girlfriend). When she saw what was happening, Peacock panicked and tried to run away. Norman grabbed her and forced her to her knees inside the house, near the front door. As she was bending down, he shot her in the back of the head. Seeing his girlfriend fall limp to the floor, Roberts attacked Norman. The two men "tussled" in the kitchen until [Ramey] shot Roberts, freeing Norman who immediately shot Roberts several more times while he lay on the floor. [Ramey] then returned to the bedroom and shot Lopez in the back of the head as he lay on the floor.

[Ramey] and Norman left the house. As they walked away, Norman realized that he had left his police scanner inside the house. [Ramey] quickly returned to retrieve the scanner. While inside, he shot the victims several more times to ensure that they were dead.

[Ramey] and Norman did not find any cocaine.

Eight other witnesses testified that [Ramey] had admitted to them that he had participated in the murders.

App.7a–9a.

On federal habeas review, the district court summarized the evidence presented during punishment:

The State based its punishment-phase case on Ramey's escalating violent actions. The State presented testimony and evidence that, when Ramey stood trial at age twenty-one, he had already amassed a significant criminal history. Ramey began acting out in school at a young age. His first interaction with the legal system occurred when at age sixteen he coerced a seven-year-old boy into performing oral sex on him. Originally charged with aggravated sexual assault, the charge was reduced to assault and the court sentenced him to juvenile probation for one year.

At age seventeen, Ramey pleaded guilty to criminal mischief for breaking into a vending machine at his high school. Less than six months later, Ramey and another friend, broke into his alternative learning school and ransacked the principal's office. His probation for the two offenses was eventually revoked for failing to pay fees, perform his community service hours, and report to his probation officer. Ramey's subsequent stay in the county jail did not squelch his lawlessness.

Jurors found out that Ramey had actually burglarized the Nairn residence three times. The State also presented evidence that, after burglarizing a different location, Ramey attempted to run over the homeowner with his car. Witnesses testified that Ramey had planned other burglaries. Additionally, Ramey told friends that he had carried out various crimes for which he was never charged. Importantly, Ramey bragged that he had committed other murders.

Ramey's behavior did not improve while incarcerated before trial. He armed himself with weapons, created disturbances, and threatened guards.

The State's final witness was Dr. Richard Coons, a psychologist. Dr. Coons did not examine Ramey, but his review of relevant records led him to opine that an offender like Ramey would "commit criminal acts of violence in the future which would constitute a continuing threat to society." Tr. Vol. 38 at 81.

The defense only called two witnesses in the penalty phase. Ramey's mother, Ms. Terral Stevens, provided an overview of Ramey's life. Ms. Stevens told jurors of Ramey's early emotional and mental problems, including a diagnosis of dyslexia and ADHD at age four. Early evaluations revealed emotional disturbances and a lack of social skills. Ramey told evaluators that his step-father had abused him. Ramey's mother, however, failed to seek the necessary help for her son's problems.

Dr. Mark Kunick, a psychiatrist, based his testimony on an interview with Ramey and Ramey's mother, his review of records, and his understanding of the facts of the case. Dr. Kunick opined that Ramey's nonviolence since incarceration, his close-knit family, and his lack of mental illness would make it unlikely that Ramey would be a future danger.

The jury answered Texas' special issues in a manner requiring the imposition of a death sentence.

App.44a–45a.

II. Ramey's Postconviction Proceedings

On January 23, 2007, Judge Williams entered judgment for a capital murder conviction and death sentence. CR.191–95. The CCA

affirmed Ramey's conviction on direct appeal—including multiple claims under *Batson*—on February 11, 2009. App.1a–30a. On October 5, 2009, this Court denied Ramey's petition for a writ of certiorari. *Ramey v. Texas*, 558 U.S. 836 (2009).

In 2008, Ramey's state habeas counsel, Mr. Richard Rogers III, filed an initial state habeas application, which included the IATC-punishment claim at issue here. SHCR.3–75.² Judge Williams, presiding over both trial and state habeas proceedings, issued findings of fact and conclusions of law recommending denial of relief. SHCR.145–61. After considering the recommendation, the CCA remanded a single issue to the trial court for further development. App.32a. After further briefing, however, the CCA held that this issue was not cognizable on state habeas review and found the rest of Ramey's claims lacked merit; thus, the court denied relief. App.38a–39a.

Ramey then took his case to federal habeas court. Ramey finally filed his amended petition, which included both claims under *Batson* and the present IATC-punishment claim. *See generally* ECF No. 30, *Ramey v.*

² SHCR refers to the State Habeas Clerk's Record for state writ number WR-74,896 and AP-76,533 (this number applies to the later filing and setting of a single claim by the CCA). It is followed by the relevant page numbers.

Davis, 314 F. Supp. 3d 785 (S.D. Tex. 2018). The lower court denied federal habeas relief. App.40a–116A. Ramey sought a certificate of appealability (COA) from the Fifth Circuit on three claims: (1) a *Batson* claim; (2) IATC during the guilt phase; and (3) IATC during the punishment phase (the same raised here). *Ramey v. Davis*, 942 F.3d 241, 246 (5th Cir. 2019).

That court granted a COA as to the first two claims but denied as to the third. *Id.* at 258. The court ultimately affirmed on the district court’s decision on the *Batson* and IATC-guilt claims. App.135a. Ramey again sought certiorari from this Court on the *Batson* and IATC-punishment claims. See generally Pet. Writ Cert., *Ramey v. Lumpkin*, 142 S. Ct. 1442 (2022). The Court denied his petition on April 4, 2022. *Ramey*, 142 S. Ct. at 1442.

On May 7, 2026, the 24th Judicial District of Jackson County, Texas, scheduled Ramey for execution on Wednesday, September 23, 2026. On September 9, two weeks before his execution, Ramey filed in state court a subsequent state habeas application, his second application overall. See App.327a–28a. He also filed a suggestion that the CCA reconsider the denial of his first state habeas application and a motion

for stay of execution. On September 21, the CCA dismissed his subsequent application as an abuse of the writ. App.328a.; *see* Tex. Code Crim. Proc. art. 11.071 § 5. It also denied the motion to stay the execution without order and took no action on the suggestion to reconsider. Ramey then the instant petition for a writ of certiorari and application for a stay of execution. The State opposes both.

REASONS FOR DENYING THE WRIT

The questions that Ramey presents for review are unworthy of the Court's attention. Supreme Court Rule 10 provides that review on writ of certiorari is not a matter of right but of judicial discretion, and it 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.*

Here, Ramey advances no compelling reason to review his case, and none exists. Indeed, the issues in this case involve only the lower court's proper application of state procedural rules for collateral review of criminal convictions. Specifically, Ramey was cited for abuse of the writ because he did not meet the subsequent application requirements of Article 11.071 § 5. The state court's disposition, which relied upon an

adequate and independent state procedural ground and did not reach the merits of Ramey's claim, forecloses certiorari review or a stay of execution.

As Justice Stevens noted, concurring in the denial of an application for a stay in *Kyles v. Whitley*, 498 U.S. 931, 932 (1990):

This Court rarely grants review at this stage of the litigation even when the application for state collateral relief is supported by arguably meritorious federal constitutional claims. Instead, the Court usually deems federal habeas proceedings to be the more appropriate avenues for consideration of federal constitutional claims.

And, if Ramey sought federal habeas now, the petition would also be impermissibly successive³ and barred by the relevant statute of limitations.⁴ These claims would also be procedurally defaulted by virtue of the CCA's application of § 5.⁵ Ramey's petition presents no important

³ Ramey is re-raising claims from his initial federal habeas proceeding. "A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed." 28 U.S.C. § 2244(b)(1). To the extent that he is raising any new claims, he fails to meet requirements of § 2244(b)(2)(A).

⁴ Ramey's statute of limitations under § 2244(d) began on December 4, 2012. App.48a-53a; *Ramey v. Davis*, 942 F.3d 241, 248 (5th Cir. 2019). And his federal habeas proceeding did not toll the statute of limitations. *Duncan v. Walker*, 533 U.S. 167, 181–82 (2001).

⁵ *Aguilar v. Dretke*, 428 F.3d 526, 533 (5th Cir. 2005) ("Texas' abuse-of-writ rule is ordinarily an 'adequate and independent' procedural ground on which to base a procedural default ruling.").

questions of law to justify this Court’s exercise of its certiorari jurisdiction, and the petition should be denied.

I. Certiorari Review and a Stay of Execution Are Foreclosed by an Independent and Adequate State-Procedural Bar.

Ramey seeks review of the lower court’s dismissal of his *Batson* and IATC-punishment claims. *See generally* Pet. Despite the CCA’s explicit statement that it was not “reviewing the merits of the claims raised,” App.328a, Ramey argues that it necessarily and always makes a prima facie determination of the merits when applying the abuse-of-the-writ bar, meaning this Court can reach them too. Pet. 17–19. But he is wrong, and the CCA’s dismissal on a state law ground strips the Court of jurisdiction.

“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)). The state law ground barring federal review may be “substantive or procedural.” *Coleman v. Thompson*, 501 U.S. 722, 729 (1991).

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 because “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). There is no presumption of federal law consideration. *Coleman*, 501 U.S. at 735–36. To so find, the state court’s decision must “fairly appear to rest primarily on federal law, or to be interwoven with the federal law.” *Id.* 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 subsequent habeas applications. *Compare* Art. 11.071 § 5, *with* 28 U.S.C.

§ 2244(b); *see Kindler*, 558 U.S. at 62 (noting that federal courts should not “disregard state procedural rules that are substantially similar to those to which we give full force in our own courts”). 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). The applicant bears the burden of providing “sufficient specific facts establishing,” Tex. Code Crim. Proc. art. 11.071 § 5(a), one of these “exceptional circumstances,” *Ex parte Kerr*, 64 S.W.3d at 418.

Ramey argued in the CCA that his *Batson* claim was authorized under Article 11.071 § 5(a)(1) because it relied on a new rule of law, specifically *Pitchford v. Cain*, 608 U.S. 391 (2026). App.236a–38a.

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

Art. 11.071 § 5(d). “Stated another way, if the legal basis for the claim was recognized by or could have been reasonably formulated from a [decision from any of those courts], then the applicant has failed to meet the unavailability exception.” *Ex parte Hood*, 211 S.W.3d 767, 775 (Tex.

Crim. App. 2007), *different result reached on reconsideration*, 304 S.W.3d 397 (Tex. Crim. App. 2010). The CCA emphasized “that lack of recognition is not enough to render a legal basis unavailable. If the legal basis could have been reasonably formulated from a decision issued by a requisite court, then the exception is not met.” *Id.*

For his IATC-punishment claim, Ramey argued that was authorized under Article 11.071 § 5(a)(3). App. 35–37. There, 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.” Art. 11.071 § 5(a)(3). This section “more or less, [codifies] the doctrine found in *Sawyer v. Whitley*, 505 U.S. 333 (1992).” *Ex parte Blue*, 230 S.W.3d 151, 151 (Tex. Crim. App. 2007). The CCA found that Ramey did not “satisfy the requirements of Article 11.071 § 5” for either claim and it dismissed “the application as an abuse of the writ without reviewing the merits of his claims.” App.328a.

Here, Ramey challenges § 5 as neither adequate nor independent. Pet.17–19. He is wrong on both counts. The Fifth Circuit “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 . . . adequate state ground for the purpose of imposing a [federal] procedural bar.” *Hughes v. Quarterman*, 530 F.3d 336, 342 (5th Cir. 2008); *cf. Expressions Hair Design v. Schneiderman*, 137 S. Ct. 1144, 1149–50 (2017) (noting that this Court generally defers to a court of appeals’ interpretation of their respective states’ laws); *De Buono v. NYSA-ILA Medical & Clinical Servs. Fund*, 520 U.S. 806, 810 n.5 (1997) (noting “settled practice of according respect to the courts of appeals’ greater familiarity with issues of state law”).

Further, this Court has held on numerous occasions that it “will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is independent of the federal question and adequate to support the judgment,” *Coleman*, 501 U.S. at 729, because “[the Court] in fact lack[s] jurisdiction to review such independently supported judgments on direct appeal: Since the state-law determination is sufficient to sustain the decree, any opinion of this Court on the federal question would be purely advisory.” *Lambrix v. Singletary*, 520 U.S. 518, 523 (1997) (citing *Herb v. Pitcairn*, 324 U.S. 117, 125–26

(1945), and *Sochor v. Florida*, 504 U.S. 527, 533–34 & n.112 (1992)); *Michigan v. Long*, 463 U.S. 1032, 1042 (1983).

There can be no question that simply determining *whether* there is a new case for purposes of § 5(a)(1) is independent of any application of federal law. As for § 5(a)(3), determining whether an inmate has provided the requisite level of evidence to prove innocence of the death penalty does not touch on federal law. *See Moore v. Texas*, 122 S. Ct. 2350, 2353–54 (2002) (Scalia, J., dissenting in grant of stay) (“The [CCA] was not required to pass on any federal question in deciding whether ‘clear and convincing evidence’ showed that ‘but for a violation of the United States Constitution no rational juror would have answered in the state’s favor one or more of the special issues that were submitted to the jury.’” (quoting Art. 11.071 § 5(a)(3))). Federal law does not dictate whether Ramey met the “clear and convincing” burden of proof mandated by Texas law. Art. 11.071 § 5(a)(3) ; *see Rocha v. Thaler*, 626 F.3d 815, 823–24 (5th Cir. 2010) (the federal courts of appeals “have unanimously held that a federal court’s determination that a petitioner cannot prove his actual innocence does not constitute a decision on the merits of the petitioner’s constitutional claim for habeas relief”).

Ramey's latest subsequent state habeas application was appropriately dismissed on adequate and independent state law grounds. For his *Batson* claim, he argued that this Court announced a new rule of law in *Pitchford* and, thus, § 5(a)(1) gave him passage through the bar. But of course, that is a complete misapprehension of *Pitchford*.

In that case, this Court reviewed the Mississippi high court's decision on Pitchford's *Batson* claim through the lens of 28 U.S.C. § 2254(d). *Pitchford*, 608 U.S. at 394. In doing so, it was necessarily reviewing the state high court's application of *already established* law. The Court determined that "the Mississippi trial court never conducted the essential third step of the *Batson* inquiry." *Id.* at 395. And, it held that "the Mississippi Supreme Court unreasonably applied the *clearly established Batson* precedents" in agreeing with the federal district court's grant of relief. *Id.* at 401.

By very dint of this Court's analysis, *Pitchford* cannot and did not announce a new rule of law. It was simply this Court applying the already established precedents of *Batson* and its progeny. And for these very reasons, Ramey could not satisfy § 5(a)(1).

For his IATC-punishment claim, the claim could not have demonstrated his innocence of the death penalty. Art. 11.071 § 5(a)(3); *see Rocha*, 626 F.3d at 825–26 (“Evidence that might have persuaded the jury to decline to impose the death penalty is irrelevant” to a claim of actual innocence of the death penalty). As will be shown below, the punishment case against Ramey was considerable.

Ramey points to *Rivera v. Quarterman*, 505 F.3d 349 (5th Cir. 2007) and *Busby v. Davis*, 925 F.3d 699 (5th Cir. 2019) for the proposition that the CCA’s evaluation of the state procedural bar implicates federal constitutional questions. But those cases dealt with the state court’s dismissal of intellectual disability claims under *Atkins v. Virginia*, 536 U.S. 304 (2002). *Busby*, 925 F.3d at 706–07; *Rivera*, 505 F.3d at 355. But the CCA has explained it engages in a *prima facie* review of *Atkins* claims under § 5(a)(3). *Ex parte Blue*, 230 S.W.3d at 162–63. The same is not true for all claims brought under that exception.

Absent an indication in the CCA’s order, the CCA presumptively did not reach the federal issue raised. *Coleman*, 501 U.S. at 735 (explaining that there is no presumption of federal-law consideration unless it is first determined that the state court decision “fairly appears

to rest primarily on federal law, or to be interwoven with the federal law”), 739–40 (“In the absence of a clear indication that a state court rested its decision on federal law, a federal court’s task will not be difficult.”). Ultimately, the abuse-of-the-writ bar—a state-law ground clearly and unambiguously applied by the CCA—prohibits this Court from exercising jurisdiction over the claims for which Ramey now seeks review. *See Kunkle v. Texas*, 125 S. Ct. 2898, 2898 (2004) (Stevens, J., concurring) (“I am now satisfied that the Texas court’s determination was independently based on a determination of state law, *see* Tex. Code Crim. Proc. art. 11.071, § 5 [], and therefore that we cannot grant petitioner his requested relief.”). Ramey’s claims are foreclosed by an adequate and independent state procedural bar and certiorari review should be denied.

II. Ramey Provides No Compelling Reason for Further Review and His Claims Lack Merit.

The Court requires those seeking a writ of certiorari to provide “[a] direct and concise argument amplifying the reasons relied on for allowance of the writ.” Sup. Ct. R. 14.1(h). The Court would be hard pressed to discover any such reason in Ramey’s petition, let alone amplification thereof. Indeed, Ramey makes no allegations of circuit or state-court-of-last-resort conflict. *See* Sup. Ct. R. 10(a)–(b). He makes a plea based on “systemic” due process violations

and broad applicability. But this is just sheep's clothing for what he really seeks: pure error correction in his case. And that is hardly a good reason to expend the Court's limited resources. *See* Sup. Ct. R. 10 ("A petition . . . is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). And such a request is especially problematic here because the court below did not reach the merits of Ramey's claims. This Court is one "of review, not of first view." *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Further, Ramey has already sought, and this Court has denied, certiorari review of these claims, and twice for his *Batson* claim. While those denials are not precedential, the same jurisprudential concerns that dictated that result continue to apply. Ramey provides no compelling reason why he should be entitled to additional bites at the apple. Consequently, this case presents an exceptionally poor vehicle for reaching the merits of Ramey's claims and his petition should be denied on this basis alone

A. Ramey's *Batson* claim lacks merit.

Ramey asserts that the trial court violated *Batson* and *Pitchford* by when it granted the State's peremptory challenge of Cheryl

Steadham-Scott (Scott), the only African-American against whom the State used a peremptory strike.

In *Batson* and subsequent cases, the Court has spelled out how a trial court should determine whether a prosecutor employed a peremptory challenge based on race. After the defendant makes a prima facie showing that a peremptory strike was based on race (step one), the prosecutor must provide a race-neutral reason for the challenged strike (step two). Then, at step three, defense counsel has an opportunity to rebut the prosecutor's race-neutral reason as pretextual, and the trial court in turn decides whether the prosecutor's race-neutral reason for striking a juror is pretextual "in light of all evidence with a bearing on it."

Pitchford, 608 U.S. at 394 (quoting *Miller-El v. Dretke*, 545 U.S. 231, 252 (2005) (*Miller-El I*)) (citing *Flowers v. Mississippi*, 588 U.S. 284, 301–303 (2019); *Snyder v. Louisiana*, 552 U.S. 472, 478–479 (2008)).

The third step will "largely will turn on evaluation of credibility." *Batson*, 476 U.S. at 98 n.21. "Credibility can be measured by, among other factors, the prosecutor's demeanor; by how reasonable, or how improbable, the explanations are; and by whether the proffered rationale has some basis in accepted trial strategy." *Miller-El v. Cockrell*, 537 U.S. 322, 339 (2003) (*Miller-El I*). In short, the trial court considers the relevant circumstances bearing upon racial animosity. *Miller-El II*, 545 U.S. at 239. But "the best evidence often will be the demeanor of the

attorney who exercises the challenge.” *Hernandez v. New York*, 500 U.S. 352, 365 (1991) (plurality opinion).

A trial court’s denial of a *Batson* claim “is entitled to ‘great deference’ and ‘must be sustained unless clearly erroneous.’” *Felkner v. Jackson*, 562 U.S. 594, 598 (2011) (quoting *Snyder*, 552 U.S. at 477). That, however, “is the standard on direct review;” AEDPA imposes an even higher standard which “‘demands that state-court decisions be given the benefit of the doubt.’” *Id.* (quoting *Renico v. Lett*, 559 U.S. 766, 773 (2010)). “Therefore, the federal court’s role is to ‘determine whether the trial court’s determination of the prosecutor’s neutrality with respect to race was objectively unreasonable and has been rebutted by clear and convincing evidence to the contrary.’” *Hoffman v. Cain*, 752 F.3d 430, 448–49 (5th Cir. 2014) (quoting *Murphy v. Dretke*, 416 F.3d 427, 432 (5th Cir. 2005)).

The thrust of Ramey’s claim is that the trial court bypassed the third step of *Batson* by not seeking input from defense counsel. App.13–15. “The full record citation confirms this abrupt termination.” App.15. But that is not what the record shows.

Ramey did not lodge his *Batson* challenge as to Scott until *three weeks* later.⁶ App.62a. The trial court allowed the objection, and the State provided its race neutral reasons. 30.RR.8–10.⁷ After the State spoke, the court said it was comfortable with what the record reflected, but then asked, “Anything else?” 30.RR.10. Trial counsel answered, “No, sir.” *Id.* This case is distinguishable from *Pitchford* where the court there did not permit trial counsel to assert his counter to the State’s reasoning. 608 U.S. at 396.

Scott, the only African-American venireperson the State struck, was repeatedly unable to answer questions regarding her ability to consider the death penalty, both in her jury questionnaire and during voir dire. On the questionnaire, she left blank the question, “Have you ever been opposed to the death penalty?” and responded in another section that she was “neither generally opposed to nor generally in favor of capital punishment.” 41.RR.CX-23 at 12, 16.⁸ It is worth noting here

⁶ The delay between jury selection and the beginning of the trial was due to the Christmas and New Years holidays.

⁷ “RR” refers to the Reporter’s Record from the trial. This is preceded by the volume number and followed by the relevant page numbers.

⁸ Volumes 40 and 41 of the reporter’s record contain twenty-three juror questionnaires made part of the record as court exhibits. This Court granted the

that, under Texas law, “failure to complete the juror questionnaire is a valid reason to strike a venire member.” *Ealoms v. State*, 983 S.W.2d 853, 856 (Tex. App.—Waco 1998, pet. ref’d) (citing *Satterwhite v. State*, 858 S.W.2d 412, 423 (Tex. Crim. App. 1993)).

During voir dire,

Scott was repeatedly unable to answer the State’s questions regarding her ability to adjudge the death penalty, both in her jury questionnaire and during voir dire. When asked whether she understood the death penalty or whether she would change it, she replied, “Yea. I don’t know how I would change it, but—I don’t know how I would change it.” When asked if she believed in the death penalty, she responded, “I mean, you’re asking me stuff like do I believe in the death penalty. I don’t know if I believe in it, you know.”

App.6a. She also said that she would “need much more of a burden” than what the law required. 29.RR.78. When answering Ramey’s *Batson* challenge, the prosecutor noted that Scott indicated she could not impose the death penalty and, had the State pushed further, she was close to being challengeable for cause. 30.RR.10.

Every reviewing court since then has agreed the State carried its burden under *Batson* by providing sufficiently race-neutral reasoning.

Director’s motion to supplement the ROA with these documents, filed under seal. ROA.6206. At the time of filing this brief, the Director does not have the sealed, supplemental ROA. Accordingly, the Director will refer to these questionnaires by listing the volume, exhibit number, and page numbers.

The trial court said that it was “comfortable with the record reflecting what it did with respect to” Scott. *Id.* The CCA on direct appeal held that “the record supports the trial court’s ruling that the State struck [Scott] because of her inconclusive opinions on the death penalty and not her identity as an African-American.” App.6a. The federal district court, App.69a–70a, and Fifth Circuit, App.124a–130a, agreed on federal habeas. Ramey has failed at every turn and in every court to show a constitutional violation under *Batson* occurred. *Pitchford* does not provide him any new purchase. This claim deserves no further development.

B. Ramey’s IATC-punishment claim lacks merit.

In his second issue, Ramey asserts a claim of IATC during the punishment phase. Pet.16–17. This Court is well familiar with the standards announced in *Strickland v. Washington*, 466 U.S. 668 (1984), and their application under *Wiggins v. Smith*, 539 U.S. 510 (2003), and its progeny, to trial counsel’s obligation to investigate and present a case for mitigation during the punishment phase. Importantly, if one prong of *Strickland* is found dispositive, either deficiency or prejudice, the Court need not address the other. *Strickland*, 466 U.S. at 697. “Failure to make

the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim” because without proof of both elements “it cannot be said that the conviction or death sentence resulted from a breakdown in the adversary process that renders the result unreliable.” *Id.* at 687, 700.

In his petition, Ramey makes broad sweeping allegations about his trial counsel but does not fully brief in specifics well enough to respond here. Suffice it to say, as in his prior state and federal habeas proceedings, Ramey alleges in his subsequent state application an almost wholesale failure to investigate potential mitigating and aggravating evidence. *See* App.266a–69a. But, counsel put before the jury the very mitigation theories Ramey now pushes: turbulent childhood, low IQ, and emotional and developmental disorders. Indeed, a review of trial counsel’s closing arguments at punishment shows its reliance on these themes. 39.RR.10–18.

To be fair, the federal habeas courts recognized that although there was duplication, Ramey’s federal habeas counsel was able to put forward “a more detailed analysis of what trial counsel could have—and should have—done at the mitigation phase.” *Ramey*, 942 F.3d at 257–58. Truly,

Ramey's complaint is that trial counsel did not put the same degree of evidence before the jury as current counsel would. This is precisely the type of backward-looking second guesses which *Strickland* strictly prohibits. Moreover, a petitioner cannot demonstrate prejudice with duplicative evidence. *Emery v. Johnson*, 139 F.3d 191, 197 (5th Cir. 1997).

The State's case for future dangerousness was very strong, if not insurmountable. Ramey's troubles began at a young age where he would continuously act out in school. SX.266–65.⁹ In 2001, when Ramey was sixteen, he coerced seven-year-old Deroderick Jones to perform oral sex on his penis for the promise of one dollar and a cell phone, a promise on which he reneged after he finished with Deroderick. 37.RR.11–14.

He also forced Deroderick's five-year-old brother, Deontae, to watch while Ramey debased his brother. 37.RR.14–15. Pierre Woods, who was twelve at the time, also witnessed this assault. 37.RR.15–19. Ramey was charged as a juvenile with aggravated sexual assault. SX.251. However,

⁹ SX refers to exhibits proffered by the State at Ramey's capital murder trial. It is followed by the relevant exhibit number.

the charge was reduced to assault, and the court sentenced him to juvenile probation for one year on November 5, 2001. *Id.*

Less than two years later, Ramey and a friend broke a vending machine at a high school, causing \$617.23 in damage. 37.RR.19–31. Ramey pleaded guilty to criminal mischief and was sentenced to 180 days in jail, probated for one year. 37.RR.31–35. He was also charged fines and restitution and required to complete 100 hours of community service, which he never did. *Id.*

Less than six months later, Ramey and another friend broke into Ramey's alternative learning school. 36.RR.55–66. Ramey ransacked the principal's office while his friend trashed the coach's office. 36.RR.49–66. Again, when approached by law enforcement, Ramey's accomplice admitted the wrongdoing while he denied any involvement. 36.RR.66–70. Ramey continued to lie even during his grand jury testimony. 36.RR.70–76.

On April 29, 2004, his probation was revoked for the burglary, failure to pay fees and restitution, and failure to keep up with his community service hours. SX.222. He was sentenced to only five months in the county jail. *Id.* On September 8, 2004, he pleaded guilty to criminal

trespass for his vandalism at the school and he received 180 days in jail probated for a year, thirty days in county jail, and fines. *Id.* On April 5, 2005, this probation was revoked because he failed to report to his parole office, submit to a urinalysis exam, and pay his fines. *Id.* He received five months in county jail. *Id.*

And yet, just over four months later on August 19th, Ramey and his cohorts burglarized Nairn's residence, where Ramey procured the guns used in the capital murder. During the State's punishment case though, the jury learned this was just the first of three raids Ramey lead on Nairn's place. On September 18th, less than one month after the first burglary and triple murders, Ramey and his associates went to Narin's again. 37.RR.70–106. The following night, Ramey said he wanted to go back in and get everything, so they went back in and cleaned the place out. 37.RR.114–25.

That night Ramey told a cohort he wanted to break into the "Robles' house" next. 37.RR.80. The very next night Ramey and an unknown male burglarized Crystal Robles's house. 37.RR.35–60. When Ms. Robles returned home, she saw Ramey run from her house and speed away in a car. 37.RR.43–54. She began to chase after him, but Ramey attempted to

hit her with his vehicle. *Id.* After he was arrested for the triple murders, police asked him about the Robles burglary. *Id.* Ramey denied any involvement and created an alibi involving Stacy Johnson. *Id.*

Norman testified that Ramey was planning another burglary of the “Viella’s.” 38.RR.10. He also discussed a time when Ramey told him that Ramey killed someone with a high-powered rifle during a home invasion in Victoria. 38.RR.9–10. Other accomplices had similar recounts of Ramey bragging about various misdeeds. Ramey told Times about sexually assaulting Deroderick Jones. 37.RR.99. Ramey said that while at Carver Elementary, he also stole laptops from the school. *Id.* Ramey claimed to have stolen a car in Victoria. *Id.* He also talked to Times about his plan to sell dope to pay for his probation. *Id.* Butler stated that in addition to bragging and joking about the triple murders, Ramey boasted that he and a couple of friends shot and killed a Hispanic man during the course of a robbery in Victoria. 37.RR.106–07.

Then there was Ramey’s behavior while awaiting trial. On August 23, 2006, guards performed a “shake down” of Ramey’s cell. 37.RR.157–69. They found a shank in his belongings. *Id.* They also discovered the toilet had been stopped up with trash, toilet paper, and feces. *Id.* The

guards told Ramey and the other inmates to clean up the mess. *Id.* Ramey began yelling and threatening the guards. *Id.* He became so belligerent that the guards had to place him in a restraint chair. *Id.* After the guards left him to clean, he continued kicking the door and screaming at the guards. *Id.* On November 29, 2006, while the first panel was in voir dire, Ramey became belligerent and again threatened the guards. 37.RR.175–82. He refused to leave his cell because he was upset about the loss of television privileges. *Id.*

Even assuming counsel was somehow deficient, Ramey cannot show prejudice. As the evidence demonstrated, Ramey is a violent individual with an escalating pattern of criminal behavior. Further, the heinous nature of the crime was sufficient for the jury to answer the future dangerous issue in the affirmative and negate the mitigating effect of his proffered evidence. As such, Ramey does not prove prejudice. *See Wong v. Belmontes*, 558 U.S. 15, 27–28 (2009); *Leavitt v. Arave*, 646 F.3d 605, 616 (9th Cir. 2011).

REASONS FOR DENYING THE MOTION FOR STAY

I. Standard of Review

A stay of execution is an equitable remedy. *Hill*, 547 U.S. at 584. “It is not available as a matter of right, and equity must be sensitive to the State’s strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Id.* (citing *Nelson v. Campbell*, 541 U.S. 637, 649–50 (2004)). “It is well-established that petitioners on death row must show a “reasonable probability” that the underlying issue is “sufficiently meritorious” to warrant a stay and that failure to grant the stay would result in “irreparable harm.” *Barefoot v. Estelle*, 463 U.S. 880, 895 (1983), *superseded on other grounds by* 28 U.S.C. § 2253(c)(2).

Indeed, “[a]pplications for stays of death sentences are expected to contain the information and materials necessary to make a careful assessment of the merits of the issue and so reliably to determine whether plenary review and a stay are warranted.” *Id.* To demonstrate an entitlement to a stay, a petitioner must demonstrate more than “the absence of frivolity” or “good faith” on the part of petitioner. *Id.* at 892–93. Rather, the petitioner must make a substantial showing of the denial of a federal right. *Id.*

In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but “the severity of the penalty does not in itself suffice.” *Id.* at 893. The State’s “powerful and legitimate interest in punishing the guilty,” as well as its interest in finality, must also be considered, especially in a case such as this where the State and victims have for years borne the “significant costs of federal habeas review.” *Herrera v. Collins*, 506 U.S. 390, 421 (1993) (O’Connor, J., concurring); *Calderon v. Thompson*, 523 U.S. 538, 556 (1998) (both the State and the victims of crime have an important interest in the timely enforcement of a sentence). Thus, in deciding whether to grant a stay of execution, the Court must consider 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)); *see also Buxton v. Collins*, 925 F.2d 816, 819 (5th Cir. 1991).

II. Ramey Cannot Demonstrate His Case is Worthy of a Stay.

A. Ramey has not made a strong showing that he will succeed on the merits.

Given the dilatory, procedurally defective, and meritless nature of his claims, Ramey fails to show that there is any significant possibility that the Court will grant certiorari. As demonstrated above, Ramey's failure to offer a sound claim for relief therefore supports the denial of a stay of execution.

B. Ramey is unlikely to suffer irreparable harm.

In a capital case, a court may properly consider the nature of the penalty in deciding whether to grant a stay, but "the severity of the penalty does not in itself suffice." *Barefoot*, 463 U.S. at 893. In his application for a stay of execution, Ramey only points to the irreversible nature of the death penalty. Stay.³ Without more, Ramey cannot satisfy this prong by showing, outside of the penalty itself, a likelihood that he will suffer irreparable harm if a stay of execution is not granted.

C. The State and the public have a strong interest in seeing the state court judgment carried out.

The State and crime victims have a "powerful and legitimate interest in punishing the guilty." *Calderon*, 523 U.S. at 556 (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); see *Nelson*, 541 U.S. at 650 (“a State retains a significant interest in meting out a sentence of death in a timely fashion”); *Gomez v. United States Dist. Court*, 503 U.S. 653, 654 (1992) (per curiam) (“[e]quity must take into consideration the State’s strong interest in proceeding with its judgment”). 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.* The State should be allowed to pursue its “strong interest in enforcing its criminal judgments without undue interference from the federal courts.” *Crutsinger v. Davis*, 936 F.3d 265, 273 (5th Cir. 2019) (citations and internal quotations omitted).

Indeed, Ramey has already passed through the state and federal collateral review process. The public’s interest is not advanced by postponing Ramey’s execution, and the State opposes any action that would cause further delay. *Martel v. Clair*, 565 U.S. 648, 662 (2012)

(“Protecting against abusive delay *is* an interest of justice.”) (emphasis in original).

It is no secret that “capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of a sentence of death.” *Rhines v. Weber*, 544 U.S. 269, 277–78 (2005) . The fact that this claim was not raised until after an execution date was set must inform the Court’s analysis. “A court considering a stay must also apply ‘a strong equitable presumption against the grant of a stay where a claim could have been brought at such a time as to allow consideration of the merits without requiring entry of a stay.’” *Hill*, 547 U.S. at 584 (quoting *Nelson*, 541 U.S. at 650). Here, Ramey’s claims are meritless and do not warrant staying his execution.

CONCLUSION

For the reasons set forth above, Ramey’s petition for a writ of certiorari should be denied. Moreover, the State’s strong interest in the timely enforcement of a sentence is not outweighed by the unlikely possibility that Ramey’s petition for certiorari will be granted. Thus, his motion for a stay of execution should be denied as well.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

AMBER PLATT
Associate Deputy Attorney General
for Criminal Justice

TOMEE M. HEINING
Chief, Criminal Appeals Division

s/ Travis G. Bragg
TRAVIS G. BRAGG
Assistant Attorney General
State Bar No. 24076286
Counsel of Record

Post Office Box 12548,
Capitol Station
Austin, Texas 78711
512.936.1400
Travis.Bragg@oag.texas.gov

Attorneys for Respondent