No. 26-5736

In the Supreme Court of the United States

SHAUN BURNEY,

Petitioner,

v.

MARIO RAMIREZ, ACTING WARDEN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

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October 29, 2026

CAPITAL CASE
QUESTION PRESENTED

Whether the court of appeals correctly denied habeas relief on petitioner's claim that his confession was involuntary.

PARTIES TO THE PROCEEDING

The petitioner is Shaun Kareem Burney. The respondent is Mario Ramirez, Acting Warden.

DIRECTLY RELATED PROCEEDINGS

Supreme Court of the United States:

Burney v. California, No. 09-8244 (certiorari denied Mar. 1, 2010).

United States Court of Appeals for the Ninth Circuit:

Burney v. Broomfield, No. 22-99002 (opinion issued May. 7, 2026) (this case below).

United States District Court for the Central District of California:

Burney v. Broomfield, No. 10-cv-00546-FLA (judgment entered Feb. 8, 2022) (this case below).

California Supreme Court:

In re Burney, No. S190968 (second state habeas petition, denied Aug. 17, 2016).

In re Burney, No. S133439 (first state habeas petition, denied Dec. 17, 2009).

People v. Burney, No. S042323 (judgment affirmed Jul. 30, 2009).

Orange County Superior Court:

People v. Burney, No. C94692 (judgment entered Sep. 16, 1994).

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STATEMENT

1. A jury found petitioner Shaun Kareem Burney guilty of special-circumstance murder for killing Joseph Kondrath during a kidnapping and robbery; the trial court sentenced him to death. Pet. App. F-121.

The evidence at trial showed that early one morning in June 1992, Burney, Allen Burnett, and Scott Rembert robbed Kondrath in the carport of an apartment complex; Kondrath was a stranger to them. Pet. App. F-122, 124. At the time of the offense, Burney was eighteen years old. Pet. App. A-5. His codefendants, Burnett and Rembert, were eighteen and twenty, respectively. *Id*. The trio took Kondrath's keys and wallet, and forced Kondrath into the trunk of his car. Pet. App. F-125. Burney eventually parked and discussed the situation with Burnett and Rembert. *Id*. at F-122. After that discussion, Burney exited the car, opened the trunk, and quickly reclosed it. *Id*. at F-126. He opened it a second time. *Id*. Kondrath begged for his life, but Burney fired a single shot into Kondrath's head, killing him. *Id*. at F-122, 126.

Burney, Burnett, and Rembert each gave a statement to the police. Pet. App. F-123, n.3.[1] Prior to trial, Burney moved to exclude his statement,

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[1] The redacted statements of each defendant were admitted at their joint trial. On Burney's direct appeal, the California Supreme Court concluded that the redactions to the codefendant statements were insufficient to cure a *Bruton* problem. But it held that the error was harmless because Burney's confession established each element of the charged offenses and enhancements. Pet. App. F-148–157.

arguing only that he had not waived his *Miranda* rights. *See* Pet. App. A-42. He did not argue that his statements were involuntary or coerced. The trial court found that Burney waived his *Miranda* rights by answering questions after expressly acknowledging that he understood his rights. *Id.*[2]

In his statement, Burney admitted that he shot Kondrath. Pet. App. J-301–305. He explained that one of his codefendants was drunk and insisted on the need to kill Kondrath. Pet. App. F-126. Asked why he didn't refuse to kill Kondrath and give the gun to someone else, "Burney responded that he was afraid the drunk defendant would accidentally shoot him (Burney)." Pet. App. A-6–7.

Burney did not present evidence at the guilt phase. Pet. App. F-132. But to avoid guilt on the special circumstances, he argued that both the kidnapping and the robbery were over before the shooting. *Id.* The jury returned a guilty verdict—including on the special circumstances, which made Burney eligible for the death penalty. *Id.* at F-121.

In the penalty phase, the prosecution presented evidence of uncharged assaults that Burney committed on his ex-girlfriend and stepfather. Pet. App. F-133. The defense's mitigation case included testimony from two mental-health experts as well as lay witnesses. *Id.* at F-134–136. Dr. Stephen Wells testified that Burney had the intellectual and social capacity of a fifteen-year-old at the time of the offense, and that Burney had been experiencing

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[2] Burney waives the *Miranda* claim in his Petition. Pet. 10 n.2.

symptoms of manic-depressive mental disorder on the day of the murder. Pet. App. F-134. Dr. William Vicary, a forensic psychiatrist, testified that Burney said he had consumed 40 ounces of malt liquor prior to the offense. *Id.* at F-135–136. Dr. Vicary agreed that Burney suffered childhood trauma. *Id.* He said that Burney expressed remorse for killing Kondrath. *Id.* at F-136. And he opined that Burney would not be a danger to others while incarcerated. *Id.* The jury returned a verdict of death. *Id.* at F-121.

On direct appeal, Burney did not challenge the admission of his statement. *See* Pet. App. F-120. The California Supreme Court affirmed the judgment in its entirety. *Id.* This Court denied Burney's petition for a writ of certiorari. *See Burney v. California*, No. 09-8244 (Mar. 10, 2010).

2. While his direct appeal was pending, Burney filed a petition for writ of habeas corpus in the California Supreme Court. Pet. App. A-17. Among the claims included in the petition, Burney asserted that his confession was involuntary and unreliable. Pet. App. H-208 (Claim VIII). In support of this claim, Burney presented the court with evidence regarding his intellectual functioning that he had not presented to the trial court. *See* Pet. App. I-224–259 (three exhibits, each dated 2005). Five months after affirming the judgment on direct appeal, the California Supreme Court denied the habeas claim as procedurally barred and meritless in the alternative. Pet. App. E-119. Citing *In re Seaton*, 34 Cal.4th 193, 197–200 (2004), the court explained that

the claim was barred because it "could have been, but [was] not, raised in the trial court." Pet. App. E-119.

In 2011, Burney filed a second state habeas petition in the California Supreme Court as an exhaustion petition, presenting the same involuntariness claim. Pet. App. A-17, 40. The court denied the claim in 2016 as untimely pursuant to *In re Robbins*, 18 Cal.4th 770, 780–781 (1998), and as barred by Burney's failure to raise the claim in the trial court pursuant to *In re Seaton*. Pet. App. D-118 (claim four). It also denied the claim as previously raised and rejected in a prior habeas petition, and—citing *In re Clark*, 5 Cal.4th 750, 767–769 (1993)—it noted that any difference between the claim as presented in the first petition and the second was barred for not having been asserted in the prior petition. Pet. App. D-118.

3. Burney sought habeas relief in federal district court. In the operative habeas petition, Burney raised several claims, including a challenge to his confession as involuntary and unreliable. *See* Pet. App. C-59–60. Exercising its discretion to deny the claim on the merits, rather than on procedural grounds, the district court concluded that the California Supreme Court could have reasonably concluded that the statements were "voluntary, knowing, and intelligent," and that "[p]etitioner's age, intelligence, and prior experience with the criminal system did not show such a degree of impairment to his rational intellect and free will that his statements, under the circumstances of his detention and interrogation, were not voluntary." *Id*. at C-61–64. The district

court denied all of Burney's other claims and granted a certificate of appealability only with respect to a claim alleging that the judge's remarks denied Burney a fair trial. *Id.* at C-116–117. The court denied "a certificate of appealability on all other claims." *Id.* at C-117.

4. The court of appeals denied Burney's request to expand the certificate of appealability to include the involuntary confession claim. Pet. App. A-3. The court concluded that the claim was "clearly not meritorious" and thus bypassed "the state court's procedural default ruling." *Id.* at A-34. Applying AEDPA deference to the California Supreme Court's denials of the claim, the court of appeals concluded "that a fairminded jurist could agree with the state court that Burney's confession was voluntary, and . . . that such conclusion is not debatable." *Id.* at A-33.

The court explained that "[t]he totality of the circumstances show that Burney's confession was voluntary. There was no inherently coercive police activity. The detectives did not use threats, violence, promises, or deception to obtain Burney's confession." Pet. App. A-35. In addition, the interrogation was not lengthy, *id.*; nothing in the record supported "Burney's claim that his youth and mental deficits rendered the detectives' questioning coercive," *id.* at A-36; "Burney's responses were appropriate and coherent in general," *id.* at A-37; and "[s]ignificantly, Burney did not simply agree with the detectives' suggestions," *id.* at A-38. Rather, he "consistently denied" certain suggestions from the detectives, evidencing that Burney's "confession was deliberate and

'the product of a free and rational will.'" *Id.* Under the totality of circumstances, the court of appeals concluded that "a fairminded jurist could agree with the state court that Burney's confession was voluntary" and that "[n]o reasonable jurist could debate that conclusion in light of the record." *Id.*

ARGUMENT

Burney asks the Court to grant certiorari to address whether his confession may "be deemed voluntary and reliable under the totality of the circumstances." Pet. i. But there are several obstacles to the Court's review of that question. The district court denied a certificate of appealability on that issue, Pet. App. C-116–117, and the court of appeals declined to expand the certificate of appealability to encompass that claim, Pet. App. A-32–39. The California Supreme Court also summarily denied habeas relief on Burney's involuntariness claim on independent and adequate state law procedural grounds, which ordinarily prevents federal review of a claim on the merits, complicating Burney's request for a merits decision in this case. And in any event, even if the Court could reach the merits of Burney's claim, plenary review is unnecessary because—as the court of appeals correctly held—reasonable jurists could conclude that Burney's confession was voluntary under the circumstances of his interrogation.

1. When the court of appeals denies a certificate of appealability on a habeas claim, this Court has jurisdiction to consider only whether the denial of a certificate of appealability was proper. *See* 28 U.S.C. § 2253(c)(1)(A) ("Unless a circuit justice or judge issues a certificate of appealability, an appeal

may not be taken to the court of appeals from . . . the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court."); *Gonzalez v. Thayer*, 565 U.S. 134, 142 (2012) ("section 2253(c)(1) is jurisdictional"); *Hohn v. United States*, 524 U.S. 236, 253 (1998) ("We hold this Court has jurisdiction under § 1254(1) to review denials of applications for certificates of appealability by a circuit judge or a panel of a court of appeals."). Review of a decision to deny a certificate of appealability "is not occasion for a ruling on the merit of petitioner's claim." *Miller-El v. Cockrell*, 537 U.S. 322, 331 (2003). Rather, a certificate-of-appealability ruling involves the distinct question of whether "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Id.* at 326.

Here, Burney's petition does not seek review of that question, nor does he argue that the question of whether the court of appeals should have issued a certificate of appealability is "fairly included within" the merits question presented in his petition. *See* Sup. Ct. R. 14.1(a); Pet. i.[3] In any event, Burney fails to offer any meaningful argument that the certificate-of-appealability question warrants the Court's plenary review. Burney seeks review so the

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[3] Even if Burney attempted to argue that the merits of his voluntariness claim are intertwined with the certificate-of-appealability standards, that argument would have no merit with respect to the California Supreme Court's procedural bar rulings. *See* Pet. App. D-118; Pet. App. E-119.

Court may "reinstate the due process protections against unconstitutionally coercive interrogations," Pet. 19—*i.e.*, merits relief the Court should not grant in this procedural posture, *see Miller-El*, 537 U.S. at 331.

2. A separate procedural bar presents an additional obstacle to review of the merits question presented in Burney's petition. Under the doctrine of procedural default, "a federal court will not review the merits of claims, including constitutional claims, that a state court declined to hear because the prisoner failed to abide by a state procedural rule." *Martinez v. Ryan*, 566 U.S. 1, 9 (2012). This "application of the independent and adequate state ground doctrine is grounded in concerns of comity and federalism. Without the rule, a federal district court would be able to do in habeas what this Court could not do on direct review; habeas would offer state prisoners whose custody was supported by independent and adequate state grounds an end run around the limits of this Court's jurisdiction and a means to undermine the State's interest in enforcing its laws." *Coleman v. Thompson*, 501 U.S. 722, 730–731 (1991). The adequate and independent state ground bar to federal habeas review is not removed if a state court "reach[es] the merits of a federal claim in an *alternative* holding." *Harris v. Reed*, 489 U.S. 255, 264 n.10 (1989).

Here, the California Supreme Court twice denied Burney's involuntariness habeas claim as procedurally barred. *See* Pet. App. E-119; Pet. App. D-118. First, in 2009, the California Supreme Court concluded that Claim VIII, raising Burney's argument that his statements were involuntary,

see Pet. App. H-208–223, was meritless and "barred insofar as [it] could have been, but [was] not, raised in the trial court." Pet. App. E-119. The Court cited *In re Seaton*, 34 Cal. 4th 193, 197–200 (2004), for the principle that a defendant may not raise a claim in habeas "when no objection was made at *trial*." In 2016, the California Supreme Court again summarily denied habeas relief, this time "solely on procedural grounds." Pet. 9. It concluded the involuntariness claim was untimely under *In re Robbins*, 18 Cal. 4th 770, 780–781 (1998), procedurally defaulted by Burney's failure to raise the claim in the trial court pursuant to *In re Seaton*, and barred to the extent that it could have been, but was not, raised in the prior habeas petition under *In re Clark*, 5 Cal. 4th 750, 767–769 (1993). *See* Pet. App. D-118 (claim four).

While the courts below did not rely on these procedural bars to deny Burney habeas relief (*see* Pet. App. A-34; Pet. App. C-60–64), they are independent state-law grounds that are adequate to preclude federal habeas review of the merits of Burney's constitutional claim. The Ninth Circuit has recognized that the requirement of an objection to the admission of a confession at trial, as described in *In re Seaton*, is independent and adequate. *See*, *e.g.*, *Fauber v. Davis*, 43 F.4th 987, 1002 (9th Cir. 2022) (recognizing "California's contemporaneous objection rule as 'an adequate and independent state law ground' that forecloses our review"); *cf. Coleman*, 501 U.S. at 747 (discussing contemporaneous objection rule examined in *Engle v. Isaac*, 456 U.S. 107 (1982), as an "independent and adequate state ground barr[ing] federal

habeas" review). This court has held that California's timeliness rule is independent and adequate. *Walker v. Martin*, 562 U.S. 307, 321 (2011). And California's rule against piecemeal presentation of claims is likeweise independent and adequate. *See Fields v. Calderon*, 125 F.3d 757, 763–764 (9th Cir. 1997) (recognizing that *Clark's* prohibition on the piecemeal presentation of claims was "intended to reestablish California's procedural rules governing sate habeas petitions and clearly define and limit the applicable exceptions"). While Burney acknowledges the state court's procedural rulings, *see* Pet. 9, he offers no argument in the petition to justify evading those procedural bars—making this case a poor vehicle for consideration of the merits question presented in the petition.

3. In any event, further review of Burney's claim on the merits would not be warranted. Under AEDPA, habeas relief is improper unless the state court's resolution of a federal constitutional claim was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)–(2). To satisfy § 2254(d)(1), Burney must show that "'there was no reasonable basis' for the [California Supreme Court's] decision." *Cullen v. Pinholster*, 563 U.S. 170, 188 (2011) (quoting *Harrington v. Richter*, 562 U.S. 86, 98 (2011)). Under § 2254(d)(2), a state court's factual findings are unreasonable if "reasonable minds reviewing the record" could not

agree with them. *Brumfield v. Cain*, 576 U.S. 305, 314 (2015); *see Wood v. Allen*, 558 U.S. 290, 301 (2010) ("[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.").

Under those deferential standards, the court of appeals correctly concluded that the state court's rejection of Burney's involuntariness claim precludes habeas relief. "The Fourteenth Amendment forbids the use of involuntary confessions" at criminal trials. *Jackson v. Denno*, 378 U.S. 368, 385–386 (1964). A confession is involuntary if the defendant's "'will was overborne' or if his confession was not 'the product of a rational intellect and a free will.'" *Townsend v. Sain*, 372 U.S. 293, 307 (1963), *overruled on other grounds by Keeny v. Tamayo-Reyes*, 504 U.S. 1 (1992), *superseded in part by statute*, 28 U.S.C. § 2254(e)(2) (1996). Evidence of "coercive police activity is a necessary predicate to the finding that a confession is not 'voluntary.'" *Colorado v. Connelly*, 479 U.S. 157, 167 (1986). Even if there is some coercive activity, however, "courts look to the totality of circumstances to determine whether a confession was voluntary." *Withrow v. Williams*, 507 U.S. 680, 693 (1993). Courts may consider the circumstances of the interrogation (such as length, location, and questioning tactics) and individual characteristics of the defendant (such as education, maturity, and both physical and mental health). *Id.* at 693–694; *Schneckloth v. Bustamonte*, 412 U.S. 218, 226 (1973).

Here, Burney fails to show that there was no reasonable basis for the California Supreme Court's summary denial of his involuntariness claim. *See* Pet. App. E-119; Pet. App. D-118. The district court correctly observed that the police did not engage in any coercive activity, which provides a reasonable basis for the state court's decision. Pet. App. C-63. And after reviewing the record, the court below agreed, finding "no inherently coercive police activity." Pet. App. A-35. The interview did not involve violence, threats, deception, or promises; it was not lengthy; and while Burney's IQ was in the "dull normal range" and reflected "the mental age of a 15-year-old, the transcript of the interrogation nevertheless demonstrates that Burney's will was not overborne." *Id.* at A-36; *see id.* at A-35-38.

The court of appeals also emphasized that "Burney did not simply agree with the detectives' suggestions" during the interview. Pet. App. A-38. Rather, he "consistently denied" certain suggestions from the detectives, which supported the conclusion that Burney's "confession was deliberate and 'the product of a free and rational will.'" *Id.* "[I]n light of th[is] record," the court of appeals correctly concluded that "a fairminded jurist could agree with the state court that Burney's confession was voluntary" and that "[n]o reasonable jurist could debate that conclusion." *Id.* at A-38.

Burney's contrary arguments are unpersuasive. He asserts that his mental health and below-average intelligence rendered him susceptible to coercion, that his interview was longer than that of his codefendants, that the

police continued to question him after he denied involvement in the murder, and that he was visibly upset throughout the interview. Pet. 15–17. These assertions do not compel a finding of coercion; nor do they render the California Supreme Court's voluntariness conclusion unreasonable. As the court of appeals observed, the interview transcript demonstrates that Burney was engaged and appropriately responsive. Pet. App. A-36–37; Pet. App. S-412. There is no evidence that the length of the interview affected Burney's mental or physical functioning. Pet. App. A-36. And there is no evidence showing that Burney's statements were involuntary merely because certain questions were repeated and Burney displayed emotion and regret during his interrogation. At a minimum, there is no clearly established federal law requiring officers to cease questioning upon the denial of culpability or crying during an interview. *See Carey v. Musladin*, 549 U.S. 70, 77 (2006) (state courts cannot misapply clearly established federal law that does not exist).

Burney's argument (at 17–19) that the decision below conflicts with *Schneckloth*, 412 U.S. at 226, and *Withrow*, 507 U.S. at 693, likewise lacks merit. *Schneckloth* confirmed that "[i]n determining whether a defendant's will was overborne in a particular case, the Court has assessed the totality of all the surrounding circumstances—both the characteristics of the accused and the details of the interrogation." 412 U.S. at 226. The court of appeals applied that standard, examining "[s]ome of the factors" considered in *Schneckloth*, including "the youth of the accused," "his lack of education," "his low

intelligence," the absence of "prolonged" questioning, and the absence of techniques like the "use of physical punishment such as the deprivation of food or sleep." *Id.*; *see* Pet. App. A-35–39. And *Withrow* held only that state prisoners may assert alleged violations of *Miranda* on federal habeas, 507 U.S. at 688—a holding that is not implicated in Burney's petition. While the Court did reiterate in *Withrow* that courts "examine[] the totality of circumstances to determine whether a confession had been 'made freely, voluntarily and without compulsion or inducement of any sort,'" *id.* at 688–689, that is the standard applied by the courts below and properly attributed to the California Supreme Court in denying Burney relief.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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