No. 26-6187 & 26A716

IN THE

Supreme Court of the United States

REINALDO DENNES,
Petitioner,

v.

STATE OF TEXAS,
Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI AND MOTION FOR STAY OF EXECUTION

KEN PAXTON
Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

AMBER PLATT
Deputy Attorney General
For Criminal Justice

TOMEE M. HEINING
Chief, Criminal Appeals Division

LUCAS WALLACE
Assistant Attorney General
Counsel of Record

P.O. Box 12548, Capitol Station
Austin, Texas 78711
Tel: (512) 936–1400
Lucas.wallace@oag.texas.gov

Counsel for Respondent

CAPITAL CASE
QUESTION PRESENTED

Petitioner Reinaldo Dennes was convicted and sentenced to death for murdering Janos Szucs during the course of a robbery. After the trial court set Dennes's execution date, Dennes belatedly filed a subsequent state application for a writ of habeas corpus, raising five claims for relief. The Texas Court of Criminal Appeals (CCA) dismissed Dennes's application as an abuse of the writ. *Ex parte Dennes*, No. WR-34,627-03 (Tex. Crim. App. Nov. 18, 2026). Dennes's petition for a writ of certiorari and application for a stay of execution now present the following claim for review:

1. Whether the state court's disposition, which relied upon an adequate and independent state procedural ground, forecloses certiorari review and a stay of execution?

LIST OF ALL PROCEEDINGS

State v. Dennes, No. 750313 (263rd Dist. Ct., Harris County, Tex. Sep. 4, 1997) (conviction of capital murder and sentence of death)

Dennes v. State, No. 72,966 (Tex. Crim. App. Jan. 5, 2000) (direct appeal opinion affirming conviction and sentence)

Ex parte Dennes, No. WR-34,627-02, 2013 WL 6673058 (Tex. Crim. App. Dec. 18, 2013) (denying relief from initial state habeas application)

Dennes v. Davis, No. CV H-14-0019, 2017 WL 1102697 (S.D. Tex. Mar. 22, 2017) (denying federal habeas relief)

Dennes v. Davis, No. 17-70010, 2019 WL 2305030 (5th Cir. May 29, 2019) (granting in part a certificate of appealability)

Dennes v. Davis, 797 F. App'x 835 (5th Cir. 2020) (affirming in part the district court's judgment and denying in part a certificate of appealability)

Dennes v. Lumpkin, 592 U.S. 1128 (2020) (denying certiorari off federal habeas)

Ex parte Dennes, No. WR-34,627-03 (Tex. Crim. App. Nov. 18, 2026) (dismissing subsequent application as an abuse of the writ and denying motion to stay execution)

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INTRODUCTION

Petitioner Reinaldo Dennes was convicted and sentenced to death by a Harris County jury in January 1996, for the capital murder of Janos Szucs during the commission of a robbery. Dennes organized and carried out the robbery and murder of Szucs, a diamond wholesaler, who had an office suite in the same building as Dennes. Dennes had an acquaintance of his make a silencer for him before he and his brother snuck into the building, distracted and shot a security guard, took the security tapes, shot and killed Szucs, and took $3,600,000 in diamonds and $200,000 in cash from Szucs's office.

Pursuant to the order of the trial court, Dennes is scheduled to be executed sometime after 6:00 P.M. on November 19, 2026. As shown below, Dennes has already availed himself of the full state and federal appeals available to death-row inmates in Texas. Now, a mere day before his scheduled execution, Dennes seeks certiorari review of the CCA's decision to dismiss his subsequent state habeas application, which he filed only eight days ago. *Ex parte Dennes*, No. WR-34-,627-03, at 2-3 (Tex. Crim. App. Nov. 18, 2026) (per curiam) (not designated for publication).

In the question presented in the instant petition for certiorari (Pet.), Dennes argues that the CCA erred "in concluding that trial counsel was not deficient when it [sic] put on a nominal mitigation case after conducting no investigation." Pet. i. However, this claim is not worthy of the Court's review

because certiorari review and a stay of execution are foreclosed by Texas's abuse of the writ bar, and adequate and independent state-procedural bar, and alternatively, Dennes's claim is meritless. Dennes's petition simply does not demonstrate any special or important reason for this Court to review the CCA's decision, and this Court does not typically engage in routine error correction. Certiorari review is therefore unwarranted.

Similarly, Dennes's request for a stay is meritless. Dennes 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*, 578 U.S. 119, 150 (2019); *see also Barr v. Lee*, 591 U.S. 979, 981 (2020). As the Court has explained:

> "[T]he 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." *Hill*, 547 U.S. at 584 (internal quotation marks omitted). . . . 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. [*Hill*, 547 U.S. at 584–85].

Bucklew, 587 U.S. at 150–51 (footnote omitted).

By delaying until the last minute to raise his claim, Dennes fails to make the requisite showing to justify interference by the federal courts. More than thirty years have passed since Dennes killed Janos Szucs. The ensuing delay

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

STATEMENT OF THE CASE

I. Facts of the Crime

The Texas Court of Criminal Appeals (CCA) summarized the relevant evidence presented during guilt-innocence in its opinion on direct appeal:

> In December of 1995, Antonio Ramirez came from Ecuador to work in Texas. Shortly after his arrival, Ramirez met a man named Francisco Rojas who sold jewelry for [Dennes].[1] Some time later, Ramirez gave several rings to Rojas that he wanted to sell. Rojas then took Ramirez and the rings to [Dennes] at [Dennes]'s office in the Greenrich Building on Richmond Avenue. During the visit, Ramirez noticed a lathe in [Dennes]'s jewelry workshop and began to play with it. [Dennes] asked Ramirez if he knew how to operate the machine and Ramirez said that he did. [Dennes] then "hired" Ramirez to make watch bezels for him.[2]
>
> Shortly thereafter [Dennes] invited Ramirez to travel to Mexico with him and to buy a diamond. After the diamond

[1] [Dennes] ran a business called "Designs by Reinaldo." [Footnotes in original]

[2] Ramirez stated that he did not expect to be paid for this work, but thought it would be a good thing to do while waiting to get money from the sale of his rings.

purchase, the pair returned to Texas and [Dennes] gave Ramirez more work. In early January 1996, [Dennes] made a sketch for Ramirez and asked him if he could make the object depicted. By the time he completed the job, Ramirez had manufactured what turned out to be a silencer for [Dennes]. After the silencer was completed, [Dennes], his brother Alberto, and Ramirez went to a field a few minutes away to test it. Thinking the silencer did not work as it should [Dennes] modified his design and had Ramirez make another one. [Dennes] test fired this model in his office.

Shortly after completion of the second silencer, [Dennes] asked Ramirez to help him and Alberto rob a jewelry dealer who also had an office in the Greenrich Building. [Dennes] explained that he would take the videotape from the security station while Ramirez secured the diamonds and Alberto shot the dealer. Ramirez consented, but returned to South America two days later.[3]

Estrella Martinez, [Dennes]'s lover, had a cleaning job at the Greenrich Building. In January of 1996, [Dennes] told Martinez he wanted her to let him in a side door of the building after working hours. He told her he was going to take some videotapes from the security guard's station on the first floor. On January 22, 1996, [Dennes] gave Martinez a cellular phone with which he planned to call her and tell her when to let him and Alberto into the building. [Dennes] also wanted Martinez to distract the guard so he could take the tapes.

Janos Szucs was a reputable wholesale diamond dealer who had an office in the Greenrich Building. Shortly before his death, Szucs had a diamond inventory worth more than $3,600,000 which he kept in his office safe. He also had approximately $200,000 in cash that he planned to use to purchase diamonds on an upcoming trip. Szucs did not have a receptionist or secretary; access to his office was controlled through an electronically-locked door. Szucs had a television monitor in his office so he could see who was at the door and he would allow people in by pushing a remote button located on his desk. In early January 1996, Szucs and Sam

[3] Ramirez testified that he only consented so as not to alarm the Dennes brothers; however, he had no intention of helping them.

Solomay formed a partnership and Solomay moved into Szucs's office suite.

On January 24th, Solomay left the office at 5:40 p.m., but Szucs remained, explaining that he had an appointment that evening. David Copeland was the security guard on duty at the Greenrich Building that evening, working the 3:00 p.m. to 11:00 p.m. shift. A videotape recorder at the security desk recorded images from the security cameras around the building. When Copeland arrived for his shift, a technician was there working on the surveillance system.

Around 6:30 p.m. that same evening, [Dennes] called Martinez on the cellular phone he had provided her and told her to open the loading dock door. [Dennes] and Alberto entered and immediately turned into a stairwell, thereby avoiding the security guard's desk. Shortly after 7:00 p.m. [Dennes] called Martinez and told her to distract the security guard. Martinez told Copeland that she had locked her keys in a fifth floor office and asked him to help her retrieve them. A little after 7:30 p.m., [Dennes] again called Martinez and told her that he needed another distraction. The security guard kept the key to the snack bar so Martinez approached Copeland and told him that she needed to clean the area and asked if he would let her in. Shortly after Martinez began cleaning, however, the owner of the snack bar arrived and told her to come back later.

When Copeland returned to the lobby, he found a man kneeling behind the security desk apparently working on the security system. Copeland assumed this was related to the earlier repairs. As Copeland approached, the man scrambled to his feet and walked briskly toward the loading dock door. As Copeland neared the security desk, the man turned and headed back toward the guard. When he reached Copeland, the man placed his left hand on Copeland's shoulder, stuck a .9 mm gun with a silencer to Copeland's chest with his other hand and fired. The man shot the guard again after he had fallen. As Copeland lay there playing dead, he heard the man walk to the security desk. He then heard equipment and wires being moved around followed by footsteps

running toward the loading dock door.[4] The owner of the snack bar called "911."

Houston Police Officer Paul Terry arrived on the scene to find Copeland lying face down in the lobby. Copeland told Terry what had happened and the officer unsuccessfully searched for a suspect. Inside the lobby, Terry found spent shell casings and fragments of a fired bullet. He also noticed that the video equipment was missing.

That same evening, Szucs's wife, Nicole, became concerned that her husband had not arrived home. After several failed attempts to reach her husband, she received a call from a friend who worked in the Greenrich Building who told her that the building guard had been shot. Nicole asked the friend to contact the building's office manager. Sometime after 11:00 p.m., the building manager approached one of the officers remaining at the scene. Officer M.R. Furstenfeld and a couple of other officers then accompanied the manager to Szucs's suite to check on his welfare. Upon gaining access to the office, Furstenfeld found Szucs's dead body. Detectives who arrived at the scene noted no signs of a forced entry. They also noticed that the safe was empty and there were no signs of the 3.6 million dollar diamond inventory Szucs maintained or the $200,000 he was supposed to have on hand in cash. Plus, Szucs was not wearing the five-carat diamond pinky ring he always wore nor was the ring ever recovered.[5] The detectives also discovered that Szucs's computer had been damaged as if someone had tried to remove a disc with tweezers.[6]

The police eventually focused their investigation upon [Dennes]. A search of his office revealed a lathe that had been broken down and boxed up, a fired .9 mm bullet, and an owner's

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[4] As she walked toward the restrooms, Martinez looked into the lobby and saw a man in overalls approaching the guard with his hands behind his back. Martinez recognized this person as [Dennes] by his walk, but noted that he was wearing a mustache and some sort of disguise. Shortly after entering the bathroom, Martinez heard a strange sound. When she returned to the lobby, Martinez saw the guard lying on the floor bleeding.

[5] Nicole testified that her husband was wearing the ring that morning when she took him to work.

[6] Szucs kept his diamond inventory records on the computer.

> manual for a .9 mm Taurus handgun. Firearms examiner Robert Baldwin determined that the bullets recovered from Szucs's body, the bullet found in [Dennes]'s office, and the bullets found in the lobby of the Greenrich Building were all fired from the same gun. Moreover, the cartridge casings found in the lobby of the Greenrich Building and those found in the field where [Dennes] tested the silencer were fired from the same gun. The weapon was determined to be either a Taurus or a Beretta .9 mm handgun.

Dennes, 2017 WL 1102697, at *1–3 (quoting *Dennes*, No. 72,966, slip op. at 2–7) (footnotes in original).

II. Punishment Evidence

A. The State's case

In addition to the heinous nature of this crime, the jury heard evidence at the punishment phase of trial concerning another armed robbery organized by Dennes the year before. In October 1995, Dennes approached an acquaintance of his, David Balderas, about committing a robbery. 34 RR[7] 55. Dennes told Balderas that he knew someone who had a lot of jewelry in his house and that Balderas just had to tie the man up and take his briefcase. *Id.* at 56–57. Dennes told Balderas that he could do the job himself or find someone

[7] The Director employes the following citation conventions: "ECF" refers to entries on this Court's electronic docket sheet, available on PACER. "CR" refers to the clerk's record of pleadings and documents filed during Dennes's capital murder trial. "RR" refers to the reporter's record of transcribed trial proceedings. "SX" and "DX" refer to the State's and Defense's trial exhibits, respectively. "SHCR" refers to the clerk's record of pleadings and documents filed during Dennes's initial state habeas proceeding challenging his capital murder conviction. All references are preceded by volume number and followed by page number where applicable.

else to do it for him. *Id*. Balderas decided he did not want to go into the house, so he found two other people, Hector Fugon and Francisco Elvira, to do the job. *Id*. at 45–47, 57–62. Dennes met with Balderas, Fugon, and Elvira at a fast-food restaurant to discuss the robbery, but did not know at the time which house they were going to rob. *Id*. at 63–65.

In early November, Dennes contacted Balderas and gave him the address, then drove Balderas into the neighborhood and showed him the house. *Id*. at 67–68. Dennes told Balderas that the house belonged to a man who flew around the country with a lot of jewelry, but that he never knew when the man would be home because of his frequent travel. *Id*. at 68–69. When he found the man at home, Dennes would call Balderas, and Balderas would then contact Fugon and Elvira. *Id*. at 69–71. Balderas later received a call from Dennes saying that the man was home, and Balderas relayed the message to Fugon and Elvira. *Id*.

Danny Tsang was watching television in his living room late that night while his wife and nine-year-old daughter were asleep in the bedroom. *Id*. at 103, 106. He heard someone tapping on the back window of his house, and found two men, who he subsequently identified as Fugon and Elvira, standing in his backyard pointing guns at him. *Id*. at 103–07. The men demanded that Tsang open the back door, and he complied because he feared they would shoot him. *Id*. at 106. Fugon and Elvira pushed Tsang to the floor and pointed guns

at his head, then tied him up with the cord from an iron and repeatedly asked him where the diamonds were kept. *Id*. at 108–09. Tsang told them that he had no diamonds, but that he knew his neighbor two doors down, Albert Ohayon, was in the jewelry business and that they probably had the wrong house. *Id*. at 109–11.

Fugon and Elvira did not leave; instead, they made Tsang wake his wife and daughter and ransacked the house for two and a half hours searching for diamonds. *Id*. at 112–17. The men told Mrs. Tsang that they had been forced to commit the robbery and that they would be hurt if they did not bring something back. *Id*. at 126. They ultimately took some jewelry, a watch, a camera, some clothing, a gun, and a stereo system, and then fled in Tsang's car. *Id*. at 118–19. Fugon and Elvira paged Balderas after they finished the robbery and advised him that it was the wrong house. *Id*. at 75–76. When Balderas passed this information on to Dennes, Dennes accused him of lying and said that he would find out the truth in the morning.[8] *Id*. at 76.

The next morning, the Ohayons were awakened by a police officer checking on their welfare because the Tsangs had just been robbed. *Id*. at 132. Albert Ohayon, who was in the diamond wholesale business, had just returned

[8] On September 25, 1996, Elvira and Fugon were convicted of committing the Tsang robbery and of sexually assaulting Mrs. Tsang. ECF No. 23-21 at 53–54 (Tsang trial transcript). The trial court at Dennes's punishment hearing ruled that the State could not present evidence of the sexual assault. 34 RR 113–14.

from the airport the prior evening with approximately $500,000 worth of diamonds in his briefcase. *Id*. at 128–31. Ohayon knew Dennes because they both once worked for the same company, albeit at different times. *Id*. at 133.

The State also introduced evidence that Dennes had been placed on deferred adjudication for 180 days for indecent exposure. *Id*. at 154–55; SX 3.

B. The Defense's case in mitigation

Calvin Wilson of the Harris County Sheriff's Department testified that he was the custodian of records for all inmates in the Harris County Jail. 34 RR 159. He further testified that Dennes had no write-ups for fighting or for any acts of violence, and Dennes had only been written up on two occasions in the year and a half that he had been incarcerated. *Id*. at 166–68. These infractions were for failing to obey an order to return his laundry to the laundry cart and failing to properly dress in the day room. *Id*. at 166–69.

Dr. Jerome Brown, a psychologist, next testified that he interviewed Dennes, gave him a battery of tests, and talked to Dennes's sister. *Id*. at 179, 185. Dr. Brown testified that there was an extraordinary lack of information that would suggest that Dennes was capable of committing capital murder. *Id*. at 194–95. For example, Dennes did not have an antisocial personality disorder, nor did he display any of the personality types that have a higher rate of criminal behavior. *Id*. at 197–98. There was no history of rule-breaking or repeated criminal behavior, no evidence of callous or cold-blooded behavior

toward other people, and no problem with impulse control. *Id*. at 198–99. Dr. Brown also state that Dennes was forty-one years old but did not have a pattern of aggressive or criminal behavior until these recent episodes, and that it was very rare to see such criminal aggression develop at such a relatively late stage in life. *Id*. at 194–95, 198. Dr. Brown further testified that he found nothing in Dennes's background to explain why he committed the offense and that he could not have predicted before the offense that Dennes was capable of doing something so violent. *Id*. at 194–98, 200–01. Dennes expressed a strong religious commitment, had a stable family, and his first marriage lasted twenty years—an unusual occurrence for death row inmates. *Id*. at 195–201

Dennes's twenty-one-year-old son, Ray, testified that his schooling at the University of Texas was funded in part by scholarships and the help of his parents, and that his father had always been supportive of him and encouraged him to achieve his goals. *Id*. at 245–47. He stated that he still views his father as an important influence in his life and that he would still rely on him for advice and guidance. *Id*. at 248. Dennes's mother, Demetria Dennes, then testified that Dennes had two children with his first wife and a nine-month-old boy with his second wife, and that he was an excellent father who provided his children with love, protection, and education. 35 RR 9–14. She stated that Dennes was a loving and attentive son, and he was someone she was always able to count on. *Id*. at 16.

III. Conviction and Postconviction Proceedings

Dennes was indicted, convicted, and sentenced to death for the January 24, 1996, capital murder of Janos Szucs. CR 2 (Indictment), 155–56 (Judgment). The CCA affirmed Dennes's conviction and sentence on direct appeal. *Dennes v. State*, No. 72,966 (Tex. Crim. App. Jan. 5, 2000). While his direct appeal was still pending, Dennes filed a state application for a writ of habeas corpus. SHCR 1–106. The trial court issued findings of fact and conclusions of law recommending that relief be denied. SHCR 212–45. Based upon these findings and conclusions as well as its own review of the record, the CCA denied relief. *Ex parte Dennes*, No. 34,627-02, 2013 WL 6673058, at *1 (Tex. Crim. App. Dec. 18, 2013). Dennes filed a federal petition for a writ of habeas corpus. *Dennes v. Davis*, No. CV H-14-0019, 2017 WL 1102697 (S.D. Tex. Mar. 22, 2017), aff'd in part, appeal denied in part, 797 F. App'x 835 (5th Cir. 2020). The federal district court denied Dennes's petition and denied him a certificate of appealability (COA). *Id*. at *17. Dennes sought a COA in the Fifth Circuit, which the court granted with respect to Dennes's *Brady*[9] claims. *Dennes v. Davis*, No. 17-70010, 2019 WL 2305030 (5th Cir. May 29, 2019). The Fifth Circuit affirmed the federal district court's denial of habeas corpus relief regarding Dennes's *Brady* claims and denied a COA regarding Dennes's

[9] *Brady v. Maryland*, 373 U.S. 83 (1963)

remaining claims. *Dennes v. Davis*, No. 17-70010, 2019 WL 2305030 (5th Cir. May 29, 2019). Dennes then filed a petition for a writ of certiorari in the Supreme Court, which the Court denied. *Dennes v. Lumpkin*, 592 U.S. 1128 (2020).

On August 14, 2026, the 263rd Judicial District Court of Harris County issued an order setting Dennes's execution date for November 19, 2026. On November 11, 2026, Dennes filed a subsequent state habeas application and a motion to stay his execution, which the CCA denied on November 18, 2026. *Ex parte Dennes*, No. WR-34,627-03, slip op. at 2-3. The instant petition followed.

REASONS FOR DENYING THE WRIT

The questions that Dennes 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 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, Dennes advances no compelling reason to review his case, and none exists. Indeed, the issue in this case involves only the lower court's proper application of state procedural rules for collateral review of death sentences. Specifically, Dennes was cited for abuse of the writ because he did not meet the subsequent application requirements of Texas Code of Criminal Procedure

Article 11.071, Section 5. The state court's disposition, which relied upon an adequate and independent state procedural ground and did not reach the merits of Dennes's claim, forecloses a stay of execution or certiorari review.

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

> [T]his 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.

However, if Dennes attempted to raise this claim in federal habeas now, the federal court would find that the claim was procedurally defaulted by virtue of the CCA's application of Section 5.[10] Moreover, any new federal habeas petition would also be impermissibly successive[11] and barred by the relevant statute of limitations.[12] Dennes's petition presents no important

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[10] *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.").

[11] To the extent that Dennes is re-raising his previous claim from his recent 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 Dennes is raising a new claim, he fails to meet requirements of 28 U.S.C. § 2244(b)(2)(A).

[12] Dennes was convicted in 1997, his statute of limitations has long since expired. 28 U.S.C. § 2244(d)(1). Dennes's federal habeas proceeding did not toll the statute of limitations. *Duncan v. Walker*, 533 U.S. 167, 181–82 (2001).

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

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

"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)).[13] Article 11.071 Section 5(a) of the Texas Code of Criminal Procedure forbids state courts to consider a prisoner's subsequent state habeas application unless the prisoner can show previous unavailability of his claims or actual innocence of the crime or the death penalty. This statute, like the federal habeas "second or successive" writ prohibition, works to limit the number of attempts an inmate may seek to collaterally attack a conviction, subject to certain, limited exceptions. *Compare* Tex. Code Crim. Pro. art. 11.071 § 5(a), *with* 28 U.S.C. § 2244(b); *see also Beard v. Kindler*, 558 U.S. 53, 62 (2009) (federal courts should not "disregard state

[13] *Foster* is illustrative of a failed bar. The *Foster* Court held the state court's bar of the petitioner's *Batson* claim was not independent of the merits of his federal claim because the state court "engaged in four pages of" a *Batson* analysis and concluded the claim was without merit. 578 U.S. at 498. Here, the CCA's terse order explicitly stated it did not review the merits of Dennes's claims.

procedural rules that are substantially similar to those to which we give full force in our own courts.").

Here, the CCA dismissed Dennes's application as "an abuse of the writ without reviewing the merits of his claims." *Ex parte Dennes*, No. WR-34,627-03, slip op. at 2-3 (citing Tex. Code Crim. Pro. art. 11.071, § 5(c)). Dennes's claims are therefore unequivocally procedurally barred because the state court's disposition of the claims relies upon an adequate and independent state law ground, i.e., the Texas abuse-of-the-writ statute found in Section 5. *See*, *e.g.*, *Moore v. Texas*, 122 S. Ct. 2350, 2352–53 (2002) (Scalia, J., dissenting); *Balentine v. Thaler,* 626 F.3d 842, 857 (5th Cir. 2010) (recognizing that Section 5 is an adequate state law ground for rejecting a claim); *Matchett v. Dretke*, 380 F.3d 844, 848 (5th Cir. 2004) ("Texas' abuse-of-the-writ rule is ordinarily an 'adequate and independent' procedural ground on which to base a procedural default ruling."); *Barrientes v. Johnson*, 221 F.3d 741, 758–59 (5th Cir. 2000); *Fuller v. Johnson*, 158 F.3d 903, 906 (5th Cir. 1998); *Emery v. Johnson*, 139 F.3d 191, 195–96 (5th Cir. 1997).

A. There is no fair appearance that the CCA relied on federal law.

In his petition, Dennes cursorily argues that Section 5 is not independent of federal law. Pet.14–16. But even considering this Court's federal habeas jurisprudence—which does not apply to a jurisdictional bar—Dennes's

arguments fail. 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). In *Michigan v. Long*, 463 U.S. 1032, 1042 (1983) the Court made clear that, in determining whether a state court judgment is independent and adequate on direct review, it would first decide whether a state court decision "fairly appears to rest primarily on federal law, or to be interwoven with the federal law." *Id*. at 1040. If this predicate was met, the Court would presume that the state court's decision turned on federal law unless the "adequacy and independence of any possible state law ground" was "clear from the face of the opinion." *Id*. at 1040–41. This framework was imported into the federal habeas context in *Harris*, 489 U.S. at 260–63, and it has since been called the "*Harris* presumption" when it is applied in such matters. *See*, *e.g.*, *Ylst v. Nunnemaker*, 501 U.S. 797, 802 (1991).

The Court later made clear in *Coleman* that a two-part, conjunctive test is required: "In habeas, if the decision of the last state court to which the petitioner presented his federal claims fairly appeared to rest primarily on resolution of those claims, or to be interwoven with those claims, and did not clearly and expressly rely on an independent and adequate state ground, a federal court may address the petition." *Coleman v. Thompson*, 501 U.S. 722, 735 (1991). *Coleman* rejected the notion that *Harris* imposed a "clearly and expressly" requirement on all procedural default holdings. *Id*. at 736. Rather,

the Court explained that the *Harris* presumption, and hence the "clearly and expressly" requirement, "appl[ies] only in those cases in which it fairly appears that the state court rested its decision primarily on federal law." *Id*. (internal quotation marks omitted); *see also id*. at 735 (describing this "predicate to the application of the *Harris* presumption"). Thus, 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." *Id*. at 735–36. 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. Here, the CCA dismissed Dennes's application as "an abuse of the writ without reviewing the merits[.]" *Ex parte Dennes*, No. WR-34,627-03, slip op. at 2-3. There is simply no indication or "fair appearance" that the CCA proceeded to a federal merits review despite its explicit statement to the contrary. This is fatal to Dennes's attempt to circumvent the jurisdictional barrier.

B. A CCA determination that an applicant cannot prove actual innocence of the death penalty does not constitute a decision on the merits.

Dennes argues that his claim was authorized under Texas Code of Criminal Procedure Article 11.071 § 5(a)(3). Under § 5(a)(3), an applicant can prove that "by clear and convincing evidence, but for a violation of the United States Constitution no rational juror would have answered in the [S]tate's

favor one or more of the special issues." Tex. Code Crim. Proc. art. 11.071 § 5(a)(3). Section 5(a)(3), "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). However, determining whether an inmate has provided the requisite level of evidence to prove innocence of the death penalty does not touch on federal law. *Moore*, 122 S. Ct. at 2353–54 (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 Tex. Code Crim. Proc. art. 11.071 § 5(a)(3))). Federal law does not dictate whether Dennes met the "clear and convincing" burden of proof mandated by Texas law. Tex. Code Crim. Proc. art. 11.071 § 5(a)(3); *see Rocha v. Thaler*, 626 F.3d 815, 823–24 (5th Cir. 2010) ("A state court does not undermine the independent state-law character of its procedural-default doctrine by using a federal standard to determine whether an otherwise defaulted successive habeas application should be permitted to bypass a procedural bar.").

C. The CCA's intellectual disability precedent does not apply here.

Finally, with his reliance on *Ex parte Blue*, Dennes appears to make the sweeping argument that ineffective-assistance-of-counsel-at-punishment claims like his are never independent of federal law. Pet.15 (citing *Ex parte Blue*, 230 S.W.3d at 163). But he fails to mention that *Ex parte Blue* specifically governs the review of *intellectual disability* claims under § 5(a)(3)—i.e. categorical ineligibility for the death penalty.[14] *Busby v. Davis*, 925 F.3d 699, 706–07 (5th Cir. 2019) (holding that the CCA's decision dismissing an intellectual disability claim was not independent of the federal question and necessarily entailed an assessment of the facts presented in support). Dennes does not raise an intellectual disability claim and does not cite any precedent establishing that the CCA regularly[15] engages in the same prima facie analysis for other types of federal claims.

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[14] Unlike categorical ineligibility, Dennes's ineffective-assistance-of-counsel-at-punishment claim could not have demonstrated his innocence of the death penalty. *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).

[15] To the extent that Dennes later relies on the singular case of *Ex parte Speer*, in which the CCA found that a habeas applicant made a sufficient showing under § 5(a)(3) with respect to an ineffective-assistance-of-counsel-at-punishment claim, this unusual act of grace fails to undermine the state-law nature of the procedural bar. *Ex parte Speer*, No. WR-59,101-06, 2025 WL 2151382, at *1 (Tex. Crim. App. July 30, 2025); *cf. Hogue v. Johnson*, 131 F.3d 466, 487–88 (5th Cir. 1997) (explaining that an occasional act of grace by a state court in entertaining the merits of a claim did not constitute a failure to regularly follow a procedural bar). Indeed, *Speer* fractured the

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 claim for which Dennes 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."). Dennes's claim is foreclosed by an adequate and independent state procedural bar, and certiorari review should be denied.

II. Dennes's Claim Fails on the Merits.

Notwithstanding the procedural posture of Dennes's *Wiggins*[16] claim, it fails on the merits. Dennes argues that his trial counsel was ineffective for failing to investigate and present mitigating evidence at punishment because counsel "presented only four witnesses" and failed to discover "significant evidence that would likely have resulted in a different decision at sentencing." Pet. 7. Specifically, Dennes argues that trial counsel should have discovered

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CCA with a claim raised in last-minute litigation, creating two dissents and a concurrence released (unusually) months after the original order staying Speer's execution, with one of the dissents specifically noting that an applicant raising an ineffective-assistance-of-counsel-at-punishment claim cannot circumvent Section 5 under the court's precedent. *Ex parte Speer*, 2025 WL 2151382, at *8 (Finley, J., dissenting).

16 *Wiggins v. Smith*, 539 U.S. 510 (2003).

Dennes's "traumatic flight from Cuba at the age of five; the close relationships and support he had from his family, as well as the injury neglectful parenting caused; his own self-sacrificing love for his family, and especially his children; and significant cognitive deficits that likely impaired his ability to make decisions." *Id*. But trial counsel's investigation was reasonable, and counsel presented sufficient mitigating evidence at sentencing.

To render effective assistance, the Sixth Amendment requires counsel "to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Andrus v. Texas*, 590 U.S. 806, 813–14 (2020) (quoting *Wiggins*, 539 U.S. at 521) (quotations omitted). When assessing effectiveness at the sentencing stage of a capital trial, counsel's "investigations into mitigating evidence should comprise efforts to discover all reasonably available mitigating evidence." *Wiggins*, 539 U.S. at 524.

With respect to counsel's duty to investigate, this Court has observed:

> [S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments.

Strickland v. Washington, 466 U.S. 668, 690–91 (1984). When a petitioner argues that his counsel failed to adequately investigate mitigation evidence, the proper inquiry is "not whether counsel should have presented a mitigation case . . . [but] whether the investigation supporting counsel's decision not to introduce mitigating evidence of [the defendant's] background was itself reasonable." *Wiggins*, 539 U.S. at 523.

The reasonableness of an attorney's investigation must be determined by considering not only the evidence already known to counsel, but also whether such evidence would lead a reasonable attorney to investigate further. *Id*. at 527. The reasonableness of an investigation depends in large part on the information supplied by the defendant. *Strickland*, 466 U.S. at 691 ("The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions. Counsel's actions are usually based, quite properly, on informed strategic decisions made by the defendant and on information supplied by the defendant. In particular, what investigation decisions are reasonable depends critically on such information.").

"[T]o establish prejudice, a 'defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Wiggins*, 539

U.S. at 534 (citing *Strickland*, 466 U.S. at 694). That is, prejudice is assessed by "reweigh[ing] the evidence in aggravation against the totality of mitigating evidence." *Id*. at 534.

Dennes first argues that counsel's mitigation investigation was inadequate because he focused "exclusively on investigating the case-in-chief." Pet. 9. In support, Dennes offers: a pretrial statement by counsel asking the court to appoint co-counsel stating that while Dennes's family has retained an attorney, they could not afford "the services of a co-counsel, investigators and/or experts"; a statement from a motion to prohibit evidence where counsel stated that they were only able to work on the case-in-chief and the investigator and counsel did "not have time to investigate and prepare a response to any extraneous matters"; a statement by an investigator "when trial began" where the investigator said his investigators were still investigating witnesses relating to guilt-innocence; and "an affidavit attached to a motion for new trial" where counsel said his ability to defend Dennes was "inadequate" which he "attributed . . . to the court's failure to grant his requests for a continuance, co-counsel, or proper notice of the State's intention to introduce extraneous offense evidence." Pet. 9–11. These statements, however, do not show that counsel failed to conduct an appropriate mitigation investigation. Rather, the statements simply show that counsel wanted more

time and resources to strengthen their case in mitigation, which is a reasonable trial strategy.

Nevertheless, Dennes appears to conclude that because trial counsel did not mention mitigation in his statements to the trial court, then counsel must have "chose[n] to abandon [his] investigation at an unreasonable juncture, making a fully informed decision with respect to sentencing strategy impossible." Pet. 11 (quotation marks omitted). But that conclusion is belied by the record. At sentencing, counsel presented testimony from a Harris County Sheriff's Deputy employed with the classification division of the jail, a psychologist who evaluated Dennes and spoke with Dennes's sister, Dennes's son, and Dennes's mother. 34 RR 159–248; 35 RR 6–25. Through this testimony, the jury heard that: Dennes's family immigrated from Cuba; his nuclear family consisted of both parents and two sibling; his parents were conservative and strict; he was married twice; he had multiple children; he played an active role in his family and children's lives; he encouraged his children to work hard in school to achieve goals; he was a hard worker; he cared deeply about his family and his family cared about him; he was severely burned several years before the capital murder in a lawnmower accident and faced long-term hospitalization; he sacrificed his own health and safety during the lawnmower incident to spare his daughter from getting more severe injuries; he learned the jewelry trade from his father; he had a history of chronic alcohol

and drug use; her was not a violent inmate while in the Harris County Jail; and he was downgraded from security levels in the jail. 33 RR 7–10; 34 RR 159–248; 35 RR 6–25. This testimony is largely cumulative of what Dennes has proffered in his instant petition. *See* Pet. 4–7. Accordingly, trial counsel conducted an adequate investigation and presented sufficient mitigating evidence.

Likewise, because the "new evidence" Dennes offers is largely cumulative to the testimony presented at sentencing, Dennes also fails to show prejudice. *See Wong v. Belmontes*, 588 U.S. 15, 22 (2009) ("Some of the evidence was merely cumulative of the humanizing evidence [trial counsel] actually presented; adding it to what was already there would have made little difference."); *Bobby v. Van Hook*, 558 U.S. 4, 11 (2009) ("[T]here comes a point at which evidence from more distant relatives can reasonably be expected to be only cumulative, and the search for it distractive from more important duties."). Indeed, even if counsel was deficient and the jury heard all of Dennes's new evidence, the result of the proceeding would not have been different. Dennes complains that the jury never heard of his "significant cognitive deficits" that arose from his "first and only neuropsychological evaluation in September 2026" showing that he experiences "inhibition and attention control, difficulty with mental flexibility, problems with organization and planning, and the inability to break large tasks into sequential,

manageable steps as a lack of self-monitoring." Pet. 6 (quotation marks omitted). But the jury heard evidence that Dennes organized and executed *two highly sophisticated robberies*. One which included drawing a sketch for manufacturing a silencer, obtaining access to a secure building that housed numerous jewelers' offices, distracting security guards, stealing security tapes, donning a disguise, and getting away with $3.6 million in diamonds and $200,000 in cash. *Dennes*, 2017 WL 1102697, at *1–3. And another that included recruiting others to break into the house of a diamond wholesaler, reconnaissance to find out where the wholesaler lived and when he would be home, and a plan that involved breaking into the wholesaler's house, tying him up, and stealing his briefcase full of diamonds. 34 RR 55–71, 109–11, 128–33. Accordingly, evidence of Dennes's alleged cognitive deficits would not have persuaded the jury to vote in favor of a life sentence. Moreover, the jury heard evidence that the plan to rob Janos Szucs included *shooting him*. 26 RR 158. Dennes's new evidence does not outweigh the aggravating evidence presented against him. Therefore, Dennes's *Wiggins* claim is meritless, and the Court has no compelling reason to grant review or a stay of execution.

III. Dennes Is Not Entitled to a Stay of Execution.

A. Standard of review

A stay of execution is an equitable remedy. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). "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.* at 896. 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).

B. Dennes has not made a strong showing that he will succeed on the merits.

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

C. Dennes 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. Here, Dennes only points to the severity of penalty in attempting to show harm. Motion to Stay at 4–5. Without

more, Dennes cannot demonstrate a likelihood that he will suffer irreparable harm if a stay of execution is not granted.

D. 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*, 139 S. Ct. at 1133 (quotation omitted); *see Nelson*, 541 U.S. at 644 ("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, Dennes has already passed through the state and federal collateral review process. The public's interest is not advanced by postponing Dennes'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 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. 650). Here, Dennes's claim is meritless and does not warrant staying his execution.

CONCLUSION

For the reasons set forth above, Dennes'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 Dennes'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
Deputy Attorney General
For Criminal Justice

TOMEE M. HEINING
Chief, Criminal Appeals Division

s/Lucas Wallace
LUCAS WALLACE
Assistant Attorney General
Counsel of Record

P.O. Box 12548, Capitol Station
Austin, Texas 78711
Tel: (512) 936–1400
Fax: (512) 320–8132
Lucas.wallace@oag.texas.gov

Attorneys for Respondent