

IN THE
Supreme Court of the United States

DAVID SANTIAGO RENTERIA,
Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR TDCJ-CID,
Respondent.

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

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

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QUESTIONS PRESENTED

1. Should this Court exercise its supervisory power to micromanage the Fifth Circuit's briefing orders despite Renteria's failure to take full advantage of his opportunities in the court below to brief his appeal of the district court's denial of his motion for funding?

2. Should this Court grant certiorari to review the Fifth Circuit's application of this Court's holding in *Ayestas v. Davis*, 138 S. Ct. 1080 (2018), in determining Renteria was not entitled to funding to investigate claims that could not succeed?

3. Should this Court grant certiorari to review the Fifth Circuit's denial of a certificate of appealability as to his claims regarding his parole eligibility where the claims are plainly without merit and they seek the creation and retroactive application of a new rule of constitutional law?

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
TABLE OF CONTENTS.....	ii
TABLE OF AUTHORITIES.....	iv
BRIEF IN OPPOSITION.....	1
STATEMENT OF JURISDICTION.....	4
STATEMENT OF THE CASE	4
I. Facts from Trial	4
A. The capital murder	4
B. Punishment-phase evidence.....	5
1. The State’s evidence	5
2. Renteria’s mitigation case	6
II. Procedural History.....	6
ARGUMENT	8
I. Renteria Briefed, and the Fifth Circuit Properly Rejected, His Appeal of the District Court’s Denial of His Motion for Funding.....	8
A. Renteria’s case presents an inapt vehicle for the Court to exercise its supervisory power.....	9
B. Renteria fails to show that the Fifth Circuit’s consideration of his appeal on the funding issue constituted a departure from the accepted and usual course of judicial proceedings.....	12
II. The Claims Renteria Requested Funding to Investigate Had No Potential Merit.....	17

A. Factual background 18

B. The lower courts properly rejected Renteria’s funding request .. 19

III. The Fifth Circuit Properly Rejected Renteria’s Claims Regarding His Parole Eligibility 24

A. Factual background 25

B. The trial court properly excluded Mr. Habern’s testimony and denied Renteria’s requested jury instruction..... 27

CONCLUSION..... 35

TABLE OF AUTHORITIES

Cases	Page
<i>Allen v. Stephens</i> , 805 F.3d 617 (5th Cir. 2015)	13
<i>Allridge v. Scott</i> , 41 F.3d 213 (5th Cir. 1994)	27, 28, 32
<i>Ayestas v. Davis</i> , 138 S. Ct. 1080 (2018)	2, 16, 17, 22
<i>Banister v. Davis</i> , 140 S. Ct. 1698 (2020)	16
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	16, 18
<i>Brecht v. Abrahamson</i> , 507 U.S. 619 (1993)	33
<i>California v. Ramos</i> , 463 U.S. 992 (1983)	28
<i>Crutsinger v. Stephens</i> , 576 F. App'x 422 (5th Cir. 2014)	13
<i>Curry v. State</i> , AP-77,033, 2017 WL 781740 (Tex. Crim. App. March 1, 2017)	27
<i>Devoe v. Davis</i> , 717 F. App'x 419 (5th Cir. 2018)	12
<i>Ex parte Brown</i> , 205 S.W.3d 538 (Tex. Crim. App. 2006)	19
<i>Gardner v. Florida</i> , 430 U.S. 349 (1977)	33
<i>Gonzalez v. Crosby</i> , 545 U.S. 524 (2005)	16
<i>Herrera v. Collins</i> , 506 U.S. 390 (1993)	19, 20
<i>Hodges v. Epps</i> , 648 F.3d 283 (5th Cir. 2011)	33
<i>Hohn v. United States</i> , 524 U.S. 236 (1998)	14
<i>Illinois v. Gates</i> , 462 U.S. 213 (1983)	16
<i>Johnson v. Quarterman</i> , 294 F. App'x 927 (5th Cir. 2008)	27

<i>Lynch v. Arizona</i> , 136 S. Ct. 1818 (2016)	26
<i>Milam v. Davis</i> , 733 F. App'x 781 (5th Cir. 2018).....	12
<i>Murphy v. Davis</i> , 732 F. App'x 249 (5th Cir. 2018)	12
<i>Nelson v. Davis</i> , 952 F.3d 651 (5th Cir. 2020).....	12
<i>Ochoa v. Davis</i> , 750 F. App'x 365 (5th Cir. 2018)	12
<i>Phillips v. United States</i> , 668 F.3d 433 (7th Cir. 2012).....	16
<i>Ramdass v. Angelone</i> , 530 U.S. 156 (2000)	<i>passim</i>
<i>Rhines v. Weber</i> , 544 U.S. 269 (2005)	10
<i>Rudd v. Johnson</i> , 256 F.3d 317 (5th Cir. 2001)	28
<i>Schlup v. Delo</i> , 513 U.S. 298 (1995).....	20
<i>Simmons v. South Carolina</i> , 512 U.S. 154 (1994).....	26, 27, 32, 33
<i>Skipper v. South Carolina</i> , 476 U.S. 1 (1986)	33
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	18
<i>Teague v. Lane</i> , 489 U.S. 288 (1989).....	33
<i>Tigner v. Cockrell</i> , 264 F.3d 521 (5th Cir. 2001).....	26
<i>Townsend v. Burke</i> , 334 U.S. 736 (1948).....	28
<i>Turner v. Quarterman</i> , 481 F.3d 292 (5th Cir. 2007)	27
<i>United States v. Rouse</i> , 410 F.3d 1005 (8th Cir. 2010)	18
<i>United States v. Santarelli</i> , 929 F.3d 95 (3d Cir. 2019).....	16
<i>United States v. Tucker</i> , 404 U.S. 443 (1972).....	28
<i>Wheat v. Johnson</i> , 238 F.3d 357 (5th Cir. 2001)	33

Wilkins v. Stephens, 560 F. App'x 299 (5th Cir. 2014)..... 13

Youakim v. Miller, 425 U.S. 231 (1976)..... 10

Statutes and Rules

18 U.S.C. § 3599..... 1, 16

28 U.S.C. § 1254.....4

28 U.S.C. § 2244(b)(2) 16

28 U.S.C. § 2244(b)(3)(A) 16

Fed. R. App. P. 31(a) 10, 14, 15

Fed. R. App. P. 32(a)(7)(B)(i) 2, 11, 15

Fed. R. Civ. P. 15 16

Fifth Cir. R. 32.4 2, 11, 15

Sup. Ct. R. 10(a) 8, 21

BRIEF IN OPPOSITION

David Renteria was convicted and sentenced to death for the murder of five-year-old Alexandra Flores. During the pendency of his federal habeas petition, Renteria requested that the district court approve funding under 18 U.S.C. § 3599 to investigate a purported witness's statement that had been provided to the El Paso police. Pet'r's App. 066–69. In her statement, the purported witness explained she had not “come forward” with the information contained in the statement before. Pet'r's App. 065. The district court denied Renteria's funding request and later denied Renteria's petition. Pet'r's App. 070–71, 113–89.

Renteria then filed an application for a certificate of appealability (COA) in which he included an appeal of the district court's denial of his motion for funding. Pet'r's App. 049–53. On the same day, Renteria filed a motion requesting entry of a briefing schedule to allow him to file a separate brief regarding the district court's denial of his funding request in the event the Fifth Circuit granted a COA as to one of the two claims raised in his application for a COA. Pet'r's App. 055–61. The Fifth Circuit denied the motion. Order, *Renteria v. Davis*, No. 19-70009 (5th Cir. Sept. 24, 2019).

Renteria now asks this Court to exercise its supervisory power to require the Fifth Circuit to grant his dilatory request for a briefing schedule where he was permitted to appeal the district court's funding decision and the Fifth

Circuit adjudicated the appeal. Pet. Cert. 11–21; Pet’r’s App. 006. Moreover, Renteria asks this Court to exercise its supervisory power even though he failed to exhaust the options available to him to brief his appeal. He did not request leave to file an extra-length application for a COA to include additional argument regarding the district court’s denial of his funding request. *See* Fifth Cir. R. 32.4. Indeed, Renteria’s application for a COA—which included an appeal of the district court’s denial of his funding request—left several thousand words to be used. Pet’r’s App. 054; Fed. R. App. P. 32(a)(7)(B)(i). As a result, Renteria fails to justify his request that this Court exercise its supervisory power over the Fifth Circuit to require the court to grant Renteria’s dilatory and superfluous motion for a briefing schedule.

Renteria also fails to identify any compelling issue regarding the Fifth Circuit’s funding decision that warrants review. The Fifth Circuit in this case, as it has done in numerous cases, adjudicated an appeal of a district court’s denial of a funding request that was included in an application for a COA. Pet’r’s App. 001–07. The Fifth Circuit applied the appropriate standard and affirmed the district court. Pet’r’s App. 006 (citing *Ayestas v. Davis*, 138 S. Ct. 1080, 1094 (2018)). The Fifth Circuit’s ruling was plainly correct, as Renteria’s funding request could only support claims that stood no hope of winning relief because they were without any potential merit or were non-cognizable in federal habeas. Pet’r’s App. 006. Renteria fails to identify any error in the Fifth

Circuit's analysis, let alone a compelling reason justifying this Court's attention.

Renteria also raised claims in state court alleging, *inter alia*, his right to due process was denied because the trial court excluded expert testimony regarding when Renteria would become eligible for release on parole if sentenced to life imprisonment and denied his request to instruct the jury that he would become eligible for parole after serving forty-seven-and-a-half years in prison rather than forty years, as the jury was instructed. *See Renteria v. State*, No. AP-74,829, 2011 WL 1734067, at *42–46 (Tex. Crim. App. May 4, 2011) (*Renteria II*). The Texas Court of Criminal Appeals (CCA) rejected the claims, holding that Renteria was not entitled to present speculative information regarding his parole eligibility to the jury. *Id.* The district court rejected the claims, holding that the state court's rejection of them was not unreasonable, and the Fifth Circuit denied a COA. Pet'r's App. 005–06, 134–43. Renteria does not identify any compelling reason such as a circuit split warranting this Court's review of the lower courts' rulings. Indeed, Renteria's claim is plainly without merit because it rests on the proposition that a capital defendant is entitled to present speculative and potentially inaccurate information to a jury about his parole eligibility. *See* Pet'r's App. 005–06. Consequently, Renteria's petition should be denied.

STATEMENT OF JURISDICTION

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

STATEMENT OF THE CASE

I. Facts from Trial

A. The capital murder

[Renteria] was a 32[-]year-old registered sex offender on probation for committing an indecency offense against an eight-year-old girl when he was arrested for the murder of the five-year-old girl in this case. On November 18, 2001, this five-year-old victim disappeared from a Wal-Mart store where she was shopping with her parents. The next day, her nude, partially burned body with a partially burned plastic bag over her head was discovered in an alley sixteen miles from the Wal-Mart. When she was set on fire, she already had been manually strangled. The medical examiner testified that the victim also received two blows to her head. The medical examiner also testified that the victim could have been sexually assaulted, although he found no physical evidence of sexual assault.

...

[Renteria] was arrested on December 3, 2001, and he gave a written custodial statement to the police. This statement was not admitted into evidence at [Renteria's] trial. In this statement, [Renteria] claimed that an "Azteca" gang member nicknamed "Flaco," whom [Renteria] had known in jail, and several other persons, whom [Renteria] did not know, were primarily responsible for the victim's murder. [Renteria] claimed that he helped these people commit the offense out of fear they would harm his family. He also claimed that his involvement in the offense was limited to luring the victim out of the Wal-Mart and helping "Flaco" and the others dispose of and burn her body after the others had murdered her.

Renteria v. State, 206 S.W.3d 689, 693–94 (Tex. Crim. App. 2006) (*Renteria I*).

B. Punishment-phase evidence

1. The State's evidence

The State presented evidence of the capital offense at the punishment trial. . . .

The State also presented evidence of Renteria's troubles with the law in the years leading up to the instant offense. In 1992, he committed the offense of indecency with a child. . . . Renteria pled guilty to this offense in 1994 and was placed on deferred adjudication probation for ten years.

While on probation, Renteria committed three driving while intoxicated (DWI) offenses in 1995, 1997, and 2000. . . .

Renteria violated the terms of probation at various times by drinking alcohol, staying out past curfew, driving without a valid driver's license, traveling to Mexico, and being around children. . . . The evidence further showed that Renteria was dishonest with his sex-offender treatment counselor, his probation officers, and his employers. Norma Reed, his counselor, testified that Renteria initially admitted committing the indecency with a child offense but then denied it until he was faced with possible termination from the program. When Reed administered an "Abel Assessment" test, Renteria scored 85% on the "social desirability" section, which indicated "a significant concern that he was likely not to be responding truthfully on the self-report portions [of the test]." Renteria informed Reed after the fact that he had been living with his eighteen-year-old pregnant girlfriend, and he admitted that he failed to tell his probation officer this information. When Renteria was employed at a parking lot less than a block away from a school, he informed probation officer Rebecca Gonzales that his employer was not aware of his indecency offense. Reed testified that Renteria informed her in 1999 that he had lost a job because he had lied about his criminal history on his job application.

Renteria II, 2011 WL 1734067, at *1–2.

2. Renteria's mitigation case

Renteria presented evidence through the testimony of his family, his childhood dance instructor, a high school classmate, the staff at his school, and a mental health expert. They described him as a good kid—quiet, friendly, respectful, studious, popular, altar boy, National Honors Society member, scholarship recipient, and extracurricular activity participant—whose life came apart after his arrest and conviction for indecency with a child.

ROA.834–35;¹ *see* ROA.835–40.

II. Procedural History

Renteria was convicted and sentenced to death for the murder of Alexandra Flores. ROA.9408, 10088–89, 2848, 2864–72. The CCA upheld Renteria's conviction on direct appeal but reversed on punishment and remanded for a new punishment trial. ROA.2921–49.

Renteria filed his first state application for a writ of habeas corpus, prior to the CCA's ruling on direct appeal.² ROA.23824–43. The CCA denied Renteria's claims in his first application that challenged his conviction. ROA.23963–64. The CCA dismissed as moot Renteria's claims in his first application that challenged his death sentence. ROA.23964.

At Renteria's second punishment trial, he was again sentenced to death. ROA.14489–90, 20972, 20980. Following the second punishment trial, the CCA

¹ ROA refers to the record on appeal filed in the court below.

² The CCA held the application pending Renteria's second punishment trial. ROA.23963–64

upheld Renteria's death sentence on direct appeal. ROA.1421–1519, 1767 (cert. denied).

Renteria filed a second state application for a writ of habeas corpus. ROA.23362–76. The CCA denied Renteria's claims in his second application that challenged his death sentence. ROA.23965–67. The CCA construed Renteria's claims in his second application that challenged his conviction as constituting a separate and subsequent application and dismissed it as such. ROA.23966–67.

Renteria then filed a federal habeas petition and, later, a brief in support. ROA.55–174, 182–238. During the pendency of his petition, Renteria requested a stay of the district court's proceedings to investigate a statement provided to the El Paso Police Department. ROA.756–62. The district court denied the request. ROA.782–97. In a sealed ex parte motion, Renteria requested funding to investigate the statement. Pet'r's App. 066–69. The district court denied the request. Pet'r's App. 070–71. The district court later denied Renteria's petition and denied a COA. Pet'r's App. 113–89. The court also denied Renteria's motion to alter or amend its judgment. ROA.1026–39.

Renteria next filed in the Fifth Circuit an Application for a COA. Pet'r's App. 008–54. On the same day, Renteria filed a motion for entry of a briefing schedule, which the Fifth Circuit denied. Pet'r's App. 055–61; Order, *Renteria v. Davis*, No. 19-70009 (5th Cir. Sept. 24, 2019). The Fifth Circuit denied

Renteria's request for a COA and affirmed the district court's denial of his motion for funding. Pet'r's App. 001–07. Renteria filed petitions for rehearing, which the Fifth Circuit denied. Pet'r's App. 075–76. Renteria then filed in this Court a petition for a writ of certiorari. The instant Brief in Opposition follows.

ARGUMENT

I. Renteria Briefed, and the Fifth Circuit Properly Rejected, His Appeal of the District Court's Denial of His Motion for Funding.

Renteria first asks this Court to exercise its supervisory power over the Fifth Circuit's briefing orders. Pet. Cert. 11–21. He does so because he desires the opportunity to file a full-length merits brief appealing the district court's denial of his motion for funding in addition to the appeal of the funding issue he included in his application for a COA. Pet. Cert. 11. But he presents no compelling reason justifying such ponderous micromanagement of a circuit court. *See* Sup. Ct. R. 10(a). He fails entirely to show that the Fifth Circuit's consideration of appeals of the denial of motions, like a motion for funding, included in an application for a COA is a departure from the usual course of judicial proceedings. *See id.* Moreover, Renteria cannot justify the relief he seeks where he failed to take full advantage of the opportunities available to him in the court below. Consequently, Renteria's petition is an inapt vehicle to address the issue he raises. His petition should be denied.

A. Renteria’s case presents an inapt vehicle for the Court to exercise its supervisory power.

Renteria asks the Court to exercise its supervisory power to dictate the way the Fifth Circuit hears its cases. Pet. Cert. 11–21. Specifically, Renteria asks that the clerk of the Fifth Circuit be required to permit a federal habeas petitioner to file a full merits brief appealing a district court’s ruling for which a COA is not required to appeal in addition to an application for a COA. Pet. Cert. 12. Renteria suggests that the Fifth Circuit’s denial of his request to file a separate brief addressing the district court’s denial of his motion for funding preempted his attempt to appeal that denial. Pet. Cert. 14. But Renteria’s request to the Fifth Circuit was more limited than the request he makes now, he failed to take full advantage of the opportunity he had to brief his appeal of the funding issue, and the Fifth Circuit considered and rejected his appeal on that issue. Consequently, Renteria’s case is an inapt vehicle for the Court to exercise its supervisory power.

First, in his motion requesting a briefing schedule, Renteria stated the Fifth Circuit “should issue a briefing schedule on this legal error. Should the Court grant COA on either of the two other claims presented in his COA application, then it should set a briefing schedule for the funding claim, and whatever other grounds for which the Court grants COA.” Pet’r’s App. 060. The Fifth Circuit did not grant a COA. Pet’r’s App. 006. Consequently, the relief

Renteria requested in his motion, even if granted, did not require the Fifth Circuit to grant him the opportunity to file an additional brief on the funding issue. Because Renteria did not request the same relief—i.e., that he be given the opportunity *at the outset* of his appeal to file a full merits brief on the funding issue—in the court below as he asks this Court to order, the issue he raises now has been waived. *See Youakim v. Miller*, 425 U.S. 231, 234 (1976).

Second, Renteria’s motion requesting a briefing schedule was untimely. The motion was clearly dilatory, as it was filed on the day his application for a COA was filed following a ninety-day extension of time of the application’s deadline. Pet’r’s App. 008, 055; Order, *Renteria v. Davis*, No. 19-70009 (5th Cir. June 28, 2019) (order granting extension). The motion for a briefing schedule could have been properly denied on that basis alone. Indeed, a brief on the funding issue filed after the expiration of Renteria’s briefing deadline would have been untimely. *See* Fed. R. App. P. 31(a). Moreover, as a prudential matter, permitting Renteria to file an additional brief would have significantly delayed the Fifth Circuit’s adjudication of the case. The Fifth Circuit was not required to countenance such delay, and capital petitioners are not entitled to interject the delay Renteria seeks to have the court tolerate as a matter of course. *Cf. Rhines v. Weber*, 544 U.S. 269, 277–78 (2005) (“In particular, capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death.”).

Third, Renteria failed to take full advantage in the court below of his opportunity to brief his arguments regarding the funding issue. As Renteria acknowledges, Pet. Cert. 22, his brief in the Fifth Circuit included an appeal of the district court's denial of his motion for funding. Pet'r's App. 049–53. Nonetheless, his brief amounted to only 8,896 words, leaving more than 4,000 words to expound on the funding issue. Fed. R. App. P. 32(a)(7)(B)(i); Pet'r's App. 054. Renteria does not identify any arguments he could make on remand that he did not already make. Indeed, nothing prevented Renteria from briefing the funding issue further and he provides no explanation for not doing so. *See* Fifth Cir. R. 32.4 (the Fifth Circuit's rule for filing a brief in excess of the word-volume limitation). The likely explanation is simply that the funding issue was fully briefed. Thus, Renteria fails to show that this Court's intervention is necessary.

Fourth, the Fifth Circuit considered Renteria's appeal of the funding issue. Pet'r's App. 006. While Renteria argues the Fifth Circuit's ruling on that issue was incorrect, he cannot show that the court's denial of his request to file a separate brief either precluded his appeal or impacted the court's consideration of it. Consequently, Renteria's petition presents an inapt vehicle for this Court to micromanage the Fifth Circuit's briefing orders, and he presents no compelling issue warranting this Court's attention.

B. Renteria fails to show that the Fifth Circuit’s consideration of his appeal on the funding issue constituted a departure from the accepted and usual course of judicial proceedings.

Even if Renteria’s case presented an appropriate vehicle for the Court to exercise its supervisory power, the Court would not find a compelling issue warranting its attention. Renteria’s complaint regarding the Fifth Circuit’s briefing letters fails to identify any such issue because he points to no circuit split and nothing inappropriate about the Fifth Circuit’s practice.

First, Renteria cannot show that the Fifth Circuit’s practice of permitting federal habeas petitioners to seek a COA and appeal the denial of a motion for which no COA is required in a single brief is improper. It is axiomatic that appellants may, and often do, brief arguments in a single brief over which varying standards of review apply. Renteria did. Pet’r’s App. 017–53. Indeed, numerous federal habeas petitioners have. *See, e.g., Nelson v. Davis*, 952 F.3d 651, 666 (5th Cir. 2020) (*id.*, No. 17-70012 (Application filed October 27, 2017)); *Ochoa v. Davis*, 750 F. App’x 365, 372–73 (5th Cir. 2018) (*id.*, No. 17-70016 (Application filed December 14, 2017)); *Milam v. Davis*, 733 F. App’x 781, 787 (5th Cir. 2018) (*id.*, No. 17-70020 (Application for COA filed January 9, 2018)); *Murphy v. Davis*, 732 F. App’x 249, 262–63 (5th Cir. 2018) (*id.*, No. 17-70007 (Application for COA filed June 12, 2017)); *Devoe v. Davis*, 717 F. App’x 419, 423 (5th Cir. 2018) (*id.*, No. 16-70026 (Application for COA filed December 28, 2016)); *Allen v. Stephens*, 805 F.3d 617, 622 (5th Cir. 2015)

(abrogated on other grounds by *Ayestas*) (*id.*, No. 14-70017 (Application for COA filed August 7, 2014)); *Wilkins v. Stephens*, 560 F. App'x 299, 301 (5th Cir. 2014) (*id.*, No. 13-70014 (Application for COA filed July 29, 2013)); *Crutsinger v. Stephens*, 576 F. App'x 422, 431 (5th Cir. 2014) (abrogated on other grounds by *Ayestas*) (*id.*, No. 12-70014 (Application for COA filed November 8, 2012)).

Even assuming a lack of clarity existed at one time regarding whether a petitioner could include in an application for a COA an appeal of a district court's denial of a motion for funding, the cases cited above resolved it. Indeed, Renteria cites to *Halprin v. Davis*, a case in which the Fifth Circuit *denied* a motion for entry of a scheduling order like the one Renteria requested a year later.³ Pet. Cert. 18 (citing Order, *Halprin v. Davis*, No. 17-70026 (5th Cir. May 15, 2018)); see Mot., *Halprin v. Davis*, No. 17-70026 (5th Cir. May 7, 2018). The Fifth Circuit permitted the petitioner in that case to file a letter brief "given the assertion of confusion." Order, *Halprin v. Davis*, No. 17-70026 (5th Cir. May 15, 2018). That the Fifth Circuit granted Halprin the opportunity to provide a letter brief addressing the funding issue after he failed to brief it in

³ The Fifth Circuit denied a petitioner's motion to file a brief on non-COA issues in another case *two years* before Halprin sought leave to file a similar brief. Order, *Jones v. Davis*, No. 16-70003 (5th Cir. Sept. 6, 2016). The petitioner in that case was granted a COA and filed a brief that addressed both his claims and the district court's denial of his motion for funding. Appellant's Br., *Jones v. Davis*, No. 16-70003 (5th Cir. Feb. 27, 2017).

his application for a COA does not justify the conclusion that the Fifth Circuit's denial of Renteria's request for a briefing schedule was arbitrary. Pet. Cert. 13. Indeed, the opposite conclusion is obvious because, before Renteria filed his application for a COA, the Fifth Circuit denied Halprin's request for a similar scheduling order and the court had considered applications for a COA that included appeals of non-COA issues in numerous cases.

Renteria relies on this Court's holding in *Hohn v. United States*, 524 U.S. 236, 253 (1998), that the Court has jurisdiction to review denials of applications for a COA. Pet. Cert. 14. But *Hohn* is clearly inapposite because the Fifth Circuit considered Renteria's appeal of the district court's denial of his motion for funding. Pet'r's App. 006. The Fifth Circuit did not "forestall" an appeal on the funding issue. Pet. Cert. 14.

Renteria's assertion that the Fifth Circuit's denial of his request to separately brief the funding issue is inconsistent with the Federal Rules of Appellate Procedure is also mistaken. Pet. Cert. 14–15. Federal Rule of Appellate Procedure 31(a)(1) explicitly required Renteria to file a brief forty days after the record on appeal was filed, which occurred on the same date—May 17, 2019—the clerk issued the briefing letter setting Renteria's due date. Pet'r's App. 072. The clerk's issuance of the briefing letter on the same date the record on appeal was filed contradicts Renteria's assertion that the Fifth Circuit's briefing letters do not fall under, or are contrary to, Federal Rule of

Appellate Procedure 31(a)(1).⁴ Pet. Cert. 15. And Rule 31(a)(1) does not limit the brief to COA or non-COA issues.

Lastly, Renteria's funding request is now moot. Following the Fifth Circuit's denial of Renteria's petition for rehearing, the district court granted Renteria's request for appointment of the Federal Public Defender's Capital Habeas Unit (CHU) as supplemental counsel. Order, *Renteria v. Davis*, No. 3:15-CV-62 (W.D. Tex. July 30, 2020). The CHU has funding, which permits it to retain investigators. Mot. 4, *Renteria v. Davis*, No. 3:15-CV-62 (W.D. Tex. July 29, 2020). The CHU's appointment means that "no additional budgeting" by the district court in this case is necessary. *Id.* Consequently, if this case were remanded to the Fifth Circuit and then to the district court to address the funding issue, Renteria would be disentitled to such funding. Renteria did not appeal the district court's denial of his motion for a stay of the district court's proceedings to allow him the opportunity to investigate the purported

⁴ Notably, Renteria's request that he be permitted to file separate briefs raising COA and non-COA issues is itself contrary to Federal Rule of Appellate Procedure 32(a)(7)(B)(i) limiting the length of briefs. Renteria would have this Court mandate that the lower court permit federal habeas petitioners to double the word-count limitation. This, despite the fact that Renteria did not take advantage of the full word-count in his brief and did not seek leave to file a brief in excess of the word-count limitation when he had the opportunity to do so. Fifth Cir. R. 32.4.

witness's statement, so the lower courts would not have jurisdiction to grant Renteria any relief.⁵

⁵ Renteria does not address whether the lower courts would have jurisdiction to consider any new claim he might raise if he received funding. But importantly, the courts would lack jurisdiction because any new claim would be successive. 28 U.S.C. § 2244(b)(2). Following the disclosure of the purported witness's statement, Renteria did not request leave to amend or supplement his petition to include any claim regarding the statement despite identifying claims he *would* raise and seeking funding and a stay to pursue them eight months before the district court entered final judgment. ROA.756–62, 798–806 (Renteria's assertion in his motion for reconsideration of the denial of a stay that no claim regarding the purported witness's statement "yet exist[ed]" because counsel lacked time and funding to investigate), 997; Pet'r's App. 066–69; *see* Fed. R. Civ. P. 15. Nor did Renteria seek to raise such claims—or challenge the district court's denial of his motions for funding and a stay—in his motion to amend the judgment. ROA.998–1006; *see Banister v. Davis*, 140 S. Ct. 1698, 1708 (2020) (holding that a motion to amend judgment does not constitute a successive petition). Consequently, any new claim Renteria might raise would be subject to AEDPA's successive bar, and he would be required to obtain authorization from the Fifth Circuit to raise it. 28 U.S.C. § 2244(b)(2), (3)(A); *see Gonzalez v. Crosby*, 545 U.S. 524, 530–32 (2005) (holding that a motion to reopen final judgment to consider a new claim constituted a successive petition); *Phillips v. United States*, 668 F.3d 433, 435 (7th Cir. 2012) (“[T]he time to amend the petition expires once the district court makes its decision. Final judgment marks a terminal point.”) (internal citation omitted); *but see United States v. Santarelli*, 929 F.3d 95, 105 (3d Cir. 2019) (holding that subsequent habeas petition was not a “second or successive” petition when it is filed during the pendency of an appeal of the district court's denial of the petitioner's initial habeas petition). Renteria's failure to seek leave to raise any new claim prior to final judgment and the jurisdictional hurdles that failure erects, as well as his failure to identify for this Court an available path forward in the courts below, are additional reasons the Court should “adhere scrupulously to the customary limits on [the Court's] discretion.” *Illinois v. Gates*, 462 U.S. 213, 224 (1983).

Similarly, Renteria does not address whether this Court has jurisdiction in light of the Fifth Circuit's denial of a COA. This Court noted in *Ayestas* that it does not have jurisdiction if jurisdiction was lacking in the court of appeals, and the denial of a COA may divest this Court of jurisdiction to consider an appeal of the denial of funding. 138 S. Ct. at 1088 n.1 (“Though we take no view on the merits, we will assume for the sake of argument that the Court of Appeals could not entertain petitioner's [18 U.S.C.] § 3599 claim without the issuance of a COA.”). While it may be that an appeal of the denial of funding should be subject to the COA standard because such a denial is necessarily linked to the merits of a claim, Renteria's case presents a particularly inapt vehicle to address that question in light of his failure to

Renteria fails to show that the Fifth Circuit’s consideration of his appeal of the funding issue along with his request for a COA is arbitrary or constitutes a departure from the usual course of legal proceedings. Pet. Cert. 13. The Fifth Circuit’s consideration of his appeal of the funding issue belies Renteria’s assertion. Pet’r’s App. 006. And as discussed below, the Fifth Circuit’s conclusion that Renteria was not entitled to funding to investigate claims that had no potential merit was plainly correct. Consequently, he presents no compelling issue justifying this Court’s intervention and his petition should be denied.

II. The Claims Renteria Requested Funding to Investigate Had No Potential Merit.

Renteria requested funding from the district court to investigate a statement that was provided to El Paso police while Renteria’s petition was pending, asserting that the investigation might result in his presenting the court with new claims. *See* Pet’r’s App. 062–68. In his motion for a stay for the same purpose, Renteria argued that the statement might support claims alleging the prosecution violated *Brady v. Maryland*⁶ by withholding exculpatory evidence, ineffective assistance of trial counsel (IATC), or actual

seek leave to amend or supplement his petition prior to final judgment. *Id.* at 1094 (“Proper application of the ‘reasonably necessary’ standard thus requires courts to consider the potential merit of the claims that the applicant wants to pursue.”).

⁶ 373 U.S. 83 (1963).

innocence. *See* Pet'r's App. 060. Renteria failed to justify funding because any claim arising from his proposed investigation would have been plainly meritless. *See Aystas*, 138 S. Ct. at 1094 (explaining that a federal habeas court must consider "the likelihood that the contemplated services will help the applicant win relief" in assessing a request for funding). He does not identify any compelling issue warranting this Court's attention.

A. Factual background

While Renteria's federal habeas petition was pending, an assistant district attorney from El Paso County provided Renteria's counsel with a statement from a purported witness. Pet'r's App. 062–65. The purported witness stated that her ex-husband indicated in 2001 that he was involved in Alexandra Flores's murder. Pet'r's App. 065. She explained she had a conversation with her then-husband prior to their divorce being finalized on October 19, 2001. Pet'r's App. 064. He told her to drive to a parking lot where he said a girl's body would be found with her eyes removed, body burned, and legs broken. Pet'r's App. 064–65. The girl was the victim of the Walmart kidnapping. Pet'r's App. 065. The purported witness explained that she did not "come forward" before because she was afraid for herself and her children. Pet'r's App. 065.

B. The lower courts properly rejected Renteria’s funding request.

The lower courts properly rejected Renteria’s request for funding to investigate the purported witness’s statement. First, insofar as Renteria sought to raise a *Brady* claim or an IATC claim based on the statement, he was not entitled to funding because any such claim would have been plainly meritless. The purported witness explicitly stated she did not inform anyone regarding her suspicion of her ex-husband before providing a statement to the police. Pet’r’s App. 065. Consequently, any claim that the prosecution withheld evidence of the purported witness’s statement or that trial counsel were deficient for failing to discover the witness would have undoubtedly failed.⁷ *See Brady*, 373 U.S. at 87–88; *Strickland v. Washington*, 466 U.S. 668, 690 (1984) (“[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel’s challenged conduct on the facts of the particular case, viewed as of the time of counsel’s conduct.”); *United States v. Rouse*, 410 F.3d 1005, 1010 (8th Cir. 2010) (“Any knowledge gained by the prosecution *after* the trial is irrelevant to a *Brady* claim.”) (emphasis in original).

⁷ Notably, trial counsel attempted to verify Renteria’s statement to police by investigating whether Alexandra’s family was involved with a gang. *See, e.g.*, ROA.2505, 3937–45, 8969–85 9840–41.

Moreover, Renteria's proposed actual innocence claim was not cognizable in federal habeas proceedings.⁸ *Herrera v. Collins*, 506 U.S. 390, 400 (1993). Consequently, Renteria necessarily could not justify funding to investigate a claim that would not be cognizable. In other words, a claim that is not cognizable is necessarily plainly meritless.

Second, Renteria failed to justify funding because any claim based on the statement would be without merit. Nothing in the statement was exculpatory as to Renteria. Pet'r's App. 064–65. Moreover, video evidence showed Renteria luring Alexandra Flores from the Walmart. *Renteria II*, 2011 WL 1734067, at *1. Alexandra's blood was found in Renteria's van. *Id.* Renteria's palm print was found on the plastic bag covering Alexandra's face. *Id.* Oranges eaten less than three hours antemortem were found in Alexandra's stomach, and evidence showed Renteria purchased oranges the day of Alexandra's abduction. *Id.* Renteria's defensive theory as set forth in his statement to police—that gang members forced him (a convicted child molester whose van was conveniently left running in the store parking lot and in which the police later found a gasoline can) for entirely unexplained reasons to abduct a young girl so that they could murder her as a form of gang retaliation in the absence of any evidence that Alexandra's family was involved in gang activity—was

⁸ Claims of actual innocence are, however, cognizable in Texas state court. *Ex parte Brown*, 205 S.W.3d 538, 544–45 (Tex. Crim. App. 2006).

wholly incredible, and the purported witness's statement did not render it any less so. ROA.10131–35.

Moreover, the purported witness stated with apparent confidence that her conversation with her ex-husband took place prior to October 19, 2001, which she recalled because the conversation was initially centered around their divorce that was finalized on that date. Pet'r's App. 064–65. But Alexandra's murder did not occur until one month later, on November 18, 2001. ROA.1926. Further, the purported witness stated her ex-husband told her that "they" removed Alexandra's eyes and broke her legs, but neither of those assertions were true. *See* ROA.10317–24 (autopsy report including notation of petechial hemorrhage in Alexandra's eye and "no skeletal injuries"). In light of the evidence implicating Renteria and the lack of any credible evidence in the statement implicating another person in Alexandra's murder, Renteria could not demonstrate his actual innocence or any prejudice or harm resulting from ineffective assistance of counsel or an alleged *Brady* violation. *See Schlup v. Delo*, 513 U.S. 298, 332 (1995) ("[T]he court may consider how the timing of the submission and the likely credibility of the affiants bear on the probable reliability of that evidence."); *Herrera*, 506 U.S. at 417 (stating that, if a claim of actual innocence were cognizable in federal habeas, the burden of making such a showing "would necessarily be extraordinarily high").

Third, any contention that the statement is exculpatory because it bolsters Renteria's statement to police plainly contradicts his claim that he was incompetent to stand trial. Renteria's primary contention in the courts below was that he was incompetent to stand trial due to amnesia, which his expert diagnosed based, in part, on her conclusion that Renteria gave a "confabulated" version of events on the night of the murder (presumably the same version he provided to the police). Pet'r's App. 004. If Renteria's incompetence at trial was evidenced by his confabulated version of events in which he falsely implicated members of the Azteca gang, any assertion now that his statement to police is corroborated by the purported witness's statement implicating the Azteca gang would directly contradict his theory of incompetence. Consequently, Renteria cannot identify any error in the lower court's rejection of his funding request.

Renteria argues the Fifth Circuit misapplied the standard this Court articulated in *Ayestas* by focusing on the potential merit of the proposed claims rather than whether a reasonable attorney would view the requested funding as reasonably necessary. Pet. Cert. 21–25. But the Fifth Circuit clearly relied on and cited to the appropriate standard. Pet'r's App. 006. Consequently, Renteria fails to identify an issue warranting this Court's attention. Sup. Ct. R. 10 ("A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly

stated rule of law.”). Nonetheless, Renteria does not show any error in the Fifth Circuit’s analysis.

In *Ayestas*, this Court explained that a court reviewing a petitioner’s request for funding must determine whether the funding is reasonably necessary. 138 S. Ct. at 1092. This calls for a determination “as to whether a reasonable attorney would regard the services as sufficiently important.” *Id.* at 1093. While Renteria would have the analysis stop there, Pet. Cert. 22, he elides this Court’s explanation that the analysis is “guided by” the “natural consideration” of whether the funding “will help the applicant win relief.” *Id.* at 1093–94. Indeed, this Court stated it would be “quite unreasonable” to conclude funding is necessary if it would “stand little hope of helping” the petitioner win relief. *Id.* at 1094. Consequently, a reviewing court is *required* to consider the potential merit of claims a petitioner seeks funding to investigate. *Id.* Renteria’s effort to exclude or deemphasize that analysis is plainly contrary to the statute and this Court’s opinion in *Ayestas*. *Id.* Consequently, Renteria fails to identify any reason for this Court to grant review.

Relatedly, Renteria argues the Fifth Circuit incorrectly concluded the purported witness was unavailable prior to his trial. Pet. Cert. 23–25. He asserts the witness was equivocal as to when she spoke with the police and what she told them, and funding could therefore be useful. Pet. Cert. 24–25.

But Renteria's assertion is plainly contradicted by the purported witness's statement. Pet'r's App. 065. As the Fifth Circuit correctly explained, the witness stated she previously spoke with police regarding another case involving her ex-husband, not Renteria's case. Pet'r's App. 007. Again, Renteria fails to identify any error in the Fifth Circuit's opinion and his petition should be denied.

III. The Fifth Circuit Properly Rejected Renteria's Claims Regarding His Parole Eligibility.

Lastly, Renteria argues the Fifth Circuit misapplied this Court's precedent when it denied a COA as to his claim that his right to due process was violated by the trial court's denial of his proffered expert's testimony and his requested jury instruction regarding his parole eligibility. Pet. Cert. 26–28. But like Renteria's funding complaint discussed above, this complaint seeks review of the lower court's application of a properly stated rule of law. Pet'r's App. 005–06. This Court's attention is therefore unwarranted. Sup. Ct. R. 10. Nonetheless, Renteria fails to identify any error in the Fifth Circuit's rejection of his claims regarding his parole eligibility.

Renteria claimed in his petition that he was denied his right to due process at his second punishment trial because the trial court improperly excluded evidence regarding his parole eligibility. *See* Pet'r's App. 134–43. He argued the trial court's ruling prevented him from presenting mitigating

evidence in violation of the Eighth Amendment and prevented him from presenting a defense in violation of the Sixth and Fourteenth Amendments.⁹ ROA.75–76. He also claimed that the trial court inaccurately instructed the jury that he would be eligible for parole release after serving forty years in prison. ROA.206. The district court rejected the claims as meritless, Pet’r’s App. 134–43, and the Fifth Circuit properly determined the district court’s rejection of the claims was not debatable. Pet’r’s App. 005–06.

A. Factual background

At his second punishment trial, Renteria proffered the testimony of William Habern outside the presence of the jury. ROA.20363–94. Mr. Habern was an attorney who represented individuals in parole matters. ROA.20364. He reviewed Renteria’s criminal record and testified that Renteria’s probation in two prior felony convictions (i.e., a twenty-year sentence for indecency with a child and a ten-year sentence for felony DWI) had been revoked and that the ten-year sentence had been stacked onto the twenty-year sentence. ROA.20365.

Mr. Habern opined both that Renteria would never be released on parole and that Renteria would “most likely” have to serve seventy years in prison

⁹ Renteria’s Eighth Amendment claim is not independently briefed in his petition. It is, therefore, inadequately briefed. Nonetheless, the Fifth Circuit properly determined the district court’s rejection of the claim was not debatable. Pet’r’s App. 007.

before being considered for parole release. ROA.20369, 20372–73, 20385–86. Mr. Habern also testified that the parole board would have discretion to cause Renteria’s twenty-year sentence to cease to operate after he served five years and then to cause Renteria’s ten-year sentence to cease to operate after he served two-and-a-half years. ROA.20388. Once those two sentences ceased to operate, and if a capital-life sentence was stacked onto the prior sentences, Renteria would then begin serving his life sentence on which he would become eligible for parole release after serving forty years. ROA.20377, 20388. Thus, in that scenario, Renteria could be released on parole after serving forty-seven-and-a-half-years. ROA.20389–90.

Mr. Habern conceded on cross-examination that his testimony regarding Renteria’s possible release on parole and the length of time Renteria would be incarcerated on a life sentence was speculative. ROA.20376–77, 20384. The trial court sustained the prosecution’s objection to Mr. Habern’s testimony and did not permit him to testify. ROA.20394. The trial court denied Renteria’s request to instruct the jury that a forty-year life sentence would not commence until his prior sentences ceased to operate. *See* Pet’r’s App. 141–42.

The judgments and sentences from Renteria’s twenty-year and ten-year sentences were admitted. ROA.20821, 23338–47. The judgments showed that the sentences would be served consecutively, however the DWI judgment was redacted to remove language indicating that the ten-year sentence would

commence when the twenty-year sentence ceased to operate. ROA.20823, 23339, 23344, 23347. Renteria’s jury was instructed, in accordance with state law, that if Renteria was sentenced to life, he would be eligible for release on parole after serving forty years in prison. ROA.2868; *see* ROA.1514–15.

Renteria raised claims on direct appeal challenging the trial court’s exclusion of Mr. Habern’s testimony and denial of his requested jury instruction. The CCA rejected the claims, holding that Mr. Habern’s testimony was properly excluded and that Renteria was not entitled to the jury instruction he requested. *Renteria II*, 2011 WL 1734067, at *42–46.

B. The trial court properly excluded Mr. Habern’s testimony and denied Renteria’s requested jury instruction.

Due process guarantees the right to inform sentencing juries about parole only if two conditions are met: (1) “jurors should consider the defendant’s future dangerousness when determining the proper punishment” and (2) “a capital defendant was ineligible for parole under state law.” *Lynch v. Arizona*, 136 S. Ct. 1818, 1819 (2016); *see Ramdass v. Angelone*, 530 U.S. 156, 166–69 (2000) (plurality opinion). This Court has specifically cautioned that, “[i]n a State in which parole is available,” it would “not lightly second-guess a decision whether or not to inform a jury of information regarding parole.” *Simmons v. South Carolina*, 512 U.S. 154, 168 (1994). And the Court in *Simmons* “expressly held that its ruling did not apply to Texas because

[Texas did] not have a life-without-parole alternative to capital punishment.”¹⁰ *Tigner v. Cockrell*, 264 F.3d 521, 525 (5th Cir. 2001) (citing *Simmons*, 512 U.S. at 168 n.8).

Consequently, Texas courts had no constitutional obligation to inform its juries of a defendant’s parole eligibility where the defendant was eligible for parole release. *See, e.g., Johnson v. Quarterman*, 294 F. App’x 927, 931–32 (5th Cir. 2008) (denying a COA on claim that the trial court violated *Simmons* by instructing the jury as to the defendant’s parole eligibility but instructing the jury not to consider it). This is because, “if a defendant’s [parole] ineligibility is a matter of fact, i.e., the defendant *probably* will not be eligible for parole, then the evidence is purely speculative (maybe even inherently ‘untruthful’) and therefore cannot positively deny future dangerousness.” *Allridge v. Scott*, 41 F.3d 213, 222 (5th Cir. 1994) (emphasis in original). Thus, this Court has “reaffirmed that states can properly choose to prevent a jury from engaging in such speculation.” *Id.* And “*Simmons* does not establish a right to inform the jury accurately about a defendant’s parole eligibility, but rather a right to inform that he is ineligible for parole.” *Turner v. Quarterman*, 481 F.3d 292, 299 (5th Cir. 2007).

¹⁰ *See Curry v. State*, AP-77,033, 2017 WL 781740, at *16 (Tex. Crim. App. March 1, 2017) ([T]he Texas Legislature amended Article 37.071 in 2005, creating life without parole as the only alternative to the death penalty for defendants convicted of capital murder.”).

As the lower courts held, clearly established federal law—*Simmons*—dictated that Renteria’s claim that he was entitled to present evidence of his parole eligibility was meritless. Pet’r’s App. 005–06. Indeed, Renteria was plainly not entitled to present an expert “opinion” that he *might* never obtain parole release or only obtain release after serving seventy years in prison. *See California v. Ramos*, 463 U.S. 992, 1013 (1983); *Allridge*, 41 F.3d at 222. Moreover, the jury’s knowledge that Renteria was eligible for parole release meant that it did not have the mistaken belief “that it could only sentence [him] to death or to a limited period of incarceration”—the jury knew Renteria’s period of incarceration might be limited. *Rudd v. Johnson*, 256 F.3d 317, 321 (5th Cir. 2001). Consequently, Renteria failed to justify a departure from this Court’s binding precedent.

Renteria asserts, however, that the trial court’s jury instruction stating that he would be eligible for parole release after serving forty years was factually incorrect because he would not be eligible for parole until he served forty-seven-and-a-half years. Pet. Cert. 26. But as the Fifth Circuit discussed, the premise of Renteria’s argument is flawed. Pet’r’s App. 005–06.

Renteria indeed had the right to a sentence based on accurate information. Pet’r’s App. 005 (citing *United States v. Tucker*, 404 U.S. 443, 447 (1972); *Townsend v. Burke*, 334 U.S. 736, 741 (1948)). Here, the information before Renteria’s jury was accurate. Pet’r’s App. 005. Renteria would have been

eligible for release on parole after serving forty years on a capital-life sentence. Pet'r's App. 005. And the judgments and sentences from Renteria's prior convictions—showing that they ran consecutively with each other—were admitted into evidence. ROA.23338–47. Consequently, the jury knew that Renteria would serve at least forty years on a capital-life sentence and that he faced additional sentences. ROA.23341, 23347; *see* ROA.885–86. Therefore, Renteria cannot show he was denied his right to a sentence based on accurate information. ROA.884–85.

Critically, the foundation of Renteria's claim—that he would not have been eligible for parole release until he served forty-seven-and-a-half years in prison because a capital-life sentence would be served consecutively with his prior sentences—was speculative. ROA.20377. Mr. Habern—and trial counsel—conceded that it was speculative whether the trial court would “stack” a life sentence onto Renteria's prior sentences. ROA.20377, 20384, 20388, 20392. It was, therefore, not an established, “objective fact” at the time of the jury's punishment deliberations that Renteria would serve at least forty-seven-and-a-half years in prison. Pet. Cert. 27; *see* Pet'r's App. 141–42 (quoting Renteria's requested jury instructions). Consequently, a jury instruction stating that Renteria would not become eligible for parole release until he served forty-seven-and-a-half years would have been speculative and could

have been, in the end, incorrect. Pet'r's App. 005. Renteria was not entitled to such an instruction.

In fact, Mr. Habern's proffered testimony that Renteria would not be eligible for parole release until he served forty-seven-and-a-half years and that he would likely have to serve at least seventy years would have invited the jury to speculate on *multiple* levels: (1) whether Renteria's capital-life sentence would be stacked onto his prior two sentences; (2) if and when his twenty-year sentence for indecency with a child would cease to operate; (3) if and when his ten-year sentence for felony DWI would cease to operate; and (4) if and when his capital-life sentence would cease to operate. *See* ROA.20381–82, 20385.

Notably, the imprecision of testimony regarding parole release is illustrated by the varying testimony regarding Renteria's parole eligibility. At Renteria's first trial, his expert testified that Renteria would be required to serve "about" fifty-three years in prison. ROA.9896. But during Renteria's second punishment trial, Mr. Habern testified that Renteria would be required to serve at least forty-seven-and-a-half years prior to becoming eligible for parole release and that, "in [his] opinion," Renteria might be required to serve seventy years prior to being considered for parole. ROA.20385, 20388. The inconsistency in the witnesses' testimony clearly illustrates the risk in permitting such testimony by encouraging a jury to speculate on such a nebulous basis. *See Ramdass*, 530 U.S. at 176–77 (noting the uncertainty as to

the petitioner's eligibility for parole at the time of his sentencing trial as a reason not to extend *Simmons*).

In *Ramdass*, this Court declined to extend *Simmons* where the petitioner argued his prior convictions made him parole ineligible under state law. *Id.* at 162 (plurality opinion); *id.* at 181 (O'Connor, J., concurring). But the petitioner was not ineligible for parole "when the jury considered his sentence" because a sentence had not been imposed on one of his prior convictions. *Id.* at 167 (plurality opinion). This was a "[m]aterial difference" between *Ramdass* and *Simmons*. *Id.* Similarly, the petitioner's parole eligibility left him—not the State, as in *Simmons*—to argue that a hypothetical future event would render him parole ineligible. *Id.* at 168 Consequently, the state court's rejection of the petitioner's claim was not contrary to *Simmons*. *Id.* at 167–69.

Renteria's attempt to extend *Simmons* to his case is mistaken for the same and similar reasons: (1) he was not ineligible for parole and (2) the minimum time Renteria would serve in prison was not settled at the time the jury deliberated because the trial court had discretion not to stack a capital-life sentence onto Renteria's prior sentences. ROA.20377, 20384, 20388, 20392. This Court in *Ramdass* rejected the petitioner's proffered extension of *Simmons* because it "would require courts to evaluate the probability of future events." *Ramdass*, 530 U.S. at 169. Renteria provides no reason the Court should not reject his proposed extension of *Simmons* as well.

Renteria argues that the “binary possibilities” for his sentence were not speculative because he would either become parole eligible after forty-seven-and-a-half years or forty years. Pet. Cert. 28. But the argument fails to show the state court unreasonably applied *Simmons*, as discussed above. Additionally, this Court in *Ramdass* declined to extend *Simmons* to require state trial courts to inform juries of every possibility. 530 U.S. at 177–78. Again, Renteria’s claim is contrary to this Court’s clearly established precedent.¹¹

Renteria also argues that the jury instruction on his parole eligibility prevented him from denying or explaining the prosecution’s case for future dangerousness. Pet. Cert. 27 (citing *Gardner v. Florida*, 430 U.S. 349, 362 (1977)). But as noted above, this Court has limited a defendant’s right to present evidence regarding parole to cases in which the defendant was “legally ineligible for parole.” *Allridge*, 41 F.3d at 222 (quoting *Simmons*, 512 U.S. at 165). Moreover, Renteria was permitted to argue that he would not be a future danger based on his lack of disciplinary infractions in jail and prison, and he presented testimony and argued in closing that he would never be released

¹¹ As the district court recognized, the jury instructions Renteria proposed at trial were misleading because they presumed the trial court would stack a capital-life sentence onto his prior sentences. Pet’r’s App. 142–43. Consequently, Renteria’s assertion now that his jury should have been instructed as to the available “binary” options differs from the request he made at trial. Pet. Cert. 28.

from prison. ROA.20649–50, 20813, 20907, 20925, 20938–39. Consequently, he was not “thwarted” from rebutting the prosecution’s case for future dangerousness. *Simmons*, 512 U.S. at 164–65 (quoting *Skipper v. South Carolina*, 476 U.S. 1, 4 (1986), and *Gardner*, 430 U.S. at 362). And, again, Renteria was not entitled to deny or explain the prosecution’s case for future dangerousness by way of a speculative and potentially inaccurate jury instruction.

Moreover, all of Renteria’s claims regarding the exclusion of evidence of his parole eligibility are barred by principles of non-retroactivity because they call for a new rule applying this Court’s holding in *Simmons* to cases in which the defendant was eligible for parole if sentenced to life imprisonment. *See Ramdass*, 530 U.S. at 165 (“We have not extended *Simmons* to cases where parole ineligibility has not been established as a matter of state law at the time of the jury’s future dangerousness deliberations in a capital case.”); *Teague v. Lane*, 489 U.S. 288, 316 (1989) (plurality opinion); *Wheat v. Johnson*, 238 F.3d 357, 361 (5th Cir. 2001) (finding any extension of *Simmons* to violate *Teague*). Therefore, Renteria’s claims are unworthy of this Court’s attention.

Lastly, Renteria cannot establish harm from any of the alleged errors. *See Brecht v. Abrahamson*, 507 U.S. 619, 629–30 (1993); *Hodges v. Epps*, 648 F.3d 283, 288–89 (5th Cir. 2011). Again, the crux of Renteria’s claims is that he was not permitted to inform the jury he would be eligible for parole release

after serving forty-seven-and-a-half-years in prison rather than forty years. Pet. Cert. 28. Even if Mr. Habern’s proffered testimony regarding Renteria’s eligibility for parole release was accurate and not speculative, Renteria cannot show that the jury would not have sentenced him to death if only it knew that he would be required to serve seven-and-a-half more years in prison prior to becoming eligible for parole release.

Additionally, Renteria cannot show that he was harmed by the trial court’s exclusion of Mr. Habern’s testimony because Renteria’s expert—Dr. Mark Cunningham—testified that he believed Renteria would die in prison and would never be at large in the community. ROA.20813. Renteria also cannot demonstrate harm in light of the aggravating evidence: his murder of a five-year-old child, criminal record, poor record of compliance with probation restrictions, and poor demonstration of acceptance of responsibility. Consequently, Renteria cannot identify a compelling issue warranting this Court’s attention. His petition should be denied.

CONCLUSION

The petition for a writ of certiorari should be denied.

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