

No. 21-5592

IN THE
Supreme Court of the United States

JOHN H. RAMIREZ,

Petitioner,

v.

BRYAN COLLIER, EXECUTIVE DIRECTOR,
TEXAS DEPARTMENT OF CRIMINAL JUSTICE, ET AL.

Respondents.

**On Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit**

**BRIEF OF PABLO CASTRO'S CHILDREN
MARIA CHAVON AGUILAR, FERNANDO
CASTRO, PABLO CASTRO JR., AND ROBERTO
SALCEDO JR. AS *AMICI CURIAE* IN SUPPORT
OF RESPONDENT**

ALLYSON N. HO

Counsel of Record

BRADLEY G. HUBBARD

MATT SCORCIO

BRIAN SANDERS

GIBSON, DUNN & CRUTCHER LLP

2001 Ross Avenue, Suite 2100

Dallas, Texas 75201

(214) 698-3100

aho@gibsondunn.com

CHRISTINE A. BUDASOFF

JASON MANION

GIBSON, DUNN & CRUTCHER LLP

1050 Connecticut Avenue, N.W.

Washington, D.C. 20036

Counsel for Amici Curiae

TABLE OF CONTENTS

	Page
Table of Authorities.....	ii
Interest of <i>Amici Curiae</i>	1
Statement	1
Argument.....	13
I. Excessive Delays In Obtaining Justice Inflict Immeasurable Harm On Victims' Families.....	13
II. Research Confirms What Experience Makes Plain—Undue Delays in Administering Justice Harm Victims of Violent Crimes.	17
Conclusion	21

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Bucklew v. Precythe</i> , 139 S. Ct. 1112 (2019).....	13, 14, 20
<i>Hill v. McDonough</i> , 547 U.S. 573 (2006).....	13, 14, 20
<i>Murphy v. Collier</i> , 139 S. Ct. 1475 (2019).....	10
<i>Ramirez v. Davis</i> , 137 S. Ct. 279 (2016).....	10
<i>Ramirez v. Davis</i> , 675 F. App'x 478 (5th Cir. 2017)	10
<i>Ramirez v. State</i> , 2011 WL 1196886 (Tex. Crim. App. Mar. 16, 2011)	<i>passim</i>
<i>Ramirez v. Stephens</i> , 2015 WL 3629639 (S.D. Tex. June 10, 2015).....	10
<i>Ramirez v. Stephens</i> , 641 F. App'x 312 (5th Cir. 2016)	3, 5, 10
<i>Ex parte Ramirez</i> , 2012 WL 4834115 (Tex. Crim. App. Oct. 10, 2012)	9
Other Authorities	
Adam Manno & Christopher Eberhart, <i>Texas Death Row Inmate Makes Last Ditch Legal Appeal to Have Pastor Hold His Hand as He's Executed Today for Brutal Murder of Store Clerk for \$1.25</i> , Daily Mail (Sept. 7, 2021).....	4, 8

Dan S. Levey, <i>Balancing the Scales of Justice</i> , 89 <i>Judicature</i> 289 (2006)	18, 19
David Kassabian & Mike Baird, <i>Suspect in 2004 Slaying Arrested</i> , <i>Corpus Christi Caller-Times</i> (Feb. 21, 2008), 2008 WLNR 31318600	7
Dean G. Kilpatrick & Ron Acierno, <i>Mental Health Needs of Crime Victims: Epidemiology and Outcomes</i> , 16 <i>J. Traumatic Stress</i> 119 (2003)	17
Jim Parsons & Tiffany Bergin, <i>The Impact of Criminal Justice Involvement on Victims' Mental Health</i> , 23 <i>J. Traumatic Stress</i> 182 (2010)	17
Judith Lewis Herman, <i>The Mental Health of Crime Victims: Impact of Legal Intervention</i> , 16 <i>J. Traumatic Stress</i> 159 (2003)	19
Letter from Fernando Castro to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021)	2, 13, 16
Letter from Maria Chavon Aguilar to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 24, 2021)	15
Letter from Pablo Castro Jr. to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021)	15, 16
Letter from Roberto Salcedo Jr. to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021)	14, 15

Mary Ann Cavazos, <i>Death Row Inmate to Stop Appeals,</i> Corpus Christi Caller-Times (Aug. 6, 2011), 2011 WLNR 28540580	9
Mary Ann Cavazos, <i>Expert: Blood Was Victim's,</i> Corpus Christi Caller-Times (Dec. 5, 2008), 2008 WLNR 31315038	6
Mary Ann Cavazos, <i>Killer Decides to Fight Death Sentence,</i> Corpus Christi Caller-Times (Sept. 10, 2011), 2011 WLNR 28546815	9
Mary Ann Cavazos, <i>Killer Given Death Penalty,</i> Corpus Christi Caller-Times (Dec. 9, 2008), 2008 WLNR 31322237	9
Mary Ann Cavazos, <i>Man Guilty of Capital Murder in Fatal Stabbing,</i> Corpus Christi Caller-Times (Dec. 6, 2008), 2008 WLNR 31315327	5
Mary Ann Cavazos, <i>Woman: Stabbing Came after 3-Day Drug Binge,</i> Corpus Christi Caller-Times (Dec. 4, 2008), 2008 WLNR 31321152	5
Mary Beth Ricke, <i>Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection,</i> 41 Wash. U. J. L. & Pol'y 181 (2013).....	18, 19

- Mike Baird,
Slaying Suspect Eludes Police,
 Corpus Christi Caller-Times (July 21, 2004),
 2004 WLNR 24784546 5, 6
- Samuel R. Gross & Daniel J. Matheson,
*What They Say at the End: Capital
 Victims' Families and the Press*,
 88 Cornell L. Rev. 486 (2003) 18, 19
- Sara Lee Fernandez,
Rosary Held for Slain 'Amigo,'
 Corpus Christi Caller-Times (July 23, 2004),
 2004 WLNR 24784667 2, 7, 8
- Tex. Code Crim. P. art. 37.071.....9
- Ulrich Orth & Andreas Maercker,
*Do Trials of Perpetrators
 Retraumatize Crime Victims?*,
 19 J. Interpersonal Violence 212 (2004)..... 18

**BRIEF FOR *AMICI CURIAE*
IN SUPPORT OF RESPONDENT**

INTEREST OF *AMICI CURIAE**

Maria Chavon Aguilar, Fernando Castro, Pablo Castro Jr., and Roberto Salcedo Jr. are the children of Pablo Castro, who was murdered by John Henry Ramirez in 2004. *Amici* have an interest in seeing justice carried out for their father and attaining closure for themselves and other family members.

STATEMENT

John Henry Ramirez stabbed Pablo Castro over 29 times for \$1.25 and left him to bleed to death in the parking lot of a convenience store. After murdering the 45-year-old Castro, Ramirez robbed two other victims at knife point—the same knife he used to murder Castro. One of the robbery victims that night was a young mother with her two-year-old son in the back seat of her car. Ramirez fled to Mexico, where he evaded capture for over three years before being tried, convicted, and sentenced to death for Castro’s murder.

Since that night over seventeen years ago, the Castro children have endured delay after delay in securing justice for their father and closure for themselves. As Fernando Castro, who was only eleven years old when his father was murdered, put it, “I want my father to finally have his justice as well as

* Pursuant to Supreme Court Rule 37.6, *amici* represent that this brief was not authored in whole or in part by any party or counsel for any party. No person or party other than *amici* or their counsel made a monetary contribution to the preparation or submission of this brief. The parties have filed blanket consents to the filing of *amicus curiae* briefs. See S. Ct. R. 37.3.

the peace to finally move on with my life and let this nightmare be over.” Letter from Fernando Castro to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021) (on file with author).

Ramirez’s violent crimes exacted an unspeakably cruel toll on his victims and their families. But that was just the beginning of their suffering. Ramirez has pursued a manipulative, dilatory litigation strategy that has robbed Pablo Castro’s children of even the smallest measure of closure and peace.

1. Pablo Castro worked at the Times Market convenience store in Corpus Christi, Texas, for fourteen years.¹ He regularly worked the night shift with Lydia Salinas, the store’s manager and cashier. *Ramirez v. State*, 2011 WL 1196886, at *1 (Tex. Crim. App. Mar. 16, 2011). They usually took turns buying dinner—and on the night of July 19, 2004, Castro told Salinas he only had a dollar, so she bought dinner for them both. A short time later, a young woman came into the store and asked to use the restroom. Salinas later identified her as one of Ramirez’s accomplices, Angela Rodriguez. *Ibid.*

As the store’s midnight closing time approached, Castro told Salinas he was going outside to empty the trash. *Ramirez*, 2011 WL 1196886, at *1. Salinas was busy counting money at the cash register. A few minutes later, a girl came in and told her there was a bleeding man lying in the parking lot. Salinas thought Castro had probably come back inside by then

¹ Sara Lee Fernandez, *Rosary Held for Slain ‘Amigo,’* Corpus Christi Caller-Times (July 23, 2004), 2004 WLNR 24784667.

and was working in the back of the store, so she called out to let him know she was going outside. *Ibid.*

After Salinas stepped outside and confirmed that someone was lying in the parking lot, she went back into the store and called 911. *Ramirez*, 2011 WL 1196886, at *1. She shouted for Castro to come to the front of the store before she went back outside to see if she could help. When she took a closer look at the man lying in a pool of blood, however, she realized he was Castro. She screamed and started toward him, but a neighbor and others who had come from the car wash next door held her back and told her that he was dead. *Ibid.*

2. Mariano Cervantes and Kashif Butt worked together at a nearby store. *Ramirez*, 2011 WL 1196886, at *1–2. After closing up for the night, they drove to the car wash next to the Times Market. *Ibid.* As they were getting ready to wash their cars, they saw Ramirez and Rodriguez punching and kicking Castro as he tried to block their blows. *Id.* at *1–3.

Cervantes and Butt started toward the parking lot to help Castro. *Ramirez*, 2011 WL 1196886, at *1–2. But it was too late. They saw Castro fall, then Ramirez and Rodriguez reached into Castro's pockets. *Id.* at *1–3; *Ramirez v. Stephens*, 641 F. App'x 312, 314 (5th Cir. 2016). Ramirez and Rodriguez were gone by the time Cervantes and Butt reached Castro, who was still conscious but barely alive. *Ramirez*, 2011 WL 1196886, at *1–2. He was gurgling and spitting up blood, with a large bloody gash on his throat. Cervantes and Butt tried to speak with him, but Castro soon closed his eyes and stopped responding. *Ibid.*

3. An autopsy later disclosed that Castro sustained twenty-nine sharp-force injuries consistent with knife wounds. *Ramirez*, 2011 WL 1196886, at *5. Ten were stab wounds that penetrated Castro's body. Nineteen were slash-type wounds. Eight were defensive wounds on Castro's right forearm and hand. The majority of the stab wounds were around Castro's head, neck, shoulders, and back. There was evidence of blunt-force trauma on Castro's face and neck from being punched and kicked. *Ibid.*

In a 2018 media interview, Ramirez recounted that after "smoking weed, taking cocaine, prescription pills and drinking vodka," he used his "military training" and "ended up hitting Pablo" using "kill shot[s]": "I hit him in the heart. I hit him in the neck. I hit him in the groin. I hit him in the lung."²

4. Officer Mike Wenzel was the first responder at the scene. *Ramirez*, 2011 WL 1196886, at *2. When he arrived, Officer Wenzel determined that Castro was no longer breathing. Officer Wenzel then tried to secure the scene while he waited for additional officers to arrive. He spoke with Salinas, Cervantes, and Butt, and gave the information he learned to the police dispatcher, who issued an alert to all officers in the city to be on the lookout for the suspects. *Ibid.*

5. Christina Chavez, Ramirez's other accomplice, testified that she, Rodriguez, and Ramirez spent the three days leading up to the murder drinking and

² Adam Manno & Christopher Eberhart, *Texas Death Row Inmate Makes Last Ditch Legal Appeal to Have Pastor Hold His Hand as He's Executed Today for Brutal Murder of Store Clerk for \$1.25*, Daily Mail (Sept. 7, 2021), <https://www.dailymail.co.uk/news/article-9968327/Texas-death-row-inmate-seeks-pastors-touch-execution.html>.

using drugs. *Ramirez*, 2011 WL 1196886, at *3. When they ran out of drugs and money, they went driving in search of someone to rob so they could buy more drugs. *Ibid.* At the time, Ramirez was on probation for a gun charge, and a warrant was out for his arrest. *Id.* at *11.³

Ramirez, Rodriguez, and Chavez traveled together in two vans—at least one of which was stolen. *Ramirez*, 2011 WL 1196886, at *3.⁴ Ramirez took one van, and Rodriguez and Chavez took the other. The three pulled into the parking lot of the Times Market, where they saw Castro carrying a bag to the dumpster. Ramirez pummeled Castro and then stabbed him until he fell to his knees. *Ramirez*, 2011 WL 1196886, at *3. After Castro fell backward onto the ground, Ramirez and Rodriguez went through Castro's pockets. *Id.* at *2; *Ramirez*, 641 F. App'x at 314. Chavez later saw Rodriguez drop \$1.25 onto the console when she got back into the van. *Ramirez*, 2011 WL 1196886, at *3. As the three fled the scene, Chavez saw Castro lying on the pavement, gasping for air.⁵

Forensics later identified blood found on various items in both vans—the steering wheel, armrest, gear-shift lever, a T-shirt, and a bottle of vodka—as Castro's. *Ramirez*, 2011 WL 1196886, at *5. The

³ Mary Ann Cavazos, *Man Guilty of Capital Murder in Fatal Stabbing*, Corpus Christi Caller-Times (Dec. 6, 2008), 2008 WLNR 31315327.

⁴ Mike Baird, *Slaying Suspect Eludes Police*, Corpus Christi Caller-Times (July 21, 2004), 2004 WLNR 24784546.

⁵ Mary Ann Cavazos, *Woman: Stabbing Came after 3-Day Drug Binge*, Corpus Christi Caller-Times (Dec. 4, 2008), 2008 WLNR 31321152.

same was true of blood found on Chavez's tank top and Rodriguez's shorts. *Ibid.*⁶

6. After washing some of Castro's blood off their clothes and hands, Ramirez and Rodriguez (along with Chavez) went in search of other victims to rob for drug money. *Ramirez*, 2011 WL 1196886, at *3. The \$1.25 they took from Castro wasn't enough. *Ibid.*

April Metting was waiting in the drive-through line of a nearby Whataburger, her two-year-old son in the back seat. *Ramirez*, 2011 WL 1196886, at *4.⁷ One of Ramirez's accomplices—Chavez testified that it was Rodriguez—walked up to the front of Metting's car and asked to use her cell phone, telling Metting that she had been in a fight and pointing to blood stains on her shirt. While Metting was being distracted, Ramirez came up behind her, reached into her open window, grabbed her by the back of her neck, held a knife to her throat, and demanded money. When Metting begged them not to hurt her in front of her son, Ramirez told her to “[s]hut up, bitch.” After Metting gave them her purse, Ramirez, Chavez, and Rodriguez left the scene together in one van. *Ramirez*, 2011 WL 1196886, at *4.

Ruby Pena Hinojosa was waiting in the drive-through line of another Whataburger when Ramirez, Rodriguez, and Chavez pulled up next to her car. *Ramirez*, 2011 WL 1196886, at *4.⁸ Once again, one of the women got out and asked to use Hinojosa's cell

⁶ Mary Ann Cavazos, *Expert: Blood Was Victim's*, Corpus Christi Caller-Times (Dec. 5, 2008), 2008 WLNR 31315038.

⁷ See Baird, *Slaying Suspect*, 2004 WLNR 24784546, *supra* note 4.

⁸ See Baird, *Slaying Suspect*, 2004 WLNR 24784546, *supra* note 4.

phone. And, once again, Ramirez appeared at Hinojosa's car window, put a knife to her neck, and demanded money—but Hinojosa was able to lean away from the knife and roll up her window. Ramirez went around to the passenger-side window and began banging on the glass with the knife. Fearing for her life, Hinojosa backed up her car and Ramirez, Chavez, and Rodriguez fled in the van. *Ramirez*, 2011 WL 1196886, at *4.

7. Police spotted the van as it was driving away and gave chase, but Ramirez and his accomplices eluded them—speeding through intersections at over seventy miles per hour without stopping. *Ramirez*, 2011 WL 1196886, at *5. Ramirez drove the van into an overgrown lot, got out, and continued on foot. Chavez and Rodriguez were soon arrested, but Ramirez absconded. *Id.* at *5–6. He was finally apprehended near the Mexican border over three and a half years later. *Id.* at *6 n.3.

Corpus Christi's police chief, Bryan Smith, said at the time that cooperation among his department, the FBI, and the U.S. Marshals Service played a large part in catching Ramirez.⁹ The heinous crime impacted every officer working in his department, he added. "None of our officers were going to rest until this person was behind bars," he said. *Ibid.*

8. Castro was survived by three daughters, six sons, his parents, two sisters, four brothers, and fourteen grandchildren.¹⁰ Several days after his murder,

⁹ David Kassabian & Mike Baird, *Suspect in 2004 Slaying Arrested*, Corpus Christi Caller-Times (Feb. 21, 2008), 2008 WLNR 31318600.

¹⁰ Fernandez, *Rosary Held*, 2004 WLNR 24784667, *supra* note 1.

over 200 people gathered to pray the rosary for him. *Ibid.* The funeral home's parking lot was filled with vehicles, but one stood out. Written on the dark windows with white shoe polish were words from Castro's children: "In loving memory of our dad Pablo Castro," on the rear windshield; "Gone but never forgotten," on a side window. *Ibid.*

Ramirez not only took Castro's life, but also deprived him of the opportunity to have a priest administer the last rites. As Ramirez's now-retired prosecutor recently said, "Pablo Castro didn't get to have somebody praying over him as [Ramirez] stabbed him 29 times"—he "didn't get afforded such niceties and things like to have a clergyman present."¹¹

9. The State charged Ramirez with capital murder for killing Castro in the course of robbing him. *Ramirez*, 2011 WL 1196886, at *1. Ramirez didn't contest that he killed Castro, but argued that the evidence didn't show that Ramirez was responsible for the underlying robbery. *Id.* at *6. The prosecution introduced eyewitness testimony that Ramirez himself went through Castro's pockets, that he was "looking for someone to rob in order to obtain drug money," and that because Castro's \$1.25 wasn't enough to buy drugs, Ramirez also robbed April Metting and attempted to rob Ruby Hinojosa that same evening. *Id.* at *7–8.

The jury ultimately found Ramirez guilty of capital murder. *Ramirez*, 2011 WL 1196886, at *1, *7. During the sentencing phase, after his father was called as a mitigation witness, Ramirez instructed his attorneys to discontinue their efforts to persuade the jury not to impose the death sentence and instead to read

¹¹ Manno & Eberhart, *Texas Death Row Inmate*, *supra* note 2.

Psalm 51:3 to the jury: “For I acknowledge my transgressions and my sin is ever before me.”¹² The jury deliberated for three and a half hours and then sentenced him to death. “There’s no feeling of triumph in a case like this,” commented the lead prosecutor. “It’s [only] a feeling that you’ve done something to help the victim’s family find justice.” *Ibid.* (alteration in original).

10. As provided by state law, see Tex. Code Crim. P. art. 37.071, § 2(h), Ramirez’s death-penalty case was automatically appealed to the Texas Court of Criminal Appeals. That court affirmed Ramirez’s conviction and sentence in a 42-page opinion that rejected Ramirez’s numerous claims of insufficient evidence, evidentiary error, and jury-charge error, among others. *Ramirez*, 2011 WL 1196886, at *1, *19. Ramirez then decided to “expedite his execution by ending his legal fight” to pursue post-conviction relief, but reversed course shortly thereafter when “he found out he has a paternal half sister.”¹³

While pursuing his direct appeal, Ramirez filed his first state application for a writ of habeas corpus. After a hearing, the trial court made detailed findings of fact and conclusions of law and ultimately recommended that the Texas Court of Criminal Appeals deny habeas relief. That court agreed and denied relief. *Ex parte Ramirez*, 2012 WL 4834115, at *1 (Tex. Crim. App. Oct. 10, 2012).

¹² Mary Ann Cavazos, *Killer Given Death Penalty*, Corpus Christi Caller-Times (Dec. 9, 2008), 2008 WLNR 31322237.

¹³ Mary Ann Cavazos, *Death Row Inmate to Stop Appeals*, Corpus Christi Caller-Times (Aug. 6, 2011), 2011 WLNR 28540580; Mary Ann Cavazos, *Killer Decides to Fight Death Sentence*, Corpus Christi Caller-Times (Sept. 10, 2011), 2011 WLNR 28546815.

Ramirez filed a federal habeas petition raising the same grounds of error as his state petition. The district court denied habeas relief and a certificate of appealability. *Ramirez v. Stephens*, 2015 WL 3629639, at *26 (S.D. Tex. June 10, 2015); J.A. 21. The Fifth Circuit likewise denied a certificate of appealability. *Ramirez*, 641 F. App'x at 327; J.A. 21. This Court denied review. *Ramirez v. Davis*, 137 S. Ct. 279 (2016).

11. Ramirez's execution was stayed for the first time in 2017, two days before it was scheduled to take place. See *Ramirez v. Davis*, 675 F. App'x 478 (5th Cir. 2017); J.A. 21 (execution set for February 2, 2017). Ramirez sought the stay (and new appointed counsel) because, according to Ramirez, his previous attorney "abandoned" him by not filing a clemency petition asking Governor Abbott for a stay of execution or a commutation of his sentence to life in prison, *Ramirez v. Davis*, No. 2:12-cv-410 (S.D. Tex. Jan. 27, 2017), ECF Nos. 43–44—even though Ramirez had ordered that attorney *not* to file a clemency petition. *Ramirez v. Davis*, No. 2:12-cv-410 (S.D. Tex. Jan. 30, 2017), ECF No. 45 at 4. As the State explained, that "is not abandonment; it is gamesmanship." *Id.* at 8.s

12. The State subsequently reset Ramirez's execution date for September 9, 2020. J.A. 21. The month before, Ramirez sued under section 1983, contending that the exclusion of his spiritual advisor from the execution chamber would violate both the Religious Land Use and Institutionalized Persons Act (RLUIPA) and the First Amendment—relying on this Court's 2019 decision in *Murphy v. Collier*, 139 S. Ct. 1475 (2019). *Ramirez v. Collier*, No. 2:20-cv-205 (S.D. Tex. Aug. 7, 2020), ECF No. 1.

Ramirez explicitly disavowed any need for his spiritual advisor to have physical contact with him in the execution chamber. *Id.* at 5. The State agreed to withdraw Ramirez’s execution date in exchange for Ramirez nonsuiting his section 1983 complaint. See *Ramirez v. Collier*, No. 2:20-cv-205 (S.D. Tex. Aug. 14, 2020), ECF No. 2; J.A. 22, 71–72.

13. In February 2021, the trial court again set Ramirez’s execution date—this time for September 8, 2021—and released Ramirez from his obligations under his agreement with the State. J.A. 23.

In April 2021, Ramirez filed an administrative grievance complaining about his spiritual advisor’s exclusion from the execution chamber. J.A. 50. His grievance said nothing about needing physical contact with his advisor. J.A. 50–51. Ramirez filed a second grievance, and the State responded by providing detailed instructions about how to ensure his spiritual advisor’s presence in the chamber with him per the State’s new policy. J.A. 52–55.

In June 2021—a month after the State agreed to accommodate Ramirez’s request to have his advisor present—his counsel requested that his advisor be permitted to make physical contact with Ramirez during his execution. J.A. 153–54. Three days later, Ramirez filed a grievance requesting similar treatment. J.A. 52–53. The State refused the lawyer’s request on June 17, and Ramirez’s on July 2. J.A. 53, 153–54.

14. In mid-August, Ramirez filed suit again, this time insisting—contrary to his previous suit—that he desired, and RLUIPA required, that his spiritual advisor be permitted to make physical contact with him

throughout his execution. J.A. 14–30. He sought another stay of execution pending the suit’s resolution. *Ibid.* Ramirez also added a challenge—raised for the first time—to the State’s verbal restrictions on spiritual advisors while in the execution chamber. J.A. 84–102. The district court denied a stay, J.A. 175–83, and the Fifth Circuit affirmed. J.A. 184–201.

Chief Judge Owen emphasized that Ramirez’s change in position—from asserting that his advisor “need not touch [him] at any time in the execution chamber” to demanding that his advisor “be permitted to lay hands on him throughout the execution process and until death has occurred”—“raises the concern that Ramirez’s change in position has been asserted to delay his execution.” J.A. 187. Chief Judge Owen went on to note that “the shifting of Ramirez’s litigation posture indicates that the change in position is strategic and that delay is the goal.” *Ibid.*

15. In the seventeen years since Pablo Castro’s murder, his children have prepared themselves for three different execution dates. They have traveled from around the country only to have the executions postponed at the last minute. As Fernando Castro put it:

I have been awaiting this death penalty since I was 11. I am currently 28. * * * Twice already, John Henry Ramirez has used loopholes to delay this execution. I have dealt with this lack of closure for many years, ever since I was merely a child. He brutally murdered my father and I am not willing to idly stand by and let him attempt to delay or extend this any longer.

Letter from Fernando Castro to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021) (on file with author). Like his brothers and sisters, Fernando Castro has “waited far too long for this chapter of my life to close.” *Ibid.*

ARGUMENT

I. EXCESSIVE DELAYS IN OBTAINING JUSTICE INFLICT IMMEASURABLE HARM ON VICTIMS’ FAMILIES.

For over seventeen years, the pain and grief suffered by Pablo Castro’s family has been compounded by delays in executing Ramirez’s sentence. Although there is no doubt that Ramirez murdered Pablo Castro—and threatened April Metting and Ruby Hinojosa with the same knife he used to murder Castro—Castro’s family continues to await justice and closure. They are not alone. Across the Nation, victims suffer immeasurable harm from excessive delays in executing sentences—delays that rob victims’ families of even a modicum of peace and closure.

As this Court recently reaffirmed, both “the State and the victims of crime have an important interest in the timely enforcement of a sentence.” *Bucklew v. Precythe*, 139 S. Ct. 1112, 1133 (2019) (quoting *Hill v. McDonough*, 547 U.S. 573, 584 (2006)). “Those interests have been frustrated in this case.” *Ibid.*; see also *id.* at 1144 (Breyer, J., dissenting) (recognizing that “the long delays that now typically occur between the time an offender is sentenced to death and his execution * * * are excessive”).

“Last-minute stays should be the extreme exception, not the norm,” this Court has warned, “and the last-minute nature of an application that could have

been brought earlier, or an applicant’s attempt at manipulation,” may itself “be grounds for denial of a stay.” *Id.* at 1134 (majority) (internal quotation marks omitted) (quoting *Hill*, 547 U.S. at 584). That principle applies with special force here, where Ramirez expressly disavowed in his previous suit the precise relief—the laying on of hands—he now demands.

As Chief Judge Owen explained below, “Ramirez’s change in position”—from asserting that his spiritual advisor “need not touch [him] at any time in the execution chamber” to demanding that his advisor “be permitted to lay hands on him throughout the execution process and until death has occurred”—“raises concern that Ramirez’s change in position has been asserted to delay his execution.” J.A. 187. The “shifting of Ramirez’s litigation posture indicates that the change in position is strategic and that delay is the goal.” *Ibid.*

Pablo Castro’s children—and victims of violent crime across the Nation—deserve better. The suffering of Castro’s family has been needlessly exacerbated by nearly decades of undue delays and manipulative, whipsaw litigation tactics.

For Castro’s son Roberto, there can be no closure until the seventeen-year ordeal seeking justice for his father finally comes to an end. See Letter from Roberto Salcedo Jr. to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021) (on file with author). Roberto was twenty-three when his father was murdered. He is now forty. Along with the rest of his family, he is forced to re-live the heinous murder of his father every time there is a new development in this case. Roberto has already prepared for three different execution dates and he even showed up at the

execution chamber for a scheduled date that was later postponed at the last minute.

As Roberto wrote in opposing Ramirez's clemency petition, "the time has come to close this chapter so that the healing process can continue without being reopened every couple of years to entertain Ramirez's appeals and granted stays for whatever reason." *Ibid.*

Roberto's sister Maria had to identify her father's body—something she doesn't "want anyone to have to go through." Letter from Maria Chavon Aguilar to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 24, 2021) (on file with author). In her own words, her "father was a great man" who, if Ramirez had only asked, "would have given the shirt off his back"—but "Ramirez never gave my father that chance." Instead, Ramirez "repeatedly stabbed my father until my father fell to the ground." *Ibid.*

In Maria's eyes, Ramirez gets "all this publicity like he just won a gold medal" while she and her family "are going through all this pain and suffering each time" they're told Ramirez will be executed—only to have the courts "put a hold on it." While difficult for all of the family, it's "especially" difficult for Maria's brothers who "were too young to have to deal [with] not having their father." Each time the execution date is set and then postponed again, Maria and her family are forced to "relive everything all over again." Maria is still waiting for Ramirez to "pay for his crime"—"[i]t's been 17 years and we just want to put this behind us and be able to move on." *Ibid.*

Roberto and Maria's brother, Pablo Jr., was only fifteen when his father was murdered, and has "doubled in age" since then. Letter from Pablo Castro Jr.

to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021) (on file with author). As he has explained, “My father will never be able to call or write to me. He was not able to witness me graduate school, basic training, advance individual training, or see his grandchildren.” Pablo Jr. questions when he and his family will finally “get justice and be able to close this horrible chapter in our lives.” The seemingly endless delays “hurt[] our family even more” especially given that Ramirez has “acknowledged his guilt.” *Ibid.*

Roberto, Maria, and Pablo Jr.’s younger brother, Fernando, was only eleven when Ramirez murdered their father. Letter from Fernando Castro to Tex. Bd. of Pardons & Paroles, Clemency Section (Aug. 23, 2021) (on file with author). He is now twenty-eight. Twice he has flown to Texas from Florida (where he now lives—and where his father is buried) for an “execution which was supposed to have taken place back in 2017 but has been extended/delayed” after Ramirez “used loopholes to delay [his] execution.” *Ibid.*

In Fernando’s own words:

I have dealt with this lack of closure for many years, ever since I was merely a child. * * * I have waited far too long for this chapter of my life to close. I want my father to finally have his justice as well as the peace to finally move on with my life and let this nightmare be over.

Ibid. He is still waiting for justice and closure.

II. RESEARCH CONFIRMS WHAT EXPERIENCE MAKES PLAIN—UNDUE DELAYS IN ADMINISTERING JUSTICE HARM VICTIMS OF VIOLENT CRIMES.

Not surprisingly, the academic literature confirms what the experiences of families like the Castros make painfully clear—long after the immediate loss and physical trauma are over, crime victims and their families continue to suffer from psychological wounds that refuse to heal. Delayed proceedings compound that harm and exacerbate the initial injuries victims suffer.

It is well known, of course, that violent crime inflicts various immediate psychological traumas on victims and those close to them. Most obviously, Post-Traumatic Stress Disorder (PTSD) is commonly documented among the victims of violent crime. See Jim Parsons & Tiffany Bergin, *The Impact of Criminal Justice Involvement on Victims' Mental Health*, 23 *J. Traumatic Stress* 182, 182 (2010); Dean G. Kilpatrick & Ron Acierno, *Mental Health Needs of Crime Victims: Epidemiology and Outcomes*, 16 *J. Traumatic Stress* 119, 119 (2003). PTSD can afflict not only the direct victims of violent crime, but also those who experience its profound repercussions more indirectly, such as family members and friends. Kilpatrick & Acierno, 16 *J. Traumatic Stress* at 125–27.

PTSD is far from the only wound that violent crime can inflict on victims. Depression, substance abuse, panic disorder, agoraphobia, social phobia, obsessive-compulsive disorder, and suicide also number among them. Parsons & Bergin, 23 *J. Traumatic Stress* at 182. All of these injuries are compounded

when the adjudicative process is subject to dilatory maneuvering and gamesmanship.

Of course, from the victim's perspective, proceedings rarely move quickly enough—"trial is typically delayed through scheduling conflicts, continuances, and other unexpected delays throughout the course of the trial." Mary Beth Ricke, *Victims' Right to a Speedy Trial: Shortcomings, Improvements, and Alternatives to Legislative Protection*, 41 Wash. U. J. L. & Pol'y 181, 183 (2013). "Victims of the crimes are already heightened emotionally with anxiety and anticipation of the impending trial, and these delays lead to further and unnecessary trauma." *Ibid.*

It thus is not surprising that "multiple studies" demonstrate "the negative effect on a victim's healing process when there is a prolonged trial of the alleged attacker because the actual judicial process is a burden on the victim." *Id.* at 193; see also Ulrich Orth & Andreas Maercker, *Do Trials of Perpetrators Retraumatize Crime Victims?*, 19 J. Interpersonal Violence 212, 215 (2004). "The years of delay exact an enormous physical, emotional, and financial toll" on victims. Dan S. Levey, *Balancing the Scales of Justice*, 89 Judicature 289, 291 (2006); see also Samuel R. Gross & Daniel J. Matheson, *What They Say at the End: Capital Victims' Families and the Press*, 88 Cornell L. Rev. 486, 492 (2003) ("Ending this painful process can become a major goal for the victim's family—sometimes the only realizable goal of the execution.").

Abundant academic literature thus confirms what common sense and experience make plain. A victim's experience with the criminal justice system—particularly when the process is long delayed and seemingly

never-ending—compounds the initial effects of violent crime. See Ricke, 41 Wash. U. J. L. & Pol’y at 182–83; see also Judith Lewis Herman, *The Mental Health of Crime Victims: Impact of Legal Intervention*, 16 J. Traumatic Stress 159, 159 (2003).

The harm caused by drawn-out criminal justice proceedings is especially acute in cases involving capital punishment, such as this one, which often involve decades of delay and false stops and starts before the case is finally over. Delay in death-penalty cases means that “[c]hildren who were infants when their loved ones were murdered are now, as adults, still dealing with the complexities of the criminal justice system.” Levey, 89 Judicature at 290.

“The automatic appeals, and often repeated appeals,” in death-penalty cases “are continually brutal on victim family members.” *Ibid.* “Year after year, survivors summon the strength to go to court, schedule time off work, and relive the murder of their loved one over and over again[.] * * * The years of delay exact an enormous physical, emotional, and financial toll.” *Id.* at 290–91. The delays also keep family members from experiencing a sense of “closure”—the “hope they will be able to put the murder behind them.” Gross & Matheson, 88 Cornell L. Rev. at 489, 490–94.

* * *

The Fifth Circuit properly put an end to Ramirez’s strategic posturing and dilatory tactics, and its judgment should be affirmed. In *Hill*, this Court recognized the obvious potential for abuse in section 1983 suits—which aren’t subject to the bar on successive

habeas petitions—and warned that strategic, repetitive, and dilatory suits shouldn’t be allowed to trammel the interest of victims. 547 U.S. at 584–85.

This case—which involves a second section 1983 suit demanding what the first suit expressly disavowed—proves the point. This Court should vindicate crime victims’ “important interest in the timely enforcement of a sentence,” by affirming the judgment below and ending an ordeal that has denied peace and closure to Pablo Castro’s children for seventeen years. See *Bucklew*, 139 S. Ct. at 1133 (quoting *Hill*, 547 U.S. at 584).

CONCLUSION

For these reasons, the judgment of the Fifth Circuit should be affirmed.

Respectfully submitted.

ALLYSON N. HO
Counsel of Record
BRADLEY G. HUBBARD
MATT SCORCIO
BRIAN SANDERS
GIBSON, DUNN & CRUTCHER LLP
2001 Ross Avenue, Suite 2100
Dallas, Texas 75201
(214) 698-3100
aho@gibsondunn.com

CHRISTINE A. BUDASOFF
JASON MANION
GIBSON, DUNN & CRUTCHER LLP
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036

Counsel for Amici Curiae

October 15, 2021