

1 Motion and Joinder in Respondents’ Response (Doc. 193), which this Court has construed
2 as a motion for relief pursuant to 18 U.S.C. § 3771. (*See* Doc. 182.)

3 **I. Background**

4 Armstrong was convicted of conspiring to murder and murdering his sister Farrah
5 Armstrong and her fiancé Frank Williams. *State v. Armstrong*, 218 Ariz. 451 (2008). He
6 was sentenced to death by the trial judge, a procedure later found unconstitutional in *Ring*
7 *v. Arizona*, 536 U.S. 584 (2002). (*Id.* at 456.) Armstrong was resentenced by a new jury in
8 2006. *Id.* The jury found one aggravating factor, multiple murders, and determined that
9 Armstrong should be sentenced to death for each murder. The Arizona Supreme Court
10 affirmed the convictions and sentences. *Id.*

11 After unsuccessfully pursuing post-conviction relief (“PCR”) in state court,
12 Armstrong filed a petition for writ of habeas corpus in this Court on July 1, 2016. (Doc.
13 20.)

14 **II. Crime Victims’ Motion for Relief**

15 The Crime Victims (“Victims”) argue that granting Armstrong’s motion to stay
16 would violate their rights under the Crime Victims’ Rights Act (“CVRA”), specifically 18
17 U.S.C. § 3771(a)(7) and (a)(8), and further assert that *Arizona Attorneys for Criminal*
18 *Justice v. Ducey*, 638 F. Supp. 3d 1038 (D. Ariz. 2022) (“*Ducey*”), cited by Armstrong,
19 provides no basis for granting a stay.

20 The CVRA states that in federal habeas proceedings arising out of state court
21 convictions, the court shall ensure that a crime victim is afforded “[t]he right not to be
22 excluded from any . . . public court proceeding”; “[t]he right to be reasonably heard at any
23 public proceeding in the district court involving release, plea, sentencing, or any parole
24 proceeding”; “[t]he right to proceedings free from unreasonable delay”; and “[t]he right to
25 be treated with fairness and with respect for the victim’s dignity and privacy.” 18 U.S.C. §
26 3771(a)(3), (4), (7), (8); (b)(2)(A).

27 Armstrong acknowledges the Victims’ right to be heard but asserts that this right
28 does not encompass “veto power” and does not require that the Court refrain from granting

1 a reasonable delay. (Doc. 184 at 3–4.) The Court agrees. *See Pann v. Warren*, No. 5:08–
2 CV–13806, 2010 WL 2836879, at *4 (E.D.Mich. July 19, 2010) (denying the victims’
3 motion to intervene but granting their “request to be heard” under the CVRA); *United*
4 *States v. Rubin*, 558 F.Supp.2d 411, 417 (E.D.N.Y. 2008) (noting that crime victims “are
5 not accorded formal party status nor . . . intervenor status;” instead, “the CVRA appears to
6 simply accord them standing to vindicate their rights as victims under the [Act]”).

7 The Victims argue Armstrong’s motion to stay should be denied because it
8 constitutes “unreasonable delay” under the factors set forth in *Barker v. Wingo*, 407 U.S.
9 514, 530 (1972), for evaluating the constitutional right to a speedy trial. (See Doc. 183 at
10 4.) The Court disagrees. The Court is aware of no legal basis that would require assessment
11 of unreasonable delay in this context under the standards set forth in *Barker*.

12 In furtherance of promoting the objectives of the CVRA, however, including
13 “ensuring that the district court doesn’t discount the impact of the crime on the victims”
14 and “allowing the victim to regain a sense of dignity and respect rather than feeling
15 powerless and ashamed,” *United States v. Burkholder*, 590 F.3d 1071, 1075 (9th Cir. 2010),
16 the Court will grant the Victims’ motion to the extent the Court reviews their submission
17 and considers the information and opinions therein. *See Brandt v. Gooding*, 636 F.3d 124,
18 137 (4th Cir. 2011) (concluding the district court fully complied with victims’ right to be
19 reasonably heard under the CVRA by construing her submissions as amicus briefs
20 providing information and communicating the victim’s views to the court); *see also*
21 *Maryland Restorative Just. Initiative v. Hogan*, 316 F.R.D. 106, 116–17 (D. Md. 2016)
22 (“[C]onferring amicus status on [Victim/Movants] is a suitable alternative for them to bring
23 their concerns to the Court’s attention.”). Because the CVRA provides that victims “may
24 assert the rights granted to them under the CVRA” by filing a motion for relief pursuant to
25 18 U.S.C. § 3771(d)(3), the Court finds it unnecessary to provide the Victims amicus status.

26 Thus, the Court turns to the merits of Armstrong’s motion with full consideration of
27 the facts, legal argument and opinions stated in the Victims’ motion for relief.
28

1 **III. *Simmons*-Related Claims**

2 Armstrong requests that the Court exercise its inherent power to grant a stay of these
3 proceedings to allow him to return to state court to petition for relief under Rule 32.1(g) of
4 the Arizona Rules of Criminal Procedure, as interpreted in *Cruz*, to raise three *Simmons*-
5 related claims.

6 A. Applicable Law

7 In *Simmons*, the United States Supreme Court held that when “a capital defendant’s
8 future dangerousness is at issue, and the only sentencing alternative to death available to
9 the jury is life imprisonment without possibility of parole, due process entitles the
10 defendant ‘to inform the jury of [his] parole ineligibility, either by a jury instruction or in
11 arguments by counsel.’” *Cruz v. Arizona*, 598 U.S. 17, 20 (2023) (quoting *Shafer v. South*
12 *Carolina*, 532 U.S. 36, 39 (2001); *Kelly v. South Carolina*, 534 U.S. 246, 248 (2002)).

13 Until 2012, Arizona law permitted imposition of a parole-eligible life sentence for
14 defendants convicted of first-degree murder. *See* A.R.S. § 13–703(A) (2000), renumbered
15 as A.R.S. § 13–751(A). In 1994, however, Arizona had abolished parole for all felonies
16 committed after 1993. A.R.S. § 41-1604.09(I)(1). Therefore, “the only ‘release’ available
17 to capital defendants convicted after 1993 was, and remains, executive clemency.” *Cruz*,
18 598 U.S. at 21. Nonetheless, the Arizona Supreme Court refused to apply *Simmons*, on the
19 grounds that Arizona’s sentencing scheme was sufficiently distinct from the one at issue in
20 *Simmons*. *See id.*, 598 U.S. at 21–22 (discussing history of the application of *Simmons* in
21 Arizona). The United States Supreme Court summarily rejected this reasoning in *Lynch*,
22 holding that “it was fundamental error to conclude that *Simmons* ‘did not apply’ in
23 Arizona.” *Id.* at 20 (quoting *Lynch v. Arizona*, 578 U.S. 613, 615 (2016)).

24 In *Cruz*, the defendant argued at trial and on appeal that under *Simmons* he should
25 have been allowed to inform the jury that a life sentence in Arizona would be without
26 parole. The trial court and the Arizona Supreme Court held that Arizona’s capital
27 sentencing scheme did not trigger application of *Simmons*. *State v. Cruz*, 218 Ariz. 149
28 (2008). After the United States Supreme Court issued its holding in *Lynch*, Cruz sought to

1 raise the *Simmons* issue again, in a PCR petition under Rule 32.1(g), which permits a
2 defendant to bring a successive petition if “there has been a significant change in the law
3 that, if applicable to the defendant’s case, would probably overturn the defendant’s
4 judgment or sentence.” The Arizona Supreme Court denied relief, concluding that *Lynch*
5 was not “a significant change in the law.” *State v. Cruz*, 251 Ariz. 203 (2021). The United
6 States Supreme Court disagreed, vacating the Arizona Supreme Court’s judgment and
7 remanding the case. *Cruz*, 598 U.S. at 32. The Court found that *Lynch* “overruled binding
8 Arizona precedent” and represented a “clear break from the past.” *Id.*

9 B. Analysis

10 Armstrong alleges that, during his 2006 resentencing, the jurors were repeatedly
11 misinformed that, if they did not impose the death penalty, he might receive a sentence that
12 would permit him to be paroled after 25 years. (*See e.g.*, RT 11/14/06 at 106) (instructing
13 the jury that if they did not sentence Armstrong to death, “the Court will sentence the
14 defendant to either life without the possibility of release until 25 calendar years in prison
15 are served or natural life”). He maintains that “[b]ecause of Arizona’s longstanding
16 misapplication of *Simmons*, at the time of Armstrong’s penalty trial and subsequent state
17 appellate and postconviction proceedings, there was no mechanism to inform jurors of a
18 defendant’s parole ineligibility or to correct this error in postconviction review.” (Doc. 162
19 at 17.) Armstrong asserts that now, after the decision in *Cruz*, he can raise a *Simmons* claim
20 in state court under Rule 32.1(g).

21 Armstrong also asserts he can seek relief for two other *Simmons*-related claims,
22 including a claim that the resentencing court violated his rights under the Fifth, Sixth,
23 Eighth, and Fourteenth Amendments through the use of factually incorrect jury
24 instructions, and a prosecutorial misconduct claim alleging the prosecutor in his case was
25 involved in the *Cruz* proceedings thus demonstrating that he “*knowingly* secured a false
26 jury instruction concerning Armstrong’s possible parole eligibility and *knowingly* failed to
27 correct [a defense expert’s] false testimony on this issue.” (Doc. 162 at 19.)

28 For purposes of this motion, the Court finds Armstrong’s proposed *Simmons* and

1 *Simmons*-related claims potentially meritorious and reviewable by the Arizona courts.

2 Because Armstrong did not raise these claims in his habeas petition, (*see* Doc. 20;
3 *see also* Doc. 68 at 3–7 (denying motion to include a claim that his jury instructions were
4 unconstitutional because they were contrary to *Simmons* and *Lynch*, finding the proposed
5 new claim untimely because it did not relate back to any timely, properly-raised claim in
6 his petition)), the Court does not analyze Armstrong’s stay request under the procedure
7 outlined in *Rhines*, which governs the court’s consideration of mixed petitions containing
8 both exhausted and unexhausted federal claims. *See King v. Ryan*, 564 F.3d 1133, 1139
9 (9th Cir. 2009) (“Given the . . . need to protect against the risk that habeas petitioners with
10 mixed petitions might ‘forever los[e] their opportunity for any federal review of their
11 unexhausted claims,’ . . . *Rhines* carved out ‘limited circumstances’ in which it is within
12 the district court’s discretion to grant a stay of a mixed petition.”). Neither does the concern
13 that a district court must be mindful of “the clear appropriateness of a stay when valid
14 claims would otherwise be forfeited,” *Kelly v. Small*, 315 F.3d 1063, 1070 (9th Cir. 2003),
15 *overruled on other grounds by Robbins v. Carey*, 481 F.3d 1143 (9th Cir. 2007), come into
16 play here, as the Court has already determined that Armstrong’s *Simmons*-related claims
17 cannot be amended to his petition as they are untimely and do not relate back to the original
18 petition. (*See* Doc. 68 at 3–7.)

19 Rather, the Court considers whether it is appropriate to exercise “its broad discretion
20 to stay proceedings as an incident to its power to control its own docket.” *Clinton v. Jones*,
21 520 U.S. 681 (1997) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). This
22 Court may stay the proceedings as part of its inherent power “to control the disposition of
23 the causes on its docket with economy of time and effort for itself, for counsel, and for
24 litigants.” *Landis*, 299 U.S. at 254; *see Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110–11
25 (9th Cir. 2005) (explaining that a stay may be appropriate where the resolution of issues in
26 the other proceeding would assist in resolving the proceeding sought to be stayed).
27 “AEDPA does not deprive district courts of that authority . . . but it does circumscribe their
28 discretion.” *Rhines*, 544 U.S. at 276.

1 To evaluate whether to stay an action, the court must weigh the competing interests
2 that will be affected by the grant or denial of a stay, including the possible damage that
3 may result from the granting of a stay; the hardship or inequity a party may suffer in being
4 required to go forward; and whether a stay will simplify or complicate issues, proof, and
5 questions of law. *CMAX, Inc. v. Hall*, 300 F.2d 265, 268 (9th Cir. 1962) (citing *Landis*,
6 299 U.S. at 254–55)). “The decision to grant a stay . . . is ‘generally left to the sound
7 discretion of district courts.’” *Ryan v. Gonzales*, 568 U.S. 57, 73 (2013) (quoting *Schriro*
8 *v. Landrigan*, 550 U.S. 465, 473 (2007)). Courts may exercise their discretion to stay even
9 fully exhausted petitions. *See e.g., Kelly*, 315 F.3d at 1070.

10 The Court has weighed the competing interests that will be affected by the granting
11 of a stay and finds that a stay would further the interests of comity, judicial economy, the
12 resources of counsel and the Court, and the public interest in the fair administration of
13 justice.

14 The Court finds the latter interest—the fair administration of justice—particularly
15 compelling in this case. In light of *Cruz*, which recognized that the Arizona Supreme
16 Court’s application of its procedural rules was so “novel and unfounded” that it did not
17 constitute an adequate state procedural ground, 598 U.S. at 29, and that the state court had
18 disregarded Supreme Court precedent “to dramatic effect for capital defendants in
19 Arizona,” *id.* at 28, the Supreme Court vacated judgment and remanded the cases of seven
20 other Arizona death-row inmates to the Arizona Superior Courts for reconsideration. *See*
21 *Burns v. Arizona*, 143 S. Ct. 997, 998 (2023) (Mem) (addressing a joint petition for a writ
22 of certiorari filed by six death-sentenced petitioners); *Ovante v. Arizona*, 144 S. Ct. 56
23 (Mem) (October 2, 2023). Additionally, since *Cruz*, the Ninth Circuit and this Court
24 together have granted stays to permit several capital habeas petitioners to return to state
25 court to pursue their *Simmons* claims.¹

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27 ¹ *See e.g., Order, Speer v. Ibarra*, No. 23-99003 (9th Cir. July 26, 2023); *Order, Newell v.*
28 *Thornell*, No. 19-99006 (9th Cir. March 22, 2023); *Order, Tucker v. Thornell*, CV 17-3383-
DJH (Doc. 102) (Ariz. Dist. Ct. July 10, 2023); *Order, Van Winkle v. Thornell*, CV 18-

1 As the Court noted in *Cruz*, the Arizona Supreme Court’s interpretation of Supreme
2 Court precedent prior to that decision made it “impossible for Cruz, and similarly situated
3 capital defendants, to obtain relief.” 598 U.S. at 29.

4 Because *Cruz* provides a procedure for Armstrong to obtain relief on his *Simmons*
5 claim in the state court, a stay would further the interests of comity, judicial economy, the
6 resources of counsel for both parties, and the public interest in the fair administration of
7 justice. *See Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005) (stating that a
8 stay may be appropriate where the resolution of related litigation could simplify issues,
9 proof, or questions of law). Should the state court vacate his death sentence and order a
10 new sentencing, this would moot all claims in Armstrong’s habeas petition arising from his
11 2006 penalty phase retrial. *See e.g.*, Order, *Speer v. Ibarra*, No. 23-99004 (9th Cir. July 26,
12 2023) (granting opposed stay and noting petitioner’s argument that “if he obtains relief in
13 state court, ‘all claims related to the penalty phase proceeding presently on appeal would
14 be mooted.’”). Additionally, Armstrong alleges that the Arizona trial court failed to
15 preserve a complete record of the proceedings related to his *Simmons* claim. Allowing the
16 state court to address this potential gap in the record in the first instance will facilitate this
17 Court’s subsequent review of his federal claims.

18 The Court is mindful of its duty to afford victims the right to proceedings “free from
19 unreasonable delay,” 18 U.S.C. § 3771(a)(7), (b)(2)(A), however, granting a stay in this
20 case will permit “full and fair” consideration of an important constitutional claim in a death
21 penalty case. *See Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (explaining that “death is
22 different” because “execution is the most irremediable and unfathomable of penalties”).

23 Accordingly, having weighed the balance of interests in this case, the Court grants
24 Armstrong’s motion to stay his federal habeas petition and hold it in abeyance while he
25 returns to state court to present claims under *Simmons*.

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28 3290-MTL (Doc. 136) (Ariz. Dist. Ct. May 9, 2023); Order, *Cropper v. Thornell*, 19-5618-
GMS (Doc. 93) (Ariz. Dist. Ct. May 24, 2023); Order, *Martinez v. Thornell*, CV 20-517-
DJH (Doc. 77) (Ariz. Dist. Ct. Dec. 12, 2023).

1 **IV. Motion for Reconsideration**

2 Next, Armstrong requests that, in light of *Shinn v. Ramirez*, 596 U.S. 366 (2022),
3 this Court reconsider its prior denial of Armstrong’s request for a stay under *Rhines*. (See
4 Doc. 162 at 29–35; *see also* Doc. 166 (recognizing imbedded request for reconsideration
5 of prior order).) The Court will deny this request as moot, in light of the stay that it has
6 granted for purposes of allowing Armstrong to present his *Simmons* claims to the state
7 court in the first instance. “One claim requiring a stay acts as an umbrella for all claims.”
8 *Brown v. Smith*, No. 1:19-CV-01796-ADA, 2023 WL 2938295, at *8 (E.D. Cal. Apr. 13,
9 2023) (quotation omitted); *see e.g.*, *Pandeli v. Shinn*, No. CV-17-01657-PHX-JJT, 2022
10 WL 16855196, at *5 n.3 (D. Ariz. Nov. 10, 2022) (“[B]ecause Pandeli has demonstrated
11 that at least one of his claims is not plainly meritless, he is entitled to a stay under *Rhines*.”)
12 (citing *Dixon v. Baker*, 847 F.3d 714, 722 (9th Cir. 2017)).

13 The Court will also grant Armstrong’s request for the FPD to represent him in
14 pursuing these claims in state court. *See Harbison v. Bell*, 556 U.S. 180, 190 n.7 (2009)
15 (“Pursuant to [18 U.S.C.] § 3599(e)’s provision that counsel may represent her client in
16 ‘other appropriate motions and procedures,’ a district court may determine on a case-by-
17 case basis that it is appropriate for federal counsel to exhaust a claim in the course of her
18 federal habeas representation.”).

19 Accordingly,

20 **IT IS HEREBY ORDERED granting** Armstrong’s Motion for Temporary Stay
21 and Abeyance. (Doc. 162).

22 **IT IS FURTHER ORDERED authorizing** Armstrong’s federal habeas counsel,
23 the Federal Public Defender for the Central District of California, to represent him in state
24 postconviction proceedings.

25 **IT IS FURTHER ORDERED directing** Armstrong to file: (a) a notice with the
26 state PCR court within 30 days raising his *Cruz* claim; and (b) a status report in this case
27 showing he has filed his *Cruz* notice in state court.


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IT IS FURTHER ORDERED directing Armstrong to file notice with the Court or move for other appropriate relief within 30 days of the conclusion of the state court proceedings.

IT IS FURTHER ORDERED granting in part the Victims' motion for relief (Doc. 183) pursuant to 18 U.S.C. § 3771.

Dated this 1st day of March, 2024.



Honorable Rosemary Márquez
United States District Judge