No. 18-7540

In the
Supreme Court of the United States

DAVID DEWAYNE RILEY,
Petitioner,
v.
STATE OF ALABAMA,
Respondent.

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

BRIEF IN OPPOSITION

STEVE MARSHALL
Alabama Attorney General

Beth Jackson Hughes*
Assistant Attorney General

OFFICE OF ALA. ATT'Y GEN.
501 Washington Avenue
Montgomery, AL 36104
(334) 242-7300
bhughes@ago.state.al.us
*Counsel of Record

Counsel for State of Alabama

CAPITAL CASE
QUESTION PRESENTED (REPHRASED)

This Court has long held that the Sixth Amendment does not grant an inmate the right to court-appointed, constitutionally effective counsel to file and litigate a collateral attack on his conviction and sentence. *See Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987). Indeed, this Court has held that States need not provide a forum to allow such post-conviction collateral attacks at all. *Id.*

Nonetheless, the State of Alabama provides more than the Constitution requires. It provides a forum for post-conviction review through Rule 32 of the Alabama Rules of Criminal Procedure. And the post-conviction court below granted the petitioner's motion to appoint counsel to assist him in litigating his post-conviction petition.

The question presented is:

Whether this Court should consider reversing well-established precedents about the right to counsel for litigating a post-conviction collateral attack on a criminal sentence where: (1) the lower court expressly held that the issue had been waived, (2) the petitioner asked for and received court-appointed, government-funded counsel, even though this Court's precedents do not require it, and (3) the doctrinal underpinnings of this Court's precedents remain sound.

PARTIES

The caption contains the names of all parties in the courts below.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

STATEMENT

David Riley robbed a package store and murdered its clerk, Scott Kirtley. *See* C.347-53. As part of his preparation and planning for the robbery and murder, he visited the store twice. His first visit was a reconnaissance mission. Security camera footage showed him walking around the store, looking directly into two of the store's three security cameras, and purchasing two soft drinks from Kirtley. St. Exh. 36-38.

Riley's second visit, which occurred approximately an hour-and-a-half after his first, was also recorded on surveillance tape. *Id*. During this visit, Riley walked to the counter, brandished a pistol, and demanded Kirtley empty the cash register of $459.17 into a brown paper bag. *Id*. Riley also directed Kirtley to place two bottles of liquor and some Newport cigarettes into the bag. St. Exh. 37.

A customer unexpectedly entered the store during the robbery. R.1080-81; St. Exh. 37. Undeterred, Riley leaned toward Kirtley and ordered him to "Make the sale." St. Exh. 37. Riley calmly backed away from the counter and waited. St. Exh. 37. While Kirtley helped the customer, Riley counted the money he had stolen and placed it in his pocket. St. Exh. 37.

Once the customer left, Riley took Kirtley into a small office and shot Kirtley in the head. St. Exh. 37, 38; R.969 (testimony describing location of gunshot wounds). While the office was outside the view of the security cameras, Riley's first shot is clearly audible on tapes from two of the surveillance cameras. St. Exh. 37,

38. The cameras also captured the audio of Kirtley screaming after Riley shot him the first time. Id. Riley then shot Kirtley twice more in the head over the next twenty seconds, pausing between each shot. St. Exh. 37, 38; R.969.

After killing Kirtley, Riley calmly walked out of the back room and removed the tape from security camera #2. St. Exh. 38. He then picked up the brown bag of liquor and cash from the counter, crossed to the other side of the store, and removed the tape from camera #1. St. Exh. 37. Riley did not remove the tape from camera #3. St. Exh. 36. After his arrest, Riley would tell his stepmother that it was "pathetic that one tape screwed all of this up for me." R.1055.

The police viewed the tape from camera #3, identified Riley, and arrested him. They found two packs of unopened Newport cigarettes in Riley's pockets. R.619-22. One of the packs had a spot of blood on it that DNA testing later confirmed was Kirtley's. R.619, 860-62. Kirtley's blood was also on the blue jeans Riley was wearing when he was arrested. R. 722-23, 858-59.

Riley confessed to murdering Kirtley to two people before he was arrested. Both testified against him at trial.

Because of a procedural error in his first trial, Riley was convicted twice. *See Riley v. State*, 48 So. 3d 671, 672 (Ala. Crim. App. 2009) (reversing initial conviction); *Riley v. State*, 166 So. 3d 705 (Ala. Crim. App. 2013) (affirming second conviction). Both times, a unanimous jury recommended that he be sentenced to death.

After his second conviction was final, Riley filed a pro se petition under Rule 32 of the Alabama Rules of Criminal Procedure, (32C. 7-57.), as well as a motion to appoint counsel under Rule 32.7(c), (32C. 58-61.) The State filed a response agreeing that the court should grant Riley's motion to appoint counsel, (32C. 64-67), and the post-conviction court did so.

The court appointed Kerri Berryhill to represent Riley, (32C. 69.), and held a hearing on the State's motion to dismiss the petition approximately seven months later. (H.R. 1-26.) At that hearing, the judge heard argument from the State and Berryhill about whether trial counsel had arguably been ineffective at either the guilt or penalty phases of trial. Berryhill focused on the claim that trial counsel should have hired a new mitigation expert between the first trial and second trial, instead of relying on the mitigation expert's testimony from the first trial to be read into the record in the second trial. (*See, e.g.,* H.R. 16-18).

More than a month later, Greg Gardner filed a notice of appearance and an application for pro hac admission to represent Riley pro bono. (32C. 196-202.) Berryhill filed a motion to withdraw, stating that Riley had hired new counsel. (32C. 193-194.) The court denied court-appointed counsel's motion to withdraw. (32C. 195.)

A few weeks later, the court denied Riley's Rule 32 petition. (32C. 224-246.) Among other things, the court concluded that any alleged deficiencies in Riley's trial counsel were incredibly unlikely to have altered the verdict or sentence.

Gardner filed a motion for reconsideration, which the court denied. (32C. 267.) The court granted Berryhill leave to withdraw for purposes of appeal.

Riley appealed through Gardner, to whom the Court of Criminal Appeals granted pro hac vice status.

The Court of Criminal Appeals affirmed the post-conviction court. That court held that Riley's complaint about his court-appointed counsel "is not properly before this Court for review because it was not properly raised in the circuit court." Pet. App. 14. Although Gardner raised the issue, he did not do so in a timely way and he was never granted pro hac vice status in any event. Pet. App. 14. The Court of Appeals also recognized that this Court has held that the Sixth Amendment does not provide the right to counsel for the purpose of collaterally attacking a sentence.

REASONS FOR DENYING THE WRIT

It is hard to see a certworthy issue in this case. For the most part, Riley's petition does not even attempt to argue the customary grounds for granting certiorari. There is no split on the question he has presented. And Riley does not argue that the lower court's decision conflicts with this Court's precedents because those

precedents directly foreclose his arguments. Instead, the petition is little more than a plea to revisit constitutional questions that this Court settled several decades ago.

Specifically, the petition asks this Court to consider reversing *Pennsylvania v. Finley*, 481 U.S. 551 (1987) and *Murray v. Giarrantano*, 492 U.S. 1 (1989), and to hold that inmates are entitled to post-conviction legal representation to challenge their convictions and sentences. But this Court reaffirmed *Finley* earlier this year, explaining that "[t]here is no right to counsel in postconviction proceedings, and most applicants proceed pro se." *Garza v. Idaho*, 139 S. Ct. 738, 749 (2019) (citation to *Finley* omitted). Indeed, this Court routinely relies on *Finley* for this principle. *See, e.g, Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

And, of course, *Finley* has been relied on by every State and the federal government to structure post-conviction procedures. Such "[r]eliance interests are a legitimate consideration when the Court weighs adherence to an earlier" precedent. *S. Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2098 (2018); *see also Alleyne v. United States*, 133 S.Ct. 2151, 2166 (2013) (Sotomayor, J., concurring). In the area of criminal procedure especially, "the States' settled expectations deserve our respect." *Ring v. Arizona*, 536 U.S. 583, 613 (2002) (Kennedy, J., concurring). But the petition does not even mention—much less address—these substantial reliance interests.

Moreover, even if the Court wanted to reconsider *Finley* or *Giarrantano*, this case would not be the vehicle in which to do so. Riley is unquestionably guilty of capital murder, and two separate juries have unanimously concluded that he deserves the death penalty. The state courts held that the issue he is trying to raise here was waived. Although the Constitution does not require it, the State of Alabama provided Riley with post-conviction review and the post-conviction court granted Riley's request for appointed counsel. There could not be a worse case for this Court to reconsider a longstanding precedent.

I. This case is a horrible vehicle to answer the question presented.

Even if the Court wanted to consider the question presented, it could not do so in this case. The petition overlooks three fatal problems that make this case a horrible vehicle to address whether to overrule *Finley* or *Giarrantano*.

First, the lower court expressly held that the issue was waived under state law. Pet. App. 14 ("not properly before this Court for review because it was not properly raised in the circuit court"). No court ruled on the effectiveness of Riley's appointed counsel because the issue was raised for the first time after the hearing in a motion filed by new counsel who was not admitted to practice law before the court. *Id.* For that reason, the lower court's ruling on review is not about the right to counsel, but about new pro bono counsel's defunct motion for the court to reconsider its decision to deny the post-conviction petition.

Second, the petitioner's motion to appoint counsel to represent him was *granted*. Although the Constitution does not require it, the State gave the petitioner what he wanted: it appointed government-funded counsel to assist him. This fact makes this case an incredibly bad vehicle to address whether to overrule *Finley* or *Giarrantano*. Because the petitioner had counsel, this Court would have to skip the *Gideon v. Wainwright*, 372 U.S. 335 (1963), question about whether the right to counsel applies to post-conviction proceedings and instead go directly to the *Strickland v. Washington,* 466 U.S. 668 (1984), question of whether Riley's appointed lawyer was effective. If the Court is going to consider overruling *Finley* or *Giarrantano*, it needs to do so in a case where a petitioner's motion for appointment of counsel is *denied*, and he is forced to litigate pro se. Those cases are a dime a dozen. *See Garza*, 139 S. Ct. at 749 (recognizing that "most applicants proceed pro se").

Third, Riley's underlying ineffective assistance of counsel claims—the ones that he sought the appointment of counsel to help him litigate—are borderline frivolous. Riley was clearly guilty of the murder: he is on videotape shooting the victim, he was arrested with the victim's blood on his clothes, and he confessed to two people. There can be no guilt phase ineffective assistance in these circumstances. As to the penalty phase, two juries considered the evidence and both juries unanimously recommended death. The only penalty-phase claim the certiorari petition discusses is trial counsel's purported failure to hire a mitigation expert. Pet. 2-3. But the

petition does not reveal that trial counsel *did* hire a mitigation expert in the first trial. And that expert's testimony was read into the record in the second trial. Both juries still unanimously recommended death.

So that's this case. A clearly-guilty murderer sought the appointment of counsel to help him litigate a borderline frivolous post-conviction petition. Even though the Constitution does not require it, the post-conviction court granted his motion to appoint counsel. And the state courts expressly held that the petitioner had waived the issue he seeks to litigate in this Court. A horrible vehicle.

II. *Finley* and *Giarrantano* are deeply established precedents with substantial reliance interests.

The merits of the petition's proposed legal question are no better. A long and unbroken line of this Court's precedent (most of which the petitioner inexplicably ignores) makes clear that there is no right to counsel for litigating post-conviction challenges. Although petitioner argues that *Martinez v. Ryan*, 566 U.S. 1 (2012), calls these precedents into doubt, his argument reflects a misunderstanding of this body of law and the Court's limited decision in *Martinez*.

A. This Court's precedents firmly establish that the Sixth Amendment does not guarantee counsel for post-conviction collateral proceedings.

The precedents that the petitioner asks this Court to upend go well beyond *Finley* or *Giarrantano.* Instead, Riley is asking this Court to consider uprooting an entire line of well-established constitutional doctrine.

1. *Ross v. Moffitt*. The relevant line of this Court's precedent begins with *Ross v. Moffitt*, 417 U.S. 600 (1974). There, the Court faced an argument that state inmates are constitutionally entitled to the assistance of counsel to pursue discretionary appeals on direct review in state court. The Court acknowledged its earlier decision in *Douglas v. California*, 372 U.S. 353 (1963), that state prisoners have a right to counsel on their first appeal of right, but expressly refused to "extend" that decision even to the discretionary-review phase of direct appeal. *Ross*, 417 U.S. at 607.

In so holding, the *Ross* Court made two observations that spell trouble for the petitioner's claim here.

First, the Court emphasized the "significant differences between the trial and appellate stages of a criminal proceeding." *Id*. at 610. Whereas at trial, the State initiates legal process against a presumptively innocent defendant and seeks to prove him guilty, on appeal just the reverse is true; the defendant, having been found guilty beyond a reasonable doubt, initiates process to overturn that finding. *Id*. at 610-11. In the light of those important practical distinctions—and the fact that under the

Constitution "the State need not provide any appeal at all"—the Court found that the State does not "act[] unfairly by refusing to provide counsel to indigent defendants at every stage of the way." *Id.* at 611. The *Ross* Court's observations apply a fortiori to post-conviction proceedings. Not only is the post-conviction petitioner, rather than the State, the one initiating proceedings, but on collateral review he is attempting to overcome not just a jury's verdict of guilt but also the affirmance of that verdict on direct appeal.

Second, in holding that there is no denial of "access" simply "because the State does not appoint counsel to aid [inmates] in seeking review" in a state supreme court, the *Ross* Court emphasized that an inmate seeking discretionary review "will have, at the very least, a transcript or other record of trial proceedings, a brief on his behalf in the Court of Appeals setting forth his claims of error, and in many cases an opinion by the Court of Appeals disposing of his case." *Id.* at 615. This observation, too, holds true in the post-conviction phase. "These materials, supplemented by whatever submission [an inmate] may make pro se," should give the post-conviction court "an adequate basis" for granting or denying relief. *Id*.

2. *Bounds v. Smith*. The Court confirmed in *Bounds v. Smith*, 430 U.S. 817 (1977), that inmates have a right of "meaningful access" to the courts for the purpose of presenting post-conviction petitions. The Court, however, expressly declined to specify the means by which States must ensure that right; rather, it left the issue of

implementation to the legislative process. And importantly here, the Court twice emphasized that it was not suggesting that States are constitutionally obliged to provide post-conviction petitioners with lawyers. First, the Court observed that States could discharge constitutional obligations by providing either adequate law libraries or "adequate assistance from persons trained in the law," *id.* at 828. Second, the Court compiled an illustrative list of "alternative means" for ensuring court access—some of which involved lawyers, others of which did not— and stressed that "a legal access program need not include any particular element we have discussed . . .." *Id*. at 831-32.

3. *Pennsylvania v. Finley*. In *Pennsylvania v. Finley*, 481 U.S. 551 (1987), the Court addressed the very question that this case presents and held, emphatically, that there is no constitutional right to the assistance of post-conviction counsel (either as such or as a remedy for a perceived denial of access). The Court stressed that it had "never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their convictions" and expressly "decline[d] to so hold" in the case before it. *Id.* at 555. To the contrary, the Court held that its cases "establish that the right to appointed counsel extends to the first appeal of right, and no further." *Id*. Building on *Ross*, the *Finley* Court concluded as follows: "[S]ince a defendant has no right to counsel when pursuing a discretionary appeal on direct review of his

conviction, a fortiori, he has no such right when attacking a conviction that has long since become final upon exhaustion of the appellate process." *Id*.

The Court found that the considerations that had animated its decision in *Ross* –among them, that a presumptively-innocent defendant's need for an attorney " 'as a shield' " is categorically different from a convict's desire for a lawyer to act " 'as a sword to upset the prior determination of guilt'"— "apply with even more force to postconviction review" than to discretionary appeals on direct review. *Id*. at 555-56 (quoting *Ross*, 417 U.S. at 610-11). The reason is commonsensical: "Postconviction relief is even further removed from the criminal trial than is discretionary direct review" and, indeed, is not even "part of the criminal proceeding itself, and . . . is in fact considered to be civil in nature." *Id*. at 556-57. Post-conviction review, the Court emphasized, "is a collateral attack that normally occurs only after the defendant has failed to secure relief through direct review of his conviction." *Id*. at 557. States, the Court continued, need not provide post-conviction review at all, and "when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well." *Id*.

4. *Murray v. Giarratano*. In *Murray v. Giarratano*, 492 U.S. 1 (1989), the Court began by summarizing its holding in *Finley*: "[N]either the Due Process Clause of the Fourteenth Amendment nor the equal protection guarantee of 'meaningful access' require[s] the State to appoint counsel for indigent prisoners seeking

state postconviction relief." *Id*. at 7. The Court then clarified (not that its broadlyworded opinion in *Finley* had left any room for doubt) that "the rule of *Pennsylvania v. Finley* should apply no differently in capital cases than in noncapital cases." *Id*. at 10. In so holding, the Court acknowledged that the Constitution imposes some "special constraints on the procedures used to convict an accused of a capital offense and sentence him to death." *Id*. at 8. But, the Court emphasized, those "special constraints" apply only at "the trial stage of capital offense adjudication"; they do not extend to the appellate or post-conviction phases. *Id.* at 9. Because "[s]tate collateral proceedings are not constitutionally required as an adjunct to the state criminal proceedings and serve a different and more limited purpose than either the trial or appeal," the *Giarratano* Court "decline[d] to read either the Eighth Amendment or the Due Process Clause to require yet another distinction between the rights of capital case defendants and those in noncapital cases." *Id.* at 10.

5. *McCleskey v. Zant*. Two years after *Giarratano*, the Court decided *McCleskey v. Zant*, 499 U.S. 467 (1991). In that death-penalty case, the Court went out of its way to clarify that the cause-and-prejudice analysis that it was adopting to implement the "abuse of the writ" doctrine did not "imply that there is a constitutional right to counsel in federal habeas corpus." *Id*. at 495. To the contrary, the Court emphasized "'the right to appointed counsel extends to the first appeal as of right, and no further.'" *Id*. (quoting *Finley*, 481 U.S. at 555).

6. *Coleman v. Thompson*. Just a month later, the Court decided *Coleman v. Thompson*, 501 U.S. 722, 111 S. Ct. 2546 (1991). In that capital case, the Court reiterated in no uncertain terms that "*Finley* and *Giarratano* established that there is no right to counsel in state collateral proceedings." *Id*. at 755. In part for that reason, the Court held that the errors of post-conviction counsel could not serve as "cause" to excuse a procedural default of a claim under federal habeas law.

Since *Coleman*, the Court has continued to state unequivocally that there is no right to counsel in state collateral proceedings. And it did so as recently as earlier this year. *See Garza v. Idaho*, 139 S. Ct. 738, 749 (2019); *Dist. Attorney's Office for Third Judicial Dist. v. Osborne*, 557 U.S. 52, 69 (2009).

B. *Martinez* does not undermine this extensive line of precedent.

The petition argues that this Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), "call[s] into question the practice of not appointing counsel in all first collateral proceedings in state court." Pet. 10. But the petitioner misreads *Martinez*. The Court in *Martinez* expressly declined to address whether there might be an exception to the rule of *Finley* and *Giarratano* in cases where collateral review is the first place a prisoner can present a challenge to his conviction. In fact, the Court disclaimed addressing any constitutional issue at all. Instead, the Court decided a question of federal habeas law and "recogniz[ed] a narrow exception" to *Coleman*'s doctrine of procedural default of a federal habeas claim. *Martinez*, 566 U.S. at 9.

This "highly circumscribed, equitable exception," *Davila v. Davis*, 137 S. Ct. 2058, 2066 (2017), does not undermine the doctrinal underpinnings of *Finley* and *Giarrantano*. The Court held that "[i]nadequate assistance of counsel at initial-review collateral proceedings may establish cause for a prisoner's procedural default of a claim of ineffective assistance at trial." *Martinez*, 566 U.S. at 9. But the Court was clear that, in all but those "limited circumstances . . . [t]he rule of *Coleman* governs." *Martinez*, 566 U.S. at 16. Contrary to *Martinez*'s express language, the petitioner would expand the exception in *Martinez* to swallow the general rule, a result this Court rejected in *Davila v. Davis*.

Moreover, the Court in *Martinez* was primarily motivated by concerns that have no bearing here. In *Martinez*, the Court was concerned that a valid claim of trial error might escape review in a State that required prisoners to bring the claim for the first time in state postconviction proceedings rather than on direct appeal. *See Martinez*, 566 U.S. at 16, 10, 12. If an attorney erroneously declined to raise the issue on post-conviction review, then the state court would not be able to address it. And, if attorney error in a state postconviction proceeding did not qualify as cause to excuse procedural default under *Coleman,* no federal court could consider the claim either. That concern is not present here because: (1) state courts can and do address pro se claims and (2) if attorney error causes a claim to be waived in state court, a federal court can now address the claim thanks to *Martinez*. There is no

need to uproot a long-established body of precedent and recognize a right to counsel for post-conviction review merely to ensure that meritorious claims are addressed by at least one state or federal court.

Finally, the petitioner relies on Justice Scalia's *Martinez* dissent, in which he invoked *Finley* and *Giarrantano* to argue against the result in *Martinez*. Pet. at 10. But Justice Scalia's dissent does not establish that *Martinez* undermined *Finley* and *Giarrantano*. His opinion was a dissent for a reason—seven members of this Court disagreed with Justice Scalia's assessment. In any event, the Court has often observed that dissents have "been known to exaggerate" the interpretation of a majority opinion to highlight the consequences they dislike. *Chaidez v. United States*, 133 S. Ct. 1103, 1110 n.11 (2013); *United States v. Albertini*, 472 U.S. 675, 684 (1985). A dissenter's complaint that the majority has misapplied precedent does not mean those precedents have been undermined and should be overruled.

III. There is no systemic problem with Alabama's system of capital post-conviction representation that warrants review in this case.

Finally, much of the petition argues, based on a scattering of cases, that Alabama is especially bad at providing representation to capital litigants who are challenging their convictions and sentences in state-court collateral proceedings. Specifically, the petition complains that, "[u]ntil 2017," capital inmates "relied on a network of volunteer attorneys from inside and outside Alabama." Pet. 5. The petition

claims this system "was and is fraught with difficulty and left indigent death-sentenced inmates at the mercy of well-intentioned out of state lawyers and inexperienced (or worse) local counsel." Pet. 5-6.

There are at least four problems with this argument.

First, as the petition notes, Alabama law changed in 2017. It used to be that courts had discretion under Rule 32 of the Alabama Rules of Criminal Procedure to appoint counsel to capital inmates to litigate post-conviction petitions. Going forward, it is mandatory. *See* Ala. Code § 13A-5-53.1.

Second, the State's lawyers do not, as the certiorari petition erroneously asserts, routinely object to paying court-appointed counsel for lodging and travel expenses. Pet. 8. In this case, for example, Riley's appointed counsel requested expenses for travel and lodging to visit Riley in prison, and her motion was approved on the day it was filed.

Third, Riley is arguing that he would *prefer* a "volunteer attorney" from "outside Alabama" over the court-appointed, government funded attorney that he asked for and received. Because Riley asked for and received a court-appointed attorney to litigate his post-conviction petition, he cannot complain about a supposedly "fraught" volunteer system that purportedly resulted in the waivers at issue in *Maples v. Thomas*, 565 U.S. 266 (2012) and *Smith v. Commissioner*, 703 F.3d 1266

(11th Cir. 2012). Riley did not rely on this supposedly fraught volunteer system; rather, he got the government-funded lawyer that he said he wanted.

Fourth, the fact that *Riley* would now apparently prefer a volunteer attorney over his court-appointed, government-funded attorney underscores the truth of what the State has long told this Court: Alabama death-row inmates are almost universally assisted by exceptionally well-qualified counsel in preparing and litigating post-conviction challenges. In the 2000s, a group of Alabama death row inmates sued the State to try to compel it to provide court-appointed, government-funded counsel for all post-conviction proceedings. *See Barbour v. Haley*, 410 F. Supp. 2d 1120 (M.D. Ala.), *aff'd*, 471 F.3d 1222 (11th Cir. 2006). Most were represented on state post-conviction review by the Equal Justice Initiative, a nonprofit law-firm operated by Bryan Stevenson. Evidence introduced in the district court in that case demonstrated that of the 130 inmates on Alabama's death row at the time, all but three had post-conviction counsel. *See* Defendants' Motion for Summary Judgment, *Barbour v. Haley*, No. 2:01-CV-1530-C (M.D. Ala. 2003), Doc. 86. Those counsel were an impressive and well-heeled bunch, too:

> Cravath, Swaine & Moore
> Covington & Burling
> Sullivan & Cromwell
> Kirkland & Ellis
> Paul, Weiss, Rifkind, Wharton & Garrison,
> Cutler, Pickering, Hale & Dorr
> White & Case
> Shearman & Sterling

Ropes & Gray
Wiley, Rein & Fielding
Sonnenschein, Nath & Rosenthal
DLA Piper Rudnick Gray Cary
Kaye Scholer
Winston & Strawn
Pillsbury Winthrop
Patton Boggs
Arent, Fox, Kintner, Plotkin & Kahn
Hill & Barlow

Id. at 6-26. Add to these private firms death-penalty experts from the University of Chicago Law School, Cornell Law School, the Innocence Project, the NAACP, and Stephen Bright's Southern Center for Human Rights. *Id*. The notion that, as a general matter, Alabama death row inmates are suffering from lack of representation is fanciful.

In fact, it is a pure legal fiction that Riley was ever representing himself in this case to begin with. Riley filed a 51-page word-processed post-conviction petition with 107 separately enumerated paragraphs that raised 26 different claims with multiple parts and subparts. It was obviously ghostwritten by able counsel representing Riley pro bono. Not every court-appointed or volunteer lawyer is perfect, but Alabama is not suffering from a "broken system" that requires this Court's intervention. Pet. 9.

CONCLUSION

The Court should deny the petition.

Respectfully submitted,

STEVE MARSHALL
Alabama Attorney General

Beth Jackson Hughes*
Alabama Assistant Attorney General

Office of Alabama Attorney General
501 Washington Avenue
Montgomery, AL 36104
(334) 242-7300
bhughes@ago.state.al.us
*Counsel of Record

Counsel for State of Alabama

April 10, 2019