No. 19-181

IN THE
Supreme Court of the United States

LANCE PATTERSON,
Petitioner,
v.

INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION,
Respondent.

On Petition for Writ of Certiorari to the Court of Appeals of Indiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

A disabled person who qualifies for Medicaid must contribute to the cost of institutional care. A federal regulation requires state Medicaid agencies to calculate a Medicaid recipient's liability by subtracting certain deductions from the recipient's "total income." States have the option of using "total income received" or a "project[ed] monthly income" as the "total income" starting point in the liability calculation. 42 C.F.R § 435.725(a), (e)(1).

The questions presented are:

1. Does 42 C.F.R. § 435.725 require a state Medicaid agency to exclude garnished child-support payments from "total income" when calculating a recipient's liability?

2. Does federal law prohibit a state court from deferring to its state Medicaid agency's interpretation of "total income" in 42 C.F.R. § 435.725?

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INTRODUCTION

This case concerns a state Medicaid agency's calculation of an institutionalized Medicaid recipient's liability for his own institutional care. Critically, Medicaid is not a general welfare program intended to subsidize child-support or other nonmedical debt. For that reason, the Secretary of Health and Human Services has promulgated a regulation, 42 C.F.R. § 435.725, that requires institutionalized Medicaid recipients to apply their "total income," less specifically enumerated deductions, toward their institutional care. Because Medicaid is not a general subsidy, a person's "total income" includes income that is garnished or otherwise encumbered to pay the person's debts.

Lance Patterson asks this Court to review an interpretation of a federal Medicaid regulation adopted by the Indiana Court of Appeals that agrees both with the regulatory text and with every other court to have addressed that regulation or materially identical regulations. The Court should not do so. The decision below does not create a lower-court conflict on any issue of federal law and is correct on the merits. And the deference question Patterson poses was not raised below and in any case is a question of *state* law, not federal law.

STATEMENT OF THE CASE

I. Regulatory Background

Medicaid "provides federal financial assistance to States that choose to reimburse certain costs of medical treatment for needy persons." *Schweiker v. Gray Panthers*, 453 U.S. 34, 36 (1981) (cleaned up). Participating States must develop plans that comply with the Social Security Act and the regulations promulgated by the Secretary of Health and Human Services. *Id.* at 36–37. Federal law requires that Medicaid eligibility and the extent of benefits be based on one's "available" income as determined by standards established by the Secretary of Health and Human Services. 42 U.S.C. § 1396a(a)(17)(B).

States are allowed (but not required) to provide Medicaid to disabled, institutionalized individuals whose income is too great to qualify for the Supplemental Security Income for the Aged, Blind, and Disabled (SSI) program, but is less than 300% of the maximum payable SSI benefit. *See* 42 U.S.C. §§ 1396a(a)(10)(A)(ii)(V), 1396d(a)(vii); 42 C.F.R. §§ 435.236(a), 435.622(b), 435.1005; *see also Herweg v. Ray*, 455 U.S. 265, 268–69 (1982) (discussing Medicaid for the "optional categorically needy"). If a State opts to provide Medicaid to this group and chooses not to apply a less-restrictive income methodology, *see* 42 U.S.C. § 1396a(r)(2); 42 C.F.R. §§ 435.601(d), (f), then it must use the SSI income methodology to determine an institutionalized, disabled person's Medicaid eligibility. 42 U.S.C. §§ 1382a(a), 1396a(a)(10)(A)(ii)(V), 1396b(f)(4)(C); 20 C.F.R. § 416.1100 *et seq.*; 42 C.F.R. § 435.236(a).

Indiana has opted to provide Medicaid coverage to this group of the optional categorically needy. *See* 405 Ind. Admin. Code 2-1.1-5(g). Indiana also has chosen not to apply less-restrictive income standards and instead follows the default federal rules. *See* 405 Ind. Admin. Code 2-1.1-5(a) (adopting federal income standards). Under these rules, federal law defines income to include "both earned income and unearned income," 42 U.S.C. § 1382a(a), specifically including garnished income, 20 C.F.R. § 416.1123(b)(2); SSI: Funds Used to Pay Indebtedness, 56 Fed. Reg. 3209, 3209 (Jan. 29, 1991).

An institutionalized disabled person who qualifies for Medicaid must contribute to the cost of institutional care. 42 C.F.R. § 435.725(a)(1); Medicaid Program Payments to Institutions, 53 Fed. Reg. 3586, 3586 (Feb. 8, 1988). The regulation governing the liability calculation is the focus of this case.

Under 42 C.F.R. § 435.725, the state agency begins with the individual's total income and then applies enumerated deductions to arrive at the individual's Medicaid liability. 42 C.F.R. § 435.725(a), (c), and (d). For "total income," States have the option of using either the individual's "total income received" or a projected "monthly income for a prospective period not to exceed 6 months." 42 C.F.R. § 435.725(e)(1). Federal regulations mandate five deductions: (1) a personal needs allowance; (2) a reasonable amount for spousal maintenance; (3) a reasonable amount for family maintenance; (4) qualified medical expenses not subject to third-party payment; and (5) the full amount of SSI benefits. 42 C.F.R. § 435.725(c). A state plan may also deduct an amount for maintenance of the recipient's home, so long as there is a reasonable likelihood that the person will return home within six months. 42 C.F.R. § 435.725(d).

The liability calculation is merely the "total income" less the deductions: A state Medicaid agency "must reduce its payment to an institution, . . . by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's total income." 42 C.F.R. § 435.725(a)(1); *see also* 405 Ind. Admin. Code 2-1.1-7(a).

II. Calculation of Patterson's Liability

Patterson's gross monthly income consists solely of $1,236 per month in SSDI benefits (Social Security Disability). Pet. App. 10, 44. He has a 32-year-old daughter from a prior marriage, for whom he owes more than $56,000 in child-support arrearage in Minnesota. *Id.* at 10, 43–45. The Social Security Administration withholds $730.80 per month from Patterson's SSDI check under a garnishment order from Minnesota, along with $2.60 per month for health plan premiums. *Id.* That means $502.60 makes it to Patterson's bank account every month. *Id.*

In October 2016, FSSA determined that Patterson was eligible for Medicaid because his total income of $1,236 was less than the special income standard of 300% of the maximum payable SSI benefit, *Id.* at 10, which at the time was $2,199 (3 x $733), Social Security Administration, SSI Federal Payment Amounts, www.ssa.gov/oact/COLA/SSIamts.html. *See* 42 U.S.C.

§§ 1396a(a)(10)(A)(ii)(V), 1396d(a)(vii); 42 C.F.R. §§ 435.236(a), 435.1005.

FSSA then calculated Patterson's Medicaid liability as required by 42 C.F.R. § 435.725 and 405 Ind. Admin. Code 2-1.1-7(a). The agency began by identifying Patterson's total income received, *see* 42 C.F.R. § 435.725(e)(1); 405 Ind. Admin. Code 2-1.1-5(a), (g), 2-1.1-7(a)(2), which was $1,236 (his SSDI benefits). The agency then subtracted the $52 personal-needs allowance and the $2.60 in health care premiums:

$$\$1{,}236 - (\$52 + \$2.60) = \$1{,}181.40.$$

Pet. App. 11, 44; *see* 42 C.F.R. § 435.725(a), (c)–(e); 405 Ind. Admin. Code 2-1.1-7(a)(3), (5). Accordingly, FSSA notified Patterson that as of November 1, 2016, he would be responsible for $1,181 per month for his nursing-home care. Pet. App. 11, 43.

III. Procedural History

Patterson sought administrative review of FSSA's liability determination, arguing that the agency had violated 42 U.S.C. § 1396a(a)(17) and state administrative rules by including Patterson's garnished income as part of his total income. Patterson did not cite 42 C.F.R. § 435.725, let alone argue that the agency had violated that federal regulation. *See* Pet. App. 43–51. The ALJ affirmed the agency's liability calculation because the agency "followed all regulations . . . to determine allowable deductions to be given to [Patterson] when determining his monthly liability obligation." *Id.* at 52. The Secretary of FSSA affirmed the ALJ's decision. *Id.* at 40–41.

Patterson sought judicial review in a state trial court, arguing for the first time that FSSA's liability determination violated 42 C.F.R. § 435.725(e) because he does not actually "receive" the garnished income. *See* Pet. App. 35–39. The state trial court granted Patterson's petition on those grounds. Pet. App. 38.

The Indiana Court of Appeals reversed the trial court's decision and affirmed FSSA's decision. Pet. App. 1–31. The court began by holding that, under *state* law, FSSA's reasonable interpretation of federal Medicaid statutes, rules, and regulations are entitled to deference, owing to the unique nature of Medicaid as a "cooperative federal-state program" under which the States administer the program on a day-to-day basis. *Id.* at 14–15. The court concluded that the term "total income received" in 42 C.F.R. § 435.725 is ambiguous and deferred to FSSA's reasonable interpretation of the regulation, under which all of Patterson's SSDI benefits—including the garnished amounts—are part of his total income. Pet. App. 22. The court reasoned that "Patterson still receives the benefit of the money that is garnished" because those funds are used to reduce his child-support debt. Accepting Patterson's interpretation, on the other hand, would result in Medicaid "effectively subsidizing [Patterson's] child support arrearage." *Id.* at 24.

The court also explained that FSSA's interpretation is consistent with the regulatory history of 42 C.F.R. § 435.725, which shows that "[t]he post-eligibility process is based on a consideration of all income considered in the eligibility process." Pet. App. 23 (quoting 53 Fed. Reg. at 3587). If anything, the court continued, "the post-eligibility determination is . . .

more inclusive of income than the eligibility determination." *Id.* at 23 n.8 (discussing 42 C.F.R. § 435.725(c)).

Patterson unsuccessfully sought discretionary review from the Indiana Supreme Court. *Id.* at 54–55.

REASONS TO DENY THE PETITION

Patterson's case for certiorari is based on a nonexistent state court conflict, a mistaken view that Medicaid is a general subsidy program that should fund child-support debt (or any other type of nonmedical debt), and an unpreserved administrative-deference issue that lies outside this Court's jurisdiction. His petition should be denied.

I. The Indiana Court of Appeals' Decision Does Not Create a Conflict on an Important Issue of Federal Law and Correctly Applies 42 C.F.R. § 435.725

The state court and FSSA correctly interpreted and applied 42 C.F.R. § 435.725 when calculating Patterson's Medicaid liability. Patterson argues that the term "total income received" in section 435.725(e) must be limited only to money that Patterson actually or physically receives. In his view, the term "received" connotes that the Secretary intended to exclude garnished income from a recipient's "total income" at the post-eligibility stage, even though the regulation does not use the terms "actually received," "physically received," or even "garnishment." Patterson's view would transform Medicaid into a general public-welfare program that subsidizes all manner of nonmedical debts provided that the Medicaid recipient is subject to garnishment, which of course would disincentivize debt repayment.

Patterson urges this Court to step in to resolve what he calls a conflict between the Indiana Court of Appeals and the South Dakota Supreme Court on an important issue of federal law. But no conflict exists, as no court has interpreted 42 C.F.R. § 435.725 differently than the court below. The relative dearth of case law applying this regulation, which has been around for more than 30 years, belies any claim of importance. In any case, the Indiana Court of Appeals correctly held that Patterson's selective reading is unsupported by the regulation's text and history.

A. The decision below does not conflict with the South Dakota Supreme Court

Patterson argues that the decision below creates a conflict with the South Dakota Supreme Court's decision in *Mulder v. South Dakota Department of Social Services*, 675 N.W.2d 212 (S.D. 2004). He also insists that the Court's attention is necessary because the increasing number of aging individuals saddled with huge amounts of student-loan debt will likely lead to more institutionalized, disabled Medicaid recipients having their incomes garnished. But Patterson's claimed conflict over the interpretation of a federal regulation is nonexistent, and his claims of widespread importance are overblown and misplaced.

1. The decision below does not actually conflict with the *Mulder* decision. In *Mulder* the South Dakota Supreme Court explicitly relied on *state law* to hold that the state Medicaid agency could not include

the $180 in alimony that was automatically withdrawn from Mulder's bank account each month when calculating his Medicaid liability. *Id.* at 215–18.

The court in that case "acknowledge[d] that federal courts and the Federal Social Security Administration have come to the conclusion that alimony may be considered available income to the payer under the SSI statute." *Id.* at 216 n.5. It determined, however, that it was "not bound by those decisions" for two reasons: First, the South Dakota agency had "promulgate[d] its own rules regarding the extent of benefits rather than adopting the SSI requirements as it did under the eligibility determination," so the court "interpret[ed its] *state regulations and statutes rather than the federal regulations and statutes*." *Id.* (emphasis added). Second, the court relied on State authority to use less-restrictive income methodologies than those established by federal law. *Id.* Nor did *Mulder* involve garnishment, for the money in that case reached the Medicaid recipient's bank account before being automatically withdrawn to pay down his alimony obligation.

The court accordingly examined the South Dakota regulations and concluded that those regulations did not allow the state agency to consider income that a person could not contribute toward his medical care. *See id.* at 216–18. The court deemed this to be consistent with the availability requirement of 42 U.S.C. § 1396a(a)(17)(B). *Id.* at 217–18. Because *Mulder* rested on state-law grounds and did not cite, let alone interpret, 42 C.F.R. § 435.725, the decision below cannot be said to conflict with it.

What is more, every other court actually to consider whether income encumbered by spousal- or child-support obligations is included in an individual's total available income at both the eligibility *and* liability stages has come to the same conclusion as the Indiana Court of Appeals—and most of those courts actually addressed the Secretary's regulations. *See Himes v. Shalala*, 999 F.2d 684, 688–89 (2d Cir. 1993); *Peura v. Mala*, 977 F.2d 484, 487 n.4 (9th Cir. 1992); *Emerson v. Steffen*, 959 F.2d 119, 121–24 (8th Cir. 1992); *Clark v. Comm'r of Income Maintenance*, 551 A.2d 729, 733 (Conn. 1988); *Ussery v. Kansas Dep't of Soc. & Rehab. Servs.*, 899 P.2d 461, 465 (Kan. 1995); *Tarin v. Comm'r of Div. of Med. Assistance*, 678 N.E.2d 146, 152–53 (Mass. 1997); *see also Johnson v. Flanagan*, 347 S.E.2d 643, 645–46 (Ga. Ct. App. 1986) (applying earlier version of 42 C.F.R. § 435.725); *cf. Cervantez v. Sullivan*, 963 F.2d 229, 231–32 (9th Cir. 1992) (holding that garnished SSDI benefits constitute "received" income for purposes of calculating SSI benefits under 42 U.S.C. § 1382a(a)(2)(B)).

These courts recognize that in an analogous context this Court has rejected the notion of "actual availability" pushed by Patterson, explaining that the "availability principle" serves "primarily to prevent the States from conjuring fictional sources of income and resources by imputing financial support from persons who have no obligation to furnish it or by overvaluing assets in a manner that attributes nonexistent resources to recipients." *Heckler v. Turner*, 470 U.S. 184, 200 (1985); *see also Himes*, 999 F.2d at 689 (rejecting contention that the availability principle means actually available to pay for medical care);

Peura, 977 F.2d at 492 (same); *Emerson*, 959 F.2d at 122 (same).

It is also irrelevant that Patterson would ostensibly receive greater Medicaid benefits if he lived in South Dakota. The *Mulder* majority itself said that South Dakota's Medicaid program could be less restrictive than the federal standards. 675 N.W.2d at 216 n.5. And in fact federal law offers States significant flexibility on how to arrange their Medicaid programs. *See, e.g.*, 42 U.S.C. § 1396a(f), (r)(2); 42 C.F.R. § 435.601(d)(1)(ii), (2)(i), (f); *see also* 42 C.F.R. § 435.725(d) (authorizing States to apply an optional deduction for home maintenance in calculating a recipient's liability). There is thus no need for this Court to establish national uniformity.

2. Patterson also argues that this case is important because of the increasing number of people who carry burdensome student-loan (and perhaps other) debts into old age. Such claims of importance are overblown, and invoking the student-loan-debt issue actually undercuts his argument.

Although the extent of Patterson's Medicaid benefits is surely important to him, the question whether garnished or otherwise encumbered income is included in a recipient's total income at the liability stage is not an important one. With only minor changes not relevant here, this version of 42 C.F.R. § 435.725 has been in force since April 1988. Medicaid Program Payments to Institutions, 53 Fed. Reg. 3586, 3586 (Feb. 8, 1988). Yet over the past 31 years, only a handful of courts have been asked to determine whether court-ordered child support or alimony is included in a person's total available income at either the eligibility or liability stages. *See* Pet. App. 1–31; *Himes*, 999 F.2d at 689; *Peura*, 977 F.2d at 488; *Emerson*, 959 F.2d at 121–24; *Clark*, 551 A.2d at 733–37; *Ussery*, 899 P.2d at 464–66; *Tarin*, 678 N.E.2d at 149–53; *Mulder*, 675 N.W.2d at 218. Fewer than 10 decisions over more than 30 years hardly signals substantial importance.

Patterson tries to bolster the importance of his case by suggesting that the increasing growth of student-loan debt means that more and more people will be in his position in the near future. If so, and if Medicaid had to subsidize those debts by excluding them from recipients' liability calculations, state and federal Medicaid expenditures would skyrocket. Drawing the line at garnishment would only discourage people from paying their student-loan debts. *Cf. Cervantez*, 963 F.2d at 235 (explaining that excluding garnished income from the SSI eligibility calculation would result in "the SSI program . . . replac[ing] garnished income a dollar-for-a-dollar, favoring SSI claimants who did not pay their debts," which would incentivize claimants with outside income "to fail to pay their debts and await garnishment, thereby shifting the cost of repayment to the SSI program").

It is for the political branches and the States, not Patterson or the courts, to weigh the competing policies at stake and determine whether to increase Medicaid expenditures to subsidize child-support, alimony, student-loan, or even credit-card debt.

B. Garnished and otherwise encumbered income is part of a Medicaid recipient's total income under 42 C.F.R. § 435.725

The decision below is correct.

1. A Medicaid recipient "receives" income even if that income is encumbered by other obligations, irrespective of whether or not the income is garnished. The regulation requires Medicaid to "reduce its payment to an institution . . . by the amount that remains after deducting the amounts specified in paragraphs (c) and (d) of this section, from the individual's *total income*." 42 C.F.R. § 435.725(a)(1) (emphasis added). The regulation further provides that "[t]he individual's income must be determined in accordance with paragraph (e) of this section." 42 C.F.R. § 435.725(a)(2). Paragraph (e), in turn, provides that in calculating the individual's liability "the agency may use *total income received, or it may project monthly income for a prospective period* not to exceed 6 months." 42 C.F.R. § 435.725(e)(1) (emphasis added).

Read in context, the word "received" is used to distinguish already paid income from income expected to be paid in the future. This is a commonsense meaning of the term "received" in this context. *See, e.g.*, American Heritage College Dictionary 1161 (4th ed. 2002) (defining "receive" to include to "acquire," to have "bestowed on oneself," "[t]o acquire or get something"); Lexico, www.lexico.com/en/definition/receive (defining "receive" as "[b]e given, presented with, or paid (something)"). That an individual's bank account does not actually or physically receive funds does not mean that the individual does not receive the funds. Patterson "receives" Medicaid benefits even though Medicaid pays its portion of Patterson's institutional expenses directly to the healthcare provider and not to Patterson or his bank account.

This understanding of the text is consistent with fundamental accounting principles and the well-established concept of "income." Every person's net wealth is dependent on the balance of assets and liabilities, which is why federal law treats garnished income as part of total income when determining eligibility for SSI or initial eligibility for Medicaid. *See* 20 C.F.R. § 416.1123(b)(2); SSI: Funds Used to Pay Indebtedness, 56 Fed. Reg. 3209, 3210–11 (Jan. 29, 1991); *Cervantez*, 963 F.2d at 231. That is why a reduction or discharge of indebtedness has long been recognized to constitute "income." *See* 26 U.S.C. § 61(a)(11); *United States v. Kirby Lumber Co.*, 284 U.S. 1, 2 (1931).

Under the regulations, "total income" at the liability stage includes at least everything that is included in "total income" at the eligibility stage. *See, e.g.*, 42 C.F.R. § 435.725(c) (requiring that "[i]ncome that was disregarded in determining eligibility must be considered" when applying the deductions); *Peura*, 977 F.2d at 487 n.4; *Ussery*, 899 P.2d at 465; *Tarin*, 678 N.E.2d at 152–53. Yet at the liability stage, the regulation requires the agency to take a second step by applying certain deductions to the recipient's "total income" to arrive at the individual's post-eligibility income, which is the recipient's liability. 42 C.F.R. § 435.725(a), (c)–(d). So the main difference between eligibility and liability lies in the deductions, not in the "total income" figure.

The term "received" cannot do the heavy lifting that Patterson claims. The regulation's text does not, for example, use a modifier such as "actually" or "physically" to limit the meaning of "received." Nor is there a textual basis for concluding that the Secretary used "income received" simply to distinguish between garnished and ungarnished income, which would be a curious way to exclude garnished income from total income. Fundamentally, accepting Patterson's reading would mean that a person who refuses to pay his debts and is subject to garnishment is treated better than a person with the same income who pays similar debts. But public-assistance programs such as Medicaid do not favor "claimants who [do] not pay their debts." *Cervantez*, 963 F.2d at 235.

2. The regulatory history confirms this interpretation. Before 1988, the regulation required state agencies to subtract the deductions "from the individual's income." 42 C.F.R. § 435.725(a) (1984). But at the States' request, the government amended the regulation in 1988 to afford States greater flexibility in calculating income by allowing them to use an individual's *projected* income. 53 Fed. Reg. at 3586, 3592.

In responding to several comments, the Secretary explained that the final rule "used 'total income' to mean gross income from all sources." 53 Fed. Reg. at 3587. The Secretary also explained that "[t]he post-eligibility process is based on a consideration of *all income considered in the eligibility process*." *Id.* (emphasis added); *see also* Centers for Medicare & Medicaid

Services, Dep't of Health & Human Servs., State Medicaid Program Memorandum: Transmittal 02-1, at 2 (May 2002), www.cms.gov/Regulations-and-Guidance/Guidance/Transmittals/downloads/SA0201.pdf (listing only eight items of income that "are not considered in the posteligibility process"). The Secretary also rejected a proposal that would have permitted deductions for court-ordered spousal or child support, explaining that the spousal- and family-maintenance deductions in 42 C.F.R. § 435.725(c) apply regardless of whether support is court-ordered, 53 Fed. Reg. at 3591.

The regulatory history confirms several features of 42 C.F.R. § 435.725. First, the Secretary intended States to consider as total income at the post-eligibility stage all income considered at the pre-eligibility stage, and then to subtract deductions from that figure to arrive at the Medicaid recipient's liability. Second, the term "total income received" simply distinguishes between already gained income and projected income—it does not narrow the scope of "total income." And third, child-support and other familial maintenance obligations are accounted for only on the deduction side of the equation and are strictly limited by the terms of paragraph (c).

3. Including garnished or otherwise encumbered income in a person's total income also furthers Medicaid's purpose as a medical-care subsidy rather than a general subsidy for other debts. Medicaid is not a program of unlimited funds, which means that for every person who tries to use it to subsidize nonmedical debts, someone with a medical need must go without. Including in a recipient's total income amounts

that must be used to pay down other obligations—whether the individual willingly pays those amounts or is so unreliable that a garnishment order is necessary—avoids Medicaid subsidization of nonmedical expenses and preserves the program for others in need of public assistance for healthcare. *See, e.g.*, *Peura*, 977 F.2d at 490; *Tarin*, 678 N.E.2d at 153; 56 Fed. Reg. at 3210, 3211.

The Indiana Court of Appeals correctly upheld FSSA's decision to include Patterson's garnished income in his total income when calculating his Medicaid liability. Although that income is garnished, Patterson "receives" that money each month when it is used to pay down his outstanding child-support debt.

II. This Case Does Not Present Any Federal Deference Issues

Patterson argues that the Court should grant certiorari because the Indiana Court of Appeals violated *Kisor v. Wilkie*, 139 S. Ct. 2400 (2019), by deferring to FSSA's interpretation of 42 C.F.R. § 435.725 because the term "total income received" is not "genuinely ambiguous." But this case does not present such an issue for several reasons.

First and foremost, Patterson never argued in the state courts that federal law restricts a state court's ability to defer to a state agency's interpretation of a federal regulation. Patterson did argue that FSSA was not entitled to deference, but he did so on the basis of state decisional law holding that state courts do not defer to one state agency's interpretation of another state agency's rules. *See* Pet. App. 13–14; *LTV Steel Co. v. Griffin*, 730 N.E.2d 1251, 1257 (Ind. 2000).

Not once did he suggest that federal administrative law governs state court deference to state agencies. Indeed, noticeably absent from Patterson's petition is a statement indicating when and how he raised his claim that federal interpretive law controls state-court interpretative methods. *Compare* Sup. Ct. R. 14.1(g)(i), *with* Pet. 6–9.

Patterson thus failed to preserve an argument that any federal administrative-law rule limits the deference that a state court can afford a state agency. Critically, this Court lacks authority under 28 U.S.C. § 1257(a) to review state court decisions where the petitioner has not "properly presented" the federal issue in state court. *Howell v. Mississippi*, 543 U.S. 440, 443 (2005) (per curiam) (quoting *Adams v. Robertson*, 520 U.S. 83, 86 (1997) (per curiam)); *see also, e.g.*, *Webb v. Webb*, 451 U.S. 493, 496–502 (1981). Nor does this Court address issues that a lower court has not addressed. *See, e.g.*, *PDR Network, LLC v. Carlton & Harris Chiropractic, Inc.*, 139 S. Ct. 2051, 2056 (2019); *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005).

Second, the process that a state court uses to interpret federal law is by its nature a question of *state* law, not a question of federal law. While this Court of course may review the state court's ultimate interpretation of federal law, it has never suggested that it can review *how* a state court reached that interpretation or that it can impose uniform interpretive canons on all courts nationwide. So to the extent Patterson argues that the Indiana Court of Appeals did not follow the process set out in *Kisor*, that claim does not present a federal question.

Third, this case is a poor vehicle for considering the abstract legal issue of a state court deferring to a state agency's interpretation of a federal regulation. As explained in Part I-B, the interpretation of 42 C.F.R. § 435.725 and its application here is not a close question, so any debate about federal limits on state-court interpretive rules is purely academic.

CONCLUSION

The Petition should be denied.

Respectfully submitted,

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