No. 20-1009

IN THE

Supreme Court of the United States

DAVID SHINN, *et al.*,

Petitioners,

v.

DAVID MARTINEZ RAMIREZ AND BARRY LEE JONES,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR THE ARIZONA JUSTICE PROJECT AND ROBERT BARTELS AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS

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September 20, 2021

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D.C. 20002

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INTERESTS OF *AMICI*[1]

The Arizona Justice Project is a 501(c)(3) organization that was founded in 1998. The Project's primary mission is to investigate and, where appropriate, attempt to remedy and prevent wrongful convictions and sentences. The Project's staff and volunteer attorneys regularly handle federal habeas corpus and state post-conviction cases, as well as proceedings before the Arizona Board of Clemency. The Project also has participated in criminal justice projects with state and local agencies (such as the Arizona Attorney General's Office, the Arizona Department of Public Safety, and the Phoenix Crime Lab). Luis Martinez, Petitioner in *Martinez v. Ryan*, 566 U.S. 1 (2012), was a client of the Arizona Justice Project.

Robert Bartels is an emeritus professor at the Sandra Day O'Connor College of Law at Arizona State University. During approximately 40 years as a full-time law teacher, primarily at the University of Iowa and Arizona State University, he frequently taught criminal procedure, federal habeas corpus, and state post-conviction relief, and he has continued to be a guest lecturer on those subjects since he moved to emeritus status in 2015. He is a former Assistant and Special Assistant United States Attorney; and since 1971 he has litigated dozens of federal habeas corpus and state post-conviction cases. He briefed and argued

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[1] In accordance with Supreme Court Rule 37.6, 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 of or submission of this brief. The parties have filed blanket consents to the filing of amicus curiae briefs, pursuant to Supreme Court Rule 37.3.

Martinez v. Ryan as counsel for Petitioner and as a volunteer for the Arizona Justice Project.

SUMMARY OF ARGUMENT

An amici curiae brief filed in this proceeding for Jonathan F. Mitchell and Adam K. Mortara ("Mitchell Brief") argues that *Martinez v. Ryan*, 566 U.S. 1 (2012), should be overruled, solely on the ground that the seven-Justice majority in *Martinez* misinterpreted 28 U.S.C. § 2254(i). That argument is without merit, for several reasons:

A. The issue of whether *Martinez* should be overruled is not encompassed by the Question on which certiorari was granted, and this Court therefore should not consider that issue. Supreme Court Rule 14.1(a).

B. The *Martinez* super-majority's holding that § 2254(i) prohibited the use of "the ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings" only as a ground for substantive habeas corpus relief, and not as cause and prejudice to excuse a procedural default, 566 U.S. at 17, was clearly explained and faithful to the statute. The Mitchell amici's confused discussion of the statutory language provides no good reason to question *Martinez's* holding.

C. Given that *Martinez* was correctly decided, the Mitchell amici's argument against *stare decisis* does not make it to first base. As this Court noted in *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 455 (2015), *stare decisis* "has consequence only to the extent it sustains incorrect decisions." Moreover, *Martinez's* interpretation of § 2254(i) has enhanced force because Congress has left it intact for the past nine years.

D. The Mitchell amici ignore the point that if this Court were to overturn the equitable federal habeas rule in *Martinez*, state and federal courts inevitably would have to address and decide a question that *Martinez* purposely avoided: Does a convicted defendant have a federal *constitutional* right to effective assistance of counsel in an initial-review collateral proceeding, with respect to any claim of ineffective assistance of trial counsel? That an affirmative answer would be required to this question is made clear by the majority's analysis in *Martinez*, 566 U.S. at 10-12, 14, which closely tracked the constitutional reasoning in *Halbert v. Michigan*, 545 U.S. 605 (2005). But that result would impose on the States significant burdens that the equitable rule in *Martinez* does not. 566 U.S. at 15-16.

ARGUMENT
MARTINEZ V. RYAN SHOULD NOT BE OVERRULED

Although Petitioner's Merits Brief does not argue that *Martinez v. Ryan*, 566 U.S. 1 (2012), should be overruled,[2] the Mitchell Brief does make that argument, based entirely on the theory that the seven-Justice majority in *Martinez* misinterpreted 28 U.S.C.

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[2] Petitioner's Merits Brief does state (at 36) that "if a conflict [between *Martinez* and § 2254(e)(2)] in fact exists, or if the *Jones* panel and *Detrich* plurality are correct that applying the statute divests *Martinez* of its relevance, . . . then the solution is to revisit *Martinez*, not to ignore § 2254(e)(2) for the sole purpose of giving *Martinez* force." But this highly conditional and undeveloped suggestion to "revisit" *Martinez* does not amount to an argument that this Court should overrule *Martinez* in this case.

§ 2254(i).[3] This Court should *not* overrule *Martinez*, for several independently sufficient reasons:

A. The issue of whether *Martinez* should be overruled is not encompassed by the single Question on which certiorari was granted: "Does application of the equitable rule this Court announced in *Martinez v. Ryan* render 28 U.S.C. § 2254(e)(2) inapplicable to a federal court's merits review of a claim for habeas relief?" (Pet. for Cert. at i). This Court therefore should not consider that issue. *See* Supreme Court Rule 14.1(a); *Franchise Tax Bd. v. Hyatt*, 538 U.S. 488, 497 (2003).

B. The *Martinez* super-majority's interpretation of § 2254(i) – which construed the statute as applying only to substantive grounds for habeas corpus relief, and not to cause and prejudice to excuse a procedural default, 566 U.S. at 17[4] – was correct and clearly explained:

> Section 2254(i) provides that "the ineffectiveness or incompetence of counsel during Federal or State collateral post-conviction proceedings shall not be a ground for relief." . . . A finding of cause and prejudice does not entitle the prisoner to habeas relief. It merely allows a federal court to consider the merits of a claim that otherwise would have been

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[3] The Mitchell Brief does not challenge the reasoning that formed the basis for the holding in *Martinez* that when an ineffective-trial-counsel claim must be raised in an "initial-review collateral proceeding," a procedural default will not bar federal habeas review of that claim "if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective," 566 U.S. at 8-17.

[4] Justice Scalia's dissent in *Martinez* (for himself and Justice Thomas) did not discuss § 2254(i). *Id.* at 18-29.

> procedurally defaulted. In this case, for example, Martinez's "ground for relief" is his ineffective-assistance-of-trial-counsel claim, a claim that AEDPA does not bar. Martinez relies on the ineffectiveness of his postconviction attorney to excuse his failure to comply with Arizona's procedural rules, not as an independent basis for overturning his conviction. In short, while § 2254(i) precludes Martinez from relying on the ineffectiveness of his postconviction attorney as a "ground for relief," it does not stop Martinez from using it to establish "cause."

566 U.S. at 17 (citation omitted). The Mitchell Brief's attacks on that reasoning are without merit:

1. The Mitchell amici first complain that the *Martinez* majority's statement that a "finding of cause and prejudice does not entitle the prisoner to habeas relief" is flawed because habeas petitioners are never "entitled" to the writ. (Mitchell Br. at 4-5). But this argument is supported only by citations to two concurring opinions in *Edwards v. Vannoy*, 141 S.Ct. 1547 (2021) – both of which simply point out that even a habeas petitioner who can show that his trial involved constitutional error might not be entitled to relief from his conviction because of Court-made equitable doctrines such as procedural default, harmless error, and abuse of the writ. *Id*. at 1566, 1570. The *Martinez* super-majority obviously was aware of those equitable doctrines – one of which was directly at issue in that case. The implication that a petitioner might be "entitled" to habeas relief must be understood to refer to a petitioner who is not subject to the equitable doctrines mentioned by the concurring opinions in *Edwards*. In any event, the amici provide no reason why *Martinez's*

use of the word "entitled" affects the validity of its conclusion that the statutory language "ground *for relief*" refers to substantive relief that would come with issuance of the writ.

2. The Mitchell amici also argue that the *Martinez* majority erred by equating the term "ground for relief" with the word "claim," and that somehow the former therefore must encompass issues like cause and prejudice. (Mitchell Br. at 5-8). The following points about that confused argument will suffice to show its invalidity.

a. The Mitchell amici rely on the following statutory comparison as their very first attempt to support a significant distinction between the terms "ground for relief" and "claim":

> Compare 28 U.S.C. § 2254(a) ("court[s] shall entertain an application for a writ of habeas corpus * * * only on the *ground* that he is in custody in violation of the Constitution or laws or treaties of the United States") (emphasis added), with *id.* § 2254(d) ("writ shall not be granted with respect to any *claim* that was adjudicated on the merits") (emphasis added).

(*Id.* at 5). But this comparison shows that § 2254(a) uses the word "ground" to refer to a basis for ultimate substantive relief (in the form of a writ of habeas corpus), and that § 2254(d) uses the word "claim" to refer to the same thing – which disproves the Mitchell amici's basic thesis.

b. Much of the Mitchell amici's argument focuses on selected definitions of "claim" and "ground" – but ignores the qualifying words "for relief." (*Id.* at 6-7). Those words were critical to the *Martinez* majority's

interpretation of § 2254(i). *Martinez's* equitable rule gives the habeas petitioner no "relief" at all; it simply provides a possible reason to excuse a procedural default.

C. Given the foregoing points, the Mitchell amici's argument against *stare decisis* (*id.* at 8-13) fails at the threshold. If overruling *Martinez* is not encompassed by the question on which certiorari was granted, *or* if the *Martinez* super-majority's interpretation of § 2254(i) was correct, then this Court need not rely on *stare decisis,* which "has consequence only to the extent it sustains incorrect decisions." *Kimble*, 576 U.S. at 455. Nevertheless, were the Court to consider revisiting *Martinez,* statutory *stare decisis* principles would be compelling:

> [*S*]*tare decisis* carries enhanced force when a decision . . . interprets a statute. Then, unlike in a constitutional case, critics of our ruling can take their objections across the street, and Congress can correct any mistake it sees.

Id. at 456. It has now been over nine years since *Martinez* rejected the interpretation of § 2254(i) that the Mitchell amici now propose – and more than eleven years since this Court rejected the same interpretation in *Holland v. Florida*, 560 U.S. 631, 660 (2010). But Congress has not amended § 2254(i).

D. Finally, a point that the Mitchell amici do not address: Overruling *Martinez* inevitably would require the federal and state courts to confront and decide the question that *Martinez's* equitable rule avoided: Does a convicted defendant have a federal constitutional right to effective assistance of counsel in an initial-review collateral proceeding, specifically with regard to any claim of ineffective assistance of trial counsel?

That an affirmative answer to this question would be required is clear from the majority's analysis in *Martinez*. That analysis closely tracked the federal *constitutional* reasoning in *Halbert*, 545 U.S. 605; it emphasized the special importance of protecting the *constitutional* right to trial counsel; and it incorporated the *constitutional* standards of *Strickland v. Washington*, 466 U.S. 668 (1984). 566 U.S. at 10-12, 14. By exercising the Court's discretion to establish an equitable federal habeas rule, rather than a constitutional rule, *Martinez* sought to give States flexibility with respect to counsel in initial-review collateral proceedings. *Id.* at 16. Overturning *Martinez* would force on the States the burdens of a constitutional rule that *Martinez* avoided.

CONCLUSION

For the foregoing reasons, this Court should not overrule *Martinez v. Ryan*.

Respectfully submitted,

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