No. 20-

IN THE
SUPREME COURT OF THE UNITED STATES

STAFON THOMPSON,

Petitioner,

v.

STATE OF MINNESOTA,

Respondent.

On Petition for a Writ of Certiorari to the Minnesota Supreme Court

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the limited habeas authority of federal courts over state prisoners includes the authority to dictate how state courts must remedy federal law violations.

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PETITION FOR A WRIT OF CERTIORARI

Stafon Thompson respectfully petitions for a writ of certiorari to review the judgment of the Minnesota Supreme Court in this case.

OPINIONS BELOW

The Minnesota Supreme Court's opinion affirming Mr. Thompson's consecutive life sentences for crimes committed as a juvenile is reported at *State v. Thompson*, 942 N.W.2d 350 (Minn. 2020). Pet. App. 1a-14a. The Hennepin County District Court's order imposing consecutive life sentences upon remand from the United States District Court for the District of Minnesota is not reported. Pet. App. 15a-25a. The United States District Court for the District of Minnesota's order granting Mr. Thompson's habeas petition in part, modifying Mr. Thompson's sentences, and remanding to the Hennepin County District Court for resentencing is not reported. *Id.* at 26a-28a.

JURISDICTION

The Minnesota Supreme Court entered judgment on April 29, 2020.[1] Mr. Thompson invokes this Court's jurisdiction under 28 U.S.C. § 1257(a).

STATUTORY PROVISIONS INVOLVED

Section 2243 of Title 28 of the United States Code provides in pertinent part:

* * *

> The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

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[1] The Minnesota Supreme Court's opinion is dated April 27, 2020, but the opinion was released on April 29, 2020. The difference is not relevant to this petition.

Section 2254 of Title 28 of the United States Code provides in pertinent part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
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> * * *

INTRODUCTION

This case squarely presents a question that federal circuit courts, state courts, and even this Court have long struggled to answer: whether the power of a federal court to dispose of habeas petitions "as law and justice requires" authorizes federal courts to dictate how state courts must remedy federal law violations suffered by state prisoners. *See* 28 U.S.C. § 2243. Federal and state courts are dramatically divided on this point. Some follow the guidance of *Fay v. Noia*, 372 U.S. 391, 430-31 (1963), to conclude that federal courts may grant a habeas petition based on a federal law violation but must leave the specific remedy to the state court. *See, e.g.*, *Henderson v. Frank*, 155 F.3d 159 (3d Cir. 1998); *Winston v. Pearson*, 683 F.3d 489 (4th Cir. 2012); *Woodfox v. Cain*, 789 F.3d 565 (5th Cir. 2015); *Gouveia v. Espinda*, 926 F.3d 1102 (9th Cir. 2019); *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457 (2004). Others, relying on *Carafas v. Lavallee*, 391 U.S. 234 (1968), interpret the habeas remedy power far more expansively. *E.g.*, *Cody v. Henderson*, 936 F.2d 715 (2d Cir.1991); *Gentry v. Deuth*, 456 F.3d 687 (6th Cir. 2006); *Hannon v. Maschner*, 981 F.2d 1142 (10th Cir.1992); *State v. Hochstein*, 632 N.W.2d 273 (Neb. 2001). Although thousands of state prisoners file federal habeas

petitions each year, this Court has not addressed the question of what remedies 28 U.S.C. § 2243 authorizes for many years and has never resolved the seemingly dichotomous authority of *Fay* and *Carafas*.

In this case Mr. Thompson filed a federal habeas petition arguing that his two consecutive mandatory life without parole sentences for crimes committed as a child violated the Eighth Amendment. Pet. App. 4a-5a. Rather than grant the habeas petition and permit the state court to craft new sentences, the federal court modified the sentences by vacating the "without possibility of release" provisions, denied the petition in all other respects, and remanded to the state trial court for resentencing. *Id.* at 26a-28a. The state court, believing itself bound by the specific dictates of the federal court's order, denied Mr. Thompson a resentencing hearing and instead imposed two consecutive life sentences. *Id.* at 21a-24a.

On appeal the Minnesota Supreme Court adopted perhaps the most expansive interpretation of federal habeas authority yet, concluding that the federal habeas court operated effectively as an appellate court with authority to issue a "limited remand" that the state court must follow "strictly." *State v. Thompson*, 942 N.W.2d 350, 353-54 (Minn. 2020). Pet. App. 9a-10a. Mr. Thompson preserved this issue by arguing to both the state trial court and state supreme court that the federal habeas authority is limited and does not empower federal courts to modify state judgments or dictate specific remedies for federal law violations against state prisoners. Pet. App. 31a-29a.[2]

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[2] In addition to briefing this issue, Mr. Thompson also presented oral argument addressing the authority of federal habeas courts over state prisoners. The

STATEMENT

Stafon Thompson was seventeen years old in 2008 when the State of Minnesota charged him and his co-defendant, sixteen-year-old Brian Flowers, with two counts of first degree murder for the deaths of Katricia Daniels and Robert Shepard. *Id.* at 16a. Both children were convicted of both offenses after separate trials. *Id.* At the time, each charge carried a mandatory life without parole (LWOP[3]) sentence. *See* Minn. Stat. § 609.106, subd. 2(1) (2008); Pet. App. 3a. The Hennepin County District Court sentenced Mr. Thompson immediately after his trial. Pet. App. 3a-4a. Because the sentences were mandatory, the court did not order the presentence investigation that ordinarily happens before felony sentencings. *Id.* at 3a. Mr. Thompson's counsel did not present any mitigating evidence, witnesses, or arguments on Mr. Thompson's behalf, nor did either party present any argument regarding the propriety of consecutive sentences. *Id.* at 4a, 11a-12a. The court sentenced Mr. Thompson to two consecutive LWOP terms. *Id.* at 4a.

In his direct appeal to the Minnesota Supreme Court, Mr. Thompson filed a *pro se* brief arguing that his mandatory LWOP sentences violated the Eighth Amendment. *State v. Thompson*, 788 N.W.2d 485, 496 (Minn. 2010). The Minnesota Supreme Court perfunctorily rejected that claim. *Id.*

Minnesota Supreme Court's audio and visual recording equipment malfunctioned on the date of the November 6, 2019 oral argument, and no recording of that argument is available.

[3] Minnesota refers to such sentences as "life without release," or LWOR. For purposes of this petition Mr. Thompson uses the more recognized LWOP abbreviation. The terms carry the same meaning.

Two years after the Minnesota Supreme Court rejected Mr. Thompson's argument that his mandatory LWOP sentences violated the Eighth Amendment, this Court held in *Miller v. Alabama* that mandatory LWOP sentences for children under age 18 violate the Eighth Amendment. 567 U.S. 460, 479 (2012). One year later, the Minnesota Supreme Court concluded that this Court's holding in *Miller* did not apply retroactively. *Chambers v. State*, 831 N.W.2d 311 (Minn. 2013), *overruled by Jackson v. State*, 883 N.W.2d 272 (Minn. 2016).

With no relief available in state court, Mr. Thompson filed in 2014 a timely federal habeas petition under 28 U.S.C. § 2254, arguing that his LWOP sentences were unconstitutional under *Miller*. Pet. App. 4a-5a. The United States District Court for the District of Minnesota denied the habeas petition on grounds that *Miller* did not apply retroactively. *Id.* at 17a-18a.[4] Mr. Thompson appealed this decision to the Eighth Circuit, which also held that *Miller* did not apply retroactively. *Thompson v. Roy*, 793 F.3d 843 (8th Cir. 2015).

Mr. Thompson then filed a petition for writ of certiorari to this Court. *Thompson v. Roy*, 136 S. Ct. 1375 (2016). While the petition was pending, this Court held in *Montgomery v. Louisiana* that *Miller* applies retroactively to all children sentenced to mandatory terms of LWOP. *Montgomery v. Louisiana*, 136 S. Ct. 718, 736-37 (2016). This Court then vacated the Eighth Circuit's decision, and Mr.

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[4] A different division of the same court granted a nearly identical petition filed by Mr. Thompson's similarly situated co-defendant, Mr. Flowers. Pet. App. 22a. The Minnesota Supreme Court has ordered the state to hold a resentencing hearing for Mr. Flowers. *Flowers v. State*, 907 N.W.2d 901 (Minn. 2018).

Thompson's habeas petition was remanded to the federal district court. *Thompson v. Roy*, 136 S. Ct. 1375 (2016); *Thompson v. Roy*, 641 Fed. Appx. 681 (8th Cir. 2016).

On remand, the parties to the case—the Hennepin County Attorney's Office and then-counsel for Mr. Thompson—drafted a joint "meet and confer" order, agreeing that the federal district court should grant Mr. Thompson's habeas petition, vacate his unconstitutional sentences, and remand for a resentencing hearing consistent with *Miller* and *Montgomery*. Pet. App. 41a. The federal district court agreed that Mr. Thompson's sentences were unconstitutional. Rather than grant the habeas writ in full, however, the court issued the following order:

> 1. The "without possibility of release" provision of Petitioner's life sentences be VACATED in accordance with *Miller v. Alabama*, 132 S. Ct. 2455, 2460 (2012), and *Montgomery v. Louisiana*, 136 S. Ct. 718, 725 (2016);
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> 2. Petitioner's case be REMANDED to the Hennepin County District Court for resentencing; and
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> 3. The petition be denied in all other respects.

Id. at 27a-28a. The federal district court did not issue a certificate of appealability and Mr. Thompson's counsel did not request one.

The parties initially understood the federal court's habeas order to permit a full resentencing hearing, and delayed that hearing for more than two years while waiting for the Minnesota Supreme Court to address two other cases involving children sentenced to LWOP. *Id.* at 20a.[5] After those cases were decided, the

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[5] These children eventually received opportunities for resentencing hearings. *Flowers v. State*, 907 N.W.2d 901 (Minn. 2018); *State v. Ali*, 895 N.W.2d 237 (Minn. 2017). Mr. Thompson is the only prisoner in Minnesota who was sentenced to consecutive mandatory LWOP terms as a child and denied a resentencing hearing.

Hennepin County District Court set aside three days for Mr. Thompson to receive a resentencing hearing complete with witnesses and evidence. *Id.* at 20a, 31a. In early 2019, a few months before the scheduled resentencing hearing and more than twenty-five months after the federal district court issued its habeas order, the state court *sua sponte* ordered the parties to brief the issue of whether the federal district court's order mandated that the state court impose two consecutive life sentences. *Id.* at 20a. In Mr. Thompson's response brief he argued, *inter alia*, that the federal court's order could not be construed as mandating consecutive life sentences because federal habeas power does not include the authority to tell state courts specifically how to correct constitutional violations. *Id.* at 38a-39a.

The state court concluded that, because the federal district court's order vacated only the "without possibility of release" portion of Mr. Thompson's sentences, the habeas order operated as a limited remand requiring the state court to reimpose consecutive life sentences. *Id.* at 22a-24a. The trial court canceled Mr. Thompson's resentencing hearing and imposed two consecutive sentences of life in prison with the possibility of release after 30 years on each count, for a total of at least 60 years. *Id.* at 24a.[6]

Mr. Thompson appealed this decision to the Minnesota Supreme Court, arguing that federal habeas authority over state prisoners is limited and does not

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[6] The sentences of life with the possibility of release after thirty years stem from the Minnesota Supreme Court's decision in *Jackson v. State*, 883 N.W.2d 272 (Minn. 2016). In *Jackson*, the Minnesota Supreme Court decided that the appropriate post-*Montgomery* remedy for children who had received unconstitutional mandatory LWOP sentences was to provide them an opportunity to request release after 30 years. *Id.* at 281-82.

include the power to modify or dictate the terms of a state prisoner's sentence. *Id.* at 31a-36a. The Minnesota Supreme Court affirmed, concluding that the federal habeas court's "limited remand" bound the state court to impose two consecutive life sentences. *State v. Thompson*, 942 N.W.2d 350, 353-54 (2020). Pet. App. 7a-10a. A three-justice concurrence noted that Mr. Thompson's sentences, imposed without any sentencing hearing or opportunity to present mitigating evidence, may violate the Eighth Amendment. *Thompson*, 942 N.W.2d at 355-56 (Chutich, Thissen, & Anderson, JJ., concurring). Pet. App. 11a-14a.

Mr. Thompson will not be eligible for release until he is at least 77 years old.

REASONS FOR GRANTING THE PETITION

THIS CASE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT THIS COURT SHOULD SETTLE

A. This Court has never settled whether federal habeas courts can dictate how state courts must remedy federal law violations against state prisoners

The federal habeas corpus statutes provide a limited vehicle for federal court review of prisoners' claims that their incarceration violates federal law. *See* 28 U.S.C. §§ 2241 *et seq.* Section 2243 authorizes federal courts to dispose of habeas corpus petitions "as law and justice require." 28 U.S.C. § 2243. However, when the habeas petitioner is incarcerated pursuant to a state conviction, the federal habeas court must balance its authority to remedy the matter as "law and justice require[s]" with the "first principles" of federalism: that the powers of the federal government are few and defined, while those which remain to the states are "numerous and indefinite." *See Cabana v. Bullock*, 474 U.S. 376, 391-92 (1986);

United States v. Lopez, 514 U.S. 549, 552 (1995) (citing The Federalist No. 45, pp. 292-93 (C. Rossiter ed. 1961)). The question of whether a federal habeas court oversteps its authority when it orders a state court to impose a specific remedy for a federal law violation is one this Court has never settled.

i. This Court has two divergent strands of decades-old precedent on the scope of federal habeas remedies for state prisoners

Fay v. Noia, decided more than fifty years ago, was at the time this Court's seminal decision addressing the boundaries of federal habeas authority over state prisoners. *See* 372 U.S. 391, 394 (1963). The Court in *Fay* concluded that, while federal habeas authority does extend to state prisoners, that authority has limitations. *Id.* at 399-426.[7] On review of a habeas petition filed by a state prisoner, the federal court's power to remedy a state's federal law violation is limited to agreeing or denying that the petitioner is wrongly confined. *Id.* at 430-31. If the federal court agrees that the petitioner is wrongly confined, it may order the State to either correct the illegal condition or release the petitioner. *Id.* (noting that federal habeas courts have the right to "enforce the right of personal liberty [over state prisoners]; when that right is denied and a person confined, the federal court

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[7] *Fay*'s holding that a state prisoner need not exhaust all available state remedies before pursuing federal habeas relief has since been overruled. *See Fay*, 372 U.S. at 430 ("The jurisdictional prerequisite is not the judgment of a state court but detention simpliciter"); *contra Wainwright v. Sykes*, 433 U.S. 72, 87-88 (1977) (rejecting *Fay*'s conclusion that federal courts can grant habeas relief on issues state prisoners could have raised in state court); *McCleskey v. Zant*, 499 U.S. 467, 491 (1991) (noting that the Court has taken care in the years since *Fay* to emphasize the importance of finality of state court decisions). There is no dispute in this case that Mr. Thompson exhausted available state remedies before pursuing federal habeas relief.

has the power to release him."). What the federal court cannot do is correct the illegal condition itself or dictate how the State must correct it. *Id.* at 430-31.

Fay explicitly recognized the broad language of 28 U.S.C. § 2243 authorizing habeas courts to "dispose of the matter as law and justice require," but concluded that federalism principles must constrain this language. *Id.* at 430-32. The *Fay* Court's attempt to honor these principles is reflected in the balance it ultimately reached: the Court held that while a federal habeas court can order a state prisoner's release, "it has no other power; it cannot revise the state court judgment; it can act only on the body of the petitioner." *Id.* at 430-31.

Fay's statement that a federal habeas court has "no other power" than to order a state prisoner's release appears unequivocal. But numerous cases have chipped away at that holding in the decades since. Just five years after *Fay* this Court decided *Carafas v. LaVallee*, 391 U.S. 234 (1968). *Carafas* addressed the question of whether a federal court can retain jurisdiction over a state prisoner's habeas petition when the prisoner is released after the petition is filed but before the case is decided. *Id.* at 237. Without referencing *Fay* or its language indicating that federal courts have "no other power" then to order a prisoner's release, the Court in *Carafas* reasoned that the federal habeas statute "does not limit the relief that may be granted to discharge of the applicant from physical custody." *Id.* at 239. The *Carafas* Court noted that the habeas statute "seem[s] specifically to contemplate the possibility of relief other than immediate release from physical custody," and reasoned that the statute permitted federal courts to grant a broad

variety of relief. *Id.* at 239 (citing 28 U.S.C. § 2243); *see also Peyton v. Rowe*, 391 U.S. 54, 63-64, 66 (1968) (citing *Fay* favorably when discussing the implications of federalism on habeas orders, but later concluding without any discussion of *Fay* that the habeas statute "does not deny the federal courts power to fashion appropriate relief other than immediate release").

Five years after *Carafas* this Court reaffirmed *Fay*'s position that the primary function of the habeas corpus writ is to grant release from custody. *Preiser v. Rodriguez*, 411 U.S. 475 (1973). In *Preiser*, the Court analyzed whether state prisoners seeking injunctive relief could pursue such relief in a Section 1983 lawsuit, or whether they must file habeas petitions. *Id.* at 476-77; 42 U.S.C. § 1983. The Court affirmed that the "essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody." 411 U.S. at 484. The Court then cited *Fay* for the proposition that the purpose of a habeas petition is to "inquir(e) into illegal detention with a view to an order releasing the petitioner." 411 U.S. at 484 (quoting *Fay*, 372 U.S. at 399 n.5).

Four years later, in *Brewer v. Williams*, the Court granted a state prisoner's habeas petition on grounds that the State violated his right to counsel. 430 U.S. 387, 390, 401 (1977). Rather than correct the constitutional violation itself, the Court suspended issuance of the habeas writ until the State had an opportunity to correct the error. 430 U.S. at 406 n.13. Similarly, in *Cabana v. Bullock* this Court dealt with the question of the appropriate federal habeas response after a state

prisoner had been improperly sentenced to death without a clear finding of the requisite mental culpability. 474 U.S. 376, 390-91 (1986). The Court reasoned that, because "[c]onsiderations of federalism and comity counsel respect for the ability of state courts to carry out their role as the primary protectors of the rights of criminal defendants," the proper remedy was to vacate the petitioner's sentence and allow the state to determine the appropriate sentence. *Id.* at 391-92.

In *Hilton v. Braunskill*, this Court assessed whether federal appellate courts have authority to stay, pending appeal, a federal habeas decision ordering release of a state prisoner. 481 U.S. 770, 774 (1987). Without referencing *Fay*, the *Braunskill* Court answered in the affirmative, reasoning that federal habeas practice "indicates that a court has broad discretion in conditioning a judgment granting habeas relief. Federal courts are authorized, under 28 U.S.C. § 2243, to dispose of habeas corpus matters 'as law and justice require.'" *Id.* at 775.

Four years after *Braunskill*, the Court in *Coleman v. Thompson* again espoused a narrow understanding of federal habeas authority over state court prisoners. 501 U.S. 722 (1991). In *Coleman*, the Court returned to *Fay* for the proposition that, when analyzing a habeas petition filed by a state prisoner under 28 U.S.C. § 2254, the federal habeas court's only task is to decide whether the petitioner's conviction or sentence violates federal law. 501 U.S. at 730. "The court does not review a judgment, but the lawfulness of the petitioner's custody *simpliciter*." *Id.* (quoting *Fay*, 372 U.S. at 430).

In *Herrera v. Collins*, the Court declined to grant relief in a state prisoner's habeas petition alleging actual innocence. 506 U.S. 390 (1993). While not itself reaching the question of appropriate habeas remedies for a state constitutional violation, the Court criticized the dissent for "fail[ing] to articulate the relief that would be available," and questioned whether the appropriate relief would be commutation of the sentence, unconditional release from prison, or a new trial. *Id.* at 403. The Court also noted that the "typical relief granted in federal habeas corpus is a conditional order of release." *Id.*

ii. This Court has not addressed its remedies precedent post-AEDPA

In 1996 Congress passed the Antiterrorism and Effective Death Penalty Act (AEDPA), which, *inter alia*, imposed new limits on federal habeas power over state prisoners. *See* 28 U.S.C. § 2254 (eff. 1996). While AEDPA restricted federal courts' authority to grant habeas petitions filed by state prisoners, it did not address the federal courts' ability to impose specific remedies when federal law violations do occur.

This Court has not post-AEDPA provided any definitive guidance on the scope of federal courts' ability to order specific remedies for state's federal law violations. In *Wilkinson v. Dotson*, this Court addressed the interplay between 42 U.S.C. § 1983 and 28 U.S.C. § 2254. *See* 544 U.S. 74 (2005). While the majority opinion did not discuss the precise limitations of the federal habeas power, Justice Scalia's concurrence noted that, though federal courts have broad habeas powers under 28 U.S.C. § 2243 over prisoners not incarcerated because of a state court

judgment, their powers over state prisoners under 28 U.SC. § 2254 are less expansive. *See* 544 U.S. at 85-87 (Scalia, J., concurring). Justice Scalia did not attempt to define the boundaries of federal habeas courts' ability to remedy state's federal law violations.

Most recently, in *Kernan v. Cuero* this Court rejected the Ninth Circuit's decision to order specific performance of a sentence that a state prisoner had negotiated and requested in his federal habeas petition. 138 S. Ct. 4, 5-7, 9 (2017). While the Court noted that none of its precedent required specific performance as a remedy, it did not address whether the federal habeas statutes authorize specific performance as a remedy. *Id.* at 8.

B. Federal circuit courts are deeply divided about whether they can order specific habeas remedies for federal law violations against state prisoners

Federal courts are split—even among their own circuits—on the scope and limitations of a federal court's habeas power to impose specific remedies for federal law violations against state prisoners. This split arises largely from confusion about this Court's seemingly divergent strands of precedent on the topic. The Third, Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuit Courts of Appeal have relied on *Fay* or related progeny as recently as 2019 for the principle that federal habeas authority over state prisoners is limited to ordering release of the prisoner unless the State rectifies the error. The Second, Sixth, Ninth, and Tenth Circuit Courts of Appeals rely on *Carafas* or the text of 28 U.S.C. § 2243 alone in

interpreting the federal habeas courts' power as expansive and not limited to ordering release.

i. The Third, Fourth, Fifth, Seventh, Eighth, Ninth, and Eleventh Circuits rely on *Fay* and its progeny for the principle that federal habeas courts cannot order state courts to impose specific remedies

Several of the federal circuits understand *Fay*'s language that federal courts have "no other power" than to order release as prohibiting federal courts from imposing specific remedies that state courts must follow. *Fay*, 372 U.S. at 430. The Third Circuit in *Henderson v. Frank* addressed the case of a state prisoner who filed a meritorious habeas petition based on the state's failure to ensure a valid waiver of counsel. 155 F.3d 159, 162, 167 (3d Cir. 1998). The parties disputed the proper remedy, and the court relied on *Fay* for the proposition that habeas authority is limited to conditionally ordering the prisoner's release and does not permit federal courts to revise the state court's judgment. *Id.* at 168 (quoting *Fay*, 372 U.S. at 430-31). The court concluded that the "federal habeas power is limited, first, to a determination of whether there has been an improper detention by virtue of the state court judgment; and second, if we find such an illegal detention, to ordering the immediate release of the prisoner." *Henderson*, 155 F.3d at 168; *see also Barry v. Brower,* 864 F.2d 294, 300–01 (3d Cir. 1988) (reversing federal district court's habeas order directing state court to provide specific remedy for constitutional violation, and reasoning that a habeas court "does not have power to directly intervene in the process of the tribunal which has incorrectly subjected the petitioner to the custody of the respondent official"); *Dunn v. Colleran*, 247 F.3d

450, 462 (3d Cir. 2001) (granting a habeas petition but declining to impose a specific remedy, instead noting that it is "best left to the state court to decide what remedy is appropriate").

More recently, the Fourth and Fifth Circuits reiterated the *Fay* holding that federal habeas courts have no authority to modify the terms of a state court judgment. *See Winston v. Pearson*, 683 F.3d 489, 507 (4th Cir. 2012); *Woodfox v. Cain*, 789 F.3d 565, 569 (5th Cir. 2015). In *Winston*, the Fourth Circuit addressed the proper remedy for a state prisoner who was sentenced to death without effective assistance of counsel. 683 F.3d at 492-93. The Fourth Circuit held that, after granting the habeas petition, the federal court "had no authority to fashion a particular procedure to remedy" the improper sentence. 683 F.3d at 507. Instead, the court must "leave it to the [State's] prerogative to craft a remedy consonant with the strictures of state law." *Id.* at 507; *see also Rose v. Lee*, 252 F.3d 676, 688 n.11 (4th Cir. 2001) ("[W]e do not believe that a federal habeas court can remand a case to a state habeas court.").

Woodfox involved a state appeal after a federal district court granted a state prisoner's habeas petition and ordered unconditional release without giving the state an opportunity to correct its error. 789 F.3d at 567. Reversing the federal district court's usurpation of state authority, the Fifth Circuit reasoned that federalism principles prevented the habeas court from interfering with the state court's judgment. *Id.* at 569. While the federal court could grant the habeas petition and order the state to either release the prisoner or correct its error, "the precise

remedy is generally left to the state." *Id.*; *see also Smith v. Lucas*, 9 F.3d 359, 363 (5th Cir. 1993) (relying on *Fay* for the principle that federal courts cannot require state courts to impose specific sentences, and commenting, "We have found no indication that the Supreme Court [post-*Fay*] has somehow changed its position and extended the use of habeas corpus . . . to revise a state criminal defendant's sentence without requiring his release. It would thus appear that the writ has but one remedy—to direct the liberation of a state prisoner whose confinement violates federal law"); *Billiot v. Puckett*, 135 F.3d 311, 316 n.5 (5th Cir. 1998) (when a federal court grants a state prisoner's habeas petition the federal court does not have authority to "remand" to the state court with specific instructions).

The Seventh Circuit, though not citing *Fay*, has rejected a habeas petitioner's request that the federal court reduce his sentence as remedy for undue delay in his appeal. *Allen v. Duckworth*, 6 F.3d 458, 460 (7th Cir. 1993). The court explained that habeas corpus "is not a compensatory remedy. The object is not to make whole someone who has suffered a loss; it is to determine whether a person is being confined in violation of basic norms of legality." *Id.*

The Eighth Circuit has acknowledged that "the teaching of *Fay v. Noia* . . . emphasizes that a federal district court should not 'upset a state conviction without an opportunity to the state courts to correct a constitutional violation.'" *Smith v. Wolff*, 506 F.2d 556, 558 (8th Cir. 1974).

The Ninth Circuit has held that a federal court exceeds its habeas powers when it directs the state to modify a state prisoner's sentence. *Douglas v. Jacquez*,

626 F.3d 501, 504 (9th Cir. 2010). Relying on *Fay*, the court reasoned that while a habeas court has power to order release of a state prisoner, it has no power to "revise the state court judgment." *Id.* at 504 (quoting *Fay*, 372 U.S. at 430-31); *see also Gouveia v. Espinda*, 926 F.3d 1102, 1109-10 (9th Cir. 2019) (citing *Fay* for the proposition that habeas courts have limited powers over state prisoners, and thus the habeas writ "does not empower a habeas court to modify a state court judgment").

The Eleventh Circuit, affirming the federal district court's grant of a habeas petition claiming sentencing error in a state case, noted that "a federal district court or court of appeals has no appellate jurisdiction over a state criminal case and hence has no authority to 'remand' a case to the state courts." *Magwood v. Smith*, 791 F.2d 1438, 1450 (11th Cir.1986). Though the court did not cite *Fay*, it reasoned that because the federal habeas statute provides an avenue for collateral rather than appellate review of state judgments, the appropriate habeas remedy is to "grant a conditional writ of habeas corpus" rather than remand with specific directions to the state court. *Id.*

ii. The Second, Sixth, Ninth, and Tenth Circuits have adopted a more expansive reading of federal habeas courts' authority to remedy federal law violations against state prisoners

Of the federal circuit courts that employ an expansive reading of federal habeas remedy power, only one has expressly rejected the limiting language of *Fay*. The Sixth Circuit discussed the seeming contradictions between *Fay* and *Carafas*, relying on *Carafas* to conclude that federal habeas authority extends beyond

challenges to incarceration and can include relief from collateral consequences. *See Gentry v. Deuth*, 456 F.3d 687, 693 (6th Cir. 2006) ("Although the Supreme Court had seemed to limit habeas relief to 'the body of the petitioner' in *Fay v. Noia* . . . the Court subsequently expanded the writ's scope in *Carafas v. LaVallee*" (internal citations omitted)); *see also Glenn v. Dallman*, 686 F.2d 418, 423 (6th Cir. 1982) (citing *Carafas* for the idea that the "federal habeas corpus statute permits federal courts to fashion relief as justice requires," and ordering the federal district court to issue a writ reclassifying the petitioner's conviction from aggravated burglary to burglary).

Other federal circuit courts simply do not discuss *Fay* when addressing appropriate habeas remedies for states' federal law violations. In *Cody v. Henderson*, the Second Circuit addressed a state prisoner's request for unconditional release based on a delay in state appellate proceedings. 936 F.2d 715, 718-19 (2d Cir.1991). While the court referenced *Preiser v. Rodriguez* for the principle that the writ's traditional function is to secure release from custody (*id.* at 720, citing *Preiser*, 411 U.S. at 484-86), it gave no indication that it believed itself constrained by that remedy. 936 F.2d at 720-22. Ultimately, the court "remand[ed]" the case to provide the petitioner an opportunity to explore a suit for damages under 42 U.S.C. § 1983. *Id.* at 723.

The Ninth Circuit, in a case predating *Gouveia* by ten years, granted relief to a prisoner wrongly convicted of a sex offense even though he had already been released from prison. *Holley v. Yarborough*, 568 F.3d 1091, 1102 (9th Cir. 2009).

The court reasoned that, "although habeas petitions are typically granted as a means of releasing the petitioner from custody, the federal habeas statute 'does not limit the relief that may be granted to discharge of the applicant from physical custody.'" *Id.* (quoting *Carafas*, 391 U.S. at 238-39).

The Tenth Circuit, when asked to decide whether releasing a state prisoner without giving the state an opportunity to remedy its error was an appropriate habeas remedy, answered in the affirmative. *Hannon v. Maschner*, 981 F.2d 1142 (10th Cir. 1992). The court relied on *Carafas* and *Braunskill* to emphasize that the habeas mandate is "broad with respect to the relief that may be granted" and includes "any relief it deems necessary." *Id.* at 1145 (quoting *Braunskill*, 481 U.S. at 775; *Carafas*, 391 U.S. at 239).

C. State courts are confused about whether and to what extent federal courts can dictate specific habeas remedies for state courts to follow

i. At least five states reject federal courts' authority to impose specific remedies for states to follow

The supreme courts of Illinois and Arkansas, as well as appellate courts in California, Colorado, and Oklahoma, have interpreted federal habeas authority as limited and rejected federal court efforts to dictate specific remedies for federal law violations. The Illinois Supreme Court addressed a group of state prisoners' claims that federal habeas courts had no authority to vacate their sentences. *People ex rel. Madigan v. Snyder*, 208 Ill. 2d 457, 469 (2004). The Illinois Supreme Court agreed, relying on *Fay* for the proposition that "a federal court issuing a writ of habeas corpus essentially requires the State to retry or resentence the defendant, on pain of

ordering the defendant's release if the State does not comply . . . A federal court considering a state prisoner's petition for a writ of habeas corpus does not have the authority to revise a state court judgment." *Id.* at 469-70 (quoting *Fay*, 372 U.S. at 430–31). The Illinois Supreme Court noted that "the federal court had no authority to revise the judgments of the Illinois courts in these cases. Thus, although the [federal] district court used the term 'vacate,' its order could not vacate these sentences." 208 Ill. 2d at 470.

The Arkansas Supreme Court has also recognized that federal habeas courts have no authority to order a state court to take specific actions in a state prisoner's case. *Nail v. State*, 869 S.W.2d 705, 705-06 (1994). The federal court in *Nail* issued a habeas order directing the state court to appoint counsel for a state prisoner and permit the prisoner to pursue a belated appeal. *Id.* at 705. The Arkansas Supreme Court rejected the federal district court's order, concluding that "the District Court has no authority to order or direct the trial court or the Arkansas Supreme Court to take any action relative to this matter." *Id.* The Arkansas court further explained that "the appropriate avenue for federal relief is to grant a petition for habeas corpus, not to order or direct the state courts to take some action." *Id.* at 706.

The California Court of Appeals has interpreted *Fay* as limiting the authority of federal courts to impose remedies other than conditionally discharging a state prisoner from wrongful confinement. *People v. Black*, 116 Cal. App. 4th 103, 108 (Cal. App. 2004). The court in *Black* reasoned that, while *Fay* has been overruled on other grounds, it still serves as the seminal authority on the power of federal courts

to dictate remedies for violations of state prisoner's constitutional rights. *Id.* (quoting *Fay*, 372 U.S. at 430-31). The court also concluded that 28 U.S.C. § 2243's provision that habeas courts can "dispose of the matter as law and justice require," read together with *Fay*, permits a federal court to grant a habeas petition conditioned on the state rectifying the particular error at issue in that case. 116 Cal. App. 4th at 108-09.

The Colorado Appellate Court has also concluded that a federal habeas court cannot order a state court to act in a specific way. *People v. Wood*, 434 P.3d 663, 671 (Colo. App. 2016), *vacated on unrelated grounds by People v. Wood*, 433 P.3d 585 (Colo. 2019). The Colorado court relied on three federal appellate decisions to conclude that "a federal court cannot remand a habeas corpus action to a state district court, nor could a federal court compel a state court to act under a conditional grant of habeas corpus relief." *See* 434 P. 3d at 671-72 (citing *Billiot v. Puckett*, 135 F.3d 311, 316 n.5 (5th Cir. 1998); *Hardcastle v. Horn*, 368 F.3d 246, 261 (3d Cir. 2004); *Rose v. Lee*, 252 F.3d 676, 688 n.11 (4th Cir. 2001)).

An Oklahoma appellate court addressed a federal habeas order that vacated a state prisoner's sentence "without prejudice to further proceedings by the State for re-determination of the sentence . . . at which proceedings the petitioner is afforded an opportunity to present all evidence relevant to mitigating circumstances or to the aggravating circumstances alleged." *Chaney v. Brown*, 699 P.2d 159, 160 (Okla. Crim. App. 1985). The Oklahoma court concluded that, notwithstanding the federal court's order anticipating a resentencing hearing, state law did not permit a

resentencing hearing and the federal habeas order did not oblige the state to conduct one. *Id.* at 161.

ii. At least three states believe themselves bound to follow specific remedies that federal habeas courts impose

The supreme courts of Michigan, Nebraska, and Minnesota have adopted expansive interpretations of federal habeas authority that permit federal courts to dictate remedies for state courts to follow. The Michigan Supreme Court addressed an appeal arising from a federal habeas decision ordering the state court to release the defendant "unless he was given a new trial in which his confession would be excluded from evidence." *People v. Frazier*, 733 N.W.2d 713, 716 (Mich. 2007). The court concluded that the federal habeas court's suppression analysis was faulty, but that the habeas court's order had "binding force" on the state court despite the faulty analysis. *Id.* After briefly discussing the authority of federal habeas courts to order state courts to cure specific errors, the Michigan court decided that it would "accept as binding the district court's ruling that defendant's confession must be excluded on retrial." *Id.* at 719-20.

The Nebraska Supreme Court examined the interplay between federal habeas orders and state power in *State v. Hochstein*, 632 N.W.2d 273 (Neb. 2001). The petitioner in *Hochstein* was sentenced to death in state court, and filed a federal habeas petition that resulted in the Eighth Circuit ordering that "petitioner's sentence will be reduced to life imprisonment, unless . . . the Nebraska Supreme Court reweighs the aggravating and mitigating circumstances, conducts an independent harmless error review, or remands the case to the sentencing court

for resentencing." *Id.* at 276-77. On remand, the petitioner attempted to raise additional claims of error that went beyond the scope of the habeas order. *Id.* at 284. The Nebraska Supreme Court rejected those claims, reasoning that "when a cause is remanded with specific directions, the court to which the mandate is directed has no power to do anything but to obey the mandate. . . this court's authority was [] limited by the relief granted by the federal courts." *Id.* at 284-85.

Until its decision in Mr. Thompson's case, the Minnesota Supreme Court had never assessed whether a federal habeas court can impose specific remedies for state courts to follow. When faced with this question, the Minnesota Supreme Court interpreted the federal court's authority as essentially limitless: it took no issue with the federal court's order modifying the terms of Mr. Thompson's sentences, and instead agreed that the order required the state trial court to impose sentences as modified by the federal court. *Thompson*, 942 N.W.2d at 351. Pet. App. 9a-10.

D. The Minnesota Supreme Court in this case misunderstood the limited function of federal habeas review

In rejecting Mr. Thompson's argument that the federal district court had no power to modify his sentence or dictate new sentences for the state to impose, the Minnesota Supreme Court did not attempt to square its decision with *Fay*. Instead, it cited *Peyton v. Rowe* for the notion that the habeas writ is not limited to securing release from confinement. *Thompson*, 942 N.W.2d at 352 n. 1 (citing *Peyton*, 391 U.S. at 64-65). Pet. App. 4a. The court then reasoned that the federal court's habeas order constituted a "limited remand" that required the state trial court to "strictly follow[] the terms of the remand order." 942 N.W.2d at 351. Pet. App. 3a, 7a-10a.

The Court began its remand analysis by citing a Minnesota state case for the proposition that "[o]n remand, it is the duty of the district court to execute the mandate of [the remanding court] strictly according to its terms." 942 N.W.2d at 353 (quoting *State v. Roman Nose*, 667 N.W.2d 386, 394 (Minn. 2003)). Pet. App. 7a. The court then cited six federal appellate cases to emphasize that federal courts also recognize the concept of limited remands, and that limited remands constrain a lower court to adjudicate only the specific issues permitted on remand. *See Thompson*, 942 N.W.2d at 353-54 (citing *United States v. Campbell*, 168 F.3d 263, 265 (6th Cir. 1999); *United States v. Walker*, 918 F.3d 1134, 1144 (10th Cir. 2019); *United States v. Malki*, 718 F.3d 178, 182-83 (2d Cir. 2013); *United States v. Young*, 66 F.3d 830, 835-37 (7th Cir. 1995); *United States v. Klump*, 57 F.3d 801, 803 (9th Cir. 1995); *United States v. McFalls*, 675 F.3d 599, 604 (6th Cir. 2012)). Pet. App. 7a-8a.

None of the cases the Minnesota Supreme Court relied on address a federal habeas court's authority over state prisoners. None of them discuss habeas authority at all; instead all six cases involve federal prisoners' appeals of federal sentences and have no bearing on the interplay between federal habeas courts and state trial courts. *See Campbell*, 168 F.3d at 264-65; *Walker*, 918 F.3d at 1137; *Malki*, 718 F.3d at 180; *Young*, 66 F.3d at 832, 835; *Klump*, 57 F.3d at 802; *McFalls*, 675 F.3d at 601. The Minnesota Supreme Court failed to understand the sensitive relationship between federal and state courts, and instead equated the federal habeas court with a court of appellate authority over state cases. *See Thompson*,

942 N.W.2d at 354 (agreeing that the state trial court was bound to impose the sentences the federal court mandated because "[w]]hen a remand is limited, it is the duty of the district court to execute the mandate of the remanding court strictly according to its terms."). Pet. App. 9a.

The Minnesota Supreme Court's misunderstanding of the complexities of federal habeas authority illustrates why this Court should grant certiorari. While Minnesota adopted the view that federal courts can remand habeas petitions with specific instructions for state courts to follow, other courts have concluded that federal courts cannot issue remands from habeas petitions and cannot tell a state court how to correct a constitutional error. *Compare Thompson*, 942 N.W.2d at 354 (state trial court was bound to follow the federal court's limited remand "strictly according to its terms") *with Magwood*, 791 F.2d at 1450 (federal habeas court has no appellate jurisdiction over state courts and no authority to remand with instructions for the state to follow); *Gouveia*, 926 F.3d at 1109-10; *Barry*, 864 F.2d at 300–01; *Snyder*, 208 Ill. 2d at 470 (all rejecting federal courts' habeas authority to impose specific remedies or modify state court judgments); *see also* Brian R. Means, FEDERAL HABEAS MANUAL § 13:5 (2020) (citing *Fay* for the principle that "although a federal court may in an appropriate case order the petitioner's release . . . it lacks the power in habeas to revise a challenged state court judgment itself in order to correct constitutional errors"). Still other courts believe the habeas remedy authority expansive but provide no clear boundaries regarding the limitations of

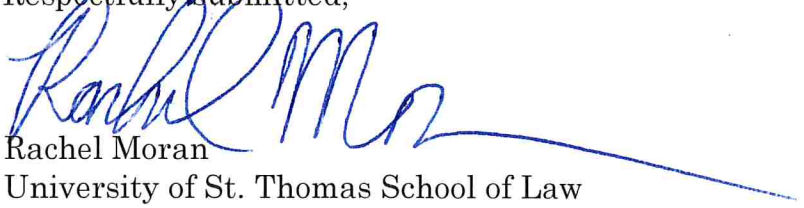
that authority. *See Dallman*, 686 F.2d at 423; *Maschner*, 981 F.2d at 1145; *Frazier*, 733 N.W.2d at 719-20.

The consequences of the Minnesota Supreme Court's confusion are severe for Mr. Thompson. Convicted of offenses committed at age 17, he was originally given LWOP sentences that all parties agree were unconstitutional. Now, because Minnesota believes it is bound to impose two consecutive life sentences as modified by the federal court, he will not be eligible for release until he is at least 77 years old. Pet. App. 24a. He has never received any meaningful opportunity to present mitigating evidence or seek earlier release, and he was denied the resentencing hearing that the Minnesota Supreme Court ordered for his similarly situated codefendant. *See Flowers*, 907 N.W.2d 901 at 907-08. The question at issue in this case has significant impact for both Mr. Thompson and the thousands of other state prisoners who file federal habeas petitions each year.

CONCLUSION

This Court should grant Mr. Thompson's petition for a writ of certiorari.

Respectfully submitted,



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