

CAPITAL CASE

No. _____

**IN THE
SUPREME COURT OF THE UNITED STATES**

STEPHEN HUGUELEY,

Petitioner,

vs.

TONY MAYS, WARDEN RIVERBEND MAXIMUM SECURITY INSTITUTION

Respondent.

**ON PETITION FOR WRIT OF CERTIORARI
TO THE TENNESSEE SUPREME COURT**

PETITION FOR WRIT OF CERTIORARI

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****CAPITAL CASE****

QUESTIONS PRESENTED

In *Martinez v. Ryan*, 566 U.S. 1, 12 (2012), this Court reaffirmed the right to effective representation “is a bedrock principle in our justice system.” To ensure that right is protected, this Court held that a habeas corpus petitioner establishes “cause” to excuse a state procedural default by demonstrating that “appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards of *Strickland v. Washington*, 466 U. S. 668 (1984).” *Id.* at 14.

Lower federal courts’ inconsistent application of *Martinez*, however, has undermined this Court’s clear instruction. First, the circuits differ on the types of deficient representation in initial post-conviction proceedings that qualify as “cause.” Some circuits, including the lower court here, limit the *Martinez* exception to cases in which post-conviction counsel failed to *plead* a claim of ineffective assistance of counsel. Other courts apply *Martinez* to any deficient representation that results in a procedural default—including the failure to develop and present evidence in support of such claims. Second, lower courts diverge in their treatment of claims that differ from those raised by state post-conviction counsel. The Sixth Circuit and other courts, apply a talismanic approach, precluding a *Martinez* inquiry of any unpled Sixth Amendment claim whenever a Sixth Amendment claim was presented in state court. Other courts employ well-established exhaustion principles to determine whether the claim raised in federal court is the same claim presented to the state courts.

These inconsistent applications of *Martinez* have created splits among the circuits and require this Court’s clarification.

The questions presented are:

1. Does “cause” exist to excuse a procedural default when state post-conviction counsel’s unreasonable and prejudicial failure to present any evidence to support a claim “caused a procedural default in an initial-review collateral proceeding,” *Martinez*, 566 U.S. at 14?
2. Whether the *Martinez* “cause” exception applies when post-conviction counsel raised a Sixth Amendment claim, but failed to plead or present the specific legal theory and facts of the distinct claim raised in federal court?

RELATED PROCEEDINGS

State v. Hugueley, 185 S.W.3d 356 (Tenn. 2006) (affirming conviction on direct appeal).

Hugueley v. State, No. W2009-00271-CCA-R3PD, 2011 WL 2361824 (Tenn. Crim. App. June 8, 2011) (affirming the dismissal of the post-conviction petition and refusing to allow Mr. Hugueley to reinstate his petition).

Hugueley v. Westbrooks, No. 09-1181, 2017 WL 3325008 (W.D. Tenn. Aug. 3, 2017) (denying petition for writ of habeas corpus).

Hugueley v. Mays, 964 F.3d 489 (6th Cir. 2020) (affirming denial of petition for writ of habeas corpus).

Hugueley v. Mays, No. 17-6024 (6th Cir. Aug. 20, 2020) (denying rehearing and rehearing en banc).

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Stephen Hugueley, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the court of appeals, which is the subject of this Petition, is reported at *Hugueley v. Mays*, 964 F.3d 489 (6th Cir. 2020), and reproduced at Appendix (“App.”) 1a–17a. The order of the court of appeals denying rehearing is unreported, *Hugueley v. Mays*, No. 17-6024 (6th Cir. Aug. 20, 2020), and reproduced at App. 18a–19a. The order of the district court denying the petition for a writ of habeas corpus is unreported, *Hugueley v. Westbrooks*, No. 09-1181 (W.D. Tenn. Aug. 3, 2017), is available at 2017 WL 3325008, and reproduced at App. 20a–161a.

JURISDICTION

The court of appeals entered judgment on July 1, 2020, and denied petitioner’s timely petition for rehearing and rehearing en banc on August 20, 2020. Pursuant to the Court’s March 19, 2020 Order, and Rule 30.1, this Petition is due on January 19, 2021. Thus, this Petition is timely filed. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in relevant part: “In all criminal prosecutions, the accused shall ... have the Assistance of Counsel for his defence.”

INTRODUCTION

This case involves Mr. Hugueley’s unsuccessful attempts to secure merits review of his Sixth Amendment claims arising from trial counsel’s failure to investigate and present evidence of his congenital brain damage and resulting incompetence to stand trial. In the district court, for the first time, Mr. Hugueley was able to obtain and present magnetic resonance imaging (MRI) that revealed “marked brain abnormality” in several regions of his brain—congenital in origin—that renders his thinking “irrational and not based in reality.” R. 127-5, PageID 5836.¹ He supported the imaging results with numerous medical reports diagnosing Mr. Hugueley with severe mental illnesses from an early age and prescribing psychotropic medications including Thorazine, Haldol, Lithium, Tegretal, Elavil, Mellaril, and Sinequan to control the symptoms caused by his brain impairments.² He also developed extensive evidence of the physical, emotional, and psychological abuse that exacerbated the debilitating effects of his brain damage.³ *See generally* R. 128-1.

¹ Unless otherwise specified citations to the record refer to the docket in *Hugueley v. Westbrooks*, 09-1181 (W.D. Tenn. 2009). R. # refers to the ECF docket entry and PageID # refers to the page number automatically generated by the district court docketing system.

² After Mr. Hugueley entered the juvenile justice system at age twelve, psychiatrists documented his severe psychiatric symptoms—including auditory and visual hallucinations—and diagnosed him with serious mental illnesses, including Schizophrenia, Bi-Polar Disorder, and Delusional Disorder, Persecutory Type. R. 128-1, PageID 6039–40.

³ Juvenile records document numerous attempts of self-harm beginning when he was five years old and progressing the serious suicide attempts, at least seven of which occurred prior to his capital trial. R.127-4, PageID 5813. Mental health professionals noted that, as a teenager, Mr. Hugueley experienced auditory

Acute trauma exacerbated his mental dysfunction. When Mr. Hugueley was an adolescent, his mother sexually molested and repeatedly raped him. When she entertained adult lovers, she locked him outside, forcing him to sleep in the literal doghouse. R. 130-2; R. 128-1, PageID 6046. His life away from home was not safer: he was raped by a member of the clergy and incarcerated in numerous juvenile facilities “where he endured further sexual, physical, and psychological abuse.” R. 128-1, PageID 5985, 6049–50.

Mr. Hugueley urged the district court to consider this evidence in support of his constitutional claims that trial counsel unreasonably failed to challenge his competence to proceed at trial and failed to challenge the introduction of the prior crimes used as a statutory aggravator. Although trial counsel possessed a wealth of documents detailing Mr. Hugueley’s lifelong erratic behavior—including multiple diagnosis of serious mental illness and treatment with antipsychotics—trial counsel did not read those records and failed to conduct any investigation of his mental condition; trial counsel also failed to enforce the trial court’s order for an appropriate brain scan. For her part, state post-conviction counsel perfunctorily pled trial

hallucinations commanding him to kill himself and his mother. As early as five, he exhibited abnormal self-harming behavior. R. 128-1, PageID 6036. While at the Taft Youth Center, Mr. Hugueley cut himself with light bulbs, banged his head against the door, swallowed objects, and coated himself with shoe polish. *Id.* PageID 6038. He attempted to hang himself twice. *Id.* When he was 16 years old, Mr. Hugueley attempted to commit suicide by overdosing, attempting to cut his leg off with broken glass, and swallowing thumbtacks. *Id.* Mr. Hugueley later overdosed on Sinequan. *Id.*, PageID 6039.

counsel's ineffectiveness with respect to the incompetence claim but repeated the deficient representation of which she accused trial counsel: she failed to investigate Mr. Hugueley's history of psychiatric problems and similarly failed to obtain imaging that would have revealed Mr. Hugueley's congenital brain abnormalities. As a result, when Mr. Hugueley irrationally attempted to withdraw his state post-conviction petition, counsel was unequipped to present *any* evidence that his actions were the product of his brain impairment. The state court thus deemed the withdrawal of the state petition a procedural default precluding judicial review of the claims. *Hugueley v. State*, No. W2009-00271-CCA-R3PD, 2011 WL 2361824, at *1 (Tenn. Crim. App. June 8, 2011).

Mr. Hugueley argued in the lower courts that this Court's decision in *Martinez v. Ryan*, 566 U.S. 1 (2012), required merits review of his Sixth Amendment claims, because post-conviction counsel's ineffective representation provided cause to excuse the default. The district court determined that post-conviction counsel's pleading of the Sixth Amendment claim was all that this Court requires: "*Martinez* does not extend to errors of counsel beyond the first opportunity to present the claim on collateral review." App. 140a. On appeal, the Sixth Circuit adopted the district court's reading of *Martinez*, holding that "post-conviction counsel's failure to take all possible steps to fully develop a claim cannot be the 'cause' of a default as long as counsel properly raised the claim and made a good-faith effort in presenting it." App. 13a.

Neither court addressed whether post-conviction counsel's unreasonable and prejudicial failure to develop and present evidence of a Sixth Amendment claim that

resulted in the procedural default of the claim serves as “cause” for the default. The record in this case demonstrates that, absent post-conviction counsel’s deficient representation, counsel would have established that Mr. Hugueley was not competent to withdraw his state petition (and which resulted in subsequent imposition of a procedural bar). As a result of counsel’s ineffective representation, Mr. Hugueley was “a man who is insane, unaided by counsel, and who by reason of his mental condition stands helpless and alone before the court,” a situation that cannot be fair. *Massey v. Moore*, 348 U. S. 105, 108 (1954).

STATEMENT OF THE CASE

Mr. Hugueley initiated habeas corpus proceedings in the district court challenging his first-degree murder conviction and death sentence for the killing of correctional counselor Delbert Steed. In his petition, Mr. Hugueley alleged, inter alia, that his trial counsel was constitutionally ineffective for failing to challenge his competency to stand trial or challenge his competency during the prior cases that served as the basis for statutory aggravating factors under Tennessee law.⁴

In support of the ineffective assistance of counsel claims, Mr. Hugueley presented evidence that he suffers from a serious congenital brain malformation

⁴ At trial, the state introduced three prior convictions in support of the “prior crimes of violence” aggravating factor, Tenn. Code Ann. § 39-13-203(i)(2): the state presented proof that on August 19, 1986, Mr. Hugueley pled to the first-degree murder of his mother, receiving a life sentence; on February 13, 1992, he pled to first-degree murder of another inmate, receiving a consecutive life sentence; and on May 18, 1998 Mr. Hugueley pled to attempted first-degree murder of an inmate, receiving 25 year sentence consecutive to his two life sentences. R. 42-1, PageID 246.

documented by braining imaging, has experienced debilitating mental health conditions throughout his life, and has a tragic history of severe trauma. The Sixth Amendment claims were further supported with numerous expert and lay reports documenting the severity and effects of these conditions and the opinions of two experts that unambiguously concluded he was incompetent during the criminal and state post-conviction proceedings. R. 53, PageID 4436–42.

In addition, Mr. Hugueley alleged and presented evidence that, despite numerous red flags, trial counsel failed to undertake even a rudimentary investigation of his mental impairments. Counsel’s deficient representation included the failure to enforce the trial court’s order for a MRI of Mr. Hugueley’s brain, which would have revealed the severe brain dysfunction.

In response to the petition, the State asserted that the claims could not be considered because the state courts invoked a procedural default when refusing to consider them.⁵ R. 112-1, PageID 5465–66. The State’s assertion stemmed from the state court’s conclusion that Mr. Hugueley was competent to waive his state post-conviction remedies—despite his on-going irrational behavior.⁶ Mr. Hugueley

⁵ Post-conviction counsel did not raise trial counsel’s ineffectiveness with respect to the prior convictions. Pursuant to Tennessee law, no state remedy exists, because it was not properly presented in the initial post-conviction proceedings. *House v. State*, 911 S.W.2d 705, 714 (Tenn. 1995).

⁶ After post-conviction counsel filed the petition, the court questioned Mr. Hugueley as to whether he intended to proceed. The court determined a genuine issue as to his competency existed and that a hearing was required. *See* R. 42-4, 2108. At that hearing, post-conviction counsel called no witnesses. 42-12, 2875–2985.

responded to the State’s invocation of the procedural bar by arguing, inter alia, that (1) post-conviction counsel’s failure to investigate and present the Sixth Amendment claims was constitutionally deficient and resulted in the state courts’ imposition of default; and (2) the district court must conduct an evidentiary hearing to determine the facts necessary to resolve the dispute concerning the procedural default. R. 127, PageID 5608–09; 5615–18.

Without conducting an evidentiary hearing, the district court declined to consider the merits of Mr. Hugueley’s claims, concluding that they were procedural defaulted. App. 160a.

After granting a certificate of appealability, the Sixth Circuit panel affirmed the denial of Mr. Hugueley’s writ of habeas corpus.⁷ App. 2a. As is relevant to this Petition, the panel held that *Martinez* did not provide cause to excuse the procedural default of the ineffective assistance of counsel claim because “Hugueley chose to withdraw his petition.” App. 15a. In so doing, the panel found as a matter of law that post-conviction counsel could not have been ineffective, because she pled a Sixth Amendment claim, and that the pleading of any Sixth Amendment claim precludes the application of *Martinez* to all unexhausted Sixth Amendment claims.

During the appeal from the trial court’s dismissal, Mr. Hugueley sought to reinstate the petition. The appellate court denied the motion to remand, finding it untimely and that all remedies waived. *Hugueley*, 2011 WL 2361824, at *1.

⁷ Although both parties requested oral argument and the Sixth Circuit granted oral argument, the Sixth Circuit issued its opinion without oral argument and without explanation for foregoing oral argument.

REASONS FOR GRANTING CERTIORARI

In *Martinez v. Ryan*, 566 U.S. 1, this Court recognized that protection of the Sixth Amendment—the “bedrock principle” that safeguards the integrity of the criminal justice process—requires “an effective [collateral review] attorney,” to ensure compliance with state procedural rules and permit merits review. *Id.* at 12–14. This is so because the consequences of a procedural default are dire, as generally a “state court’s invocation of a procedural rule to deny a prisoner’s claims precludes federal review of the claims.” *Id.* at 9; *see also Coleman v. Thompson*, 501 U.S. 722, 730 (1991); *Wainwright v. Sykes*, 433 U.S. 72, 81–82 (1977). Thus, to protect Sixth Amendment rights, this Court held that “where appointed counsel in the initial-review collateral proceeding ... was ineffective under the standards of *Strickland v. Washington*, 466 U.S. 668 (1984),” “a prisoner may establish cause for the default of an ineffective-assistance claim.” *Martinez*, 566 U.S. at 14.

In the decade since *Martinez*, the circuit courts applied the doctrine with conflicting standards and inconsistent results. This case requires this Court’s plenary review as the Sixth Circuit’s opinion exacerbates the division among the circuit courts and further distorts the “cause and prejudice” doctrine.

I. CERTIORARI IS WARRANTED TO ENSURE CONSISTENT APPLICATION OF *MARTINEZ* WHEN POST-CONVICTION COUNSEL’S DEFICIENT REPRESENTATION RESULTED IN A PROCEDURAL DEFAULT.

A. The Circuits are Divided on What Constitutes Deficient Representation for *Martinez* Purposes.

In *Martinez*, this Court addressed whether cause exists when post-conviction counsel’s deficient representation regarding a trial counsel ineffectiveness claim resulted in the imposition of a procedural default. 566 U.S. at 5, 10–11; *see also Trevino v. Thaler*, 569 U.S. 413, 423 (2013) (“[A] lawyer’s failure to raise an ineffective-assistance-of-trial-counsel claim during initial-review collateral proceedings, could ... deprive a defendant of any review of that claim at all.”). This Court distinguished “initial-review” proceedings from “other kinds of postconviction proceedings,” *Martinez*, 566 U.S. at 11, but did not limit the deficient representation inquiry only to whether counsel adequately pled the claim in the petition. Instead, the equitable exception to the default doctrine applies “when an attorney’s errors (or the absence of an attorney) *caused* a procedural default in an initial-review collateral proceeding.” *Id.* at 14 (emphasis added); *see also Davila v. Davis*, 137 S. Ct. 2058, 2065 (2017) (recognizing that *Martinez* held that “procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if the default results from the ineffective assistance of the prisoner’s counsel in the collateral proceeding”) (quoting *Martinez*, 566 U.S. at 17).

Although this Court’s holding in *Martinez* focused on whether post-conviction counsel’s deficient representation resulted in the imposition of a procedural default, the particular deficient representation in that case was post-conviction counsel’s

failure to plead a Sixth Amendment claim at all. *Martinez*, 566 U.S. at 6. This Court, therefore, did not have the occasion in *Martinez* or subsequently in *Trevino* to apply the cause exception to other forms of deficient representation.

Without this Court’s guidance on applying *Martinez* to instances in which post-conviction counsel pled but ineffectively failed to develop and support a Sixth Amendment claim, lower courts have adopted divergent approaches. As Justice Breyer previously noted, this Court’s intervention is warranted to correct some courts’ constricted view of qualifying deficient representation:

A claim without any evidence to support it might as well be no claim at all. In such circumstances, where state habeas counsel deficiently neglects to bring forward “any admissible evidence” to support a substantial claim of ineffective assistance of trial counsel, there seems to me to be a strong argument that the state habeas counsel’s ineffective assistance results in a procedural default of that claim.

Gallow v. Cooper, 570 U.S. 933, 933 (2013) (Breyer, J. dissenting from the denial of certiorari).

The Sixth Circuit’s decision in this case typifies the unwarranted limitation of the *Martinez* exception to deficient representation at the pleading stage of the initial-review proceeding. The lower court held:

Martinez and the cases that follow it indicate that the Supreme Court’s rationale in creating the exception was the concern that deficient (or nonexistent) post-conviction counsel would fail to ever raise a prisoner’s ineffective-assistance-of-trial-counsel claim, not a concern that the claim would be raised but ultimately be underdeveloped. Put another way, *post-conviction counsel’s failure to take all possible steps to fully develop a claim cannot be the*

“cause” of a default as long as counsel properly raised the claim and made a good-faith effort in presenting it.

App. 13a (emphasis added).

Similarly, other circuits have limited *Martinez* to deficient representation solely at the pleading stage of the state court proceedings. For example, the Fourth Circuit has held that *Martinez* does not apply when post-conviction counsel failed to support a Sixth Amendment claim when counsel has presented the “heart” of the claim. *Moore v. Sterling*, 952 F.3d 174, 185 (4th Cir. 2020) (rejecting merits consideration of ineffective assistance of counsel claim supported by evidence not presented in the state court post-conviction proceedings). The Eighth, Tenth, and Eleventh circuits have taken a similarly constricted approach. *Thomas v. Payne*, 960 F.3d 465, 473 (8th Cir. 2020) (holding that as long as “the specific ineffective assistance at trial allegations” were “presented” in state court, the “weakness of support ... in the [state court] petition and hearing has no bearing on whether the claims were actually presented”); *Carter v. Bigelow*, 787 F.3d 1269, 1290 n.19 (10th Cir. 2015) (holding that *Martinez* provides “no relief” for claims nominally raised in state court because they “were not found to be procedurally defaulted”); *Hamm v. Comm’r, Alabama Dep’t of Corr.*, 620 F. App’x 752, 778 n.20 (11th Cir. 2015) (holding claim ineffectively raised in state was “not defaulted and was considered on the merits in state court; accordingly, collateral counsel’s ineffective assistance is irrelevant to that claim”).

In contrast, other circuits have recognized that deficient representation that results in a procedural default may constitute cause pursuant to *Martinez*—even if it occurs after the petition is filed. The Ninth Circuit has applied *Martinez* when post-conviction counsel pled a Sixth Amendment claim, but unreasonably and prejudicially failed to develop and present factual support for the claim. For example, in *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014), the Ninth Circuit held that *Martinez* provides cause for the procedural default of a “newly-enhanced claim of ineffective assistance of sentencing counsel,” when “the claim [was] substantial and ... that his PCR [postconviction] counsel was ineffective under *Strickland*.”⁸ *Id.* at 1320; see *Floyd v. Filson*, 940 F.3d 1082, 1148 (9th Cir. 2019) (noting Ninth Circuit precedent holds that a federal court may “new evidence introduced to support a *Martinez* motion alleging ineffective assistance of trial and postconviction counsel as cause and prejudice for a procedural default”); *Williams v. Filson*, 908 F.3d 546, 573 (9th Cir. 2018) (holding that “new evidence transforms the claim into a new claim that the state courts never had an opportunity to adjudicate on the merits” and that the default to present such a claim is “subject to analysis under *Martinez* to determine if the default can be excused”); *Jones v. Ryan*, 327 F. Supp. 3d 1157, 1215 (D. Ariz. 2018) (finding cause established where post-conviction “counsel acted deficiently by

⁸ In *Dickens*, state post-conviction counsel presented a claim alleging that trial counsel failed to investigate mitigation and develop evidence from the court-appointed psychologist. 740 F.3d at 1317. State counsel, however, did not supplement the claim with “extensive factual allegations suggesting [Mr.] Dickens suffered from FAS [fetal alcohol syndrome] and organic brain damage.” *Id.* at 1309.

failing to request investigatory assistance to develop these claims, or, lacking funding for investigatory resources, failing to attempt to develop these claims himself”), *aff’d sub nom.*, *Jones v. Shinn*, 943 F.3d 1211 (9th Cir. 2019).⁹ Similarly, the Fifth Circuit has held that, although “*Martinez* does not apply to claims that were fully adjudicated on the merits by the state habeas court,” it may apply when new evidence revealed that state habeas counsel pursued the claim ineffectively. *Escamilla v. Stephens*, 749 F.3d 380, 394–95 (5th Cir. 2014).

The Sixth and other circuits’ approach also conflicts with this Court’s well-established application of the Sixth Amendment standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), and incorporated by *Martinez*, 566 U.S. at 14. To meet the *Strickland* standard, counsel’s performance must satisfy an “objective standard of reasonableness” and discharge his or her duties according to “prevailing professional norms.” *Id.* at 688. This Court has applied these prevailing standards in a wide variety of instances in which counsel failed to secure expert services and to investigate, develop, and present evidence regarding a defendant’s mental impairments. *See, e.g., Hinton v. Alabama*, 571 U.S. 263, 272 (2014) (per curiam) (holding under “straightforward application” of *Strickland*, defense counsel’s failure to request additional funding to replace inadequate expert amounted to deficient performance); *Porter v. McCollum*, 558 U.S. 30, 40 (2009) (per curiam) (holding

⁹ The State of Arizona had announced it will seek this Court’s review of the decision in *Jones*. *See Jones v. Shinn*, No. 18–99006, ECF No. 88 (9th Cir. Aug. 25, 2020).

counsel's failure to develop and present evidence regarding the defendant's military service and other psychological impairments unreasonable); *Rompilla v. Beard*, 545 U.S. 374, 376 (2005) (holding counsel's failure to discover evidence regarding social history and mental impairments, including possible fetal alcohol syndrome, unreasonable); *Wiggins v. Smith*, 539 U.S. 510, 535 (2003) (holding counsel's failure to properly investigate the defendant's history of physical and sexual abuse, homelessness, and diminished mental state unreasonable); *Williams v. Taylor*, 529 U.S. 362, 396–97 (2000) (holding counsel's failure to discover mitigating evidence of the defendant's childhood abuse, mental retardation, and helpfulness to prison officials unreasonable).

Rather than determining whether post-conviction counsel's representation was deficient representation under these standards, the Sixth Circuit replaced this review with a less demanding and undefined standard of whether counsel acted in "good faith." App. 13a. By adding a bad-faith requirement, the Sixth Circuit has untethered *Martinez* from the *Strickland* ineffective assistance of counsel inquiry.

Protection of the Sixth Amendment requires *effective* post-conviction representation, as this Court held in *Martinez* and *Trevino*. *Trevino*, 569 U.S. at 422; *Martinez*, 566 U.S. at 12. Limiting the *Martinez* cause exception to instances in which post-conviction counsel has wholly omitted the claim from a state petition or when counsel has acted in "bad faith" improperly forecloses federal review of a nominally presented claim, regardless of how deficient post-conviction counsel was in its development and presentation. Indeed, this Court's holding in *Martinez* expressly

recognized that factual development may be critical to the presentation and litigation of such claims. 566 U.S. at 13 (“Ineffective-assistance claims often depend on evidence outside the trial record.”); *see also Trevino*, 569 U.S. at 429 (recognizing that a state’s “procedural framework, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal”).

Given this recognition, unsurprisingly, this Court has found Sixth Amendment violations when counsel had the wherewithal to present an issue in general terms or to recognize the existence of a possible avenue for mitigation or relief, but nonetheless was ineffective for failing to support cursory arguments with readily available and compelling evidence. *See, e.g., Porter*, 558 U.S. at 32, 39–40, 44 (finding constitutional violation where counsel failed to present mitigating evidence regarding defendant’s mental health, family background, and military service, despite presenting testimony about defendant’s behavior and telling jury that defendant was not “mentally healthy”); *Wiggins*, 539 U.S. at 515, 534–35 (finding constitutional violation where counsel failed to present mitigating evidence about defendant’s life history, despite informing the jury in opening statements that it would hear such evidence); *Williams*, 529 U.S. at 397–98 (finding constitutional violation where counsel failed to investigate and present substantial mitigation evidence about defendant’s childhood and intellectual deficiencies, despite presenting some mitigating evidence about defendant’s background).

B. This Case Presents a Good Vehicle for Resolving the Conflicting Approaches.

1. Mr. Hugueley Established Cause and Prejudice to Excuse the Procedural Default.

Under *Martinez*, a petitioner avoids the application of the procedural default doctrine by demonstrating “cause” for the default, which is established when “appointed counsel in the initial-review collateral proceeding, where the claim should have been raised, was ineffective under the standards of *Strickland v. Washington*, 466 U. S. 668 (1984).” *Martinez*, 566 U.S. at 14. In addition, the petitioner must establish “that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, which is to say that the prisoner must demonstrate that the claim has some merit.” *Id.* Mr. Hugueley fully complied with the *Martinez* requirements and thus is entitled to federal review of the otherwise defaulted claims.

a. Post-conviction counsel’s ineffective representation resulted in the procedural default.

Mr. Hugueley presented the lower courts with compelling evidence that post-conviction counsel’s deficient and prejudicial representation with respect to his Sixth Amendment claim resulted in the procedural default. After Mr. Hugueley instituted post-conviction proceedings, the post-conviction court appointed Kelly Gleason. R. 130–20. Throughout the proceedings, Ms. Gleason was unable to meet the deadlines set by the court.¹⁰ Most importantly, although she presented a pro forma Sixth

¹⁰ *See, e.g.*, R. 130-20, PageID 7405 (noting that she was counsel of record in nine capital post-conviction proceedings, including two clients that had scheduled executions); *id.* at 7404 (demonstrating that counsel filed a motion to extend the time for filing the amended petition on the date it was due, stating that she had “not begun investigation of Mr. Hugueley’s case other than requesting” some records); R. 42-2,

Amendment claim that trial counsel failed to investigate and challenge Mr. Hugueley's competency to stand trial, her representation with respect to that claim was fatally deficient.

Post-conviction counsel was aware that medical experts diagnosed Mr. Hugueley with "multiple and ongoing diagnoses of mental illnesses from an early age" and prescribed "multiple and concurrent psychoactive medications," as she admitted in a declaration submitted in the district court. R. 130-20, PageID 7409. Ms. Gleason further acknowledged her obligation to develop proof of counsel's deficient and prejudicial failure to investigate Mr. Hugueley's mental impairments. *Id.* Nevertheless, post-conviction counsel never investigated Mr. Hugueley's background and functioning. *See, e.g.*, R. 130-20, PageID 7420 (noting that by the late stage when Mr. Hugueley's was attempting "waive" post-conviction she had no social history to provide the evaluating expert). As a result, the extensive evidence of Mr. Hugueley's lifelong history of mental impairments detailed in the lower courts was not developed until the commencement of federal proceedings.

Post-conviction counsel's further failure to secure expert assistance and a brain scan constitutes deficient representation. Although Ms. Gleason understood the need for expert assistance to present a Sixth Amendment claim, she did not even file the relevant motions for such assistance until months *after* she filed the amended

PageID 1685; R. 130-20, PageID 7406 (requesting a further extension the day after the amended petition was due).

petition.¹¹ R. 42-1, PageID 1622–82; R 101-1, PageID 5148–62; *see, e.g., Porter*, 558 U.S. at 40 (holding counsel performed deficiently by failing to investigate mitigating mental health information presented in defendant’s competency report); *cf. Williams*, 529 U.S. at 395 (noting counsel deficiently did not begin to prepare for the sentencing phase “until a week before the trial.”).

When she finally did file motions for expert assistance, including for brain scans and for the appointment of a neuropsychologist, a psychiatrist, and a pharmacologist, she flouted clear pleading requirements and inexcusably failed to support the motions with sufficient reasoning. R. 130-20, PageID 7414; R. 101-2, PageID 5163–68. The court denied each of these motions because counsel failed to: (1) plead a particularized need for such services, (2) comply with well-established Tennessee procedural requirements , and (3) explain how brain scans were relevant to Mr. Hugueley’s incompetence to stand trial.¹² R. 130-20, PageID 7414. Specifically,

¹¹ Counsel submitted her initial motions in August 2007, more than seven months after she submitted the amended petition. R. 130, PageID 7409–12. Counsel admits that she submitted these motions for experts with “the little I knew about Mr. Hugueley’s mental health history.” R. 130-20, PageID 7410. The post-conviction proceeding was concluded without her ever completing a substantive investigation of Mr. Hugueley’s background. R. 130-20, PageID 7420.

¹² Counsel admits that she possessed sufficient information to properly support her motion, but inexplicably failed to do so:

In 2007 I was aware that MRI scans had, in fact—contrary to the opinion of the trial court—been available to trial counsel.... I knew or should have known that the trial court had ordered a pretrial MRI scan of Mr. Hugueley that had not been performed because of the intervention of TDOC guards. I also knew that it is possible that a MRI scan could reveal an injury to or malformation of the brain which an

counsel neglected to comply with Tennessee Supreme Court Rule 13, which requires that counsel make “[e]very effort” to find an expert within 150 miles of the forum court. R. 130-20, PageID 7408–16. Despite counsel’s failure, the post-conviction court noted that counsel’s pleading did not comport with Rule 13 “at this time” and encouraged her to remedy the deficient pleading. R. 130-20, PageID 7414. Disregarding the court’s clear direction, post-conviction filed a second, renewed motion that did nothing to comply with Rule 13. R. 131-17, PageID 7500–02. The motion was predictably denied. R. 131-18, PageID 7503–05. As this Court held in *Hinton*, counsel’s “unreasonable failure to understand the resources that state law made available” presents a “straightforward application” of *Strickland*. 571 U.S. at 272, 275.

Post-conviction counsel repeated this pattern of deficient representation during the proceedings to determine Mr. Hugueley’s competency. After the court determined that hearing was necessary regarding Mr. Hugueley’s competency to withdraw his state petition, post-conviction counsel, again, filed a pro forma motion for brain imaging, including a MRI, without a declaration or any other support from a mental health expert. R. 101-1, PageID 5148–62. Unsurprisingly, without such information, the court denied the motion, again concluding erroneously that the

expert would be able to determine pre-dated the trial of this matter. Despite this knowledge, I did not attempt to educate the trial court with a renewed motion.

R. 130-20, PageID 7415.

present condition of Mr. Hugueley’s brain had no bearing on his prior mental state or his competency to waive post-conviction. R. 131-16, PageID 7497.

Mr. Hugueley also demonstrated prejudice from post-conviction counsel’s deficient representation. Had she acted in accordance with prevailing standards, counsel would have developed substantial evidence of Mr. Hugueley’s life-long history of mental illness and erratic behavior, imaging of his congenital brain defects, and expert testimony about his severe mental illness. Counsel would have been able to present experts who would have testified that Mr. Hugueley was incompetent at the time of his waiver,¹³ including a trial expert who—now furnished with the results of a thorough investigation—would have testified that Mr. Hugueley was incompetent during the trial and over the course of the various legal proceedings,¹⁴ numerous lay

¹³ See *expert reports submitted in habeas*, R. 127-5, PageID 5835–45 (Mr. Hugueley suffers from “marked brain abnormality,” “abnormal cortical thickening,” and “reduced size of the hippocampus,” that render his thinking “irrational and not based in reality.” “Together the abnormalities outlined here indicate significant deficits resulting in a virtually global neurocognitive syndrome, with marked dysexecutive features.” His brain structures are “very significantly abnormal” and that malformation is “likely developmental in nature—having affected his behavior since early in his life—if not since birth.”); R. 127-4, PageID 5788–5834 (opining “Stephen Hugueley was incompetent to stand trial in his capital case. Stephen suffers from a mental disease or defect that, at the time of his trial, rendered him unable to ‘consult with his lawyer with a reasonable degree of rational understanding’”; and finding Mr. Hugueley “was incompetent to waive his post-conviction proceedings, as he lacked the ‘capacity to appreciate his position and make a rational choice with respect to continuing or abandoning further litigation’”).

¹⁴ R. 130-11, PageID 7366 (psychologist, who examined Mr. Hugueley pretrial, notes that if she had been provided an adequate history and the brain scans, she would have concluded “in 2002-2003, Mr. Hugueley almost certainly lacked the ability to consult with his lawyer with a reasonable degree of rational understanding to assist in his defense.”).

witnesses who would have described his erratic behavior,¹⁵ and medical records that predated the capital crime and documented the lifelong manifestations of his brain defect.¹⁶

In addition to fully supporting the Sixth Amendment claim that post-conviction counsel nominally pled, this information would have provided substantial support for her assertion that Mr. Hugueley was incompetent to “withdraw” his state petition. Instead, Ms. Gleason’s deficient representation with respect to the Sixth Amendment claim left her unequipped to demonstrate that Mr. Hugueley’s purported withdrawal of the state petition was the product of his mental illness.

These cascading failures by post-conviction counsel resulted in the denial of *any* expert assistance in a post-conviction proceeding where the primary claims pertained to competency to stand trial. The post-conviction court’s decision to allow Mr. Hugueley to withdraw his petition was based solely upon the evaluation of an expert proposed by the state.¹⁷ Beyond post-conviction’s counsel failure to secure

¹⁵ Stephen’s maternal aunt observed “Steve has had fits since he was a baby.” R. 128-1, PageID 6079. As he grew older, she observed that he had “strange spells” where he would exhibit odd behavior. R. 130-1, PageID 6080. He is also documented to have physically attacked objects, and he “would scream and kick and destroy whatever was around him.” R. 130-1, PageID 6080; *see also*, R. 128-2, PageID 6300-02 (noting “Steve was a strange one—like he had a double personality. He’d be smiling at you one minute and then the next minute he’d go off.... Some people thought he was crazy, but he was just trying to make friends. If Steve thought of you as a friend he would take care of you and do anything for you.”).

¹⁶ *See* R. 128-1, PageID 6036–41 (describing Mr. Hugueley’s history as a juvenile and young adult of mental illness, self-injury, and bizarre behavior).

¹⁷ The state-tendered expert, Bruce Seidner, Ph.D., was unlicensed at the time he testified at the competency hearing. 42-12, PageID 2875. In federal habeas

expert assistance, her failure to properly investigate the case left her unable to litigate Mr. Hugueley's competence. Her failure to investigate meant that she was incapable of providing the evaluating expert with *any* information regarding Mr. Hugueley's background. As she admitted "I did not have additional materials to submit to Dr. Seidner, because no social history or mitigation investigation had been done in his case." R. 130-20, PageID 7420.¹⁸ Moreover, given her deficient representation, she had scant information to cross-examine Dr. Seidner or discredit his conclusions based upon Mr. Hugueley's previous history.

b. The Defaulted Claim Was Substantial.

In the lower courts, Mr. Hugueley established that his defaulted claim that trial counsel rendered ineffective assistance for failing to raise his incompetence has merit.¹⁹ *Martinez*, 566 U.S. at 14. Mr. Hugueley established that reasonably competent trial counsel would have undertaken an investigation of his ability to understand the nature of the proceeding against him and assist in his defense. Trial

proceedings, Mr. Hugueley's expert noted there were "several problematic issues" which "undermine and invalidate [Dr. Seidners] ultimate conclusion." R. 127-4, PageID 5813. Among these issues were Dr. Seidner's discounting Mr. Hugueley's long and documented history of suicidality, disregarding his history of visual and auditory hallucinations, and rendering a clinical inappropriate diagnosis. R. 127-4, PageID 5813-16.

¹⁸ Even though trial counsel collected (but did not review) Mr. Hugueley's juvenile records, including his extensive history of mental health treatment and medication, R.130-8, PageID 7294, post-conviction counsel did not submit those records to the court's competency expert for his consideration, R. 130-20, PageID 7420.

¹⁹ The Sixth Circuit did not address whether the showing of a substantial claim satisfied the *Martinez* exception.

counsel was aware of Mr. Hugueley’s suicidal and bizarre behavior. *See, e.g., Wiggins*, 539 U.S. at 511 (“Any reasonably competent attorney would have realized that pursuing such leads was necessary ...”). Indeed, at arraignment, Mr. Hugueley exhibited self-defeating and irrational behavior, initially stating that he would plead guilty to capital murder if he would be permitted to wear prison-issue jeans and a studded dog collar. R. 130-11, PageID 7361. At each subsequent court appearance, Mr. Hugueley was increasingly odd and erratic: he cursed at the court, threatened and insulted counsel, dictated a nonsensical trial strategy, testified in support of the prosecution’s case and, ultimately, purported to waive the presentation of mitigating evidence. *See, e.g., id.*, PageID 7511; R.132-1, PageID 7520; R. 41-4, PageID 623–56. Given these circumstances, any reasonably competent counsel would have conducted an investigation of Mr. Hugueley’s mental functioning. R. 130-9, PageID 7307 (describing standard of care at the time of trial).

As Mr. Hugueley alleged, however, trial counsel failed to conduct a mental health investigation or raise the question of Mr. Hugesley’s competency to stand trial. Trial counsel did no research on the law of competency and “never considered the possibility that Mr. Hugueley’s behavior was not something he could control or that his decisions might be the result of brain impairment.” R. 130-8, PageID 7292–93.

Although trial counsel had obtained expert assistance,²⁰ counsel’s failure to provide those experts the necessary mental health history and obtain appropriate

²⁰ Mr. Hugueley originally was represented by the Hardeman County Public Defender, who retained an expert neuropsychologist and a mitigation specialist to

brain scans invalidated those experts' efforts. The experts' requests for additional information prior to trial went unanswered.²¹ The mental health experts also requested brain imaging, which trial counsel failed to ensure was performed. At his experts' request, trial counsel obtained an order for MRI and computed axial tomography (CAT) scans of Mr. Hugueley's brain. R. 130-15, PageID 7386–87. When Mr. Hugueley was transported for the scans, however, the correctional officer refused to remove his handcuffs to permit a MRI and, only a CAT was conducted. R. 130-16, PageID 7390. Counsel's failure to obtain an MRI stemmed from his woeful ignorance of the importance of the more discerning MRI scan, as counsel readily admitted in his declaration: "At that time I did not appreciate the distinction between CT and MRI scans. In fact, I don't know the difference today." R. 130-8, PageID 7293. Mr. Hugueley further presented proof that counsel never even realized that the court order was not fulfilled: "I did not realize that no MRI scan was conducted ... If I had

assist with the case. R. 130-8, PageID 7291. Prior to conducting the necessary investigation, however, the public defenders withdrew due to a conflict of interest. R. 130-8, PageID 7290. Successor counsel, Michie Gibson recognized the need to retain a psychiatrist. R. 130-8, PageID 7291.

²¹ Mr. Gibson concedes that he did not provide the investigation results to the experts: "We did not provide [the mitigation specialist's] work product to any experts. I didn't see any reason to do so. I, myself, did not review the records she collected." R. 130-8, PageID 7291. Notably, the neuropsychologist informed trial counsel of the need for further investigation: "I felt that the current investigation of both sides of his family was incomplete and inadequate for me to fully discuss the issues I was asked to examine." R. 130-11, PageID 7364. The expert further states that she "expected to receive additional records to review," R. 130-11, PageID 7364, but trial counsel never provided any of the records gathered. R. 130-8, PageID 7291. In part, these failings were due to the fact the mitigation report was not even completed until the trial began. R. 130-18, PageID 7396.

known that one of the scans ordered by the Court had not been conducted, I would have litigated that issue ... I would have had every reason to challenge that and no reason not to challenge that.” *Id.*

Finally, Mr. Hugueley established that the Sixth Amendment violation was prejudicial. As proof presented to the district court showed, had the trial experts had Mr. Hugueley’s mental health history and brain scans, they would have opined that Mr. Hugueley was not competent to stand trial. As a trial expert concluded, “It is my opinion that if I had received this [social history and brain scans] information in 2002-2003, it would have changed my assessment of his rational understanding of the charges against him and his ability to assist counsel in his defense.” R. 130-11, PageID 7366.

2. The Sixth Circuit Misapplied *Martinez* and *Strickland*.

As noted above, the panel opinion impermissibly limits *Martinez’s* equitable relief, holding that the cause exception applies only to ineffective assistance of trial counsel claims that post-conviction counsel failed to plead. App. 13a. In doing so, the panel completely ignored the prejudicial effect of post-conviction counsel’s failure to develop the Sixth Amendment claim that she pled. Moreover, by adding a bad faith requirement, the panel misapplied *Strickland* to her post-pleading representation.

The panel did not address whether counsel’s actions constituted deficient representation. Instead, the panel’s entire discussion of the issue was a non-sequitur:

In support, he notes that several of Gleason’s motions for expert assistance were denied because she failed to abide by a Tennessee Supreme Court rule that required counsel

to make “every effort” to obtain experts located within 150 miles of the court....Each of Gleason’s proposed neuropsychological, psychopharmacology, and psychiatric experts was located outside of the geographic boundaries set out by the rule and so the post-conviction court denied funding for them.

Id. (internal citation omitted). Although Ms. Gleason’s unreasonable failure to *comply* with state procedure (or explain why she was unable to do so) doomed the motions, the lower court failed to address this deficient performance or analyze the prejudice that flowed therefrom. Instead, the court persisted in its recitation of counsel’s actions following the filing of the amended petition:

Starting in January 2007, Gleason also spent several months exploring avenues for evidence in support of the claim, including filing motions for experts and submitting Hugueley’s mental-health reports into the record. When Hugueley first expressed a desire to withdraw his petition, Gleason also independently raised her own concerns about his competency, and successfully demonstrated that a genuine issue existed on that point.

App. 14a (emphasis added). Because Mr. Hugueley’s *Martinez* argument focused on counsel’s failure to undertake minimal efforts to investigate his multiple mental impairments *prior* to pleading the Sixth Amendment claim, the court’s catalogue of her actions following the pleading did not address Mr. Hugueley’s claim. The court thus failed to engage with the proof and instead adopted an undefined bad faith requirement that is contrary to this Court’s *Strickland* precedent.

Finally, the panel concluded that, absent post-conviction counsel’s deficient representation, “there was no indication that the post-conviction court would have granted” the motions for expert assistance and “there was no indication that

additional experts or new brain scans would have so obviously revealed Hugueley's alleged incompetency that the post-conviction court's conclusion to the contrary was clearly incorrect." *Id.* The Sixth Circuit's assertions are factually and legally incorrect. As detailed above, had post-conviction counsel provided effective representation, she would have developed a substantial history of Mr. Hugueley's mental deficits that would have provided a factual basis for her Sixth Amendment claim, supported the motions for expert assistance and imaging, and shown that he was incompetent to withdraw his petition.

Moreover, the *Strickland* prejudice standard requires a petitioner to demonstrate that, but for counsel's deficient performance, the result of the proceeding would have been different. *Strickland*, 466 U.S. at 694. Rather than apply with well-established standard, the Sixth Circuit approach is to require Mr. Hugueley's proof to "*so obviously revealed*" his "incompetency that the post-conviction court's conclusion to the contrary was *clearly incorrect*." App. 14a (emphasis added). By grafting this amorphous and substantially more exacting standard, the Sixth Circuit imposed a burden that this Court rejected in *Strickland*. 466 U.S. at 694 ("a defendant need not show that counsel's deficient conduct more likely than not altered the outcome in the case").

II. CERTIORARI IS WARRANTED TO ENSURE THAT FEDERAL COURTS EMPLOY CONSISTENT STANDARDS TO DETERMINE WHETHER CLAIMS PRESENTED IN FEDERAL COURT DIFFER FROM THE CLAIMS PRESENTED IN THE STATE COURT POST-CONVICTION PROCEEDING.

A. The Circuits are Split on the Standards for Determining Whether a Claim was Presented in the State Court Proceedings.

The Sixth Circuit’s decision also reflects the lower courts’ conflicting application of *Martinez* to claims that were not presented to the state courts. App. 15a n.4. Contrary to decades of exhaustion jurisprudence, the panel concluded that *any* allegation of ineffective assistance of counsel necessarily encompasses *all* Sixth Amendment claims:

On this appeal, Hugueley raises a new theory of relief that was never raised before ... even if this theory of relief was not raised in the state post-conviction proceedings, the vehicle through which Hugueley could obtain relief through the theory—his ineffective-assistance-of-trial-counsel claim—unquestionably was.... Hugueley’s post-conviction counsel *could not have* been ineffective by not raising one theory of relief that could have possibly underpinned his ineffective-assistance-of-trial-counsel claim.

Id. (emphasis added).

This holding plainly conflicts with *Trevino*, in which this Court determined that post-conviction counsel’s ineffectiveness excused the default of an unpled Sixth Amendment claim—even though post-conviction counsel pled other claims related to the performance of trial counsel. 569 U.S. at 429. In *Trevino*, post-conviction counsel raised an ineffective assistance of counsel claim for deficient performance during the capital sentencing phase, but did not raise a Sixth Amendment claim for failure to investigate and present mitigating evidence. *Id.* at 418. Although the Fifth Circuit concluded the mitigation claim was procedurally defaulted, this Court held that post-conviction counsel’s failure to raise and litigate the claim could provide cause for the default. *Id.* at 429.

The Sixth Circuit’s decision also conflicts with the Third, Ninth, and Fifth circuits’ application of *Martinez*. In *Workman v. Superintendent*, 903 F.3d 368 (3d Cir. 2018), the Third Circuit held that post-conviction counsel’s raising a claim that trial counsel failed to request a jury instruction did not preclude a *Martinez* inquiry for a claim that “trial counsel’s failure to present evidence or argue consistently with the evidence presented by the jury.” *Id.* at 373, 375. In *Detrich v. Ryan*, 740 F.3d 1237 (9th Cir. 2013) (en banc), the Ninth Circuit recognized that a claim of trial counsel ineffectiveness does not preclude the presentation of other Sixth Amendment claims:

We therefore read *Martinez* to allow new claims of trial-counsel IAC, asserted for the first time on federal habeas, even if state PCR counsel properly raised other claims of trial-counsel IAC. The Court implicitly confirmed this reading in *Trevino*, where it held that *Martinez* applied to Trevino’s procedurally defaulted trial-counsel IAC claims even though Trevino’s state PCR counsel had presented other trial-counsel IAC claims during the initial-review collateral proceeding.

Id. at 1248. Similarly, following *Trevino*, the Fifth Circuit applied *Martinez* to review procedurally defaulted claims, despite post-conviction counsel raising other Sixth Amendment claims. *Nelson v. Davis*, 952 F.3d 651, 671–72 (5th Cir. 2020) (conducting a *Martinez* inquiry when new evidence could “fundamentally alter[]” a claim, “render[ing] it a new claim that was not adjudicated on the merits by the state court”).

B. This Case Presents a Good Vehicle for Resolving the Conflicting Approaches.

Without addressing the proof Mr. Hugueley presented, the Sixth Circuit dismissed his claim of ineffective assistance of counsel for failure to challenge his prior convictions. In a footnote, the court categorically found that *Martinez’s*

equitable excuse for default does not extend to unpled Sixth Amendment claims unless post-conviction counsel failed to plead *any* ineffective assistance claims at all. Because Mr. Hugueley’s proof demonstrates that trial counsel was ineffective in failing to develop proof of his incompetence at the time of his pleas to the prior offenses—which underpinned the “prior crimes of violence” aggravating circumstance—and that post-conviction counsel was ineffective in failing to plead, develop, and prove that Sixth Amendment claim, Mr. Hugueley’s case presents an excellent vehicle to resolve the conflict between the circuits’ divergent approaches.

1. Mr. Hugueley Established Cause and Prejudice to Excuse the Procedural Default.

a. Post-conviction counsel’s ineffective representation resulted in the procedural default.

Although post-conviction counsel faulted trial counsel for not investigating Mr. Hugueley’s competence to stand trial, and though her questions about his competence should have prompted a similar conclusion concerning trial counsel’s failure to challenge Mr. Hugueley’s prior offenses, post-conviction counsel failed to raise this claim. R. 42-1 at PageID 1622. As the Ms. Gleason admits, the omission was due to her ineffectiveness: “I did not consider that Mr. Hugueley might have had basis for setting aside those convictions under state law despite the fact that it is a claim which I would normally investigate and raise, as I have in other cases.” R. 130-20 PageID 7406–07.

As detailed above, post-conviction’s deficient representation was prejudicial. Had counsel conducted a rudimentary investigation into Mr. Hugueley’s mental

condition throughout his life—and particularly during the prior criminal proceedings—she would have developed substantial information demonstrating his incompetency during those proceedings. *Rompilla*, 545 U.S. at 376; *Wiggins*, 539 U.S. at 535 *Williams*, 529 U.S. at 396–97. That readily available evidence would have demonstrated that Mr. Hugueley “exhibited symptoms of mental, emotional, and cognitive impairment from infancy,” R. 128-1, PageID 5947, as the result of brain malformation that was developmental—existing prior to age eighteen, if not congenital, R.127-4, PageID 5788–834; R. 127-5, PageID 5835–45; R. 127-6, PageID 5846–942.

b. The Defaulted Claims Was Substantial.

Trial counsel not only failed to challenge the aggravating circumstances used to sentence Mr. Hugueley to death: it never occurred to him to try: “[W]e did not investigate Mr. Hugueley’s prior offenses – frankly that did not occur to me. I viewed my representation to be in his capital case and did not consider the possibility of attacking the prior convictions that were used as aggravating circumstances.” R. 130-8, PageID 7291. Counsel’s failure allowed the state to introduce unanswered proof not only of Mr. Hugueley’s guilty pleas to both a murder and an attempted murder in prison, but also to the murder of his own mother.

This Court has recognized that counsel has a duty “to conduct a thorough investigation of the defendant’s background” in capital cases, *Williams*, 529 U.S. at 396, including “efforts to discover all reasonably available mitigating evidence and evidence to rebut any aggravating evidence that may be introduced by the

prosecutor.” *Wiggins*, 539 U.S. at 524 (quoting American Bar Association, Guidelines for the Appointment and Performance of Counsel in Death Penalty Cases 11.4.1.C 93 (1989)). Thus, when counsel is on notice that important mental health evidence exists, a failure to uncover and present such evidence constitutes deficient representation. *See, e.g., Rompilla*, 545 U.S. at 385, 377 (holding trial counsel had a duty to “make all reasonable efforts” to investigate and rebut prosecution evidence).

Had counsel represented Mr. Hugueley in accordance with prevailing professional norms, counsel would have discovered Mr. Hugueley’s brain malformation and its deleterious effect on his ability to rationally assist counsel. Given that the nature of his brain impairment demonstrates that it is congenital, discovery of the impairment would have, inherently, provided counsel with proof that Mr. Hugueley had been incompetent to assist counsel at the time of his prior guilty pleas. Counsel could have presented proof that, “because of his brain malformation, Mr. Hugueley’s capacity to rationally understand the proceedings is compromised” and could have shown that Mr. Hugueley was incompetent to stand trial for each of the prior offenses. R. 127-5, PageID 5840. Counsel’s failure to recognize the issue, develop the proof, and vacate the prior convictions was deficient performance. *Johnson v. Mississippi*, 486 U.S. 578, 586 (1988).

Mr. Hugueley also demonstrates that trial counsel’s failures were prejudicial. Had counsel developed the proof that Mr. Hugueley was incompetent at each of his pleas to his prior crimes, counsel could have challenged—and vacated—Mr.

Hugueley's prior convictions.²² Without the aggravating circumstance, there is a reasonable probability that at least one juror would not have voted for death. *Cone v. Bell*, 556 U.S. 449 (2009) (remanding for assessment of reasonable probability constitutional error affected judgment of at least one juror at Tennessee capital sentencing proceeding).

2. The Sixth Circuit Misapplied *Martinez* and Well-Established Procedural Default and Exhaustion Principles.

As noted above, the panel opinion held that whenever a petitioner raises any Sixth Amendment claim in state post-conviction proceedings, *Martinez* cannot excuse the procedural default of another claim based on a different theory of ineffective assistance of trial counsel. App. 14a n.4. In doing so, the panel threatens to unravel decades of case law defining procedural default and exhaustion doctrines.

When this Court decided *Martinez*, it did so in the context of the well-established procedures for determining whether a claim was subject to procedural default or exhaustion doctrines. Notably, this Court did not alter these doctrines in *Martinez* but assumed that lower courts would continue to apply existing precedent. *Martinez*, 566 U.S. at 7 (citing *Sykes*, 433 U.S. at 84–85, 90–91 (1977)) (applying

²² Under Tennessee law, the statute of limitation for filing a post-conviction petition is tolled during a petitioner's incompetency. *Williams v. State*, 44 S.W.3d 464, 469 (Tenn. 2001). Proof that Mr. Hugueley was incompetent at the time of his prior pleas would have resulted in the vacatur of those convictions. Failing vacatur, it would have at least provided powerful rebuttal to whatever aggravating effect the conviction engendered.

procedural default doctrine to claim not properly presented in the state petition). This Court has long held that a federal claim is not fairly presented to a state court when the specific legal theory was not presented, *Picard v. Connor*, 404 U.S. 270, 276 (1971), or when newly presented was evidence “fundamentally alter[s]” the claim, *Vasquez v. Hillery*, 474 U.S. 254, 260 (1986). The Sixth Circuit’s approach is incompatible with this Court’s well-established precedents.

CONCLUSION

This Court should grant this petition for a writ of certiorari.

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CERTIFICATE OF SERVICE

Pursuant to Supreme Court Rule 29.5(a), I certify a copy of the Petition for a Writ of Certiorari was sent via First Class mail to the U.S. Supreme Court and to counsel for the Respondent on January 19, 2021.



Amy D. Harwell