CAPITAL CASE

No. 20-6929

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 UNITED STATES COURT OF
APPEALS FOR THE SIXTH CIRCUIT

REPLY TO RESPONDENT'S BRIEF IN OPPOSITION

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I. INTRODUCTION

Mr. Hugueley's case presents two issues that require this Court's attention and resolution: (1) the disagreement among the circuits as to the application of *Martinez v. Ryan*, 566 U.S. 1 (2012), to ineffective assistance of trial counsel claims that are pled but not developed or presented in an initial state court post conviction proceeding, and (2) the Sixth Circuit's jettisoning of established exhaustion principles to create a new rule that the presentation in state court of any claim of ineffective assistance of trial counsel necessarily encompasses all claims of ineffective assistance of trial counsel. Seemingly conceding the conflicts among the circuits[1] and that these issues require this resolution by this Court—and without addressing the second issue at all—the Warden claims that Mr. Hugueley's case is an inappropriate vehicle for the resolution of the *Martinez* issue.

The Warden's contention that the case is not a good vehicle to resolve the questions presented is a fallacy. Only by ignoring the ineffectiveness of post-conviction counsel can the Warden contend that "waiver"—caused the default of Mr.

[1] Since the filing of the Petition for a Writ of Certiorari (Petition), the courts of appeals have decided two additional cases that reflect the divergent opinions of the circuits applying *Martinez*. *See Vandross v. Stirling*, 986 F.3d 442, 451 (4th Cir. 2021) ("We have already held on more than one occasion that *Martinez*, which authorizes a federal court to consider a new claim that was procedurally defaulted, does not provide a similar exception for new evidence supporting a claim that was in fact presented in state court."); *Broadnax v. Lumpkin*, 987 F.3d 400, 409 n.7 (5th Cir. 2021) ("'Thus, once a claim is considered and denied on the merits by the state habeas court, *Martinez* [*v. Ryan*, 566 U.S. 1, 132 S. Ct. 1309, 182 L.Ed.2d 272 (2012)] is inapplicable, and may not function as an exception to *Pinholster*'s rule that bars a federal habeas court from considering evidence not presented to the state habeas court.'") (quoting *Escamilla v. Stephens*, 749 F.3d 380, 395 (5th Cir. 2014)).

Hugueley's ineffective assistance of trial counsel claims. The Warden's attempt to distort the state court's default ruling fails because the state court could not permit the "withdrawal" of the petition had Mr. Hugueley's counsel performed in accordance with constitutional standards. The Warden seeks to have this Court ignore post-conviction counsel's deficient performance with respect to the Sixth Amendment claim that trial counsel failed to adequately investigate, develop, and present Mr. Hugueley's incompetence to stand trial. As the record amply demonstrates, post-conviction counsel—as had trial counsel—failed to investigate or litigate the claim. Her deficiencies preceded—and foreordained the outcome of—the competency hearing.

The Warden's auxiliary argument is that certiorari is not appropriate because Mr. Hugueley's Sixth Amendment claims were not substantial under *Martinez*. This, too, fails, because the record reflects that trial counsel failed to investigate Mr. Hugueley's mental health condition despite numerous red flags, failed to ensure compliance with a court order that would have revealed his marked brain abnormalities, and neglected to even read any of the records that documented a long history of mental illness, suicidality, and trauma. These failures constitute a serious departure from prevailing professional norms and constitute deficient performance. Accordingly Mr. Hugueley's ineffective assistance of trial counsel claims, clearly having "some merit," is substantial under *Martinez*. *Martinez,* 566 U.S. at 14 (citing *Miller-El v. Cockrell*, 537 U.S. 322 (2003)).

II. THE WARDEN'S PUTATIVE DISTINCTION BETWEEN THIS AND OTHER *MARTINEZ* CASES IS ILLUSORY: POST-CONVICTION COUNSEL'S INEFFECTIVENESS CAUSED THE "WAIVER" AND THE PROCEDURAL DEFAULT.

The Warden repeatedly asserts Mr. Hugueley's case is not an appropriate vehicle for the resolution of the *Martinez* question presented because Mr. Hugueley's "waiver" caused the default of his claims—not the ineffectiveness of post-conviction counsel. Brief in Opposition (BIO) at 14–17. Repeatedly making this assertion, however, does not alter the facts. The only reason the putative "waiver" was accepted by the state court was post-conviction counsel's failure to adequately investigate, plead, and present the claim that trial counsel unreasonably failed to raise Mr. Hugueley's incompetence to stand trial. The warden's argument fails because, had post-conviction counsel reasonably investigated and developed this Sixth Amendment claim, she would have demonstrated that Mr. Hugueley was as incompetent to waive his post-conviction proceeding as he was to stand trial—and for the same reasons. The brain malformation that impaired his functioning throughout his life, causing hallucinations, self-harm, and fits of psychotic behavior, prevented him from rationally choosing to abandon his post-conviction proceedings—just as it prevented him from consulting with counsel with a reasonable degree of rational understanding.

The Tennessee law of competency to waive post-conviction remedies in a capital case, codified in Tennessee Supreme Court Rule 28, specifies that a capital defendant must understand "the significance and consequences of withdrawing the post-conviction petition," "knowingly, intelligently, and voluntarily, without coercion,

withdraw[] the petition," and be "competent to decide whether to withdraw the post-conviction petition."[2] Tenn. Sup. Ct. R. 28, § 11(A)1–4; *see also Medina v. California*, 505 U.S. 437, 450 (1992) ("[I]t is contradictory to argue that a defendant may be incompetent, and yet knowingly or intelligently waive his right[s].") (internal citation and quotation marks omitted). Under this Rule, the relevant inquiry is "whether the prisoner possesses 'the present capacity to appreciate [his or her] position and make a rational choice with respect to continuing or abandoning further litigation or on the other hand whether the petitioner is suffering from a mental disease, disorder, or defect which may substantially affect the petitioner's capacity.'" *Reid ex rel. Martiniano v. State*, 396 S.W.3d 478, 512–13 (Tenn. 2013) (quoting Tenn. Sup. Ct. R. 28 § 11(B)(1)).

Simply, Mr. Hugueley could not have "waived" his right to pursue his post-conviction because he was not competent to do so. The Warden has never disputed the two central opinions that Mr. Hugueley's experts presented in the federal proceedings below: (1) that his brain is malformed in a way that inherently shows the damage long pre-dated his adult convictions; and (2) that this impairment caused him

[2] Tennessee's rule for determining competency to waive capital post-conviction proceedings mirrors federal standards of competency. *See, e.g.*, *Edwards v. Arizona*, 451 U.S. 477, 482 (1981) (A valid waiver must be a "knowing and intelligent relinquishment or abandonment of a known right or privilege."); *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 277 (1942) ("The task of judging the competence of a particular accused cannot be escaped by announcing delusively simple rules of trial procedure which judges must mechanically follow. The question in each case is whether the accused was competent to exercise an intelligent, informed judgment.").

to be unable to consult with his lawyer with a degree of rational understanding as required by the governing law.

Instead of engaging with Mr. Hugueley's incompetence, the Warden points talismanically to Mr. Hugueley's "waiver" in an attempt to convince this Court that this case is fact-bound and "not an appropriate vehicle" for resolving the circuit split. BIO at 14 (claiming that procedural default is solely attributable to Mr. Hugueley's waiver). The Warden's argument is unavailing because, *just as in every case to which Martinez applies*, the procedural default in this case—that is, Mr. Hugueley's putative "waiver"—was caused by post-conviction counsel's ineffectiveness. *See, e.g.*, *Martinez*, 566 U.S. at 14 (holding that the procedural default doctrine may not bar an "ineffectiveness claim of ineffective assistance of trial counsel when an attorney's errors (or the absence of an attorney) *caused* a procedural default in an initial-review collateral proceeding") (emphasis added),

The Warden posits that post-conviction counsel "'vigorously raised Hugueley's ineffective-assistance-of-counsel claim, including how trial counsel failed to properly litigate his competency to stand trial or waive the presentation of mitigating evidence.'" BIO at 13 (quoting *Hugueley v. Mays*, 964 F.3d 489, 500 (6th Cir. 2020)). This is a dubious proposition considering that, by her own admission, post-conviction counsel had neither collected the relevant records nor conducted any investigation at the time she filed Mr. Hugueley's amended petition. R. 130-20, PageID 7406. At the time Mr. Hugueley allegedly "waived" his post-conviction proceedings, post-conviction counsel had not investigated basic aspects of his background and mental

functioning. R. 130-20, PageID 7420. Furthermore, the amended petition omitted any claim that trial counsel had been ineffective for failing to challenge Mr. Hugueley's prior convictions. *Id.* at 7406–07; 42-1, PageID 1622–82.

The Warden misdirects the Court, eliding post-conviction counsel's failures with a characterization that she "vigorously challenged" the court's expert's conclusions and credentials and proffering a meaningless observation that "[t]he post-conviction court afforded Hugueley the opportunity to present additional evidence regarding his competency after the hearing, and post-conviction counsel supplemented the record with a report questioning the adequacy and reliability of Dr. Seidner's evaluation." BIO at 9 (citing *Hugueley*, 964 F.3d at 493, 497). That post-conviction counsel managed to show up to court, ask questions of the expert, and then submit a report she obtained pro bono opining that Dr. Seidner's methodology was flawed, does not transform her failures into constitutionally adequate representation.

Indeed, the record unquestionably demonstrates that post-conviction counsel's performance with respect to the trial counsel ineffectiveness claim was constitutionally deficient. She failed to investigate, despite the numerous facts that compelled a mental health investigation. R. 130-20, PageID 7406 (attesting that counsel had done "minimal" investigation prior to submitting the petition); *id.* at PageID 7408 (counsel had "spent very little time on the preparation of Mr. Hugueley's case"); *id.* at PageID 7420 (noting that counsel had conducted no social history investigation prior to the "waiver" proceeding). She failed to adequately plead his Sixth Amendment claims. R. 130-20, PageID 7406–07. She failed to comply with basic

pleading requirements resulting in the court's denial of her request for expert assistance. R. 130-20, PageID 7414–15. These compounding failures culminated in post-conviction counsel's failure to secure *any* expert assistance. In turn, the post-conviction court had no information with which to evaluate Mr. Hugueley's competency other than the opinion of the court's expert, Dr. Seidner. Counsel's failures led inexorably to the court's erroneous conclusion that Mr. Hugueley was competent because her failures deprived her of the knowledge and expert assistance necessary to challenge Dr. Seidner's suspect conclusions.[3]

Dr. Seidner concluded that Mr. Hugueley was competent to withdraw his petition and reasoned that, although Mr. Hugueley's views were unconventional, his desire to die was a reasonable reaction to the conditions of prison life. *See generally* R. 42-7, PageID 2595–2613 (Seidner Report). Had counsel performed adequately, however, counsel would have discovered Mr. Hugueley's organic brain impairments and would have been able to disprove these conclusions. First and foremost, counsel's failure to secure brain imaging to support the Sixth Amendment claim or challenge

[3] To the extent that there is any question about post-conviction counsel's deficient representation resulted in the procedural default, the district court should have conducted an evidentiary hearing and afforded Mr. Hugueley the opportunity to prove that he established cause to excuse the default. *See Clark v. Warden*, 934 F.3d 483, 494 (6th Cir. 2019) ("As a general matter, '[w]here there is a factual dispute, the habeas court must hold an evidentiary hearing to determine the truth of the petitioner's claims.'") (quoting *Huff v. United States*, 734 F.3d 600, 607 (6th Cir. 2013)). *See also Chase v. MaCauley*, 971 F.3d 582, 592 (6th Cir. 2020) ("An argument that ineffective assistance of counsel should excuse a procedural default is treated differently than a free-standing claim of ineffective assistance of counsel. . . . In particular, the latter must meet the higher AEDPA standard of review, while the former need not.") (internal citation and quotation marks omitted).

the waiver of the petition meant that Mr. Hugueley organic brain abnormalities went undiscovered. The failure to obtain these scans—due to an abject failure to abide by the pleading requirements—was undoubtedly prejudicial as these scans definitively and quantifiably show that Mr. Hugueley is not capable of rational decision-making. Counsel's failure to secure her own expert evaluation to support the Sixth Amendment claim similarly resulted in her failure to discredit Dr. Seidner's opinions. Dr. Seidner opined that Mr. Hugueley was not suicidal, despite elevations on both the indexes for suicidality and depression on the Personality Assessment Inventory, a lengthy, well-documented history of suicide attempts, and Mr. Hugueley's representations to Dr. Seidner that he was attempting to commit "suicide by state." R. 42-7, PageID 2607–09; R. 42-12, PageID 2933. Dr. Seidner also discounted the well-documented history of Mr. Hugueley's auditory hallucinations and diagnoses of psychiatric disorders. *See* R. 127-4, PageID 5813–16. He erroneously diagnosed Mr. Hugueley with a personality disorder—a diagnosis that required the absence of any Axis I mental illness. R. 127-4, PageID 5815–16. Furthermore, she was unequipped to cross-examine Dr. Seidner, both because she lacked her own expert and because she was unfamiliar with Mr. Hugueley's history of mental problems and had failed to conduct meaningful investigation into his case—even by the late date of his competency hearing. *See* R. 130-20, PageID 7420 ("I did not have additional materials to submit to Dr. Seidner because no social history or mitigation investigation had been done in this case.").

The Warden's assessment that post-conviction counsel did an adequate job with what she had to work is inapposite. The question is not her skill at making purses from sow's ears. The question is why she had only sow's ears with which to work. Post-conviction counsel has answered that question explicitly. She did not have the proof of Mr. Hugueley's brain impairment to support the Sixth Amendment claim and to demonstrate that he was incompetent to waive post-conviction review because she could not get the court to approve brain scans. R. 130-20, PageID 7414; R. 101-2, PageID 5163–68. The court would not approve brain scans because she did not meet the pleading requirements of showing a particularized need. R. 130-20, PageID 7414. She could not show a particularized need because she had not conducted a mitigation investigation. R. 130-20, PageID 7420. Counsel's failure to represent Mr. Hugueley in accordance with prevailing professional norms left the state court without the information necessary to accurately assess his competency to waive his post-conviction proceedings. R. 130-20, PageID 7409–12; 7415; 7420; Pet. for cert. at 18.

Finally, the Warden concedes there is a circuit split regarding the application of *Martinez* to instances in which post-conviction counsel pled but ineffectively failed to develop and support a Sixth Amendment claim. The Warden, however, attempts to distinguish Mr. Hugueley's case from those cited in the Petition, claiming that his case is distinct from either side of the split. BIO at 16. In essence, the Warden argues that *Martinez* offers no avenue for relief in cases in which the procedural default resulted from the petitioner's withdrawal of post-conviction proceedings. *Id.* The distinction drawn by the Warden is unavailing.

The Warden asks this Court to treat the procedural default of Mr. Hugueley's claim as different from other defaults encompassed by *Martinez*. *Martinez* itself never restricted its application to certain procedural defaults and rather instructed that a federal court may excuse any default of a claim when post-conviction counsel was "ineffective under the standards of *Strickland v. Washington*." *Martinez*, 566 U.S. at 14. For the purposes of that holding, it is irrelevant whether the default was the deficient failure to follow a procedural rule, the deficient failure to plead a claim, or the deficient failure to prove a claim. All those failures by post-conviction counsel may constitute ineffective representation sufficient to excuse the default pursuant to *Martinez*. *Id.* The relevant inquiry is therefore whether, but for counsel's errors, the claim would have been properly preserved and presented to the state courts for review. *Coleman v. Thompson*, 501 U.S. 722, 750 (1991) (defining cause as "attributable thereto").

Thus, the Warden's reliance on the fact that Mr. Hugueley's putative "waiver" served as the post-conviction court's reason for dismissing the state petition fails to address the clear *Martinez* inquiry. Properly framed the relevant inquiry is whether, but for post-conviction counsel's deficient representation, would Mr. Hugueley have been found competent to withdraw his petition and thereby have defaulted his ineffective assistance of trial counsel claim. Every medical and mental health professional furnished his magnetic resonance imaging results has found him incompetent. Counsel's failure to secure experts, obtain the relevant brain scans, or even gather basic mental health and social history records constitutes deficient

performance. In short, the putative "waiver" only serves as an independent source of default if we accept the Warden's faulty premise that this "waiver" was knowingly entered by a competent individual, capable of intelligently waiving his rights.

III. THE WARDEN'S ARGUMENT THAT *HUGUELEY* IS FACT-BOUND AND SOLELY ABOUT PETITIONER'S WAIVER IS BELIED BY THE WARDEN'S SUBSEQUENT USE OF *HUGUELEY* TO ARGUE THAT *MARTINEZ* IS LIMITED.

In its Brief in Opposition, the Warden casts the Sixth Circuit's decision in *Hugueley* as bounded and limited by the fact that Mr. Hugueley "waived" post-conviction proceedings. BIO at 17. According to the Warden, this waiver distinguishes *Hugueley* from all other *Martinez* cases—putting *Hugueley* "beyond the reach of *Martinez*" and rendering *Hugueley* an inappropriate vehicle for the resolution of the circuit split. BIO at 15. In other cases, however, the Warden expressly argues the opposite, claiming that *Hugueley* fundamentally limits the application of *Martinez*. For example, in *Ivy v. Carpenter*, 2:13-cv-02374 (W.D. Tenn. July 29, 2020) (R. 128 Reply), the Warden argued that *Hugueley* stands for the proposition that *Martinez* does not provide an avenue for relief for properly raised claims that were "underdeveloped" by post-conviction counsel. *Id.* at PageID 14760. Similarly, in *Sample v. Colson*, 2:11-cv-02362 (W.D. Tenn. Dec. 11, 2020) (R. 155 Reply) the Warden repeatedly cited *Hugueley* for the proposition that cursory and underdeveloped claims presented in post-conviction could not be excused pursuant to *Martinez*. *Id.* at PageID 14153–55. That the Warden has cited *Hugueley*, repeatedly, as authority that *Martinez* is limited demonstrates that *Hugueley* is an ideal vehicle

for the resolution of the split both parties acknowledge exists in the Circuits' application of *Martinez*.

IV. MR. HUGUELEY'S CLAIMS ARE SUBSTANTIAL UNDER *MARTINEZ*; COUNSEL WAS NOT ENTITLED TO RELY ON HIS EXPERTS' UNINFORMED OPINIONS, BECAUSE TRIAL COUNSEL DID NOT INVESTIGATE COMPETENCY.

Choosing not to address Mr. Hugueley's second question presented, the Warden, instead, poses an alternate question: "Whether, even if *Martinez v. Ryan*, 566 U.S. 1 (2012), applied here, it would excuse Hugueley's default since he failed to demonstrate that his ineffective-assistance-of-trial-counsel claim was substantial."[4] BIO at i. Unsurprisingly, the Warden answers his own, substitute, question in the negative. BIO at 18 (arguing "certiorari is not warranted because Hugueley has failed to show that his claims of ineffective assistance of trial counsel are substantial"). Though the questions presented by Mr. Hugueley's petition do not implicate the substantiality of Mr. Hugueley's ineffective assistance of counsel claim, the Warden's analysis is belied by any reading of the record.

Contrary to the Warden's contention that "the record shows that trial counsel recognized competency as a potential issue and thoroughly investigated it" (BIO at 19), the record demonstrates exactly the opposite. Trial counsel admits that he "never considered the possibility that Mr. Hugueley's behavior was not something he could

[4] Mr. Hugueley's second question presented asks this Court to address the Sixth Circuit's determination that any Sixth Amendment claim raised in state court necessarily encompasses all ineffective assistance of counsel claims for the purposes of the exhaustion doctrine.

control or that his decisions might be the result of brain impairment." R. 130-8, PageID 7292–93. Trial counsel admits that he also "did not do any legal research concerning competency." *Id.* Since trial counsel "never considered the possibility" Mr. Hugueley was incompetent, it is unclear how the Warden can argue in good faith that the record shows that he recognized the issue, much less that he "thoroughly investigated it." BIO at 19.

Further, the record belies Warden's contention that trial counsel investigated Mr. Hugueley's competency. The Warden conveniently omits that, while trial counsel did collect substantial mitigating evidence, counsel did not share that information with the experts—indeed, he did not even review it himself. R. 130-8, PageID 7291. That trial counsel had an investigator collect records does not constitute an "investigation" under prevailing professional norms when trial counsel did not so much as read the documents collected much less direct further efforts in response to those documents. Trial counsel has sworn that he concluded that Mr. Hugueley was competent merely because "he knew what was going on." R. 130-8, PageID 7293. Indeed, trial counsel could not have based that assessment on anything other than his limited and uniformed interactions because he did not investigate Mr. Hugueley's mental health history and did not read the paltry records that were collected. *See, e.g.*, R. 41-7, PageID 900–1238 (unread report and records); R. 128-1, PageID 6036–41; Pet. for cert. at 21 n.15.

The Warden also argues that Mr. Hugueley's ineffective assistance of counsel claims are not substantial because he was "deemed competent in his three prior

murder trials." BIO at 20. The Warden builds on that contention, arguing that because Mr. Hugueley had been thrice found to be competent, "trial counsel had no reasonable basis for attempting to collaterally attack Hugueley's prior convictions, and his performance in this regard was not deficient." BIO at 20. To the contrary, Mr. Hugueley did not have three murder trials. Indeed, he has had only one trial–ever. R. 42-1, PageID 246. Not only does the record show that Mr. Hugueley pleaded guilty to his three prior offenses, it demonstrates that his counsel in a prior non-capital proceeding questioned his competency to stand trial but acquiesced in Mr. Hugueley's desire to plead without an evaluation. R. 132-16, PageID 7651 (discussing 1992 plea and counsel's concern that a competency evaluation was needed). Moreover, the record demonstrates that the need to collaterally challenge the prior offenses would have been manifest had trial counsel considered the possibility that Mr. Hugueley was not competent and conducted the most basic investigation including interviewing predecessor counsel about counsel's experience representing Mr. Hugueley. R. 130-20, PageID 7406–07.

Finally, contrary to the Warden's unsupported assertion, the opinions of the experts presented in the lower courts definitively demonstrate that Mr. Hugueley was incompetent at the time of his prior offenses. The Warden claims that, the expert reports "do not specifically address Hugueley's mental state at the time of his prior convictions let alone conclude that he was incompetent to stand trial at the time of

those convictions." BIO at 20.[5] The Warden further asserts that Mr. Hugueley "[f]ailed to show *any* evidence he was incompetent at the time of his prior convictions." *Id.* (emphasis added). The Warden's conclusion defies a plain reading of the experts' reports. Both of Mr. Hugueley's experts in federal habeas concluded that he is incompetent based on a brain condition that has existed since early childhood if not birth and pointing out many, many instances of conduct attributable to this brain defect from early childhood and continuing until the time of the evaluation. R. 127-4; R. 127-5. Although both experts identified the etiology of Mr. Hugueley's impairment as lifelong and developmental in nature, the Warden seeks to cast their conclusions as being inapplicable to Mr. Hugueley's mental state at the time of his prior convictions. Such a reading is plainly inaccurate given both experts' clear conclusions that Mr. Hugueley's condition is lifelong, having originated in childhood if not in utero and that it persists until present day. R. 127-4; R. 127-5.

V. THE WARDEN DOES NOT CONTEST THAT CERTIORARI IS NEEDED TO RESOLVE WHETHER THE SIXTH CIRCUIT APPROPRIATELY JETTISONED WELL-ESTABLISHED EXHAUSTION PRINCIPLES.

It is notable that the Warden does not contest that there is a conflict between the Sixth Circuit's holding in *Hugueley* and the well-established exhaustion principles that have long been part of this Court's jurisprudence.

The exhaustion doctrine requires a state prisoner to "give the state courts an opportunity to act on his claims before he presents those claims to a federal court in

[5] The Warden's assertion is particularly objectionable given that he opposed an evidentiary hearing in the lower court that would have permit a full exploration of the experts' opinions. R. 89-1, PageID 4986–90; R. 137, PageID 7671.

a habeas petition." *O'Sullivan v. Boerckel,* 526 U.S. 838, 842 (1999). "A petitioner satisfies the exhaustion doctrine when the claim has been "fairly present[ed],", so the state court has an "'opportunity to pass upon and correct' alleged violations" of petitioner's federal rights. *Duncan v. Henry*, 513 U.S. 364, 365 (1995) (quoting *Picard v. Connor*, 404 U.S. 270, 275 (1971)).

The Sixth Circuit's decision in *Hugueley* cavalierly ignores this deep-rooted jurisprudence. *See Hugueley*, 964 F.3d at 501 n.4. The lower court's holding—that *any* allegation of ineffective assistance of counsel encompasses *all* Sixth Amendment claims—is simply incompatible with established exhaustion principles. As this Court has held "it is not enough to make a general appeal to a constitutional guarantee . . . to present the 'substance' of such a claim to a state court." *Gray v. Netherland*, 518 U.S. 152, 163 (1996); *Mayle v. Felix*, 545 U.S. 644, 655–56 (2005) (holding that claims in habeas must be plead with particularity). The exhaustion requirement "would serve no purpose if it could be satisfied by raising one claim in the state courts and another in the federal courts." *Picard*, 404 U.S. at 276. By holding that pleading any claim of ineffective assistance of counsel claim is sufficient to subsume all such claims, the Sixth Circuit defies this Court's clear guidance that a cognizable claim must articulate both the legal and factual basis for each claim. Taken to its logical end, the Sixth Circuit's hold results in a rule that pleading a general claim of ineffective assistance of counsel in state court is sufficient to exhaust all Sixth Amendment claims.

In addition to defying the exhaustion doctrine, this approach also is expressly contrary to *Martinez* and *Trevino*. The underpinning of the *Martinez* doctrine's equitable exception is that otherwise a defendant would be deprived "of any review of [a substantive ineffective assistance of counsel] claim at all." *Trevino v. Thaler*, 569 U.S. 413, 423 (2013). Under the Sixth Circuit's interpretation, if state post-conviction counsel pled non-meritorious claims in state post-conviction but omitted another substantial claim, *Martinez* does not permit review of the omitted claim under the reasoning that "theory of relief" of ineffective assistance of counsel was available and subsumed such a claim.[6] *See Hugueley*, 964 F.3d at 501 n.4.

In sum, the Sixth Circuit's holding in *Hugueley* defies this Court's established jurisprudence and certiorari is warranted. Sup. Ct. R. 10(a).

VI. CONCLUSION

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

[6] The Sixth Circuit's decision is utterly incompatible with *Trevino* as that case involved facts where post-conviction counsel pled one theory of ineffective assistance of counsel but omitted another substantial claim of ineffective assistance. *Trevino*, 569 U.S. at 418.

Respectfully submitted,

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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 March 8, 2021.

Amy D. Harwell