CAPITAL CASE
No. _____
October Term, 2022

IN THE SUPREME COURT OF THE UNITED STATES

_____

WALTER RAGLIN,

***Petitioner*,**

v.

TIM SHOOP, WARDEN,

***Respondent*.**

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

November 21, 2022

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CAPITAL CASE – NO EXECUTION DATE

QUESTIONS PRESENTED

The Questions Presented are as follows:

1. Whether a capital defendant is deprived of the effective assistance of trial counsel when his lawyers repeatedly concede guilt of aggravated murder during *voir dire* and opening arguments, and then ask the jury to acquit the defendant of aggravated murder during culpability phase closing arguments.

2. Whether Ohio's *res judicata* doctrine is an adequate and independent state procedural bar as applied to claims of ineffective assistance of trial counsel.

PARTIES TO THE PROCEEDINGS

Petitioner, Walter Raglin, a death-sentenced Ohio prisoner, was the petitioner-appellant in the United States Court of Appeals for the Sixth Circuit.

Respondent, Warden Tim Shoop, was the respondent-appellee in the United States Court of Appeals for the Sixth Circuit.

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IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Walter Raglin respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's opinion affirming the denial of Raglin's petition for a writ of habeas corpus is unpublished and is available at *Raglin v. Shoop*, No. 19-3361, 2022 WL 1773719 (6th Cir. Jun. 1, 2022). It is reproduced as Appendix A at A-1. Raglin's petition for rehearing *en banc* was denied without comment. The District Court's opinion dismissing Raglin's petition is unpublished and available at *Raglin v. Mitchell*, No. 1:00-cv-767, 2018 WL 1417325 (S.D. Ohio Mar. 22, 2018). It is reproduced as Appendix B at 15a. The District Court's opinion denying Raglin's claim of ineffective assistance of trial counsel is unpublished and available at *Raglin v. Mitchell*, No. 1:00-cv-767, 2013 WL 5468227 (S.D. Ohio Sep. 29, 2013). It is reproduced as Appendix C at 19a. The Magistrate Judge's amended supplemental report and recommendation is unpublished and available at *Raglin v. Mitchell*, No. 1:00-cv-767, 2006 WL 2711674 (S.D. Ohio Jun. 29, 2006). It is reproduced as Appendix D at 80a. The Magistrate Judge's initial report and recommendation is unpublished and available at *Raglin v. Mitchell*, No. 1:00-cv-767, 2006 WL 7136085 (S.D. Ohio Feb. 2, 2006). It is reproduced as Appendix E at 101a.

The Supreme Court of Ohio's opinion affirming Raglin's convictions and death sentence on direct review is published as *State v. Raglin*, 699 N.E.2d 482

(Ohio 1998). It is reproduced as Appendix F at 160a. The opinion of the Ohio Court of Appeals affirming the dismissal of Raglin's petition for post-conviction relief is unpublished and available at *State v. Raglin*, No. C-980425, 1999 WL 420063 (Ohio App. Jun. 25, 1999). It is reproduced as Appendix G at 178a. The opinion of the Hamilton County Court of Common Pleas dismissing Raglin's petition for post-conviction relief is unpublished and is reproduced as Appendix H at 190a. The Sixth Circuit's order denying Raglin's petition for rehearing and suggestion for rehearing *en banc* is unpublished and is reproduced as Appendix I at 202a.

JURISDICTION

The Sixth Circuit's judgment against Raglin was rendered on June 1, 2022. Raglin filed a timely petition for rehearing and suggestion for rehearing *en banc*, which was denied on June 30, 2022. On July 27, 2022, Justice Kavanaugh granted Raglin's unopposed application to extend the time for filing Raglin's petition for a writ of certiorari until November 27, 2022. This Court's jurisdiction is timely invoked under 28 U.S.C. § 1291

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the following Amendments to the United States Constitution:

A. Sixth Amendment, which provides in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

B. Fourteenth Amendment, which provides in relevant part:

"No state shall . . . deprive any person of life, liberty, or property, without due process of law."

C. 28 U.S.C. § 2241(a), which provides, in relevant part:

"Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdictions."

D. 28 U.S.C. § 2254(a), which provides in relevant part:

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

INTRODUCTION

This case will provide the Court with a timely opportunity to consider two "important question[s] of federal law that [have] not been, but should be, settled by this Court[.]" S.Ct.R. 10(c). Walter Raglin was convicted of aggravated murder in Ohio state court and sentenced to death. Raglin's lawyers repeatedly conceded that he was guilty of aggravated murder during voir dire and opening arguments at the culpability phase of trial. During closing arguments at the culpability phase, however, Raglin's lawyers completely changed course and asked the jury to acquit Raglin of aggravated murder. There is no conceivable explanation for this course of action other than sheer incompetence. The Sixth Circuit nevertheless concluded that Raglin's trial lawyers did not perform deficiently. This Court should grant certiorari to consider the requirements of the Sixth Amendment in these circumstances.

Certiorari is also warranted to determine whether Ohio's *res judicata* doctrine is an adequate and independent state procedural bar as applied to claims of ineffective assistance of trial counsel. The last reasoned state court decision in Raglin's case concluded that his claim of ineffective assistance of trial counsel was barred by *res judicata* because it supposedly could have been fairly litigated on direct review. In *Massaro v. United States*, 538 U.S. 500 (2003), however, this Court rejected an identical procedural bar for claims of ineffective assistance of trial counsel arising out of a federal prosecution. This Court should grant certiorari to determine if the state court's continued use of that rejected doctrine is an adequate

and independent state procedural bar as applied to claims of ineffective assistance of trial counsel.

STATEMENT OF THE CASE

This is a case about whether it's acceptable for a capital trial lawyer to essentially admit their client's guilt of aggravated murder during *voir dire* and during the opening stages of trial, but then take the opposing position during closing arguments by arguing for complete acquittal, thereby conceding guilt and simultaneously undermining any and all credibility with the jury.

In the early morning hours of December 29, 1995, Walter Raglin, an 18-year-old boy who had endured a lifetime of wretched trauma that began before he was born, robbed a prominent local musician in Cincinnati named Michael Bany, During the robbery, the gun that Raglin pointed at Bany from at least three feet away discharged, the bullet striking Bany in the neck. The gun introduced as evidence at trial may not have been the gun used in the crime, and the gun that was introduced was a cheap firearm, a Bryco Arms 38 pistol—a gun notorious for shoddy manufacturing and having a hair-trigger that often resulted in accidental discharges.

Testimony at trial established that if the bullet had impacted just millimeters above or below where it did, Bany would have likely survived. But sadly the bullet hit the precise spot to damage a blood vessel, and Bany died as a result of the injuries he sustained. Under questioning from law enforcement, Raglin requested to speak with an attorney, but when questioning resumed Raglin made clear to the

officers conducting the interrogation that he did not intend to kill Bany. As Raglin explained, he simply panicked before the shot was fired, he'd never shot anyone else before, he didn't know exactly where the shot had struck Bany, he didn't intend to kill Bany, and that he wasn't even aware that Bany had died until he saw it later on the news.

Raglin's lawyers moved to suppress Raglin's confession, but the court denied the motion. As a result, Raglin's trial lawyers were aware that the jury would hear Raglin's assertions that he did not intend to kill Bany. Furthermore, a specific intent to kill is an essential element of aggravated murder under Ohio law. *State v. Raglin*, 699 N.E.2d 482, 492 (Ohio 1998).

Despite this knowledge, Raglin's trial lawyers repeatedly conceded during *voir dire* and opening arguments that Raglin was guilty of aggravated murder. For example, at the outset of the proceedings, trial counsel told the entire venire ". . . I would suggest to you is that it's very likely that you that are picked as jurors will be in a second phase, a mitigation phase." While conducting individualized *voir dire* with a juror who was eventually seated, counsel stated "rest assured I think that there will be a second phase and that you'll move on to the mitigation phase[.]" Counsel told another juror who was later seated "[w]e will probably get to a second phase in this trial" and that "once we get to the second phase that means you've found Walter Raglin guilty of the crimes with which he's charged." Counsel told yet another juror who was seated that "neither Mr. Keller or I or Walter Raglin are here to lie to you. We feel that we will probably get to a second phase in this case

which is why we're concentrating on that and on questions on that part." Still another seated juror was asked "And you understand we've been talking about the fact that there are going to be actually two separate trials here?" Similarly, during opening arguments at the culpability phase, counsel stated there was "no dispute there was a murder" and that the culpability phase was "the first of presumably two trials[.]"

But following the presentation of evidence at the culpability phase, trial counsel completely reversed course. Instead of retaining any credibility and good will with the jury they might have created by conceding Raglin's guilt of aggravated murder at the outset, they devoted their closing argument to asking the jury to acquit Raglin of aggravated murder. Trial counsel urged the jury to believe Raglin's statements in his confession and conclude that Raglin did not act purposefully in causing Bany's death as required under Ohio law for an aggravated murder conviction; counsel explained to the jury that "what I would suggest to you is that Walter Raglin when he gave that taped statement was truthful" and "[w]hat I'm suggesting to you is what Walter told them is truthful." Trial counsel argued "if you put together the pieces and the parts of this puzzle you find out that each and every statement that Walter made in that taped statement which you will have an opportunity to listen to is truthful. He told them that he never intended to kill anyone." Counsel complained that the prosecution was asking the jury to believe everything in Raglin's confession except Raglin's assertion that he did not intend to

kill Bany, and expressly requested that the jury find Raglin not guilty of aggravated murder:

> What the officers and what the State of Ohio want you to believe is that everything that was beneficial to the State of Ohio was truthful, but when it came to the issue of I panicked, I didn't intend to kill him, now they want you to turn around and say we're not going to believe that. Well, I'd suggest to you that you're going to have to grapple behind those doors what the purpose was. You're going to have to grapple with the facts and I challenge you to find that anything that Walter said to the police was not inconsistent [*sic*] with what their own criminal investigation showed.
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> ***
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> What I would suggest to you is that when you do that and the Judge gives you the instructions you are going to be hard pressed to find that there was a purpose to take the life. And the facts are harsh and it would be an instance where it's so harsh, but you can't convict him as presently charged so you'd have to acquit him because he didn't purposely take the life of him. That's what this is all about.
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> ***
>
> What I would suggest to you, and you may think it's bizarre, that it's ludicrous, that if you hold them to that standard and you hold them to the standard of proving purpose and you take that in light of what Walter said, and he's the only person that you have that testified in that regard, his state of mind, what he was intending to do, that based on those statements, his words, no one else's, that you would have to come back with a finding of not guilty to the aggravated murder with the specification as he's expressly charged. Thank you.

Raglin's ninth ground for relief in his state post-conviction petition alleged that he had been deprived of the effective assistance of trial counsel when his lawyers repeatedly conceded guilt of aggravated murder and then presented

conflicting arguments by arguing for an acquittal in their closing summation. Raglin supported his post-conviction petition by, among other things, Raglin's affidavit in which he stated "[a]t no time did my trial lawyers obtain my consent to concede my guilt to the jury or to the prospective jurors, nor did I agree to this course of action."

The Court of Common Pleas nevertheless dismissed Raglin's claim as being barred by *res judicata*, reasoning that it was based entirely on material within the record. As Raglin explained in his state post-conviction petition, however, he required "discovery under the Ohio Rules of Civil Procedure to fully develop and pursue this claim." The Ohio Court of Appeals nevertheless concluded that Raglin's claim was barred by *res judicata* and affirmed the dismissal. *State v. Raglin*, No. C-980425, 1999 WL 420063, at *5 (Ohio App. Jun. 25, 1999).[1] The federal District Court, on review in federal habeas corpus proceedings, concluded that Raglin's claim was procedurally defaulted, but the Sixth Circuit elected to overlook the default and deny the claim on the merits. *Raglin v. Shoop*, No. 19-3361, 2022 WL 1773719, *3–4 (6th Cir. Jun. 1, 2022). Raglin now requests that this Court grant certiorari to consider the questions Raglin presents.

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[1] The Ohio Court of Appeals' opinion mistakenly states "In his ninth claim for relief, Raglin contended that his trial counsel was ineffective because certain comments made by him during the guilt and *mitigation* phases of the trial were in conflict." *Raglin*, 1999 WL 420063, at *5 (emphasis added). As already explained, the claim at issue that Raglin raised in his state post-conviction related to counsel's conduct during *voir dire* and the culpability phase of trial.

REASONS FOR GRANTING THE PETITION

Certiorari should be granted because this case provides the Court with a timely opportunity to consider two "important question[s] of federal law that [have] not been, but should be, settled by this Court[.]" S.Ct.R. 10(c). First, certiorari should be granted to give further consideration to the Sixth Amendment's requirements where trial counsel concedes to the jury that their client is guilty of a capital offense. And second, this Court should also grant certiorari to determine whether Ohio's *res judicata* doctrine is an adequate and independent state procedural bar as applied to claims of ineffective assistance of trial counsel. This Court's precedent establishes that Ohio's *res judicata* doctrine is clearly not an adequate and independent state procedural bar because its application fails to serve any legitimate state interest. This Court should grant review accordingly.

I. This Court should grant certiorari to provide further guidance on the Sixth Amendment's requirements in cases where trial counsel concedes to the jury that the defendant is guilty of a capital offense

This Court has previously dealt with ineffective assistance of counsel claims where trial counsel chose to concede that their client was guilty of a capital offense. In *Florida v. Nixon*, 543 U.S. 175 (2004), this Court held that there is no presumption of prejudice where trial counsel concedes guilt in the absence of either the defendant's express consent or objection; in such circumstances the traditional standards applicable to claims of ineffective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), are controlling. *Nixon*, 543 U.S. at 178-79. More recently, the Court in *McCoy v. Louisiana,* 138 S. Ct. 1500 (2018), held that

conceding guilt over the defendant's express objection is *per se* ineffective assistance of trial counsel and a structural defect requiring automatic reversal. *McCoy*, 138 S. Ct. at 1505, 1511.

Raglin's case falls somewhere between *Nixon* and *McCoy*, and this Court should grant certiorari to provide guidance to the lower state and federal courts about how to properly address claims of this nature. Raglin explained in his state court post-conviction affidavit that he never consented to trial counsel's concession of guilt, but he also made no claim that the concession was over his express objections. Unlike *Nixon*, however, there is no indication in the record that Raglin's trial lawyers ever bothered to discuss with Raglin whether to strategically concede his guilt of aggravated murder. *See Nixon*, 543 U.S. at 181–82. And *Nixon* makes clear that "[d]efense counsel undoubtedly has a duty to discuss potential strategies with the defendant." *Id*. at 178. As previously noted, Raglin requested discovery in his state post-conviction proceedings to develop the factual basis for his claim, but the state courts refused to allow it. By the time Raglin deposed trial counsel in his federal habeas corpus proceedings, they did not even recall conceding that Raglin was guilty of aggravated murder, and were unable to offer a reasoned, strategic justification for their actions.

The Sixth Circuit elected to bypass the procedural default inquiry and rejected Raglin's claim on the merits. *Raglin*, 2022 WL 1773719, at *3–4. The Sixth Circuit's analysis of the claim is deeply flawed, however:

> This decision was obviously strategic, which means that we strongly presume that it was reasonable. *Strickland*, 466 U.S. at 689. Raglin has not overcome that presumption. His counsel knew that the jury would hear the recording of Raglin himself saying that he had looked Bany in the eye and then shot him at near point-blank range. Hence counsel could reasonably conclude that the defense would only lose credibility with the jury by disputing the murder charge.

Raglin, 2022 WL 1773719, at *4.

Wholly absent from the Sixth Circuit's analysis is any acknowledgment at all that trial counsel *did, in fact, dispute the aggravated murder charge after repeatedly conceding to the jury that Raglin was guilty of it*: counsel devoted their closing argument at the culpability phase to asking the jury to acquit Raglin of aggravated murder because he lacked the requisite intent under Ohio law. Thus, whatever credibility counsel may achieved with the jury by conceding guilt at the outset was completely squandered when counsel reversed course in closing arguments, asking the jury to acquit Raglin of aggravated murder on the ground that the state failed to prove beyond a reasonable doubt that Raglin had purposefully killed Bany. Placed in the full context, trial counsel's ineffective assistance becomes clear; the Sixth Circuit's reasoning unreasonably and erroneously considers only the guilt concession, egregiously shorn from the critical context of counsel's contradictory arguments advanced during closing, and improperly considered in a vacuum.

Furthermore, the Sixth Circuit's assertion that "counsel knew that the jury would hear the recording of Raglin himself saying that he had looked Bany in the eye and then shot him at near point-blank range" is an egregiously misleading characterization of what Raglin actually said in his confession. As previously explained, in his confession Raglin made clear that he simply panicked when he fired the shot, he'd never shot anyone else before, he didn't know exactly where the shot had struck Bany, he didn't intend to kill Bany, and that he wasn't even aware that Bany had died until he saw it later on the news. In addition, the Supreme Court of Ohio found that the shot was fired not from "near point-blank range" as the Sixth Circuit characterized it, but from at least three feet away. *Raglin*, 699 N.E.2d at 486. In sum, the Sixth Circuit's opinion rejecting Raglin's claim completely disregards the portions of the state court record that demonstrate trial counsel's ineffectiveness.

Furthermore, the Antiterrorism and Effective Death Penalty Act (AEDPA) poses no bar to relief on Raglin's claim. The last reasoned state court decision on Raglin's ground for relief dismissed the claim as procedurally defaulted without reaching the merits, and as a result there is no state court merits ruling at issue. *See Ylst v. Nunnemaker*, 501 US 797, 803 (1991). Because there is no state court merits ruling to which the federal courts reviewing in habeas corpus must defer, the restrictions on federal review in 28 U.S.C. § 2254(d) are inapplicable, and this Court's review is *de novo*. *Johnson v. Williams*, 568 U.S. 289, 302 (2013).

Accordingly, AEDPA will not preclude granting relief on Raglin's claim. This Court should grant certiorari.

II. This Court should grant certiorari and hold that Ohio's *res judicata* doctrine is not an adequate and independent state procedural bar as applied to claims of ineffective assistance of trial counsel

As previously explained, the Ohio Court of Appeals concluded that Raglin's claim was procedurally defaulted under Ohio's *res judicata* doctrine. *Raglin*, 1999 WL 420063, at *5. Procedural default will pose no bar to this Court's review of the merits of Raglin's claim, however, because it is clear that Ohio's *res judicata* doctrine is not an adequate and independent state procedural bar as applied to claims of ineffective assistance of trial counsel. This Court should grant certiorari to consider this issue, as well.[2]

In *Massaro v. United States*, 538 U.S. 500 (2003), this Court rejected a federal procedural bar that was essentially identical to Ohio's *res judicata* doctrine, at least in the context of claims of ineffective assistance of trial counsel. Specifically, this Court rejected the Second Circuit's rule that "when the defendant is represented by new counsel on appeal and the ineffective-assistance claim is based solely on the record made at trial, the claim must be raised on direct appeal; failure

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[2] The District Court and Sixth Circuit both refused to grant Raglin a certificate of appealability ("COA") on this particular issue, despite the fact that the question is obviously debatable among jurists of reason. Nevertheless, the denial of a COA in the lower courts poses no bar to this Court addressing the issue on the merits should the Court elect to grant certiorari. *Buck v. Davis*, 137 S. Ct. 759, 774–75 (2017) ("With respect to this Court's review, § 2253 does not limit the scope of our consideration of the underlying merits, and at this juncture we think it proper to meet the decision below and the arguments of the parties on their own terms.").

to do so results in procedural default unless the petitioner shows cause and prejudice." *Massaro*, 538 U.S. at 503. In Raglin's case, the Ohio Court of Appeals followed the same rule that this Court rejected in *Massaro*: "An ineffective-assistance-of-counsel claim, however, may be dismissed as *res judicata* where the petitioner was represented by new counsel on direct appeal, that counsel failed to raise the issue of trial counsel's incompetence, and the issue could fairly have been determined without evidence *dehors* the record." *Raglin*, 1999 WL 420063, at *3 (citation omitted).

As this Court explained in detail in *Massaro*, the *res judicata* rule as applied to ineffective-assistance-of-trial-counsel claims fails to serve any legitimate interest. *Massaro*, 538 U.S. at 504–08. "When an ineffective-assistance claim is brought on direct appeal, appellate counsel and the court must proceed on a trial record not developed precisely for the object of litigating or preserving the claim and thus often incomplete or inadequate for this purpose." *Id.* at 504–05. "The evidence introduced at trial . . . will be devoted to issues of guilt or innocence, and the resulting record in many cases will not disclose the facts necessary to decide either prong of the *Strickland* analysis." *Id*. at 505.

This Court explained further that "[i]f the alleged error is one of commission, the record may reflect the action taken by counsel but not the reasons for it." *Id*. "The appellate court may have no way of knowing whether a seemingly unusual or misguided action by counsel had a sound strategic motive or was taken because the counsel's alternatives were even worse." *Id*. "The trial record may contain no

evidence of alleged errors of omission, much less the reasons underlying them. And evidence of alleged conflicts of interest might be found only in attorney-client correspondence or other documents that, in the typical criminal trial, are not introduced." *Id.* Each of these concerns are manifestly present in Raglin's case.

This Court in *Massaro* continued: "The Second Circuit's rule creates inefficiencies for courts and counsel, both on direct appeal and in the collateral proceeding." *Id.* at 506. "Even meritorious claims would fail when brought on direct appeal if the trial record were inadequate to support them." *Id.* "Appellate courts would waste time and resources attempting to address some claims that were meritless and other claims that, though colorable, would be handled more efficiently if addressed in the first instance by the district court on collateral review." *Id.* at 506–07. "The most to be said for the rule in the Second Circuit is that it will speed resolution of some ineffective-assistance claims. For the reasons discussed, however, we think few such claims will be capable of resolution on direct appeal and thus few will benefit from earlier resolution." *Id.* at 507. The "rule, moreover, does not produce the benefits of other rules requiring claims to be raised at the earliest opportunity—such as the contemporaneous objection rule—because here, raising the claim on direct appeal does not permit the trial court to avoid the potential error in the first place." *Id.* at 508. Once again, each of these concerns are present in the Ohio courts' treatment of Raglin's ineffective-assistance claim.

Applying this Court's *Massaro* reasoning to the facts in Raglin's case makes abundantly clear that Ohio's *res judicata* doctrine fails to serve any legitimate state

interest when applied to claims of ineffective assistance of counsel. State procedural bars may not foreclose federal review if they fail to serve a legitimate state interest. *Douglas v. Alabama*, 380 US 415, 422–23 (1965). Accordingly, Ohio's *res judicata* doctrine is not an adequate and independent state ground as applied to claims of ineffective assistance of trial counsel.

The District Court found that *Massaro* was not a constitutional ruling that was binding on the states. *Raglin*, 2013 WL 5468227, at *29–30. Consequently, the District Court rejected, on that erroneous basis, Raglin's argument that Ohio's *res judicata* rule was not an adequate and independent state ground as applied to Raglin's ineffective-assistance claim. But the adequate and independent state ground doctrine questions whether a state procedural bar can foreclose review in federal court, not whether a state is constitutionally obligated to adopt a particular rule. *See Lee v. Kemna*, 534 U.S. 362, 375 (2002).

Ohio is free to come up with alternative procedures for adjudicating claims of ineffective assistance of trial counsel, so long as the chosen procedure permits an adequate inquiry into the petitioner's allegations. *C.f. Smith v. Robbins*, 528 U.S. 259 (2000). If Ohio wanted to, it could require all claims of ineffective assistance of trial counsel to be litigated on direct review; it would, however, need to allow the constitutionally required analysis, such as by providing a meaningful opportunity to expand the record in advance of the appeal with evidence to support the defendant's allegations. *See Fairchild v. Trammell*, 784 F.3d 702, 721–22 (10th Cir. 2015); *see also Trevino v. Thaler*, 569 U.S. 413, 425 (2013) (explaining that a state fails to

provide a meaningful opportunity to raise a claim of ineffective assistance of trial counsel on direct appeal where there is not an adequate opportunity to expand the record in support of the claim in advance of the appeal).[3] What Ohio cannot do is foreclose the availability of federal habeas corpus review by forcing petitioners to litigate their claims trapped within a framework that this Court has rejected as being completely inadequate for ineffective assistance of trial counsel allegations.[4] This Court should grant certiorari and hold that Ohio's *res judicata* doctrine is not an adequate and independent state ground as applied to claims of ineffective assistance of trial counsel.

CONCLUSION

This case, in which a young Black man with a background jam-packed with trauma, abuse, and other compelling mitigation may have accidentally killed a prominent white musician in Hamilton County, Ohio, hardly represents the worst of the worst for which this Court and the United States Constitution reserve the ultimate punishment. But Walter Raglin's federal constitutional rights have been

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[3] Under Ohio Rule of Criminal Procedure 33(B), a motion for a new trial must be filed within fourteen days of the verdict; this is even less time to expand the record in advance of the direct appeal than what this Court found to be inadequate in *Trevino*. *See Trevino*, 569 U.S. at 425 (finding that 30 days and 75 days after the jury's verdict was inadequate time to expand the record).

[4] The Supreme Court of Ohio recently refused to modify state law to bring it in line with this Court's decision in *Massaro*, even while conceding that petitioners who raise ineffective-assistance-of-counsel claims in direct appeal are frequently not afforded an opportunity to have their claim "fully considered," "meaningfully adjudicated," or "meaningfully reviewed." *State v. Blanton*, No. 2021-0172, Slip op. No. 2022-Ohio-3985, ¶¶ 66–67, 2022 Ohio LEXIS 2326.

disappeared in a way that cries out for this Court's intervention. First by counsel who initially conceded to the jury, at the outset of trial, Raglin's guilt of aggravated murder, and then, during closing, took a mutually exclusive position by seeking full acquittal. And second, by the Ohio state courts, which applied a state *res judicata* procedural bar to deny adequate factual development in such a way that doomed Raglin's ineffective-assistance-of-counsel claim to fail. Then the Sixth Circuit compounded the injustice when, addressing the merits of Raglin's claim, that court selectively omitted the entire context necessary to understand the claim, and used that half-baked assessment to deny relief. This Court should grant certiorari with respect to both questions presented in Raglin's petition for a writ of certiorari, and reverse the lower court's ruling to protect Raglin's federal constitutional rights.

Respectfully submitted this 21st day of November, 2022,

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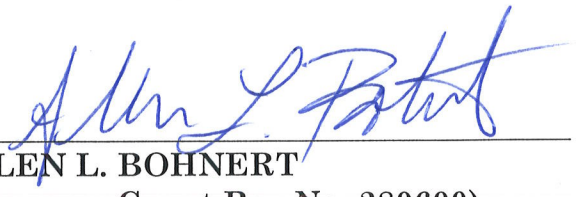

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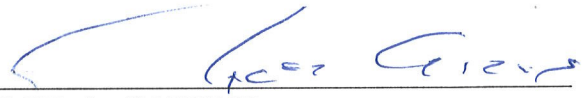

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