

No. _____

IN THE
Supreme Court of the United States

DESHON AARON ATKINS

Petitioner,

v.

DAVID HOLBROOK

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Pro se Petitioner Deshon Atkins filed his federal habeas petition months early and without first seeking state habeas review. Atkins withheld consent to magistrate jurisdiction. The magistrate judge, before the Warden even noticed an appearance, issued a *sua sponte* order deeming two of Atkins' three claims unexhausted and providing Atkins four "choices" to remedy the error. Upon receipt of this order, Atkins withdrew the claims and proceeded on the Petition, which was subsequently denied.

Magistrate jurisdiction is limited to the resolution of non-dispositive matters. 28 U.S.C. § 636; Fed. R. Civ. P. § 72; *United States v. Raddatz*, 447 U.S. 667, 673 (1980). Here, however, the magistrate pre-determined the issue of exhaustion without seeking district court review and issued an Order which led Atkins to abandon two claims. Is the practice of the Central District of California in allowing magistrate judges to issue generic orders in the habeas context that have a dispositive effect on Petitioners' rights to judicial review consistent with federal law and the provisions of U.S. Const., Article III, as the Ninth Circuit held, or does this practice represent an unconstitutional delegation of Article III authority?

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LIST OF PRIOR PROCEEDINGS

United States Court of Appeals for the Ninth Circuit

Atkins v. Montgomery, 2024 WL 3594386, district court denial affirmed on July 31, 2024.

United States District Court for the Central District of California

Atkins v. Montgomery, 2020 WL 5044407, judgment entered on Aug. 26, 2020.

California Court of Appeal, Second Appellate District, Division Five

People v. Atkins, 2018 WL 507746, affirmed in part, modified in part, and remanded for further proceedings on Jan. 23, 2018.

Pursuant to Supreme Court Rule 12.4, the Petitioner files a single petition for writ of certiorari to the Ninth Circuit Court of Appeals to cover the multiple judgments in the courts below.

**PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

OPINIONS BELOW

On July 31, 2024, the Ninth Circuit affirmed the district court's denial of relief in an unpublished opinion in *Atkins v. Montgomery*, 2024 WL 3594386 (July 31, 2024). (Pet. App. 001-006.) The district court denied habeas relief and entered judgment against Atkins in an unpublished opinion on August 26, 2020. *Atkins v. Montgomery*, 2020 WL 5044407 (Aug. 26, 2020). (Pet. App. 039.) The California Court of Appeal, in an unpublished decision on January 23, 2018, remanded to the trial court for consideration of whether to exercise new statutory discretion relating to sentence enhancements, but otherwise denied Petitioner Atkins' direct appeal claims. *People v. Atkins*, 2018 WL 507746 (Cal. Ct. App. Jan. 23, 2018).

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The Ninth Circuit had jurisdiction under 28 U.S.C. §§ 1291 and 2253. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rules 13.1 and 13.5.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III to the U.S. Constitution

Section 1

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

Section 2

The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make...

28 U.S.C. § 636: Jurisdiction, powers, and temporary assignment

a) Each United States magistrate judge serving under this chapter shall have within the district in which sessions are held by the court that appointed the magistrate judge, at other places where that court may function, and elsewhere as authorized by law--

(1) all powers and duties conferred or imposed upon United States commissioners by law or by the Rules of Criminal Procedure for the United States District Courts;

(2) the power to administer oaths and affirmations, issue orders pursuant to section 3142 of title 18 concerning release or detention of persons pending trial, and take acknowledgements, affidavits, and depositions;

(3) the power to conduct trials under section 3401, title 18, United States Code, in conformity with and subject to the limitations of that section;

(4) the power to enter a sentence for a petty offense; and

(5) the power to enter a sentence for a class A misdemeanor in a case in which the parties have consented.

(b)(1) Notwithstanding any provision of law to the contrary--

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions...

Fed. R. Civ. P. 72. Magistrate Judges: Pretrial Order

(a) Nondispositive Matters. When a pretrial matter not dispositive of a party's claim or defense is referred to a magistrate judge to hear and decide, the magistrate judge must promptly conduct the required proceedings and, when appropriate, issue a written order stating the decision. A party may serve and file objections to the order within 14 days after being served with a copy. A party may not assign as error a defect in the order not timely objected to. The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

(b) Dispositive Motions and Prisoner Petitions.

(1) *Findings and Recommendations.* A magistrate judge must promptly conduct the required proceedings when assigned, without the parties' consent, to hear a pretrial matter dispositive of a claim or defense or a prisoner petition challenging the conditions of confinement. A record must be made of all evidentiary proceedings and may, at the magistrate judge's discretion, be made of any other proceedings. The magistrate judge must enter a recommended disposition, including, if appropriate, proposed findings of fact. The clerk must promptly mail a copy to each party.

(2) *Objections.* Within 14 days after being served with a copy of the recommended disposition, a party may serve and file specific written objections to the proposed findings and recommendations. A party may respond to another party's objections within 14 days after being served with a copy. Unless the district judge orders otherwise, the objecting party must promptly arrange for transcribing the record, or whatever portions of it the parties agree to or the magistrate judge considers sufficient.

(3) *Resolving Objections.* The district judge must determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

STATEMENT OF THE CASE

I. LEGAL FRAMEWORK

Unless consent is given, magistrate judges are statutorily and constitutionally precluded from taking dispositive actions on the matters before them. 28 U.S.C. § 636; Fed. R. Civ. P. § 72; *United States v. Raddatz*, 447 U.S. 667 (1980). The Ninth Circuit has defined dispositive actions as those that have the effect of disposing of a litigant's claims or defenses. *Flam v. Flam*, 788 F.3d 1043, 1046 (9th Cir. 2015.) Here, the magistrate judge issued an order which had the effect of compelling Atkins to abandon two potentially meritorious claims, which should have rendered the order improperly dispositive, but the Ninth Circuit denied relief.

II. PROCEEDINGS BELOW

A. Trial

In 2016, Atkins was convicted of two counts of attempted murder arising out of a gang-related shooting. *People v. Atkins*, No. B278735, 2018 WL 507746, at *1 (Cal. Ct. App. Jan. 23, 2018). Atkins, eighteen years old at the time of the offense, was sentenced to two consecutive life sentences and 45 years in then-mandatory firearm enhancements. *Id.* at 10.

B. Subsequent State Court Proceedings

On August 21, 2017, the California Court of Appeal ("CCA") affirmed Atkins' conviction and sentence. *People v. Atkins*, No. B278735, 2017 WL

3587418, at *1 (Cal. Ct. App. Aug. 21, 2017). But on November 15, 2017, the California Supreme Court (“CSC”) remanded the case to the CCA in light of a new California law, which made the formerly mandatory firearm enhancements imposed in Atkins’ case discretionary. *People v. Atkins*, No. B278735, 2018 WL 507746, at *1 (Cal. Ct. App. Jan. 23, 2018). On April 30, 2018, the trial court declined to strike the mandatory enhancements. (Pet. App. 106.)

C. Proceedings in the Federal District Court

Atkins moved directly from the trial court into federal habeas proceedings. Atkins filed a Petition for Writ of Habeas Corpus (“Petition”) with the federal district court on August 10, 2018, seeking relief on three grounds: first, “[t]here was insufficient evidence to support the attempted murder in count 4 received by the jury to prove all the elements of an attempted murder;” second, “ineffective assistance of counsel conducted by [trial counsel];” and third, “[t]he 12022.53(d) gun enhancement has no proof. It was supported by hearsay!” (Pet. App. 095-96.)

At the same time Atkins filed his Petition, the matter was referred to a magistrate judge “to consider preliminary matters and conduct all further hearings as may be appropriate or necessary.” (Pet. App. 105.) Atkins had previously indicated on federal form CV18-677 that he did not consent to disposition by magistrate. (Pet. App. 104.)

On September 4, 2018, roughly three weeks after receipt of the Petition, the magistrate judge issued an in-chambers order (“Order”) stating that the Petition appeared “subject to dismissal as a mixed petition under *Rose v. Lundy*.” (Pet. App. 089-90.) Respondent Warden had not yet entered a Notice of Appearance on the case and therefore had not yet moved to dismiss any of the claims as unexhausted. (See Pet. App. 077.)

The Order stated that, “before deciding this matter,” the Court would first give Atkins “an opportunity to address the exhaustion issue by electing any one of the following four options.” (Pet. App. 089.) The options can be summarized as:

- (1) withdraw the unexhausted claims and proceed on ground one of the Petition, only;
- (2) allow Petitioner to demonstrate to the Court’s satisfaction that he had, in fact, exhausted grounds two and three;
- (3) dismiss the Petition without prejudice and return to state court to exhaust the unexhausted claims; or
- (4) file a motion to “hold his federal habeas petition in abeyance while he returns to state court to exhaust his state remedies with respect to his unexhausted claims.”

(Pet. App. 090.) The Order warned Atkins that if he did not elect one of the four choices, his federal petition would be dismissed. (*Id.*) Roughly two weeks

later, on September 20, 2018, Atkins filed a notice with the court withdrawing grounds two and three “due to unexhaustion.” (Pet. App. 085.)

The magistrate then ordered Respondents to file a response. (Pet. App. 080-84.) The order to Respondent also stated that if “Respondent contends that the Petition can be decided without the Court’s reaching the merits of Petitioner’s claims (e.g., because Respondent contends that Petitioner has failed to exhaust any state remedies as to any ground for relief alleged in the Petition...Respondent shall file a Motion to Dismiss within thirty (30) days after the date of this Order.”) (Pet. App. 081.)

The magistrate also directed that if Respondent moved to dismiss on the grounds of exhaustion, Respondent would “specify the state remedies still available to Petitioner.” (Pet. App. 081.) But the magistrate had already determined the exhaustion question. And while Respondent was provided the underlying record of the proceedings, the magistrate did not, in the order directing Respondents to respond, address the initial Order related to exhaustion or indicate that Atkins had already withdrawn these claims. (See Pet. App. 080-84.)

On October 31, 2018, Respondent filed a Motion to Dismiss the Petition for having failed to exhaust grounds two and three, (Pet. App. 069-076), which the magistrate denied as moot on February 28, 2019. (Pet. App. 067.) The magistrate judge then set a briefing schedule. (Pet. App. 068.)

After receiving briefing, the magistrate judge issued a Report and Recommendation (R&R) urging denial of the Petition with prejudice on May 21, 2020. (Pet. App. 045-066.) On August 26, 2020, the district court judge issued an order accepting the R&R and entering judgment. (Pet. App. 040-042.) Atkins timely appealed. (Pet. App. 037.)

D. Proceedings in the Ninth Circuit

On January 18, 2022, the Ninth Circuit granted Atkins a certificate of appealability and issued an Order to Show Cause (“OSC”) as to “why the district court’s judgment should not be vacated and this appeal summarily remanded to the district judge for consideration of whether Appellant’s August 10, 2018 petition includes unexhausted claims.” (Pet. App. 035.) Upon receiving briefing from Respondent, the Ninth Circuit discharged the OSC, but ordered the parties to brief the certified issue. (Pet. App. 007.)

The case was submitted in the Ninth Circuit on July 15, 2024, and on July 31, 2024, the circuit court issued an unpublished memorandum of disposition denying Atkins’ claim. (Pet. App. 001-006.) The Ninth Circuit determined that because the magistrate Order gave Atkins “notice and an opportunity to respond to her finding that the Petition was mixed, the magistrate judge did not exceed her authority by *sua sponte* evaluating the Petition” for exhaustion, and that the options Order “did not dispose of a claim or defense of a party, or preclude the ultimate relief sought.” (Pet. App.

005.) The circuit court also determined that the magistrate judge was under no obligation to provide Atkins additional assistance in understanding the significance of the Options order or the failure to exhaust claims on account of his *pro se* status. (Pet. App. 005-06.)

REASONS FOR GRANTING THE WRIT

It is settled law that if a magistrate issues an order that has the effect of compelling a Petitioner to take dispositive action, the magistrate judge has acted outside her statutory and constitutional jurisdiction. *Flam*, 788 F.3d at 1046. Such orders go beyond the preliminary matters within the purview of magistrate judges because they have the effect of deciding substantive issues. Under 28 U.S.C. § 636, decisions that narrow the universe of available relief or preclude an available affirmative defense must be reviewed by an Article III judge.

Here, without consent to proceed from the parties, the magistrate judge filed an Order that effectively decided the question of exhaustion by compelling Atkins to withdraw two of his three claims. Under the “functional approach” adopted by the Ninth Circuit in *Flam*, if the effect of an action is to preclude substantive claims from federal review, it is dispositive and beyond the magistrate’s jurisdiction to issue. 788 F.3d at 1046. The magistrate’s actions regarding exhaustion should have been subject to review by the district court. Certiorari review is appropriate here because the Ninth

Circuit’s order sanctioning the district court’s departure from “the accepted and usual course of judicial proceedings . . . call[s] for an exercise of this Court’s supervisory power.” U.S. Sup. Ct. Rule 10(a). Additionally, because this case raises an “important question of federal law” regarding the permissible scope of magistrate judge jurisdiction under Article III, the Court should grant certiorari, vacate the lower court decision, and remand for further proceedings. U.S. Sup. Ct. Rule 10(c).

A. Magistrate judges are limited to rendering decisions on nondispositive matters or issuing nondispositive orders.

The statutory authority of magistrate judges is “limited by 28 U.S.C. § 636, under which a magistrate judge may hear and determine nondispositive matters but not dispositive ones.” *Bastidas v. Chappell*, 791 F.3d 1155, 1159 (9th Cir. 2015). Notably, § 636(b)(1) does not use “dispositive” vs. “nondispositive” to differentiate between the types of matters that may be decided by a magistrate—that language comes from Fed. R. Civ. P. 72, which implements § 636(b)(1). *See Mitchell v. Valenzuela*, 791 F.3d 1166, 1169 n.2 (9th Cir. 2015). Rule 72 allows for referral to a magistrate of “a pretrial matter not dispositive of a party’s claim or defense.” Fed. R. Civ. P. 72 (emphasis added).

28 U.S.C. § 636 and Fed. R. Civ. P. 72, taken together, are interpreted to mean that dispositive actions are those that have a preclusive effect on a

petitioner's claims or defenses. Ensuring that magistrate judges only decide nondispositive matters reflects the important constitutional concern that, "at least absent consent, delegating the final disposition of cases to magistrate judges would run afoul of the Constitution." *Bastidas v. Chappell*, 791 F.3d at 1160 (internal citations omitted). *See also McKeever v. Block*, 932 F.2d 795, 798 (9th Cir. 1991) ("[W]ith respect to dispositive matters, a magistrate is only permitted to make recommendations for final disposition by an Article III judge who reviews his findings and recommendation, if objected to, de novo.").

1. The Ninth Circuit has adopted a "functional approach" to determine whether a matter is dispositive.

The Ninth Circuit "has adopted a functional approach that 'look[s] to the effect of the motion...to determine whether it is properly characterized as 'dispositive or nondispositive of a claim or defense of a party.'" *Flam*, 788 F.3d at 1046 (emphasis added). In habeas cases, the question of whether an order or action by a magistrate is dispositive typically arises in addressing exhaustion. *See Rose v. Lundy*, 455 U.S. 509, 510 (1982) (a petition presenting unexhausted claims "must be" dismissed.).

The passage of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") constrained petitioners' ability to exhaust claims and return to federal court to litigate them by imposing a one-year statute of limitations

on the filing of a federal habeas petition. 28 U.S.C. § 2244(d)(1). Accordingly, the consequences of dismissal are far more significant in habeas proceedings today than when *Rose v. Lundy* was decided, as now, “[t]o dismiss a petition for curable deficiencies may...preclude a petitioner from obtaining federal habeas review altogether, even where the dismissal was without prejudice.”

James v. Pliler, 269 F.3d 1124, 1126 (9th Cir. 2001). This Court recognized this practical reality in *Rhines v. Weber*, 544 U.S. 269 (2005), by allowing the federal courts to stay proceedings and toll the statute of limitations while petitioners pursue exhaustion in state court.

2. Determinations regarding exhaustion are typically dispositive and exceed the magistrate's authority to issue.

In *Hunt v. Pliler*, 384 F.3d 1118 (9th Cir. 2004), the Ninth Circuit addressed a situation wherein a magistrate judge, in response to a motion to dismiss, entered an order stating that “unless Petitioner elects to move for leave to file a Second Amended Petition containing only exhausted claims, this Court will be required to dismiss the entire action without prejudice.” *Id.* at 1120. Although the order for dismissal was without prejudice, the Ninth Circuit on review recognized that “Respondents’ motion to dismiss the First Amended Petition as mixed was a dispositive matter.” *Id.* at 1123. By allowing the magistrate to make the “pivotal determination that the First

Amended Petition contained unexhausted claims, the court abused its discretion.” *Id.* at 1125 (emphasis added).

In *Mitchell v. Valenzuela*, the Ninth Circuit reiterated that “[i]n light of *Rhines*, we conclude that a motion to stay and abey section 2254 proceedings is generally (but not always) dispositive of the unexhausted claims.” 791 F.3d at 1171. The court explained that this is because “the interaction of AEDPA’s statute of limitations and *Lundy*’s total-exhaustion rule constrains the authority of magistrate judges,” as any decision regarding leave to exhaust may determine whether the petitioner’s claims are capable of being heard by a federal court in the first place. *Id.* at 1172–73. The “denial of a motion to stay and abey is ‘dispositive insofar as proceedings in the federal court are concerned,’ because ‘such an order preclusively determines the important point that there will not be a federal forum available to entertain the petitioner’s exhausted claims.’” *Id.* at 1173.

More recently in *Bastidas v. Chappell*, the Ninth Circuit considered a case in which the magistrate denied petitioner leave to return to state court to exhaust. 791 F.3d at 1158. There, Bastidas moved to withdraw two claims that were included in the petition after the State moved to dismiss, but before the magistrate judge acted on that motion. Subsequently, the magistrate judge issued a Report and Recommendation recommending that the entire petition be denied with prejudice. *Id.* While the circuit court cautioned that

there “may well be situations in which a magistrate judge takes unauthorized steps that ultimately force a litigant to move to dismiss some of his claims,” because Bastidas moved to withdraw the two claims “[u]nder no compulsion from the magistrate judge,” the judge was within her authority to grant the request. 791 F.3d at 1165.

B. The magistrate judge exceeded her authority here because the order she issued compelled Atkins to dismiss two of his claims.

Under the functional approach adopted by the Ninth Circuit in *Flam*, an order is dispositive if its effect is to “preclusively determine[] the important point that there will not be a federal forum available to entertain a particular dispute.” 788 F.3d at 1047. Here, because the magistrate judge determined *sua sponte* that the Petition was mixed and subject to dismissal if Atkins did not take action to correct it, Atkins withdrew his broadest (and arguably most important) claim in the habeas context: ineffective assistance of trial counsel, without ever having the district court review and approve that decision. Furthermore, not only did the magistrate act on exhaustion before the Respondent had an opportunity to respond; the magistrate issued the Order before Respondent had even entered an appearance, and even though Atkins had not consented to magistrate jurisdiction. *Compare Mathews v. Weber*, 423 U.S. 261, 271 (1976) (“Finally, the magistrate’s report puts before the district judge a preliminary evaluation of the cumulative

effect of the evidence in the record...Each step of the process takes place with the full participation of the parties. They know precisely what recommendations the judge is receiving and may frame their arguments accordingly.”).

While in *Bastidas*, the Ninth Circuit found that the magistrate judge did not exceed her jurisdiction in accepting the petitioner’s voluntary motion to withdraw unexhausted claims, the court took care to note that the withdrawal came “[u]nder no compulsion from the magistrate judge.” 791 F.3d at 1165. Here, the opposite is true: Atkins withdrew his claims directly in response to the Order from the magistrate judge. This situation also differs from that in *Hunt* and *Mitchell*, where the issue of exhaustion was raised by the government prior to the magistrate taking action to address the petitions. See *Hunt*, 384 F.3d. at 1120; *Mitchell*, 791 F.3d at 1167 (both cases reflecting that the question of exhaustion arose following respondents’ filing motions to dismiss.).

1. The magistrate judge exceeded her jurisdiction because the Order issued effectively decided the question of exhaustion.

In *Hunt*, the Ninth Circuit found “the magistrate judge’s November 22 Memorandum and Order determining Respondents’ motion to dismiss Hunt’s First Amended Petition as mixed exceeded his statutory authority.” 384 F.3d at 1124. Here, too, the magistrate judge effectively decided the issue of

exhaustion without submitting that decision to the review of the district court. The Order here was undeniably styled as an attempt to expedite litigation on account of the magistrate’s determination that the Petition was “mixed.” This is evident in the fact that three of the four “choices” provided presumed the matter of exhaustion already decided. (See Pet. App. 089-90.) Furthermore, it is notable that under the Ninth Circuit’s existing precedent, the magistrate judge would have been unable to rule on at least option four—showing good cause for a stay and abey under *Rhines v. Weber*. The magistrate, then, was providing Atkins “options” the magistrate did not have the legal authority to decide, without any indication that the district court would be involved at this critical stage of the petition review process.

2. Under Ninth Circuit precedent, the fact that the Order included “choices” does not resolve the question of whether the magistrate’s action was dispositive.

The Ninth Circuit’s decision in this case failed to properly apply its own test for assessing whether a magistrate’s action is dispositive under *Flam*, requiring it to assess the effect of the order. 783 F.3d at 1046; *see also QBE Specialty Ins. Co. v. Kane as Tr. for Hawaii Island Air, Inc.*, No. CV 22-00450 SOM-KJM, 2023 WL 1069703, at *4 (D. Haw. Jan. 27, 2023) (to determine whether an action is dispositive, “the court must determine whether its

decision could ‘effectively den[y] the ultimate relief sought by a party or dispose[] of any claims or defenses.”) (internal citations omitted).

The question is not whether the Order offered Atkins distinct options, but whether the magistrate had already exceeded her authority in *sua sponte* determining that the Petition was mixed and subject to dismissal. *See United States v. Raddatz*, 447 U.S. at 683 (“delegation [to a magistrate judge] does not violate Art. III so long as the ultimate decision is made by the district court.”). In *Hunt*, *Mitchell*, and *Bastidas*, the petitioners were also given “choices” as to how to proceed, but the Ninth Circuit nonetheless found the magistrate judges’ actions in those cases improperly dispositive. Here, because the effect of the Order was not only to cause Atkins to withdraw two claims, but to proceed only on the exhausted claim, he was effectively precluded by the magistrate’s acceptance of his withdrawal from ever raising the unexhausted claims in federal court again. *See Goodrum v. Busby*, 824 F.3d 1188, 1196 (9th Cir. 2016) (holding that remand was warranted where *pro se* petitioner was misled by the Court in a way that would subject his petition to “the more demanding standard applicable to second or successive petitions under § 2244(b)(2).”); *see also Roell v. Withrow*, 538 U.S. 580, 597 (2003) (Thomas, J., dissenting) (“litigants’ rights under Article III are either protected or they are not.”). More importantly, a district court judge never

presided over any of the critical decision making that ultimately shaped the resolution of the claims raised by Atkins' Petition.

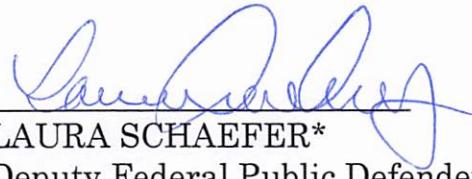
CONCLUSION

Because this case raises the important question of the extent to which resolution of constitutional issues can be delegated to non-Article III judges without consent, this Court should grant the writ. Alternatively, because the Ninth Circuit misapplied its own precedent by determining that the magistrate judge acted within the bounds of her statutory and constitutional jurisdiction, the Court should exercise its supervisory power under Rule 10(a) and grant certiorari.

Respectfully submitted,

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Federal Public Defender

DATED: October 29, 2024

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No. _____

IN THE
Supreme Court of the United States

Deshon Aaron Atkins,

Petitioner,

v.
DAVID HOLBROOK

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
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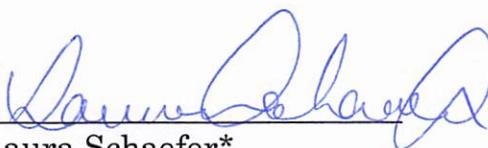
CERTIFICATE PURSUANT TO RULE 33

Pursuant to Rule 33.2, I hereby certify that this petition is less than 40 pages, and therefore complies with the page limit set out in Rule 33. This brief was prepared in 13-point Century Schoolbook font.

Respectfully submitted,

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