No. _____

IN THE

Supreme Court of the United States

CHANCE BLACKMAN

Petitioner,

v.

THERESA CISNEROS

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

Under agency principles, petitioners are held responsible for the mistakes of their lawyers, including the late filing of a federal petition. How do those principles apply where a severely mentally and physically disabled inmate relies on an incarcerated, non-lawyer advocate for legal assistance?

LIST OF PRIOR PROCEEDINGS

Ninth Circuit Court of Appeals

Chance Blackman v. Theresa Cisneros, Case No. 23-55340, opinion affirming judgment filed on November 29, 2024; no petition for rehearing filed

United States District Court for the Central District of California

Chance Blackman v. Theresa Cisneros, Case No. 21-cv-02739-MEMF-JPR; judgment entered on March 22, 2023

California Supreme Court

In re: Chance Blackman, Case No. S262213, appeal of second petition for habeas corpus, denied on October 7, 2020

California Court of Appeal

People v. Chance Blackman, Case No. B288142, direct appeal opinion affirming judgment on October 2, 2018

In re Chance Blackman, Case No. B299276, appeal of first petition of habeas corpus, denied on July 31, 2019

In re Chance Blackman, Case No. B305735, appeal of second petition for habeas corpus, denied on January 29, 2020

Los Angeles Superior Court

In re Chance Blackman, Case No. BA452577, first petition for habeas corpus, denied on June 21, 2019

In re Chance Blackman, Case No. BA452577, second petition for habeas corpus denied on December 4, 2019

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PETITION FOR A WRIT OF CERTIORARI

Chance Blackman petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's opinion denying equitable tolling is reported, *Blackman v. Cisneros*, 122 F.4th 377 (9th Cir. 2024). (Slip op. at Petitioner's Appendix ("App.") A.) The district court's orders and judgment denying relief are unreported. (App. B. (Judgment); App. C (Order accepting magistrate's R&R); App. D. (Magistrate's Report and Recommendation).)

JURISDICTION

The Ninth Circuit's opinion denying habeas relief was filed November 29, 2024. There was no petition for rehearing. The Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1) and Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2244(d):

(1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of—

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

STATEMENT OF THE CASE

Petitioner Chance Blackman was convicted of sexual assault in Los Angeles Superior Court and sentenced to 18 years in prison. (App. D-28.) His counseled appeal to the California Court of Appeal was denied on October 2, 2018. (App. D-28.) Blackman's lawyer did not file a petition for review with the California Supreme Court and so his conviction became final 40 days later, on November 13, 2018. (App. D-28.) Under 28 U.S.C. § 2244(d)(1)(A), his federal petition was due one year later, absent statutory[1] or equitable tolling.

Over the next 18 months, Blackman filed multiple state petitions and related appeals, all drafted and mailed by another inmate:

- Petition 1 was constructively filed in Los Angeles Superior Court on April 21, 2019. It raised four claims, including that Blackman's trial counsel was ineffective for failing to seek a psychiatric examination, even after Blackman asked for one. The petition was denied June 21, 2019. (*See* App. D-28.)
- The appeal of Petition 1 filed in the California Court of Appeal on July 24, 2019, and was denied July 31, 2019 without prejudice to

[1] Because the Ninth Circuit did not reach Blackman's statutory tolling argument, it is not raised herein. (App. A-14, n.8)

re-filing after Blackman obtained a declaration from his trial counsel. (*See* App. D-28; App. K-124[2].)

- Petition 2 was filed in Los Angeles Superior Court on September 8, 2019, and was denied on December 4, 2019. (App. D-29.)
- The appeal of Petition 2 filed in the California Court of Appeal on January 15, 2020, and was denied on January 29, 2020. (*See* App. D-29; App. K-117.)
- The final appeal of Petition 2 was filed in the California Supreme Court on May 7, 2020, and was denied on July 22, 2020. (*See* App. D-29.)

Blackman, again assisted by another inmate, constructively filed his federal petition on March 23, 2021. (App. K-76.) He raised four claims, including that his trial counsel was ineffective because he did not seek a psychiatric examination of Blackman. (*See* App. K-92.) Blackman's federal petition also attached mental health records from 2018-2020. Those records reflect his diagnosis of schizophrenia and the statements Blackman made to medical staff:

> I am not doing good. I got power of attorney from the devil. That is how it works. . . I am losing my memory

[2] Portions of the complete habeas petition filed in district court were submitted as excerpts of record in the Court of Appeal. *See Blackman v. Cisneros*, Case No. 21-cv-02739-MEMF-JPR, Dkt. 1 (March 29, 2021).

> . . . I talked to my brother[,] he does not do anything for my appeal so I hire jailhouse lawyers to work for me. It feels like my clinician is trying to hypnotize me. . . I am not eating or sleeping good. I think about a lot of things, devil sending me messages.

(App. K-129.) The federal petition also included a 2019 declaration from "inmate legal advocate" Karl Frantz who said he drafted all legal pleadings submitted on Blackman's behalf. (App. K-120.) Frantz said "Blackman rambles on a makes no sense even when he takes his psychiatric medications" and so Frantz did his "best to sift through the ramblings of the petitioners" and "gleened (sic) most facts in this case via reading of the transcripts." (App. K-120-121.)

Blackman filed several other documents in federal court, including a request for counsel, a request for a status update, and a "request to transfer to a higher level of care" among others, with the assistance of Frantz and inmate paralegal Michael Harrison. (*See* App. A-16; Apps. E, F, G, H, J.) Blackman's request for counsel attached medical records, which revealed that he suffered from back pain, bilateral hand pain, "injury of left optic nerve," "vision loss of right eye" and required the use of hearing aids. (App. J-68-69.)

The Warden moved to dismiss the federal petition as untimely, but conceded that Blackman was entitled to some statutory tolling while his first two petitions were pending. (*See* App. D-34.) The court granted the motion to dismiss, after finding that Blackman was not eligible for equitable tolling.

(App. D-45.) Blackman appealed and was appointed counsel for the first time in the Ninth Circuit.

The Ninth Circuit, in a published opinion, affirmed the denial of equitable tolling because "Blackman had access to legal assistance and filed multiple state habeas petitions, both before and after the federal deadline had run. . ." (App. A-3.) In so holding, the Ninth Circuit applied the two-part test in *Bills v. Clark*, 628 F.3d 1092, 1093 (9th Cir. 2010), which requires the petitioner to show:

> (1) that his mental impairment was an "extraordinary circumstance" beyond his control by demonstrating the impairment was so severe that either (a) petitioner was unable rationally or factually to personally understand the need to timely file, or (b) petitioner's mental state rendered him unable personally to prepare a habeas petition and effectuate its filing
>
> and
>
> (2) the petitioner was diligent in pursuing the claims to the extent he could understand them, but that the mental impairment made it impossible to meet the filing deadline under the totality of the circumstances, including reasonably available access to assistance.

(App. A-5.) The court did not address the first prong of *Bills*, and denied the claim based on Blackman's lack of diligence. (App. A-15.) In finding lack of diligence, the court evaluated the "totality of the circumstances, including any reasonably available assistance, whether from another inmate or from an

attorney." (App A-6, citing *Bills*.) The court noted that "[w]hen a petitioner makes use of available assistance, a petitioner is not entitled to equitable tolling merely because the petitioner's legal assistant or lawyer fell below the standard of care." (App. A-6; *see id* ("Merely ineffective performance of state post-conviction counsel does not give rise to equitable tolling.").) In denying the claim, the court concluded that "[b]ecause Blackman was able to use the assistance available to him in prison to file cogent petitions, he has failed to show that his mental impairments made it impossible for him to meet the filing deadline for AEDPA." (App. A-17.)

REASONS FOR GRANTING THE WRIT

A. There is a circuit split on how agency principles apply in the equitable tolling context for attorney errors less than "abandonment"

The idea that petitioners should be held responsible for the routine mistakes of their attorneys is based on the concept of "agency." This Court first applied agency principles in *Murray v. Carrier*, 477 U.S. 478, 488 (1986), when it declined to excuse a procedural default based on an attorney's inadvertent failure to properly raise a claim. There, the Court reasoned that "[s]o long as a defendant is represented by counsel whose performance is not constitutionally ineffective under the standard established in *Strickland v. Washington,* 466 U.S. 668, (1984), we discern no inequity in requiring him to bear the risk of attorney error that results in a procedural default." *See also*

Coleman v. Thompson, 501 U.S. 722, 753 (in "our system of representative litigation . . . each party is deemed bound by the acts of his lawyer-agent.") (internal citations omitted)

In *Holland.* v. *Florida*, 560 U.S. 631, 651 (2010), however, this Court recognized that attorney misconduct that amounts to "egregious behavior" could[3] excuse an untimely federal petition. There, Holland's attorney did not do proper research to determine the correct filing deadline, did not inform Holland that the state supreme court had decided his case, and did not communicate with Holland for many years. *Id.* at 653. This Court said failures such as these "violated fundamental canons of professional responsibility, which require attorneys to perform reasonably competent legal work, to communicate with their clients, to implement clients reasonable requests, to keep their clients informed of key developments in their cases, and never to abandon a client." *Id.* But in his partial concurrence, Justice Alito distinguished between egregious attorney error and attorney abandonment. He believed only abandonment excused the petitioner from bearing the consequence of his attorney's error. *See Id.* at 653 (Alito, J., concurring in part). ("Common sense dictates that a litigant cannot be held

[3] The Court remanded for factual development without ever making a finding on whether the facts in that case warranted tolling.

constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.")

Two years later, this Court seemed to adopt Justice Alito's approach in *Maples v. Thomas*, 565 U.S. 266, 283 (2012) when it held, "under agency principles, a client cannot be charged with the acts or omissions of an attorney who has abandoned him." There, the attorneys Maples believed were representing him had left the firm, and no longer had authority to act on his behalf. So this Court held that Maples could not be held responsible for their default, as they were not acting as his agent. *Id.* at 289.

But since *Maples*, lower courts have split on how agency principles apply to attorney errors less than abandonment. The Second Circuit, for example, holds that *Maples* altered *Holland* such that attorney wrongdoing must rise to the level of abandonment to justify equitable tolling. *Rivas v. Fischer*, 687 F.3d 514, 538, n.33 (2d Cir. 2012). The Eleventh Circuit first held the same, but then on panel rehearing, qualified their holding with the statement that attorney misconduct other than abandonment *may* still amount to an extraordinary circumstance. *Cadet v. Florida Dept. of Corr.*, 853 F.3d 1216, 1228 (2017). The Ninth Circuit in *Luna v. Kernan*, 784 F.3d 640, 648-49 (9th Cir. 2015) agreed that it "remains unclear whether the Court intended to hold in *Maples* that attorney misconduct falling short of abandonment may no longer serve as a basis for equitable tolling" but

ultimately concluded that *Maples* did not overrule *Holland*. Finally, the Fifth Circuit noted the circuit split in an unpublished opinion, but avoided taking a side. *Jimenez v. Hunter*, 741 Fed. Appx. 189, 192 (5th Cir. 2018).

This Court should step in and clarify how *Holland* and *Maples* work together. Right now, the same act by a lawyer—failure to file a timely federal petition— could be "garden variety" neglect in one case, an "egregious error" in another, and abandonment in a third, all with different results in different circuits.[4] Given that *Holland* and *Maples* were decided 15 and 13 years ago respectively, this split is mature and will not benefit from further percolation. This Court should address the split now.

B. There is an open question on whether agency principles should apply to incarcerated, non-lawyer advocates

Apart from the circuit split, this Court has not defined how agency principles operate when a petitioner's "attorney" is an incarcerated advocate with no legal duty to him.

Under normal agency principles, discussed *supra*, petitioners are bound by the acts and omissions of their lawyer. This is fair because lawyers are subject to many ethical rules designed to protect their clients:

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[4] The district court in this case made no factual inquiry into which of the three scenario's applied to Blackman's case. If certiorari is granted, this Court should consider remanding for further factual development.

- Lawyers must be competent in the areas of law in which they operate, which includes calculating statutory deadlines and filing petitions promptly. *See* Cal. R. Prof. Conduct 1.1 (requiring lawyers to perform services "competently," which means that the lawyers has "learning and skill" and "mental, emotional, and physical ability reasonably necessary for the performance of such service.")
- Lawyers are bound by a duty of diligence, which requires them not to delay the filing of a petition in a way that harms the client. *See* Cal. R. Prof. Conduct 1.3 (requiring "diligence," which means that the "lawyer acts with commitment and dedication to the interests of the client and does not neglect or disregard or unduly delay a legal matter entrusted to the lawyer.).
- Lawyers owe their client's a duty of loyalty and may not take a case if a lawyer is too busy with other matters or if the case conflicts with the lawyer's own interests. Cal. R. Pro. Conduct 1.7(b); *see id* at comment [1] stating that "[l]oyalty and independent judgment are essential elements in the lawyer's relationship to the client."

Other rules make sure lawyers charge fees that are reasonable, that they maintain the case and correctly transfer the case file, and that they do not withdraw from representation in ways that cause foreseeable prejudice to the client. Cal. R. of Prof. Conduct 1.8, 1.16(d).

Jailhouse "lawyers" are not subject to any ethical rules. They may have little or no education in the law. Many incarcerated advocates suffer from mental or physical illness that impairs their ability to help. No duty requires them to file petitions on time or in the correct forum. There are no rules that prevent financial exploitation of a vulnerable petitioner seeking legal assistance from a more savvy inmate. And of course, a non-attorney inmate can terminate his help at any time, despite the prejudice to the petitioner.

And yet, federal courts still hold petitioners responsible for mistakes made by their untrained, non-lawyer advocates. *See e.g., Ostrowski v. Kelly*, 639 F. Supp. 3d 1084 (D. Oregon 2022) (denying equitable tolling where prison legal assistant provided incorrect advice about the statute of limitations); *Rolle v. Florida*, 2012 WL 780812 (N.D. Florida, 2012) ("Because attorney negligence in calculating the AEDPA timeline is not an extraordinary circumstance warranting equitable tolling, it does not seem that non-attorney negligence, assuming such negligence exists here, would warrant equitable tolling.); *Brissette v. Herndon*, 2009 WL 1437822, (C.D. Cal. 2009) ("Errors by jailhouse lawyers do not warrant equitable tolling.")

Here, the Ninth Circuit conducted a superficial inquiry into the number and timing of petitions that Blackman filed during the limitations period. In doing so, the court made no distinction between those filed by Blackman personally (likely none) and those filed by another inmate,

allegedly acting on Blackman's behalf (likely all of them). More importantly, the court made no distinction between legal assistance provided by a trained attorney and assistance provided by another inmate. *See* (App. A-6) ("In considering whether the petitioner has shown diligence, we evaluate the totality of the circumstances, including any reasonably available assistance, *whether from another inmate or from an attorney*.) (emphasis added). The court explicitly stated that a petitioner cannot receive equitable tolling when their legal assistant fails to meet "the standard of care," even though that term only applies to lawyers. (App. A-6). Non-lawyers owe no duty of care to those they assist.

In sum, the agency doctrine is based explicitly on the professional obligations between a trained lawyer and his client. Yet courts such on the one below have applied agency principles to untrained, non-lawyer inmates who owe nothing to those they help. This Court should grant certiorari and hold that agency principles do not apply where a habeas petitioner is assisted by an incarcerated, non-lawyer advocated.

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CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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DATED: February 26, 2025

By:_____
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