No. 24-948

IN THE
Supreme Court of the United States

PATRICIA GUERRERO, CHIEF JUSTICE OF CALIFORNIA, ET AL.,

Petitioners,

v.

STEPHEN MORELAND REDD,

Respondent.

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

BRIEF OF THE CONFERENCE OF CHIEF JUSTICES AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

STATUTES

RULES / OTHER AUTHORITIES

INTEREST OF *AMICUS CURIAE*[1]

Founded in 1949, the Conference of Chief Justices (CCJ) consists of the Chief Justices or Chief Judges of the courts of last resort in all fifty States, the District of Columbia, the Commonwealths of Puerto Rico and the Northern Mariana Islands, and the Territories of American Samoa, Guam, and the Virgin Islands. CCJ's purpose is to provide an opportunity for those judicial officers to discuss matters of common interest in the operation of state courts and judicial systems.

CCJ has a strong interest in the proper resolution of this case. CCJ is a consistent defender of federalism principles and comity among state and federal courts. The decision below undermines those interests by resolving an issue of state judicial administration that should be left to state courts, interpreting state law in conflict with the authoritative construction of the state's highest court, and applying a federal constitutional standard inapplicable to state courts.

This brief has been reviewed and approved by the Amicus Committee of the Conference of Chief Justices, chaired by the Chief Justice of Vermont, and composed of the current or former Chief Justices of Delaware, Indiana, New Jersey, Texas, and Utah.

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[1] Pursuant to Supreme Court Rule 37, *amicus curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amicus curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. All parties received timely notice of CCJ's intent to file this brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

State courts fulfill critical functions in our Nation's legal system, particularly in connection with criminal justice. They oversee the vast majority of criminal prosecutions, and subsequent appeals and requests for post-conviction relief take up a substantial portion of state-court dockets. Those proceedings are vital to the criminal-justice system but also costly for all involved.

In California, as in many other states, statutes provide for state courts to appoint counsel to represent capital inmates in state post-conviction proceedings. Cal. Gov't Code § 68662. Such appointments "shall be [made] as expeditiously as possible, consistent with a fair adjudication." Cal. Penal Code § 1509(f). The California Supreme Court has recognized that, "[i]deally, the appointment of habeas corpus counsel should occur shortly after an indigent defendant's judgment of death." *In re Morgan*, 50 Cal. 4th 932, 996 (2010). As a practical matter, however, fiscal limitations and "a serious shortage of qualified counsel … willing to represent capital inmates in habeas corpus proceedings" mean that it is often not possible for California courts to appoint habeas counsel for years or even decades, if at all. *Id.* at 996.

Given those practical constraints, over which the state judiciary has no meaningful control, the California Supreme Court has construed timing provisions in Section 1509(f) to be "merely directive" rather than mandatory. *Briggs v. Brown*, 3 Cal. 5th 808, 860 (2017). The alternative, the Court has reasoned, "unduly restrict[s] the courts' ability to administer justice." *Id.* at 854.

In the decision below, the Ninth Circuit adopted a markedly different approach. In a suit brought under 42 U.S.C. § 1983 by a California capital inmate who died from natural causes during the appeal, the Ninth Circuit construed California's appointment-of-counsel statute to create a property interest protected by the federal Constitution and held that federal due-process principles compel California state judges to appoint capital habeas counsel "within a reasonable time" or face liability in federal court. Pet.App.79a-82a.

This Court should vacate that troubling decision. While *amicus* takes no position on vacatur-by-reason-of-mootness principles generally, vacatur is uniquely appropriate here because the Ninth Circuit's decision undermines important principles of federalism and comity, with potentially far-reaching adverse consequences for state courts. As a legal matter, the decision improperly intrudes on state courts' prerogatives to manage their criminal justice systems, conflicts with a state supreme court's authoritative construction of state law, and applies a due process standard designed for federal administrative law rather than state criminal procedure. As a practical matter, the decision could impose massive new costs on state courts without providing any mechanism to raise the necessary funds. Such a significant decision should not become binding law without the possibility of further review.

ARGUMENT

I. THE DECISION BELOW UNDERMINES FEDERALISM AND COMITY PRINCIPLES

In our system of federalism, states are "residuary sovereigns and joint participants in the governance of the Nation" deserving the proper "respect owed them

as members of the federation." *Alden v. Maine*, 527 U.S. 706, 748-49 (1999) (quotation marks omitted). Federal courts thus abide by the "notion of 'comity,' that is, a proper respect for state functions," which recognizes "that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 601 (1975) (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). This Court is thus loath to allow federal judicial interference with state functions. *Id.* at 603.

That general respect for states and their institutions commands a particular "[r]espect for the independence of state courts." *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). State courts "'have the solemn responsibility equally with the federal courts to safeguard constitutional rights,' and this Court has refused to sanction any decision that would 'reflect negatively upon a state court's ability to do so.'" *Burt v. Titlow*, 571 U.S. 12, 19 (2013) (brackets omitted) (quoting *Trainor v. Hernandez*, 431 U.S. 434, 443 (1977)). Considerations of federalism and comity are accordingly at their apex when federal courts are confronted with requests for equitable relief against a state judiciary. *Huffman*, 420 U.S. at 603-04. Such "interference … reflect[s] negatively upon the state courts' ability to enforce constitutional principles" and should be carefully circumscribed. *Id.* at 602-03 (quoting *Steffel v. Thompson*, 415 U.S. 452, 462 (1974)).

The decision below did not afford the California judiciary that due respect. The Ninth Circuit failed to abstain from resolving a challenge to the internal administration of California's judicial system; its conclusion

that California law creates a federally protected property right to the appointment of capital habeas counsel is inconsistent with California's controlling statutory and decisional law; and it vastly expanded the due process standard to which state courts must adhere when adjudicating post-conviction claims. For all those reasons, the decision below would have been a prime candidate for en banc rehearing or certiorari review on the merits if the case had not become moot because of the Respondent's death during the appeal. Rather than leave the decision on the books as a result of that happenstance, this Court should vacate the decision to allow relitigation of these significant issues in a proper case or controversy.

A. Abstention Principles Weighed Against The Ninth Circuit's Resolution Of This Case

One significant way in which federal courts show state courts the respect that federalism demands is through abstention doctrines. Under those doctrines, "federal courts may decline to exercise their jurisdiction"—*i.e.*, "abstain" from deciding a matter—when doing so "would clearly serve an important countervailing interest." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996). Important countervailing interests that warrant abstention include, for example, "regard for federal-state relations" and "wise judicial administration." *Id.* (citation omitted).

With those interests in mind, this Court in *Younger* called for federal courts to abstain from deciding cases that interfere with pending state-court criminal proceedings. 401 U.S. at 43-44. A "vital consideration" in reaching that decision was "sensitivity to the legitimate

interests of both State and National Governments," under which federal courts endeavor to safeguard federal rights and interests "in ways that will not unduly interfere with the legitimate activities of the States." *Id.* at 44.

"The policies underlying *Younger* are fully applicable to noncriminal judicial proceedings when important state interests are involved." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 432 (1982). The Court has thus extended *Younger* to "state civil proceedings that are akin to criminal prosecutions or that implicate a State's interest in enforcing the orders and judgments of its courts." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013) (citing cases).

For example, in *O'Shea v. Littleton*, 414 U.S. 488 (1974), plaintiffs brought a class action lawsuit alleging that state judges and other state officials were engaging in racially discriminatory practices. The plaintiffs sought an injunction to, *inter alia*, require state officials to set bail in a more individualized manner and to cease imposing higher sentences allegedly based on race. *Id.* at 492. The court of appeals instructed the district court to grant injunctive relief against the state officials if the allegations were proven true. *Littleton v. Berbling*, 468 F.2d 389, 414-15 (7th Cir. 1972).

This Court reversed, reasoning that the relief sought would amount to an "ongoing federal audit of state criminal proceedings" that "would indirectly accomplish the kind of interference that *Younger* … and related cases sought to prevent." *O'Shea*, 414 U.S. at 500. The Court explained that "recognition of the need for a proper balance in the concurrent operation of fed-

eral and state courts counsels restraint against the issuance of injunctions against state officers engaged in the administration of the State's criminal laws in the absence of a showing of irreparable injury which is 'both great and immediate.'" *Id.* at 499 (quoting *Younger*, 401 U.S. at 46). Finally, the Court noted its concerns that "such a major continuing intrusion of the equitable power of the federal courts into the daily conduct of state criminal proceedings is in sharp conflict with the" abstention principles set forth in cases such as *Younger*. *Id.* at 502.

Faithful application of this "strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances" has made federal courts especially unwilling to meddle in the internal administration of state judicial systems. *Middlesex Cnty. Ethics Comm.*, 457 U.S. at 431. In *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1 (1987), for instance, the Court determined that the district court and court of appeals should have abstained from ruling on a due process challenge to Texas post-judgment collection procedures because of "the significant interests harmed by their unprecedented intrusion into the [state] judicial system." *Id.* at 10. For similar reasons, this Court held in *Juidice v. Vail*, 430 U.S. 327 (1977), that abstention was appropriate in a Section 1983 challenge to New York's civil contempt process. *Id.* at 338-39.

The Court's reasoning in *Pennzoil* and *Juidice* applies with equal if not greater force here. Respondent brought a Section 1983 challenge to state-court judicial procedures—the appointment of capital habeas counsel under state law—and the remedy the Ninth Circuit afforded him represents an "unprecedented intrusion

into [California's] judicial system" by federal courts. *Pennzoil*, 481 U.S. at 10. Specifically, under the Ninth Circuit's decision, California state judges must appoint capital habeas counsel "within a reasonable time" or face Section 1983 suits, Pet.App.79a-82a, even though nobody disputes that the California Legislature has allocated insufficient funds and there are not enough willing and qualified lawyers to complete the task, *In re Morgan*, 50 Cal. 4th at 996-97. This Court's abstention doctrines, and the underlying principles of federalism and comity that they serve, do not permit such an intrusive "ongoing federal audit of" California's post-conviction relief proceedings. *O'Shea*, 414 U.S. at 500. At a minimum, the Ninth Circuit's imposition of such an intrusive remedy should not become binding law without the prospect of en banc rehearing or review by this Court—which is now foreclosed because of the case's mootness. Vacatur is accordingly the appropriate course.

B. The Decision Below Improperly Expanded State Law Beyond The Authoritative Construction Of The State's Highest Court

"The highest court of each State … is 'the final arbiter of what is state law.'" *Montana v. Wyoming*, 563 U.S. 368, 377 n.5 (2011) (quoting *West v. AT&T Co.*, 311 U.S. 223, 236 (1940)). Accordingly, when applying state law, a federal court is bound by any authoritative interpretation of the highest state court. *See Animal Sci. Prods., Inc. v. Hebei Welcome Pharm. Co.*, 585 U.S. 33, 44 (2018); *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). When addressing a question of first impression under state law, federal courts must attempt to "ascertain[] what the state courts may [t]hereafter determine the

state law to be." *Meredith v. City of Winter Haven*, 320 U.S. 228, 234 (1943).

This longstanding practice is grounded in principles of federalism and comity—in particular, the recognition that "the State's highest court is the best authority on its own law." *Comm'r v. Bosch's Est.*, 387 U.S. 456, 465 (1967); *see also United States v. Morrison*, 29 U.S. 124, 137 (1830). For that reason, "it is not [a federal court's] role to break new ground in state law." *Lopardo v. Fleming Cos., Inc.*, 97 F.3d 921, 930 (7th Cir. 1996). Rather, the federal court must "ascertain from all the available data what the state law is and apply it rather than … prescribe a different rule, however superior it may appear." *Montana*, 563 U.S. at 377 n.5 (quoting *West*, 311 U.S. at 237).

Under core principles of federalism, moreover, a federal court's interpretation of any statute should avoid unduly "intrud[ing] on state governmental functions." *Gregory v. Ashcroft*, 501 U.S. 452, 470 (1991); *see also Montgomery v. Louisiana*, 577 U.S. 190, 211 (2016) ("[T]his Court is careful to … avoid intruding more than necessary upon the States' sovereign administration of their criminal justice systems."). The Court in *Gregory* and *Montgomery* articulated this rule in the context of interpreting a federal statute, but it applies *a fortiori* when construing state statutes. *Cf. Horne v. Flores*, 557 U.S. 433, 471 (2009) (vacating "a statewide injunction that intruded deeply into the State's budgetary processes" implemented based on an "interpretation of state law").

The Ninth Circuit's decision runs contrary to those fundamental tenets. Under California Government Code § 68662, "[t]he superior court that imposed [a]

sentence shall offer to appoint counsel to represent a state prisoner subject to a capital sentence for purposes of state postconviction proceedings." The appointment of habeas counsel "shall be [made] as expeditiously as possible, consistent with a fair adjudication." Cal. Penal Code § 1509(f); *see also* Pet.App.29a (Bennett, J., dissenting from the denial of rehearing en banc) (same); *Briggs*, 3 Cal. 5th at 824 (explaining that counsel for indigent capital inmates must be appointed "as soon as possible"); *People v. Wilson*, 16 Cal. 5th 874, 957 (2024) ("The representation that superior courts must order pursuant to Government Code section 68662 … pertain[s] to capital petitions governed by section 1509 …."). As a matter of ordinary meaning, "possible" means "capable of being done," Ballentine's Law Dictionary (3d ed. 2010), "within the limits of ability, capacity, or realization," Merriam-Webster's Collegiate Dictionary (11th ed. 2003), or "[what] is in one's power, that one can do, exert, use, etc.," Oxford English Dictionary (2d ed. 1989). And the California statutes' general reference to appointment "as expeditiously as *possible*"—rather than within a fixed timeframe—distinguishes California's statutes from those of other states. *See, e.g.*, Ark. Code § 16-91-202(a)(1)(A)(i) ("If a capital conviction and sentence are affirmed on direct appeal, the circuit court in which the conviction was obtained *shall, within two (2) weeks after the affirmance*, conduct a hearing and enter a written order appointing counsel to represent the petitioner in a post-conviction proceeding." (emphasis added)); Mont. Code § 46-21-201(3)(b)(1) ("*Within 75 days* after a conviction for which a death sentence was imposed … the sentencing court shall … order the office of state public defender to assign counsel." (emphasis added)); Tex. Crim. P.

art. 11.071, § 2(c) ("At the earliest practical time, but *in no event later than 30 days*, after the convicting court makes the findings required … the convicting court shall appoint the office of capital and forensic writs." (emphasis added)). The plain text of the California statutes thus does not create an expectation of the appointment of counsel by a certain date or timeframe, much less a cognizable property interest in such appointment.

California Supreme Court decisions interpreting the relevant statutes reinforce that conclusion. In *Morgan*, the California Supreme Court stated that "[*i*]*deally*, the appointment of habeas corpus counsel should occur shortly after an indigent defendant's judgment of death." 50 Cal. 4th at 996 (emphasis added). The Court explained, however, that the "task of recruiting counsel has been made difficult" by limited fiscal resources and "a serious shortage of qualified counsel … willing to represent capital inmates in habeas corpus proceedings." *Id.* at 996-97. The straightforward position of the California Supreme Court is thus that it is not "possible" for California state courts to appoint habeas counsel any more expeditiously than they do. Cal. Gov't Code § 68662. And because "it would have been impossible for California courts to guarantee appointment of habeas counsel within a certain time frame, the California Supreme Court would not find that the California Legislature intended the courts to do the impossible." Pet.App.35a (Bennett, J., dissenting from the denial of rehearing en banc).

In *Briggs*, the California Supreme Court held that even the *specific* time limits enumerated in California Penal Code § 1509(f)—which set a two-year deadline for courts to resolve capital habeas petitions—are "merely directive" rather than mandatory. 3 Cal. 5th

at 860. Otherwise, the court reasoned, the statute would "materially impair fair adjudication" and "unduly restrict the courts' ability to administer justice." *Id.* at 854. As in *Morgan*, the Court recognized that "[m]uch depends on the funding made available by the Legislature." *Id.* at 861.

This Court's decisions in analogous contexts further suggest that California law does not create a property interest in the appointment of capital habeas counsel within a set amount of time. For instance, in *Town of Castle Rock v. Gonzales* 545 U.S. 748 (2005), this Court determined that a state law providing that police "shall use every reasonable means to enforce a restraining order" did not create a property interest for due process purposes regardless of the statute's facially mandatory language. *Id.* at 759, 763-64 (quoting Colo. Rev. Stat. § 16-6-803.5(3)(a) (1999)). The Court explained that the "indeterminacy" of the statute's terms " is not the hallmark of a duty that is mandatory[, n]or can someone be safely deemed 'entitled' to something when the identity of the alleged entitlement is vague." *Id.* at 764. So too here. Respondent's alleged "entitlement" to the appointment of habeas counsel "as expeditiously as possible" is far too indeterminate and vague to form the basis of his due process claim. *See id.* at 766 (cautioning against lightly expanding due process principles to protect an interest that does not "resemble any traditional conception of property").

The Ninth Circuit failed to follow California law and this Court's due process jurisprudence. The panel's speculation that members of the California judiciary could have altered the qualification requirements for appointing habeas counsel or allocated internal budgetary resources differently, Pet.App.62a-63a, contradicts

the California Supreme Court's repeated insistence in *Morgan* that the delays in appointing capital habeas counsel are "[d]ue to circumstances beyond our control," 50 Cal. 4th at 940-41 & n.7. The Ninth Circuit also did not recognize the California Supreme Court's well-established principle that statutes should not be construed to "materially impair fair adjudication or unduly restrict the courts' ability to administer justice." *Briggs*, 3 Cal. 5th at 854. Interpreting Section 1509(f) to require California courts to appoint habeas counsel within specific time limits does exactly that.

In short, rather than "ascertain from all the available data what the state law is and apply it," *Montana*, 563 U.S. at 377 n.5, the Ninth Circuit adopted a novel interpretation of California law unmoored from the relevant California statutes and Supreme Court decisions. This case is therefore a prime candidate for vacatur due to happenstance that has prevented this Court or the en banc Ninth Circuit from reviewing an incorrect—and highly consequential—decision.

C. The Ninth Circuit Applied An Inapt Due Process Standard

This Court has applied two different tests to determine whether a particular government action comports with the Due Process Clause. The first is set out in *Mathews v. Eldridge*, 424 U.S. 319 (1976), and requires courts to balance "the private interest that will be affected," "the risk of an erroneous deprivation of such interest through the [state's] procedures," and "the Government's interest." *Id.* at 335. The second is set out in *Medina v. California*, 505 U.S. 437 (1992), and asks whether the challenged action "offends some prin-

ciple of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental," or "transgresses any recognized principle of fundamental fairness in operation." *Id.* at 446, 448 (quotation omitted).

Those tests apply in distinct factual scenarios. The *Mathews* test is generally directed to "address[ing] due process claims arising in the context of administrative law." *Medina*, 505 U.S. at 444. For example, in *Mathews* itself the Court applied that test to determine whether a recipient of Social Security benefits was entitled to an evidentiary hearing before the termination of those benefits. 424 U.S. at 323-26. Since then, the Court has applied *Mathews* in a variety of administrative and civil contexts. *See, e.g.*, *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 542-43 (1985) (discharge of government employee); *FDIC v. Mallen*, 486 U.S. 230, 242 (1988) (suspension of bank official from participating in bank's affairs); *Gilbert v. Homar*, 520 U.S. 924, 931-32 (1997) (tenured police officer's suspension without pay after being arrested and charged with felony).

The *Medina* test, on the other hand, "provide[s] the appropriate framework for assessing the validity of state procedural rules" that "are part of the criminal process." *Medina*, 505 U.S. at 443. As this Court explained in *District Attorney's Office for Third Judicial District v. Osborne*, 557 U.S. 52 (2009), the *Medina* test applies to cases reviewing state post-conviction procedures. Specifically, the *Osborne* Court applied *Medina* to hold that Alaska's denial of a prisoner's access to DNA testing under post-conviction procedures developed through Alaska courts' interpretation of state law did not violate fundamental principles of justice or fairness. *Id.* at 69. The Court explained that "when a State

chooses to offer help to those seeking relief from convictions, due process does not dictate the exact form such assistance must assume." *Id.* (cleaned up). That is because, as here, a convicted inmate's "right to due process … must be analyzed in light of the fact that he ha[d] already been found guilty at a fair trial, and ha[d] only a limited interest in postconviction relief." *Id.* State courts and legislatures accordingly have "more flexibility in deciding what procedures are needed in the context of postconviction relief." 557 U.S. at 68.

Medina thus provides the governing standard for evaluating the constitutional adequacy of California's post-conviction procedures at issue in this case. Here, Respondent did not satisfy the high burden *Medina* sets for his due process claim. California's alleged delay in appointing habeas counsel, which is not constitutionally required, does not offend fundamental principles of justice or fairness because Respondent, a convicted inmate "has only a limited interest in postconviction relief," *Osborne*, 557 U.S. at 69, and various California statutes and policy choices affect when the appointment of habeas counsel can be made.[2]

The Ninth Circuit, however, incorrectly relied on *Mathews*. *See* Pet.App.84a-88a (balancing the *Mathews*

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[2] *See, e.g.*, Cal. Gov't Code § 68661(a) (authorizing Habeas Corpus Resource Center to employ no more than 34 capital defense attorneys); Cal. Gov't Code § 68666(a) (authorizing California Supreme Court to compensate habeas counsel at rate of at least $125 per hour); Cal. Gov't Code § 68666(b) (limiting authorized habeas litigation expenses to $50,000 absent an order to show cause); Cal. Rule of Court 8.652 (establishing competency standards that limit the pool of private attorneys available to handle habeas cases).

factors to conclude Respondent had a "substantial" interest in appointment of capital habeas counsel, a property right that the State's procedures inadequately protected). The court's application of that test infringed upon the principles of federalism and comity by intruding on an area where States are generally given deference—"flexibility in deciding what procedures are needed in the context of postconviction relief." *Osborne*, 557 U.S. at 68.

II. THE DECISION BELOW WILL HAVE SERIOUS NEGATIVE CONSEQUENCES

Aside from its legal flaws, the decision below will also impose severe practical consequences. The most immediate is likely a flood of lawsuits from capital inmates seeking to force state courts or other state-government entities to appoint post-conviction counsel on timelines determined by federal courts.

That consequence is undeniable in California. The Ninth Circuit panel members recognized that "other capital prisoners who ... have waited many years for habeas counsel" will invoke the "decisional framework" of the decision below to try to force the appointment of such counsel. Pet.App.7a (Berzon, J., respecting the denial of rehearing en banc). That is no small concession given the hundreds of capital inmates in California. *See* Death Penalty Info Ctr., *California* (2025), https://tinyurl.com/yc7dvd36. Moreover, "[t]he ambiguity in the panel's 'expeditiously' standard invites lengthy discovery bouts" about its proper application, which will only further hinder state courts' ability to devote resources to appointing counsel in capital habeas cases. Pet.App.23a n.4 (Bennett, J., dissenting from the denial of rehearing en banc).

California is not the only state where courts would be vulnerable to such suits. Of the 27 states that authorize capital punishment, 25 have statutes providing for appointment of habeas counsel for indigent capital inmates.[3] As of this year, these 25 states had 2,057 inmates on death row. *See* Death Penalty Info Ctr., *State*

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[3] Ala. Code § 13A-5-53.1(b) ("shall appoint"); Ariz. Rev. Stat. § 13-4041(B) ("shall appoint"); Ark. Code § 16-91-202(a)(1)(A)(i) ("shall … enter a written order appointing"); Colo. Rev. Stat. § 16-12-205(1) ("shall enter an order appointing"); Conn. Gen. Stat. § 51-296(a) ("shall … designate"); Fla. R. Crim. P. 3.851(b)(1) ("shall … issue an order appointing"); Idaho Crim. R. 44.2(a) ("must assign"); Ind. R. Crim. P. 24(H) ("shall enter"); Kan. Stat. § 22-4506(d)(1) ("shall provide"); Ky. Rev. Stat. § 31.110(2)(c) ("is entitled to be represented"); La. Rev. Stat. § 15:169(A) ("shall promptly cause counsel to be enrolled"); Miss. R. App. P. 22(c)(1)(i) ("shall be represented"); Mo. Rev. Stat. § 547.370(1) ("shall cause to be appointed"); Mont. Code § 46-21-201(3)(b)(1) ("shall … order the office of state public defender to assign counsel"); Nev. Rev. Stat. § 34.820(1)(a) ("shall … [a]ppoint"); Ohio Rev. Code § 2953.21(J)(1) ("shall appoint"); 22 Okla. St. § 1089(B) ("shall represent"); Or. Rev. Stat. § 138.590(4) ("shall appoint"); 234 Pa. Code Rule 904(H)(1) ("shall appoint"); S.C. Code § 17-26-160(B) ("shall be immediately appointed"); S.D. Codified Laws § 21-27-4 ("shall, if the judge finds that such appointment is necessary to ensure a full, fair, and impartial proceeding, appoint"); Tenn. Sup. Ct. Rule 13(i) ("shall be appointed"); Tex. Crim. P. art. 11.071, § 2(c) ("shall appoint"); Utah Code § 78B-9-202(2)(a) ("shall … promptly appoint"); Wyo. Stat. § 7-6-104(c)(ii) ("entitled … [t]o be represented"). *But see Sallie v. Chatman*, 34 F. Supp. 3d 1272, 1290 n.21 (M.D. Ga. 2014) (recognizing that Georgia does not appoint habeas counsel for indigent death-row inmates); *State v. Victor*, 242 Neb. 306, 313 (1993), *aff'd*, 511 U.S. 1 (1994) (same for Nebraska). *See generally* Death Penalty Info. Ctr., *State by State* (2025), https://tinyurl.com/338vnmkz (noting that 27 States retain the death penalty).

by State (2025), https://tinyurl.com/338vnmkz. According to the "decisional framework" of the decision below, every one of those states could also be a font of numerous federal cases just like this one.

If successful, those hundreds of new suits would impose enormous burdens on limited state resources. According to a report that Respondent cited in his complaint below, a successful capital habeas petition can take "8,000 hours of pro bono attorney time, [take] 7,000 hours of paralegal time, and [accrue] litigation expenses of $328,000." California Commission on the Fair Administration of Justice, *Final Report* 53 n.71 (2008), https://tinyurl.com/2d2jmu82 (citing *In Re Lucas*, 33 Cal. 4th 682 (2004)); *see* First Amended Complaint at 10 (¶ 31), *Redd v. Cantil-Sakauye*, No. 16-cv-1540 (C.D. Cal. Aug. 13, 2019), ECF No. 31. Multiplying those hours by the currently applicable fee rates in California would mean the total cost of a capital habeas petition is roughly $1.75 million. *See* Cal. Sup. Ct., *Payment Guidelines for Counsel Appointed by the Supreme Court Representing Indigent Criminal Appellants in California Courts* at 2 (Feb. 1, 2025), https://tinyurl.com/yv933hb6. Multiplied by 362 (the minimum number of other indigent capital prisoners in Respondent's putative class), that would amount to federal courts imposing an over-$600-million burden on California's judiciary. *Cf.* Pet.App.22a n.4 (Bennett, J., dissenting from the denial of rehearing en banc).

Beyond California, taking those same hours and multiplying them by the currently applicable federal Criminal Justice Act rates would yield a total cost of approximately $2 million per capital habeas petition. U.S. Courts, Criminal Justice Act (CJA) Guidelines § 630.10.10(a), https://tinyurl.com/chj2mhmb. Multiplied

by 2,057 (the approximate number of other death-row inmates in states that provide for the appointment of capital habeas counsel), that would amount to an over-$4-*billion* bill for state courts.

Finally, without vacatur, the Ninth Circuit's analysis paves the way for more "intrusive" due process scrutiny of states' post-conviction procedures under the inapplicable *Mathews* test. *Medina*, 505 U.S. at 446. That result would undercut states' "flexibility in deciding what procedures are needed in the context of post-conviction relief"—a flexibility justified on the grounds that a "criminal defendant proved guilty … does not have the same liberty interests as a free man." *Osborne*, 557 U.S. at 68-69. It would also disregard the "substantial deference" due to States' "considerable expertise" in the area of criminal process, which, like the writ of habeas corpus, is "grounded in centuries of common-law tradition." *Medina*, 505 U.S. at 445-46. Such a stark departure from this Court's precedent with such grave consequences for states and our system of federalism merits vacatur now that the decision has by happenstance become effectively unreviewable.

CONCLUSION

For the reasons set forth above, the Court should grant the petition for certiorari and vacate the judgment below.

Respectfully submitted.

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