No. 24-948

IN THE

Supreme Court of the United States

PATRICIA GUERRERO, CHIEF JUSTICE OF CALIFORNIA, AND KIMBERLY MENNINGER, JUDGE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE,

Petitioners,

v.

STEPHEN MORELAND REDD,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

REPLY BRIEF FOR PETITIONERS

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Respondent abandons most of his defenses of the Ninth Circuit's refusal to vacate its decision holding that the California judiciary plausibly violated the Due Process Clause because of delays in the appointment of state habeas counsel, something that the Constitution does not itself guarantee. He agrees that courts should follow the "ordinary application" of *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), even when a case becomes moot after the panel issued its decision. Br. in Opp. 20 (citation omitted). Although the Eighth Circuit in *Banyee* v. *Bondi*, 131 F.4th 823 (8th Cir. 2025), has only deepened the conflict since the filing of the petition, respondent dis-

claims any more stringent vacatur standard. He also agrees that this Court can vacate even without finding that the underlying decision is "cert-worth[y]." Br. in Opp. 26.

Everyone agrees, then, that this Court should apply *Munsingwear* straight up here. Under that decision, "mootness by happenstance provides sufficient reason to vacate" and thereby "clears the path for future relitigation of the issues." *U.S. Bancorp Mortgage Co.* v. *Bonner Mall Partnership*, 513 U.S. 18, 22, 25 n.3 (1994) (quoting *Munsingwear*, 340 U.S. at 40). Respondent argues half-heartedly that the case did not become moot by happenstance because he died while pursuing claims that the delay in appointment of state habeas counsel violated the Constitution—an assertion that improperly bootstraps the merits into *Munsingwear* and misrepresents the causes of litigation delay below. Respondent also argues that petitioners must show prejudice beyond the harms of being bound by an adverse precedent even though *Camreta* v. *Greene*, 563 U.S. 692 (2011), held that *Munsingwear* prevents precisely that kind of prejudice, which is especially egregious for repeat litigants like petitioners.

The need for this Court's intervention is urgent, as the Conference of Chief Justices and 20 States make clear. Petitioners have pursued vacatur because the Ninth Circuit's decision, by the panel's own description, establishes a "framework" for "similarly-situated prisoners" to attempt "to get past the pleading stage" with claims against the California judiciary. Pet. App. 7a, 16a (Berzon, J., respecting denial of rehearing en banc); see also States Br. 18. And respondent's counsel (despite representing no live client) vigorously defends that framework, perhaps because

counsel "is aware of several other class members who are ready and willing to intervene in the action to pursue the same claims." C.A. Doc. 69, at 34 n.6 (Feb. 16, 2024). This Court should grant the petition, vacate the Ninth Circuit's decision, and allow future relitigation of the underlying issues.

A. The Case Became Moot By Happenstance

Respondent's lead argument is that the case did not become moot by happenstance because he died while litigating claims alleging delays in the appointment of counsel under state law. Br. in Opp. 14. But even the panel acknowledged "mootness caused by the death of one party" is a form of "[i]nvoluntary mootness." Pet. App. 8a. Still, the panel refused to vacate because its opinion was issued before the case became moot, would provide "'guidance'" for future lawsuits, and (at the same time) supposedly did not cause "substantial prejudice" to petitioners. *Id.* at 9a (citation omitted). Respondent offers no sound reason to revisit the panel's conclusion that the case became moot by happenstance.

Respondent's contrived definition of happenstance depends on the merits of his claim that there were "unconstitutional delays" in the appointment of habeas counsel under state law. Br. in Opp. 14. That approach defies this Court's longstanding recognition that vacatur cannot turn on "assumptions about the merits" that the Court now lacks "constitutional power to decide." *Bancorp*, 513 U.S. at 27; see, *e.g.*, *United States* v. *Hamburg-Amerikanische Packetfahrt-Actien Gesellschaft*, 239 U.S. 466, 477 (1916). Because mootness cut short petitioners' ability to press their justiciability and merits defenses, saddling petitioners with an adverse decision based on the timing of respondent's death would be unfair. Pet. 10.

Respondent also has no basis to argue that mootness "result[ed] from the unilateral action" of petitioners. *Bancorp*, 513 U.S. at 23. This Court has never held that standard litigation delays are the sort of inequitable conduct that could deprive a party of the protections of vacatur. At any rate, almost none of the delay can be laid at petitioners' feet:

- Respondent spent 15 months seeking appointment of state habeas counsel through an improper vehicle, culminating in this Court's denial of certiorari in *Redd* v. *Chappell*, 574 U.S. 1041 (2014).
- Respondent waited 15 months to file a § 1983 claim. D. Ct. Doc. 1 (Mar. 4, 2016).
- Without calling for a response from petitioners, the district court took 19 months to dismiss the complaint. D. Ct. Doc. 4, at 7-9 (Oct. 3, 2017).
- Fourteen months later, the Ninth Circuit vacated the dismissal and instructed the district court to allow respondent to file an amended complaint—relief petitioners did not oppose. D. Ct. Doc. 16 (Dec. 12, 2018).
- Respondent secured counsel, who sought multiple extensions before filing an amended complaint nine months later, D. Ct. Doc. 31 (Aug. 13, 2019), and serving petitioners three months after that, D. Ct. Docs. 45-46 (Nov. 20, 2019).
- After the parties briefed petitioners' motion to dismiss on a schedule punctuated with delays (including from the COVID-19 pandemic), the district court dismissed the amended complaint ten months after the filing of the reply in sup-

port of the motion. D. Ct. Doc. 78 (Mar. 31, 2021).

- On October 20, 2023, the panel issued its opinion 17 months after oral argument. Pet. App. 45a.
- Two months later, respondent died of natural causes while petitioners' rehearing petition was pending. C.A. Doc. 61, at 1 (Dec. 26, 2023).

As that timeline shows, the delay stemmed from respondent's litigation choices and from long periods during which the courts below prepared their opinions. Petitioners never "step[ped] off the statutory path" of review nor took action to thwart respondent's ability to pursue his constitutional claims in federal court. *Bancorp*, 513 U.S. at 27. And such routine delays in capital litigation are no more an exception to *Munsingwear* than they are a violation of the Eighth Amendment. Cf. *Knight* v. *Florida*, 528 U.S. 990, 992 (1999) (Thomas, J., concurring in denial of certiorari) (citing *Lackey* v. *Texas*, 514 U.S. 1045 (1995)).

Respondent's counsel refers generically to "exculpatory evidence" and "innocence." Br. in Opp. 6, 14. But respondent sought counsel primarily to challenge the California courts' refusal to suppress *inculpatory* evidence, a claim that is not even cognizable in habeas. D. Ct. Doc. 1, at 5-8; see *Stone* v. *Powell*, 428 U.S. 465, 494 (1976). Again, "there was overwhelming and seemingly irrefutable evidence that [respondent] committed the crimes charged." *People* v. *Redd*, 48 Cal. 4th 691, 740 (2010). It would be perverse to attribute the timing of respondent's death to petitioners when respondent received all he could have hoped to obtain in habeas: an indefinite stay of his death sentence. Pet. 6-7.

B. Circuits Disagree About The Vacatur Standard When A Case Becomes Moot After A Panel Issues Its Opinion

Respondent makes no headway attacking the split from either end. The Ninth Circuit, along with the Second, Third, Tenth, and (late-switching) Eighth Circuits, have held that a court of appeals has more discretion to leave its own opinion in place when "post-decisional mootness" strikes. Pet. App. 6a. In contrast, the D.C., Fourth, and Eleventh Circuits apply the standard *Munsingwear* test, under which mootness by happenstance ordinarily requires vacatur.

Respondent begins by mischaracterizing the Ninth Circuit's decisions. He contends that the Ninth Circuit refused to vacate its decision in *Armster* v. *U.S. District Court for Central District of California*, 806 F.2d 1347 (9th Cir. 1986), because the case was "not moot." Br. in Opp. 15 (quoting 806 F.2d at 1361). But respondent ignores the fact that *Armster* separately refused to apply *Munsingwear* on the theory that "[t]here is a significant difference between a request to dismiss a case or proceeding for mootness prior to the time an appellate court has rendered its decision on the merits and a request made after that time." 806 F.2d at 1355. The Ninth Circuit has since repeatedly distinguished mootness before a panel opinion from mootness after one. *E.g.*, Pet. App. 6a; *Dickens* v. *Ryan*, 744 F.3d 1147, 1148 (9th Cir. 2014) (en banc).

Nor does the Ninth Circuit stand alone in claiming more discretion to shield its own decisions from *Munsingwear* vacatur. The Third and Tenth Circuits agree that "[t]here is a significant difference" between requesting vacatur "prior to" and "after" the court of appeals "has rendered its decision on the merits."

Humphreys v. *DEA*, 105 F.3d 112, 115 (3d Cir. 1996) (quoting *Armster*, 806 F.2d at 1355); *Bastien* v. *Office of Senator Ben Nighthorse Campbell*, 409 F.3d 1234, 1235 (10th Cir. 2005) (per curiam) (quoting same). The Second, Third, and Tenth Circuits also have all treated post-decisional mootness (along with settlement) as a circumstance that "generally" disfavors vacatur. *In re Grand Jury Investigation*, 399 F.3d 527, 528 n.1 (2d Cir. 2005); *Humphreys*, 105 F.3d at 114; *Bastien*, 409 F.3d at 1236. And since the petition's filing, the Eighth Circuit has fractured over this precise question whether decisions are "generally not good candidates for discretionary vacatur" when mootness arises only after the decision. *Banyee*, 131 F.4th at 826 (Stras, J., concurring in denial of rehearing en banc); see *id.* at 829-830 (Colloton, C.J., dissenting from denial of rehearing en banc) (urging application of *Munsingwear* standard).

Respondent contends that these circuits denied vacatur on the "particular facts" of each case given the "unique equities." Br. in Opp. 15, 17. But the question isn't whether the Ninth Circuit and its compatriot circuits always, never, or "sometimes" vacate their own decisions. Cf. *id.* at 16-17. The question is whether those circuits properly adopted a special test for post-decisional mootness.

Three circuits take a different approach, applying the standard rules of *Munsingwear* even when a case becomes moot after the panel decision's issuance. Before *Bancorp*, the Eleventh Circuit would vacate its decisions under *Munsingwear* even when the parties settled after the panel issued its opinion. *E.g.*, *In re Ghandtchi*, 705 F.2d 1315, 1316 (11th Cir. 1983) (per curiam). And since *Bancorp* clarified that vacatur is generally inappropriate when the parties settle, both

the D.C. Circuit and the Fourth Circuit have held that vacatur is the "just and appropriate" (or "customary") remedy when a case becomes moot by happenstance. *United States* v. *Schaffer*, 240 F.3d 35, 38 (D.C. Cir. 2001) (en banc) (per curiam) (first quote); *Hirschfeld* v. *Bureau of Alcohol, Firearms, Tobacco & Explosives*, 14 F.4th 322, 327-328 (4th Cir. 2021) (second quote). None of those courts suggested that a different standard applies to "post-decisional mootness." Pet. App. 6a.

Given this split over the standard, respondent retreats to the position that the conflict is unimportant because mootness "rarely" arises after a panel decision. Br. in Opp. 20. This Court is the best judge of whether such mootness is really that "rar[e]" in light of the number of such *Munsingwear* requests that could be resolved in the courts of appeals but are instead shunted onto the certiorari docket. See Pet. 26-27 (collecting examples).

C. The Ordinary *Munsingwear* Test Applies In This Context

Respondent intones that vacatur depends on the "equities and circumstances" of each case. Br. in Opp. 22. But respondent never says *what* equities should matter. *Munsingwear* is not an anything-goes test, and the considerations outlined by this Court's precedents make clear that vacatur is appropriate here.

The prime factor is that the case became moot by the happenstance of respondent's death. See pp. 3-6, *supra*. According to the Ninth Circuit, vacatur in such event "is neither mandatory nor commonplace." Pet. App. 9a. But this Court has held that vacatur *is* the "normal rule" for mootness by happenstance. *Camreta*, 563 U.S. at 713. Not just once: "Vacatur is

in order when mootness occurs through happenstance—circumstances not attributable to the parties." *Arizonans for Official English* v. *Arizona*, 520 U.S. 43, 71 (1997). And not just twice: "[M]ootness by happenstance provides sufficient reason to vacate." *Bancorp*, 513 U.S. at 25 n.3; see also, *e.g.*, *Alvarez* v. *Smith*, 558 U.S. 87, 95-97 (2009).

Respondent does not dispute that this Court has never articulated a different vacatur standard when a case "became moot before certiorari" but after the court of appeals' decision. *Azar* v. *Garza*, 584 U.S. 726, 729 (2018) (per curiam). For at least eight decades, this Court has understood that an appeal "contemplates more than a consideration of the case by the Circuit Court of Appeals alone." *Walling* v. *James V. Reuter, Inc.*, 321 U.S. 671, 677 (1944). Those decisions refute the Ninth Circuit's special rule disfavoring vacatur in this context.

Respondent argues that petitioners have not suffered "any meaningful prejudice" because the panel opinion is not a "final adverse ruling." Br. in Opp. 23-24. But as petitioners explained, *Camreta* forecloses that narrow understanding of prejudice. Pet. 26-28. This Court vacated a portion of a decision in *favor* of the petitioners because that aspect had adverse "prospective effects"—namely, other plaintiffs could rely on the opinion's "legally consequential" ruling in "future cases." *Camreta*, 563 U.S. at 713, 714 n.11. While the Ninth Circuit denied vacatur to preserve its "decisional framework" for "future courts" that may confront claims brought potentially by hundreds of capital inmates, Pet. App. 7a, that binding precedential effect, "[f]ar from counseling against vacatur," only "reveals the necessity of that procedural course" for repeat players like petitioners with an institu-

tional interest in challenging adverse precedent through the full appellate process, *Camreta*, 563 U.S. at 713; see States Br. 7-8. Yet respondent never even cites *Camreta*, despite its ample airtime in the petition.

Respondent also has no response to the harms to state sovereignty and fiscal integrity noted by amici. The Ninth Circuit's decision "undermines important principles of federalism and comity" by allowing federal courts to oversee and interfere with the state judiciary's administration of state postconviction proceedings. Conference of Chief Justices Br. 3; accord States Br. 14-15. And its treatment of appointed counsel as a property right could impose "an over-$600-million burden" on California through lawsuits against California judges. Conference of Chief Justices Br. 18; see Pet. 32. Respondent does not dispute the tremendous potential cost.

Respondent falls back on a death-is-different approach to *Munsingwear*. Br. in Opp. 23. But none of his cases supports denying vacatur here. In one, the petitioner voluntarily moved to dismiss the petition after the respondent's death without seeking vacatur. Mot. to Dismiss Pet., *Ryan* v. *Nash*, 559 U.S. 999 (2010) (No. 09-686). The other two arose from criminal and habeas cases that were once governed by a separate standard and have come under *Munsingwear* only "in recent years." Stephen M. Shapiro et al., *Supreme Court Practice* § 19.7, at 19-39 (11th ed. 2019); see *Claiborne* v. *United States*, 551 U.S. 87, 87-88 (2007) (per curiam).

Ultimately, respondent's dueling understanding of *Munsingwear* tracks the approach advocated by Justice Jackson in two recent separate opinions. Br. in Opp. 23-25. He contends, in effect, that petitioners

should be required to identify some harm beyond "having to accept the law as the lower court stated it." *Acheson Hotels, LLC* v. *Laufer*, 601 U.S. 1, 19-20 (2023) (Jackson, J., concurring in the judgment) (stating "disagree[ment]" with *Camreta*). And he argues that the general rule of vacatur upon mootness by happenstance does not honor the view that "judicial decisions are valuable and should not be cast aside lightly." *Id.* at 17 (quoting *Chapman* v. *Doe*, 143 S. Ct. 857, 858 (2023) (Jackson, J., dissenting)).

Just last Term, this Court "decline[d] Justice Jackson's invitation to reconsider" its "*Munsingwear* practice," which is "well settled." *Acheson*, 601 U.S. at 5. Respondent was free to argue that this Court should, so to speak, reconsider its refusal to reconsider. But this Court has not done so.

D. Respondent Disavows A Certworthiness Requirement, Which Petitioners Meet Anyway

Some, notably the Solicitor General, have argued that *Munsingwear* vacatur is proper "only if the case would have warranted certiorari but for mootness." *E.g.*, Br. in Opp. at 10, *Perez-Garcia* v. *United States*, No. 24-6203 (Apr. 16, 2025); see also *Armster*, 806 F.2d at 1356 n.12. Here, however, respondent agrees with petitioners that the "cert-worthiness of the issues decided in the underlying panel opinion is an entirely separate issue from the vacatur-related question." Br. in Opp. 26-27; see Pet. 25-29. Respondent thus has relinquished any argument that petitioners must establish that they were not only deprived of seeking, but also likely would have secured, further review. This Court should accept that concession at a minimum for purposes of this petition and accordingly

vacate the panel decision for mootness by happenstance.

Petitioners in any event satisfy a certworthiness standard. First, this Court likely would have held a petition pending review of the Article III standing question in *Gutierrez* v. *Saenz*, No. 23-7809 (argued Feb. 24, 2025), and considered a GVR. Pet. 29-30. Although respondent tries to sidestep *Gutierrez* on the theory that he "had a right to state-appointed counsel as a matter of state law," Br. in Opp. 28, "standing in federal court is a question of federal law, not state law," *Hollingsworth* v. *Perry*, 570 U.S. 693, 715 (2013). Second, respondent does not identify any support for the Ninth Circuit's unprecedented treatment of appointed counsel as a property right rather than a procedural right. Br. in Opp. 29. And third, respondent admits that the Ninth Circuit should not have applied *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), if appointment of counsel (as here) is a "state procedural rul[e]." Br. in Opp. 28 (quoting *Medina* v. *California*, 505 U.S. 437, 443 (1992)). Respondent has no answer to the cases from this Court and other courts of appeals that apply *Medina* to postconviction proceedings. Pet. 31; Conference of Chief Justices Br. 15-16.

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The Court should grant the petition for a writ of certiorari, vacate the Ninth Circuit's decision under *United States* v. *Munsingwear, Inc.*, 340 U.S. 36 (1950), and remand with instructions to direct the district court to dismiss the case as moot.

Respectfully submitted.

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