No. 23-6776

In The
Supreme Court of the United States

ROBERT SHAWN INGRAM,

Petitioner,

v.

WARDEN, HOLMAN CORRECTIONAL FACILITY,

Respondent.

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

REPLY TO BRIEF IN OPPOSITION

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

INTRODUCTION

Robert Shawn Ingram is on Alabama's death row because his attorneys did not make reasonable efforts to ensure he followed through with a plea agreement allowing parole eligibility. The Alabama courts did not correctly analyze the clearly established law on this type of ineffective assistance of counsel claim and in fact, did not correctly assess whether his attorneys' failures prejudiced Mr. Ingram. Certiorari review is appropriate because the state courts decided this claim contrary to this Court's precedent. Supreme Court Rule 10(c).

Mr. Ingram remains on death row because he was denied due process of law during state post-conviction proceedings. Despite his best efforts to prove prejudice resulting from trial counsel's inadequate preparation of his penalty-phase case, he was denied funds for the expert witnesses he needed to do just that. There is a split among the circuits, and even within the Eleventh Circuit, on whether this issue is cognizable in federal habeas. The importance and timeliness of this question cannot be overstated because this Court's recent ruling in *Shinn v. Ramirez*, 596 U.S. 366 (2022), clarified that presenting evidence in state post-conviction proceedings is essential to securing federal habeas relief.

ANALYSIS

I. Respondent and the lower courts misinterpreted the prejudice component in this type of case, and Mr. Ingram meets the prejudice standard from *Lafler v. Cooper*, 566 U.S. 166 (2012).

Respondent continues to deny Mr. Ingram has shown that he satisfied *Lafler*'s prejudice analysis. BIO, p. 13, n.4. This argument, present throughout the entire case, evinces a complete misunderstanding of *Lafler*'s requirements.

Lafler requires relief when counsel performs deficiently and the petitioner is prejudiced such that, but for counsel's errors, there is a "reasonable probability he and the trial court would have accepted the guilty plea."[1] *Lafler* specifically defines prejudice in this situation:

> In these circumstances a defendant must show that but for the ineffective advice of counsel there is a reasonable probability that the plea offer would have been presented to the court (*i.e.*, that the defendant would have accepted the plea and the prosecution would not have withdrawn it in light of intervening circumstances), that the court would have accepted its terms, *and that the conviction or sentence, or both, under the offer's terms would have been less severe than under the judgment and sentence that in fact were imposed.*[2]

Mr. Ingram's conviction (capital murder) and sentence (death) are unquestionably more severe than the conviction (murder) and sentence (life with the possibility of parole) he would have received had his attorneys performed adequately.

The state courts concluded Mr. Ingram was not prejudiced in this case because they believed there was nothing else his attorneys could have done to

[1] *Lafler*, 566 U.S. at 174.

[2] *Id.* at 164. (Emphasis added.)

persuade him to meet the requirements of his plea deal. This notion originated in the state circuit court's deficient performance analysis,[3] but it is irrelevant to the prejudice inquiry. The state courts did not find facts with bearing on the prejudice inquiry.

There were no findings, for example, about the credibility of Mr. Ingram's sister, Carla or his Aunt Joyce on whether they could have persuaded Mr. Ingram to honor his plea agreement.[4] But because the Alabama Court of Criminal Appeals ("ACCA") cited that court's statement to justify denying Mr. Ingram's claim on prejudice grounds, the Eleventh Circuit treated the statement as a factual finding that must be overcome by clear and convincing evidence under § 2254(e)(1)[5] and as

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[3] Pet. App. 171a-172a.

[4] *See* Pet. App. 19a. (citing *Jenkins v. Comm'r, Alabama Dep't of Corr.*, 963 F.3d 1248, 1272 (11th Cir. 2020)) ("And '[t]he credibility of a witness is a question of fact entitled to a presumption of correctness under AEDPA.'"). The Eleventh Circuit compounded the State court's errors when it combined the circuit court and ACCA rulings to determine the "Alabama courts did not fail to consider" the testimony of Mr. Ingram and his relatives on separate issues—first, whether Mr. Ingram would have honored the plea agreement with competent advice by counsel, and second, whether Mr. Ingram would have listened to his family if they told him to do so. Pet. App. 18a-19a. Citing a Second Circuit case predating *Strickland*, the Eleventh Circuit incorrectly determined the state courts—treated as one entity— "did not credit" the entirety of this testimony. Pet. App. 19a. The ACCA called this testimony "self-serving," but because the circuit court did not make credibility determinations related to prejudice and instead rejected the claim on the deficient-performance prong, it cannot be said that the fact-finding court found the facts necessary to discredit the testimony as it applies to prejudice.

[5] Pet. App. 19a.

dispositive on *Strickland*'s[6] prejudice prong, allowing it § 2254(d)(2) deference.[7] Respondent's BIO provides no argument refuting this. Rather, it repeats the same errors made in the courts below in conflating the two analyses. *See* BIO, pp. 14-15.

Had any court conducted the proper prejudice analysis, it would have found that prejudice was proven. Mr. Ingram received a capital murder conviction and death sentence because his attorneys failed to ensure he did what he agreed to do months before: testify against Anthony Boyd. The lower courts held that he was not prejudiced because there was nothing his attorneys could have done to have him follow through with his plea agreement. This was not only factually wrong, but also legally incorrect. While the *Lafler* analysis is straightforward, every court reviewing this issue so far has misapplied it. This Court should grant certiorari to clarify for the lower courts how to apply the *Lafler* analysis when counsel renders deficient performance at the plea stage.

II. Certiorari is appropriate because the Eleventh Circuit's decision denying Mr. Ingram's COA violated this Court's precedent, and there is a circuit split on whether a court reviewing a habeas corpus petition can resolve a denial of due process in state post-conviction proceedings.

Respondent claims that the Eleventh Circuit's resolution of Mr. Ingram's Certificate of Appealability ("COA") is not worthy of this Court's review for two primary reasons. First, Respondent claims the decision does not violate *Buck v. Davis*,[8] even though the Eleventh Circuit decided the substance of the claim in

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[6] *Strickland v. Washington*, 466 U.S. 668 (1984).

[7] Pet. App. 21a.

[8] 580 U.S. 100 (2017).

denying the COA. Respondent also claims there is no circuit split on the underlying question. Both arguments against granting certiorari must fail.

A. Respondent's BIO supports the argument that the Eleventh Circuit violated *Buck.*

In *Buck*, this Court repeated that the COA determination is not coextensive with a merits determination.[9] Respondent, while arguing that the Eleventh Circuit's decision did not violate *Buck*, stated:

> Instead, the court assumed that the due process claim was cognizable in habeas and then found that the circuit court refused to allow the testimony of Ingram's expert during the evidentiary hearing because Ingram refused to allow the state's mental health expert to examine him.

BIO at 16-17. In other words, the Eleventh Circuit *denied the COA on the merits of the claim,* finding there was no due process violation. This is exactly what *Buck* prohibits. This court should grant certiorari to ensure this error is corrected.

B. Whether a due process violation in state post-conviction is cognizable in habeas corpus has split the circuits, so reasonable jurists have disagreed on the issue.

Mr. Ingram argued in his certiorari petition there is a circuit split on the underlying claim. Respondent, in its BIO, claims there is no split, citing, for example, *Montgomery v. Meloy.*[10] Specifically, according to Respondent, *Montgomery* holds simply that "errors in state collateral review cannot form the basis for federal habeas corpus relief."[11] But the *full* quote is very

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[9] 580 U.S. at 115 (citing *Miller-El v. Cockrell*, 537 U.S. 322 (2003)).

[10] 90 F.3d 1200 (7th Cir. 1996).

[11] *Id.* at 1206.

different. What the Seventh Circuit said was, "*Unless state collateral review violates some independent constitutional right,* such as the Equal Protection Clause, errors in state collateral review cannot form the basis for federal habeas corpus relief."[12] Indeed, the Seventh Circuit repeated this position 20 years later in a *per curiam* decision, holding:

> Although a majority of the courts of appeals have concluded "that errors in state post-conviction proceedings do not provide a basis for redress under § 2254," *Word v. Lord*, 648 F.3d 129, 131 (2d Cir. 2011) (collecting cases), we have not adopted this per se rule. Instead, we have held that "[u]nless state collateral review violates some independent constitutional right, such as the Equal Protection Clause, errors in state collateral review cannot form the basis for federal habeas corpus relief." *Montgomery v. Meloy*, 90 F.3d 1200, 1206 (7th Cir.1996) (citations omitted).[13]

Flores-Ramirez, 811 F.3d at 866.

Like the Seventh Circuit, the First Circuit disagrees with the Eleventh Circuit on this question. In *Tevlin v. Spencer*, while resolving a question regarding a *Brady* claim, that court stated: "[T]he question is whether Massachusetts postconviction discovery procedures are 'fundamentally inadequate to vindicate the substantive rights provided.'"[14]

There is undoubtedly a circuit split on federal habeas cognizability of due process violations in state post-conviction proceedings. Rather than denying the

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[12] *Id.* (emphasis added) (internal citations omitted).

[13] *Flores-Ramirez v. Foster*, 811 F.3d 861, 866 (7th Cir. 2016).

[14] 621 F.3d 59, 70 (1st Cir. 2010).

COA based on a merits analysis of Mr. Ingram's due process claim, the Eleventh Circuit should have granted the COA to resolve the underlying question.

It is an understatement to say that Alabama's post-conviction relief procedures are fundamentally inadequate to vindicate a defendant's substantive rights. Mr. Ingram's case perfectly illustrates this point. He was denied access to a mental health assessment by a qualified expert at trial because of counsel's ineffectiveness.[15] He was then denied access to an expert—the assistance of whom was required to prove *Strickland* prejudice—because the circuit court refused to provide expert funding, despite Mr. Ingram's indigence.[16] This situation, already questionable,[17] becomes untenable, given this Court's decision in *Shinn v. Ramirez*.[18]

In *Shinn*, this Court clarified that federal courts are not to take evidence in habeas corpus proceedings not presented to the state court, and that post-conviction counsel's failure to do so is not sufficient cause to allow the federal court to accept that evidence.[19] Refusing to countenance due process violations from state post-conviction process in a federal habeas petition makes it virtually impossible for a capitally sentenced prisoner to prove his case. The Court should accept certiorari on this issue.

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[15] Pet. App. 150a.

[16] Pet. App. 150a-153a.

[17] *See* Pet. App. 151a.

[18] 596 U.S. 366 (2022).

[19] *Id.* at 384.

CONCLUSION

For the above reasons and those in his initial certiorari petition, Mr. Ingram requests that this Court grant certiorari, vacate the decision of the Eleventh Circuit, and remand the case for *de novo* proceedings in District Court.

Respectfully submitted,

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