No. 23-7809

IN THE

Supreme Court of the United States

RUBEN GUTIERREZ,

Petitioner,

v.

LUIS SAENZ, ET AL.,

Respondents.

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

BRIEF OF ARKANSAS AND 13 OTHER STATES AS *AMICI CURIAE* SUPPORTING RESPONDENTS

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INTERESTS OF AMICI CURIAE

Amici Curiae are the States of Arkansas, Alabama, Alaska, Indiana, Iowa, Kentucky, Louisiana, Mississippi, Nebraska, Ohio, Oklahoma, South Carolina, Tennessee, and Utah. States are not constitutionally required to allow postconviction DNA testing, but if a State chooses to provide such a right, the attendant procedures must satisfy due process. *Dist. Atty's Off. for the Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69, 72–74 (2009). While this Court has rejected numerous theories attacking state DNA-testing procedures, *Osborne* "left slim room for [a] prisoner to show that the governing state law denies him procedural due process." *Skinner v. Switzer*, 562 U.S. 521, 525 (2011). To date, no court of appeals has held that a state's postconviction DNA testing procedures falls short of fundamental fairness under the Constitution.

Yet prisoners continue to mount challenges to states' careful balancing of the finality of criminal judgments and ensuring punishment is meted out only to the guilty. This Court's decision in *Reed v. Goertz* allowed a challenge to proceed based on the determination that a decision in Reed's favor would remove the state prosecutor's justification for denying testing. But Gutierrez seeks to expand *Reed*'s reach well beyond the narrow circumstances that case presented. Here, the court of appeals correctly concluded that a federal-court decision invalidating one procedural aspect of Texas law ultimately wouldn't make a difference as to whether Gutierrez is entitled to testing—for independent reasons, he is not. Yet he argues that *Reed* allows him to sue anyway.

Amici States urge the Court to reject Gutierrez's expansive reading of *Reed* and instead straightforwardly apply this Court's redressability standards.

A federal decision in Gutierrez's favor would merely waste state and federal resources on needless litigation. Prisoners like Gutierrez are not entitled to federal-court advisory opinions on the procedural fairness of state DNA-testing regimes. States should not be haled into Court unless a prisoner can meet the requirements of Article III standing that apply in all other constitutional litigation.

SUMMARY OF THE ARGUMENT

Texas, like all states, provides criminal defendants with limited but meaningful access to postconviction DNA testing in circumstances where testing could prove a defendant is innocent. Gutierrez sought testing, but the Texas Court of Criminal Appeals held he isn't entitled to it. He now challenges aspects of Texas's postconviction DNA testing regime as fundamentally unfair. But as the court of appeals correctly recognized, even if his complaints were vindicated he wouldn't be entitled to testing as a matter of Texas law, as authoritatively construed by that state's courts.

Under this Court's standing doctrine, Gutierrez cannot invoke the power of the federal courts to issue what would amount to an advisory opinion. To establish Article III standing, a plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (cleaned up). Here, Gutierrez must show a likelihood that the state prosecutor would agree to allow DNA testing if a federal court entered declaratory relief holding unconstitutional aspects of Texas's procedural requirements. The court of appeals concluded he cannot make that showing because the prosecutor

would be justified in continuing to deny testing based on independent determinations by the state courts that Gutierrez is not entitled to it. Under this Court's ordinary application of standing precedents, that would settle the matter.

Gutierrez resists this conclusion in two principal ways. *First*, he argues that this Court's recent decision in *Reed* establishes that a declaratory order holding aspects of a state's procedural framework unconstitutional necessarily satisfies redressability. But lacking in *Reed* were state-court decisions determining for independent reasons that Gutierrez is not entitled to testing. *Reed* did not purport to resolve every state prisoner's standing in one fell swoop. Rather, just as in every case, each plaintiff bears the burden of establishing standing based on the specific facts presented.

Second, Gutierrez urges this Court to apply its cases involving procedural challenges to federal agency decisions, where this Court has taken a somewhat relaxed approach to redressability. But even that more forgiving standard does not countenance federal-court involvement where there is no prospect that remedying the alleged procedural violation would result in a favorable substantive outcome. And in any case, there is no reason to extend that looser redressability standard beyond its narrow application to federal agency proceedings.

This Court should affirm.

ARGUMENT

I. Redressability is satisfied under *Reed* only where, under the specific factual circumstances presented, a declaratory judgment would eliminate the prosecutor's justification for denying DNA testing.

Gutierrez is one of many state-court prisoners who claim that their state's procedures for securing postconviction DNA testing are fundamentally unfair. A straightforward application of this Court's redressability precedents requires these prisoners to show that under fair procedures they would have at least some likelihood of securing testing. Otherwise, a federal court's opinion as to the procedural fairness of the state's system is merely advisory. This Court should clarify that *Reed* did not create an exception to this Court's redressability precedents for prisoners like Gutierrez. Rather, where state courts have determined that DNA testing is foreclosed under state law for reasons independent of the challenged procedures, a federal decision has no prospect of redressing the prisoner's claimed injury. The court of appeals correctly recognized that Gutierrez has no prospect of obtaining DNA testing as a result of this case, and its decision should be affirmed.

Because a federal court's jurisdiction is limited to "Cases" and "Controversies," U.S. Const., Art. III, § 1, it "is without power to . . . give advisory opinions which cannot affect the rights of the litigants in the case before it," *St. Pierre v. United States*, 319 U.S. 41, 42 (1943) (per curiam). "[S]tanding is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan*, 504 U.S. at 560. For a federal court to intervene in a dispute, "it must be likely, as opposed to merely speculative, that the

injury will be redressed by a favorable decision." *Id.* at 561 (cleaned up).

A declaratory judgment is "a proper judicial resolution of a 'case or controversy' rather than an advisory opinion" only where it will "affect[] the behavior of the defendant towards the plaintiff." *Hewitt v. Helms*, 482 U.S. 755, 761 (1987) (emphasis omitted). In assessing for purposes of redressability the probable effect of a declaratory judgment, this Court "assume[s] it is substantially likely that" government actors will "abide by an authoritative interpretation" of federal law issued by a federal court even where "they would not be directly bound by such a determination." *Franklin v. Massachusetts*, 505 U.S. 788, 803 (1992).

But that assumption does not end the analysis. Rather, the court must assess whether "the practical consequence of" the declaratory judgment "would amount to a significant increase in the likelihood that the plaintiff would obtain relief that directly redresses the injury suffered." *Utah v. Evans*, 536 U.S. 452, 464 (2002). The plaintiff fails to carry his burden where, under the facts presented, a declaratory judgment would merely provide "the moral satisfaction of knowing that a federal court concluded that his rights had been violated." *Hewitt*, 482 U.S. at 761.

Reed did not purport to cast aside this Court's longstanding redressability requirements. Instead, it held, at least at the pleading stage, that "'the practical consequence'" of the declaratory order Reed sought would "'amount to a significant increase in the likelihood' that the state prosecutor would grant access to the requested evidence," the lack of which constituted Reed's alleged injury. *Reed*, 598 U.S. at 234 (quoting *Evans*, 536 U.S. at 464). That is because in that case, such an "order would eliminate the state

prosecutor's justification for denying DNA testing." *Id.*

Reed did not create a categorical rule that redressability is satisfied anytime a prisoner brings a due-process challenge to a state's postconviction DNA procedures. After all, "standing is not dispensed in gross." *Lewis v. Casey*, 518 U.S. 343, 358 n.6 (1996). Every plaintiff bears the burden of establishing each element of standing with "specific facts that are necessary to support the claim." *Lujan*, 504 U.S. at 561 (quotation omitted). And *Reed* had no occasion to consider a case where state-court decisions give a prosecutor multiple independent justifications for denying testing.

"Respect for the independence of state courts, as well as avoidance of advisory opinions," warrants due consideration of the state court's reasons for denying testing. *Michigan v. Long*, 463 U.S. 1032, 1040 (1983). Here, the state court "already found that Gutierrez would have no right to DNA testing even if the statutory bar to testing for evidence about sentencing were held to be unconstitutional." JA 18a. The court of appeals properly distinguished *Reed* because the "Texas court made no holding in *Reed* comparable to its holding in *Gutierrez* about potential invalidation of the challenged requirement." *Id*. Gutierrez's federal lawsuit is thus ultimately futile, and any opinion resolving it would be advisory.

Gutierrez attempts to sidestep this reality, arguing that this Court's assumption that a government defendant will abide by a federal court's order even if not technically bound to do so, *see Franklin*, 505 U.S. 788, means that redressability is always satisfied. But that argument begs the question of whether abiding would require the prosecutor to acquiesce and allow

testing. In *Reed*, the answer was apparently "yes." 598 U.S. at 234 (holding that an order would "eliminate the state prosecutor's justification for denying DNA testing"). But here, a ruling that "preventing testing if resulting evidence would be relevant only to the sentence"—the aspect of Texas law Gutierrez challenges—violates due process would change nothing for Gutierrez. JA 10a.

To be sure, a state prosecutor who chose to abide by such an order would not deny testing based on the conviction/sentence distinction in the Texas law. But a declaratory judgment holding that distinction unconstitutional would leave untouched the state court's alternative holdings, including that "[w]hatever DNA evidence might provide," Gutierrez would "still [be] legally subject to the death penalty" under state law and thus not entitled to DNA testing. JA 14a. That is because Gutierrez does not (nor could he) seek an order from a federal court requiring that testing be performed, only that the specific constitutional violation be remedied. And while this Court "may assume it is substantially likely" that the state prosecutor will comply with that order, nothing suggests he would go further than required and gratuitously order DNA testing performed. *Franklin*, 505 U.S. at 803. Far from "pledging noncompliance," Pet. Br. 31, the state prosecutor can fully abide by the order Gutierrez seeks and nevertheless "follow what his state's highest criminal court has already held should be the effect of [its] decision." JA 16a.

This Court should reject Gutierrez's invitation to reshape its redressability precedent to allow for advisory opinions on the procedural fairness of state postconviction DNA testing procedures. Instead, it should hold that such an injury is only redressable

where, based on the specific facts presented, the order sought after would "eliminate the . . . justification for denying DNA testing." *Reed*, 598 U.S. at 234.

II. This Court should not extend its precedents relaxing redressability in statutory procedural challenges to federal agency decisions.

Gutierrez additionally resists a straightforward application of this Court's redressability standard by overreading several of this Court's cases dealing with violations of congressionally bestowed procedural rights. Pet. Br. 34–36. While this Court has relaxed redressability in some circumstances where federal agency actions are challenged as procedurally defective under governing statutes, it has never applied those decisions to due-process challenges to state-court procedures. It should not do so now.

This Court has held that, where Congress has "accorded a procedural right to protect" a "concrete interest[]," a plaintiff "can assert that right without meeting all the normal standards for redressability." *Lujan*, 504 U.S. at 572 n.7. But even in those statutory cases the Court has merely "loosen[ed]" rather than eliminated "the strictures of the redressability prong of [the] standing inquiry." *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009). And while in these "procedural-standing cases," the Court has "tolerate[d] uncertainty over whether observing certain procedures would have led to (caused) a different substantive outcome," it has never suggested that this relaxed redressability requirement can be met where, as here, there is little to no prospect of a different substantive outcome. *Dep't of Educ. v. Brown*, 600 U.S. 551, 565–66 (2023). So those cases do not help Gutierrez.

There is an additional reason that Gutierrez's reliance on those "procedural-standing cases" is misplaced. This Court has not relaxed the redressability prong of Article III standing outside of congressionally bestowed procedural rights within the framework of federal agency decision making. Several unique features of federal agency proceedings undergird this Court's less stringent approach to redressability. For one, "vacatur is the normal remedy" under the Administrative Procedure Act for procedural violations such as "deficient notice." *Allina Health Servs. v. Sebelius*, 746 F.3d 1102, 1110 (D.C. Cir. 2014). *SEC v. Chenery Corp* significantly cabins agencies' ability to avoid vacatur by relying on post hoc rationales to claim that the ultimate outcome of proceedings would be unchanged. 332 U.S. 194, 196 (1947). Once an agency action is vacated, changing course on the next go-around may pose additional complications. *See, e.g.*, *FCC v. Fox Television Stations*, 556 U.S. 502, 514 (2009); *Encino Motorcars, LLC v. Navarro*, 579 U.S. 211, 221 (2016). Those considerations alone may explain the Court's allowance for a greater degree of speculation as to the ultimate outcome of a procedural challenge when analyzing redressability.

But whatever the merits of relaxing Article III's requirements in procedural challenges to federal agency decisions, this Court should not extend that approach here. Principles of federalism counsel against "unnecessary disruption of state judicial proceedings." *Rose v. Lundy*, 455 U.S. 509, 518 (1982). After all, "the federal and state courts are equally bound to guard and protect rights secured by the Constitution." *Id.* (cleaned up). And while Congress has imposed heightened procedural requirements for federal agency decisions—requirements could lose

much of their regulative force without robust judicial review—"[f]ederal courts may upset a State's post-conviction relief procedures only if they are fundamentally inadequate to vindicate the substantive rights provided." *Dist. Atty's Off. for Third Jud. Dist. v. Osborne*, 557 U.S. 52, 69 (2009). Advisory opinions as to the procedural fairness of state court systems divorced from any practical consequence for the plaintiff undermine important comity interests.

Moreover, the greater degree of speculation this Court has tolerated when considering whether the correction of procedural errors may redress an injury to a plaintiff's interests is unnecessary here. As a practical matter, it is much simpler for a court to determine whether a plaintiff "would be successful in persuading" a single government actor to change course as a result of declaratory relief than it is to predict the outcome of revisited agency proceedings, which sometimes last years and may involve changes in Presidential administrations. *Summers*, 555 U.S. at 496. Allowance for greater speculation is especially unneeded where, as here, the "state prosecutor is quite likely to follow what his state's highest criminal court has already held should be the effect" of the decision Gutierrez seeks. JA 16a. Federal intervention into state-court proceedings ought not be premised on the fiction that the prosecutor would simply ignore authoritative state-court decisions establishing adequate and independent grounds for denying testing.

CONCLUSION

This Court should affirm.

Respectfully submitted,

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