No. 24-7200

IN THE
Supreme Court of the United States

THERESA BATSON,
Petitioner,

v.

FLORIDA DEPARTMENT OF CORRECTIONS,
Respondent.

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

REPLY BRIEF FOR PETITIONER

DAVID C. FREDERICK
MARY CHARLOTTE Y. CARROLL
Counsel of Record
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
Counsel for Petitioner

September 15, 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

STATUTES

Relying on a footnote from a case in which this issue was not briefed or contested, the Eleventh Circuit held the state trial court's entry of Ms. Batson's amended judgment *nunc pro tunc* controlled the federal question of whether that judgment restarts AEDPA's one-year statute of limitations for habeas claims. The court concluded that, regardless of the propriety of the *nunc pro tunc* label, a state court's use of those three words is "the determining factor" for whether an amended judgment is a new judgment under 28 U.S.C. § 2244(d)(1). This decision makes state courts the arbiters of federal habeas relief, in defiance of state and federal law.

In postconviction proceedings, a Florida court determined that Ms. Batson's conviction on two counts of conspiracy for the same conduct violated her constitutional double jeopardy rights and ordered the trial court to revise her judgment accordingly. That court, in turn, vacated one count of Ms. Batson's conviction, updated her sentence to reflect that change, and re-authorized her confinement pursuant to an amended judgment. The State contends (at 17) these events constitute "at most a clerical correction" that could be effected *nunc pro tunc*. But reversal of an unconstitutional jury conviction in response to a motion to correct an illegal sentence is not akin to fixing a typo. Florida's highest courts long have held that orders changing the substance of a prior adjudication cannot be entered *nunc pro tunc*. In ruling that Ms. Batson's amended judgment was such an order, the Eleventh Circuit blinded itself to Florida law. And, in deeming that *nunc pro tunc* label "dispositive" for purposes of federal habeas law, the court conflicted with decisions of the Sixth and Ninth Circuits and this Court.

In the few months since Ms. Batson submitted her certiorari petition, more courts have relied on the Eleventh Circuit's erroneous decision below to bar state petitioners from federal habeas relief. Given that backdating an amended sentencing form is a reasonable way for a state court to reflect time a petitioner already has served, this number will only grow. The Court's intervention now is warranted to protect state petitioners' constitutional right to habeas review.

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THE SIXTH AND NINTH CIRCUITS

A. The State's attempt to distinguish *Crangle v. Kelly*, 838 F.3d 673 (6th Cir. 2016) (per curiam), misses the mark. Rather than engaging with *Crangle*'s *nunc pro tunc* analysis—the core issue in this appeal—the State contends that the petitioner in *Crangle* "**only**" secured relief because (unlike Ms. Batson) the new sentence he received was worse than the original. Opp. 4. But the State mischaracterizes *Crangle*, inserting language not found in the opinion. In *Crangle*, the Sixth Circuit held that a state court order adding five years of supervised release to a petitioner's sentence "was a new judgment that reset the one-year statute of limitations to file a habeas corpus petition." 838 F.3d at 680. This conclusion, the court observed, was "consistent" with cases finding that an order imposing a "worse-than-before sentence . . . amounts to a new judgment." *Id.* at 678. Nowhere did the court say that the state-court order was a new judgment "**only**" because it increased the petitioner's sentence, as the State contends. Opp. 4.[1]

---

[1] The State's discussion (at 5) of *Freeman v. Wainwright*, 959 F.3d 226 (6th Cir. 2020), is also unavailing. The state court in *Freeman* did not issue an amended

And, in any event, this Court and the Eleventh Circuit already have resolved whether an amended sentence must be beneficial to the petitioner to trigger a new statute-of-limitations period. *See Burton v. Stewart*, 549 U.S. 147, 150-51 (2007) (per curiam) (holding AEDPA's limitations period ran from petitioner's amended judgment even though it made him eligible for early-release credits); *Insignares v. Secretary, Florida Dep't of Corr.*, 755 F.3d 1273, 1275-76 (11th Cir. 2014) (per curiam) (amended judgment reducing petitioner's sentence was new judgment under AEDPA). In this very case—then a consolidated appeal involving two petitioners with better-than-before sentences—the Eleventh Circuit reiterated that the relevant judgment for AEDPA purposes is the judgment "that confines a prisoner," meaning the "*most recent* sentence that authorizes the petitioner's current detention," regardless of whether the sentence was better or worse than the original. App. 15a-16a (holding Mr. Cassidy had secured an amended judgment that restarted AEDPA's limitations period even though new sentence was more favorable than the original).

The State's focus on this aspect of *Crangle* distracts from the conflict between the circuits at issue in this appeal: whether a state court's entry of a judgment *nunc pro tunc* can prevent that judgment from resetting AEDPA's clock. *Crangle* held that "[a] state court's decision to affix the label *nunc pro tunc* to an order does not control

---

judgment; it "made a single sentence modification to Freeman's original sentencing journal entry, striking all post-release control," a change that "did not disturb Freeman's initial judgment." *Id.* at 230 (cleaned up). The circuit court here disturbed Ms. Batson's original judgment: it vacated a conviction, imposed an amended judgment covering all other counts, and issued an amended sentence to reflect that new reality.

the federal question[] whether the order changes his conditions of confinement." 838 F.3d at 680. In other words, "[n]o matter" how a state court "label[s]" its judgment, an order "chang[ing] the substance of [a petitioner's] sentence" is a "new judgment." *Id.* The State does not address this part of *Crangle*'s holding at all.

B. The State correctly explains that *Gonzalez v. Sherman*, 873 F.3d 763 (9th Cir. 2017), "'**look[ed] to state law** to determine whether a state court action constitutes a new, intervening judgment.'" Opp. 5 (quoting 873 F.3d at 769) (emphasis by respondent). In that respect, the parties agree—*Gonzalez* "distinguishes itself" from the decision below. *Id.* The Eleventh Circuit utterly failed to conduct a state-law inquiry, determining that the court's own precedent prevented it from doing so. *See* App. 9a ("*Osbourne* requires us to defer to a state court's designation of an amended judgment or sentence as *nunc pro tunc*" "without evaluating the validity of the *nunc pro tunc* designation under Florida law").

In *Gonzalez*, by contrast, while the state court had entered the order at issue "as of the original sentencing date" (making it functionally a *nunc pro tunc order*), the court analyzed California law to assess whether what the order actually did—altering a petitioner's presentence credits—constituted "a legally significant act." 873 F.3d at 769, 772. Put differently, the court did not find that the inquiry into whether an action constituted a new judgment ended with the backdated entry. Instead, the court conducted an independent analysis of California law and concluded the action

at issue "replace[d] an invalid sentence with a valid one." *Id.* at 769. Therefore, under federal law, it was a new judgment.[2]

So, too, in Ms. Batson's case. The sentencing "order was retroactive in the sense that the duration of time served was to be calculated from the date of the original judgment, rather than from the date of the amendment. Nevertheless, the amendment to the judgment was clearly a new judgment under *Magwood[v. Patterson*, 561 U.S. 320 (2010)]." *Id.* at 773.

II. THE ELEVENTH CIRCUIT ERRONEOUSLY APPLIED BOTH FEDERAL AND STATE LAW

A. The State and Ms. Batson agree that "federal courts must defer to each state's interpretation of its own law." Opp. 6. But as this Court held in *Bosch*, and as *Gonzalez* recognized, only state law as articulated "by the highest court of the State"—not individual trial courts—"is to be followed" by federal courts. *Commissioner v. Estate of Bosch*, 387 U.S. 456, 465 (1967); *see Gonzalez*, 873 F.3d at 772-73 (looking to California Supreme Court precedent to assess effect of backdated judgment); Pet. 16-18 (collecting cases). That is not what happened here.

---

[2] The State also argues (at 6) *Gonzalez* is distinguishable because the amended judgment in that case "affected the amount of time that Gonzlez had remaining to serve," whereas Ms. Batson's amended judgment did not. This contention is based on Ms. Batson's total length of imprisonment (60 years) remaining the same when one of her 30-year sentences for conspiracy was removed because her two conspiracy sentences ran concurrently. But that does not mean the deletion of this count "did not have any effect" on her sentence. Opp. 6. If Ms. Batson's other conspiracy conviction is reversed, her sentence will be reduced by 30 years; prior to the amended judgment, both conspiracy convictions would require reversal to reduce her sentence.

The Eleventh Circuit did not look to Florida law at all in assessing whether the State properly could have entered Ms. Batson's amended judgment *nunc pro tunc*. Instead, it stated that the court's prior decision in *Osbourne v. Secretary, Florida Department of Corrections*, 968 F.3d 1261, 1266 n.4 (11th Cir. 2020), "requires us to defer to a state court's designation of an amended judgment or sentence as *nunc pro tunc*," no matter the propriety of that label. App. 9a; *cf. United States v. Craft*, 535 U.S. 274, 279 (2002) (federal courts must look to "the substance" of state-court rulings, "not merely the labels the State gives the[m]"). In taking the state court's *nunc pro tunc* designation at face value and failing to perform its own inquiry under Florida law, the Eleventh Circuit erred.

The State points to *Coleman v. Thompson*, 501 U.S. 722 (1991), in support of its position, but that decision is not applicable here. *Coleman* concerned the independent and adequate state ground doctrine—that is, the doctrine that this Court "will not review a question of federal law decided by a state court if the decision of that court rests on a state law ground that is *independent of the federal question* and adequate to support the judgment." *Id.* at 729 (emphasis added). For example, failure to exhaust state remedies may constitute an independent and adequate state-law ground that counsels against review in the habeas context. *Id.* at 731-32. This case, however, concerns how a federal statute of limitations should be applied when a state-court judgment is entered *nunc pro tunc*. The effect of the *nunc pro tunc* label is not "independent of the federal question," but inextricably intertwined with it. *See* Pet. 18. The doctrine advanced in *Coleman* does not apply.

B. The State next incorrectly contends (at 7), without citation, that Florida courts have a "consistent practice of allowing an order designated '*nunc pro tunc*' to relate back to the original judgment" automatically. Florida's highest court held long ago that *nunc pro tunc* orders are permitted only to "correct clerical mistakes." *R.R. Ricou & Sons Co. v. Merwin*, 113 So. 745, 746 (Fla. 1927). They "may not be used to add new material to the substance of the earlier proceedings." *Doll v. Secretary, Florida Dep't of Corr.*, 715 F. App'x 887, 893 (11th Cir. 2017) (per curiam) (cleaned up); *see In re Riha's Est.*, 369 So. 2d 404, 404 (Fla. Dist. Ct. App. 1979) (if court "wholly omits an order or wishes to change it, the new order cannot be entered nunc pro tunc").

When a Florida trial court improperly designates an order *nunc pro tunc*, the appellate courts routinely disregard that designation. *See*, *e.g.*, *Gilliam v. State*, 801 So. 2d 996, 997 (Fla. Dist. Ct. App. 2001) (violation of parole order "could not be amended" *nunc pro tunc* because it "change[d] a prior adjudication that ha[d] become final"); *Merritt v. Merritt*, 802 So. 2d 1206, 1209 (Fla. Dist. Ct. App. 2002) (reversing *nunc pro tunc* designation because an order "modif[ying] the [s]ubstance of a prior ruling or of itself constitutes a ruling not previously made" "should not be given retrospective effect"); *De Baun v. Michael*, 333 So. 2d 106, 108 (Fla. Dist. Ct. App. 1976) (per curiam) (reversing *nunc pro tunc* designation because the order at issue "did not correct a 'mistake'; rather it adjudicated anew").

To get around this issue, the State argues that Ms. Batson's amended judgment, which vacated an unconstitutional count of her conviction and revised her

sentence, amounts to a "clerical correction." Opp. 8. But substantively altering a person's conviction and sentence, and re-authorizing her confinement, "is not merely the correction of a clerical error." *Crangle*, 838 F.3d at 680. It strains credulity to suggest otherwise.

III. THE DECISION BELOW IS WRONG

A. The Eleventh Circuit's holding that Ms. Batson's amended judgment was a *nunc pro tunc* order, rendering her habeas petition untimely, relied entirely on a footnote in one case: *Osbourne*, 968 F.3d at 1266 n.4. This was error, for two reasons. First, *Osbourne* does not prohibit courts from determining whether a *nunc pro tunc* order can have retroactive effect under Florida law. Second, if that were not true—i.e., if *Osbourne* means what the Eleventh Circuit says it means—*Osbourne* would go against the Eleventh Circuit's own precedent.

Critically, the petitioner in *Osbourne* did not brief or "raise any challenge to the nunc pro tunc designation" in his amended judgment before the Eleventh Circuit or district court. *Id.* Thus, the panel declined to "opine" on whether that "was the proper or correct use of a nunc pro tunc designation under Florida law." *Id. Osbourne* therefore did not bar the court from examining whether Ms. Batson's amended judgment can have retroactive effect under Florida law. *See Koehn v. Pabst Brewing Co.*, 763 F.2d 865, 866 (7th Cir. 1985) (per curiam) ("[F]ootnotes are not the most authoritative source of legal doctrine."); *see also OXY USA, Inc. v. Babbitt*, 230 F.3d 1178, 1186 (2000) ("Surely it is not a coincidence that courts frequently categorize as dicta language that is relegated to footnotes."), *vacated on reh'g en banc on other grounds*, 268 F.3d 1001 (10th Cir. 2001).

Reading *Osbourne* the way the Eleventh Circuit did—to give state trial courts control over AEDPA's statute-of-limitations inquiry—creates serious federalism concerns. Under the Eleventh Circuit's approach, a state trial court's entry of a judgment *nunc pro tunc* controls the federal question of whether that order is a new judgment for AEDPA purposes. *See* App. 10a (describing *nunc pro tunc* label as "dispositive"). But what counts as a "judgment" in § 2244(d)(1) cannot be determined by state-court labels; rather, the federal court must look to the *effect* of that judgment to determine whether it re-authorizes a petitioner's confinement. *See Patterson v. Secretary, Florida Dep't of Corr.*, 849 F.3d 1321, 1326 (11th Cir. 2017) (en banc) ("[T]he only judgment that counts for purposes of section 2244 is the judgment 'pursuant to' which the prisoner is 'in custody.'") (quoting 28 U.S.C. § 2254); *accord Ferreira v. Secretary, Dep't of Corr.*, 494 F.3d 1286, 1293 (11th Cir. 2007) ("[T]he writ and AEDPA, including its limitations provisions, are specifically focused on the judgment which holds the petitioner in confinement."). If, like Ms. Batson's judgment, the order does re-authorize confinement, is it a new judgment.

B. The State's remaining arguments to avoid certiorari lack merit.

1. The State spends much of its briefing discussing the timeliness of Ms. Batson's petition. But it does not dispute that, if the statute of limitations runs from Ms. Batson's amended judgment, her petition is timely. Opp. 12 ("The only way Batson's federal habeas petition would be timely is if the amended judgment and sentences . . . restarted the AEDPA one-year limitations period."). Because Ms. Batson's amended judgment re-authorized her confinement and revised and

re-entered her convictions and sentences, it constitutes a new judgment that restarts the limitations period regardless of the *nunc pro tunc* designation. Thus, Ms. Batson's petition is timely.

2. The State also does not dispute that the *nunc pro tunc* designation appeared only on Ms. Batson's amended sentencing forms, not on the face of the amended "judgment" entered on August 17, 2017. *See* Opp. 16; Pet. 5. It is therefore not, as the State contends (at 17), "crystal clear" that the trial court intended to enter the amended judgment *nunc pro tunc*. *See* Pet. 8 n.2.

But this Court need not concern itself with the trial court's intent. Even if "*nunc pro tunc*" appeared on every page of the judgment and sentencing forms, that designation still would violate Florida law. The Eleventh Circuit should not have given a designation that Florida appellate courts would set aside "dispositive" effect over the federal question of whether Ms. Batson secured a new judgment that reset the statute of limitations. Under the Eleventh Circuit's own test, which requires an amended judgment that replaces the original and becomes the judgment authorizing the petitioner's custody, the August 2017 amended judgment is such a new judgment. App. 15a-16a. Her petition is timely.

IV. THIS CASE WARRANTS THE COURT'S REVIEW NOW

Allowing the Eleventh Circuit's decision to stand risks closing the door for habeas review to state petitioners with the most meritorious claims—those who have already secured postconviction relief in some form. That is because an amended sentence like Ms. Batson's must be entered in some way that reflects it runs from the date the person first entered custody so that she receives credit for time served. *See*

Gonzalez, 873 F.3d at 773; Pet. 20-21. Under the Eleventh Circuit's ruling, however, *any time* a state court uses the words "*nunc pro tunc*" in entering an amended judgment, that action prevents the judgment from qualifying as a new judgment for AEDPA purposes. That cannot be right.

In the months since Ms. Batson submitted her certiorari petition, more courts have relied on the erroneous *nunc pro tunc* analysis in the decision below to deny state habeas petitioners relief. *See*, *e.g.*, *Smith v. Secretary, Florida Dep't of Corr.*, 2025 WL 1786352, at *4 (M.D. Fla. June 27, 2025) ("In light of this Eleventh Circuit precedent, the Court is required to find that Petitioner's February 6, 2020 judgment, issued *nunc pro tunc* to June 28, 2018, did not restart the federal one-year limitations period."); *Griffin v. United States*, 2025 WL 2029743, at *2 (M.D. Fla. July 21, 2025) (indicating that petitioner's "amended judgment does not qualify as a new judgment because it was imposed nunc pro tunc to the date of the original judgment" and ordering supplemental briefing on this issue in light of *Cassidy*). By looking only at labels or backdating, instead of the substance of the amended judgment, the Eleventh Circuit has set petitioners up to fail. This Court should grant Ms. Batson's petition and reverse this erroneous holding.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID C. FREDERICK
MARY CHARLOTTE Y. CARROLL
Counsel of Record
KELLOGG, HANSEN, TODD, FIGEL
& FREDERICK, P.L.L.C.
1615 M Street, N.W., Suite 400
Washington, D.C. 20036
(202) 326-7900
Counsel for Petitioner

September 15, 2025