No. 24-948

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 WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF ALABAMA AND 17 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

Other Authorities

INTEREST OF *AMICI CURIAE*

The States of Alabama, Alaska, Arkansas, Florida, Indiana, Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, and West Virginia respectfully submit this brief as *amici curiae* in support of petitioners. *Amici* States and their officers are repeat players in the federal courts. It is not unusual for an adverse party's personal stake in a case to become moot while litigation is pending. When that happens, the case is over, but judgments already rendered can have significant prospective effects—undermining the enforcement of state laws, restraining state officers, and precluding relitigation. Vacatur is often vital "to prevent an unreviewable decision 'from spawning any legal consequences.'" *Camreta v. Greene*, 563 U.S. 692, 713 (2011).

Amici States have strong interests in preserving *Munsingwear* as "the normal rule," *id.*, especially in cases like this one. Before declining to vacate, the panel acknowledged "considerable" and "significant" "federalism and comity concerns." App.64a, 74a. Its ruling was a "decisional framework" for hundreds of prisoner lawsuits against petitioners alone. App.7a. The panel thought that its opinion's value for future litigation was a reason to keep it. But that fact just heightens the unfairness to petitioners, who had no chance to challenge it.

Many *Amici* States have found themselves in the same position, forced to ask this Court to intervene in a moot case when lower courts have improperly let unreviewable decisions stand. Though the Court has made clear on multiple occasions that "'[a] party who

seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance … ought not in fairness be forced to acquiesce in' that ruling." *Camreta*, 563 U.S. at 712 (quoting *U.S. Bancorp Mortgage Co. v. Bonner Mall Partnership*, 513 U.S. 18, 25 (1994)), many courts of appeals continue to force litigants to spend their limited resources bringing vacatur requests to this Court. For the sake of fairness, uniformity, and efficiency, the Court should vacate the decision below and reaffirm in a precedential decision that "the normal rule" for this Court is the normal rule for lower courts too.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

To reach the merits, the panel below first had to confront *O'Shea v. Littleton*, an abstention doctrine that bars "monitoring" the operation of state courts as "antipathetic to established principles of comity." 414 U.S. 488, 501 (1974). In doing so, the panel assured that it was "mindful" of the "delicate balance" of powers as well as "federalism and comity concerns [that] are surely significant." App.64a, 67a. With "trepidation," the panel declined to abstain. App.74a. Relief for Stephen Redd would be "less intrusive," it held, than other forms of intrusion like an injunction or class-wide relief. App.74a-75a & n.10. After all, the panel was "dealing with only his individual request for declaratory relief rather than any systemic remedy." App.68a.

But after Redd passed away, the court became much less "mindful." And it forgot that this case was just about "*his* individual … rights." App.68a. Asked to vacate its judgment, the court found exactly what it foreswore—an "occasion … to further involve itself" (*id.*) in a State's criminal justice system by cementing its opinion as the "decisional framework for district courts deciding [hundreds of] cases." App.7a.

This Court should swiftly rectify the refusal to vacate. When fate moots a case "on its way here," the "established practice" is vacatur. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). Vacatur is not only "fair[] to the parties" but also "best" for the public "when the demands of orderly procedure cannot be honored." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 27 (1994) (cleaned up). But in the Ninth Circuit, a panel can deviate from this best

practice if it deems its own opinion too "valuable" to lose. App.7a. That's backward. The more "valuable" the decision is for "other [plaintiffs] like Redd," *id.*, the more unfair it is to force petitioners to acquiesce in it without a full appellate process.

The Ninth Circuit's approach to *Munsingwear* should be expressly rejected, and this case illustrates why. In its equitable discretion, the court elevated the interests of hypothetical plaintiffs above those of actual parties. The court discounted the prejudice factor, assuring that its ruling was "limited" while touting a "framework" that would "undoubtedly" affect future lawsuits against petitioners. App.7a, 9a n.3. And the court ignored *its own* "federalism concern[s]," which should have "le[d] [it] to conclude that vacatur … is the equitable solution." *Arizonans for Off. Eng. v. Arizona*, 520 U.S. 43, 75 (1997).

Even if this were not a paradigm case for applying "the normal rule" (and it is), *Camreta v. Greene*, 563 U.S. 692, 713 (2011), the Ninth Circuit abused its equitable discretion. The Court should grant the petition and expunge the unreviewed and unreviewable judgment below. In doing so, it should issue an opinion reaffirming that vacatur is required when happenstance prevents review of a lower court's decision.

ARGUMENT

I. The Court Should Grant Certiorari and Vacate the Ninth Circuit's Decision.

A. *Munsingwear* vacatur is the normal rule in cases mooted by happenstance.

When a case becomes moot "on its way" to this Court, the "established practice of the Court … is to reverse or vacate the judgment below and remand

with a direction to dismiss." *United States v. Munsingwear, Inc.,* 340 U.S. 36, 39 (1950); *see, e.g.*, *Turtle Mountain Band of Chippewa Indians v. N.D. Legislative Assembly*, 144 S. Ct. 2709 (2024); *Speech First, Inc. v. Sands*, 144 S. Ct. 675 (2024); *Payne v. Biden*, 144 S. Ct. 480 (2023); *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 22 (2023). "A party who seeks review of the merits of an adverse ruling, but is frustrated by the vagaries of circumstance, ought not in fairness be forced to acquiesce in the judgment." *U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 (1994). *Munsingwear* vacatur limits the "legal consequences" of an "unreviewable decision" to ensure that "no party is harmed" by a "preliminary adjudication." *Camreta v. Greene*, 563 U.S. 692, 713 (2011) (cleaned up). To that end, vacatur "rightly 'strips the decision below of its binding effect,' and 'clears the path for future relitigation.'" *Id.* (citation omitted). If a case becomes moot by "happenstance …, the normal rule should apply: Vacatur[.]" *Id.*

Vacatur is warranted here. Because petitioners were seeking panel and en banc rehearing when the case became moot, they could not avail themselves of the "primary route, by appeal as of right and certiorari, through which parties may seek relief from the legal consequences of judicial judgments." *Bancorp*, 513 U.S. at 27. And petitioners satisfy the "principal condition" for vacatur: mootness arose from "happenstance" when Redd passed away. *Id.* at 24-25. It would be unfair to saddle petitioners with the ruling's "prospective effects," *Camreta*, 563 U.S. at 714 n.11, especially because its unreviewable opinion aimed to be a "blueprint" for "362" lawsuits, App.43a (Bennett, J., dissenting). Betraying a "long-standing practice," *A. L. Mechling Barge Lines, Inc. v. United*

States, 368 U.S. 324, 330 n.11 (1961), the Ninth Circuit abused its discretion by failing to vacate a consequential yet only preliminary decision. *See* 13C Charles A. Wright et al., *Federal Practice & Procedure* § 3533.10.3 at n.6 (3d ed. Apr. 2025 Update) (collecting cases where the Court vacated lower-court decisions that became moot after the decisions were issued).

Unfortunately, the decision below is part of a trend in the courts of appeals, *see* Pet.17-20, which forces parties to petition this Court for relief that was wrongly withheld below. This exercise is gratuitous, and it is unfaithful to decades of *Munsingwear* precedent. Vacatur should be granted as a matter of course when mootness arises by happenstance and deprives a party of the full appellate process. Anything else permits mischief to masquerade as equity. The Court should grant certiorari and make clear that what is routine in this Court should be routine in all the courts of appeals.

B. Equity favors vacatur.

This case calls for a straightforward application of *Munsingwear*, which makes vacatur "the duty of the appellate court." 340 U.S. at 40. But even if this case had presented "unique circumstances," App.8a n.2, the lower court's balance of the equities was wrong. The court overvalued the interests of "the legal community" at the expense of the actual litigants. App.7a. And it neglected weighty "federalism and comity concerns," App.64a, which should have informed both the equities and the public interest. Especially when the movant is "a repeat player before the courts," equity favors vacatur. *Motta v. Dist. Dir. of INS*, 61 F.3d 117, 118 (1st Cir. 1995).

1. Start with the Ninth Circuit's first factor, "valu[e] to the legal community." App.7a. Properly understood, it is the public interest that must be weighed. The "legal community" has no special status in equity. And *Bancorp* did not say it did. *See* 513 U.S. at 26-27. But even if vacatur should be sensitive to this abridged form of the public interest, an opinion's value as a "decisional framework" (App.7a) should count for very little.

For one, *any* published opinion has decisional value; that's why they're published.[1] Only a fraction of appeals even merit a published opinion.[2] So the Ninth Circuit's test tilts against vacatur in just those few cases where vacatur matters most. But there's no room in the doctrine for that maneuver—the whole "point of vacatur is to prevent an unreviewable decision 'from spawning any legal consequences.'" *Camreta*, 563 U.S. at 713 (quoting *Munsingwear*, 340 U.S. at 41).

To claim the mantle of the public interest, the panel needed more than an assertion of its opinion's precedential value. In general, any "concrete and individualized harm" to parties will outweigh the "diffuse and slight harm to the public interest" in vacating precedent. *Hartford Cas. Ins. Co. v. Crum &*

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[1] *See* Rachel Brown et al., *Is Unpublished Unequal? An Empirical Examination Of The 87% Nonpublication Rate In Federal Appeals*, 107 Cornell L. Rev. 1, 39 (2022) ("[T]he data suggest that judges … publish cases where they believe the stakes are higher or where the legal questions seem weightier."); *accord*, *e.g.*, 9th Cir. R. 36-2 (criteria for publication); 11th Cir. R. 36 I.O.P. 6 ("Opinions that the panel believes to have no precedential value are not published.").

[2] Admin. Off. of the U.S. Courts, *Table B-12* (Jan. 2025), uscourts.gov/sites/default/files/2025-01/jb_b12_0930.2024.pdf.

Forster Specialty Ins. Co., 828 F.3d 1331, 1335 (11th Cir. 2016) (discussing *Motta*, 61 F.3d at 117-18).

Take *Camreta*, which involved another "legally consequential decision" with "prospective effects." 563 U.S. at 713, 714 & n.11. The Ninth Circuit had ruled that an alleged constitutional right was not clearly established, so the defendants had qualified immunity. *See Greene v. Camreta*, 588 F.3d 1011, 1030-33 (9th Cir. 2009). That could have been the end of it, but the panel spent the time to decide *both* prongs in order to "promote[] the development of constitutional precedent," "clarify[] the law for the future," and "provide[] guidance" to both sides. *Id.* at 1021-22. In the panel's view, the opinion established "constitutional standards … of great importance." *Id.* at 1021.

"Far from counseling against vacatur," however, the lower court's effort "to govern future cases … reveal[ed] *the necessity* of that procedural course." 563 U.S. at 713 (emphasis added). So too here. Whether commendable or not, the panel's attempt to green-light hundreds of new lawsuits (App.7a) was only "preliminary," 563 U.S. at 713. The fact that its ruling was so "legally consequential" is all the more reason to apply "the normal rule." *Id.*; *see also, e.g.*, *DeFunis v. Odegaard*, 416 U.S. 312, 316, 319-20 (1974) (vacating despite "great public interest in the continuing issues raised by this appeal"); *Hirschfeld v. ATF*, 14 F.4th 322, 327 (4th Cir. 2021) (vacating despite weighty "constitutional interests").

Vacatur does not disparage the value of judicial work product. It is just a misfortune of circumstance that some judgments will be undone when mootness arises involuntarily.

Likewise, the concern that vacatur would "force[] future courts to duplicate the panel's careful efforts" is unmoving. App.7a. Again, the point of vacatur is to "clear[] the path for future relitigation." *Arizonans,* 520 U.S. at 71 (quoting *Munsingwear,* 340 U.S. at 40). The Ninth Circuit cited no authority from this Court that permits the workload of district courts to factor into the equities—let alone to outweigh fairness to the losing party deprived of the full appellate process.

If district courts would literally "duplicate" the panel's "decisional framework," then the cost of vacatur is minimal. They can simply deny motions to dismiss for the reasons stated by the panel.[3] There would be work to do only if the panel's reasoning is not persuasive. But in that case, it would be a lot more efficient for "the legal community" if the unsound judgment were vacated immediately, rather than forcing petitioners to litigate another case to final judgment, appeal, and then take that case en banc and/or back to this Court.

There is a "natural urge" for finality, to be sure. *Cf. Raines v. Byrd*, 521 U.S. 811, 820 (1997). But

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[3] As petitioners put it, a vacated opinion "does not vanish into thin air." Pet.28. It may remain "the most pertinent statement of the governing law, even if … not directly binding." *Los Angeles Cnty. v. Davis*, 440 U.S. 625, 646 (1979) (Powell, J., dissenting); *see also id.* at 646 n.10; *DeFunis*, 416 U.S. at 319-20 (vacating despite expectation that "a subsequent case attacking [the same] procedures" would come "with relative speed to this Court, now that the [court below] has spoken"). Even after this Court granted Alabama's request to vacate as moot the Eleventh Circuit's decision in *Alabama State Conference of NAACP v. Alabama*, 949 F.3d 647 (11th Cir. 2020), *cert. granted, judgment vacated*, 141 S. Ct. 2618 (2021), the vacated opinion has been cited more than a dozen times, just not as binding precedent.

"Congress has prescribed a primary route" by which legal disputes are settled. *Bancorp*, 513 U.S. at 27. Finality is the fruit of a fair and orderly process; it is no virtue when achieved by force or fortune.

The lower court's argument from public interest reflects its disagreement with the *concept* of *Munsingwear* vacatur, not its application here. But this Court's "*Munsingwear* practice is well settled," *Acheson Hotels*, 601 U.S. at 5, despite occasional objections about a ruling's "valu[e] to the legal community," *id.* at 21 (Jackson, J., concurring in the judgment); *cf. Izumi Seimitsu Kogyo Kabushiki Kaisha v. U.S. Philips Corp.*, 510 U.S. 27, 40 (1993) (Stevens, J., dissenting). Absent "unique circumstances," which the court below did not articulate, App.8a n.2, "[a]dherence to our custom" is what "protects the public interest," *Hirschfeld*, 14 F.4th at 327.

2. Next the court deemed prejudice to petitioners "not substantial[]." App.8a. But it's hard to agree when the panel simultaneously encouraged hundreds of potential plaintiffs to sue petitioners. App.7a; *see also* App.43a (Bennett, J., dissenting). Some members of the putative class are already "ready and willing" to bring "the same claims." DE69:34 n.6. Surely they see the decision as a major windfall, not a "limited" ruling for Stephen Redd. App.8a. They got favorable precedent without the burden (or liability) of convincing the court to take any of the unusual steps proposed in Redd's supplemental briefing.[4]

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[4] Redd's brief had proposed substituting his daughter as plaintiff, DE69:27-31, finding a live case based on the existence of a putative class, *id.* at 31-32, remanding to let another putative class member file a new complaint, *id.* at 32, or remanding without dismissing, *id.* at 35 n.7.

By declining to vacate because of "other capital prisoners who, like Redd, have waited many years," App.7a, the panel issued a kind of class-wide relief in a moot case without a certified class. That prejudiced petitioners. Not only did the court force them to acquiesce in a ruling they had no chance to challenge; it did so based on the interests of nonparties whose claims were not before the court and were never litigated.

Bancorp, the only precedent of this Court relied upon by the court below, did not diminish the role of prejudice. Just the opposite: *Bancorp* denied vacatur *because* the petitioner had "forfeited … the ordinary processes of appeal" by settling the case. 513 U.S. at 25. There was no "fairness" problem. *Id.* In contrast, vacatur is "proper" when a litigant is "pursuing his 'right to … appeal'" "when the mooting event occur[s]." *Camreta*, 563 U.S. at 712 n.10 (quoting *Arizonans*, 520 U.S. at 74). That's what happened here. Petitioners were seeking rehearing when fate, not fault, deprived them of an orderly procedure.

The court below gave short shrift to prejudice. First, there is simply no support in the doctrine for ignoring the unfairness of being deprived of a "discretionary form[] of appellate review." App.8a. The rule applies when a case becomes moot "while on its way here or pending our decision on the merits." *Munsingwear*, 340 U.S. at 39. And that makes sense because the inequity lies in treating an "adverse decision that *would be reviewable*" "as if there had been a review." *Camreta*, 563 U.S. at 712 & n.10 (emphasis added). The panel decision might have become "unreviewable" if it had survived the rest of the appellate process; until then, it was "only preliminary." *Munsingwear*, 340 U.S. at 40-41; *see also Azar v. Garza*,

584 U.S. 726, 729 (2018) (per curiam) ("[T]he fact that the relevant claim here became moot before certiorari does not limit this Court's discretion." (collecting cases)); Pet.26-27; Wright, *supra*, § 3533.10.3, at n.6.[5]

Second, the possibility of "later … recourse," a future appeal in a future case, App.8a, is cold comfort. The panel drew a roadmap for plaintiffs as well as courts. The next *Redd* claim will survive a motion to dismiss. And it will succeed so long as the plaintiff can show that some evidence has decayed since sentencing. *See* App.86a-87a. Petitioners may need to litigate a case to verdict (and then lose at the panel stage) before they can challenge the panel's rulings on abstention, due process, and standing. Vacatur would give them a chance as soon as the next case is filed.

Munsingwear rectifies another kind of unfairness too, one that arises in cases against governmental entities like petitioners or *Amici* States. When a State has won but the plaintiff's claim becomes moot, a court may permit a substitution of party or even intervention to keep the case alive, *see, e.g.*, *Nat'l Union Fire Ins. Co. of Pittsburgh v. Seafirst Corp.*, 891 F.2d 762, 764 (9th Cir. 1989); *Atkins v. State Bd. of Ed.*, 418 F.2d 874, 876 (4th Cir. 1969); Indeed, respondent tried both tactics below. DE69:24-25, 27-31.

But generally, a State cannot play that game. When a State loses and the plaintiff's claim becomes moot, the State cannot force anyone onto the other side of the "v." The case is over, and unless vacated,

[5] Even after certiorari is granted, further review is still "discretionary" because the Court can dismiss the writ. Yet the Court often vacates cases that become moot at the merits stage. Thus, it cannot be right that only a party "entitled" to review is one for whom fairness demands vacatur. *See* Pet.20-23.

the decision binds a "repeat player" who is "*primarily* concerned with the precedential effect of the decision below." *Motta*, 61 F.3d at 118. Vacatur thus protects parties for whom the stakes are great even when the plaintiff's personal stake becomes extinct. *See, e.g.*, *Camreta*, 563 U.S. at 713 (granting vacatur to a prevailing party); *Hirschfeld*, 14 F.4th at 328 ("[W]e are reluctant to leave a preclusive judgment standing against a federal agency responsible for enforcing federal law while cutting off the appellate process[.]"); *MLB Props., Inc. v. Pac. Trading Cards, Inc.*, 150 F.3d 149, 152 (2d Cir. 1998) (vacating where "repeat player" "had to be concerned about … future litigation"). The Ninth Circuit got the equities backward when it treated repeat-player status as a reason *not* to vacate.

3. Both the panel and the seven dissenting judges below agreed that petitioners raised "federalism and comity concerns [that] are surely significant." App.27a (Bennett, J., dissenting); App. 64a, 74a. Even if those concerns did not warrant abstention, App.64a-75a, or certification of the novel state-law questions to the state supreme court, App.12a n.4, they should have informed the decision to vacate. Federal "intrusion … into the daily conduct of state criminal proceedings is in sharp conflict with the principles of equitable restraint." *Rizzo v. Goode*, 423 U.S. 362, 379-80 (1976) (citing *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975)). The panel's refusal to vacate reflected not restraint but a zeal to speed up the criminal justice system of a separate sovereign. Due process may justify such intrusion, but equity rarely does. This too was an abuse of discretion.

Arizonans for Official English is on point. There, the Court unanimously rebuked the Ninth Circuit for answering "[n]ovel, unsettled questions of state law" about "a novel state Act not yet reviewed by the State's highest court." 520 U.S. at 79. Those questions should have been certified to avoid "friction-generating error" and to "help[] build a cooperative judicial federalism." *Id.* at 77, 79. In any event, the case became moot on its way here. The Court could have said that despite the Ninth Circuit's lack of "respect for … States," *id.* at 75, its valuable opinion could guide future litigation. Instead, the Court's "federalism concern … le[d it] to conclude that vacatur" was the only "equitable solution." *Id.*

The case for vacatur here follows *a fortiori*. The panel's key premise was that California law guarantees counsel to be appointed "expeditiously, and so at a time when counsel will be useful." App.82a. But whether that "timing requirement is a substantive element" of the statutory right, App.31a (Bennett, J., dissenting), is a question the state supreme court has not answered. The panel's choice to reach out and decide the issue without certifying, *id.* at 38a-41a, is troubling on its own. To double down, refusing to vacate a novel interpretation of state law, even more so.

Worse still, the court ignored the role of federalism in a case about state criminal justice. *Munsingwear* vacatur is proper for *any* "consequential" decision that affects "the conduct of public officials." *Camreta,* 563 U.S. at 713. But such concerns should have been heightened in a case about the "administration of justice," which "is much more the business of the States than it is of the Federal Government." *Patterson v. New York*, 432 U.S. 197, 201 (1977). In this area, a

court must treat the balance "between federal equitable power and State administration of its own law" with "special delicacy." *Stefanelli v. Minard*, 342 U.S. 117, 120 (1951); *see also O'Shea*, 414 U.S. at 499-502.

A "more cautious approach was in order." *Arizonans*, 520 U.S. at 77. Yet the panel's "trepidation" on the merits (App.74a) gave way to audacity on the equities. After it became "impossible … to grant any effectual relief" to Redd, *Chafin v. Chafin,* 568 U.S. 165, 172 (2013), the court saw a chance to relieve "other capital prisoners," App.7a—exactly the kind of "systemic remedy" it had disavowed in its abstention ruling, App.68a. In doing so, the court's ruling was essentially "prophylactic," announcing "procedures for a state agency designed to minimize … misconduct" that others *might* allege. *Rizzo*, 423 U.S. at 378. That is "at odds" with basic tenets of equity, *id.*, and indeed a "dramatic overreach, the impact of which is to bind the justices and judges of California to the views of a federal court, not only as to the meaning of California law but also as to the structure of the State's judicial system." App.39a (Bennett, J., dissenting).

But the panel did not mention federalism, comity, or sovereignty when explaining its refusal to vacate. Perhaps it thought that it could not. Responding to the dissenters, the judges opposing vacatur wrote, "Vacating a decision … based on disagreement with the merits amounts to deciding a moot case, which is constitutionally forbidden." App.5a. But the panel did not need to make "assumptions about the merits," *Bancorp*, 513 U.S. at 27, to appreciate *its own* "considerable comity concerns" with the outcome. App.74a. Whether or not Redd had a viable due-process claim,

federalism has equitable weight. The panel was not "constitutionally forbidden" from considering it.[6]

The alternative, excluding federalism when it plays a role in the merits, would slant the equities in exactly those cases where federalism is most salient. Case in point: the court below could not have found an *unmitigated* public good in its "decisional framework" if it had taken its own concerns seriously. App.7a. Whatever virtue there was in the decision to cement an unreviewable blueprint for hundreds of lawsuits, the panel should have weighed its vices too, including the intrusion on state justice systems. If it had, the result would have been vacatur.

* * *

Petitioners should receive vacatur because mootness arose by chance while the case was pending on appeal. They do not need more. *See supra* §I.A. But even those who would require more than the inherent unfairness of an unreviewable decision can easily find it here. *Cf. Acheson Hotels,* 601 U.S. at 19 (Jackson, J. concurring). The "harm-related justification" for vacatur was "demonstrated" by the panel opinion itself. *Id.* at 20. If the Court decides that this case is not controlled by the normal rule of *Munsingwear*, then "consideration must be given to principles of federalism, *Rizzo*, 423 U.S. at 379, and the Court should vacate the judgment below.

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[6] Members of the Court have appealed to federalism when applying *Munsingwear* in other contexts, such as the decision to vacate the judgment of a state court of last resort. *See, e.g.*, *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 592 n.3 (1972) (Douglas, J., dissenting).

C. The Ninth Circuit's novel due-process right to speedy appointments in state postconviction cases deserves full review.

There is no constitutional right to counsel in post-conviction proceedings. *See Coleman v. Thompson*, 501 U.S. 722, 756-57 (1991). When an inmate seeks to use an attorney "as a sword to upset the prior determination of guilt" in those proceedings, the "fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer." *Murray v. Giarratano*, 492 U.S. 1, 7-8 (1989) (quotations omitted). But many States offer more than the Constitution requires. *See Martinez v. Ryan,* 566 U.S. 1, 14-15 (2012) (collecting statutes). According to a theory embraced for the first time below, a State cannot provide counsel in post-conviction proceedings without satisfying significant *federal* due process requirements, such as timeliness.

The Ninth Circuit's decision raises a host of complex questions, each of which could be worthy of certiorari on its own. At the threshold, the panel dismissed fears that it was licensing courts to "audit … state criminal proceedings," App.65a, although it gave no guidance as to how much delay is too much. The panel then decided that Redd's property interest in counsel guarantees him a speedy appointment under the Fourteenth Amendment. Petitioners deprived him of that right, the panel said, because "the value of Redd's entitlement … ha[d] significantly diminished" over time. *See* App.84a-85a. How exactly this cashes out for prisoners across the circuit is anyone's guess. The panel left open whether such claims would be governed by *Mathews v. Eldridge*, 424 U.S. 319 (1976) or *Barker v. Wingo*, 407 U.S. 514 (1972), App.85a, an

important question in its own right, *cf. Culley v. Marshall*, 601 U.S. 377 (2024).

The issues in this case are important to resolve.[7] On that score, all thirteen judges below agreed. The seven dissenters thought the ruling raised "a question of exceptional importance" in part because it posed "significant challenges to the already limited resources of the California judicial system." App.20a, 22a (Bennett, J., dissenting). And although the six concurring judges tried to downplay the import of the case, they tipped their hand by crediting the panel's "valuable" "framework" for future courts and plaintiffs, for whom vacatur would be a "disservice." App.7a, 19a. But if it was so "valuable to the legal community," it would have been valuable to review fully—en banc or in this Court. The panel's first impression should not be set in stone because of an accident, the timing of the plaintiff's death from natural causes. Nor should petitioners be bound to accept the panel's views without a chance to challenge them.

There will be ripple effects well beyond California. Most States offer some kind of post-conviction counsel. If *Redd* becomes a trend, they could be on the hook for more. The requirements of federal due process in this context are novel and unexplored. Some States "appoint counsel in every first collateral proceeding," some "if the claims have some merit" or if the record is "worthy of further development," and some appoint counsel if an evidentiary hearing is required. *Martinez,* 566 U.S. at 14-15. Each of these limitations could be subject to challenge, risking "significant"

[7] Indeed, Redd may have raised them because two members of this Court thought so too. *Redd v. Chappell*, 574 U.S. 1041 (2014) (Sotomayor, J., respecting the denial of certiorari).

intrusions into a State's sovereignty over its criminal justice system. App.64a. The Court should "clear[] the path for future relitigation" before this "preliminary" ruling "spawn[s] any [worse] legal consequences." *Munsingwear,* 340 U.S. at 40.

CONCLUSION

The Court should grant certiorari and vacate the judgment below to deprive it of precedential effect. The problem is not limited to the Ninth Circuit, and even courts that seem to apply the proper test, *see* Pet.15-17, make *Munsingwear* mistakes. Just a few years ago, the Eleventh Circuit, in an unreasoned order, declined to vacate a decision with "immense legal consequences." *Ala. State Conf. of NAACP v. Alabama*, 806 F. App'x 975-76 (11th Cir. 2020) (Branch, J., concurring in part and dissenting in part). So Alabama, supported by twelve States, had to ask this Court to intervene, which it did. *See Alabama v. Ala. State Conf. of NAACP*, 141 S. Ct. 2618 (2021); Br. for the State of Tex. et al. as *Amici Curiae*, No. 20-1047 (Apr. 5, 2021).

But it should not have required thirteen sovereigns and a cert petition to ensure that this Court's "normal rule" was applied in Alabama's case. Likewise, in this case, vacatur is clearly required by this Court's precedent. But more clarity is apparently needed. To that end, the Court should issue a precedential decision emphasizing again that when chance prevents a party from obtaining further review of a lower court decision, vacatur is the proper remedy.

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