No. 25-52

IN THE
Supreme Court of the United States

TERENCE CLARK, DIRECTOR, *et al.*,
Petitioners,

v.

JEREMIAH ANTOINE SWEENEY,
Respondent.

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

REPLY BRIEF FOR THE PETITIONERS

ANTHONY G. BROWN
Attorney General of Maryland

JULIA DOYLE
Solicitor General

JER WELTER
Principal Deputy Solicitor General

ANDREW J. DIMICELI*
Assistant Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202
adimiceli@oag.state.md.us
(410) 576-6422

* Counsel of Record

OCTOBER 2025

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

REPLY BRIEF FOR THE PETITIONERS

A. Congress and This Court Have Prescribed a Rigorously Enforced Total Exhaustion Rule that Lower Courts Are Not Authorized to Modify or Ignore.

Mr. Sweeney argues that the habeas exhaustion rule is not jurisdictional, and so, he suggests, the court of appeals below was not obligated to follow it. Br. in Opp. 16. To be sure, the rule is not jurisdictional—it is a procedural defense that can be excused in a few limited circumstances that Congress has authorized. But both Congress and this Court have made clear that exhaustion is a *requirement*, and federal habeas courts cannot modify or ignore the rule to reach the merits of a claim.

"Fourteen years before Congress enacted AEDPA, [this Court] held in *Rose v. Lundy*, 455 U.S. 509 (1982), that federal district courts may not adjudicate mixed petitions for habeas corpus, that is, petitions containing both exhausted and unexhausted claims." *Rhines v. Weber*, 544 U.S. 269, 273 (2005). To further "the interests of comity and federalism," it "imposed a *requirement of 'total exhaustion'* and directed federal courts to effectuate that requirement by dismissing mixed petitions without prejudice." *Id.* at 273-74 (emphasis added) (quoting *Lundy*, 455 U.S. at 522).

In 1996, Congress enacted AEDPA to "curb the abuse of the habeas corpus process." H.R. Rep. No. 104-23, at 8 (1995). While AEDPA "dramatically altered the landscape for federal habeas corpus petitions," it "preserved *Lundy's* total exhaustion

requirement, *see* 28 U.S.C. § 2254(b)(1)(A)." *Rhines*, 544 U.S. at 274; *see also Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) ("AEDPA requires state prisoners to 'exhaus[t] the remedies available in the courts of the State' before seeking federal habeas relief. 28 U.S.C. § 2254(b)(1)(A).").

Currently, 28 U.S.C. 2254(b)(1) states that a federal habeas petition brought by a state prisoner "*shall not be granted* unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State . . . ." (emphasis added)). AEDPA reinforced the exhaustion rule by adding § 2254(b)(3): "A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement." "This provision [was] designed to disapprove those decisions which have deemed states to have waived the exhaustion requirement, or barred them from relying on it, in circumstances other than where the state has expressly waived the requirement." H.R. Rep. No. 104-23, at 10.[1]

---

[1] Mr. Sweeney relies on *Granberry v. Greer*, 481 U.S. 129, 135 (1987), for the supposed proposition that a special circumstances "exception applies when 'a full trial has been held in the district court and it is evident that a miscarriage of justice has occurred.'" Br. in Opp. 16. He mischaracterizes the decision. The Court held in *Granberry* that habeas courts may "hold *that the nonexhaustion defense has been waived* in order to avoid unnecessary delay in granting relief that is plainly warranted." 481 U.S. at 135 (emphasis added). In any case, Congress abrogated that part of *Granberry* when it adopted § 2254(b)(3).

The habeas statute currently identifies only three exceptions to the exhaustion requirement. The first two apply where "(i) there is an absence of available State corrective process; or (ii) circumstances exist that render such process ineffective to protect the rights of the applicant." 28 U.S.C. § 2254(b)(1)(B). Those provisions were adopted for the obvious purpose of preventing states from circumventing federal habeas review by denying criminal defendants a full and fair *opportunity* to exhaust their claims.

The third exception permits federal courts to *deny* (but not grant) a petition on the merits despite non-exhaustion. 28 U.S.C. § 2254(b)(2). Congress added that provision through the AEDPA amendments to promote judicial efficiency when federal courts are confronted with plainly meritless petitions. H.R. Rep. No. 104-23, at 9-10 ("This reform will help avoid the waste of state and federal resources that now result when a prisoner presenting a hopeless petition to a federal court is sent back to the state courts to exhaust state remedies.").

Mr. Sweeney argues that Congress's adoption of these exceptions is evidence that it "left the special-circumstances exception intact." Br. in Opp. 18-19. To the contrary, Congress's codification of those specific exceptions, coupled with the proviso, now located at § 2254(c), that "[a]n applicant shall not be deemed to have exhausted the remedies available in the courts of the State, within the meaning of this section, if he has the right under the law of the State to raise, by any available procedure, the question presented," indicates that any exceptions to the rule are limited to those that Congress adopted. *See Duckworth v.*

Serrano, 454 U.S. 1, 3 (1981) (per curiam) (stating that the exhaustion requirement is "now codified in the federal habeas statute," and that "[a]n exception is made *only* if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief" (emphasis added)); H.R. Rep. No. 104-23, at 10 ("This amendment [§ 2254(b)(2)] does not undermine the policy of comity to state courts that underlies the exhaustion requirement, since *the federal habeas court would only be permitted to deny an unexhausted claim*." (emphasis added)). These statutory exceptions do not, as Mr. Sweeney suggests, support the existence of broad discretion to excuse nonexhaustion in an ordinary § 2254 case.[2]

In sum, the amendments to § 2254 collectively form a comprehensive exhaustion rule. Congress has legislated that federal habeas relief cannot be granted unless state-court remedies are exhausted (except where there is an absence of, or ineffective, state corrective process), and a state cannot be estopped

---

[2] Also, Section 2254(b)(1)(B) is inapplicable here because the Maryland courts provided Mr. Sweeney a full and fair opportunity to raise federal constitutional claims on direct appeal and in state postconviction proceedings. He simply did not raise Sixth Amendment impartial-jury or Confrontation Clause claims at any stage of the proceedings (state and federal). And to the extent that the § 2254(b)(1)(B)(i) "absence of available State corrective process" exception may be triggered because Mr. Sweeney has used up all of his state-court remedies, the claims that the Fourth Circuit raised sua sponte would then be barred under the doctrine of procedural default. *Coleman v. Thompson*, 501 U.S. 722, 735 n.1 (1991); *Woodford v. Ngo*, 548 U.S. 81, 92-93 (2006).

from relying on the exhaustion requirement (except when expressly waived). Congress left no room in the statute for ad-hoc, court-made exceptions.

This would not be the first time the Court has had to summarily reverse a court of appeals for crafting its own exception to Congress's exhaustion requirement. In *Serrano*, Isadore Serrano sought federal habeas relief from his state judgment of conviction. *Serrano*, 454 U.S. at 2. Serrano "did not challenge the effectiveness of counsel in his appeal to the Indiana Supreme Court . . . or before the Federal District Court, which dismissed his petition for a writ of habeas corpus." *Id.* Rather, an ineffective-assistance "issue was first raised in the Court of Appeals for the Seventh Circuit," which reversed on that ground. *Id.* The court of appeals "acknowledg[ed] that the ineffective-assistance argument had never been presented to the state courts" but "nevertheless decided that 'in view of the clear violation' of [Serrano's] rights and 'in the interest of judicial economy,' there was no reason to await the state court's consideration of the issue." *Id.*

This Court summarily reversed. *Id.* at 3-4. It explained that it was well-settled "that a state prisoner must normally exhaust available state remedies before a writ of habeas corpus can be granted by the federal courts," and that doctrine is "now codified in the federal habeas statute." *Id.* at 3. It stated that "[a]n exception is made *only* if there is no opportunity to obtain redress in state court or if the corrective process is so clearly deficient as to render futile any effort to obtain relief." *Id.* (emphasis added). The "new exception for 'clear violations'" that

the court of appeals had "engrafted . . . onto the habeas statute [was] not envisioned by Congress, [was] inconsistent with the clear mandate of the Act, and [was] irreconcilable with [this Court's] decisions requiring the exhaustion of state judicial remedies." *Id.* at 4-5. "Because obvious constitutional errors, no less than obscure transgressions, are subject to the requirements of § 2254(b)," this Court explained, "the Court of Appeals was obligated to dismiss [the habeas] petition." *Id.* at 4.

Here, just as in *Serrano*, the Fourth Circuit engrafted onto the habeas statute an exception to the exhaustion rule for when a habeas court observes a "combination of extraordinary failures" in the state-court record. App. 22a. Such an exception is inconsistent with AEDPA, this Court's precedent, and the longstanding exhaustion rule. As in *Serrano*, summary reversal is warranted.

B. The Special Exceptions to the Exhaustion Rule Identified in This Court's Early Exhaustion Cases Do Not Apply Here.

Mr. Sweeney cites a string of late 19th Century and early 20th Century decisions from this Court—namely, *Ex parte Royall*, 117 U.S. 241 (1886); *Ex parte Frederich*, 149 U.S. 70 (1893); *Whitten v. Tomlinson*, 160 U.S. 231 (1895); *United States ex rel. Kennedy v. Tyler*, 269 U.S. 13 (1925); *Bowen v. Johnston*, 306 U.S. 19 (1939)—for the proposition that "the Court has always insisted" that the exhaustion rule "can yield to the particular needs of a particular case." Br. in Opp. 16-17. These early cases do not justify the Fourth Circuit's decision below, because even if they

established narrow exceptions to the exhaustion rule that were perhaps incorporated into the habeas statute when Congress first enacted § 2254, the narrow exceptions would not apply here.

This Court did say in *Royall* (and reiterated in its contemporary progeny) that the principles of comity underpinning the exhaustion rule may be "subordinated to any special circumstances requiring immediate action." 117 U.S. at 253. But the special circumstances that the Court discussed in *Royall* and contemporary cases are exceedingly narrow: "cases of urgency, involving the authority and operations of the general government, the obligations of this country to or its relations with foreign nations." *Id.* at 251; *see also Whitten*, 160 U.S. at 241-42 (discussing several examples of "exceptional case[s]" that involved matters of uniquely federal concern but emphasizing that, "except in such peculiar and urgent cases," the exhaustion rule should be enforced); *Bowen*, 306 U.S. at 27 (stating that "exceptional circumstances" include "a conflict between state and federal authorities on a question of law involving concerns of large importance affecting their respective jurisdictions").

"In 1948, Congress codified the exhaustion doctrine in 28 U.S.C. § 2254, citing *Ex parte Hawk*[, 321 U.S. 114 (1944),] as correctly stating the principle of exhaustion." *Lundy*, 455 U.S. at 516. In *Hawk*, the Court delineated the exhaustion rule and then, quoting *Tyler*, 269 U.S. at 17, it added that federal courts "will interfere with the administration of justice in the state courts only 'in rare cases where exceptional circumstances of peculiar urgency are shown to exist.'" *Hawk*, 321 U.S. at 116-17.

In *Tyler*, the Court identified only three cases that satisfied the *Royall* "exceptional circumstances of peculiar urgency" and warranted relief—two involved "interferences by the state authorities with the operations of departments of the general government," and the third "concerned the delicate relations of that government with a foreign nation." 269 U.S. at 19. It added that the "general [exhaustion] rule is emphasized by a consideration of the few cases where this [C]ourt has upheld the allowance of the writ." *Id.* at 18.

Indeed, in these early cases, the Court routinely affirmed the denial of habeas petitions on non-exhaustion grounds. *See, e.g.*, *Royall*, 117 U.S. at 252-53; *Frederich*, 149 U.S. at 78; *Whitten*, 160 U.S. at 247; *Tyler*, 269 U.S. at 17. If anything is to be gleaned from these early cases, it is that the exhaustion rule should routinely be applied and is not to be excused in run-of-the-mill habeas cases.

Thus, even if the narrowly defined and rarely applied exceptions identified in *Royall* / *Tyler* / *Hawk* survived the codification of, and various amendments to, § 2254, they do not apply here.[3] There was nothing special or urgent about this mine-run § 2254 case that justified the Fourth Circuit's departure from the

---

[3] For this reason, Mr. Sweeney's reliance on *Lundy* is misplaced. There, this Court restated the exhaustion rule, but citing *Tyler* and *Hawk*, it added that "[s]ubsequent cases refined the principle that state remedies must be exhausted except in unusual circumstances." *Lundy*, 455 U.S. at 515. Again, the "unusual circumstances" the Court described in those early cases do not apply to Mr. Sweeney's unremarkable challenge to his state judgment of conviction.

exhaustion rule. Mr. Sweeney has cited no case from this Court, nor have petitioners found one, where the Court has excused exhaustion in even remotely similar circumstances.

C. The Fourth Circuit Violated the Party-Presentation Principle.

The Fourth Circuit violated the party-presentation principle because, as petitioners have explained, the panel majority, without any input from the parties, identified constitutional claims that Mr. Sweeney *never asserted at any stage* in the proceedings (state or federal), excused Mr. Sweeney's failure to exhaust them, and then granted habeas relief based on the "confluence" of supposed errors that it perceived in Mr. Sweeney's state criminal trial. Pet. at 15-17.

In response, Mr. Sweeney largely ignores the party-presentation issue and instead focuses on exhaustion, the "distinction between waiver and forfeiture," and cases that address whether courts of appeals may consider procedural defenses forfeited by the state. Br. in Opp. 25-32 (citing *Wood v. Milyard*, 566 U.S. 463, 473 (2012); *Day v. McDonough*, 547 U.S. 198, 202 (2006); *Granberry*, 481 U.S. at 132-136; *Caspari v. Bohlen*, 510 U.S. 383, 389 (1994)). He also references the cause-and-prejudice exception to the procedural default rule. Br. in Opp. 29. But he cites no case from this Court establishing that it is appropriate or permissible for a court of appeals to sua sponte raise and grant relief on constitutional claims that a habeas petitioner never asserted.

In a last-ditch effort, Mr. Sweeney suggests that he perhaps "*did* raise the arguments that Maryland complains the court invented out of whole cloth" and points the Court to language from pages 24 and 435-437 of the Fourth Circuit Joint Appendix. Br. in Op. 30-31. To the contrary, those records establish that Mr. Sweeney unambiguously raised claims of ineffective assistance of counsel. *See* C.A. J.A. 22-24 (arguing, under the heading, "Petitioner was a victim of ineffective assistance of counsel . . . ," that the trial court erred but "*Petitioner's counsel never objected to any of these actions*" (capitalization and emphasis altered)); *id* at 432-435 (arguing, under the heading, "trial counsel rendered deficient assistance . . . ," that "*trial counsel rendered deficient assistance* that caused prejudice to Petitioner" (capitalization and emphasis altered)). He never asserted a claim for relief that he was denied his right to an impartial jury or his right to confrontation. *See Gray v. Netherland*, 518 U.S. 152, 162-63 (1996) (reiterating that "for purposes of exhausting state remedies, a claim for relief in habeas corpus must include reference to a specific federal constitutional guarantee," and "presenting the state courts only with the facts necessary to state a claim for relief" is insufficient (citing *Picard v. Connor*, 404 U.S. 270, 271, 278 (1971))). Moreover, Mr. Sweeney does not dispute that he failed to present these claims to the Fourth Circuit, and so it was inappropriate for the panel majority to raise them sua sponte.

Where a court of appeals has failed to adhere to the party-presentation principle, this Court has intervened. *United States v. Sineneng-Smith*, 590

U.S. 371, 375 (2020). The Court should do the same here.

D. This Case Is an Ideal Candidate for Summary Reversal.

Mr. Sweeney argues that the Court should decline to intervene in this case because petitioners present only an "illusory" circuit split. Br. in Opp. 23. But the reason why there is a lack of circuit conflict is because, in the nearly three decades following the enactment of AEDPA, no court of appeals has ever relied upon *Frisbie v. Collins*, 342 U.S. 519 (1952), or *Granberry* to excuse nonexhaustion and grant habeas relief like the panel majority did here.[4] Certainly, Mr. Sweeney has identified no such case. The panel majority admitted that it needed to go "beyond . . . traditional habeas review" to grant Mr. Sweeney relief, App. 22a, and indeed, it went where no other court of appeals has gone before. For that reason, this case warrants summary reversal.

Mr. Sweeney resists petitioners' call for summary reversal, arguing that that remedy is "reserved for rare circumstances where a lower court's decision is

---

[4] Naturally, there are numerous post-AEDPA cases where federal courts have, consistent with AEDPA, applied the exhaustion waiver rule, § 2254(b)(3); found that state corrective process was ineffective or no longer available (often resulting in a procedural default), § 2254(b)(1)(B); or *denied* plainly meritless claims despite nonexhaustion, § 2254(b)(2). But there is no decision from any court of appeals other than the decision of the panel below that has applied *Frisbie* or *Granberry* to excuse nonexhaustion and grant relief on a post-AEDPA petition based on the number and/or merits of the errors identified by the court.

patently unmoored from well-established law and the error is clear, egregious, and indisputable." Br. in Opp. 34. This is precisely such a case.

CONCLUSION

The petition for writ of certiorari should be granted and the judgment of the court of appeals should be summarily reversed.

Respectfully submitted,

ANTHONY G. BROWN
Attorney General of Maryland

JULIA DOYLE
Solicitor General

JER WELTER
Principal Deputy Solicitor General

ANDREW J. DIMICELI*
Assistant Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202
adimiceli@oag.state.md.us
(410) 576-6422

Attorneys for Petitioners

*Counsel of Record