

*** CAPITAL CASE ***

No. 25-6647

IN THE
Supreme Court of the United States

EMANUEL JOHNSON, SR.,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REPLY ARGUMENT

This Court has made clear that a habeas petitioner nearly always bears the cost of counsel's failure to preserve reasonably meritorious arguments on his behalf. *See, e.g., Shinn v. Ramirez*, 596 U.S. 366, 383 (2022). Yet, Respondent's opposition faults Mr. Johnson for an administrative anomaly beyond his control, which occurred during his attempt to fairly present his constitutional claims amidst a long history of counsel's omissions. Respondent's logic would punish Mr. Johnson for the same diligence this Court requires.

Further, Respondent's myopic attack on the four pro se claims raised in District Court is a misapplication of relevant law and an attempt at distraction from the critical underlying issues: (1) Mr. Johnson's pro se claims are inextricable from the claims pending on his counseled dockets; (2) the District Court's adjudication of those claims has been used by Respondent to bolster their arguments in the counseled docket; and (3) Mr. Johnson's counsel in that case is unable to make his strongest procedural and constitutional arguments due to an ongoing conflict of interest. Although Respondent ignores the interplay between the lower courts' procedural rulings and Mr. Johnson's substantive claims, the impact of the rulings below severely prejudices Mr. Johnson's entitlement to a full and fair round of habeas review. The only remedy to this quagmire is this Court's intervention.

Rather than engage with the viability of Mr. Johnson's consolidation argument, Respondent opts to attack the merits of Mr. Johnson's pro se claims by relying on their piecemeal presentation—all the while ignoring why those claims

were presented in such a fashion in the first place. BIO at 5. In overlooking the effect of CCRC-M's conflict of interest on the presentation of both the pro se and the counseled claims, Respondent's position that consolidation of the actions would change nothing, *id.*, glosses over the grave continuing harm: Mr. Johnson is currently represented in the pending § 2254 proceedings by counsel who cannot present his most viable arguments against procedural default. Indeed, Respondent's position conflicts with this Court's clear instructions to lower courts to ensure that § 2254 petitioners are represented by conflict-free counsel. *Martel v. Clair*, 565 U.S. 648, 657-62 (2012); *Christeson v. Roper*, 574 U.S. 373, 379 (2015) (stating that "a district court would be compelled 'to appoint new counsel if the first lawyer developed a conflict.'"). As *Christeson* emphasized, a "significant conflict of interest" arises when counsel's interest in avoiding reputational damage is "at odds with" a client's strongest federal argument. 574 U.S. at 378 (quoting *Maples v. Thomas*, 565 U.S. 266, 285-86 (2012)). Rather than changing nothing, the relief Mr. Johnson seeks would globally change the fairness of his pending litigation. See *Banister v. Davis*, 590 U.S. 504, 507, 509 (2020) (under AEDPA a state prisoner is always entitled to one "fair opportunity to seek federal habeas relief").

Respondent's related assertion that the conflict no longer exists is simply false in light of the overlap between the pro se and counseled dockets. Just as CCRC-M as an entity was impeded from properly advising and representing Mr. Johnson in the pro se proceedings because the performance of that office was directly at issue, so too are they impeded in the ongoing counseled § 2254 litigation. Respondent has raised

default of multiple federal claims as an affirmative defense in those proceedings, to which Mr. Johnson has viable procedural arguments related to CCRC-M's deficiencies and his consequent pro se efforts toward fair presentation. Thus, contrary to the District Court's finding, a conflict would not be *created* by consolidation of the pro se and counseled dockets; it has existed ever since Mr. Johnson made viable allegations of CCRC-M's ineffectiveness. Despite Respondent's shallow assurances, the prejudicial impact of the lower court's failure to consolidate and provide conflict-free counsel reverberates throughout both the counseled and pro se claims. Keeping the dockets separate does not remedy the conflict. It exacerbates it.

Whether a district court's procedural denial involves a "substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253 does not turn on whether the procedural ruling itself caused the denial of that right. Instead, all an applicant must show to obtain a COA on a procedural ruling is that it arguably impacted the court's adjudication of—or ability to adjudicate—a constitutional claim. In the context of a COA, the relevant inquiry is not whether the District Court's refusal to consolidate and appoint conflict-free counsel *itself* violated Mr. Johnson's constitutional rights. Rather, what is relevant is that the refusal impacted adjudication of all of Mr. Johnson's underlying pro se habeas claims (including valid claims of trial and appellate counsel ineffectiveness, prosecutorial misconduct, and judicial bias that were fully and fairly presented in state court). Here, not only did that refusal impact adjudication of the pro se claims, it has bled over and continues to impact *pending constitutional claims* on Mr. Johnson's counseled dockets.

In misconstruing the distinct underlying constitutional basis invoked in this case, Respondent actually exemplifies the danger of separated actions by using the pro se adjudication to support its opinion on the viability of the pending (counseled) claims. BIO at 6 (citing default of many of the issues, and stating that “his pending claims also lack merit.”). Yet, Respondent argues that “only upon conclusion of the entirety of Johnson’s federal claims can it be assessed whether he has been deprived of anything.” BIO at 6. This may be true during a normal course of litigation, but not here, where two different tracks are so clearly intertwined. This has resulted in a uniquely harmful position best illustrated by the District Court’s treatment of Ground One, a trial counsel ineffectiveness claim, which has now been partly adjudicated by the District Court and Eleventh Circuit but remains pending in part on the counseled docket. There is an immutable nexus between these procedural rulings and the underlying denial of constitutional rights as laid out in Mr. Johnson’s § 2254 petition.

Whether consolidation is not only proper in this case, but critical, is undoubtedly reasonably debatable. An unforeseen administrative anomaly that resulted from Mr. Johnson’s diligent efforts to preserve his federal rights has now snowballed into a threat to the fairness of his constitutional review. This Court has made clear on multiple occasions that petitioners are entitled to “one bite out of the apple” under AEDPA. *Jones v. Hendrix*, 599 U.S. 465, 510 (2023) (Jackson, J., dissenting) (detailing congressional intent to ensure a habeas petitioner received a “full, fair chance” to present federal habeas claims under AEDPA). And, this Court

has specified that for the purposes of focused and thorough adjudication, such review should occur in “a single proceeding.” *Rose v. Lundy*, 455 U.S. 509, 520 (1982). That is all Mr. Johnson seeks here.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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