Habeas Corpus — Ineffective Assistance of Counsel — Procedural Default — Shinn v. Ramirez

Ten years ago, the Supreme Court held in *Martinez v. Ryan*[1] that ineffective assistance of postconviction counsel, in an initial-review proceeding, may establish cause for a habeas petitioner's procedural default of a claim of ineffective assistance of trial counsel.[2] The Court affirmed this ruling the subsequent year in *Trevino v. Thaler*.[3] Both cases served to vindicate defendants' Sixth Amendment right to counsel by ensuring that they had at least one meaningful opportunity to be heard after having twice been given ineffective counsel by the state.[4] Last Term, in *Shinn v. Ramirez*,[5] the Court revisited the question of a petitioner's right to bring and develop trial-ineffectiveness claims on habeas review. In two consolidated cases, the Court held that the Antiterrorism and Effective Death Penalty Act[6] (AEDPA) bars federal courts from considering evidence outside the state-court record to prove *Martinez* claims.[7] Thus, although habeas petitioners may *assert* such claims, petitioners are now unable to marshal the evidence required to *prove* them in the habeas forum. In this way, the Court effectively — though not explicitly — overruled its precedents, privileging "state sovereignty" over stare decisis and harming indigent defendants in the process.

Ramirez consolidated the cases of David Martinez Ramirez and Barry Lee Jones.[8] After being convicted of first-degree murder and felony murder, respectively, Ramirez and Jones received death sentences, which were affirmed on direct review.[9] Ramirez petitioned for state postconviction relief, alleging trial-level ineffective assistance of counsel (IAC) due to failure to investigate and present mitigation evidence at sentencing; this petition was summarily denied as untimely.[10] Jones's

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[1] 566 U.S. 1 (2012).

[2] *Id.* at 9, 17.

[3] 569 U.S. 413, 428–29 (2013) (holding that an initial-review proceeding, for *Martinez*-hearing purposes, encapsulates not only the defendant's first *actual* opportunity to raise a trial-ineffectiveness claim, but the first "meaningful opportunity" to do so, *id.* at 429).

[4] *See Martinez*, 566 U.S. at 7, 12 ("The right to the effective assistance of counsel at trial is a bedrock principle in our justice system." *Id.* at 12.); *Trevino*, 569 U.S. at 422 (quoting *Martinez*, 566 U.S. at 12).

[5] 142 S. Ct. 1718 (2022).

[6] Pub. L. No. 104-132, 110 Stat. 1214 (1996) (codified as amended in scattered sections of the U.S. Code).

[7] *Ramirez*, 142 S. Ct. at 1728.

[8] Shinn v. Ramirez, 141 S. Ct. 2620 (2021) (mem.).

[9] *See Ramirez*, 142 S. Ct. at 1728–29 (citing State v. Ramirez, 871 P.2d 237, 240, 242 (Ariz. 1994); State v. Jones, 937 P.2d 310, 313 (Ariz. 1997)) (describing Ramirez's 1990 conviction of two counts of first-degree murder, as well as Jones's 1995 conviction for the sexual assault, child abuse, and felony murder of his then-girlfriend's daughter).

[10] *Id.* at 1728; Ramirez v. Ryan, No. CV-97-1331-PHX, 2010 WL 3854792, at *3 (D. Ariz. Sept. 28, 2010).

state postconviction petition, in turn, alleged trial-level ineffectiveness for inadequate pretrial investigation; it was also summarily denied.[11]

Jones and Ramirez next filed habeas petitions in federal court, alleging that their *postconviction* attorneys were ineffective for failing to raise and develop claims of their *trial* attorneys' ineffectiveness.[12] In both cases, the district court denied relief under then-governing precedent, finding their claims procedurally defaulted.[13] Ramirez and Jones each appealed to the Ninth Circuit.[14] While their cases were pending, the U.S. Supreme Court decided *Martinez*, which held that postconviction-level IAC, in an initial-review proceeding, may establish cause for the procedural default of a trial-level IAC claim.[15] The Ninth Circuit remanded each case in light of *Martinez*.[16]

In both cases, the district court ordered supplemental briefing and accepted new evidence to reevaluate whether cause existed.[17] New evidence in Ramirez's case included testimony of family members, never before contacted, as to his childhood abuse, neglect, and early indications of intellectual disability; the admittedly inadequate representation of unprepared, inexperienced trial counsel; psychological evidence of a disability; and a lack of a "strategic reason," on the part of trial counsel, for failing to present this information at sentencing.[18] The district court considered the new evidence, but nonetheless found Ramirez's IAC claim to be without merit and hence defaulted.[19] Jones's evidentiary hearing, in turn, took place over a seven-day period, and it demonstrated trial counsel's "fail[ure] to conduct an adequate pre-trial investigation . . . [and] his failure to uncover key evidence" as to the medical timeline — which suggested that the assault could not have been committed when Jones was present with the victim.[20] Based on this evidence, the court found cause and granted Jones's habeas petition.[21]

Arizona appealed in Jones's case, arguing that 28 U.S.C. § 2254(e)(2) did not permit evidentiary hearings on claims not pursued in state

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[11] *Ramirez*, 142 S. Ct. at 1729; Jones v. Ryan, 327 F. Supp. 3d 1157, 1165 (D. Ariz. 2018).

[12] *See Ramirez*, 142 S. Ct. at 1728–30.

[13] *See id.* at 1729. In Ramirez's case, the court denied relief despite citing "concerns regarding the quality" of Ramirez's postconviction representation. *See id.* at 1742 (Sotomayor, J., dissenting) (quoting Ramirez v. Ryan, 937 F.3d 1230, 1238 (9th Cir. 2019)).

[14] *See Ramirez*, 937 F.3d at 1238; Jones v. Shinn, 943 F.3d 1211, 1219 (9th Cir. 2019).

[15] Martinez v. Ryan, 566 U.S. 1, 9, 17 (2012).

[16] *Ramirez*, 937 F.3d at 1238; *Jones*, 943 F.3d at 1219.

[17] *Ramirez*, 937 F.3d at 1238–39; *Jones*, 943 F.3d at 1219.

[18] *Ramirez*, 937 F.3d at 1238–40.

[19] Ramirez v. Ryan, No. CV-97-01331-PHX, 2016 WL 4920284, at *9–11, *13 (D. Ariz. Sept. 15, 2016) ("The default . . . is not excused under *Martinez*." *Id.* at *13.).

[20] *Jones*, 943 F.3d at 1219 (citing Jones v. Ryan, 327 F. Supp. 3d 1157, 1200, 1218 (D. Ariz. 2018)). The child exhibited signs of earlier onset of the peritonitis from which she died, and other family members had a history of physically abusing her. *Jones*, 327 F. Supp. 3d at 1200–01.

[21] *Jones*, 327 F. Supp. 3d at 1163; *see also id.* at 1218.

court.[22] But the Ninth Circuit affirmed,[23] holding that "*Martinez*'s procedural-default exception applies to merits review, allowing federal habeas courts to consider evidence not previously presented to the state court."[24] On appeal in Ramirez's case, the Ninth Circuit held that the failure of postconviction counsel to raise and develop the trial-level IAC claim constituted cause and remanded, stating that Ramirez was "entitled to [the] evidentiary development"[25] that postconviction counsel failed to provide.[26] Arizona petitioned for a rehearing en banc in both cases, claiming that remanding for additional factfinding violated § 2254(e)(2); the petitions were denied.[27] When Arizona then petitioned the U.S. Supreme Court, the Court consolidated the cases and granted certiorari.[28]

The Supreme Court reversed.[29] As to whether § 2254(e)(2) permits federal courts to accept new evidence in evaluating the merits underlying *Martinez* claims, the Court held that "a federal habeas court may not conduct an evidentiary hearing or otherwise consider evidence beyond the state-court record based on ineffective assistance of state postconviction counsel."[30] That is, while a federal habeas court may conclude that ineffectiveness of state postconviction counsel — in failing to *raise* an underlying ineffectiveness claim of state trial counsel — may suffice to constitute cause to excuse a petitioner's procedural default under *Martinez*, the petitioner may still be deemed "at fault" for § 2254(e)(2) purposes, rendering her unable to further *develop* the excused claim under *Ramirez*.[31]

Writing for the majority, Justice Thomas[32] first emphasized the importance of state sovereignty and noted the "intru[sion]" thereon by federal habeas review.[33] He stated that federal intervention in state criminal adjudications "overrides the State's sovereign power to enforce 'societal norms through criminal law,'" "imposes significant costs on state criminal justice systems," harms finality, and "undermines the

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[22] *Jones*, 943 F.3d at 1215, 1221. Section 2254(e)(2), enacted as part of AEDPA, states that if a habeas petitioner "has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless" certain conditions are met. 28 U.S.C. § 2254(e)(2).

[23] *Jones*, 943 F.3d at 1236.

[24] *Id.* at 1221.

[25] Ramirez v. Ryan, 937 F.3d 1230, 1248 (9th Cir. 2019).

[26] *Id.* at 1247–48, 1251; *see also id.* at 1244 (noting that this IAC claim was "at least . . . substantial").

[27] *Ramirez*, 142 S. Ct. at 1729–30 (citing Ramirez v. Shinn, 971 F.3d 1116 (9th Cir. 2020) (mem.); Jones v. Shinn, 971 F.3d 1133 (9th Cir. 2020) (mem.)).

[28] *See* Shinn v. Ramirez, 141 S. Ct. 2620 (2021) (mem.).

[29] *Ramirez*, 142 S. Ct. at 1740.

[30] *Id.* at 1734.

[31] *See id.* at 1737; *see also id.* at 1735–38.

[32] Justice Thomas was joined by Chief Justice Roberts, as well as Justices Alito, Gorsuch, Kavanaugh, and Barrett.

[33] *Ramirez*, 142 S. Ct. at 1731 (quoting Harrington v. Richter, 562 U.S. 86, 103 (2011)).

States' investment in their criminal trials."[34] Second, he asserted that AEDPA was enacted to limit federal habeas relief, as exhibited by its strict exhaustion requirements, its mandate for federal courts to base their review of claims adjudicated on the merits in state court "solely on the state-court record," and the doctrine of procedural default.[35] These restrictions "promote federal-state comity" and respect for states.[36]

Under the doctrine of procedural default, "federal courts generally decline to hear any federal claim that was not presented to the state courts 'consistent with [the State's] own procedural rules.'"[37] Procedurally defaulted claims can be excused only if the petitioner proves cause and actual prejudice, where cause consists of external impediments, which generally do not include attorney error.[38] *Martinez* provides an exception, although a "narrow" one,[39] which applies when "the State requires petitioners to raise [trial-level IAC] claims for the first time during state collateral proceedings,"[40] as in Arizona.[41]

Justice Thomas asserted, however, that "[t]here is an even higher bar for excusing a [petitioner's] failure to develop the state-court record"[42] under *Keeney v. Tamayo-Reyes*.[43] There, attorney error is considered insufficient to justify further evidentiary development,[44] at least for petitioners "who were not diligent."[45] Justice Thomas argued that Congress enacted AEDPA against the backdrop of *Keeney*, adding the even "more stringent requirements" in § 2254(e)(2) for evidentiary hearings in federal habeas forums.[46] These requirements apply whenever a petitioner has "failed to develop the factual basis of a claim,"[47] and the majority "interpret[ed] 'fail,' consistent with *Keeney*, to mean that the [petitioner] must be 'at fault' for the undeveloped record in state court."[48] Moreover, Justice Thomas declined to undertake an "equitable rewrite of § 2254(e)(2) because it lacks any principled limit," and "[u]nlike for procedural default, [the Court] lack[s] equitable authority

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[34] *Id.* (quoting Calderon v. Thompson, 523 U.S. 538, 556 (1998)).
[35] *Id.* at 1732 (citing Cullen v. Pinholster, 563 U.S. 170, 180 (2011)).
[36] *Id.*
[37] *Id.* (alteration in original) (quoting Edwards v. Carpenter, 529 U.S. 446, 453 (2000)).
[38] *Id.* at 1733.
[39] *Id.* (quoting Trevino v. Thaler, 569 U.S. 413, 428 (2013)).
[40] *Id.*
[41] *Id.* at 1736.
[42] *Id.* at 1733 (citing Keeney v. Tamayo-Reyes, 504 U.S. 1, 9 (1992)).
[43] 504 U.S. 1; *see id.* at 9.
[44] *Ramirez*, 142 S. Ct. at 1733–34.
[45] *Id.* at 1736 (quoting Williams v. Taylor, 529 U.S. 420, 433 (2000)).
[46] *Id.* at 1734 (quoting *Williams*, 529 U.S. at 433).
[47] 28 U.S.C. § 2254(e)(2).
[48] *Ramirez*, 142 S. Ct. at 1734 (quoting *Williams*, 529 U.S. at 432). Justice Thomas likewise cited *Williams v. Taylor*, 529 U.S. 420, for the proposition that "the opening clause of § 2254(e)(2) codifies *Keeney*'s threshold standard of diligence," such that a "failure to develop" under AEDPA "is not established unless there is lack of diligence . . . attributable to the [petitioner] *or the [petitioner's] counsel*." *Ramirez*, 142 S. Ct. at 1735 (quoting *Williams*, 529 U.S. at 432, 434).

to amend a statute to address only a subset of claims" (that is, *Martinez* claims).[49] The Court cited the "sprawling evidentiary hearing in *Jones*" (seven days, at least ten witnesses) as indicative of the costs on state courts that could follow a contrary ruling.[50]

Thus, reasoning that "under AEDPA and our precedents, state postconviction counsel's ineffective assistance in developing the state-court record is attributed to the [petitioner]," the Court held that Ramirez and Jones were "at fault" for failing to develop their claims[51] — reversing the Ninth Circuit and denying relief.[52] The Court acknowledged the irony in petitioners, under *Martinez*, being able to adequately allege cause for procedural default due to postconviction IAC in failing to bring trial-level IAC claims below, while being subsequently unable to *develop* those claims because of AEDPA's evidentiary bar in the federal habeas forum.[53] The majority responded by asserting the narrowness of *Martinez*,[54] and it reiterated that AEDPA erects a high bar in the service of finality, comity, respect for state courts, and avoidance of "sandba[gging]."[55]

Justice Sotomayor dissented.[56] She called the majority's decision "perverse" and "illogical," stating that it "all but overrules two recent precedents" — *Martinez* and *Trevino*, which are hardly a decade old.[57] Despite *Martinez* and *Trevino* establishing that those who failed to raise trial-ineffectiveness claims on state habeas (given that their postconviction counsel was ineffective in failing to do so) are not "at fault" for cause-and-prejudice purposes, they are "nonetheless at fault for the ineffective assistance of postconviction counsel in *developing the evidence* of trial ineffectiveness in state court."[58] So despite the double ineffectiveness of state-provided counsel, the petitioner is barred from developing the evidence required to prove her underlying claim on the merits — a result that "guts *Martinez*'s and *Trevino*'s core reasoning."[59] Justice Sotomayor argued that this result was required by "[n]either AEDPA nor this Court's precedents,"[60] which have found attorney error

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[49] *Id.* at 1737.

[50] *Id.* at 1738.

[51] *Id.* at 1734.

[52] *Id.* at 1740 (reversing the judgments).

[53] *Id.* at 1737–38.

[54] *Id.* Justice Thomas added: "While we agree that any such *Martinez* hearing would serve no purpose" if federal courts cannot thereafter rely on that new evidence at the merits stage, "that is a reason to dispense with *Martinez* hearings altogether, not to set § 2254(e)(2) aside." *Id.* at 1738–39.

[55] *Id.* at 1739 (quoting Murray v. Carrier, 477 U.S. 478, 492 (1986)) (articulating the fear of forum-shopping defendants).

[56] Justice Sotomayor's dissent was joined by Justices Breyer and Kagan.

[57] *Ramirez*, 142 S. Ct. at 1740 (Sotomayor, J., dissenting).

[58] *Id.* (emphasis added).

[59] *Id.*

[60] *Id.*

to constitute an external impediment in certain situations.[61] These include, critically, *Martinez* situations — where attorney error constitutes cause specifically because the petitioner was unable to raise a trial-ineffectiveness claim on direct appeal; as a result, the petitioner's Sixth Amendment right to counsel is violated if her state postconviction attorney negligently failed to raise this claim that could not have been brought earlier.[62]

Justice Sotomayor argued that neither AEDPA nor *Keeney* changed this fault standard: they addressed situations in which petitioners were "at fault" for failing to raise a claim — not *Martinez-Trevino* scenarios where petitioners were legally not at fault for the negligence of their Sixth Amendment–required counsel.[63] Thus, she reasoned that Ramirez and Jones "[were] not at fault for their attorneys' failures to develop the state-court record"[64] since these failures "constituted external impediments" under *Martinez-Trevino*; and thus "§ 2254(e)(2), properly interpreted, poses no bar to evidentiary development in federal court."[65] She chastised the majority's contrary reading for "eviscerat[ing] *Martinez* and *Trevino* and mischaracteriz[ing]" the Court's precedents.[66] She wrote that the Court "empt[ied] [these precedents] of all meaning" and did so by curiously "rel[ying] on the *dissent[s]* in *Trevino*" and *Martinez* and misconstruing precedent.[67] AEDPA "str[uck] a balance between respecting state-court judgments and preserving the necessary and vital role [of] federal courts" in "promoting fundamental fairness," especially in death penalty cases.[68] The Court, in disregarding that balance, "reduce[d] to rubble many habeas petitioners' Sixth Amendment rights to the effective assistance of counsel," privileging finality over fundamental fairness and "extinguish[ing] the central promise of *Martinez* and *Trevino*, . . . [while] mak[ing] illusory the protections of the Sixth Amendment."[69]

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[61] *Id.* at 1744 (citing Maples v. Thomas, 565 U.S. 266, 289 (2012)).

[62] *Id.* at 1744–45 (citing Martinez v. Ryan, 566 U.S. 1, 8, 11, 13–14, 16 (2012)).

[63] *See id.* at 1745–46. The Sixth Amendment is implicated because the State stipulated that claims of trial-level IAC could be raised only on state postconviction review; thus, the *Martinez* Court held that petitioners are guaranteed effective assistance in these situations, at their first opportunity for review, where the underlying IAC claim is substantial. *See id.* at 1744.

[64] *Id.* at 1746.

[65] *Id.* at 1747.

[66] *Id.*

[67] *Id.* For example, the majority "resuscitate[d] a complaint that previously was relegated to a dissent" in *Martinez* when it complained of a lack of "principled limit." *Id.* at 1748 (citing *Martinez*, 566 U.S. at 19 (Scalia, J., dissenting)). *Martinez is* narrow, and the Court "overstate[d] the harm to States that would result" here. *Id.* at 1749.

[68] *Id.* at 1748–49 (quoting Christeson v. Roper, 574 U.S. 373, 377 (2015) (per curiam)).

[69] *Id.* at 1750. Justice Sotomayor's dissent included an extensive discussion of the new evidence in each case, *id.* at 1741–43, which, she argued, "illustrates the breakdown in the adversarial system caused by ineffective assistance of counsel," *id.* at 1741.

In *Ramirez*, the Roberts Court devalued stare decisis in favor of state sovereignty, curtailing the rights of vulnerable populations in the process. As the Court itself acknowledged, little remains of *Martinez* and *Trevino* after *Ramirez*. But the Court failed to justify its stealth overruling; rather than citing to traditional principles of stare decisis, it privileged "state sovereignty" as the cardinal policy consideration. In so doing, the Court harms indigent defendants and portends a regime whereby "states' rights" predominate over civil rights once more.

Ramirez contravened stare decisis by "gut[ting] *Martinez*'s and *Trevino*'s core reasoning,"[70] effectively overruling those decisions while reconsidering — absent special justification — the same arguments raised ten years ago in their dissents.[71] To be sure, one can argue, as Justice Thomas did, that *Martinez* was an "equitable" ruling and that *Ramirez* is merely a textualist interpretation of AEDPA.[72] But the language of § 2254(e)(2) existed when *Martinez* was decided, and *Ramirez*'s reading of that text renders the *Martinez* right an effective nullity in many cases.[73] Indeed, many of the Justices in the majority acknowledged this effective end run around *Martinez* at oral argument: Justice Thomas addressed it in his first question, as did Chief Justice Roberts, Justice Alito, and Justice Kavanaugh.[74] The Chief Justice suggested that Congress did not necessarily "envision[] the problem" when enacting AEDPA,[75] despite the majority asserting that AEDPA compelled its

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[70] *Id.* at 1740.

[71] *See id.* at 1747–49. For commentary, see, for example, Noam Biale, *Conservative Majority Hollows Out Precedent on Ineffective-Counsel Claims in Federal Court*, SCOTUSBLOG (May 23, 2022, 6:56 PM), https://www.scotusblog.com/2022/05/conservative-majority-hollows-out-precedent-on-ineffective-counsel-claims-in-federal-court [https://perma.cc/4M5G-VQUG]; Leah Litman, *The Supreme Court Just Gutted Another Constitutional Right*, SLATE (May 23, 2022, 2:30 PM), https://slate.com/news-and-politics/2022/05/scotus-constitutional-right-habeas-corpus-prison-death-row.html [https://perma.cc/2PJX-KU2U].

[72] *See, e.g.*, *Ramirez*, 142 S. Ct. at 1736.

[73] *See, e.g.*, *id.* at 1738–39 (acknowledging this quandary); *id.* at 1740 (Sotomayor, J., dissenting).

[74] Transcript of Oral Argument at 5, *Ramirez* (No. 20-1009) (statement of Thomas, J.), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2021/20-1009_nlio.pdf [https://perma.cc/56ME-G4H6] ("[I]t seems rather odd that . . . we [would] excuse a default under *Martinez* but not allow the [petitioner] to make his underlying claim or develop . . . [an] evidentiary basis [therefor]."); *id.* (calling *Martinez*'s grant of cause, then, "pretty worthless"); *id.* at 6–7 (statement of Roberts, C.J.) ("[I]t's a basic syllogism. . . . [I]f you do get the right to raise the claim for the first time, because your counsel was incompetent before, surely, you have the right to get the evidence that's necessary to support your claim." *Id.* at 6.); *id.* at 19 (statement of Alito, J.) (stating that "it would follow" that attorney error in *Martinez* cases would not be attributable to the petitioner for § 2254(e)(2) purposes either); *id.* at 10 (statement of Kavanaugh, J.) ("[D]oesn't it really gut *Martinez* . . . and then . . . what's the point of *Martinez*? The Court obviously carefully crafted [*Martinez*] to give you the right to raise an [IAC] claim, . . . and this would really gut that . . . ."). This confusion was echoed in the lower court proceedings. *See* Liliana Segura, *Supreme Court Guts Its Own Precedent to Allow Arizona to Kill Barry Jones*, THE INTERCEPT (May 28, 2022, 7:00 AM), https://theintercept.com/2022/05/28/barry-jones-supreme-court-arizona-shinn-martinez [https://perma.cc/4DFR-K5PD].

[75] Transcript of Oral Argument, *supra* note 74, at 9 (statement of Roberts, C.J.).

holding.[76] Justice Kavanaugh asserted that surely the *Martinez* Court foresaw this issue, and "it's hard to envision" that the result of *Ramirez* "would make any sense."[77] Thus, four out of the six Justices in the majority expressly acknowledged that the logical implications of *Martinez* militated against the Court's holding, yet they nonetheless joined the majority opinion. Curiously, the Chief Justice and Justice Alito did so despite being in the majority in *Martinez*, too; and neither penned a concurrence to explain the flip.[78]

Rather than adhering to stare decisis, the majority justified its holding on "state sovereignty" grounds — hardly a special factor counseling disregard for precedent. Discussions of states' "sovereign power" have become increasingly commonplace in Roberts Court opinions.[79] And policy arguments appealing to "state sovereignty" have been used to override stare decisis before.[80] Nor is this the first time the Roberts Court has privileged respect for states over individuals' fundamental, constitutional rights.[81] Indeed, twice this Term, members of the Court

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[76] *Ramirez*, 142 S. Ct. at 1728.

[77] Transcript of Oral Argument, *supra* note 74, at 11 (statement of Kavanaugh, J.); *see also id.* at 24–25 (asking whether the *Martinez* Court "really contemplate[d] that [these IAC claims] could be raised but not actually pursued, which seems . . . very odd").

[78] Contrast this with the Chief Justice's concurrence in the judgment in *June Medical Services v. Russo*, 140 S. Ct. 2103 (2020). In *Russo*, Chief Justice Roberts discussed stare decisis at length and cast his vote to follow logically from the Court's related ruling just four years prior in *Whole Woman's Health v. Hellerstedt*, 579 U.S. 582 (2016). *See* 140 S. Ct. at 2140–42 (Roberts, C.J., concurring in the judgment). In *Ramirez*, the Roberts Court broke from its commitment to stare decisis despite seemingly controlling prior cases. And to be sure, the Justices may perceive themselves in good faith as "narrowing" *Martinez*, rather than strictly overruling it, *see, e.g.*, Richard M. Re, Essay, *Narrowing Precedent in the Supreme Court*, 114 COLUM. L. REV. 1861, 1875–86 (2014); but, for the real-world defendants who are now unable to marshal the evidence required to prove their *Martinez* claims in a federal forum, one wonders whether such a distinction holds water.

[79] *See, e.g.*, *Ramirez*, 142 S. Ct. at 1730–32; Cameron v. EMW Women's Surgical Ctr., 142 S. Ct. 1002, 1011 (2022) (articulating the need for "[r]espect for state sovereignty"); Mays v. Hines, 141 S. Ct. 1145, 1149 (2021) (per curiam) (similar); Nat'l Fed'n of Indep. Bus. v. Dep't of Lab., 142 S. Ct. 661, 667 (2022) (Gorsuch, J., concurring) (commenting upon local governments' sovereign powers); Trump v. Vance, 140 S. Ct. 2412, 2442–44 (2020) (Alito, J., dissenting) (discussing states' sovereign authority to enforce criminal laws); Gamble v. United States, 139 S. Ct. 1960, 1965–67 (2019) (discussing the dual-sovereignty doctrine at length); Wilson v. Sellers, 138 S. Ct. 1188, 1198 (2018) (Gorsuch, J., concurring) (articulating arguments similar to those advanced by the *Ramirez* majority, and noting that federal habeas review "frustrates . . . the States' sovereign power to punish offenders" (quoting Harrington v. Richter, 562 U.S. 86, 103 (2011))).

[80] *See, e.g.*, South Dakota v. Wayfair, Inc., 138 S. Ct. 2080, 2096 (2018) ("Here, stare decisis can no longer support the Court's prohibition of a valid exercise of the States' sovereign power. If . . . the Court's Commerce Clause decisions prohibit the States from exercising their lawful sovereign powers in our federal system, the Court should be vigilant in correcting the error.").

[81] *Compare* Shelby County v. Holder, 570 U.S. 529, 543 (2013) (discussing the autonomy, "integrity, dignity, and residual sovereignty of the States" in managing their own elections (quoting Bond v. United States, 564 U.S. 211, 221 (2011))), *with id.* at 565 (Ginsburg, J., dissenting) (arguing for the importance of *individuals'* "dignity and respect" regarding fundamental, constitutional voting rights (quoting 152 Cong. Rec. 16,946–47 (2006))). *See also* Reva B. Siegel, *The Supreme Court, 2012 Term — Foreword: Equality Divided*, 127 HARV. L. REV. 1, 71 (2013) ("To begin interpretation

have invoked *Dred Scott v. Sandford*[82] to support the Court's holdings.[83] Honoring "states' rights" here means that individuals like Jones and Ramirez, who were appointed counsel because they could not afford an attorney, are unable to vindicate their Sixth Amendment right to counsel. This rights-stripping is done in the alleged service of avoiding "disrespecting" or "overburdening" the states with a mere *handful* of evidentiary hearings resulting from *Martinez* remands, all involving state-appointed counsel for indigent defendants.[84] The resurgence of the "states' rights" narrative thus goes hand in hand with a loss of equal access to justice and fundamental rights.[85]

This favoring of "states' rights" will harm indigent defendants.[86] Criminal cases in the United States are disproportionately handled by public defenders, who "are chronically underfunded, poorly paid and overloaded with cases."[87] About ninety percent of capital defendants are represented by public defenders, and the danger of inadequate representation is clear.[88] These limitations and risks extend beyond trials;

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of the Civil War Amendments with a demand that Congress justify departures from equal sovereignty effaces the history of the Civil War and the Second Reconstruction, and elevates concern about the equality and dignity of states over the equality and dignity of citizens." (footnote omitted)).

82 60 U.S. 393 (1857) (enslaved party).

83 *See, e.g.*, Dobbs v. Jackson Women's Health Org., 142 S. Ct. 2228, 2303 (2022) (Thomas, J., concurring) (citing *Dred Scott*, 60 U.S. at 452). *Dred Scott* was also cited approvingly in a *majority* opinion in *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S. Ct. 2111, 2150–51 (2022). *See* Saul Cornell, *Clarence Thomas' Latest Guns Decision Is Ahistorical and Anti-originalist*, SLATE (June 24, 2022, 9:26 AM), https://slate.com/news-and-politics/2022/06/clarence-thomas-gun-decision-bruen-anti-originalist.html [https://perma.cc/2KWA-4GMG].

84 Brief for the American Bar Association as Amicus Curiae Supporting Respondents at 9–10, *Ramirez* (No. 20-1009), 2021 WL 4458925, at *9–10 ("Arizona . . . had [just] '17 *Martinez* remands . . . to reconsider [IAC] claims previously dismissed on procedural grounds' between 2012 and 2017." (quoting Brief of the States of Arizona et al. as Amici Curiae in Support of Respondent at 2, Ayestas v. Davis, 138 S. Ct. 1080 (2018) (No. 16-6795), 2017 WL 3575763, at *2)).

85 *See, e.g.*, Siegel, *supra* note 81, at 71.

86 Though much of the media reporting on *Ramirez* focused on *actual-innocence* issues, *see, e.g.*, Press Release, Christina Swarns, Exec. Dir., Innocence Project, Statement on *Shinn v. Ramirez and Jones* (May 24, 2022), https://innocenceproject.org/innocence-project-statement-from-executive-director-christina-swarns-on-shinn-v-ramirez-and-jones [https://perma.cc/J4HJ-VEE8], this critique is misguided, though understandable given the Court's own opaqueness in *Ramirez*. *Ramirez* could make it more difficult for individuals who are actually innocent to have their cases heard *where part of the claim involves IAC* — via, for example, failure to investigate potential alternative culprits, as in Jones's case. But *Ramirez* does not stand for the proposition that standalone claims of innocence, based on newly discovered evidence, are insufficient grounds for habeas relief; that's *Herrera v. Collins*, 506 U.S. 390 (1993). Rather, *Ramirez*'s main doctrinal effect is to prohibit petitioners from having their *Martinez* claims of IAC adequately developed on the factual record.

87 Press Release, Christina Swarns, *supra* note 86; *see also* Litman, *supra* note 71 (noting state-imposed resource limitations).

88 *See Resolution Supporting a Moratorium on the Death Penalty*, PRISON POL'Y INITIATIVE, https://www.prisonpolicy.org/articles/moratorium041104.html [https://perma.cc/H7A5-69C3]; *see also* Ankur Desai & Brandon L. Garrett, *The State of the Death Penalty*, 94 NOTRE DAME L. REV. 1255, 1259–61, 1278–82 (2019) (demonstrating that improved defense representation contributes significantly to reductions in capital punishment); James S. Liebman et al., *A Broken System: Error*

postconviction "proceedings are woefully underfunded, and lawyers are limited in the time and resources they have to pursue . . . relief."[89] Indeed, *the* most common claim resulting in reversals of death sentences during postconviction proceedings is trial-level IAC.[90] As a result of *Ramirez*, individuals lacking effective assistance at the trial stage and, subsequently, at postconviction have no way to vindicate their Sixth Amendment right to effective counsel — a right without a remedy.[91]

Ramirez represents the tip of the iceberg in the Roberts Court's project of quietly undercutting stare decisis, privileging respect for "states" over settled precedents that uphold the rights and dignity of individuals. The majority reached its holding by effectively undoing settled precedent — the *Martinez-Trevino* framework — that this Court created just a decade ago. AEDPA's § 2254(e)(2) language existed then, in 2012, just as it does now, in 2022. Each Justice who spoke during oral argument acknowledged this tension in one way or another; and then six voted to quash *Martinez* on a state-sovereignty rationale, allowing stare decisis to give way to a states' rights narrative that has seen an all-too-comfortable resurgence in recent years. *Ramirez* thus continues the Roberts Court's trend of "'hollow[ing] out' past precedents" without expressly overruling them.[92] It displays "the [C]ourt's newly aggressive indifference to its own legal precedent,"[93] and like *Dobbs v. Jackson Women's Health Organization*,[94] it prioritizes the value of state sovereignty over that of stare decisis — to the detriment of individual rights. The majority's curious regurgitation of identical arguments made in past dissents, absent special factors justifying their reconsideration, harms the Court's legitimacy. And it exacerbates the criminalization of poverty, depriving low-income individuals — suffering ineffective representation at the hands of the state — any meaningful opportunity to vindicate their constitutional rights. In *Ramirez*, "states' rights" trump civil rights once more — recent, settled precedent to the contrary notwithstanding.

Rates in Capital Cases, 1973–1995, at 4–5 (Columbia L. Sch. Pub. L. Res. Paper, Paper No. 15, 2000), https://scholarship.law.columbia.edu/faculty_scholarship/1219 [https://perma.cc/G242-5T4G] (finding that sixty-eight percent of capital sentences were reversed, most often due to inadequate representation).

89 Litman, *supra* note 71.

90 Desai & Garrett, *supra* note 88, at 1260.

91 *Cf.* Marbury v. Madison, 5 U.S. 137, 147 (1803) ("[E]very right, when withheld, must have a remedy . . . .").

92 Biale, *supra* note 71; *see also* Litman, *supra* note 71 (analyzing *Dobbs* as part of this trend).

93 *See* Segura, *supra* note 74.

94 142 S. Ct. 2228 (2022).