No. 22-686

IN THE

Supreme Court of the United States

CROSLEY ALEXANDER GREEN,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS, *et al.*

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

BRIEF OF DUE PROCESS INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

Due Process Institute is a nonprofit, bipartisan public interest organization striving to honor, preserve, and restore procedural fairness in the criminal legal system through the guiding principle that due process accomplishes the Constitution's solemn promises to "establish justice" and "to secure the blessings of liberty." U.S. Const., pmbl. Due Process Institute takes a strong interest in ensuring the existence of meaningful postconviction remedies for constitutional claims raised in criminal cases, because these postconviction remedies are an essential check on the process of prosecution and criminal litigation. When procedural errors occur during prosecution—deprivations of due process—it is crucial that the federal courts be able to provide relief from those errors.

SUMMARY OF ARGUMENT

By ignoring a Florida court's express finding that Petitioner Crosley Green exhausted his *Brady* claim under state law and "recommending" state-court pleading requirements, the Eleventh Circuit improperly disregarded fundamental principles of federalism and comity designed to limit the role of federal courts in habeas proceedings for individuals in state custody. Concerned with protecting the principles of federalism and comity to states, Congress and this Court

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[1] Pursuant to Supreme Court Rule 37.6, no counsel for a party authored this brief in whole or in part, and no entity or person other than amicus and its counsel made any monetary contribution toward the preparation and submission of this brief. Also, pursuant to Rule 37.2, counsel of record for all parties received notice of *amicus curiae*'s intent to file this brief at least 10 days before the due date.

have confined the adjudication of federal habeas cases in several important ways.

This case implicates two separate, but related, comity controls. *First*, habeas claims are channeled first to state courts, so that they can resolve such claims before federal courts undertake such adjudication. The exhaustion requirement affords state courts the first opportunity to correct alleged violations of federal law. *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981) (per curiam). How States use that opportunity and enable exhaustion of claims is within their purview. *Second*, a federal court considering a habeas petition must defer to state-court factfinding. "[W]here, as here, the federal courts review a state-court ruling under the constraints imposed by [the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")], the federal court must accord an additional and 'independent, high standard' of deference." *White v. Wheeler*, 577 U.S. 73, 78 (2015) (quoting *Uttecht v. Brown*, 551 U.S. 1, 10 (2007)). Since the Judiciary Act of 1789, Congress and the Court repeatedly have confirmed these and other limitations on federal habeas review out of respect for federalism and comity. *See, e.g.*, *Shoop v. Twyford*, 142 S. Ct. 2037, 2043 (2022); *Ex parte Royall*, 117 U.S. 241 (1886); *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 94 (1807).

For over a decade, Mr. Green pursued postconviction relief in the state courts, including in the Florida Supreme Court, under *Brady v. Maryland*, 373 U.S. 83 (1963). He argued that the State unlawfully failed to disclose exculpatory evidence—namely, notes showing that before trial, two responding officers shared with the prosecutor their belief that Mr. Green was innocent, and the victim's ex-girlfriend was the

actual perpetrator of the crime. A state court subsequently found that Mr. Green's *Brady* claim was "addressed in his first post-conviction motion[,] denied by this Court on November 22, 2005, and affirmed on appeal to the Supreme Court of Florida," thereby exhausting the claim in state court. Order Den. Def.'s Mot. for Post-Conviction Relief, *State v. Green*, No. 05-1989-CF-00492-AXXX-XX, at 13 (Fla. 18th Cir. Ct. Aug. 31, 2011).

On review, the Eleventh Circuit defied decades of well-settled precedent when it failed to defer to the state court's finding of exhaustion. Instead, the federal court of appeals conducted a searching, *de novo* review of the record and relitigated the exhaustion issue in a 100-plus page opinion concluding in a "recommendation" to Florida to amend its rules and procedures for postconviction pleadings, presumably to make it easier for federal courts to relitigate claim exhaustion.

However, this Court's guidance in this area is clear: Exhaustion is a question of state law and procedure, the interpretation of which federal courts "are bound to accept." *Hortonville Joint School Dist. No. 1 v. Hortonville Ed. Assn.*, 426 U.S. 482, 488 (1976). And federal courts must avoid undue interference in the management of state courts. *See Coleman v. Thompson*, 501 U.S. 722, 750 (1991) ("[S]ignificant harm to the States . . . results from the failure of federal courts to respect [state procedural rules].").

In short, the Eleventh Circuit's opinion disregards basic principles of federalism and comity, establishes an unworkable, burdensome obligation on federal courts to review all state and federal court pleadings

and opinions to relitigate a question of state law, and therefore should not stand.

ARGUMENT

I. FEDERALISM AND COMITY REQUIRE THE REVERSAL OF THE ELEVENTH CIRCUIT'S OPINION.

Historically, federalism and comity govern federal courts' use of the writ of habeas corpus. These concerns are paramount when federal courts review state-court decisions on matters of state law, such as whether a claim has been exhausted. The Eleventh Circuit failed to give due respect to the determination of the Florida Circuit Court of the Eighteenth Judicial Circuit's ("Circuit Court") that Mr. Green sufficiently presented his claim to the Florida Supreme Court. The new model for habeas proceedings in the Eleventh Circuit is the opposite of comity. It tasks federal courts with relitigating procedural decisions made over years of state proceedings, and forces state litigants to conform their state-court litigating strategies to the demands of the federal courts that might review a case.

A. Federal Habeas Review Historically Has Operated as a Limited Check on a State's Authority to Detain an Individual.

American courts have always recognized that the writ of habeas corpus operates as a limited judicial check on an executive's ability to detain individuals. Departing from the English courts' tradition, early American federal courts uniquely limited their use of the writ to the authority provided by statute. *Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 94 (1807) ("the power to award the writ by any of the courts of the United

States, must be given by written law"). Because the Judiciary Act of 1789 only permitted federal courts "to grant the writ of habeas corpus when prisoners were 'in custody, under or by colour of the authority of the United States, or [were] committed for trial before some court of the same,'" the writ generally applied only to individuals in federal custody.[2] *Felker v. Turpin*, 518 U.S. 651, 659 (1996) (quoting Act of Sept. 24, 1789, ch. 20, § 14, 1 Stat. 82).

In 1867, Congress expanded the writ of habeas to persons in state custody. *Wainwright v. Sykes*, 433 U.S. 72, 78 (1977). Under the Act of 1867, habeas became available "in all cases where any person may be restrained of his or her liberty in violation of the constitution, or of any treaty or law of the United States." Act of Feb. 5, 1867, ch. 28, 14 Stat. 385.

Despite the expansion of habeas following the Civil War, Congress and this Court have taken steps to ensure that state-court determinations remain entitled to significant deference. *E.g.*, *Wainwright*, 433 U.S. at 87 (holding federal courts will not overrule a state-court conviction on claims that were procedurally defaulted); *Rose v. Lundy*, 455 U.S. 509 (1982) (holding federal courts will not overrule a state-court conviction on claims that were unexhausted); *McCleskey v. Zant*, 499 U.S. 467, 489 (1991) (limiting habeas'

[2] Although the writ of habeas was predominantly a mechanism for "federal courts to issue habeas writs to federal custodians," *Brown v. Davenport*, 142 S. Ct. 1510, 1520 (2022), early federal courts could grant the writ for state detainees under certain limited circumstances, *Felker v. Turpin*, 518 U.S. 651, 659–60 (1996).

availability for successive petitions under the abuse-of-the-writ doctrine).

More recently, Congress has reaffirmed that federal courts must be restrained in their decision-making in habeas cases. A key goal of AEDPA was "to further the principles of comity, finality, and federalism[.]" *Woodford v. Garceau*, 538 U.S. 202, 206 (2003) (internal citation omitted).

Stated simply, preservation of respect for federalism and comity for state courts has been a cornerstone of the American writ of habeas corpus throughout its history. Two centuries of precedent demand that federal courts "respect our system of dual sovereignty" as zealously today as in 1789. *Shinn v. Ramirez*, 142 S. Ct. 1718, 1730 (2022) (internal citation omitted).

B. In Line With These Federalism and Comity Guardrails, Federal Courts Should Defer to State-Court Determinations of Claim Exhaustion in Habeas Proceedings.

Federal courts generally require state prisoners to exhaust their state-court remedies before seeking federal relief. *Picard v. Connor*, 404 U.S. 270, 275–76 (1971) ("It has been settled since *Ex parte Royall*, 117 U.S. 241 [] (1886), that a state prisoner must normally exhaust available state judicial remedies before a federal court will entertain his petition for habeas corpus."). Congress agreed and codified the exhaustion requirement. 28 U.S.C. § 2254(b) ("An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of

the State."). Under AEDPA, a claim is not yet exhausted if the prisoner still "has the right under the law of the State to raise, by any available procedure, the question presented." *Id.* at § 2254(c).

As with most doctrines underlying federal habeas processes, the exhaustion requirement is rooted in federalism and comity. The requirement that state prisoners first exhaust their federal claims in state court "is principally designed to protect the state courts' role in the enforcement of federal law and prevent disruption of state judicial proceedings." *Rose*, 455 U.S. at 518. Exhaustion gives state courts "an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights," before federal courts scrutinize the underlying state criminal proceedings. *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981) (per curiam). In other words, the exhaustion requirement is a procedure that furthers the interests of federalism by "minimiz[ing] friction between our federal and state systems of justice[.]" *Id.*

A state court's determination regarding claim exhaustion is entitled to deference from federal courts in habeas proceedings because the determination "turns on an inquiry into what procedures are 'available' *under state law*." *O'Sullivan v. Boerckel*, 526 U.S. 838, 847 (1999) (emphasis added); *see Shinn*, 142 S. Ct. at 1732 (explaining that to properly exhaust a claim, a state prisoner must raise his "federal claim before the state courts in accordance with state procedures"). Federal courts are "bound to accept the interpretation of [state] law," as determined by that state's courts. *Hortonville Joint School Dist. No. 1 v. Hortonville Ed. Assn.*, 426 U.S. 482, 488. Thus, when a state court determines that a party properly presented and fully

exhausted a claim in its courts, federal courts must accept that interpretation of the state's procedures.

This Court has already indicated that federal courts must accept an authoritative state court's determination of what qualifies as exhaustion under its state law—even when that determination takes a different form from what would be familiar in federal courts. In *O'Sullivan*, the petitioner argued that requiring state prisoners to exhaust their federal claims in state court before federal habeas relief could be obtained would overwhelm state appellate courts with prisoners seeking to exhaust their claims. The Court responded that States can establish their own procedures to reduce or mitigate that burden; and it cited, as an example, *In re Exhaustion of State Remedies in Criminal and Post-Conviction Relief Cases*, 471 S.E.2d 454 (S.C. 1990).

In that case, the Supreme Court of South Carolina issued a blanket ruling following legislative changes to the state's postconviction procedures. The court held that prisoners were "deemed to have exhausted all available state remedies respecting a claim of error" regardless of whether they petitioned the state supreme court for review. *Id.* In essence, the Supreme Court of South Carolina redefined the state procedures for exhaustion, to state that prisoners are deemed to have exhausted claims even without pursuing all available remedies. This Court then, in *O'Sullivan*, regarded the South Carolina approach as a permissible way for a State to define its own mechanisms for exhaustion.

South Carolina is not the only state supreme court to judicially declare that prisoners' claims are exhausted. State courts across the country have

amended their procedures to redefine what constitutes exhaustion of a claim. *See, e.g.*, *State v. Sandon*, 777 P.2d 220, 221 (Ariz. 1989). Besides the Eleventh Circuit in this case, the federal courts of appeals have widely accepted these state-court interpretations of exhaustion of state-court remedies. *See, e.g.*, *Lambert v. Blackwell*, 387 F.3d 210, 233 (3d Cir. 2004) ("hold[ing] that [Pennsylvania Supreme Court] Order No. 218 renders review from the Pennsylvania Supreme Court 'unavailable' for purposes of exhausting state court remedies"); *Adams v. Holland*, 330 F.3d 398, 402 (6th Cir. 2003) (holding claim exhausted based on a Tennessee Supreme Court rule that declared "the litigant shall be deemed to have exhausted all available state remedies" after intermediate appellate court review); *Randolph v. Kemna*, 276 F.3d 401, 404 (8th Cir. 2002) (holding claim exhausted based on a Missouri Supreme Court rule that declared discretionary review "'is not part of the standard review process for purposes of federal habeas corpus review'") (internal citation omitted).

In other contexts, this Court has held that federal courts' decision-making on habeas petitions depends upon state courts' interpretation of state law. For example, in *Evans v. Chavis*, 546 U.S. 189 (2006), the Court considered whether a state-court appeal could toll the one-year statute of limitations of 28 U.S.C. § 2244(d) when the state statute merely said the state appeal had to be filed within a "reasonable time." A unanimous Court held that what constitutes a "reasonable time" should be decided based on state law. *Id*. at 199–200. Thus, this Court deferred to a state court's determination of a state-law issue, which

affected the federal court's decision on the habeas petition.[3]

At a minimum, a state court's determination of a question of state law is entitled to comity, which the Eleventh Circuit did not provide. Comity "dictates that when a prisoner alleges that his continued confinement for a state court conviction violates federal law, the state courts should have the first opportunity to review this claim and provide any necessary relief." *O'Sullivan*, 526 U.S. at 842–44. "[T]he doctrine of comity [] 'teaches that one court should defer action on causes properly within its jurisdiction until the courts of another sovereignty with concurrent powers, and already cognizant of the litigation, have had an opportunity to pass upon the matter.'" *Rose*, 455 U.S. at 518 (quoting *Darr v. Burford*, 339 U.S. 200, 204 (1950)). If a state court is satisfied that a federal claim has been presented and that it had an opportunity to address the prisoner's claims, as occurred in this case, federal courts fail to give the requisite respect to state courts by insisting the prisoner engage in more or different state-court litigation.

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[3] In addition to the situation presented in *Evans*, the Court also has held that state-law determinations of procedural default control federal courts' decisions to consider habeas petitions. *Harrington v. Richter*, 562 U.S. 86, 99–100, 103 (2011) ("If the state court rejects the claim on procedural grounds, the claim is barred in federal court unless" an exception applies). The same deference should apply if the state court holds the claim is *not* barred on state procedural grounds.

C. Despite These Well-Established Principles, the Eleventh Circuit Failed to Defer to the State-Court Finding that Mr. Green Exhausted His *Brady* Claim.

The Eleventh Circuit accorded zero deference to the state court's finding that Mr. Green exhausted his *Brady* claim under state law.

The record contains a definitive statement by the state court on this issue. Reviewing Mr. Green's successive state postconviction motion in 2011, the Circuit Court stated the following:

> The Defendant next alleges that the State never disclosed to the Defendant or his defense counsel that then-Deputy Rixey and Sergeant Clarke observed facts indicating that Hallock shot Chip Flynn. *This issue was addressed in his first post-conviction motion*[,] *denied by this Court on November 22, 2005, and affirmed on appeal to the Supreme Court of Florida*. (See Exhibit "7"). Green v. State, 975 So. 2d 1090 (Fla. 2008).

Order Den. Def.'s Mot. for Post-Conviction Relief, *State v. Green*, No. 05-1989-CF-00492-AXXX-XX, at 13 (Fla. 18th Cir. Ct. Aug. 31, 2011) (emphasis added). Because this *Brady* claim had been previously litigated through the entirety of Florida's appellate system, including before the Florida Supreme Court, the Circuit Court explicitly held the issue "barred as successive." *Id.* After the Circuit Court's statement on this issue, no court questioned whether this *Brady* claim was exhausted until the case reached the Eleventh Circuit in 2018. App. 156a (Jordan, J., concurring in part and dissenting in part) ("In 2011, then,

both the state and state post-conviction court were satisfied that Mr. Green had exhausted his *Brady* claim[.]").

Nevertheless, instead of deferring to this explicit state-court conclusion that the *Brady* claim was exhausted, the Eleventh Circuit engaged—for almost 70 pages—in a comprehensive survey of the state and federal filings and opinions to adjudicate the question afresh. Concerns over the form of raising the claim, specifically the numbering and lettering of headers in prior pleadings, preoccupied the majority. *See, e.g.*, *id.* (Jordan, J., concurring in part and dissenting in part) (the majority "focused (fixated might be a better word) on the numbering of the claims in Florida post-conviction proceedings instead of analyzing the substance of the arguments that Mr. Green presented"). This overwhelming focus on the form, over substance, of Mr. Green's pleadings violated basic principles of the exhaustion doctrine. *See Picard*, 404 U.S. at 278 ("We simply hold that the substance of a federal habeas corpus claim must first be presented to the state courts."); App. 156a (Jordan, J., concurring in part and dissenting in part) (the majority has "not [used] the correct approach, for the 'policy of federal state comity,' 'underlying the exhaustion doctrine does not compel the triumph of form over substance'" (quoting *Henry v. Dep't of Corr.*, 197 F.3d 1361, 1367 (11th Cir. 1999))). Moreover, it should, under *O'Sullivan*, remain the prerogative of the state courts *not* to focus on the arrangement of headings in state-court briefs. Florida law and Florida procedures determined whether the claim was presented to the Florida courts, and it flouts the basic principles of comity for a federal court to decide that, contrary to the state

courts' views, particular features of a prisoner's brief are dispositive of that point.

In the course of this lengthy analysis, on page 95 of the opinion, buried in a footnote, the Eleventh Circuit acknowledged, and rejected, the Circuit Court's finding of exhaustion. *See* App. 84a–85a n.91 ("The quoted statement that Claim III-H-4 was 'affirmed on appeal to the Supreme Court of Florida' finds no support in the *Green II* decision, and had to have come from another source, one that we were unable to identify."). The majority even had the audacity to suggest "[t]he Circuit Court could not have read the opinion" of the Florida Supreme Court. *Id.* This, too, was contrary to *O'Sullivan*. There, the Court indicated a State can choose to deem a claim exhausted even though the prisoner did not carry it all the way through a filing at the state's highest court; here, the Eleventh Circuit has held a state court cannot deem a claim exhausted if a federal court is not satisfied with the prisoner's state filings.

Furthermore, this Court has instructed federal courts to presume that a state court has adjudicated a claim on the merits even when there is no reasoned decision. *Harrington*, 562 U.S. at 98–99. The Eleventh Circuit's analysis here contravenes that precedent, too, by assuming—in the face of directly contradictory language—that the Florida Supreme Court could not have addressed a given claim.

This analysis blatantly disregarded the comity owed to state courts in federal habeas proceedings. The Circuit Court, which frequently and with familiarity applies Florida appellate and postconviction procedures, is perfectly suited to determine whether Mr. Green presented and exhausted his *Brady* claim in

the Florida Supreme Court. *See Albertson v. Millard*, 345 U.S. 242, 244 (1953) (per curiam) ("Interpretation of state legislation is primarily the function of state authorities, judicial and administrative.").

D. The Eleventh Circuit Further Erred in Trying to Influence a State's Rules and Procedures.

Wholly ignoring the guardrails of federalism and comity, the Eleventh Circuit attempted to intervene in how *state* petitioners plead their claims in *state* court. "While this Court cannot do more than recommend to the state courts that they consider requiring more straightforward post-conviction pleading," the Eleventh Circuit wrote, "state prisoners seeking post-conviction relief in federal court may consider themselves on notice that this Court will vigorously enforce both AEDPA and Rules 8 and 11." App. 144a.

As an initial matter, the Eleventh Circuit's recommendation that a State amend its procedural rules violates basic principles of federalism and comity. This Court has long instructed against this type of federal intervention into state judicial processes. "Since the beginning of this country's history," it explained, "Congress has, subject to few exceptions, manifested a desire to permit state courts to try state cases free from interference by federal courts." *Younger v. Harris*, 401 U.S. 37, 43 (1971). Therefore, even while "vindicat[ing] and protect[ing] federal rights and federal interests," federal courts must avoid "unduly interfer[ing] with the legitimate activities of the States." *Id.* at 44.

The Court also has warned against federal interference into state matters specifically in the

postconviction context. In *Coleman v. Thompson*, for instance, a case "concern[ing] the respect that federal courts owe the States and the States' procedural rules," the Court explained there is "significant harm to the States that results from the failure of federal courts to respect [state procedural rules]." 501 U.S. 722, 726, 750 (1991). The Court thus "eliminate[d] inconsistency between the respect federal courts show for state procedural rules and the respect they show for their own," and definitively concluded that "[n]o less respect should be given to state rules of procedure." *Id.* at 751; *see also Urquhart v. Brown*, 205 U.S. 179, 181 (1907) ("[I]n view of the relations existing, under our system of government, between the judicial tribunals of the Union and of the several states, a Federal court or Federal judge will not ordinarily interfere by habeas corpus with the regular course of procedure under state authority, but will leave the applicant for the writ of habeas corpus to exhaust the remedies afforded by the state for determining whether he is illegally restrained in his liberty.").

Two decades later, in *Harrington v. Richter*, the Court, again, warned federal courts against forcing state courts to modify their practices, in part because it could "undercut state practices" or risk depleting state "resources." 562 U.S. at 99 ("Opinion-writing practices in state courts are influenced by considerations other than avoiding scrutiny by collateral attack in federal court."); *Wright v. Sec'y for Dep't of Corr.*, 278 F.3d 1245, 1255 (11th Cir. 2002) ("Telling state courts when and how to write opinions to accompany their decisions is no way to promote comity."). If federal courts cannot dictate how state courts write their opinions in postconviction proceedings, *see Harrington*, 562 U.S. at 99, federal courts also should not

dictate how state petitioners plead their claims in state postconviction proceedings.

Moreover, despite being a "recommend[ation]," the Eleventh Circuit's commentary nonetheless has immediate and problematic consequences for state petitioners within its region. App. 143a. Like other states, Florida has established its own rules and procedures for how to adjudicate claims on direct appeal and in postconviction proceedings. *See, e.g.*, Fla. R. Crim. P. § 3.850. This includes rules regarding the contents of a postconviction motion, *id.* at § 3.850(c), and the form of the motion, *id.* at § 3.850(d). Nothing in its rules dictates how "straightforward[ly]" a petitioner must plead her claims. App. 143a.

Now, however, a state petitioner has little choice but to be mindful of the Eleventh Circuit's "straightforward" requirement when pleading a claim in state postconviction proceedings. Even if the state courts soundly adjudicate a claim, the Eleventh Circuit may deem the state pleadings too "complex and confusing," throw the case out of federal court, and thus deny a petitioner the right to federal review. App. 3a. Indeed, this is what exactly happened to Mr. Green. Under this new standard, petitioners like Mr. Green are in a bind: They are barred from pursuing their claims in state court because their claims are exhausted in the view of state courts, while they simultaneously are barred from seeking relief in federal court because their claims are not sufficiently exhausted in the view of federal courts. The Eleventh Circuit cannot be

permitted to supplement, or effectively amend, a state's rules and procedures in this way.[4]

II. THE ELEVENTH CIRCUIT'S HOLDING IS UNWORKABLE BECAUSE IT REQUIRES FEDERAL COURTS TO DEVOTE SIGNIFICANT JUDICIAL RESOURCES TO REVIEWING STATE-COURT PLEADINGS.

The Eleventh Circuit has created an unworkable and burdensome precedent for district courts. District courts within that circuit can no longer rely on a state court's pronouncement that a claim has been exhausted but must now engage in a probing, *de novo* review of every pleading filed in state and federal court to resolve the threshold exhaustion question. As a result, those courts will expend even more resources on habeas cases than what is already spent today.[5] *See Harrington*, 562 U.S. at 91 (reviewing a habeas petition is "a commitment that entails substantial judicial resources"). This result is directly contrary to the purpose of the exhaustion doctrine, which seeks to

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[4] The Eleventh Circuit's "straightforwardness" rule will have particularly harmful consequences on *pro se* petitioners. *See Estelle v. Gamble*, 429 U.S. 97, 104–06 (1976) ("[A] pro se complaint, 'however inartfully pleaded,' must be held to 'less stringent standards than formal pleadings drafted by lawyers.'") (internal citation omitted).

[5] In 2021, state prisoners filed nearly 13,000 habeas petitions in U.S. District Courts. *U.S. District Courts – Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit*, Admin. Offs. of U.S. Courts (Mar. 31, 2021), available at https://www.uscourts.gov/statistics/table/c-2/federal-judicial-caseload-statistics/2021/03/31. Surely, district courts cannot conduct in every case the type of searching review that the Eleventh Circuit now requires.

decrease "the burden on the federal courts." *Rose*, 455 U.S. at 520.

The Eleventh Circuit's decision illustrates the burden imposed on lower courts that ignore principles of federalism and comity. The majority opinion is more than 150 pages. *See* App. 145a (Jordan, J., concurring in part and dissenting in part) (describing the majority opinion as "exhaustive [in] nature," "too long," and "say[ing] too much about too many things unnecessarily"). The majority devotes almost 70 of those pages to describing the claims that were litigated in numerous prior filings and opinions in both state and federal court dating back to 2001 when Mr. Green filed his first amended state postconviction petition. *See* App. 24a–90a. Furthermore, to conduct this analysis at all, the majority had to navigate through a voluminous record, consisting of more than 12 volumes and 8,000 pages. This is not the proper allocation of a federal court's resources in habeas proceedings.

Indeed, one district court has already described *Green*'s novel exhaustion analysis as an "unnecessarily cumbersome step." *Sinclair v. Sec'y, Fla. Dep't of Corr.*, No. 22-CV-14215-RAR, 2022 WL 16700291, at *7 (S.D. Fla. Nov. 3, 2022). Tellingly, that court deemed *Green*'s requirement of "individually analyzing how each subclaim changed (or not) over time" so burdensome that it decided it would be simpler for it to review the merits of the claims *de novo*. *Id.*

Similarly, *Ether v. Dixon*, No. 20-60241-CIV-ALTMAN, 2022 WL 1908918 (S.D. Fla. June 3, 2022), reflects the extensive work that *Green* calls for. Citing *Green*, *Ether* conducted a detailed analysis of whether the petitioner's briefing of three claims across

multiple pleadings in state and federal court were "substantially the same." *Id.* at *6. The court then devoted several pages to documenting the ways in which the claims had been pleaded differently. *Id.* (finding the argument on which one claim rested had changed "*a bit*" across pleadings). Nonetheless, even after engaging in this lengthy analysis, the court concluded that, while at least one of the claims was "something of a close call," it gave the plaintiff the "benefit of the doubt" and considered the claims exhausted. *Id.* at *7. *Ether* thus highlights not only the resource drain, but also the confusing nature of the Eleventh Circuit's novel approach to exhaustion.

Habeas petitions already impose a heavy burden on the federal courts. Requiring district courts to engage in an exhaustive review of every pleading and opinion ever filed in state and federal court to resolve a threshold exhaustion issue imposes an unnecessary and unworkable burden.

Federal habeas relief is an important mechanism to remedy due-process violations, when they occur. To ensure that this remedy remains available when it is appropriate, the attention of the federal courts in habeas cases should not be distracted to relitigating procedural questions that the state courts have already decided. If a prisoner's habeas claim is meritorious (under the governing standards), it should be granted; and if it is not meritorious, it should be denied. For the federal courts to engage in extensive rehashing of state postconviction processes, even after the state courts have determined the pertinent procedural questions, is a significant new obstacle. And besides being an unwarranted constraint on habeas relief, it has the dangerous consequence of undermining the

state courts that federal habeas rules purport to respect.

CONCLUSION

The Eleventh Circuit's decision disregarded foundational principles underlying federal habeas review: deference and comity to state courts. And its unprecedented analysis, relitigating a procedural issue clearly resolved by a state court, has produced an unworkable and burdensome approach that will consume the limited resources of the lower courts. For the reasons set forth above, the Due Process Institute urges the Court to grant the petition for a writ of certiorari.

Respectfully submitted,

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