UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CARL MERTON IRONS, II, Petitioner-Appellee, v. TOM L. CAREY, Warden, Respondent-Appellant.	No. 05-15275 D.C. No. CV-04-00220-LKK Eastern District of California, Sacramento

BRIEF OF AMICI CURIAE HABEAS CORPUS RESOURCE CENTER, OFFICE OF THE STATE PUBLIC DEFENDER, CALIFORNIA APPELLATE PROJECT, AND CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE IN SUPPORT OF PETITIONER

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INTRODUCTION

A primary concern of the Framers in shaping the Constitution was maintaining the supremacy of federal law, the insufficiency of which was a chief vice of the Articles of Confederation. Their solution was to assign to the federal Judicial Branch the essential function of maintaining the supremacy of federal law. The Constitution thus vests Article III courts with the authority to define and interpret federal law independently – to "say what the law is" – and gives finality and effect to their decisions regarding the supremacy of federal law. The Supreme Court has protected and reaffirmed the authority of Article III courts assiduously, denying force and effect to legislative acts and state court decisions that impinge on the ability of Article III courts to enforce the Constitution's supremacy.

This brief addresses the unconstitutionality of two provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C § 2254(d)(1). It first examines the "deference provision," which mandates that an Article III court defer to a state court's incorrect application of federal law if the state court's error was "objectively reasonable." As explained in Section I below, this provision violates the doctrine of separation of powers and the Supremacy Clause of the Constitution. Section II addresses AEDPA's source of law provision, which mandates that Article III courts are only bound by

federal law "as determined by the Supreme Court," not circuit precedent. In so doing, this "Supreme Court only" clause robs circuit precedent of its stare decisis effect and denies Article III courts their constitutional judicial power to define and interpret federal law.[1]

I. AEDPA'S REQUIREMENT THAT FEDERAL COURTS DEFER TO STATE COURTS' INCORRECT, BUT OBJECTIVELY REASONABLE, APPLICATIONS OF FEDERAL LAW VIOLATES THE DOCTRINE OF SEPARATION OF POWERS AND THE SUPREMACY CLAUSE.

Article III of the Constitution vests the "judicial Power of the United States" in the Supreme Court and the inferior federal courts and "extend[s]" the "judicial Power" to "all Cases, in Law and Equity, arising under [the] Constitution [and] the Laws of the United States." U.S. Const. art. III, §§ 1, 2. The constituent parts of the "judicial Power" are the powers *independently*, *finally*, and *effectually* to decide federal law questions arising under the court's jurisdiction. These attributes of the judicial power are essential to maintaining the balance of power among the branches of government and the supremacy of federal law. AEDPA's requirement that federal courts defer to state courts' incorrect, but objectively reasonable, interpretations of federal law

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[1] Amici submit this brief pursuant to this Court's June 8, 2005, order granting leave to do so. To avoid repetition, amici refer the Court to the motion for leave to file the brief, filed on June 5, 2005, for compliance with Fed. R. App. P. 29(c)(3) in identifying amici's identity and interest in the case.

fundamentally upsets the balance of power by delegating interpretation of federal law to state courts.

A. THE LEGISLATIVE POWER TO CONFER JURISDICTION DOES NOT CARRY WITH IT THE POWER TO SAY WHAT THE LAW IS.

"[T]he doctrine of separation of powers . . . is at the heart of our Constitution." *Buckley v. Valeo*, 424 U.S. 1, 119 (1976). The Constitution separates the governmental powers into three defined categories – legislative, executive, and judicial – in order to "assure, as nearly as possible, that each branch of government [will] confine itself to its assigned responsibility." *I.N.S. v. Chadha*, 462 U.S. 919, 951 (1983). The fundamental responsibility of the Judicial Branch is to interpret the Constitution and maintain its supremacy:

> It is emphatically the province and duty of the judicial department to say what the law is. Those who apply the rule to particular cases, must of necessity expound and interpret that rule . . . This is of the very essence of judicial duty.

Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177-78 (1803); *Cooper v. Aaron*, 358 U.S. 1, 18 (1958) (affirming the "basic principle that the federal judiciary is supreme in the exposition of the law of the Constitution, and that principle has ever since been respected . . . as a permanent and indispensable feature of our constitutional system").

The Legislative Branch has the power to grant or withdraw Article III courts' jurisdiction to decide cases arising under the Constitution. U.S. Const.

art. III, § 2. In exercising that power, however, Congress may not encroach upon the Judicial Branch's power to interpret and maintain the supremacy of the Constitution. *See City of Boerne v. Flores*, 521 U.S. 507, 536 (1997) (declaring that "[w]hen the Court has interpreted the Constitution, it has acted within the province of the Judicial Branch, which embraces the duty to say what the law is" and that any contrary expectations from the legislative branch "must be disappointed."); *Lindh v. Murphy*, 96 F.3d 856, 872 (7th Cir. 1996) (en banc), ("Once the judicial power is brought to bear by the presentation of a justiciable case or controversy within a statutory grant of jurisdiction, the federal courts' independent interpretive authority cannot constitutionally be impaired."), *rev'd on other grounds*, 521 U.S. 320 (1997); James S. Liebman & William F. Ryan, *"Some Effectual Power": The Quantity and Quality of Decisionmaking Required of Article III Court*s, 98 Colum. L. Rev. 696 (1998) (explaining that the Framers of the Constitution struck a careful balance by giving Congress quantitative power to confer jurisdiction, yet not qualitative power to determine the manner in which the judicial power is exercised.)

B. CONGRESS CANNOT LIMIT THE JUDICIARY'S POWER INDEPENDENTLY TO SAY WHAT THE LAW IS.

There is little disagreement that an essential role of Article III courts is independently to "say what the law is." *Marbury,* 5 U.S. (1 Cranch) at 177-178; *Boerne*, 521 U.S. at 524 ("The power to interpret the Constitution in a case

or controversy remains in the Judiciary."); *Wright v. West,* 505 U.S. 277, 305 (1992) (O'Connor, J., concurring) ("We have always held that the federal courts, even on habeas, have an independent obligation to say what the law is."); *see Williams v. Taylor*, 529 U.S. 362, 389 (2000) (Stevens, J., concurring); *see also* Brief of the United States as Intervenor (hereafter "USAG Brief") at 5. Indeed, judicial independence in interpreting federal law is essential to maintaining the uniformity and supremacy of federal law. Otherwise, "the Constitution and laws and treaties of the United States, and the powers granted to the Federal Government, would soon receive different interpretations in different States, and the Government of the United States would soon become one thing in one State and another thing in another." *Ableman v. Booth*, 62 U.S. (21 How.) 506 (1858); *see also Williams*, 529 U.S. at 389 (Stevens, J., concurring).

Article III courts' independent power and duty to interpret federal law necessarily forecloses Congress' ability to mandate that courts defer to the interpretation of the Constitution of any other branch of government. *See Williams*, 529 U.S. at 379, 387 (Stevens, J., concurring); *see also Lindh*, 96 F.3d at 872 ("Congress lacks power to revise the meaning of the Constitution or to require federal judges to 'defer' to the interpretations reached by state courts."). In *Marbury v. Madison*, the Court defended its independent power to

interpret the law against Congress's attempted encroachment; in *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1821), the Court defended against similar encroachments by a state court.

In *Cohens*, the Commonwealth of Virginia argued that federal courts should defer to state court interpretations of the Constitution unless the case presented an "extreme" violation of federal law – much as AEDPA limits federal courts to reversing only "objectively unreasonable" state court applications of federal law. *Id.* at 386. Virginia reasoned that given the many instances in which federal courts do not have the power and jurisdiction to remedy Constitutional violations, federal courts should not feel obliged to remedy such violations in cases in which the courts do have jurisdiction. *Id.* at 404-05. Justice Marshall rejected Virginia's reasoning, ruling instead that the Congressional grant of jurisdiction carries with it not only the power to decide for itself a relevant constitutional question, but the duty to do so. *Id.* (noting that federal court must decide a relevant constitutional issue and "cannot pass it by because it is doubtful."); *see also* Henry P. Monaghan, *Marbury and the Administrative State*, 83 Colum. L. Rev. 1, 11 (1983) ("There is no half-way position in constitutional cases; so long as it is directed to decide the case, an article III court cannot be 'jurisdictionally' shut off from full consideration of the substantive constitutional issues.")

Prior to AEDPA, federal habeas courts reviewed de novo questions of law and mixed questions of law and fact, while usually deferring to state courts' resolution of questions of fact. This distinction reinforces the notion that Article III courts' primary functions are to enforce the supremacy of federal law and to maintain a "unitary system of law." *Ornelas v. United States*, 517 U.S. 690, 697 (1996) (holding that independent review of mixed questions is "necessary if appellate courts are to maintain control of, and to clarify, the legal principles"); *Williams*, 529 U.S. at 390-91 (Stevens, J., concurring) (rejecting deferential review of mixed questions as violating the "well-recognized interest in ensuring that federal courts interpret federal law in a uniform way").[2]

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[2] The United States argues that federal court de novo review of state courts' decisions is a modern invention, and that section 2254(d)(1) simply codifies prior long-standing principles of habeas jurisprudence requiring federal deference to a state court's interpretation of federal law. USAG Brief at 8-9. The cases cited discuss how the types of claims redressable on habeas corpus have evolved over time – i.e., how the *scope of the writ* has expanded. This, however, does not address the *scope of review* undertaken by federal courts on habeas, and specifically the level of deference afforded state judgments.

Contrary to the United States' assertions, on the question of deference – which is at issue here – habeas corpus jurisprudence has been notably consistent over time. Since the inception of federal habeas review of state decisions with the statute of 1867, federal courts have not afforded deference to state courts on questions of federal law. Though the claim has been made that de novo review of state court interpretations of federal law in habeas corpus proceedings was a product of the modern era ushered in by *Brown v. Allen* in 1953, *see* Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441 (1963), the Supreme Court rejected this view in *Fay v. Noia*, 372 U.S. 391, 419-26 (1963) ("[t]he breadth of the federal

State court decisions resolving questions of fact do not present challenges to the supremacy of federal law. Accordingly, Article III courts do not compromise their independent duty to say what the law is by deferring to state court fact-finding. By contrast, restricting federal court review of state court decisions of pure questions of federal law and mixed questions of law and fact can only lead to non-uniform applications of the law throughout the fifty states. Just as Article III courts cannot defer to Congress' interpretation of federal law, *see Boerne*, 521 U.S. at 535-36, they cannot defer to state courts' federal law interpretations without violating their essential independent duty to maintain the supremacy and unity of federal law. *See Norris v. Alabama*, 294 U.S. 587, 590 (1935) (stating that it is "incumbent" upon federal courts to review mixed questions of law and fact; "[o]therwise, review by this Court would fail of its purpose in safeguarding constitutional rights.").

C. THE JUDICIARY MUST HAVE THE POWER TO EFFECTUATE FINAL JUDGMENTS AND MAY NOT ISSUE ADVISORY OPINIONS.

An essential component of the supremacy-maintaining function of Article III courts is the power to give effect to the Constitution and deny effect to all laws in conflict with it. U.S. Const. art. VI, § 2; *see Gordon v. United States*,

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courts' power of independent adjudication on habeas corpus stems from the very nature of the writ, and conforms with the classic English practice."); *see*

69 U.S. (2.Wall) 561, 561 (1864) ("The award of execution is a part, and an essential part of every judgment passed by a court exercising judicial power."). In *Marbury*, after having found a congressional act unconstitutional, the Court concluded that the act was "absolutely incapable" of conferring the authority it sought to confer. *Marbury*, 5 U.S. (1 Cranch) at 173. The Court held that the Constitution trumped the act, rendered it nugatory, and warranted discharge of the petition filed under the act's authority. *Id.* at 180. The Court thus enforced the Constitution's supremacy by giving it effect over Congress' unconstitutional act.

In *United States v. Klein*, the Supreme Court more explicitly affirmed its effectual power. 80 U.S. (13 Wall.) 128 (1871). Klein was the successor in interest to a confederate citizen who, upon claiming loyalty to the Union, had received a pardon from the President for his rebellion during the Civil War. Prior to Klein's case, the Court had decided that such pardoned persons were entitled to recover property confiscated by the Union Army. *See United States v. Padelford*, 76 U.S. (9 Wall.) 531 (1870).[3] During the pendency of Klein's appeal to the Supreme Court, Congress passed legislation that effectively

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also Charles Alan Wright et al., 17A *Federal Practice & Procedure: Jurisdiction* § 4261, n. 43 (2d ed. 1988).

[3] Notably, the court's decision in *Padelford* rested in part on affirming that the executive power had acted within its constitutional purview by granting

negated the stare decisis effect of *Padelford* and would have precluded Klein from recovering property. In direct contradiction to the Court's holding in *Padelford* and the President's proclamation granting the pardons, the congressional act ordered the courts to consider the acceptance of the pardon as evidence of disloyalty and divested courts of jurisdiction upon being presented with proof of a pardon. Pursuant to the congressional act, "the court [was] forbidden to give the *effect* to evidence which, in its own judgment, such evidence should have, and [was] directed to give it an *effect* precisely contrary." *Klein*, 80 U.S. (13 Wall.) at 147 (emphasis added). The court rejected these efforts to negate its effectual power, stating that by doing so "Congress has inadvertently passed the limit which separates the legislative from the judicial power." *Id.* Consistent with *Marbury*, the Court denied effect to the unconstitutional congressional act and gave effect to the President's act and its own precedent, both of which had been issued within the limits of the executive and judicial powers under the Constitution. [4] *Id.* at 148 (rejecting Congress's

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such pardons. *Padelford*, 76 U.S. at 542 ("That the President had power . . . to grant a general conditional pardon, has not been seriously questioned.").

[4] Though in *Klein* the Court described the Legislature's transgression as an attempt to "prescribe rules of decision to the Judicial Department," 80 U.S. (13.Wall.) at 146, the crux of the unconstitutionality of Congress's act is better described as negating the judicial power's independence, effectualness, and supremacy-maintaining function. *See* Liebman & Ryan, *supra*, at 775, n. 362. Congress may "prescribe rules of decision," so long as in doing so it does not violate the federal judiciary's duty independently and effectively to maintain

efforts to "impair[] the executive authority and direct[] the court to be instrumental to that end").

The Supreme Court also has protected its effectual power against attempted incursions by the state courts. In *Ableman v. Booth*, the Wisconsin Supreme Court ordered released a federal prisoner convicted of violating the Fugitive Slave Act ("FSA"). 62 U.S. (21 How.) 506 (1858). The federal court had rejected Booth's argument that the FSA was unconstitutional, but the Wisconsin court ruled that Booth's conviction and incarceration were illegal and ordered him released. *Id.* at 508. The Supreme Court rejected the Wisconsin court's effort to revise the federal court's holding and thus negate its effect. The High Court stated that by reviewing and rejecting the lower federal court's decision, the state court had "annulled the provisions of the Constitution itself," *id.* at 522, which gives "paramount judicial authority" to the federal courts to decide federal law. *Id.* at 518.

Similarly, in *Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304 (1816), the Supreme Court rejected an effort by the Virginia Court of Appeals to "revise" the Court's judgment based on the Virginia court's assessment that the federal court was erroneous and beyond its competence. *Id.* at 355. The Court

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the supremacy of federal law. *See Plaut v. Spendthrift Farm, Inc.* 514 U.S. 211, 218 (1995); *cf. Robertson v. Seattle Audubon Society*, 503 U.S. 429, 434-35

explained that state courts are "expressly bound to obedience by the letter of the constitution" and there is no reason to give their judgments an "absolute and irresistible force" "if they should unintentionally transcend their authority, or misconstrue the constitution." *Id.* at 344. Justice Johnson, who had dissented in the original case, wrote a concurring opinion because he viewed the question as one of "most momentous importance," affecting the "permanence of the American union." *Id.* at 363. Though Johnson agreed with the Virginia courts on the merits of the case, he vigorously rejected their position that they were not bound to obey the Supreme Court's mandate. *Id.* at 365. Johnson stated succinctly, "[o]urs is the super[i]or claim upon the comity of the state tribunals." *Id.*

A corollary to the judiciary's effectual power is the preclusion of Article III courts from giving advisory opinions. This preclusion also ensures that the federal courts' decisions will be given effect and the supremacy of federal law will be maintained. *See Gordon*, 69 U.S. (2.Wall) at 561 (declining to accept jurisdiction in a case where the court would "merely express an opinion" which "binds no one" and could not be carried "into effect at the pleasure of Congress.") The Supreme Court underscored the importance of the advisory opinion preclusion in *Steel Co. v. Citizens for a Better Environment*, 523 U.S.

(1992) (avoiding broad Article III jurisprudential question of whether *Klein*

83, 101 (1998). As Justice Scalia explained, the disapproval is based on "more than legal niceties"; rather, it is an "essential ingredient of separation and equilibration of powers." *Id.* Reaffirming the principles of *Marbury*, Justice Scalia stated, "Jurisdiction is power to declare the law." *Id.*

Article III courts' insistence on the finality of their judgments also ensures that the judicial power of Article III courts is actually effectuated. In *Plaut v. Spendthrift Farm, Inc., supra*, the Supreme Court held that Congress violated the doctrine of separation of powers by instructing federal courts to reopen final judgments. 514 U.S. at 227. The Court explained that the judicial power to issue *dispositive* judgments is at the heart of Article III:

> The record of history shows that the Framers crafted this [Article III] charter of the judicial department with an expressed understanding that it gives the Federal Judiciary the power, *not merely to rule on cases, but to decide them* . . . because "a 'judicial Power' is one to render *dispositive* judgments."

Id. at 218-29 (emphasis added, citation omitted). The independent judicial power to decide cases thus is inextricably linked to the courts' power to give effect to their judgments. The ban on advisory opinions and insistence on finality are corollary doctrines that ensure that Article III courts' judgments on federal law are "the supreme Law of the Land." U.S. Const. art. VI, § 2.

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precludes Congress from prescribing rules of decision).

D. AEDPA'S DEFERENCE PROVISION VIOLATES THE SUPREMACY-MAINTAINING FUNCTION OF ARTICLE III COURTS.

There is no dispute that AEDPA did not alter the underlying grant of jurisdiction in 28 U.S.C. § 2254(a) to determine whether a state prisoner is in "custody in violation of the Constitution or laws or treaties of the United States." *Williams*, 529 U.S. at 378 & n.10. Once given the jurisdiction to review a state habeas petition under section 2254, federal courts cannot ignore their obligation to decide independently whether there has been a violation of federal law based on the whole body of federal law. *See Marbury,* 5 U.S. (1 Cranch) at 177-178; *Cohens*, 19 U.S. (6 Wheat.) at 405.

The deference provision of section 2254(d)(1) can be seen as either (1) commanding federal courts to defer to state court interpretations of federal law, or (2) preserving the federal court's independence to determine whether there was a violation of federal law, yet precluding relief when the state court's decision was objectively reasonable. The former interpretation violates the independence of the judicial power, and the latter precludes the exercise of Article III judicial power from having any effect. Courts that have upheld the constitutionality of the deference provision have adopted the interpretation that it is simply a limitation on relief. *See, e.g., Lindh*, 96 F.3d at 870 ("Section 2254(d)(1) as we read it does no more than regulate relief."). A limitation on

relief, however, is a limitation on the judiciary's effectual power. A court's ability to say what the law is without giving dispositive effect to its nullifies its ability to maintain the supremacy of federal law. *See Klein*, 80 U.S. (13 Wall.) at 147; *Ableman*, 62 U.S. (21 How.) at 518. A federal court's decision that a state law determination is incorrect but that, per the deference provision, it cannot be remedied, amounts to a prohibited advisory opinion with no binding effect.[5] *See Gordon*, 69 U.S. (2.Wall) at 561; *Steel Co.*, 523 U.S. at 101; *Plaut*, 514 U.S. at 227.

Moreover, the Supreme Court's precedent is robbed of stare decisis effect when the state court's incorrect applications of federal law are allowed to stand. *Boerne,* 521 U.S. at 524. By affirming incorrect state applications of federal law, Article III courts permit the development of a non-uniform system of law, in abdication of their essential authority to enforce the supremacy of the Constitution.[6] *See Ornelas*, 517 U.S. at 697. Because the deference provision

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[5] In support of the argument that limitations on remedies are constitutional, the Seventh Circuit offered examples of other judicial doctrines, such as qualified immunity and the *Teague* doctrine, where the Court is precluded from granting relief even if there has been a violation of constitutional law. *Lindh*, 96 F.3d at 871-73; *see also* USAG Brief at 9-10. As explained by dissenting Judge Ripple, unlike the deference provision of AEDPA, these doctrines do not affect the essential "law declaring function or the adjudicatory function of the federal courts." *Id.* at 889.

[6] As then-judge, now Justice Kennedy, explained:

of AEDPA compels this result, it must be denied force and effect.[7] *Marbury*, 5 U.S. (1 Cranch) at 177.

II. AEDPA'S LIMITATION ON THE SOURCE OF APPLICABLE LAW UNCONSTITUTIONALLY ROBS CIRCUIT COURT PRECEDENT OF ITS STARE DECISIS EFFECT

AEDPA's command that federal courts may consider only clearly established federal law "as determined by the Supreme Court" deprives the circuit courts' decisions of their precedential effect. Because stare decisis is fundamental to the "judicial Power" granted only to Article III courts, Congress lacks Constitutional authority to negate it in this manner.

By the Constitution's clear mandate, once inferior courts are ordained and established, they are vested with the same "judicial Power" as the Supreme Court. U.S. Const. art. III, § 1. "The attributes which inhere in that power and

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> The standard for determining whether there is an improper interference with or delegation of the independent power of a branch is whether the alteration prevents or substantially impairs performance by the branch of its essential role in the constitutional system . . . If the essential, constitutional role of the judiciary is to be maintained, there must be both the appearance and the reality of control by Article III judges over the *interpretation, declaration, and application of federal law.*

Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc., 725 F.2d 537, 544 (9th Cir. 1984) (internal citation omitted, emphasis added).

[7] The United States and appellee's argument that *Duhaime v. Ducharme*, 200 F.3d 597, 600 (9th Cir. 2000) forecloses this argument lacks merit. *Duhaime* did not address the constitutionality of the deference provision.

are inseparable from it can neither be abrogated nor rendered practically inoperative." *Michaelson v. United States*, 266 U.S. 42, 65-66 (1924).

That indivisible "judicial Power" unquestionably includes the doctrine of stare decisis. As early as 1807, the Supreme Court referred to stare decisis as a "great principle...fundamental to our law" that is "peculiarly important in popular governments, where the influence of the passions is strong." *Ex parte Bollman*, 8 U.S. 75, 89 (1807). This is so, the Court noted, because stare decisis acts as a counter-majoritarian check in our constitutional system, as indicated in no small part by the fact that it lies within the province of the life-tenured Article III judiciary rather than Congress. As the Supreme Court has observed, "it is indisputable that stare decisis is a basic self-governing principle within the Judicial Branch, which is entrusted with the sensitive and difficult task of fashioning and preserving a jurisprudential system that is not based upon 'an arbitrary discretion.'" *Patterson v. McLean Credit Union*, 491 U.S. 164 (1989) (quoting The Federalist, No. 78, p. 490 (H. Lodge ed. 1888) (A. Hamilton)).

The Court's description of stare decisis as a "basic self-governing principle within the Judicial Branch" captures the essence of the principles, elaborated in Part I above, that run through a string of decisions from *Klein* to *Plaut* and *Boerne*. Once Congress grants jurisdiction to an Article III court, it

cannot bar the judiciary from consideration of the "whole law" or preclude the stare decisis effect of the judiciary's constitutional interpretations.

Although the Constitution requires that lower Article III courts' decisions have binding precedential value, AEDPA mandates otherwise. The limitation of law in section 2254(d)(1) to clearly established Federal law, only "as determined by the Supreme Court" strips circuit courts' previous decisions of their binding precedential effect.

The Supreme Court acknowledged in *Williams v. Taylor* that this effected a substantial change from previous law under *Teague v. Lane*, 489 U.S. 288 (1989). 529 U.S. at 381 (Stevens, J., concurring) (noting that the "Supreme Court only" clause is a "retrenchment from former practice, which allowed the United States courts of appeals to rely on their own jurisprudence in addition to that of the Supreme Court . . . This extends the principle of *Teague* . . . by limiting the source of doctrine on which a federal court may rely in addressing the application for a writ.") (internal quotations omitted); *see also id.* at 412 (O'Connor, J., majority opinion).

Justice O'Connor's majority opinion in *Williams* concluded that section 2254(d)(1) placed "a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court." *Id.* at 412. The Court did not

address the issue presented here, however, which is not that the "Supreme Court only" clause limits the federal courts' independent interpretive authority, but rather that it negates the precedential effect of their previous independent interpretations.

Nor is this Court's prior decision in *Duhaime v. Ducharme* controlling here, for two reasons. 200 f.3d 597 (9th Cir. 2000). First, *Duhaime* was issued prior to the Supreme Court's decision in *Williams v. Taylor*, which as noted above left the question open. Second, and more fundamentally, *Duhaime* is inapposite because it addressed an issue different from the one presented here.

The petitioner in *Duhaime* argued that Congress did not intend to limit the lower federal courts to consideration of only Supreme Court law, and therefore it was unconstitutional for the district court to violate stare decisis by ignoring circuit precedent. *Id.* at 600 ("Duhaime asserts that the district court violated the principles of stare decisis and Article III of the Constitution, and that such a removal of Article III jurisdiction was not intended by Congress."). The opposite is argued here. Post-*Duhaime*, the Supreme Court in *Williams v. Taylor* held that Congress did indeed intend to strip circuit decisions of their precedential value. The problem thus presented is whether Congress thereby violated the separation of powers doctrine by impinging upon the judicial power that is solely the province of Article III courts. Because the petitioner in

Duhaime argued that Congress did *not* intend to alter the precedential effect of circuit courts' jurisprudence, this issue was not raised, analyzed, or decided in that case. Under settled principles of stare decisis, any statements by the *Duhaime* court regarding issues not briefed or argued in that case and not central to the holding are without precedential value.[8] The instant panel of this Court is thus free to decide the issues presented here.

CONCLUSION

Amici respectfully urge that if resolution of this case turns on an unconstitutional application of the deference or choice of law provisions of the AEDPA as described above, this Court deny effect to those provisions.

Dated: June 29, 2005

Respectfully submitted,

By: _____
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[8] *See United States v. Collicott*, 92 F.3d 973, 980 n.4 (9th Cir. 1996) (prior Ninth Circuit decision not binding "in the absence of a reasoned analysis and analogous facts"); *Lum v. City & County of Honolulu*, 963 F.2d 1167 (9th Cir. 1992) (cases that "stumble into decisions on questions neither raised nor discussed by the parties . . . are not treated as authoritative").

Certificate of Compliance Pursuant to Fed. R. App. P. 32(a)(7)(C) and Circuit Rule 32-1 for Case Number 05-15275

I certify that pursuant to Fed. R. App. P. 29(d) and 9th Cir. R. 32-1, the attached amicus brief is 20 pages in compliance with this Court's June 8, 2005 order and is proportionally spaced, has a typeface of 14 points or more and contains 7000 words or less (4,089).

Dated: June 29, 2005

By: _____

CRISTINA BORDÉ
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PROOF OF SERVICE

***Irons v. Carey*, Case No. 05-15275**

I, Darryl Davis declare that I am over the age of eighteen years and not a party to this action. I am an employee of Habeas Corpus Resource Center and my business address is 50 Fremont Street, Suite 1800, San Francisco, CA 94105.

On June 29, 2005, I served the following documents in this cause:

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I declare under penalty of perjury, under the laws of the State of California that the foregoing is true and correct. Executed on June 29, 2005, at San Francisco, California.

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Darryl Davis