No. 05-15275

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

CARL MERTON IRONS, II,
Petitioner-Appellee,

v.

TOM L. CAREY, Warden
Respondent-Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA
D.C. No. CV-04-00220-LKK (Hon. Lawrence K. Karlton, Presiding)

BRIEF FOR THE UNITED STATES AS INTERVENOR

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BRIEF FOR THE UNITED STATES AS INTERVENOR

On May 18, 2005, this Court ordered the parties to file supplemental briefs addressing the constitutionality of 28 U.S.C. 2254(d)(1), and in particular 1) "whether AEDPA unconstitutionally prescribes the sources of law that the Judicial Branch must use in exercising its jurisdiction," and 2) whether AEDPA "unconstitutionally prescribes the substantive rules of decision by which the federal courts must decide constitutional questions that arise in state habeas cases." Pursuant to 28 U.S.C. 2403(a), the Court also permitted the United States to intervene and to file a brief. The United States hereby intervenes and submits this brief supporting the

constitutionality of Section 2254(d)(1).

ARGUMENT

SECTION 2254(D)(1) DOES NOT VIOLATE THE SEPARATION OF POWERS DOCTRINE

Article III of the Constitution provides that "[t]he judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Article III, § 1. Under Article III, "[t]he decision with respect to inferior federal courts, as well as the task of defining their jurisdiction, was left to the discretion of Congress." Palmore v. United States, 411 U.S. 389, 400-401 (1973); see Case of Sewing Machine Companies, 85 U.S. (18 Wall.) 553, 577-578 (1874) ("the distribution of the subjects of jurisdiction among such inferior courts as Congress may from time to time ordain and establish, within the scope of the judicial power, always [has] been, and of right must be the work of the Congress").

The federal courts' authority to issue writs of habeas corpus is granted by statute, see Ex parte Bollman, 8 U.S. (4 Cranch) 75, 94 (1807) (power to award writ "must be given by written law"), and "judgments about the proper scope of the writ are 'normally for Congress to make.'" Felker v. Turpin, 518 U.S. 651, 664 (1996) (quoting Lonchar v. Thomas, 517 U.S. 314, 323 (1996)); see Lindh v. Murphy, 96 F.3d 856, 868 (7th Cir. 1996) (en banc) ("[c]ollateral review of judgments * * * is

subject to legislative control"), rev'd on other grounds, 521 U.S. 320 (1997). In enacting the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), "Congress placed a new restriction on the power of federal courts to grant writs of habeas corpus to state prisoners." Williams v. Taylor, 529 U.S. 362, 399 (2000) (opinion of O'Connor, J.). Section 2254(d)(1) prohibits a federal court from granting habeas relief to a state prisoner with respect to a claim that was adjudicated on the merits in state court unless the state court's adjudication "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. 2254(d)(1).

In Williams v. Taylor, the Supreme Court identified "two categories of cases" in which Section 2254(d)(1) authorizes a federal court to grant habeas relief to a state prisoner on a claim that has been resolved on the merits by a state court:

> Under the "contrary to" clause, a federal habeas court may grant the writ if the state court arrives at a conclusion opposite to that reached by this Court on a question of law or if the state court decides a case differently than this Court has on a set of materially indistinguishable facts. Under the "unreasonable application" clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.

529 U.S. at 412-413. The Court made clear that the statute does not permit the federal court to issue a writ of habeas corpus "simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly

established federal law erroneously or incorrectly." Id. at 411. Rather, "[r]elief is available under § 2254(d)(1) only if the state court's decision is objectively unreasonable." Yarborough v. Alvarado, 541 U.S. 652, 665 (2004). The Court also construed the phrase "clearly established Federal law, as determined by the Supreme Court of the United States" in Section 2254(d)(1), holding that "[t]hat statutory phrase refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." Williams v. Taylor, 529 U.S. at 412; see Lockyer v. Andrade, 538 U.S. 63, 71-72 (2003) ("'clearly established Federal law' under § 2254(d)(1) is "the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision").

Congress's limitation of habeas relief to cases involving fundamental legal error does not contravene the separation of powers doctrine. Article III "'gives the Federal Judiciary the power, not merely to rule on cases, but to decide them * * * .'" Miller v. French, 530 U.S. 327, 342 (2000) (quoting Plaut v. Spendthrift Farm, Inc., 514 U.S. 211, 218-219 (1995)). Section 2254(d)(1) does not constitute an impermissible intrusion on federal courts' authority to interpret the governing law and to decide cases; rather, the statute represents a proper exercise of Congress's authority to define the scope of the federal habeas remedy for state prisoners.

A. Section 2254(d)(1) preserves the federal courts' independent authority to interpret federal law.

1. Section 2254(d)(1) does not infringe upon the federal judiciary's power to "say what the law is." See Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803); see also City of Boerne v. Flores, 521 U.S. 507, 536 (1997). In Duhaime v. Ducharme, 200 F.3d 597 (9th Cir. 2000), this Court rejected a habeas petitioner's claim that Section 2254(d)(1) placed an unconstitutional limitation on the interpretive authority of Article III courts. Id. at 601 & n.5 (noting that petitioner relied on "a line of cases originating from Marbury v. Madison"). The Court reasoned that Section 2254(d)(1) "serves to govern prospectively classes of habeas cases rather than offend the court's authority to interpret the governing law and to determine the outcome in any pending case." Id. at 601. Other courts of appeals that have considered the question have also concluded that Section 2254(d)(1) does not impair the federal courts' independent authority to interpret the law. See Green v. French, 143 F.3d 865, 874-875 (4th Cir. 1998) ("[S]ection 2254(d) does not limit any inferior federal court's independent interpretive authority to determine the meaning of federal law in any Article III case or controversy"), overruled on other grounds by Williams v. Taylor, 529 U.S. 362 (2000); Lindh v. Murphy, 96 F.3d at 869-870 ("Federal courts acting within their jurisdiction are always entitled to interpret the law independently.").

Neither of the decisions cited in this Court's order casts doubt on the constitutionality of Section 2254(d)(1). Marbury v. Madison involved a statute which expanded the Supreme Court's original jurisdiction to include issuance of writs of mandamus to federal officials, in violation of Article III. See 5 U.S. (1 Cranch) at 173-176. The Court concluded that Congress lacked the "power * * * to assign original jurisdiction to [the Supreme] Court in other cases than those specified" in Article III. Id. at 174. In Ex parte Bollman, decided four years after Marbury v. Madison, the Court made clear that Congress has the authority to define the scope of federal habeas relief. 8 U.S. (4 Cranch) at 94 ("the power to award the writ by any of the courts of the United States, must be given by written law").

Similarly, in City of Boerne v. Flores, the Court held that the Religious Freedom Restoration Act of 1993 (RFRA), as applied to state and local governments, exceeded Congress's authority under Section 5 of the Fourteenth Amendment to "enforce, by appropriate legislation, the provisions of [the Amendment]." 521 U.S. at 530-536. The Court held that Section 5 gives Congress broad power to remedy past and present discrimination and to prevent future discrimination, but that "[t]here must be a congruence between the injury to be prevented or remedied and the means adopted to that end." Id. at 517-520; see College Savings Bank v. Florida Prepaid Postsecondary Education Expense Board, 527 U.S. 666, 672 (1999) (City of Boerne makes clear "that the term 'enforce' is to be taken seriously - that the object of valid § 5 legislation must

be the carefully delimited remediation or prevention of constitutional violations"). Unlike the RFRA, AEDPA was enacted pursuant to Congress's legislative authority under Article I. Congress's Article I powers - unlike its enforcement powers under Section 5 - are not purely remedial and preventive, and City of Boerne's limitation on Congress's exercise of its Section 5 power has no application to Section 2254(d)(1). See Eldred v. Ashcroft, 537 U.S. 186, 218 (2003) (standard adopted in City of Boerne "does not hold sway for judicial review of legislation enacted * * * pursuant to Article I authorization"). City of Boerne also held that Congress lacked the "power to decree the substance of the Fourteenth Amendment's restrictions on the States," and that the RFRA's "attempt [to enact] a substantive change in constitutional protections" intruded upon the "province of the Judicial Branch" to interpret the Constitution. 521 U.S. at 519, 532, 536. Nothing in Section 2254(d)(1) suggests that the statute was intended to redefine the substance of any constitutional guarantee.

2. Although Section 2254(d)(1) does not infringe upon the federal courts' authority to interpret the law, the statute does limit the scope of federal habeas relief for state prisoners. See Williams v. Taylor, 529 U.S. at 412 (Section 2254(d)(1) "places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus"); Felker v. Turpin, 518 U.S. at 662 (AEDPA "impos[ed] new requirements for the granting of relief to state prisoners"); Lindh v. Murphy, 96 F.3d at 871 ("principal change effected by § 2254(d)(1)" is that

"the grave remedy of upsetting a judgment entered by another judicial system after full litigation is reserved for grave occasions").

The remedial limitation imposed by Section 2254(d)(1) is consistent with historical restrictions on federal habeas relief for state prisoners. Congress provided no general federal habeas corpus remedy for prisoners held in state custody until 1867. In the Judiciary Act of 1789, ch. 20, 1 Stat. 73, the first Congress vested the federal courts with jurisdiction to issue writs of habeas corpus, but specifically excluded relief for prisoners confined under state authority. See Ex parte Dorr, 44 U.S. (3 How.) 103 (1845). In 1867, Congress for the first time authorized federal courts to grant the writ "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. Although at that time habeas corpus relief could be granted only when the court that rendered judgment lacked jurisdiction, see Preiser v. Rodriguez, 411 U.S. 475, 485 (1973), the Court gradually expanded the notion of "jurisdictional" defects to include constitutional violations. See McCleskey v. Zant, 499 U.S. 467, 478 (1991). But "it was not until well into [the Twentieth] century that [the] Court interpreted that provision to allow a final judgment of conviction to be collaterally attacked on habeas." Felker v. Turpin, 518 U.S. at 663 (citing Waley v. Johnston, 316 U.S. 101 (1942) (per curiam), and Brown v. Allen, 344 U.S. 443 (1953)). In enacting Section 2254(d)(1), Congress "elected to move back in [the] direction" of limiting

federal courts' authority to grant writs of habeas corpus. Lindh v. Murphy, 96 F.3d at 873. As the Seventh Circuit noted in Lindh, the court "would have to cast history to the winds to say that [Congress's] decision, which respects fully-litigated judgments unless the state court has gone seriously wrong, transgresses constitutional limitations." Id. at 873-874.

Section 2254(d)(1) is also consistent with numerous well-established doctrines that limit federal courts' authority to grant relief for constitutional violations, both on collateral review and on direct appeal. See, e.g., McCleskey v. Zant, 499 U.S. at 494-497 (abuse-of-the-writ limitation for second or subsequent habeas petitions); Teague v. Lane, 489 U.S. 288 (1989) (new rules of constitutional procedure are not cognizable on federal habeas review); Stone v. Powell, 428 U.S. 465 (1976) (Fourth Amendment claims for which state provided opportunity for full and fair litigation are not generally cognizable on federal habeas review); Wainwright v. Sykes, 433 U.S. 72, 87 (1977) (barring federal habeas review of procedurally defaulted claims absent a showing of cause and prejudice); see also Reed v. Farley, 512 U.S. 339, 349 (1994) (habeas relief is available for non-constitutional "violations of federal laws when the error qualifies as 'a fundamental defect which inherently results in a complete miscarriage of justice [or] an omission inconsistent with the rudimentary demands of fair procedure'") (quoting Hill v. United States, 368 U.S. 424, 428 (1962)); cf. Anderson v. Creighton, 483 U.S. 635 (1987) (qualified immunity to damages actions claiming that official

action violated constitutional rights); United States v. Leon, 468 U.S. 897 (1984) (good faith exception to Fourth Amendment exclusionary rule); Nix v. Williams, 467 U.S. 431 (1984) (inevitable discovery doctrine). Although these are judge-made doctrines, restrictions on federal courts' authority to redetermine constitutional questions can also be imposed by Congress. See 28 U.S.C. 1738; cf. Allen v. McCurry, 449 U.S. 90, 103 (1980) (rejecting, in case involving the applicability of the Full Faith and Credit Act, the suggestion that the Constitution guarantees "every person asserting a federal right * * * one unencumbered opportunity to litigate that right in a federal district court, regardless of the legal posture in which the federal claim arises"). In the context of the many other doctrinal limits on federal courts' power to redress constitutional violations, Section 2254(d)(1)'s "limitation upon the scope of a remedy is entirely ordinary and unexceptionable, even when the remedy is one for constitutional rights." Green v. French, 143 F.3d at 875.[1]

B. Section 2254(d)(1) does not unconstitutionally prescribe sources of law federal courts must use in exercising their jurisdiction.

Section 2254(d)(1)'s limitation of federal habeas relief for state prisoners to cases in which the state court's decision is contrary to or unreasonably applies clearly

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[1] This Court has emphasized that although Section 2254(d)(1) limits federal courts' authority to grant writs of habeas corpus to state prisoners, the statute does not render the habeas remedy "toothless." See Lambert v. Blodgett, 393 F.3d 943, 978 (9th Cir. 2004) (noting that "the Supreme Court and each of the circuits have all found AEDPA's standard of review satisfied").

established law, "as determined by the Supreme Court," does not unconstitutionally restrict the sources of law federal courts may use in deciding whether to grant the writ. As explained above, Section 2254(d)(1) leaves federal courts "free * * * to decide whether a habeas petitioner's conviction and sentence violate any constitutional rights"; the statute "only places an additional restriction upon the scope of the habeas remedy." Green v. French, 143 F.3d at 875. And in determining whether the AEDPA standard is satisfied, "precedent from this court, or any other federal circuit court, has persuasive value in [the Court's] effort to determine 'whether a particular state court decision is an "unreasonable application" of Supreme Court law, and * * * what law is "clearly established."'" Musladin v. Lamarque, 403 F.3d 1072, 1074 (9th Cir. 2005) (quoting Duhaime v. Ducharme, 200 F.3d at 600).

Section 2254(d)(1)'s requirement that courts apply "Federal law, as determined by the Supreme Court," is "consistent with the hierarchical nature of the federal judiciary." Lindh v. Murphy, 96 F.3d at 873 ("Article III does not establish a system under which judges of inferior federal courts always must render judgment without regard to the conclusions of other courts."); see also United States v. Barrett, 178 F.3d 34, 54 (1st Cir. 1999) (rejecting separation of powers challenge to "gatekeeping" provision of 28 U.S.C. 2255, which authorizes filing of second or successive collateral attacks only for claims based on newly discovered evidence or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme

Court"). It is also appropriate for Congress to limit habeas relief for state prisoners to cases in which the state court's decision is contrary to or unreasonably applies clearly established Supreme Court law, because "only the Supreme Court's holdings are binding on the state courts." Clark v. Murphy, 331 F.3d 1062, 1069 (9th Cir. 2003); see Lockhart v. Fretwell, 506 U.S. 364, 376 (1993) (Thomas, J., concurring) ("The Supremacy Clause demands that state law yield to federal law, but neither federal supremacy nor any other principle of federal law requires that a state court's interpretation of federal law give way to a (lower) federal court's interpretation."); Lindh v. Murphy, 96 F.3d at 869 ("State courts must knuckle under to decisions of the Supreme Court, but not of this court."); United States ex rel. Lawrence v. Woods, 432 F.2d 1072, 1075-1076 (7th Cir. 1970) ("because lower federal courts exercise no appellate jurisdiction over state tribunals, decisions of lower federal courts are not conclusive on state courts").[2]

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[2] In Yniguez v. Arizona, 939 F.2d 727, 736 (9th Cir. 1991), the Court noted that "[t]he view that decisions of the lower federal courts on questions of federal law do not bind the state courts has gained considerable acceptance in the academic literature," and "has been expressed by some state courts" and by individual justices of the Supreme Court, but stated that "we have serious doubts as to the wisdom of this view." The Supreme Court later vacated a subsequent judgment in the same case on mootness grounds. See Arizonans for Official English v. Arizona, 520 U.S. 43 (1997). The Supreme Court described the passage in this Court's earlier opinion suggesting that decisions of federal courts of appeals might be binding on state courts as "remarkable," and went on to state:

> The Court of Appeals questioned the wisdom of the view expressed "in

C. Section 2254(d)(1) does not unconstitutionally prescribe substantive rules of decision federal courts must apply.

Section 2254(d)(1) does not impermissibly encroach upon the federal courts' power to decide cases by directing a decision in a pending case. See United States v. Klein, 80 U.S. (13 Wall.) 128, 146-147 (1872). Klein involved a suit to recover private property sold by the United States during the Civil War. Proof that the property owner had not aided the rebellion was made by showing that he had received a pardon from the President. After the Court of Claims ruled in the property owner's favor, Congress enacted a law requiring the Supreme Court to dismiss any appeal in a case in which the plaintiff had established his loyalty through a pardon. The

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> the academic literature," "by some state courts," and by "several individual justices" that state courts are "coordinate and coequal with the lower federal courts on matters of federal law." [939 F.2d] at 736 (footnote omitted). The Ninth Circuit acknowledged "there may be valid reasons not to bind the state courts to a decision of a single federal district judge – which is not even binding on the same judge in a subsequent action.'" Id. at 736-737. However, the appellate panel added, those reasons "are inapplicable to decisions of the federal courts of appeals." Id. at 737. But cf. ASARCO, Inc. v. Kadish, 490 U.S. 605, 617 (1989) ("state courts * * * possess the authority, absent a provision for exclusive federal jurisdiction, to render binding judicial decisions that rest on their own interpretations of federal law"); Lockhart v. Fretwell, 506 U.S. 364, 375-376 (1993) (Thomas, J., concurring) (Supremacy Clause does not require state courts to follow rulings by federal courts of appeals on questions of federal law).

520 U.S. at 58 n.11.

Supreme Court held that the statute's limitation on the Court's jurisdiction was unconstitutional, stating that it attempted to "prescribe a rule for the decision of a cause in a particular way." 80 U.S. (13 Wall.) at 146. The Court also held that the statute at issue in Klein was unconstitutional because it "impair[ed] the effect of a pardon, * * * thus infringing the constitutional power of the Executive." 80 U.S. (13 Wall.) at 147.

Even if Klein were read broadly, as invalidating a statutory rule of decision requiring a court to decide a pending case in a particular way, it would be inapplicable here. Section 2254(d)(1) adopts a standard of general applicability that governs a class of cases - habeas petitions by state prisoners - but it does not "dictate[] the judiciary's interpretation of governing law" or "mandate[] a particular result in any pending case." Green v. French, 143 F.3d at 874; see Plaut v. Spendthrift Farm, Inc., 514 U.S. at 218 (statute that "set out substantive legal standards for the Judiciary to apply" did not violate separation of powers principle of Klein); Lindh v. Murphy, 96 F.3d at 872 ("Congress cannot tell courts how to decide a particular case, but it may make rules that affect classes of cases.").[3] The statute thus preserves for the courts

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[3] Plaut held that the statute involved in that case, which required federal courts to reinstate securities fraud actions that had been dismissed as time-barred, violated Article III because it attempted to "'reverse a determination once made, in a particular case.'" 514 U.S. at 225 (quoting The Federalist No. 81, at 545). Unlike the statute at issue in Plaut, Section 2254(d)(1) "do[es] not offend the separation of powers by purporting to legislatively reopen a final judgment" of an Article III court.

"[t]he essence of judicial decisionmaking - applying general rules to particular situations." Rivers v. Roadway Express, Inc., 511 U.S. 298, 312 (1994).

Moreover, as the Supreme Court has explained, "[w]hatever the precise scope of Klein, * * * later decisions have made clear that its prohibition does not take hold when Congress 'amend[s] applicable law.'" Plaut v. Spendthrift Farm, Inc., 514 U.S. at 218 (quoting Robertson v. Seattle Audubon Society, 503 U.S. 429, 441 (1992)). In Robertson, the Supreme Court rejected a separation of powers claim based on Klein, explaining that "what Congress directed * * * was a change in law, not specific results under old law." 503 U.S. at 439. The AEDPA amended 28 U.S.C. 2254 to impose new standards for granting habeas relief to state prisoners. See Felker v. Turpin, 518 U.S. at 662. "Rather than prescribing a rule of decision, [Section 2254(d)(1)] simply imposes the consequences of the court's application of the new legal standard." Miller v. French, 530 U.S. at 349.

Congress has "ample power to adjust the circumstances under which the remedy of habeas corpus is deployed," see Lindh v. Murphy, 96 F.3d at 872, and in enacting Section 2254(b)(1), Congress has done just that. The statute leaves to the courts the judicial functions of interpreting the law and applying it to the facts to determine whether habeas relief is warranted in a particular case, under the statutory standard.

Green v. French, 143 F.3d at 874.

In sum, Section 2254(d)(1) respects the division between legislative and judicial functions that the Constitution requires.

CONCLUSION

The standards for habeas relief in 28 U.S.C. 2254(d)(1) are constitutional.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused true and correct copies of the foregoing Brief for the United States as Intervenor to be served this 17th day of June, 2005, by Federal Express, on:

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