

No. 16-6219

IN THE
Supreme Court of the United States

ERICK DANIEL DAVILA,

Petitioners,

v.

LORRIES DAVIS, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION,

Respondents.

*On Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit*

**MOTION OF *AMICI* STATES TO PARTICIPATE IN ORAL ARGUMENT
AND FOR DIVIDED ARGUMENT**

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Pursuant to Supreme Court Rules 28.4 and 28.7, the State of Nevada, on behalf of the *Amici* States, respectfully moves for leave to participate in oral argument and for divided argument on behalf of Respondent.

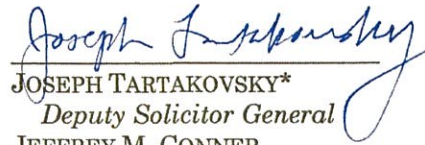
Rule 28.7 permits “counsel for an *amicus curiae* whose brief has been filed as provided in Rule 37 [to] argue orally on the side of a party, with the consent of that party.” Here, Nevada has filed an *amicus* brief on behalf of thirty states and Respondent has agreed to cede 10 minutes of her oral argument time to Nevada and the *Amici* States.

Allowing Nevada to participate will “provide assistance to the Court not otherwise available.” SUP. CT. R. 28.7. As a frequent habeas litigant in the Ninth Circuit—the only circuit to adopt Petitioner’s view—Nevada is uniquely positioned to explain, from firsthand experience, the ills of extending *Martinez v. Ryan*, 132 S. Ct. 1309 (2012) to the arena of procedural default and claims of ineffective assistance of *appellate* counsel. The Ninth Circuit’s stretching of *Martinez* conflicts with the statutory provisions of AEDPA, upsets this Court’s procedural default jurisprudence by reviving the “deliberate bypass” standard abandoned in *Wainwright v. Sykes*, 433 U.S. 72 (1977), undercuts the deference properly due to state procedural rules, and further undermines the finality of state criminal convictions. Agreeing with the Ninth Circuit, and overruling four others, will have dangerous ripple effects across the entire federal court system.

Based upon the foregoing, Nevada respectfully requests that the Court allocate 10 minutes of Respondent's oral argument time to the *Amici States*.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that I am a member in good standing of the bar of this Court and that on April 5, 2017, I cased a copy of the foregoing Motion of *Amici* States to Participate in Oral Argument and for Divided Argument to be served by first class mail on counsel identified below, pursuant to Rule 29.5 of the Rules of this Court. All parties required to be served have been served.

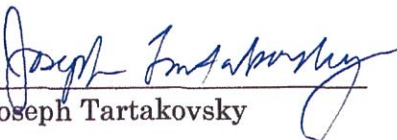
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