

Case Background on David Ramirez
Shinn v. Ramirez and Jones, 20-1009 (SCOTUS, OT 2021)

David Martinez Ramirez is on death row in Arizona despite the fact that two of the country's leading experts have diagnosed him with intellectual disability based on his many low IQ scores and lifetime of adaptive deficits. Though his intellectual limitations were obvious to his trial lawyer – who had never even observed a capital trial before she represented Mr. Ramirez – she failed to investigate, develop, or present the available evidence showing that he is a person with intellectual disability and therefore constitutionally protected against execution. The trial prosecutor extended a plea offer to Mr. Ramirez that would have spared his life but Mr. Ramirez's trial counsel failed adequately to recognize the cognitive deficits he suffered due to intellectual disability and did not convey the gravity of his situation to him in terms he could recognize. He rejected the prosecutor's offer.

Mr. Ramirez's state postconviction lawyer similarly failed to investigate, develop and present evidence of intellectual disability, which led the federal habeas courts to later find the claim procedurally defaulted and not susceptible to a ruling on its merits. It was only when the case reached federal court that Mr. Ramirez's new lawyers conducted the investigation needed to document his intellectual disability.

In 2019, a unanimous panel of the U.S. Court of Appeals for the Ninth Circuit held that Mr. Ramirez's state postconviction lawyer's failure to investigate and present the issue of trial counsel's ineffectiveness satisfied the narrow exception the Supreme Court carved out in *Martinez v. Ryan*, 566 U.S. 1 (2012), which allows a federal habeas court to consider otherwise procedurally defaulted claims of trial counsel ineffectiveness. The Ninth Circuit remanded Mr. Ramirez's case for the district court to conduct an evidentiary hearing and consider whether trial counsel was ineffective for not pursuing and presenting evidence of his intellectual disability

The Ninth Circuit's decision, *Ramirez v. Ryan*, 937 F.3d 1230 (9th Cir. 2019), is available here: Mr. Ramirez's brief filed in the Ninth Circuit, which includes detailed discussion of the evidence supporting his intellectual disability claim, is available here:

The State of Arizona then sought Supreme Court review. The Supreme Court granted certiorari in this case and that of another Arizona prisoner, Barry Jones. The case will likely be set for a consolidated oral argument in early November.

The Supreme Court agreed to decide whether a provision of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 28 U.S.C. § 2254(e)(2), precludes a federal court from considering new evidence in support of a claim that is before it under the *Martinez* exception. Section 2254(e)(2) bars a federal court from considering evidence at the habeas stage if the prisoner "failed to develop" it in state court. *Martinez* itself recognized, however, that a prisoner who received ineffective state postconviction representation was "in no position to develop" the evidence supporting his claim that trial counsel was ineffective. *Martinez*, 566 U.S.

at 12. All of the federal courts of appeals to consider the issue have, like the Ninth Circuit in Mr. Ramirez's case, deemed section 2254(e)(2) inapplicable to claims that satisfy *Martinez's* narrow exception to the procedural default rule. Despite the absence of any circuit split on this issue, the Supreme Court nevertheless agreed to address it.

If the Supreme Court limits *Martinez*, prisoners who had two rounds of ineffective counsel in state court will be barred from having a federal court consider evidence demonstrating intellectual disability and other serious constitutional errors in their cases.

The issue before the Supreme Court may seem technical, but it has potentially devastating ramifications for prisoners across the country. In essence, this case presents the question whether a state prisoner who has the misfortune of having both an ineffective trial lawyer and an ineffective lawyer appointed to investigate trial counsel's mistakes is barred from having a federal court consider the evidence those lawyers neglected to find, no matter how compelling the evidence nor how egregious counsel's errors. The interpretation Arizona asks the Court to adopt would gut the rule established in *Martinez*, allowing convictions and death sentences like Mr. Ramirez's to be virtually unchallengeable and creating a serious risk that people with intellectual disability will be executed in violation of the Constitution.

David Ramirez experienced a lifetime of intellectual challenges.

David Ramirez's high risk for intellectual disability began in the womb. His fifteen-year-old mother, Maria, drank throughout her pregnancy and attempted to abort him. Maria also worked as a migrant farm laborer before his birth where she lived in deplorable conditions and was exposed to pesticides and herbicides. She lacked adequate nutrition during her pregnancy and received little prenatal care.

Maria's heavy drinking continued throughout Mr. Ramirez's childhood, leading her to abuse and neglect him and his seven siblings. Maria made Mr. Ramirez drink beer as a toddler to quiet him. She regularly left the children unsupervised, without food, for days at a time. Mr. Ramirez "was so malnourished that his 'belly was distended.'" (Ninth Circuit brief p.4).

Mr. Ramirez routinely witnessed his mother having sex with men for money, booze, or drugs, and also saw her allow various men to have sex with his sisters to support her needs. From a young age, he also saw Maria beaten by her boyfriends, sometimes resulting in broken bones.

Mr. Ramirez spent his childhood shuttling between family members, retrieved by Maria when she wanted to claim him for welfare purposes. Maria lived in filthy shacks with animal feces in the house. There were no books or toys. The children slept on a dirty mattress on the floor, surrounded by cats and dogs. They ate from plates the dog had already eaten on. Maria routinely slapped, hit, and kicked the children, and Mr. Ramirez suffered head injuries from her abuse.

Given all these risk factors, it is not surprising that Mr. Ramirez manifested impaired intellectual functioning from an early age. He was slow to achieve developmental milestones like potty training, walking, talking, and using utensils. By age ten he still had trouble using a knife and fork and even in his early teens he struggled to tie his shoes.

Mr. Ramirez was held back in school; in fourth grade, a school psychologist theorized he had been promoted only because he was “getting ‘pretty old to be in that low a grade.’” (Ninth Circuit brief p.10) He had difficulty with the most basic math concepts even as a teenager. He was placed in special education classes and often tried to hide his disabilities by avoiding answering questions. He “hated to read in front of the class because the teacher would always have to read for him almost every word.” (Ninth Circuit brief p.13)

Mr. Ramirez also had difficulty learning and following rules, which caused him to engage in dangerous behaviors. As a teenager, he was hit by a car while crossing the street, suffering a severe leg injury. Around age ten, he was found hanging from a clothesline after he had wrapped it around his neck in order to see what would happen.

He struggled socially, often appearing passive, withdrawn, and keeping to himself. Other children took advantage of his vulnerabilities and “used him as a pawn to hustle up marijuana, booze, or spending money as preteens and teenagers.” (Ninth Circuit brief p.14) He often acted impulsively without thinking. Even as an adult, he was unable to live independently and worked on and off at low-skilled, low-paying jobs from which he could not sustain a living.

Mr. Ramirez’s IQ scores reflect his severe impairment. From ages 9 to 48, he received numerous valid IQ scores in the intellectually disabled range – scores of 64, 70, 69, 67, and 74.

Inexperienced trial counsel ignored red flags pointing to Mr. Ramirez’s intellectual disability.

In May 1989, Mr. Ramirez was charged with the murder of his girlfriend and her daughter. He was dazed and disoriented at the time of his arrest and had been abusing alcohol and cocaine heavily in the months leading up to the crime.

The lawyer appointed to represent him had never handled or even observed a capital murder trial before. She was aware that Ramirez had low IQ scores, was three or four grades behind his peers in school, switched schools repeatedly, and never graduated from high school. Counsel’s interactions with Mr. Ramirez raised concerns about his intellectual functioning. And she knew some facts about his traumatic and impoverished upbringing.

“Despite possessing these facts, counsel failed to investigate further or present a claim of mental impairment,” though all of the information discussed above was available to her. (Ninth Circuit decision p.1244) She did not even provide the defense expert, who testified at the sentencing hearing, with the IQ scores, school records, or family history information she did have, and relied on his assessment – based on this incomplete information – that Mr. Ramirez was intellectually average.

Mr. Ramirez was convicted and sentenced to death.

Postconviction counsel similarly ignored Mr. Ramirez’s obvious intellectual challenges and failed to pursue the evidence his trial lawyer had neglected to investigate.

Like his trial counsel, Mr. Ramirez’s state postconviction review (PCR) attorney was aware that he had low IQ scores and other indicia of intellectual disability. Yet this lawyer, too, failed to investigate and present the evidence of Mr. Ramirez’s impairments. “Post-conviction counsel possessed evidence that indicated that Ramirez could have an intellectual disability, and knew that trial counsel failed to present or pursue evidence of an intellectual disability.” (Ninth Circuit decision p.1248)

Finally, in federal court, Mr. Ramirez supported his ineffective assistance of counsel claims with evidence introduced at an unsuccessful state court *Atkins* hearing.

New counsel appointed to represent Mr. Ramirez in federal habeas corpus proceedings finally did what his prior lawyers should have done all along: They obtained all available IQ tests, and school, social services, and other records available to demonstrate that he satisfies the diagnostic criteria for intellectual disability. And they obtained diagnoses to that effect from some of the country’s leading experts in the field. On this basis, they obtained a stay of the federal proceedings and asserted in a state court hearing that Mr. Ramirez is a person with intellectual disability whose execution would be unconstitutional, as the Supreme Court held in *Atkins v. Virginia*, 536 U.S. 304 (2002). The state court denied Mr. Ramirez’s *Atkins* claim, based on Arizona’s unreasonably strict standard that an accused must meet with “clear and convincing evidence” to establish intellectual disability. Mr. Ramirez returned to federal court and alleged that the evidence introduced at the state court hearing supported his claim that state postconviction counsel was ineffective under *Martinez* for failing to raise a claim that state trial counsel rendered ineffective assistance by failing to present significant mitigating evidence regarding Mr. Ramirez’s intellectual disability at sentencing.

After the federal district court denied relief, the Ninth Circuit reversed and remanded for an evidentiary hearing. The court found that postconviction counsel was ineffective for not investigating and developing the claim that trial counsel was ineffective for not adequately investigating and presenting the mitigating evidence. (Ninth Circuit decision at p. 1247). The court also found that Mr. Ramirez was prejudiced by postconviction counsel’s failure, because the claim of trial counsel’s ineffective assistance was “substantial.” (Ninth Circuit decision p.1244-47). The Ninth Circuit therefore concluded that Mr. Ramirez met *Martinez*’s narrow exception and that the federal court could consider the merits of Mr. Ramirez’s ineffective assistance of trial counsel claim and hold an evidentiary hearing on the issue. (Ninth Circuit decision at p. 1247-49)

The State now asks the Supreme Court to effectively nullify *Martinez*.

The State of Arizona petitioned for certiorari, and the U.S. Supreme Court granted review to consider whether section 2254(e)(2) applies to a federal court's consideration of new evidence in support of claims that satisfy *Martinez's* procedural-default exception. The case was an unusual candidate for Supreme Court review, because all federal appellate courts to address this issue had concluded that section 2254(e)(2) did not apply in this situation.

Mr. Ramirez argues that applying section 2254(e)(2) would foreclose presentation of evidence supporting his claim of ineffective assistance of trial counsel, effectively overruling *Martinez*. "Almost by definition, and as *Martinez* itself recognized, presenting that trial counsel claim after its default is excused will require introducing evidence beyond the state court record. A prisoner who received ineffective postconviction representation was 'in no position to develop' the evidence bearing on the claim in state court proceedings. [*Martinez*, 566 U.S.] at 12. And by their nature, '[i]neffective assistance claims often depend on evidence outside the trial record,' *id.* at 13, and 'often require investigative work,' *id.* at 11." (BIO p.1)

For these reasons, misreading section 2254(e)(2) to block the presentation of new evidence in a case that satisfies *Martinez* would lead to absurd and unfair results. Indeed, while the very basis for allowing Mr. Ramirez to satisfy *Martinez* and present his claim of ineffective assistance of trial counsel was his postconviction counsel's failure to present the evidence of Mr. Ramirez's intellectual disability, applying section 2254(e)(2) would attribute that same failure to Mr. Ramirez to preclude the federal district court from considering the previously undiscovered evidence. Such a rule would both nullify *Martinez* and allow Mr. Ramirez's death sentence, to which ineffective assistance of trial counsel greatly contributed, to go unremedied. Similarly, it would deny to other prisoners a federal court remedy to challenge egregious instances of ineffective assistance of trial counsel that were procedurally defaulted for failure to raise them in the state courts.

[Mr. Ramirez's brief in opposition to certiorari is available here:](#)

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