

No. 10-63

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IN THE  
**Supreme Court of the United States**

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CORY R. MAPLES,  
*Petitioner,*  
v.

RICHARD F. ALLEN, COMMISSIONER OF THE  
ALABAMA DEPARTMENT OF CORRECTIONS,  
*Respondent.*

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**On Petition for a Writ of Certiorari to the  
United States Court of Appeals  
for the Eleventh Circuit**

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**BRIEF FOR AMICUS CURIAE  
THE CONSTITUTION PROJECT  
IN SUPPORT OF PETITIONER**

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**INTEREST OF AMICUS CURIAE**

The Constitution Project is a bipartisan nonprofit organization that seeks solutions to contemporary constitutional issues through scholarship and public education. The Project's essential mission is to promote constitutional dialogue.<sup>1</sup> It creates bipartisan committees whose members are former government officials, judges, scholars, and other prominent

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<sup>1</sup> No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than the amicus curiae or their counsel made a monetary contribution to its preparation or submission. The parties were timely notified of amicus' intent to file this brief more than 10 days in advance and have consented to its filing.

citizens. These committees reach across ideological and partisan lines to craft consensus recommendations for policy reforms. The Project is deeply concerned with the preservation of our fundamental constitutional guarantees and ensuring that those guarantees are respected and enforced by all three branches of government.

The Constitution Project regularly files amicus briefs in this Court and other courts in cases, like this one, that implicate its bipartisan positions on constitutional issues, in order to better apprise courts of the importance and broad consequences of those issues. In 2000, the Project's Death Penalty Initiative convened a blue-ribbon committee including supporters and opponents of the death penalty, Democrats and Republicans, former judges, prosecutors, defense lawyers, victim advocates, and others with extensive and varied experience in the criminal justice system. Although the Initiative does not take a position on the death penalty itself, it is concerned that, as currently administered, the death penalty lacks adequate procedural safeguards and other assurances of fundamental fairness. The Committee issued its first report in 2001, and in 2005, issued an updated version of its report with thirty-two consensus recommendations. See The Constitution Project, *Mandatory Justice: The Death Penalty Revisited* (2005) ([www.constitutionproject.org/manage/file/30.pdf](http://www.constitutionproject.org/manage/file/30.pdf)). The report concludes, *inter alia*, that the "[t]he lack of adequate counsel to represent capital defendants is likely the gravest of the problems that render the death penalty, as currently administered, arbitrary, unfair, and fraught with serious error." *Id.* at 1.

The Constitution Project has a keen interest in the Court's review of this case. Petitioner's trial counsel displayed a shocking degree of ineffectiveness. Yet under the rule adopted by the Eleventh Circuit, petitioner will be put to death without any federal habeas review of that claim, through no fault of his own, even though the constitutionally inadequate performance of his trial counsel most likely resulted in his death sentence.

Amicus curiae fully supports petitioner's position that there was no procedural default that barred federal habeas review in this case, because Alabama lacked an adequate state law basis for barring federal habeas review where a defendant is faultless. But this brief addresses the reasons why, even if there was a procedural default, it should be excused for "cause," and petitioner should be allowed federal habeas review of his claims.

The representation of prisoners accused of capital crimes or sentenced to the death penalty is unique in its difficulty, and in the consequences for prisoners when that representation is inadequate. Protection of prisoners' constitutional rights requires an effective system of representation, and constitutionally adequate performance by courts and counsel in ensuring that prisoners receive fair notice of orders on which their lives may depend. The Court should grant the petition to review the important issues raised by this case.

#### **SUMMARY OF THE ARGUMENT**

A man should not be executed because, through no fault of his own, he never received notice of a deadline-triggering court order. Petitioner Maples' post-conviction counsel timely filed a state habeas

petition (the “Rule 32 petition”) that raised serious claims that Maples was denied effective assistance of trial counsel. Pet. App. 30-31 & n.3. But then they left their firm—and thus their representation of Maples—without substituting counsel or even leaving a forwarding address. A mailroom returned the order denying the petition to the clerk unopened, but the court clerk that received the unopened envelope by return mail did nothing while appellate deadlines lapsed.

And there Maples’ life—according to the Eleventh Circuit—will come to an end without any federal court review of his claims that he was denied constitutionally guaranteed assistance of counsel at trial. The State now intends to put Maples to death, but it failed to take the most obvious, reasonable steps to ensure that he received timely notice of the deadline-triggering order. That failure, combined with his post-conviction counsel’s abandonment, left Maples barred from further review of his claims through no fault of his own. The Court’s review is warranted to make clear—consistent with the Court’s precedent—that federal courts are not bound by such errors to ignore claims that would save a man’s life.

Petitioner has persuasively shown that the alleged procedural default was no default at all because Alabama lacked an “adequate” state-law ground, *Cone v. Bell*, 129 S. Ct. 1769, 1780 (2009), to deny review of his claims. That issue alone warrants this Court’s review. *See* Pet. 12-24. But in addition, the Court’s review is also required because the Eleventh Circuit disregarded and misapplied this Court’s precedents in holding that neither the failure of the State to notify Maples of a deadline-triggering order,

nor the abandonment of his counsel, are “cause” to overcome the purported procedural default.

The Eleventh Circuit held that Maples was not entitled to federal habeas review, notwithstanding grievous errors of the State and his counsel, because he had no right to post-conviction representation. Pet. App. 17a (citing *Coleman v. Thompson*, 501 U.S. 722, 752 (1991)). This Court’s decision in *Coleman* requires no such thing. A petitioner “bears the risk in federal habeas for all attorney errors made in the course of the representation.” *Coleman*, 501 U.S. at 754. But where there is “something external to the petitioner, something that cannot fairly be attributed to him,” *id.* at 753, a court may excuse procedural default on collateral review for “cause.” *See also Murray v. Carrier*, 477 U.S. 478, 488 (1986). Here, the clerk’s failure to ensure that Maples received notice of an order that deprived him of fundamental rights was one such objective factor. And the abandonment of Maples by the post-conviction counsel who prepared his Rule 32 petition was another. Pet. 27-32; *cf. Coleman*, 501 U.S. at 754. The Court’s review is warranted to ensure that courts uniformly consider both the State’s own conduct and abandonment by post-conviction counsel as causes of a procedural default, and to ensure that a prisoner is not barred from federal corpus review of constitutional claims because of either.

This Court has long held that constitutionally inadequate actions of the *State* constitute cause to excuse a procedural default. And the Court has held that the State acts inadequately when knowledge that a mailing was ineffective “triggered an obligation on the government’s part to take additional steps to effect notice,” but it failed to take

such steps. *Jones v. Flowers*, 547 U.S. 220, 230 (2006). But the court below ignored this factor, solely because Maples lacked a right to post-conviction *counsel*. The clerk’s failure to deliver notice of the Rule 32 order was an independent due process violation, external to Maples, that prevented him from timely raising claims that he received ineffective assistance of trial counsel. The Court should grant review to ensure that lower courts uniformly consider the State’s contribution to a procedural default as cause to excuse that default.

Review is also warranted to conform the “cause” inquiry with the standards recently announced in *Holland v. Florida*, 130 S. Ct. 2549 (2010). There, the Court held that the equitable principles that govern habeas review required tolling the federal limitation period where an attorney had effectively abandoned his client. Unlike in *Coleman*, such abandonment involves circumstances “beyond [a defendant’s] control” because “a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.” *Id.* at 2568 (Alito, J., concurring).

Even more so than in *Holland*, adherence to the purported procedural fault would contravene the equitable principles that govern habeas review. In *Holland*, the defendant at least had an attorney, albeit one who failed to do his bidding. Here, Maples’ failure to receive notice was “beyond his control” not only because the State failed in its constitutional duties, but also because his attorneys had quite literally left Maples behind and had ceased to “operat[e] as his agent in any meaningful sense of that word.” *Id.* It is one thing to attribute errors of post-conviction counsel to their clients, it is quite

another to put a defendant to death where counsel has entirely abandoned him.

Although Maples' death sentence, imposed by the minimum allowable verdict, is likely the result of the constitutional ineffectiveness of his trial counsel, he never received any review of the order denying that claim through no fault of his own. The Court should grant review to clarify that, in accord with the Court's precedents, "cause" to excuse a purported default exists both because of the State's own failure to provide the requisite due process and because his counsel abandoned their representation of him. That this case involves multiple levels of error, rather than just one, is no reason to put a man to death.

#### **REASONS FOR GRANTING THE WRIT**

##### **I. THE ELEVENTH CIRCUIT DEPARTED FROM THIS COURT'S PRECEDENTS IN FAILING TO RECOGNIZE THE STATE'S OWN FAILURE TO PROVIDE NOTICE.**

The Court has established a judge-made rule that when a petitioner has "cause" for not following a state procedural rule, and suffered prejudice as a result, the default may be excused. *Wainwright v. Sykes*, 433 U.S. 72, 87 (1977). *Sykes* left open "for resolution in future decisions the precise definition of the 'cause'-and 'prejudice' standard." *Id.* And due to the "virtually limitless array of contexts in which a procedural default can occur," the Court has not given the term "cause" precise content. *Reed v. Ross*, 468 U.S. 1, 13 (1984). But the Court has long held that there is "cause" to excuse a state procedural default if "some objective factor external to the defense impeded counsel's efforts to comply with the State's procedural rule." *Murray*, 477 U.S. at 488.

Here, the clerk's failure to forward the Rule 32 order to Maples or his putative counsel was an "objective factor" that impeded the effort to comply with the deadline for appealing that order.

Objective factors that impede counsel's efforts to comply with the State's procedural rule include "interference by officials" that makes such compliance with the procedural rules impracticable. *McCleskey v. Zant*, 499 U.S. 467, 494 (1991) (citation and quotation omitted); *see also Brown v. Allen*, 344 U.S. 443, 486 (1953) ("some interference by officials" made compliance impracticable, and constituted "cause"). For example, in *Strickler v. Greene*, 527 U.S. 263 (1999), the Court held that a petitioner established cause for failing to raise a *Brady* claim where the prosecution withheld exculpatory evidence and the petitioner reasonably relied on the prosecutor's "open file" policy as fulfilling the prosecution's duty to disclose such evidence. *See also Amadeo v. Zant*, 486 U.S. 214, 222 (1988) (government concealment of evidence cause for a procedural default if it "was the reason for the failure of a petitioner's lawyers to raise the jury challenge in the trial court").

Here, the Eleventh Circuit erroneously failed to address the clerk's failure to ensure that Maples received the Rule 32 order as an objective factor that caused the procedural default. In other cases, the Eleventh Circuit had found cause to excuse prisoners' procedural defaults where they were due to the State's clerical errors but no fault of the prisoner. *See Roberts v. Sutton*, 217 F.3d 1337, 1340 (11th Cir. 2000) (default excused for "cause" when the appellate record was not properly transmitted to a state court of appeals, because there was "nothing

in the record to suggest that Roberts was responsible” for the problem).<sup>2</sup> The court had also equitably tolled deadlines for clerical errors.<sup>3</sup> But when it came to Maples’ case, the Eleventh Circuit failed to address the implications of the clerk’s failure to deliver notice to Maples’ lead counsel, even though it was the central reason why Maples could not timely appeal that order.

The Alabama Court of Criminal Appeals recognized that the clerk in this case “assumed a duty to notify the parties of the resolution of the Rule 32 petition.” App. 234a, 236a. The court, however, concluded that no due process violation occurred as a result, because counsel had a duty to notify the clerk of a change of

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<sup>2</sup> See also *Siebert v. Allen*, 455 F.3d 1269, 1272 (11th Cir. 2006) (in determining “cause,” considering whether clerk sent judgment in compliance with relevant rule of appellate procedure); *United States v. Novaton*, 271 F.3d 968, 992-93 (11th Cir. 2001) (appellant not accountable for exhibits not included in record “[t]hrough no fault of his own”); *Sanders v. United States*, 113 F.3d 184, 187 (11th Cir. 1997) (“when through no fault of his own, a *pro se* litigant does not receive notice of the order from which he seeks to appeal, it would be unjust to deprive him of the opportunity to present his claim to this court”); *Alexander v. Dugger*, 841 F.2d 371 (11th Cir. 1988) (*pro se* litigant’s motion for rehearing never docketed by clerk); *Dorman v. Wainwright*, 798 F.2d 1358 (11th Cir. 1986) (state’s failure to provide appellant with trial transcript within reasonable time constituted “external factor” out of appellant’s control that sufficed as “cause”).

<sup>3</sup> See *Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005) (equitable tolling applies “when the State’s conduct prevents the petitioner from timely filing”), *aff’d* 549 U.S. 327 (2007); *Knight v. Schofield*, 292 F.3d 709, 712 (11th Cir. 2002) (petitioner misled by court clerk); *Spottsville v. Terry*, 476 F.3d 1241, 1245 (11th Cir. 2007) (petitioner misled by the state habeas court into filing with wrong court).

address. Pet. App. 234a, 236a. That reasoning ignores the State’s own, independent duties once it had affirmatively learned that attempted service on counsel was never made. In *Strickler*, the state failed to perform its independent duty to turn over exculpatory evidence, and there was “cause” to excuse the default engendered by the defendant’s failure to file a motion seeking the withheld materials where the defendant had relied on the state’s duty. 527 U.S. at 284. Here, as well, the State’s failure to fulfill its duty to give notice of a deadline triggering-order in a state habeas proceeding excuses Maples alleged procedural default. The State, in the person of the circuit clerk, was an objective factor denying due process to Maples by failing to ensure he received the Rule 32 order, which was the sole reason he could not comply with the deadline for appealing the order. That the State’s interference occurred after the denial of the Rule 32 order does not matter, because “the standard for cause should not vary depending on the timing of a procedural default.” *Murray*, 477 U.S. at 491.<sup>4</sup>

In analogous—but less dire—circumstances, the Court has held that a state’s failure to deliver notice

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<sup>4</sup> It is not enough that local counsel received a copy of the order. Due process requires “the government to consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case.” *Jones*, 547 U.S. at 230 (citing *Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) (notice of forfeiture proceedings sent to home address inadequate when State knew that owner was in prison)). Lead counsel “performed all of the substantive work” in the case, Pet. App. 3a, and the clerk knew that that counsel had not received notice of the order, which had unexpectedly been issued *sua sponte* nearly a year and a half after the petition was filed. Pet. 6.

of a deprivation of fundamental rights violates basic due process. In *Jones v. Flowers*, a Commissioner's repeat attempts to send a tax sale notice by certified mail resulted in the return of the unopened packet "unclaimed," leaving the homeowner with no notice before his house was sold. 547 U.S. at 223-24. That failed to satisfy the longstanding rule that "when notice is a person's due \* \* \* [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 229 (citation omitted).

Writing for the Court, Chief Justice Roberts reasoned that "no one 'desirous of actually informing' the owners would simply shrug his shoulders as the letters disappeared and say 'I tried.'" *Id.* at 229. Knowledge that certified mail sent to the homeowner's address was ineffective "triggered an obligation on the government's part to take additional steps to effect notice," *id.* at 230, and the failure to follow up was unreasonable, even though the letters were reasonably calculated to reach their intended recipients when delivered to the postman. *Id.* at 229. As the Court analogized, "[i]f the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again." *Id.* "This is especially true when \* \* \* the subject matter of the letter concerns such an important and irreversible prospect as the loss of a house." *Id.* at 230. But the Commissioner did "nothing." *Id.* at 234. When exerting extraordinary power against a property owner, "[i]t is not too much

to insist that the State do a bit more to attempt to let him know about it when the notice letter addressed to him is returned unclaimed.” *Id.* at 239.

The same is necessarily true here, where a man’s life, rather than just his property, is at stake. The Rule 32 order was a deprivation notice just as much as the notice in *Jones* was. Unless Maples responded within 42 days to the order by appealing it—or satisfied the requirements for an out-of-time appeal—he would be defaulted. Alabama rules expressly permitted an out-of-time appeal in these circumstances, and the Eleventh Circuit erred by holding that reliance on the appeal deadline was an “adequate” basis for a default. *See* Pet. 12-24. But even if that decision were correct, this Court’s precedents establish that the State’s failure to satisfy due process was sufficient cause to excuse that purported procedural fault.

As in the Court’s analogy in *Jones*, the unopened, returned envelope with “Return to Sender—Left Firm” was the equivalent of watching the Rule 32 notice fall out of the postman’s bag and down the drain. As a matter of basic due process, the State was required to do more to ensure that Maples received notice. Something as simple as a call to counsel’s former firm to ask for a forwarding address would have allowed the clerk to direct the notice to the proper person. Or, at a bare minimum, the clerk should have sent the notice to Maples directly when he or she learned that his lead counsel did not receive it. Such simple, virtually costless actions could have ensured Maples appellate review, which in turn could save him from legal errors that would spare his life.

The Eleventh Circuit's wholesale failure to address the State as an objective factor placed the court in conflict with this Court's precedents, and is reason enough to grant review. But as next shown, the Court's overreaching interpretation of *Coleman* to exclude a finding of "cause" in cases of attorney abandonment is yet another reason.

**II. THE ELEVENTH CIRCUIT DEPARTED  
FROM THIS COURT'S PRECEDENTS IN  
HOLDING THAT ATTORNEY  
ABANDONMENT IS NO CAUSE TO  
EXCUSE A PROCEDURAL DEFAULT.**

The State's failure to provide notice was not the only factor that caused Maples' default. He was also abandoned by his post-conviction counsel, even though he had relied on them to represent him. In *Coleman*, the Court held that "[s]o long as a defendant is represented by counsel whose performance is not constitutionally ineffective \* \* \* we discern no inequity in requiring him to bear the risk of attorney error that results in a procedural default." 501 U.S. at 752 (quoting *Murray*, 477 U.S. at 488) (emphasis added). In such circumstances, errors by attorneys are attributed to the clients whom they are representing, and the clients bear those risks. But a defendant cannot bear the risk of attorney error when his attorney is no longer representing him. Here, the evidence is that Maples' post-conviction counsel had literally left the scene without giving the clerk a forwarding address, thereby leaving him to his own devices. In that situation, he had no way to exercise his rights because he never received notice of the order denying his petition.

In *Holland*, the Court recently reversed as “too rigid” the Eleventh Circuit’s rule that even “grossly negligent” attorney conduct could never warrant equitable tolling of the federal habeas limitation period. 130 S. Ct. at 2554. That case involved “a complete breakdown in communication” between a habeas petitioner and his attorney, who had “abandoned” his client, *id.* at 2555, necessitating the client’s own filing of an untimely federal habeas petition. *Id.* at 2559. The Court held that the petitioner was entitled to equitable tolling because he had diligently pursued his rights, yet “some extraordinary circumstance stood in his way” that prevented timely filing. *Id.* at 2562 (citation omitted).

Although *Holland* involved the closely related doctrine of equitable tolling of federal limitations periods, Justice Alito explained how its reasoning applies to the “cause” standard at issue in this case. When an attorney has “effectively ‘abandoned’” a habeas petitioner, that “suffice[s] to establish extraordinary circumstances beyond his control” because “[c]ommon sense dictates that a litigant cannot be held constructively responsible for the conduct of an attorney who is not operating as his agent in any meaningful sense of that word.” *Id.* at 2568 (citing *Coleman*, 501 U.S. at 754). Justice Alito therefore concurred in remanding the case because the Eleventh Circuit “did not consider petitioner’s abandonment argument or assess whether the State improperly prevented petitioner from either obtaining new representation or assuming the responsibility of representing himself.” *Id.*

Likewise in this case, Maples’ attorneys “effectively abandoned” him by leaving without substituting counsel and were “not operating as his agent in any

meaningful sense of that word.” And likewise in this case, the Eleventh Circuit did not properly consider Maples’ abandonment argument or assess whether the State, by failing to notify him directly when his counsel’s notification was returned, “improperly prevented him from obtaining new representation or assuming the responsibility of representing himself.”

The Eleventh Circuit’s failure to recognize that fact also conflicts with the decisions of other circuits which, even before *Holland*, held that such conduct constitutes “cause” to excuse procedural default. See *Manning v. Foster*, 224 F.3d 1129, 1135 (9th Cir. 2000) (attorney’s errors not attributable to the client where attorney “does not actually represent the client”); see also *Rouse v. Lee*, 339 F.3d 238, 250 n.14 (4th Cir. 2003) (en banc), *cert. denied*, 541 U.S. 905 (assuming “utter abandonment” was external cause); Pet. 29-30. The State’s concomitant failure to ensure notice only compounds the error.

The Eleventh Circuit held that “the factor that resulted in Maples’ default—namely, counsel’s failure to file a timely notice of appeal of the Rule 32 Order—cannot establish cause for his default because there is no right to post-conviction counsel.” Pet. App. 17a. But that analysis is refuted by the reasoning in *Holland*. Once counsel had abandoned the representation, Maples’ lack of notice—through no fault of his own—was “something external \* \* \* that cannot fairly be attributed to him,” which excuses the purported default. *Coleman*, 501 U.S. at 753. Counsel’s abandonment was, in the words of the *Holland* majority, an external “impediment to the pursuit of his legal remedy.” 130 S. Ct. at 2565. Or, as Justice Alito explained with direct reference to the standard at issue here, it was an “extraordinary

circumstance[] beyond his control” that “improperly prevented petitioner from either obtaining new representation or assuming the responsibility of representing himself.” *Id.* at 2568.

Thus, the Court’s decision in *Holland*, issued after the Eleventh Circuit ruled in this case, only underscores the Eleventh Circuit’s errors and the need for this Court’s review.

### III. THE EQUITIES OF THIS CASE WARRANT THE COURT’S INTERVENTION

“[T]he only writ explicitly protected by the Constitution,” *Holland*, 130 S. Ct. at 2562, habeas corpus is “an area of the law where equity finds a comfortable home.” *Id.* at 2561 (citing *Munaf v. Geren*, 553 U.S. 674, 693 (2008)). See *Schlup v. Delo*, 513 U.S. 298, 319 (1995) (“Habeas corpus is, at its core, an equitable remedy.”); *Sanders v. United States*, 373 U.S. 1, 17 (1963). And in exercising its habeas jurisdiction, the Court has “equitable discretion to correct a miscarriage of justice.” *McCleskey*, 499 U.S. at 502. That discretion includes the “equitable power to overlook [a] respondent’s state procedural default.” *Dugger v. Adams*, 489 U.S. 401, 410 (1989). See *Reed*, 468 U.S. at 9, 11 (“Our decisions have uniformly acknowledged that federal courts are empowered under 28 U.S.C. § 2254 to look beyond a state procedural forfeiture and entertain a state prisoner’s contention that his constitutional rights have been violated”) (citations omitted).

As explained by the dissenting judge in the Eleventh Circuit, Pet. App. 31a, these same equitable principles that underlie the Great Writ require excusing Maples’ purported default because reliance on such unfair procedural obstacles “must

yield to the imperative of correcting a fundamentally unjust [sentence].” Pet. App. 31a (Barkett, J., dissenting) (citation omitted). The Court’s subsequent reasoning in *Holland*, which reversed another parsimonious Eleventh Circuit decision, underscores the need for this Court’s review in this case as well. Every bit as much as in *Holland*, this case warrants review to shed rigid and inflexible adherence to the “evils of archaic rigidity,” 130 S. Ct. at 2563, that employ procedural obstacles to bar federal habeas review through no fault of a petitioner. Just as *Holland*’s attorney’s abandonment prevented his timely filing of a federal petition, the abandonment of Maples’ attorneys, combined with the State’s failure to notify him directly, left Maples unable to meet the alleged state appeal deadline.

The inflexible rule used to extinguish review of Maples ineffective assistance claims is particularly unacceptable in this capital case. “[T]he penalty of death is different in kind from any other punishment imposed under our system of criminal justice.” *Gregg v. Georgia*, 428 U.S. 153, 188 (1976). In its finality, death is “qualitatively different from a sentence of imprisonment, however long,” creating a “corresponding difference in the need for reliability in the determination that death is the appropriate punishment in a specific case.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976). Here, the ineffective assistance of Maples’ trial counsel—which resulted in the bare minimum verdict necessary to impose the death sentence, Pet. 31a n.3—renders that sentence wholly unreliable. And all possible review of the decision denying his ineffective assistance claims was barred because Maples received yet *more* ineffective assistance at the post-conviction

stage (albeit not in the constitutional sense), aggravated by the State's deprivation of notice.

The Court should grant review to avoid this intolerable result and to correct the Eleventh Circuit's departure from the precedents of this Court and other circuits. This case is an excellent vehicle to consider the issues, given that Maples is indisputably blameless for the alleged procedural default, Pet. 10, and has strong claims that his trial counsel was constitutionally ineffective, Pet. App. 30a-31a & n.3. Maples properly raised those claims at the first opportunity to do so, through the Rule 32 petition.<sup>5</sup> But as the result of the alleged procedural default, he lost *all* opportunity for appellate review—state and federal—of the order denying his Rule 32 petition. Barring relief from this Court, Alabama will put Maples to death without any federal court hearing on his significant claims regarding the ineffective assistance of his trial counsel that likely caused the death sentence. Thus, the constitutional deprivations of clerk and counsel, for which Maples was entirely blameless, likely resulted in real and direct constitutional harm that can only be corrected by this Court's review.

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<sup>5</sup> Notably, the decision below relied on cases in which defaults resulted from failures to present claims on initial state habeas review. Pet. App. 17a-18a. *Cf. Jimenez v. Fla. Dep't of Corr.*, 481 F.3d 1337, 1344 (11th Cir. 2007); *Henderson v. Campbell*, 353 F.3d 880, 899-900 (11th Cir. 2003). By contrast, Maples presented his ineffective assistance of counsel at the commencement of state habeas review via the Rule 32 petition.

**CONCLUSION**

For the foregoing reasons, and those in the petition, the petition should be granted and the judgment below reversed.

Respectfully submitted,

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