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## Ineffective assistance of counsel as grounds for habeas corpus relief in post-conviction proceedings

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**Słowa kluczowe:** doktryna *habeas corpus*, nieefektywna pomoc obrońcy, *Martinez v. Ryan*

**Abstract:** The doctrine of habeas corpus is that no one should be imprisoned contrary to the law of the land. The habeas corpus review is used as a form of inquiry issued to test whether a conviction or restraint is lawful. However, before having a chance to present their case before a federal forum, state prisoners have to fulfill the state's gatekeeping requirements, such as the exhaustion of all available state remedies, requirements of the Anti-Terrorism and Effective Death Penalty Act, and the absence of procedural default. Procedural default arises when the state court declines to address a prisoner's federal claims because the prisoner failed to meet a state procedural requirement. To overcome the procedural default the petitioner has to satisfy the "cause-and-prejudice test." In many cases the fulfillment of the "cause" element is often based on the claim of ineffective assistance of counsel. To prove the ineffective assistance of counsel, the petitioner has to satisfy the test consisting of two prongs: establishing the deficient performance of counsel and demonstrating that the deficient performance prejudiced the defense.

In federal proceedings the rule is to raise the claim of the ineffective assistance of counsel in the collateral review. However, the right to a counsel does not extend to collateral attacks upon conviction, including a post-conviction appeal. Moreover, the counsel's deficient performance does not constitute a basis for a procedural default reversal in the post-conviction claim. The above-mentioned assertion may pose a question: what happens when the defendant is eligible to raise the ineffective assistance of counsel claim only in the collateral proceeding and the counsel representing the defendant in such a proceeding does not raise the claim?

The Supreme Court resolved this matter in the decision from the *Martinez v. Ryan* case. The Court allowed for treating inefficient assistance of post-conviction counsel as a cause that could reverse procedural default. Taking into consideration the amount of ineffective assistance of counsel

claims in habeas corpus review, the *Martinez v. Ryan* case may influence a fair amount of individuals seeking their constitutional rights and give them their last chance to contest unfair conviction.

## Nieefektywna pomoc obrońcy jako przesłanka wniosku o *habeas corpus* w postępowaniu po skazaniu

**Abstrakt:** Wniosek o *habeas corpus* jest środkiem, który umożliwia osobie pozbawionej wolności zbadanie przez sąd legalności jej skazania. Przed skorzystaniem z tej możliwości skazany powinien wyczerpać wszelkie możliwe środki służące ponownemu zbadaniu legalności skazania, przysługujące mu na podstawie prawa stanowego. Ponadto wnioskodawca powinien uczynić zadość wszelkim stanowym przepisom proceduralnym. W wypadku niezadośćuczynienia temu obowiązkowi sąd stanowy nie rozpozna wniosku, chyba że wnioskodawca udowodni, iż nie mógł spełnić wymogów proceduralnych z powodów, na które nie miał wpływu. Wnioskodawcy w takiej sytuacji bardzo często powołują się na nieefektywną pomoc obrońcy.

Zasadą jest, iż na nieefektywną pomoc obrońcy w postępowaniu przed sądem federalnym można powołać się poza postępowaniem głównym obejmującym rozpoznanie sprawy w I i II instancji. Prawo do obrony zagwarantowane w szóstej poprawce do Konstytucji Stanów Zjednoczonych nie rozciąga się jednak na postępowania poza postępowaniem głównym. Skazani nie mogą zatem powołać się na nieefektywną pomoc obrońcy, aby odwrócić stan niezadośćuczynienia obowiązkowi proceduralnym wynikającym z prawa stanowego. Taki stan rzeczy budził wiele wątpliwości. W wypadku gdy pełnomocnik wnioskodawcy w postępowaniu poza postępowaniem głównym nie powołał się na nieefektywną pomoc obrońcy, który reprezentował skazanego w postępowaniu w I lub II instancji, wnioskodawca nie będzie mógł później wnieść o *habeas corpus* na tejże podstawie, gdyż wymagania proceduralne prawa stanowego nie zostały spełnione.

Do tego problemu odniósł się Sąd Najwyższy w orzeczeniu w sprawie *Martinez v. Ryan*. Sąd dopuścił możliwość powołania się przez wnioskodawcę na nieefektywną pomoc obrońcy w postępowaniu poza postępowaniem głównym jako przesłankę niemożności zaspokojenia wymogów proceduralnych postępowania przed sądem stanowym. Biorąc pod uwagę, iż w ponad połowie postępowań związanych z wnioskiem o *habeas corpus* wnioskodawcy powołują się na nieefektywną pomoc obrońców, orzeczenie to ma ogromny wpływ na doktrynę *habeas corpus*.

### 1. Introduction

The doctrine of habeas corpus is that no one should be imprisoned contrary to the law of the land. Its significance was further highlighted by the placement of the Suspension Clause in the US Constitution.<sup>1</sup> Article I section 9 clause 2 of the Constitution states that “the privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.”<sup>2</sup>

<sup>1</sup> M. Ellis, “A tale of three prejudices: Restructuring the ‘Martinez Gateway,’” *Washington Law Review* 2015, no. 19, p. 405.

<sup>2</sup> U.S.C.A. Const. Art. I § 9, cl. 2.

Habeas corpus is mainly used as a form of inquiry issued to test whether a conviction or restraint is lawful.<sup>3</sup> It allows for a reassessment of the constitutionality of a conviction or restraint before a federal court. If a person is being detained unlawfully, the procedure of habeas corpus asserts that such an individual should be released.<sup>4</sup>

Originally, under the Judiciary Act of 1789 habeas corpus relief was dedicated only to federal prisoners. In 1833 the remedy was extended to state prisoners under certain circumstances and then, in 1867, to “all persons who may be restrained of his or her liberty in violation of the Constitution or of any treaty or the law of the United States.”<sup>5</sup> Furthermore, Congress included the habeas corpus doctrine in the Judiciary Act of June 25, 1948. Later, the habeas corpus doctrine was further developed by case law rather than statutory law, which has resulted in many inconsistencies between the statute and practice.<sup>6</sup>

According to research conducted by the National Center for State Courts in 2007, ineffective assistance of counsel is the most frequently raised claim in the habeas corpus proceedings. It was raised in 81% of capital cases and in 50% of all non-capital cases.<sup>7</sup>

## 2. Habeas corpus in contemporary US law

Contemporary habeas corpus is a combination of statutory and constitutional regulations.<sup>8</sup> Habeas corpus relief is available for both state and federal prisoners, who claim that their conviction is contrary to the Constitution. However, the procedure of obtaining habeas corpus relief is different for those convicted by state and federal courts.

Prisoners in federal custody may bring their habeas corpus claims under section 2255 of the United States Code Annotated.<sup>9</sup> Section 2255, unlike section 2241,<sup>10</sup> under which state prisoners may bring their claims, is a statutory remedy distinct from habeas corpus itself, which is treated by courts as a remedy of first resort.<sup>11</sup> Federal prisoners may bring their claim under section 2241 only when federal

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<sup>3</sup> J. Kim, *Habeas Corpus*, [https://www.law.cornell.edu/wex/habeas\\_corpus](https://www.law.cornell.edu/wex/habeas_corpus) (accessed: 1.03.2019).

<sup>4</sup> M. Ellis, *op. cit.*, p. 411.

<sup>5</sup> Judiciary Act of Feb. 5, 1867, Ch. 28, § 1, 14 Stat. 385. See D.L. Stahlkopf, “A dark day for habeas corpus: successive petitions under the anti-terrorism and effective death penalty act of 1996,” *Arizona Law Review* 1998, no. 40, p. 1116.

<sup>6</sup> *Ibidem*.

<sup>7</sup> T. Zimpleman, “The ineffective assistance of counsel era,” *South Carolina Law Review* 2011, no. 63, p. 438.

<sup>8</sup> M. Ellis, *op. cit.*, pp. 409–413.

<sup>9</sup> 28 U.S.C.A. § 2255.

<sup>10</sup> 28 U.S.C.A. § 2241.

<sup>11</sup> D.L. Stahlkopf, *op. cit.*, p. 1119.

courts lack jurisdiction under section 2255.<sup>12</sup> The claim under section 2255 has further far-reaching limitations. It can only be used when the prisoner questions imposition or validity of the sentence. Otherwise, if the prisoner challenges the execution of the sentence, the claim should be brought under section 2241.<sup>13</sup>

There are two available habeas corpus claims for state prisoners. The first is available under section 2241 and the second under section 2254.<sup>14</sup> There is no clear statutory regulation limiting the possibility of their application in specific circumstances. In some jurisdictions, the courts created those rules. For example, the Seventh, Ninth, and Tenth Circuits stated that claims challenging the validity of a conviction or sentence should be brought under section 2254, whereas claims challenging the execution of the sentence should be brought under section 2241.<sup>15</sup>

Before having a chance to present their case before a federal forum, state prisoners have to fulfill the state's gate-keeping requirements.<sup>16</sup> First, the petitioner generally has to exhaust all state remedies available.<sup>17</sup> Mixed petitions, in which not all of the claims are exhausted are not permitted.<sup>18</sup>

Congress has imposed further limitations for habeas corpus relief and altered the previous procedure of obtaining habeas corpus relief. The Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA") introduced four major procedural limitations. The first one is a requirement for courts to grant habeas corpus relief under certain circumstances.<sup>19</sup> The relief may be granted only when the claim was adjudicated by the state court on the merits and

1. 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;

2. or resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the state court proceeding.<sup>20</sup>

The bar is high to demonstrate that the decision was contrary to clearly established federal laws as determined by the Supreme Court. The petitioner has

<sup>12</sup> Ibidem.

<sup>13</sup> *Freeman v. United States*, 254 F.2d 352, 353-54 (D.C. Cir. 1958); D.L. Stahlkopf, op. cit., pp. 1125-1129.

<sup>14</sup> 28 U.S.C.A. § 2254.

<sup>15</sup> *Newlin v. Helman*, 7th Cir. 1997; *Greene v. Roe*, 9th Cir. Nov. 5, 1996 (unpublished); *Moore v. Perrill*, 10th Cir. Nov. 10, 1994 (unpublished); D.L. Stahlkopf, op. cit., pp. 1125-1129. According to D.L. Stahlkopf the distinction of the proper legal basis have important implications, as under AEDPA regulation, claims brought under section 2241 and 1154 are not treated as subsequent, thus the prisoner can bring nearly identical claims subsequently without violating AEDPA's provisions, which forbid bringing subsequent habeas corpus claims.

<sup>16</sup> M. Ellis, op. cit., pp. 413-416.

<sup>17</sup> 28 U.S.C.A. § 2254.

<sup>18</sup> M. Ellis, op. cit., p. 411.

<sup>19</sup> Ibidem, pp. 412-413.

<sup>20</sup> 28 U.S.C.A. § 2254.

to demonstrate that a precedent requires the contrary outcome, and not merely that the adverse interpretation by the Supreme Court would have been possible.<sup>21</sup>

Secondly, the AEDPA poses a one year limitation period, during which a petitioner may seek habeas corpus relief pursuant to the judgment of a state court.<sup>22</sup>

The limitation period runs from:

1. the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;
2. the date on which the impediment to filing an application created by state action in violation of law is removed, if the applicant was prevented from filing by such action;
3. the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review;
4. or the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.<sup>23</sup>

Thirdly, if the applicant has failed to develop the factual basis of a claim in state court proceedings, the federal court will not perform an evidentiary hearing on the claim unless the claim relies on a new rule of constitutional law that the Supreme Court made retroactive to cases on collateral review or the claim relies on a factual predicate that could not have been previously discovered despite exercising due diligence.<sup>24</sup> The third exception to the prohibition of performing an evidentiary hearing is when

the applicant shows that the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable fact-finder would have found the applicant guilty of the underlying offense.<sup>25</sup>

Finally, the AEDPA prohibited successive petitions for habeas corpus relief in most circumstances.<sup>26</sup>

The absence of procedural default is another major gate-keeping requirement for the petitioner. Procedural default arises when the state court declines to address a prisoner's federal claims because the prisoner failed to meet a state procedural requirement.<sup>27</sup> According to the Supreme Court "a federal court will not review the merits of claims, including constitutional claims, that a state court

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<sup>21</sup> *Matteo v. Superintendent*, SCI Albion, 3d Cir. 1999; H. Mundy, "Rid of habeas corpus? How ineffective assistance of counsel has endangered access to the writ of habeas corpus and what the Supreme Court can do in *Maples* and *Martinez* to restore it," *Creighton Law Review* 2011, no. 45, pp. 199–200.

<sup>22</sup> H. Mundy, *op. cit.*, pp. 195–199.

<sup>23</sup> 28 U.S.C.A. § 2241.

<sup>24</sup> *Ibidem*.

<sup>25</sup> 28 U.S.C.A. § 2254.

<sup>26</sup> A.M. Voigts, "Narrowing the eye of the needle: Procedural default, habeas reform, and claims of ineffective assistance of counsel," *Columbia Law Review* 1999, no. 99, p. 1127.

<sup>27</sup> *Coleman v. Thompson*, 501 U.S. 722, (1991), holding modified by *Martinez v. Ryan*, 566 U.S. 1, (2012); M. Ellis, *op. cit.*, pp. 413–416.

declined to hear because the prisoner failed to abide by a state procedural rule.”<sup>28</sup> Moreover, a state court’s invocation of a procedural rule to deny a prisoner’s claims precludes federal review of the claims if, among other requisites, the state procedural rule is a nonfederal ground adequate to support the judgment and the rule is firmly established and consistently followed.<sup>29</sup>

However, it is possible to overcome the procedural default. One of the two options for the petitioner is to satisfy the “cause-and-prejudice test,” established in *Davis v. United States* in 1973.<sup>30</sup> The petitioner has to establish good cause for a failure to follow “a state procedural rule and actual prejudice resulting therefrom.”<sup>31</sup>

The second option for the petitioner to overcome the procedural default is to prove a fundamental miscarriage of justice. This solution is based on an assumption that the miscarriage of justice resulted in a conviction of a person who is innocent.<sup>32</sup>

### 3. The Strickland test for the ineffective assistance of counsel

In many cases in which the defendant invokes procedural default, the fulfillment of the “cause” element is often based on the ineffective assistance of counsel claim.<sup>33</sup> The effective assistance of counsel is guaranteed by the Sixth Amendment of the US Constitution. In *Kimmelman v. Morrison*, the Supreme Court stated that the right to a counsel is the right to an effective assistance of counsel.<sup>34</sup> It also applies to states’ proceedings through the Fourteenth Amendment.<sup>35</sup> It often starts before the selection of a jury, lasts until the exhaustion of direct appeals, and extends to all aspects of the process.<sup>36</sup> The Supreme Court in *Strickland v. Washington* stated that the “government violates the right to effective assistance when it interferes in certain ways with the ability of counsel to make independent decisions about how to conduct the defense.”<sup>37</sup>

The ineffective assistance of counsel claim has many forms and may be applied to all aspects of the trial and appellate process as well as the limited portion of post-conviction aspects.<sup>38</sup> It may be evinced in counsel’s behavior like failure

<sup>28</sup> *Martinez v. Ryan*, 566 U.S. 1, 9, 132 S.Ct. 1309, 1316.

<sup>29</sup> *Ibidem*.

<sup>30</sup> *Davis v. United States*, 411 U.S. 233, 242 (1973).

<sup>31</sup> H. Mundy, *op. cit.*, pp. 199–204.

<sup>32</sup> *Ibidem*.

<sup>33</sup> *Ibidem*.

<sup>34</sup> *Kimmelman v. Morrison*, 477 U.S. 365, 377 (1986); A.M. Voigts, *op. cit.*, p. 1119.

<sup>35</sup> *Gideon v. Wainwright*, 372 U.S. 335, 342 (1963).

<sup>36</sup> T. Zimpleman, *op. cit.*, p. 439.

<sup>37</sup> *Strickland v. Washington*, 466 U.S. 668, 686 (1984).

<sup>38</sup> T. Zimpleman, *op. cit.*, p. 439.

to move for the dismissal, investigative failures, poor evidence strategy, and other forms of incompetence.

To prove the ineffective assistance of counsel, the petitioner has to satisfy the two-pronged test from *Strickland v. Washington*.<sup>39</sup> The first prong requires establishing the deficient performance of counsel. The petitioner has to demonstrate that the “counsel made errors so serious that counsel was not functioning as the counsel guaranteed the petitioner by the Sixth Amendment.”<sup>40</sup> In *Strickland v. Washington*, the Supreme Court stated that the standard for counsel’s performance is that of reasonably effective assistance. To establish ineffectiveness of counsel, the petitioner has to show that “counsel’s representation fell below an objective standard of reasonableness” in relation to facts of the specific case.<sup>41</sup> For example, the effectiveness of a counsel may be influenced by the defendant’s behavior.<sup>42</sup>

The second prong requires establishing that the deficient performance prejudiced the defense.<sup>43</sup> The petitioner has to show that “counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.”<sup>44</sup> The reason of establishing this prong is compliant with the Sixth Amendment provision to “ensure that a defendant has the assistance necessary to justify reliance on the outcome of the proceeding.”<sup>45</sup> Only the deficiencies of counsel’s performance that negatively impact the outcome of the case may satisfy the second prong of the *Strickland* test.<sup>46</sup> As counsels errors are infinitely various and their harmfulness depends on the facts of a specific case, the petitioner has to affirmatively prove prejudice.<sup>47</sup> The Supreme Court pointed out that “it is not enough for the defendant to show that the errors had some conceivable effect on the outcome of the proceeding.”<sup>48</sup>

The appropriate test for proving the prejudice depends on the defendant’s showing that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.<sup>49</sup>

The court further explained that reasonable probability is “a probability sufficient to undermine confidence in the outcome.”<sup>50</sup>

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<sup>39</sup> *Strickland v. Washington*.

<sup>40</sup> *Ibidem*.

<sup>41</sup> *Ibidem*.

<sup>42</sup> *Ibidem*.

<sup>43</sup> *Ibidem*.

<sup>44</sup> *Ibidem*.

<sup>45</sup> *Ibidem*.

<sup>46</sup> *Ibidem*.

<sup>47</sup> *Ibidem*.

<sup>48</sup> *Ibidem*.

<sup>49</sup> *Ibidem*.

<sup>50</sup> *Ibidem*.

#### 4. Ineffective assistance of counsel in post-conviction proceedings

The federal and state practices involving the ineffective assistance of counsel are not homogenous with respect to the right moment of the process to raise this claim. In federal proceedings the rule is to raise the claim of the ineffective assistance of counsel in the collateral review. However, there are exceptions to this rule. The ineffective assistance of counsel rule can be raised in a direct review if the record allows the court to meticulously review the claim.<sup>51</sup> In many cases it is impossible to unequivocally recognize the ineffective assistance of counsel, because on that stage of the process the evidence of possible counsel error is not sufficiently developed.<sup>52</sup> Moreover, if the same lawyer is in a direct appeal, sometimes it is impossible to identify their ineffectiveness.<sup>53</sup> Following the above-mentioned reasoning, many states have applied similar solutions in their proceedings related to the ineffective assistance of counsel claim.<sup>54</sup>

However, the requirement of raising the claim of ineffective assistance of counsel in collateral proceedings may pose a problem. The Supreme Court in the decision in *Kimmelman v. Morrison* pointed out that

because collateral review will frequently be the only means through which an accused can effectuate the right to counsel, restricting the litigation of some Sixth Amendment claims to trial and direct review would seriously interfere with an accused's right to effective representation.<sup>55</sup>

The Supreme Court has held multiple times that the right to a counsel does not extend to collateral attacks upon conviction. That includes a post-conviction appeal.<sup>56</sup> For example, in *Coleman v. Thompson* the Supreme Court stated that the counsel's deficient performance does not constitute a basis for a procedural default reversal in the post-conviction claim; thus, a petitioner cannot claim constitutionally ineffective assistance of counsel in such proceedings.<sup>57</sup> The Supreme Court stated that if the defendant was not deprived of his or her right to effective counsel, the defendant should "bear the risk of attorney error that results in a procedural default."<sup>58</sup>

The Supreme Court further explained that, an attorney's error does not constitute "cause," because the attorney acts as the petitioner's agent.<sup>59</sup> The "cause" equals a violation of the petitioner's right to a counsel, which does not depend on the gravity of the attorney's error.<sup>60</sup> Only when a

<sup>51</sup> A.M. Voigts, op. cit., p. 1127.

<sup>52</sup> Ibidem.

<sup>53</sup> Ibidem.

<sup>54</sup> Ibidem.

<sup>55</sup> Ibidem, p. 1127.

<sup>56</sup> H. Mundy, op. cit., pp. 203–207.

<sup>57</sup> *Coleman v. Thompson*.

<sup>58</sup> Ibidem.

<sup>59</sup> Ibidem.

<sup>60</sup> Ibidem.

petitioner defaults a claim as a result of the denial of the right to effective assistance of counsel, the State, which is responsible for the denial as a constitutional matter, must bear the cost of any resulting default and the harm to state interests that federal habeas review entails.<sup>61</sup>

The above-mentioned assertion may pose a question: what happens when the defendant is eligible to raise the ineffective assistance of counsel claim only in the collateral proceeding and the counsel representing the defendant in such a proceeding does not raise the claim? The reasoning of the Supreme Court in *Coleman v. Thomson* follows that the petitioner may not raise that claim in the habeas corpus review.

That question was considered by the Supreme Court in the case of *Martinez v. Ryan*.<sup>62</sup> Martinez was a prisoner in Arizona. According to Arizona law, prisoners may raise the ineffective assistance of counsel claim only in collateral proceedings. Martinez's counsel did not raise the claim in the collateral review.<sup>63</sup> Subsequently, Martinez, represented by a new lawyer, raised a claim in the habeas corpus review that he had received ineffective assistance of counsel during the trial and the first stage of collateral proceeding.<sup>64</sup> The United States District Court of Arizona denied his petition on the grounds that he "had not shown cause to excuse the procedural default, because under *Coleman v. Thompson*, an attorney's errors in a post-conviction proceeding do not qualify as cause for a default."<sup>65</sup> The court of appeal affirmed this ruling and the case was brought before the Supreme Court.<sup>66</sup>

The Supreme Court in its holding created a narrow exception to the *Coleman* bar. The Court stated that

claims of ineffective assistance of trial counsel that must be raised in an initial-review collateral proceeding, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial if, in the initial-review collateral proceeding, there was no counsel or counsel in that proceeding was ineffective.<sup>67</sup>

In other words, a petitioner can demonstrate "cause" through the deficient performance of post-conviction relief counsel.<sup>68</sup>

However, Martinez's rule has a very narrow application. It does not extend to any other attorney's errors beyond the first occasion when it is possible for the prisoner to raise a claim of ineffective assistance of counsel.<sup>69</sup> The Court further recognized the difference between initial-review and other types of collateral-review

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<sup>61</sup> *Ibidem*.

<sup>62</sup> *Martinez v. Ryan*.

<sup>63</sup> *Ibidem*.

<sup>64</sup> *Ibidem*.

<sup>65</sup> *Ibidem*.

<sup>66</sup> *Ibidem*.

<sup>67</sup> *Ibidem*.

<sup>68</sup> M. Ellis, *op. cit.*, p. 406.

<sup>69</sup> *Martinez v. Ryan*.

proceedings. The initial-review bears a special significance for the defendant, since when an attorney errs in initial-review collateral proceedings, it precludes any further review of the prisoner's claim.<sup>70</sup> Thus it is "likely that no state court at any level will hear the prisoner's claim."<sup>71</sup>

In the Martinez case, the Supreme Court created a four-pronged test upon which the "cause" can be established despite the procedural default. The first prong requires the petitioner to demonstrate that the underlying ineffective-assistance-of-trial-counsel claim is a substantial one, thus they must demonstrate that the claim has merit.<sup>72</sup> To fulfill the second prong, the petitioner must demonstrate that the "cause" was constituted by the absence of a counsel or an ineffectiveness of counsel. Moreover, the petitioner has to demonstrate that counsel's performance prejudiced the petitioner's defense.<sup>73</sup> The third prong requires that the state post-conviction proceeding was the first one in which the defendant could raise the ineffective assistance claim.<sup>74</sup>

The fourth prong requires a petitioner to show that the Martinez test applies to a state in which a petitioner was convicted, hence a specific state denies ineffective assistance of counsel claim in a direct appeal.<sup>75</sup> This prong was later broadened by the Supreme Court in 2013 in the *Trevino v. Thaler* case. The court stated that the fourth prong should encompass not only states that deny permission to raise the claim on direct appeal but also states that "in theory grant permission but, as a matter of procedural design and systemic operation, deny a meaningful opportunity to do so is a distinction without a difference."<sup>76</sup>

## 5. Conclusion

Habeas corpus relief may seem to be widely accessible for anyone who questions the constitutionality of their conviction. However, when a prisoner wishes to take advantage of their right to question state conviction or execution of the sentence, they may come across many procedural obstacles posed by state law, AEDPA regulation, and case law. All three significantly narrow down the availability of habeas corpus relief for prisoners. The consequences of failing to comply with the procedural requirements may be detrimental for a petitioner, as the court may reject the claim without review on the merits.<sup>77</sup>

<sup>70</sup> Ibidem.

<sup>71</sup> Ibidem.

<sup>72</sup> M. Ellis, op. cit., pp. 422–440.

<sup>73</sup> Ibidem.

<sup>74</sup> Ibidem.

<sup>75</sup> Ibidem.

<sup>76</sup> *Trevino v. Thaler*, 569 U.S. 413, 133 (2013); M. Ellis, op. cit., p. 428.

<sup>77</sup> H. Mundy, op. cit., p. 186.

These restrictions may be especially burdensome in the case of ineffectiveness of petitioner's counsel. To prove ineffective assistance of counsel, the petitioner has to meet the restrictions posed by for example procedural default doctrine and the Strickland test, thus demonstrate cause and actual prejudice and prove that he or she did not obtain the assistance of counsel diligent enough to fulfill the Sixth Amendment minimum. Otherwise, the petitioner can try to prove that the mishandling of their case resulted in a fundamental miscarriage of justice.

The petitioner is often oblivious of the above-mentioned legal restrictions on the accessibility to a habeas corpus claim and may be blameless for not fulfilling some of them. This was especially problematic in cases when the petitioner was barred from questioning the effectiveness of his or her trial counsel in a habeas corpus review, because, on the grounds of *Coleman v. Thompson*, the inadequate assistance of counsel at an initial-review collateral proceeding could not be recognized as a "cause" for the prisoner's procedural default.

The Supreme Court resolved this matter in the revolutionary decision from *Martinez v. Ryan*. The Court allowed for treating an inefficient assistance of post-conviction counsel as a cause that could reverse procedural default, however under some restrictions. For petitioners, a chance for analysis by the federal court of previously adjudicated ineffective assistance of counsel claims may be the only and last chance to contest their unfair conviction. Taking into consideration the amount of ineffective assistance of counsel claims in a habeas corpus review, the *Martinez v. Ryan* case may influence a fair amount of individuals seeking their constitutional rights.

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