

PREVIEW OF FIRST THREE PAGES
OF CHAPTER THREE

AEDPA REVIEW STANDARDS [3.00.0]:

Prior to the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), federal courts reviewed de novo state court decisions on questions of law and mixed questions of law and fact. A state court’s decision involving a question of fact was reviewed under a presumption of correctness standard. But with the enactment of AEDPA on April 26, 1996, came significant changes in how federal courts review state court adjudications. The present standards of review are set forth in § 2254 and provide as follows:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--

(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; or

(2) 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.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

The application of these new standards of review – or limitations on relief – is the subject of this chapter. *See Jimenez v. Walker*, 458 F.3d

130 135 n.2 (2d Cir. 2006) (“§ 2254(d) may more accurately be called a ‘limitation on relief’ than a deferential ‘standard of review’”).

A. CASES GOVERNED BY AEDPA [3.10.0]: Whether AEDPA applies to a state prisoner’s federal petition turns on what was before the federal court on April 26, 1996, the date AEDPA was enacted. If, on that date, the state prisoner had before a federal court an application for habeas relief seeking an adjudication on the merits of the petitioner's claims, then the standard of review provisions of AEDPA do not apply. An application filed after April 26, 1996, is subject to AEDPA, even if other filings by the same applicant – such as, for example, a request for the appointment of counsel or a motion for a stay of execution – were presented to the federal court prior to AEDPA's effective date. *Woodford v. Garceau*, 538 U.S. 202, 207 (2003).

A complication arises where the petitioner files a pre-AEDPA petition containing exhausted and unexhausted claims, the unexhausted claims are dismissed and the exhausted claims are held in abeyance, and the petitioner post-AEDPA amends his petition to include the previously unexhausted claims. In this situation, the initially exhausted claims in the pre-AEDPA petition are not governed by AEDPA, even though re-filed after AEDPA’s effective date. *Stankewitz v. Woodford*, 365 F.3d 706, 713 (9th Cir. 2004); *cf. Williams v. Calderon*, 83 F.3d 281 (9th Cir. 1996). It is an open question whether AEDPA applies to the claims that were unexhausted at the initial filing, and then re-filed after AEDPA’s effective date. *Stankewitz v. Woodford*, 365 F.3d 706, 713 (9th Cir. 2004).

➤ COMMENT: Generally, when an original habeas action is dismissed, there is no pending petition to which a second petition can relate back or amend. *Neverson v. Bissonette*, 261 F.3d 120, 126 (1st Cir. 2001); *Dils v. Small*, 260 F.3d 984, 986 (9th Cir. 2001); *Marsh v. Soares*, 223 F.3d 1217, 1219-20 (10th Cir. 2000); *Warren v. Garvin*, 219 F.3d 111, 114 (2d Cir. 2000); *Nyland v. Moore*, 216 F.3d 1264, 1266 (11th Cir. 2000); *Jones v. Morton*, 195 F.3d 153, 160-61 (3d Cir. 1999). Thus, a petitioner cannot avoid the AEDPA by relating back a post-AEDPA petition to a prior, previously dismissed pre-AEDPA petition. *Hull v. Kyler*, 190 F.3d 88, 103-04 (3d Cir. 1999) (later petition

governs for purposes of applying AEDPA notwithstanding a prior petition that was dismissed pre-AEDPA without prejudice; the prior petition is treated as if it never existed); *Sanchez v. Gilmore*, 189 F.3d 619, 623 (7th Cir. 1999) (AEDPA applied to habeas petition filed after its enactment, though petitioner had filed a pre-AEDPA petition, which remained unexhausted). The Ninth Circuit in *Griffey v. Lindsey*, 345 F.3d 1058 (9th Cir. 2003), held that an exception to this rule exists in the very limited circumstance where the petitioner is able to have the judgment in the prior action set aside under either Federal Rule of Civil Procedure 59(e) or 60(b). But because the petitioner died during the pendency of a petition for rehearing, the opinion was later vacated. *Griffey v. Lindsey*, 349 F.3d 1157 (9th Cir. 2003).

B. PRE-AEDPA [3.20.0]: Prior to the effective date of AEDPA (April 26, 1996), federal courts gave no deference to a state court's resolution of a question of law or mixed question of fact and law. *See, e.g., Miller v. Fenton*, 474 U.S. 104, 112 (1985).

C. QUESTIONS OF LAW / MIXED QUESTIONS OF LAW AND FACT [3.30.0]: The AEDPA modified "the role of federal habeas courts in reviewing petitions filed by state prisoners" by placing "a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus with respect to claims adjudicated on the merits in state court." *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (O'Connor, J., concurring [speaking for a majority of the Court]).

1. Methodology [3.31.0]:

- a. Purely Legal And Mixed Questions Of Law Distinguished [3.31.1]: Challenges to *purely legal questions* resolved by the extant state court record are reviewed under § 2254(d)(1). The question on review is (a) whether the state court's decision contradicts a holding of the Supreme Court or reaches a different result on a set of facts materially indistinguishable from those at issue in a decision of the Supreme Court; or (b) whether the state court unreasonably applied controlling Supreme Court precedent to the facts of the petitioner's case.