

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KEENEY, SUPERINTENDENT, OREGON STATE PENITENTIARY v. TAMAYO-REYES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

No. 90-1859. Argued January 15, 1992—Decided May 4, 1992

In collateral state-court proceedings, respondent, a Cuban immigrant with little education and almost no knowledge of English, alleged, *inter alia*, that his plea of *nolo contendere* to first-degree manslaughter had not been knowing and intelligent and therefore was invalid because his court-appointed translator had not translated accurately and completely for him the *mens rea* element of the crime in question. The state court dismissed the petition after a hearing, the Oregon Court of Appeals affirmed, the State Supreme Court denied review, and the Federal District Court denied respondent habeas corpus relief. However, the Court of Appeals held that he was entitled to a federal evidentiary hearing on the question whether the *mens rea* element of the crime was properly explained to him, since the record disclosed that the material facts concerning the translation were not adequately developed at the state-court hearing, see *Townsend v. Sain*, 372 U.S. 293, 313, and since postconviction counsel's negligent failure to develop those facts did not constitute a deliberate bypass of the orderly procedure of the state courts, see *id.*, at 317; *Fay v. Noia*, 372 U.S. 391, 438.

Held: A cause-and-prejudice standard, rather than *Fay's* deliberate bypass standard, is the correct standard for excusing a habeas petitioner's failure to develop a material fact in state-court proceedings. *Townsend's* holding that the *Fay* standard is applicable in a case like this must be overruled in light of more recent decisions involving, like *Fay*, a state procedural default, in which this Court has rejected the deliberate bypass standard in favor of a standard of cause and prejudice. See, e. g., *Wainwright v. Sykes*, 433 U.S. 72, 87-88, and n. 12; *Coleman v. Thompson*, 501 U.S. ___, ___. It would be irrational to

distinguish between failing to properly assert a federal claim in state court and failing in state court to properly develop such a claim, and to apply to the latter a remnant of a decision that is no longer upheld with regard to the former. Moreover, the concerns of finality, comity, judicial economy, and channeling the resolution of claims into the most appropriate forum that motivated the rejection of the *Fay* standard in the state procedural default cases are equally applicable to this case. Finally, applying the cause-and-prejudice standard here also advances uniformity in habeas corpus law. Thus, respondent is entitled to a federal evidentiary hearing if he can show cause for his failure to develop the facts in the state-court proceedings and actual prejudice resulting from that failure, or if he can show that a fundamental miscarriage of justice would result from failure to hold such a hearing. See, e. g., *McCleskey v. Zant*, 499 U.S. ___, ___. Pp.3-10.

KEENEY v. TAMAYO-REYES

Syllabus

926 F.2d 1492, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and SCALIA, SOUTER, and THOMAS, JJ., joined. O'CONNOR, J., filed a dissenting opinion, in which BLACKMUN, STEVENS, and KENNEDY, JJ., joined. KENNEDY, J., filed a dissenting opinion.