No. _____

In the Supreme Court of the United States

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, *Petitioner*

v.

MATTHEW REEVES, *Respondent.*

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE
QUESTION PRESENTED

Federal courts reviewing a state court decision under 28 U.S.C. § 2254(d) must not be "read[y] to attribute error" to a state court for at least two reasons. *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002). First, federal courts are to "presum[e] that state courts know and follow the law." *Id.* And, second, such skeptical review is "incompatible with § 2254(d)'s highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." *Id.* (cleaned up).

The state court here provided several pages of analysis regarding the applicable standard for assessing Matthew Reeves's ineffective assistance of counsel claim, and the court's opinion included numerous quotes from and citations to precedents from the Eleventh Circuit and this Court. The state court ultimately concluded that, "[i]n *this* case, Reeves's failure to call his attorneys to testify is fatal to his claims of ineffective assistance of counsel." Pet.App.272a (emphasis added).

The Eleventh Circuit read the state court to have held that, "in *every* case," failure to call counsel to testify is fatal to an ineffective assistance of counsel claim. And because the state court had purportedly created and used this per se rule that unreasonably applied *Strickland v. Washington,* 466 U.S. 668 (1984), the Eleventh Circuit was "unconstrained by § 2254's deference" and was free to assess Reeves's claim de novo. Pet.App.31a. The court then granted habeas relief.

The question presented is whether the Eleventh Circuit violated § 2254(d) by readily attributing error to the state court.

STATEMENT OF RELATED PROCEEDINGS

Reeves v. Comm'r, Ala. Dep't of Corr., No. 19-11779 (United State Court of Appeals for the Eleventh Circuit) (opinion filed on November 10, 2020 reversing in part denial of habeas relief and remanding district court's judgment).

Reeves v. Dunn, No. CV 17-0061-KD-MU (United States District Court for the District of Southern Alabama) (opinion filed January 8, 2019 denying petition for writ of habeas corpus).

Reeves v. Alabama, No. 16–9282 (Supreme Court of the United States) (denial of petition for writ of certiorari filed November 13, 2017).

Reeves v. State, No. CR–13–1504 (Court of Criminal Appeals of Alabama) (opinion filed June 10, 2016 affirming circuit court's denial of post-conviction relief).

Reeves v. State, No. CC-1997-31 (Circuit Court of Dallas County, Alabama) (opinion filed October 26, 2009 denying post-conviction relief).

Reeves v. State, No. CR-98-0777 (Court of Criminal Appeals of Alabama) (opinion filed October 27, 2000 affirming convictions and sentences on direct appeal).

Reeves v. State, no. CC-97-31 (Circuit Court of Dallas County, Alabama) (sentencing order filed August 24, 1998).

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STATEMENT OF JURISDICTION

The Eleventh Circuit entered judgment granting habeas relief on November 10, 2020. The jurisdiction of this Court is timely invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

Section 2254 of Title 28 of the United States Code provides, in pertinent part:

> (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[.]

INTRODUCTION

Under § 2254(d), when federal courts review the handiwork of their counterparts in the States, "state-court decisions" must "be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002). That principle honors "the presumption that state courts know and follow the law," *id.*, and ensures "that state courts are the principal forum for asserting constitutional challenges to state convictions," *Harrington v. Richter*, 562 U.S. 86, 103 (2011). Accordingly, any "readiness" by the federal court "to attribute error" to the state court (*Woodford*, 537 U.S. at 24) is offensive to our federalism and strikes at "the basic structure of federal habeas jurisdiction," *Harrington*, 562 U.S. at 103.

Because the Eleventh Circuit in this case proved all too ready to attribute error to the state court, this Court's review and summary reversal are warranted. Rather than defer to the state court's judgment, the Eleventh Circuit read error into the state-court opinion, concluding that the state court held what it never held and said what it never said. And if the federal court's approach is not checked, state courts—which already carry "very heavy" caseloads, *Johnson v. Williams*, 568 U.S. 289, 300 (2013)—will be forced to bear the burden of producing bulletproof post-conviction opinions impervious to mischaracterization. All this despite this Court's unequivocal precedent requiring precisely the opposite.

This case involves Reeves's claim that his trial counsel were constitutionally deficient for not hiring an expert to evaluate him for intellectual disability. But after analyzing "voluminous records indicat[ing] that Reeves was within the borderline range of intellectual functioning," and being provided access to a report prepared by

a state clinical psychologist who helpfully synthesized those records into powerful mitigating evidence, Reeves's counsel decided not to further investigate whether Reeves's intellectual functioning fell below the borderline range. Pet.App.94a. Reeves argues this decision rendered counsel constitutionally deficient, primarily because an expert was available who would have testified Reeves was intellectually disabled—despite the substantial evidence indicating the opposite. No record evidence explains why counsel opted not to hire this expert because, during post-conviction proceedings, Reeves opted not to call his attorneys to provide their rationale. But circumstantial evidence suggests counsel behaved reasonably, and each court preceding the Eleventh Circuit concluded that Reeves had not rebutted the strong presumption that counsel exercised reasonable professional judgment.

The Eleventh Circuit nevertheless granted habeas relief, but only after reading error into the state court opinion and thus finding itself "unconstrained by § 2254's deference." Pet.App.31a. First, the Eleventh Circuit interpreted one sentence of dicta—plucked from a lengthy block quote—as promulgating a "categorical rule" that no *Strickland* claim can succeed unless trial counsel testifies. Pet.App.24a (citing *Strickland v. Washington*, 466 U.S. 668 (1984)). This despite the fact that the quote's context undermines the federal panel's interpretation.

Next, the federal court misquoted the state court's opinion to suggest the state court had relied on the per se rule. The state court held, after explaining at length petitioner's burden to present evidence of counsel's ineffective assistance, that "[i]n *this* case, Reeves's failure to call his attorneys to testify is fatal to his claims . . . ."

Pet.App.272a (emphasis added). The state-court opinion thus deliberately cabined its holding to the facts of "*this* case."

That language was nowhere to be found when the Eleventh Circuit declared that the state court had "concluded, based on this categorical rule, that Mr. Reeves' 'failure to call his attorneys to testify [was] *fatal* to his claims.'" Pet.App.24a (emphasis from Eleventh Circuit). That is, the Court of Appeals omitted the state court's language applying the holding to the facts "in this case"—language which directly contradicts any application of a "per se rule."

Once the Eleventh Circuit held that the state court applied a "categorical rule" as a "per se bar to relief," the federal court then held that the state court "unreasonably applied *Strickland*." *Id.* And so the Eleventh Circuit was "unconstrained" by AEDPA and free to review Reeves's claims de novo. Sitting where the state court once sat, the Eleventh Circuit held Reeves's counsel constitutionally deficient and granted relief.

This approach strikes at the heart of AEDPA. If federal courts are permitted to so easily read error into state-court opinions, federal courts will increasingly find themselves "unconstrained by § 2254's deference." Pet.App.31a. And state courts will increasingly find that they are merely "a preliminary step for a later federal habeas proceeding." *Harrington*, 562 U.S. at 103. This Court should summarily reverse the Eleventh Circuit to again make clear that federal courts may not use tenuous interpretations of state-court opinions to circumvent AEDPA's constraints.

STATEMENT

A. Murder of Willie Johnson

In late November 1996, petitioner Matthew Reeves and his younger brother Julius, along with associates Brenda Suttles and her cousin, gathered at Suttles's house in Selma, Alabama. Pet.App.193a. There the foursome agreed to go "looking for some robberies." At Julius's suggestion, the group agreed to rob a drug dealer who lived in a neighboring town. Julius retrieved a shotgun and gave it to Reeves. *Id*.

Their car died en route, and the group sat stranded for hours. By chance a good Samaritan, Willie Johnson, offered to tow the car back to Selma. Once Johnson had brought the group back to the Reeveses' home, he requested $25 for his trouble. None in the group had cash, so Julius offered a ring from his girlfriend's house instead—if Johnson would just help him get it. Julius informed the other members of his party Johnson would be their robbery victim. Pet.App.194a.

Brenda, Julius, and Reeves traveled with Johnson to retrieve the ring. Julius sat up front with Johnson, and Brenda climbed in the rear bed of the truck. Reeves, concealing the shotgun behind his leg, jumped into the rear bed with Brenda as soon as Johnson started the ignition. They retrieved the ring without incident, and Johnson drove the trio back to the Reeveses' house. Pet.App.195a.

Following the group's directions, Johnson stopped in an alley behind the Reeveses' home. Reeves then "placed the shotgun in through the sliding back window of the truck and fired one shot into the neck of Willie Johnson." Pet.App.297a. Slumped over the driver's seat, Johnson bled heavily and made "gagging" noises.

Pet.App.196a. Reeves told Julius and Brenda to "get his money." Pet.App.195a. They took what they could and fled.

Back at the Reeveses' home, Reeves instructed Julius and Brenda to change out of their bloodstained clothes. While they changed, the trio was "jumping and hollering and celebrating about all the stuff [they] got from Johnson." Pet.App.196a. (cleaned up). The group departed to Brenda's house. Reeves saw his girlfriend on the way and told her to tell police he had spent the day with her. *Id.*

At Brenda's house the trio divided the spoils and continued to celebrate. Pet.App.196a–197a. Reeves boasted to several witnesses he had murdered Johnson, and, "throughout the night . . . partied and danced to rap music and occasionally mocked the horrible death of the victim by flinching and jerking." Pet.App.297a. Reeves also announced the murder would earn him a "teardrop"—a "gang-related sign that indicates a gang member has committed murder." *Id.* At least one witness testified Reeves still had not cleaned Johnson's blood off his hands. Pet.App.197a.

Around 2:00 AM the following morning, police found Johnson's body slumped across the seat of his truck, his pockets turned out and a pool of blood beneath him. *Id.*. Reeves was arrested and indicted for multiple offenses, including first-degree robbery and murder made capital.

B. Reeves's Trial and Sentencing

The trial court appointed Blanchard McLeod, Jr. and Marvin W. Wiggins to serve as Reeves's defense counsel. Pet.App.166a. In mid-September 1997, McLeod petitioned the trial court for funds to hire Dr. Goff, a clinical neuropsychologist, to "evaluate, test, and interview [Reeves] for testimony at the trial." *Id.* McLeod

explained "the State just simply dumped [Reeves's records] on [him]," Pet.App.167a, so he needed an expert to "compile this information, correlate this information, interview the client and present this information in an orderly and informative fashion to the jury during the mitigation phase," Pet.App.3a–4a. The trial court denied McLeod's request the following day, but granted his renewed request a month later. Pet.App.167a.

Two things happened around this time that are relevant to Reeves's *Strickland* claim. First, during the month before the court granted McLeod's request, McLeod withdrew from the case and the court appointed Thomas Goggans to replace him.

Second, and more important, Goggans then "petitioned the court to order the release of all of Reeves's mental health records from Taylor Hardin Secure Medical Facility." Pet.App.168a. These records provided extensive information about Reeves's background and psychoanalysis, "including records related to an evaluation performed by a clinical psychologist, Dr. Kathy Ronan, a few months earlier." Pet.App.5a. These records (and later, Dr. Ronan's trial testimony) provided mitigating evidence regarding Reeves's troubled upbringing, low intelligence, and behavioral disorders. The records also suggested that Reeves was not intellectually disabled.

Goggans further "submitted discovery requests of any and all inculpatory and exculpatory evidence possessed by the State." Pet.App.168a. Goggans and Wiggins "obtained extensive documentation from Reeves's childhood and adolescent years." Pet.App.94a. Among other things, the records showed "Reeves was within the borderline range of intellectual functioning . . . and these records further evidence[d]

that Reeves was *denied* special education services for intellectual disability and was instead recommended for emotional conflict and behavioral services." *Id.* (emphasis added).

After gaining access to these records and Dr. Ronan's report, Reeves's counsel decided not to hire Dr. Goff or further investigate Reeves's alleged intellectual disability. Pet.App.315a–316a. The record does not make clear why counsel reached this decision.

But the record does reveal that counsel presented evidence, supported by the voluminous documentation from the Taylor Hardin records, that Reeves "came from a very turbulent upbringing," had numerous behavioral difficulties from an early age, and that he functions in the borderline range of intelligence. Pet.App.103a–105a. During the penalty phase of his trial, Reeves called Detective Pat Grindle, Marzetta Reeves (his mother), and Dr. Ronan to testify. "These witnesses testified regarding the Defendant's formative years, and the turbulent environment in which he was raised." Pet.App.298a–299a. Det. Grindle and Ms. Reeves testified to Reeves's early educational difficulties and troubles with law enforcement, the extraordinarily poor conditions in which he grew up, his lack of family structure—including having only met his father on two occasions in his life, Pet.App.101a—and his relative success in more structured environments, Pet.App.299a–300a.

Dr. Ronan expounded on Reeves's "very turbulent upbringing." Pet.App.301a–302a. She explained Reeves had virtually no structure in his home and lived in an environment so dangerous it led him to develop a personality disorder. Doc. 23-8 at

140–42, 150.[1] She also told the judge and jury how Reeves's mother "had a drinking problem" and failed to procure basic counseling and medical services for Reeves. *Id.* at 142.

Dr. Ronan further testified to Reeves's low intelligence. Pet.App.301a. She noted that, based on two intelligence tests given at different points in his life, Reeves was in the "borderline range of intelligence," but "was not in a level that they would call him mental retardation [sic]." Pet.App.302a.

In their closing argument, Reeves's counsel emphasized Reeves's poor home environment and his perpetual difficulties in school. Doc. 23-8 at 174–184. Among other instructions, the court specifically told the jurors that "[i]f [they] find that the Defendant's level of intelligence is on the borderline, [they] must consider that to be a mitigating circumstance." *Id.* at 197. Following a short deliberation, the jury "recommend[ed] that the Defendant, Matthew Reeves, be punished by death. The vote [was] as follows: death, ten; life without parole, two." *Id.* at 207.

C. Direct Appeal Proceedings

Reeves appealed to the Court of Criminal Appeals of Alabama (CCA). The CCA rejected Reeves's several claims of various improprieties in his conviction. 87 So.2d 18 (Ala. Crim. App. 2000). Among these was Reeves's contention that the trial court "erred in failing to consider [Reeves's] low level of intelligence as a mitigating circumstance." 807 So.2d at 47. The CCA explained "the trial court expressly indicated that

[1] Record citations refer to the docket in *Reeves v. Dunn*, No. CV 17-0061-KD-MU (United States District Court for the Southern District of Alabama). The number following "Doc." refers to the specific docket entry. A docket-entry number followed by a hyphen and a separate number indicates an exhibit, the latter figure representing the specific exhibit number in the docket entry.

it had considered [Reeves's] 'low intellectual level,'" and "specifically instructed the jury that it must consider as a mitigating circumstance [Reeves's] proffered evidence of his 'borderline' intelligence." *Id.* Though the trial court "considered the appellant's proffered evidence of his low intellectual level," the CCA explained, it had nevertheless "concluded that this evidence did not rise to the level of a mitigating circumstance." *Id.* at 49.

D. State Post-Conviction Proceedings

1. Trial

Reeves sought state post-conviction relief in the Circuit Court of Dallas County pursuant to Rule 32 of the Alabama Rules of Criminal Procedure. Reeves alleged several theories to support an ineffective-assistance-of-counsel claim. Pet.App.307a. Two remain relevant:

> (a) Trial Counsel failed to procure necessary expert assistance regarding Mr. Reeves' low cognitive functioning and potential mental retardation in addition to general mitigation evidence.
>
> (b) Trial Counsel provided ineffective assistance of counsel in relying on Dr. Ronan during the Sentencing phase of Mr. Reeves' Trial.

Id.

The circuit court conducted a two-day evidentiary hearing. Reeves called two witnesses to testify, Drs. John Goff and Karen Salekin. The State offered one witness, Dr. Glen David King. Critically, Reeves did not call his trial counsel to explain why they decided not to hire Dr. Goff.

Dr. Goff testified he had administered several intelligence tests to Reeves, the results of which were "a full-scale IQ score of 71; a verbal IQ score of 75; and a

performance IQ score of 76." Pet.App.302a. Dr. Goff explained these IQ scores were inflated due to the "Flynn Effect, a phenomenon he defined as an inflation of IQ scores observed by Dr. James Flynn," and that Reeves's actual IQ was 66. *Id*. Accounting for the Flynn Effect, Dr. Goff argued Reeves's IQ scores showed mental disability. Pet.App.302a–303a.

Dr. Salekin followed, primarily "outlin[ing] the risk factors that existed in Reeves' life, their affect [sic] on his developmental trajectory and that they were not offered to the jury as mitigation testimony." Pet.App.304a. Dr. Salekin considered Dr. Ronan one of several "qualified clinicians that performed mitigation analysis," but nevertheless criticized Dr. Ronan and Ms. Reeves's testimony as "a hodgepodge of information put out without context," Pet.App.303a–304a.. Dr. Salekin concluded the myriad risk factors present in Reeves's life could negatively impact one's academic, social, and employment prospects. Pet.App.304a.

The State then called Dr. King, who "opined that Reeves intellectually functions in the borderline range and his IQ would fall in the range of 70 to 84." Pet.App.305a. Dr. King also explained he did not apply the Flynn Effect because, "[b]ased upon [his] review of the data and research accumulated by Flynn, there appear[ed] to be unreliable data to effectively apply the theory when evaluating someone's mental status." Pet.App.306a.

The circuit court concluded Reeves was neither mentally disabled nor denied effective assistance of counsel. On the former, the court cited the parties' conflicting testimony and found the Flynn Effect did not appear "settled in the scientific

community." Pet.App.312a. Based on the trial transcript and evidence of Reeves's functional achievements, the court concluded "Reeves' intellectual functioning, while certainly sub-average, is not significantly sub-average." *Id.*

On Reeves's ineffective-assistance claims, the court noted Reeves "failed to call either Goggans or Wiggins in support of their claim of ineffective assistance of counsel." Pet.App.315a. The court explained it would "[t]herefore . . . review this claim *in light of this failure and consider only that which is in the Record*." Pet.App.316a (emphasis added). Considering the evidence in the record, the state court held (a) "[w]hen Dr. Ronan's testimony is considered in its entirety together with the records collected by Trial Counsel, there was *no indication of a diagnosis of mental retardation*," *id.* (emphasis added); and (b) "it was reasonable for Defense Counsel to rely on [Dr. Ronan's] testimony and work as the sole source of mitigation evidence during the sentencing phase of [Reeves's] trial," Pet.App.317a.

The court held Reeves failed to meet his burden of proof for either ineffective-assistance theory. Pet.App.316a–317a.

2. Appeal

Reeves appealed the circuit court's post-conviction judgment. In a 57-page opinion, the CCA affirmed. The CCA paid particular attention to the parties' extensive debate about the Flynn Effect and Reeves's intelligence more generally. Pet.App.207a–208a. After describing the accepted test for mental disability, the CCA marched through the extensive record presented and concluded the circuit court had appropriately reconciled conflicting evidence of Reeves's intelligence. Pet.App.260a.

Reeves's ineffective-assistance argument before the CCA resembled his argument before the Eleventh Circuit: the circuit court's ruling was wrong because "there is no *requirement* that trial counsel testify." Pet.App.268a (emphasis added). That is, Reeves alleged the circuit court—which expressly stated it was reviewing the record despite Reeves's failure to offer testimony from his counsel, *see* Pet.App.315a–316a—impermissibly applied a "categorical rule" requiring that trial counsel testify. The CCA acknowledged and rejected Reeves's argument head-on, explaining Reeves "fail[ed] to take into account the requirement that courts indulge a strong presumption that counsel acted reasonably, a presumption that must be overcome by *evidence* to the contrary." Pet.App.268a (emphasis in original).

The CCA then spent multiple pages articulating the importance of counsel's testimony in proving ineffective-assistance claims. Pet.App.268a–272a. The balance of the CCA's discussion (which included the page-long block quote in which the Eleventh Circuit found the "categorical rule") focused on the extraordinary difficulty—never the legal impossibility—of proving ineffective assistance without counsel's testimony. The CCA concluded that "[i]n this case" the record was silent as to trial counsel's tactical and investigatory decisions, and that the circuit court correctly held Reeves had not, therefore, overcome "the strong presumption of effective assistance." Pet.App.281a–87a.

E. Petition for Writ of Certiorari

Reeves filed a petition for a writ of certiorari with this Court following the state post-conviction appellate court's denial of relief. The Court denied Reeves's petition

over a dissent from Justice Sotomayor, joined by Justices Ginsburg and Kagan. Pet.App.178a–191a.

Justice Sotomayor's dissent from denial of certiorari foreshadowed the Eleventh Circuit's eventual decision. The dissent read the state court's block-quoted dicta as a "per se rule" contravening *Strickland*. Pet.App.188a. Then the dissent stripped the state court's holding of its limiting language to show the court "unquestionably applied" the "per se rule." Pet.App.187a–189a.

The dissent reasoned,

> [Reeves] presented evidence of what his counsel knew, which included several red flags indicating intellectual disability; what his counsel believed to be necessary for his defense, which included funding for an expert to evaluate him for intellectual disability; what his counsel did, which included repeatedly asking for and securing such funding; and what his counsel did not do, which included failing to then use that funding to hire such an expert and failing to present evidence of intellectual disability as mitigation. In so doing, Reeves upheld his end of the evidentiary bargain.

Pet.App.190a.

Also foreshadowing the Eleventh Circuit's opinion, the dissent never mentioned that Reeves's attorneys had received the Taylor Hardin files, Dr. Ronan's report, and other discovery files from the State shortly after McLeod requested expert funding.

F. Federal Habeas Proceedings

1. District Court

Reeves sought federal habeas relief in the United States District Court for the Southern District of Alabama. Among other grounds for relief, he again argued ineffective assistance of counsel. Pet.App.53a–54a. Specifically, Reeves claimed:

a) Court of Criminal Appeals unreasonably concluded that counsel's testimony is required to overcome *Strickland*'s presumption of sound trial strategy.

b) Counsel failed to investigate [Reeves's] alleged intellectual disability.

c) Counsel failed to retain mitigating expert and failed to present crucial mitigating evidence.

Id.

The district court rejected each claim in turn. First, echoing its state counterparts, the district court held Reeves simply "failed to carry his burden," Pet.App.88a: "[w]ith a record void of evidence (including the testimony of counsel) that the complained of actions were not the result of reasonable strategy, the court interpreted the evidence, as required, with deference to counsel's decisions and competency," Pet.App.89a.

Next, the district court explained Reeves's counsel "obtained substantial evidence of Reeves's educational history, medical history, juvenile correctional experience, family and social history, and work experience." Pet.App.92a. Acknowledging the record was "void" regarding counsel's decision not to hire Dr. Goff, the court held "Reeves's trial counsel cannot reasonably be faulted for failing to pursue further expert inquiry into Reeves's intellectual functioning *where the evidence objectively indicated Reeves was not intellectually disabled*." Pet.App.94a–95a (emphasis added). And lastly, the district court reviewed all the evidence presented at Reeves's trial, Pet.App.96a–110a, and concluded Drs. Goff and Salekin's testimony "would barely have altered the sentencing profile presented to the sentencing judge," Pet.App.110a.

2. Eleventh Circuit

The Eleventh Circuit followed the reasoning in Justice Sotomayor's dissent from denial of certiorari and reversed the district court. In its *per curiam* opinion, the court reasoned that the CCA "unreasonably applied *Strickland*" because it had "treat[ed] Mr. Reeves' failure to call his counsel to testify as a per se bar to relief." Pet.App.24a. The Eleventh Circuit edited the CCA's holding to support the alleged promulgation of a "categorical rule," removing the very language which made clear no such "categorial rule" had applied. *Compare* Pet.App.272a ("*In this case*, Reeves's failure to call his attorneys to testify is fatal to his claims.") (emphasis added) *with* Pet.App.24a ("[The CCA] concluded, based on this categorical rule, that Mr. Reeves' 'failure to call his attorneys to testify [was] *fatal* to his claims.") (emphasis from Eleventh Circuit). The court then reasoned that the alleged "per se bar to relief" constituted an unreasonable application of *Strickland*. Pet.App.25a–31a.

Thus the Eleventh Circuit found itself "unconstrained by § 2254's deference" and able to review Reeves's claims de novo. Pet.App.31a. Considering the "numerous records pointing to Mr. Reeves' low intelligence and educational failures," the court determined "there can be no valid strategic reason" for Reeves's counsel's decision not to hire Dr. Goff, rendering counsel deficient under the first *Strickland* prong. Pet.App.39a. The Eleventh Circuit addressed neither the change in Reeves's representation nor the discovery of Reeves's records from Taylor Hardin Medical Facility—both of which occurred between when Reeves's counsel initially requested funds to retain an expert and when they decided not to retain one.

The court next turned to *Strickland*'s prejudice prong. It reviewed de novo because "[t]he Court of Criminal Appeals did not reach the prejudice prong." Pet.App.40a. "Although Mr. Reeves is not ineligible for the death penalty under *Atkins*," the court wrote, "the jury or trial court might have found other statutory or non-statutory mitigating factors had evidence of his intellectual disability been presented, and thus weighed the aggravating and mitigating circumstances differently." Pet.App.41a. This is because, according to the Eleventh Circuit, "[t]he mitigating evidence that counsel failed to obtain and present was powerful . . . . Dr. Goff testified that Mr. Reeves was 'mentally retarded.'" Pet.App.42a.

Nowhere did the court address how the jury would have reconciled conflicting testimony regarding Reeves's alleged retardation, let alone the substantial evidence showing Reeves was not mentally retarded. Nor did the court attempt to weigh how additional evidence of low intelligence might, in the jury's eyes, diminish the heinousness of Reeves's crimes.

REASONS FOR GRANTING THE PETITION

I. The Eleventh Circuit Violated AEDPA By Reading Error Into The State Court's Opinion.

Under AEDPA, a federal court may grant habeas relief only "where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents." *Harrington*, 562 U.S. at 102. "If this standard is difficult to meet, that is because it was meant to be." *Id.* Federal courts must provide state courts "the benefit of the doubt," presuming that they "know and follow the law."

Woodford 537 U.S. at 24. So where a state-court judge's reasoning may accord with Supreme Court precedent, the federal court ought to presume that it does.

Practical considerations support the deference AEDPA requires. As this Court has recognized, "[t]he caseloads shouldered by many state appellate courts are very heavy, and the opinions issued by these courts must be read with that factor in mind." *Johnson*, 568 U.S. at 300. Affirmatively reading error into state-court opinions only increases state courts' workloads, defying this Court's teaching.

The Eleventh Circuit disregarded this Court's precedent by discerning error in the state-court opinion where none need be found. In so doing, the federal court placed an insurmountable burden on its state counterparts, requiring them to craft opinions that cannot be misconstrued. What is more, the Eleventh Circuit's opinion is a playbook any federal court can follow. And if left uncorrected, many will. The Eleventh Circuit's decision thus warrants summary reversal.

Before it could review Reeves's claims de novo, the Eleventh Circuit had to divine error in the state court's opinion. It began with the state court's legal analysis. Plucking a sentence from a page-long block quote in the state court's opinion, the Eleventh Circuit stated "the Court of Criminal Appeals held that, 'to overcome the strong presumption of effectiveness, *a Rule 32 petitioner must, at his evidentiary hearing, question trial counsel regarding his or her actions and reasoning*.'" Pet.App.24a (emphasis in original). Based on this language, the Eleventh Circuit deemed the state court to have announced a "categorical rule." *Id.*

But the quoted language did not bear on the state-court opinion's outcome and was certainly not, as the Eleventh Circuit claimed, the state court's holding. It was one portion of a recycled, multiple-pages-long block quote reciting relevant legal standards. Pet.App.270a–272a (block-quoting *Stallworth v. State*, 171 So.3d 53, 92 (Ala. Crim. App. 2013)). The state court's analysis focused on petitioner's burden of disproving counsel's presumptive efficacy, and rightly noted the extraordinary difficulty—never the legal impossibility—of doing so without record evidence of counsel's actions or intent. Pet.App.268a–272a.

Moreover, if the state court had actually applied this "categorical rule," its opinion would have had no need for its pages-long discussion of why absence of counsel's testimony "in this case" left Reeves's burden unmet; a violation of a "categorical rule" speaks for itself and needs no further explanation. Reading the state-court opinion to apply a "categorical rule" necessarily requires reading large portions of the opinion as, at best, superfluous. But such "readiness to attribute error is inconsistent with the presumption that state courts know and follow the law." *Woodford*, 537 U.S. at 24. Assuming, as a federal court must, that the state court meant what it wrote, a "per se bar to relief" played no role in its reasoning.

Yet even if the state court had inadvertently quoted a per se rule, by "considering all the circumstances" surrounding Reeves's ineffective-assistance claim, the court clearly did not apply one. *Strickland*, 466 U.S. at 688. Again, a categorical rule would require none of the explanation the state court provided. The court expressly referred to Reeves's trial record throughout its ineffective-assistance analysis,

Pet.App.272a–282a, and a federal court may not presume the state court somehow missed whatever record evidence the federal court found persuasive, *see Woodford*, 537 U.S. at 24. "The contention that [the state court] failed to consider facts and circumstances that it had taken the trouble to recite strains credulity." *Early v. Packer*, 123 S.Ct. 362, 365 (2002) (emphasis in original). And while the Eleventh Circuit might have preferred that the CCA dedicate several more pages analyzing this particular claim, "federal courts have no authority to impose mandatory opinion-writing standards on state courts." *Johnson*, 568 U.S. at 300.

What the CCA did write was that, "[i]n this case, Reeves's failure to call his attorneys to testify [was] fatal to his claims." Pet.App.272a. But only part of that quote appears in the Eleventh Circuit's opinion. According to the Eleventh Circuit, the state court "concluded, based on this categorical rule, that Mr. Reeves' 'failure to call his attorneys to testify [was] *fatal* to his claims.'" Pet.App.24a (emphasis from Eleventh Circuit). As previously noted, the Eleventh Circuit omitted the operative words "[i]n this case," which introduced the quoted sentence. Pet.App.272a. These words are important—indeed, for the purposes of this discussion, decisive—because, unless superfluous, they cabin the statement to the case's circumstances. That is, the deleted language indicated that what followed was not categorical.

In this case, the record contains no direct evidence explaining Reeves's counsel's strategic or investigatory decisions. Pet.App.277a. But the record circumstantially suggests that counsel reasonably decided that the files they obtained from Taylor Hardin and the State—including records related to Dr. Ronan's evaluation of

Reeves—rendered an expert's services unnecessary. Pet.App.168a. So *in this case*, Reeves's failure to introduce contrary evidence could not possibly "overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" *Strickland*, 466 U.S. at 689. It therefore makes perfect sense for the state court to conclude that, "*[in] this case*, Reeves's failure to call his attorneys to testify [was] fatal to his claims of ineffective assistance of counsel." Pet.App.272a (emphasis added). There was no per se rule or bright-line test; Reeves simply failed to meet his burden.

Nevertheless, the Eleventh Circuit held the state court "unreasonably applied *Strickland* by applying a per se rule." Pet.App.31a. Seeking support for the proposition that the state court "unreasonably applied" this Court's precedent, the Eleventh Circuit attempted to analogize this case to this Court's canonical habeas outliers. *See* Pet.App.27a–30a (citing *Williams v. Taylor*, 529 U.S. 362 (2000); *Wiggins v. Smith*, 539 U.S. 510 (2003)). These cases do not apply here.

Counsel in this case investigated and presented the exact evidence counsel missed in *Williams*. 529 U.S. at 395–96 ("nightmarish childhood," defendant "was 'borderline mentally retarded'"). And in *Williams*, the attorneys failed to investigate "not because of any strategic calculation but because they incorrectly thought that state law barred access," *id*.—nothing remotely similar occurred here. Nor does counsel in this case bear resemblance to counsel in *Wiggins*. There, counsel concluded their investigation after reviewing a one-page presentence investigation and housing records littered with red flags, *Wiggins*, 539 U.S. at 524–25; here, "[i]t is undisputed

from the trial record that counsel obtained substantial evidence of Reeves's educational history, medical history, juvenile correctional experience, family and social history, and work experience," Pet.App.92a. No precedent supports the Eleventh Circuit's decision.

To reach de novo review, the Eleventh Circuit stretched the state court's opinion and this Court's precedent well past their breaking points. The Eleventh Circuit's "readiness to attribute error is inconsistent with the presumption that state courts know and follow the law. It is also incompatible with § 2254(d)'s highly deferential standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." *Woodford*, 537 U.S. at 24 (2002) (cleaned up). Because the Eleventh Circuit did just the opposite here, this Court should grant the State's petition and summarily reverse the Court of Appeals.

II. Fairminded Jurists Could Debate The Eleventh Circuit's Ruling, So Habeas Relief "Shall Not Be Granted."

Under AEDPA's constraints, Reeves's claim should have been denied, for fairminded jurists could hold—as several already have in this case—that Reeves failed to show deficient performance. This is enough to deny relief. *See Harrington*, 562 U.S. at 102 ("[Section 2254(d)] preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents. It goes no further."). Moreover, in light of the strong mitigating evidence Reeves's counsel presented and the compelling aggravating evidence introduced by the State, Reeves failed to show that his counsel's purported deficiencies prejudiced him.

A. The Record Suggests Reeves's Counsel Acted Reasonably.

When "considering all the circumstances," *Strickland*, 466 U.S. at 688, the record provides readymade "reasonable argument[s] that counsel satisfied *Strickland*'s deferential standard," *Harrington*, 562 U.S. at 105. In holding otherwise, the Eleventh Circuit not only failed to "consider[] all the circumstances," it ignored the record evidence bearing most strongly on Reeves's ineffective-assistance claim: first, shortly after receiving funding for Dr. Goff, attorney McLeod—the driving force to hire Dr. Goff—withdrew from the case and Goggans replaced him, Pet.App.165a–167a; and second, Goggans and Wiggins then "petitioned the court for and were granted access to the complete mental health records of the Taylor Hardin Secure Medical Facility in connection with its evaluation and treatment of Reeves, including the records related to Dr. Kathy Ronan's June 3, 1997, evaluation of Reeves," Pet.App.94a.

Once they had received the documents from Taylor Hardin and the State, Reeves's counsel had no reason to hire an expert or keep looking for evidence of mental disability. The files contained the very information McLeod had previously sought expert services to procure; that is, they contextualized the "150 to 200 pages of material with reference to psychological and psychiatric evaluations." Pet.App.166a. Equally important, the evidence showed Reeves's intelligence scores placed him in the "borderline intelligence" range—above mental disability—and that Reeves "was denied special education services for intellectual disability." Pet.App.94a. (emphasis added). In light of substantial evidence showing Reeves was not mentally disabled, Reeves's counsel could have reasonably decided to stop investigating potential

disability. *Cullen v. Pinholster*, 563 U.S. 170, 195 (2011) ("*Strickland* itself rejected the notion that the same investigation will be required in every case.").

Moreover, trying to show intellectual disability at trial—particularly where strong evidence existed showing the opposite—could have hurt Reeves's case. For one thing, testimony from Dr. Goff would have led to protracted debate about the merits of the Flynn Effect, the academically unsettled method of adjusting IQ scores on which Dr. Goff relied in his assessment of Reeves's intellectual capacity. Pet.App.220a–246a. It is not unreasonable to think a jury might find such an argument unpersuasive and even disingenuous—particularly where, as here, Reeves's educational history and intelligence scores indicated he was not mentally disabled. Nor is it unreasonable to think a jury would find mitigation evidence from Dr. Ronan—a neutral expert employed by the State—more trustworthy than evidence from an expert hired by the defense team. *Cf. United States v. LaPage*, 231 F.3d 488, 492 (9th Cir. 2000) ("The jury understands defense counsel's duty of advocacy and frequently listens to defense counsel with skepticism."). Indeed, "reasonable argument[s] that counsel satisfied *Strickland*'s deferential standard" abound. *Harrington*, 562 U.S. at 105.

Reeves's counsel's decision to rely on Dr. Ronan was also reasonable, the Eleventh Circuit's contrary view notwithstanding. Pet.App.35a. Dr. Ronan proved more than capable of "present[ing] [Reeves's] information in an orderly and informative fashion to the jury during the mitigation phase"—precisely what McLeod wanted an expert to do. Pet.App.3a–4a. Relying on "a great deal of outside information" in her

evaluation of Reeves, Doc. 23-8 at 134, Dr. Ronan painted a vivid picture of his difficult upbringing, family troubles, and educational failures, and testified to his low intelligence, *see* Pet.App.103a–105a. Although Dr. Salekin might have provided "more detail[]," she "did not reveal completely unknown facts from those presented during the trial." Pet.App.109a. Thus, there is no chance counsel's decision to rely on Dr. Ronan "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686.

Granting Reeves's ineffective-assistance claim, the Eleventh Circuit ignored that Reeves's counsel analyzed "voluminous records" weighing on Reeves's background and showing he was borderline intelligent—not mentally disabled. Pet.App.94a. Instead, the Eleventh Circuit simply asserted it was unreasonable not to continue investigating mental disability. The "[Eleventh Circuit's] approach is flatly inconsistent with *Strickland*'s recognition that '[t]here are countless ways to provide effective assistance in any given case.' There comes a point where a defense attorney will reasonably decide that another strategy is in order, thus 'mak[ing] particular investigations unnecessary.'" *Pinholster*, 563 U.S. at 197 (cleaned up). A fair-minded jurist "applying a heavy measure of deference to counsel's judgments" could no doubt hold Reeves's counsel, after finding substantial evidence of Reeves's borderline intelligence, "ma[de] a reasonable decision that ma[de] particular investigations unnecessary." *Strickland*, 466 U.S. at 691.

B. Even If Reeves's Counsel Were Ineffective, the Alleged Ineffectiveness Did Not Prejudice Reeves.

None of counsel's alleged deficiencies would have prejudiced Reeves. "[T]he question is whether there is a reasonable probability that, absent the errors, the sentencer . . . would have concluded that the balance of aggravating and mitigating circumstances did not warrant death." *Strickland*, 466 U.S. at 695. In this context, "[a] reasonable probability means a 'substantial,' not just 'conceivable,' likelihood of a different result." *Pinholster*, 563 U.S. at 189. The Eleventh Circuit's prejudice analysis further contravened this Court's precedent.[2]

The evidence which Drs. Goff and Salekin presented at the post-conviction evidentiary hearing "would barely have altered the sentencing profile presented to the sentencing judge." *Strickland*, 466 U.S. at 699–700. Reeves's counsel highlighted Reeves's low intelligence in both their opening and closing arguments, and during their testimony both Reeves's mother and Dr. Ronan discussed the same. Pet.App.95a–96a. This Court has already explained such evidence can be persuasive. *Williams*, 529 U.S. at 398 ("[T]he reality that [Mr. Williams] was 'borderline mentally retarded,' might well have influenced the jury's appraisal of his moral culpability."). Though Dr. Goff could have sowed doubt that Reeves's IQ tests were appropriately calibrated, introducing his testimony would not have been without risk; "[i]f [Reeves] had called Dr. [Goff] to testify consistently with his psychiatric report, [Reeves] would have opened the door to rebuttal by a state expert." *Pinholster*, 563 U.S. at 201; *c.f.*

[2] The Eleventh Circuit engaged in de novo review because no state court addressed *Strickland*'s prejudice prong. Pet.App.40a (citing *Rompilla v. Beard*, 545 U.S. 374, 390 (2005)).

Atkins v. Virginia, 536 U.S. 304, 321 (2002) ("[R]eliance on mental retardation as a mitigating factor can be a two-edged sword."). And, in any event, the bulk of his testimony mostly repeated what the jury already heard: Reeves suffered low intelligence. So too with Dr. Salekin's testimony, which merely offered greater detail about Reeves's difficult upbringing.

Because "[t]he 'new' evidence largely duplicated the mitigation evidence at trial," there is no reasonable probability that Drs. Goff or Salekin's post-conviction evidence would have changed the jury's verdict. *Pinholster*, 563 U.S. at 200; *see also Wong v. Belmontes*, 558 U.S. 15, 22–23 (2009) (per curiam) (holding that "[s]ome of the [additional mitigating] evidence was merely cumulative of the humanizing evidence [the petitioner] actually presented" because "[t]he sentencing jury was well acquainted with [the petitioner's] background and potential humanizing features") (cleaned up).

With virtually no explanation, the Court of Appeals presumed a "'substantial,' not just 'conceivable,' likelihood" that more evidence of Reeves's low intelligence would have changed Reeves's sentence. For example, the court reasoned that if the jury had heard "Dr. Goff testif[y] that Mr. Reeves was 'mentally retarded,'" there was a substantial likelihood that at least one juror would have changed her or his vote. Pet.App.42a. But asserting mental retardation was hardly a foolproof strategy. *Pinholster*, 563 U.S. at 201. As it did when evaluating the first *Strickland* prong, the Eleventh Circuit ignored ample evidence showing Reeves was not mentally disabled, *see* Pet.App.251a–260a, and failed to explain why an approach with obvious risks

would have been provident considering counsel had already presented potentially persuasive evidence of Reeves's borderline intelligence, *Williams*, 529 U.S. at 398.

The Eleventh Circuit further suggested that a jury would have found Dr. Goff's testimony "particularly relevant" considering evidence that Reeves's brother, Julius, "who was present for the offense and conceived of the idea to rob Mr. Johnson," negatively influenced Reeves, and "that [Reeves's] low intellectual functioning made him particularly susceptible to the influence of others." Pet.App.43a. But the jury heard this exact argument from Dr. Ronan and rejected it. Doc. 23-8 at 148. The jury may have rejected this argument on several grounds, most notably that Reeves, not Julius, conceived of the idea to *murder* Mr. Johnson—and that Reeves, not Julius, pulled the trigger.

Nor did the Eleventh Circuit explain why it thought claims about mental disability would outweigh or undercut the heinousness of Reeves's crimes. It is not hard to imagine why the court skipped that part of the analysis: the jury heard how Reeves and his associates had gone "looking for some robberies"; how Reeves murdered and robbed the good Samaritan who, just hours before his death, had rescued Reeves and his friends when their vehicle broke down; how Reeves tried to conceal evidence of the murder from authorities; how Reeves laughed about the murder and even created a dance mocking the victim's dying breaths; and how Reeves boasted about earning a teardrop-tattoo for murdering Johnson. Pet.App.193a–197a.

Considering all the jury heard, additional evidence of Reeves's low intelligence—requiring exhaustive exposition of unsettled psychometric theory—could not

plausibly create a "'substantial,' not just 'conceivable,' likelihood of a different result." *Pinholster*, 563 U.S. at 189. Accordingly, the Eleventh Circuit's prejudice analysis is also wrong and warrants summary reversal.

III. Correcting The Eleventh Circuit's End Run Around AEDPA Is Important For Comity, Finality, And Federalism.

Federal habeas review necessarily threatens federalism. It "entails significant costs . . . and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority." *Davila v. Davis*, 137 S.Ct. 2058, 2070 (2017) (internal quotation marks, citations omitted). It "frustrates" and "degrades" states' systems of justice, and "denies society the right to punish some admitted defenders." *Id.* (internal quotation marks, citations omitted).

The Eleventh Circuit's decision endangers federalism to a far greater degree than a case this Court has already summarily reversed this term. *See Shinn v. Kayer*, 529 U.S. ___, No. 19-1302 (Dec. 14, 2020). Unlike *Shinn*, which turned on idiosyncrasies in Arizona's Supreme Court jurisprudence, *see id.* slip op. at 5, the Eleventh Circuit's hostile approach to state-court opinions threatens "the basic structure of federal habeas jurisdiction," which is "designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions." *Harrington*, 562 U.S. at 103.

And beyond its afront to AEDPA and this Court's precedent, this case represents a unique threat to the very "judicial resources" this Court seeks to protect through "the sound and established principles that inform [the writ's] proper issuance." *Harrington*, 562 U.S. at 91–92. Unless reversed, state courts will be given the

extraordinarily time-consuming—and virtually impossible—task of writing opinions that federal courts cannot misread or mischaracterize. Some state courts may reasonably conclude that the game isn't worth the candle. *See Harrington*, 562 U.S. at 99 (recognizing that "issuance of summary dispositions in many collateral attack cases can enable a state judiciary to concentrate its resources" elsewhere.).

To avoid these serious harms and "ensure observance of Congress's abridgment of [federal courts'] habeas power," the Court should grant the State's petition and summarily reverse the Eleventh Circuit. *Cash v. Maxwell*, 565 U.S. 1138, 132 S. Ct. 611, 616 (2012) (Scalia, J., dissenting).

CONCLUSION

This Court should grant the petition for writ of certiorari and summarily reverse.

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