No. 21-6238
CAPITAL CASE

In the
SUPREME COURT of the UNITED STATES

DONALD BROADNAX,
Petitioner,
v.

COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE ALABAMA SUPREME COURT

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED (RESTATED)

I. Is it necessary for this Court to clarify whether 28 U.S.C.A. § 2254(d)'s reference to "any claim" includes due process claims for the purposes of according AEDPA deference?

II. Has this court clearly established a due process right to present hearsay testimony in state postconviction proceedings when other, non-hearsay, avenues for presenting that evidence exist?

PARTIES

The caption contains the names of all parties in the courts below.

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STATEMENT OF THE CASE

I. Facts of the Crime.

Donald Broadnax was convicted of murdering two people: his wife, Hector Jan Stamps, and his wife's grandson, three-year-old DeAngelo Stamps. The Alabama Court of Criminal Appeals set forth the facts of this heinous case on direct appeal and on appeal from Broadnax's Rule 32. *Broadnax v. State*, 825 So. 2d 134 So. 2d 134, 150–51 (Ala. Crim. App. 2000); *Broadnax v. State*, 130 So. 3d 1232, 1238–39 (Ala. Crim. App. 2013).

In 1995, Donald Broadnax married Hector Jan Stamps, who, at the time of the marriage, had a three-year-old grandson, DeAngelo Stamps. In April 1996, Broadnax, who had been previously convicted of murder and was serving a 99-year sentence, was residing at a work-release center in Alexander City working at Welborn Forest Products. At this time, the Broadnax and Jan were having marital problems, as Broadnax believed that Jan was partially responsible for a recent denial of parole. According to a fellow employee at Welborn, Broadnax confided that the was planning to kill Jan.

On the evening of April 25, 1996, Jan and DeAngelo delivered food to Broadnax at Welborn around 6:00 p.m.. Johnny Baker, an inmate and coworker at Welborn, saw Broadnax driving Jan's car at Welborn that evening. Broadnax stopped to speak with Baker, and Baker noticed that a child was in the backseat. Baker testified that he as "pretty sure" the child was alive. That same evening near Elyton Village in Birmingham, where Broadnax grew up, Robert Williams and his wife left their home

around 8:20 p.m. and noticed no cars parked at the house across the street—a home which had previously been used as a "crack-house" and for prostitution. When the pair arrived back at 8:50 p.m., they noticed a white Dodge Aries automobile parked behind the house across the street. Because of the previous illegal activities that had occurred at that house, the couple called the police. Officers with the Birmingham Police Department arrived shortly thereafter. The car belonged to Jan Stamps.

When the Officers approached the car, they noticed blood on the ground behind the car and on the car's bumper. The Officers radioed for paramedics and secured the scene. The bodies of Jan and DeAngelo were found in the car's trunk, beaten, alongside a piece of lumber and a piece of blue cloth. Both victims sustained blunt-force trauma, which the medical examiner testified could have been caused using a piece of lumber, like the one found with the bodies. The piece of lumber found in the trunk was similar to the lumber used at Welborn, as was the blue cloth.

At 10:45 p.m. that same night, Mark Chastain, a security guard at Welborn, found Broadnax inside a building while he was securing the building for the night. When Chastain asked Broadnax why he was still in the building, Broadnax stated that the work release van had dropped him off. Kathy Chastain, Mark's wife, testified that while she was outside the building waiting for her husband to secure it, she saw an individual matching Broadnax's description get out of a light-colored truck and run into the building.

On April 27, two inmates at the work-release center found a work uniform and a pair of Red Wing brand work boots stuffed under their bunks, which were later

identified as belonging to Broadnax. On the grounds at Wellborn, employees found an earring that matched an earring found on the rear floorboard of Jan's car. Bloodstains were found on the uniform, and analysis of the stains indicated that the DNA in those stains matched the DNA of Jan and DeAngelo. When asked about the boots, Broadnax stated that he had sold the boots to another inmate, but he could not identify that inmate. When asked about the uniform, Broadnax stated that it had been stolen two months earlier, and that he had reported the theft to the uniform company, but evidence showed that no such report had been made.

The State's theory was that between 6:30 p.m. and 10:30 p.m. on April 25, 1996, Broadnax brutally beat Jan to death at Welborn; put her body in the trunk of her car; drove her car with DeAngelo in the backseat to a location near Elyton Village in Birmingham; brutally beat DeAngelo to death and put his body in the trunk with Jan's body; and found someone to drive him back to Welborn. Broadnax was subsequently convicted and sentenced to death.

II. Facts Relevant to the Writ.

On Rule 32, Broadnax claimed that his trial counsel was ineffective during the penalty phase of his trial. At the evidentiary hearing, Broadnax sought to present testimony from Dr. Ken Benedict, a neuropsychologist. Over Broadnax's objection, Dr. Benedict was prohibited from testifying at the hearing "to the substance of statements made to [him] by Broadnax and Broadnax's family members regarding Broadnax's allegedly troubled childhood." *Broadnax*, 130 So. 3d at 1241.

On appeal to the Alabama Court of Criminal Appeals, Broadnax argued "that the information Dr. Benedict received from him and from his family members about his childhood, although hearsay, was necessary for Dr. Benedict's psychological evaluation of him and would have been admissible at the penalty phase of trial as mitigation evidence." *Id*. at 1241–42. The court concluded that, under Alabama Rules of Evidence Rule 804 and relevant caselaw, the rules of evidence apply to postconviction proceedings, and therefore, inadmissible hearsay is excluded. *Id*. at 1243. The court also concluded that the exclusion of Dr. Benedict's hearsay testimony did not deny Broadnax a full and fair hearing and his right to due process, because "although Dr. Benedict was precluded from testifying about statements made to him by Broadnax and Broadnax's family members regarding Broadnax's allegedly troubled childhood, nothing prevented Broadnax from calling his family members to testify or from testifying himself." *Id*. at 1245.

In his petition to the District Court for the Northern District of Alabama, the court, applying correct AEDPA deference, found that "the exclusion of Dr. Benedict's testimony as hearsay did not violate Broadnax's due process rights." Memorandum Opinion at 44, *Broadnax v. Dunn*, 2:13-cv-01142-AAK (N.D. Ala. Dec. 13, 2009), ECF No. 20. Like the ACCA, the District Court reasoned that "Broadnax could have presented the substance of these hearsay statements through the testimony of Broadnax and relevant family members," and "[s]imply arguing that hearsay statements are admissible in the penalty phase proceedings is insufficient to

establish that exclusion of hearsay testimony made the Rule 32 proceeding so fundamentally unfair that it violated his right to due process." *Id*. at 44–45.

In response to Broadnax's Rule 59 motion, the District Court concluded that "neither *Sears* nor the cases cited therein establish a right to the presentation of inadmissible hearsay evidence during the state-court post-judgment hearing." Memorandum Opinion at 14, *Broadnax v. Dunn*, 2:13-cv-01142-AAK (N.D. Ala. June 8, 20), ECF No. 23. Thus, because "[t]here is no clearly established federal law holding that a defendant's due process rights are violated by the exclusion of hearsay testimony, pursuant to state law, during a state post-conviction proceeding," the District Court found that Broadnax failed to prove that its decision "constituted a manifest disregard for the law." *Id*. at 15.

On appeal to the Eleventh Circuit, the court, correctly applying AEDPA deference, determined that, even assuming there was a clearly established right to introduce reliable hearsay evidence in state postconviction proceedings, Broadnax had not established a violation of that right because the evidence he sought to admit did not have the same indicium of reliability present in *Green v. Georgia*, 442 U.S. 97 (1979). *Broadnax v. Comm'r, Ala. Dep't of Corrs.*, 996 F.3d 1215, 1228 (11th Cir. 2021). The court likewise concluded that Broadnax's due process rights had not been violated, because Broadnax could have introduced the substance of Dr. Benedict's testimony through his own testimony or through the testimony of his family members. *Id*.

REASONS FOR DENYING THE WRIT

Broadnax's petition fails to meet this Court's requirement that there be "compelling reasons" for granting certiorari. Sup. Ct. R. 10. Broadnax's petition presents no genuine split, is fact-bound, and he has not shown that any of the grounds for granting certiorari review set out in Rule 10 exist. His due process claim was rejected by the Alabama Court of Criminal Appeals (hereinafter "ACCA") after a thorough consideration of the facts and circumstances of this case, and Broadnax has shown no conflict between that decision and a decision of any state court of last resort, any decision of a United States court of appeals, or any decision of this Court, including *Sears v. Upton*, 561 U.S. 945 (2010) or *Green v. Georgia*, 442 U.S. 95, 97 (1979). Sup. Ct. R. 10. Further, the district court and the Eleventh Circuit correctly found that ACCA's decision included no unreasonable determinations of fact or misapplication of any clearly established precedent of this Court. Consequently, for the reasons set forth below, Broadnax's petition is without merit and should be denied.

I. By the Statute's Plain Language, AEDPA Deference Clearly Applies to "Any Claim" Decided on the Merits in State Postconviction Proceedings.

Broadnax first argument concerning his due process claim contends that his case presents a question of first impression – whether a due process claim brought in habeas and challenging a state's postconviction procedures is subject to AEDPA deference. (Pet. at 6.) But Broadnax fails to raise a cert-worthy question. It is well established in this Court's precedent that when reviewing a statute, this Court looks

to the statute's "plain language." *Ardestani v. I.N.S.*, 502 U.S. 129, 135–36 (1991)." ("The "strong presumption" that the plain language of the statute expresses congressional intent is rebutted only in "rare and exceptional circumstances," … when a contrary legislative intent is clearly expressed.") Broadnax's due process claim was decided on the merits by the ACCA, which concluded that "Broadnax was not denied due process by the circuit court's proper application of the Alabama Rules of Evidence." *Broadnax v. State*, 130 So. 3d 1232, 1246 (Ala. Crim. App. 2013). As Broadnax admits, his due process claim was also raised in his habeas petition. (Pet. at 4-5.)

By AEDPA's plain terms, deference applies to "any claim" that was "adjudicated on the merits in State court proceedings." 28 U.S.C.A. § 2254(d). It is difficult to conceive of a phrase less subject to interpretation or confusion than "any claim." Indeed, as this Court has previously recognized, AEDPA deference applies to "any claim that was adjudicated on the merits in State court proceedings." *Cone v. Bell*, 556 U.S. 449, 472 (2009) (quoting 28 U.S.C. § 2254(d)(1)). Moreover, this Court has previously held that AEDPA applies to due process claims. *Metrish v. Lancaster*, 569 U.S. 351, 351 (2013) ("Lancaster may obtain federal habeas relief only if the Michigan Court of Appeals, in rejecting his due process claim, unreasonably applied "clearly established Federal law, as determined by [this] Court." 28 U.S.C. § 2254(d)(1).") Broadnax offers no compelling reasons why *his* due process claim is any different. To the extent that this Court has not specifically held that the term "any claim" includes due process claims challenging *postconviction* process,

respectfully, that is not a question that "has not been, but should be, settled by this Court." Sup. Ct. R. 10.

Finally, Broadnax's reliance on *Panetti v. Quarterman*, 551 U.S. 930 (2007), is misplaced because *Panetti* makes it clear that to strip a state court merits determination of the deference that AEDPA requires, a federal court must determine that *at some point* the State court unreasonably applied federal law. In *Pannetti*, "[t]he state court's failure to provide the procedures mandated by *Ford* constituted an unreasonable application of clearly established law as determined by this Court." *Panetti*, 551 U.S. at 948. Thus, the *Panetti* Court's denial of deference to the state court rulings was not based on the "type of claim" raised, but on the presence of an unreasonable application of this Court's precedent in *Ford v. Wainwright*, 477 U.S. 399 (1986). In *Panetti*, the petitioner was denied a "constitutionally adequate opportunity to be heard." *Panetti*, 531 U.S. at 952. By contrast, as the Eleventh Circuit concluded, "Mr. Broadnax was not prevented from calling other witnesses to testify firsthand about the information Dr. Benedict learned." *Broadnax v. Comm'r, Alabama Dep't of Corr.*, 996 F.3d 1215, 1228 (11th Cir. 2021). Unlike Panetti, Broadnax was provided with an opportunity to be heard, was afforded due process, and as shown below, the State court's application of the Alabama Rules of Evidence did not violate clearly established law.

II. The Eleventh Circuit's Holding is Entirely In-Step with This Court's Precedents and the Fifth Circuit.

Broadnax's second argument for certiorari is his contention that a circuit split exists between the Eleventh and Fifth Circuits over the question of whether it is

clearly established law that hearsay evidence must be admitted in postconviction proceedings - if the equivalent evidence would have been admissible under the relaxed evidentiary standards of a capital sentencing proceeding. (Pet. at 9.) In effect, Broadnax asks this Court to substitute its own evidentiary ruling for those of the courts below and to override application of state evidentiary rules. However, as the district court and Eleventh Circuit correctly found, there is no federal law clearly establishing such right - particularly when, as here, the State court procedures provided an adequate alternative method for introducing the substance of the challenged evidence. Nor is there any conflict between the decision of the Eleventh Circuit and the two decisions from the Fifth Circuit that Broadnax relies upon. Consequently, this Court should not grant certiorari.

First, reviewing the cases that Broadnax relies upon for the purported split reveals that certiorari is unwarranted here because no circuit split actually exists. The Eleventh Circuit did not determine whether *Sears*, 561 U.S. 945 and *Green,* 442 U.S. 95 provide petitioners with a clearly established right to introduce hearsay evidence in a state postconviction proceeding. Rather, the court held that, even "assuming that *Green* and *Sears* do stand for the premise that mitigating hearsay evidence is always admissible at the postconviction stage," Broadnax had not established a violation of that right because the evidence he sought to admit did not have the same indicium of reliability present in *Green*. *Broadnax*, 996 F.3d 1215, 1228. Thus, contrary to Broadnax's argument, the Eleventh Circuit did not hold that

"there was no clearly established law requiring Alabama to allow the introduction of hearsay." (Pet. at 9.)

In addition to being wrong about the nature of the Eleventh Circuit's decision, Broadnax also mistakes the nature of the two Fifth circuit cases – one reported and one unreported – that he relies on to show his purported split. Neither conflicts with the Eleventh Circuit and both are distinguishable from Broadnax's own case on their facts and procedural posture. First, neither case even considered whether *Sears* and *Green* provide a petitioner with a clearly established right to introduce reliable hearsay evidence in a state postconviction proceeding. Rather, in *Ruiz v. Stephens*, 728 F.3d 416, 425 (5th Cir. 2013), the Fifth Circuit was addressing a case in which there had been a federal evidentiary hearing at which Ruiz offered "new evidence." *Id.* at 425. The Fifth Circuit did not examine the propriety of Texas' hearsay rule. Instead, in the context of Ruiz's *Strickland* claim, the court rejected the idea that the new evidence should be given less weight because it *might* be considered hearsay in a state court. Because the evidence had been admitted at the federal habeas proceeding, the Fifth Circuit concluded that "we need not ... make the state-law evidentiary findings that would have been at issue at sentencing." *Id.* at 424. Notably, *Ruiz* did not hold that either *Sears* or *Green* forbade a *state court* from making those "state-law evidentiary findings." *Id*.

In a subsequent unreported decision, *Escamilla v. Stephens*, 602 F. App'x 939 (5th Cir. 2015), the Fifth Circuit followed *Ruiz* in deciding how to address evidence that *was already in the record* and had been "presented to the state habeas court."

Escamilla, 602 F. App'x at 942. By contrast, Broadnax did not present the Eleventh Circuit with a claim regarding the appropriate weight to be given to potential hearsay in a *Strickland* analysis. Instead, his claim concerned whether due process permitted a state court to *refuse to admit* hearsay evidence in postconviction. Put differently, the Eleventh Circuit has determined that even if *Sears* and *Green* required the admission of reliable hearsay evidence, Broadnax failed to show that his evidence was reliable. The Fifth Circuit has held that if evidence is already in the record, federal courts in the Fifth Circuit will consider it in conducting a *Strickland* prejudice analysis – even if it *might* be hearsay under state law. Because these holdings address distinctly different questions of law, there is no conflict or split that would warrant a grant of certiorari review.

Second, both the Fifth Circuit's reasoning and Broadnax's argument arise from a footnote to this Court's opinion in *Sears*, 561 U.S. 945. In *Sears*, this Court did not hold that due process requires the admission of hearsay in state postconviction proceedings. Nor did it even state that this evidence *should not* be excluded in state postconviction. Instead, in a footnote responding to the dissent, the majority observed that *at trial*, "reliable hearsay evidence that is relevant to a capital defendant's mitigation defense should not be excluded by rote application of a state hearsay rule." *Sears*, 561 U.S. at 950, fn. 6. This reading of *Sears* is reinforced[1] by the manner in

[1] This reading is further reinforced by the subsequent history of Mr. Sears case. Upon remand, the Georgia Supreme Court again denied relief, noting, among other things that: "Upon our review of this testimony, we conclude, as the habeas court did, that much of it consists of hearsay and speculation that would not have been admissible at trial." *Sears v. Humphrey*, 294 Ga. 117, 138, 751 S.E.2d 365, 381 (2013). This court

which the majority concluded the footnote in question: "We take no view on whether the evidence at issue would satisfy the considerations we set forth in *Green or* would be otherwise admissible under Georgia law." *Id*. It is difficult to see how this Court's commentary in *Sears* could be read to "clearly establish" that a state court may not apply its own hearsay rules in postconviction proceedings.

That this Court was addressing admissibility at the trial level should be clear from the fact that it relied on *Green*, 442 U.S. 95, which in turn addressed a direct appeal claim. And even then, *Green* does not stand for a blanket admission of hearsay. Rather, it addressed "unique circumstances" in which the state of Georgia offered an out-of-court confession in the declarant's trial but excluded it in his accomplice's trial. *Green*, 442 U.S. at 97. As this Court held in *Green*, there were "substantial reasons existed to assume [the] reliability" of the evidence at issue there: it was a confession sustained by other evidence; it was made spontaneously; and it was a statement against interest with no "ulterior motive [for] making it." *Id*. That is not the case here. As the Eleventh Circuit found, the testimony from Dr. Benedict could, at best, only be corroborated by the "mutual corroboration of the interviews and testing," but "corroboration was just one of several reasons the *Green* court held that [the testimony] was reliable." *Broadnax.*, 996 F.3d at 1228. Moreover, it is notable that the evidence at issue in *Green* was available from no other source than the out-of-court confession. *Id*. That was also the case in *Chambers v. Mississippi*, 410 U.S. 284,

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denied Sears's petition for writ of certiorari from that decision. *Sears v. Chatman*, 572 U.S. 1118, 134 S. Ct. 2292, 189 L. Ed. 2d 179 (2014).

298–302 (1973), upon which *Green* relies. There, the same type of "single source" evidence was involved, and this Court narrowly tailored its holding to the particular facts and circumstances of that case: whether it was a due process violation to refuse to admit a confession that "bore persuasive assurances of trustworthiness" and that would have completely exculpated the defendant. *Id.* at 284.

That is not the case here, as all three lower courts found, Broadnax could have presented the substance of the hearsay statements through his own testimony or through the testimony of relevant family members. *See Broadnax*, 130 So. 3d at 1245; Memorandum Opinion at 44, *Broadnax v. Dunn*, 2:13-cv-01142-AAK (N.D. Ala. Dec. 13, 2009), ECF No. 20; *Broadnax*, 996 F.3d at 1228. Indeed, Broadnax had the opportunity to present direct, testable evidence regarding his background through himself or family members. But he failed to do so, in favor of an attempt to introduce the same evidence through an expert. Thus, to the extent that his ability to vindicate his substantive rights was compromised, it was compromised by his own tactical decisions, not by Alabama law.

The Fifth Circuit decisions that Broadnax relies on did not consider the questions at issue in his own case, and, in any case, he has failed to show any material conflict between the circuits that would warrant this Courts attention. At bottom, as the district court correctly concluded, there is "no clearly established federal law holding that a defendant's due process rights are violated by the exclusion of hearsay testimony, pursuant to state law, during a state post-conviction proceeding." *Broadnax*, No. 2:13-CV-1142-AKK, 2020 WL 3051239, at *7, aff'd sub

nom. *Broadnax*, 996 F.3d 1215. Because Broadnax has failed to show any genuine circuit split, or any other grounds warranting certiorari review, this Court should deny the petition.

CONCLUSION

For the foregoing reasons, this Court should deny Broadnax's petition for writ of certiorari.

Respectfully submitted,

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