No. 22-7301

In the Supreme Court of the United States

ARTURO DANIEL ARANDA, PETITIONER

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION

(Capital Case)

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

BRIEF IN OPPOSITION

JOHN SCOTT
Provisional Attorney General of Texas

BRENT WEBSTER
First Assistant Attorney General

LANORA C. PETTIT
Principal Deputy Solicitor General
Counsel of Record

NATALIE D. THOMPSON
Assistant Solicitor General

SARA BAUMGARDNER
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Lanora.Pettit@oag.texas.gov
(512) 936-1700

QUESTIONS PRESENTED

Although he currently denies holding the murder weapon, Arturo Aranda does not dispute that nearly fifty years ago, he participated in a drug-smuggling operation that resulted in a police officer asphyxiating after a bullet from a .38 special pierced his lung. Nor can Aranda contest that before trial, the state trial court specifically heard testimony about how—after receiving *Miranda* warnings in English and Spanish—Aranda confessed to firing repeatedly at the officer while attempting to evade arrest. The questions presented are:

1. Whether Aranda's federal habeas petition—which has been pending for more than thirty years and thus must be resolved under the standards that applied before the passage of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)—raised a valid claim that his waiver of *Miranda* rights was not knowing and intelligent.

2. Whether Aranda can show that admission of his written confession during the rebuttal stage of his capital-murder trial in response to testimony from his own witnesses had a "substantial and injurious effect or influence" on the jury's verdict, as required by *Brecht v. Abrahamson*, 507 U.S. 619 (1993).

3. Whether the court of appeals correctly applied the pre-AEDPA statutory presumption of correctness, 28 U.S.C. § 2254(d) (1966),[1] to explicit and implicit findings of historical fact the state court made when denying Aranda's motion to suppress his written confession.

---

[1] All references to section 2254(d) in this brief are to the 1966, pre-AEDPA version of this statute.

4. Whether the court of appeals correctly concluded that the district court had discretion under *Townsend v. Sain*, 372 U.S. 293 (1963), to deny Aranda's request for a federal-court evidentiary hearing.

RELATED PROCEEDINGS

In addition to the proceedings listed in the petition for writ of certiorari, the following proceedings are related:

Aranda v. Collins, No. 6:89-cv-00013 (S.D. Tex.), *judgment entered December 31, 1991, and motion to alter or amend the judgment denied May 4, 2020.*

Aranda v. Lumpkin, No. 21-70008 (5th Cir.), *judgment entered November 9, 2022.*

TABLE OF CONTENTS

Page

Questions Presented I
Related Proceedings III
Table of Contents IV
Table of Authorities V
Introduction 1
Statement 2
I. The Crime and the Confession 2
II. Procedural History 5
A. The trial 5
B. Direct appeal and state habeas 7
C. Federal district court 8
D. The court of appeals 8
Reasons to Deny the Petition 12
I. This Case Presents a Fact-Bound Request for Error Correction, Which Does Not Merit This Court's Review. 12
II. This Petition Is a Poor Vehicle to Resolve Any Lingering Issues Regarding How to Address Pre-AEDPA Habeas Petitions. 15
A. Aranda failed to adequately brief his *Miranda* claim below. 15
B. Aranda cannot obtain habeas relief because he cannot show the prejudice *Brecht* requires. 18
III. There Is No Error to Correct. 22
A. The Fifth Circuit correctly applied the pre-AEDPA presumption of correctness for state-court findings of fact. 22
1. The merits of the factual dispute *were* resolved in the state-court hearing. 25
2. Aranda does not identify any procedural defect that would foreclose the pre-AEDPA presumption of correctness for state-court factual determinations. 30
B. Aranda is not entitled to further "fact development." 34
1. The Fifth Circuit did not create a "new test." 34
2. Aranda still has not identified any evidence he would like to "develop" in support of his *Miranda* claim. 35
3. Aranda is not entitled to "fact development" under *Townsend*. 36
Conclusion 39

TABLE OF AUTHORITIES

Page(s)

Cases:

Ex parte Acosta,
672 S.W.2d 470 (Tex. Crim. App. 1984) 32
Anderson v. Sec'y for Dep't of Corr.,
462 F.3d 1319 (11th Cir. 2006) 32
Aranda v. Texas,
487 U.S. 1241 (1988) 8
Arizona v. Fulminante,
499 U.S. 279 (1991) 18, 19
Barwick v. Florida,
No. 22-7424, 2023 WL 3214140 (U.S. May 3, 2023) 15
Brecht v. Abrahamson,
507 U.S. 619 (1993) ..... I, 1, 10-11, 15, 18-19, 21
Brown v. Davenport,
142 S. Ct. 1510 (2022) 15, 18
Cullen v. Pinholster,
563 U.S. 170 (2011) 22
Colorado v. Spring,
479 U.S. 564 (1987) 28-29
Edwards v. Vannoy,
141 S. Ct. 1547 (2021) 18
Ford v. Wainwright,
477 U.S. 399 (1986) 31, 32
Gaskin v. Florida,
143 S. Ct. 1102 (2023) 15
Gideon v. Wainwright,
372 U.S. 335 (1963) 13
Graver Tank & Mfg. Co. v. Linde Air Prods. Co.,
336 U.S. 271 (1949) 12
Hester v. State,
535 S.W.2d 354 (Tex. Crim. App. 1976) 28
Idaho Dep't of Emp. v. Smith,
434 U.S. 100 (1977) 14
Jefferson v. Upton,
560 U.S. 284 (2010) 12, 13, 22-24, 30, 33

Jones v. Davis,
927 F.3d 365 (5th Cir. 2019) 13
Kotteakos v. United States,
328 U.S. 750 (1946) 19
LaVallee v. Delle Rose,
410 U.S. 690 (1973) 13, 25, 26, 30
Leza v. State,
351 S.W.3d 344 (Tex. Crim. App. 2011) 31
Marshall v. Lonberger,
459 U.S. 422 (1983) 19, 23, 25-26, 30
Miller v. Fenton,
474 U.S. 104 (1985) 13, 29, 36
Mobil Oil Corp. v. FPC,
417 U.S. 283 (1974) 14
Moran v. Burbine,
475 U.S. 412 (1986) 17, 38
Oregon v. Elstad,
470 U.S. 298 (1985) 16, 17
Rugendorf v. United States,
376 U.S. 528 (1964) 32
Schriro v. Landrigan,
550 U.S. 465 (2007) 22
Shinn v. Ramirez,
142 S. Ct. 1718 (2022) 18, 22, 35
Slack v. McDaniel,
529 U.S. 473 (2000) 1, 8
Thompson v. Keohane,
516 U.S. 99 (1995) 14
Thompson v. Oklahoma,
487 U.S. 815 (1988) 14
Tisius v. Vandergriff,
No. 22-7700, 2023 WL 3831778 (U.S. June 6, 2023) 15
Townsend v. Sain,
372 U.S. 293 (1963) ..... II, 10, 13, 24-31, 34, 36-38
United States v. N.Y. Telephone Co.,
434 U.S. 159 (1977) 17
United States v. Raddatz,
447 U.S. 667 (1980) 33

Wainwright v. Witt,
469 U.S. 412 (1985) 23, 26, 29, 30, 36

Constitutional Provisions, Statutes, and Rules:

U.S. Const. amend. V 16
28 U.S.C.:
§ 2254 (1966) 15, 33, 38
§ 2254(d) (1966) ..... I, 13-14, 19, 22-24, 29-31, 33-34, 36
§ 2254(d)(1) (1966) ..... I, 22, 25, 30
§ 2254(d)(2) (1966) 22, 24, 30, 31
§ 2254(d)(3) (1966) 22, 30, 31, 32
§ 2254(d)(6) (1966) 22, 30, 31, 33
§ 2254(d)(7) (1966) 22, 30, 31, 33
Sup. Ct. R. 10 ..... 1, 12, 14, 15, 18
Fed. R. Civ. P. 59(e) 8
Tex. Const. art. V, § 5(b) 7
Tex. Code Crim. Proc.:
art. 37.071(h) 7
art. 38.22, § 6 28
Tex. R. App. P. 71.1 7

Other Authorities:

Br. for Appellant, Aranda v. Lumpkin, No. 20-70008, 2022 WL 16837062 (5th Cir. Nov. 9, 2022) 24
Reply Br. for Appellant, *Aranda v. Lumpkin*, No. 20-70008, 2022 WL 16837062 (5th Cir. Nov. 9, 2022) 32
STEPHEN M. SHAPIRO, ET AL., SUPREME COURT PRACTICE (11th ed. 2019) 12

INTRODUCTION

This petition is the definition of a request for fact-bound error correction by a state prisoner who allowed his own habeas petition to languish for a quarter of a century—notwithstanding that the supposed constitutional violation affected not just the enforceability of his sentence, but the very validity of his conviction. Because this petition was filed in 1989 before Congress enacted AEDPA, pre-AEDPA law governs its resolution. *Slack v. McDaniel*, 529 U.S. 473, 481 (2000). Thirty years on from AEDPA, such cases are vanishingly rare. As a result, consideration of the questions presented—both of which expressly seek clarification of pre-AEDPA standards—is not a worthwhile investment of this Court's resources. Sup. Ct. R. 10.

Even if there were some need to resolve a putative circuit split on when fact development is appropriate on a pre-AEDPA habeas petition, this would be a poor vehicle to do it. To start, it is far from clear that Aranda has properly preserved the issues he now presents to the Court. But even if he has, he cannot satisfy the heightened prejudice standard of *Brecht v. Abrahamson*, 507 U.S. 619 (1993). Although his confession was eventually admitted at trial, it was only in response to comments from his own witnesses; the State was content to rest its case without it. Indeed, the prosecutor invited the jury to ignore the confession and rely instead on the eyewitness testimony and physical evidence proving that Aranda shot and killed Laredo Police Officer Pablo Albidrez. Because Aranda cannot show that the confession's admission at trial had a "substantial and injurious effect" on the verdict, *Brecht*, 507 U.S. at 637, he would not be entitled to habeas relief even if the state court erred in holding it admissible.

As the Fifth Circuit recognized, however, Aranda is wrong on the merits—even under the more lenient pre-AEDPA standards. The state trial court held an evidentiary hearing regarding Aranda's request to suppress his confession. At that hearing, Aranda had the opportunity to present evidence of the very theories he advances now. Although the focus of the hearing was his allegation that he and his brother were coerced into confessing their crimes, the trial court also heard evidence showing that Aranda's waiver of his *Miranda* rights was knowing and intelligent. There is no reason to think the court failed to consider that evidence. And its explicit and implicit findings of historical fact are presumed correct even under the pre-AEDPA version of the federal habeas statute. Having correctly applied the proper presumption of correctness, the Fifth Circuit rejected Aranda's claims as well as his request for another evidentiary hearing—this time, in federal court. Even now—forty-seven years after the confession—Aranda identifies no additional facts he could add to the evidence that was before the state trial court when it rejected his version of the events surrounding his waiver.

The Court should deny Aranda's petition for a writ of certiorari.

STATEMENT

I. The Crime and the Confession

Early in the morning of July 31, 1976, brothers Juan and Arturo Aranda set out to transport a large quantity of marijuana from Laredo to San Antonio, Texas.[2] Pet.App.1a, 32a. Officer Albidrez and Officer Candelario Viera of the Laredo Police Department stopped the brothers after spotting their station wagon leaving a

[2] This brief refers to petitioner Arturo Aranda by his last name and his brother Juan by his first name.

known drug-smuggling location on the bank of the Rio Grande. Pet.App.32a-33a. Albidrez pulled his marked patrol car in front of the brothers' vehicle while Viera parked behind. Pet.App.32a-33a. Once the vehicles came to a stop, Viera exited his vehicle and stood adjacent to the rear, driver's-side corner of the station wagon, shouting to identify himself as a police officer. ROA.3075. At the same time, Albidrez exited his vehicle and approached the passenger side of the station wagon from the front. ROA.3075.

A shot rang out, and Viera saw Albidrez "jerk up," then start running and returning fire towards the vehicle. ROA.3076. A man (later identified as Juan) leapt out of the driver's seat and fired a shotgun towards Viera, who took cover behind his car. ROA.3076, 3079-80. Viera also fired at the vehicle with his 9mm service weapon. ROA.3068, 3076, 3080. A few moments later, Viera found Albidrez slumped next to his vehicle, nonresponsive. ROA.3081-82. In his hand, his service weapon was jammed. ROA.3082. Albidrez died before he reached the hospital. *See* Pet.App.33a. A round from a Colt .38 special had pierced his lung. ROA.3411, 3478-79.

The Aranda brothers fled on foot, and Aranda was found facedown on the ground a short distance away. Pet.App.33a. He had two bullet wounds: one "to the middle finger of his left hand" and one "semi-superficial wound to the . . . upper left shoulder." ROA.1736. Police took him to a hospital, where an attending nurse found a .38-caliber pistol in the front waistband of his pants. Pet.App.33a. Ballistic testing would later show that this weapon was the only weapon present during the shootout that "could have fired the bullet that killed Officer Albidrez," Pet.App.1a; *accord*

Pet.App.35a; ROA.3413-17, 3426, as Viera was armed with a 9mm and Juan Aranda with a shotgun, *see* ROA.3417-18, 3424.

Later that day, Aranda's wounds were treated at the hospital. Pet.App.33a; ROA.4085. Around 12:10 pm, hospital staff administered 100 milligrams of Demerol in preparation for removing bullet fragments from Aranda's shoulder. ROA.4094, 4100; *accord* Pet.App.33a. They removed the bullet and treated his wounds around 1:00 pm. ROA.4094, 4100. According to later physician testimony, the effects of Demerol last between four and six hours, ROA.3496, so the effects of Aranda's dose would have worn off, at the latest, around 6:15 that evening.

Aranda was discharged from the hospital into police custody at around 3:30 pm, ROA.4094, 4100-01, and was taken to the county jail, Pet.App.33a. Around 10:00 that night, ROA.1722, he received *Miranda* warnings in both English and Spanish, ROA.1733-34, 4045. At 11:15 pm, ROA.4045—well after the dose of Demerol he received around noon would have worn off, *see* ROA.3496—he waived his rights and agreed to make a statement, which he wrote in his own handwriting and signed in the presence of two police officers and the local district attorney, ROA.1734-35, 4045-46. The waiver, too, was read to him in both English and Spanish. ROA.3907-08. He had time to read and review the statement before he signed it. ROA.1735. In that statement, he confessed to firing multiple shots at Albidrez. Pet.App.33a; ROA.4046. The two officers present witnessed his statement. ROA.4046.

Due to the significant delays in adjudicating Aranda's petition, the district attorney and one of these officers are now dead. ROA.1421-22.

II. Procedural History

A. The trial

Before trial, Aranda moved to suppress his confession. ROA.1720-62, 5150-5407. The trial court held an evidentiary hearing on the admissibility of the confession at which the State explained that it would proceed with the prosecution even if the confession were excluded. ROA.5140.

At that hearing, Aranda testified that when he gave the statement, he was "shot twice" and "was in no condition to talk to anybody." ROA.5384. He testified that he was taken from the hospital in a wheelchair "because [he] was in no condition to stand up." ROA.5388. Aranda further stated that at the time of his questioning, he was "feeling pain," ROA.5400, "in a bad condition," ROA.5396, "could not talk," ROA.5396, and was "kind of unconscious," ROA.5391. He asserted that once he reached the county jail, he was carried to the room where he was questioned, ROA.1750, and that no one ever read him his *Miranda* rights, ROA.5391. He also testified that he was receiving "pills" from a "Dr. Lugo," though he did not specify when or what type of pills. ROA.1749. During the hearing, defense counsel presented the court with Aranda's medical records from the hospital, including evidence of the Demerol dose. ROA.4094, 4100, 5384-85. The court also heard the officers' and district attorney's testimony that several hours after arriving from the hospital, Aranda walked out of his cell by himself to the room where he was questioned, ROA.5421, and that his *Miranda* rights were explained to him in both English and Spanish, ROA.1726, 1733.

The record reflects that the trial court considered whether Aranda knowingly and intelligently waived his rights. For example, the trial court noted that a line of

questioning "raise[d] a question . . . as to [Aranda's] intelligence, you know, his ability to communicate, to read and write the English language." ROA.5395. And the court took "into consideration" that the confession was in Aranda's own handwriting and, "from a review of the statement, it appears to be an intelligent discourse of [Aranda's] own statement." ROA.1757.

At the end of the hearing, the trial court made a number of oral findings. It found "that [Aranda] had been released from the hospital oh, some . . . nine hours prior to the giving of the statement." ROA.1757. The court further stated, "I find nothing other than the fact that he was treated for a gunshot wound but there's nothing to tell the Court what his actual physical condition might have been" by the time he made his statement. ROA.1761. It then credited the testimony of the State's witnesses (rather than Aranda), ruling "that the statement will be admissible on the trial on the merits." ROA.1762.

At trial, the State's opening statement did not mention that Aranda had confessed to the crime. ROA.2888-91. And the prosecution closed its case without introducing the confession. Instead, the State focused on Viera's testimony and the physical evidence from the scene of the shootout—including testimony that the gun that was later found on Aranda's prone body could have fired the fatal shot. *See*, *e.g.*, ROA.3178-80, 3424, 3704-18, 3875, 4144-50. The confession was admitted into evidence only on rebuttal, ROA.3898-3918, and only after its circumstances came up during the defense case, *cf.* ROA.4182. Nor did the State rely on the confession in its closing argument. As the Fifth Circuit accurately summarized, "it was Aranda's [own] attorney who focused on the confession in his closing argument, in which he asked the jury to disregard the confession." Pet.App.3a; ROA.4160-61. In

rebuttal, the State minimized the confession's significance to the jury, saying "[w]e didn't need that statement of Arturo's." ROA.4174. And even in rebuttal, counsel did not "focus on the probative value" of the confession, but "briefly described why the confession was voluntary." Pet.App.3a; *see* ROA.4181-82. The entire discussion comprises approximately one page of the eighteen-page rebuttal transcript. ROA.4181-82.

The jury found Aranda guilty and rendered a special verdict resulting in a sentence of death, which the trial court imposed. Pet.App.24a-26a.

B. Direct appeal and state habeas

On direct appeal to Texas's Court of Criminal Appeals (CCA), Tex. Const. art. V, § 5(b); Tex. Code Crim. Proc. art. 37.071(h); Tex. R. App. P. 71.1, the CCA remanded Aranda's case to the trial court for entry of written findings of fact and conclusions of law on the admissibility of Aranda's confession. ROA.4482.

The trial court entered findings and conclusions, Pet.App.123a-125a, and the case returned to the CCA, which affirmed Aranda's conviction and sentence, Pet.App.115a-122a. In holding that the trial court properly admitted Aranda's confession, the CCA considered the same facts to which the petition currently points, including Aranda's hearing testimony that he had just had an operation and was in pain, he had left the hospital in a wheelchair, "a doctor had given him 'some pills,'" he was "carried" out of the cell, and he "couldn't talk to nobody." Pet.App.119a. But the CCA found "there is no evidence to show that [Aranda] was under the influence of medication to the extent he could not clearly think or voluntarily give a confession. His testimony did not establish that." Pet.App.119a.

This Court denied Aranda's petition for a writ of certiorari. *Aranda v. Texas*, 487 U.S. 1241 (1988). The state courts denied habeas relief. Pet.App.26a.

C. Federal district court

Aranda filed his habeas petition in federal court in 1989, ROA.38, and the Director moved for summary judgment in accordance with local practice in the Southern District of Texas, ROA.321-487. Following briefing, the district court ruled in the State's favor, denying Aranda's petition and motion for an evidentiary hearing. ROA.940-1029; Pet.App.1a. Aranda timely moved to alter or amend the judgment under Federal Rule of Civil Procedure 59(e). ROA.1039-65. After further briefing on that motion, and "[f]or reasons which are unclear from the record," Pet.App.1a, the docket remained dormant for nearly twenty-six years. Notwithstanding that any putative constitutional error in the admission of the confession would have gone not just to his sentence but his conviction, Aranda appears to have done nothing to press his claim for relief.

In 2018, the case was reassigned, ROA.7, and the new district judge requested a status update from the parties, ROA.1295-96, as well as supplemental briefing, ROA.1329. Because Aranda's habeas petition was filed well before AEDPA took effect, the court properly applied pre-AEDPA standards to Aranda's motion. Pet.App.19a-20a; *see Slack*, 529 U.S. at 481. The district court denied the Rule 59(e) motion and declined to certify any issues for appellate review. Pet.App.20a.

D. The court of appeals

Aranda appealed the district court's disposition of his petition, challenging both the 1991 denial of habeas relief and the 2020 denial of his Rule 59(e) motion. ROA.1493. He sought certificates of appealability (COAs) from the United States

Court of Appeals for the Fifth Circuit. As relevant here, the Fifth Circuit granted a limited COA regarding Aranda's *Miranda* claim to the extent it challenged whether Aranda knowingly and intelligently waived his rights. Pet.App.8a-9a, 13a.[3]

In considering the merits of Aranda's *Miranda* claim, the Fifth Circuit addressed Aranda's arguments that his waiver could not have been knowing and intelligent "because (1) he 'did not understand' the English-language waiver form, (2) he had not recovered from surgery earlier in the day to knowingly and intelligently understand the consequences of his waiver, and (3) he did not know he was facing a capital murder charge," Pet.App.2a—the same arguments Aranda advances again in this Court.

And the Fifth Circuit unanimously concluded in an unpublished opinion that Aranda's "*Miranda* violation claim falls flat." Pet.App.2a. "Aranda challenged his confession before the trial court" and received "a full and fair hearing [from] th[at] court." Pet.App.2a. True, the Fifth Circuit acknowledged, the "primar[y]" focus of that hearing was whether Aranda waived his rights voluntarily. Pet.App.2a. But "Aranda raised some of the same issues he does here" in the trial court, "including his purported difficulties speaking English and his condition after surgery at the time of his interrogation." Pet.App.2a. "Although the trial court made few explicit findings of fact," its decision to admit Aranda's confession, as well as its choice to reject Aranda's arguments and to "believe the peace officers and the District Attorney," "necessarily implies that it found both that Aranda was either explained the form and his rights in Spanish or had sufficient grasp of English to waive his

[3] The Fifth Circuit also granted a COA regarding an ineffective-assistance-of-counsel claim, which Aranda has abandoned before this Court by declining to include it in his petition.

rights, and that Aranda's condition was not so poor after his surgery that he was incapable of waiving his rights." Pet.App.2a (citing *Townsend v. Sain*, 372 U.S. 293, 314 (1963)). "The findings necessarily implied in the ruling," the court wrote, "are entitled to our deference." Pet.App.2a.

The court went on to explain that the record supported the state court's conclusion that no *Miranda* violation took place because: (1) Aranda "had a working grasp of English and . . . was explained his rights in Spanish"; (2) "there was significant testimony indicating that by the time of his interrogation he had sufficiently recovered" from any earlier medical procedures and "had a full understanding of the circumstances surrounding his interrogation"; and (3) would likely no longer be under the influence of Demerol by the time of his interrogation approximately nine hours after that medication had been administered. Pet.App.2a.

"But even assuming that there was a *Miranda* violation," the Fifth Circuit explained, Aranda would still not be entitled to habeas relief because he had not demonstrated prejudice as required by *Brecht*, 507 U.S. at 637. Pet.App.3a. To the contrary, "the record demonstrates that any purported *Miranda* error was harmless" because "[t]he State produced overwhelming evidence of Aranda's guilt," including Officer Viera's testimony and identification of Aranda in open court, "significant ballistic evidence that . . . Aranda's gun killed Officer Albidrez," and Juan's testimony "describ[ing] the gunfight with the officers." Pet.App.3a.

The Fifth Circuit rejected Aranda's post hoc attempts to explain away this evidence. In particular, Aranda argued that "Viera's eyewitness account of the shooting should be completely disregarded because the 'immense stress' caused by

the gunfight renders Officer[] Viera's account 'inherently unreliable.'" Pet.App.3a. The court of appeals dismissed this argument, explaining that "Officer Viera's testimony was unequivocal." Pet.App.3a. His "eyewitness testimony," the court held, "cannot be discounted based on after-the-fact speculation that stress renders it unreliable." Pet.App.3a. The Fifth Circuit also rejected Aranda's "attempts to impugn the ballistics evidence" because "a ballistics expert testified that" Aranda's weapon, and no other weapon at the scene, "could have fired the bullet that killed Officer Albidrez." Pet.App.3a. Despite Aranda's insistence that the evidence was "conflicting" on this point, he pointed to no evidence showing this purported conflict. Pet.App.3a.

And Aranda's argument "that his confession must have had a substantial influence on the jury's verdict" also "misse[d] the mark," the court explained, because—contrary to Aranda's characterization of the State's closing argument—"the prosecutor actually minimized the importance of Aranda's confession in his closing." Pet.App.3a. Indeed, "[w]hen viewed in context, the prosecutor's closing argument makes clear how *little* the prosecution relied on the confession relative to other evidence, including the ballistic evidence and witness testimony." Pet.App.3a. Given the "profuse amount of evidence presented against [Aranda] at trial," the Fifth Circuit held, "the admission of the confession did not have 'a substantial and injurious effect or influence' in the context of the trial as a whole." Pet.App.3a (quoting *Brecht*, 507 U.S. at 637).

The Fifth Circuit also affirmed the district court's denial of an evidentiary hearing. Pet.App.6a. In doing so, it explained that "[a]n evidentiary hearing would not prove beneficial" because (1) the parties proffered no disputed evidence;

(2) "the evidence was appropriately presented during the state-court proceedings"; and (3) Aranda "[did] not identif[y] any new evidence that could be developed if he were granted an evidentiary hearing at this juncture." Pet.App.6a n.5. This Court permitted Aranda to file an untimely petition for certiorari.

REASONS TO DENY THE PETITION

I. This Case Presents a Fact-Bound Request for Error Correction, Which Does Not Merit This Court's Review.

This is a "court of law," not a "court for correction of errors in fact finding." *Graver Tank & Mfg. Co. v. Linde Air Prods. Co.*, 336 U.S. 271, 275 (1949). Certiorari "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10; *see also* STEPHEN M. SHAPIRO, ET AL., SUPREME COURT PRACTICE 4-8, 4-44 (11th ed. 2019). This case is the prototypical example of a fact-bound request for error correction.

And both questions presented expressly ask this Court to delve into how to interpret a statute that has been ineffective for twenty-seven years. Pet. i. *First*, Aranda asks the Court to examine whether the Fifth Circuit misapplied a case that, in its decades-long existence, has been cited barely a dozen times by any court of appeals—for any proposition—and never by this Court. *Jefferson v. Upton*, 560 U.S. 284 (2010) (per curiam). Aranda does not, however, even try to claim that there is a split among this handful of cases. Instead, in an apparent effort to concoct a certworthy issue, Aranda describes (at 13, 17-18) the putative issue as "reviv[ing] a pre-2010 circuit split" resolved by *Jefferson*. Pet. 13. Leaving aside that Aranda conspicuously did not cite *Jefferson* in his Fifth Circuit briefing, a circuit split is not the antagonist in a horror film that can be revivified: Assuming there was a

split before *Jefferson*, 560 U.S. at 300 (Scalia, J., dissenting) (criticizing the case as "a straightforward request for error correction on a constitutional claim"), this Court resolved it. Until two circuits disagree on how to interpret *Jefferson*—which apparently has not happened—there is no circuit split, only a question of whether the Fifth Circuit correctly applied the case's holding.

That does not change because Aranda takes issue (at 17-18) with the Fifth Circuit's citation of a single case predating this Court's opinion in *Jefferson*. Pet.App.2a. Even if the lower court was wrong to do so, it did so only in the standard-of-review section. Pet.App.3a. It did not apply that case or any other post-AEDPA case in its analysis, where it almost exclusively cited its own and this Court's pre-AEDPA precedent. *See* Pet.App.2a-3a.[4]

Second, Aranda asks the Court to examine how the Fifth Circuit applied a case issued on the same day as *Gideon v. Wainwright*, 372 U.S. 335 (1963), that was overruled in large part four years before AEDPA was ever passed, *Townsend v. Sain*, 372 U.S. 293 (1963), *overruled in part by Keeney v. Tamayo-Reyes*, 504 U.S. 1, 5 (1992). But this request ignores that the pre-AEDPA section 2254(d) is "an almost verbatim codification of the standards [this Court articulated] in *Townsend*." *Miller v. Fenton*, 474 U.S. 104, 111 (1985). As a result, through pre-AEDPA section 2254(d), the Court regularly used *Townsend* and its surrounding jurisprudence as a guide to construing section 2254(d), *e.g.*, *LaVallee v. Delle Rose*,

[4] The lone exception, *Jones v. Davis*, 927 F.3d 365, 370-71 (5th Cir. 2019), supports the proposition that "the erroneous admission of a confession does not, in every case, constitute harmful error"—a principle inherent in the concept of trial error that was true before AEDPA and that Aranda does not challenge. Pet.App.3a.

410 U.S. 690, 693-95 (1973) (per curiam); *see also Thompson v. Keohane*, 516 U.S. 99, 109-10 (1995), and the question here is whether the Fifth Circuit correctly articulated and applied the relevant statutory provisions. The Fifth Circuit did not ignore the section 2254(d) exceptions that Aranda brings up. *See* Pet.App.2a; *infra* Part III.A. So, the only question is whether that court applied them correctly.

The petition gives no reason to think that even if the Fifth Circuit erred in applying these moribund cases to a defunct statute (which it did not, *see infra* Part III), the issue is likely to recur. It will not, as the number of pre-AEDPA habeas petitions that remain pending is vanishingly small. Aranda certainly provides no reason why this is one of the "rare instances" to grant review merely to correct an erroneous lower-court decision because, in his view, "the standard appears to have been misapprehended or grossly misapplied." *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 310 (1974); *accord* Sup. Ct. R. 10. Although Aranda certainly disagrees with how the Fifth Circuit applied the pre-AEDPA standard of review of state-court factual findings, this Court is "much too busy to correct every error that is called to [its] attention in the thousands of certiorari petitions that are filed each year." *Idaho Dep't of Emp. v. Smith*, 434 U.S. 100, 104 (1977) (Stephens, J., dissenting); SHAPIRO, *supra* at 5-44 (explaining that error correction typically requires meeting the standard for summary reversal). No one questions that "death is different" or that "our society demands that it be treated differently in certain identifiable respects." *Thompson v. Oklahoma*, 487 U.S. 815, 877-78 (1988) (Scalia, J., dissenting). But this is not such a case: This Court routinely denies review in death-penalty cases like this one that fail to present "compelling reasons" justifying the

investment of this Court's limited and valuable resources. Sup. Ct. R. 10.[5] If anything, Aranda's request is particularly unsympathetic, as he was content to allow his *Miranda* claim to sit for twenty-six years even though, if substantiated, it could have entitled him to a new trial.

II. This Petition Is a Poor Vehicle to Resolve Any Lingering Issues Regarding How to Address Pre-AEDPA Habeas Petitions.

Even if there were a need to clarify how to apply the pre-AEDPA version of section 2254 to any other thirty-year-old habeas petitions to which it might apply, this is a poor vehicle to do so for multiple reasons. Two are noteworthy. *First*, due to deficiencies in his habeas petition, it is far from clear that Aranda has preserved the issues he now seeks to litigate. *Second*, even if Aranda can clear that hurdle, a ruling in his favor on the *Miranda* issue will afford him nothing but (yet further) delay in his sentence because he would still not be entitled to habeas relief under the standard of prejudice applicable in *Brecht*.[6]

A. Aranda failed to adequately brief his *Miranda* claim below.

To begin, this is a poor vehicle to address the limits of *Miranda*'s knowing-and-intelligent requirement (or the pre-AEDPA standards for development of such a *Miranda* claim) because his federal habeas petition did not,

---

[5] *See, e.g.*, Order, *Tisius v. Vandergriff*, No. 22-7700, 2023 WL 3831778 (U.S. June 6, 2023) (denying stay of imminent execution and petition for writ of certiorari); *Barwick v. Florida*, No. 22-7424, 2023 WL 3214140 (U.S. May 3, 2023) (same); *Gaskin v. Florida*, 143 S. Ct. 1102 (2023) (same).

[6] Aranda also would not be entitled to the Great Writ, which is always an equitable form of relief that falls within a federal court's discretion. *E.g.*, *Brown v. Davenport*, 142 S. Ct. 1510, 1524 (2022). Equity does not favor rewarding an individual who slept on a claim that could (if ultimately proven) entitle him to a new trial for capital murder until most of the witnesses who would be needed at that trial were themselves dead.

in fact, challenge his Fifth Amendment waiver on grounds that it was not knowingly or intelligently executed. ROA.48-55. Since even before Aranda filed his petition, it has been well-established that the voluntariness of a confession is different from whether a waiver of rights is knowing and intelligent. *See Oregon v. Elstad*, 470 U.S. 298, 310 (1985) ("The failure of police to administer *Miranda* warnings does not mean that the statements received have actually been coerced."). In denying habeas relief in late 1991, the district court explicitly found that Aranda's habeas petition made "no claim that his confession was not intelligently made, or that he did not understand the *Miranda* warnings when given." Pet.App.46a n.11. Almost thirty years later, when denying Aranda's motion to alter or amend, a different district judge came to the same understanding of the petition. Pet.App.20a.

Both federal district judges who examined the question were correct: While Aranda's habeas petition argued that his "uncounseled, custodial 'confession' was improperly admitted," ROA.48, it did not once say that his waiver of rights was unintelligent or unknowing. ROA.48-55. Rather, his claim focused on the voluntariness of his confession, alleging that "[n]ew evidence" left "no doubt about the coercive atmosphere which fueled the State's extraction of [his] 'confession[,]'" ROA.50; that "his confession was systematically coerced through physical and mental abuse," ROA.53; and that he was not brought before a magistrate prior to interrogation, "an important factor in a finding of involuntariness," ROA.53. The closest Aranda came to challenging the knowingness and intelligence of his Fifth Amendment waiver was in the final paragraph of his second claim, which stated that he "did not . . . make an independent and informed decision to waive his right

to counsel and his right not to provide testimony against himself." ROA.55. But the phrase "independent and informed," unlike the ubiquitous phrase "knowing and intelligent," carries no legal significance in the *Miranda* context—particularly when read in context of the entire claim. Through his reply, Aranda could *and should* have explained that he wished to challenge his confession using both prongs of *Miranda*, but he instead clarified that he was using only one—voluntariness. ROA.694-95. Because the two claims are separate, *Elstad*, 470 U.S. at 310, his current claim is not properly preserved.[7]

True, the Fifth Circuit concluded that Aranda's district-court pleadings were adequate to raise this claim for the purpose of granting a COA given that the "district court *sua sponte* denied a COA" on the issue. *See* Pet.App.8a-9a. But the claim's debatable forfeiture—which the Director challenged below—makes this case a poor vehicle for considering the questions presented. Contrary to Aranda's suggestion (at 16 n.4), the Director has not conceded that Aranda adequately presented a knowing-and-intelligent claim in his federal habeas petition. It is black-letter law that a district-court decision can be affirmed on any basis supported by the record. *See, e.g.*, *United States v. N.Y. Telephone Co.*, 434 U.S. 159, 174-78 (1977). Recognizing that the district court "omitted analysis" of a claim that was not before it, the Director objected to the grant of a COA when the Fifth Circuit was considering granting one and then explained why the district court was

[7] Before this Court, Aranda has abandoned his argument that his confession was involuntary. But he nevertheless alleges that he received threats while in the hospital or experienced physical abuse. *E.g.*, Pet. 3, 4-5. These assertions pertain solely to the voluntariness question, *Moran v. Burbine*, 475 U.S. 412, 421 (1986), and thus have no bearing on whether Aranda understood his rights or the impact of waiving them.

correct to deny relief on that claim at the merits stage. The Director has thus consistently taken the position that Aranda's claim was not properly raised.

B. Aranda cannot obtain habeas relief because he cannot show the prejudice *Brecht* requires.

Even if he properly preserved his current claim, Aranda cannot satisfy this Court's equitable limitations on the availability of the habeas writ, which have existed since long before AEDPA. *Cf. Shinn v. Ramirez*, 142 S. Ct. 1718, 1731 (2022) ("To ensure that federal habeas corpus retains its narrow role, AEDPA imposes several limits on habeas relief, and we have prescribed several more."). One of these limitations is *Brecht*'s "heightened harmless error standard." *Edwards v. Vannoy*, 141 S. Ct. 1547, 1570 (2021) (Gorsuch, J., concurring). *Brecht* holds that a state prisoner cannot obtain "'habeas relief based on trial error unless' he can show the error had a 'substantial and injurious effect or influence' on the verdict." *Davenport*, 142 S. Ct. at 1523 (quoting *Brecht*, 507 U.S. at 637). Aranda does not dispute that his claim alleges a trial error subject to *Brecht*, Pet. 35; *see Arizona v. Fulminante*, 499 U.S. 279, 309-10 (1991), or that the Fifth Circuit correctly stated the *Brecht* standard, Pet.App.3a. This Court generally does not grant certiorari to correct errors in applying a correctly stated rule of law. Sup. Ct. R. 10. Aranda provides no reason that this case warrants an exception to that rule. *Contra* Pet. 35-37.

Aranda cannot make *Brecht*'s heightened harmless-error showing, which requires him to "establish that [the error] resulted in 'actual prejudice.'" *Brecht*, 507 U.S. at 637. "When reviewing the erroneous admission" of a confession, this Court, as "with the admission of other forms of improperly admitted evidence, simply reviews the remainder of the evidence against the defendant to determine

whether the admission of the confession," *Fulminante*, 499 U.S. at 310, "had substantial and injurious effect in determining the jury's verdict," *Brecht*, 507 U.S. at 623 (quoting *Kotteakos v. United States*, 328 U.S. 750, 776 (1946)). The Fifth Circuit correctly concluded that here, "any purported *Miranda* error was harmless." Pet.App.3a. At trial, the "State produced overwhelming evidence of Aranda's guilt." Pet.App.3a. Viera's uncontroverted testimony explained that Aranda was in the passenger seat and that the fatal shot came from the vehicle's passenger side. ROA.3082-83, 3171. The .38 special recovered from Aranda at the hospital fired bullets of the same caliber as the bullet recovered from Albidrez's body, Pet.App.35a; ROA.3416-17, in contrast to the weapons used by Viera and Juan Aranda, ROA.3069, 3071. Aranda cannot show that he would have been acquitted in the absence of the confession.

The four counterarguments Aranda offers (at 35-39) are unavailing. *First*, he attacks (at 36-37) Viera's testimony as "inherently unreliable." But, as the Fifth Circuit explained, Viera's "eyewitness testimony cannot be discounted based on after-the-fact speculation that stress renders it unreliable." Pet.App.3a. Aranda's trial counsel made this same argument to the jury, ROA. 4165-66, which took it into account when it found Aranda guilty. Well before AEDPA, it was for the jury, not a federal habeas court, to determine what weight to give Viera's testimony. *See Marshall v. Lonberger*, 459 U.S. 422, 434 (1983) ("[Section] 2254(d) gives federal habeas courts no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them.").

Second, Aranda attempts (at 37) to undermine the ballistics evidence by saying "there was conflicting testimony as to whether either of the Aranda brothers

possessed, at the time of the shooting, the .38 caliber handgun." He made the same argument in the Fifth Circuit, which observed that Aranda "point[ed] to no such conflicting testimony in the record." Pet.App.3a. A .38 special was discovered in the waistband of Aranda's pants shortly after the murder. Pet.App.33a. And Juan testified that his brother, Aranda, was armed with a pistol and that Juan saw him fire it at the officers. ROA.3875. Aranda (at 37) calls it "incredible" that hospital personnel would have found the handgun still in the front of his pants upon his arrival in the emergency room (with an injury to his back and Aranda presumably lying on his stomach), but he cites no evidence to call this testimony into doubt—only speculation. And while Aranda asserts (at 37) that "the firearm toolmark evaluation purporting to match the .38 caliber handgun" was "not conclusive," here, as in the Fifth Circuit, Aranda "fails to direct [this Court] to any record evidence" to that effect. Pet.App.3a. If Aranda's point is that testing did not show that it was *Aranda's* weapon that killed Albidrez, as opposed to some other .38 special, that is immaterial because the State showed that no other weapon on the scene could have fired the killing shot. ROA.3424, 3704-18, 3875.[8] The defense put this theory before the jury, which nevertheless found Aranda guilty.

Third, Aranda argues (at 37-39) that his confession had pride of place in the State's case, but the record belies this notion. The State did not even mention the confession in its opening statement and was content to rest without relying on the confession at all. ROA.2888-91, 3900; *see* Pet. 38-39. The confession was admitted

[8] After all, Juan was armed with a shotgun, *e.g.*, ROA.3766, and Viera with a 9mm, ROA.3068, 3080. Albidrez was carrying a .38-caliber revolver, but that gun uses a different cartridge than a .38 special, which was the killing bullet and which Aranda's gun was designed to fire. ROA.3411.

into evidence only on rebuttal, ROA.3898-3918; and only after a defense witness had testified about its circumstances, *cf.* ROA.4182. Nor did the State bring up the confession in its initial closing argument, ROA.4137-51: It was only after Aranda's own counsel brought up the confession in the defense's closing, ROA.4160-61, that the State mentioned it at all. And when it did so, the State downplayed the confession's significance, ROA.4181-82, inviting the jury to ignore it, ROA.4174. Even if erroneously admitted—though it was not—the confession was harmless to Aranda's defense.

Finally, Aranda briefly avers (at 39) that the jury instructions gave an "impression that the [confession] was the pivotal evidence in the case." He did not make this argument in the Fifth Circuit, so it is not properly before this Court. And it is unpersuasive, given that the State expressly told the jury that it should feel free to ignore the confession. ROA.4174.

* * *

In sum, Aranda has not properly preserved the issues presented because he did not actually plead a claim that his confession was not knowing or intelligent in his habeas petition. Even if he did, he would not be entitled to relief because Aranda cannot demonstrate that the admission of his confession "had substantial and injurious effect in determining the jury's verdict." *Brecht*, 507 U.S. at 623. So even if the Fifth Circuit were wrong to conclude that his confession was admissible—though it was not, *see infra* Part III—Aranda could not obtain habeas relief. That makes resolving the questions presented a poor investment for this Court's resources. *Cf. Ramirez*, 142 S. Ct. at 1739 (explaining that a federal court "'may *never* needlessly prolong' a habeas case" with proceedings that "never would

'entitle [the prisoner] to federal habeas relief'" (first quoting *Cullen v. Pinholster*, 563 U.S. 170, 209 (2011) (Sotomayor, J., dissenting); and then quoting *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007)). The Court should deny Aranda's request to engage in fact-bound error correction for this reason alone.

III. There Is No Error to Correct.

Finally, the Court should deny Aranda's petition because there is no error to correct. Notwithstanding that the Fifth Circuit is undoubtedly (and understandably) out of practice in applying pre-AEDPA standards to habeas petitions, it correctly identified and applied the relevant presumption of correctness to the state court's explicit and implicit factual findings. It was also correct to deny Aranda's request to hold an evidentiary hearing to develop unspecified facts from unnamed witnesses to an event that happened more than forty-five years ago.

A. The Fifth Circuit correctly applied the pre-AEDPA presumption of correctness for state-court findings of fact.

Aranda's primary argument for this Court's review is his contention (at 15, 17-19) that the Fifth Circuit misapplied *Jefferson* when it presumed that the state trial court's factual findings were correct under pre-AEDPA section 2254(d). *See* 28 U.S.C. § 2254(d). It did not. The state court made explicit and implicit factual findings that are supported by the record, *see id.* § 2254(d)(1), and Aranda never identified any defect in the state process that could independently foreclose the presumption under pre-AEDPA section 2254(d)(2), (3), (6), or (7), *see* Pet. 17-18. Because Aranda cannot criticize the Fifth Circuit for failing to discuss ephemeral state-court procedural defects that he has never identified, he must overcome the

state court's fact-finding by convincing evidence. *See* 28 U.S.C. § 2254(d). This he cannot do.

Even under the pre-AEDPA habeas statutes, state-court factual findings "after a hearing on the merits of a factual issue[] . . . shall be presumed to be correct" unless one of eight enumerated exceptions applies. 28 U.S.C. § 2254(d); *see Jefferson*, 560 U.S. at 291. As relevant here, those exceptions include:

> (1) that the merits of the factual dispute were not resolved in the State court hearing; (2) that the factfinding procedure employed by the State court was not adequate to afford a full and fair hearing; (3) that the material facts were not adequately developed at the State court hearing; . . . (6) that the applicant did not receive a full, fair, and adequate hearing in the State court proceeding; . . . (7) that the applicant was otherwise denied due process of law in the State court proceeding; (8) or . . . [the] factual determination is not fairly supported by the record.

28 U.S.C. § 2254(d). Factual findings must be written to receive the presumption of correctness. *Id.* But this Court has held that such findings need not be found in the trial court's ultimate order: A court transcript satisfies this requirement. *Wainwright v. Witt*, 469 U.S. 412, 430-31 (1985). Moreover, the Court may infer findings based on the evidence and objections presented and the conclusion reached in that transcript. *Marshall*, 459 U.S. at 434.

In *Jefferson*, this Court reminded lower courts that any one of the eight section 2254(d) exceptions is sufficient to overcome the pre-AEDPA presumption of correctness for state-court findings but did not otherwise disturb existing law. 560 U.S. at 285, 292-93. That means a state-court finding may be presumed correct if it is "fairly supported by the record," but not if the petitioner identifies one of section 2254(d)'s other defects. *See id.* at 292. For example, a finding of fact does not receive the presumption if the petitioner shows "that the factfinding procedure

employed by the State court was not adequate to afford a full and fair hearing." 28 U.S.C. § 2254(d)(2). In *Jefferson*,

> th[e] findings were drafted exclusively by the attorneys for the State pursuant to an *ex parte* request from the state-court judge, who made no such request of Jefferson, failed to notify Jefferson of the request made to opposing counsel, and adopted the State's proposed opinion verbatim even though it recounted evidence from a nonexistent witness.

560 U.S. at 292. The lower court could not accept those findings by simply concluding they were supported by the record: It needed to consider alleged problems with the process by which the record was created to ensure the petitioner had "receive[d] a full and fair evidentiary hearing in . . . state court.'" *Id.* (quoting *Townsend*, 372 U.S. at 312); *see* 28 U.S.C. § 2254(d)(2).

Jefferson's holding has no impact on Aranda's claim because he has never identified a section 2254(d) defect in the state-court proceedings that could exempt the state findings of fact from the presumption of correctness. In the Fifth Circuit, his only criticism of the state-court process was that the state *habeas* court did not hold a further hearing on his *Miranda* claim. *See* Br. for Appellant at 17, *Aranda v. Lumpkin*, No. 20-70008, 2022 WL 16837062 (5th Cir. Nov. 9, 2022). But the habeas court's decision is not the basis for the factual findings at issue, so its process was immaterial. *See* Pet.App.3a. Moreover, as this Court has repeatedly explained, federal courts may infer state-court findings of fact under pre-AEDPA section 2254(d), and the Fifth Circuit properly did so here. If there were other process defects that the Fifth Circuit supposedly ignored, Aranda has no one to blame but himself, as he identified no other procedural defect to the Fifth Circuit and has identified no additional defects here.

1. The merits of the factual dispute *were* resolved in the state-court hearing.

a. This Court has instructed that implicit state-court findings can resolve the "merits of the factual dispute" within the meaning of pre-AEDPA section 2254(d)(1) and thus be presumed correct. *See Townsend*, 372 U.S. at 313-14. *Contra* Pet. 19-21 (asserting that "the merits of the factual dispute were not resolved in the state court hearing" because there were no express factual findings). Thus, if a state court did not make express findings of fact, federal courts "must initially determine whether the state court has *impliedly* found material facts" before proceeding to other aspects of the analysis. *Townsend*, 372 U.S. at 314 (emphasis added) (discussing the requirement that became section 2254(d)(1)); *see* Pet.App.2a.

For example, in *LaVallee*, a New York jury credited the defendant's two confessions, "presumably" finding them voluntary, in convicting him, 410 U.S. at 691—even though, at trial, he had alleged that "he had a back injury, and therefore was in pain," at the time of his confession, *id.* at 693. On remand "to determine the voluntariness of [the] confessions," the state trial court made written findings stating that the confessions were "legally admissible in evidence at the trial." *Id.* at 691. On federal habeas review, the lower courts held that the state-court findings were not entitled to the presumption of correctness under section 2254(d)(1) because "the state trial judge had 'neglected to say how far he credited—and to what extent, if any, he discounted or rejected' [the defendant's] testimony and the evidence before him," *id.* at 691-92—that is, because the state court "failed to make express findings as to the defendant's credibility," *Marshall*, 459 U.S. at 433. This Court disagreed, holding that the state-court findings were entitled to the

presumption of correctness because "there [was] no evidence that the state trier utilized the wrong [legal] standard." *LaVallee*, 410 U.S. at 695.

Similarly, in *Marshall*, though the state trial court made "no explicit findings" about a witness's credibility, 459 U.S. at 432, this Court applied *LaVallee* to determine that "[t]he trial court's ruling allowing [a] record of conviction to be admitted in evidence" amounted to "a refusal to believe" the defendant's testimony. *Id.* at 434. "[B]ecause it was clear under the applicable federal law that the trial court would have granted the relief sought by the defendant had it believed the defendant's testimony, its failure to grant relief was tantamount to an express finding against the credibility of the defendant." *Id.* at 433.

b. The Fifth Circuit correctly stated—and applied—this rule when it noted that "[t]he findings necessarily implied in the [state court's] ruling are entitled to [the court's] deference." Pet.App.2a. The state trial court held a hearing on Aranda's motion to suppress his confession. ROA.1720-62, 5150-5407; *see Townsend*, 372 U.S. at 314. At that hearing, the trial court (correctly) recognized that the inquiry before it included determining whether Aranda's waiver was knowing and intelligent. *See* ROA.5395. And it rendered a decision on the merits, holding "that the statement will be admissible on the trial on the merits." ROA.1762; *see Townsend*, 372 U.S. at 314. Even if the state court made "no express findings" on the knowing-and-intelligent question, the Fifth Circuit properly "reconstruct[ed]" the state court's findings on that issue because the state court's "view of the facts is plain" from the trial transcript and the written findings of fact. *Townsend*, 372 U.S. at 314; *see Witt*, 469 U.S. at 430-31; Pet.App.2a.

The trial court's findings underlying the knowing-and-intelligent question are apparent from its decision to admit the confession. As Aranda's counsel pointed out, that decision "boils down to who[m] Your Honor wants to believe." ROA.1758. The trial court expressly stated that it was "inclined to believe the peace officers and the District Attorney" instead of Aranda himself, who, the trial court noted, could "reasonabl[y]" be making self-serving allegations in his hearing testimony. ROA.1762. Aranda tries (at 19-20) to minimize the scope of the court's finding by asserting that the trial court's express statement that he believed the police officers and the district attorney referred only to its choice to credit those individuals' testimony regarding whether Aranda wanted an attorney present during questioning. *See* ROA.1762. Even if true (which is dubious), that is irrelevant because the court's decision to admit the confession implies the underlying predicate findings.

The trial court's explicit findings of fact also demonstrate that the court rejected Aranda's version of events. *See* Pet.App.125a. Contrary to Aranda's characterization (at 21), the state court explicitly found that Aranda was given the "necessary statutory warnings," Pet.App.124a, which implies a rejection of Aranda's factual claims that he never received the written warnings, that he did not understand the warnings because they were printed in English, and that the officers did not translate the warnings into Spanish, *see* ROA.5390-91. The state court explicitly found that Aranda wrote his statement "in his own handwriting," ROA.4443, thereby implicitly rejecting his testimony that he could not write in English, ROA.5392, he was so debilitated by pain or medication that he was unaware of his surroundings, ROA.5389, 5391, and the police officers made up the

statement, ROA.5389, 5394. Aranda ignores these properly inferred findings of historical fact.

And the trial court's view of the facts is plain from the record in other ways, as well. *Townsend*, 372 U.S. at 314. The trial court had before it all the facts that Aranda now presses. *See* Pet. 34-35. As he does now, Aranda (through counsel) stated that he "was just released from the hospital" the day of his confession, "went out of there on a stretcher; he was under medication, had not been taken before a magistrate, and had not been told that he was charged with capital murder when he gave this statement." ROA.1759. But the trial court noted that "[Aranda] had been released from the hospital oh, some . . . nine hours prior to the giving of the statement" and that on its review of the statement, the confession "appear[ed] to be an intelligent discourse of [Aranda's] own statement." ROA.1757.

That the trial court's formal, written findings were entered upon remand from the CCA does not preclude federal courts from inferring the trial court's findings. *See* Pet. 20-21. Texas law requires a trial court denying a motion to suppress to "enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based." Tex. Code Crim. Proc. art. 38.22, § 6; *Hester v. State*, 535 S.W.2d 354, 356 (Tex. Crim. App. 1976); *accord* ROA.4482. Compliance with that state-law rule by the CCA and trial court say nothing about the validity of the findings of fact.

c. Aranda makes two legal challenges to the Fifth Circuit's analysis, neither of which has merit. *First*, Aranda argues that his *Miranda* waiver was not knowing and intelligent as a matter of law because "he did not know he was facing a capital murder charge." Pet. 34. That argument is foreclosed by *Colorado v. Spring*, 479

U.S. 564 (1987), which Aranda does not ask the Court to revisit. In that case, this Court held that "a suspect's awareness" of the charges against him "is not relevant to determining whether [he] voluntarily, knowingly, and intelligently waived his Fifth Amendment privilege." *Id.* at 577.

Second, Aranda insists (at 29) that the state trial court did not apply the correct legal standard because it did not expressly determine whether he confessed knowingly and intelligently.[9] This argument has two problems. As an initial matter, it assumes a requirement that the trial court must expressly state its findings relating to the knowing-and-intelligent question on the record. As just discussed, that flies in the face of this Court's holding that federal courts may infer underlying factual findings from the ultimate determination on the merits. *Townsend*, 372 U.S. at 314. And it ignores record evidence that the state trial court understood, at the time it admitted Aranda's confession, that the confession could not be admitted unless waiver were knowing and intelligent. ROA.5395. Moreover, Aranda's argument gets the presumption backwards: If the record does not indicate the standard a state trial judge applies, the federal habeas court presumes he applied the correct one, not the incorrect one. *Witt*, 469 U.S. at 431.

In sum, because the state trial court reached a decision on the merits that Aranda's confession would be admissible in trial after discussing whether his *Miranda* waiver was knowing and intelligent, ROA.1762, it implicitly found

[9] This argument comes in the section of Aranda's brief contending that he is entitled to further "fact development." *See infra* Part III.B. But as noted above, this Court has used its reasoning in *Townsend* to construe section 2254(d), which is "an almost verbatim codification" of the standards this Court articulated in *Townsend*. *Miller*, 474 U.S. at 111.

predicate facts allowing it to conclude that Aranda knowingly and intelligently waived his rights, *Townsend*, 372 U.S. at 314; *see also Witt*, 469 U.S. at 431. It thus resolved the factual dispute on the merits in the hearing, and its implicit findings are entitled to the presumption of correctness under section 2254(d)(1). *See LaVallee*, 410 U.S. at 695; *Townsend*, 372 U.S. at 314; *see also Marshall*, 459 U.S. at 435 (stating that federal courts are "bound to respect" findings that may be inferred from state-court records); *Witt*, 469 U.S. at 430-31. The Fifth Circuit properly inferred this, Pet.App.2a, and thus did not err under section 2254(d)(1) or *Jefferson*.

2. Aranda does not identify any procedural defect that would foreclose the pre-AEDPA presumption of correctness for state-court factual determinations.

Aranda next complains (at 21-25) about the state-court factfinding process and asserts that the Fifth Circuit improperly accorded the state-court findings a presumption of correctness without looking to section 2254(d)(2), (3), (6), and (7) to determine whether any of those subparts precluded such a presumption. If that is true, it is because—unlike the petitioner in *Jefferson*, 560 U.S. at 292-93—Aranda did not identify any procedural defect in the state-court suppression hearing he received. The Fifth Circuit can hardly be faulted for discussing section 2254(d)'s procedural scenarios only briefly before concluding that Aranda received a "full and fair hearing" as required by section 2254(d)(2), Pet.App.2a; *see* 28 U.S.C. § 2254(d)(2).

In any event, the state-court process was not deficient. Without citing any authority, Aranda insists (at 21-25) that the state-court findings are not entitled to the presumption of correctness because the "fact-finding procedure" the state

court employed "was not adequate to afford a full and fair hearing," 28 U.S.C. § 2254(d)(2); "the material facts were not adequately developed at the State court hearing," *id.* § 2254(d)(3); Aranda "did not receive a full, fair, and adequate hearing in the State court proceeding," *id.* § 2254(d)(6); and he "was otherwise denied due process of law in the State court proceeding," *id.* § 2254(d)(7). He is wrong on all counts.

First, the state-court procedure was adequate. *See* 28 U.S.C. § 2254(d)(2). "The adequacy of a state-court procedure under *Townsend*" and section 2254(d) "is largely a function of the circumstances and the interests at stake." *Ford v. Wainwright*, 477 U.S. 399, 411 (1986) (plurality op.). "[T]he lodestar of any effort to devise a procedure" that will pass muster under section 2254(d) "must be the overriding dual imperative of providing redress for those with substantial claims and of encouraging accuracy in the factfinding determination." *Id.* at 417. The state-court process in this case fulfilled both objectives: It provided an opportunity to exclude Aranda's confession if the State failed to show that it was admissible under *Miranda*, *see Leza v. State*, 351 S.W.3d 344, 349 (Tex. Crim. App. 2011), and encouraged accuracy in the factfinding process by hearing witnesses in open court.

Indeed, this case is entirely unlike those in which the Court has held that the presumption of correctness did not apply because of deficient process. For example, in *Ford*, another capital case, a plurality of the Court held that a state's procedure was inadequate under section 2254(d)(2), (3), and (6) because (1) it "fail[ed] to include the prisoner in the truth-seeking process"; (2) the habeas petitioner was "deni[ed]" the "opportunity to challenge or impeach the" State's witnesses; and (3) the State made the executive branch, rather than the judicial

one, the decisionmaker. 477 U.S. at 413-16. None of these things are true of Aranda's hearing. Texas did not "fail[] to include [Aranda] in the truth-seeking process." *Id.* at 413. He and his lawyer were present at the hearing and had the opportunity to challenge the State's witnesses, which they did. *Compare id.* at 413-14, *with* ROA.1720-62, 5150-5407. That is also why Aranda was not "deni[ed]" an "opportunity to challenge or impeach" the State's witnesses. *Ford*, 477 U.S. at 415. And Aranda's hearing and all subsequent process occurred wholly within the judicial branch. *See id.* at 416.

As in the Fifth Circuit, Aranda criticizes (at 22-25) only the state *habeas* court's procedures. To start, because Aranda raised the question only in his Fifth Circuit reply, Reply Br. for Appellant at 4, *Aranda v. Lumpkin*, No. 20-70008, 2022 WL 16837062 (5th Cir. Nov. 9, 2022), the question is forfeited. *E.g.*, *Rugendorf v. United States*, 376 U.S. 528, 534 (1964). Even if it were not, that is irrelevant because the factual findings presumed correct were made by the state *trial* court. The state habeas court was not required to hold a further evidentiary hearing on his claim, and because Texas law bars habeas review of a claim already exhausted on direct appeal—as Aranda's was—the habeas court had no reason to do so. *See Ex parte Acosta*, 672 S.W.2d 470, 472 (Tex. Crim. App. 1984); *cf. Anderson v. Sec'y for Dep't of Corr.*, 462 F.3d 1319, 1330 (11th Cir. 2006) (noting that "a state court's failure to hold an evidentiary hearing . . . is not a basis for federal habeas relief").

Second, the material facts were adequately developed. 28 U.S.C. § 2254(d)(3). It does not matter, *contra* Pet. 22, whether the state court contemporaneously entered written findings because, as explained above, the federal courts may infer the state court's factual findings, *see supra* Part III.A.1. All the facts that Aranda

brings up now were before the trial court and developed at the hearing. Aranda's entire argument thus amounts to a complaint that the trial court did not rule his way on the admissibility of his confession. But that complaint effectively disputes whether the factual finding is "fairly supported by the record," *not* whether a separate procedural fault exists that can permit him to impugn that record under pre-AEDPA section 2254. *See, e.g.*, *Jefferson*, 560 U.S. at 292-93 (emphasis omitted).

Third, Aranda received a full, fair, and adequate hearing in the state-court proceeding for all the reasons discussed above. 28 U.S.C. § 2254(d)(6). Indeed, Aranda had the opportunity to challenge the trial court's factual findings as part of his direct appeal—free from the additional burdens attached to either state or federal habeas proceedings.

Fourth, Aranda was not "otherwise denied due process of law" in the state-court proceeding. 28 U.S.C. § 2254(d)(7). Aranda makes much in his petition (at 22-24) of an alleged practice of "forc[ing] capital cases through the habeas proceedings by repeatedly setting execution dates to drive the case through . . . as quickly as possible." Pet. 8. That does not matter for section 2254(d)'s purposes. Aranda received a hearing on the merits of the admissibility of his confession, where the trial court heard witnesses and expressly reached a merits decision that Aranda's confession would be admissible at trial. ROA.1720-62, 5150-5407. If he did not like the result, he could appeal it—which he did. He received sufficient process. *Cf. United States v. Raddatz*, 447 U.S. 667, 679 (1980) (holding that "the process due at a suppression hearing may be less demanding and elaborate than the protections accorded the defendant at the trial itself").

The state-court findings were entitled to the presumption of correctness under section 2254(d). And the Fifth Circuit expressly ruled that the state-court process was "full and fair." Pet.App.2a. This Court should deny Aranda's petition for a writ of certiorari on Aranda's first question presented.

B. Aranda is not entitled to further "fact development."

Aranda's second question presented (at 25-31)—whether the Fifth Circuit applied the incorrect pre-AEDPA standard for holding evidentiary hearings in federal habeas proceedings—fares no better. The Fifth Circuit did not create a "new test" to replace *Townsend*; rather, it recognized that granting an evidentiary hearing in this case would be fruitless because Aranda has not submitted new, material evidence at any point during the long history of his case, despite ample opportunity to do so. Nor has he identified discovery that would help him support his *Miranda* claim. And Aranda is not entitled to fact development under *Townsend* in any event.

1. The Fifth Circuit did not create a "new test."

To start, contrary to Aranda's assertion (at 26-27), the Fifth Circuit did not create a new standard for determining whether a habeas petitioner is entitled to an evidentiary hearing. What Aranda calls "the proves-beneficial standard," Pet. 27 (emphasis omitted) is no more than the Fifth Circuit's conclusion: Authorizing an evidentiary hearing would be pointless because it "would not prove beneficial" in Aranda's case, Pet.App.6a n.5. In reaching that conclusion, the court pointed to three facts: "(1) [T]he parties have not proffered any evidence that is disputed; (2) the evidence was appropriately presented during the state-court proceedings[][;] and (3) Aranda has not identified any new evidence that could be

developed if he were granted an evidentiary hearing at this juncture." Pet.App.6a n.5. Aranda provides no authority that a federal court is legally required to conduct an evidentiary hearing that would be futile.

2. Aranda still has not identified any evidence he would like to "develop" in support of his *Miranda* claim.

It is not even clear that Aranda disputes the Fifth Circuit's conclusion that an evidentiary hearing would be futile. Instead, Aranda expressly disclaims any desire or need for an evidentiary hearing, instead saying that he seeks "fact development" without elaborating on what that might entail. Pet. 31. If Aranda's complaint is that the district court did not authorize discovery, he never raised that complaint to the Fifth Circuit and thus cannot raise it now. Even if he could still pursue the issue, it is not clear how that would help him (other than to further delay his execution) for at least two reasons.

First, today there is no difference between holding a formal evidentiary hearing and "otherwise consider[ing] new evidence." *Ramirez*, 142 S. Ct. at 1739. Aranda provides no authority suggesting that that rule was different prior to AEDPA, and it is hard to see why it would be. After all, discovery is a fishing expedition unless it is reasonably likely to result in admissible evidence that can be admitted in some form of evidentiary hearing.

Second, Aranda points to no new evidence that he hopes to "develop" even now. If Aranda received a further opportunity for "fact development," by all appearances he would put on—at most—the very same evidence that is already in the state-court record. He could hardly do otherwise: Nearly fifty years have passed since he gunned down Albidrez. The evidence has grown stale, and most of the witnesses have died. ROA.1421-22.

3. Aranda is not entitled to "fact development" under *Townsend*.

In any event, Aranda is not entitled to an evidentiary hearing, even under the standards he claims the Fifth Circuit failed to apply. Aranda asserts (at 29-31) that *Townsend* factors (1), (3), (5), and (6) entitle him to an evidentiary hearing—that is, that "the merits of the factual dispute were not resolved in the state hearing"; "the fact-finding procedure employed by the state court was not adequate to afford a full and fair hearing"; "the material facts were not adequately developed at the state-court hearing"; and "it appears" that "the state trier of fact did not afford the habeas applicant a full and fair hearing." *Townsend*, 372 U.S. at 313. Because the pre-AEDPA section 2254(d) is "an almost verbatim codification of the standards delineated in *Townsend*," *Miller*, 474 U.S. at 111, this argument adds nothing to his statutory argument discussed above, *see supra* Part III.A. Even if that were not the case, none of Aranda's arguments has merit.

1. For two reasons, Aranda contends he was entitled to a hearing "under *Townsend* factor (1) because 'the merits of the factual dispute were not resolved in the state hearing.'" Pet. 29-30 (emphasis omitted) (quoting *Townsend*, 372 U.S. at 313). *First*, he argues (at 29) that the Fifth Circuit could not properly infer a state-court factual finding that his waiver was knowing and intelligent because it is "unclear whether the state [fact]finder applied correct constitutional standards." That argument fails on the face of the record—the state court understood that the inquiry encompassed whether Aranda's waiver was knowing and intelligent, ROA.5395, and it went on to admit the confession, *see supra* at 26-28. And it ignores the presumption that state courts do apply correct constitutional standards. *Witt*, 469 U.S. at 431 ("[W]here the record does not indicate the standard applied by a state trial judge, he is presumed to have applied the correct one.").

Second, Aranda asserts that the relevant facts are too "blended" with the legal standard to be inferred. Pet. 29-30. He can make this argument only by ignoring state-court findings of historical fact that bear on both voluntariness and valid waiver. *See supra* at 26-28. The Director does not (contrary to Aranda's suggestion) contend that the state court's findings that Aranda was not "subject to 'undue interrogation'" and "gave his statement voluntarily" are what forecloses a further federal hearing. Pet. 30. Rather, a hearing is not required under *Townsend* because the state court both explicitly and implicitly rejected Aranda's version of the events surrounding his *Miranda* waiver—including those events that he maintained demonstrated his waiver was neither knowing nor intelligent. By contrast, the trial court implicitly and explicitly accepted the account of the district attorney and police officers that demonstrated facts showing the waiver was fully informed—for example, that officers remedied any deficiencies in Aranda's understanding of English by explaining his rights in Spanish. *See supra* Part III.A.1.

2. Referring again to the state habeas court's refusal to hold another evidentiary hearing, Aranda argues (at 30) that the material facts were not adequately developed. *Townsend*, 372 U.S. at 313 (factor (5)). The state court's process was not deficient for the reasons explained above. *See supra* Part III.A.2. If anything, comparison to the facts in *Townsend* underscore why Aranda's case fails: There, factual development was necessary because a "crucial fact"—namely, "that the substance injected into Townsend before he confessed has properties which may trigger statements in a legal sense involuntary"—"was not disclosed at the state-court hearing." *Townsend*, 372 U.S. at 321; *see also id.* at 313 (discussing the fifth *Townsend* factor), 317 (same).

Here, by contrast, the trial court held an extensive suppression hearing where the facts that Aranda now alleges were fully developed, are thus part of the state-court record, and were found by the trial court. With all this evidence before it, the trial court still determined that Aranda's statement was knowing and intelligent. ROA.1757. What is more, Aranda's defense counsel made an argument substantively identical to the one Aranda makes now. ROA.1759; *see also* ROA.4161 (defense closing). Where all the material facts were before the trial court when it decided that Aranda's confession would be admissible, further fact development would merely waste time and judicial resources.

Aranda's argument on *Townsend* factors (3) and (6) (to the extent he makes them) fails for all the reasons discussed above. *See supra* Part III.A.2.

3. Because Aranda cannot show that he is entitled to a hearing under *Townsend*, and because the pre-AEDPA section 2254 tracks *Townsend*, it was within the district court's discretion whether to hold such a hearing. 372 U.S. at 318. And Aranda gave the district court no reason to hold one because there, as here, he offered no new facts or disputed evidence. The record evidence shows that his *Miranda* rights were explained to him in both English and Spanish, ROA.1733-34, 4045, and according to physician testimony, he would no longer have been experiencing the effects of Demerol when he was questioned, *see* ROA.3496, 4094, 4100. Thus, the record is devoid of evidence suggesting that Aranda acted without "full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran*, 475 U.S. at 421. For the same reasons, the Fifth Circuit correctly decided that his evidence "was appropriately presented during the state-court proceedings[]," and he was not entitled to another

opportunity to delay his execution by obtaining a futile hearing in federal court. Pet.App.6a n.5.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

JOHN SCOTT
Provisional Attorney General
of Texas

BRENT WEBSTER
First Assistant Attorney
General

LANORA C. PETTIT
Principal Deputy
Solicitor General
Counsel of Record

NATALIE D. THOMPSON
Assistant Solicitor General

SARA BAUMGARDNER
Assistant Attorney General

OFFICE OF THE
ATTORNEY GENERAL
P.O. Box 12548 (MC 059)
Austin, Texas 78711-2548
Lanora.Pettit@oag.texas.gov
(512) 936-1700

JUNE 2023