No. _____

IN THE

Supreme Court of the United States

WILLIE JAMES PYE,
Petitioner,

v.

SHAWN EMMONS, WARDEN,
GEORGIA DIAGNOSTIC AND CLASSIFICATION PRISON,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Eleventh Circuit's novel construction of 28 U.S.C. § 2254(d)—under which a state prisoner is ineligible for federal habeas relief even when the state court has "unreasonabl[y]" rejected his claim, *id.* § 2254(d)(1)-(2), so long as the federal court can provide *some* reasonable "justification" for the state court's "reason" for denying relief—is inconsistent with the statutory text and in direct conflict with this Court's decision in *Wilson* v. *Sellers*, 138 S. Ct. 1188 (2018).

2. Whether 28 U.S.C. § 2254(e)(1) applies when a state prisoner seeks federal habeas relief solely on the state-court evidentiary record.

PARTIES TO THE PROCEEDING

Petitioner Willie James Pye was petitioner-appellant in the court of appeals and petitioner in the district court.

Respondent Shawn Emmons is named in his official capacity as warden of the Georgia Diagnostic and Classification Prison. At earlier stages of this litigation, other individuals holding that office were similarly named in their official capacity as respondent-appellee in the court of appeals and respondent in the district court.

RELATED PROCEEDINGS

Superior Court of Spalding County, Georgia:

The State v. *Willie James Pye*, No. 94R-42 (June 7, 1996)

Superior Court of Butts County, Georgia:

Willie James Pye v. *Stephen Upton, Warden, Georgia Diagnostic and Classification Prison*, No. 2000-V-85 (Jan. 30, 2012)

Supreme Court of Georgia:

Willie James Pye v. *The State*, No. S97P2062 (Oct. 31, 1997)

Willie James Pye v. *The State*, No. S98P0612 (Sept. 21, 1998)

Willie James Pye v. *Stephen Upton, Warden*, No. S12E1536 (Apr. 15, 2013)

United States District Court for the Northern District of Georgia:

Willie James Pye v. *Bruce Chatman, Warden, Georgia Diagnostic Prison*, No. 3:13-cv-119-TCB (Jan. 22, 2018)

United States Court of Appeals for the Eleventh Circuit:

Willie James Pye v. *Warden, Georgia Diagnostic Prison*, No. 18-12147 (Jan. 25, 2023)

Supreme Court of the United States:

Willie James Pye v. *Georgia*, No. 98-8048 (May 17, 1999)

Willie James Pye v. *Antoine Caldwell, Warden, Georgia Diagnostic Prison*, No. 22A992 (May 15, 2023)

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Petitioner Willie James Pye respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

INTRODUCTION

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214, limits the power of federal courts to grant habeas relief to state prisoners whose claims were rejected on the merits by a state court. A prisoner seeking relief must demonstrate one of two exceptions: either that the state court's "adjudication of the claim . . . resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law," 28 U.S.C. § 2254(d)(1), or that the adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," *id.* § 2254(d)(2).

To make this reasonableness determination, a federal habeas court "'train[s] its attention on the *particular reasons*—both legal and factual—why state courts rejected a state prisoner's federal claims,'" and then "defers to *those reasons* if they are reasonable." *Wilson* v. *Sellers*, 138 S. Ct. 1188, 1191-1192 (2018) (emphasis added) (quoting *Hittson* v. *Chatman*, 576 U.S. 1028, 1028 (2015) (Ginsburg, J., concurring in denial of certiorari)). Both in applying AEDPA itself and instructing lower courts how to do so, this Court has long held that the federal habeas court "focuse[s] exclusively on the actual reasons given" by the state court. *Id.* at 1195-1196.

The en banc court of appeals did not follow that clear instruction in this case. A panel had examined the state court's adjudication of Mr. Pye's claim that he was denied the effective assistance of counsel at his capital-sentencing proceeding. Applying *Wilson*, the panel determined that each and every one of the factual and legal underpinnings for the state court's rejection of the claim was unreasonable, and thus that Section 2254(d) permitted de novo review. But on rehearing, the en banc court held that Section 2254(d) required deference to the state court's conclusion that Mr. Pye had not demonstrated prejudice from counsel's deficient performance.

The en banc majority based that conclusion on two erroneous holdings. First, the majority held that Section 2254(d) required deference if there was *any* reasonable basis for the state court's prejudice conclusion—even if the court's *stated* rationales were each "unreasonable application[s] of[ ] clearly established federal law," 28 U.S.C. § 2254(d)(1), or "unreasonable determination[s] of the facts," *id.* § 2254(d)(2). The majority acknowledged *Wilson*'s instruction that federal habeas courts consider only the state court's "*reasons*" for denying relief, but nevertheless held that it must defer if it could imagine other, unstated "*justifications*" that would satisfy AEDPA's reasonableness standard. Pet. App. 18a-19a. That approach permitted the majority to "bur[y]" the state habeas court's "egregious[ ]" errors "under a mountain of reasons the [court] never employed." *Id.* at 126a (J. Pryor, J., dissenting).

This distinction between "reasons" and "justifications" has no footing in AEDPA's text or this Court's precedent, and no other circuit has adopted it. In fact, this

novel approach all but returns the Eleventh Circuit to its outlier regime that led to this Court's intervention in *Wilson*.

En route to its rejection of Mr. Pye's claim, the court of appeals also deepened another longstanding split of authority. The lower courts have long disagreed on whether, when a habeas petitioner seeks relief under 28 U.S.C. § 2254(d)(2) by showing that the state court relied on an unreasonable determination of the facts, he must also satisfy Section 2254(e)(1)'s requirement that state-court factual findings are "presumed to be correct" unless rebutted "by clear and convincing evidence," *id.* § 2254(e)(1). And this Court has "not yet 'defined the precise relationship between'" the provisions, *Brumfield* v. *Cain*, 576 U.S. 305, 322 (2015) (quoting *Burt* v. *Titlow*, 571 U.S. 12, 18 (2013)), leaving unsettled "whether § 2254(e)(1) applies in every case presenting a challenge under § 2254(d)(2)," *Wood* v. *Allen*, 558 U.S. 290, 300 (2010). See also *Titlow*, 571 U.S. at 18; *Rice* v. *Collins*, 546 U.S. 333, 339 (2006).

The en banc majority held that Section 2254(e)(1) applied even though Mr. Pye sought relief solely on the state-court record. It then proceeded to characterize many of the state court's conclusions as factual determinations and invoked Section 2254(e)(1) to render them unassailable.

Operating in tandem, the en banc majority's holdings served to insulate the state court's manifestly unreasonable findings from federal review. Those holdings thus consigned Mr. Pye to execution despite never having received a constitutionally compliant death sentence. By deepening splits of authority, they also sowed further

uncertainty into federal habeas proceedings. This Court should grant review.

OPINIONS BELOW

The opinion of the en banc court of appeals (Pet. App. 5a-126a) is reported at 50 F.4th 1025. The opinion of the panel on remand from the en banc court (Pet. App. 1a-4a) is unpublished but is available at 2023 WL 386289. The vacated opinion of the initial panel (Pet. App. 127a-174a) is unpublished but is reported at 853 Fed. Appx. 548. The order of the district court denying the petition for a writ of habeas corpus (Pet. App. 179a-274a) is unpublished but is available at 2018 WL 11184647. The order of the Supreme Court of Georgia denying a certificate of probable cause to appeal (Pet. App. 275a-276a) and the order of the Superior Court of Butts County, Georgia, denying post-conviction relief (Pet. App. 277a-369a) are unreported.

JURISDICTIONAL STATEMENT

The judgment of the court of appeals was entered on January 25, 2023. A petition for rehearing was denied on March 9, 2023. On May 15, 2023, Justice Thomas extended the time to file a petition for a writ of certiorari until July 7, 2023. *Pye* v. *Caldwell*, No. 22A992 (mem.). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Title 28 U.S.C. § 2254 provides, in relevant part:

§ 2254. State custody; remedies in Federal courts

. . . .

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State

court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

(e)

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

(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

> (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

. . . .

The full text of 28 U.S.C. § 2254 is reproduced in the appendix to this petition. Pet. App. 371a-374a.

STATEMENT

A. Legal Background

Under AEDPA, a federal habeas court considering a claim rejected by a state court on the merits must defer if "'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington* v. *Richter*, 562 U.S. 86, 101 (2011) (quoting *Yarborough* v. *Alvarado*, 541 U.S. 652, 664 (2004)). When the last state court to reject the claim "explains its decision" in a "reasoned opinion," this deference involves a "straightforward inquiry": the federal court "train[s] its attention on the particular reasons—both legal and factual"—for the state court's decision. *Wilson* v. *Sellers*, 138 S. Ct. 1188, 1191-1192 (2018) (internal quotation marks omitted).

In *Richter*, this Court addressed how AEDPA operates "when state-court relief is denied without an accompanying statement of reasons." 562 U.S. at 92. There, *no* state court had issued a reasoned opinion, and the Court explained that "the habeas petitioner's burden still must be met by showing there was no reasonable basis for the state court to deny relief." *Id.* at 98. The Court thus held that relief was unavailable "if there was a reasonable justification for the state court's decision." *Id.* at 109.

In *Wilson* v. *Warden, Georgia Diagnostic Prison*, 834 F.3d 1227, 1235-1242 (2016) (en banc), the Eleventh Circuit held that *Richter*'s scheme of deference applied even when a state court *has* issued a reasoned opinion. A Georgia state trial court had rejected an ineffective-assistance-of-counsel claim in a reasoned opinion, explaining why the petitioner had failed to demonstrate either deficient performance or prejudice. *Wilson*, 138 S. Ct. at 1192-1193; see *Strickland* v. *Washington*, 466 U.S. 668, 687 (1984). The Georgia Supreme Court rejected the claim by summarily denying review. *Wilson*, 138 S. Ct. at 1193. The question presented was whether the state supreme court's adjudication should be treated as unreasoned—in which case, under *Richter*, habeas relief would be unavailable were there *any* reasonable rationale for rejecting the claim—or if the federal habeas court should instead "look through" the summary order to the reasoned trial-court opinion and consider the reasonableness of its rationale. See *ibid.*

The en banc Eleventh Circuit held that Section 2254(d)(1) called for *Richter* deference—that "[i]nstead of 'looking through' the decision to the state habeas court's opinion, the federal court should have asked what arguments 'could have supported' the Georgia Supreme Court's refusal to grant permission to appeal." *Wilson*, 138 S. Ct. at 1193. In refusing to use the "'look through' approach," the Eleventh Circuit split from every other circuit to address the issue both before and after *Richter*. *Ibid.*

This Court reversed, holding that *Richter* applied only when "there was no lower court opinion to look to." *Wilson*, 138 S. Ct. at 1195. The Court explained that it had in

many cases "'looked through' to lower court decisions in cases involving the merits" and, rather than defer to hypothetical reasons that could have supported the state high court's decision, "focused exclusively on the *actual reasons given by the lower state court*" and "deferred to *those reasons* under AEDPA." *Id.* at 1195-1196 (emphasis added) (citing *Premo* v. *Moore*, 562 U.S. 115, 123-133 (2011); and *Sears* v. *Upton*, 561 U.S. 945, 951-956 (2010) (per curiam)).

In the decision below, however, the Eleventh Circuit once again unmoored federal review from the state court's actual reasoning and empowered federal habeas courts to imagine "justifications" not given by the state court. As the dissent below noted, "[a]t this point only [this] Court can set things right again." Pet. App. 126a (opinion of J. Pryor, J.).

B. Proceedings in State Court

1. State trial proceedings

A jury in Spalding County, Georgia, found Mr. Pye guilty of murder and other offenses for his involvement in the rape and shooting of his former girlfriend, Alicia Lynn Yarbrough. Pet. App. 7a-9a. The crime began as an attempted robbery of Yarbrough's new boyfriend; Mr. Pye's alleged motive was that he "had signed the birth certificate of a child whom Pye claimed as his own." *Id.* at 7a (quoting *Pye* v. *State*, 505 S.E.2d 4, 10 (Ga. 1998)).

Mr. Pye was appointed just one attorney: public defender Johnny Mostiler. Pet. App. 9a. Pursuant to a lump-sum contract, Mostiler represented all indigent defendants in the county—at the time, about 800 facing felony charges. D. Ct. Doc. 17-13, at 4 (Sept. 11, 2013).

Mostiler's caseload also included four other capital cases, not to mention his "active private civil practice." Pet. App. 129a-130a.[1]

Mostiler was assisted on the case by a single investigator, and billing records indicated that Mostiler "spent just over 150 hours preparing for Mr. Pye's trial." Pet. App. 130a. A "week or two before the trial," the investigator contacted Mr. Pye's sister and "asked her to find witnesses who may testify to [his] good character." *Id.* at 144a (internal quotation marks omitted). Because of "*her* efforts," seven family members and one friend testified at the penalty phase. *Ibid.* These witnesses generally discussed Mr. Pye's "good moral character" and "asked the jury for mercy." *Id.* at 130a-131a. Mr. Pye's sister testified that the family lived in "a four-bedroom home," and that while they did not have "running water in the bathroom or central heat," the "one thing [they] did have" was "love." *Id.* at 131a (internal quotation marks omitted).

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[1] Mostiler once slept during the trial of a client who was eventually executed. See *Fults* v. *Upton*, No. 09-cv-86, 2012 WL 884766, at *15 (N.D. Ga. Mar. 14, 2012). About another client who was also later executed, Mostiler said, "The little n[****]r deserves the death penalty." *Osborne* v. *Terry*, 466 F.3d 1298, 1316 (11th Cir. 2006) (internal quotation marks omitted). Another capital client was forced to "reenact a murder while wearing unnecessary leg irons and manacles" after Mostiler failed to object and "waved off the prosecutor's concern" that the shackles should be removed before the defendant testified. *Whatley* v. *Warden, Ga. Diagnostic & Classification Prison*, 141 S. Ct. 1299, 1299-1300 (2021) (Sotomayor, J., dissenting from denial of certiorari).

For more on Mostiler and his agreement with Spalding County to become its sole public defender, see Alan Berlow, *Requiem for a Public Defender*, Am. Prospect (Dec. 19, 2001), https://prospect.org/features/requiem-public-defender.

Mostiler and the prosecutor had tried capital cases against one another so often that the prosecutor told the jury he could "anticipate[]" Mostiler's closing arguments "down to the very quotes" from the Bible and Shakespeare that Mostiler would invoke. Pet. App. 131a, 162a. True to form, Mostiler recited his "canned closing." *Id.* at 67a (J. Pryor, J., dissenting).

Likewise, Mostiler knew that the prosecutor "had a habit" of arguing the defendant's future dangerousness in prison. Pet. App. 162a. In a recent trial involving Mostiler, the prosecutor had argued to the jury, "How do you explain [a sentence less than death] to the prison guard if [the defendant] has to kill one to get out of jail?" *Ibid.* (first alteration in original) (internal quotation marks omitted). The prosecutor parroted the same argument at Mr. Pye's trial, emphasizing that if Mr. Pye were sentenced to life imprisonment, "he'll for sure kill a guard to get out." *Id.* at 131a (internal quotation marks omitted). Mostiler nonetheless "had nothing prepared to refute the prosecutor's assertion." *Id.* at 71a (J. Pryor, J., dissenting).

The jury recommended a death sentence, which the trial court imposed. Pet. App. 9a. The Supreme Court of Georgia affirmed on direct review, *Pye*, 505 S.E.2d 4, and this Court denied certiorari, 526 U.S. 1118 (1999).

2. State postconviction proceedings

Mr. Pye sought state postconviction relief. Pet. App. 9a. As relevant here, he alleged that Mostiler had provided ineffective assistance of counsel at the penalty phase by failing to develop readily available mitigating evidence and rebut the State's case for death. *Id.* at 9a-10a.

a. At the evidentiary hearing, Mr. Pye introduced testimony from Mostiler's investigator that "the primary focus of the defense was to prove Mr. Pye's innocence." Pet. App. 133a. The investigator explained that Mr. Pye's family had not been helpful in his efforts to develop a guilt-phase defense, so he lost interest in enlisting their help at the penalty phase. *Id.* at 134a. He confirmed that Mostiler's usual practice was to commission a psychological evaluation of capital defendants but that Mostiler had failed to do so here. D. Ct. Doc. 14-41, at 72, 83-84 (Sept. 11, 2013).

Mr. Pye also introduced live testimony from lay and expert witnesses, as well as affidavits from about two dozen individuals familiar with his past. Pet. App. 135a. Several family members who had spoken with Mostiler before trial testified that he had not asked about Mr. Pye's upbringing or explained what sort of evidence might establish mitigating circumstances, instead simply instructing them "to say nice things about [Mr. Pye]." *Id.* at 144a (internal quotation marks omitted). A number of other witnesses—including teachers, a police officer, a social worker, and former prison guards—testified that they were never contacted by Mostiler. D. Ct. Doc. 16-24, at 20-118 (Sept. 11, 2013); D. Ct. Doc. 16-25, at 11-14.

These individuals now "described in detail Mr. Pye's traumatic childhood and adolescence, during which near-constant physical and emotional abuse, extreme parental neglect, endangerment, and abject poverty pervaded his daily life, as well as his resulting troubled adulthood." Pet. App. 135a. Their consistent testimony went unrebutted. *Id.* at 168a.

The evidence showed that at birth, Mr. Pye, the seventh of ten children, was left "alone with his siblings all day, leaving the older children—10, at the oldest—to care for the younger ones" while their mother worked for subsistence wages and their father was in prison. Pet. App. 168a. The family lived in a four-*room* (not four-bedroom) home "with makeshift sleeping quarters divided by boards and sheets" and no heat or indoor plumbing. *Id.* at 170a; see *id.* at 136a-137a. A police officer who frequently responded to domestic-violence calls at the home testified that the "conditions were filthy," and a social worker who visited hundreds of times described the conditions as "deplorable" and "so unsanitary" as to create serious risks to the children. *Id.* at 137a (internal quotation marks omitted).

Mr. Pye's father Buck, "a violent and explosive alcoholic, regularly abused" the family, with Mr. Pye his "favorite target." Pet. App. 169a (internal quotation marks omitted). Buck would berate Mr. Pye for being "so stupid that he just couldn't be [his] kid." *Id.* at 138a (internal quotation marks omitted). Buck would suggest that Mr. Pye's mother "was messing around while [Buck] was in prison." *Ibid.* (internal quotation marks omitted).

Mr. Pye also introduced evidence of brain damage and low intellectual functioning. Pet. App. 143a. The State's expert tested Mr. Pye's IQ at 68. *Id.* at 299a n.3. Mr. Pye also introduced school records "corroborat[ing] his low attendance, academic challenges despite effort (including standardized test scores placing him in the lowest one percentile nationally in reading and language), general lack of family support, and completion only of eight years of schooling." *Id.* at 140a-141a.

Finally, Mr. Pye introduced records of his prior incarceration, "which trial counsel did not attempt to obtain" despite knowing what the State would argue in aggravation. Pet. App. 141a; see *id.* at 141a-143a. Additionally, two prison guards testified by affidavit that during the earlier incarceration, Mr. Pye had been a nonviolent prisoner whom they trusted to perform work duties unsupervised and help keep order in the prison. *Id.* at 142a.

b. The postconviction trial court denied relief, entering—verbatim—the 77-page proposed order prepared by the State. Pet. App. 277a-369a.

The trial court first concluded that Mostiler had not performed deficiently in presenting a mitigation case, finding that the cursoriness of his investigation was reasonable. Pet. App. 348a-349a. The trial court then concluded that Mr. Pye had not suffered prejudice from Mostiler's failure to investigate in preparation for sentencing. *Id.* at 349a-359a. It explained that because Mr. Pye "was 28 years old at the time of these crimes, [Mostiler] could have reasonably decided . . . that remorse was likely to play better than excuses." *Id.* at 358a.[2]

The trial court further concluded—without mentioning the mitigation witnesses who testified live at the hearing—that all two dozen mitigation-witness affidavits were too unreliable to support a finding of prejudice. Pet. App. 356a-359a. Quoting Eleventh Circuit precedent, the court observed that "'[i]t is common practice for petitioner[s] attacking their death sentences to submit affidavits from witnesses who say they could have supplied additional

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[2] The trial record reflects that Mostiler presented no evidence of remorse whatsoever.

mitigating circumstance evidence, had they been called,' but 'the existence of such affidavits, artfully drafted though they may be, usually proves little of significance.'" *Id.* at 356a (quoting *Waters* v. *Thomas*, 46 F.3d 1506, 1513-1514 (1995) (en banc)).

The trial court found evidence of "artful drafting" in three affidavits from Mr. Pye's family members. Pet. App. 357a-358a. For example, an affidavit from one of Mr. Pye's brothers stated that "[n]o one talked to me about any of this [*i.e.*, Mr. Pye's childhood] before [the] trial." *Id.* at 34a (internal quotation marks omitted). The trial court's order, however, elided part of the affidavit and quoted it as stating that "[n]o one talked to me . . . before [the] trial." *Id.* at 357a (second alteration in original) (internal quotation marks omitted). The court observed that Mostiler's billing records indicated they had in fact spoken, and on that basis it discredited the affidavit. *Ibid.* The court similarly interpreted affidavits from Mr. Pye's mother and another brother as falsely claiming never to have met with Mostiler. *Id.* at 357a-358a. And the court found a social worker's affidavit to be artfully drafted, too, because he had submitted a minor correction to his initial statement. *Id.* at 357a.

The trial court parlayed these findings into a basis for regarding *all* of the affidavits "with caution." Pet. App. 358a. The court did not offer any further explanation of its conclusion that each affidavit was too dubious to support a showing of prejudice. See *ibid.*

c. Mr. Pye sought a certificate of probable cause from the Georgia Supreme Court to appeal the denial of his claims, but the court denied his application without explanation. Pet. App. 275a-276a.

C. Proceedings in Federal Court

Mr. Pye filed a habeas petition in the U.S. District Court for the Northern District of Georgia. The district court denied the petition, Pet. App. 179a-274a, but an Eleventh Circuit panel reversed and granted sentencing relief, *id.* at 127a-174a. On rehearing, the en banc court of appeals vacated the panel's grant of relief, *id.* at 5a-126a, and the panel on remand rejected Mr. Pye's remaining claim, *id.* at 1a-4a.

1. Initial panel decision

The panel began by noting that AEDPA required it to "train its attention on the particular reasons—both legal and factual—why [the state court] rejected [Mr. Pye's] federal claims, and to give appropriate deference to that decision." Pet. App. 150a (quoting *Wilson*, 138 S. Ct. at 1191-1192). With that framing, the panel concluded that each of the state court's reasons for rejecting Mr. Pye's ineffective-assistance-of-counsel claim was unreasonable.

The panel held that the state court had "unreasonably cast aside Mr. Pye's mitigation affidavits, required a temporal and topical connection between the crime and mitigating circumstances, buoyed trial counsel's performance based on a non-existent remorse strategy, and failed to consider the full breadth of mitigating evidence in Mr. Pye's [prison] records." Pet. App. 167a. It therefore concluded that "[t]he court's errors lie 'beyond any possibility for fairminded disagreement.'" *Ibid.* (quoting *Richter*, 562 U.S. at 103). Accordingly, the panel reviewed Mr. Pye's claim de novo and held that he was entitled to a new sentencing hearing. *Id.* at 167a-174a.

2. En banc proceedings

The State sought rehearing, limited to the panel's conclusion that the state court's prejudice determination was not entitled to AEDPA deference. Pet. App. 13a. The en banc court of appeals held that Mr. Pye was not entitled to relief. *Id.* at 5a-126a.

a. The en banc majority (comprising six of the ten judges hearing the case) began with two holdings on the application of 28 U.S.C. § 2254. First, the majority held that in addition to the deference to state-court factfinding imposed by Section 2254(d)(2), Section 2254(e)(1) required Mr. Pye to rebut the state court's factual conclusions by clear and convincing evidence, notwithstanding that Mr. Pye claimed entitlement to relief on the state-court record alone. Pet. App. 17a. That issue, one of first impression in the Eleventh Circuit, was not addressed by the district court or the panel, and the parties had not briefed it.

The majority then held that Section 2254(d) permitted it to consider rationales for denying relief that the state court had not provided. Pet. App. 18a-30a. The majority explained that "although the Supreme Court's decision in *Wilson* instructs us to 'review[] the specific reasons given by the state court and defer[] to those reasons if they are reasonable,' we are not required, in assessing the reasonableness of a state court's reasons for its decision, to strictly limit our review to the particular *justifications* that the state court provided." *Id.* at 18a (citation omitted) (quoting *Wilson*, 138 S. Ct. at 1192). Thus, Section 2254(d) called for a two-step process—first, "determine[] the *reasons* for the state court's decision"; second, "consider any potential *justification* for those reasons," even

if the state court had not provided those "justifications." *Ibid.* The majority noted that the finding of insufficient prejudice was a "reason" for denying relief, but that it must, "in evaluating whether that 'reason [was] reasonable,' consider additional rationales that support the state court's prejudice determination." *Ibid.* (alteration in original) (citation omitted) (quoting *Wilson*, 138 S. Ct. at 1192). And it stated that "there is simply nothing in *Wilson* that clearly confines a federal habeas court to the precise justifications that a state court provides in its written opinion." *Id.* at 26a.

Applying its construction of AEDPA, the majority deferred to the state court's conclusion that Mr. Pye had not demonstrated prejudice. Pet. App. 31a-61a. The majority believed itself obligated, in considering whether the state court's legal and factual conclusions were reasonable (under Section 2254(d)), to supplement that court's stated rationales with additional "justifications" of its own. *E.g.*, *id.* at 49a n.20. And it further required Mr. Pye to rebut each of the state court's subsidiary factual determinations—including, for instance, that the affidavits were "artfully drafted," *id.* at 38a—by clear and convincing evidence (under Section 2254(e)(1)). See *id.* at 34a, 41a, 48a. Concluding that every aspect of the state court's analysis was at least *hypothetically* supported by a factual determination Mr. Pye had not rebutted, the majority denied relief under Section 2254(d).

b. Judge Jill Pryor, joined by Judge Wilson in full and Judges Jordan and Rosenbaum in part, dissented. Pet. App. 66a-126a; see *id.* at 63a. She believed that the majority had strayed from *Wilson*'s "clear dictate" that federal habeas courts "review a limited universe"—the

actual rationales provided by the state court. *Id.* at 78a-79a. She rejected the "distinction between reasons and justifications" on which the majority relied as "nonexistent in the caselaw." *Id.* at 80a. She observed that if federal habeas courts were required to "imagine reasons that would support the [state court's] ultimate decision, and hold fast to AEDPA deference" even if "the actual reasons given are *unreasonable*"—then "*Wilson*'s look-through rule does no work." *Id.* at 82a. And she catalogued how, despite the majority's contrary assertion, its approach rendered the Eleventh Circuit an outlier. *Id.* at 88a-93a.

Judge Pryor also objected to the majority's discussion of the relationship between Section 2254(d)(2) and (e)(1). Pet. App. 94a-96a (dissenting opinion). She noted that it was the subject of "a split among the circuits" and that this Court had "repeatedly dodged the question of the [provisions'] precise interplay." *Id.* at 95a.

Focusing on the rationale set forth in the state court's opinion, Judge Pryor would have concluded that its rejection of Mr. Pye's claim was unreasonable. Pet. App. 98a-113a (dissenting opinion). On de novo review, she would have held that Mr. Pye had made the necessary showing—that there was "a reasonable probability that at least one juror would have voted for a sentence less than death had the jury heard what we now know." *Id.* at 114a; see *id.* at 113a-126a.

c. Judge Jordan, joined by Judge Rosenbaum, concurred in the judgment. Pet. App. 63a-65a. He agreed with Judge Pryor's construction of Section 2254(d) and with her criticism of the majority's choice to address the relationship between Section 2254(d)(2) and (e)(1). *Id.* at 63a-64a (citing *United States* v. *Sineneng-Smith*, 140

S. Ct. 1575, 1579-1581 (2020)). He would have concluded on de novo review that Mr. Pye had not shown prejudice. *Id.* at 64a-65a.

3. Further proceedings

On remand from the en banc court, the now-two-judge panel (one member retired and was not replaced) rejected Mr. Pye's remaining claim and affirmed the district court's denial of relief. Pet. App. 1a-4a; see *id.* at 1a n.*.

REASONS FOR GRANTING THE PETITION

The court of appeals misapplied AEDPA in two ways.

First, the court held that federal habeas relief is categorically unavailable—even when the relevant state-court decision has unreasonably applied federal law—so long as there is some other, *conceivable* reasonable basis for rejecting a claim. The court reached that interpretation by inventing a distinction between "reasons" and "justifications" for a state court's ultimate decision, a distinction that no other circuit has drawn and that places the Eleventh Circuit in square conflict with most other circuits. The court's novel approach has no footing in the statutory text, and it is in clear contravention of this Court's decisions holding that when state courts have rejected a prisoner's claim in a reasoned opinion, it is only their *actual* reasoning that is entitled to deference.

Second, the court of appeals deferred to the state court's judgment only through repeated application of 28 U.S.C. § 2254(e)(1)'s presumption that all facts are as found by the state courts. In so deferring, the court of appeals misapprehended the proper relationship between Section 2254(e)(1) and Section 2254(d)(2), which provides the sole framework for fact deference in cases, like this

one, where the federal habeas court is not tasked with making new factual findings.

Both these errors deepened splits among the courts of appeals on the proper application of AEDPA. The questions presented recur in almost every case in which a state prisoner seeks federal habeas relief. And their erroneous resolution below consigned Mr. Pye to lethal injection, despite having never received a death sentence compliant with the Sixth Amendment.

This Court should grant the petition.

I. THIS COURT SHOULD GRANT REVIEW ON THE FIRST QUESTION PRESENTED.

A. The Decision Below Deepened a Split of Authority on Deference to Reasoned State-Court Decisions Under AEDPA.

Under the approach inaugurated by the en banc majority, when a state court has issued a reasoned decision rejecting a prisoner's claim, a federal habeas court must consider only the high-level *reasons* given by the state court (*e.g.*, that the prisoner failed to show *Strickland* prejudice). But having identified those reasons, the federal court then "consider[s] any potential *justification* for those reasons," and must deny relief under Section 2254(d) if there are "additional rationales that support" the reasons. Pet. App. 18a.

The majority claimed that its approach "represents the overwhelming consensus position," Pet. App. 23a, but that is far from correct. In truth, no other circuit has ever drawn or relied upon the reasons-versus-justifications distinction the majority unveiled in this case. And though some (but not all) circuits took an approach resembling

(but not identical to) the majority's in the past, those circuits have retreated in light of this Court's decisions in *Harrington* v. *Richter*, 562 U.S. 86 (2011), and *Wilson* v. *Sellers*, 138 S. Ct. 1188 (2018). That leaves the Eleventh Circuit, just as before *Wilson*, an outlier. This Court should once again intervene to set things straight.

1. The Eleventh Circuit is in unmistakable conflict with the Third and Ninth Circuits.

The en banc majority acknowledged that its approach conflicts with the longstanding view of the Ninth Circuit. The majority accepted that the Ninth Circuit "limit[s] federal habeas courts' review to the state courts' specific justifications," and that it has done so both before and after *Wilson*. Pet. App. 29a n.9 (citing *Kipp* v. *Davis*, 971 F.3d 939, 948-960 (9th Cir. 2020); and *Taylor* v. *Maddox*, 366 F.3d 992, 1008 (9th Cir. 2004), overruled on other grounds by *Cullen* v. *Pinholster*, 563 U.S. 170 (2011)).

The decision below is also flatly contrary to the Third Circuit's approach. Though the Third Circuit has not cited *Wilson* in a precedential opinion, see Pet. App. 93a n.28 (J. Pryor, J., dissenting), the court's pre-*Wilson* cases are unequivocal. In *Dennis* v. *Secretary, Pennsylvania Department of Corrections*, 834 F.3d 263 (2016), the en banc Third Circuit explained that "federal habeas review does not entail speculating as to what other theories could have supported the state court ruling when reasoning has been provided." *Id.* at 281. The court explained that consideration of reasons that state courts could have, but did not, give is limited to cases—like *Richter*—where the federal habeas court "cannot be sure of the precise basis for the state court's ruling." *Id.* at 282.

2. The decision below aligns with no other circuit.

Despite this acknowledged conflict, the en banc majority claimed the mantle of the mainstream, relying on a footnote in *Sheppard* v. *Davis*, 967 F.3d 458 (5th Cir. 2020), that purportedly "summarized that 'most of the courts of appeals' have held that even where a state court rejects a petitioner's claim in a reasoned decision, the federal 'habeas court must defer to a state court's ultimate *ruling* rather than to its specific *reasoning*.'" Pet. App. 23a (citing *Sheppard*, 967 F.3d at 467 n.5). The majority's reliance on this footnote was misguided.

First, the alleged majority view described by *Sheppard* is conspicuously not the Eleventh Circuit's newly fashioned approach. Instead, *Sheppard* explained that the Fifth Circuit had "[t]raditionally … consider[ed] 'not only the arguments and theories the state habeas court actually relied upon to reach its ultimate decision but also all the arguments and theories it *could have* relied upon.'" 967 F.3d at 466-467 (quoting *Evans* v. *Davis*, 875 F.3d 210, 216 (5th Cir. 2017)); see *Neal* v. *Puckett*, 286 F.3d 230, 246 (5th Cir. 2002) (en banc) (per curiam) (federal habeas courts are authorized to review only "a state court's 'decision,' and not the written opinion explaining that decision"). But because *Wilson* had clarified that a federal habeas court "should 'train its attention on the *particular reasons*—both legal and factual—why state courts rejected a state prisoner's federal claims,'" the Fifth Circuit assumed without deciding that *Wilson* had abrogated its earlier approach. *Sheppard*, 967 F.3d at 467-468 (quoting *Wilson*, 138 S. Ct. at 1191-1192); see also *Thomas* v. *Vannoy*, 898 F.3d 561, 568 (5th Cir. 2018) (noting that the

old approach's "continued viability" is "uncertain" after *Wilson*).

Further, though the en banc majority noted that *Sheppard* cited cases from the First, Second, Sixth, Seventh, Eighth, and Tenth Circuits, none of those circuits aligns with the majority. First, and most importantly, each case cited by *Sheppard* predates *Wilson* (and some predate *Richter*). Since those decisions, no circuit has utilized the majority's approach or anything resembling it. In any event, many of those cases *did* focus carefully on the state court's actual reasoning—the precise approach the majority rejected. And even those cases that took a broader approach to AEDPA deference did so based on the understanding that the state court's rationale could be disregarded *entirely*—not based on the putative distinction between "reasons" and "justifications" for its decision.

a. Contrary to their characterization by the Fifth Circuit in *Sheppard* and the Eleventh Circuit below, the First and Second Circuits have long applied Section 2254(d) by carefully analyzing the state court's actual reasoning.

The Fifth Circuit cited *Clements* v. *Clarke*, 592 F.3d 45 (1st Cir. 2010), as an exemplar of a decision "defer[ring] to a state court's ultimate *ruling* rather than to its specific *reasoning*." *Sheppard*, 967 F.3d at 467 n.5. But *Clements* focused on the state court's reasoning, deferring under Section 2254(d) because "the state court's treatment of the jury coercion issue, though brief, was [ ]reasonable." 592 F.3d at 57. And other First Circuit opinions, both before *Richter* and *Wilson* and since, have likewise focused on the state court's actual rationale. See, *e.g.*, *Webster* v.

Gray, 39 F.4th 27, 33-34 (2022); *Porter* v. *Coyne-Fague*, 35 F.4th 68, 76-77 (2022); *McCambridge* v. *Hall*, 303 F.3d 24, 37-43 (2002) (en banc).[3]

Similarly, the Fifth Circuit's citation of *Cruz* v. *Miller*, 255 F.3d 77 (2d Cir. 2001), is unavailing. *Sheppard*, 967 F.3d at 467 n.5. *Cruz* described a focus on the state court's actual rationale, explaining that "sound reasoning will enhance the likelihood that a state court's ruling will be determined to be a reasonable application of Supreme Court law." 255 F.3d at 86 (internal quotation marks omitted). And since *Wilson*, the Second Circuit has continued to focus on the precise rationale given by state courts. See *Scrimo* v. *Lee*, 935 F.3d 103, 111-112 (2d Cir. 2019).[4]

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[3] The en banc majority claimed that *Porter* supports its approach because the court, "after noting that the state court had failed to cite or discuss a key fact, did not . . . proceed straight to de novo review, but rather first considered whether there was another 'possible explanation of the state court's decision.'" Pet. App. 28a n.9 (quoting 35 F.4th at 79). But that alternative "possible explanation of the state court's decision," 35 F.4th at 79, was another explanation of the court's *actual reasoning*—a consideration made necessary because "the state court's opinion [was] terse to the point of obscuring the precise mechanics of its reasoning," *id.* at 77.

[4] The en banc majority also erroneously claimed *Scrimo* for its side of the ledger because the court, "after determining that 'it was error to exclude [certain w]itnesses' testimony for [the state court's] reason,' went on to ask 'whether the [w]itnesses' testimony could have been excluded on other grounds.'" Pet. App. 28a-29a n.9 (alterations in original) (quoting *Scrimo*, 935 F.3d at 116). But *Scrimo* "examine[d] the *stated* reasons for the exclusion" in determining whether the state court erred, 935 F.3d at 114-115 (quoting *Washington* v. *Schriver*, 255 F.3d 45, 57 (2d Cir. 2001)), and considered alternative grounds for exclusion not for purposes of deference but as part of the

b. Prior to *Wilson*, the Sixth, Eighth, and Tenth Circuits applied *Richter* deference even to reasoned state-court decisions. See *Holland* v. *Rivard*, 800 F.3d 224, 236 (6th Cir. 2015) (the difference between "a state court decision unaccompanied by any explanation" and one "based on erroneous reasoning" is "not a meaningful distinction"); *Williams* v. *Roper*, 695 F.3d 825, 831 (8th Cir. 2012) ("[W]e examine the ultimate legal conclusion reached by the court, not merely the statement of reasons explaining the state court's decision." (citation omitted)); *Bonney* v. *Wilson*, 754 F.3d 872, 884-885 (10th Cir. 2014) (similar).

But again, that is not the en banc majority's approach, and these circuits have begun to course-correct since *Wilson*. The Sixth Circuit recently cited *Wilson* for the proposition that "AEDPA requires this court to review the actual grounds on which the state court relied." *Coleman* v. *Bradshaw*, 974 F.3d 710, 719 (2020); see *ibid.* (analyzing for reasonableness the state court's explanations as to *why* a piece of evidence was not material under *Brady*, not just the state court's overarching conclusion on materiality); see also *Thompson* v. *Skipper*, 981 F.3d 476, 480 (6th Cir. 2020) (noting that *Coleman*'s approach "[h]ew[ed] to *Wilson*"). And in *Wood* v. *Carpenter*, 907 F.3d 1279 (2018), the Tenth Circuit rejected a habeas petitioner's claim that it should review de novo where "the *state trial court* made many unreasonable factual determinations in its findings of facts," explaining that because the state *high court* had issued an opinion, its review was of the

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harmlessness inquiry under *Brecht* v. *Abrahamson*, 507 U.S. 619, 638 (1993), see *Scrimo*, 935 F.3d at 115.

specific analysis *that* court provided. *Id.* at 1294 n.12 (citing *Wilson*, 138 S. Ct. at 1192).[5]

c. The pre-*Wilson* law in the Seventh Circuit was uneven. Compare *Whatley* v. *Zatecky*, 833 F.3d 762, 775 (2016) (a prisoner is not entitled "to *de novo* review simply because the state court's rationale is unsound"), with *Brady* v. *Pfister*, 711 F.3d 818, 825-826 (2013) ("[T]he state court's reasoning continues to be relevant wherever it has given an explanation, notwithstanding the holding in [*Richter*]."). But the Seventh Circuit has clarified its approach since *Wilson*. See *Winfield* v. *Dorethy*, 956 F.3d 442, 454 (2020) (identifying "the state court's 'specific reasons' for denying relief" and proceeding to ask "whether *that* explanation was reasonable" (emphasis added) (quoting *Wilson*, 138 S. Ct. at 1192)); see also, *e.g.*, *Dunn* v. *Jess*, 981 F.3d 582, 591 (2020); *Lentz* v. *Kennedy*, 967 F.3d 675, 688 (2020); *Gish* v. *Hepp*, 955 F.3d 597, 603 (2020).

The Fourth Circuit's pre-*Wilson* framework appeared to require *Richter* deference to the state court's topline conclusion even in the presence of a reasoned opinion. See *Barnes* v. *Joyner*, 751 F.3d 229, 265-266 (2014) (Agee, J., dissenting). But just as with the other circuits discussed above, the Fourth Circuit has, since *Wilson*, revised its approach to look solely to the actual rationale provided by the state court. See *Richardson* v. *Kornegay*, 3 F.4th 687, 697-698 (2021).

In sum, the circuits with whom the en banc majority claimed kinship do not provide any support for its approach. Those courts have never spoken of the distinction

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[5] As of the end of June 2023, the Eighth Circuit had never cited *Wilson*.

between "reasons" and "justifications" or suggested that it is relevant under Section 2254(d). And even those courts that once took a broader view of deference have largely adjusted in light of *Wilson*'s clarification of the proper methodology.

B. The Decision Below Is Inconsistent with AEDPA's Text and This Court's Decisions in *Richter* and *Wilson*.

Not only is the court of appeals' approach to AEDPA an outlier. It also fails to find any support in either the statutory text or this Court's precedents.

1. Section 2254(d)'s text evinces a clear focus on a state court's *actual* reasoning, not its hypothetical reasoning. Subparagraph (d)(1) tasks federal habeas courts with considering whether the state court's adjudication of a claim "*resulted* in a decision that *was* contrary to, or *involved* an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d)(1) (emphasis added). And Subparagraph (d)(2) similarly asks whether the adjudication "*resulted* in a decision that *was based* on an unreasonable determination of the facts." *Id.* § 2254(d)(2) (emphasis added). That is, AEDPA directs federal courts to what the state court *actually* said, not to post hoc reimaginations of what it might have said.

2. This Court's decisions similarly mandate a focus on the *actual* rationale given by state courts. And the Court has never sanctioned anything resembling the reasons-versus-justifications approach employed below.

The en banc majority claimed support from *Richter*'s observation that "determining whether a state court's decision resulted from an unreasonable legal or factual

conclusion does not require that there be an opinion from the state court explaining the state court's reasoning." Pet. App. 21a (quoting 562 U.S. at 98). The majority interpreted that language to mean that AEDPA essentially operates the same regardless whether there is a reasoned state-court opinion. In truth, however, the majority's approach cannot be reconciled with *Richter*.

Richter held that a prisoner bears the burden under Section 2254(d) to demonstrate that the state court's ruling was unreasonable. See 562 U.S. at 98. When the state court has not explained its reasoning, the only way to carry that burden is to show that there was *no* way to apply the law and facts reasonably and still reject the claim. See *ibid.* But when the state court *has* shown its work and that work is unreasonable, the burden is met; it does not matter if the state court *could have* taken a reasonable path to its conclusion because we know that it *did not.* See *Wilson*, 138 S. Ct. at 1195 (explaining that *Richter* is based on presumptions about likely explanations for state-court judgments). That is why *Richter* explained that "[u]nder § 2254(d), a habeas court must determine what arguments or theories *supported or, as here, could have supported*, the state court's decision," and then review those arguments or theories through a deferential lens. 562 U.S. at 102 (emphasis added); see *Hittson* v. *Chatman*, 576 U.S. 1028, 1030 (2015) (Ginsburg, J., concurring in denial of certiorari) ("*Richter* makes clear that where the state court's real reasons can be ascertained, the § 2254(d) analysis can and should be based on the actual 'arguments or theories [that] supported . . . the state court's decision.'" (alterations in original) (quoting 562 U.S. at 102)).

The en banc majority quoted *Richter* as holding that federal habeas courts are to "determine what 'arguments or theories' either 'supported or . . . *could have supported* . . . the state court's decision.'" Pet. App. 22a (alterations in original). The error is manifest: by eliding the key phrase "as here" in this quotation, the en banc majority entirely missed *Richter*'s logic. See *Dennis*, 834 F.3d at 283 (explaining the importance of the "as here" language in *Richter*). Indeed, in *Wetzel* v. *Lambert*, 565 U.S. 520 (2012) (per curiam), a case involving a reasoned state-court opinion, this Court properly elided the irrelevant part of *Richter*'s holding, explaining that "[u]nder § 2254(d), a habeas court must determine what arguments or theories supported . . . the state court's decision." *Id.* at 524 (alteration in original) (quoting *Richter*, 562 U.S. at 102).

3. Moreover, if the court of appeals' approach to AEDPA were correct, then this Court's decision in *Wilson* was an entirely pointless exercise. *Wilson*, like this case, involved a prisoner's claim that counsel provided ineffective assistance at the penalty phase of his capital trial. 138 S. Ct. at 1192. As here, the Georgia trial court issued a reasoned opinion rejecting the claim on both deficient-performance and prejudice grounds. *Ibid.* And as here, the Georgia Supreme Court then "denied the application without any explanatory opinion." *Wilson*, 138 S. Ct. at 1193.

The question presented in *Wilson* was whether the appropriate state-court ruling for AEDPA purposes was the Georgia Supreme Court's summary denial or the trial court's reasoned denial. 138 S. Ct. at 1192. All assumed—including the Eleventh Circuit—that this question

mattered, because if the federal habeas court looked to the Georgia Supreme Court's summary denial, the inquiry would be (under *Richter*) whether there was *any* reasonable basis for denying Wilson's claim, as opposed to focusing on "the specific reasons given" by the trial court. *Ibid.*; see *id.* at 1195; see also *Wilson*, 834 F.3d at 1235-1236. This Court held that the proper approach under Section 2254(d) was "to 'look through' the silent state higher court opinion to the reasoned opinion of [the] lower court," *Wilson*, 138 S. Ct. at 1195, "focus[] exclusively on the actual reasons given by [that] court," and "defer[] to *those* reasons under AEDPA," *id.* at 1195-1196 (emphasis added). The court did not distinguish a state court's "reasons" from its "justifications," or otherwise suggest that the two are not "one and the same," Pet. App. 81a (J. Pryor, J., dissenting).

Under the approach of the en banc majority, however, none of this had any practical relevance. The state trial court's conclusions that Wilson had not shown (a) deficient performance or (b) prejudice would be the "*reasons* for the state court's decision," and the federal habeas court would be required to defer if there were "any potential *justification[s]* for those reasons"—*i.e.*, if there were unstated, "additional rationales that support the state court's prejudice [or deficient-performance] determination[s]." Pet. App. 18a. But under the novel approach employed below, there would have been *zero* practical difference between considering the Georgia Supreme Court's decision and the Georgia trial court's decision.

Either way, *Richter* deference would govern, making it difficult to see why the case was worth anyone's time.[6]

The Eleventh Circuit's blinkered view of *Wilson* would also, for all practical purposes, allow it to return to its pre-*Wilson* regime of giving *Richter* deference to a state supreme court's summary rejection of a prisoner's claim, even when the lower state court issues a reasoned opinion. That is what the Eleventh Circuit did in *Wilson*; that is what made it an outlier among the circuits; and that is why this Court reversed. Yet the Eleventh Circuit managed to do exactly the same thing in this case, identical in procedural posture to *Wilson*.

In short, if the decision below is correct, then *Wilson* was a meaningless decision. If that is true, it is for this Court to say—not the Eleventh Circuit.

C. The First Question Presented Is Exceptionally Important.

Section 2254(d) is interpreted and applied in federal habeas courts every day. And the stakes of those cases are immense, both for the state prisoners seeking to vindicate their constitutional rights and for States seeking to vindicate the validity and finality of their convictions. See *Shoop* v. *Twyford*, 142 S. Ct. 2037, 2043 (2022). That is reason enough for this Court to resolve the split of authority and reject the Eleventh Circuit's erroneous interpretation.

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[6] True enough, looking through to the Georgia trial court's decision eliminated the possibility that the Georgia Supreme Court had rejected Wilson's claim on procedural grounds, but surely that is not the import of *Wilson*'s holding, as that principle was established 27 years earlier in *Ylst* v. *Nunnemaker*, 501 U.S. 797 (1991).

Moreover, even if the Eleventh Circuit's distinction between reasons and justifications were faithful to AEDPA's text and this Court's precedent, the en banc majority provided scant guidance on how to operationalize it. The court asserted that "of course, everyone recognizes the difference between macro-level *reasons* and their constituent rationales—what we've called *justifications*," Pet. App. 20a n.3, but it is doubtful that district courts will find the task to be as straightforward as advertised. For instance, the majority did not explain what would constitute a "reason," as opposed to a "justification," for a state court's denial of a prisoner's claim that trial evidence was admitted in violation of the Confrontation Clause. And the majority give no hint whatsoever on how to distinguish between a *factual* "reason" and a factual "justification." See 28 U.S.C. § 2254(d)(2).

II. THIS COURT SHOULD GRANT REVIEW ON THE SECOND QUESTION PRESENTED.

Fourteen years ago, this Court "granted certiorari to address the relationship between §§ 2254(d)(2) and (e)(1)." *Wood* v. *Allen*, 558 U.S. 290, 293 (2010). But that question escaped resolution in *Wood* and other cases since.

This case presents an excellent opportunity for this Court to finally resolve the issue. As they were when the Court granted certiorari in *Wood*, the circuits are in disarray on the question, and the decision below only deepened the split of authority. See 558 U.S. at 299 & n.1 (noting that the question "ha[d] divided the Courts of Appeals"); Pet. App. 63a (Jordan, J., concurring in the judgment) (observing that the majority "resolve[d] an important issue of first impression in our circuit").

In line with the decision below, some circuits have held that Section 2254(e)(1)'s presumption of correctness—and associated requirement that state-court factual findings be rebutted by clear and convincing evidence—comes into play whenever a prisoner claims relief through Section 2254(d)(2). See, *e.g.*, *Lambert* v. *Blackwell*, 387 F.3d 210, 235 (3d Cir. 2004); *Valdez* v. *Cockrell*, 274 F.3d 941, 950-951 (5th Cir. 2001); *Ben-Yisrayl* v. *Buss*, 540 F.3d 542, 549 (7th Cir. 2008); *Trussell* v. *Bowersox*, 447 F.3d 588, 591 (8th Cir. 2006). The Ninth Circuit has, by contrast, held that in order to give both provisions independent meaning, Section 2254(d)(2) alone applies when a prisoner "challenges the state court's findings based entirely on the state record." *Taylor*, 366 F.3d at 999 (Kozinski, J.). And the precise formulations of the two provisions' relationship have been legion. See *Wood*, 558 U.S. at 300 & n.2; see also 1 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* § 20.2[c] (7th ed. 2022); 7 Wayne R. LaFave et al., *Criminal Procedure* § 28.7(a) (4th ed. 2022); Brian R. Means, *Postconviction Remedies* § 28:3 (2022 ed.).

Properly interpreted, the entirety of Section 2254(e) applies only when a federal habeas court conducts independent factfinding. That is why Subparagraph (e)(2) focuses on the availability of federal evidentiary hearings and why Subparagraph (e)(1) uses a standard—clear and convincing evidence—that is ubiquitous in the context of evidentiary submissions but makes little sense when applied to a cold record.

Here, Mr. Pye could—and did—demonstrate that the decision to discount the affidavit evidence in toto was "unreasonable," 28 U.S.C. § 2254(d)(1)-(2), both as a matter

of clearly established law (under Section 2254(d)(1)) and as a matter of fact on the state-court evidentiary record (under Section 2254(d)(2)). No more was required.

The court of appeals' erroneous deployment of Section 2254(e)(1), in conjunction with its rejection of *Wilson*'s clear instruction on how to apply Section 2254(d), effectively erected an impenetrable shield around the state trial court's unsupported factual findings. With respect to all but four affidavits, for instance, the en banc majority acknowledged that "neither the state court nor the State ha[d] offered specific reasons to doubt their truth." Pet. App. 37a. Still, the majority concluded that the state court's "discount[ing]" of the affidavits was not "clearly and convincingly erroneous," and thus Mr. Pye could not rely on their content in federal court. *Id.* at 38a.[7] And the majority also felt bound to add its own "justification" for rejecting the affidavits that the state court did not provide: that "uniformity" in some of the affidavits' language describing "the affiants' willingness to testify at

[7] This problem arises in circumstances where the state court's rejection of a claim rests on factual findings without support—either for or against—in the record. Under the view of the en banc majority, the petitioner lacks recourse in such a situation. Section 2254(e)(2) usually precludes new factual development in the federal habeas proceeding, so the prisoner must rely on the state-court evidentiary record. But there is no "clear and convincing evidence" in the state-court evidentiary record to "rebut[]" the findings, 28 U.S.C. § 2254(e)(1), because there is no evidence *at all*. And with the factual findings unrebutted, Section 2254(d) will all but bar relief.

sentencing had they been asked" suggested "credibility concerns." *Ibid.*[8]

Perhaps implicitly recognizing the unsuitability of Section 2254(e)(1), the en banc majority repeatedly invoked its view that the state court's factual findings were not "clearly and convincingly erroneous." *E.g.*, Pet. App. 34a-38a, 53a-57a. But Section 2254(e)(1) does not refer to clear and convincing *error* (which would be an unusual standard of review); it refers to "clear and convincing *evidence*." 28 U.S.C. § 2254(e)(1) (emphasis added). That the majority struggled to apply its own interpretation of AEDPA is a strong indicator that its interpretation was erroneous.

In short, "when combined with the majority['s] disregard of Supreme Court precedent requiring [courts] to review exclusively the reasons the state habeas court actually gave," its holding as to Section 2254(e)(1) "creates a practically impossible path to relief for habeas petitioners." Pet. App. 68a (J. Pryor, J., dissenting). And in any event, "[r]arely should a court address a complex issue without the benefit of briefing," *E.O.H.C.* v. *Secretary U.S. DHS*, 950 F.3d 177, 195 (3d Cir. 2020), a maxim that should govern ever more strongly before consigning to the death chamber a prisoner who has never received a constitutionally compliant death sentence. This Court should afford Mr. Pye the opportunity he lacked below.

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[8] Each affidavit contained a basic averment that the affiant would have been willing to meet with counsel and to testify if asked. That is neither surprising nor unusual—establishing that an affiant would have been willing to testify at sentencing is necessary to demonstrate the affidavit's relevance to an ineffective-assistance-of-counsel claim. See, *e.g.*, *Woodfox* v. *Cain*, 609 F.3d 774, 808 (5th Cir. 2010).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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