No. 23-31

# 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 Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit**

## BRIEF IN OPPOSITION


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## CAPITAL CASE
## QUESTIONS PRESENTED

1. Whether the court of appeals correctly applied *Wilson v. Sellers,* 138 S. Ct. 1188 (2018), when it "looked through" the state supreme court's summary decision and specifically reviewed the lower court's reasons for denying Pye's ineffective-assistance claim, examining the record and concluding that the state court's decision and reasoning were reasonable.

2. Whether 28 U.S.C. § 2254(e)(1)'s burden of proof, requiring clear and convincing evidence to challenge state court fact findings, applies to all habeas actions.

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STATUTES

## STATUTORY PROVISIONS INVOLVED

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

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a state court shall not be granted with respect to any claim that was adjudicated on the merits in state court proceedings unless the adjudication of the claim –

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

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## INTRODUCTION

Petitioner Willie James Pye casts the Eleventh Circuit as a rogue nation ignoring this Court's precedent and setting a standard of § 2254 review unlike any other court of appeals. But it is Pye who seeks to foist a revolution in habeas law on federal courts, one that has been specifically rejected by this Court and every court of appeals to examine the issue. There is no reason to grant review on either question Pye puts forward.

Under the Anti-Terrorism and Effective Death Penalty Act, courts must defer to a state court decision unless it was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). As this Court and many courts of appeals have held, this means that a federal court examining a state court decision should examine the *reasons* given for a particular state court decision, but the court can look beyond the specific supporting arguments or evidence that the state court happened to mention in its opinion.

Pye would have the Court believe that the Eleventh Circuit held that a federal court is supposed to invent every possible reason for the denial of a state habeas claim, even if the state court did not put them forward, but that is patently wrong. The decision below simply held that when analyzing a state court's given reason for denying relief (like a lack of prejudice) a federal habeas court can look at whatever support there is in the record for that claim, whether or not the state

court specifically identified *every single piece of evidence* in its favor. The Eleventh Circuit did *not* hold, as Pye seems to believe, that a court should simply invent wholly different reasons (like procedural default or res judicata) that the state court did not identify.

With that confusion cleared up, Pye's split of authority disappears. No court has held that because a state court lists a few particular supportive points, federal courts cannot examine *other* points in the record (or the case law) that support the state court's reasoning, as well. Instead, every court to examine the issue has said the opposite, including this one. As this Court held only two years ago, if AEDPA "means anything, it is that a federal court must carefully consider *all the reasons and evidence supporting* the state court's decision. After all, there is no way to hold that a decision was 'lacking in justification' without identifying – let alone rebutting – all of the justifications." *Mays v. Hines*, 141 S. Ct. 1145, 1149 (2021).

Pye tries to conjure some conflict with this Court's decision in *Wilson v. Sellers*, 138 S. Ct. 1188 (2018), but there is none. *Wilson* simply held that courts should "look through" a summary affirmance to the last written state court opinion. The Eleventh Circuit did that in this case: it looked through the Georgia Supreme Court's summary affirmance and examined the trial court opinion. But Pye takes *Wilson* to also mean something that it plainly does not: Pye argues that *Wilson* revolutionized § 2254 review and mandates that federal courts review *only* the evidence, cases, and arguments that a state court opinion *specifically mentions*

in support of its ultimate rationale. *Wilson* held no such thing. As the Eleventh Circuit here explained, the plain language of AEDPA and this Court's precedents focus on the ultimate *reason* for denial of relief, not the underlying points of evidence or specific cases that support that reason.

The Eleventh Circuit here distinguished between the "reason" the state court gave and the "justifications" for that reason, but whatever vocabulary one uses, the key point is that § 2254 focuses on the state court's ultimate reason: it is not an opinion-writing contest. AEDPA review is meant to "guard against extreme malfunctions in the state criminal justice systems," it does not demand state court decisions that are hundreds of pages long just to ensure that no federal court calls out "gotcha!" when the state court fails to specifically mention a particular supportive justification. *Harrington v. Richter*, 562 U.S. 86 (2011).

Regardless, this case is a terrible candidate for this Court's review. There is no split of authority – other circuits are aligned with the Eleventh Circuit. And the question isn't dispositive here. The court below engaged in a painstaking, factbound analysis of Pye's claims and determined that they failed. Even half of the judges who dissented from the majority's legal reasoning concurred in the judgment because, under *any* standard of review, Pye loses. And on top of everything else, as *Wilson* made clear, in the unlikely event that the state trial court's decision failed to put forward a reasonable decision, the Court would have to conclude that the Georgia Supreme Court did *not*

adopt that unpersuasive rationale and instead adopted a *reasonable* one. So even if, somehow, federal courts were compelled to limit their review to nothing other than the literal words on the page of a state court decision, Pye *still loses*. This issue is factbound, it is not dispositive, it is the subject of no split, Pye is wrong on the merits. There is no reason to grant review.

There is also no reason to grant review as to Pye's second question presented. Pye disputes the Eleventh Circuit's decision to apply § 2254(e)(1)'s "clear and convincing" standard to the state court's fact findings. In his view, § 2254(e)(1) comes into play only if there is a federal evidentiary hearing, and the court below should have simply relied on § 2254(d)(2)'s "unreasonable" standard. But this issue is not dispositive here. No judge below thought this legal point was decisive, because it is not. The state court's findings were *neither* unreasonable *nor* overcome by clear and convincing evidence. In any event, only the Ninth Circuit has ever agreed with Pye's atextual view of § 2254(e)(1). Nothing in the plain language of the statute supports Pye's limitation of § 2254(e)(1), and nothing in this case suggests it is a candidate for this Court's review.

## STATEMENT

### A. Facts of the Crimes

In November 1993, Petitioner James Willie Pye, along with Chester Adams and Anthony Freeman, robbed, kidnapped, gang-raped, and murdered Alicia

Lynn Yarbrough. *Pye v. State*, 269 Ga. 779, 780 n.1, 782-83 (1998). Alicia had been living with the father of her child and boyfriend, Charles Puckett, though she had previously been in a "sporadic romantic relationship" with Pye. *Id.* at 782. Puckett had signed the birth certificate of the child whom Pye claimed as his own, which angered Pye. *Id.* Pye also heard that Puckett had recently collected a settlement check from a lawsuit. *Id.* Pye set out to rob Puckett with Adams and Freeman. *Id.*

The three men drove to Puckett's home, where "all of the men put on the ski masks which Pye had brought with him"; Pye and Adams wore gloves. *Id.* Alicia was home alone with her infant child. *Id.* "Pye tried to open a window and [Alicia] saw him and screamed." *Id.* "Pye ran around to the front door, kicked it in, and held [Alicia] at gunpoint." *Id.* "[T]here was no money in the house." *Id.* Still, the men took a ring and necklace from Alicia, kidnapped her, and left the baby home alone. *Id.*

"The men drove to a nearby motel where Pye rented a room using an alias." *Id.* There, they all took turns raping Alicia at gunpoint during which time Pye also angrily exclaimed that "[Alicia] let Puckett sign [his] baby's birth certificate." *Id.* Later, the three men took Alicia and left in the car. *Id.* "Pye whispered [something] in Adams'[s] ear and Adams turned off onto a dirt road." *Id.* Pye ordered Alicia out of the car, made her lie face down, and shot her three times, killing her." *Id.* "Pye tossed the gloves, masks," and .22 pistol from the car as they drove away. *Id.*

A few hours after she was killed, the police found Alicia's body and recovered the tossed items. *Id.* at 783. "A hair found on one of the masks was consistent with [Alicia's] hair, and a ballistics expert determined that there was a 90 percent probability that a bullet found in [Alicia's] body had been fired by the .22." *Id.* Semen was also found in Alicia's body and "DNA taken from the semen matched Pye's DNA." *Id.* Later that day, Pye told the police that "he had not seen [Alicia] in the last two weeks." *Id.* However, Freeman later confessed to the crimes as outlined above. *Id.*

## B. Proceedings Below

### 1. Direct Criminal Proceedings

In February 1996, Pye was found guilty by a jury of malice murder, kidnapping with bodily injury, armed robbery, burglary, and rape. Doc.13-10 at 52. The jury recommended a death sentence for the malice murder of Alicia, "finding as four separate statutory aggravating circumstances that Pye had committed [the murder] while engaged in the commission of the offenses of kidnapping with bodily injury, rape, armed robbery, and burglary." *Pye*, *supra*, at 779-80, 780 n.1.

Pye was represented by experienced, and well-regarded, criminal defense attorney Johnny Mostiler. Pet.App.at 329a; Doc.12-1 at 9; Doc.20-8 at 107.[1]

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[1] Pye states that "Pursuant to a lump-sum contract, Mostiler represented all indigent defendants in the county – at the time, about 800 facing felony charges." Pet.8 (citing Doc.17-13 at 4). Not so. There are two proposals in the record (one of which Pye relies

Mostiler was assisted in his representation of Pye by investigator Dewey Yarbrough who had worked with Mostiler "over much of the course of" Mostiler's tenure in capital cases. Doc.20-40 at 43; Doc.14-41 at 60-61. Yarbrough had worked as an investigator with the State of Georgia Public Defender for approximately 18 years before he was hired as Mostiler's lead investigator for Spalding County's indigent defense. Doc.14-41 at 59-60.

The defense team interviewed Pye's family and asked questions of Pye's family members about Pye's childhood, including where he lived, the size of his family, and his living conditions, which included visits to the family home where Pye grew up. Doc.19-11 at 19,

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on to support the statement above) that contain information regarding Mostiler's public defender contracts during the time he represented Pye. Doc.17-13 at 2-48; Doc.17-11 at 35-114; Doc.17-12 at 2-9. The proposals state that "indigent felony defendants are provided service through the law offices of Johnny P. Mostiler," and Mostiler employed another attorney in his office during this time as a contract public defender. Doc.17-11 at 58, 60, 85, 88. Regarding misdemeanor and juvenile cases, the proposals identified other law firms with whom Mostiler contracted to handle these cases. *See*, *e.g.*, Doc.17-11 at 58-59, 85-86. The proposals also explained that other law firms would be appointed in the event of multiple defendants or conflicts and, due to the simultaneous running of three superior courts, there were three other attorneys that would represent indigent defendants during criminal jury trials to keep from creating a backlog should only Mostiler serve as attorney of record. *Id.* at 61-62, 90, 92. The proposals do not have a breakdown of exactly how many felony cases were handled by Mostiler or how each of the felony cases were resolved – *e.g.*, plea, dismissal, or jury verdict. *See* Doc.17-13 at 2-48; Doc.17-11 at 35-114; Doc.17-12 at 2-9. No other record provides this information.

21-22; Doc.20-40 at 59. The defense team knew that "Pye grew up in a small, crowded house with seven brothers and two sisters." Doc.19-11 at 93. Also, it was Mostiler's "common practice" "at some point to talk about abuse with the family." Doc.14-41 at 96. Pye's family was "less than cooperative" and "not willing to work with the defense team in preparing a defense." Doc.20-40 at 46. One family member in particular told Yarborough that Pye "got himself into this, he can get himself out of it." Doc.19-11 at 24. Additionally, when Yarborough attempted to interview other people in the community, he had weapons drawn on him because of the community resentment against Pye. Doc.14-41 at 71; Doc.19-11 at 19.

The defense team obtained Pye's school records and their notes stated that "School records show that he has a low average IQ [and] appears to have tried hard when young and then given up and then dropped out." Doc.19-11 at 95-97; Doc.15-12 at 27. It was standard procedure for Mostiler to obtain psychiatric evaluations in death penalty cases, but Yarborough did not recall anyone telling him that Pye had any type of mental disorder. Doc.14-14 at 83-84. Notes within trial counsel's file stated that Pye had "no military history," no "psychiatric history," nor any "serious illness" or "major traumas." Doc.19-11 at 94.

At the sentencing phase, trial counsel "called eight witnesses to testify on Pye's behalf: Pye's sister Pam Bland, sister Sandy Starks, brother Ricky Pye, father Ernest Pye, niece Chanika Pye, nephew Dantarius Usher, sister-in-law Bridgett Pye, and family friend

Lillian Buckner." Pet.App.9a; Doc.13-11 at 28-32, 38-41, 48-56, 60-62, 64-69. Collectively, they testified about their relationship with Pye, his family background, his good character, his relationship with Alicia, his generally non-violent disposition, and pled for mercy. *Id.* More specifically, the witnesses testified that Pye was one of ten children, his mother was disabled, and his father worked for the county government roadworks. Doc.13-11 at 28, 30. The family home was small and didn't have running water or heat. Doc.13-11 at 66-67. Sandy, Pye's sister, testified that the family had "love." *Id.* at 67. Additionally, the family testified that Pye was a helpful uncle, generous, non-violent, "respectful," "kind," and was close with his siblings. *Id.* at 28-32, 38, 52-54, 60, 65, 68.

On the other side, the State "presented evidence of Pye's reputation for violence in the community, earlier crimes and altercations with Alicia Yarbrough, and the aggravating circumstances of the murder. The State also argued Pye would pose a danger to prison staff were he to remain incarcerated." Pet.App.9a.

In September 1998, the Georgia Supreme Court affirmed all of Pye's convictions and sentences. *Pye*, *supra*, at 789; *cert. denied*, *Pye v. Georgia*, 526 U.S. 1118 (1999).

### 2. State Habeas Proceedings

Pye filed his amended state habeas petition in November 2006. Doc.13-31 at 8; Doc.14-25. Pye asserted, as relevant here, that Mostiler was ineffective during

the sentencing phase for allegedly "failing to 'conduct an adequate pretrial investigation into [Pye's] life, background, physical and psychiatric health to uncover and present to the jury evidence in mitigation.'" Pet.App.9a (quoting Doc.13-31 at 13).

Pye presented 24 affidavits in support of his ineffectiveness claim, many of whom testified that "Pye's childhood was marked by significant poverty, abuse, and neglect." Pet.App.10a. However, despite the background records Pye submitted, some from government sources, there was no direct support for Pye's allegations of abuse and neglect. Doc.14-41 at 8; Doc.15-12 at 8-30, 32-95; Doc.15-13 at 1-122; Doc.15-14 at 1-51; Doc.15-15 thru Doc.15-18; Doc.15-19 at 2-51; Doc.15-20 at 1-23, 34. For example, the Department of Human Resources and Department of Family and Children's Services records regarding Pye's family span nearly two decades, yet not even one report mentions abuse or neglect. Doc.15-12 at 32-95; Doc.15-13 at 1-122; Doc.15-14 at 1-51. Also, these post hoc affidavits were all provided approximately ten years after Pye's trial concluded, and with one exception, none of the affiants came to the evidentiary hearing despite living in close proximity to the court. *See* Doc.14-41 at 5; Doc.16-24 at 20, 31, 40, 43, 59, 67, 72, 85, 99, 106, 75, 78, 82, 111.

"Pye also offered testimony from mental-health experts that he suffered from frontal-lobe brain damage that impaired his ability to plan and control his impulses – damage, they said, that was potentially caused by fetal alcohol syndrome." Pet.App.10a. In rebuttal, the Warden presented its "own mental-health

expert, who testified that the facts of Pye's crime, which involved significant premeditation and planning, weren't consistent with frontal-lobe impairment or fetal-alcohol syndrome" and also diagnosed Pye with a "Personality Disorder, antisocial type." *Id.*; Doc.19-24 at 66. However, the Warden's expert "acknowledged that Pye had cognitive deficits that would have affected his ability to function in the community." Pet.App.at 10a-11a.

Finally, Pye presented affidavits from two correctional officers from the "youthful-offender program" where he was initially incarcerated until he "aged out" and was sent to another prison. Pet.App.55a. The officers attested "that they didn't consider Pye a security concern and that he was less dangerous than most inmates they encountered." Pet.App.53a. But "later prison records[] contained at least 15 disciplinary reports, including those pertaining to fights with other inmates and instances of insubordination categorized as "High"- and "Greatest"-level offenses." *Id.* These records included a report that "Pye 'became hostile and aggressive' toward corrections officers after being removed from his dorm" and had to be wrestled "to the floor." Pet.App.54a (quoting Doc.15-20 at 16, 18, 19).

In January 2012, the state habeas court denied Pye's petition. Pet.App.277a-369a. The court found that counsel did not render deficient performance during the sentencing phase of trial and that there was no prejudice. Pet.App.349a. As to prejudice, the state court "emphasized" five areas regarding Pye's background that prevented Pye from proving prejudice:

(1) "credibility concerns regarding the affidavit testimony"; (2) "evidence of Pye's family's unwillingness to cooperate in his defense at the time of trial"; (3) "the minimal connection between Pye's background and the crimes he committed"; (4) "Pye's age at the time of his crimes"; and (5) "the extensive aggravating evidence presented by the State at sentencing." Pet.App.11a.

As for Pye's mental health evidence, "the court credited the testimony of the State's expert that Pye was not as impaired as his witnesses suggested." *Id.* (citing Pet.App.353a-55a). And regarding future dangerousness, the court found Pye's prison disciplinary records showed "'a history of insubordination, aggressiveness and propensity for violence toward those in authority' that negated any reasonable probability that testimony like that offered by the corrections officers during state post-conviction proceedings would have affected the outcome of sentencing." *Id.* (quoting Pet.App.352a).

Pye applied for a certificate of probable cause to appeal the state habeas court's order to the Georgia Supreme Court, which was summarily denied. Doc.20-42; Pet.App.275a. Pye did not file a petition for writ of certiorari in this Court.

### 3. Federal Habeas Proceedings

Pye then filed a federal habeas petition, again raising his claims of ineffective assistance regarding investigation and presentation of mitigation evidence.

Doc.1; Doc.23. The district court denied relief. Pet.App.179a.

Regarding Pye's *Strickland* ineffective-assistance claim, the district court determined that Pye had failed to show deficient performance or prejudice because Pye's evidence of a difficult background was not significant enough mitigation evidence that it could "overcome the aggravating evidence." Pet.App.12a. Pye obtained a certificate of appealability on several claims including his ineffective-assistance claim. Pet.App.2a, 178a.

A panel of the Eleventh Circuit reversed the district court and vacated Pye's death sentence in an unpublished opinion. Pet.App.12a; Pet.App.127a. The Warden petitioned for rehearing *en banc* on the prejudice prong of Pye's sentencing phase *Strickland* claim, and the Eleventh Circuit granted review and ultimately affirmed the district court's denial of habeas relief.

The *en banc* court first held that, in any habeas action, "a state court's factual determinations are 'presumed to be correct,' and the petitioner has the burden of proving otherwise 'by clear and convincing evidence.'" Pet.App.16a (quoting 28 U.S.C. § 2254(e)(1)). However, "[e]ven if the state court made a clearly erroneous factual determination, that doesn't necessarily mean the state court's 'decision' was 'based on' an 'unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" Pet.App.17a (quoting § 2254(d)(2)). The "factual error"

may lack "importance" to the "ultimate decision," and thus "as a whole" the decision is still reasonable. *Id.* (quotation mark omitted). The court of appeals relied upon this Court's holding that §§ 2254(d)(2) and (e)(1) are "independent requirements." *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003).

The court next explained that deference under § 2254(d) requires "assessing the reasonableness of [the] *state court*'s *reasons* for its decision," and that in doing so it may consider any "arguments" or "theories" presented by the parties or evident in the record. Pet.App.18a, 20a, n.3. A court "may consider any potential *justification* for [the state court's] reasons." Pet.App.18a. This method of review gives appropriate deference to the state court's "decision," which has always been the focus of § 2254(d) as shown by "AEDPA's plain language and the logic of [this] Court's decision in [*Harrington v.*] *Richter*." Pet.App.22a.

The court also relied on this Court's instruction in *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018), to "'review[] the specific reasons given by the state court and defer[] to those reasons if they are reasonable.'" Pet.App.18a, 25a, n.6 (quoting *Wilson v. Sellers*, 138 S. Ct. 1188, 1192 (2018)). The court rejected the dissent's attempt to use *Wilson* to "confin[e] a federal habeas court to the precise justifications that a state court provides in its written opinion." Pet.App.26a. As the majority explained, *Wilson* did not "*sub silentio* revolutionize[] AEDPA's application to all state-court decisions." Pet.App.26a, n.6.

The court then painstakingly reviewed the fact-intensive arguments Pye asserted on his behalf. To start, it held that the state court's decision to discount Pye's affidavit evidence was reasonable. Pye disputed the state court's fact findings, but, scrutinizing the affidavits, the federal court pinpointed language ("No one talked to me about any of this") that plausibly conflicted with billing records, identified trends across the affidavits, and ultimately concluded that the state court's fact findings were reasonable. Pet.App.39a-40a.

Pye also argued that the district court was wrong to discount the childhood evidence on the grounds that much time had passed before he committed the crime at 28 years old. Pet.App.43. The Eleventh Circuit held that the state court's conclusion was nevertheless reasonable. Although the state court partly discounted age based on a misstatement that trial counsel's strategy was based on "remorse" and not "excuses," that minor error did not "undermine the reasonableness" of the court's prejudice analysis because it *partially* affected only "*one* of th[e] five justifications" the court relied on to hold that Pye was not prejudiced by the failure to present childhood evidence. Pet.App.44a-45a, n.17.

Next, Pye argued that he was prejudiced by his counsel's "failure to obtain a mental-health evaluation" or "present mental health evidence." Pet.App.47a. The federal court assessed the competing testimony that had been given by various medical experts, Pet.App.48a, considered Pye's argument that the state court overlooked certain prison medical records,

Pet.App.48a, n.20, and factored in the evidence that Pye "had sufficient mental faculties" to organize the rape, kidnapping, and murder of Alicia. Pet.App.49a. Weighing the conflicting evidence, the federal court held that the state court reasonably determined that Pye suffered no prejudice. Pet.App.52a.

Pye had further argued that he suffered prejudice from his trial counsel's "failure to rebut the State's argument about his future dangerousness in prison" because he had corrections-officer affidavits stating otherwise. Pet.App.52a. The Eleventh Circuit considered the affidavits along with competing prison disciplinary reports, evidence that Pye became more violent as he got older, and the fact that Pye's new affidavits were "cumulative" of other witness testimony. Pet.App.52a-56a. The court specifically held that the state court's fact finding, based on the disciplinary reports that Pye was aggressive, was reasonable. Pet.App.56a.

Finally, Pye argued that he was prejudiced by counsel's failure to introduce evidence of the victim's drug addiction, based on a post-conviction affidavit that the state court found unreliable. Pet.App.57a. The federal court reconsidered the evidence the state court had weighed when assessing the affidavit and concluded that it was not unreasonable to conclude that the affidavit was unreliable and that Pye suffered no prejudice from its omission. Pet.App.58a.

Two judges concurred, disagreeing with the majority's explanation of the legal standards but agreeing

that, under *any* standard of review, Pye failed to establish a right to relief. Pet.App.63a. And two judges dissented. Pet.App.66a.

## REASONS FOR DENYING THE PETITION

### I. There is no split of authority or other reason to grant review on the question whether a federal habeas court can examine evidence and arguments that support a state court's reasons for denying relief.

The decision below applies this court's precedent on how to evaluate a state court's reasoning under § 2254(d). And it applied that analysis with granular detail, in an extremely fact-bound case. Contrary to Pye's argument, there is no meaningful split of authority here. And even if there were, these issues are not well-presented or dispositive in this case. That probably helps explain why this Court has denied petitions for certiorari review raising this question on at least four occasions.[2]

#### A. Pye misinterprets both the decision below and this Court's precedent to try to manufacture a circuit split.

At bottom, Pye misinterprets the decision below. He argues that the court held that § 2254(d) requires

[2] *See Presnell v. Ford*, 142 S. Ct. 131 (2021); *Esposito v. Ford*, 141 S. Ct. 2727 (2021); *Tollette v. Ford*, 141 S. Ct. 2574 (2021); *Meders v. Ford*, 140 S. Ct. 394 (2019).

a federal court to defer a "state-court decision [that] has unreasonably applied federal law" as long as "there is some other, *conceivable* reasonable basis" to reject the constitutional claim, *which* the state court did not consider. Pet.19. The court explicitly held the opposite: the federal court analysis centers on "the *reasons* for the state court's decision." Pet.App.18a.

The court did correctly hold that those specific reasons can be justified even if the state court did not spell out *every possible point of support* for those reasons, but that is hardly controversial among the courts of appeals *or this Court*. Arguing otherwise, Pye misinterprets *Wilson*, claiming that it revolutionized § 2254(d) deference. He argues that *Wilson v. Sellers* not only requires a federal habeas court to "review[] the specific reasons given by the state court," 138 S. Ct. at 1192, but also that the court cannot consider *anything* beyond "what the state court *actually* said." Pet.27. But *Wilson* held nothing of the kind. It simply held that the *correct* opinion to look at is the most recent reasoned state court decision, rather than a summary affirmance. *Wilson*, 138 S. Ct. at 1189. As this Court has held, if AEDPA "means anything, it is that a federal court must carefully consider *all the reasons and evidence supporting* the state court's decision. After all, there is no way to hold that a decision was 'lacking in justification' without identifying – let alone rebutting – all of the justifications." *Mays v. Hines*, 141 S. Ct. 1145, 1149 (2021).

Whether other courts have used the same language or not, this fundamental principle was all the

Eleventh Circuit was getting at. A habeas court must look at the reasons a state court gives, but it need not turn a blind eye to *all* the supportive evidence or arguments that justify those "reasons." Hence, the court's distinction between a "reason" and a "justification." Pet.App.18a. It is no more than the court's acknowledgement that state courts need not list *everything* that supports their reasoning.

With the decision correctly understood, Pye does not cite a single case in either this Court or a federal court of appeals that conflicts with the decision below. To the contrary, in case after case, this Court has relied upon additional justifications not provided by state courts in their opinions to affirm the denial of relief under § 2254(d). *See*, *e.g.*, *Dunn v. Reeves*, 141 S. Ct. 2405, 2411 (2021) (the Court posited several additional justifications regarding counsel's decision not to present mental health evidence not supplied by the state court); *Woods v. Etherton*, 578 U.S. 113, 118-19 (2016) (providing additional justifications in support of the state court's reasoned rejection of Etherton's ineffective-assistance claim under *Richter*'s "fairminded jurist" standard); *White v. Wheeler*, 577 U.S. 73 (2015) (supplying justifications under *Richter*'s "fairminded jurist" standard in support of the state courts' determination that a jury was not unconstitutionally excused by the trial court); *Burt v. Titlow*, 571 U.S. 12, 20-24 (2013) (reviewing the "record as a whole" and relying upon additional evidence to support the state court's determination of Titlow's ineffective-assistance claim).

And circuit courts applying § 2254(d) have deferred to state court reasons by relying on additional arguments and record evidence not explicitly mentioned in the state court opinion. At least six federal courts of appeal – post-*Wilson* – have expressly adopted this approach, analyzing whether a state court's reason for denying habeas relief is reasonable by considering all the evidence, arguments, and rationales both for and against it. These courts explicitly *support*, rather than contradict, the Eleventh Circuit here.

For instance, the First Circuit recently held that "when reviewing a state court's decision under the 'unreasonable application' prong, courts focus on 'the ultimate legal conclusion that the state court reached and *not on whether the state court considered and discussed every angle of the* [*claim*].'" *Strickland v. Goguen*, 3 F.4th 45, 53 (1st Cir. 2021) (emphasis added). And the First Circuit practices what it preaches. In *Porter v. Coyne-Fague*, 35 F.4th 68 (1st Cir. 2022), for instance, the state court had rejected a *Batson* claim on the grounds that the prosecutor's strike was based on the juror's fear of retaliation, not race. After the petitioner argued that the state court unreasonably ignored or misconstrued the racial aspects of the prosecutor's statement, the First Circuit also considered additional explanations from the state. *Id.* at 80-81; *see also Webster v. Gray*, 39 F.4th 27, 35-38 (1st Cir. 2022) (putting forward additional justifications for deferring to state court denial of sufficiency claim).

In *McCray v. Capra*, 45 F.4th 634, 640 (2d Cir. 2022), the Second Circuit held: "On a habeas petition

under section 2254, we review the 'last reasoned decision' by the state court, [] *only for the 'reasonableness' of its bottom-line 'result,' not the 'quality of [its] reasoning*.'" (emphasis added). The court then applied this to McCray's *Brady v. Maryland*, 373 U.S. 83 (1963) claim: "Because we review the undisclosed evidence not piecemeal but cumulatively, [] and because *we address only the reasonableness of the state court*'s *decision and not its rationale*, [] all three [of McCray's] arguments merge into the first and can be addressed together." *McCray*, 45 F.4th at 642 (emphasis added). *See also*, *e.g.*, *Cruz v. Miller*, 255 F.3d 77, 80, 86 (2d Cir. 2001) (the court looked beyond the "ambiguous" reasoning of the state court to other facts supporting the state court's conclusion that there was no *Miranda* custody). The Second Circuit did not hold otherwise in *Scrimo v. Lee*, 935 F.3d 103 (2d Cir. 2019), *contra* Pet.24, both because there was no reasoned state *habeas* decision to consider, and because it does not bar considering additional evidence or arguments.

In *Crockett v. Clarke*, 35 F.4th 231, 244 (4th Cir. 2022), the Fourth Circuit held "that a state court need not refer to each piece of a petitioner's evidence" and where a state court has "failed to adequately explain its reasoning" the court "'must determine what arguments or theories . . . could have supported the state court's determination.'" (quoting *Shinn v. Kayer*, 141 S. Ct. 517, 524 (2020)).

The Fifth Circuit recently held that "in reviewing a state court opinion, this court *focuses on the ultimate legal conclusion* that the state court reached and not

on whether the state court considered and discussed every angle of the evidence." *Russell v. Denmark*, 68 F.4th 252, 262 (5th Cir. 2023). Similarly, in *Langley v. Prince*, 926 F.3d 145, 163 (5th Cir. 2019), the Fifth Circuit held that "*Wilson* . . . does not prohibit this Court from considering Supreme Court cases not cited when evaluating the reasonableness of the state court's reasoning." *Id.* at 160-63. *See also Reeder v. Vannoy*, 978 F.3d 272, 277 (5th Cir. 2020) ("Indeed, the Supreme Court has instructed that we are to 'determine what arguments or theories supported or . . . could have supported, the state court's decision.'" (quoting *Richter*, 562 U.S. at 102)).

Ditto for the Sixth Circuit. In *Rogers v. Mays*, 69 F.4th 381, 391-92 (6th Cir. 2023), Rogers "fault[ed]" a particular justification provided by the state court. The Sixth Circuit rejected Roger's argument, explaining that "the Supreme Court has repeatedly held [that] we may not flyspeck state-court opinions" because "AEDPA instructs us to look for 'a *decision*' – not a few words or a stray thought – 'that was contrary to, or involved an unreasonable application of, clearly established Federal law.'" *Id.* (quoting § 2254(d)(1)). In support, the court stated that AEDPA's "goal is to protect against 'extreme malfunctions in the state criminal justice system,' not to create a grading system for state-court opinion writing." *Id.* (quoting *Brown v. Davenport*, 142 S. Ct. 1510, 1523-24 (2022)). *See also Coleman v. Bradshaw*, 974 F.3d 710, 719 (6th Cir. 2020) (the court looked at additional facts supporting the state court's reason to reject an affidavit); *Thompson v.*

*Skipper*, 981 F.3d 476, 485 (6th Cir. 2020) (Nalbandian, J., concurring).

In *Flint v. Carr*, 10 F.4th 786, 797 (7th Cir. 2021), the Seventh Circuit stated in conjunction with a reasoned state court opinion that it "must deny the writ if *we can posit arguments or theories that could have supported the state* court's *decision*, and if fairminded jurists could disagree about whether those arguments or theories are inconsistent with Supreme Court holdings.'" (quoting *Kidd v. Lemke*, 734 F.3d 696, 703 (7th Cir. 2013) (emphasis added)).

In *Zornes v. Bolin*, 37 F.4th 1411, 1415 (8th Cir. 2022), the Eighth Circuit specifically held, "We *evaluate the reasonableness of the state court*'s *ultimate conclusion, not necessarily the reasoning* used to justify the decision.") (citing *Dansby v. Hobbs*, 766 F.3d 809, 830 (8th Cir. 2014) (emphasis added)).

None of Pye's cited cases support his claim that a federal court analyzing whether deference is appropriate cannot consider anything outside the literal words of the state court opinion itself. The cases merely apply the universally accepted practice of deferring to a state court decision when the federal court concludes that the reasons it gave were reasonable. *E.g.*, *Clements v. Clarke*, 592 F.3d 45, 57 (1st Cir. 2010); *Webster v. Gray*, 39 F.4th 27, 36 (1st Cir. 2022); *Lentz v. Kennedy*, 967 F.3d 675, 692 (7th Cir. 2020); *Richardson v. Kornegay*, 3 F.4th 687, 698 (4th Cir. 2021); *Sheppard v. Davis*, 967 F.3d 458, 468 (5th Cir. 2020). Under the approach outlined above – where a federal court *may* consider any

arguments or record evidence that supports the state court's reasoning – it is obvious one *can* defer based "solely [on] the actual rationale provided by the state court." Pet.26. Pye's argument hinges entirely upon some courts of appeals' "rote quotations of *Wilson's* language" "to train attention" on the state court's reasons; but this language does not conflict with the Eleventh Circuit's approach. Pet.App.25, n.6, 26a, 28a, n.9. Nothing in these cases limits a federal court to considering only "the precise explanation offered by the state court – in every jot and tittle, right down to the last syllable." Pet.App.20a, n.3.

Pye claims that the Third Circuit and Ninth Circuit are "in unmistakable conflict" with the decision below, but again he is wrong. The pre-*Wilson* Third Circuit decision Pye cites, *Dennis v. Secretary, Pennsylvania Department of Corrections*, 834 F.3d 263, 281-82 (2016), held only 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, or buttressing a state court's scant analysis with arguments not fairly presented to it." That aligns with the decision here, and the Third Circuit never held that a court cannot consider *all relevant arguments* and record evidence when analyzing whether a state court decision is reasonable. Instead, it specifically noted that it would not invent arguments never made to the state court, which is very different from not addressing evidence or arguments *made* but not *specifically laid out in every detail* by the state court.

And the Ninth Circuit's decision in *Taylor v. Maddox*, 366 F.3d 992 (9th Cir. 2004), hardly fairs better. *See also Kipp v. Davis*, 971 F.3d 939 (9th Cir. 2020) (applying *Taylor*). As the decision below explained, the Ninth Circuit has long considered a state court's decision to be *per se* procedurally unreasonable if the state court opinion omits relevant facts, because that renders the "fact-finding process itself" unreasonable even if the "resulting findings" are reasonable. Pet.App.29a, n.9 (alteration adopted and quotations omitted). But the Ninth Circuit's unique legal analysis there is unrelated to the issue Pye raises: whether a federal court can consider other evidence or arguments when deciding whether a state court decision is substantively reasonable. At bottom, then, Pye asserts a split of authority based on the Ninth Circuit's idiosyncratic rule on a different question. That is no reason to grant review.

### B. This case is a poor vehicle for review.

Because the Eleventh Circuit simply did not hold what Pye claims it held, there is no reason to review. But even if there were some reason to keep analyzing these questions in the abstract, this would be a terrible case to do so.

**1.** To start, this is a factbound dispute where it is unclear what effect, if any, Pye's preferred rule would even have on the analysis. The Eleventh Circuit did not simply rubber stamp the state court decision, it carefully analyzed the state court's given justifications to

determine that the decision was, on multiple grounds, reasonable. To use just one example, the Eleventh Circuit analyzed the state court's analysis of Pye's new affidavits, holding that it was not unreasonable to find them suspicious, given their apparent contradictions and seeming artful pleading. Pet.App.33a. The Court would have to delve deep into nuanced factual issues to even determine whether the Eleventh Circuit *did* in fact go beyond the "reasoning" of the state court, however Pye defines that term.

**2.** Moreover, Pye ignores a core holding of *Wilson*, which would make review pointless in any event. This petition involves a written opinion from the state habeas court and a summary merits affirmance from the Supreme Court of Georgia. Following *Wilson*'s instruction, the Eleventh Circuit "looked through" the Georgia Supreme Court's affirmance to the trial court's opinion. But as *Wilson* held, the "look through" presumption is "not an absolute rule" and can easily be rebutted. 138 S. Ct. at 1196. If the lower court's decision is "unreasonable[ ]," that is itself evidence that the state supreme court did not "adopt[ ] the same reasoning." *Id.* And if the State has made "convincing alternative arguments for affirmance [before] the State's highest court or [presented] equivalent evidence . . . in its briefing to the federal court," then that evidence of reasonable grounds to support the state court's decision "rebut[s] the presumption." *Id.*

So even if Pye were to persuade this Court to impose his nothing-but-the-words-in-the-state-court-opinion approach to deference, and even assuming that doing

so would somehow mean that the trial court's reasons were unsupported, the ultimate holding would have to remain that he obtains no relief because the *Georgia Supreme Court* did not adopt that hypothetically "unreasonable" decision. And if Pye attempts to rebut this basic point by arguing that the Georgia Supreme Court could not have identified reasonable grounds because none exist, then he admits that his question presented is *irrelevant*, because the standard of review wouldn't matter. In other words, if Pye's position is that (1) reasonable grounds exist to deny his petition, but (2) the state trial court did not identify them, then he loses because the Georgia Supreme Court presumably *did*. If, on the other hand, his position is that *no* reasonable grounds exist to deny his petition, his question presented is meaningless, since his argument is *really* that he should win regardless of the standard. Either way, there is no reason for this Court to get involved.[3]

**3.** On top of everything else, hashing out § 2254(d) deference in this case would be fruitless because even under *de novo* review, Pye loses. That's why two judges below, Judge Jordan and Judge Rosenbaum, concurred in the judgment. They did not agree with much of the majority's legal analysis, but they expressly concluded

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[3] In virtually every case where a court has to "look through" a summary affirmance under *Wilson*, the deference question Pye raises here will be meaningless. If the lower court opinion is *unreasonable* but there do exist valid reasons, federal courts will hold that the summary affirmance did *not* adopt the unreasonable holdings of the lower court. So not only is this case a poor vehicle, but *any* case involving this procedural posture will be unaffected by this Court's deciding the question Pye puts forward.

that Pye is *not* entitled to habeas relief even on *de novo* review. Pet.App.63a. Simply put, Pye failed to prove *Strickland* prejudice because none of the new mitigation evidence, "when juxtaposed against the brutality and cruelty of the premeditated kidnapping, gang rape, and murder of Ms. Yarbrough," would have moved even "one juror." Pet.App.65a.

### C. The decision below is correct.

Although it should not matter, another reason to deny review is that the Eleventh Circuit is correct on the merits, as this Court's cases and every other circuit to examine the issue have held. To overcome the deference that federal habeas courts must give to a state court decision under § 2254(d), the "prisoner must show that the state court's decision is so obviously wrong that its error lies beyond any possibility for fair-minded disagreement." *Shinn v. Kayer*, 141 S. Ct. 517, 523 (2020) (quotation omitted). As *Wilson* explains, the way this process begins is that "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." 138 S. Ct. at 1192. But that is not all that must happen. A "federal court must carefully consider all the reasons and evidence supporting the state court's decision." *Mays v. Hines*, 141 S. Ct. 1145, 1149 (2021). And that makes sense because the text requires it: Section 2254 looks to the *decision* of the state court, not its *opinion*. 28 U.S.C. § 2254(d).

The decision below falls in lockstep. It held that a federal court "may consider any potential *justification*" – i.e., the supporting arguments and record evidence – when "assessing the reasonableness of a state court's reasons for its decision" denying habeas relief. Pet.App.18a. The rule is easy to apply in practice. *Contra* Pet.32. If, for example, a state court denies a *Strickland* claim for the reason that there was no deficient performance, then if the federal court is to consider another reason for denying habeas relief – such as concluding that there was no prejudice – then that review would be *de novo*. *See*, *e.g.*, *Hayes v. Sec'y, Fla. Dep't of Corr.*, 10 F.4th 1203, 1210 (11th Cir. 2021). "Reasons" are the basis for denying relief, *e.g.*, deficiency or prejudice for a *Strickland* claim, materiality for a *Brady* claim, custody for a *Miranda* claim, and so on. "Justifications" are the combinations of facts, legal elements, or factors that should be considered, and the applicable precedent. Pye's argument that this approach render's *Wilson* a legal nullity falls entirely flat. *See* Pet.29.[4]

Pye also argues that *Wilson* prohibits the court of appeals' continued reliance on *Richter's* holding that "a habeas court must determine what arguments or theories supported or . . . could have supported, the state court's decision" when there is a reasoned opinion. *Richter*, 562 U.S. at 102. But *Wilson* did not hold,

[4] Of course, not every opinion uses the term "reasons" and "justifications" as the Eleventh Circuit did here. The point is simply that when a state court gives a reason for denying relief, the federal court can look to what supports that reason, not just the specific words the state court put on the page.

explicitly or implicitly, that the federal courts cannot rely on "arguments or theories" in support of the state court's ultimate reason for denying relief that were not mentioned by the state court. Undeniably, such a holding would be contrary to this court's instruction that federal courts cannot impose mandatory opinion writing standards on state courts. *See Johnson v. Williams*, 568 U.S. 289, 300 (2013). By limiting a federal court's review to only the justifications given by the state court, a federal court would then be free to ignore any other justifications in support of the state court's reasons for denying relief. This would mean a state court would have to provide every justification it could think of to support its reasons otherwise the federal court could claim it ignored some portion of the record.

Pye's contrary theory is unprincipled, atextual, and unfair. On federal habeas review, a petitioner has free rein to comb through the entire body of law and every detail in the record to craft his argument attacking the state court's decision as unreasonable. But, in Pye's view, the State cannot rely on any relevant precedent or evidence in the record that is not *explicitly mentioned* in the state court decision, because to do so would allow the federal court to sidestep the "state court's *actual* reasoning." Pet.27. That is brazenly wrong. Section 2254(d) does not somehow *narrow* the possible evidence and arguments that can support a state conclusion while simultaneously allowing a petitioner to use the entire universe to attack it.

"Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions in the

state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Richter*, 562 U.S. at 102-03 (quoting *Jackson v. Virginia*, 443 U.S. 307, 332, n.5 (1979) (Stevens, J., concurring in judgment)). "[Section § 2254(d)] preserves authority to issue the writ in cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents." *Id.* at 102. The Eleventh Circuit's decision faithfully applied the text and this Court's precedent, and this Court should reject Pye's attempt to revolutionize habeas review.

## II. The second question presented is not important and did not affect the decision below.

Pye argues that the court erred in holding that state factual findings are "presumed" correct and can be overcome only by "clear and convincing evidence" under 28 U.S.C. § 2254(e)(1). In his view, § 2254(d)(2) is the only relevant provision, and § 2254(e)(1) applies only where the federal court "conducts independent factfinding." Pet.33. That is plainly wrong, but it is also an unimportant question that has no perceivable effect on this case.

The Eleventh Circuit sensibly held that a habeas petition must overcome both of these deferential regimes to obtain habeas relief based on supposed factual errors. Section 2254(e)(1) declares that in a habeas proceeding, "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." Section 2254(d)(2) then provides another layer of deference: no court shall grant a writ unless the state court decision was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." Neither provision suggests it is exclusive of the other, and this Court has *held* that they are separate requirements. *Miller-El*, 537 U.S. at 341.

To the extent there is any confusion in how to apply these provisions, this Court has not addressed it because although it is theoretically interesting, it is rarely dispositive. In almost any case where a petitioner challenges a state-court fact finding, whether the state court's decision is reasonable "does not turn on any interpretive difference regarding the relationship between these provisions." *Wood v. Allen*, 558 U.S. 290, 300 (2010); *see also id.* ("Although we granted certiorari to resolve the question of how §§ 2254(d)(2) and (e)(1) fit together, we find once more that we need not reach this question."). State-court fact findings that require deference under § 2254(d)(2) rarely depend on the additional presumption of correctness imposed by § 2254(e)(1).

It is no surprise then, that nearly every circuit applies § 2254(e)(1) in every § 2254 habeas action. Although Pye admits that "some circuits" reject his cramped reading of § 2254(e)(1), Pet.33, the truth is

that almost every circuit has rejected it.[5] Only the Ninth Circuit has agreed with Pye. *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004).

And even if the issue warrants attention at some point, it should not be resolved in a case like this one, where it is not dispositive and the court below resolved the question *sua sponte*. Indeed, not one member of the *en banc* court – majority, concurrence, or dissent – thought that the issue had any impact on the issues presented in the case. *See*, *e.g.*, Pet.App.33a (state court finding was, at minimum, "debatable" and thus not unreasonable); 40a (finding was "not unreasonable"; 41a ("nor was it unreasonable for it to weigh in its prejudice analysis"); 64a (concurrence); 96a (dissent).

Pye takes particular issue, Pet.34, with the state court's decision to view "with caution" various affidavits, where there was evidence of artful pleading, Pet.App.38a, but those fact findings were simply not "unreasonable" and the (d)(2)/(e)(1) question would make no difference. The affidavits came a decade after the trial, they were suspiciously repetitive, and the state court was unconvinced by them. That is not "unreasonable" by any standard, and again, no judge on

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[5] *Field v. Hallett*, 37 F.4th 8, 21 (1st Cir. 2022); *Cosey v. Lilley*, 62 F.4th 74, 82 (2d Cir. 2023); *Orie v. Sec'y Pa. Dep't of Corr.*, 940 F.3d 845, 850 (3d Cir. 2019); *Currica v. Miller*, 70 F.4th 718, 723 (4th Cir. 2023); *Flores v. Lumpkin*, 72 F.4th 678, 683 (5th Cir. 2023); *Michael v. Butts*, 59 F.4th 219, 225 (6th Cir. 2023); *Shannon v. Hepp*, 27 F.4th 1258, 1267-68 (7th Cir. 2022); *Stephen v. Smith*, 963 F.3d 795, 800 (8th Cir. 2020); *Smith v. Duckworth*, 824 F.3d 1233, 1241 (10th Cir. 2016).

the Eleventh Circuit thought the difference between § 2254(d)(2) and § 2254(e)(1) mattered to this question. The court's opinion would have come out exactly the same way if it was assessing only whether the state court's fact findings were reasonable rather than also considering whether Pye had disproven them by clear and convincing evidence.

To the extent it matters, the Eleventh Circuit (and nearly every other circuit) is correct on the merits: Section 2254(e)(1) applies in all § 2254 habeas actions. The plain language of the statute lays out that AEDPA deference requires federal courts to presume state-court fact findings "to be correct" and obliges petitioners to produce "clear and convincing evidence" to rebut that presumption. § 2254(e)(1). And it applies in any "proceeding instituted by an application for a writ of habeas corpus by a person in [state] custody." § 2254(e)(1). Nothing in the text suggests that anything less than clear and convincing evidence – whether that be drawn from the record the petitioner developed through state proceedings or a federal hearing – is sufficient to undermine state court fact findings.

Pye gets everything backwards, misconstruing § 2254(e) to be about how the "federal habeas court conducts independent factfinding," when that is merely a subpart. Pet.33. As a whole, § 2254(e) outlines the practical ways federal courts defer to state-court fact finding. Subsection (e)(1) establishes the burden of proof required to reject a state fact finding. And subsection (e)(2) limits when a petitioner can seek an evidentiary hearing in federal court to make up for

"fail[ing] to develop the factual basis of a claim in State court proceedings." Section 2254(e) is a universal restriction on a federal habeas court's ability to reject state court fact findings. Subsection (e)(1) is the generally applicable rule to every case, and (e)(2) imposes additional hurdles for petitioners who want to introduce entirely new facts through an evidentiary hearing.

Section 2254(e)(1) also tracks the overall structure of AEDPA, which is "not an alternative forum for trying facts and issues which a prisoner made insufficient effort to pursue in state proceedings." *Cullen v. Pinholster*, 563 U.S. 170, 186 (2011). The standard is "difficult" because it was designed to "stop[ ] [just] short of imposing a complete bar on federal-court relitigation" of state habeas claims. *Harrington v. Richter*, 562 U.S. at 102. This burden of proof does not, as Pye claims, "bar relief," Pet.34, n.7 – it just focuses the action where it should be, in state court.

## CONCLUSION

For the reasons set out above, this Court should deny the petition.

Respectfully submitted,

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