No. 23-682

In the Supreme Court of the United States

STATE OF ALABAMA,
PETITIONER,
v.

MARCUS BERNARD WILLIAMS,
RESPONDENT.

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

BRIEF IN OPPOSITION AND SUPPLEMENTAL APPENDIX

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CAPITAL CASE
QUESTIONS PRESENTED

On June 26, 2015, the United States Court of Appeals for the Eleventh Circuit reversed and remanded the district court's denial of penalty-phase habeas relief. On August 31, 2015, the Eleventh Circuit denied Alabama's petition for rehearing and rehearing *en banc*. Alabama had until November 30, 2015, to petition this Court for a writ of certiorari. It chose not to do so. Instead, the matter returned to the district court, which held a three-day evidentiary hearing before deciding, *de novo*, to grant penalty-phase relief. Chief among the evidence supporting the district court's resolution was the undisputed fact*—according to expert testimony—"that 'if the sexual abuse hadn't happened [to Mr. Williams], there would not have been the sexual violence [by Mr. Williams]."'

Alabama appealed, challenging the district court's *de novo* resolution of both prongs of *Strickland*. On appeal, Alabama did not argue the issue set forth in its first question presented as an alternative basis for reversing. Reviewing the prejudice prong *de novo*, the Eleventh Circuit "independently reweighed *all* the available evidence," including "the record and the evidence produced at the evidentiary hearing," before affirming.

Mr. Williams restates the questions presented as follows:

1. Does this Court have jurisdiction, under 28 U.S.C. § 2101(c), over a court of appeals judgment from 2015?

2. Should this Court expand *Taylor v. McKeithen*, 407 U.S. 191 (1972), to impose a writing requirement on all decisions of the courts of appeals?

3. Should this Court review a *de novo* finding of penalty phase prejudice in a capital rape-murder case where the jury never heard undisputed expert testimony "that 'if the sexual abuse hadn't happened [to Mr. Williams], there would not have been the sexual violence [by Mr. Williams]"'?

* Reply in Support of Mot. to Expedite Briefing on the Pet. for a Writ of Certiorari and Other Relief at 3 ("[T]he State is not contesting any fact findings.").

LIST OF PARTIES

The Respondent is Marcus Bernard Williams. The Petitioner is the State of Alabama. Because no party is a corporation, a corporate disclosure statement is not required under Supreme Court Rule 29.6.

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INTRODUCTION

Alabama seeks certiorari on two issues: (1) whether "a state-court adjudication on the merits lose[s] its entitlement to AEDPA deference if it is affirmed on procedural grounds"; and (2) whether "it [was] proper to find *Strickland* prejudice without considering the double-edged nature of Williams's 'hypersexuality' and the new aggravating evidence of his second violent sex crime." Pet. i. The first question presented seeks review of an August 31, 2015, court of appeals judgment.

This Court should deny certiorari on the first question presented for four reasons. First, this Court lacks jurisdiction. Second, the circuit split is illusory, and Alabama's briefing on it is misleading. Third, Alabama abandoned the issue by failing to raise it in its most recent opening brief at the Eleventh Circuit. Fourth, Alabama fails to mention *Harrington v. Richter*, 562 U.S. 86 (2011)—let alone discuss or distinguish it—despite its central role in the challenged decision.

The second question presented also does not merit review. First, it rests on significant misstatements about the facts and decision below. Second, *Thornell v. Jones*, cert. granted, No. 22-982 (Dec. 13, 2023) is procedurally and substantively dissimilar to this case. Third, it seeks error correction from the court of appeals' *de novo* review of a district court's *de novo* decision based on undisputed facts, including expert testimony "that 'if the sexual abuse hadn't happened [to Mr. Williams], there would not have been the sexual violence [by Mr. Williams].'" Fourth, it would require this Court to develop and impose a writing requirement on decisions of the courts of appeals.

STATEMENT OF THE CASE

After confessing to the murder of Melanie Rowell, Marcus Williams was indicted for murder made capital because it occurred "during a rape or attempted rape." App. 5. Counsel called no witnesses at the guilt phase, and their "sole defense was that [Mr. Williams] intended only to rape, not kill, Rowell." App. 6. A few weeks after the murder, Mr. Williams attempted to commit another rape.[1] App. 32-33.

The jury heard from two defense witnesses at sentencing: Mr. Williams' mother, Charlene Williams (Charlene), and his great-aunt, Eloise Williams (Eloise), and after deliberating for 30 minutes, voted 11-1, to recommend a death sentence. App. 6-7. At the judicial sentencing hearing, Mr. Williams testified and expressed remorse. App. 7. Ultimately, "[t]he trial court found one aggravating circumstance—the murder was committed during a rape," "one statutory mitigating circumstance—Williams had no significant criminal history," and "four non-statutory mitigating circumstances: (1) Williams' unstable upbringing, (2) his problem resulting from the end of a promising athletic career, (3) the attainment of his GED after not graduating from high school, and (4) his remorse." *Id.* Concluding the single aggravator outweighed the five mitigators, the court imposed a death sentence. *Id.*

After appeal and postconviction proceedings, Mr. Williams sought federal habeas relief. App. 7-8. Initially, the district court denied relief. App. 8. The court of appeals reversed, finding "the district court erred in granting deference under

[1] Counsel kept this incident out during the guilt phase, and Alabama did not attempt to present it at sentencing. App. 162 & n.11.

AEDPA to the postconviction court's decision [on penalty-phase failure-to-investigate ineffective assistance claims] because the ACCA [Alabama Court of Criminal Appeals] had applied a procedural bar and therefore had not adjudicated Williams' claims on the merits." App. 8-9. It remanded for "the district court to determine whether Williams was entitled to an evidentiary hearing and to reconsider his failure-to-investigate claims de novo." App. 9. Alabama's application for panel rehearing and rehearing *en banc* was denied, Supp. App. 1, and the judgment issued on August 31, 2015. Supp. App. 2. Alabama did not seek certiorari.

The district court held a three-day evidentiary hearing on eight failure-to-investigate claims[2] at which it heard from numerous witnesses, both lay and expert, and "[b]oth sides presented evidentiary materials." App. 9-10. Among the undisputed facts[3] established were that counsel "knew Williams' confession would likely be admitted at trial, so mitigation would be important to possibly get life without parole." App. 14. However, counsel "failed to use available resources for a mitigation investigation," including the $1,500 the trial court "awarded . . . to hire a mitigation investigator for the penalty phase." *Id.* Counsel "met infrequently with Williams and

[2] Those claims were: "(1) failure to collect documentary evidence and hire a mitigation specialist; (2) failure to thoroughly investigate Williams' history, including his childhood sexual abuse; (3) failure to interview Williams' friend, Alister Cook; (4) failure to adequately interview and prepare the penalty phase witnesses; (5) failure to compile Williams' history of abuse and neglect; (6) failure to investigate Williams' family history of mental illness; (7) failure to show that Williams' background contributed to his committing capital murder; and (8) failure to present his redeeming characteristics." App. 9-10 n.2.

[3] Reply in Support of Mot. to Expedite Briefing on the Pet. for a Writ of Certiorari and Other Relief at 3 ("[T]he State is not contesting any fact findings.").

failed to ask more than general questions about [his] background." App. 15. The jury heard scant evidence, including testimony from Charlene and Eloise. App. 5-11, 13-19. Eloise first met counsel the day she testified, and counsel—who spent just 15 minutes preparing her—"did not seem to understand Williams' life story." App. 15.

Because of their deficient performance, counsel did not discover crucial mitigation evidence, including that an older male babysitter sodomized Mr. Williams several times when he was "between the ages of four and six." App. 16-17. This resulted in depression, feelings of shame, and "thoughts of self-harm and suicide." App. 17. He was "exposed to sexual relations at an inappropriately young age," including sharing a bed with Charlene and her various boyfriends, and at 10, an adult cousin "allow[ing] him to watch" him have sex. *Id*. Counsel also failed to discover "[t]he pervasive history of childhood sexual abuse and incest within Williams' family, which spans generations." App. 18. Dr. Matthew Mendel, a clinical psychologist, "testified . . . that 'if the sexual abuse hadn't happened [to Mr. Williams], there would not have been the sexual violence [by Mr. Williams]." App. 25.

Also undiscovered was Charlene's alcoholism, which resulted in her drinking to the point of intoxication and neglecting Mr. Williams, who himself "began drinking alcohol between the ages of 12 and 14 years old," with "his consumption steadily increase[ing] throughout his teenage years to the point where he was getting drunk weekly." App. 19. Moreover, "Dr. Mendel and Dr. King, the State's expert, both testified that, but for alcohol, [Mr. Williams'] crime would not have happened." App. 211.

"Finally, counsel would have learned that Williams' childhood was defined by chaos and abandonment." App. 19. This included Charlene frequently going "out partying or drinking . . . leav[ing] the children to fend for themselves." *Id.* "[B]ecause Charlene could not properly care for him," Mr. Williams "moved back and forth between Eloise and his great-grandmother[.]" *Id.* Moreover, Mr. Williams' "father was not involved in his life until he was 13 or 14," and he "did not grow up with any of his six half-siblings all of whom were raised in different households." *Id.* While Mr. Williams' half-siblings had stable homes, he "felt that he was never wanted or belonged anywhere." App. 19-20.[4]

The evidentiary hearing resulted in "a 141-page order granting Williams' habeas petition on" five claims. App. 11.[5] The district court devoted seven pages of its prejudice analysis to the separate attempted rape that occurred weeks after the murder of Ms. Rowell, including what effect its admission could have at a future resentencing. App. 160-67.

Alabama appealed, asserting "the district court erred in two ways": (1) "by failing to uphold the presumption of effective assistance of counsel"; and (2) "by incorrectly reweighing the additional aggravating and mitigating evidence produced at the evidentiary hearing." App. 12.

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[4] The district court's decision contains a detailed recitation of the "powerful mitigating evidence" that "the jury and the trial judge would have heard" had trial counsel conducted a reasonable investigation. App. 144-47.

[5] Relief was denied—for failure to prove prejudice—on three claims: failure to interview Alister Cook; failure to investigate family history of mental illness; and failure to present his redeeming characteristics. App. 11 n.3.

The court of appeals began by reciting the correct standards of review. App. 11-12 ("We review de novo the district court's grant of a federal habeas petition under 28 U.S.C. § 2254 [and review] factual findings . . . for clear error," and recognizing resolution of an ineffective assistance claim "is a mixed question of law and fact" reviewed *de novo*) (citations and quotation marks omitted). The majority and dissent agreed that trial counsel performed deficiently.[6] App. 20-21, 27. Moving on to prejudice, the court recited the correct standard based on this Court's precedent, and "[a]fter carefully reweighing the evidence . . . f[ou]nd there is a reasonable probability that absent counsel's deficiencies, the balance of aggravating and mitigating factors in Williams' case did not warrant a sentence of death." App. 23. In doing so, it "independently reweighed *all* the available evidence." App. 24 (emphasis added) (citing *Strickland v. Washington*, 466 U.S. 668, 695 (1984)). It continued:

> We have reviewed the record and the evidence produced at the evidentiary hearing, and we find that not only the sheer volume of but also the powerful nature of the mitigators overwhelmingly outweighs the aggravator in Williams' case . . . and our confidence in the outcome of the penalty phase of Williams' trial is undermined. *Id.* at 694.

App. 24-25. The district court record it reviewed included the undisputed[7] testimony of Dr. Mendel who "strongly believed that 'if the sexual abuse hadn't happened [to

[6] Alabama does not challenge this conclusion.

[7] Alabama does not dispute any of the factual findings below. Reply in Support of Mot. to Expedite Briefing on the Pet. for a Writ of Certiorari and Other Relief at 3; *see also* App. 25 ("The district court credited both Williams' and Dr. Mendel's testimony regarding the sexual abuse . . . and the State has not adequately challenged this credibility finding.").

Mr. Williams], there would not have been the sexual violence [by Mr. Williams].'" App. 25.

The dissent, after discussing the subsequent attempted rape, including its effect on other mitigators and potential for establishing future dangerousness, App. 32-33, concluded, "[V]iewed in its entirety and weighed properly, the evidence developed in habeas creates only the slightest possibility of a different outcome." App. 34. The majority briefly addressed the dissent's contentions before concluding, "Williams 'has met the burden of showing that the decision reached [in the penalty phase] would reasonably likely have been different absent the errors.'" App. 26 (quoting *Strickland*, 466 U.S. at 696)). The court of appeals unanimously denied panel rehearing and rehearing *en banc*. App. 1-2.

REASONS FOR DENYING THE PETITION

I. This Court lacks jurisdiction over Alabama's first question presented.[8]

This Court has appellate jurisdiction "with such Exceptions, and under such Regulations as the Congress shall make." U.S. Const., art. III, § 2; *see also Durousseau v. United States*, 6 Cranch 307, 312 (1810) ("The appellate powers of the supreme court of the United States, are given by the *constitution*; but they are *limited and regulated* by the judicial act and other acts passed by congress on the subject.") (emphases in original); *Davis v. Jacobs*, 454 U.S. 911, 916 (1981) (mem.) (Rehnquist, J., dissenting) ("[W]here a specific statutory enactment dealing with our jurisdiction to consider decisions of the courts of appeals limits that jurisdiction to '[c]ases in the courts of appeals,' 28 U.S.C. § 1254, we are bound by that statutory provision just as we would be bound by any other statutory provision, unless we were to hold it violative of some provision of the Constitution.") (second brackets in original).

Pursuant to Article III, § 2, Congress has limited and regulated this Court's appellate jurisdiction by, among other things, placing a strict time limit on petitions for certiorari from civil judgments of the courts of appeals. 28 U.S.C. § 2101(c) ("Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ

[8] If this Court is inclined to grant certiorari, it should do so on Mr. Williams' restatement of the question presented.

of certiorari for a period not exceeding sixty days."); *see also* Sup. Ct. R. 13. "An appellate jurisdiction necessarily implies some judicial determination, some judgment, decree, or order of an inferior tribunal, from which an appeal has been taken." *The Alicia*, 74 U.S. 571, 573 (1868). Here, the judgment of the court of appeals that forms the basis for Alabama's first question presented issued August 31, 2015. Section 2101(c)'s time limit, thus, deprives this Court of jurisdiction over it.[9] The Eleventh Circuit's decision was not on an interlocutory appeal; it was from an appeal by right following a final judgment of a district court.

This Court has generally followed the limitations Congress has placed on its appellate jurisdiction. *See, e.g.*, *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990) ("Title 28 U.S.C. § 2101(c) requires that a petition for certiorari in a civil case be filed within 90 days of the entry of the judgment below. This 90-day limit is mandatory and jurisdictional."); *Salazar v. Buono*, 559 U.S. 700, 711-12 (2010) ("When Buono moved the District Court in *Buono I* for an injunction . . . the Government raised the same standing objections it proffers now[, and] the District Court entered a judgment in Buono's favor, which the Court of Appeals affirmed in *Buono II*. The Government did not seek review in this Court. The judgment became final and unreviewable upon the expiration of the 90–day deadline under 28 U.S.C. § 2101(c)[.]") (citations omitted).

[9] Moreover, Alabama's failure to seek certiorari in 2015 resulted in prolonged proceedings below, including a three-day evidentiary hearing, and a court of appeals process that included oral argument and petitions for panel rehearing and rehearing *en banc*. Even if this Court had jurisdiction, it should decline to exercise it because "at some point there must be finality." *Gray v. Lucas*, 463 U.S. 1237, 1240 (1983) (mem.) (Burger, C.J., concurring in den'l of certiorari and stay).

Occasionally, however, this Court has—often without citation to 28 U.S.C. § 2101(c) or Art. III, § 2—proclaimed, with minimal elaboration, its authority to reach all issues raised in an earlier appeal. *See, e.g.*, *Major League Baseball Players Ass'n v. Garvey*, 532 U.S. 504, 508 n.1 (2001) ("[T]here is no question that the Association's petition was filed in sufficient time for us to review *Garvey II*, and we have authority to consider questions determined in earlier stages of the litigation where certiorari is sought from the most recent of the judgments of the Court of Appeals.") (citing *Mercer v. Theriot*, 377 U.S. 152 (1964) (*per curiam*); *Hamilton-Brown Shoe Co. v. Wolf Brothers & Co.*, 240 U.S. 251 (1916)); *Urie v. Thompson*, 337 U.S. 163 (1949).

Garvey's brief treatment makes no explicit reference to jurisdiction; it simply declares this Court has "authority." *Id.* Likewise, it makes no mention of Art. III, § 2, 28 U.S.C. § 2101(c), or Rule 13. *Mercer*'s holding is only slightly more detailed:

> We now "consider all of the substantial federal questions determined in the earlier stages of the litigation * * *.," *Reece v. Georgia*, 350 U.S. 85, 87 [] [(1955)], for it is settled that we may consider questions raised on the first appeal, as well as "those that were before the court of appeals upon the second appeal."

Mercer, 377 U.S. at 153-54 (ellipsis in original) (citing *Hamilton-Brown*, 240 U.S. at 257; *Urie*, 337 U.S. at 171-73; *Messenger v. Anderson*, 225 U.S. 436, 444 (1912)). This Court's declaration that "it is settled that we may consider questions raised on the first appeal" conflicts with Congress' limitation of its appellate jurisdiction.

Urie provides some indication of the basis for this Court's claims of broad jurisdiction and discusses both jurisdiction and a statutory basis. There, the first state court appellate judgment "was not final; it was interlocutory and not reviewable

here within the meaning of our jurisdictional statute. 28 U.S.C. [§] 344(b) (now [§] 1257(3))[.]" *Urie*, 337 U.S. at 171-72. Moreover, "as this Court has had occasion heretofore to observe, its power to probe issues disposed of on appeals prior to the one under review is, in the last analysis, a 'necessary correlative' of the rule which limits it to the examination of final judgments." *Id.* at 172-73 (citation and footnote omitted). "[P]etitioner Urie has 'invoked the jurisdiction of this court *at the first opportunity open to (him)*, and the federal question, having been considered by the state Supreme Court, is properly here.'" *Id.* at 172 n.12 (parentheses in original; emphasis added; citation omitted). Thus, the fact that Urie *could not* seek certiorari from the first appeal due to a lack of jurisdiction was central to the resolution of the issue. Whether there is some implied basis for jurisdiction over earlier issues in cases where no certiorari jurisdiction existed has no bearing on cases like Mr. Williams', where this Court clearly had jurisdiction to review the 2015 decision through a timely petition.

Alabama's first question presented neither seeks certiorari on an issue decided in a non-final, state court decision over which this Court lacked jurisdiction nor represents Alabama's "first opportunity" to present the question. As such, *Urie* undercuts *Garvey* and makes any reliance on it tenuous, even in the absence of *Jenkins* and *Buono*. If this Court grants certiorari, it should do so only to overrule *Garvey* and the cases upon which it rests (to the extent they could be read to apply to appeals from non-interlocutory decisions of the courts of appeals) and hold it has no jurisdiction over Alabama's first question presented.

II. The circuit split is illusory, and Alabama's briefing is misleading.

Alabama asserts, "[T]he courts of appeals are divided with respect to the deference owed to adjudications on the merits by lower state courts that are affirmed on alternate grounds." Pet. 22. It purports to identify the split as generally involving the Third, Fifth, and Eleventh Circuits on one side and the Sixth, Seventh, and Ninth on the other. Pet. 22-24. However, the next section of the petition belies this, acknowledging that, in cases like Mr. Williams' (the only type of case that matters here), "the Third and Eleventh Circuits function like the Sixth, Seventh, and Ninth Circuits[.]" Pet. 25. Thus, the circuit "split," as limited by Alabama's argument, appears to involve a single case from the Fifth Circuit. Pet. 22.

Relying on the lone Fifth Circuit case is problematic because Alabama quotes a single sentence from that decision while omitting the citations upon which it depends. Alabama writes: "In the Fifth Circuit, '[w]here a lower state court rules on an element that a higher state court did not, the lower state court's decision is entitled to AEDPA deference.' *Loden v. McCarty*, 778 F.3d 484, 495 (5th Cir. 2015)." Pet. 22 (brackets in original). Missing from Alabama's brief is any indication that the quoted sentence is followed by citations. That is important and misleading because, immediately after the end of the quoted sentence, *Loden* reads:

> *See Atkins v. Zenk,* 667 F.3d 939, 944 (7th Cir.2012) ("Because both prongs have been addressed by Indiana state courts, in one form or another, the deferential standard of review set out in § 2254(d) applies to both."); *Hammond v. Hall,* 586 F.3d 1289, 1332 (11th Cir. 2009) ("[W]here a state trial court rejects a claim on one prong of the ineffective assistance of counsel test and the state supreme court, without disapproving that holding, affirms on the other prong, both of those state court decisions are due AEDPA deference.").

Loden, 778 F.3d at 495. Given that the Seventh and—as limited by Alabama's argument about Mr. Williams' case—the Eleventh Circuits fall on the other side of the "split," it is exceedingly misleading to omit the fact that the Fifth Circuit's sole cited decision on the issue relies on decisions on the issue from both circuits.

This Court should decline to grant certiorari both because any circuit split is illusory—at least as applied to cases like Mr. Williams'—and Alabama has attempted to mislead this Court as to the basis for the Fifth Circuit's decision and the extent of the "split."

III. Alabama abandoned the issue raised in its first question presented.

The Eleventh Circuit "require[s] that issues be raised in a party's brief on appeal" to "promote[] careful and correct decision making," a rule that "is not too much to ask of an appellant or appellee." *Hamilton v. Southland Christian School, Inc.*, 680 F.3d 1316, 1319 (11th Cir. 2012), *overruled in part by United States v. Durham*, 795 F.3d 1329, 1330 (11th Cir. 2015). "Under our caselaw, a party seeking to raise a claim or issue on appeal must plainly and prominently so indicate, i.e., in a section of his brief that is demarcated by a boldface heading or by some equivalent notation," or "[a]t the very least, he must devote a discrete, substantial portion of his argumentation to that issue. Otherwise, the issue—even if properly preserved at trial—will be considered abandoned." *United States v. Jernigan*, 341 F.3d 1273, 1283 n.8 (11th Cir. 2003), *abrogated on other grounds by Rehaif v. United States*, 139 S. Ct. 2191, 2200 (2019) (citations omitted). This uncontroversial practice is consistent with this Court's approach. *See, e.g.*, *CRST Van Expedited, Inc. v. EEOC*, 578 U.S.

419, 435 (2016) ("It is not the Court's usual practice to adjudicate either legal or predicate factual questions in the first instance.") (citation omitted).

Here, after choosing not to seek certiorari from the 2015 judgment, Alabama then failed to raise the issue on appeal from the grant of penalty phase relief. Instead, Alabama waited until its petition for panel rehearing and rehearing *en banc*. Under Eleventh Circuit precedent, it abandoned that claim. *See, e.g.*, *United States v. Levy*, 379 F.3d 1241, 1242 (11th Cir. 2004) ("This Court has repeatedly refused to consider issues raised for the first time in a petition for rehearing.") (citations omitted). This Court should deny certiorari because Alabama abandoned the issue raised in the first question presented.

IV. Alabama does not cite—let alone discuss—*Harrington v. Richter*, 562 U.S. 86 (2011), despite its centrality to the court of appeals' decision on the issue underlying the first question presented.

In *Richter*, this Court held, "When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." *Richter*, 562 U.S. at 99 (citation omitted). "The presumption may be overcome when there is reason to think some other explanation for the state court's decision is more likely." *Id.* at 99-100 (citing *Ylst v. Nunnemaker*, 501 U.S. 797, 803 (1991)). The 2015 decision—from which Alabama seeks certiorari in its first question presented—relies heavily on *Richter*. App. 233-34; App. 233 ("Under § 2254(d), AEDPA's deferential standard of review is limited to claims that have been 'adjudicated on the merits' in state court. A decision that is based on state

procedural grounds is not an adjudication on the merits.") (citing *Richter*, 562 U.S. at 99). Yet *Richter* goes unmentioned in Alabama's petition. Pet. ix-xi.[10]

Analyzing the ACCA's decision,[11] the court of appeals explained it could not give AEDPA deference "because the court clearly told us it did not consider the merits," and "[a]s the Supreme Court explained in *Richter*, we only presume that a state court reached the merits when there is 'no reason to think some other explanation for the state court's decision is more likely.'" App. 234 (quoting *Richter*, 562 U.S. at 99-100). "In this case, our reason is clear—the [ACCA] expressly held that Mr. Williams's claims were 'procedurally barred.'" *Id.*[12]

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[10] Alabama does cite *Loggins v. Thomas*, 654 F.3d 1204 (11th Cir. 2011). Pet. 22. Below, the court of appeals found Alabama's reliance on *Loggins* "misplaced" because it "simply h[e]ld that when state trial and appellate courts make alternative, but consistent, merits determinations, we accord AEDPA deference to both decisions." App. 235 (citations omitted). "[W]here, as here, a state trial court issues a decision that the state appellate court does not agree with, we consider only the state appellate court's decision." *Id.*; *see also* App. 236 ("Unlike the state court decision[] in *Loggins*," the ACCA's "holding that the Rule 32 court did not have the authority to consider the merits of Mr. Williams's failure-to-investigate claims is not consistent with the Rule 32 court's decision addressing the merits of those claims.").

[11] The court of appeals could not "afford AEDPA deference to the Rule 32 court's decision because [it] was rejected by a higher state court on the basis of state law." App. 234. It rejected Alabama's argument that "there is no indication that the [ACCA] disagreed with the Rule 32 court's decision" because the ACCA "invoked a *jurisdictional* procedural bar." *Id.* (citation omitted; emphasis in original). As a result, the ACCA "found itself—and necessarily, the Rule 32 court as well—without the authority to even consider the merits of Mr. Williams's failure-to-investigate claims," meaning the ACCA "disagreed that the Rule 32 [c]ourt had jurisdiction to make any merits determination at all, including the one that it made." App. 234-35.

[12] After applying *Richter*, the court of appeals held that "[b]inding Supreme Court precedent requires us to hold that" review was not foreclosed by the ACCA's "incorrect finding that Mr. Williams's claims had been previously raised and addressed on direct appeal[.]" App. 236-37. In doing so, the Eleventh Circuit faithfully applied this

Alabama's failure to mention *Richter*, let alone address the court of appeals' reliance on—and application of—it, is reason enough for this Court to deny certiorari, especially because Alabama does not argue this Court should overrule *Richter*.

V. The second question presented rests on misstatements about the decision below.

"Counsel . . . have an obligation . . . to point out in the brief in opposition, and not later, any perceived misstatement made in the petition." Sup. Ct. R. 15.2. Thus, Mr. Williams must point out numerous misstatements Alabama makes in support of the second question presented. Alabama's misstatements alone are sufficient for this Court to deny certiorari on the second question presented.

The misstatements begin in the question presented: "Was it proper to find *Strickland* prejudice without considering the double-edged nature of Williams's 'hypersexuality' and the new aggravating evidence of his second violent sex crime[.]." Pet. i. Absent the misstatements, the question presented reads: "Was it proper to find *Strickland* prejudice?" This is hardly the type of compelling issue that merits this Court's attention. Sup. Ct. R. 10.

The body of the brief expands the misstatements, asserting:

> The Eleventh Circuit improperly lowered *Strickland*'s highly demanding prejudice standard by failing to consider new aggravating evidence.
>
> * * *

Court's precedent, namely *Ylst*, 501 U.S. at 804 n. 3, and *Cone v. Bell*, 556 U.S. 449, 453 (2009). App. 237-39.

> The Court below ignored all the "bad," including strong evidence of future dangerousness, a second sex crime, and the damage to Melanie Rowell's family.
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> * * *
>
> The court did not once consider how the evidence developed on remand about Williams's "troubled upbringing" could harm his case. Nor did it consider the likely effect of rebuttal evidence had Williams made a full-throated mitigation case based on his "hypersexuality."
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> * * *
>
> Yet the panel majority apparently[13] never considered how any juror could see it differently.
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> * * *
>
> Likewise, the court failed to consider how more developed testimony about Williams's drug and alcohol problems and his family history could have been aggravating—or at least not purely mitigating.
>
> * * *
>
> The court also ignored the devastating evidence that would have followed Williams's *purported* mitigation.[14]

Id. at 28-30 (capitalization altered; bold type removed; emphasis added).

The foregoing cannot be reconciled with the decision below. Specifically, the Eleventh Circuit explained it "independently reweighed *all* the available evidence" and "reviewed the *record and evidence produced at the evidentiary hearing*[.]" App. 24 (emphases added; citation omitted). Only after explaining it had considered and weighed *everything*, did the court make its finding: "that not only the sheer volume

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[13] This is the only time Alabama tempers its representation of the decision below.

[14] Of course, the mitigation was not "purported," because Alabama now concedes all factual findings below were correct.

but also the powerful nature of the mitigators overwhelmingly outweighs the aggravator in Williams' case," and thus "our confidence in the outcome of the penalty phase of Williams' trial is undermined." *Id.* at 24-25 (citing *Strickland*, 466 U.S. at 694)).

Nor can it be reconciled with the dissent, which after discussing the evidence of the subsequent attempted rape, including its effect on other mitigators and potential for establishing future dangerousness, App. 32-33, concluded, "[V]iewed in its entirety and weighed properly, the evidence developed in habeas creates only the slightest possibility of a different outcome." App. 34. In other words, the dissent, applying *Strickland*, did not quibble with the facts not explicitly mentioned in the majority opinion but differed only in the weight and effect of the facts on a decisionmaker.

Related to the preceding misstatements was another: "The majority simply declared that being prone to rape is 'powerful' mitigating evidence. App. 24." Pet. 30. At the cited page, the term "powerful" appears as follows: "We have reviewed the record and the evidence produced at the evidentiary hearing, and we find that not only the volume of but also the powerful nature of the mitigators overwhelmingly outweighs the aggravator in Williams' case." App. 24-25. In the paragraph preceding this sentence, the Court set forth the mitigation "[t]he jury never heard," namely: "Williams' sexual abuse, his early exposure to sexual relations, his exposure to domestic violence, the abandonment by both his father and mother, or the sexual abuse and alcoholism that was pervasive in his family." App. 23. Nowhere does

anything that could be construed as "prone to rape" appear, and "powerful" referred to all "mitigators" (plural) mentioned in the preceding paragraph.

This Court should deny certiorari on the second question presented because it relies on significant and pervasive misstatements about the facts and decision below.

VI. This case is procedurally and substantively dissimilar to *Thornell v. Jones*.

While Alabama attempts to fabricate a basis for this Court's certiorari jurisdiction by arguing that *Thornell v. Jones*, cert. granted, No. 22-982 (Dec. 13, 2023), and *Williams* share an identical analytical error in evaluating *Strickland* prejudice, Pet. 33-36, "this is a classic mixing of apples and oranges." *Schlup v. Delo*, 513 U.S. 298, 339 (1995). This Court should deny certiorari because *Jones* is procedurally and substantively dissimilar from Mr. Williams' case.

For starters, *Jones* and this case are unlike each other in kind or character. In 1999, Mr. Williams was tried and convicted for the murder and rape of Melanie Rowell — a crime to which he confessed. *Williams v. State*, 795 So. 2d 753, 761 (Ala. Crim. App. 1999). During the penalty-phase, the State argued just one aggravating circumstance–murder during a rape. App. 2-3. Counsel presented scant evidence at sentencing, which included two ill-prepared witnesses: Charlene and Eloise. App. 5-11, 13-19. The trial court found only one statutory mitigating circumstance: Mr. Williams had no significant history of prior criminal activity. App. 21-23. Identifying non-statutory mitigation, the trial court noted "[t]he circumstances of defendant's upbringing, his problem resulting from the end of a promising athletic career, [and] his attainment of his GED after failing to graduate from high school." App. 24. After

finding the one aggravating circumstance to outweigh the mitigators, the trial court imposed a death sentence. *Id.*

Alabama courts denied relief on direct appeal and during state post-conviction. As recited in the Eleventh Circuit's opinion, the district court evaluated Mr. Williams' ineffective assistance of counsel claims based on failure to investigate mitigating evidence *de novo* after a 2015 Eleventh Circuit remand for an evidentiary hearing. App. 4.

In granting habeas relief, and consistent with this Court's precedent, the district court properly "consider[ed] the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding—and reweigh[ed] it against the evidence in aggravation." App. 148 (citations omitted); *see also Sears v. Upton*, 561 U.S. 945, 956 (2010) (per curiam) ("A proper analysis of prejudice under *Strickland* would have taken into account the newly uncovered [mitigation] evidence . . ., along with the mitigation evidence introduced during [Mr. Williams'] penalty phase trial, to assess whether there is a reasonable probability that [the petitioner] would have received a different sentence after a constitutionally sufficient mitigation investigation"). Added to the powerful evidence he was the victim of child rape, Mr. Williams proved more than a dozen new statutory and non-statutory mitigating circumstances, which counsel either failed to develop or even mention at trial. App. 147-52. As the district court acknowledged, "[t]he fact that Mr. Williams' case is not highly aggravated further supports a finding of prejudice in this case." App. 169.

Particularly relevant was the district court's reweighing analysis that specifically and extensively considered the potentially aggravating implications of new mitigating evidence about Mr. Williams' traumatic response to being sexually abused during childhood. App. 162-64. In doing so, the district court agreed that Mr. Williams' commission of an attempted rape just 18 days after the murder was "'entirely consistent with the portrait of [Mr. Williams'] psychological unraveling, stemming from his childhood sexual abuse' and his plea for help for his sexual crimes." App. 166 (citation omitted).

Correctly applying the clear error standard, the Eleventh Circuit agreed that Mr. Williams had proven both *Strickland* prongs, finding "there is a reasonable probability that, absent counsel's deficiencies, the balance of aggravating and mitigating factors in Williams' case did not warrant a sentence of death." App. 23. The majority recited and correctly applied *Strickland*, which required it to reweigh all the evidence:

> When a defendant challenges a death sentence, the test for prejudice "is whether there is a reasonable probability that, absent [counsel's] errors, the sentencer—including an appellate court, to the extent it independently reweighs the evidence—would have concluded that the balance of aggravating and mitigating circumstances did not warrant death.'"

Id. (quoting *Strickland*, 466 U.S. at 695).

It also acknowledged and dismissed Alabama's arguments about re-weighing, noting, "The State argues that the district court incorrectly reweighed the additional aggravating and mitigating evidence produced at the evidentiary hearing by giving significance to the number of aggravators and mitigators rather than their nature."

App. 24. It found "[t]his argument is meritless and, in all events, on de novo review, this Court has independently reweighed *all the available evidence*." *Id.* (citing *Strickland*, 466 U.S. at 695) (emphasis added). The majority explained it had "reviewed the record and the evidence produced at the evidentiary hearing," including new mitigating evidence and evidence that purportedly undermined that evidence. App. 24-25. In doing so, it declined to "minimize the brutality of Williams' crime[.]" App. 26. Nor did the majority "minimize the weight or significance of the aggravating circumstance[.]" App. 25 (citing *Strickland*, 466 U.S. at 694).

Additionally, the majority directly responded to the dissent's concerns about new aggravating evidence, noting its reliance on the "highly deferential" clear error standard, which requires appellate court deference to a district court's factual findings undergirding the prejudice analysis. App. 26 ("Here, the district court conducted an evidentiary hearing on the failure-to-investigate claims, made extensive factual findings based on evidence that had not been presented during Williams' penalty phase, and concluded that Williams was entitled to habeas relief. On appeal, we must review the district court's factual findings for clear error and its legal conclusions de novo."). It referenced again its consideration of the whole evidentiary record. *Id.* ("Considering the record before us—and given the highly deferential standard of review for factual findings—we conclude that Williams has established *Strickland* prejudice."). Having thus thoroughly considered all the good and bad evidence, the Eleventh Circuit affirmed and unanimously denied the State's petitions for panel rehearing and rehearing *en banc*. App. 1-2.

In contrast, *Jones* presents not only disparate facts but also a much more convoluted procedural history. Unlike this case, *Jones* involves multiple aggravated homicides with substantially more mitigating evidence and aggravating circumstances. Mr. Jones beat Robert Weaver to death with a baseball bat and struck Weaver's seven-year-old daughter with a bat before killing her by suffocation or strangulation. *Jones v. Ryan*, 52 F.4th 1104, 1109 (9th Cir. 2022). He also tried to kill Weaver's grandmother, who later died from her injuries. *Id.*

At sentencing, counsel called three witnesses: (1) Jones' guilt-phase investigator to testify about an accomplice; (2) Jones' second stepfather, Randy, who testified about the onset of his drug addiction, his childhood and developmental history; and (3) Dr. Potts, a court-appointed independent forensic psychiatrist who testified extensively about Jones' traumatic social history. *Id.* at 1110. Despite this evidence, which supported four non-statutory mitigating factors, the judge imposed a death sentence because the four aggravators—that Jones (1) "committed the offense as consideration for the receipt, or in expectation of the receipt of anything of pecuniary value"; (2) "committed the offenses in an especially heinous or depraved manner"; (3) was "convicted of one or more other homicides . . . which were committed during the commission of the offense"; and (4) killed a child under 15—outweighed them. *Id.* at 1112.

Following post-conviction appeals, Jones sought federal habeas relief, and the district court conducted an evidentiary hearing on two penalty-phase ineffective assistance of counsel claims for failure to hire mental health experts. Pet. at 11,

Jones, *supra* (No. 22-982). The district court denied both claims, finding *Strickland*'s prejudice prong unsatisfied because the new mental health evidence was not entirely mitigating or persuasive. *Id.* at 13. Crediting testimony from Arizona's experts, it found Jones did not prove he suffered from cognitive impairment, major affective disorder, or post-traumatic stress disorder. *Id.* at 12. "Moreover, the conditions that Jones *did* establish—ADHD and low-level mood disorder—'[did] not constitute persuasive evidence in mitigation because they do not bear a relationship to [Jones's] violent behavior.'" *Id.* at 13 (emphasis in original). Ultimately, "the results of subsequent examinations performed by the parties' mental health experts have not established a more-persuasive case in mitigation than that presented through the report and testimony of Dr. Potts" at sentencing. *Id.*

The Ninth Circuit reversed, declining to apply AEDPA, and considered the claims *de novo*. *Id.* at 12-13. The Ninth Circuit found, based on its own review of the evidence, a reasonable probability that, with a defense mental health expert and neuropsychological and neurological testing, the results of sentencing would have been different. *Id.* at 15.

In *Jones*, Arizona appeals the Ninth Circuit's most recent grant of relief on remand from a prior panel of the Ninth Circuit and this Court.[15] The question presented in *Jones* is:

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[15] Unlike here, *Jones* also involves multiple remands to ensure compliance with this Court's precedents. The Ninth Circuit first decided Jones' appeal in *Jones v. Ryan*, 583 F.3d 626 (9th Cir. 2009). This Court vacated that decision for reconsideration in light of *Cullen v. Pinholster*, 563 U.S. 170 (2011). *See Jones v. Ryan*, 563 U.S. 932 (2011). *See also Jones v. Ryan*, No. CV-01-00384-PHX-SRB, 2018 WL 2365714, at *1

> Whether the U.S. Court of Appeals for the 9th Circuit violated this court's precedents by employing a flawed methodology for assessing prejudice under *Strickland v. Washington* when it disregarded the district court's factual and credibility findings and excluded evidence in aggravation and the state's rebuttal when it reversed the district court and granted habeas relief.

Arguing the Ninth Circuit misapplied *Strickland*'s prejudice analysis, Arizona's certiorari petition asserts that the Ninth Circuit not only failed to defer to the district court's detailed factual findings as required under the clearly erroneous standard but also failed to consider, in a highly aggravated case, unfavorable evidence "that would have been presented had [Jones] submitted the additional mitigation evidence." Pet. at 29, *Jones*, *supra* (No. 22-982) ("Had the panel followed the prescribed framework it would have been compelled to affirm the district court's denial of habeas relief. As demonstrated below, a *Strickland* prejudice analysis that includes all relevant facts in the record and affords proper deference to the district court's findings must fail to find prejudice."); *id.* at 20; *id.* at 28 (citing *Wong v. Belmontes*, 558 U.S. 15, 26 (2009) (per curiam)).

(D. Ariz. May 24, 2018), *rev'd and remanded*, 1 F.4th 1179 (9th Cir. 2021), *and rev'd and remanded*, 52 F.4th 1104 (9th Cir. 2022) which recites the subsequent history:

> Three years later, after briefing and oral argument, the Ninth Circuit vacated and deferred submission of the case pending the decision in *Dickens v. Ryan*, 740 F.3d 1302 (9th Cir. 2014) (en banc). *Jones v. Ryan*, No. 07-9900 (9th Cir. Sep. 05, 2013). Shortly after the decision, the Ninth Circuit remanded Jones's case to the [district court] to consider, under *Dickens* and *Martinez v. Ryan*, 566 U.S. 1 (2012), "Jones's argument that his ineffective assistance of counsel claims are unexhausted and therefore procedurally defaulted, and that deficient performance by his counsel during his post-conviction relief case in state court excuses the default." (Doc. 240-2.)

More specifically, Arizona argues the Ninth Circuit ignored state expert testimony "that Jones did not suffer from cognitive impairment" and "[w]ith its sweeping dismissal of the State's rebuttal evidence, the panel failed to account for the effect the State's experts' testimony would have had on the weight of the 'new' mitigation Jones presented." *Id.* at 28. Arizona also notes Judge Bennett and nine other judges dissented from the denial of *en banc* rehearing. *Id.* at 2 ("Review and summary reversal are warranted here, where at least ten Ninth Circuit judges believed the amended panel opinion merited en banc review. Judges Bennett and Ikuta authored dissents for those judges, with Judge Bennett stating in explicit terms that this Court should correct yet another example of the Ninth Circuit's misapplication of *Strickland* in a capital case. App. 76 ("[W]e should have taken this case en banc so that the Supreme Court, which has already vacated our judgment once, does not grant certiorari a second time and reverse us.")); Cert. Reply Br. at 6, *Jones*, *supra* (No. 22-982) ("As Judge Bennett noted, this Court has 'routinely' reversed the Ninth Circuit's decisions in capital cases, including decisions resulting from the circuit's misapplication of *Strickland*.").

None of those problems is present here. Instead, Alabama argues the opposite: despite the clearly erroneous standard, the Eleventh Circuit should not have deferred to the fact-bound elements of the district court's *Strickland* prejudice finding. Pet. 29-36. And contrary to Alabama's assertion, the court of appeals neither ignored the single aggravating circumstance nor the impact of new evidence developed during the federal habeas proceedings—its reweighing analysis considered both. *Compare* App.

24-25 *with* Pet. at 16, *Jones*, *supra* (No. 22-982) ("the panel justified disregarding the district court's conclusion that Jones's mental conditions were not 'persuasive' mitigation because they were unconnected to Jones's violent behavior") & *id.* at 17 ("The panel failed to acknowledge these findings, much less afford them deference. Instead, it substituted its own findings that directly contradicted the district court's."). By contrast, here, "[a]fter carefully reweighing the evidence, [the panel majority] [found] there is a reasonable probability that, absent counsel's deficiencies, the balance of aggravating and mitigating factors in Williams' case did not warrant a sentence of death." App. 23. Perhaps that is why the Eleventh Circuit unanimously denied rehearing.

To summarize, Arizona and Alabama are in lockstep seeking error correction. *See Barnes v. Ahlman*, 140 S. Ct. 2620, 2622 (2020) (Sotomayor, J., dissenting from denial of stay) ("error correction . . . is outside the mainstream of the Court's functions and . . . not among the 'compelling reasons' . . . that govern the grant of certiorari.") (quoting S. Shapiro, K. Geller, T. Bishop, E. Hartnett, & D. Himmelfarb, Supreme Court Practice § 5.12(c)(3), p. 5–45 (11th ed. 2019)). While both complain about decisions granting prisoners penalty-phase relief under *Strickland*, they present wholly different cases on applying law to the facts. That squares with *Strickland*'s prejudice analysis which produces case-specific, fact-bound results. *Riolo v. United States*, 38 F.4th 956, 974 (11th Cir. 2022) (recognizing "ineffective-assistance claims are fact-bound"); *Strickland*, 466 U.S. at 698 ("[B]oth the performance and prejudice components of the ineffectiveness inquiry are mixed questions of law and fact."). Joint

consideration with *Jones* would be inappropriate, and this Court should deny certiorari on the second question presented.

VII. The second question presented seeks simple error correction.

Although clothed in a circuit split, at bottom, the second question presented seeks error correction from the court of appeals' *de novo* review of a district court's *de novo* decision based on undisputed facts, including expert testimony "that 'if the sexual abuse hadn't happened [to Mr. Williams], there would not have been the sexual violence [by Mr. Williams].'" App. 25. This Court "rarely grant[s]" certiorari "when the asserted error consists of . . . the misapplication of a properly stated rule of law." Sup. Ct. R. 10. Moreover, based on the dissent's reasoning,[16] this is closer to one of the numerous petitions for certiorari from grants of summary judgment that Justice Alito has noted are not cert-worthy. *Tolan v. Cotton*, 572 U.S. 650, 661 (2014) (Alito, J., concurring) ("In my experience, a substantial percentage of the civil appeals heard each year by the courts of appeals present the question whether the evidence in the summary judgment record is just enough or not quite enough to support a grant of summary judgment."). The panel's application of the prescribed *Strickland* framework compelled its grant of penalty-phase relief. Alabama's disagreement with the result is understandable but does not warrant this Court's intervention.

As the majority recited, "[a]t the penalty phase of Williams' trial, the jury only heard testimony from Eloise and Charlene[,]" but "their testimony revealed very little

[16] "[V]iewed in its entirety and weighed properly, the evidence developed in habeas creates only the slightest possibility of a different outcome." App. 34.

about the true extent of Williams' troubled upbringing and family history." App. 23. This testimony was "likely more harmful than helpful." App. 226. In contrast, new mitigation presented at the evidentiary hearing offered evidence "[t]he jury never heard about Williams' sexual abuse, his early exposure to sexual relations, his exposure to domestic violence, the abandonment by both his father and mother, or the sexual abuse and alcoholism that was pervasive in his family." App. 23. Like the district court, the court of appeals found evidence of Mr. Williams being a victim of childhood sexual abuse particularly salient to its prejudice analysis because of its direct relationship to his brief history of sex offending, including Dr. Mendel's testimony "that 'if the sexual abuse hadn't happened [to Mr. Williams], there would not have been the sexual violence [by Mr. Williams].'" App. 25 ("The abuse clearly had a damaging impact on Williams because he felt shameful and had thoughts of hurting or killing himself. The abuse also contributed to the early age at which Williams became sexually active, and the hypersexuality he developed as an adolescent and a young man. The district court credited both Williams' and Dr. Mendel's testimony regarding the sexual abuse by Mostella, and the State has not adequately challenged this credibility finding. Thus, we reject the State's argument that Williams was not prejudiced by the failure to present evidence regarding Williams' sexual abuse by Mostella.").

The majority observed that this Court "has found that counsel's failure to present evidence of abuse in mitigation constitutes prejudice." *Id.* (citing *Wiggins v.*

Smith, 539 U.S. 510, 524 (2003); *Rompilla v. Beard*, 545 U.S. 374, 391–93 (2005)).[17] The Eleventh Circuit was required to (and did) reweigh aggravating evidence against the totality of mitigating evidence and decide if "the available mitigating evidence, *taken as a whole*, 'might well have influenced the jury's appraisal' of [Mr. Williams'] moral culpability." *Wiggins*, 539 U.S. at 538 (quoting *Williams v. Taylor*, 529 U.S. 362, 398 (2000)) (emphasis added). Having undertaken that analysis, the panel determined the evidence counsel failed to investigate and present "*adds up to* a mitigation case that bears no relation to" the abbreviated sentencing presentation at trial. *Rompilla*, 545 U.S. at 393 (emphasis added). This Court should reject Alabama's disguised attempt to seek error correction, especially where no error exists.

VIII. Granting certiorari on the second question presented would require this Court to impose regulations on how courts of appeals write nearly all decisions.

This Court has rarely reversed a court of appeals decision for failure to write enough. In *Taylor v. McKeithen*, 407 U.S. 191 (1972), a Voting Rights Act case, a special master conducted four days of hearings, heard from 100 witnesses, and issued a report. 407 U.S. at 191, 192. Following a hearing, the district court adopted the special master's report. *Id.* at 192. On appeal, the Fifth Circuit "reversed without

[17] This Court has repeatedly found the omission of similar mitigating evidence can be prejudicial, even in cases with more abundant aggravating evidence. *See*, *e.g.*, *Rompilla*, 545 U.S. at 383 (reasonable probability jury would have returned life without parole verdict had mitigating evidence been presented despite defendant's "significant history of felony convictions" including prior conviction for rape and assault); *Wiggins*, 539 U.S. at 535 (failure to present evidence of severe family abuse, sexual abuse in foster care, and diminished mental capacity in case where defendant drowned a septuagenarian "in the bathtub of her ransacked apartment").

opinion." *Id.* at 193. Over a vigorous dissent by then-Justice Rehnquist, this Court granted, vacated, and reversed "[b]ecause this record does not fully inform us of the precise nature of the litigation and because we have not had the benefit of the insight of the Court of Appeals[.]" *Id.* at 194. Then-Justice Rehnquist concluded that "whether opinions should accompany judgments of the courts of appeals, and the desirable length and content of those opinions are matters best left to the judges of the courts of appeals." *Id.* at 196 (Rehnquist, J., dissenting). Addressing the dissent, this Court "agree[d] that the courts of appeals should have wide latitude in their decisions of whether or how to write opinions," but departed from the general rule due to "the special circumstances": "the lower court summarily reversed without opinion on a point that had been considered at length by the District Judge." *Id.* at 194 n.4.

Shortly after deciding *Taylor*, this Court granted, vacated, and remanded a Sixth Circuit decision because it was "not possible for this Court to determine whether the Court of Appeals applied the proper standard in" denying attorneys' fees. *Northcross v. Board of Ed. of Memphis City Schools*, 412 U.S. 427, 427-29 (1973) (citing *Taylor*). Assuming this Court wants to expand *Taylor*, this is not the case to do so. This case is nothing like *Taylor* or *Northcross*. But, before this Court can reach the merits of Alabama's second question presented, it must first hold the court of appeals was required to satisfy certain unstated content rules. If this Court is to expand its precedent so greatly, it should only do so after merits briefing and argument.

CONCLUSION

The petition for a writ of certiorari should be denied. Alternatively, should this Court grant certiorari, it should do so on one or more of the questions presented as restated by Mr. Williams.

Respectfully Submitted,

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January 23, 2024

Respondent's Supplemental Appendix

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 12-14937-P

MARCUS BERNARD WILLIAMS,

Petitioner - Appellant,

versus

STATE OF ALABAMA,

Respondent - Appellee.

Appeal from the United States District Court
for the Northern District of Alabama

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

BEFORE: MARCUS, WILSON and MARTIN, Circuit Judges.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure), the Petition(s) for Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

Bucky B. Martin

UNITED STATES CIRCUIT JUDGE

ORD-42

UNITED STATES COURT OF APPEALS
For the Eleventh Circuit

No. 12-14937

District Court Docket No.
1:07-cv-01276-KOB-TMP

MARCUS BERNARD WILLIAMS,

Petitioner - Appellant,

versus

STATE OF ALABAMA,

Respondent - Appellee.

Appeal from the United States District Court for the
Northern District of Alabama

JUDGMENT

It is hereby ordered, adjudged, and decreed that the opinion issued on this date in this appeal is entered as the judgment of this Court.

Entered: June 26, 2015
For the Court: Douglas J. Mincher, Clerk of Court
By: Jan S. Camp

Issued as Mandate:
August 31, 2015