****CAPITAL CASE****

No._____

IN THE

Supreme Court of the United States

KARL DOUGLAS ROBERTS,

Petitioner

v.

DEXTER PAYNE, Director,
Arkansas Division of Correction,

Respondent

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

PETITION FOR WRIT OF CERTIORARI

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****CAPITAL CASE****

QUESTION PRESENTED

At the time of Karl Roberts's 1999 capital murder trial, this Court's precedents permitted the execution of persons with intellectual disability, *Penry v. Lynaugh*, 492 U.S. 302 (1989), abrogated by *Atkins v. Virginia*, 536 U.S. 304 (2002), while Arkansas law prohibited it, Ark. Code Ann. § 5-4-618.

Citing only the Arkansas statute, Roberts filed a one-page pretrial motion asking the court to make a "determination" as to his eligibility for the death penalty under state law, without arguing its merits or presenting any evidence. Following a brief hearing on Roberts's competency, the court ruled without explanation or analysis that "the State may seek the death penalty[.]" App. 203a.

In the decision below, the Eighth Circuit held that the 1999 death-eligibility order "constituted an adjudication of the *Atkins* claim 'on the merits' for purposes of AEDPA," "even if that determination occurred prior to the *Atkins* decision." App. 11a. The court of appeals denied relief solely on the basis of 28 U.S.C. § 2254(d), finding that the state court's one-sentence denial was a reasonable application of the as-yet-unannounced rule of *Atkin*s.

The question presented is:

> Whether a claim has been adjudicated on the merits by a state court under § 2254(d), where the defendant did not present a federal claim for relief and the clearly established federal law at the time would not have supported a federal claim?

PARTIES

The caption contains the names of all parties.

DIRECTLY RELATED CASES

- *State v. Roberts*, No. CR-1999-70, Polk County Circuit Court, Judgment of conviction, May 19, 2000.

- *State v. Roberts*, No. CR 03-780, Arkansas Supreme Court, Affirming judgment, October 9, 2003.

- *Roberts v. State*, No. CR 02-22, Arkansas Supreme Court, Affirming waiver of postconviction proceedings, April 10, 2003.

- *Roberts v. Norris*, No. 04-1032, Eighth Circuit Court of Appeals, Dismissing appeal of stay of execution as moot, July 18, 2005.

- *Roberts v. State*, No. CR 10-1068, Arkansas Supreme Court, Affirming dismissal of state postconviction, December 1, 2011.

- *Roberts v. State*, No. CR 02-22, Arkansas Supreme Court, Denying application on writ of error coram nobis, February 14, 2013.

- *Roberts v. State*, No. CR 03-780, Arkansas Supreme Court, Ordering new hearing on prior postconviction waiver, February 14, 2013.

- *State v. Roberts*, No. CR-1999-70, Polk County Circuit Court, Finding competency to waive post-conviction, December 29, 2014.

- *Roberts v. State*, No. CR-15-417, Arkansas Supreme Court, Reversing and ordering new proceeding, March 17, 2016

- *State v. Roberts*, No. CR-1999-70, Polk County Circuit Court, Denying postconviction relief, May 17, 2018.

- *Roberts v. State*, No. CR-18-845, Arkansas Supreme Court, Affirming denial of post-conviction relief, January 30, 2020.

- *Roberts v. Payne*, No. 5:04-cv-4, U.S. Dist. Ct., Eastern District of Arkansas, Denying petition for writ of habeas corpus, September 20, 2021.

- *Roberts v. Payne*, No. 22-1935, U.S. Court of Appeals for the Eighth Circuit, Affirming denial of federal habeas relief, August 19, 2024.

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PETITION FOR A WRIT OF CERTIORARI

Karl Roberts respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit, cited as *Roberts v. Payne*, 113 F.4th 801 (8th Cir. 2024), is at Appendix A. The order denying rehearing and rehearing en banc is unpublished and at Appendix C. The order of the United States District Court for the Eastern District of Arkansas, unofficially reported at 2021 WL 4269472 is at Appendix B.

JURISDICTION

The Eighth Circuit Court of Appeals issued its opinion on August 19, 2024. The Court denied a timely petition for rehearing on October 15, 2024. This Court granted Petitioner an extension of time to file a petition for writ of certiorari until March 14, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth Amendment to the United States Constitution provides:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Section 2254(d) of title 28 of the United States Code provides:

> 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.

INTRODUCTION

When he was twelve years old, Karl Roberts was run over by a dump truck. The accident fractured Roberts's skull and resulted in the loss of fifteen percent of his brain, including significant portions of his frontal lobes. This event altered Roberts's brain in ways that were significant, permanent, and critical to his death sentence.

In 1999, this Court's precedent held that the Eighth Amendment posed no bar to the execution of persons with intellectual disability. *Penry v. Lynaugh*, 492 U.S. 302, 340 (1989). Arkansas law, however, prohibited such death sentences. *See* Ark. Code Ann. § 5-4-618.[1] Roberts requested a pretrial determination of his death eligibility under the state law, citing no federal authority in support of his motion. After a brief hearing on the issue of competence to stand trial, the trial court concluded that Roberts was competent and death-eligible under state law.

In the decision below, the Eighth Circuit held that the pretrial order on Roberts's state-law death eligibility sufficed as an "adjudication on the merits" of his later-raised *Atkins* claim. While Roberts argued that § 2254(d) could not possibly apply to a pre-*Atkins* state-law ruling, the court rejected this argument,

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[1] Enacted as part of Act 420 of 1993, Arkansas's death eligibility statute was not authoritatively interpreted by the Arkansas Supreme Court until after *Atkins* was decided. *See Anderson v. State*, 163 S.W.3d 333 (Ark. 2004). Pre-*Atkins* cases discussing the statue centered primarily around the standard of review for the trial court's determination, *see Rankin v. State*, 948 S.W.2d 397 (Ark. 1997), or challenges to the statue's IQ rebuttable presumption, *see Jones v. State*, 10 S.W.3d 449 (Ark. 2000); *Sanford v. State*, 25 S.W.3d 414 (2000).

reasoning that, "true to AEDPA's intent," the state court's order was due deference "even [though] that determination occurred prior to the *Atkins* decision." App. 11a. In so concluding, the decision below defies this Court's precedents interpreting and applying § 2254(d) and contradicts well-settled habeas principles and procedures intended to ensure respect for state court judgments.

This case does not call upon the Court to reinterpret any of its prior precedents. Nor does it challenge the Court's commitments to maintaining the state-federal balance. Instead, this case presents the question whether, if a state court resolves a state-law question, prior to the recognition of any relevant federal right, is deference still due to the state-law ruling?

STATEMENT OF THE CASE

I. Roberts was sentenced to death after the trial court ruled, in an effectively non-adversarial proceeding, that he was eligible for the death penalty under state law.

In 1999, prior to his trial, Roberts's counsel filed a "Motion for Hearing to Determine if the State May Seek the Death Penalty," where he "raise[d] the issue of mental retardation and request[ed] a hearing on this matter to determine whether [Roberts] suffers from mental retardation, thus, preventing the State from seeking the death penalty at trial." App. 148a (citing Ark. Code Ann. § 5-4-618(d)(1)). The motion contained no argument or evidence and did not cite federal law. Roberts filed a separate motion to determine if he was competent to stand trial. App. 146a.

Roberts was sent to the Arkansas State Hospital where staff psychologist, Dr. Charles Mallory, interviewed him over a period of "4 to 5 hours." App. 156a. Pursuant to the court's order, Dr. Mallory was tasked only with assessing Roberts's

criminal responsibility and competency to proceed. App. 150a (at ¶3). Despite Roberts's significant medical history related to his traumatic brain injury, Dr. Mallory conducted no neuropsychological testing because "[w]e didn't see a reason for it and I'm not qualified to do them." App. 175a.[2] Instead, he administered three tests: (1) an MMPI, which is a personality test that is not used to measure intellectual functioning; (2) the Georgia Competency Test, which is a screening tool of a person's understanding of the legal system; and (3) a WAIS intelligence test, which measured Roberts's IQ at 76, putting him, according to Dr. Mallory, in the borderline range of intellectual functioning. App. 157a–58a, 181a. Dr. Mallory did not perform any formal assessment of Roberts's adaptive deficits. He conducted a two-hour phone interview with Roberts's parents and wife, and the only records he reviewed were the state police files and 1980 medical records pertaining to Roberts's brain injury. App. 207a–208a.

The court held an omnibus hearing on all pending motions where Dr. Mallory testified that Roberts was competent to stand to trial and that he "didn't think" Roberts suffered any mental disease or defect at the time of his crime. App. 171a. While conceding that Roberts's intellectual functioning "could be a significant factor in judgment," Dr. Mallory did not discover—in his 4–5 hours with Roberts—"major impairment of some life activity" that would warrant a "diagnosis" of intellectual disability. App. 181a–82a. Per Dr. Mallory, Roberts could "hold a job," "participate

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[2] Neuropsychological testing was later performed by Dr. Mary Wetherby, the defense expert hired to evaluate Roberts's brain injury. This testing was performed after the trial court's death eligibility determination. App. 242a, 246a.

in normal or family life," and, based upon a five-minute reading test, could adequately read and write. App. 184a, 173a. Dr. Mallory could not state with medical certainty that Roberts *did not* have intellectual disability, but rather only that he was unable to classify Roberts with an Axis II diagnosis on the DSM. App. 183a. ("I can't technically do that. I can't do it as a DSM system.").

Other than brief cross-examination by Roberts's attorney, the proceeding was entirely non-adversarial, and no other witnesses were called. When the trial court solicited argument on the issue of death eligibility, trial counsel declined, stating "I can't do anything but say the Court has the necessary information to make a ruling on that." App. 194a. At the hearing's conclusion, the court summarily stated, "Based on the testimony of Dr. Mallory, I feel that the Defendant is competent and capable of standing trial and to be subject to the death penalty." App. 198a. The court then entered a written order stating simply:

> Following a hearing regarding the defendant's competency and after hearing testimony from Dr. Mallory of the Arkansas State Hospital regarding the defendant's IQ, the Court hereby finds that the State may seek the death penalty at the trial of the matter.

App. 203a. The trial court never revisited the issue of intellectual disability.

The key issue at trial was whether Roberts lacked criminal responsibility for capital murder. Evidence was presented that Roberts is missing about fifteen percent of his brain, resulting from a dump truck accident when he was twelve. App. 28a, 85a, 130a, 252a. No expert refuted Roberts's brain injury but disputed its legal consequences as to criminal responsibility. The jury convicted Roberts of capital murder and sentenced him to death that same day.

II. Roberts waived direct appeal and state-postconviction, and the Arkansas Supreme Court affirmed the judgment without mentioning the trial court's state-law death-eligibility ruling.

In June 2000, Roberts's trial counsel filed a document to waive Roberts's direct appeal and collateral proceedings. App. 42a–43a. The trial court held a hearing, at which Roberts was the sole witness, and found the waiver was knowing and voluntary. App. 44a, 220a. The Arkansas Supreme Court reviewed the record "for adverse rulings objected to by Roberts and his counsel," App. 138a, pursuant to its automatic review of death cases under *State v. Robbins*, 5 S.W.3d 51 (Ark. 1999) and Ark. Sup. Ct. R. 4-3(h). The court appointed an amicus to "abstract the record" and "argue any errors prejudicial to Mr. Roberts," App. 221a, while informing counsel that "you are not representing the appellant but are instead providing a service for the court." App. 218a. Amicus counsel did not mention, let alone argue, the unobjected ruling on § 5-4-618 eligibility. App. 225a–33a. The Arkansas Supreme Court affirmed without mentioning the pretrial death-eligibility order. App. 125a–44a.

III. Roberts raised an *Atkins* claim for the first time in federal court and, following renewed post-conviction proceedings, the Arkansas Supreme Court held the issue had already been decided during mandatory review.

In 2004, represented by new counsel, Roberts filed a federal habeas petition where he raised a federal *Atkins* claim for the first time. The district court stayed proceedings to allow Roberts to exhaust his claims in state court. App. 58a–60a. After lengthy and complex proceedings in the state courts, the Arkansas Supreme

Court eventually determined that Roberts was not competent at the time he waived postconviction and was entitled to a fresh collateral review proceeding. App. 60a.

In May 2017, the state postconviction court held a three-day evidentiary hearing. There, Dr. Garrett Andrews, a neuropsychologist, offered an unrebutted opinion that Roberts is a person with intellectual disability. App. 234a. Regarding intellectual functioning, Dr. Andrews reviewed both Roberts's WAIS score plus Dr. Wetherby's neuropsychological testing. Dr. Andrews explained that Roberts's 76 IQ score was "consistent with intellectual disability" and a complete assessment "is not based solely on one single test score." App. 243a. The State never suggested—neither in argument or cross-examination—that the measured IQ score disqualified or undermined the ID finding. App. 255a–61a, 263a–89a. Further, raw data from Dr. Wetherby's tests showed how Roberts's problem-solving abilities were "profoundly impaired across all paths." App. 247a. Roberts's deficits in intellectual functioning compelled Dr. Andrews to analyze whether Roberts also has deficits in adaptive functioning—an analysis that, critically, Dr. Mallory never conducted. App. 244a.

Regarding adaptive functioning, Dr. Andrews reviewed school records indicating that Roberts performed many years below grade level in multiple areas. App. 249a; 251a. For instance, contrary to Dr. Mallory testifying that Roberts could read at a high school level, actual school records showed that he could only read at a sixth-grade level. App. 251a. Testimony and written statements of witnesses showed that Roberts could not manage money or take care of himself without support. App.

245a, 248a. He worked as a concrete finisher, a simple and repetitive job that he could not perform without supervision. App. 270a. Dr. Andrews found numerous adaptive deficits because "there is a clear distinction that over time [Roberts] needed structure, he needed assistance with activities from work to home to self-care." App. 245a–46a. Based upon a complete assessment of Roberts's intellectual and adaptive functioning, Dr. Andrews concluded that Roberts met the clinical criteria for intellectual disability.

Despite Dr. Andrews's unrebutted diagnosis that Roberts is a man with intellectual disability, the state postconviction court rejected the Eighth Amendment claim by ruling *sua sponte* that "the question of the competency of the Petitioner at the time of the offense was settled on direct appeal and cannot be reargued or refuted." App. 293a. Other than mentioning Roberts's 76 IQ, the postconviction court referred only to facts discussed in the Arkansas Supreme Court's denial of Roberts's voluntary confession claim—a claim considered during its mandatory review of his conviction. App. 292a. The Arkansas Supreme Court affirmed on the same grounds, stating that the pretrial ruling on "competency" (sic) could not be reargued:

> In the order denying postconviction relief, the circuit court recognized that Roberts offered the testimony of neuropsychologist Dr. Andrews that Roberts was mildly intellectually disabled in 1999. However, the court found that the issue of Roberts's *competency* at the time of the offense had been settled on direct appeal and could not be reargued in postconviction proceedings. We affirm on this point.

App. 116a (emphasis added).

Roberts returned to federal court and filed an amended petition re-raising his *Atkins* claim and citing to the uncontroverted state-court testimony that he is a person with intellectual disability. Only three days after Roberts filed his traverse on the merits, the district court dismissed the amended petition. App. 22a–96a. The district court declined to consider the 2017 record and denied the *Atkins* claim by applying AEDPA deference to the trial proceedings. The district court cited a passage from the Arkansas Supreme Court's analysis of whether Roberts confessed voluntarily to find that his *Atkins* claim failed AEDPA deference. App. 79a–81a.

IV. The Eighth Circuit found the trial court's 1999 death-eligibility order to be an adjudication on the merits of his later-raised *Atkins* claim.

The Eighth Circuit affirmed the district court by ruling that the pretrial state-law order regarding death eligibility was subject to § 2254(d) deference. The court recognized that "Roberts's claim is grounded in the Eighth Amendment's prohibition of 'cruel and unusual punishments' because the execution of an individual with an intellectual disability is a cruel and unusual punishment" under this Court's 2002 decision in *Atkins*. App. 9a. However, the court found that "Roberts litigated his intellectual disability claim in state court and received a decision on the matter," by virtue of the 1999 pre-trial state statutory order. App. 10a. The court acknowledged that this "occurred before the 2002 *Atkins* decision created a *new* constitutional right forbidding the execution of the intellectually disabled." App. 10a (emphasis added). Yet, per the court, "*Atkins* did not provide a 'previously unavailable federal claim'" that would allow consideration of the evidence developed in the re-opened state post-conviction proceeding. App. 11a.

Further, "Roberts's prior hearings" in 1999 "were substantively akin to a federal *Atkins* hearing." App. 11a.[3] Citing "the essential need to promote the finality of state convictions" and "the 'State's significant interest in repose for concluded litigation[,]' " the court held that "the Arkansas courts' decisions constituted an adjudication of the *Atkins* claim 'on the merits' for purposes of AEDPA":

> Hence, we stay true to AEDPA's intent and prioritize Arkansas's significant interest in adjudicating this habeas litigation. Because Arkansas courts have already heard extensive evidence regarding Roberts's alleged intellectual disability, we hold they have already decided the merits of Roberts's intellectual disability claim when they determined he was not intellectually disabled under Arkansas law, even if that determination occurred prior to the Atkins decision.

App. 11a. On this basis, the court applied deference to the state court's pretrial death-eligibility ruling, concluding that "[a]mple proof supports the reasonableness of the Arkansas Supreme Court's rejection of Roberts's intellectual disability claim[.]" App. 12a.[4] The Eighth Circuit did not opine how the claim would have fared without § 2254(d) deference.

REASONS FOR GRANTING THE PETITION

The Court should grant Roberts's petition for writ of certiorari because the Eighth Circuit "entered a decision in conflict with the decision of another United States court of appeals on the same important matter," S. Ct. R. 10(a), and "decided

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[3] The reference to "hearings" is incorrect because only one omnibus hearing occurred prior to the trial court's ruling on the issue.

[4] The reference to the "Arkansas Supreme Court's rejection" is incorrect because that court was never asked to review the unobjected 1999 ruling and could not have done so under its mandatory-review criteria. *See supra* at 6.

an important federal question in a way that conflicts with relevant decisions of this Court." S. Ct. R. 10(c).

This case presents a circuit split over what constitutes an "adjudication of a claim on the merits" for the purposes of determining whether a state-court decision is entitled to deference under § 2254(d). This Court has held that the word "claim," as that word is used in § 2244(b), refers to a *federal* claim for relief. The Fifth, Sixth, Ninth, and Eleventh Circuits have held that definition of the word "claim," as "an asserted federal basis for relief," applies to § 2254(d). The Eighth and Fourth Circuits have held that a state-court adjudication of a purely state-law claim can constitute an adjudication on the merits of a later-announced federal claim for relief. Certiorari is needed to resolve this split.

Additionally, the methodology the Eighth Circuit used to arrive at its first-impression § 2254(d) ruling flies in the face of this Court's repeated insistence that statutes be interpreted using ordinary interpretative canons, instead of brazen appeals to purpose or intent. Here, the Eighth Circuit's conclusion that a purely state-law ruling is subject to § 2254(d) was explained almost entirely by its appeal to AEDPA's "purpose" to promote finality. While habeas purposes are relevant to shaping equitable habeas doctrines, they have no role answering novel questions of statutory construction.

Finally, even assuming AEDPA's purposes are relevant to the construction of § 2254(d), the Eighth Circuit's purpose-based rationale was flawed and incomplete. This Court's AEDPA jurisprudence makes clear that the statute was enacted not for

the sole and express purpose of promoting finality, but to insulate state court rulings on matters purely of state law from federal scrutiny, to ensure state courts were only being called upon to adjudicate federal claims that were actually presented to them, and to prevent federal courts from holding state courts to federal standards that did not exist at the time of their review. Though purporting to "stay true to AEDPA's intent," the Eighth Circuit's decision to give deference to an unavailable, unpresented federal claim perverts this Court's jurisprudence and reduces the concept of deference to the point of absurdity. App. 11a. This Court should grant certiorari to clarify that AEDPA deference does not permit a federal court to defer to something the state court did not and could not do.

I. The Eighth Circuit's § 2254(d) construction, which holds that a state court adjudicates a "claim" under § 2254(d) where the claim is raised solely under state law and the federal law it is supposedly adjudicating does not yet exist, conflicts with decisions of four other circuits and decisions of this Court.

As recognized by four appellate courts, § 2254(d) does not apply to purely state-law rulings when no federal argument was ever made. In such jurisdictions, the 1999 state-law ruling in this case would not be deemed an "adjudicat[ion] on the merits" of the later-raised *Atkins* "claim," and would not, therefore, be subject to deference under § 2254(d). This Court should settle the correct construction of § 2254(d) and hold that Roberts's *Atkins* claim was not adjudicated on the merits by the Arkansas state courts.

Section 2254(d) restricts review of any federal habeas "claim" that was "adjudicated on the merits" in state court. Here, on a question of first impression in the circuit, the Eighth Circuit held that the state court's ruling on a purely *state-*

law issue—with no pretense of considering federal law—was entitled to deference because it constituted an adjudication on the merits of an *Atkins* claim, even though it "occurred prior to the *Atkins* decision." App. 11a. The Eighth Circuit's broad conception of what constitutes a "claim" under § 2254(d) is inconsistent with this Court's precedents, and reflects a Circuit split in need of resolution.

In *Gonzalez v. Crosby*, 545 U.S. 524 (2005), Justice Scalia, writing for the majority, conducted this Court's first authoritative construction of the term "claim," as used in AEDPA. The issue in that case concerned what constitutes a "claim" for the purpose of determining whether a Rule 60(b) motion is a disguised second-or-successive petition. This Court concluded that a "claim" means "an asserted *federal basis* for relief from a state court's judgment[.]" *Id.* at 530 (emphasis added); *see also id.* at 533 (a "claim" refers to an assertion that "substantively addresses *federal* grounds" for such relief) (emphasis added). Although *Gonzalez* examined the terms appearing in § 2244(b), *id*. at 529–30, the Court looked to "other habeas statutes within Chapter 153 of title 28," including specifically § 2254(d), when defining the term "application." *Id.* at 530 (citing *Woodford v. Garceau*, 538 U. S. 202, 207 (2003)). The Court's discussion generally spoke to all "restrictions introduced by AEDPA [in] proceedings under 28 U.S.C. § 2254." *See id*. at 529 & n.3.

In addition to defining the word "claim," *Gonzalez* also stated that a decision is "on the merits" if it makes a "determination that there exist or do not exist grounds . . . under . . . § 2254(a) . . . " *Id*. at 532 n.4. The reliance on § 2254(a) reflects this Court's acknowledgement that AEDPA review is limited to "only" asserted

"violation[s] of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a); *see Pulley v. Harris*, 465 U.S. 37, 41 (1984) (excluding any "perceived error of state law" from habeas review under § 2254(a)).

Following *Gonzalez*, four circuits have concluded that the *Gonzalez* definition of "claim" applies with equal force to § 2254(d), as it does to § 2244(b). The Sixth Circuit, for example, has held that the "definition of 'claim' for purposes of 28 U.S.C. § 2254(d)" conforms with *Gonzalez* to mean "an asserted *federal basis for relief* from a state court's judgment of conviction." *Pouncy v. Palmer*, 846 F.3d 144, 159 (6th Cir. 2017) (emphasis added); *see also Woods v. Smith*, 660 F. App'x 414, 432 (6th Cir. 2016) (concluding that "AEDPA's text" must be controlling for § 2254(d), and that the reference to "'any claim that was adjudicated on the merits" means "any 'asserted federal basis for relief . . .'").

The Eleventh Circuit similarly agreed that the *Gonzalez* definition covers the term "claim" in § 2254(d). *Kearse v. Sec'y, Fla. Dep't of Corr.*, 669 F.3d 1197, 1199 (11th Cir. 2011). Applying that reasoning, the court concluded the "state court's conclusion [on a question governed by state law] was . . . not an 'adjudication of [a] claim' under § 2254(d)." *Id*.

The Ninth Circuit has also acknowledged that the *Gonzalez* definition of "claim" covers § 2254(d) to mean an asserted federal basis for relief. *Kirkpatrick v. Chappell*, 950 F.3d 1118, 1131 (9th Cir. 2020). The Ninth Circuit reasoned that the *Gonzalez* decision, of itself, "defined 'claim' as an asserted federal basis for relief," for purposes of § 2254(d) deference. *Id*.

Using slightly different reasoning, the Fifth Circuit most recently adopted the *Gonzalez* definition of "claim" for § 2254(d). *See Nelson v. Lumpkin*, 72 F.4th 649, 657 (5th Cir. 2023). Unlike the Ninth Circuit, the Fifth Circuit read *Gonzalez* to only squarely define "claim" as appearing in § 2244(b). But the court applied the canon that "identical words and phrases within the same statute should normally be given the same meaning," *id*. at 658 (quoting *Powerex Corp. v. Reliant Energy Servs., Inc*., 551 U.S. 224, 232 (2007)), to conclude that "claim" as "contained in § 2254(d)" must follow the *Gonzalez* definition to mean "an asserted federal basis for relief[.]" *Id*. at 657.

No federal decisions that acknowledge *Gonzalez* have suggested that "claim" means something different in § 2254(d) than it does in § 2244(b). The same goes for the lead treatise on federal habeas. *See* B. Means, POSTCONVICTION REMEDIES § 29:5 (citing *Gonzalez* for the proposition that under § "2254(d)(1) . . . a claim is an asserted federal basis for relief from a state court's judgment of conviction.").

Unlike the above-cited authorities, the Eighth Circuit has charted a different path. A claim under § 2254(d), according to the Eighth Circuit, includes a claim for relief raised purely under state-law, even when no corollary federal right existed at the time the claim was raised. The ruling below purported to follow the Fourth Circuit's decision in *Conaway v. Polk*, 453 F.3d 567 (4th Cir. 2006), which held that a purely state-law decision was subject to § 2254(d) because it involved the same "dispositive issue" as the later-announced federal right in *Atkins*.

The Eighth and Fourth Circuits cited *Early v. Packer*, 537 U.S. 3, 7–8 (2002), in support of the proposition that "a state court ruling that does not cite the relevant Supreme Court precedent could still reach the 'merits' of that precedent for purposes of AEDPA." App. 11a. But that is beside the point. The Supreme Court precedent at issue in *Early* actually existed at the time of the state-court ruling, unlike here where *Atkins* precedent at issue had not even been decided yet. There was no dispute in *Early* as to what the clearly established law was at the time, nor any dispute that the state court adjudicated a *federal* claim on the merits under § 2254(d). *Early*, 527 U.S. at 8. The dispute was instead over whether the state court's failure to cite this Court's controlling precedent rendered its adjudication of the claim unreasonable. App. 11a; *Conaway*, 453 F.3d at 592. On that point, *Early* held that § 2254(d)(1) "does not require citation of our cases . . . so long as neither the reasoning nor the result of the state-court decision contradicts them." *Early*, 537 U.S. at 8 (emphasis removed).

The Eighth Circuit's reliance on *Early* is confounding. The Eighth Amendment prohibition on executing persons with intellectual disability did not exist in 1999. What is more, Roberts did not even present a federal constitutional argument to the Arkansas courts. Nothing in *Early* supports the conclusion that a state-law ruling counts as a merits adjudication under § 2254(d) where no federal argument is presented to the state court and/or when no applicable federal law even existed for

the state court to apply.[5] *Early* was a case where the Supreme Court precedent existed and was actually argued, but simply not *cited* by the state court. It was not a case, like this one, where the Supreme Court precedent the state court was charged with applying was not yet *decided*.

Despite this critical difference between *Early* and Roberts's case, the Eighth Circuit's decision here has created a circuit split between those circuits that define a claim under § 2254(d) consistently with *Gonzalez*, thus requiring that the state court adjudicate a federal claim for relief that actually exists at the time of the adjudication, and those circuits that deem a state court's application of purely state law to be an adjudication on the merits of a federal claim that did not exist at the time of the adjudication. The Court should resolve the split about the construction of "claim" as it appears in § 2254(d) and hold that the *Gonzalez* definition controls. Because Roberts did not assert, and the state courts never considered, any federal ground for relief, this Court should reverse and remand for the Eighth Circuit to examine Roberts's *Atkins* claim without AEDPA deference.

II. The Eighth Circuit's decision conflicts with this Court's requirement that state-court reasonableness be measured against federal law existing at the time of the state-court ruling.

When a state court adjudicates the merits of a federal claim under § 2254(d), the ensuing review under § 2254(d)(1) looks to how the state court's ruling comported with clearly established law regarding that claim, "as of the time the state court

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[5] The Fourth Circuit's rule evaded this Court's review because that court remanded the case on a separate ground, *Conaway*, 453 F.3d at 583–89, which resulted in habeas relief, *see* 2008 WL 4790107 (M.D.N.C. Oct. 24, 2008).

renders its decision." *Greene v. Fisher*, 565 U.S. 34, 38 (2011); *see also Andrew v. White*, 145 S. Ct. 75, 80 (2025). This temporal line under § 2254(d) is the clearest and least controversial of AEDPA doctrines. *See*, *e.g. Metrish v. Lancaster*, 569 U.S. 351, 367 (2013); *Lockyer v. Andrade*, 538 U.S. 63, 71–72 (2003); *see also Montgomery v. Louisiana*, 577 U.S. 190, 218 (2016) (Scalia, J., dissenting) ("[F]ederal habeas courts are to review state-court decisions against the law . . . that existed at the time the decisions were made"). Indeed, not a single member of this Court has suggested—in any of its approximately 75 decisions on § 2254(d)—that a state-court ruling can be scrutinized for reasonableness in how it applied *later* Supreme Court cases. B. Means, POSTCONVICTION REMEDIES, § 29:19, 29:29–31 (collecting cases).

This Court has twice reversed lower courts for misapplying the legal rule that clearly established law is limited to the law that existed at the time of the state-court ruling. Specifically, in the context of *Atkins* claims, the Court held in *Shoop v. Hill*, 586 U.S. 45, 50–52 (2019), that the petitioner could not rely upon *Moore v. Texas*, 581 U.S. 1 (2017), to prove the state court's 2008 denial of his *Atkins* claim was unreasonable. The Court reversed the Sixth Circuit and instructed it "determine whether its conclusions can be sustained based strictly on legal rules that were clearly established in the decisions of this Court at the relevant time." *Id.* at 52 (emphasis added); *cf. Cain v. Chappell*, 870 F.3d 1003, 1024, n. 9 (9th Cir. 2017) (because *Moore* was "decided just this spring," it "cannot serve as 'clearly established' law at the time the state court decided Cain's claim"). Because *Moore* "was not handed down until long after the state-court decisions", it was not clearly

established federal law from which to measure the reasonableness of the lower court's adjudication of petitioner's *Atkins* claim. *Id.* at 52. Similarly, in *Thaler v. Haynes*, 559 U.S. 43 (2010), the Court vacated the § 2254(d)(1) ruling because the operative precedent on which the Fifth Circuit granted relief, *Snyder v. Louisiana*, 552 U.S. 472 (2008), "could not have constituted 'clearly established Federal law as determined by' this Court . . . because we decided *Snyder* . . . more than six years after the relevant state-court decision." *Id.* at 48 n.2.

The Eighth Circuit's decision below stands in stark contrast with any decision on clearly established law: it expressly applied "deference" under § 2254(d)(1) to examine how a ruling that "occurred prior to the *Atkins* decision" comported with *Atkins*. App. 10a–11a. While many clearly established precedents clarify or heighten an already existing federal right, *Atkins* created an entirely new one. In the same way that *Roper v. Simmons* overruled *Stanford v. Kentucky* and *Batson v. Kentucky* overruled *Swain v. Alabama*, *Atkins* overruled the case that, at the time of his trial, did not constitutionally bar Roberts's death sentence. *Atkins*, 536 U.S. at 321. The state court could not adjudicate a violation of a federal right that did not exist, and the reasonableness of the court's denial cannot be measured by the legal standard created three years later in *Atkins*. *Cf.* K. Scheidegger, *Habeas Corpus, Relitigation, and the Legislative Power*, 98 COLUM. L. REV. 888, 949 (1998) ("If there is no clearly established law governing the situation, then nothing the state court did could possibly be an unreasonable application of nonexistent law.").

This Court should grant certiorari to reinforce its repeated and unanimous directives that, under § 2254(d)(1), state-court decisions may only be measured against this Court's then-existing legal precedents.

III. The Eighth Circuit's purposivist methodology for construing § 2254(d) conflicts with decisions of this Court.

The Eighth Circuit's methodology, which it used to arrive at its first-impression application of § 2254(d), is an independently compelling reason for review. The court below construed § 2254(d) through a brazenly purposivist appeal to AEDPA's intent—without any pretense of using ordinary interpretative tools. Such appeals to "legislative intent," as this Court has reiterated, amount to "exactly the sort of reasoning this Court has long rejected." *Bostock v. Clayton Cty.*, 590 U.S. 644, 676 (2020). Certiorari is necessary to promote integrity in statutory interpretation, particularly in recurring AEDPA cases like this one.

After claiming the Fourth Circuit's decision in *Conaway* supplied a construction of § 2254(d) that should apply in this case, the Eighth Circuit explained that construction through rank purpose-oriented reasoning:

> AEDPA requires a federal court to give "deference to the state court's determination," so "a habeas petitioner challenging a state conviction must first attempt to present his claim in state court," *Harrington* [*v. Richter*, 562 U.S. 86, 103-04 (2011)], because "a federal habeas court may never needlessly prolong a habeas case, particularly given the essential need to promote the finality of state convictions," *Shinn v. Ramirez*, 596 U.S. 366, 390 (2022) (cleaned up), nor should a federal court "disturb the 'State's significant interest in repose for concluded litigation.'" *Shoop* [*v. Twyford*, 596 U.S. 811, 820 (2022)] (quoting *Harrington*, 562 U.S. at 103).
>
> Hence, we stay true to AEDPA's intent and prioritize Arkansas's significant interest in adjudicating this habeas litigation. Because Arkansas courts have already heard extensive evidence regarding Roberts's alleged intellectual disability, we hold they have already

> decided the merits of Roberts's intellectual disability claim when they determined he was not intellectually disabled under Arkansas law, even if that determination occurred prior to the *Atkins* decision.

App. 11a–12a. (parallel reporter citations omitted).

In the context of statutory interpretation, the Eighth Circuit employed "exactly the sort of [purpose-driven] reasoning this Court has long rejected." *Bostock,* 590 U.S. at 676; *see also Oklahoma v. Castro-Huerta*, 597 U. S. 629, 642 (2022) ("As this Court has repeatedly stated, the text of a law controls over purported legislative intentions unmoored from any statutory text."); *Magwood v. Patterson*, 561 U. S. 320, 334 (2010) (holding courts may not "replace the actual text with speculation as to Congress' intent."); *Alexander v. Sandoval*, 532 U. S. 275, 287–88 (2001) (instructing courts not to give "dispositive weight to the expectations that the enacting Congress had formed in light of the contemporary legal context"); *Central Bank of Denver, N. A. v. First Interstate Bank of Denver, N. A.,* 511 U. S. 164, 173 (1994) ("[T]he text of the statute controls our decision").

For example, as the Court recently stated in the Title VII context, "[t]his Court normally interprets a statute in accord with the ordinary public meaning of its terms at the time of its enactment." *Bostock,* 590 U.S. at 654–55. Courts cannot "abandon the statutory text" in favor of appeals to "assumptions and policy." *Id*. at 673. This methodology is improper because "we are a government of laws, not of men, and are governed by what Congress enacted rather than by what it intended." *Digital Realty Tr., Inc. v. Somers*, 583 U.S. 149, 172 (2018) (Thomas, J., concurring) (quotation omitted). *Compare* App. 11a (justifying § 2254(d)'s applicability in order

to "stay true to AEDPA's intent") *with* A. Scalia & B. Garner, READING LAW 21-23 (2012) (disapproving "purposivist" reasoning of "being true to [a statute's] spirit").

Contrary to the Eighth Circuit's approach, this Court's cases confirm there is no AEDPA exception to correct statutory interpretation. On many notable occasions, the Court applied ordinary interpretive tools to *expand* habeas rights and rejected purposivist arguments from State respondents. *See, e.g.*, *Gonzalez*, 545 U.S. at 529–32 (applying ordinary interpretive canons and rejecting Florida's appeals to the interest of finality); *Williams v. Taylor,* 529 U.S. 420, 431–36 (2000) (same, to construe "failed to develop" in § 2254(e)(2), despite Virginia's protest about "AEDPA's purpose to further the principles of comity, finality, and federalism"); *Jimenez v. Quarterman*, 555 U.S. 113, 119–120 (2009) (same, to construe "direct review" in § 2244(d), despite Texas's appeal to AEDPA's "goal" of "finality"); *Wall v. Kholi*, 562 U.S. 545, 551–53 (2011) (same, to construe "collateral review" in § 2244(d), despite Rhode Island's purpose-based AEDPA arguments); *Magwood*, 561 U.S. at 331 (same, to construe "application" and "judgment" in § 2254(a), despite policy-based appeals from Alabama); *see also Day v. McDonough*, 547 U.S. 198, 215 (2006) (Scalia, J., dissenting) (arguing for strict forfeitability of the § 2244(d) limitations defense through ordinary interpretive canons); *Wood v. Milyard*, 566 U.S. 463, 475 (2012) (Thomas, J., concurring) (same).

To be sure, this Court's AEDPA precedents, particularly in the early years of interpretation, have referenced Congress's purposes. *See, e.g.*, *Duncan v. Walker*, 533 U.S. 167, 178–82 (2001) (analyzing which of two "competing constructions" of

§ 2244(d) best advanced AEDPA's purpose) & *id.* at 185-193 (Breyer, J., dissenting) (disagreeing about the best policy). But even then, the Court's treatment of purpose was only as a *supplement* to the ordinary canons already applied¸ *see id.* at 173–78—essentially as "proverbial icing on a cake already frosted—that is, an extra citation after the Court has already [reached a decision based on] the statutory text and traditional tools of statutory interpretation," *cf. Rudisill v. McDonough,* 601 U.S. 294, 316 (2024) (Kavanaugh, J., concurring).

The Eighth Circuit misconceived this Court's discussions of the purposes of habeas. The purpose-based language the Eighth Circuit cites from *Shoop* and *Shinn*, *see* App. 10a–11a, was never relevant to this Court's statutory interpretation. It only informed the proper *exercise of discretion*—such as whether to hold a hearing on a procedural issue (in *Shinn*, 596 U.S. at 389), or to compel burdensome evidence production (in *Shoop*, 596 U.S. at 820)—where the end result would be a futile waste of time. Purpose considerations are valid to resolve issues of equity or discretion, but nothing in these cases authorizes courts "to amend" or "rewrite" a habeas statute based on preferred policy. *Shinn,* 596 U.S. at 386–87.[6]

As this Court's cases show, habeas purposes can guide decisions concerning the *equities* of the writ, but they are not to be used to interpret the meaning of statutory

[6] In fact, in the part of *Shinn*'s that discusses § 2254(e)(2)'s statutory scope, the Court made clear that purpose-oriented reasoning was improper for statutory interpretation. *Id.* at 386–87. The Court's finality concerns were relevant only to the second part of *Shinn*, which was about equitable discretion. *Id.* at 388–90. The Court ruled that even though § 2254(e)(2)'s text did not address hearings on procedural-default issues, the interest in finality should cause courts to decline such hearings given their futility to the ultimate merits of the underlying claim. *See id.*

words. The Eighth Circuit baldly treated AEDPA as if it were immune from normal rules of interpretation. The opinion never bothers to consider what the words in § 2254(d) mean under any ordinary textual canon. It simply justified its first-impression holding by referencing the State's interest in finality. App. 11a.

This Court should grant certiorari to provide guidance for the right and wrong ways to interpret the AEDPA's statutory text. Alternatively, it should hold the case pending the outcome in *Bowe v. United States*, No. 24-5438 (cert. granted Jan. 17, 2025), which will examine the Eleventh Circuit's construction of another AEDPA provision that—like here—was not "grounded in the statutory text but rather in the policy view [of advancing AEDPA's purposes]" and which conflicts with other circuits that reject "'such a purposive argument [because it] simply cannot overcome the force of the plain text.'" *Bowe,* Pet. for Cert., No. 24-5438 at 16 (quoting *In re Graham*, 61 F.4th 433 (4th Cir. 2023)); *see also Avery v. United States*, 140 S. Ct. 1080 (2020) (Kavanaugh, J., respecting denial of certiorari) (urging certiorari on this question "[i]n a future case," given that some lower courts have expanded the scope of the AEDPA provision beyond "the text of the law[.]").

IV. To the extent purpose consideration are relevant, the Eighth Circuit's novel application of § 2254(d) got them wrong in ways that conflict with well-established habeas doctrines announced and often applied by this Court.

As the Court recently stated in *Shoop v. Twyford*, AEDPA serves not only finality, but also "to advance 'the principles of comity . . . and federalism[.]" 596 U.S. at 817 (quoting *Woodford*, 538 U.S. at 206, and *Williams*, 529 U.S. at 436). Though the Eighth Circuit purported to "stay true to AEDPA's intent," in truth, the decision

conflicts with the principles of comity and federalism and threatens to upend decades of this Court's jurisprudence interpreting and applying the statute.

The well-known doctrine of "fair presentation" ensures that habeas review is only available to petitioners who "alert [the state] court to the federal nature of the claim[s]" they raise. *Baldwin v. Reese*, 541 U.S. 27, 29 (2004); *Picard v. Connor*, 404 U.S. 270, 275 (1971) (state courts must be "alerted to the fact that the prisoners are asserting claims under the United States Constitution"). Fair presentation requires that a claim "include reference to *a specific federal constitutional guarantee*, as well as a statement of the facts that entitle the petitioner to relief." *Gray v. Netherland*, 518 U.S. 152, 162–63 (1996) (emphasis added); *see also Picard*, 404 U.S. at 275–76 (explaining that fair presentation is not satisfied by "raising one claim in the state courts and another in the federal courts"); *Reese*, 541 U.S. at 29 (petitioners must exhaust available state remedies, thereby giving the State "an initial 'opportunity to pass upon and correct' alleged violations of its prisoners' *federal* rights"') (citing *Picard*, 404 U.S. at 275) (emphasis added).

The fair presentation rule promotes comity by "avoiding the 'unseem[liness]' of a federal district court's overturning a state court conviction without the state courts having had an opportunity to correct the constitutional violation in the first instance." *O'Sullivan v. Boerckel,* 526 U.S. 838, 845 (1999) (citing *Darr v. Burford*, 339 U.S. 200, 203 (1950)). In *Ex parte Hawk*, 321 U.S. 114, 117 (1944),

> [T]his Court reiterated that comity was the basis for the exhaustion doctrine: "it is a principle controlling all habeas corpus petitions to the federal courts, that those courts will interfere with the administration of

> justice in the state courts only in rare cases where exceptional circumstances of peculiar urgency are shown to exist."

Rose v. Lundy, 455 U.S. 509, 510, 514 (1982) ("[R]equiring exhaustion of all claims furthers the purposes underlying the habeas statute . . . because it gives the state courts the first opportunity to correct federal constitutional errors and minimizes federal interference and disruption of state judicial proceedings."); *see also O'Sullivan,* 526 U.S. at 844 (describing "comity" interest in AEDPA's requirement that prisoners assert that the "state court conviction violates federal law."); *Duckworth v. Serrano*, 454 U.S. 1, 3 (1981) (noting that the exhaustion requirement "serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights"). Thus, the fair presentation requirement promotes comity by preventing federal courts from faulting the state for unreasonably applying clearly established federal law where they were never called upon to interpret or apply it in the first place.

Here, the Eighth Circuit's desire to promote finality resulted in completely undermining an equally important purpose of the statute—comity. Under no fair reading of this Court's exhaustion jurisprudence did Roberts present an Eighth Amendment challenge prior to his trial or during the course of the Arkansas Supreme Court's mandatory review of his conviction and sentence. Roberts's pretrial motion did not cite any federal basis for relief, let alone "a specific federal constitutional guarantee," as required for fair presentation. *Gray*, 518 U.S. at 162–63; *see* App. 148a. Roberts's trial judge was under no obligation to look beyond the

four corners of the pretrial motion or to discern the legal foundation for an *Atkins* claim, nor could he—the rule announced in *Atkins* did not exist. A boilerplate motion for a determination of state-law death eligibility did not alert Roberts's trial court to the "federal nature" of any then-nonexistent Eighth Amendment claim and, as such, § 2254(d) cannot apply to Roberts's *Atkins* claim. The Eighth Circuit's holding that Roberts presented an *Atkins* claim without referencing federal law and before *Atkins* was even decided turns this Court's entire fair presentation jurisprudence on its head.

This most rudimentary of requirements—that the federal basis of the claim was asserted in state court—is widely embraced throughout the circuits. In *Lucas v. Sec'y, Dep't of Corr.*, the Eleventh Circuit held that petitioners' allusion to a "constitutional right of confrontation," did not "fairly apprise[ ] the state court of his federal constitutional right-to-confrontation claim." 682 F.3d 1342, 1352–53 (11th Cir. 2012). This was so even though both the federal and Florida Constitutions granted a right to confront witnesses. *See also Preston v. Sec'y, Fla. Dep't of Corr.*, 785 F.3d 449 (11th Cir. 2015) (discussing the circuit's precedents on exhaustion and noting that "[t]he crux of the exhaustion requirement is simply that the petitioner must have put the state court on notice that he intended to raise a federal claim."). The Ninth Circuit has similarly, and repeatedly, held that exhaustion is not satisfied just because the federal claim may be "essentially the same" as the state law claim. *Casey v. Moore*, 386 F.3d 896, 914 (9th Cir. 2004) (citing *Johnson v. Zenon*, 88 F.3d 828, 830 (9th Cir. 1996) ("If a petitioner fails to alert the state court

to the fact that he is raising a federal constitutional claim, his federal claim is unexhausted regardless of its similarity to the issues raised in state court.").

If broadly asserting a constitutional violation does not exhaust the federal claim, then a complete failure to assert a constitutional violation certainly cannot. The Eighth Circuit's conclusion that application of state law sufficed to adjudicate the merits of an *Atkins* claim flouts a core principles of habeas review—that a petitioner must fairly present his federal claims to the state court before the federal courts may pass upon their merits. The Eighth Circuit's decision invites petitioners to argue fair presentation where purely state law claims were presented below in contravention of the AEDPA's purpose to promote comity.

V. Roberts's case is a perfect vehicle for the question presented and presents an injustice that warrants this Court's intervention.

There are no impediments to answering the question presented and correcting the Eighth Circuit's novel § 2254(d) holding. The decision below rests squarely and exclusively on § 2254(d) deference to a pre-*Atkins* state-law order, and the Eighth Circuit did not comment on how the *Atkins* claim would fare on *de novo* review.

Roberts's case is also important as a matter of substantive justice. The 1999 pretrial order is the only ruling that even arguably purports to opine on Roberts's intellectual disability. The State called one witness—a state hospital examiner who was only tasked with evaluating Roberts for purposes of *distinct* state-law questions of competency and criminal responsibility, not intellectual disability. App. 150a. For his part, Roberts's counsel called no witnesses and declined to present any argument, essentially throwing the issue to the trial court to decide. App. 198a. The

trial court, for its part, declined to provide reasoning for its decision and in the process conflated "competency" with the question of intellectual disability. App. 203a. The 1999 state-law order was founded upon a record that is indefensible by any measure of adversarial testing upon which our justice system is founded.

Roberts's attempts to get one meaningful *Atkins*-compliant ruling have been thwarted at each opportunity. After pleading an *Atkins* claim in his 2004 habeas petition and obtaining a stay to exhaust, the Arkansas Supreme Court agreed that Roberts was not competent to waive postconviction proceedings and ordered a wholesale new proceeding. App. 58a–60a. This resulted in a 2017 evidentiary hearing where Roberts presented evidence of his intellectual disability.

Unlike the cursory 1999 state-law hearing, Roberts's new expert, Dr. Andrews, examined both Roberts's intellectual and adaptive functioning. He reviewed Roberts's 1999 WAIS results and his later neuropsychological testing—testing that, significantly, was performed *after* Roberts's pre-trial hearing—and found Roberts exhibited "significantly subaverage intellectual functioning." App. 251a; 267a–68a.[7] Standardized test data showed how Roberts performed many years below grade level in multiple areas and, contrary to Dr. Mallory's assessment, Roberts's reading was five years below grade level. App. 251a. Based upon the testimony of Roberts's family, his daily living required structure, assistance, and repetition. App. 245a.

[7] As Dr. Andrews explained, Roberts's measured 76 score on the WAIS-III, under the circumstances, was consistent with an intellectual disability diagnosis. App. 243a. The State did not challenge this point—neither expressly in the post-hearing briefing, nor implicitly through their cross-examination. App. 255a–61a.

Test scores from Roberts's neuropsychological testing were consistent with a person who "wasn't able to problem solve and adapt to his environment." App. 248a. Based upon Roberts's early school records, the testimony of an educator familiar with Roberts, and Roberts's young age at the time of his traumatic brain injury, Dr. Andrews was also able to confirm that Roberts's onset of symptoms occurred before age 18. App. 252a–53a. Based upon a complete and clinical assessment, he concluded that Roberts met the criteria for intellectual disability in 1999.

But all of this evidence was for naught. Although the State never addressed the *Atkins* claim in its post-hearing briefing, the court's ruling rendered the hearing irrelevant. The postconviction court *sua sponte* held that Roberts's "competency" (sic) was already settled "on direct appeal" and could not be relitigated. App. 293a (postconviction court), App. 116a (Arkansas Supreme Court).[8] And in federal court, AEDPA deference was summarily applied to the 1999 state-law ruling. The evasion

[8] That Arkansas courts would repeatedly conflate intellectual disability with competency, or find the claim raised when it was not, is unfortunately not surprising. Succinctly, there is a problem in Arkansas when it comes to capital defendants raising the issue of intellectual disability. In all the years since the state created its statutory exemption, the state's supreme court has *not once* found a capital defendant to be death ineligible due to their intellectual disability. *See Fairchild v. Norris*, 861 S.W.2d 111 (Ark. 1993); *Reams v. State*, 909 S.W.2d 324 (Ark. 1995); *Rankin v. State*, 948 S.W.2d 397 (Ark. 1997); *Jones v. State*, 10 S.W.3d 449 (Ark. 2000); *Sanford v. State*, 25 S.W.3d 414 (Ark. 2000); *Noel v. Norris*, 120 S.W.3d 599 (Ark. 2003); *Anderson v. State*, 163 S.W.3d 333 (Ark. 2004); *Engram v. State*, 200 S.W.3d 367 (Ark. 2004); *Nance v. State*, 2005 WL 984779 (Ark. 2005) (unreported); *Weston v. State*, 234 S.W.3d 848 (Ark. 2006); *Miller v. State*, 362 S.W.3d 264 (Ark. 2010); *Dimas-Martinez v. State*, 385 S.W.3d 238 (Ark. 2011); *Lard v. State*, 595 S.W.3d 355 (Ark. 2020).

of merits review into Roberts' *Atkins* claim has been an indefensible and extreme malfunction of the criminal justice system that warrants this Court's intervention.

CONCLUSION

For all the reasons set forth above, Karl Roberts respectfully requests that his petition for a writ of certiorari be granted. Roberts asks the Court to reverse the decision of the Eighth Circuit and remand for further proceedings unburdened by § 2254(d) deference.

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