No. *___

In the Supreme Court of the United States

SCOTT SPEER AND CHARLOTTE HEADLEY, SUPERINTENDENTS, STAFFORD CREEK CORRECTIONS CENTER AND WASHINGTON CORRECTIONS CENTER FOR WOMEN,

PETITIONERS,

v.

JEFFREY WELLER & SANDRA WELLER,

RESPONDENTS.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

28 U.S.C. § 2254(d) bars habeas relief unless the state court adjudication of the merits of a claim was contrary to or an unreasonable application of clearly established federal law. For claims of ineffective assistance of counsel, *Strickland v. Washington*, 466 U.S. 668 (1984), is the relevant clearly established federal law. The Washington courts expressly applied *Strickland* in this case, and the district court denied relief, finding the state court adjudication of the claim was reasonable. On appeal, the Ninth Circuit remanded for an evidentiary hearing, holding that the state courts never adjudicated the merits of the claim. The questions presented are:

1. Whether the state courts adjudicated the merits of the claim for purposes of 28 U.S.C. § 2254(d) when the state courts expressly cited to this Court's controlling precedent to deny the claim on collateral review.

2. Whether the Ninth Circuit failed to comply with 28 U.S.C. § 2254(e)(2) when it authorized an evidentiary hearing without applying the requirements of that statute.

PARTIES

The Petitioners are Scott Speer, the Superintendent of the Stafford Creek Corrections Center, and Charlotte Headley, the Superintendent of the Washington Corrections Center for Women. Superintendent Speer is the successor in office to Ronald Haynes, who was formerly the custodian of Mr. Weller, and Superintendent Headley is the successor in office to Deborah Jo Wofford, who was formerly the custodian of Mrs. Weller. Superintendents Speer and Headley are substituted pursuant to Rule 35.3.

The Respondents are Jeffrey Weller and Sandra Weller, petitioners-appellants below.

RELATED PROCEEDINGS

The following is a list of proceedings in state and federal court directly related to this petition:

- *Jeffrey Weller v. Ronald Haynes*, and *Sandra Weller v. Deborah Wofford*, United States Court of Appeals for the Ninth Circuit, No. 23-35459 and No. 23-35460, memorandum opinion entered September 9, 2024, and order denying rehearing entered October 11, 2024

- *Jeffrey Weller v. Ronald Haynes*, and *Sandra Weller v. Deborah Wofford*, United States District Court, Western District of Washington, No. 3:20-cv-05861-RAJ-TLF (consolidated with No. 3:20-cv-5862-RAJ-TLF), judgment entered June 12, 2023

- *In re Personal Restraint Petitions of: Jeffrey Weller and Sandra Weller*, Washington Supreme Court, No. 97453-5, final order entered August 5, 2020

- *In re Personal Restraint Petition of Jeffrey Weller* and *In re Personal Restraint Petition of Sandra Weller*, Washington Court of Appeals, No. 52289-6-II (consolidated with No. 52302-7-II), opinion entered July 2, 2019

- *State v. Jeffrey Weller and Sandra Weller*, Washington Supreme Court, No. 94296-0, order entered June 28, 2017

- *State v. Sandra Weller* and *State v. Jeffrey Weller,* Washington Court of Appeals, No. 48056-5-II (consolidated with No. 48106-5-II), opinion entered January 31, 2017

- *State v. Jeffrey Weller* and *State v. Sandra Weller*, Washington Supreme Court, No. 91406-1, order entered July 8, 2015

- *State v. Jeffrey Weller* and *State v. Sandra Weller*, Washington Court of Appeals, No. 44726-6-II (consolidated No. 44733-9-II), opinion entered February 18, 2015

- *State v. Jeffrey Weller*, Superior Court of the State of Washington, Clark County, Cause No. 11-1-01678-1, judgment entered September 17, 2015

- *State v. Sandra Weller*, Superior Court of the State of Washington, Clark County, Cause No. 11-1-01679-1, judgment entered September 17, 2015

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PETITION FOR A WRIT OF CERTIORARI

Scott Speer, the Superintendent of the Stafford Creek Corrections Center, and Charlotte Headley, the Superintendent of the Washington Corrections Center for Women, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The memorandum opinion of the United States Court of Appeals for the Ninth Circuit, and the order denying rehearing, are unreported. App. 1a, 2a-7a. The order of the United States District Court for the Western District of Washington denying habeas relief, and the report and recommendation of the United States Magistrate Judge, are unreported. App. 10a-11a, 12a-38a. The opinion of the Washington Court of Appeals denying the personal restraint petition, and the ruling of the Washington Supreme Court denying review of that opinion, are unreported. App. 39a, 40a-50a, 51a-58a. The opinion of the Washington Court of Appeals on initial direct appeal is published in part at *State v. Weller*, 185 Wash. App. 913, 344 P.3d 695 (2015). App. 59a-82a. The remaining opinions of the state courts on direct review are not relevant to the issues raised in this petition.

JURISDICTION

The court of appeals entered its opinion on September 9, 2024. App. 2a. The court of appeals denied a timely petition for rehearing and rehearing *en banc* on October 11, 2024. App. 1a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendment to the United States Constitution provides, in relevant part:

> In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence.

28 U.S.C. § 2254(d) provides in relevant part:

> 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.

28 U.S.C. § 2254(e)(2) provides in relevant part:

> If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—
>
> (A) the claim relies on—
>
> (i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
>
> (ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and
>
> (B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

INTRODUCTION

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. No. 104-132, 110 Stat. 1214 imposes two significant restraints on the review of applications for writ of habeas corpus filed by state prisoners. First, 28 U.S.C. § 2254(d) imposes a precondition on any grant of relief with respect to a claim that was adjudicated on the merits in state court. Second, 28 U.S.C. § 2254(e)(2) bars any evidentiary development in federal court if the

applicant failed to develop the factual record in state court. Congress enacted these statutes specifically to protect the finality of state court judgments by significantly reforming habeas corpus review. *Woodford v. Garceau*, 538 U.S. 202, 206 (2003).

AEDPA achieved this reform by expressly limiting the power of the federal courts to grant relief to state prisoners. *Williams v. Taylor*, 529 U.S. 362, 399 (2000). Under 28 U.S.C. § 2254(d), a federal court may grant relief only if the state court adjudication of the merits of a claim was contrary to or an unreasonable application of clearly established federal law or rested upon an unreasonable determination of the facts, and the statutory deference owed to the state court is "near its apex" when a claim alleges ineffective assistance of counsel. *Sexton v. Beaudreaux*, 585 U.S. 961, 968 (2018). The review of such claims is "doubly deferential when it is conducted through the lens of federal habeas." *Yarborough v. Gentry*, 540 U.S. 1, 5-6 (2003).

"If this rule means anything, it is that a federal court must carefully consider all the reasons and evidence supporting the state court's decision." *Mays v. Hines*, 592 U.S. 385, 391 (2021). "Any other approach would allow a federal court to 'essentially evaluat[e] the merits *de novo*' by omitting inconvenient details from its analysis." *Id.* at 392 (alteration in original) (quoting *Shinn v. Kayer*, 592 U.S. 111, 119 (2020)). Despite this clear statutory mandate, the lower courts, and particularly the Ninth Circuit, have demonstrated reluctance to enforce the statute's plain language, finding various avenues to avoid complying with the highly deferential statutory standard. This Court has had to repeatedly correct

the lower courts, often summarily, to reaffirm the deference required by AEDPA. *See, e.g.*, *Kayer*, 592 U.S. 111; *Sexton*, 585 U.S. 961; *Kernan v. Hinojosa*, 578 U.S. 412 (2016); *Glebe v. Frost*, 574 U.S. 21 (2014); *Lopez v. Smith*, 574 U.S. 1 (2014); *Parker v. Matthews*, 567 U.S. 37 (2012).

Here, the Ninth Circuit has once again found a way to avoid AEDPA's deferential standards. Much like in *Kernan v. Hinojosa*, the circuit court blatantly refused to apply the statute simply by concluding—in obvious contradiction to the state court opinions—that the state courts never adjudicated the merits of the claim. This Court should grant certiorari and summarily reverse this decision.

Here, the Washington courts expressly cited and applied the standard established in *Strickland v. Washington*, 466 U.S. 668 (1984), and ruled that the Wellers did not present the evidence necessary to prove their claim under that standard. App. 46a-47a; App. 55a. The Ninth Circuit, however, simply avoided 28 U.S.C. § 2254(d) by determining that the state courts never adjudicated the merits of the claim. Based on the state supreme court's citation to a state court opinion (a citation absent from the decision of the state court of appeals), the Ninth Circuit ruled that both state courts had applied "state procedural grounds by invoking the inadequate briefing rule of *In re Rice*, 828 P.2d 1086 (Wash. 1992)," App. 3a, and therefore "there is no independent adjudication on the merits in the state court record for us to consider." App. 3a-4a n.1. The Ninth Circuit then determined that 28 U.S.C. § 2254(e)(2) did not apply because the Wellers did not "fail to develop" the record in state court. This contradicts the Ninth Circuit's own logic,

because the procedural rule allegedly applied by the state courts rested on the Wellers' very failure to present evidence in state court. App. 6a-7a. The Ninth Circuit's decision fails to apply the deferential AEDPA standards, conflicts with the holdings of this Court, and conflicts with the holdings of other circuit courts. This Court should summarily reverse.

STATEMENT OF THE CASE

A. The Wellers Were Convicted on Multiple Counts of Assaulting and Unlawfully Imprisoning Their Children

The Wellers had six children under their care: two 16-year-old twins adopted by Sandra Weller (CW and CG), and four biological children of Jeffrey or Sandra Weller. App. 60a. In early October 2011, the twins CW and CG gave their therapist a note that reported abuse by the Wellers. App. 60a. The therapist reported the abuse to child protective services, which investigated the matter. App. 60a. The investigator visited the residence, interviewed the Wellers, and determined that the twins were unsafe. App. 61a. The investigator then called the police. App. 61a.

Police officers arrived to determine whether to remove the children from the home. App. 61a. The officers talked with CW and CG, both of whom told the officers the Wellers had repeatedly beaten them with a board. App. 61a. When CG and CW began looking for the board in the garage, the officers saw in plain view a board leaning against the wall. App. 62a. CG and CW told the officers that it was the board the Wellers used to beat them. App. 62a. After the officers

picked up the board, they could see a groove worn into the board, as well as discoloration on the board that appeared consistent with dried blood. App. 62a. Based upon these observations, the police officers removed the twins and the other children from the Weller residence. App. 62a. The prosecution subsequently charged the Wellers with multiple counts of assault and unlawful imprisonment for repeatedly beating the children, depriving them of food, and locking them in a room. App. 62a-63a.

The evidence at trial showed that, with Sandra's encouragement, Jeffrey Weller often hit the children "with a board, which resulted in beatings so ferocious that they drew blood and resulted in at least one broken bone and permanent skin discoloration." App. 80a. The evidence also showed that the Wellers repeatedly forced CG to remain locked in a filthy room for most of the day. App. 81a. This occurred so often "that her younger siblings cut a hole in between their bedroom walls to pass food through to CG. Because CG was unable to leave her room, her younger siblings testified that they took it upon themselves to procure food for her." App. 81a. A forensic scientist and treating physician corroborated the children's testimony about the extensive abuse and imprisonment. App. 31a.

The jury convicted the Wellers as charged, finding that the Wellers acted with deliberate cruelty and as part of an ongoing pattern of abuse. App. 64a. The judge sentenced Jeffrey Weller on eight counts of varying levels of assault and one count of unlawful imprisonment, and the judge sentenced Sandra Weller on four counts of assault and one count of unlawful imprisonment. App. 64a & n.4. Based upon

the aggravating factors, the judge sentenced the Wellers to 240 months of confinement. App. 64a. The Washington appellate courts affirmed the convictions on appeal but remanded for resentencing after invalidating one of the aggravating factors. App. 60a; *State v. Weller*, 352 P.3d 188 (2015) (table). On remand, the judge again imposed the 240-month sentences. The Washington Court of Appeals affirmed the sentences, and the Washington Supreme Court denied review without comment. *State v. Weller*, 396 P.3d 337 (2017) (table).

B. The State Courts on Collateral Review Adjudicated the Merits of the Claim of Ineffective Assistance of Counsel

The Wellers then filed personal restraint petitions, which the Washington Court of Appeals consolidated. App. 51a. Among other things, the Wellers raised the current claim of ineffective assistance of counsel.[1] App. 55a. Denying the claim, the state court cited to and applied *Strickland*, 466 U.S. 668. App. 55a. The court ruled, "[t]o establish ineffective assistance of counsel, [Weller] must demonstrate that her counsel's performance fell below an objective standard of reasonableness and that as a result of that deficient performance, the result of her case probably would have been different." App. 55a (citing *Strickland*, 466 U.S. at 687). The court

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[1] Having consolidated the petitions, the state court allowed the Wellers to incorporate each other claims, and the court addressed the merits of the Wellers' current claim in a single ruling, referring to it as "Sandra's Issue 5." App. 55a.

"presume[d] strongly that trial counsel's performance was reasonable." App. 55a. The court held, "[Weller] does not show either deficient performance or resulting prejudice." App. 55a. The court added, "[Weller] does not present evidence of what the other witnesses would have said, what medical and mental health experts would have said, that the officer's disciplinary history was of an impeaching nature, or that witnesses improperly commented on the veracity or credibility of other witnesses." App. 55a. For this reason, the court ruled, "Sandra does not demonstrate ineffective assistance of trial counsel." App. 55a.

Notably absent from the Washington Court of Appeals' decision was any discussion of a state procedural rule or a citation to the state court opinion of *In re Rice*, 118 Wash. 2d 876, 828 P.2d 1086 (1992).

Denying review, the Washington Supreme Court also expressly cited to and applied the *Strickland* standard to evaluate the claim. The court stated that "[d]efense counsel is strongly presumed to have rendered adequate assistance." App. 46a-47a (citing *Strickland*, 466 U.S. at 690). The state supreme court noted that the Wellers "must demonstrate that counsel's representation fell below an objective standard of reasonableness and that, but for counsel's unprofessional performance, there is a reasonable probability the outcome of the trial would have been different." App. 47a. The court also noted that the Wellers must satisfy both prongs of *Strickland* to obtain relief. App. 47a.

Applying *Strickland*, the Washington Supreme Court noted, "[t]he Court of Appeals held that Ms. Weller failed to present sufficient evidence to

support her ineffective assistance of counsel claim because she did not present evidence of what the other witnesses would have said." App. 47a. Because the lower court's analysis was consistent with the Washington Supreme Court's holding regarding a petitioner's evidentiary burden, the supreme court found "no basis for further review of this claim." App. 47a (citing *In re Rice*, 118 Wash. 2d at 886). Although the Washington Supreme Court cited *Rice*, the court did so for the evidentiary burden necessary to prevail on the merits of a claim, not only on the merits of this claim of ineffective assistance of counsel, but also on the merits of a separate *Brady* claim. *See* App. 44a-45a.

C. The District Court Denied Relief Because the State Court Adjudication of the Merits of the Claim Was Not Unreasonable

The Wellers then raised the claim in federal court, presenting for the first time new evidence not presented to the state courts. In response, the State asserted that 28 U.S.C. § 2254(d) barred relief because the state courts adjudicated the merits of the claim, and that adjudication was not unreasonable. The State also moved to strike the new evidence, arguing that 28 U.S.C. § 2254(d) and (e)(2) precluded it. In reply, the Wellers argued that they had procedurally defaulted on the claim in state court, and that as a result, they could present the new evidence under *Martinez v. Ryan*, 566 U.S. 1 (2012) without satisfying 28 U.S.C. § 2254(d) and (e)(2). This Court then issued *Shinn v. Ramirez*, 596 U.S. 366 (2022), in light of which, the magistrate judge recommended that the district court strike the new evidence and deny

the petition. App. 12a-38a. The magistrate judge determined that the state court had adjudicated the claim on the merits, and that the state court adjudication was reasonable. App. 15a-31a. The district court denied the petition. App. 10a-11a.

D. The Ninth Circuit Ruled that the State Courts Never Adjudicated the Merits of the Claim

Reversing the district court's judgment and remanding for an evidentiary hearing, the Ninth Circuit did not apply 28 U.S.C. § 2254(d) or (e)(2). Instead, the circuit court ruled that the state courts had applied only "state procedural grounds by invoking the inadequate briefing rule of *In re Rice*, 828 P.2d 1086 (Wash. 1992)." App. 3a. Ignoring the express citation to *Strickland* by both state courts, the Ninth Circuit concluded that 28 U.S.C. § 2254(d) did not apply because "there is no independent adjudication on the merits in the state court record for us to consider." App. 3a-4a n.1. In doing so, the Ninth Circuit refused to acknowledge the merits decision by the Washington Court of Appeals, even though that state court had never cited to *Rice*. App. 3a-4a n.1. The Ninth Circuit also determined that 28 U.S.C. § 2254(e)(2) did not apply to bar an evidentiary hearing. Even though the procedural rule allegedly applied by the state courts rested on the failure of the Wellers to present evidence to support their claim, the circuit court found that the Wellers did not "fail to develop" the evidentiary record in state court. App. 6a-7a.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's refusal to respect the state court adjudication and to properly apply 28 U.S.C. § 2254(d) and (e)(2) warrants this Court's review. This Court should grant the writ of certiorari and summarily reverse for two reasons.

First, the Ninth Circuit circumvented the requirements of 28 U.S.C. § 2254(d) by disregarding the state court adjudication of the merits of the claim. Despite the state courts' express citation to the clearly established standard for reviewing the merits of a claim of ineffective assistance of counsel, the Ninth Circuit determined the state courts applied only a state procedural rule, and did not address the merits of the claim. The Ninth Circuit thus completely avoided the deference required by Congress when reviewing habeas claims. The Ninth Circuit's decision conflicts with the holdings of this Court and other circuit courts.

Second, the Ninth Circuit compounded the harm in this case by then failing to properly apply 28 U.S.C. § 2254(e)(2). The Ninth Circuit determined that the Wellers did not "fail to develop" the evidentiary record in state court. But assuming the state courts applied a procedural rule as the Ninth Circuit concluded, the rule necessarily rested upon the Wellers having failed to present evidence in state court to support their claim. Thus, under the Ninth Circuit's own logic, the Wellers "failed to develop" the record, and 28 U.S.C. § 2254(e)(2) applies in this case.

A. Congress Enacted AEDPA Specifically to Limit a Federal Court's Power to Review Habeas Claims *De Novo*

AEDPA limits habeas review by imposing a precondition on the grant of habeas relief with respect to any claim adjudicated on the merits in the state courts. 28 U.S.C. § 2254(d). The statute authorizes the federal court to grant "habeas relief on a claim 'adjudicated on the merits' in state court only if the decision 'was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States.'" *Waddington v. Sarausad*, 555 U.S. 179, 190 (2009) (quoting 28 U.S.C. § 2254(d)(1)). AEDPA protects the State's sovereign interest in the finality of judgments by creating "an independent, high standard to be met before a federal court may issue a writ of habeas corpus to set aside state-court rulings." *Uttecht v. Brown*, 551 U.S. 1, 10 (2007). Congress enacted the statute specifically to avoid the significant harm inflicted by extensive *de novo* habeas review. *Woodford*, 538 U.S. at 206; *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

Under the statute, "a federal court 'shall not' grant a writ of habeas corpus unless the earlier decision took an 'unreasonable' view of the facts or law." *Mays*, 592 U.S. at 391 (quoting 28 U.S.C. § 2254(d)). "If this rule means anything, it is that a federal court must carefully consider all the reasons and evidence supporting the state court's decision." *Id.* "Any other approach would allow a federal court to

'essentially evaluat[e] the merits *de novo*'" by omitting inconvenient details from its analysis." *Id.* at 392 (alteration in original) (quoting *Kayer*, 592 U.S. at 119).

A federal court may no longer grant the writ simply because the court concludes in its independent judgment that constitutional error has occurred. *Williams*, 529 U.S. at 411; *Bell v. Cone*, 535 U.S. 685, 698-99 (2002). Rather, relief lies only if the state court adjudication was unreasonable. *Sarausad*, 555 U.S. at 190; *Rice v. Collins*, 546 U.S. 333, 341-42 (2006). The state court must have reached a legal conclusion opposite to that reached by this Court, *see Williams*, 529 U.S. at 405, unreasonably applied the holdings of the Supreme Court to the facts of the case, *see Holland v. Jackson*, 542 U.S. 649, 652 (2004), or made a factual determination where the evidence is "too powerful to conclude anything but" the contrary of the determination reached by the state court, *Miller-El v. Dretke*, 545 U.S. 231, 265 (2005).

The statute bars relief unless no "fairminded jurist" could agree on the correctness of the state court's decision. *Harrington*, 562 U.S. at 101. The petitioner "must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id.* at 103. The petitioner bears the heavy burden of showing "there was no reasonable basis for the state court to deny relief." *Id.* at 98. "If this standard is difficult to meet, that is because it was meant to be." *Id.* at 102. While not imposing a complete bar on a federal court's relitigation of claims already rejected

in state proceedings, the statute does impose a modified res judicata rule that constrains the federal court's authority to substitute its judgment for that of a state court. *Id.*

"Section 2254(d) reflects the view that habeas corpus is a 'guard against extreme malfunctions in the state criminal justice systems,' not a substitute for ordinary error correction through appeal." *Harrington*, 562 U.S. at 102-03 (quoting *Jackson v. Virginia*, 443 U.S. 307, 332 n.5 (1979)). The statute "demands that state-court decisions be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam). The readiness to fault the state court adjudication and to find reversible constitutional error is inconsistent with AEDPA's highly deferential standard of review. *Id.*; *Brown v. Payton*, 544 U.S. 133, 141-47 (2005).

B. The Ninth Circuit Circumvented This Limitation by Mischaracterizing the State Court Adjudication of the Merits

AEDPA imposes a presumption that the state courts adjudicated the merits of the federal claim. *Harrington*, 562 U.S. at 99. The federal courts may not disregard a state court adjudication simply because the state court did not provide a sufficiently detailed analysis of the federal law governing a claim. *Johnson v. Williams*, 568 U.S. 289, 297-98 (2013). As this Court explained, "it is not the uniform practice of busy state courts to discuss separately every single claim to which a defendant makes even a passing reference." *Id.* at 298. The statute applies if the state

court provided only a cursory discussion, or even no discussion at all. *Johnson*, 568 U.S. at 298-301. The statute "does not even require *awareness* of our cases, so long as neither the reasoning nor the result of the state-court decision contradicts them." *Early v. Packer*, 537 U.S. 3, 8 (2002).

AEDPA requires only a "decision" on the claim, not a treatise of the federal law and the facts. *Harrington*, 562 U.S. at 98-99. Even without a citation to federal law, "[w]hen 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." *Id.* at 99. This strong presumption "may be rebutted only in unusual circumstances[.] . . ." *Johnson*, 568 U.S. at 302.

As this Court has made clear, the statute applies where a state court considered and rejected the federal claim on the merits "'after the court . . . heard and *evaluated* the evidence and the parties' substantive arguments.'" *Id.* at 302 (alteration in original) (quoting *Black's Law Dictionary* 1199 (9th ed. 2009)). "And as used in this context, the word 'merits' is defined as '*[t]he intrinsic rights and wrongs of a case* as determined by *matters of substance*, in distinction from matters of form.'" *Id.* at 302 (quoting *Webster's New International Dictionary* 1540 (2d ed. 1954)).

The state court here rejected the Wellers' claims on the merits. The state courts expressly applied the relevant federal law, evaluated the evidence or lack thereof, and determined that

the Wellers did not prove ineffective assistance of counsel because they did not present evidence to show either deficient representation or prejudice. Contrary to the Ninth Circuit's conclusion, the state courts expressly adjudicated the claim on the merits. The Ninth Circuit simply refused to acknowledge the existence of that adjudication. Rather than applying the presumption required under *Johnson*, the Ninth Circuit disregarded the state court decisions.

Here, the state courts cited to and applied *Strickland* in reviewing the claim. App. 46a-47a; App. 55a. The state courts recognized the applicable two-prong standard, as well as the presumption of competent representation, and the courts correctly held that the Wellers must prove both deficient representation and resulting prejudice. App. 46a-47a; App. 55a. The state courts concluded that the Wellers did not prove either one, and therefore did not prove their claim. App. 46-47a; App. 55a. The state courts not only provided a decision on matters of substance, as opposed to form, but expressly cited *Strickland* in doing so. The state courts evaluated the lack of evidence and determined that the Wellers failed to carry their evidentiary burden. This determination was not an unreasonable application of clearly established federal law. *Dunn v. Reeves*, 594 U.S. 731, 739 (2021) (state court did not unreasonably adjudicate the merits when the state court determined that the absence of evidence does not rebut the presumption that counsel provided competent representation). The state courts therefore adjudicated the merits of the claim.

C. The Ninth Circuit Incorrectly Determined that the State Courts Applied Only a State Procedural Rule in Denying the Claim

Relying on *Harris v. Reed*, 489 U.S. 255 (1989), and *Coleman v. Thompson*, 501 U.S. 722 (1991), the Ninth Circuit ruled that the state courts clearly and expressly applied only a state procedural rule by invoking "the inadequate briefing rule of *In re Rice*, 828 P.2d 1086 (Wash. 1992)." App. 3a. The Ninth Circuit was wrong on this point for two reasons.

First, even if *Rice* itself reflected only a state procedural rule, the Ninth Circuit failed to recognize that the state court's citation to and application of that rule was clearly interwoven with federal law. As such, the state court did not apply an independent state procedural law, but instead applied both state and federal law to resolve the merits of the claim.

By jumping to the conclusion that the state courts applied only a state law procedural rule, the Ninth Circuit failed to apply the presumption established by this Court for resolving ambiguities as to whether the state court applied state or federal law. *Coleman*, 501 U.S. at 733. Where the state court decision rests primarily upon or is interwoven with federal law, the Court "will accept as the most reasonable explanation that the state court decided the case the way it did because it believed that federal law required it to do so." *Michigan v. Long*, 463 U.S. 1032, 1040-41 (1983). Unlike the Ninth Circuit here, other circuit courts have routinely applied this conclusive presumption in similar situations, and correctly ruled that the state court did not apply only a state procedural rule, but actually adjudicated the

merits of the federal claim. *See, e.g.*, *Haight v. Jordan*, 59 F.4th 817, 837 (6th Cir. 2023) ("its analysis, which sets out the *Strickland* standard and applies it to the facts of Haight's case, does not provide a 'reason to think some other explanation for the state court's decision is more likely' than an adjudication on the merits."); *Jermyn v. Horn*, 266 F.3d 257, 280-81 n.10 (3d Cir. 2001) ("For purposes of determining the appropriate standard of review we must apply under AEDPA, we simply cannot ignore the circumstance that the correct application of the procedural rule at play here requires the court to review the underlying merits of a particular federal constitutional claim."); *see also Ruiz v. Stephens*, 728 F.3d 416, 423-24 (5th Cir. 2013) ("As we explained at length in our opinion remanding this case to the district court, the CCA's summary dismissal of Ruiz's *Wiggins* claim can reasonably be read as an on-the-merits disposition. Under the *Richter* presumption, § 2254(d) thus applies to Ruiz's claim." (footnotes omitted)); *Jimenez v. Walker*, 458 F.3d 130, 146 (2d Cir. 2006) (a state court's rejection of a federal claim as "'either unpreserved for appellate review or without merit'" constitutes a merits adjudication for purposes of 28 U.S.C. § 2254(d) (quoting *Fama v. Comm'r of Corr. Servs.*, 235 F.3d 804, 810-11 (2d Cir. 2000))).

As the Sixth Circuit recognized, "A procedural rule's availability alone does not show it was more likely that the state relied on that rule instead of deciding the case on the merits. Such an assumption would flip *Richter*'s contrary prescription on its head, especially given that in the procedural default context, 'neither the mere availability nor the potential, or even obvious, applicability of such a

[procedural] rule is determinative.'" *Stermer v. Warren*, 959 F.3d 704, 724 (6th Cir. 2020) (alteration in original) (quoting *Henderson v. Palmer*, 730 F.3d 554, 561 (6th Cir. 2013)).

Here, the citation to *Rice* was clearly interwoven with the application of *Strickland*. The state supreme court cited to *Rice* to reference the burden imposed on the Wellers to prove a claim of ineffective assistance of counsel under *Strickland*. App. 46a-47a. The court in fact referred to *Rice* as imposing an evidentiary burden. App 47a. The state supreme court noted the lower court's holding "that Ms. Weller failed to present sufficient evidence to support her ineffective assistance of counsel claim because she did not present evidence of what the other witnesses would have said." App 47a. The state supreme court ruled, "this analysis is consistent with this court's holding in *Rice* regarding a petitioner's evidentiary burden." App. 47a. Thus, the state court cited to *Rice* for the evidentiary burden necessary to prevail on the merits of the claim, not simply as a procedural rule governing the adequacy of briefing.

Second, *Rice* itself does not establish a mere state procedural rule. Rather, the *Rice* decision is more complex than that. *Rice* first explained that a state court may dismiss a petition for procedural reasons. *Rice*, 118 Wash. 2d at 884-85. However, *Rice* explained that if not dismissed for procedural reasons, the court should then rule on the merits of the claims. *Id.* If a factual dispute exists, the court should hold an evidentiary hearing. *Id.* But if the petitioner does not present evidence showing a factual dispute, then the court should resolve the claim on the merits without an evidentiary hearing. *Id.* at 885-86. *Rice* explained

that an evidentiary hearing is unnecessary "when the petition, though facially adequate, has no apparent basis in provable fact." *Id.* In such a case, the court should dismiss the claim on the merits without an evidentiary hearing. *Id.*

That is what occurred here. The state courts denied the claim on the merits without an evidentiary hearing because the Wellers did not present evidence to prove their claim. The court of appeals did not dismiss the petition on its face for inadequate briefing. Rather, the chief judge of the lower court referred the petition to a three-judge panel, which in turn issued an opinion addressing the merits of the various claims raised in the petition. App. 51a-58a. That merits decision was consistent with Washington Rules of Appellate Procedure 16.11(b) ("If the petition is not frivolous and can be determined solely on the record, the Chief Judge will refer the petition to a panel of judges for determination on the merits."). As the Tenth Circuit recognized, such a ruling is an adjudication on the merits for purposes of AEDPA. *Lott v. Trammell*, 705 F.3d 1167, 1211-13 (10th Cir. 2013) (any denial of a request for an evidentiary hearing on the issue of ineffective assistance of counsel "operates as an adjudication on the merits of the *Strickland* claim and is therefore entitled to deference under § 2254(d)(1).").

The Ninth Circuit's focus on an isolated citation of state case law also suffers from the same flaw committed by the circuit court in *Holland*, 542 U.S. 649, and *Visciotti*, 537 U.S. 19. By focusing on isolated words rather than the entirety of the decision, the Ninth Circuit improperly parsed the state court

decision to avoid the requirements of AEDPA. *Holland*, 542 U.S. at 655; *Visciotti*, 537 U.S. at 23-24. As this Court explained, 28 U.S.C. § 2254(d) "demands that state-court decisions be given the benefit of the doubt." *Visciotti*, 537 U.S. at 24; *see also Murphy v. Royal*, 875 F.3d 896, 925-26 (10th Cir. 2017) (applying § 2254(d) and refusing to view a single sentence as proving the state court applied only a procedural rule, rather than addressing the merits of the claim), *aff'd sub nom. Sharp v. Murphy*, 591 U.S. 977 (2020).

Finally, even if the state court's citation to *Rice* implicated only an "adequate briefing rule," which it did not, application of that rule still constitutes an adjudication on the merits under 28 U.S.C. § 2254(d). As the Eleventh Circuit has determined, "the state court's denial of a petitioner's federal claim without an evidentiary hearing for failure to satisfy a 'specific pleading' requirement constitutes a decision on the merits." *Jones v. Sec'y, Fla. Dep't of Corr.*, 834 F.3d 1299, 1318 n.10 (11th Cir. 2016) (first quoting *Pope v. Sec'y for Dep't of Corr.*, 680 F.3d 1271 (11th Cir. 2012) ("[J]ust as under our federal procedural rules, a Florida state court's dismissal of a post-conviction claim for facial insufficiency constitutes—at least for purposes of the procedural default analysis—a ruling 'on the merits' that is not barred from our review."); then citing *Daniel v. Comm'r, Ala. Dep't of Corr.*, 822 F.3d 1248, 1260 (11th Cir. 2016) ("Summary dismissals under [Alabama's specific pleading rules] are adjudications on the merits and subject to AEDPA review."); and then citing *Borden v. Allen*, 646 F.3d 785, 814-15 (11th Cir. 2011) (same)).

Here, the Washington courts expressly cited to *Strickland*, expressly recited the two-prong standard under *Strickland*, and expressly ruled that the Wellers failed to meet this standard. The fact that the state court also cited to state court case law does not rebut the presumption that the state court adjudicated the merits of the claim. By ignoring that state court merits adjudication, the Ninth Circuit failed to properly respect the state court decision.

D. Even if the State Supreme Court Applied a State Procedural Law, the Ninth Circuit Should Have Reviewed the Lower Court Adjudication of the Claim

In cases where the state supreme court denies review on procedural grounds, this Court has "focused exclusively on the actual reasons given by the lower state court, and we deferred to those reasons under AEDPA." *Wilson v. Sellers*, 584 U.S. 122, 131-32 (2018) (citing *Premo v. Moore*, 562 U.S. 115, 132 (2011)); *Sears v. Upton*, 561 U.S. 945, 951-56 (2010) (per curiam). The statute applies so long as *any* state court has adjudicated the merits of the claim, even if not the state supreme court. *Mays*, 592 U.S. at 391 ("Because a Tennessee court considered and rejected Hines' theory, a federal court 'shall not' grant a writ of habeas corpus unless the earlier decision took an 'unreasonable' view of the facts or law." (quoting 28 U.S.C. § 2254(d))). Thus, even assuming the Washington Supreme Court applied only a state procedural rule in denying review, the Ninth Circuit erred by not applying 28 U.S.C. § 2254(d) to review the adjudication by the Washington Court of Appeals. *Kayer*, 592 U.S. at 120 n.1 ("We may assume without

deciding that the Arizona Supreme Court's denial of discretionary review was not a merits adjudication because we conclude that the Superior Court did not unreasonably apply federal law.").

As this Court has repeatedly explained, federal courts should "assess the reasonableness of the 'last state-court adjudication on the merits of' the petitioner's claim." *Brown v. Davenport*, 596 U.S. 118, 141 (2022) (quoting *Greene v. Fisher*, 565 U.S. 34, 40 (2011)). Rejecting an argument that 28 U.S.C. § 2254(d) limits review to the state supreme court's decision when that decision applies only a procedural rule, this Court in *Greene* found this to be "an implausible reading of § 2254(d)(1)[,]" and held "[t]he words 'the adjudication' in the 'unless' clause obviously refer back to the 'adjudicat[ion] on the merits,' and the phrase 'resulted in a decision' in the 'unless' clause obviously refers to the decision produced *by that same adjudication on the merits*." *Greene*, 565 U.S. at 39-40 (third alteration in original). "A later affirmance of that decision on alternative procedural grounds, for example, would not be a decision *resulting from* the merits adjudication. And much less would be (what is at issue here) a decision by the state supreme court not to hear the appeal—that is, not to decide at all." *Id.* at 40.

In fact, "a discretionary denial of leave to appeal does not typically entail an 'adjudication' of the underlying claim's 'merits' under AEDPA's terms. Instead, it usually represents 'a decision by the state supreme court not to hear the appeal—that is, not to decide at all." *Davenport*, 596 U.S. at 141-42 (quoting *Greene*, 565 U.S. at 40). For this reason, this Court has

long treated lower court decisions "as the relevant AEDPA adjudication despite discretionary denials of review by the State Supreme Court." *Davenport*, 596 U.S. at 142 (citing *Woods v. Donald*, 575 U.S. 312, 314-15, 317 (2015) (per curiam); *Burt v. Titlow*, 571 U.S. 12, 20 (2013); *Lafler v. Cooper*, 566 U.S. 156, 161, 173 (2012)).

Here, having believed that the Washington Supreme Court applied only a procedural rule, the Ninth Circuit then concluded that no state court merits adjudication existed. App. 3a-4a n.1. This conclusion conflicts with the holdings of this Court and fails to give respect to the lower state court's express application of *Strickland* in resolving the claim.

The Washington Court of Appeals expressly cited *Strickland*, applied the two-prong standard clearly established by this Court, and never cited to the *Rice* decision or otherwise indicated that it was applying a procedural rule rather than addressing the merits. App. 55a. The state court of appeals concluded that the Wellers did not prove deficient representation or prejudice. App. 55a. Thus, even if the Washington Supreme Court applied a procedural rule in denying discretionary review, the lower court adjudicated the merits of the federal claim.

The Ninth Circuit, however, refused to look past the Washington Supreme Court's ruling to the lower court ruling. App. 3a n.1. The Ninth Circuit admitted "the Court of Appeals' decision did not 'clearly and expressly' cite *Rice* as the grounds for its denial of the Wellers' petition," but the circuit court

still refused to recognize the merits adjudication. Instead, the Ninth Circuit ruled that the state supreme court construed the lower court decision as imposing a procedural bar simply because the commissioner stated the lower court's "reasoning was 'consistent with this court's holding in *Rice* regarding a petitioner's evidentiary burden.'" App. 3a-4a n.1. Finding itself "bound" by this supposed state court conclusion, the Ninth Circuit ruled that "there is no independent adjudication on the merits in the state court record for us to consider." App. 4a n.1. But the fact that the state supreme court declined to review the lower court decision because it was "consistent with" a state procedural rule does not mean the lower state court never adjudicated the merits of the claim. At most, it represents "a decision by the state supreme court not to hear the appeal—that is, not to decide at all." *Davenport*, 596 U.S. at 141-42 (quoting *Greene*, 565 U.S. at 40). The Ninth Circuit's failure to even acknowledge the lower court's merits adjudication violates 28 U.S.C. § 2254(d).

E. The Ninth Circuit Failed to Apply the Requirements of 28 U.S.C. § 2254(e)(2)

After erroneously concluding that the state courts applied only a state "adequate briefing" rule, the Ninth Circuit then reached the inherently contradictory conclusion that 28 U.S.C. § 2254(e)(2) is inapplicable here because the Wellers did not "fail to develop" the evidence in state court. App. 6a-7a. However, the Wellers cannot have it both ways. If the state appellate courts in fact applied a state procedural rule because the Wellers failed to adequately support their claim with the evidence necessary to prove it, then the Wellers did "fail to

develop" the record and the fault lies with them. Such a procedural default necessarily means the Wellers failed to develop the record for purposes of 28 U.S.C. § 2254(e)(2).

As argued above, 28 U.S.C. § 2254(d) applies here because the state courts adjudicated the merits of the claim. In addition to imposing a deferential standard of review, that statute limits the factual scope of review "to the record that was before the state court that adjudicated the claim on the merits." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011). "[T]he record under review is limited to the record in existence at that same time *i.e.*, the record before the state court." *Id.* at 182. But even if 28 U.S.C. § 2254(d) does not apply here, then 28 U.S.C. § 2254(e)(2) still bars the presentation of new evidence to support the claim because the Wellers failed to first develop the evidence in state court. *Williams*, 529 U.S. at 430. The statute focuses "not on 'preserving the opportunity' for hearings . . . but rather on *limiting* the discretion of federal district courts in holding hearings." *Pinholster*, 563 U.S. at 185 n.8.

The Ninth Circuit essentially concluded that because the Wellers acted pro se and did not act negligently, they did not "fail to develop" the record in state court. App. 6a-7a. This conclusion directly conflicts with this Court's recent precedent. *See Ramirez*, 596 U.S. at 378 (in presenting a claim to the state courts, the petitioner must comply with the state procedural rules). The statute applies where there is a "'lack of diligence, or some greater fault, attributable to the prisoner or the prisoner's counsel.'" *Id.* at 383 (emphasis omitted) (quoting *Williams*, 529 U.S. at 432). Thus, regardless of whether a

petitioner acts with counsel, or acts pro se and without resources, the petitioner's failings are attributable to the petitioner.

Here, the Wellers failed to present their new evidence to the state court. Having failed to develop the evidence in state court, the Wellers may not present the new evidence in federal court because they do not satisfy 28 U.S.C. § 2254(e)(2). *Shoop v. Twyford*, 596 U.S. 811, 819-20 (2022) ("although state prisoners may occasionally submit new evidence in federal court, 'AEDPA's statutory scheme is designed to strongly discourage them from doing so.'" (quoting *Pinholster*, 563 U.S. at 186)). A federal court may not disregard the statute, even if the court believes equitable reasons exist for the development of new evidence. *Ramirez*, 596 U.S. at 384. Equity does not allow the court to disregard the statute. *Id.* at 385.

"To be sure, *Martinez* recognized that state prisoners often need 'evidence outside the trial record' to support their trial-ineffective-assistance claims.... But *Martinez* did not prescribe largely unbounded access to new evidence whenever postconviction counsel is ineffective . . . ." *Ramirez*, 596 U.S. at 387 (citation omitted). Rather, *Martinez* recognized "its 'holding . . . ought not to put a significant strain on state resources,' because a State 'faced with the question whether there is cause for an apparent default . . . may answer' that the defaulted claim 'is wholly without factual support.'" *Ramirez*, 596 U.S. at 387-88 (alterations in original) (quoting *Martinez*, 566 U.S. at 15-16). "That assurance has bite only if the State can rely on the state-court record. Otherwise, 'federal habeas courts would routinely be

required to hold evidentiary hearings to determine' whether state postconviction counsel's factfinding fell short." *Ramirez*, 596 U.S. at 388 (quoting *Murray v. Carrier*, 477 U.S. 478, 487 (1986)).

To end unnecessary federal court proceedings, this Court reaffirmed that "when a federal habeas court convenes an evidentiary hearing for any purpose, or otherwise admits or reviews new evidence for any purpose, it may not consider that evidence on the merits of a negligent prisoner's defaulted claim unless the exceptions in § 2254(e)(2) are satisfied." *Ramirez*, 596 U.S at 389. Doing so, the Court expressly rejected the argument made by habeas petitioners, including the Wellers, that application of the statute renders *Martinez* "a nullity" as "there is no point in developing a record for cause and prejudice if a federal court cannot later consider that evidence on the merits." *Id.* Rejecting this argument, this Court agreed that while "any such *Martinez* hearing would serve no purpose, that is a reason to dispense with *Martinez* hearings altogether, not to set § 2254(e)(2) aside." *Id.* Thus, if the petitioner cannot satisfy the "'stringent requirements'" of the statute, "a federal court may not hold an evidentiary hearing—or otherwise consider new evidence—to assess cause and prejudice under *Martinez*." *Id.* (citation omitted).

The Wellers have never attempted to satisfy the requirements of 28 U.S.C. § 2254(e)(2). The statute does apply to the Wellers, and it bars any further factual development in this case. The Ninth Circuit erred in disregarding the statute and directing the district court to hold an evidentiary hearing in this case.

CONCLUSION

Given the clear error committed by the Ninth Circuit, and the conflict the decision here poses with the decisions of this Court and other courts, this Court should grant certiorari and summarily reverse the decision below.

RESPECTFULLY SUBMITTED.

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