No. _____

IN THE SUPREME COURT OF THE UNITED STATES

_____

NICHOLAS ACKLIN,

Petitioner,

v.

JOHN Q. HAMM, COMMISSIONER, ALABAMA DEPARTMENT OF CORRECTIONS, *ET AL.*,

Respondents.

_____

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

_____

CAPITAL CASE

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

This is a death penalty case from Alabama in which the following occurred:

(1) the defense attorney was being paid in substantial part by the defendant's father;

(2) the attorney learned before trial that the defendant had been abused as a child by his father—the same person paying the attorney;

(3) the defendant's father told the attorney that he would be "done with helping with this case" if the attorney presented evidence of the abuse as mitigation at trial;

(4) the attorney never informed the defendant or the court of any conflict of interest and instead privately obtained a signed document from the defendant agreeing to forego any use of the abuse evidence;

(5) the attorney then called the father to testify at trial that the defendant was raised in a supportive home; and

(6) the trial court expressly relied on the father's testimony that the defendant had a positive upbringing when imposing the death penalty.

The state appellate court held that the attorney did not have an actual conflict of interest, and therefore the defendant was not denied his constitutional right to effective, conflict-free counsel. On habeas review, the Eleventh Circuit held that the state court's decision was not unreasonable under 28 U.S.C. § 2254(d). The question presented is this:

> In the extraordinary circumstances of this death penalty case, was it unreasonable for the state court to conclude that the defense attorney did not have an actual conflict of interest?

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PARTIES TO THE PROCEEDING

Petitioner Nicholas Acklin was the appellant in the proceedings below. Respondents John Hamm, the Commissioner of the Alabama Department of Corrections, and Terry Raybon, the Warden of Holman Correctional Facility, were the appellees in the proceedings below.

LIST OF RELATED PROCEEDINGS

Trial and Direct Appeal

State v. Acklin, Madison Cty. No. CC-97-162.00 (Nov. 6, 1998)

Acklin v. State, Ala. Crim. App. No. CR-98-0330 (Apr. 28, 2000)

Ex parte Acklin, Ala. No. 1991908 (Jan. 12, 2001)

Acklin v. Alabama, U.S. No. 00-9772 (June 25, 2001)

State Post-Conviction Proceedings

State v. Acklin, Madison Cty. No. CC-97-162.60 (Apr. 8, 2015)

Acklin v. State, Ala. Crim. App. No. CR-14-1011 (Dec. 15, 2017)

Ex parte Acklin, Ala. No. 1170677 (June 15, 2018)

Acklin v. Alabama, U.S. No. 18-640 (Mar. 25, 2019)

Federal Habeas Corpus Proceedings

Acklin v. Dunn, et al., N.D. Ala. No. 5:18-cv-885 (Sept. 30, 2021)

Acklin v. Comm., Ala. Dep't of Corr., *et al.*, 11th Cir. No. 22-13599 (Dec. 12, 2024)

PETITION FOR WRIT OF CERTIORARI

Petitioner Nicholas Acklin respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The decision of the Eleventh Circuit affirming the denial of federal habeas corpus relief is unpublished but available at 2024 WL 5087460. *See* App. 1a-24a. The opinion of the district court denying federal habeas corpus relief is available at 2021 WL 4477632. *See* App. 31a-84a. The district court's order denying Acklin's motion to alter or amend the judgment is unpublished but reproduced in the appendix at 27a-30a. The decision of the Alabama Court of Criminal Appeals affirming the denial of post-conviction relief is reported at 266 So. 3d 89. *See* App. 85a-110a. The order of the Madison County Circuit Court denying post-conviction relief is unpublished but reproduced in the appendix at 111a-155a.

JURISDICTION

The judgment of the Eleventh Circuit was entered on December 12, 2024. Acklin filed a timely motion for reconsideration, which the Eleventh Circuit denied on March 13, 2025. *See* App. 25a-26a. On April 29, 2025, Justice Thomas extended the time for filing this petition to July 11, 2025. *See Acklin v. Hamm, Comm., et al.*, No. 24A1040 (Apr. 29, 2025). This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT CONSTITUTIONAL 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."

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

INTRODUCTION

Two days before Petitioner Nicholas Acklin's capital trial, defense attorney Behrouz Rahmati learned that Acklin had been abused as a child by his father, Ted. Rahmati recognized that evidence of the abuse could be significant as mitigation. But Ted, who was paying for the representation, told Rahmati that if such evidence were presented, he would be "done with helping with this case." Vol. 40, P.R. 118. After Ted issued this threat, Rahmati did not inform Acklin or the court that he had a conflict of interest. Instead, he privately obtained a waiver of the abuse evidence from Acklin and then called Ted to testify that Acklin was raised in a supportive home. Rahmati knew that Ted's testimony was inaccurate, yet he presented it anyway. And when the trial court relied on Ted's account of Acklin's positive upbringing when imposing a death sentence, Rahmati did not object.

Acklin had a constitutional right to effective, conflict-free counsel, *Strickland v. Washington*, 466 U.S. 668, 686 (1984), *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980), and he was denied that right. It would be difficult to imagine a more blatant

conflict of interest involving a third-party payer than the one presented in this capital case. Yet the state court and the Eleventh Circuit declined to acknowledge any conflict and held that Rahmati provided effective assistance. *See* App. 13a-20a (Eleventh Circuit); App. 95a-101a (state court).

This Court's intervention is necessary to protect Acklin's right to effective, conflict-free counsel and to prevent the decision below from setting a dangerous example for attorneys who encounter conflicts of interest.

STATEMENT OF THE CASE

A. Pretrial Proceedings

Nicholas Acklin[1] and two other defendants were charged with capital murder for causing the deaths of Charles Hemphill, Michael Beaudette, Johnny Couch, and Brian Carter pursuant to a single scheme or course of conduct. *See* Ala. Code § 13A-5-40(a)(10). The trial court summarized the State's evidence as follows:

> Late on the night of September 25, 1996, Nicholas Bernard Acklin and two companions, all heavily armed, entered the home of Ashley Rutherford on University Drive in Huntsville, Madison County, Alabama. Acklin, Joseph Wilson, and Corey Johnson held seven people at gunpoint in a 13' x 18' room and for nearly two hours assaulted, tortured, and humiliated them. Then, shortly before midnight, Acklin and Wilson fired 19 rounds of 9mm ammunition, shooting 6 of the 7 victims in or about the head. Four of the six victims died, two survived the shooting, and one victim escaped.

Vol. 2, T.C. 280.[2]

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[1] This petition generally refers to Nicholas Acklin as "Acklin," but at times it refers to him as "Nicholas" or "Nick" to distinguish him from his father or to avoid altering quotations.

[2] "Vol.__" refers to the volume of the 49-volume state court record manually filed in the district court. Doc. 14. "T.R." and "T.C." refer to the reporter's transcript and clerk's record compiled and certified for the direct appeal. "P.R." and "P.C." refer to the reporter's transcript and clerk's record compiled

Five days after the offense, attorney Behrouz Rahmati met with Acklin's mother, Velma Acklin Evans, and agreed to represent Acklin. Vol. 39, P.R. 13-15.[3] Rahmati and Velma signed an agreement providing for a $25,000 retainer and a fee of $150 per hour. Vol. 36, P.C. 4235-36. It soon became clear that Velma was unable to pay for Rahmati's services. A year after the agreement was signed, she had paid only $1,200 of the $25,000 retainer. Vol. 36, P.C. 4240; Vol. 40, P.R. 32-40.

Recognizing that Velma would be unable to pay him in full, Rahmati contacted Theodis ("Ted") Acklin, Nicholas's father, for help with his fees. Vol. 40, P.R. 55-57; Vol. 36, P.C. 4260. In March 1998, Ted paid Rahmati $700. Vol. 36, P.C. 4260. As the October 1998 trial date approached, Ted increased his contributions significantly and became Rahmati's primary source of funds. He paid more to Rahmati in the month before the trial than Velma had paid in the previous two years. Vol. 36, P.C. 4270; Vol. 40, P.R. 80.

On October 17, 1998—two days before the trial was set to begin—Rahmati met with Velma alone. Vol. 40, P.R. 109; Vol. 36, P.C. 4253. Velma told Rahmati that Ted had severely abused her and their children, including Nicholas. Vol. 40, P.R. 113-16. Specifically, Velma informed Rahmati that "if [Ted] was mad at the kids, he would hold them down, put a gun to them, threaten to shoot them, threaten to kill them." Vol. 40, P.R. 116. She also explained that "there was lots of physical

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and certified for the state post-conviction appeal. "Doc.__ at __" refers to the docket entry and page number of documents filed in the district court.

[3] Kevin Gray, a recent law school graduate who worked with Rahmati, served as second-chair counsel. *See* Vol. 41, P.R. 277, 280.

and verbal abuse," including an incident in which Ted "shoved her out of the window" of the house and "she fell to the ground." Vol. 40, P.R. 114.

Rahmati believed Velma's account of the abuse, and he recognized that evidence of the abuse could serve as valuable mitigation. Vol. 40, P.R. 117-20. As he explained later, "I think any human being that listens to kids growing up in that environment could feel like maybe they turned out the way they did because of that, and so they [the jurors] could possibly find some sympathy." Vol. 40, P.R. 117. The information from Velma was particularly important because Rahmati expected that Acklin's case would reach a penalty phase: "[T]here was a high probability, I should say, that we were going to be having a sentencing phase." Vol. 40, P.R. 93; *see also* Vol. 41, P.R. 290-91.

Rahmati did not initially discuss Velma's disclosure with Acklin. Instead, Rahmati first met with Ted to ask him about the abuse. Vol. 40, P.R. 109-12, 117-18. As Rahmati recalled later, "I told [Ted] that I had learned about the – or that [Velma] had told us about the physical and the mental abuse, more or less at his hands to paraphrase, that he had put Nick through and [Velma] through and the brothers through." Vol. 40, P.R. 110.

Ted was enraged. Vol. 40, P.R. 111-12, 118. He "literally stood up," and he "took a very aggressive posture" toward Rahmati. Vol. 40, P.R. 111-12. As Rahmati recalled: "[Ted] literally got up as he started hearing what I was saying about what [Velma] had said. He literally stood up, and he was like, 'I can't believe they are doing this,' or 'They are going there,' something to that effect. Visibly, he was

angry, and he said, 'You tell Nick if he wants to go down this road, I'm done with him,' to that extent." Vol. 40, P.R. 112. Rahmati further explained: "[Ted] told me to tell Nick he's done with Nick, he's done with helping with this case, and got up." Vol. 40, P.R. 118. Ted then stormed out of the office. Vol. 40, P.R. 118.

Following Ted's threat to be "done with Nick" and "done with helping with this case" if the defense were to "go down this road," Rahmati did not disclose to anyone that he had a conflict of interest. He also did not investigate the abuse further, seek a continuance, or alert the trial court of the situation. Instead, he disposed of the issue immediately, without telling the court. Within thirty-six hours of Ted's threat, Rahmati met with Acklin, told him that the evidence could be helpful, told him what Ted had said, and had him sign a typewritten document stating that he did not want evidence of the abuse presented at trial. Vol. 40, P.R. 182-84; Vol. 39, P.C. 4978. The document does not say anything about a conflict of interest, the third-party payer arrangement, or Ted's threat to Rahmati. Vol. 39, P.C. 4978.

B. Trial Proceedings

The guilt phase of Acklin's trial lasted five days. After the presentation of evidence, the jury found Acklin guilty of capital murder. Vol. 10, T.R. 937.[4]

[4] Joseph Wilson, the "ringleader" in the offense according to the prosecution, Vol. 10, T.R. 859, went to trial before Acklin. He was convicted, the jury voted unanimously for death, and the trial court imposed a death sentence. *Wilson v. State*, 777 So. 2d 856, 874 (Ala. Crim. App. 1999). The other defendant in the case, Corey Johnson, entered a guilty plea and was sentenced to 15 years in prison. *State v. Johnson*, Madison Cty. No. CC-97-163.00 (Nov. 2, 1998).

At the penalty phase, Rahmati called Ted to testify about Acklin's upbringing. Vol. 10, T.R. 964-70. Ted testified: "I had to look back over my life and ask, where did I go wrong? Nicholas was raised in a God-fearing home. His mother, Velma, and I took him to church, he sang in the youth choir, he ushered. He was a good kid and I guess with me being a father who really, I guess overly protective, really a father who loves his children." Vol. 10, T.R. 967. Rahmati asked Ted whether he ever had to discipline Nicholas; Ted replied, "We didn't have that problem." Vol. 10, T.R. 968-69. Rahmati also called several other witnesses to testify that Nicholas Acklin had a peaceful disposition and had expressed remorse regarding the offense. Vol. 10, T.R. 953-75. When Velma testified, she apologized to the victims' families and asked the jury to return a life sentence; Rahmati did not ask her any questions about Acklin's childhood. Vol. 10, T.R. 973-75. Following closing arguments, the jury voted ten to two for a death sentence. Vol. 10, T.R. 1018.

Two weeks later, the trial court held a judicial sentencing proceeding. Rahmati called Ted as his only witness. Vol. 10, T.R. 1025-28. Ted reiterated that his son Nicholas "was raised in a Christian home, Protestant ethics, hard work, good values, to love and respect others," but "[s]omehow he slipped." Vol. 10, T.R. 1026. The trial court imposed a death sentence, and in doing so, it distinguished the "clearly good" parenting that Acklin supposedly had from the kind of "abuse" and "dysfunction" that could serve as mitigation. Vol. 10, T.R. 1044. The court stated:

> This Court was impressed with the sincerity of the testimony by the defendant's mother and father. They are clearly good people and tried to do the right thing in raising him. However, the Court does not find this to be a mitigating circumstance. Most killers are typically the products of poverty, a dysfunctional family, physical or sexual abuse and/or social deprivation. Acklin was the product of a loving middle-class family. Acklin was exposed to all of the values that are central to an ordered society; however, he chose to reject them.

Vol. 2, T.C. 294; *see also* Vol. 10, T.R. 1044. Rahmati knew that these statements were inaccurate. He later testified, "I really couldn't [agree], based on what I knew." Vol. 40, P.R. 151. But he did not object. After the sentencing proceeding, he continued to seek additional payment from Ted. *See* Vol. 36, P.C. 4280-86 (seven letters requesting payment).

The Alabama Court of Criminal Appeals affirmed Acklin's conviction and death sentence on direct appeal. *Acklin v. State*, 790 So. 2d 975, 1012 (Ala. Crim. App. 2000). The Alabama Supreme Court and this Court denied certiorari. *Ex parte Acklin*, 790 So. 2d 1012 (Ala. 2001); *Acklin v. Alabama*, 533 U.S. 936 (2001).

C. State Post-Conviction Proceedings

In his state post-conviction ("Rule 32") petition, Acklin alleged, among other claims, that Rahmati had a conflict of interest with respect to the penalty phase due to Ted's threat to stop paying for the representation if the defense presented evidence of the abuse. Vol. 25, P.C. 2011-2186; Vol. 28, P.C. 2721-25. In addition to establishing the facts set forth above regarding the payments, Velma's revelation of the abuse, and Rahmati's response, Acklin presented testimony and records confirming that the abuse had occurred.

The post-conviction evidence stands in stark contrast to the trial court's positive findings about Acklin's childhood. Velma testified that Ted routinely beat her and threatened her at gunpoint in front of the children. She explained: "He would have a gun in his hand, and he would be shaking it, and he would just shove it down my mouth." Vol. 40, P.R. 219. Her son Nicholas and his brothers "would be screaming, telling their dad not to hurt their mom." Vol. 40, P.R. 220. Velma described multiple other incidents of violence, including one fight with Ted involving a rifle, which ended with Velma falling out of a second-floor window. *See* Vol. 41, P.R. 226 ("We was pulling back and forth with the gun, and all I remember, I was going in the bathroom and out the deck."). That incident was corroborated by records from Huntsville Hospital, which show that Velma had fallen from a second-floor window and was unconscious at the scene. Vol. 36, P.C. 4303-05. Velma also described Ted's violence toward the children, which involved threats and beatings with belts, switches, and guns. *See* Vol. 40, P.R. 214; Vol. 41, P.R. 272-74.

Steve Acklin, Nicholas Acklin's brother, testified that Ted "whipp[ed]" the children with belts, "choked them" until they "couldn't breathe," and threatened them with guns. Vol. 42, P.R. 512, 514. Steve recalled: "[Ted] would come into the room – and most of the time me and my brother were together, and he would come in, right before he disciplines with the belt, and have the gun in hand and tell us he will kill all of us and kill himself." Vol. 42, P.R. 512. Records from the Alabama Department of Human Resources, a state agency that responds to reports of child abuse, confirm Steve Acklin's testimony. The Department once investigated an

incident in which Ted admitted to threatening his sons with a gun and stating, "I brought you into this world and I can take you out." *See* Vol. 38, P.C. 4694-95.

Following the hearing, the Rule 32 circuit court denied relief. Vol. 34, P.C. 3995-Vol. 35, P.C. 4039. The Alabama Court of Criminal Appeals affirmed that ruling. *Acklin v. State*, 266 So. 3d 89, 121 (Ala. Crim. App. 2017) (App. 85-110a). In its decision, the Court of Criminal Appeals held that the circuit court did not err in finding that "Acklin presented no evidence that his father threatened to not pay trial counsel if they presented evidence that he was abusive during the penalty phase." App. 98a. The Court of Criminal Appeals further held that even if Ted had threatened not to pay Rahmati, there was no conflict of interest because Rahmati did not expect to be paid in full, Rahmati worked diligently on the case, and Acklin signed the typewritten waiver agreeing not to present evidence of the abuse. App 97a-98a. The Alabama Supreme Court denied certiorari, as did this Court. *See Acklin v. Alabama*, 586 U.S. 1247 (2019).

D. Federal Habeas Proceedings

In his federal habeas petition, Acklin argued that he was denied his right to effective, conflict-free counsel at the penalty phase of his trial and that the decision of the Alabama Court of Criminal Appeals was based on an unreasonable determination of the facts and an unreasonable application of federal law. Doc. 1 at 16-33. The district court denied relief, App. 31a-84a, and the Eleventh Circuit affirmed. Specifically, the Eleventh Circuit concluded that "[i]t was plausible for the state appellate court to read Ted's threat . . . directed to Acklin as withdrawing

his emotional support and help with the mitigation case, rather than his help with paying trial counsel." App. 17a. The court also found that Rahmati "diligently represent[ed]" Acklin and "had already given up on full payment by th[e] time" Ted issued his treat. App. 18a-19a. Addressing the waiver, the Eleventh Circuit concluded that the state court was not unreasonable in determining that Rahmati "would've readily presented the domestic abuse evidence but for Acklin's express instruction not to." App. 19a.[5]

In a concurring opinion, Judge Wilson disagreed with the court's analysis of the conflict issue. He concluded that Rahmati had a conflict of interest because a "third-party payor . . . had significant access to counsel, influenced what evidence was presented at trial, and was relied on during crucial moments of the trial and sentencing, despite multiple allegations that Ted (the payor) abused Acklin and his family members." App. 21a. As Judge Wilson explained, the record "strongly suggests that Rahmati placed not only his own interests, but Ted's interests, before the interests of his client—Acklin." App. 21a. For example, Rahmati "did not investigate" the allegations further and then "relied heavily on Ted, the alleged abuser, during both the trial and at sentencing." App. 21a-22a. Judge Wilson also stated that Rahmati "should have at least disclosed the conflict and then obtained a valid waiver of Acklin's right to conflict-free counsel," but instead, Rahmati "did neither." App. 22a. For these reasons, Judge Wilson would have found "that

[5] In a footnote, the court stated that it was not unreasonable for the state court to conclude that there was "no reasonable probability of a different result if trial counsel presented evidence of Ted's abuse." App. 23a.

Rahmati was deficient because of the conflict." App. 22a. However, he concurred in the result because he believed that Acklin could not establish prejudice. App. 22a.

REASONS FOR GRANTING THE WRIT

This case presents a conflict-of-interest issue involving the most severe of circumstances—a capital trial in which the defense attorney's conflict led the jury and the trial court to rely on a fundamental misunderstanding of the defendant's life history. This Court should grant certiorari to protect Petitioner Acklin's right to effective, conflict-free counsel and to ensure that the decision below does not provide the wrong guidance for practicing attorneys, who have a duty to avoid conflicts of interest.

I. The Decision Below Is Wrong Because Under Any Reasonable Analysis, Acklin's Attorney Rendered Ineffective Assistance of Counsel Due to a Conflict of Interest.

The Sixth Amendment guarantees criminal defendants the right to the effective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a criminal defendant is denied that right when (1) his counsel performed deficiently, and (2) the deficient performance resulted in prejudice. *Id.* at 688, 694. "One type of actual ineffectiveness claim" arises where counsel has an actual conflict of interest, *id.* at 692, meaning a conflict that "adversely affected [the] lawyer's performance," *Cuyler v. Sullivan*, 446 U.S. 335, 348 (1980). When counsel has a conflict, he "breaches the duty of loyalty, perhaps the most basic of counsel's duties," and as a result, this Court has adopted a "fairly rigid rule of presumed prejudice for conflicts of interest." *Strickland*, 466 U.S. at 692.

Otherwise, a defendant alleging ineffectiveness must establish "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694.

In this case, Rahmati had a blatant conflict: Ted, who was paying for the representation, said that he would be "done with helping with this case" if the defense presented evidence that he had abused his family. Yet Rahmati never acknowledged or disclosed any conflict. Instead, he repeatedly took steps that benefitted Ted and harmed Acklin, including presenting testimony from Ted that Acklin was raised in a supportive home—testimony on which the trial court relied explicitly when imposing a death sentence. The state appellate court denied the existence of a conflict and held that Rahmati performed effectively. App. 91a-101a. That decision, however, was based on unreasonable factual determinations and involved an unreasonable application of *Strickland* and *Sullivan*. If the state court had recognized the conflict, it would have applied a presumption of prejudice, *see* App. 96a, but even without a presumption, the conflict here was prejudicial because Rahmati presented evidence that was affirmatively misleading and damaging. Acklin is entitled to habeas corpus relief under 28 U.S.C. § 2254(d), and the Eleventh Circuit's decision to the contrary warrants reversal.

A. Acklin's Attorney Had an Actual Conflict of Interest.

This Court has made clear that a criminal defense attorney has "a duty to avoid conflicts of interest," *Strickland*, 466 U.S. at 688, and a duty "to advise the court promptly when a conflict of interest arises." *Sullivan*, 446 U.S. at 346; *see also Holloway v. Arkansas*, 435 U.S. 475, 485-86 (1978) (same principle). Those

duties are particularly important in the context of third-party payer arrangements, which create the risk that an attorney may be "influenced in his basic strategic decisions by the interests of the [person] who hired him." *Wood v. Georgia*, 450 U.S. 261, 272 (1981).

Under any reasonable reading of the record, Rahmati had a conflict of interest. The state court denied the existence of a conflict because it found that there was "no evidence that [Acklin's] father threatened to not pay trial counsel if they presented evidence that he was abusive during the penalty phase." App. 98a. But Ted explicitly told counsel that he would be "done with helping with this case" if Rahmati presented evidence of the abuse. Vol. 40, P.R. 118. The state court's determination was unreasonable under § 2254(d)(2), and it affects the entire analysis. *See Wiggins v. Smith*, 539 U.S. 510, 528 (2003) (holding the state court unreasonably determined facts when it found that records contained evidence of sexual abuse even though the records did not contain any such evidence). The state court also engaged in an unreasonable application of *Strickland* and *Sullivan* by failing to recognize a conflict that is "beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011).

In defending the state court's decision, the Eleventh Circuit offered four explanations for why the circumstances did not present an actual conflict of interest for Rahmati. None of the four can withstand scrutiny.

First, the Eleventh Circuit held that it was reasonable for the state court to conclude that when Ted said that he would be "done with helping with this case" if

evidence of the abuse were presented, he did not necessarily mean that he would stop paying Rahmati. App. 16a-17a. In the Eleventh Circuit's view, Ted "was helping Acklin in ways that had nothing to do with paying for the representation," App. 17a, so he could have meant that he would be "done" helping with other parts of the case but still would continue to support the case financially. The problem is that Ted did not say that he would be "done" helping with the case in some ways but not others. Instead, he said without qualification that he would be "done with helping with this case." The phrase "done with helping with this case" means "done with helping with this case"—there is no reasonable way around that. Moreover, the Eleventh Circuit's alternate interpretation is implausible given the context in which the statement was made. Ted made his threat while taking a "very aggressive posture" toward Rahmati, and immediately afterward, he stormed out of Rahmati's office. Vol. 40, P.R. 111-12, 118. No reasonable attorney in Rahmati's shoes would think that he could then go to court, present evidence that Ted had abused his children, and continue to obtain payment from Ted.

Second, the Eleventh Circuit held that it was reasonable for the state court to conclude that Rahmati did not have a conflict because he did not expect to be paid the full amount that he was "owed for the representation." App. 17a. This is a red herring. It does not make any difference whether Rahmati expected to be paid *in full*. He clearly hoped to be paid additional money by Ted, as reflected by the fact that he sent seven letters to Ted seeking further payment after the threat was made. Vol. 36, P.C. 4280-86. Whether Rahmati hoped to receive $2,000 more or

$20,000 more, he was unquestionably trying to obtain additional payment from the third-party payer who had threatened to be "done with helping with this case" if certain evidence was presented. This was as clear a financial conflict as an attorney can possibly have. *See* App. 21a (Judge Wilson stating, "I agree with Acklin that a conflict emerged").

Third, the Eleventh Circuit held that even if a conflict arose, it was reasonable for the state court to conclude that the conflict did not have an adverse effect on the representation Acklin received. App. 18a-19a. The court justified that holding primarily by claiming that Rahmati did "exhaustive work" on the case *before Ted made his threat*. App. 18a. Specifically, the court cited a litany of tasks that Rahmati completed long before the threat was made. App. 18a-19a. But the relevant question is what Rahmati did *after Ted made his threat*, which was when the conflict arose. As Judge Wilson noted in his concurrence, Rahmati responded to Ted's threat by making decisions that benefitted Ted and harmed Acklin:

- "The evidence of abuse suggested a need for further investigation, but Rahmati did not investigate."
- "The meeting between Rahmati and Acklin [where Rahmati obtained the waiver of the abuse evidence] strongly suggests that Rahmati placed not only his own interests, but Ted's interests, before the interests of his client—Acklin."
- "Rahmati took an alarming action after securing the waiver. Despite his knowledge of the abuse . . . Rahmati relied heavily on Ted, the alleged abuser, during both the trial and at sentencing."
- "Rahmati should have at least disclosed the conflict and then obtained a valid waiver of Acklin's right to conflict-free counsel."

App. 21a-22a. Those acts and omissions, which occurred after the conflict emerged, demonstrate the adverse effects of the conflict.

Fourth, the Eleventh Circuit held that it was reasonable for the state court to conclude that any conflict could not have affected the representation because Acklin signed a typewritten waiver of the abuse evidence, and therefore he "wouldn't have let [Rahmati] present the abuse evidence under any circumstances." App. 20a. To be clear, it was Rahmati, the conflicted attorney, who obtained the waiver of the abuse evidence from Acklin. He did so during a private meeting in which he did not disclose his conflict, even though he had not conducted further investigation and the penalty phase was still several days away. Those circumstances undermine the integrity of the waiver. *See Sullivan*, 446 U.S. at 346 (explaining that defense counsel has an obligation "to advise the court promptly when a conflict of interest arises").[6] Moreover, the notion that Acklin would not have allowed the abuse evidence to be presented "under any circumstances" is belied by what actually happened. The moment Acklin obtained conflict-free counsel for his post-conviction proceedings, he raised the issue of the abuse. Vol. 25, P.C. 2011-2186; Vol. 28, 2721-25.

[6] The empirical research regarding conflicts shows precisely why Rahmati's approach was problematic. Even if an individual with a conflict may *believe* that he is acting without bias, "in actuality the automatic bias toward self-interest will often create an error in judgment that favors self-interest, automatically and without conscious awareness." Tigran W. Eldred, *The Psychology of Conflicts of Interest in Criminal Cases*, 58 U. Kan. L. Rev. 43, 69 (2009) (citation omitted). This is why "[t]he human-nature rationale for regulation of potential conflicts of interest accepts that the ability of individuals to rise above their conflicting loyalties . . . is limited." Beth Nolan, *Removing Conflicts from the Administration of Justice*, 79 Geo. L.J. 1, 52 (1990).

In short, what happened in this case is a textbook example of a conflict of interest involving a third-party payer. The state court's decision denying the existence of a conflict was unreasonable, and the Eleventh Circuit erred in its analysis of the issue.

B. The Attorney's Conflict of Interest Was Prejudicial Under Any Standard.

It is "an open question" whether the presumption of prejudice from *Sullivan* should apply outside the context of multiple concurrent representation. *Mickens v. Taylor*, 535 U.S. 162, 176 (2002).[7] However, regardless of whether a prejudice showing is required, it is virtually impossible for a court to evaluate the prejudice resulting from a conflict of interest when it fails to recognize the conflict. If this Court agrees that Rahmati had a conflict—and that the state court's failure to recognize it was unreasonable—it may be appropriate for the Court to remand the matter so that the court below can address prejudice with a proper understanding of the conflict. *See, e.g.*, *McWilliams v. Dunn*, 582 U.S. 183, 200 (2017) (remanding for a prejudice analysis under *Ake v. Oklahoma*, 470 U.S. 68 (1985), because the lower court did not conduct a prejudice analysis that focused on the actual violation at issue); *Andrus v. Texas*, 590 U.S. 806, 824 (2020) (finding that counsel rendered

[7] The Eleventh Circuit explained that it is not unreasonable for a state court to conclude that the presumption of prejudice from *Sullivan* does not apply outside the context of multiple concurrent representation. *See* App. 13a-16a. However, the state court assumed that the presumption of prejudice would apply if a conflict existed, which is consistent with *Sullivan*. *See* App. 96a. The problem with the state court's decision is that it failed to recognize Rahmati's conflict at all. *See* Part I(A).

deficient performance and remanding for further proceedings because "there [was] a significant question whether the [state court] properly considered prejudice").

With or without a presumption of prejudice, Rahmati's conflict was prejudicial. Mitigation was everything in this capital case—and Rahmati knew it. Prior to trial, he knew there was "a high probability" that the case would reach a penalty phase, given the strength of the State's evidence. Vol. 40, P.R. 93. And at trial, he acknowledged to the jury that it was "a tough case" involving difficult facts. Vol. 10, T.R. 875. Yet when the penalty phase arrived, he presented affirmatively misleading evidence that Acklin had a positive upbringing while concealing the evidence of abuse. The state court held that "Acklin has not demonstrated any reasonable probability that evidence of the alleged abuse would have altered the trial court's weighing of the aggravating and mitigating circumstances," App. 100a, and the Eleventh Circuit echoed that reasoning, App. 20a, 23a. That analysis was unreasonable and incomplete. The harm here was not simply the omission of the abuse evidence; it was the presentation of affirmatively misleading evidence on which the trial court expressly relied when imposing the death penalty. *See Porter v. McCollum*, 558 U.S. 30, 41 (2009) (holding that the state court's prejudice analysis was unreasonable where "[t]he judge and jury at [the] original sentencing heard almost nothing that would . . . allow them to accurately gauge [the defendant's] moral culpability").

To ensure reliable, individualized sentencing, this Court has held that the defense in a capital case must be permitted to present evidence in support of

"compassionate or mitigating factors stemming from the diverse frailties of humankind." *Woodson v. North Carolina*, 428 U.S. 280, 304 (1976). As this Court has recognized, evidence that a capital defendant was abused as a child can serve as valuable mitigation. *See Wiggins*, 539 U.S. at 535 (explaining that a person's "troubled history" is "relevant to assessing [his] moral culpability"); *see also Williams v. Taylor*, 529 U.S. 362, 396-98 (2000) (similar); *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (similar).[8]

Here, because of Rahmati's conflict, the picture presented at trial was fundamentally different from the reality of Acklin's life. The trial evidence suggested that Acklin was raised in a supportive home and had "a good background." Vol. 10, T.R. 957. Ted testified that he was an "overly protective" parent who loved his children, and that Acklin "was raised in a God-fearing home." Vol. 10, T.R. 967. At the judicial sentencing hearing, Ted reiterated that Acklin "was raised in a Christian home, Protestant ethics, hard work, good values, to love and respect others." Vol. 10, T.R. 1026.

The evidence adduced at the post-conviction hearing, however, "would have destroyed the benign conception of [Acklin's] upbringing." *Rompilla v. Beard*, 545 U.S. 374, 391 (2005). It shows a home in which Ted was constantly threatening or

[8] Much has been written about how and why evidence of childhood abuse affects capital jurors so profoundly. *See, e.g.*, Bryan Stevenson, *Just Mercy* 196-202 (2014); John Blume & Russell Stetler, *Mitigation Matters*, Cornell L. Sch. Legal Stud. Res. Paper Series 39 (2017). In short, when ordinary jurors learn about a defendant being abused as a child, they may view the defendant in a different light, feel compassion, and experience "'the shuddering recognition of a kinship: here but for the grace of God, drop I.'" *Witherspoon v. Illinois*, 391 U.S. 510, 520 n.17 (1968) (quoting Arthur Koestler, *Reflections on a Hanging* 166-67 (1956)).

committing acts of violence against Acklin and the rest of the family. Ted would threaten the children with guns; as Steve Acklin explained, Ted would "have the gun in hand and tell us he will kill all of us and kill himself." Vol. 42, P.R. 512; *see also* Vol. 42, P.R. 517 (explaining that Ted "would line us all up and discipline us one at a time," using either a belt or a gun); Vol. 38, P.C. 4693-95 (records describing multiple instances of the children being "whipped with a belt"). The evidence also shows that Acklin witnessed severe abuse toward Velma. For example, he witnessed incidents in which Ted "would just shove [a gun] down [Velma's] mouth." Vol. 40, P.R. 219; *see also* Vol. 40, P.R. 214. On another occasion, Acklin was home when Ted "wrestl[ed] over" a gun with Velma, resulting in Velma falling out the window. Vol. 41, P.R. 225-26. When Acklin and his siblings observed these incidents, they "would be screaming, telling their dad not to hurt their mom." Vol. 40, P.R. 220.

The contrast between the two evidentiary presentations is striking:

EVIDENCE PRESENTED IN THE TRIAL COURT	EVIDENCE RAHMATI KNEW TO BE TRUE
"Nicholas was raised in a Christian home, Protestant ethics, hard work, good values, to love and respect others. Somehow he slipped . . . ." – *Ted Acklin*	"[Ted] would have a gun in his hand, and he would be shaking it, and he would just shove it down my mouth. . . . [Nicholas and his brothers] would be screaming, telling their dad not to hurt their mom." – *Velma Evans*
"I guess with me being a father who really, I guess overly protective, really a father who loves his children. Nick and I had a relationship, parent-teacher conferences, I took him to the dentist, I took him because that is the relationship I wanted with my son . . . ." – *Ted Acklin*	"[Ted] would come into the room – and most of the time me and [Nicholas] were together, and he would come in, right before he disciplines with the belt, and have the gun in hand and tell us he will kill all of us and kill himself." – *Steve Acklin*[9]

The trial court's sentencing order shows precisely why Rahmati's approach at trial was so damaging. In the order, the trial court noted Ted's "sincerity" and found that Ted "tried to do the right thing in raising" Acklin. Vol. 10, T.R. 1044. The court concluded that while "[m]ost killers are typically the products of poverty, a dysfunctional family, physical or sexual abuse, and/or social deprivation," Acklin

[9] Clockwise from the top left, the quotations in the chart above appear at Vol. 10, T.R. 1026; Vol. 40, P.R. 219-20; Vol. 42, P.R. 512; and Vol. 10, T.R. 967. There was additional evidence of abuse as well; the testimony of Velma Evans and Steve Acklin was corroborated by records from the Alabama Department of Human Resources and Huntsville Hospital. *See* Vol. 36, P.C. 4303-05; Vol. 38, P.C. 4694-95.

was not. Vol. 10, T.R. 1044. The trial court's finding does not reflect a reliable, individualized sentencing calculation based on Nicholas Acklin's actual life. Instead, it reflects a sentencing calculation based on a false narrative created by Acklin's abusive father and the conflicted attorney he was paying. In short, Rahmati's presentation at trial was both factually inaccurate and demonstrably harmful.

Both the state court and the Eleventh Circuit emphasized the severity of the offense when holding that Acklin could not have been prejudiced by Rahmati's actions. App. 20a, 23a (Eleventh Circuit), 100a-101a (state court). But the notion that a death sentence was a foregone conclusion in this case is undermined by what actually happened. This was not a case in which the jury voted unanimously for death. Instead, two jurors voted for life without parole. Vol. 10, T.R. 1018. In most states, that would have eliminated the death penalty as an option, and here, it meant that one more vote for life would have prevented a death recommendation. *See* Ala. Code § 13A-5-46(f). At a minimum, the jury's vote shows that this was a close case at sentencing—a case that could have gone either way depending on the defense's evidence in mitigation.[10]

The prejudice in this case is uniquely clear: the attorney presented misleading evidence, the trial court expressly relied on that evidence, and the jury

[10] This point is further confirmed by the research showing that mitigating evidence, including evidence of childhood abuse, often leads juries to reject the death penalty, even in highly aggravated cases. *See* Russell Stetler, et al., *Mitigation Works: Empirical Evidence of Highly Aggravated Cases Where the Death Penalty Was Rejected at Sentencing*, 51 Hofstra L. Rev. 89 (2022) (identifying more than 600 cases in which juries rejected the death penalty for highly aggravated crimes, including more than 400 cases involving two or more decedents).

nearly rejected the death penalty even without an accurate understanding of Acklin's life history. Acklin respectfully maintains that under a proper analysis, a presumption of prejudice should apply. But even without a presumption, the death sentence in this case should be vacated.

II. The Decision Below Sets a Dangerous Example for Attorneys Who Encounter Conflicts of Interest.

The decision below provides exactly the wrong guidance to practicing attorneys. According to the decision, if a third-party payer threatens to stop helping with a case unless the attorney follows his wishes, the attorney can simply (1) not disclose that he has a conflict, (2) do exactly what the third-party payer demands, even if those demands are inconsistent with the client's interests, and then (3) continue to seek payment from the third-party payer. That approach conflicts with this Court's precedents, the holdings of other courts of appeals, and every prevailing professional norm. If permitted to stand, it would increase problematic conflicts and undermine the protections designed to avoid them.

This Court has recognized the "inherent dangers that arise when a criminal defendant is represented by a lawyer hired and paid by a third party." *Wood*, 450 U.S. at 268-69. In particular, the Court has noted the risk that counsel would refrain from taking "actions contrary to the [payer's] interest," and would be "influenced in his basic strategic decisions by the interests of the [payer] who hired him." *Id.* at 269, 272; *see also Holloway*, 435 U.S. at 490 (noting that "the evil" of an attorney's conflict "is in what the advocate finds himself compelled to *refrain* from doing, not only at trial but also as to possible pretrial plea negotiations and in the

sentencing process").

Consistent with these principles, the courts of appeals have viewed third-party payer arrangements skeptically and often removed counsel in such circumstances. *See, e.g.*, *United States v. Jackson*, 805 F.3d 200, 203 (5th Cir. 2015) (disqualifying counsel because third-party payer arrangement "created further divided loyalties, possibly requiring [counsel] to choose between vigorously representing his client or pleasing the person paying that client's fees"); *United States v. Urutyan*, 564 F.3d 679, 683 (4th Cir. 2009) (disqualifying counsel due to the possibility that counsel would be "acting as an agent of a third party who has interests which are potentially in conflict with those of his client"); *see also, e.g.*, *United States v. Rodriguez Rodriguez*, 929 F.2d 747, 752 (1st Cir. 1991) (ordering evidentiary hearing on claim that "counsel declined to pursue, due to a conflict of interest [resulting from a third-party payer arrangement], the plausible defense strategy of seeking a favorable plea bargain"); *In re Grand Jury Subpoena Served Upon Doe*, 781 F.2d 238, 248 n.6 (2d Cir. 1986) (recognizing that third-party payer arrangements "may subject an attorney to undesirable outside influence, particularly where the attorney is representing clients in criminal matters").

Prevailing professional norms provide similar guidance. *See Strickland*, 466 U.S. at 688 (recognizing that "[p]revailing norms of practice as reflected in the American Bar Association standards and the like . . . are guides to determining what is reasonable"). For example, the Model Rules of Professional Conduct state that there must be "no interference with the lawyer's independence of professional

judgment or with the client-lawyer relationship." ABA Model R. of Prof'l Conduct 1.8(f). The Rules also warn against the "significant risk" that an attorney's representation under these circumstances "will be materially limited by the lawyer's responsibilities to . . . a third person or by a personal interest of the lawyer." ABA Model. R. of Prof'l Conduct 1.7(b). Other guidelines provide identical instructions to attorneys. *See, e.g.*, American Law Institute, *Restatement (Third) of the Law Governing Lawyers* § 134(2) (2000) (providing that a third-party payer cannot "interfere with the lawyer's independence of professional judgment"); ABA Criminal Justice Standards for the Defense Function § 4-1.7(g) ("Defense counsel should not permit a person who . . . pays defense counsel to . . . regulate counsel's professional judgment in rendering such legal services."). As prominent scholars have observed, "in family arrangements in which parents secure counsel for their children . . . , the risk that the lawyer will serve the interests of the paymaster, rather than those of the client, is obvious." Gregory C. Hazard, et al., *The Law of Lawyering* § 13.21, at pp. 13-44 to 13-45 (4th ed. 2015).

Judge Wilson's analysis of the conflict reflects these principles. Judge Wilson explained that the record "strongly suggests that Rahmati placed not only his own interests, but Ted's interests, before the interests of his client—Acklin." App. 21a. As Judge Wilson explained, "Rahmati should have at least disclosed the conflict and then obtained a valid waiver of Acklin's right to conflict-free counsel." App. 22a. Instead, "Rahmati did neither." App. 22a. Making matters worse, "Rahmati took an alarming action" after the conflict emerged: "Rahmati relied heavily on Ted, the

alleged abuser, during both the trial and at sentencing." App. 22a. Judge Wilson then correctly concluded "that Rahmati was deficient because of the conflict." App. 22a.

Yet the Eleventh Circuit charted a different course. According to the decision below, if an attorney paid by a third party discovers evidence that helps the client but harms the payer, the attorney can first go to the payer to obtain permission to present that evidence. When the payer predictably denies permission and threatens to withhold payment, the attorney can go to his client and secure a waiver consistent with the payer's demands *without disclosing that he has a conflict*. In the Eleventh Circuit's view, the attorney has no obligation to inform the court about the conflict, and there is no problem with the conflicted attorney advising the client about the evidence in question. The attorney can then permit the payer to present fraudulent evidence to the court that is harmful to the client but favorable to the payer. That approach cannot be squared with this Court's precedents, the decisions of other courts of appeals, or the prevailing norms of practice. This Court's intervention is necessary.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari. Alternatively, the Court should summarily reverse the decision below.

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