

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JONATHAN BOYER, *Petitioner*,

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY, *Respondent*.

ON WRIT OF CERTIORARI TO THE
COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the requirement set forth in 28 U.S.C. §2254(d)(1) is satisfied when a state court's conclusions regarding one or more of the factors set out in *Barker v. Wingo*, 407 U.S. 514 (1972) is contrary to, or objectively unreasonable in light of controlling Supreme Court precedent or whether the state court's ultimate decision remains subject to deference under §2254(d)(1)?

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jonathan Boyer respectfully requests that the Court grant a writ of certiorari to review the decision of the Fifth Circuit Court of Appeals affirming the denial of his application for habeas relief.

The petitioner is the petitioner and petitioner-appellant in the courts below. The respondent is Darrell Vannoy, the respondent and respondent-appellee in the courts below.

OPINIONS BELOW

The opinion of the Fifth Circuit Court of Appeals affirming the denial of Mr. Boyer's application for writ of habeas corpus is at *Boyer v. Vannoy*, 863 F.3d 428 (5th Cir. 2017)(“*Boyer*”), and is reprinted in the Appendix at App. A.

The opinion of the Fifth Circuit Court of Appeal denying rehearing is at *Boyer v. Vannoy*, 16-30487 (La. 11/9/17), and is reprinted in the Appendix at App. B.

The opinion of the United States district court adopting the Magistrate's Report and Recommendations and denying habeas relief is at *Boyer v. Cain*, 14-CV-914 (WDLA, 3/28/16); 2016 U.S. Dist. LEXIS 41254 and is reprinted in the Appendix at App. C.

The report and recommendation of the magistrate is at *Boyer v. Cain*, 14-CV-914 (WDLA, 1/14/16); 2016 U.S. Dist. LEXIS 41122 and is reprinted in the Appendix at App. D.

JURISDICTION

Petitioner invokes this Court's jurisdiction to grant the Petition for a Writ of Certiorari to the Fifth Circuit Court of Appeal on the basis of 28 U.S.C. § 1254. The Court of Appeal denied Petitioner's appeal on July 17, 2017. The Court of Appeal denied Petitioner's application for rehearing on November 9, 2017. This petition follows timely pursuant to Supreme Court Rule 13.1.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The question presented implicates the following provision of the United States Code:

28 U.S.C. 2254(d): An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

- (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
- (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

A. Introduction

The Court of Appeals for the Fifth Circuit readily found that the state court had misapplied this Court's precedent in failing to weigh against the state the five years of delay in Mr. Boyer's case caused by the State of Louisiana's failure to adequately fund indigent capital defense. However, the circuit court also held that it was barred from granting habeas relief, or even conducting a *de novo* review of the speedy trial question, by operation of 28 U.S.C. §2254(d)(1).

The Court of Appeals held that the requirement of 28 U.S.C. §2254(d)(1) was not satisfied, even where the state court's conclusion regarding one or more of the factors defined in *Barker v. Wingo*, 407 U.S. 514 (1972) was contrary to or objectively unreasonable in light of controlling Supreme Court precedent.

The circuit court's holding is directly contrary to the holding of this Court in *Panetti v. Quarterman*, 551 U.S. 930, 953-954 (2007), that § 2254(d)(1) is satisfied when a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law.

The circuit court's holding as to the application of §2254(d)(1) is contrary to this Court's precedents and the holdings of other courts of appeals and should be reversed.

B. Procedural history at trial and on direct appeal

Mr. Boyer was indicted on one count of first degree murder on June 6, 2002. For the next five years the case was stalled as a result of the State of Louisiana's

failure to adequately fund indigent capital defense. The first degree murder count was amended to one of second degree murder on May 21, 2007 and an additional count of armed robbery, arising from the same incident, was filed on that date. This reduction of the case to a non-capital proceeding resolved the funding impasse. Mr. Boyer raised and preserved his constitutional speedy trial claim in the trial court.

Mr. Boyer's trial began on September 22, 2009. On September 29, 2009, Mr. Boyer, was convicted of one count of second degree murder by a non-unanimous jury and unanimously convicted of armed robbery. He was sentenced to life imprisonment without parole on the murder and a concurrent term of 104 years imprisonment on the armed robbery.

His convictions and sentences were affirmed on direct appeal by Louisiana's Third Circuit Court of Appeal. *State v. Boyer*, 10-693 (La. App. 3 Cir. 02/02/11); 56 So. 3d 1119 *writ denied* 2011-K-769; 78 So. 3d 138. In addressing Mr. Boyer's speedy trial claim, the state court held that the majority of the delay in the case was caused by the lack of funding but refused to weigh that delay against the state as the progression of the prosecution was "out of the State's control". *Id.* at 1145.

Mr. Boyer sought a writ of certiorari from this Court, which was initially granted but then denied as improvidently granted after oral argument. *Boyer v. Louisiana*, 569 U.S. 238 (2013).

No application for state post-conviction relief was filed.

C. Federal habeas proceedings

Mr. Boyer timely sought habeas relief in federal court arguing, *inter alia*, that his federal constitutional right to a speedy trial was denied and that the state court's decision in this regard was contrary to, or involved an unreasonable application of, clearly established Federal law.

In particular, Mr. Boyer argued that the state court's determination that five years of delay caused by the State of Louisiana's failure to provide adequate funding for indigent capital defense should not be weighed against the state in the speedy trial analysis was contrary to, or an unreasonable application of clearly established Federal law. Mr. Boyer argued that as a result of this error, the federal courts should not defer to the state court's decision and that upon *de novo* review, relief should be granted pursuant to *Barker v. Wingo*, 407 U.S. 514 (1972) and its progeny.

On January 14, 2016, the Magistrate Judge recommended denial of Mr. Boyer's request for an evidentiary hearing and of his petition. Mr. Boyer filed objections to the Magistrate's Report and Recommendation. On March 28, 2016 the Magistrate's Report and Recommendation were adopted as written by the district court and habeas relief was denied. A Certificate of Appealability was issued by the district court.

The Court of Appeals for the Fifth Circuit found that the state court had obviously erred and misapplied this Court's precedent in failing to weigh the lack of funding against the state. However, the circuit court further held that the requirement set forth in §2254(d)(1) is not met when the state court's preliminary conclusion as to one of the *Barker* factors is contrary to or objectively unreasonable

in light of controlling Supreme Court precedent but only when the ultimate decision reached by the state court is objectively unreasonable. *Boyer* at 444-45; A-15-6.

The panel majority concluded that while the state court's ultimate decision to deny relief was debatable, it was not objectively unreasonable. *Id.*; A-16. The dissenting judge concluded that the state court's ultimate decision to deny relief was objectively unreasonable and would have granted relief. *Id.* at 457-8; A-25-6.

Mr. Boyer applied for panel rehearing, pointing out that the circuit court's reasoning conflicted with this Court's holding in *Panetti (supra)* that the requirement set forth in § 2254(d)(1) is satisfied when a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law.

On November 9, 2017, rehearing was denied (A-28) without reasons and this application for writ of certiorari timely follows.

REASONS FOR GRANTING THE PETITION

I. This Court should decide whether the requirement set forth in 28 U.S.C. §2254(d)(1) is satisfied when a state court's conclusions regarding one or more of the factors set out in *Barker v. Wingo*, 407 U.S. 514 (1972) is contrary to or objectively unreasonable in light of controlling Supreme Court precedent or whether the state court's ultimate decision remains subject to deference under §2254(d)(1)

A. The Court of Appeals for the Fifth Circuit held that even if the state court's treatment of one of the Barker factors was contrary to or objectively unreasonable in light of controlling Supreme Court precedent, that deference must still be granted under §2254(d)(1)

While finding that the application of the other three *Barker* factors was not objectively unreasonable, the Court of Appeals expressly held that the state court erred in its analysis of the second *Barker* factor. *Boyer* at 444; A-15. The circuit court

held that the lack of funding should have been weighed against the state and that when it failed to do so, the state court misapplied Supreme Court precedent. *Id.* The circuit court later described this as an obvious legal error. *Boyer* at 445; A-16.¹

The circuit court then held that notwithstanding this error, §2254(d)(1) was not satisfied:

Importantly, “the state court’s preliminary conclusions regarding one or more of the factors, even if contrary to or objectively unreasonable in light of controlling Supreme Court precedent, are insufficient to grant habeas relief, so long as we find the ultimate decision reached by the state court not objectively unreasonable.” Here, although the state appellate court erred by failing to weigh the lack of funding against the State in its speedy trial analysis, this error does not satisfy AEDPA’s requirements for habeas relief under 28 U.S.C. § 2254(d)(1).

Boyer at 444-5; A-15-6 (footnote omitted) quoting *Goodrum v. Quarterman* 547 F. 3d 249, 257 (5th Cir. 2008).

Applying §2254(d) deference to the state court’s ultimate decision to deny relief, the majority concluded that fair-minded jurists could disagree on whether the balance of the *Barker* factors resulted in a speedy trial violation and that as a result, §2254(d)(1) could not be satisfied, notwithstanding the state court’s error. *Boyer* at 445; A-16.

¹ The circuit court did not specifically identify whether the state court’s error was contrary to this Court’s precedent or an objectively unreasonable application of that precedent, however, it is clear that the circuit court believed that the error rose to this level. The court contrasted the error with its finding that the state court’s decisions regarding the other three *Barker* factors were not objectively unreasonable; identified this Court’s precedent with quotes from and citations to *Barker*, *Doggett v. United States*, 505 U.S. 647 (1992) and *Vermont v. Brillon*, 556 U.S. 81 (2009); held that the state court misapplied this precedent; and, using the word “importantly” explained that even holdings contrary to or unreasonable applications of Supreme Court precedent could not satisfy §2254(d)(1) if they related to one or more of the factors rather than the ultimate decision. *Boyer* at 444-5. Even if the circuit court were understood to not have reached the question of objective reasonableness, this would be a question to be resolved on remand applying the correct standard and not a reason for denying this petition.

As a result, habeas relief was barred without *de novo* consideration of the balance of the *Barker* factors under a correct application of clearly established federal law. Indeed, in Mr. Boyer's case, no court has ever considered and determined the balance of the *Barker* factors under a correct application of clearly established federal law.

Dissenting, Judge Graves held that even according §2254(d)(1) deference to the state court's ultimate decision, the state court's denial of speedy trial relief was objectively unreasonable and that relief should be granted. *Boyer* at 457-8; A-25-6.

B. The Fifth Circuit's decision decides an important federal question in a way that conflicts with relevant decisions of this court

The circuit court's holding is directly contrary to this Court's holdings on the proper application of §2254(d)(1). In *Panetti*, this Court stated that:

When a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law, the requirement set forth in § 2254(d)(1) is satisfied. A federal court must then resolve the claim without the deference AEDPA otherwise requires. *See Wiggins v. Smith*, 539 U.S. 510, 534, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (2003) (performing the analysis required under *Strickland's* second prong without deferring to the state court's decision because the state court's resolution of *Strickland's* first prong involved an unreasonable application of law); 539 U.S., at 527-529, 123 S. Ct. 2527, 156 L. Ed. 2d 471 (confirming that the state court's ultimate decision to reject the prisoner's ineffective-assistance-of-counsel claim was based on the first prong and not the second). *See also Williams*, *supra*, at 395-397, 120 S. Ct. 1495, 146 L. Ed. 2d 389; *Early v. Packer*, 537 U.S. 3, 8, 123 S. Ct. 362, 154 L. Ed. 2d 263 (2002) (*per curiam*) (indicating that § 2254 does not preclude relief if either "the reasoning [or] the result of the state-court decision contradicts [our cases]").

Panetti, 551 U.S. at, 953-954.

In *Panetti*, the state court adjudicated the defendant's claim on the merits, finding him competent to be executed. However, as a preliminary conclusion to this ultimate decision, the state court had made an implicit legal finding – that the procedures it provided were adequate to resolve the competency claim. *Panetti*, 551 U.S. at 952-3.

This Court held that this antecedent finding involved an unreasonable application of the relevant federal law. *Panetti*, 551 U.S. at 953. As a result, this Court found the exception in §2254(d)(1) met and addressed Panetti's claim on the merits, without deferring to the state court's denial of the competency claim and ultimately remanded the case to the district court for further proceedings. *Panetti*, 551 U.S. at 954.

This Court in *Panetti* cited to several of its own cases in support of its holding that §2254(d)(1) is satisfied when a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law. A review of those cases clearly illustrates that the interpretation of §2254(d)(1) in *Panetti* is not based upon nor limited to the question of the requirements of due process in competency to be executed claims.

In *Wiggins v. Smith*, 539 U.S. 510, 528-9, 534 (2003), this Court held that the state court's conclusion that the scope of counsel's investigation met the legal standard in *Strickland* was objectively unreasonable and that this error in the state court's analysis was sufficient to satisfy the requirements of §2254(d). The Court then went on to review the federal claim *de novo*, rather than assessing the state

court's ultimate decision to reject the ineffective assistance claim under the objective reasonableness standard, as the circuit court's decision in this case would require.

In *Williams v. Taylor*, 529 U.S. 362, 395-7(2000),² this Court held that the state court had unreasonably applied federal law to *Strickland's* prejudice prong by applying an exception recognized in *Lockhart v. Fretwell*, 506 U.S. 364 (1993), to the case and by failing to consider the impact of mitigation evidence on the defendant's moral culpability, as opposed to future dangerousness. Having identified this error, the Court reviewed the federal claim *de novo*, rather than assessing the state court's ultimate decision to reject the ineffective assistance claim under the objective reasonableness standard, as the circuit court's decision in this case would require.

In *Early v. Packer*, 537 U.S. 3, 8 (2002)(*per curiam*), the Court rejected the Ninth Circuit's holding that the §2254(d)(1) exception was met because the state court had failed to cite to federal authority. The Court held that neither citation nor even awareness of federal authority was required but instead indicated that “§ 2254 does not preclude relief if either ‘the reasoning [or] the result of the state-court decision contradicts [our cases].’” *Panetti*, 551 U.S. at 954 (quoting *Packer*, 537 U.S. at 8).

In the present case, the state court held that the “largest part” and “majority” of the delay involved the funding crisis and that “[b]ut for . . . lack of funding for a capital case, the case would have progressed in a timely manner.”. *State v. Boyer*, 10-

² Notably, the *Panetti* Court cites to Justice Stevens' 6-justice majority opinion on the application of AEDPA to Mr. Williams' case, rather than the Justice O'Connor's 5-justice majority opinion on the narrower question of the 'contrary to' clause.

693(La. App. 3 Cir. 02/02/11); 56 So. 3d 1119, 1142-3. The circuit court correctly held that this factual finding was due deference under §2254(e)(1) and binding on federal habeas review. *Boyer* at 445; A-16.

However, as the circuit court held, the state court then misapplied this Court's precedent and refused to weigh delay caused by the lack of funding for indigent capital defense against the state at all. *State v. Boyer*, 56 So.3d at 1144-5. This error was contrary to or an unreasonable application of clearly established federal law.

Given the primacy of the second *Barker* factor, "[t]he flag all litigants seek to capture,"³ there is no doubt that the state court's rejection of Mr. Boyer's speedy trial claim was "dependent" on its antecedent unreasonable application of federal law in refusing to weigh the delay caused by lack of funding against the state. *Panetti*, 551 U.S. at 93.

Thus, under *Panetti*, the requirements of §2254(d)(1) were met and the speedy trial claim should have been considered *de novo*.

The circuit court's approach in the present case and in *Goodrum*⁴, upon which it relied, is directly contrary to this Court's explicit and binding interpretation of AEDPA in *Panetti*.

³ *United States v. Loud Hawk*, 474 U. S. 302, 315 (1986).

⁴ *Panetti* is not discussed at all in the briefing or oral argument in the *Goodrum* case. Indeed, Mr. Goodrum briefed his appeal *pro se*, with counsel first appointed ahead of oral argument. Appointed counsel filed a four page letter brief but did not address the question presented here.

C. The Fifth Circuit has entered a decision in conflict with the decisions of other courts of appeals

Even prior to this Court's decision in *Panetti*, some circuits had construed §2254(d)(1) consistently with this Court's approach in that case. *See, e.g., Allen v. Lee*, 366 F.3d 319, 343 n.3 (4th Cir. 2004)(*en banc*)(applying *Wiggins* the court held that "[h]aving found that the analysis employed by the state court was unreasonable, we could not properly deny relief under § 2254(d) on the basis that the result of the state court proceeding was not unreasonable.")

Since this Court's decision in *Panetti*, the Fifth Circuit has become an outlier in holding that a showing that a state court's antecedent reasoning was contrary to or an unreasonable application of clearly established federal law does not satisfy the requirement of §2254(d)(1). *Frantz v. Hazezy*, 533 F.3d 724, 733-5 (9th Cir. 2008)(*en banc*)(applying *Panetti*, the court held that state court mistakes in predicate decisions satisfy §2254(d) and that a federal court must then review the underlying constitutional claim *de novo*); *Smith v. Secretary, Department of Corrections*, 572 F.3d 1327, 1348 (11th Cir. 2009)(applying *Panetti*, the court held that an objectively unreasonable determination that a piece of evidence was not impeachment evidence under *Brady* satisfied §2254(d)(1) and precluded deference to the state court's cumulative materiality analysis); *Milton v. Miller*, 744 F.3d 660, 670-71 (10th Cir. 2014)(applying *Panetti*, the court held that where the state court's application of the first prong of *Strickland* was contrary to clearly established federal law, the ineffective assistance claim was to be assessed *de novo*, without deference to the state court's prejudice finding or its ultimate conclusion)

In its decision in *Goodrum*, the Fifth Circuit relied upon a decision of the Tenth Circuit holding that “[h]abeas relief is only available if there is no possible balancing of the factors that both supports the OCCA's decision and is not contrary to clearly established Supreme Court precedent.” *Jackson v. Ray*, 390 F.3d 1254, 1260 (10th Cir. 2004). It does not appear that the Tenth Circuit Court of Appeals has had occasion to directly reconsider its decision in *Jackson* but its decision in *Milton* (*supra*) indicates that following this Court’s decision in *Panetti*, the court has applied §2254(d)(1) in the manner urged by Petitioner.

Clearly, the Fifth Circuit’s approach is in conflict with the decisions of several other circuit courts and their understanding of this Court’s decision in *Panetti*.

D. Mr. Boyer’s case presents an excellent vehicle for the resolution of this important federal question, being presented on a clear appellate record in an otherwise very close case

The Fifth Circuit has stated in bare and unequivocal terms a rule interpreting §2254(d)(1) in a manner that is directly inconsistent with this Court’s interpretation of the same provision. The clearly expressed language of this Court and the Fifth Circuit are in direct conflict.

The Fifth Circuit says:

the state court’s preliminary conclusions regarding one or more of the factors, even if contrary to or objectively unreasonable in light of controlling Supreme Court precedent, are insufficient to grant habeas relief, so long as we find the ultimate decision reached by the state court not objectively unreasonable.

Boyer at 444-5; A-15-6.

This Court says:

When a state court's adjudication of a claim is dependent on an antecedent unreasonable application of federal law, the requirement set forth in § 2254(d)(1) is satisfied. A federal court must then resolve the claim without the deference AEDPA otherwise requires.

Panetti, 551 U.S. at 953.

The Fifth Circuit's error in interpreting §2254(d)(1) was central to its decision in this case, leading directly to its majority opinion denying relief. The Fifth Circuit expressly declined to undertake a *de novo* review applying federal law reasonably, but instead deferred to the state court's ultimate decision to deny relief, even though it was based on an unreasonable and clearly erroneous application of federal law.

The Fifth Circuit did not purport to provide an alternative basis for denying relief, nor suggest that it would have denied relief under *de novo* review. To the contrary, the Fifth Circuit noted that jurists could disagree with the correctness of the state court's decision that the balance of the four *Barker* factors did not result in a speedy trial violation. *Boyer* at 445; A-16.⁵ Indeed, the dissenting judge found that the state court's ultimate decision was itself objectively unreasonable.

E. The federal question at issue is of fundamental importance and the Fifth Circuit's ruling creates an environment in which state courts may routinely apply the federal constitution contrary to this Court's jurisprudence, particularly in a nuanced area such as the speedy trial right

The question of the correct application of §2254(d) is of the utmost importance as it acts as a bar to the grant of the writ of federal habeas corpus.

⁵ The Fifth Circuit also held that jurists could disagree with the state appellate court's conclusion that the other *Barker* factors were not present. *Boyer* at 443-44.

The Fifth Circuit's interpretation of this bar greatly narrows the reach of the writ to prisoners confined as a result of a state court judgment. Indeed, the Fifth Circuit's interpretation of §2254(d) permits states to routinely address federal constitutional claims using reasoning that is contrary to or an unreasonable application of federal law. The Fifth Circuit approach then defers to the state court's ultimate decision as if it were, in fact, the product of a reasonable application of the federal constitution.

The Fifth Circuit's application of §2254(d) is likely to narrow access to federal habeas relief most particularly in the area of the speedy trial right. The Fifth Circuit has already observed that, because the speedy trial test involves a difficult and sensitive balancing process, federal courts must give state court's the widest latitude under §2254(d)(1) in the conduct of their speedy trial analysis. *Amos v. Thornton*, 646 F.3d 199, 205 (5th Cir. 2011). Given this wide latitude, it is unlikely that any state court's ultimate decision denying speedy trial relief will be found to be objectively unreasonable no matter how unreasonable the state court's treatment of one or more of the underlying factors in the *Barker* test.

F. This Court's pending decision in Wilson v. Sellers, 16-6855 may provide additional guidance to the Fifth Circuit Court of Appeals in its application of 28 U.S.C. §2254(d)

This Court has granted certiorari and heard argument in a case from the Eleventh Circuit addressing the application of §2254(d) and the significance of state court reasoning to AEDPA's deferential scheme: *Wilson v. Sellers*, 16-6855.

The question presented in that case is not directly applicable to the present case. However, both the briefing and oral argument in that case addressed in some detail the application of §2254(d) when a state court does provide reasons for its decision. Without presuming to anticipate the scope of this court's decision, much of the briefing and argument of the parties in that case was in agreement that where a state court provides reasons for its decisions, §2254(d)(1) can be satisfied on a showing that the reasons, and not simply the result, involved an unreasonable application of clearly established federal law.

If this Court's opinion in *Wilson v Sellers* provides further guidance on the proper application of §2254(d), this case may be appropriate for remand for further consideration in light of that guidance.

CONCLUSION

Petitioner respectfully pleads that this Court grant his writ of certiorari and permit briefing and argument on the issues.

Respectfully submitted,

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Dated: February 26, 2018