

No. 17-7930

In the Supreme Court of the United States

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JONATHAN BOYER,

Petitioner,

v.

DARREL VANNOY, WARDEN, LOUISIANA STATE PENITENTIARY,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

This Court granted certiorari five years ago to address whether Petitioner's speedy trial rights were violated but, after oral argument, the Court dismissed the writ as improvidently granted. Petitioner now presents the same issue again to this Court, but its procedural posture is even less favorable to him because the case is now on federal habeas review. The question presented, properly framed, is:

Did the Fifth Circuit err when it held that the Louisiana Supreme Court did not unreasonably apply *Barker v. Wingo*, 407 U.S. 514 (1972), when it rejected Petitioner's speedy trial claim?

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STATEMENT OF THE CASE

Six years ago, this Court granted a writ of certiorari in this case on direct review to address Petitioner's contention that the "state's failure to fund counsel for an indigent defendant for five years" should be weighed against the State for speedy trial purposes. *Boyer v. Louisiana*, 569 U.S. 238, 238 (2013). After briefing and oral argument, this Court dismissed the writ of certiorari as improvidently granted. *Id.* The facts have not changed. The same issue now arises on federal habeas review, subject to the strict limits on relief imposed by 28 U.S.C. § 2254(d). The Fifth Circuit concluded that the Louisiana Court of Appeal erred in not weighing part of the delay against the State but concluded that its ultimate balancing of the four *Barker v. Wingo* factors was not objectively unreasonable. That unexceptional holding does not warrant this Court's review.

The Murder

Bradlee Marsh made a fatal decision to give Petitioner and his brother a ride in his truck February 4, 2002. *State v. Boyer*, 56 So.3d 1119, 1124 (La. Ct. App. 2011). Petitioner demanded money from Marsh and shot Marsh three times in the back of the head, killing him when Marsh did not comply. Petitioner then stole money and a silver chain off Marsh's neck. He later confessed the murder to numerous family and friends, then fled to Jacksonville, Florida. R4641, 5085-5086, 5317; *Boyer*, 56 So.3d at 1131.¹ He was ultimately apprehended by Jacksonville police and arrested for Marsh's murder. *Id.*

¹ All citations to the record refer to the state court record on appeal.

Pre-Trial Proceedings

He was indicted on June 6, 2002. R155. Within a few days of his indictment, Tom Lorenzi was appointed as lead counsel for Petitioner. R3, 158-159. At arraignment in September 2002, Petitioner's second and third chair attorneys enrolled through the Louisiana Capital Assistance Center.² Petitioner has previously conceded that *he had at least one fully-funded counsel throughout the case* (through the Louisiana Capital Assistance Center and from arraignment to trial). O.A. Tr. at 6-7.

In November 2002, Lorenzi filed a Motion to Determine the Source of Funds ("Motion for Funding") regarding his fees only. R172-179. Both Lorenzi's funding motion and the trial were continued numerous times over the next seven years. During the first three years, Petitioner requested, joined, acquiesced, or failed to object to every continuance during this period. Pet. App. 7-8.³ Petitioner first asserted his speedy trial right on July 7, 2005, in a motion to quash. R217-226.

Later, right when the trial court was about to finally conduct a hearing on the pending funding motion in the summer of 2005, Hurricanes Katrina and Rita struck, causing widespread devastation and disruption across all of south Louisiana including further delays in Petitioner's trial.⁴ On September 12, 2005, about two

² LA. S. CT. R. XXXI(A)(1)(a) provides that "[i]n any capital case in which a defendant is found to be indigent, the court shall appoint no less than two attorneys to represent the defendant."

³ The Fifth Circuit's recitation of the pre-trial proceedings is accurate, with one omission. On May 16, 2007, the State advised the Court that defense counsel received informal notice of the hearing, but was unable to appear. Therefore, on the motion of the State, the Court ordered the re-arraignment to be heard on May 21, 2007. *Compare* R82 *with* Pet. App. 8.

⁴ Hurricane Katrina struck the Gulf Coast on the morning of August 29, 2005. Executive Order 05-32 suspended legal delays in the State of Louisiana until September 25, 2005. Exec. Order No. KBB

weeks after Hurricane Katrina struck, defense counsel filed a motion to continue “due to the lack of contact with co-counsel in New Orleans and the inability to subpoena witnesses from New Orleans as a result of Hurricane Katrina devastation.” R232.

The Motion for Funding was eventually heard March 27, 2006. After hearing the defense’s evidence, the trial court deferred its ruling and stated that it would schedule another hearing for a later date. R68. On November 20, 2006, Petitioner’s motion to quash was denied, but the speedy trial portion of the motion was dismissed without prejudice because the funding issue had not been resolved. R70.

On May 21, 2007, to resolve any further funding issues, the State amended the charge of first degree murder to second degree murder. R84, 2708-2709. At this hearing, the judge appointed Petitioner new lead counsel, and re-set the trial for October 29, 2007. R84, 2709-2711. The LCAC would eventually take over representation of Petitioner, both as lead and additional counsel. R86.

Once the charges were amended, and LCAC assumed the role as lead counsel, defense counsel filed some 30 motions between July 26, 2007 and January 22, 2008, including another motion to continue the trial date and another motion to quash based on a violation of Petitioner’s right to a speedy trial. R247-357, 1154-1286. The motion to quash was denied, R101-105, however, proceedings were then stayed nearly a year after issues arose regarding Petitioner’s competency. R110-

2005-32, 31 La. Reg. 09, 2169 (Sept. 20, 2005). Hurricane Rita made landfall in Southwestern Louisiana on September 24, 2005 causing the State of Louisiana to amend the end date of suspensions even further. Executive Order KBB 05-67 extended the suspension of delays to November 25, 2005. Exec. Order No. KBB 2005-67, 31 La. Reg. 11, 2675 (Nov. 20, 2005).

117. On April 15, 2009, the trial court found Petitioner competent to stand trial, and re-scheduled trial for September 21, 2009. R117.

Petitioner unsuccessfully re-urged the speedy trial violation the day his trial was set to begin and his trial commenced the next day. R124-127, 1900-1902. The jury found Petitioner guilty of second degree murder, armed robbery, and use of a firearm. *Boyer*, 56 So.3d at 1124. A few weeks later, the court sentenced Petitioner to life in prison for the second degree murder conviction, 99 years for the armed robbery conviction, and an additional five years because Petitioner used a firearm during the commission of the armed robbery. *Boyer*, 56 So.3d at 1124.

Direct Review

The Louisiana Third Circuit Court of Appeal affirmed the decision of the trial court rejecting, *inter alia*, Petitioner's speedy trial claim. *Id.* at 1139-1145. Analyzing Petitioner's speedy trial claim pursuant to the four-factor test in *Barker v. Wingo*, 407 U.S. 514 (1972), the state appellate court held there was no speedy trial violation. *Boyer*, 56 So.3d at 1139-1145.

As to the first factor, the state appellate court concluded that the length of the delay in the case was presumptively prejudicial. *Id.* at 1141. With respect to the second factor (reason for the delay), it concluded that while "[t]he largest part of the delay involved the 'funding crisis' experienced by the State of Louisiana," the reason for the delay also resulted from other events outside the State's control. *Id.* at 1142, 1145. Competency issues and "more than thirty motions to be litigated, including two motions to recuse the trial judge and several evidentiary motions which

required testimony from witnesses” were factors that were not attributed to the State. *Id.* at 1142-1145. Justice Alito later noted that Hurricane Rita forced the Calcasieu Parish Courthouse to close during this time period. *Boyer*, 569 U.S. at 239.

As to the third *Barker* factor (the defendant’s assertion of the right), the state appellate court found the initial speedy trial motion untimely and a delay between the two motions to quash indicative that the motions were “more perfunctory than aggressive.” *Boyer*, 56 So.3d at 1143.

With respect to the last factor (prejudice to the defendant), the state appellate court found that Petitioner failed to adequately support his claims. He did not explain how unavailable witnesses or evidence would have affected his trial and did not explain what job he allegedly lost due to the prosecution or whether it was caused by the prosecution rather than his flight to Florida to evade arrest. *Id.* at 1143-1145.

Thus, although the state appellate court had found the length of time to be presumptively prejudicial, it nevertheless rejected the claim because the remaining *Barker* factors favored the State. *Id.* at 1145.

The Louisiana Supreme Court denied his petition for writ of certiorari. *State v. Boyer*, 78 So.3d 138 (La. 2012). This Court subsequently granted certiorari but after briefing and oral argument, this Court dismissed the writ as improvidently granted. *Boyer*, 569 U.S. at 238. Three concurring justices explained that certiorari had been granted based upon “[t]he [mistaken] premise... that a breakdown in

Louisiana’s system for paying the attorneys representing petitioner, an indigent defendant who was charged with a capital offense, caused most of the lengthy delay between his arrest and trial.” *Id.* But because “the record shows that the single largest share of the delay in this case was the direct result of defense requests for continuances, that other defense motions caused substantial additional delay, and that much of the rest of the delay was caused by events beyond anyone’s control,” at least three justices felt that the question presented could not be answered based upon the facts of this case. *Id.* at 240.

The four dissenting justices would have deferred to the state court’s determination “that the ‘majority of the seven-year delay’ in Boyer’s case was caused by the ‘lack of funding’ made available for the defense” and would have answered the question presented: “whether, once the Louisiana court found that most of the delay in Boyer’s case was caused by the State’s failure to fund Boyer’s defense, the court was required to weigh that period of the delay against the State for the purposes of its analysis under *Barker*.” *Boyer*, 569 U.S. at 245. The concurrence explained that, in context, the state court most likely meant that “the delay in question was [not] caused by the State’s failure to provide funding but simply that the delay was attributable to the funding issue. And as noted, most of this delay was caused by the many defense requests for continuances of hearings on the issue of funding.” *Id.* at 240-241.

Federal Habeas Proceedings

Petitioner decided to forgo state post-conviction relief and instead sought federal habeas relief. He alleged five assignments of error, including the speedy trial claim. Pet. App. 12, 30-31. The federal magistrate and later the district court rejected his speedy trial arguments. *Id.* at 29-39. Though relief was denied, the district court granted a certification of appealability. *Id.* at 12.

Petitioner appealed and raised three issues, including the speedy trial claim. *Id.* at 13. The Fifth Circuit affirmed. While the Fifth Circuit found that the state appellate court's decisions regarding the first, third, and fourth factors of the *Barker* test were reasonable, it determined the state court "err[ed]" in its determination as to which party should bear the weight of the funding issue. *Id.* at 15-16. It did not, however, find that the state court's error on the second factor itself unreasonably applied clearly established law under 28 U.S.C. § 2254(d)(1). Rather, it stated that Petitioner is not entitled to habeas relief "even if [that error is] contrary to or objectively unreasonable in light of controlling Supreme Court precedent," because "there is no evidence of deliberate delay, the State's funding problems do not weigh heavily against the State" and the error did not "so severely alter the scales that we can say the resulting balance was 'objectively unreasonable.'" *Id.*

The Court held that the "determinative question" was whether the state court's conclusion that the balance of all four *Barker* factors did not establish a violation of the Petitioner's right to a speedy trial was objectively unreasonable. *Id.* at 14. In reaching the conclusion that it was not objectively unreasonable, the Fifth

Circuit performed “a limited review of the state court’s analysis of each *Barker* factor” “to facilitate our evaluation of the reasonableness.” *Id.*

In declining to grant habeas relief, the court noted that a reasonable jurist could draw similar conclusions as the state appellate court based on the timing of the motions to quash by the Petitioner and the lack of concrete prejudice shown by the defense. *Id.* at 15. Petitioner filed a petition for rehearing which was denied without dissent. *Id.* at 28.

REASONS FOR DENYING THE PETITION

I. This case is a poor vehicle to reach the question presented because the question wrongly assumes that the state court’s assessment of the second *Barker* factor contradicts a clearly established holding of this Court.

Time has not made this case more worthy of certiorari. The case now comes to this Court as a habeas case with a distinctly higher burden on Petitioner. Although AEDPA “stops short of imposing a complete bar on federal court re-litigation of claims already rejected in state proceedings,” “[i]t preserves authority to issue the writ in cases where there is no possibility fair minded jurists could disagree that the state court’s decision conflicts with this Court’s precedents. It goes no further.” *Harrington v. Richter*, 562 U.S. 86, 102 (2011) (citation omitted).⁵ Petitioner cannot meet that demanding burden.

⁵ 28 U.S.C. § 2254(d)(1) states in full: “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.”

Petitioner's question presented assumes that the Louisiana Court of Appeal's ruling on the second *Barker* factor was objectively unreasonable within the meaning of AEDPA. *See* Pet. i; *id.* at 4, 16. Based on that assumption, he asks this Court to hold that the Fifth Circuit erred in still giving AEDPA deference to the state appellate court's ultimate holding that his speedy trial rights were not violated. *Id.* at 4, 16. That assumption, however, is unfounded. The Fifth Circuit did not hold that the state appellate court's application of the second *Barker* prong unreasonably applied clearly established law. Nor could it, given that this Court expressly left the issue open in *Vermont v. Brillon*, 556 U.S. 81, 85, 94 (2009), and three Justices of this Court already concluded that, on the complicated facts of this case, the state appellate court got it right. In other words, the delay in question was not caused by the State's failure to provide funding but the delay was attributable to the funding issue. *Boyer*, 569 U.S. at 240-241, (Alito, J., concurring). Most of the delay was caused by defense requests, joins, acquiescences, or failures to object to continuances of the Motion for Funding. *See id.* And Petitioner "was assisted at all times by at least one" fully funded attorney. *See id.* at 239; O.A. Tr. at 6-7.

1. The Fifth Circuit never stated that the Louisiana Court of Appeal's conclusion on the second *Barker* factor was objectively unreasonable, one that no fair-minded jurist could reach. Rather, the Fifth Circuit concluded that the state court "errs . . . in its analysis of the second factor," and then speaks of "the error's effect," that the state court "erred," and "its error." Pet. App. 15-16. This Court has made clear time and again that there is a fundamental difference between a mere

error and a merits ruling so flawed that it constitutes “a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by [this] Court.” 28 U.S.C. § 2254(d)(1). For example, in *Woods v. Donald*, this Court wrote that “an unreasonable application of [this Court’s] holdings must be objectively unreasonable, not merely wrong; even clear error will not suffice.” 135 S.Ct. 1372, 1376 (2015) (quoting *White v. Woodall*, 134 S.Ct. 1697, 1702 (2014) (internal quotation marks omitted)).

To be sure, the Fifth Circuit quoted circuit precedent for the proposition that “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.” Pet. App. 15-16 (quoting *Goodrum v. Quarterman*, 547 F.3d 249, 257 (5th Cir. 2008) (citation omitted) (emphasis added)). The Court’s point was simply that, if a federal habeas court focuses on the “ultimate decision” even when a state court made an objectively unreasonable “preliminary conclusion[],” the same must be true when the state court erred when applying one part of a four-part test. But the Fifth Circuit never declared that the state appellate court’s ruling on the second factor was objectively unreasonable.⁶

⁶ Although the Fifth Circuit stated that the state court’s refusal to attribute the funding issue to the State was a “failure” that “misapplied Supreme Court precedent,” the Court appeared to be restating what it considered to be a mere error by the state court. Pet. App. 15 (footnote omitted). If the Fifth Circuit meant to find the state court’s analysis as to the second factor to be an unreasonable application of this Court’s precedent, there would be no need to qualify the finding in the next paragraph with the words “even if.” *Id.*

2. And for good reason. This Court’s decisions, including *Vermont v. Brillon*, have not clearly established that failure to fund counsel should always be weighed against the state for speedy trial purposes, or what weight should be given if the delay is charged against the state. 556 U.S. 81, 85, 94 (2009) (a breakdown in the indigent defense system “may” or “could” “be charged against the State”).

The most that can be said is that *Brillon* and other cases suggested in dicta that failure to fully fund indigent defense is a factor that must be charged against the government. *E.g. Strunk v. United States*, 412 U.S. 434, 436 (1973). Perhaps that is the logical next step, one that four Justices of this Court were prepared to take on direct review in this case. *See Boyer*, 569 U.S. at 242 (Sotomayor, J., dissenting). But even those Justices were willing to say only that *Brillon* “indicated” that such delays “could” be charged to the State; they did not find that *Brillon* held as much. *Id.* at 246 (citing *Brillon*, 556 U.S. at 94). Because this Court has never “squarely established” that delays caused by indigent defense funding are attributable to the State, AEDPA prevents federal courts from granting habeas relief on that ground. *Woodall*, 134 S.Ct. at 1706; *see also id.* at 1702 (“Clearly established Federal law for purposes of § 2254(d)(1) includes only the holdings, as opposed to the dicta, of this Court’s decisions.”) (internal quotation marks, brackets and citations omitted).

3. There is another reason the Fifth Circuit could not possibly have found the state appellate court objectively unreasonable: three Justices of this Court already concluded that the record supports the state court’s application of the second *Barker*

factor. *See Boyer*, 569 U.S. at 238-241 (Alito, J., concurring). Even if one disagrees with their conclusion, the concurring opinion confirms that “fairminded jurists could disagree that the state court’s decision conflicts with this Court’s precedents.” *Richter*, 562 U.S. at 102.

As Justice Alito explained for himself and Justices Scalia and Thomas, the Court previously granted certiorari on the premise that there was “a breakdown in Louisiana’s system for paying the attorneys representing petitioner, an indigent defendant who was charged with a capital offense,” which “caused most of the lengthy delay between his arrest and trial.” *Boyer*, 569 U.S. at 238-239. But he found that “the record shows otherwise.” *Id.* at 238. After describing the procedural history of the case in detail, Justice Alito concluded that “the record shows that the single largest share of the delay in this case was the direct result of defense requests for continuances, that other defense motions caused substantial additional delay, and that much of the rest of the delay was caused by events beyond anyone’s control.” *Id.* at 240.

The record amply supports that conclusion. As discussed in oral argument before this Court, Louisiana Supreme Court Rule XXXI(A)(1)(a) provides for two capital-certified attorneys to be appointed to represent indigent defendants in capital cases.⁷ *See* O.A. Tr. at 4-6. Indeed, Petitioner’s counsel acknowledged that

⁷ The entire purpose of the State’s system of providing indigent capital defendants with two specially qualified attorneys is to enhance the quality of representation for the indigent in criminal cases of the utmost importance—those which may result in a sentence of death. This system thus serves among the most important public interests. *See* LA. S. CT. R. XXXI(A)(1)(a). Under this Court’s precedent, the reason is “valid” and thus “justifies delay,” where “important public interests” underlie the process that results in delay. *United States v. Loud Hawk*, 474 U.S. 302, 315 (1986).

he had at least one fully-funded lawyer representing him throughout the entire case. *See* O.A. Tr. at 6-7.⁸ In short, the State did not deprive Petitioner of counsel guaranteed by the United States Constitution and its funding problems did not stop this case from moving forward. Nor was the state responsible for the slow resolution of the funding issue. Lorenzi, who initially represented Petitioner, “impeded resolution of the funding issue by seeking or acquiescing in nine continuances of the hearing on his funding motion, delaying a determination on the issue for over three years.” Respondent’s Br. at 1, *Boyer*, 569 U.S. 238.

At the very least, a fairminded jurist—such as the three Justices who concurred in the dismissal of the writ as improvidently granted—could so conclude. The predicate of Petitioner’s question presented is therefore misplaced. The Fifth Circuit did not, and could not, find that any aspect of the state appellate court’s speedy trial analysis was objectively unreasonable within the meaning of § 2254(d)(1).

4. Nor, tellingly, does Petitioner clearly dispute the Fifth Circuit’s conclusion that the state appellate court’s ultimate holding was reasonable, even if the delay is weighed against the State. The *Barker v. Wingo* test is heavily fact-dependent. As this Court has noted, “[t]he speedy-trial right is amorphous, slippery, and necessarily relative.” *Brillon*, 556 U.S. at 89 (citations and internal quotation marks

⁸ Regardless of whether this fully-funded attorney would meet Louisiana’s unique capital certification standards for *lead* counsel, Petitioner points to no holding by this Court that holds that this funded attorney does not satisfy the right to assistance of counsel under the Sixth Amendment. On page 43 of the previous oral argument in this case, Justice Sotomayor stated: “This is a very serious question which is, I don’t know that we have ever defined what the minimum qualification is for qualified counsel.”

omitted). And evaluating whether a rule application was unreasonable requires considering the rule's specificity. In the habeas context, AEDPA demands *more* deference to a reasoned state court judgment, not less. Broad, general standards are necessarily less likely to provide clearly established principles in a given case where many case-specific circumstances are relevant. "The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations." *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004); *see also Sexton v. Beaudreaux*, 585 U.S. ___, slip op. at 8 (June 28, 2018) (state court has even more latitude to reasonably determine that a defendant has not satisfied ineffective assistance of counsel standard because it is a general standard).

Though Petitioner may dispute the Fifth Circuit's ultimate conclusion, he has not identified any precedent of this Court with which any portion of the Fifth Circuit's analysis conflicts. To the contrary, the Fifth Circuit *was* critical of the State and appears to have followed the *Boyer* dissenters' view on how to weigh the funding delay. But it nevertheless found the overall result to fall within the range of disagreement allowed by AEDPA. The Fifth Circuit's analysis is entirely consistent with the requirements of AEDPA and does not merit further review.

II. Even if a state court's assessment of one of the *Barker* factors contradicted a holding of this Court, a federal court may only grant habeas relief if the resulting balance of all four *Barker* factors was objectively unreasonable.

1. The question Petitioner presents is not worthy of this Court's review even accepting its mistaken predicate. When the last state court to rule upon a prisoner's claim gives a decision on the merits, "a federal habeas court simply reviews the

specific reasons given by the state court and defers to those reasons if they are reasonable.” *Wilson v. Sellers*, 138 S.Ct. 1188, 1192 (2018). The Fifth Circuit deferred to the state court’s adjudication of three factors and apparently refused to defer to its analysis of one factor. Pet. App. 15-16. The Fifth Circuit then appeared to review that one factor *de novo*. *Id.* 444-445. That is precisely what *Wilson* required.

If a “specific reason” given by a state court on the merits contradicts this Court’s precedents, no deference under AEDPA is due as to that reason. *Wilson*, 138 S.Ct. at 1192. This Court’s opinion in *Wilson* does not hold that *all* the other reasons given by the state court lose deference under AEDPA or that the ultimate decision loses deference when that decision remains objectively reasonable. The cases relied upon by Petitioner to suggest a different rule are inapposite.

As noted, the Fifth Circuit observed that “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.” Pet. App. 15-16. That is exactly what the text of AEDPA requires; the state court’s error must “result in a decision” that contradicts this Court’s precedents. 28 U.S.C. § 2254(d)(1).

2. *Panetti v. Quarterman*, 551 U.S. 930 (2007), relied upon by Petitioner, bears little resemblance to this case. There, this Court held that because the defendant had no opportunity to be heard on competency findings of the state court

(in violation of his due process rights), the resulting factual findings were not entitled to deference. As this Court put it, “[w]hen 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.” *Id.* at 953.

Here, there was no “antecedent” application of this Court’s speedy trial precedent by the State court of appeal; there was only a single adjudication of Petitioner’s speedy trial claim. In *Panetti*, adjudication of the defendant’s claim was undeserving of deference because of an antecedent problem; the manner in which evidence was acquired by the state court violated this Court’s precedent. There is no “antecedent” issue to the speedy trial claim. A speedy trial claim involves a balancing of four factors. *Barker*, 407 U.S. at 530. The State court’s analysis of one *Barker* factor is not “antecedent” to the adjudication of the *overall* claim; it is a part of a single, larger analysis. *Compare Panetti*, 551 U.S. at 953.

The foundation for the error in *Panetti* is simply absent in this case—the appeal court *did* make factual findings, and the weight assigned to the funding delay *was* re-evaluated by the Fifth Circuit. Had the state court’s findings regarding the other three speedy trial factors been “dependent” on its evaluation of the second factor, the Fifth Circuit would have been bound to re-evaluate those other factors as well. Because “the specific reasons given by the state court” as to the three factors were “reasonable” and independent of the analysis of the second factor, there was no need for the Fifth Circuit to re-evaluate them. *Wilson*, 138 S.Ct. at 1192.

Even upon what appeared to be *de novo* review of the second factor, it was the balance of the other factors that were fatal to Petitioner’s overall speedy trial claim. Pet. App. 14-16. Specifically, it found “[t]he state appellate court’s conclusions on the first, third, and fourth factors were reasonable, and its error on the second factor did not so severely alter the scales that we can say the resulting balance was ‘objectively unreasonable.’” Pet. App. 16. In other words, “[f]airminded jurists could disagree on the correctness of the state court’s decision’ that the balance of the four Barker factors did not result in a speedy trial violation.” *Id.* (citing *Richter*, 562 U.S. at 101) (internal quotation marks omitted).

3. Other cases referenced by Petitioner are also distinguishable. In *Wiggins v. Smith*, 539 U.S. 510 (2003), the determination that the “scope of counsel’s investigation into petitioner’s background” to obtain mitigation evidence for the defendant’s capital sentencing proceeding was reasonable was “an objectively unreasonable application of” this Court’s precedent. *Id.* at 528 (citing 28 U.S.C. § 2254(d)(1)). Therefore, this Court reviewed the deficiency prong of the ineffective-assistance-of-counsel test *de novo*. *Id.* at 521, 531. But the two-pronged *Strickland* test for assessing ineffective-assistance-of-counsel claims is fundamentally different than the four-pronged *Barker* test. The deficiency prong is antecedent to the prejudice question. *Panetti*, 551 U.S. at 953 (citing *Wiggins*, 539 U.S. at 534). Prejudice is irrelevant if counsel’s actions were reasonable. Deficient performance and prejudice are not balanced against each other. By contrast, the four *Barker* factors are each non-dispositive and simply weigh in the totality of circumstances

that emerges from balancing them.⁹ And so the alleged state court error here, in contrast to *Wiggins*, did not bear upon a discrete, antecedent factor.

Petitioner’s argument concerning *Williams v. Taylor* misses the mark for the same reason. 529 U.S. 362 (2000). There, this Court found the Virginia Supreme Court used the wrong standard to evaluate prejudice for an ineffective-assistance-of-counsel claim. *Id.* at 394-395 (2000). Therefore, this Court necessarily had to reevaluate prejudice under the proper standard. *Id.* at 395-397. The Virginia Supreme Court also did not decide whether trial counsel had acted ineffectively to begin with, so there was no reasoning to which this Court could defer. *Id.* at 371.

Nor did *Early v. Packer* remotely address the question in this case. There, this Court stated that it does “not require citation of our cases — indeed, it 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) (emphasis deleted). Petitioner suggests this bare and general statement does more work than it can possibly do in light of AEDPA. It cannot mean that all deference is lost if *any* reasoning given by a state court contradicts this Court’s precedents, no matter how inconsequential, to the result. Such a broad interpretation would conflict with broader principles of comity and federalism embodied in AEDPA.

⁹ *Milton v. Miller*, deals with a similar issue where the state court of appeal’s analysis of ineffective assistance of counsel was an unreasonable application of this Court’s precedents. 744 F.3d 660, 669-671 (10th Cir. 2014),

III. There is no circuit split.

The decisions from the circuit courts of appeal relied upon by Petitioner are similarly distinguishable because the state court decision in those cases violated clearly established law as to an antecedent issue and had, therefore, erroneously declined to address a consequent issue.

In *Smith v. Secretary of the Department of Corrections*, 572 F.3d 1327, 1348 (11th Cir. 2009), because the Florida Supreme Court determined that a particular piece of withheld evidence did not qualify as impeachment evidence in a criminal case, it did not perform a materiality analysis as to that piece of evidence pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963). The Eleventh Circuit could not defer to the state court as to the consequent issue of materiality for two reasons. First, the issue was not reached by the state court and, second, the antecedent favorability analysis was not worthy of deference. A *Brady* analysis considers evidence cumulatively. So if withheld, favorable evidence is omitted from the analysis, the whole materiality analysis must be performed again.

The same cannot be said here, where there are four discrete speedy trial factors. A court can re-evaluate a single speedy trial factor and then re-balance all four factors, maintaining deference as to the state court's evaluation of the other three factors. When performing a *Brady* analysis, however, adding one piece of suppressed, favorable evidence into the mix necessarily affects the overall strength of the State's case. Materiality must be "considered collectively, not item by item." *Kyles v. Whitley*, 514 U.S. 419, 436 (1995) (footnote omitted). But in a speedy trial

analysis, determining the party that caused most of the delay does not necessarily affect the three other discrete factors.

In *Frantz v. Hazey*, the Ninth Circuit concluded that the state court violated clearly established law when it adjudged a particular constitutional error harmless and not structural error. 533 F.3d 724, 731-732, 734-735 (9th Cir. 2008) (*en banc*). The case did not clearly grapple with the “antecedent” language in *Panetti*. Moreover, the case is distinguishable because the state court of appeals did not address the merits because it addressed another determinative issue. *Frantz*, 533 F.3d at 731-732. The same cannot be said here.

Petitioner has not identified any circuit split that demands this Court’s intervention. The only case on point is *Jackson v. Ray*, 390 F.3d 1254, 1260 (10th Cir. 2004), but this decision does not create any circuit split. To the contrary, it is entirely consistent with the Fifth Circuit approach to the overall analysis. Reviewing a state court speedy trial argument, the Tenth Circuit reviewed each of the four factors to determine if any findings violated 28 U.S.C. § 2254(d)(1). The Tenth Circuit correctly focused on the ultimate conclusion not on the failure of any single factor to meet AEDPA standards. Like the Fifth Circuit, the Tenth Circuit found habeas relief is proper only if the state court’s *ultimate conclusion* fails AEDPA. *Id.*; *see also* Pet. App. 15-16. Therefore, there is no circuit split presented in this case.

CONCLUSION

The State of Louisiana respectfully submits that the petition for a writ of certiorari should be denied.

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