

No. 17-7930

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

REPLY TO BRIEF IN OPPOSITION

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REASONS FOR GRANTING THE PETITION

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

*A. The decision below conflicts with this Court's decision in *Wilson v. Sellers*, 584 U.S. ___, 138 S. Ct. 1188 (2018)*

As anticipated in Mr. Boyer's petition for certiorari, the decision below is not only inconsistent with this Court's prior jurisprudence but with its subsequently released decision in *Wilson v. Sellers*, 584 U.S. ___, 138 S. Ct. 1188 (2018).

In *Wilson*, this Court held that under 28 U. S. C. §2254(d) a federal habeas court must "train its attention on the particular reasons" given by the state court and that the court "reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id.* at 1191-2. The Court noted that it had "affirmed this approach time and again" and that in its own cases it had looked through to and "focused exclusively on the actual reasons given by the lower state court." *Id.* at 1192, 1195.. The Court specifically rejected the "could have supported" framework of *Harrington v. Richter*, 562 U.S. 86 (2011) "where there is a reasoned decision by a lower state court," stating that in doing so, the Court was doing what "AEDPA directs us to do." *Id.* at 1195, 1196.

In the present case, the Fifth Circuit held that AEDPA limits the reviewing court's focus to the objective reasonableness of the state court's ultimate decision, regardless of whether preliminary conclusions regarding one or more of the *Barker* factors are objectively unreasonable. *Boyer v. Vannoy*, 863 F.3d 428, 442, 445 (5th Cir. 2017). Under the Fifth Circuit's approach in the present case, *Richter's* "could

have supported” framework is applied even where actual reasons are provided and even objectively unreasonable reasons are deprived of legal significance. Instead, there is only “a limited review of the state court's analysis” to facilitate evaluation of the ultimate conclusion (i.e. to see if the analysis provides an example of a rational basis for the ultimate decision, thus foreclosing the need for further review).¹ *Boyer*, 863 F.3d at 442 quoting *Goodrum v. Quarterman*, 547 F.3d 249, 257 (5th Cir. 2008).

The Fifth Circuit’s holding in the present case is inconsistent with *Wilson* and *Panetti v. Quarterman*, 551 U.S. 930 (2007), which require a focus on the specific reasons given by the state court and hold that the requirement of §2254(d)(1) is met when the state court’s ultimate decision is objectively unreasonable or is dependent upon an objectively unreasonable application of federal law.

Respondent’s efforts to distinguish this Court’s prior cases are unconvincing. *Brief in Opposition*, pp.15-8. *Panetti* did not used the word “antecedent” in the strained and narrow fashion suggested by respondent and if it had done so, it would not have relied upon *Wiggins v. Smith*, 539 U.S. 510 (2003) *Williams v. Taylor*, 529 U.S. 362 (2000) or *Early v. Packer*, 537 U.S. 3 (2002) to support its conclusion.

Further, this Court’s holding in *Panetti* was that once it is shown that a state court ruling is dependent on an antecedent unreasonable application of the relevant

¹ This approach is reflected in the Fifth Circuit’s AEDPA jurisprudence regarding the “unreasonable application” clause of 28 U.S.C §2254(1). *Evans v. Davis*, 875 F.3d 210, 216 (5th Cir. 2017)(applying *Richter*’s “could have supported” test even where a state court provides actual reasons for its decision so as to consider “not only the arguments and theories the state habeas court actually relied upon to reach its ultimate decision but also all the arguments and theories it could have relied upon.”); *Neal v. Puckett*, 286 F.3d 230, 244-46 (5th Cir. 2002) (*en banc*) (*per curiam*) (§ 2254(d) directs review solely of the state court decision and not the reasons for that decision).

law, “[a] federal court federal court must then resolve the claim without the deference AEDPA otherwise requires.” *Panetti*, 551 U.S. at 953. This holding is wholly inconsistent with Respondent’s argument that a federal court is bound to continue to defer under §2254(d)(1) to the state court’s treatment of every other prong and to the ultimate decision. *See Brief in Opposition* p.15.

II. The present case represents a good vehicle to resolve the question presented

As Respondent’s brief demonstrates, the question is squarely presented and two very distinct applications of 28 U.S.C. §2254(d)(1) are offered for resolution.

Respondent’s contention that the Fifth Circuit did not reach the question of whether *Barker*,² *Doggett*³ and *Brillon*⁴ represent clearly established federal law is no basis for denying the petition, even if Respondent were correct. For the reasons offered in Mr. Boyer’s petition for certiorari, it is clear that the Fifth Circuit did regard the state court as having applied clearly established federal law in an objectively unreasonable manner on the question of cause of delay. *Petition* p.7 n.1; *Boyer*, 863 F.3d at n.65-68. However, even if the Fifth Circuit did not determine whether the error involved clearly established federal law, the most that could be said is that the lower court did not reach that question because it was unnecessary under the panel’s interpretation of AEDPA. In those circumstances, there is no reason not to grant the petition and ultimately remand for further consideration under the

² *Barker v. Wingo*, 407 U.S. 514 (1972).

³ *Doggett v. United States*, 505 U.S. 647 (1992).

⁴ *Vermont v. Brillon*, 556 U.S. 81 (2009).

correct framework, which would require the lower court to directly address the question.

Respondent's reliance on the concurrence by three judges of this court in the prior denial of certiorari is beside the point. The question presented relates to the proper application of 28 U.S.C. §2254(d), an important federal question not previously before this Court in this case. The application of the law to the facts within the correct legal framework is quintessentially the role of the lower court. Respondent errs in suggesting that certiorari should be denied to favor what Respondent assumes would be the votes of judges of this Court who concurred in the prior denial of certiorari were they to be sitting in the Court of Appeals.

B. The federal question at issue is of fundamental importance to ensure the effective operation of the speedy trial guarantee for indigent defendants in state court

Certiorari should be granted not only to resolve the correct standard of review to be applied in the Fifth Circuit under AEDPA but to serve the weighty interest of ensuring that our constitution's speedy trial guarantee operates meaningfully for the indigent as well as the wealthy.

Jonathan Boyer was an indigent charged with first degree murder and facing a possible death penalty when the State of Louisiana chose not to provide him with the funds or services necessary for him to make his defense. Far from being provided a fully-funded lawyer throughout, as argued by Respondent,⁵ Mr. Boyer was provided

⁵ Contrary to Respondent's claim, counsel for Mr. Boyer did not concede in oral argument before this court that Mr. Boyer had a *fully-funded* lawyer throughout.

an *assistant* lawyer, an unfunded lead attorney and no funding for experts. Over the next five years, the only issue in his case was the lack of funding for Mr. Boyer's defense and it was agreed that the defense was not funded in a manner that would allow it to proceed.

The speedy trial rights of indigent defendants are held ransom by the State's control over the timely provision of counsel. At the time of Mr. Boyer's prosecution, the State of Louisiana chose to not adequately fund indigent capital defense, preventing his defense from moving forward for five years. While the State of Louisiana took steps to increase capital defense funding in 2008, it has now slashed such funding and once again there is a waiting list in Louisiana for indigent defendants charged with capital offenses to receive counsel, though at this stage the delay has stretched only to the comparatively modest figure of six months.⁶

The only constitutional spur for a state to timely provide funded counsel is the speedy trial guarantee. *Gideon*⁷ requires each state to provide counsel before proceeding with a prosecution but says nothing as to how long a state may take to produce the required counsel. Louisiana took five years in Mr. Boyer's case.

⁶ Media reports over the last two years have documented the return to a wait list. http://www.lsunow.com/daily/death-penalty-public-defender-wait-list-growing-with-delays/article_4b9ee15c-b10c-11e6-a3af-635507081549.html; (2016 article reporting "there is a wait list of a dozen defendants charged with capital crimes waiting for a lawyer to be appointed for their cases"); <https://theappeal.org/in-louisiana-defendants-facing-the-death-penalty-face-a-wait-list-for-an-attorney-b4b01545c597/> (2018 article reporting on budget cuts and the resulting wait list of a dozen capital defendants). The records of the Louisiana Public Defender Board now report the state of the capital waiting list online. <http://lpdb.la.gov/Meetings/LPDB%20Board%20Meeting.php> (Board meeting materials list the size of the waiting list as 16 cases in April (p.298), 10 cases in May (p.422) and 8 cases in July (p.493))

⁷ *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792 (1963).

The Fifth Circuit's decision blunts this constitutional spur by effectively eliminating the safety net of federal oversight of Louisiana's application of the federal speedy trial guarantee. It does this by granting AEDPA deference even to decisions dependent upon an objectively unreasonable application of federal law as to one or more of the *Barker* factors. *See Petition* at p.16.

It is a modest aim to ask that all persons have the protections of the bill of rights applied to their cases in a manner that may not be correct but is, at least, not wholly unreasonable. The Fifth Circuit's decision thwarts even this modest aim, not by deferring to a state court decision on the presumption that it was based upon a reasonable application of the law (*Richter*), but by deferring to a state court decision even when it knows that the decision was dependent on an objectively unreasonable application of federal law.

III. Mr. Boyer's case is a compelling candidate for this Court's GVR practice

It is respectfully submitted that this case represents a good candidate for an order granting certiorari, vacating the judgement below and remanding for reconsideration in light of *Wilson*. There seems a reasonable probability that, in light of *Wilson*, the Fifth Circuit would reject deference to the state court's ultimate decision given the state court's unreasonable application of the law to exclude the five-year funding delay from consideration. The Fifth Circuit would then resolve the claim without the deference §2254(d) otherwise requires. Such a resolution may determine the ultimate outcome of the litigation.

Subsequent to this Court’s opinion in *Wilson*, a panel of the Fifth Circuit has recognized the conflict between *Wilson* and the Fifth Circuit’s §2254(d)(1) jurisprudence and that the impact of *Wilson* will have to be determined. However, as the court was able to resolve the claim in that case irrespective of which standard was applied, it left “*Wilson’s* impact to be decided another day.” *Langley v. Prince*, 890 F.3d 504, 515 (5th Cir. 2018).

A GVR in the present case would allow the Fifth Circuit to consider, in the first instance, the impact of *Wilson* on its jurisprudence.

CONCLUSION

Petitioner respectfully pleads that this Court grant his writ of certiorari and either vacate and remand in light of *Wilson v. Sellers*, 584 U.S. ___, 138 S. Ct. 1188 (2018) or permit briefing and argument on the issues.

Respectfully submitted,

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