No. 22-686

IN THE

Supreme Court of the United States

CROSLEY ALEXANDER GREEN,

Petitioner,

v.

RICKY D. DIXON, SECRETARY,
FLORIDA DEPARTMENT OF CORRECTIONS, *et al.*,

Respondents.

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

BRIEF OF FORMER STATE-COURT JUDGES AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR WRIT OF CERTIORARI FILED BY CROSLEY ALEXANDER GREEN

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INTEREST OF THE *AMICI CURIAE* [1]

Amici formerly served on their states' supreme courts, and as such have a unique perspective on the relationship between state and federal courts. *Amici* are united in a belief that federal deference to state courts is a core feature of our system of federalism, and that such deference cannot be invoked selectively to the benefit of one party. This is particularly true in the context of factual findings and rulings related to state procedure that state courts are best situated to determine.

SUMMARY OF ARGUMENT

This Court has repeatedly instructed that the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), 28 U.S.C. § 2254, imposes a "*highly deferential* standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." *Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (emphasis added) (citation omitted). This is because, among other things, AEDPA requires federal courts to "presume[]" that *all* state-court fact-findings are "correct," 28 U.S.C. § 2254(e)(1) (emphasis added), and to not disturb *any* "[]reasonable" state-court application of this Court's precedent, *id.* § 2254(d)(1). In practice, these factors usually work to a petitioner's detriment. *See, e.g.*, *Brown v. Davenport*, 142 S. Ct. 1510 (2022) (affirming denial of a habeas petition because the state court's due-process ruling was not unreasonable).

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity, other than counsel for the *amici curiae*, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for *amici curiae* notified the parties of their intention to file this brief at least ten days prior to the filing of this brief.

But this Court has made it clear that deference under AEDPA does not depend on the identity of the party-beneficiary. For example, this Court has instructed that state-court rulings relating to exhaustion should be "respect[ed,]" such that a state court's "refus[al] to readjudicate a claim on the ground that it has been previously determined" is "strong evidence that the claim has already been given full consideration by the state courts and thus is ripe for federal adjudication." *Cone v. Bell*, 556 U.S. 449, 467–68 (2009).

AEDPA deference is but one example of the respect given to state courts under "Our Federalism." For example, to "permit state courts to try state cases free from interference by federal courts," *Younger v. Harris*, 401 U.S. 37, 43 (1971), Congress has prohibited federal courts from enjoining state-court proceedings except in narrow circumstances. 28 U.S.C. § 2283. And despite federal courts' "virtually unflagging" "obligation" to decide cases over which they have jurisdiction, *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013), they *must* abstain when the exercise of that jurisdiction would improperly violate "the notion of 'comity,'" a "vital consideration" counseling that "the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger*, 401 U.S. at 44.

The Eleventh Circuit's decision only selectively abides by these principles. In doing so, it turns AEDPA on its head. To respect—by leaving intact—Mr. Greene's state-court judgment of conviction, the Eleventh Circuit's decision had to simultaneously reject state-court rulings that Mr. Green's *Brady* claim

had been "appeal[ed] to the Supreme Court of Florida," App. at 84a n.91, and that the substance of Officer Walker's report was "far different" than the substance of Prosecutor White's notes, App. at 223a. The Eleventh Circuit's decision thus defers to *some* state-court rulings at the expense of *others*. But this discordant approach is not permitted by AEDPA, this Court's rulings, or the Constitution. So *Amici* respectfully request that this Court grant Mr. Green's petition for certiorari.

ARGUMENT

I. All state-court rulings are entitled to deference in federal habeas

This Court has repeatedly counseled that AEDPA imposes a "*highly deferential* standard for evaluating state-court rulings, which demands that state-court decisions be given the benefit of the doubt." *Cullen*, 563 U.S. at 181 (emphasis added) (citation omitted); *Bell v. Cone*, 543 U.S. 447, 455 (2005) (citation omitted); *Woodford v. Visciotti*, 537 U.S. 19 (2002) (per curiam) (citation omitted).

This deference is built right into the statute's text. On questions of law, for example, AEDPA prohibits federal courts from disturbing *any* "[]reasonable" state-court application of this Court's precedent. 28 U.S.C. § 2254(d)(1). *See Metrish v. Lancaster*, 569 U.S. 351, 358 (2013) ("[A] state prisoner must show that the challenged state-court ruling rested on an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." (internal quotation marks and citation omitted)). And on questions of fact, AEDPA prohibits federal courts from disturbing a state court's "[]reasonable determination of the facts," 28 U.S.C. § 2254(d)(2)—and in fact

requires federal courts to "presume[]" that *all* state-court fact-findings are "correct," *id.* § 2254(e)(1) (emphasis added). *See, e.g.*, *Foster v. Chatman*, 578 U.S. 488, 500 (2016) ("[I]n the absence of exceptional circumstances, we defer to state court factual findings unless we conclude that they are clearly erroneous." (emphasis added) (internal quotation marks and citation omitted)).

In practice, this deference often works to a petitioner's detriment. *See, e.g.*, *Brown v. Davenport*, 142 S. Ct. 1510 (2022) (affirming denial of a habeas petition because state court's due-process ruling was not unreasonable); *Schriro v. Landrigan*, 550 U.S. 465 (2007) (affirming denial of a habeas petition because the state court's factual finding was not unreasonable).

But this Court has made it clear that such deference does not turn on the identity of the party-beneficiary. Take retroactivity, for example. To further the interests of comity and respect for the finality of state convictions, this Court has instructed that federal courts are generally not permitted to apply new constitutional rules retroactively in § 2254 cases. *See Teague v. Lane*, 489 U.S. 288, 311 (1989). But this Court has also instructed that state courts may freely apply those rules retroactively, because the same "considerations of comity militate in favor of allowing state courts to grant habeas relief to a broader class of individuals than is required by *Teague*," and finality "is a matter that [s]tate[] [courts] should be free to [independently] evaluate, and weigh the importance of[.]" *Danforth v. Minnesota*, 552 U.S. 264, 279–80 (2008).

The same party-blind deference applies when determining exhaustion-related issues. For example, on its

face, AEDPA states that federal courts may not grant habeas relief if the petitioner has failed to "exhaust the remedies available in the [state] courts[.]" 28 U.S.C. § 2254(b)(1)(A). In other words, a petitioner who does not "properly present" his claim in state court will often be said to have procedurally defaulted that claim. *Howell v. Mississippi*, 543 U.S. 440, 443 (2005).

But "[t]he mere existence of a basis for a state procedural bar" is not dispositive, as this Court has instructed that it may consider a petitioner's federal law claim on habeas as long as the state court's decision "fairly appears" to have decided that claim on the merits. *Caldwell v. Mississippi*, 472 U.S. 320, 327 (1985) (citing *Michigan v. Long*, 463 U.S. 1034, 1040–41 (1983)). In other words, federal courts should defer to a state court's decision to resolve a federal issue instead of dismissing it as procedurally defaulted. *See id.* (this Court had jurisdiction to consider argument that was not presented on appeal in state court because the state supreme court raised the issue *sua sponte*—i.e., because the state supreme court did not rule that the claim was procedurally defaulted but instead resolved it on the merits).

Relatedly—and especially relevant here—this Court has held that federal courts should defer to a state court's ruling that a claim "ha[s] been previously determined." *Cone v. Bell*, 556 U.S. 449, 467 (2009). The procedural history of *Cone* parallels the procedural history of Mr. Green's case. There, as here, the petitioner raised a claim under *Brady v. Maryland*, 373 U.S. 83 (1963), in a successive state-court habeas petition. *Id.* at 459–60. There, as here, the state court dismissed that claim after ruling that it was merely a "re-statement[] of [a] previous ground[] heretofore determined and denied by the . . . Court of Criminal

Appeals upon the [previous] [p]etition." *Id.* at 460. And there, as here, a federal court of appeals considering a subsequent § 2254 petition ruled that the *Brady* claim had been procedurally defaulted. *Id.* at 462.

This Court disagreed and vacated the court of appeals' decision. "When a state court *refuses* to readjudicate a claim on the ground that it has been previously determined," this Court noted, "it provides strong evidence that the claim has *already* been given full consideration by the state courts and thus is ripe for federal adjudication." *Id.* at 467–68 (emphasis added). Because the state court pointedly "did *not* hold that [petitioner] waived his *Brady* claim"—instead, it held that the claim had been "determined and denied by the . . . Court of Criminal Appeals upon the First Petition"—this Court held that the court of appeals should "*not* [have] second-guess[ed] the[] [state court's] judgment" and should have instead grappled with the merits of the *Brady* claim. *Id.* at 469. The same result would hold, this Court explained, *even if* the federal court believed the state court's ruling on exhaustion was "mistaken." *Id.* at 467.

II. Our system of government is based on deference to state courts

This deference to, and respect for, state courts is not cabined to the habeas context. Indeed, our system of government rests on the idea that states—and, particularly, state courts—are essential players in the Constitutional order. *See, e.g.*, U.S. Const., art. IV, § 1. Accordingly, this Court has long recognized deference to state courts as integral to "mak[ing] the dual system work" and "prevent[ing] needless friction between state and federal courts." *Mitchum v. Foster*, 92 S. Ct. 2151, 2156–57 (1972); *see also Woodford v. Visciotti*,

537 U.S. 19 (2002) (recognizing the "presumption that state courts know and follow the law").

Some examples of this include the Constitution's Full Faith and Credit Clause, Congress' enactment of the Anti-Injunction Act, and this Court's routine application of federal abstention doctrines. 28 U.S.C. § 2283; *Younger*, 401 U.S. at 44. In short, the deference required here is far from novel.

The Constitution's requirement that state judgments be afforded full faith and credit "throughout the land" is instructive. *V.L. v. E.L.*, 577 U.S. 404, 407 (2016); *see also Baker by Thomas v. Gen. Motors Corp.*, 522 U.S. 222, 233 (1998) ("[T]he judgment of the rendering State gains nationwide force."). In *V.L.*, this Court underscored the importance of respecting a state's right to enforce its laws in its own courts, regardless of the "reasoning" underlying such enforcement. *Id*. The *V.L.* Court held that, once a state court enters final judgment, the only question governing its effect elsewhere is whether that court had jurisdiction. *Id*. at 408. The inquiry must end there. *See id*. (invalidating "any inquiry into the merits of the cause of action, the logic or consistency of the decision, or the validity of the legal principles on which the judgment is based"). The same forbearance is necessary here.

This rationale that "[s]tate courts are the final arbiters of their own state law" is not limited to rights specifically provided for in the Constitution. *Danforth v. Minnesota*, 552 U.S. 264 (2008); *see also Brotherhood of Locomotive Engineers*, 90 S. Ct. 1739, 1743 (1970) ("Proceedings in state courts should normally be allowed to continue unimpaired by intervention of the lower federal courts[.]"). Recognizing this, Congress has acknowledged only a few situations where federal court interference may be warranted. One

example of this is the Anti-Injunction Act, codified in 28 U.S.C. § 2283. This Act provides explicit but limited instances in which federal injunction of state court proceedings may be permissible. *Id*.

Like AEDPA, the Anti-Injunction Act was enacted by Congress to address specific circumstqances requiring federal deference to states. *Vendo Co. v. Lektro-Vend Corp*., 97 S. Ct. 2881, 2886 (1977) ("The Act's purpose is to forestall the inevitable friction between the state and federal courts that ensues from the injunction of state judicial proceedings by a federal court."). Like AEDPA, the Anti-Injunction Act resulted from Congress' recognition that certain situations may create tension between the two sovereigns. *See Leiter Minerals v. U.S.*, 352 U.S. 220, 225 (1957) ("The statute is designed to prevent conflict between federal and state courts."). In other words, where tension is expected and accounted for—even built into the statute's text—deference is required.

Finally, this Court's own precedent has continuously upheld deference to a state's good faith administration of its own laws. *See, e.g., Younger* (where Court "made clear" the "fundamental policy against federal interference"). For criminal proceedings such as this one, this policy favoring restraint is a "must." *Sprint*, 571 U.S. at 77.

III. The Eleventh Circuit showed selective deference

The Eleventh Circuit's opinion ostensibly deferred to—by leaving intact—Mr. Green's state-court judgment of conviction. But in doing so, it had to ignore or discard two important state-court rulings. As discussed above, *all* state-court rulings are entitled to deference under both general principles of comity,

AEDPA, and this Court's rulings within and outside the habeas context. The Eleventh Circuit's approach, therefore, was mistaken.

The first rejected state-court ruling relates to exhaustion. Below, Mr. Green argued that the state violated his *Brady* rights by failing to turn over Prosecutor White's notes of a conversation with Officers Rixey and Clarke, in which Rixey and Clarke expressed their belief that Kim Hallock—and *not* Mr. Green—had shot Mr. Flynn. App. at 175a. The Eleventh Circuit rejected this claim as procedurally defaulted because the Eleventh Circuit believed that, while Mr. Green had exhausted *a Brady* claim in state courts, he did not exhaust this *particular Brady* claim. App. at 91a–97a.

In doing so, the Eleventh Circuit considered—but explicitly rejected—a state-court ruling that this particular *Brady* claim *had* been exhausted. Mr. Green filed two habeas petitions in state court. When ruling on his second petition, the state trial court characterized Mr. Green's *Brady* claim as "alleg[ing] that the State never disclosed . . . that then-Deputy Rixey and Sergeant Clarke observed facts indicating that Hallock shot Chip Flynn." Order at 13, *State v. Green*, No. 05-1989-CF-004942 (Cir. Ct. of the Eighteenth Jud. Cir. in and for Brevard Cnty., Fla. Aug 31, 2011). The state trial court then ruled that this *Brady* claim was "addressed in [Mr. Green's] first post-conviction motion" and "affirmed on appeal to the Supreme Court of Florida," and that the claim was, therefore, "barred as successive." *Id.*

The Eleventh Circuit was made aware of, and considered, this precise ruling. *See* App. at 84a–85a n.91 (noting that "the Circuit Court's order of August 31, 2011, denying Green's Successive Motion" had

concluded that "the issue was raised . . . [in Mr. Green's] first post-conviction motion and affirmed on appeal to the Supreme Court of Florida"). But the Eleventh Circuit, instead of deferring to this ruling, outright rejected it: "The Circuit Court could not have read the [Florida Supreme Court's] opinion . . . as affirming the denial of [this *Brady* claim,]" the Eleventh Circuit believed. *Id.* To the contrary, the Eleventh Circuit concluded, the Circuit Court's ruling simply "finds no support" in that opinion. *Id.*

This "second-guess[ing]" of the state court's "refus[al] to readjudicate [Mr. Green's *Brady*] claim on the ground that it has been previously determined" is strictly forbidden by this Court's precedent—no matter how much the Eleventh Circuit believed that refusal was "mistaken." *Cone*, 556 U.S. at 467–69; *see also Woodford*, 537 U.S. at 24 ("The Court of Appeals' . . . readiness to attribute error is inconsistent with the presumption that state courts know and follow the law.").

The other rejected state-court ruling relates to the merits of the *Brady* claim. According to the notes of Prosecutor White mentioned above, Ms. Hallock initially said that "*she* tied [Mr. Flynn's] hands behind his back" on the night of the attack. App. at 230a (emphasis added). But according to a report filed by Deputy Walker, Ms. Hallock said that she "was *told to* tie Mr. Flynn's hands" behind his back. App. at 223a. At trial, Ms. Hallock testified that it was *Mr. Green* who tied Mr. Flynn's hands.

In Mr. Green's first state habeas petition, he argued that his trial counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984), for failing to impeach Ms. Hallock's trial statement (that Mr. Green tied Mr. Flynn's hands) with her statement in Deputy Walker's report (that she was "told to" tie Mr. Flynn's

hands). App. at 223a. The state court rejected this *Strickland* claim as "without merit," because it found that Ms. Hallock's statement that she "was told to tie Mr. Flynn's hands behind his back . . . is *far different* than reporting that [Ms.] Hallock stated that she tied [Mr.] Flynn's hands." *Id.* (emphasis added).

When considering the merits of Mr. Green's *Brady* claim, the Eleventh Circuit concluded that the failure to disclose Prosecutor White's notes "was immaterial" and "would have been of no demonstrable benefit to the defense." App. at 100a. That conclusion rested on the Eleventh Circuit's belief that the state court found that everything in Prosecutor White's notes, including Ms. "Hallock's hands-tying statement," "was disclosed to the defense"—i.e., because Mr. Green's trial counsel "had the report Deputy Walker filed . . . and [because that report] contained the [hands-tying] statement." App. at 101a. But as just noted, the state court *found just the opposite*—i.e., it found that the statement about being "told to" tie Mr. Flynn's hands is "far different" than a statement about actually "t[ying] [Mr.] Flynn's hands." App. at 223a (emphasis added). In other words, the Eleventh Circuit, instead of applying the mandatory presumption of correctness to the state-court's finding, 28 U.S.C. § 2254(e)(1), simply ignored and reversed it *sotto voce*.

CONCLUSION

AEDPA imposes a "highly deferential standard for evaluating state-court rulings." *Cullen*, 563 U.S. at 181. But this deference does not depend on the identity of the party-beneficiary; to the contrary, such deference is a two-way street.

The Eleventh Circuit's maintenance of the finality of Mr. Green's conviction came at the expense of the

state's interest in the finality of its courts' rulings. Neither principles of comity, *see Woodford*, 537 U.S. at 24 ("[S]tate-court decisions [must] be given the benefit of the doubt."), AEDPA's text, 28 U.S.C. § 2254(e)(1) ("[A] determination of a factual issue made by a [s]tate court shall be presumed to be correct."), nor this Court's rulings, *see Cone*, 556 U.S. at 467–68 (a federal court should "not second-guess" a state-court ruling "that [a claim] has been previously determined"), permit this discordant approach. *Amici* therefore respectfully ask this Court to grant Mr. Green's petition for certiorari.

Respectfully submitted,

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APPENDIX

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