No. 23-6912

# In the Supreme Court of the United States

SAMUEL FIELDS,

*Petitioner*,

v.

LAURA PLAPPERT, Warden,

*Respondent.*

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

*CAPITAL CASE*

## RESPONSE TO PETITION FOR REHEARING


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## BACKGROUND

A Kentucky jury convicted Samuel Fields of murdering 84-year-old Bess Horton in August 1993, and he was sentenced to death. Pet. App. 5a, 8a. Fields slashed Ms. Horton's throat and then stabbed her with such force that the knife went all the way through her head. *Id.* at 7a. The police found Fields in Ms. Horton's bedroom with her body. *Id.* He promptly confessed to killing her to three people. *Id.* at 7a, 8a. At trial, part of the prosecution's theory was that Fields broke into Ms. Horton's home by using a butter knife (known at trial as the "twisty knife") to unscrew the screws on a window on Ms. Horton's home. *Id.* at 8a. During deliberations, the jury tested that theory by using the twisty knife, which had been admitted into evidence, to unscrew screws in a wall of cabinets in the jury room. *Id.* at 10a–11a.

Fields unsuccessfully argued in state court that the jury's experiment violated his rights. *Id.* at 199a–204a. On habeas review, then-district judge Thapar denied relief on Fields's jury-experiment claim. *Id.* at 89a–93a. Judge Thapar explained that "the rule of law that Fields posits here—that juries must not conduct experiments in the jury room—is one that the United States Supreme Court has never recognized." *Id.* at 90a. On appeal, the en banc Sixth Circuit ultimately affirmed by a 10–5 vote. *Id.* at 3a–51a. The court understood this Court's AEDPA caselaw to direct that "prisoners may not sidestep the lack of Supreme Court precedent on a legal issue by raising the 'level of generality' at which they describe the Court's holdings on other issues." *Id.* at 12a (citations omitted). This AEDPA rule, the court determined, forecloses Fields's jury-experiment claim because "Fields cites not a single Supreme

Court case that has ever 'addressed' the propriety of jurors experimenting with evidence during deliberations—let alone one that has found these experiments unconstitutional." *Id.* at 13a (citation omitted).

Fields argued in response, just as he now argues in his petition for rehearing, that this Court has "clearly establish[ed] 'a constitutional right to have the jury determine guilt or innocence based only on evidence presented at trial.'" *Id.* at 17a (citation omitted). The Sixth Circuit, however, concluded that "[t]his line of reasoning bears the hallmarks of circuit decisions the Supreme Court has seen fit to summarily reverse under AEDPA: Fields articulates a *broad rule* based on *narrow holdings* in order to transform an imaginative extension of existing case law into clearly established Federal law as determined by the Supreme Court." *Id.* at 18a (citations omitted) (cleaned up). Put more simply, "Fields wrongly treats as clearly established law a 'general proposition' that originates with a few quotations from far-afield decisions." *Id.* (citation omitted).

The Sixth Circuit issued its decision on November 3, 2023—over two years ago. This Court denied certiorari on June 10, 2024. *Fields v. Plappert*, 144 S. Ct. 2635 (2024). Six months later, this Court issued its per curiam opinion in *Andrew v. White*, 604 U.S. 86 (2025) (per curiam).[1] Fields believed that *Andrew* supported him, so he asked the Sixth Circuit to recall its mandate. CA6 Dkt. 126. The Sixth Circuit denied

[1] The Court considered and denied Fields's petition for certiorari while the petition for certiorari in *Andrew* was pending. *Compare Fields v. Plappert*, No. 23-6912 (distributed for June 6, 2024 conference), *with Andrew v. White*, No. 23-6573 (initially scheduled for Mar. 28, 2024 conference).

his motion in an unreasoned order by the same 10–5 vote that it rejected the merits of his appeal. CA6 Dkt. 130. Fields then sought certiorari from the Sixth Circuit's refusal to recall its mandate, which this Court denied on November 10, 2025. *Fields v. Plappert*, 146 S. Ct. 371 (2025).

Meanwhile, again invoking *Andrew*, Fields filed a motion for leave to file an untimely petition for rehearing of the Court's denial of certiorari in this matter. He filed this motion more than six months after *Andrew* was decided. The Court granted Fields's motion and ordered the Warden to respond to the petition for rehearing.

## ARGUMENT

To justify the extraordinary remedy of rehearing a denial of certiorari, Fields must establish "intervening circumstances of a substantial or controlling effect" or "other substantial grounds not previously presented." *See* S. Ct. R. 44.2. The only basis for rehearing identified in Fields's petition is the rendition of *Andrew*. The Warden thus begins by discussing *Andrew* and then offers several reasons why it does not justify rehearing, especially in a closed death-penalty matter like this.

*Andrew* was not a jury-experiment case. In fact, it had nothing to do with alleged jury misconduct. At issue in *Andrew* was the admission of irrelevant evidence against a criminal defendant. 604 U.S. at 89–96. The Tenth Circuit denied habeas relief on the basis that no clearly established law existed that could entitle the petitioner to relief. *Id.* at 91. In particular, the court held that a passage in *Payne v. Tennessee*, 501 U.S. 808 (1991), was a "pronouncement," not a "holding." *Id.* (citation omitted).

This Court summarily reversed. It determined that the part of *Payne* that the Tenth Circuit distinguished was in fact a holding of the Court such that it qualified as clearly established law under AEDPA. *Id.* at 92–93. This was so, the Court explained, because the disputed passage was a "legal principle" that was "indispensable to the decision in *Payne*." *Id.* at 93. In explaining this conclusion, the Court noted that it had twice applied *Payne*'s holding—once in a case "much like Andrew's" and another time "in the same way that Andrew sought to rely on it here." *Id.* at 94. As the Court explained in the language that Fields now emphasizes, "[g]eneral legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court." *Id.*

As this description of *Andrew* makes clear, it is a narrow decision about how to read a single decision of this Court that has nothing to do with jury experiments. *Andrew* did not announce any new AEDPA principles. Instead, it simply applied the preexisting AEDPA rule that clearly established federal law "is the governing legal principle or principles set forth by the Supreme Court at the time the state court renders its decision." *Id.* at 92 (citing and quoting *Lockyer v. Andrade*, 538 U.S. 63, 71–72 (2003)).

Despite *Andrew* being a narrow precedent about how to read an inapplicable decision, Fields argues that *Andrew* helps him because he believes the Sixth Circuit held that general holdings cannot qualify as clearly established law under AEDPA. For example, he points to this Court's broad statement in *Turner v. Louisiana*, 379 U.S. 466, 472 (1965), that "the requirement that a jury's verdict 'must be based upon

the evidence developed at the trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury." As Fields sees it, this generalized statement and others like it constitute clearly established law under *Andrew* such that the Sixth Circuit's decision cannot stand.

That is wrong on several levels. To begin with, *Andrew* broke no ground in saying that a general holding can constitute clearly established law under AEDPA. After all, *Andrew* cited several prior decisions for this proposition. 604 U.S. at 94–95 (collecting cases). In fact, Fields argued before the Sixth Circuit, and the Warden did not dispute, that general statements can be clearly established law for purposes of AEDPA. CA6 Dkt. 102 at 5; CA6 Dkt. 107 at 10–11. So Fields's petition for rehearing does not ask for relief based on a new rule created by *Andrew* that the Sixth Circuit could not have considered. He wants relief based on a preexisting AEDPA rule that the parties addressed below and that the Sixth Circuit concluded does not apply here. In other words, Fields wants rehearing so that he can reargue an issue on which he already lost.

The Sixth Circuit specifically addressed the issue on which Fields now seeks rehearing. It approached the issue just like the Court did in *Andrew*. It looked at the generalized statements Fields cited from cases like *Turner*, and it asked whether those broad statements constitute holdings. Pet. App. 17a–19a; *see also id.* at 14a–17a. After studying each case, the court concluded that the actual holdings in those cases "say nothing about whether jurors may 'test' an admitted exhibit using objects in the jury room." *Id.* at 18a. More to the point, the Sixth Circuit concluded that Fields

was not relying on this Court's holdings but on a "'general proposition' that originates with a few quotations from far-afield decisions." *Id.* (citation omitted). In other words, by framing this Court's decisions at a "sky 'high level of generality,'" Fields "overlook[ed] what matters: their holdings." *Id.* (citation omitted).

The Sixth Circuit correctly noted that generalizing the holdings of this Court's caselaw, as Fields invites, is a recipe for summary reversal. *Id.* In this regard, the Sixth Circuit cited *Nevada v. Jackson*, 569 U.S. 505 (2013) (per curiam). There, the Ninth Circuit did what Fields invited the Sixth Circuit to do. It relied on a "broad right to present evidence bearing on a witness's credibility" as clearly established law. *Id.* at 512 (cleaned up) (citation omitted). This Court unanimously reversed. It explained, in language that the Sixth Circuit quoted, that "[b]y framing our precedents at such a high level of generality, a lower federal court could transform even the most imaginative extension of existing case law into 'clearly established Federal law, as determined by the Supreme Court.'" *Id.* (quoting 28 U.S.C. § 2254(d)(1)); *accord Lopez v. Smith*, 574 U.S. 1, 6 (2014) (per curiam) (holding that an "abstract" proposition that "a defendant must have adequate notice of the charges against him" does not "establish clearly the specific rule [the habeas petitioner] needs"). *Andrew* in no way modifies this basic AEDPA principle. In fact, *Andrew* made clear that this AEDPA rule was not at issue there. 604 U.S. at 96 ("Andrew does not rely on an interpretation or extension of this Court's cases but on a principle this Court itself has relied on over the course of decades."). So *Andrew* turned on a

different AEDPA principle than the one the Sixth Circuit applied to rule against Fields.

It's also worth noting that *Andrew* emphasized that this Court had twice applied *Payne*'s general rule. *Id.* at 94. And the Court had done so in closely analogous circumstances. *Id.* (noting that one case was "much like Andrew's" and the other "relied on *Payne* in the same way that Andrew sought to rely on it here"). The opposite is true here. As the Sixth Circuit summarized, Fields "cites not a single Supreme Court case that has ever 'addressed' the propriety of jurors experimenting with evidence during deliberations—let alone one that has found these experiments unconstitutional." Pet. App. 13 (citation omitted). This absence of jury-experiment caselaw further distinguishes this matter from *Andrew*.

In sum, the Sixth Circuit did not say that general holdings cannot count as clearly established law. To so conclude would have been an error before and after *Andrew*. Instead, the Sixth Circuit considered each of the broad statements from this Court's caselaw cited by Fields and determined none was a holding of this Court. In doing so, the Sixth Circuit applied the very same holding-centric analysis that this Court later undertook in *Andrew*. As *Andrew* instructs, the "holdings of this Court" drive the AEDPA analysis. *See* 604 U.S. at 94. The Sixth Circuit, then, was correct to note that "what matters" is this Court's "holdings." Pet. App. 18a. As a result, there is no daylight between the Sixth Circuit's decision and *Andrew*.

Even if the Court thinks there is tension with *Andrew*, granting rehearing will not change the bottom-line result. Assuming that Fields's favored broad propositions

are clearly established law under AEDPA, he still must overcome Section 2254(d)(1)—in particular, he must show that the Kentucky Supreme Court "unreasonabl[y] appli[ed]" clearly established law. In other words, he must show that the Kentucky Supreme Court's decision is so unreasonable that no "fairminded jurist" can agree with it. *See Shinn v. Kayer*, 592 U.S. 111, 121 (2020) (per curiam). Fields cannot make that high showing because, as the Sixth Circuit noted, "Fields cites not a single Supreme Court case that has ever 'addressed' the propriety of jurors experimenting with evidence during deliberations—let alone one that has found these experiments unconstitutional." Pet. App. 13a (citation omitted). Plus, even if Fields's generalized proposition counts as clearly established law, "the more general the rule, the more leeway state courts have." *Shinn*, 592 U.S. at 119 (citation omitted). Putting the generalized nature of Fields's favored rule together with the absence of jury-experiment caselaw, there's no way Fields can establish that the Kentucky Supreme Court acted so unreasonably that not even a single fairminded jurist can agree with its decision. Indeed, as the Sixth Circuit emphasized, "[c]ountless" lower-court opinions have found "no federal or state error when jurors conducted experiments using 'extrinsic evidence' from the jury room." Pet. App. 20a.

In this respect as well, this case differs from *Andrew*. There, as this Court emphasized, it had applied *Payne*'s rule twice in similar circumstances. 604 U.S. at 94. As a result, a remand in *Andrew* was not an empty exercise. *See id.* at 97 (Alito, J., concurring in the judgment) (expressing "no view" on whether AEDPA's "very high standard is met here"). Here, by contrast, the result on remand is all but a foregone

conclusion, given the absence of jury-experiment caselaw from this Court, the generalized rule on which Fields relies, and the "[c]ountless" decisions approaching jury experiments similarly to the Kentucky Supreme Court. *See White v. Woodall*, 572 U.S. 415, 423 (2014) (explaining that an absence of on-point caselaw "alone suffices to establish that the Kentucky Supreme Court's conclusion was not 'objectively unreasonable'" (citation omitted)).

One final point merits emphasis as the Court weighs whether to reopen this closed matter. As Fields's petition notes, this Court has granted rehearing in a closed case on the theory that "the interests of justice would make unfair the strict application of [the Court's] rules." *United States v. Ohio Power Co.*, 353 U.S. 98, 99 (1957) (per curiam). To be clear, the Court's rules say that a belated rehearing petition, like Fields's, is not permitted. S. Ct. R. 44.2 ("The time for filing a petition for the rehearing of an order denying a petition for a writ of certiorari or extraordinary writ will not be permitted."); *see Ohio Power*, 353 U.S. at 99 (Harlan, J., dissenting) (criticizing the Court's "disturbing" "departure" from "sound procedure"). That aside, the interests of justice are against Fields, even if there is tension between the decision below and *Andrew*. This Court's denial of certiorari in Fields's case was the culmination of decades of litigation to vindicate Kentucky's sovereign power to punish crimes within its borders and to protect its citizens from violent criminals like Fields. In a closed death-penalty matter like this, Kentucky's "interests in finality *are all but paramount*" given that Fields "has already had extensive review of his claims in federal and state courts." *See Calderon v. Thompson*,

523 U.S. 538, 557 (1998) (emphasis added). Finality in a case like this "acquires an added moral dimension" in recognition of the Commonwealth's interest in carrying out its punishment and the victim's interest in securing justice. *See id.* at 556.

Given the States' profound interest in finality, the Court has set an almost insurmountable standard before a court of appeals can recall its mandate in a closed death-penalty matter like this one. In that circumstance, a prisoner must make a "strong showing" of actual innocence before a circuit court can recall its mandate. *Id.* at 557. Absent such proof, "the State's interests in actual finality outweigh the prisoner's interest in obtaining yet another opportunity for review." *Id.* The upshot is that a federal court of appeals can recall its mandate in a closed death-penalty matter in only the most extraordinary of circumstances. Although *Calderon* considered a circuit court recalling its mandate, an analogous standard should govern here.[2] Were it otherwise, a losing party could circumvent the high standard for a court of appeals to recall its mandate by simply asking this Court to rehear its denial of certiorari. Make no mistake, that is exactly what Fields is doing, given that this Court has already denied certiorari related to Fields's motion to recall the Sixth Circuit's mandate.

[2] *Calderon* also held that a motion to recall the mandate in a circuit court "can" qualify as a second or successive application subject to AEDPA's gate-keeping requirements. 523 U.S. at 553–54. A similar conclusion should hold here, given that Fields is unmistakably seeking to relitigate an old claim. *See* 28 U.S.C. § 2244(b)(1). Even if not, the Court should still exercise its discretion "in a manner consistent with the objects" of AEDPA, *Calderon*, 523 U.S. at 554, which supports an especially robust standard for rehearing.

Fields's ordinary avenues for appeal have been exhausted since this Court denied certiorari on June 10, 2024. In the 20 months since, Ms. Horton's family has had the assurance—earned after two trials and decades of litigation—that Fields's appeals are *finally* exhausted. To reopen Fields's case at this late juncture would cause profound harms:

> Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out. To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike.

*Id.* at 556 (citations omitted) (cleaned up). Given these weighty considerations, it bears emphasis that Fields was found in the room with Ms. Horton's body, after which he confessed to three people that he had killed her. Judged against Kentucky's profound interest in finality, Fields's hair-splitting argument about how *Andrew* applies here comes nowhere close to providing the truly compelling cause needed to reopen this closed case.

## CONCLUSION

The Court should deny rehearing.

Respectfully submitted,

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