

OCTOBER TERM, 2024

No. 24-5782

IN THE SUPREME COURT OF THE UNITED STATES

Harvey Miguel Robinson,
Petitioner,

v.

**Secretary, Pennsylvania Department of Corrections;
Superintendent, Phoenix SCI;
Superintendent, Rockview SCI;
Lehigh County District Attorney,**
Respondents.

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

**REPLY IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI**

— CAPITAL CASE —

Eric Patrick Motylinski*
Eric J. Montroy
Assistant Federal Defenders
Federal Community Defender Office
for the Eastern District of Pennsylvania
601 Walnut Street, Suite 545 West
Philadelphia, PA 19106
(215) 928-0520
Eric_Motylinski@fd.org
Eric_Montroy@fd.org

**Counsel of record for Petitioner, Harvey Miguel Robinson
Member of the Bar of the Supreme Court*

REPLY ARGUMENT

The Court should grant certiorari because (1) contrary to *Simmons v. South Carolina*, 512 U.S. 154 (1994), and progeny, the trial judge never retracted his errant instruction to Mr. Robinson’s jury that the law that life imprisonment means life without the possibility of parole may change in the future, and (2) the Third Circuit’s decision below highlights a circuit split as to whether federal habeas courts may invent their own reasoning to justify a state court’s decision, even where that reasoning contradicts the state court’s actual reasoning. As explained below, Respondents’ cursory and conclusory Brief in Opposition is unresponsive to Mr. Robinson’s actual arguments and offers no cogent reason why this Court should not grant certiorari.

I. *Simmons* Has No Meaning if the Jury Can Be Instructed That the Law That Life Imprisonment Means Life Without the Possibility of Parole May Change.

Respondents simply quote at length the decision below and call it satisfactory without grappling with Mr. Robinson’s arguments as to why the quoted material is factually unsupported and runs afoul of *Simmons* and progeny. The Third Circuit repeatedly states that the trial judge “retracted” his speculation that the law may change. But the Third Circuit cannot support its theory of retraction, and neither can Respondents, BIO at 4 (quoting 5a–6a¹), because no retraction ever occurred. *See* Petition at 7–8. The Third Circuit also dodged deciding “whether this speculation violated *Simmons*,” *id.* (quoting 6a), and Respondents similarly offer no defense of the

¹ References to the Appendix are cited as ___ a.

idea that *Simmons* is not violated where a judge instructs the jury that the law may change. *Simmons* states what the jury may be informed of, beyond parole ineligibility: “any truthful information regarding the availability of commutation, pardon, and the like.” *Simmons*, 512 U.S. at 177. As explained in Mr. Robinson’s Petition at 8–10, the threat that the law may change is not on that list because the point of *Simmons* is to assure the jury that parole is an impossibility. If the jurors act on their fear of parole, which the specter of a change in the law presses them to do, then the jurors are applying counterfactual law, which is the constitutional danger that *Simmons* and progeny were written to prevent. The Court should grant certiorari on this question.

II. The Third Circuit’s Decision Highlights a Circuit Split Concerning Whether Federal Habeas Courts May Invent Their Own Reasoning to Justify a State Court’s Decision, Even Where That Reasoning Contradicts the State Court’s Actual Reasoning.

Respondents’ answer here is confused and, fundamentally, wrong. Respondents mischaracterize the Petition’s argument as “pretending that the Third Circuit deferred to an unreasonable application of *Simmons* by the state court.” BIO at 5. That is wrong: the Third Circuit did *not* defer to the state court’s reasoning but instead invented its own reasoning to support the state court’s conclusion. Respondents admit that *Wilson v. Sellers*, 584 U.S. 122 (2018), holds that “when the last state court to decide a prisoner’s federal claim explains its decision on the merits in a reasoned opinion. . . . , a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable.” BIO at 6 (quoting *Wilson*, 584 U.S. at 125). But Respondents ignore the fact that the reasoning the Third Circuit applies—that the trial judge “retracted” his speculation that the law

may change—is nowhere to be found in the state court’s opinion and instead is contradicted by the state court’s explicit embrace of the suitability of the trial judge’s speculation. *See* Petition at 11. Furthermore, Respondents do not dispute that there is a deep circuit split on this question² or offer any reason why this Petition is not the ideal vehicle to cure it. The Court should grant certiorari on this question and resolve the split.

CONCLUSION

For the reasons set forth above and in Mr. Robinson’s Petition, the Court should grant certiorari.

Respectfully submitted,

/s/ Eric Patrick Motylinski

Eric Patrick Motylinski*

Eric J. Montroy

Assistant Federal Defenders

Federal Community Defender Office

for the Eastern District of Pennsylvania

601 Walnut Street, Suite 545 West

Philadelphia, PA 19106

(215) 928-0520

Eric_Motylinski@fd.org

Eric_Montroy@fd.org

**Counsel of record for Petitioner*

Member of the Bar of the Supreme Court

Dated: Dec. 30, 2024

² Indeed, the dissent in one of the decisions the split comprises discusses the split at length. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1070–72 (11th Cir. 2022) (en banc) (Jill Pryor, J., dissenting).