

No. _____
(CAPITAL CASE)

IN THE
Supreme Court of the United States

ANTHONY MEDINA,
Petitioner,

v.

BOBBY LUMPKIN, DIRECTOR, TEXAS DEPT. OF CRIMINAL JUSTICE,
CORRECTIONAL INSTITUTIONS DIVISION

RESPONDENT.

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

PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE QUESTION PRESENTED

Petitioner Anthony Medina seeks resolution of a long-standing circuit split over when a state court order qualifies as an adjudication “on the merits” under 28 U.S.C. § 2254(d). Under *Johnson v. Williams*, 568 U.S. 289, 302 (2013), an adjudication is “on the merits” if it was “delivered after the court heard . . . and *evaluated* the evidence and parties’ substantive arguments.” The lower courts refused to apply *Johnson*, barring review of Medina’s substantial claims and arguments.

In the Fifth Circuit, “[t]he term ‘adjudication on the merits’ . . . refers solely to whether the state court reached a conclusion as to the substantive matter of a claim, as opposed to disposing of the matter for procedural reasons.” *Valdez v. Cockrell*, 274 F.3d 941, 950 (5th Cir. 2001). The term “on the merits,” however, “does not speak to the quality of the process.” *Id.* Whether the state court heard or evaluated a petitioner’s evidence and substantive arguments before reaching its conclusion is irrelevant. Other circuits hold that “dispos[ing] of a claim without considering the facts supporting it is not a decision on the merits.” *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009) (*en banc*), *abrogated by Lott v. Trammell*, 705 F.3d 1167, 1213 (10th Cir. 2013); *see also Valentino v. Clarke*, 972 F.3d 560, 577 (4th Cir. 2020) (“[A] state court could not have properly adjudicated a claim if it decided on a materially incomplete record.”) (internal quotations omitted).

Medina was convicted of capital murder and sentenced to death. His trial counsel performed hardly any investigation during the six months between appointment and trial in this case—in part because they tried three other unrelated capital cases during this period. Medina’s ensuing ineffective-assistance-of-counsel-claim landed before a trial court that, in *every* case, adopts *verbatim* *every* individual finding of fact and conclusion of law submitted by the State. True to form, the state court failed to acknowledge Medina’s filings and merely signed every proposed order submitted by the State. In federal court, Medina alleged his claim had not been “adjudicated on the merits.” The lower courts summarily rejected Medina’s arguments as without any basis in the law and denied his request for an appeal.

This case therefore presents the following questions:

1. Is the Fifth Circuit’s refusal to apply this Court’s definition of an adjudication “on the merits” for purposes of 28 U.S.C. § 2254(d) debatable among jurists of reason?
2. Could reasonable jurists debate that trial counsel’s near total failure to investigate Medina’s case, and the ensuing consequences, violated Medina’s right to the effective assistance of counsel?

PARTIES TO THE PROCEEDINGS BELOW

All parties appear on the cover page in the case caption.

LIST OF RELATED CASES

A direct appeal, in which the Texas Court of Criminal Appeals affirmed Medina's conviction and sentence on October 6, 1999. *Medina v. State*, 7 S.W.3d 633 (Tex. Crim. App. 1999). This Court denied Medina's petition for writ of certiorari on May 1, 2000. *Medina v. Texas*, 529 U.S. 1102 (2000).

Texas post-conviction proceedings. *Ex parte Medina*, WR-41,274-01 (Tex. Crim. App. April 28, 1999); *Ex parte Medina*, WR-41,274-02 (Tex. Crim. App. Sept. 16, 2009); *Ex parte Medina*, WR-41,274-03 (Tex. Crim. App. Nov. 23, 2005); *Ex parte Medina*, WR-41,274-04 (Tex. Crim. App. Sept. 16, 2009); *Ex parte Medina*, WR-41,274-05 (Tex. Crim. App. Jan. 25, 2017).

Habeas corpus proceedings in the United States District Court. *Medina v. Lumpkin*, 2023 WL 3852813 (S.D. Tex. June 6, 2023).

Proceedings before the United States Court of Appeals for the Fifth Circuit, *Medina v. Lumpkin*, No. 23-70003 (5th Cir. Aug. 15, 2024), in which the court denied a certificate of appealability.

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PETITION FOR A WRIT OF CERTIORARI

Anthony Medina petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit (“Fifth Circuit”).

OPINIONS BELOW

The Fifth Circuit’s August 15, 2024, unpublished opinion is attached as an appendix.

STATEMENT OF JURISDICTION

The Fifth Circuit entered its judgment on August 15, 2024. Medina’s timely petition for rehearing was denied on September 18, 2024. On December 4, 2024, this Court extended the time to file this petition to January 16, 2025. *Medina v. Lumpkin*, No. 24A538. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the Sixth and Fourteenth Amendments to the United States Constitution, which provide in relevant part:

“In all criminal prosecutions, the accused shall enjoy the right to . . . the Assistance of Counsel for his defence.” U.S. Const. amend VI.

“[N]or shall any State deprive any person of life, liberty, or property, without due process of law.” U.S. Const. amend XIV, § 1.

This case also involves 28 U.S.C. § 2254(d), which states as follows:

(d) 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; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

Trial Proceedings.

“A good way to end up on death row in Texas is to be accused of a capital crime and have Jerry Guerinot represent you.”¹ This happened to Petitioner Anthony Medina. On January 5, 1996, Medina was arrested for a double homicide that occurred on New Year’s Day. On January 15, 1996, Gerard “Jerry” Guerinot was appointed to defend Medina against capital murder charges. Guerinot is infamous for his impossibly huge caseload and failure to prepare for capital trials.² With 20 clients sentenced to death,³ Guerinot’s tally of death-sentenced clients is more than the death-sentenced population of 11 of the 28 states with the death penalty.⁴ This Court

¹ Adam Liptak, *A Lawyer Best Known for Losing Capital Cases*, N.Y. TIMES, May 17, 2010 (“Lawyer Best Known for Losing”).

² *Lawyer Best Known for Losing*, N.Y. TIMES, supra, (Guerinot’s record “seems to boil down to a failure to conduct even rudimentary investigations.”); Scott Horton, *The Texas Death Penalty Express*, HARPER’S MAGAZINE, May 20, 2010 (Guerinot “plays an essential role in [the Texas] system by creating the illusion that defendants have competent defense representation.”); Lise Olsen, *Hundreds Kept Jailed for Months Pretrial: Lawyers for the Poor Have High Caseloads, but Little Oversight*, HOUSTON CHRONICLE, Oct. 4, 2009 (“In 2007 and 2008, [Guerinot was] assigned to handle more than 2,000 felony clients, . . . enough work to keep more than 12 lawyers busy, according to caseload limits accepted by the National Legal Aid and Public Defender Association.”) (emphasis added); David Rose, *Lethal Counsel*, THE OBSERVER, Dec. 2, 2007 (“Jerry Guerinot [is] probably America’s most dangerous defence lawyer.”); Mary Flood, *What Price Justice?*, HOUSTON CHRONICLE, July 1, 2000, at A1 (noting jokes about the “Guerinot Wing” on death row).

³ Debra Cassens Weiss, *Defense Lawyer Holds Possible Record for Most Clients Sentenced to Death*, ABA Journal, May 18, 2010 (available at http://www.abajournal.com/news/article/defense_lawyer_holds_possible_record_for_most_clients_sentenced_to_death/) (last visited Jan. 5, 2025).

⁴ Death Penalty Information Center, <https://deathpenaltyinfo.org/death-row/overview> (last visited Jan. 5, 2025).

previously deemed his representation unconstitutionally deficient in another Texas capital case. *Buck v. Davis*, 580 U.S. 100, 118–22 (2017).

His most prolific period was in 1996. In six months, from February 1 to August 1 of 1996, four Guerinot clients were sentenced to death. The first was just after he was appointed to Medina’s case. He then tried two more unrelated capital cases, the last of which ended 45 days before Medina’s began. Medina was sentenced to death on August 1, 1996. In addition to these four capital trials, Guerinot was simultaneously counsel in 174 other felony cases and had a part-job as a prosecutor in an adjacent city. ROA.1439–44.⁵

Jack Millin, Medina’s second-chair lawyer, was dying of stomach cancer. Millin had a shunt implanted in his chest and missed portions of Medina’s trial to receive chemotherapy. ROA.1963. Guerinot later reported that Millin struggled to eat during trial. Medina’s was the third death sentence Millin obtained in less than six months. Millin died less than two months after Medina was sentenced to death. ROA.1445.

Counsel filed their first pretrial motion on Medina’s behalf just 26 days before trial. Their investigators began working on Medina’s case only on the eve of trial and spent a total of 30 hours investigating for *both* phases of the trial. ROA.1971–72.

The case concerned a drive-by shooting in which one gang, La Raza 13 (“LRZ”), was attempting to avenge the murder of one of its members by another gang, the H-Town Crips (“HTC”). The only meaningfully contested issue was identity: was the shooter Medina or fellow LRZ gang member Dominic Holmes?

⁵ “ROA” citations refer to the Record on Appeal in *Medina v. Lumpkin*, No. 23-70003 (5th Cir. Aug. 15, 2024).

It was undisputed that Holmes, Medina, and several other LRZ members attended a New Years Eve party near the site of the shooting. Medina said that Holmes left the party with Jamie Moore, Holmes's cousin, in Moore's car around the time of the shooting and returned sometime later. ROA.10311–60. Moore admitted to being the driver during the shooting, ROA.1893, and Holmes admitted to being in the car. ROA.10081–84. Both claimed, however, that other LRZ members, including Medina, were in the car and that Medina was the shooter. ROA.9856; 10088.

When Medina was arrested and charged, the murder weapon—a large assault rifle—had not been located. Both Medina and Holmes told police they did not know where it was. ROA.1425; 1857. Two months later, based on an anonymous tip, the police found the weapon wrapped in a plastic bag and buried near another LRZ member's house. ROA.1435–36. The police identified two sets of palm prints on the bag. None matched Medina. One set, however, matched Holmes. *Id.*

Though Holmes had demonstrably lied under oath to the police about disposing of the murder weapon and the only forensic evidence linked Holmes to the murder, the prosecutors nonetheless proceeded to trial against Medina with Holmes as their star witness. The State's other key witnesses were Moore (Holmes's cousin and the admitted driver of the car), Johnny Valadez (a sixth grade LRZ member who claimed to have been in the car), and Regina Juarez (a ninth grade LRZ member). Juarez denied having been in the car—though some testified she had been—but testified that Medina confessed to her shortly after the shooting. ROA.1477. Juarez also testified that she helped Holmes dispose of the murder weapon—contrary to her prior sworn,

false statement to the police that sent them on a fruitless scuba diving expedition in a Houston bayou. ROA.1477–78.

The State's theory at trial was that Medina had somehow unexpectedly produced the large assault rifle while seated in the passenger's seat of Moore's car and began shooting without any warning to the other occupants. The State alleged that after he was arrested, Medina asked Holmes and Juarez to dispose of the murder weapon. ROA.1478. Despite substantial coaching from the prosecutors, the State's witnesses were incapable of consistently recounting the State's theory of events.

When Holmes was asked about the disposal of the murder weapon, he testified that had not seen it since the night of the shooting. ROA.1474. The prosecutor then coaxed Holmes to tell a different story that they had discussed following the discovery of his palmprint on the bag in which rifle was hidden. ROA.1474–75. When Juarez gave her version of the disposal of the murder weapon, she contradicted Holmes's version with respect to who participated and the actions they performed.⁶ ROA.1478.

Valadez initially testified that Holmes was sitting in the front seat (where witnesses from the scene placed the shooter), forcing the prosecution to impeach him with his prior statement to the police. ROA.1471. Valadez then explained that Moore stopped the car just before the shooting so that the weapon could be retrieved from Moore's trunk and Medina then traded seats with Holmes. *Id.* If this version of events is credited, Moore and Holmes would have had obvious criminal liability in connection

⁶ Holmes claimed that Juarez was not involved with the gun disposal and admitted that he personally wrapped the gun in the plastic bag. Juarez initially omitted Holmes from her gun disposal story altogether until she was specifically asked about him during cross-examination. Juarez insisted Holmes never handled the gun or helped wrap it.

with the shooting. Yet none of the State's witnesses, including Holmes (whose palm prints connected him to the murder weapon), Juarez (who helped dispose of the murder weapon), or Moore (who drove the car used in a drive-by shooting) were ever charged with any crime.⁷

Guerinot did virtually nothing of substance to contest the State's case. Having failed to interview any of the key witnesses, Guerinot failed to impeach Holmes and Juarez with their prior sworn statements disclaiming any knowledge of what became of the murder weapon. The jury never learned that they indisputably lied under oath. Instead, Guerinot asked bizarre non sequiturs. He accused Holmes, who is Black, of smoking crack on the night of the shooting—even though there had never been any previous mention of crack cocaine at the trial. ROA.10102. He accused Juarez of attempting suicide. ROA.1479.

Alarmed by Guerinot's failure to investigate, Medina's family attempted to develop evidence on their own. ROA.1448–49. Medina's sister testified that Holmes had confessed to her. ROA.1481. Medina's family also located two witnesses who testified that Holmes had made an inculpatory statement to them, though the prosecutor was able to characterize the statement as vague. There was no other defense case beyond the witnesses brought to Guerinot by Medina's family.

The jury deliberated for ten hours and sent out two notes asking questions but

⁷ The prosecutor confirmed on the record that Holmes was "guilty of tampering," ROA.10459, but he was never prosecuted. None of the State's witnesses were prosecuted for obstruction or tampering, or for perjury after testifying inconsistently with their sworn statements. But two other witnesses allegedly in the car during the shooting—girls aged 14 and 16 whose grand jury testimony contradicted their statements and exculpated Medina—were prosecuted and sentenced to years in prison. ROA.1438.

eventually convicted Medina of capital murder. ROA.10518–23. After a penalty phase in which defense counsel plucked unprepared family members from the audience to testify, Medina was sentenced to death on August 1, 1996. ROA.10793.

Post-Trial State Court Proceedings.

The Texas Court of Criminal Appeals (“TCCA”) affirmed Medina’s conviction and sentence on October 6, 1999. *Medina v. State*, 7 S.W.3d 633 (Tex. Crim. App. 1999). This Court denied Medina’s petition for writ of certiorari on May 1, 2000. *Medina v. Texas*, 529 U.S. 1102 (2000).

Medina filed a 284-page state habeas application asserting numerous substantial constitutional violations, along with detailed factual allegations supported by over 70 evidentiary proffers consisting of affidavits and records. ROA.7166–7720. The affidavits Medina submitted in state habeas proceedings included powerful evidence that Holmes was the shooter and had threatened other witnesses into implicating Medina.

Holmes had at least two motives for the murder. First, he wanted to move up in the LRZ hierarchy, which required engaging in “combat.” Second, Holmes was very close with the LRZ member who was killed by HTC. Holmes had a tattoo honoring his death and spoke frequently about wanting to exact revenge on HTC. ROA.1521.

Medina submitted an affidavit from an eyewitness saw a Black man near the scene firing a matching weapon from the passenger side of a car. ROA.7571. Specifically, a neighborhood resident swore that on the night of the shooting he saw a man matching Moore’s description driving a car matching the description of Moore’s

car in the direction of the site of the shooting. Another Black man (Holmes is Black, Medina is a light-skinned Hispanic) was shooting a rifle from the passenger's seat of the car. *Id.*

A high-level LRZ member named Dallas Nacoste, who had given a statement to the police implicating Holmes, stated in his postconviction affidavit that he personally authorized Holmes to commit the drive-by on the night of the shooting. ROA.7565. He also stated that Holmes subsequently told him that he planned to blame Medina for the shooting and that he had threatened Valadez into doing the same. Valadez confirmed this to Nacoste. ROA.7566.

Juarez's ex-boyfriend stated in his postconviction affidavit that Holmes had also threatened to kill her if she did not implicate Medina. ROA.7485. Holmes and Juarez admitted to another LRZ member, whose affidavit was also attached to Medina's state habeas petition, that Holmes had been the shooter but that they would blame Medina. ROA.7580. A third witness signed an affidavit swearing that, shortly after the shooting, Holmes brought the murder weapon wrapped in a towel to Moore's sister's house before Moore insisted that Holmes dispose of it elsewhere. ROA.7577. Holmes eventually sought promotion within LRZ as a reward for his actions. ROA.7585.

The application alleged constitutional violations predicated on Medina's new, extra-record evidence, including claims of ineffective assistance of trial counsel ("IATC"), prosecutorial misconduct, and juror misconduct. The State denied almost all of Medina's allegations and proffered its own affidavits controverting many of

them.

State law compelled the trial court—without a request from Medina—to identify from the pleadings any material factual disputes and to afford a process for developing the record and adjudicating them.⁸ Medina nonetheless submitted motions identifying areas of material factual controversy, seeking discovery, and requesting a hearing at which he could prove allegations denied by the State. ROA.6685–6700; 7679–7729. For example, Medina pointed to his evidentiary proffers showing that Guerinot had failed to interview any of the State’s witnesses as well as other available witnesses never contacted by the defense that would have been favorable to Medina’s defense. ROA,7681. The State proffered written testimony from Guerinot baldly asserting that the “defense interviewed witnesses” without identifying any of them. *Id.* Medina sought a hearing to adjudicate these disputed facts and prove his allegation that Guerinot had failed to interview critical witnesses he knew or should have known about.

The trial court never acknowledged Medina’s motions. Instead, the trial court signed a proposed order drafted by the prosecutor denying that any material factual disputes existed and ordering both parties to submit findings of fact and conclusions of law. ROA.6927.

⁸ Tex. Code Crim. Proc. art. 11.071 § 8(a) (“Not later than the 20th day after the last date the state answers the application, the convicting court *shall* determine whether controverted, previously unresolved factual issues material to the legality of the applicant’s confinement exist and shall issue a written order of the determination.”) (emphasis added); *id.* at § 9(a) (“If the convicting court determines that controverted, previously unresolved factual issues material to the legality of the applicant’s confinement exist, the court shall enter an order, not later than the 20th day after the last date the state answers the application, designating the issues of fact to be resolved and the manner in which the issues shall be resolved. To resolve the issues, the court may require affidavits, depositions, interrogatories, and evidentiary hearings and may use personal recollection.”).

Medina objected to the prosecution-authored order:

Mr. Medina maintains that there are still controverted material facts to be resolved in his case and reurges the arguments and requests set forth in his previous filings. Mr. Medina again reurges his request for an evidentiary hearing so that this Court may make accurate findings regarding the extrarecord evidence submitted by Mr. Medina.

ROA.6936.

The trial court subsequently signed an order purporting to adjudicate facts and make legal rulings that had been prepared by the prosecutor. ROA.7004. The court did so without so much as altering the title or correcting any typographical errors and misspellings. Thus, the trial court's findings in this case are entitled "Respondent's Proposed Findings of Fact, Conclusions of Law and Order." ROA.6949. Attached to the order were all of the State's evidentiary proffers but none of Medina's. ROA.7006–55. Ultimately, the only work the trial court performed on Medina's state habeas application was to sign and date all prosecution-proposed orders. Medina's motions went wholly unacknowledged.

On September 16, 2009, the TCCA summarily adopted the trial court's findings and denied relief. *Ex parte Medina*, No. WR-41,274-02 (Tex. Crim. App. Sept. 16, 2009).

Federal Habeas Corpus Proceedings.

In federal court, Medina argued that the combination of the state court's abdication of judicial authority, its wholesale adoption of the State's evidence and arguments, and its failure to engage with Medina's evidence and arguments rebutted the existence of a qualifying state court adjudication "on the merits" of his claims.

ROA.3389–93; 4067–4110; 4271–83.

Medina grounded his argument on *Johnson v. Williams*, 568 U.S. 289 (2013). *See, e.g.*, ROA.4272–77. He cited to record evidence demonstrating that the state court prosecutor authored the critical witness affidavits she proffered. ROA.3295–97. He also cited to the state court findings deeming the prosecutor’s affidavits credible even when her witness affidavits were contradicted by the trial record and Medina’s extra-record evidence. *See, e.g.*, ROA.3298–3300.

Additionally, Medina produced evidence that, in every contested capital postconviction case before it, the trial court in question had *never* credited a single defense-sponsored finding of fact or conclusion of law and had adopted *verbatim every* prosecution-authored finding of fact and conclusion of law submitted to it. ROA.4085–87. And Medina produced evidence that the trial court’s behavior was consistent with a countywide pattern and practice of absolute deference to the prosecution in capital postconviction cases. ROA.4087–94.

In addition to this statistical evidence, Medina submitted qualitative evidence showing that Harris County trial courts tended to adopt prosecution orders without reviewing them or checking them against the record they purportedly relied upon. ROA.4094–4100. Indeed, one judge had to withdraw an order after accidentally signing the State’s proposed findings in a capital habeas case pending before a different judge. ROA.4099–4100. Medina also documented numerous *ex parte* contacts between the Harris County District Attorney’s Office (“HCDAO”) and trial court judges regarding the signing of State’s proposed findings. ROA.4100–06. Based

on this proffer, Medina sought discovery and a hearing to rebut the existence of an adjudication “on the merits”. ROA.4340; 4361–63; 4463–67.

The district court summarily dismissed Medina’s arguments and evidence in a footnote. The court held—without even citing this Court’s 2013 *Williams* decision—that a state court adjudication on the merits occurred. It reasoned that the Fifth Circuit’s pre-*Williams* precedent and unpublished orders categorically prohibited any argument predicated on the circumstances of state court review:

Medina raises lengthy arguments which, essentially, contend that the state court adjudication should not merit federal deference because it was too flawed, superficial, or favorable to the State. AEDPA predicates federal deference on the existence of a state adjudication without commenting on the quality of state review. *Medina’s arguments about the inapplicability of AEDPA deference have no basis in the law. See Freeney v. Davis*, 737 F. App’x 198, 206 (5th Cir. 2018); *Basso v. Stephens*, 555 F. App’x 335, 342, 343 (5th Cir. 2014); *Green v. Thaler*, 699 F.3d 404, 416 n.8 (5th Cir. 2012); *Valdez v. Cockrell*, 274 F.3d 941, 950 (5th Cir. 2001).

Medina v. Lumpkin, 2023 WL 3852813, at *7 n.15 (S.D. Tex. June 6, 2023) (emphasis added). The district court thus applied § 2254(d) to bar relitigation of Medina’s IATC claims, denied relief, and denied a certificate of appealability (“COA”). *Id.* at *25; *44–*45.

Medina sought a COA from the Fifth Circuit regarding his IATC claims and argued, *inter alia*, that reasonable jurists could debate whether the state court had adjudicated them on the merits. COA App.54–58; 78. Medina noted that the district court’s footnote failed to acknowledge that, pursuant to *Williams*, 568 U.S. at 301–03, the presumptive state court adjudication on the merits may be rebutted by evidence that a “court” failed to “hear[] and *evaluate[]* the evidence and the parties’

substantive arguments.” *Id.* at 57. Instead, the district court created an irrebuttable presumption in violation of *Williams*. *Id.* at 57–58. Medina noted that the Fourth Circuit had recognized the validity of his legal position but the district court instead relied on pre-*Williams* circuit authority and unpublished orders. *Id.* at 58. Thus, Medina argued, his legal arguments were at least debatable. *Id.*

The Fifth Circuit, like the district court, summarily rejected Medina’s argument and failed to acknowledge or even cite to this Court’s *Williams* decision. Instead, the Fifth Circuit held that “because the state court reached the merits of Medina’s claims, they were adjudicated on the merits and AEDPA deference applies.” App.11. The Fifth Circuit’s COA denial, as described *infra*, was predicated on pre-*Williams* circuit precedent.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD RESOLVE THE CIRCUIT SPLIT OVER THE APPLICATION OF § 2254(d), ONLY A MINORITY OF THE CIRCUITS CURRENTLY ADHERE TO THIS COURT’S DEFINITION OF AN ADJUDICATION “ON THE MERITS.”

I. The Fifth Circuit ignored whether the state court heard and evaluated the parties’ evidence and substantive arguments. In doing so, it improperly excised the “on the merits” prerequisite to 28 U.S.C. § 2254(d)’s relitigation bar.

A. An adjudication is “on the merits” only if the state court hears and evaluates the parties’ evidence and arguments.

This Court has established a rebuttable presumption that habeas claims denied in state court proceedings were adjudicated “on the merits” for purposes of 28 U.S.C. § 2254(d). *Williams*, 568 U.S. at 302. *Williams* “require[d] [the Court] to ascertain the

meaning of the [§ 2254(d)] adjudication-on-the merits requirement.” *Id.* at 292. The Court held that a judgment is “on the merits”

only if it was “delivered after the court . . . heard and *evaluated* the evidence and the parties’ substantive arguments.” Black’s Law Dictionary 1199 (9th ed. 2009) (emphasis added). And as used in this context, the word “merits” is defined as “[t]he *intrinsic rights and wrongs of a case* as determined by *matters of substance*, in distinction from matters of form.” Webster’s New International Dictionary 1540 (2d ed. 1954) (emphasis added).

Id. at 302.

Williams was unanimous, but Justice Scalia declined to join the Court’s reading of § 2254(d)’s “on the merits” requirement. *Id.* at 307 (Scalia, J., concurring in the judgment). Justice Scalia objected to reading “on the merits” as “[d]ecided after due consideration,” *id.*, and as “suggest[ing] a line between a *considered* rejection of a claim and an *unconsidered, inadequately considered, or inadvertent* rejection.” *Id.* at 308. Instead, Justice Scalia would have limited a petitioner’s ability to rebut the § 2254(d) presumption of a merits adjudication to “a showing, based on the explicit text of the court’s order, or upon standard practice and understanding in the jurisdiction with regard to the meaning of an ambiguous text, that the judgment *did not purport* to decide the federal question.” *Id.* at 307.

Responding to Justice Scalia, the Court insisted that not all federal claims rejected in state court should be viewed as having been adjudicated “on the merits” for purposes of triggering the § 2254(d) relitigation bar:

If a federal claim is rejected as a result of sheer inadvertence, it has not been evaluated based on the intrinsic right and wrong of the matter. Justice SCALIA is surely correct that such claims have been adjudicated and present federal questions we may review . . . but it does not follow that they have been adjudicated “on the merits.” By

having us nevertheless apply AEDPA’s deferential standard of review in such cases, petitioner’s argument would improperly excise § 2254(d)’s on-the-merits requirement.

Id. at 302–03. Accordingly, application of the § 2254(d) relitigation bar necessarily requires more than a state court order purporting to reject a claim’s substance.

Williams and Harrington v. Richter, 562 U.S. 86 (2011), involved the application of the presumption when a state court failed to explicitly address some or all of a petitioner’s claims. Each case described how a petitioner might rebut the presumption in those circumstances. But those cases do not define the universe of circumstances in which a petitioner may establish that a state court disposition was not “on the merits”—as defined in *Williams*—for purposes of § 2254(d).

If an adjudication “on the merits” under § 2254(d) requires that (1) a state court (2) hear and (3) evaluate (4) the evidence and (5) the parties’ substantive arguments about the intrinsic rights and wrongs of a case, then the *Williams* presumption may be rebutted through evidence establishing that any element was absent from the state court proceedings. A petitioner could demonstrate, for example, that the purported adjudication was not by a state court⁹ or that the state court failed to hear or evaluate the evidence.¹⁰ If a petitioner establishes that an element is absent, an adjudication on the merits has not occurred, and courts may not apply the §

⁹ *White v. Ind. Parole Bd.*, 266 F.3d 759, 766 (7th Cir. 2001) (because prison disciplinary boards are not “courts,” § 2254(d) does not apply to their decisions).

¹⁰ *See, e.g., Gordon v. Braxton*, 780 F.3d 196, 202 (4th Cir. 2015) (no adjudication on the merits when the state court unreasonably refused further development of the facts resulting in a materially incomplete record) (citing *Winston v. Pearson*, 683 F.3d 489, 496 (4th Cir. 2012)); *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009) (*en banc*), *abrogated by Lott v. Trammell*, 705 F.3d 1167, 1213 (10th Cir. 2013) (“To dispose of a claim without considering the facts supporting it is not a decision on the merits.”).

2254(d) relitigation bar. But, as Medina’s case illustrates, this is not true in the Fifth Circuit.

B. The Fifth Circuit applies pre-AEDPA and pre-*Williams* precedent that improperly excise § 2254(d)’s on-the-merits prerequisite to applying the relitigation bar. The lower court’s unduly narrow definition of “on the merits” fatally conflicts with *Williams* and unjustifiably restricts the scope of evidence relevant to rebutting the *Williams* presumption.

Before AEDPA, the Fifth Circuit applied a three-part test to determine whether a state court had resolved a claim on the merits based on

the following factors: (1) what the state courts have done in similar cases; (2) whether the history of the case suggests that the state court was aware of any ground for not adjudicating the case on the merits; and (3) whether the state courts’ opinions suggest reliance upon procedural grounds rather than a determination of the merits.

Green v. Johnson, 116 F.3d 1115, 1121 (5th Cir. 1997). The Fifth Circuit subsequently imported its pre-AEDPA resolution-on-the-merits test to determine whether the § 2254(d) relitigation bar applied. *Mercadel v. Cain*, 179 F.3d 271, 274 (5th Cir. 1999) (“In this circuit, the question of whether a state court’s decision is an adjudication on the merits turns on ‘the court’s disposition of the case—whether substantive or procedural.’” (quoting *Green*, 116 F.3d at 1121)); *see also id.* (describing *Fisher v. Texas*, 169 F.3d 295, 299–300 (5th Cir. 1999), as “applying *Green* to adjudication on the merits analysis”).

Like Justice Scalia’s approach to § 2254(d), the Fifth Circuit’s inquiry goes no further than determining whether a state court decision rested on federal or state law grounds and does not necessarily reach the question of whether a state court determination was adjudicated “on the merits” as defined in *Williams*. Habeas

petitioners in the Fifth Circuit may rebut the *Williams* presumption, but only by demonstrating that the state court did not purport to resolve a federal claim.

Valdez v. Cockrell, one of the Fifth Circuit's leading cases on the application of § 2254(d), illustrates the court's unduly blinkered approach. 274 F.3d 941 (5th Cir. 2001). Valdez alleged his trial counsel were ineffective for failing to investigate his background and develop evidence of his intellectual disability, physical abuse as a child, and good behavior during prior incarcerations. *Id.* at 943. The judge who presided over the state habeas proceeding (1) had not presided over the trial; (2) stated he never read the trial record and had no intention of doing so; and (3) "excluded . . . from [his] resolution of Valdez's case" exhibits admitted during the state proceedings that were lost before he ruled. *Id.* at 944–45. Adhering to its pre-*Williams* precedent that "[t]he term 'adjudication on the merits,' like its predecessor 'resolution on the merits,' refers *solely* to whether the state court reached a conclusion as to the substantive matter of a claim, as opposed to disposing of the matter for procedural reasons," the Fifth Circuit held that "on the merits" "*does not speak to the quality of the process.*" *Id.* at 950 (emphasis added). The court thus held that the § 2254(d) relitigation bar applied. *Id.* at 959.

Even after being rendered untenable by this Court's *Williams* decision, *Valdez's* blinkered approach remains the governing standard in the Fifth Circuit: "Where we have conducted an examination of whether an 'adjudication on the merits' occurred, we have looked at whether the state court reached the merits of the petitioner's claim rather than deciding it on procedural grounds." *Sandoval Mendoza v. Lumpkin*, 81

F.4th 461, 472 (5th Cir. 2023) (quoting *Valdez*, 274 F.3d at 952). The Fifth Circuit has explicitly rejected the Fourth Circuit’s approach, *infra*, which, consistent with *Williams*, allows a petitioner to rebut the existence of an adjudication on the merits when a state court fails to hear and evaluate the petitioner’s evidence and arguments. *Id.* Based on their continued adherence to pre-*Williams* circuit precedent, the courts below likewise refused to address Medina’s evidence and arguments rebutting the presumption of an adjudication “on the merits” as defined by *Williams*.

Thus, in the Fifth Circuit, the presumption of an “adjudication on the merits” cannot be rebutted by proving that the state court actually failed to hear or evaluate the evidence or arguments. This approach is contrary to *Williams*. For example, assume a trial judge announced: “I have not read the pleadings or the record, and I have not considered the issues in this case, but I am signing the prosecution’s proposed order based on my unwavering trust in the office.” Because the prosecution’s proposed order purports to address the claims on the merits, the Fifth Circuit inquiry goes no further. The relitigation bar would apply even though the state court never heard or evaluated the petitioner’s arguments and evidence. Such an approach is untenable after *Williams* and contrary to the Fourth Circuit’s approach in cases like *Gordon v. Braxton*, *infra*.

The Fifth Circuit’s approach¹¹ is also inconsistent with AEDPA’s goal of ensuring

¹¹ Addressing the same circuit split at issue here in 2009, then-Judge Gorsuch categorized the Second and Seventh Circuits as aligned with the Fifth Circuit. *Wilson v. Workman*, 577 F.3d 1284, 1317 (10th Cir. 2009) (Gorsuch, J., dissenting). Since then, both the First and Sixth Circuits have held that *Cullen v. Pinholster*, 563 U.S. 170 (2011), and *Harrington v. Richter*, 562 U.S. 86 (2011), require adherence to the Fifth Circuit’s narrow view of an adjudication on the merits. *See, e.g., Ballinger v. Prelesnik*, 709 F.3d 558, 562 (6th Cir. 2013); *Atkins v. Clarke*, 642 F.3d 47, 49 (1st Cir. 2011). *Pinholster* addresses the scope of evidence relevant to the § 2254(d)(1) exception, but it does not address the facts and

that state court proceedings are the central forum for adjudicating the merits of state prisoners' claims. The lower court has imported the pre-AEDPA inquiry for identifying whether a state court decision rested on federal law or a state procedural ground. If the latter, a federal court generally lacks power to overturn the state court judgment, consistent with the independent and adequate state ground doctrine. AEDPA's inquiry whether there has been a state court adjudication on the merits serves a fundamentally different purpose. AEDPA confers deference on a state court resolution of federal claims so long as, per *Williams*, the state court heard and evaluated petitioner's evidence and arguments. Thus, the "adjudication on the merits" language in AEDPA serves to ensure at least one fair opportunity for *de novo* review of federal claims and incentivizes the state courts to provide it. It is not enough in this context, as the Fifth Circuit holds, for the state court to deny the federal claim's substance. It must decide the claim based on the arguments and evidence. Indeed, such is the law in other circuits.

II. The Fourth, Tenth, and—likely—the Eleventh Circuits adhere to *Williams*' definition of "on the merits" because they will consider rebuttals of the presumptive merits adjudication based on a state court's failure to hear and evaluate the petitioner's evidence and substantive arguments.

Other circuits will not apply the § 2254(d) relitigation bar in the absence of an

circumstances relevant to rebutting the existence of the § 2254(d) prerequisite adjudication "on the merits." 563 U.S. at 181 ("We now hold that review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits."). *Richter* holds that the absence of a written opinion does not alone rebut the presumption of a merits adjudication, but "[t]he presumption may be overcome when there is reason to think some other explanation for the state court's decision is more likely." 562 U.S. 86, 99–100. *Richter* does not purport to define the universe of circumstances relevant to rebutting the presumption.

element required for adjudication “on the merits” as defined by this Court. For example, the Fourth Circuit has held that when the state habeas court denies a claim based on “a materially incomplete record” and “unreasonably refuses to permit further development of the facts of a claim,” the claim has not been “adjudicated on the merits” within the meaning of AEDPA. *Gordon v. Braxton*, 780 F.3d 196, 202 (4th Cir. 2015).

The Fourth Circuit’s application of the on-the-merits requirement originates from two pre-*Williams* decisions. *Winston v. Kelly*, 592 F.3d 535 (4th Cir. 2010) (*Winston I*); *Winston v. Pearson*, 683 F.3d 489 (4th Cir. 2012) (*Winston II*). Winston’s claim was presented to and summarily denied by the state court. The truncated state proceedings resulted in a materially incomplete record. The Fourth Circuit held that “when a state court forecloses further development of the factual record, it passes up the opportunity that exhaustion ensures”: “If the record ultimately proves to be incomplete, deference to the state court’s judgment would be inappropriate because judgment on a materially incomplete record is not an adjudication on the merits for purposes of § 2254(d).” *Wilson I*, 592 F.3d at 556. Because the claim was not adjudicated on the merits, § 2254(d) deference did not apply.

In *Gordon v. Braxton*, 780 F.3d 196 (4th Cir. 2015), the petitioner alleged that his attorney’s failure to file a notice of appeal amounted to constitutionally ineffective representation. The state responded with an affidavit from trial counsel that addressed some but not all of the petitioner’s allegations. The state court refused to allow further factual development and denied the claim. The Fourth Circuit held that

“the state court did not adjudicate Gordon’s claim on the merits because it (1) unreasonably truncated further factual development on Gordon’s contention that counsel failed to file an appeal; and, (2) said nothing at all about Gordon’s assertion that counsel failed to consult with him.” *Id.* at 202.

The Fourth Circuit’s determination of whether a claim was adjudicated “on the merits” does not begin and end with what the state court said it did. The inquiry is “more nuanced,” because “a state court could not have properly adjudicated a claim if it decided on a ‘materially incomplete record.’” *Valentino v. Clarke*, 972 F.3d 560, 577 (4th Cir. 2020) (quoting *Winston II*, 683 F.3d at 496, and *Winston I*, 592 F.3d at 555). Thus, if “the state post-conviction court has ‘unreasonably refuse[d] to permit ‘further development of the facts’ of a claim,’” there is no qualifying adjudication on the merits. *Id.* (quoting *Winston I*, 592 F.3d at 555).

The Fourth Circuit relied in part on the Tenth Circuit’s approach in *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009) (*en banc*), *abrogated by Lott v. Trammell*, 705 F.3d 1167, 1213 (10th Cir. 2013). In *Wilson*, the Tenth Circuit assumed that the Oklahoma court ignored a petitioner’s extra-record evidentiary proffers—and decided claims solely on the trial record—unless the state court first granted an evidentiary hearing. CITE. The Tenth Circuit held that disposing of a claim in this manner is not an adjudication “on the merits”: “A claim is more than a mere theory on which a court could grant relief; a claim must have a factual basis, and an adjudication of that claim requires an evaluation of that factual basis.” *Wilson*, 577 F.3d at 1291. In language presaging this Court’s *Williams* decision four years later, the Tenth Circuit held that

“[t]o be entitled to deference under AEDPA, the state court must similarly decide the ‘substance’ of the claim, which means to ‘apply controlling legal principles to the facts bearing upon [his] constitutional claim.’” *Id.* at 1293 (quoting *Picard v. Connor*, 404 U.S. 270, 277 (1971)). Thus, “[t]o dispose of a claim without considering the facts supporting it is not a decision on the merits.” *Id.* The Tenth Circuit concluded that

AEDPA requires us to defer to the state court “with respect to any claim that was adjudicated on the merits,” but an ineffectiveness claim has not been adjudicated on the merits when the state court failed to consider the evidence on which the defendant based his claim. So long as that defendant was diligent in presenting his evidence to the state court and otherwise satisfies AEDPA’s requirements, the federal court will review the claim *de novo*.

Id. at 1293.¹²

The Eleventh Circuit has cited the Fourth Circuit’s “on the merits” analysis with approval. In *Sears v. Warden GDCP*, 73 F.4th 1269, 1286–87 (11th Cir. 2023), the court assumed that the state court had adjudicated Sears’ claim on the merits but concluded the state court adjudication was unreasonable. The court expressed doubt, however, that its assumption was warranted because the state court left material “evidentiary proffers regarding Sears’s mental-health problems . . . unaddressed” *Id.* at 1286 n.11. The Eleventh Circuit indicated that the state court’s refusal to engage with Sears’s potentially outcome-determinative evidence violated this Court’s

¹² After the Oklahoma court explained that it does consider the extra-record evidence in all habeas applications, even when it denies an evidentiary hearing, the Tenth Circuit held that the factual premise of *Wilson* was undermined. *Lott v. Trammell*, 705 F.3d 1167, 1213 (10th Cir. 2013). The legal principle announced in *Wilson*—disposing of a claim without considering the facts supporting it is not a decision “on the merits”—remains the law of the circuit.

decision in *Williams* and that the state court’s refusal to all development of necessary facts ran afoul of *Winston I. Id.*

The Fourth, Tenth, and likely the Eleventh Circuits’ application of § 2254(d) does not read the “on the merits” language out of the statute. Their approach is grounded in the text of the statute, is consistent with *Williams*, and adheres to Congress’s goal of ensuring that state court proceedings are the central forum for adjudicating state prisoners’ claims. But,

if a state court shuns its primary responsibility for righting wrongful convictions and refuses to consider claims of error, the weighty concerns of federalism and comity are diminished. . . . AEDPA thus permits a federal court to bypass § 2254(d)’s limitations on relief when a state court has refused to “adjudicate” a procedurally proper claim “on the merits.” § 2254(d).

Valentino v. Clarke, 972 F.3d 560, 576 (4th Cir. 2020) (citations omitted).

This Court should grant review to resolve the conflict between these circuits and the court below.

III. Medina’s case is an ideal vehicle for addressing the longstanding circuit split over § 2254(d)’s on-the-merits prerequisite to AEDPA deference.

Medina’s case is an ideal vehicle for addressing the circuit conflict over whether § 2254(d)’s on-the-merits requirement mandates some minimum level of state court engagement with a petitioner’s evidence and arguments before deference is due to a state court decision. Medina presented the state court with compelling evidence of his counsels’ deficient performance and the ensuing prejudice at both phases. Medina moved the state court for evidentiary development regarding the controverted material facts. But the state trial court’s participation in Medina’s case began and

ended with signing *verbatim* every order the prosecution prepared for it, which included fact adjudications squarely contradicted by the trial record.

Medina proffered evidence in the federal district court that the state court's blind deference to the prosecution's error-laden findings in his case was not an anomaly but instead was consistent with that court's record of deferring to *every* prosecution-authored proposed finding in *every* case while rejecting *every* defense-authored proposed finding. "Happenstance is unlikely to produce this disparity." *Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003). Medina's IATC claims and his argument that § 2254(d) did not apply to the state court decision were, at minimum, debatable among jurists of reason.

However, the Fifth Circuit's refusal to acknowledge *Williams*-based arguments short-circuited even the threshold COA-level review of Medina's substantial IATC claims. The § 2254(d) relitigation bar was imposed when it would not be justified in other circuits. Medina's case thus presents a good vehicle for addressing the circuit split. A ruling in Medina's favor would warrant a COA and a remand so Medina may rebut the *Williams* presumption under the appropriate standard. This would allow him to litigate his IATC claims on the merits for the first time in any court.

A. Medina's IATC claim is debatable among reasonable jurists.

As described, *supra*, Medina's counsel were in trial in multiple unrelated capital trials during most of the brief interval between their appointment and Medina's trial. Counsel failed to investigate numerous obvious red flags or perform basic tasks such as interviewing key prosecution witnesses.

This was a close case in which Medina has consistently maintained his innocence. The only forensic evidence related to the identity of the shooter pointed to Dominic Holmes, who police initially believed to be the shooter and who witnesses reported had confessed to the crime. Indeed, trial counsels' theory at trial was that Holmes was the shooter. Their failure to adequately prepare, however, resulted in (1) the omission of critical evidence supporting their theory; and (2) their failure to impeach the prosecution's witnesses—almost all of whom were juvenile gang members—with their materially inconsistent prior sworn statements. Although many prosecution witnesses testified falsely under oath, trial counsel were too unfamiliar with the case to notice and cross-examine them accordingly. In light of the jury's struggle over the guilt-phase verdict, trial counsel's omissions were prejudicial because there is a reasonable probability that jurors would have harbored a reasonable doubt about Medina's guilt.

A defendant is denied the effective assistance of counsel when “counsel’s performance was deficient” and the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Deficient performance occurs when “counsel’s representation fell below an objective standard of reasonableness.” *Id.* at 688.

This Court has said that “norms of practice as reflected in American Bar Association standards and the like . . . are guides to determining what is reasonable.” *Padilla v. Kentucky*, 599 U.S. 356, 366 (2010) (quoting *Strickland*, 466 U.S. at 688). According to those standards, “[i]t is the duty of the lawyer to conduct a prompt

investigation of the circumstances of the case and to explore all avenues leading to facts relevant to the merits of the case.” *Rompilla v. Beard*, 545 U.S. 374, 387 (2005) (quoting 1 ABA Standards for Criminal Justice 4–4.1 (2d ed. 1982 Supp.)). Counsel’s investigation should include, at a minimum, interviews of “eyewitnesses or other witnesses having purported knowledge of the events surrounding the offense itself.” American Bar Association Guidelines For The Appointment And Performance Of Counsel In Death Penalty Cases § 11.4.1(D) (1989). “[T]rial counsel must not ignore ‘pertinent avenues of investigation’ or even a single, particularly promising investigation lead.” *Charles v. Stephens*, 736 F.3d 380, 390 (5th Cir. 2013) (quoting *Porter v. McCollum*, 558 U.S. 30, 40 (2009)). Where the circumstances demonstrate that counsel’s purported strategic choice is a “‘post-hoc rationalization’ rather than a genuine account of her decision-making process,” trial counsel’s actions are not afforded deference. *Richards v. Quarterman*, 566 F.3d 553, 569 (5th Cir. 2009) (quoting *Wiggins v. Smith*, 539 U.S. 501, 526–27 (2003)).

Trial counsel waited until just three months before trial to move for investigative funds, ROA.1445, and the investigators spent a total of *30 hours* investigating for *both* phases of trial. ROA.1446. Other than talking to Medina and his sister, the investigators did not attempt witness interviews until just *six (6)* days before trial. ROA.1509. The defense failed to interview the majority of the State’s witnesses, including three of the four key witnesses. ROA.1448. It appears that the fourth, Jamie Moore, was contacted by the defense investigator, *id.*, but Guerinot was unaware of it during trial. ROA.9879. Guerinot acknowledged that he had never

spoken with most of the State’s witnesses. *See, e.g.*, ROA.10001 (Guerinot crossing Johnny Valadez: “you and I have never talked about this case, have we?”); ROA.10099 (same with Dominic Holmes); ROA.10158 (same with Regina Juarez); ROA.9748 (cross-examination of State’s firearms examiner: “Mr. Baldwin, we haven’t talked previously to today on this case, have we?”). Guerinot’s “questions . . . at trial clearly establish that [he] had never spoken with [the State’s key witnesses] before they took the witness stand.” *Richards v. Quarterman*, 566 F.3d 553, 571 (5th Cir. 2009). Whether counsel’s near-total failure to conduct a pre-trial investigation into Medina’s case was professionally unreasonable is, at minimum, debatable among reasonable jurists.

“To establish *Strickland* prejudice a defendant must ‘show that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.’” *Lafler v. Cooper*, 566 U.S. 156, 164 (2012). As the prosecutor acknowledged at trial, Medina’s was a close case in which jurors struggled to reach a verdict: “I’m not naive. I’ve been doing this for many, many, years and I know somebody had a problem at the guilt stage of this case. I know that.” ROA.10761 (prosecution penalty phase closing argument). “[A] verdict or conclusion only weakly supported by the record is more likely to have been affected by [counsel’s] errors than one with overwhelming record support.” *Strickland*, 466 U.S. at 695–96. Viewed cumulatively, counsel’s deficient performance prejudiced Medina.

First, as noted above, counsel’s unfamiliarity with the case left them unprepared to impeach the prosecution’s key witnesses, all of whom were vulnerable

to devastating cross-examination about their false statements under oath—either in their police statements or at trial. As the prosecutor later testified under oath in a different matter, Medina’s conviction depended on these witnesses: “As far as identifying the shooter, *that was all we had*. So *without the other gang members testifying, [Medina] would have been found not guilty*.” 4 RR 44, *Ponce v. State*, 985 S.W.2d 594 (Tex.App.—Houston [1st Dist.] 1999) (emphasis added).

Second, although the defense theory was that Holmes was the shooter, the defense failed to seek out and interview witnesses who would have supported their case. Dallas Nacoste, for example, was identified to defense counsel—in the police report and by their client—as a critical defense witness. ROA.1515. It is undisputed that trial counsel never interviewed him and thus failed to call him as a witness. *Id.* Nacoste gave a statement to the police on January 10, 1996, exculpating Medina and inculping Holmes. Nacoste would have provided important evidence that was not elicited from any other defense witness.

Nacoste explained that, on the night of the crime, Holmes had seen a rival gang member at the location where the shooting later happened. ROA.2015. Nacoste, who outranked Holmes in the LRZ hierarchy, eventually gave Holmes approval to do a drive-by shooting. *Id.* Holmes and Moore departed with the gang’s semi-automatic rifle. *Id.* They returned a short while later and Moore wanted to make sure there were no spent shell casings in his car. *Id.* When Nacoste was questioned by the police, he was told by a detective that a witness had reported that the shooter was a Black male. ROA.2016. After the shooting Holmes told Nacoste that he had “messed up,” and he

was not sure how many people he had shot but he did see two or three fall. *Id.* Holmes suggested that Medina would be a good person to blame because he was known to the police and had a rap sheet. *Id.* Holmes threatened to kill Nacoste and others, including Valadez, who did not help him. *Id.* Nacoste confirmed that no member of the defense team ever talked to him and, if they had asked, he would have testified truthfully. ROA.2017.

With regard to the gun burial issue, Nacoste told the police on January 10, 1996, about a January 3rd conversation in which Valadez stated that Holmes had done the drive-by shooting and “they had buried the gun somewhere in Westbury.” ROA.1423. Critically, this information rebutted the prosecution’s trial story—based on testimony from its star witnesses—that the gun had been buried *after* Medina’s January 5, 1996, arrest and *at his direction*. Moreover, Nacoste was the *only* witness to be truthful with the police about the whereabouts of the gun. His January 1996 statement to the police that Holmes had buried the weapon was corroborated by the evidence when, two months later, the police unearthed the weapon wrapped in plastic bearing Holmes’s palm prints. *All* of the State’s witnesses, in contrast, lied to the police in their January statements and said they had not seen the gun since January 1st or—in Juarez’s case—that it was probably in the bayou.

Because trial counsel had not interviewed the State’s witnesses prior to trial, they were unaware of the State’s newly minted trial story about an alleged Medina-directed January 6th weapon burial. This was especially damaging because counsel were necessarily ignorant of (1) the need to rebut the prosecution’s new story

explaining away Holmes's palm print linking him to the murder weapon; (2) the impeachment value of the State's witnesses' false, sworn statements to the police about the guns; and, (3) Nacoste's superior credibility based on his honest statement to the police in January about the gun burial matter—as distinguished from Holmes, Juarez, and Moore, who all lied to throw the police investigation off the trail regarding the murder weapon. In short, because trial counsel had not interviewed either the State's witnesses or Nacoste, they were entirely unaware of a critical component of the State's case and thus could not have made an informed strategic decision about how to rebut it or assess which witnesses would be the most credible on the issue.

Adequate pre-trial investigation would have produced other witnesses who heard Holmes confess to the shooting and his plans to blame it on Medina. For example, Jason Crawford lived across the street from Jamie Moore's sister and knew Moore and Holmes. ROA.1520. He would have testified that Holmes was close to the gang member whose murder is alleged to have prompted the retaliatory drive-by shooting in this case. ROA.1521. According to Crawford, Holmes "had something planned for" the rival gang that murdered his friend. *Id.* Shortly after January 1, 1996, Crawford was at Moore's sister's house when Holmes arrived with a long rifle wrapped in a towel. *Id.* Crawford was never contacted by the defense but would have willingly testified truthfully.

Similarly, both Ricardo Villanueva and Raymundo Becerra were told by Regina Juarez that Holmes had done the shooting. ROA.1522. Juarez told Villanueva

that she did not want Holmes going to jail, and that she and Holmes were going to blame it on Medina. *Id.* Villanueva spoke with Holmes as well, who admitted to the shooting and said “we smoked those fools” and “that shit was cool.” ROA.2031. Holmes confirmed his plan to blame it on Medina. Additionally, Juarez told Becerra that Holmes and Moore had paid her a visit and threatened her if she said anything about the shooting. ROA.2036. Villanueva and Becerra were not contacted by the defense, but both would have been willing to testify. *Id.*; ROA.2032.

Further, trial counsel did not interview eyewitness Carlos McNickles, who lived near the crime scene and, while on the phone with Chasity Hamilton, saw a Black man firing an AK-type rifle out of a car matching the descriptions of Moore’s that was driven by a Black man wearing glasses (Moore wears glasses). ROA.2022–23; *see also* ROA.2025–26 (affidavit of Chasity Hamilton confirming that she heard gunshots while talking to McNickles).

Because there is a reasonable probability that impeaching the prosecution’s star witnesses and introducing credible exculpatory evidence that Holmes was the shooter would have cemented a reasonable doubt about Medina’s guilt, Medina’s merits-phase IATC claim was at least debatable among reasonable jurists.

B. Reasonable jurists would debate whether Medina’s IATC claims were adjudicated “on the merits.”

To rebut the existence of an adjudication on the merits, Medina directed the district court to numerous facts in the record indicating that the state court paid no attention to his evidentiary proffers and arguments. He supported this conclusion with evidence of the trial court’s pattern and practice of absolute deference to the

prosecution in all contested capital habeas cases. Further, Medina submitted evidence of a countywide pattern of complete judicial deference to the prosecution and circumstances indicating that the courts were not actually reviewing the records before signing prosecution-authored findings.

1. The state habeas court abdicated its judicial authority to the post-conviction prosecutor and failed to evaluate Medina’s evidence and arguments.

When the trial court signed the State’s proposed order in Medina’s case, it endorsed a facially partisan, inaccurate, and error-ridden document. The document was facially partisan because it was titled as the State’s proposed order, because each of the fifteen attached exhibits was titled “State’s Exhibit,” and because the order adopted *all* of the evidence proffered by the State. None of the evidence proffered by Medina was included in the trial court’s order.

The State’s proposed findings contained numerous errors large and small that should have been readily apparent upon judicial inspection. Medina offers a few examples here. First, some of the typographical errors were so blatant that even a reader unfamiliar with the case would have noticed and corrected them. *See, e.g.*, ROA.6965 (citing to a Texas case decided in the year “20002”).

Second, a judge with superficial familiarity with the record would have noticed and corrected the misspelled names of key actors. *See, e.g., id.* at 962 (referring to Medina’s trial counsel Jack Millin variously as “Mullin” or “Mullins” in the same sentence). Millin’s name is misspelled throughout the trial court’s findings even though his name is spelled correctly throughout every volume of Medina’s trial

transcript. Notably, the state habeas judge did not preside over Medina’s trial; to check any of the parties’ numerous assertions about, and citations to, the trial record, he presumably would have needed to review many different volumes of the trial record. Had he done so, he would have recognized that defense counsel’s name was misspelled throughout the State’s proposed findings before he adopted them wholesale as the order of the court. Had the trial court reviewed the prosecution’s post-conviction affidavits, it would have seen that Millin’s name was spelled incorrectly in Guerinot’s affidavit and the affidavits from the trial prosecutors, and that those misspellings were identical to the prosecutor’s misspelling of Millin’s name in all of her written filings. Millin’s name is misspelled in the same manner in every State filing, witness affidavit, and court order because one person—the post-conviction prosecutor—authored all of them.¹³

Third, the trial court adopted findings contradicted by the record, such as crediting Guerinot’s alleged decision not to call Dallas Nacoste as a witness based on his lack of credibility when in fact no member of the defense team ever contacted Nacoste or had the chance to assess his credibility. ROA.1518–19.

Additionally, and most fundamentally, the trial court failed to engage or credit Medina’s evidence—even when it was uncontroverted. For example, the prosecution-

¹³ Typographical errors also raise questions about the care with which the trial prosecutors and defense counsel reviewed the affidavits that the post-conviction prosecutor wrote for them. In each of the prosecutors’ affidavits, the prosecutor misspelled the names of *both* defense counsel in the first paragraph. See State Habeas Vol. 3 at 699 (affidavit of prosecutor O’Brien referring to defense “counsel Gerri Guerinot [sic] and Jack Mullin [sic]”); *id.* at 704 (affidavit of prosecutor Baldassano referring to defense counsel “[sic] Gerri Guerinot and Jack [sic] Mullin”). Mr. Guerinot’s affidavit begins with a typo: “My name [sic] in Gerard Guerinot.” *Id.* at 693.

authored findings repeatedly deem Guerinot's prosecution-authored affidavit credible. But Guerinot had previously signed a different affidavit. ROA.1966–67. Guerinot's first affidavit, in contrast to the one authored for him by the prosecution, bears significant indicia of credibility. In his first affidavit, Guerinot was able to correctly spell the name of his co-counsel, with whom he had tried several capital cases. More importantly, Guerinot acknowledged a significant omission concerning the jury instructions that “was not the result of any trial strategy.” ROA.1966. Though the prosecution-authored state court findings cite and rely on the prosecution-authored “credible affidavit” of Guerinot at least twenty-five (25) times, the affidavit Guerinot signed admitting to a significant omission was never acknowledged. The findings wholly ignored Guerinot's confessed omission—which failed to preserve reversible error under Texas law and was part of Medina's guilt-phase IATC claim. ROA.1535–53. Thus, even when the parties proffered affidavits from the *same witness*, only the prosecution's submission counted.

Medina was not required to *prove* the claims he pleaded in his state habeas application within the application itself; he needed only to plead allegations which, if true, would entitle him to relief. *See Ex parte Medina*, 361 S.W.3d 633, 639 (Tex. Crim. App. 2011) (there is no requirement that a habeas applicant “plead evidence”). He nonetheless attached hundreds of pages of extra-record evidence supporting the detailed allegations in his claims. The trial court was statutorily bound to review the parties' submissions, identify any material controversies of fact, and provide an adequate process for adjudicating them. As noted, Medina filed motions identifying

numerous material factual controversies and requesting the fact development and hearing necessary to resolve them. His filings were ignored, and the trial court adopted an order proposed by the State finding no factual disputes existed—eliminating the availability of fact development and a hearing under state law. The trial court then adopted prosecution-authored proposed findings repeatedly faulting Medina for failing to “prove” his allegations and resolving all factual controversies against him.

In short, the circumstances of this case reveal a record in which the postconviction prosecutor was given carte blanche to shape the facts—even when they contradicted the record—and fashion court orders exclusively adopting her case. Evidence and filings submitted by Medina were ignored, but the postconviction judge signed off on every proposed order the prosecutor placed before him. All facts were resolved against Medina based on a wholesale adoption of the State’s case without any opportunity—such as discovery or a hearing—for evidentiary development. The result was a fictional evidentiary landscape devoid of material controversy about the facts. Such a state court process would not constitute an adjudication “on the merits” in other circuits.

2. Pattern and practice evidence reinforces Medina’s argument rebutting the existence of a state court adjudication on the merits.

Additionally, the trial court’s conduct in other cases, as well as the entrenched practices and culture with respect to capital postconviction cases in the Harris County courthouse during this period, reinforce the conclusion that the trial court disposed

of Medina’s state habeas application in a partisan process without engaging his evidence and arguments. Medina does not suggest that this additional evidence alone proves the trial court wholly delegated its authority to the postconviction prosecutor in his case. But, just as evidence that a district attorney’s office engaged in a pattern and practice of “bias against African-Americans in jury selection” does not prove racial discrimination by a prosecutor in any particular case, the “evidence . . . is relevant to the extent it casts doubt on the legitimacy of the motives underlying the State’s actions in [a] petitioner’s case.” *Miller-El v. Cockrell*, 537 U.S. at 347; *see also Miller-El v. Dretke*, 545 U.S. 231, 266 (2005) (“If anything more is needed for an undeniable explanation of what was going on, history supplies it.”).

Texas’s current capital post-conviction statute, Tex. Code Crim. Proc. art. 11.071, was enacted in 1995 and mandated for the first time that both parties submit proposed findings of fact and conclusions of law (“FFCL”). *Id.* at 11.071 §§ 8(b); 9(e). While his case was before the district court, Medina’s counsel and his colleagues attempted to collect data with respect to every post-11.071 case from Harris County, Texas, to ascertain how the courts treat the parties’ proposed findings.¹⁴ The study identified 208 discrete sets of FFCL entered in Harris County cases.

Two significant findings emerged from this research. First, the trial court that processed Medina’s application had adopted *100%* of the prosecution’s proposed FFCL in *every* capital case since the inception of the current state habeas scheme in 1995.

¹⁴ The results of this study were subsequently published. *See* Steiker, Marcus, Posel, *The Problem of “Rubber-Stamping” in State Capital Habeas Proceedings: A Harris County Case Study*, 55 *Hou. L. Rev.* 889 (2018).

Second, the trial court’s record of absolute deference to Harris County postconviction prosecutors is consistent with a countywide pattern and practice of judicial deference to the State.

- a. **The trial court in this case has adopted *verbatim* every finding of fact and conclusion of law proposed by the prosecution in every contested capital habeas corpus case since 1995.**

The 228th Judicial District Court—from which Medina’s case arises—entered twelve (12) sets of FFCL in contested capital habeas corpus cases between the passage of Article 11.071 and 2017.¹⁵ In all, the prosecution proposed 1,466 FFCL in contested cases, and the 228th Judicial District Court adopted every single one:

Last Name	Recommendation	Judge	State's Proposed FOFCL File Date	Trial Court FOFCL Signed	Total State Proposed FOFCL	Total Trial Court FOFCL	State's Proposed Adopted Verbatim
McWilliams, Frederick	Deny	Poe	Unknown	12/11/00	43	43	43
Shannon, Willie	Deny	Poe	Unknown	01/20/01	45	45	45
Wesbrook, Coy	Deny	Shaver	03/04/02	03/14/02	122	122	122
Greer, Randolph	Deny	Poe	10/19/01	08/02/02	207	207	207
Rivers, Warren	Deny	Poe	08/12/02	08/14/02	163	163	163
Greer, Randolph	Deny	Carter	10/10/06	10/10/06	27	27	27
Rivers, Warren	Deny	Carter	12/15/06	01/03/07	91	91	91
Wesbrook, Coy	Deny	Carter	01/24/07	01/26/07	119	119	119
Rivers, Warren	Deny	Carter	05/18/07	05/22/07	145	146	145
Medina, Anthony	Deny	Carter	04/25/08	05/26/09	254	254	254
Mason, William	Deny	Carter	10/25/05	12/28/09	92	92	92
Wesbrook, Coy	Deny	Carter	06/27/14	09/05/14	158	158	158
TOTAL					1466	1467	1466

Figure 1. FFCL entered by the 228th Judicial District Court in contested cases since the 1995 passage of Article 11.071.

Judge Carter, who presided over Medina’s case, has adopted *verbatim* 100% of the prosecution’s 886 proposed findings of fact and conclusions of law. *Id.* The undeniable

¹⁵ In addition, the 228th Judicial District Court entered findings in William Mason’s case, in which the prosecution recommended that the CCA “review” the claim at issue but did not oppose relief. *Ex parte William Mason*, No. 620024-B (228th Dist. Ct., Harris County, Tex., Nov. 6, 2012).

explanation for the trial court's record is partisanship: The prosecution is, quite literally, always right in capital postconviction proceedings before the 228th Judicial District Court.

b. The trial court's absolute deference to the prosecution is consistent with a countywide culture in capital habeas corpus cases.

When the lens is widened to look at all Harris County trial courts, the picture is barely altered. Of the 191 contested sets of FFCL for which complete information was available, the Harris County trial courts simply signed off on 167 of the prosecutor's pleadings without changing even the heading of the document identifying it as the Respondent's proposed order. In 16 other sets of FFCL, the judges changed only the title of the document or made other formatting changes without altering the text. Thus, Harris County courts adopted 100% of the prosecutor's proposed FFCL *verbatim* in 183 of 191 (or 96%) instances.

Additionally, the documents necessary to ascertain the rate at which each judge adopted the State's proposed FFCL *verbatim* were available for forty (40) of the forty-seven (47) judges who entered findings. Thirty-four (34) of forty (40) judges—or 85% of Harris County judges—adopted *every* finding of fact and conclusion of law proposed by the prosecution in *every* case:

	Habeas Judge	Sets of Findings Signed	Total State's Proposed	Total Adopted Verbatim	Adoption Rate	Former HCADA?
1	Hill	15	1388	1388	100%	Yes
2	McSpadden	9	1109	1109	100%	Yes
3	Keel	8	905	905	100%	Yes
4	Carter	7	886	886	100%	Yes
5	Collins	6	346	346	100%	No
6	Cosper	6	500	500	100%	Yes
7	Krockner	6	514	514	100%	Yes
8	Anderson	5	541	541	100%	Yes
9	Rains	5	262	262	100%	Yes
10	Wallace	5	419	419	100%	No
11	Alcala	4	302	302	100%	Yes
12	Barr	4	695	695	100%	Yes
13	Poe	4	458	458	100%	Yes
14	Bacon	3	312	312	100%	No
15	Davies	3	213	213	100%	Yes
16	Guiney	3	463	463	100%	Yes
17	Shaver	3	380	380	100%	Yes
18	Wilkinson	3	177	177	100%	Yes
19	Bond	2	398	398	100%	Yes
20	Bridgewater	2	341	341	100%	Yes
21	Brown, M.	2	369	369	100%	Yes
22	Magee	2	260	260	100%	Yes
23	Evans	2	208	208	100%	Yes
24	Velasquez	2	219	219	100%	Yes
25	Burdette	1	87	87	100%	Yes
26	Campbell, C.	1	66	66	100%	Yes
27	Guerrero	1	211	211	100%	No
28	Huffman	1	69	69	100%	Yes
29	Jackson	1	168	168	100%	No
30	Powell	1	243	243	100%	No
31	Ritchie	1	188	188	100%	No
32	Robertson	1	111	111	100%	Yes
33	Bradley	1	92	92	100%	Yes
34	Denson	1	29	29	100%	No
35	Harmon	10	694	684	99%	Yes
36	Brown, S.	15	2067	1922	93%	Yes
37	Campbell, J.	4	443	329	79%	Yes
38	Garner	1	191	97	51%	No
39	Price	1	119	0	0%	Yes
40	Reagin	1	363	0	0%	No
Total		153	16806	15961		

Figure 2. Rate at which Harris County District Judges adopt *verbatim* the prosecution's proposed findings.

Reviewing the prosecutor's proposed orders and checking them against the voluminous records in capital cases would require Harris County trial judges to review thousands of pages of trial transcripts and documents. Yet, Harris County judges have often disposed of these complex, document-intensive cases with remarkable speed. ROA.4095–98 (Harris County judges have adopted lengthy FFCL addressing voluminous records in less than a day). Even more revealing are the casual procedural mistakes of Harris County judges, such as signing the prosecutor's proposed findings and conclusions before receiving the applicant's. ROA.4098–4100.

One judge mistakenly signed the prosecution’s findings even though she was not presiding over the case. *Id.* Together, this evidence reveals that Harris County judges are not carefully reviewing the prosecutor’s proposed orders—and are not reading the applicant’s submission—before adopting them *in toto*.

* * * *

Medina’s *Williams*-based argument, at minimum, would have supported a finding in the Fourth, Tenth, and Eleventh Circuits that reasonable jurists could debate whether he had rebutted the existence of an adjudication on the merits. His case is thus a good vehicle for addressing the split in the circuits and whether the Fifth Circuit’s pre-*Williams* precedent is no longer tenable.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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DATED: January 16, 2025