

IN THE
Supreme Court of the United States

ANTHONY MEDINA,
Petitioner,

v.

ERIC GUERRERO, DIRECTOR,
TEXAS DEPARTMENT 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

**RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR A
WRIT OF CERTIORARI**

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CAPITAL CASE

QUESTIONS PRESENTED

Petitioner Anthony Medina was convicted and sentenced to death for the murders of nine-year-old David Rodriguez and fifteen-year-old Diane Rodriguez during a gang-related drive-by shooting. He first raised the relevant guilt-innocence ineffective-assistance-of-trial-counsel (IATC) claims in his 2001 state habeas application. Both the State and Medina's state habeas counsel drafted proposed findings of fact and conclusions of law addressing the merits of Medina's claims and the evidence presented in support of or against the claims. The state habeas court signed the State's proposed order and recommended to the Texas Court of Criminal Appeals (CCA) that relief be denied. In rejecting the claims, the CCA adopted the state court's findings of fact and conclusions of law and conducted its own independent review of the record. Relevant to Medina's IATC claims, the CCA concluded that he failed to show trial counsel was ineffective.

The federal district court concluded, and the Fifth Circuit agreed, that the state court's decision was an adjudication of Medina's claims on the merits, so the courts applied 28 U.S.C. § 2254(d) deference. The Fifth Circuit also determined that reasonable jurists would not debate the state court's adjudication of the guilt-innocence IATC claims or the district court's subsequent denial.

Medina has repeatedly sought to strip the CCA's merits adjudication of deference, and he argues that the Fifth Circuit's application of § 2254(d)'s relitigation bar was improper. The case therefore raises the following questions:

1. Whether the Fifth Circuit's application of 28 U.S.C. § 2254(d)'s relitigation bar conflicts with this Court's decision in *Johnson v. Williams*, 568 U.S. 289 (2013) and creates a circuit split with the Fourth, Tenth, and Eleventh Circuits?
2. Whether the Fifth Circuit properly found that reasonable jurists could not debate the merits denial of Medina's guilt-innocence IATC claims?

LIST OF PROCEEDINGS

State v. Medina, No. 726,088 (228th Dist. Ct., Harris Cnty, Tex.) (convicted and sentenced to death Aug. 1, 1996).

Medina v. State, 7 S.W.3d 633 (Tex. Crim. App. 1999) (affirming conviction and death sentence) (cert. denied)

Ex parte Medina, No. WR-41,274-01 (Tex. Crim. App. Apr. 28, 1999) (dismissing initial state habeas application as untimely)

Ex parte Medina, No. WR-41,274-02 (Tex. Crim. App. Sept. 16, 2009) (denying state habeas application)

Ex parte Medina, No. WR-41,274-03 (Tex. Crim. App. Nov. 25, 2005) (dismissing subsequent state habeas application as abuse of the writ)

Ex parte Medina, No. WR-41,274-04 (Tex. Crim. App. Sept. 16, 2009) (dismissing subsequent state habeas application as abuse of the writ)

Ex parte Medina, No. WR-41,274-05, 2017 WL 690960 (Tex. Crim. App. Jan. 25, 2017) (dismissing subsequent state habeas application as abuse of the writ)

Medina v. Lumpkin, No. 4:09-CV-03223, 2023 WL 3852813 (S.D. Tex. June 6, 2023) (denying federal habeas petition)

Medina v. Lumpkin, No. 23-70003, (5th Cir. Aug. 15, 2024) (denying a certificate of appealability)

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
LIST OF PROCEEDINGS.....	ii
TABLE OF CONTENTS.....	iii
TABLE OF AUTHORITIES.....	v
BRIEF IN OPPOSITION.....	1
STATEMENT OF JURISDICTION.....	2
STATEMENT OF THE CASE.....	2
I. Facts from Trial.....	2
A. The Murders.....	2
B. Trial Testimony.....	3
i. The Prosecution.....	4
ii. The Defense.....	5
C. Punishment Phase.....	5
II. Procedural History.....	7
ARGUMENT.....	9
I. The Court Should Deny Review Because this Case Does Not Implicate a Circuit Split that Requires this Court’s Intervention, and the Lower Court’s Application of Deference Was Consistent with this Court’s Precedent.....	9
A. The Court should deny Medina’s petition because the circuit split he alleges is illusory.....	10
B. The Fifth Circuit’s application of 28 U.S.C. § 2254(d)’s relitigation bar conforms with this Court’s precedent.....	16
C. The lower courts properly held that the state court adjudicated Medina’s guilt-innocence IATC claims on the merits.....	19

II.	Reasonable Jurists Would Not Debate the Fifth Circuit’s Merits Denial of Medina’s Guilt-Innocence IATC Claims.....	24
A.	Standard of review.....	24
B.	Factual background.....	26
C.	The Fifth Circuit properly determined that Medina failed to meet his burdens under AEDPA and <i>Strickland</i>	29
	CONCLUSION.....	33

TABLE OF AUTHORITIES

Case(s)	Page(s)
<i>Boyer v. Vannoy</i> , 863 F.3d 428 (5th Cir. 2017).....	18, 19
<i>Brown v. Davenport</i> , 596 U.S. 118 (2022).....	16
<i>Calvert v. Texas</i> , 141 S. Ct. 1605 (2021).....	11
<i>Chafin v. Chafin</i> , 568 U.S. 165 (2013).....	22
<i>Charles v. Stephens</i> , 736 F.3d 380 (5th Cir. 2013).....	18
<i>Cullen v. Pinholster</i> , 563 U.S. 170 (2011).....	11, 25
<i>Dobbs v. Jackson Women’s Health Org.</i> , 597 U.S. 215 (2022).....	15
<i>Ex parte Medina</i> , No. 41,274–02 & 04, 2009 WL 2960466, at*1 (Tex. Crim. App. Sept. 16, 2009)	7
<i>Ex parte Medina</i> , No. 41,274–03, 2005 WL 31191791 (Tex. Crim. App. Nov. 23, 2005).....	7
<i>Ex parte Medina</i> , No. WR-41,274-05, 2017 WL 690960 (Tex. Crim. App. Jan. 25, 2017).....	ii, 8
<i>Gordon v. Braxton</i> , 780 F.3d 196 (4th Cir. 2015).....	11, 13
<i>Harrington v. Richter</i> , 562 U.S. 86 (2012).....	passim
<i>Harris v. Sharp</i> , 941 F.3d 962 (10th Cir. 2019)	14
<i>Johnson v. Williams</i> , 568 U.S. 289 (2013).....	passim
<i>Knowles v. Mirzayance</i> , 556 U.S. 111 (2009).....	25
<i>Lott v. Trammell</i> , 705 F.3d 1167 (10th Cir. 2013)	14
<i>Medina v. Lumpkin</i> , No. 4:09-CV-03223, 2023 WL 3852813 (S.D. Tex. June 6, 2023).....	ii, 8
<i>Medina v. Lumpkin</i> , No. 23-70003, 2024 WL 3833291 (5th Cir. Aug. 15, 2024)	6
<i>Medina v. State</i> , 7 S.W.3d 633 (Tex. Crim. App. 1999)	ii, 7
<i>Mendoza v. Lumpkin</i> , 145 S. Ct. 138 (2024).....	2, 10, 12

<i>Padilla v. Kentucky</i> , 559 U.S. 356 (2010)	24
<i>Sandoval Mendoza</i> , 81 F.4th.....	12, 18, 19, 20
<i>Sears v. Warden GDCP</i> 73 F.4th 1269 (11th Cir. 2023)	15
<i>Sims v. Apfel</i> , 530 U.S. 103 (2000).....	21
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984)	passim
<i>Trevino v. Thaler</i> , 569 U.S. 413 (201)	8
<i>Valentino v. Clarke</i> , 972 F.3d 560 (4th Cir. 2020)	11, 12, 13
<i>Wiggins v. Smith</i> , 539 U.S. 510 (2003)	26
<i>Williams v. Taylor</i> , 529 U.S. 420 (2000).....	16, 17
<i>Wilson v. Workman</i> , 577 F.3d 1284 (10th Cir. 2009)	14, 16
<i>Winston v. Kelly</i> , 592 F.3d 535 (4th Cir. 2010).....	11
<i>Winston v. Pearson</i> , 683 F.3d 489 (4th Cir. 2012).....	11, 12
<i>Wong v. Belmontes</i> , 558 U.S. 15 (2009).....	32
<i>Woods v. Etherton</i> , 578 U.S. 113 (2016).....	25
<i>Yarborough v. Gentry</i> , 540 U.S. 1 (2003).....	32
<i>Youakim v. Miller</i> , 425 U.S. 231 (1976).....	22

Statutes

28 U.S.C. § 1254(1)	2
28 U.S.C. § 2254(d)	passim
28 U.S.C. § 2254(d)(2)	18
28 U.S.C. § 2254(e)(1)	18, 20

BRIEF IN OPPOSITION

Petitioner Anthony Medina was properly convicted and sentenced to death for the capital murder of nine-year-old David Rodriguez and fifteen-year-old Diane Rodriguez during a retaliatory gang-related drive-by shooting. Medina argues that he is entitled to federal habeas relief because his trial counsel's efforts to investigate his case and their subsequent representation during the guilt-innocence phase of his trial were constitutionally insufficient. The state court denied Medina's relevant claims on the merits, and the federal courts have subsequently rejected them pursuant to 28 U.S.C. § 2254(d)'s relitigation bar. Throughout the course of his federal habeas litigation, Medina has sought to evade the strictures of AEDPA deference, ultimately seeking evidentiary development and de novo review of claims that have been continuously considered and rejected by the state and federal courts.

First, Medina argues that the Fifth Circuit's application of the relitigation bar to his claims both conflicts with this Court's precedent and creates a circuit split with the Fourth, Tenth, and—likely—Eleventh Circuits. He is wrong. The Fifth Circuit's interpretation and application of § 2254(d)'s relitigation bar is consistent with this Court's precedent and facilitates AEDPA's goals to promote comity, finality, and federalism. Additionally, this Court recently declined to address any purported circuit split over the meaning of "adjudicated on the merits" for purposes of applying AEDPA's relitigation

bar. *See Sandoval Mendoza v. Lumpkin*, 145 S. Ct. 138 (2024). The Court should decline to do so again here.

Second, Medina insists that reasonable jurists would debate both that the merits of his claims were actually addressed and adjudicated by the state court, and also that reasonable jurists would debate the merits denial of his relevant guilt-innocence IATC claims. He is also wrong about that. For the reasons contained herein, this case does not justify this Court's review of the Fifth Circuit's and district court's entirely correct holdings that his claims fail under the doubly deferential schemes of *Strickland v. Washington*, 466 U.S. 668 (1984), and AEDPA. The Court should deny Medina's petition.

STATEMENT OF JURISDICTION

The Court has jurisdiction under 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

I. Facts from Trial

A. The Murders

On New Year's Eve there was a party going on at the Rodriguez family home in Houston, Texas. In the early morning hours of January 1, 1996, the adults were inside and most of the children were outside playing in the backyard. Nine-year-old David sat on the trunk of Veronica Rodriguez's car, and his fifteen-year-old sister Diane stood nearby. Around 2:30am, a car came down the dead-end street and, as it passed the house, used an assault rifle to spray the children with bullets. Both David and Diane died, and their cousin was injured. A witness to the shooting

identified the hand holding the assault rifle as “white or Mexican” but definitely not “black.”

About six months prior to the murders, someone had previously shot at the Rodriguez home, and the next day, someone painted gang-related graffiti on their garage. In two other incidents, someone vandalized Veronica Rodriguez’s car, and another time someone threw a Molotov cocktail at their house. Although no one in the Rodriguez family belonged to a gang, the violence ultimately stemmed from Veronica’s two-year relationship with Marco “Blue” Martinez, a member of the H-Town Crips (“HTC”).

Throughout the time that Martinez dated Veronica, a gang war brewed between the HTC and its rival gang, La Raza (“LRZ”). The tension between the two gangs intensified after an HTC member killed an LRZ member. Personal animosity built between Martinez and Medina, an LRZ leader. This animosity led to the two exchanging a series of dirty looks, flashing gang signs, and threatening each other with weapons. There was no question that it was Veronica’s relationship with Martinez that brought violence upon the Rodriguez house, culminating in the New Years murders. Although Veronica and Martinez were not home at the time of the murders, her marked car was parked outside the home which the children were dancing around when they died from gunfire. The only people able to identify the shooter came from those inside the car. The prosecution ultimately fingered Medina as the shooter, while the defense claimed Dominic “Flaco” Holmes, a Black “peewee” or junior member of the predominantly Hispanic LRZ gang, was the killer.

B. Trial Testimony

Trial testimony revealed that at the same time the Rodriguez family met to celebrate the new year, Medina and his fellow LRZ gang members began to party at the house of Candelario “Candyman” Guerrero. Around 11:00pm, Medina and others went to a different party at the house of a former LRZ member, Michele “Chicona” Aguenta. While there, a dispute erupted when LRZ members accused another person of having a brother affiliated with the HTC. When that person looked as

though he was going to hit another leader in LRZ, Medina brandished a gun. The LRZ members left after Chicon's brother put an end to the tension. Back at Candyman's house, around 2:00 or 2:30am, a group left Candyman's house to carry out the drive-by murders.

i. The Prosecution

The prosecution's theory was that Medina left in James Moore's car, a non LRZ member, with Johnny "Pelon" Valadez, Alex "Slim" Perez, Veronica "China" Ponce, Scharlene "India" Pooran, and Holmes. Medina was the only leader in the car. Moore, the driver, Pelon, and Holmes, each of whom testified for the prosecution, admitted to being present in the car, and all identified Medina, Slim, India, and China as also being there. The gang members directed Moore to the Rodriguezes' street, stopping to allow Medina to get a semiautomatic assault rifle from the trunk of the car and move to the front passenger seat. Moore, Pelon, and Holmes all testified at trial that Medina fired at the Rodriguez house.

Around 3:00 am, Medina and the other LRZ members returned to Chicon's house, and Medina told Regina Juarez that they had done a drive-by and he fired the gun. Medina bragged about the murder, and people saw him with the murder weapon. He pointed the gun at someone he suspected to have a brother who was in a rival gang, and shot the gun into the air before Chicon's brother restrained him in a headlock. The LRZ members left when Chicon's father fired a shotgun into the air and told everybody to leave.

After Medina's arrest, he called Regina Juarez and told her to get rid of the murder weapon which was at India's house. Regina, Holmes, Moore, and another gang member got rid of the gun. Medina also directed gang members to lay blame on Holmes, and China and India helped with his plan. Specifically, China and

India told Pelon to blame Holmes and that if Pelon told the truth they would come after his family or try to do something to him.

ii. The Defense

The trial court appointed John A. Millin, and Gerald “Jerry” Guerinot to represent Medina at trial. The focus of their strategy was to place blame on Holmes through two primary themes: (1) Holmes made incriminating statements, and (2) Medina disclaimed being the shooter. The defense supported this theory with testimony that Holmes told Medina’s sister that the police “had to know it was him, but they had to find him before they could arrest him.” Holmes had also stated to other friends that he “put them hoes to rest” and “made the hoes lie down.”

The Defense had Slim testify that he had not left Candyman’s house to do the drive-by, and that Slim had not seen Medina with a weapon at Candyman’s house. Slim claimed that neither Holmes nor Medina claimed responsibility for the shootings. Medina also took the stand and testified that he did not participate in the crime, but stayed at Candyman’s house until around 3:30am, and that he saw a weapon in Moore’s car and Moore and Holmes left around the time of the murders. The jury found Medina guilty of capital murder.

C. Punishment Phase

There was a variety of evidence presented against Medina at the punishment phase, including that:

1. Medina and one Edward Johnson skipped school almost daily and slashed the tires on cars, and Medina drove his SUV into other cars to push them into the intersection or to damage them, and that they stole items from the cars after smashing the windows with a sledgehammer.
2. Medina was arrested in October 1993 on multiple counts of burglary of a motor vehicle,

and Medina failed to comply with the terms of his probation.

3. Medina received ten years probation in December 1994 in four arson cases; Medina violated probation and was sentenced in these cases and the burglary cases.
4. Testimony from a sixteen-year-old Dante Medrano that Medina and another person committed a drive-by where bullets hit Medrano's house.
5. Rocio Pedrosa testified that she was shot at the Rodriguez house and had to have a three-hour surgery, was in the hospital for eleven days, and still had a colostomy bag at the time of the trial and needed further surgery. She also had not returned to school, had nightmare and flashbacks, and was afraid to be alone.
6. Jesus Rodriguez, the father of the deceased, was in the house when he heard the shots and ran outside after. He testified that his wife could not sleep and was sick and nervous after the shooting; that his son Francisco was different after the shootings, and his daughter Jennifer gave him a poem about her feelings.

The Defense presented evidence where: Medina's family members testified about his "childhood, his early speech impediment, his family relationships, his behavior, his church activities, his interaction with children and adults, his attendance at Bellaire Christian Academy, his protective attitude towards others, and their lack of knowledge of his gang activities."[] The jury answered Texas' special issue questions in a manner requiring imposition of a death sentence.

Medina v. Lumpkin, No. 23-70003, 2024 WL 3833291, at *1–3 (5th Cir. Aug. 15, 2024) (internal headings adjusted); Petition Appendix at 2–6.

II. Procedural History

Medina was indicted, convicted, and sentenced to death in the 228th Judicial District Court of Harris County, Texas, for capital murder. ROA.6556–58.¹ The Texas Court of Criminal Appeals (CCA) affirmed Medina’s conviction and sentence on direct appeal. *Medina v. State*, 7 S.W.3d 633 (Tex. Crim. App. 1999); ROA.7939–57.

Prior to initiating federal litigation, Medina filed four state habeas applications. ROA.6446–559 (-01), 7118–41 (-02 & -04), 7672–7678 (-03). The CCA dismissed Medina’s first application as untimely and his third and fourth applications for abuse of the writ. *Ex parte Medina*, No. 41,274–03, 2005 WL 3119179, at *1 (Tex. Crim. App. Nov. 23, 2005); *Ex parte Medina*, No. 41,274–02 & 04, 2009 WL 2960466, at *1 (Tex. Crim. App. Sept. 16, 2009); ROA.6445 (-01), 7114–17 (-04), 7667 (-03). On September 16, 2009, the CCA denied the claims contained in Medina’s second application. *Ex parte Medina*, 2009 WL 2960466, at *1. On October 5, 2009, Medina filed a federal habeas petition, and he amended his petition, raising new claims, on May 31, 2011. ROA.17–265, 683–1047. The Director answered the amended petition arguing, in relevant part, that some of Medina’s claims were procedurally defaulted because he

¹ “ROA” refers to the Fifth Circuit’s record on appeal followed by the relevant page numbers.

failed to exhaust them in state court. ROA.1060–310. Medina filed a motion to stay the federal proceedings arguing that this Court’s decision in *Trevino v. Thaler*, 569 U.S. 413 (2013), would dictate his answer to some of the Director’s procedural arguments. ROA.1375–83. Over the Director’s objection, the district court stayed Medina’s federal proceedings and ordered him to exhaust available remedies in state court. ROA.1389–402.

Medina then filed his fifth state habeas application. ROA.5598–903. On January 25, 2017, the CCA dismissed the subsequent application as an abuse of the writ. *Ex parte Medina*, No. 41,274–05, 2017 WL 690960, at *1 (Tex. Crim. App. Jan. 25, 2017); ROA.5569–95.

Medina returned to federal court and filed a second amended federal habeas petition, as well as a motion for discovery in which he sought an evidentiary hearing. ROA.1403–769. The Director answered, ROA.2619–871, and Medina replied, ROA.2924–3209. The district court denied Medina habeas relief, denied a certificate of appealability (COA), and denied his motion for discovery. *Medina v. Lumpkin*, No. 09-CV-3223, 2023 WL 3852813, at *45 (S.D. Tex. June 6, 2023); ROA.4662–754. Medina then filed a Rule 59(e) Motion to Alter or Amend the district court’s judgment, ROA.4758–792, which the district court also denied. ROA.4828–33.

Medina next filed in the Fifth Circuit an Application for a COA. *See Medina v. Lumpkin*, No. 23-70003 (5th Cir.), ECF Nos. 57 & 58. The Fifth

Circuit denied Medina’s request for a COA and affirmed the district court’s resolution of Medina’s claims on both procedural grounds and the merits. Pet. App’x at 30. Medina filed a petition for rehearing, which the Fifth Circuit denied. *See* ECF Nos. 94 & 96. Medina then filed in this Court a petition for a writ of certiorari. The instant Brief in Opposition follows.

ARGUMENT

I. The Court Should Deny Review Because this Case Does Not Implicate a Circuit Split that Requires this Court’s Intervention, and the Lower Court’s Application of Deference Was Consistent with this Court’s Precedent.

Medina complains of an alleged circuit split between the Fifth Circuit and the Fourth, Tenth, and Eleventh Circuits with respect to the interpretation of this Court’s “adjudication on the merits” precedent following *Johnson v. Williams*, 568 U.S. 289 (2013), and the consequent application of § 2254(d)’s relitigation bar. Pet. Cert. 14–23. Medina argues that the state trial court’s verbatim adoption of the prosecution’s proposed order recommending relief be denied without permitting any discovery or evidentiary development of his relevant guilt-innocence IATC claims should not be considered an adjudication on the merits. Pet. Cert. 32–39. As a result, he argues, the Fifth

Circuit’s imposition of the relitigation bar to those same claims was improper. Pet. Cert. 32–39.

The circuit split Medina alleges is illusory. And notably, this Court recently denied a petition for writ of certiorari raising a substantially similar question in which the petitioner challenged the Fifth Circuit’s application of the relitigation bar to his claims and argued the same circuit split existed between the First, Fifth, and Sixth Circuits and the Second, Fourth, and Tenth Circuits. *See Sandoval Mendoza*, 145 S. Ct. 138. Moreover, the Fifth Circuit’s application of the relitigation bar was entirely consistent with this Court’s precedent. For the following reasons, the Court should deny Medina’s petition.

A. The Court should deny Medina’s petition because the circuit split he alleges is illusory.

Medina argues the Court should grant review to resolve a circuit split regarding the meaning under § 2254(d) of an “adjudication on the merits.” Pet. Cert. 13–23. He argues his case would have been decided differently under Fourth, Tenth, and—likely—Eleventh Circuit precedent. The Court should deny Medina’s petition because he fails to identify any relevant circuit split,

and in the absence of a relevant split there is no compelling reason for this Court’s review.² *See* Sup. Ct. R. 10.

First, Medina points to the Fourth Circuit’s application or discussion of § 2254(d)’s relitigation bar in four cases: *Winston v. Kelly*, 592 F.3d 535 (4th Cir. 2010) [*Winston I*]; *Winston v. Pearson*, 683 F.3d 489 (4th Cir. 2012) [*Winston II*] (affirming the earlier *Winston I* AEDPA deference discussion and reasoning); *Gordon v. Braxton*, 780 F.3d 196 (4th Cir. 2015); and *Valentino v. Clarke*, 972 F.3d 560 (4th Cir. 2020). But the cases Medina cites as favorable to him are either distinguishable as to where the petitioner sought evidentiary development or proffered “new” evidence, or because the state court involved did not follow proper procedure, neither of which is the case here.

In *Winston I*, the Fourth Circuit determined that when a petitioner offers new, material evidence for the first time *in federal habeas proceedings* that the state court could have considered if evidentiary development had been permitted, de novo review in the federal habeas proceedings *might* be appropriate. 592 F.3d at 555–56. But that decision both predates and is contrary to this Court’s holding in *Cullen v. Pinholster*, 563 U.S. 170 (2011)

² Even if there were a relevant circuit split, the scant support Medina supplies fails to justify this Court’s attention. *See Calvert v. Texas*, 141 S. Ct. 1605, 1606 (2021) (Statement of Sotomayor, J., respecting the denial of certiorari) (“The legal question Calvert presents is complex and would benefit from further percolation in the lower courts prior to this Court granting review.”).

(holding that federal review under § 2254(d)(1) is limited to the record that was before the state court that adjudicated the claim on the merits). *See Valentino*, 972 F.3d at 577 n.15 (acknowledging two circuits’ suggestions that the Fourth Circuit’s interpretation of an adjudication on the merits creates “considerable tension with § 2254(d)’s structural limitation on relief”); *but see Winston II*, 683 F.3d at 500–03 (affirming the “validity of *Winston I* in light of *Pinholster*” and *Harrington v. Richter*, 562 U.S. 86 (2012)).

And, here, Medina does not argue that evidence he presented in federal court fundamentally altered a claim from that raised in state court or rendered the state court record materially incomplete. *See* Pet. Cert. 32–40. *Winston I* and *II* are thus distinguishable and inapposite.³ Indeed, Medina argues only that the state trial court’s adoption of the prosecution’s proposed findings of fact and conclusions of law strips the state court’s decision of deference because those findings and conclusions were purportedly contradicted by the record

³ The Fifth Circuit in *Sandoval Mendoza* discussed the Fourth Circuit’s *Winston I* and *II* holdings. *Sandoval Mendoza*, 81 F.4th at 471–72. There, Mendoza relied on *Winston I* and *II* to argue that “because he sought discovery in state court, but it was denied, the [CCA] failed to provide him with due process and his claims were not adjudicated on the merits.” *Id.* at 472. The Fifth Circuit found that because “the [CCA’s] denial of Mendoza’s claims was based not upon procedural grounds but upon the merits of the claims, albeit without the benefit of additional material evidence,” the claims were adjudicated on the merits in the state court. *Id.* As such, the federal district court could not consider new evidence in support of those claims, and it did not abuse its discretion in denying Mendoza’s motion for an evidentiary hearing. *Id.* at 471–72. This Court subsequently declined to intervene with the Fifth Circuit’s resolution of Mendoza’s claims or address any purported circuit split. *See Sandoval Mendoza*, 145 S. Ct. 138.

that was in front of the state court. *E.g.*, Pet. Cert. 35 (“Evidence and filings submitted by Medina were ignored, but the postconviction judge signed off on every proposed order the prosecutor placed before him.”). The Fourth Circuit’s holding with respect to the effect of a lack of evidentiary development in state court has no bearing on the question Medina asks this Court to consider.

In *Gordon*, the Fourth Circuit held that the state court did not adjudicate Gordon’s IATC claims on the merits because the state court decision was made “on a materially incomplete record.” 780 F.3d at 202–04. There, rather than hold an evidentiary hearing to resolve blatant credibility issues and factual disputes in the record, the state court “blinded itself to the evidence.” *Valentino*, 972 F.3d at 579 (discussing *Gordon*). The Fourth Circuit distinguished *Gordon* in *Valentino* where it applied the relitigation bar to Valentino’s IATC claim “because Valentino’s trial developed at least *some facts*, [so] the record was not materially incomplete.” *Valentino*, 972 F.3d at 578–79 (emphasis in original). Here, there is no reason to believe the state court blinded itself to Medina’s evidence or that the record was otherwise materially incomplete. Again, Medina’s argument to this Court is not that the state court’s decision is not entitled to deference because it unreasonably refused to permit factual development of his IATC claim. *See id.* at 577. It is unpersuasive that, if decided by the Fourth Circuit, Medina’s case would have been decided any differently. *See id.* (“A state court does not unreasonably truncate further

factual development when it declines to order discovery of a fact that it finds immaterial.”).

Second, the Tenth Circuit case, *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009), upon which Medina relies has been overruled despite his assertion to the contrary. *See* Pet. Cert. 22 n.12. In *Wilson*, the Tenth Circuit held that when the state court refuses to grant an evidentiary hearing to consider material, non-record evidence of an IATC claim the defendant diligently sought to develop, then decides the claim without consideration of the evidence, the denial is not an adjudication on the merits to which AEDPA deference is owed. 577 F.3d at 1300. But, in *Harris v. Sharp*, 941 F.3d 962, 975–76 (10th Cir. 2019), the Tenth Circuit clarified, first, that *Wilson* was overruled by *Lott v. Trammell*, 705 F.3d 1167 (10th Cir. 2013), and, second, that “any denial of a request for an evidentiary hearing on an ineffective-assistance of counsel claim constitutes an adjudication on the merits.”⁴ *Harris*, 941 F.3d at 975. This comports with the Fifth Circuit’s reading of *Williams*, and its interpretation of on-the-merits adjudication and application of AEDPA deference. Moreover,

⁴ In *Wilson*, the Tenth Circuit (incorrectly) explained that Oklahoma law at the time confined appellate review of a criminal conviction “to the original trial record unless that record has been supplemented through an evidentiary hearing.” 577 F.3d at 1286 (citing Oklahoma Appellate Rule 3.11(B)(3)(b)). In *Lott*, the Tenth Circuit explained that the Tenth Circuit had since clarified that it considers non-record evidence when disposing of a request for an evidentiary hearing. 705 F.3d at 1212–13.

Medina provides no support for the contention that the CCA refused to consider non-record evidence when it considered and rejected his claim on the merits, and he points to no state law that limited the state court’s consideration of non-record evidence. *Wilson* is, therefore, inapposite.

Finally, the Eleventh Circuit’s single footnote cite to the Fourth Circuit’s on-the-merits analysis does nothing to demonstrate an inconsistent application of § 2254(d)’s relitigation bar or a circuit split which necessitates this Court’s interference. *See Sears v. Warden GDCP*, 73 F.4th 1269, 1286 n.11 (11th Cir. 2023). Ultimately, Medina only really relies on the Fourth Circuit to show a circuit split. But even the Fourth Circuit’s holding in *Winston* is inapposite because it was premised on the effect of presentation of new evidence in federal court, which Medina’s argument is not, and *Wilson* is contrary to *Pinholster*.

The Supreme Court “mostly does not even grant certiorari on . . . one-to-one Circuit splits, because . . . a bit of disagreement is an inevitable part of our legal system.” *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. 215, 392–93 (2022) (Breyer, J., dissenting). Even if the Court were inclined to reach the issue of what § 2254(d) requires of state courts, this Court’s intervention would still be unnecessary here because the Fifth Circuit has taken the correct side of any putative split. The contrary view for which Medina advocates is “inconsistent with AEDPA’s plain terms and structure” and “frustrates

AEDPA’s central purpose.” *Wilson*, 577 F.3d at 1315 (Gorsuch, J., dissenting) (explaining why the view that a claim is not “adjudicated on the merits” if the state court did not accord with the habeas petitioner’s ideas of a “full and fair hearing” is incorrect). Medina’s reading of “adjudicated on the merits” would turn AEDPA on its head because a state court’s substantive decision would be deemed not “on the merits” any time a petitioner can subsequently take issue with the state habeas court’s mere evidentiary or discovery ruling. That reading would “treat[] state courts less like instruments of sovereign governments and more like federal agencies whose decisions” are under review. *Id.* at 1318 (Gorsuch, J., dissenting). And it would thwart what this Court has recognized as AEDPA’s goals: to promote “comity, finality, and federalism” by narrowing the grounds on which habeas petitioners can obtain relief. *Williams v. Taylor*, 529 U.S. 420, 436 (2000); *see also, e.g., Brown v. Davenport*, 596 U.S. 118, 125 (2022) (“Under AEDPA, . . . a federal court may disturb a final state-court conviction only in narrow circumstances.”). As such, the petition identifies no compelling reason warranting this Court’s attention, and it should be denied.

B. The Fifth Circuit’s application of 28 U.S.C. § 2254(d)’s relitigation bar conforms with this Court’s precedent.

Medina also fails to justify this Court’s review because the lower courts’ application of AEDPA deference is entirely consistent with this Court’s

precedent. AEDPA requires a federal district court to defer to a state habeas court's determination of the merits of a prisoner's claims unless the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law" or "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." 28 U.S.C. § 2254(d). A federal claim is deemed to have been adjudicated on the merits when, "in the absence of any indication or state-law procedural principles to the contrary," it has been presented to the state court and the state court has denied relief. *Richter*, 562 U.S. at 99. "The presumption may be overcome when there is reason to think some other explanation for the state court's decision is more likely." *Id.* at 99–100.

In *Williams*, this Court clarified that "because it is not the uniform practice of busy state courts to discuss separately every single claim to which a defendant makes even a passing reference," federal habeas courts cannot assume that any unaddressed federal claim was simply overlooked, and therefore unadjudicated. 568 U.S. at 298. Rather, "when a state court issues an order that summarily rejects without discussion *all* the claims raised by a defendant, including a federal claim that the defendant subsequently presses in a federal habeas proceeding, the federal habeas court must presume (subject to rebuttal) that the federal claim was adjudicated on the merits." *See id.* at 293 (emphasis in original) (citing *Richter*, 562 U.S. 86). Similarly, when a state

court rules against a defendant in an opinion that rejects *some* of the defendant's claims but does not *expressly address* a federal claim, a federal habeas court must presume, again subject to rebuttal, that the federal claim was adjudicated on the merits. *Id.* As such, where a petitioner raises a claim that was adjudicated on the merits by the state court and fails to rebut the presumption, "the restrictive standard of review set out in § 2254(d)(2) applies." *Id.*

Following this Court's precedent in *Richter* and *Williams*, the Fifth Circuit routinely applies 2254(d)'s relitigation bar to federal habeas claims that have been adjudicated on the merits by the state court. *See* Pet. App'x at 8–11; *Charles v. Stephens*, 736 F.3d 380, 387–88 (5th Cir. 2013) (discussing AEDPA's relitigation bar). Consistent with *Williams*, the Fifth Circuit has explained that where a federal habeas claim has been presented to the state court and the state court has denied relief, "in the absence of any indication or state-law procedural principles to the contrary," the claim is presumed to have been adjudicated on the merits. *See* Pet. App'x at 9 (quoting *Richter*, 562 U.S. at 99). That presumption is, of course, subject to rebuttal. *See id.* But the Fifth Circuit has "consistently held that 'a full and fair hearing is not a precondition to according § 2254(e)(1)'s presumption of correctness to state habeas court findings of fact nor to applying § 2254(d)'s standards of review." *Sandoval Mendoza v. Lumpkin*, 81 F.4th 461, 472 (5th Cir. 2023) (quoting *Boyer v.*

Vannoy, 863 F.3d 428, 446 (5th Cir. 2017)). That is because “[s]uch a requirement is supported neither by the plain text of Section 2254(d), which makes no reference to a full and fair hearing, nor by the legislative landscape against which AEDPA was passed.” *Id.* The Fifth Circuit’s reading of AEDPA both complies with its language and serves its purposes.

C. The lower courts properly held that the state court adjudicated Medina’s guilt-innocence IATC claims on the merits.

A panel of the Fifth Circuit unanimously decided that Medina’s relevant guilt-innocence IATC claims were adjudicated on the merits by the state court, and, therefore, subject to AEDPA’s relitigation bar. Pet. App’x at 11. Medina raised the claims in his 2001 state habeas application, and the state habeas court issued findings of fact, conclusions of law, and an order, which the CCA adopted and denied Medina relief. *See id.* at 10. The Fifth Circuit determined that “because Medina’s arguments were ‘presented to a state court, and the state court [] denied relief, it may be presumed that the state court adjudicated the claim on the merits.” *Id.* (quoting *Richter*, 562 U.S. at 99).

The Fifth Circuit rejected Medina’s argument that he rebutted the presumption because he requested, and was denied, discovery and an evidentiary hearing to resolve his fact-intensive claims in state court, and, instead, the state court verbatim signed the prosecutor’s proposed order. *See id.* at 10–11. Relying on its reasoning from *Sandoval Mendoza*, the Fifth

Circuit noted that “a full and fair hearing is not a precondition to according § 2254(e)(1)’s presumption of correctness to state habeas court findings of fact nor to applying § 2254(d)’s standard of review.” *Id.* at 11 (citing 81 F.4th at 472).

Here, Medina renews his claim that the state habeas court did not engage with the evidence and arguments he presented in support of his guilt-innocence IATC claims in denying his state habeas application, thus, he argues, his claims cannot be considered adjudicated on the merits, and the Fifth Circuit’s application of the relitigation bar was improper. *See* Pet. Cert. 13–19. But, as discussed, this Court in *Williams* did not require the state courts to entertain every claim on the merits with an evidentiary hearing or to even address every specific federal claim in its findings and conclusions. *See Williams*, 568 U.S. at 298–303. Rather, to be considered adjudicated on the merits for purposes of the relitigation bar, *Williams* requires state courts to evaluate claims “based on the intrinsic right and wrong,” “as determined by *matters of substance*, in distinction from matters of form.” *Id.* at 302–03 (emphasis in original). For this reason, this Court said “[i]f 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,” and it cannot be considered as having been adjudicated on the merits. *Id.* And “[w]hen the evidence leads *very clearly* to the conclusion that a federal claim was inadvertently overlooked in

state court, § 2254(d) entitles the prisoner to an unencumbered opportunity to make his case before a federal judge.” *Id.* at 303 (emphasis added).

Ultimately, Medina fails to even allege that his claims were rejected as the result of sheer inadvertence. He instead argues a different ground on which to avoid AEDPA deference: that the state court’s verbatim adoption of the post-conviction prosecutor’s proposed findings and conclusions—which contained typographical errors—demonstrated without question that the state court failed to engage with or consider Medina’s arguments and evidence. *See* Pet. Cert. 31–40. But the underlying argument—that Harris County judges engaged in a “pattern and practice” of verbatim adopting post-conviction prosecutors’ proposed findings and conclusions in *all* capital habeas cases without engaging with the individual claims and evidence—cannot be considered because he failed to properly present the argument to the Fifth Circuit. *See* Pet. Cert. 35–40. There, Medina only mentioned the trial court’s alleged “pattern and practice” in a single footnote in the introductory discussion of his post-trial proceedings referring to his original federal habeas petition, but then he reasserted in his Reply that he presented “substantial evidence” of the alleged practice. *See* ECF No. 57 at 43 n.7; ECF No. 85 at 1; ROA.4085–87. Because he deprived the lower court of the opportunity to consider this argument, he has waived the argument in this Court. *See Sims v. Apfel*, 530 U.S. 103, 109 (2000) (“[o]rdinarily an appellate court does not give

consideration to issues not raised below.”); *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (“It is only in exceptional cases coming here from the federal courts that questions not pressed or passed upon below are reviewed.”).

Even so, Medina does not conclusively demonstrate that the state court *in his case* failed to consider his evidence and arguments. The state habeas court entered 206 findings of fact and forty-eight conclusions of law in which it addressed the merits of Medina’s claims and his evidentiary concerns and provided bases upon which it recommended the CCA deny his claims. ROA.6949–7004. And Medina conveniently ignores the additional fact that the CCA adopted those findings and conclusions *and* conducted *its own independent review* of the record. ROA.7114–15. Medina gives no convincing reason for this Court to conclude that the state court ignored his evidentiary submissions in considering the merits of his claims. That court merely disagreed with him.

Even so, Medina asks this Court to “assume” a scenario in which a trial judge admits to not reading the pleadings or the record and not considering the issues in the case but adopting verbatim the State’s proposed order to argue that under the Fifth Circuit’s precedent, the relitigation bar still would be applied to that hypothetical petitioner’s claims. *See* Pet. Cert. 18. But that hypothetical is plainly not the record with which this Court is confronted. *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013) (“Federal courts may not decide

questions that cannot affect the rights of litigants in the case before them or give opinions advising what the law would be upon a hypothetical set of facts.” (quotation marks and citation omitted)). Here, Medina has offered no substantive proof that the state court failed to read the pleadings or the record or to consider the issues in this case before signing the State’s proposed order. Although the order contained typographical errors, that does not equate to demonstrative evidence that the state habeas court wholly failed to engage with the case. And, again, Medina conveniently ignores the fact that the CCA subsequently conducted its own independent review of the record before denying Medina’s claims on their merits. ROA.7114–17.

Medina’s assertion that, in the Fifth Circuit, a 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 is unsupported and unpersuasive. *See* Pet. Cert. 18. Rather, he failed to demonstrate that happened here. Without convincing evidence of the contrary, the state court presumptively considered and rejected the merits of his claims. *See Williams*, 568 U.S. at 301–03; *Richter*, 562 U.S. at 98–100. Although the state court denied Medina the requested evidentiary development, *Williams* does not require that in order to apply AEDPA deference. As such, Medina wholly fails to demonstrate that the state court record was actually materially incomplete, that the state court “very clearly” “overlooked” the federal claims that were

resolved on the merits, or that the state court’s decision was unreasonable. *See Williams*, 568 U.S. at 303. The Fifth Circuit’s application of § 2254(d)’s relitigation bar conforms with this Court’s holding in *Williams*, and reasonable jurists would not debate that Medina’s relevant guilt-innocence IATC claims were adjudicated on the merits by the state court. His petition should be denied.

II. Reasonable Jurists Would Not Debate the Fifth Circuit’s Merits Denial of Medina’s Guilt-Innocence IATC Claims.

Finally, Medina reurges the merits of his guilt-innocence IATC claims. Pet. Cert. 24–31. But as the Fifth Circuit found, Pet. App’x at 13–19, his claims are undebatably meritless. Therefore, his petition fails to present a compelling reason to review the question he presents.

A. Standard of review

In reviewing an IATC claim, *Strickland*’s two-prong test requires a petitioner to demonstrate counsel’s performance was deficient and this deficiency prejudiced his defense. *Strickland*, 466 U.S. at 687–88, 690. This Court has noted, “[s]urmounting *Strickland*’s high bar is never an easy task.” *Padilla v. Kentucky*, 559 U.S. 356, 371 (2010). To establish deficiency, an inmate must show that “counsel’s representation fell below an objective standard of reasonableness.” *Strickland*, 466 U.S. at 688. A “strong presumption” that counsel’s representation was within the “wide range” of

reasonable professional assistance applies. *Id.* at 689. To demonstrate prejudice, an inmate must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. The “likelihood of a different result must be substantial, not just conceivable.” *Richter*, 562 U.S. at 112.

Because Medina’s instant IATC claims were adjudicated on the merits, *see infra* Argument.I.B, the state court’s denial is entitled to AEDPA deference; thus, the claims must be reviewed under the “doubly deferential” standard of both § 2254(d) and *Strickland*, 466 U.S. at 687–88, 690. *Woods v. Etherton*, 578 U.S. 113, 117 (2016) (citing *Pinholster*, 563 U.S. at 190); *Knowles v. Mirzayance*, 556 U.S. 111, 112 (2009). In reviewing these claims, the “pivotal question” is not “whether defense counsel’s performance fell below *Strickland*’s standards,” but “whether the state court’s application of the *Strickland* standard was unreasonable.” *Richter*, 562 U.S. at 101. And “while ‘[s]urmounting *Strickland*’s high bar is never an easy task,’ ‘[e]stablishing that a state court’s application of *Strickland* was unreasonable under § 2254(d) is all the more difficult.” *Id.* at 105. Every effort must be made to eliminate the “distorting effects of hindsight.” *Strickland*, 466 U.S. at 689.

Here, Medina argues that reasonable jurists would debate the Fifth Circuit’s finding that he failed to prove that trial counsel was ineffective for failing to (a) investigate and subsequently introduce critical evidence in

support of the defense’s theory that Dominic Holmes was the shooter through witnesses Dallas Nacoste, Ricardo Villanueva, Raymundo Becerra, and Carlos McNickles, and (b) interview and subsequently impeach the State’s key witnesses, specifically Dallas Nacoste, with their previous statements. *See* Pet. Cert. 24–31. Medina contends that trial counsel’s omissions in presenting certain evidence rendered deficient performance, and, absent counsel’s deficient performance, there is a reasonable probability that the jurors would have harbored reasonable doubt about Medina’s guilt and a reasonable probability of a different outcome. *Id.*; *Strickland*, 466 U.S. at 687, 695–96.

Counsel in a death-penalty case “has ‘a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.’” *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 691). “*Strickland*, however, permits counsel to ‘make a reasonable decision that makes particular investigations unnecessary.’” *Richter*, 562 U.S. at 106. The “decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Wiggins*, 539 U.S. at 521–22.

B. Factual background

Counsel’s strategy at trial was to blame the murder on Dominic Holmes. ROA.4699, 4703. At trial, witnesses fingered Medina as the gunman: Moore,

Valadez, and Holmes testified that Medina stuck the rifle out the front right passenger seat window and fired. ROA.9855–58 (Moore), 9985–90 (Valadez), 10088 (Holmes). Juarez testified that on the night of the shooting, Medina told her he had fired the rifle, but two months later, after his arrest, Medina told her to finger Holmes as the shooter. ROA.10139, 10155–56. Medina also wrote a letter to Pooran in which he fingered Holmes as the shooter. ROA.10423.

The defense’s theory was that Moore and Holmes were at the New Year’s Eve party, left the party in Moore’s car, committed the drive-by shooting, and returned to the party. Medina’s sister testified that after Medina was arrested, she had a telephone conversation with Holmes in which she testified that Holmes said: “[T]he cops weren’t that stupid. They’ve got to know it’s me, but they have to find me before they can take me in.” ROA.10205–08. Domingo Valle testified that some days after the shooting, Holmes said to him, “Yeah, man—excuse my language—I put them hoes to rest.” ROA.10238.

Rene Reyna testified that about a week to ten days after the shooting, Holmes told her that he had “made them lay down,” that is, killed the victims. ROA.10252. Alex Perez testified he never saw Medina leave the New Year’s Eve party with Moore or anyone else. ROA.10280. And, testifying in his own

defense, Medina said he saw Moore and Holmes leave the New Year's Eve party several times. ROA.10334–35.

On state habeas, the state court recognized that trial counsel's strategy was to place blame on others, including by presenting evidence that Holmes told others that he committed the offense. ROA.6981. The state court ultimately found that the evidence Medina complains counsel should have investigated and presented through Nacoste, Becerra, Villanueva, Crawford, and McNickles was either available to trial counsel before trial in offense reports or witness statements and corroborated the trial testimony or does not exculpate Medina, and, in fact, may have actually inculcated him. ROA.4703–04, 6980–81.

Trial counsel Guerinot submitted an affidavit in which he stated that he specifically did not call Nacoste to testify because Nacoste was not credible, and the defense had other witnesses to shift the blame to Holmes. ROA.4703, 6980. The state habeas court found counsel's affidavit to be credible and endorsed counsel's strategic decision not to call Nacoste as reasonable under the circumstances. ROA.6980, 7001. The state habeas court also found that Becerra's and Villanueva's purported testimony would have fit into the narrative that Juarez provided at trial, and, thus, was before the jury. ROA.4704, 6981. And Crawford's and McNickles's purported testimony did not

exculpate Medina and may have actually inculpated Medina as much as any other LRZ member. ROA.6980–81.

Ultimately, the state court found that the information Medina presented in the “postconviction affidavits is either information that does not exculpate [him] or is information that was presented at trial and rejected by the jury, as shown by the jury’s finding of guilty.” ROA.6981. Thus, the court concluded that Medina failed to demonstrate that trial counsel’s investigative performance was deficient or prejudicial, and that counsel made reasonable strategic decisions. ROA.7000–01.

C. The Fifth Circuit properly determined that Medina failed to meet his burdens under AEDPA and *Strickland*.

The district court and the Fifth Circuit agreed that the state court’s application of *Strickland* was reasonable and determined that Medina failed to demonstrate that trial counsel was deficient or that any deficiency prejudiced him. *See* Pet. App’x at 14. Specifically, the Fifth Circuit determined that “the evidence that Medina argues should have been brought in or would have been brought in had counsel contacted or called the [complained-of] witnesses was either: information counsel already had access to, a strategic decision not to call the witness, not information that would exculpate Medina, or already presented through other witnesses or evidence at trial.” *Id.* at 16.

But, Medina complains, yet again, that counsel should have investigated and introduced evidence from:

- (1) Nacoste, even though he gave the police a statement implicating Holmes and reporting that Holmes buried the murder weapon;
- (2) Crawford, Holmes's and Moore's friend, who could have testified that Holmes repeatedly expressed a desire to avenge the death of Lopez and saw Holmes with a long rifle shortly after the shooting;
- (3) Villanueva, who would have testified that Holmes confessed to Juarez that he committed the shooting;
- (4) Becerra, who would have testified that Holmes confessed to Juarez that he committed the shooting, and that Holmes and Moore threatened Juarez if she said anything about the shooting;
- (5) McNickles, who lived near the crime scene and saw a black man firing an AK-type rifle out of a car matching the description of Moore's car.

Pet. Cert. 29–31. Through the presentation of six defense witnesses at guilt-innocence, and cross-examination of the State's witnesses, counsel made reasonable strategic decisions to support the defense's strategy to shift the blame onto Holmes. ROA.6952–54, 6975, 6981. Medina is vague about any concrete benefits that would have arisen from additional investigation and pretrial interviews of the complained-of witnesses, nor has he demonstrated by

“any verifiable means . . . how those witnesses would have changed their trial testimony had counsel interviewed them.” ROA.4701.

In any case, there was evidence presented at trial that Holmes confessed to the shooting, including testimony from Medina’s sister, Domingo Valle, and Rene Reyna that Holmes confessed to the shooting. ROA.10205–08, 10238, 10252. And Alex Perez testified that he never saw Medina leave the New Year’s Eve party. ROA.10280. Nacoste’s statement in which he stated that Holmes carried out the shooting was available to trial counsel, and counsel made a strategic decision not to call Nacoste to testify because his credibility was worse than other witnesses; McNickles’s statements did not exculpate Medina from the murder; and the purported additional evidence Becerra and Villanueva offered—that Holmes told others he committed the murders—was presented by counsel through Juarez and Holmes. Pet. App’x at 14–15, 28 n.7. Accordingly, much of the complained-of testimony would not have fundamentally altered the evidentiary picture already before the jury, was available to trial counsel who made reasonable strategic decisions not to present it as Medina now wishes he had, or was presented through other witnesses. ROA.4704; *see* Pet. App’x at 15–16.

Trial “counsel’s investigatory decisions must be assessed in light of the information known at the time of the decisions, not in hindsight.” *Strickland*, 466 U.S. at 680. “There are countless ways to provide effective assistance in

any given case,” and “every effort [must] be made to eliminate the distorting effects of hindsight.” *Id.* at 689. As Medina has consistently argued, this case turned on the credibility of witnesses. Medina’s trial counsel conducted a substantial investigation and made reasonable strategic choices based on professional judgment, the information known to and investigated by counsel, and the defensive theory pursued. *Id.* at 680–82. Even if Medina’s post-conviction counsel can now imagine additional investigatory avenues or alternative strategies by which to present the evidence, Medina was entitled to “reasonable competence, not perfect advocacy judged with the benefit of hindsight.” *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (per curiam); see *Wong v. Belmontes*, 558 U.S. 15, 24 (2009) (“Additional evidence on these points would have offered an insignificant benefit, if any at all.”). Ultimately, as the state court, district court, and Fifth Circuit determined, Medina failed to demonstrate that counsel’s investigation or subsequent representation at the guilt-innocence phase of trial was deficient. *Strickland*, 466 U.S. at 687. And reasonable jurists would not debate that conclusion.

Furthermore, even if deficiency were shown, Medina fails to demonstrate prejudice. *Strickland*, 466 U.S. at 692. Because the evidence Medina claims was missing was already presented in another form or through other witnesses, he cannot demonstrate that the result of the proceeding would have been different. See Pet. App’x at 16–17; *Strickland*, 466 U.S. at 692–94. The

state court's determination that Medina failed to demonstrate a "substantial" likelihood of a different result was reasonable, and the district court's and Fifth Circuit's conclusions as to the same are undebatable. *See Richter*, 562 U.S. at 112.

Medina fails to demonstrate that trial counsel was ineffective, that the state court's application of *Strickland* was unreasonable, or that reasonable jurists could disagree with the Fifth Circuit's and district court's determinations under the doubly deferential schemes of AEDPA and *Strickland*. *See* 28 U.S.C. § 2254(d); *Strickland*, 466 U.S. at 687–88, 690. As such, Medina has shown no compelling reason for this Court to grant review of his IATC claims. His petition should be denied.

CONCLUSION

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

Respectfully submitted,

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