

No. 24-6370
(CAPITAL CASE)

IN THE
Supreme Court of the United States

ANTHONY MEDINA,
Petitioner,

v.

ERIC GUERRERO, 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

**REPLY TO BRIEF IN OPPOSITION TO
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?

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REPLY TO BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

I. A longstanding, entrenched circuit split requires this Court’s intervention.

Respondent urges this Court to deny review by attempting to paper over an entrenched split that has divided the circuits for more than a decade and a half. BIO.10 (“The circuit split Medina alleges is illusory.”); 15 (referring to a “putative split”). Respondent asserts that “in the absence of a relevant split there is no compelling reason for this Court’s review.” BIO.11. Respondent’s effort to minimize the disarray in the circuits is incredible in both senses of the word. The circuits themselves, a Member of this Court, a leading habeas corpus treatise, and even Respondent’s brief in the court below all recognize the irreconcilable divide in the circuits over the application of 28 U.S.C. § 2254(d)’s “on the merits” requirement.

Numerous circuits have recognized the split over whether a materially deficient state court factfinding process qualifies as an adjudication on the merits. When the Tenth Circuit held 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, 1293 (10th Cir. 2009) (*en banc*), *abrogated by Lott v. Trammell*, 705 F.3d 1167, 1213 (10th Cir. 2013), then-Judge Gorsuch wrote that the “majority’s ... holding today cements a circuit split.” *Id.* at 1317 (Gorsuch, J., dissenting).¹

In the Fourth Circuit, “all state prisoners in Maryland, the Virginias, and the

¹ Respondent notes that *Wilson* was overruled, BIO.14, but explains in a footnote that the overruling was based on a factual error about Oklahoma’s state court procedures. BIO.14 n.4. Respondent cites no case in which the Tenth Circuit overruled its application of § 2254(d)’s “on the merits” requirements.

Carolinas [] may evade § 2254(d)’s limitation on relief if [they] can show that the state post-conviction court has ‘unreasonably refuse[d] to permit further development of the facts of a claim.’” *Valentino v. Clarke*, 972 F.3d 560, 577 (4th Cir. 2020). The court has acknowledged that “[a]t least two of our sister circuits have suggested that our interpretation creates a considerable tension with § 2254(d)’s structural limitation on relief—not to mention other provisions of AEDPA that speak directly to evidentiary hearings.” *Id.* at 577 n.15 (citing *Atkins v. Clarke*, 642 F.3d 47, 49 (1st Cir. 2011); *Garuti v. Roden*, 733 F.3d 18, 23 (1st Cir. 2013); *Ballinger v. Prelesnik*, 709 F.3d 558, 562 (6th Cir. 2013)).

Respondent suggests that *Cullen v. Pinholster*, 563 U.S. 170 (2011), abrogated the Fourth Circuit’s rule. BIO.11–12. This is incorrect. *See, e.g., Stanko v. Stirling*, 109 F.4th 681, 690 (4th Cir. 2024) (“It is indeed well established in our circuit ... that a claim is not adjudicated on the merits for purposes of § 2254(d) if it is decided on a ‘materially incomplete record’ because a state PCR court has ‘unreasonably refused to permit’ necessary factual development ... either by refusing to consider, without explanation, critical evidence ... or by unreasonably refusing to hold a hearing to resolve a critical factual dispute....”) (citations omitted).²

² *Pinholster* does not overrule the Fourth Circuit’s application of § 2254(d)’s “on the merits” prerequisite to affording deference to state court decisions. BIO.11–12. *Pinholster* addresses a separate question that arises only *after* a federal court first determines that a claim was adjudicated on the merits: “In post-AEDPA cases *where the state court adjudicated the petitioner’s claim on the merits*, a federal court’s review ‘is limited to the record that was before the state court that adjudicated the claim on the merits.’” Brian R. Means, *The state court adjudicated the claim on the merits*, Postconviction Remedies § 22:3 (2024) (quoting *Pinholster*, 563 U.S. at 181). Thus, *Pinholster* dictates that if a petitioner attempts to demonstrate that a qualifying state court merits adjudication was legally unreasonable pursuant to § 2254(d)(1)’s exception to AEDPA deference, the petitioner’s argument is confined to the state court record. *Id.* However, federal courts have no reason to engage in the § 2254(d)(1) exception analysis, and thus *Pinholster* does not apply, *in the absence* of a qualifying

As the Fourth and Tenth Circuits noted, other circuits have adopted conflicting interpretations of § 2254(d)’s “on the merits” requirement. In *Garuti*, the First Circuit acknowledged but explicitly rejected the Fourth and Tenth Circuits’ application of the “on the merits” requirement: “Although these decisions by other courts appear to support Garuti’s position, ... this court rejected the view that there can be no decision on the merits within the meaning of § 2254(d) unless there was an evidentiary hearing.” *Garuti*, 733 F.3d at 23. The Sixth Circuit held that the Fourth Circuit’s rule is contrary to *Harrington v. Richter*, 562 U.S. 86 (2011), and *Pinholster*, and thus sided with the First Circuit in declining to follow it. *Ballinger*, 709 F.3d at 561–62; *see id.* at 562 (citing *Atkins v. Clarke*, 642 F.3d 47, 49 (1st Cir. 2011), with approval for “reject[ing] the petitioner’s claim that the state court’s decision was not on the merits because he had not received a ‘full and fair evidentiary hearing’”).

The Fifth Circuit has likewise squarely rejected the Fourth Circuit’s holding that “judgment on a materially incomplete record is not an adjudication on the merits for purposes of § 2254(d)”³: “With respect for that circuit, we have consistently held that a full and fair hearing is not a precondition to ... applying § 2254(d)’s standards of review.” *Sandoval Mendoza v. Lumpkin*, 81 F.4th 461, 472 (5th Cir. 2023) (quoting

merits adjudication. As the Fourth Circuit observed, “the Court phrased its holding as applying only to claims that had been adjudicated on the merits in state court.” *Winston v. Pearson*, 683 F.3d 489, 501 (4th Cir. 2012) (“*Winston II*”) (citing *Pinholster*, 563 U.S. at 181; 185 (“If a claim has been adjudicated on the merits by a state court, a federal habeas petitioner must overcome the limitation of § 2254(d)(1) on the record that was before that state court.”) (emphasis added)). This “Court made plain that its analysis and the strictures of § 2254(d) do not apply to claims that had not been adjudicated on the merits in state court.” *Winston II*, 683 F.3d at 501 (citing *Pinholster*, at 185–86). *Pinholster* does not “expressly delineate[] the contours of an ‘adjudication on the merits’ for AEDPA purposes,” *id.* at 498–99, it applies only *after* a federal court concludes there was one.

³ *Winston v. Kelly*, 592 F.3d 535, 555–56 (4th Cir. 2010) (“*Winston I*”).

Boyer v. Vannoy, 863 F.3d 428, 446 (5th Cir. 2017)).

The Eleventh Circuit, however, has cited the Fourth Circuit’s rule with approval. *Sears v. Warden GDCP*, 73 F.4th 1269, 1286 n.11 (11th Cir. 2023).

According to a leading habeas corpus treatise, “[i]t is *undecided* whether a deficient state-court fact-finding process removes the record limitation imposed by *Pinholster*”:

Some courts have ruled that holding a full and fair hearing in state court is not a prerequisite to applying ... § 2254(d)’s standards of review. Other courts have concluded that a state court’s refusal to allow further development of the factual record precludes deference under AEDPA.

Brian R. Means, *The state court adjudicated the claim on the merits*, Postconviction Remedies § 22:3 (2024) (emphasis added) (footnotes omitted).

Finally, while Respondent now attempts to characterize the circuit split as “illusory,” in the court below it relied on binding Fifth Circuit precedent rejecting the Fourth Circuit’s “on the merits” jurisprudence. Opp.COA.21 (“Indeed, the petitioner in *Sandoval Mendoza* relied on the Fourth Circuit’s precedent, and this Court explicitly declined to adopt the Fourth Circuit’s reasoning.”).

As argued in Medina’s petition, *Johnson v. Williams*, 568 U.S. 289, 302 (2013), plainly elucidated the elements of “an adjudication on the merits” for purposes of § 2254(d). Pet.13–16. Yet, more than a decade later, the longstanding disagreement between the circuits persists over when § 2254(d) deference comes due. Review is appropriate pursuant to Supreme Court Rule 10(a) because only this Court’s intervention will resolve the conflict between the courts of appeals.⁴

⁴ Respondent notes that this Court recently denied review of a similar issue in another case. BIO.1–2

II. The unresolved circuit split is directly relevant to Medina’s case.

Respondent argues that even if a circuit split exists, Medina’s case is materially distinguishable from cases in other circuits in which the state court proceedings failed to qualify as an “adjudication on the merits.” BIO.11–15. But Respondent repeatedly mischaracterizes Medina’s arguments and the record in an unconvincing effort to minimize both the relevance of the other circuits’ precedents and his showing rebutting the existence of a merits adjudication.

As described, *supra*, some circuits hold that “a claim is not adjudicated on the merits for purposes of § 2254(d) if it is decided on a ‘materially incomplete record.’” *Stanko*, 109 F.4th at 690; *see also Wilson*, 577 F.3d 1284, 1293 (“dispos[ing] of a claim without considering the facts supporting it is not a decision on the merits”). Respondent contends, however, that 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,” because “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.” BIO.13 (emphasis added); *see also* BIO.12–13 (“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 that was in front of the state court.”)

(citing *Sandoval Mendoza v. Lumpkin*, 145 S. Ct. 138 (2024)). Contrary to Respondent’s suggestion that the Court’s denial of certiorari in a different case with a different record is a reason to deny review in this case, the frequency with which the issue arises militates in favor of resolving it.

(emphasis added).

These statements are false. Medina objected to the state court's unreasonable refusal to permit the fact development necessary to develop his claims throughout the state and federal proceedings. That failure is one of *multiple* circumstances Medina proffered to rebut the presumption of a merits adjudication. Indeed, Respondent's misrepresentation of Medina's position is conspicuous considering its conflicting assertion that "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." BIO.9 (emphasis added).

Medina's arguments mirror those of habeas petitioners who successfully rebutted the existence of a merits adjudication in other circuits. For example, Medina documented that his trial counsel performed virtually no work on his case during the six months between their appointment and Medina's trial, likely because they were busy trying three other unrelated death penalty cases. Pet.2–3. Trial counsel's investigator spent a mere *30 hours* investigating for *both* phases of the trial. Pet.3. The postconviction prosecutor authored an affidavit for trial counsel vaguely alleging that he thoroughly investigated Medina's case. Pet.9, 11. Although state law compelled the court to determine whether "controverted issues of material fact" required resolution, and even though Medina filed multiple motions requesting discovery and a hearing on this issue and others, the state court ignored Medina's

pleadings and merely signed every order the prosecution prepared for it. Pet.9–10. Medina’s case thus falls squarely into Respondent’s own characterization of Fourth Circuit cases in which the state proceedings failed to qualify as a merits adjudication:

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*).

BIO.13.

Without acknowledging the breadth of Medina’s argument, Respondent asserts that “there is no reason to believe the state court blinded itself to Medina’s evidence or that the record was otherwise materially incomplete.” BIO.13. Medina argues here, and argued below, that the totality of multiple circumstances rebuts the presumption of a merits adjudication, including:

- (1) The state court’s refusal to allow the fact development necessary to resolve the merits of his claim. Pet.34–35 (“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....”).
- (2) The state court’s wholesale, verbatim adoption of the State-authored findings fact, even when contradicted by the record. Pet.33.⁵

⁵ This Court has criticized the verbatim adoption of a party’s findings and noted “the potential for overreaching and exaggeration on the part of attorneys preparing findings of fact.” *Anderson v. City of Bessemer City, N.C.*, 470 U.S. 564, 572 (1985). In *Anderson*, the lower court did “not appear to have uncritically accepted findings prepared without judicial guidance by the prevailing party,” the other party was “provided and availed itself of the opportunity to respond at length to the proposed findings,” and the trial court did not “simply adopt petitioner’s proposed findings.” *Id.* None of these circumstances are present in this case; instead, the state court uncritically adopted the prosecution’s proposed findings.

- (3) Typographical errors, and mistakes in the State’s proposed order that would have been obvious to—and corrected by—a court reviewing the State’s proposed order. Pet.32–33.
- (4) The state court’s failure to credit *any* of Medina’s evidence, even when uncontroverted and originating from the same witness (trial counsel) deemed credible in the State’s submission. Pet.33–34.
- (5) The state court’s attachment of *all* of the State’s evidence—and *none* of Medina’s evidence—to the findings and conclusions. Pet.32.
- (6) The state court’s pattern and practice—in *every* capital habeas case—of adopting verbatim *every* prosecution-authored fact finding and legal conclusion and rejecting *every* petitioner-authored submission. Pet.36–38.⁶
- (7) A county-wide pattern of deference to the prosecution and circumstances suggesting that judges failed to review the prosecution’s pleadings before signing off on them. Pet.38–40.⁷

The courts below refused to consider Medina’s arguments—the district denied any fact development related to these issues and the court of appeals denied an appeal—

⁶ Respondent erroneously asserts that Medina failed to note this factor in the court below. BIO.21. Medina described the trial court’s pattern of adopting every state finding in every capital case in the court below. COA.App.43. Medina then argued that he presented substantial evidence in the district court rebutting the presumptive merits adjudication and cited to the pattern and practice evidence. COA.App.54; 56. In reply to Respondent’s opposition to COA, Medina argued that he “supported his case-specific arguments [rebutting the *Williams* presumption] with evidence of the [state] court’s pattern and practice of adopting verbatim 100% of the prosecution’s proposed factual findings and legal conclusions in *every* contested capital habeas case since the 1995 inception of Texas’s capital habeas procedures.” COA.Rep.1. The Fifth Circuit’s refusal to consider this evidence was not due to any alleged omission in Medina’s pleadings; it was based on the court’s categorical rule that the quality of the state court proceedings is irrelevant to the existence of a merits adjudication. App.10–11.

⁷ Respondent asserts that the TCCA’s review and adoption of the trial court findings cure any defect in the state court proceedings. BIO.22. But the TCCA affords “almost total deference to a trial judge’s determination of the historical facts supported by the record, especially when those fact findings are based on an evaluation of credibility and demeanor.” *Ex parte Briseno*, 135 S.W.3d 1, 12–13 (Tex. Crim. App. 2004), *abrogated on other grounds by Moore v. Texas*, 581 U.S. 1 (2017). And “in most circumstances,” the TCCA “will defer to and accept a trial judge’s findings of fact and conclusions of law when they are supported by the record.” *Ex parte Reed*, 271 S.W.3d 698, 727 (Tex. Crim. App. 2008). In other words, the TCCA defers to the trial court if there is some evidence in the record—any evidence—that supports the trial court’s recommendation. This deferential review cannot cure the “materially incomplete record” after “a state PCR court has unreasonably refused to permit necessary factual development . . . either by refusing to consider, without explanation, critical evidence . . . or by unreasonably refusing to hold a hearing to resolve a critical factual dispute.” *Stanko*, 109 F.4th at 690 (internal quotations omitted).

because Fifth Circuit precedent categorically precludes rebutting the presumption of a merits adjudication based on any argument related to the quality of the state court adjudication. Pet.12–13.⁸

Medina’s arguments about the state court’s “unreasonabl[e] refus[al] to permit’ necessary factual development ... by refusing to consider, without explanation, critical evidence ... [and] by unreasonably refusing to hold a hearing to resolve a critical factual dispute,” *Stanko*, 109 F.4th at 690 (citations omitted), would have found solid footing in the Fourth and Tenth Circuits. Medina’s case thus directly implicates the circuit courts’ disparate treatment of petitioners attempting to rebut the existence of a qualifying merits adjudication under § 2254(d).

III. The Fifth Circuit’s continued adherence to pre-*Williams* precedents is no longer tenable.

Respondent asserts that “[e]ven 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.” BIO.15. Further, Respondent argues that “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

⁸ Respondent repeatedly faults Medina for “not conclusively demonstrate[ing] that the state court *in his case* failed to consider his evidence and arguments.” BIO.22; *id.* at 23 (“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.”). First, Medina offered the voluminous proof cited above, which is largely uncontested. Second, based on Fifth Circuit precedent precluding Medina’s legal arguments, Medina’s motions to further develop the record on the state court’s deficiencies were denied. ROA.4370–76; 4750–51. At this stage, the question is whether Medina’s arguments are debatable, not whether he has conclusively proven his allegations.

unsupported and unpersuasive.” BIO.23. Respondent is incorrect in both respects.

First, conspicuously absent from Respondent’s BIO is any defense of—or citation to—the Fifth Circuit’s seminal case holding that the presumption of an adjudication on the merits cannot be rebutted by proving that the state court actually failed to hear or evaluate the petitioner’s evidence or arguments. In *Valdez v. Cockrell*, 274 F.3d 941 (5th Cir. 2001), the state habeas judge (who had not presided over Valdez’s trial) announced that he would not read the record and had not considered evidence Valdez submitted during the post-conviction proceedings that had been lost. *Id.* at 944–45. In the Fourth and Tenth Circuits, and likely also the Eleventh, the state court’s refusal to review the record and consider Valdez’s evidence would disqualify the state court’s decision as a merits adjudication. But the Fifth Circuit categorically rejected any argument referencing the “quality of the process.” *Id.* at 950. *Valdez* remains circuit law and barred merits review below. Pet.12, 16–18.

Second, as Medina argues in his Petition, Pet.16–18, the Fifth Circuit’s categorical refusal to consider any argument rebutting the existence of a merits adjudication related to the “quality of the process” is contrary to *Johnson v. Williams*, 568 U.S. 289 (2013). *Williams* requires that a state court perform certain actions before its decision qualifies as a merits adjudication under § 2254(d). For example, a state court must evaluate *both* parties’ evidence and arguments. *Id.* at 302. Thus, *Williams* dictates that a petitioner—like Valdez and Medina—who can demonstrate the trial court failed to do so necessarily rebuts the existence of a merits adjudication. But not in the Fifth Circuit. In contrast, the Fourth and Tenth Circuits’ definitions of

a merits adjudication, *supra*, closely track *Williams*. Compare *Wilson v. Workman*, 577 F.3d at 1293 (“To 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.’”) (quoting *Picard v. Connor*, 404 U.S. 270, 277 (1971)) with *Williams*, 568 U.S. at 302 (a decision 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)... [T]he 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).”).

Medina adduced evidence that the state court process failed to qualify under *Williams* as a merits adjudication. His arguments were nonetheless summarily rejected and deemed not debatable in the courts below because they were contrary to Fifth Circuit precedent. The Fifth Circuit’s continued adherence to its pre-*Williams* precedent places it on the *incorrect* side of the split in the courts below.

IV. Medina’s case demonstrates that applying § 2254(d) deference despite the absence of a qualifying state court adjudication thwarts review of meritorious constitutional claims.

The Fifth Circuit held that no reasonable jurist would debate the reasonableness of the state court’s rejection of Medina’s *Strickland* claim. Given the extensive evidence Medina submitted concerning his trial counsel’s failure to adequately investigate his case and the resulting prejudice, the Fifth Circuit’s decision underscores the unfairness resulting from application of § 2254(d) deference

to sham state post-conviction proceedings.

As Medina exhaustively detailed, the state court that summarily denied his habeas petition had a long-standing practice of effectively outsourcing resolution of capital post-conviction proceedings to the prosecution, as in Medina's case. *See* Pet.31–40. Despite being deprived of a genuine opportunity to litigate his *Strickland* claim in state court, the federal courts subjected Medina's claim to, at best, minimal scrutiny. This culminated in the Fifth Circuit denying a certificate of appealability in a decision that simply parroted the prosecution-authored, rubberstamped findings from the one-sided state court proceeding.

To be clear, even applying AEDPA deference to the state court's decision, the Fifth Circuit clearly erred in holding that no reasonable jurists would debate the merits of his claim. *See* Pet.24–31. By any objective measure, trial counsel's pretrial investigation—which consisted almost entirely of a series of phone calls made over two days—was not reasonable. ROA.1971–72. Like the Fifth Circuit, however, Respondent improperly recharacterizes Medina's claim as one challenging trial counsel's purportedly strategic decisions as to which witnesses to present, rather than trial counsel's failure to conduct an adequate investigation in the first place. *See Strickland v. Washington*, 466 U.S. 668, 690–91 (1984) (“[S]trategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.”).

Respondent points to the fact that defense counsel called six witnesses at the guilt phase. BIO at 30. One of those witnesses, however, was Medina. Three of the

others were family members (Medina’s father, sister, and cousin, Alex Perez). The remaining two—Domingo Valle and Rene Renya, who both testified to a single, vaguely inculpatory statement by Holmes—were located by Medina’s teenage sister, who took it upon herself to attempt an investigation when it became apparent during jury selection that the defense had not subpoenaed *any* witnesses. ROA.1962.⁹ That trial counsel was directed to Valle and Renya on the eve of trial by Medina’s sister not only underscores the deficiency of their investigation, it also gives the lie to any assertion that trial counsel could have reasonably elected to forgo basic investigative steps—such as interviewing Dallas Nacoste, something which Medina had implored his counsel to do, ROA.2011–12—because they had already secured sufficient evidence of Medina’s innocence.

Respondent argues that the courts must defer to trial counsel’s purportedly “strategic decision not to call Nacoste to testify because his credibility was worse than other witnesses.” BIO.31.¹⁰ But Respondent ignores that trial counsel could not have made an informed strategic decision not to call Nacoste as a witness because trial counsel *never interviewed* Nacoste. *Strickland*, 466 U.S. at 690–91. Trial counsel failed to do so despite Nacoste telling the police not just that Holmes had likely been the shooter, but that Holmes had buried the murder weapon months before it was

⁹ Medina’s sister was also responsible for proposing that Medina’s cousin, Alex Perez, testify for the defense. ROA.1962.

¹⁰ Medina submitted evidence in state court that trial counsel had never heard of Dallas Nacoste or seen his police statement before trial—despite it being available to him. ROA.2019–20. It was only later in his prosecution-authored affidavit that trial counsel expressed purported concerns regarding Nacoste’s credibility. ROA.1990. This was one of many factual issues as to which the state court simply ignored Medina’s evidence and instead treated the prosecution-sponsored evidence as inherently credible and effectively irrebuttable.

located.¹¹ ROA.1882; *Porter v. McCollum*, 558 U.S. 30, 40 (2009) (trial counsel may not ignore pertinent avenues of investigation). Moreover, contrary to Respondent’s assertion, much of the exculpatory information Nacoste could have testified to was not contained within the police reports, including that Nacoste personally authorized Holmes to commit the drive-by and that Holmes later threatened to kill Johnny Valadez if he did not identify Medina as the shooter. ROA.2015–16.

With respect to Raymundo Becerra (who could have testified that Holmes threatened Regina Juarez and her family if she did not identify Medina as the shooter, ROA.2036) and Ricardo Villanueva (who could have testified that Holmes confessed to the shooting and that he and Juarez planned to blame Medina, ROA.2031), Respondent asserts that trial counsel presented evidence “through Juarez and Holmes” that “Holmes told others he committed the murders.” BIO.31. That is not true.¹² Juarez *denied* that Holmes ever said that he was the shooter, ROA.1970–71, and Holmes was never asked about it. ROA.1912–26.

Respondent also asserts, as the Fifth Circuit did, that Jason Crawford’s testimony would have been “just as incriminating to Medina as to anyone else.” BIO.28–29; App.15. This ignores the fact that Crawford would have testified not only that Holmes stated that LRZ had something planned for their HTC rivals, but that Holmes himself repeatedly vowed vengeance against HTC, was particularly close to

¹¹ That Nacoste, who was interviewed *before* Holmes, already knew the guns had been buried fatally undermines the Fifth Circuit’s tortured attempt to reconcile Holmes statement to police. App.28 n.7. In that statement, Holmes denied knowing what happened to the murder weapon; in his trial testimony, he admitted to burying it.

¹² The Fifth Circuit also made this error with respect to Juarez. App.15.

the LRZ member murdered by HTC, and in fact had a tattoo in the murdered member's honor. ROA.2028.

With respect to Carlos McNickles—who around the time of the offense saw a black man shooting a rifle out of the passenger seat of a car like Jamie Moore's being driven by someone matching Moore's description and heading in the direction of the Rodriguez home—Respondent repeats the Fifth Circuit's conclusory comment, which itself was lifted directly from the prosecution authored state-court findings, that the testimony was not exculpatory. BIO.28; App.15. The obvious implication of the testimony would have been that the person McNickles saw firing the rifle from the car also committed the drive-by shooting moments later and that that person was Holmes, not Medina.

To be clear, the Fifth Circuit's holding that reasonable jurists would not debate the reasonableness of the state court's decision was incorrect. That error alone is a sufficient basis for this Court to vacate the Fifth Circuit's judgment. But the Fifth Circuit's recycling of clearly flawed and rubberstamped state court findings underscores the unfairness that results from applying AEDPA deference to a state court process in which no meaningful adjudication occurred.

CONCLUSION

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

Respectfully submitted,

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