

No. 24-6941

IN THE
Supreme Court of the United States

MICHAEL WAYNE REYNOLDS,
Petitioner,

v.

JOHN Q. HAMM, COMMISSIONER, ALABAMA
DEPARTMENT OF CORRECTIONS,
Respondent.

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

**BRIEF OF FORMER FEDERAL JUDGES AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Amici Curiae are nine former federal judges who have an interest in this Court granting certiorari and resolving the circuit split implicated in the present case:

- **Judge Mark Bennett** served on the U.S. District Court for the Northern District of Iowa from 1994 to 2019, and served on the same Court as a Magistrate Judge from 1991 to 1994.
- **Judge Robert Cindrich** served on the U.S. District Court for the Western District of Pennsylvania from 1994 to 2004.
- **Judge Alex Kozinski** served on the U.S. Court of Appeals for the Ninth Circuit from 1985 to 2017, and on the U.S. Claims Court from 1982 to 1985.
- **Judge Timothy Lewis** served on the U.S. Court of Appeals for the Third Circuit from 1992 to 1999, and on the U.S. District Court for the Western District of Pennsylvania from 1991 to 1992.

¹ All parties received notice of *Amici*'s intent to file this brief at least 10 days prior to the due date of this brief. *Amici* affirm that no counsel for any party authored this brief in whole or in part, and no person or entity other than *Amici* or their counsel made a monetary contribution intended to fund the preparation or submission of this brief.

- **Judge Beverly Martin** served on the U.S. Court of Appeals for the Eleventh Circuit from 2010 to 2021, and on the U.S. District Court for the Northern District of Georgia from 2000 to 2010.
- **Judge Stephen Orlofsky** served on the U.S. District Court for the District of New Jersey from 1995 to 2003, and served on the same Court as a Magistrate Judge from 1976 to 1980.
- **Judge Kevin Sharp** served on the U.S. District Court for the Middle District of Tennessee from 2011 to 2017.
- **Judge John Daniel Tinder** served on the U.S. Court of Appeals for the Seventh Circuit from 2007 to 2015, and on the U.S. District Court for the Southern District of Indiana from 1987 to 2007.
- **Judge Thomas Vanaskie** served on the U.S. Court of Appeals for the Third Circuit from 2010 to 2019, and on the U.S. District Court for the Middle District of Pennsylvania from 1994 to 2010.

Amici collectively devoted over 150 years to serving on the federal bench. As such, *Amici* had and continue to have an interest in maintaining the legitimacy of the federal judiciary. Resolving circuit splits “further the legitimacy of the judiciary and reduces friction flowing from the application of

different rules to similarly situated individuals based solely on their geographic location.” *United States v. Thomas*, 939 F.3d 1121, 1131 (10th Cir. 2019). The circuit split implicated in the present case over the proper interpretation of 28 U.S.C. § 2254 also touches upon an area of heightened concern for federal judges given that “[t]here is no higher duty of a [judge], under our constitutional system, than the careful processing and adjudication of petitions for writs of habeas corpus.” *Harris v. Nelson*, 394 U.S. 286, 290 (1969).

SUMMARY OF ARGUMENT

Under the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”), federal habeas courts must give substantial deference to a state court’s prior factual findings. If AEDPA deference applies, then a federal court must defer to a state court’s findings unless the habeas petitioner shows that all “reasonable minds” would agree that the findings are incorrect. *Brumfield v. Cain*, 576 U.S. 305, 314 (2015). But if AEDPA does not apply, then a federal court reviews the state court’s findings de novo.

I. This case presents the question of whether AEDPA deference applies to a state court’s factual findings even if the state court denied the habeas petitioner a full and fair evidentiary hearing.² This question has divided the circuit courts of appeals for nearly 25 years. Whereas the Second, Fourth, Ninth, and Tenth Circuits do *not* apply AEDPA deference if the state court denied the habeas petitioner a full and fair evidentiary hearing, the First, Third, Fifth, Sixth, and Eleventh Circuits do.

II. The question presented is an important one. Tens of thousands of state prisoners file habeas

² This case also presents a second cert-worthy question: Whether 28 U.S.C. § 2254(e)(1) applies in every case presenting a challenge under 28 U.S.C. § 2254(d)(2)? This Court has twice granted certiorari to address this question, only to bypass it. *Hayes v. Florida Dep’t of Corr.*, 10 F.4th 1203, 1223 (11th Cir. 2021) (Newsom, J., concurring). “In the absence of any controlling decision, the circuits remain split ... over the exact relationship between subsections (d)(2) and (e)(1).” *Id.*

petitions in federal court every year. Before doing so, they must first seek relief in state court. In most cases, the state courts will make adverse factual findings without allowing for discovery or an evidentiary hearing.

If AEDPA deference applies under these circumstances, which it does in the First, Third, Fifth, Sixth, and Eleventh Circuits, then it will be effectively impossible for the state prisoner to obtain relief in federal court. The state court denying discovery will ensure that there will be little (if any) evidence in the record contradicting the state court's findings. Likewise, the state court denying a live evidentiary hearing will ensure that the evidence supporting the state court's findings will be unimpeached through cross-examination. With little evidence in the record contradicting the findings, and with the evidence supporting the findings being unimpeached, the state prisoner will be unable to show that all "reasonable minds" would agree that the findings are incorrect. Absent such a showing, the federal court will be required to defer to the findings, and the state prisoner's claim will fail.

III. The present case is an excellent vehicle for this Court to resolve the circuit split. Petitioner Michael Reynolds sought postconviction relief in state court based on *Giglio v. United States*, 405 U.S. 150 (1972). He alleged that the prosecution's primary witness at his trial falsely testified that she did not have a leniency agreement with the prosecution regarding her own pending criminal charges. After denying Reynolds discovery and an evidentiary

hearing, the state court found that no agreement existed and denied Reynolds' claim.

The Eleventh Circuit applied AEDPA deference to the state court's finding that no agreement existed and held that Reynolds had failed to overcome this deference. However, the court acknowledged that if AEDPA deference did not apply, there was enough evidence in the record for it to find an agreement. Thus, whether the Eleventh Circuit was correct to give AEDPA deference to the state court's finding is outcome determinative.

IV. Finally, this Court should resolve the circuit split by holding that a state court's factual findings are *not* entitled to AEDPA deference if the state court denied the habeas petitioner a full and fair evidentiary hearing. Such a holding is supported by the text, legislative history, and purpose of AEDPA.

ARGUMENT

I. **THERE IS AN ENTRENCHED AND RECURRING CIRCUIT SPLIT THAT WILL NOT BE RESOLVED WITHOUT THIS COURT'S INTERVENTION.**

Section 2254, 28 U.S.C., requires a federal habeas court to give substantial deference to a state court's factual findings. Prior to 1996, the statute conditioned this deference on the habeas petitioner receiving a "full and fair hearing" in state court. At a minimum, this meant a habeas petitioner receiving an opportunity to present his own evidence as well as an opportunity to challenge the State's evidence

through cross-examination. *Ford v. Wainwright*, 477 U.S. 399, 415 (1986).

But in 1996, Congress enacted AEDPA. As a result, § 2254 no longer explicitly conditions deference to a state court’s factual findings on the habeas petitioner receiving a full and fair hearing. *Miller-El v. Cockrell*, 537 U.S. 322, 358 (2003) (Thomas, J., dissenting).

Lower courts are now “divided on whether, when, and to what extent lack of an evidentiary hearing in the state court might undercut the deference to state fact-finding.” *Robidoux v. O’Brien*, 643 F.3d 334, 340 (1st Cir. 2011). Four courts of appeals have held that a state court’s factual findings are *not* entitled to AEDPA deference if the habeas petitioner did not receive a full and fair evidentiary hearing in state court. Five courts of appeals have held the opposite.

A. The Second, Fourth, Ninth, and Tenth Circuits do not give AEDPA deference to a state court’s factual findings if the state court denied the habeas petitioner a full and fair evidentiary hearing.

The Second, Fourth, Ninth, and Tenth Circuits have all held that a state court’s factual findings are not entitled to AEDPA deference where the habeas petitioner did not receive a full and fair evidentiary hearing in state court.

1. The first circuit to make such a holding was the Tenth Circuit in *Miller v. Champion*:

[B]ecause the state court did not hold any evidentiary hearing, we are in the same position to evaluate the factual record as it was. Accordingly, to the extent the state court's dismissal of [the habeas petitioner's claim] was based on its own factual findings, we need not afford those findings any deference.

161 F.3d 1249, 1254 (10th Cir. 1998).

The Tenth Circuit would later expand on its approach in *Wilson v. Workman*, 577 F.3d 1284 (10th Cir. 2009). The majority in that case explained that § 2254 requires deference to a state court's factual findings only if the state court has adjudicated the habeas petitioner's claim on the merits. *Id.* at 1290. "A merits adjudication requires the court to consider the 'substance' of the defendant's claim," which means applying "controlling legal principles to the facts bearing upon [the defendant's] claim." *Id.* at 1292-93. Without an evidentiary hearing, the state court will not have the facts bearing upon the defendant's claim in front of it and therefore will not be able to apply controlling legal principles to those facts. Thus, when a state court "refuses to grant an evidentiary hearing to consider material, non-record evidence ... and then rules on [a defendant's] claim without consideration of this evidence, the [state court's] denial of the claim is not an adjudication on the merits to which the federal courts owe AEDPA deference." *Id.* at 1300.

Then-Judge Gorsuch dissented. *Id.* at 1315 (Gorsuch, J., dissenting). He argued that the

majority's interpretation was "inconsistent with AEDPA's plain terms and structure, contradicts the decisions of several other circuits, and effectively frustrates AEDPA's central purpose by getting [federal courts] back in the business of grading state court procedures rather than focusing on the reasonableness of the results they reach." *Id.* He explained that before "AEDPA, § 2254 allowed [federal courts] to review a state court's findings *de novo* whenever [they] found the state procedures inadequate." *Id.* at 1318. "With AEDPA, Congress expressly abolished this approach." *Id.* The *Wilson* majority's interpretation of § 2254 "is immediately recognizable as a species of the full and fair hearing requirement Congress rejected." *Id.*

2. The Second Circuit adopted a similar approach in *Drake v. Portuondo*, 321 F.3d 338 (2d Cir. 2003) ("*Drake I*"), and *Drake v. Portuondo*, 553 F.3d 230 (2d Cir. 2009) ("*Drake II*"). There, a habeas petitioner sought postconviction relief in state court, alleging that the prosecution knowingly used perjured testimony to obtain his conviction. *Drake I*, 321 F.3d at 343. But the state court summarily denied his claim based on its factual finding that the petitioner "had made no showing that the prosecution knew or should have known about [the] perjury." *Id.* at 345. The court made this finding without holding a hearing, thereby preventing the petitioner from developing the factual record. *Id.* at 343.

On two separate appeals, the Second Circuit held that the state court's finding was *not* entitled to AEDPA deference. *Id.* at 345; *Drake II*, 553 F.3d at

238. The state court had denied the habeas petitioner's claim "without a hearing." *Id.* "Because the state court[] did not permit the development of the factual record as to whether the prosecution knew [the witness's] testimony to be perjured, ... there were no findings of fact requiring deference." *Id.* "[N]o deference to the state courts' conclusions is required [when] the state courts did not permit the development of the factual record." *Id.* at 239.

3. The Ninth Circuit adopted a similar approach in *Taylor v. Maddox*, 366 F.3d 992 (9th Cir. 2004). The court explained that the text of § 2254(d) does not require a federal habeas court to defer to a state court's factual findings if the state court's adjudication of the petitioner's claim "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)(2). According to the *Taylor* court, a habeas petitioner can satisfy this standard by showing that the state court's "fact-finding process itself is defective." *Taylor*, 366 F.3d at 1001. "If, for example, a state court makes evidentiary findings without holding a hearing and giving petitioner an opportunity to present evidence, such findings clearly result in an 'unreasonable determination' of the facts" and said findings are therefore not entitled to deference. *Id.*

Since it decided *Taylor*, the Ninth Circuit has "held repeatedly that where a state court makes factual findings without an evidentiary hearing or other opportunity for the petitioner to present

evidence, the fact-finding process itself is deficient, and not entitled to deference.” *Jones v. Ryan*, 52 F.4th 1104, 1120 (9th Cir. 2022); *Hurles v. Ryan*, 752 F.3d 768, 790 (9th Cir. 2014).

4. The final court of appeals to hold that a state court’s factual findings are not entitled to AEDPA deference if the state court denied the habeas petitioner a full and fair evidentiary hearing was the Fourth Circuit in *Winston v. Kelly*, 592 F.3d 535 (4th Cir. 2010) (“*Winston I*”) and *Winston v. Pearson*, 683 F.3d 489 (4th Cir. 2012) (“*Winston II*”). There, a habeas petitioner “requested discovery and an evidentiary hearing from the state court” but the state court “denied [the] request.” *Winston I*, 592 F.3d at 577. As a result, the Fourth Circuit held that the state court’s factual findings were not entitled to deference. *Id.*

The court explained that § 2254 requires deference to a state court’s factual findings only if the state court adjudicates the habeas petitioner’s claim on the merits. This requirement “exists because comity, finality, and federalism counsel deference to the judgments of state courts when they are made on a complete record.” *Id.* at 555. But “[i]f the record ultimately proves to be incomplete, deference to the state court’s judgment would be inappropriate because judgment on a materially incomplete record is not an adjudication on the merits for purposes of § 2254(d).” *Id.* at 555-56. If a “state court failed to adjudicate a claim on the merits by refusing to facilitate production of new, material evidence, meaningful deference to its factual findings is well-

nigh impossible.” *Winston II*, 683 F.3d at 506; *see also* *Gordon v. Braxton*, 780 F.3d 196, 203 (4th Cir. 2015).

The Fourth Circuit has recognized that its interpretation of § 2254 is “consistent with holdings reached in similar cases in the Second and Tenth Circuits,” *Winston I*, 592 F.3d at 556, but “two of [its] sister circuits [the First and Sixth Circuits] have suggested that [its] interpretation creates a considerable tension with § 2254(d)’s structural limitation on relief.” *Valentino v. Clarke*, 972 F.3d 560, 577 n.15 (4th Cir. 2020).

B. The First, Third, Fifth, Sixth, and Eleventh Circuits still give AEDPA deference to a state court’s factual findings even if the state court denied the habeas petitioner a full and fair evidentiary hearing.

In contrast, the First, Third, Fifth, Sixth, and Eleventh Circuits have held that a state court’s factual findings are still entitled to AEDPA deference even if the state court denied the habeas petitioner a full and fair evidentiary hearing.

1. The first court of appeals to make such a holding was the Fifth Circuit in *Valdez v. Cockrell*, 274 F.3d 941 (5th Cir. 2001). The majority in that case explicitly “decline[d] to adopt [the Tenth Circuit’s] approach,” *id.* at 953, and held that “a full and fair hearing is not a prerequisite to the operation of AEDPA’s deferential scheme,” *id.* at 946. The majority explained that AEDPA “jettisoned all references to a full and fair hearing.” *Id.* at 949. AEDPA’s “mandatory and all-encompassing language

... leaves no room for judicial imposition of a full and fair hearing prerequisite.” *Id.* at 950.

Judge Dennis dissented and also dissented from the denial of rehearing en banc. *Id.* at 959–73 (Dennis, J., dissenting); *see also Valdez v. Cockrell*, 288 F.3d 702 (5th Cir. 2002) (Dennis, J., dissenting from the denial of rehearing en banc). He believed that the majority’s interpretation “insulate[d] a state habeas court’s decision ... from meaningful review in a federal habeas court.” *Id.* at 703.³ Under the majority’s interpretation, “state courts are free to (1) rubber-stamp the prosecuting body’s proposed findings of fact and conclusions of law, (2) deny the petitioner relief without affording him a hearing, and (3) effectively prevent a federal court from later granting the requested relief.” *Id.*

Judges Wiener and Parker also dissented from the denial of rehearing en banc to express their belief that under the panel majority’s interpretation, “federal habeas review has been reduced to nothing more than a search for the state judge’s signature—a classic example of exalting form over substance.” *Id.* at 706 (Wiener & Parker, JJ., dissenting from denial of rehearing en banc).

³ In *Bryan v. Mullin*, the Tenth Circuit noted Judge Dennis’s dissent and agreed with him that “the rule adopted by the Fifth Circuit mandated the perverse result of deferring to legal and factual determinations made by state courts, even though a habeas petitioner had never been afforded a full and fair opportunity to develop the factual basis of his claim in state court.” 335 F.3d 1207, 1216 n.8 (10th Cir. 2003).

Since it decided *Valdez*, the Fifth Circuit has “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). In doing so, it has rejected the Fourth Circuit’s approach. *Id.*

2. The Third Circuit adopted a similar view in *Lambert v. Blackwell*, 387 F.3d 210 (3d Cir. 2004). Like the *Valdez* court, the *Lambert* court noted that § 2254 “no longer explicitly conditions federal deference to state court factual findings on whether the state court held a hearing.” *Id.* at 238. But the court declined to conclude “that state court ... procedures are entirely irrelevant.” *Id.* “The extent to which a state court afforded a defendant adequate procedural means to develop a factual record—whether the defendant was afforded a ‘full and fair hearing,’ to put it in the parlance of the pre-AEDPA statute—may well affect whether a state court’s factual determination was reasonable.” *Id.* at 239. “In other words, the extent to which a state court provides a full and fair hearing is no longer a threshold requirement before deference applies; but it might be a consideration while applying deference under § 2254(d)(2) ...” *Id.*

3. The next court of appeals to address the issue was the Sixth Circuit in *Cowans v. Bagley*, 639 F.3d 241 (6th Cir. 2011). In that case, a state postconviction court found that the habeas petitioner was competent. *Id.* at 247. In federal court, the petitioner argued that this finding was not entitled to AEDPA deference because the state court did not hold an evidentiary hearing. *Id.* at 248. But the Sixth

Circuit rejected the argument, explaining that “[n]othing in § 2254(d)(2) ... suggests we defer to a state court’s factual findings only if the state court held a hearing on the issue.” *Id.* “[W]e have never suggested that § 2254(d)(2) does not apply to competency determinations issued without a hearing.” *Id.*

4. Like the Sixth Circuit, the First Circuit has also rejected the argument “that a state court finding gets no deference absent an evidentiary hearing.” *Robidoux*, 643 F.3d at 340–41. Moreover, it has rejected the “the rationale of the Fourth Circuit ... and the Tenth Circuit ... that there can be no decision on the merits if there has been no evidentiary hearing on disputed facts.” *Garuti v. Roden*, 733 F.3d 18, 23 (1st Cir. 2013).

5. Finally, the Eleventh Circuit adopted a similar approach in *Landers v. Warden, Atty. Gen. of Ala.*, 776 F.3d 1288 (11th Cir. 2015). The habeas petitioner in that case argued that a “state habeas court’s fact-finding procedure—resolving a credibility dispute on the basis of dueling affidavits, without an evidentiary hearing—was so inadequate as to render its factual determinations ‘unreasonable’ under § 2254(d)(2), stripping them of AEDPA deference.” *Id.* at 1297. But the Eleventh Circuit rejected this argument, “conclud[ing] that an evidentiary hearing in state court cannot be a requirement for § 2254(d)(2) deference for all disputed factual issues in a state court proceeding.” *Id.* In doing so, the court noted the “disagreement among [its] sister circuits on the extent to which § 2254(d)’s deference is conditioned, if at all,

on the state court's fact-finding procedures.” *Id.* at 1298.

“[W]here cases present issues over which the [lower] courts have divided, this Court has a special obligation to intercede and provide some definitive resolution of the issues.” *Metheny v. Hamby*, 488 U.S. 913, 915 (1988) (White, J., dissenting from denial of certiorari). As the foregoing makes clear, this case presents such an issue. There is a well-recognized and entrenched circuit split on the issue of whether a state court’s factual findings are still entitled to AEDPA deference when the habeas petitioner did not receive a full and fair evidentiary hearing. This Court has a special obligation to intercede and provide some definitive resolution of the issue.

II. THE PRESENT CASE ILLUSTRATES WHY THIS COURT RESOLVING THE CIRCUIT SPLIT IS SO IMPORTANT.

The question on which the circuits are split is an important one as is illustrated by the facts of this case. At Petitioner Michael Reynolds’ trial, the prosecution’s key witness (Adrian West) testified twice that she did not have a leniency agreement with the prosecution regarding her own pending criminal charges. Reynolds alleges that this testimony was false and violated *Giglio*. He first sought postconviction relief in Alabama state court where he was denied a meaningful opportunity to conduct discovery on his claim and then denied an evidentiary

hearing where he could challenge the State's evidence through cross-examination.

Despite these limitations, there was still ample evidence in the record of an agreement between West and the prosecution. Specifically, there was memo drafted by West's attorney in which he acknowledged an "[a]greement with D.A." Pet. App. 677a. There was also an affidavit from a district attorney in which he stated that West's attorney sent this memo to his office "in an effort to substantiate his recollection of an agreement for a sentence recommendation from the State." *Id.* at 668a. In addition to this direct evidence, there was what Judge Jordan of the Eleventh Circuit described as "strong circumstantial evidence" of an agreement. *Id.* at 57a.

Despite all of this evidence, the state court remarkably found there was "nothing in the record that indicates there was an agreement between the prosecution and West." *Id.* at 461a. The court then found that "no such agreement ever existed" largely based on three affidavits submitted by West, her attorney, and a district attorney in which they all denied the existence of an agreement. *Id.* at 463a. Reynolds never received an opportunity to test these affidavits in an adversarial setting. *Id.* at 32a.

Reynolds then sought relief in federal court. Because the Eleventh Circuit held that AEDPA deference applied, the burden was on him to show that all "reasonable minds" would agree that the state court's finding that there was no agreement was incorrect. But the previous actions of the state court

made it impossible for him to make this showing. See *Johnson v. Bell*, 605 F.3d 333, 344-45 (6th Cir. 2010) (Clay, J., dissenting) (explaining why it is “impossible” to prove the existence of a deal between a prosecutor and a witness without having an opportunity to question the prosecutor and witness through cross-examination). The state court denying him discovery prevented him from discovering and introducing evidence that would have contradicted the state court’s finding. Likewise, the state court denying him a live evidentiary hearing ensured that the evidence supporting the state court’s finding went unimpeached.

Reynolds’ case is not an outlier. Tens of thousands of state prisoners file habeas petitions in federal court every year. Before doing so, they are required to seek postconviction relief in state court. In a typical case, the state court will deny the state prisoner an opportunity to conduct discovery, thereby preventing him from obtaining the evidence he needs to prove the facts that are material to his claim.⁴ The state court will then hold a “paper hearing” rather than a live evidentiary hearing, thereby denying the prisoner an opportunity to impeach through cross-examination any evidence submitted by the State.⁵ After it has denied the state prisoner any meaningful

⁴ John Blume, *In Defense of Noncapital Habeas: A Response to Hoffman and King*, 96 Cornell L. Rev. 435, 447 (2011); Samuel Wiseman, *Habeas after Pinholster*, 53 B.C. L. Rev. 953, 972-77 (2012).

⁵ Samuel Wiseman, *What Is Federal Habeas Worth*, 67 Fla. L. Rev. 1157, 1198 (2015).

opportunity to prove the facts material to his claim, the state court will then unsurprisingly make a finding that the prisoner failed to prove the facts material to his claim. This finding will likely be contained within a proposed order submitted by the prosecution that the state court “rubberstamps” without reviewing.⁶

The prisoner then has the option to seek habeas relief in federal court. But if AEDPA deference is applied to the state court’s factual findings, then it is a foregone conclusion that he will not obtain relief. He has already been prevented from introducing evidence that would have contradicted the state court’s findings and from impeaching any evidence supporting the findings. As a result, he will not be able to overcome the findings by showing that all reasonable minds would agree that they are incorrect, and his claim will fail.

The foregoing is the current practice in the First, Third, Fifth, Sixth, and Eleventh Circuits. In these circuits, if a state court finds that a state prisoner has failed to prove a fact material to his claim, a federal court will give that finding AEDPA deference no matter what. It does not matter if the reason that the state prisoner failed to prove a fact material to his claim was the state court denying him a full and fair hearing. Likewise, it does not matter whether the state court denying the state prisoner a

⁶ Jordan M. Steiker et al., *The Problem of Rubber-Stamping in State Capital Habeas Proceedings: A Harris County Case Study*, 55 Hous. L. Rev. 889 (2018).

full and fair hearing makes it impossible for him to make the showing necessary to overcome AEDPA deference. The courts in these circuits will still apply AEDPA deference under these circumstances. In these circuits, “federal habeas review has been reduced to nothing more than a search for the state judge’s signature.” *Valdez*, 288 F.3d at 706 (Wiener & Parker, JJ., dissenting from denial of rehearing en banc).

III. THE PRESENT CASE IS AN EXCELLENT VEHICLE FOR THIS COURT TO RESOLVE THE CIRCUIT SPLIT.

The present case is an excellent vehicle for this Court to resolve the circuit split given that the answer to the question presented is likely outcome determinative.

To be entitled to relief on his *Giglio* claim, Reynolds must make two showings: (1) there was a leniency agreement and so West’s testimony was false; and (2) the false testimony was material. *Glossip v. Oklahoma*, 145 S. Ct. 612, 626 (2025).

Assuming that there was an agreement, then West’s false testimony would clearly be material. West was the prosecution’s “key witness”⁷ and whether she had a leniency agreement with the prosecution affected her credibility. This Court has

⁷ In the prosecution’s own words, West “was obviously a key part of [Reynolds’] prosecution and probably the key witness.” Pet. App. 699a. She “provided critical information that [the prosecution] wouldn’t have - - may not have gotten otherwise.” *Id.*

repeatedly held that false testimony bearing on the testimony of the prosecution's key witness is material, especially when the false testimony relates to a leniency agreement. *See, e.g., Giglio*, 405 U.S. at 155 (1972) Had the prosecution corrected West's false testimony on the stand, it "would have revealed to the jury not just that [West] was untrustworthy ... but also that [she] was willing to lie to them under oath." *Glossip*, 145 S. Ct. at 628. "Such a revelation would be significant in *any case* ..." *Id.* (emphasis added).

Accordingly, whether Reynolds is entitled to habeas relief hinges entirely on whether he can prove an agreement between West and the prosecution existed. And whether he can make such a showing depends on whether the state court's finding to the contrary is entitled to AEDPA deference.

The Eleventh Circuit held that the state court's finding was entitled to AEDPA deference, and that Reynolds had failed to overcome that deference. However, the court acknowledged that if AEDPA deference did not apply, there was enough evidence in the record from which a fact finder could find an agreement:

Although *factual inferences can be drawn in the way Mr. Reynolds suggests*, the record can also be read differently. ...

We are not the original triers of fact and our review of the state court factual findings is deferential under AEDPA. Our limited review means that we may not issue a writ of habeas corpus simply

because we conclude, in our independent judgment, that the Rule 32 court and the ACCA were incorrect. The decision must be objectively unreasonable.

Pet. App. 23a-24a (emphasis added). The quote above is an acknowledgement by the Eleventh Circuit that if AEDPA deference did not apply and they were “the original triers of fact” exercising their “independent judgment,” then the record was sufficient for them to draw “factual inferences” that there was an agreement between West and the prosecution “in the way Mr. Reynolds suggests.”

Accordingly, the question presented is outcome determinative. If Reynolds prevails on the question presented in this Court, then the record is sufficient for the Eleventh Circuit to find an agreement and grant him relief on remand.

IV. THIS COURT SHOULD RESOLVE THE CIRCUIT SPLIT BY HOLDING THAT A STATE COURT’S FACTUAL FINDINGS ARE NOT ENTITLED TO AEDPA DEFERENCE IF THE HABEAS PETITIONER DID NOT RECEIVE A FULL AND FAIR EVIDENTIARY HEARING.

This Court should resolve the circuit split by interpreting § 2254 as *not* requiring deference to a state court’s factual determinations when the state court denied the habeas petitioner a full and fair evidentiary hearing. This full-and-fair-hearing interpretation is supported by the text, legislative history, and purpose of AEDPA.

A. The text of § 2254 only requires deference to a state court's factual determinations if two things are true. First, the habeas petitioner's claim must have been "adjudicated on the merits." Second, that adjudication must not have "resulted in a decision that was based on an unreasonable determination of the facts." *Id.* Neither of these things is true when the habeas petitioner does not receive a full and fair evidentiary hearing.

First, a state court that disposes of a claim without providing the habeas petitioner a full and fair hearing does not adjudicate that claim on the merits. "A merits adjudication requires the court to consider the 'substance' of the defendant's claim," which means applying "controlling legal principles to the facts bearing upon [the defendant's] claim." *Wilson*, 577 F.3d at 1292-93. When a state court refuses to provide the defendant a full and fair hearing, the state court prevents the petitioner from putting the facts bearing upon his claim in front of that court. As a result, the state court will not be able to apply controlling legal principles to those facts. Thus, when a state court "refuses to grant an evidentiary hearing to consider material, non-record evidence ... and then rules on the [defendant's] claim without consideration of this evidence," the state court's "denial of the claim is not an adjudication on the merits to which the federal courts owe AEDPA deference." *Id.* at 1300.

Second, "the denial of a full and fair hearing in state court produces *per se* an unreasonable determination of the facts." *Valdez*, 288 F.3d at 705

(Dennis, J., dissenting from the denial of rehearing en banc).

B. The full-and-fair-hearing interpretation is also supported by the legislative history of AEDPA. See Justin Marceau, *Deference and Doubt: The Interaction of AEDPA Section 2254(d)(2) and (e)(1)*, 82 Tul. L. Rev. 385, 427 (2007) (summarizing “four pieces of legislative history that ... support the conclusion that procedural fairness in state court is a prerequisite for deference to factual findings”).

As just one example, when signing AEDPA into law, President Clinton stated: “If [AEDPA] were read to deny litigants a meaningful opportunity to prove the facts necessary to vindicate Federal rights, it would raise serious constitutional questions. I do not read it that way.” William J. Clinton, Statement on Signing the Antiterrorism and Effective Death Penalty Act of 1996, 1 Pub. Papers 630, 631 (Apr. 24, 1996).

A reading of § 2254 that requires deference to state court’s factual findings made in the absence of a full and fair hearing would clearly deny a litigant a meaningful opportunity to prove the facts necessary to vindicate his federal rights. “[I]f a full and fair hearing is not a prerequisite ... to deference in federal court under the AEDPA, then state courts are free to (1) rubber-stamp the prosecuting body’s proposed findings of fact and conclusions of law, (2) deny the petitioner relief without affording him a hearing, and (3) effectively prevent a federal court from later granting the requested relief.” *Valdez*, 288 F.3d at 703

(Dennis, J., dissenting from the denial of rehearing en banc);

C. Finally, the full-and-fair-hearing interpretation also comports with the general purpose of AEDPA, which is “to further the principles of comity, finality, and federalism.” *Williams v. Taylor*, 529 U.S. 420, 436 (2000). This purpose is “not served when the state court has never considered the substance of the claim in the first place.” *Wilson*, 577 F.3d at 1293. “No court will have yet evaluated the evidence ... and thus there is no prior evaluation of the claim that would deserve the kind of deference AEDPA provides.” *Id.* As the federal court would be the first court to apply controlling legal principles to the facts bearing upon his constitutional claim, “its ruling would show no disrespect to any contrary dispensation from the state court.” *Id.* When a state court denies a habeas petitioner a full and fair evidentiary hearing, federal habeas courts “do not offend the principles of comity, finality, and federalism that animate AEDPA deference because the state court has passed on the opportunity to adjudicate the claim on a complete record.” *Gordon*, 780 F.3d at 202.

CONCLUSION

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

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