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 Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTIONS PRESENTED

In 2003, Michael Wayne Reynolds was sentenced to death for brutally murdering a family of three. At trial, Marcie West testified that Reynolds was guilty—she knew because she helped him. In state post-conviction proceedings, Reynolds claimed that West, who was also charged and convicted for her involvement, entered an undisclosed plea agreement with the State. The state court "ordered the prosecution to provide all its files on the case," including any "incentives" or "agreements" with witnesses, and "granted Mr. Reynolds access to all files" and reviewed *in camera* any withheld files. Pet. App. 22a. After all this discovery, as the state court explained, Reynolds had nothing more than "speculation and conjecture." *Id.* Indeed, West, her attorney, and the Chief Deputy District Attorney denied the existence of an agreement, and West's sentence was "consistent" with offenders in "similar circumstances." *Id.* Accordingly, the state court rejected Reynolds's claim without a hearing. The Eleventh Circuit denied habeas relief because the state court did not unreasonably determine the facts by finding there was no agreement. *See* 28 U.S.C. § 2254(d)(2).

The questions presented are:

1. Whether the state court unreasonably determined the facts under 28 U.S.C. § 2254(d)(2) when it rejected Reynolds's claim on the papers.
2. Whether the Eleventh Circuit erred to the extent that it required Reynolds to rebut the presumption of correctness accorded to state-court findings of fact, 28 U.S.C. § 2254(e)(1).

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INTRODUCTION

This is a federal habeas corpus proceeding in which Petitioner Michael Wayne Reynolds unsuccessfully challenged his state conviction for capital murder pursuant to 28 U.S.C. § 2254. He now seeks certiorari review of the United States Court of Appeals for the Eleventh Circuit's unpublished affirmance of the district court's denial of his federal habeas petition. Because Reynolds fails to present a compelling reason for this Court to review his claim, and because he does not demonstrate that any error occurred below, the petition for writ of certiorari should be denied.

STATEMENT OF THE CASE

A. Reynolds's Crime and Conviction.

Michael Wayne Reynolds was convicted of five counts of capital murder for the deaths of Charles Martin, Melinda Martin, and eight-year old Savannah Martin. In 2003, Reynolds stabbed the Martin family to death in their own home, then poured gas on their bodies, and set them on fire. Pet. App. 572a.

Reynolds's girlfriend, Adrian Marcella West, testified at trial. According to West, Reynolds was responsible for the murders. West testified that she and Reynolds first went to the Martin's house so that Reynolds could "get some money." *Id.* at 572a. West waited in the car while Reynolds went into the house carrying a dagger-style knife. *Id.* at 572a-73a.

After West heard screaming coming from the house, she went inside and saw Charles Martin lying on the kitchen floor. *Id.* West went to the back of the house where she saw Melinda Martin bent over next to a bed on which Savannah was sitting, while Reynolds stabbed Melinda. *Id.* Reynolds told West to go back to the car

and gave her the dagger, as well as a steak knife. *Id.* Reynolds then came back to the car, told West not to leave, grabbed the larger knife, and went back into the house. *Id.* Reynolds later returned a second time, went back in the house, and then returned a third time after which he and West left the crime scene. *Id.*

Beyond West's testimony, significant evidence linked Reynolds to the crime, including (1) a broken piece of his eyeglasses found in the Martin's bedroom, (2) Melinda Martin's blood found on Reynolds's eyeglasses, and (3) a bloody footprint outside the Martin's house that matched Reynolds's footprint. *Id.* at 574a-75a.

Reynolds was convicted by a jury of capital murder and sentenced to death. The Alabama Court of Criminal Appeals affirmed his sentence, and both the Alabama Supreme Court and this Court denied review.

B. Postconviction Proceedings.

Reynolds filed a petition for postconviction relief (a Rule 32 petition) in 2013, which he later amended. The circuit court summarily dismissed Reynolds's petition, but, on appeal, the ACCA remanded the case to the circuit court for "further proceedings on Reynolds's *Brady*/*Giglio* claim," Pet. App. 490a-92a, which had alleged an undisclosed agreement between West and the State to testify against Reynolds, Pet. App. 454a-55a. At trial, West had testified on both direct and cross-examination that she had made no deal with prosecutors to testify in exchange for favorable treatment on pending charges against her. *Id.* at 455a. The ACCA directed that the circuit court "may" order discovery relating to that claim, that it must "provide the State an opportunity to present evidence in rebuttal," that it could comply with the remand instructions by either conducting an evidentiary hearing or taking evidence by

evidentiary submissions pursuant to Rule 32.9 of the Alabama Rules of Criminal Procedure, and directed the circuit court to return the case "to this Court at the earliest time possible and within 56 days of the release of this opinion." *Id* at 490a-91a.

The trial court immediately issued a scheduling order in compliance with the ACCA's directive concerning the presentation of evidence relating to Reynolds's *Brady*/*Giglio* claim. *See id.* at 451a-52a. Reynolds filed an initial discovery motion, broadly asking for discovery of "the entire case file" relating to the deaths of the Martin family, which the circuit court denied as overly broad. *Id.* Reynolds submitted a renewed motion for more tailored discovery requests, and the court immediately granted Reynolds's motion in part by ordering that the District Attorney's Office make available to Reynolds "*any and all files*" relating to the prosecution of Marcie West for hindering prosecution, unlawful distribution of a controlled substance, possession of a controlled substance, and drug paraphernalia—the charges for Marcie West that were the subject of Reynolds's *Brady* claim in his petition. *Id.* at 452a (emphasis added). Reynolds filed a brief in support of his *Brady* claim, along with evidentiary submissions, followed by the State's brief and evidentiary submissions. *Id.* at 454a-55a. After receiving these evidentiary submissions, the circuit court issued a written order denying relief on Reynolds's *Brady*/*Giglio* claim. *Id.* at 456a.

In its dismissal order, the postconviction court found that nothing in the record indicated the existence of an agreement between West and prosecutors:

> There is nothing in the record that indicates there was an agreement between the prosecution and West. Just the contrary, on at least two (2) occasions, once by the defense and once by the prosecution, West denied any agreement. West's affidavit in the State's opposition to Defendant's

> claims denied any agreement. West's attorney, Jeff Montgomery, denied any knowledge of any agreement for West's testimony. Chief Deputy District Attorney Marcus Reid denied any agreement with West for her testimony. ... Furthermore, Judge David Kimberley's plea colloquy at West's guilty plea hearing indicates West's plea was a blind plea. …
>
> Defendant's counsel draw a comparison between the sentence given to West as opposed to the sentence given to Donald Harvey ... , who was also charged with hindering prosecution. West, who had no prior conviction, was sentenced by Judge David Kimberley while Harvey, who was an habitual offender and known to this Court, was sentenced by this Court. Both were blind pleas by different judges, a practice which has long since changed in this circuit. Now co-defendants are assigned to the same trial judge to assure sentencing will be uniform. …
>
> The sentence of West is found by this Court to be consistent with other sentences of similar character in this circuit, depending on the judge assigned the case.
>
> The defendant relies only on the sentence that West received to establish that there was an agreement for her testimony. The State has presented affidavits from Chief Deputy District Attorney Marcus Reid; Jeff Montgomery, Attorney for Marcie West; Affidavit of Marcie West; Marcie West's testimony at trial; the colloquy with Judge David Kimberley, and the trial transcript, all of which indicate there was no agreement between West and the prosecution in exchange for West's testimony. Reynolds's claims are based on speculation and conjecture. The ruling on remand is replete with 'if true' as to Reynolds's claims, which would entitle him to relief. This Court finds that Reynolds's claims are not true and further that the prosecution did not suppress evidence that was favorable to the Defendant. Further, this Court finds the Defendant did not prove his *Brady*/*Giglio* claim.

Id. at 459a-463a. Accordingly, the court concluded that Mr. Reynolds had failed to meet his burden of proof on his *Brady*/*Giglio* claims. *Id.* at 463a.

The ACCA affirmed the denial and dismissal of Reynolds's petition for post-conviction relief, and the Alabama Supreme Court subsequently denied certiorari. *Id.* at 456a.

Reynolds subsequently filed a habeas corpus petition in the United States District Court for the Northern District of Alabama. *Id.* at 169a-174a. After full briefing, the district court denied Reynolds's motion for leave to conduct discovery and his habeas corpus petition. *Id.* at 169a-174a.

The Eleventh Circuit affirmed and rejected Reynolds's *Brady*/*Giglio* claim because a reasonable jurist could conclude that West never entered into an agreement with the State. *Id.* at 2a, 24a.[1] Thus, the state court's finding was not "an unreasonable determination of the facts." *Id.* at 24a; *see also id.* at 32a (Jordan, J., concurring) ("[I]t cannot be said that the Rule 32 court's determination that no agreement existed is unreasonable.").

REASONS FOR DENYING THE PETITION

I. There Is No Split of Authority or Other Reason to Grant Review on the First Question Presented.

Reynolds asks the Court to review whether and when federal courts may find an unreasonable determination of fact under 28 U.S.C. § 2254(d) based solely on the procedures the state court used to reach its findings. But he identifies no disagreement worth resolving, much less a circuit split. He also has not demonstrated he would receive a different result in another circuit; his arguments are fact-bound; and he didn't argue below that the state court's findings were unreasonable based on the

[1] The Eleventh Circuit also rejected Reynolds's ineffective assistance claim for his counsel's failure to admit Chad Martin's confession. The Eleventh Circuit explained that the state court's conclusion that this omission did not prejudice Reynolds was reasonable because (1) the jury "heard some of the details" of the confession, (2) the confession contradicted Reynolds's own theory of the case and testimony, and (3) physical evidence tied Reynolds to the crime. Pet. App. 30a-31a; *see also id.* at 585 ("After investigation, the police excluded Chad Martin as a suspect.").

procedures it used. Even if the question presented warrants review, the Eleventh Circuit's unpublished decision below makes for a poor vehicle. Thus, the Court should deny certiorari on the first question presented.

A. There is no circuit split worthy of review.

Reynolds contends the circuits are split on whether federal courts "may review the procedural adequacy of [a] state court's decision" under § 2254(d)(2). Pet.19. Reynolds has not shown a circuit split. Every circuit to have addressed the issue treats alleged deficiencies in a state court's fact-finding process as one consideration that can result in unreasonable determinations of fact.

Reynolds presents one side of the purported split, the Sixth, Seventh, Ninth, and Tenth Circuits, as having an almost automatic rule that state-court factual determinations are unreasonable if made pursuant to "defective procedures." *Id.* at 19-21. But the Ninth Circuit has expressly held that a state court's "decision not to hold an evidentiary hearing *does not* render its fact-finding process unreasonable so long as the state court could have reasonably concluded that the evidence already adduced was sufficient to resolve the factual question." *Hibbler v. Benedetti*, 693 F.3d 1140, 1147 (9th Cir. 2012) (emphasis added). The Ninth Circuit has "never held that a state court must conduct an evidentiary hearing to resolve every disputed factual question." *Id.* at 1147. The Tenth Circuit follows the same approach. *See Smith v. Aldridge*, 904 F.3d 874, 882-83 (10th Cir. 2018). And contrary to Reynolds's argument, the Sixth and Seventh Circuit cases he cites reached no precise holding on whether and how a state court's procedures factor into the § 2254(d)(2) analysis. *See Stermer v. Warren*, 959 F.3d 704, 721 (6th Cir. 2020); *McManus v. Neal*, 779 F.3d 634, 660-61

(7th Cir. 2015) (relying ultimately on "an unreasonable factual finding," not the mere existence of "a legal error [that] infected the trial court's fact-finding process"). Thus, even in the circuits favored by Reynolds, the answer to his first question presented is "No," a state-court ruling on a "colorable claim[]" can be entitled to § 2254 deference even without a hearing. Pet.i-ii.

While Reynolds casts the First, Third, and Fourth Circuits as falling "in the middle," those courts also hold that a state court's procedures may or may not bear on the reasonableness of its resulting factual determinations. *See Teti v. Bender*, 507 F.3d 50, 59 (1st Cir. 2007) (absence of a hearing "might be a consideration" under § 2254(d)(2)); *Lambert v. Blackwell*, 387 F.3d 236, 239 (3d Cir. 2004) ("[T]he procedures a state court applies when adjudicating a petitioner's claims may also be relevant during habeas review."); *Gray v. Zook*, 387 F.3d at 239 (4th Cir. 2015) ("[A state habeas court's] fact-finding process may lead to unreasonable determinations of fact under § 2254(d)(2)."). Likewise, the Eleventh Circuit has explained that it cannot "foreclose the possibility that a state court's fact-finding procedure could be so deficient and wholly unreliable as to result in an unreasonable determination of the facts under § 2254(d)(2)." *Landers v. Warden, Atty. Gen. of Ala.*, 776 F.3d 1288, 1297 (11th Cir. 2015).

Highlighting *Valdez v. Cockrell*, 274 F.3d 941 (2001), Reynolds claims the Fifth Circuit took a view "opposite" the other circuits when it held that "§ 2254 appl[ies] regardless of whether the state court afforded [the] petitioner a procedurally fair process." Pet.21. But *Valdez* addressed a different and broader question. Under AEDPA,

an inmate with claims "adjudicated on the merits" in state court cannot obtain federal relief absent either an "unreasonable application" of law or an "unreasonable determination" of fact. 28 U.S.C. § 2254(d). In *Valdez*, the inmate argued that he need not satisfy § 2254(d) *at all*. He alleged that because the State did not provide full and fair procedures, he was entitled to de novo review in federal court *without* proving an unreasonable application of law or determination of fact. 274 F. 3d at 948, 950. That holding is not at odds with the view that inadequate procedures might *help* the inmate establish an unreasonable factual determination, a question the Fifth Circuit did not address. Nor is the other Fifth Circuit case Reynolds cites, *Waldrip v. Lumpkin*, 976 F. 3d 467 (5th Cir. 2020), contrary to the view of other circuits. True, the court assigned error to the district court's holding "that the denial of an evidentiary hearing was an unreasonable factual determination." *Id.* at 476. But that holding was erroneous because the denial of a hearing was premised on the absence of "material controverted facts," which is "a legal conclusion," not a factual determination. *Id.* Thus, the Fifth Circuit adopted no rule in *Waldrip* about whether a procedural defect in the fact-finding process can *result* in unreasonable determinations sufficient to satisfy § 2254(d)(2).[2]

[2] A brief filed in support of Reynolds argues that the Court should review whether the lack of "a full and fair evidentiary hearing" obviates the need to show an unreasonable determination of fact. Br. of Former Federal Judges as *Amici Curiae*, at 7. But that is not the question presented in the petition, it was not raised below, and the argument is wrong on the merits because, as noted below, AEDPA removed the statutory requirement of a "full and fair hearing" as a pre-condition to deference.

In short, Reynolds has not identified a single circuit holding that a state court's procedures are categorically irrelevant under § 2254(d)(2). To be sure, some circuits might have more developed tests than others, some seem to identify defects in state-court procedures more readily and regularly, but all agree that deficient process can be a factor in deciding whether the state-court ruling "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2). Reynolds does not explain how the result of any case would have been different if it were decided in another circuit (let alone his own case). He has not shown a divergence of authority worthy of review.

B. This case is a poor vehicle.

This case is a poor candidate for review. Reynolds's habeas petition would be unsuccessful in any circuit; his certiorari petition seeks fact-bound error correction. And the Eleventh Circuit's decision below is an unpublished and unremarkable application of 2254(d)(2).

First, Reynolds is wrong that other courts of appeals would have decided this case differently than the Eleventh Circuit. Reynolds does nothing to support his contention that his case would have been decided differently "had he been in a different circuit." *See* Pet.34. He makes no attempt to apply the allegedly different standards of his claimed circuit split to the facts of this case. He does not identify any decision from any circuit that has resolved similar facts in favor of a petitioner's § 2254(d)(2) arguments. He doesn't even speculate about which circuit would have decided the case differently.

The Tenth Circuit, for instance, has explained that "most of the time ... it will be reasonable for a state court to make factual determinations based on the evidence

before it without holding a hearing." *Aldridge*, 904 F.3d at 883. In the Ninth Circuit, Reynolds would have to show that *every* appellate court would agree that the state court's procedures were inadequate. *Taylor v. Maddox*, 366 F.3d 992, 1000 (9th Cir. 2004) ("[W]e must be satisfied that any appellate court to whom the defect is pointed out would be unreasonable in holding that the state court's fact-finding process was adequate."); *accord Aldridge*, 904 F.3d at 883 (quoting *Taylor*).

The standard is demanding. In *Aldridge*, the Tenth Circuit held as reasonable under § 2254(d)(2) the Oklahoma Court of Criminal Appeals' finding, made without the benefit of an evidentiary hearing, that none of the jurors were continually sleeping during trial. 904 F.3d at 879. In making that finding, the OCCA considered the trial judge's assertion, made in an order denying petitioner's motion for a new trial, that he actively monitored the jury's attentiveness and did not observe any repeated instances of jurors sleeping during the trial. *Id.* at 879. It also considered the affidavits of five jurors, including the allegedly offending juror, each of which alleged that the juror "continually fell asleep." *Id.* The Tenth Circuit determined that it did not have before it "one of those rare cases in which all reasonable courts would have concluded it was necessary to hold an evidentiary hearing" and that it was therefore reasonable for the OCCA to credit the trial judge's assertions over the affidavits. *Id.* at 883. In making that determination, the Tenth Circuit emphasized the additional record facts corroborating the trial judge's assertions. *Id.* at 883-84. Those corroborating facts, the court continued, gave the OCCA "'plausible reasons'" to decide the

"'credibility dispute on the basis of dueling affidavits, without an evidentiary hearing.'" *Id.* at 884 (quoting *Landers*, 776 F.3d at 1297-98).

The Tenth Circuit went out of its way to note that the juror affidavits presented a compelling and credible case—well above the low bar of "colorable" that Reynolds would have courts apply, Pet.i-ii. The jurors described "the same event in different, detailed terms," which "len[t] credibility to their accounts." *Aldridge*, 904 F.3d at 885. So much so, in fact, that the Tenth Circuit indicated that it might have reached a different conclusion "if presented with th[e] question in the first instance." *Id.* "But AEDPA demands more," and the Tenth Circuit could not say that "no reasonable court could have credited the trial judge's statement without holding a hearing." *Id.*

The *Aldridge* court's § 2254(d)(2) determination relied heavily on the Eleventh Circuit's *Landers* decision. In that case, the Eleventh Circuit also considered a credibility dispute resolved by a state postconviction court "on the basis of dueling affidavits, without an evidentiary hearing." *Landers*, 776 F.3d at 1297-98. In holding that resolution to be reasonable under § 2254, the Eleventh Circuit noted the "strikingly different indicia of reliability" between the competing affidavits: petitioner's affidavits were less than half a page long, lacked any factual detail, and were nearly identical; the state's affidavit, by contrast, was nearly five pages and described the relevant facts in "great detail." *Id.* Given those differences, the Eleventh Circuit could not "say that making a credibility determination on the basis of th[o]se affidavits . . . was objectively unreasonable." *Id.* at 1298; *see also Garuti v. Roden*, 733 F.3d 18 (1st Cir. 2013).

Reynolds comes nowhere near engaging in the "fact-bound and case-specific inquiry" needed to meet the standard in other circuits, *Hibbler*, 693 F.3d at 1147, so he hasn't even shown that the so-called split matters in this case. Worse, Reynolds did not argue below that the procedures rendered the state court's findings unreasonable, so even though this is a "court of review, not first view," *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), it would need to conduct that inquiry in the first instance.

Second, Reynolds seeks nothing more than fact-bound error correction. Most of his argument focuses on why, in his view, the decision below is wrong. Reynolds contends that the state postconviction court's denial of his Rule 32 petition was based on an unreasonable determination of the facts because the court denied him relief without the benefit of an evidentiary hearing. Pet.17-18. But he also concedes that "[i]t is undisputed that state courts are not required to conduct evidentiary hearings in all instances," acknowledging the "[n]umerous federal courts" that have so held. Pet.28-29. In light of that concession, Reynolds's complaint is that the Eleventh Circuit misapplied AEDPA precedent to the particular facts of his case.

Reynolds does not dispute the fact-bound nature of his request. Indeed, he presents "reasons why an evidentiary hearing was needed *here*," Pet.29 (emphasis in original), quite literally emphasizing the particular facts of his case as the basis for granting the petition. That is not the type of alleged error that warrants this Court's review. *See* Sup. Ct. R. 10; *see also Salazar-Limon v. City of Houston*, 137 S. Ct. 1277, 1278 (2017) (Alito, J., concurring in the denial of certiorari) ("[W]e rarely grant review

where the thrust of the claim is that a lower court simply erred in applying a settled rule of law to the facts of a particular case.").

Third, this case is a poor vehicle to address the alleged circuit split because the decision below is unpublished and therefore lacks precedential value in the Eleventh Circuit. This Court rarely reviews unpublished, non-precedential decisions because they do not reflect a circuit's definitive position on an issue. *See Plumley v. Austin*, 574 U.S. 1127, 1131-32 (2015) (Thomas, J., dissenting from the denial of certiorari) (noting that an unpublished opinion "lacks precedential force," which "preserves [a circuit's] ability to change course in the future"). By rule, the decision below will not stand in the way of someone else obtaining relief based on alleged deficiencies in a state court's fact-finding procedures. *See* 11th Cir. R. 36-2.

C. The decision below is correct.

Even if this Court were inclined to consider Reynolds's request for fact-bound error correction, the Eleventh Circuit's decision to deny Reynolds's petition despite the lack of an evidentiary hearing in the state postconviction proceeding is an unremarkable and faithful application of the plain language of AEDPA.

1. Under AEDPA, a federal habeas petitioner cannot obtain relief based on purported factual errors in the state proceedings "unless the adjudication of the 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). Habeas relief is appropriate *only* if the error was so well-understood as to be "beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 101-02 (2011). Under § 2254(d)(2), "[t]he question ... is not whether a

federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold." *Schriro v. Landrigan*, 550 U.S. 465, 473 (2007); *see also Wood v. Allen*, 558 U.S. 290, 301 (2010) ("[A] state-court factual determination is not unreasonable merely because the federal habeas court would have reached a different conclusion in the first instance.").

In addition to the deference afforded under § 2254(d)(2), AEDPA also requires that a state postconviction court's "determination of a factual issue ... shall be presumed to be correct" unless rebutted by "clear and convincing evidence." *Id.* § 2254(e)(1).

Significantly, AEDPA effected a change to the prior version of the statute. And those changes reinforce the propriety of the decisions below. The prior version of § 2254 included a presumption of correctness that the petitioner could rebut by showing, among other things, the denial of a full and fair hearing in the state postconviction court. *See Valdez*, 274 F.3d at 949. AEDPA amended the prior version of § 2254, removing any reference to "full and fair hearing" in connection with the deference owed to state court factual findings. *Id.* That change is particularly significant here. There is no dispute that AEDPA is far more deferential to state court factual findings than was its predecessor. But even under the prior version of § 2254, application of the presumption of correctness to state court factual findings was not conditioned on live testimony at an evidentiary hearing held on state postconviction review. *See Townsend v. Sain*, 372 U.S. 293, 313 n.9 (1963), *overruled on other grounds by Keeney*

v. Tamayo-Reyes, 504 U.S. 1 (1992). Thus, even under AEDPA's far less deferential precursor, "full and fair hearing" did not categorically require an evidentiary hearing.

2. The ACCA reasonably found, without an evidentiary hearing, that there was no agreement between West and state prosecutors. That was an adjudication on the merits, and the district court properly applied deference to those findings under AEDPA. Reynolds has not proven the ACCA's no-deal finding was unreasonable.

As the district court and Eleventh Circuit noted, the sworn affidavits of West, her counsel, and the state prosecutor "specifically and categorically den[ied] the existence of a deal made between the State and West." Pet. App. 23a-24a, 169a. For her part, West specifically asserted that there wasn't even an indication that her trial testimony would affect her pending charges. At the time of her trial testimony, she "had no idea what would happen in [her] own cases." *Id.* at 674a. On its own, the affidavit testimony of West, her counsel, and the prosecutor in charge of Reynolds's case establishes the reasonableness of the ACCA's determination that there was no deal. *See Baxter v. Thomas*, 45 F.3d 1501, 1507 (11th Cir. 1995) (denying federal habeas relief on a claim that a witness testified pursuant to a deal with the State where the Assistant District Attorney, the witness, and a law enforcement officer provided sworn testimony that no such deal was made).

What's more, all three affidavits offered detailed accounts that were consistent with each other and the broader factual record before the state postconviction court. Pet. App. 666a-675a. The following facts from the state postconviction record corroborate the affidavit testimony.

First, West's affidavit testimony was consistent with her testimony at Reynolds's trial. During both direct and cross-examination, West testified that she had not made any deal with prosecutors in exchange for her testimony. *Id.* at 461a. The same state postconviction judge also presided over Reynolds's trial, meaning he was able to personally observe West's demeanor on direct and, more importantly, on cross-examination. West's trial testimony and the affidavit testimony are consistent with the substance of West's plea agreements, both of which were "blind" pleas. *Id.*

Second, West's trial testimony and the testimony in all three affidavits were also consistent with statements made by West's counsel and prosecutors during West's plea and sentencing colloquies. At the plea and sentencing hearings in both of her criminal cases, West's counsel and prosecutors reiterated that there was no deal related to West's testimony at Reynolds's trial. And during both cases, West acknowledged her understanding of the "blind" nature of her pleas. *Id.* at 682a-83a; 694a-95a

Third, and further corroborating the absence of a deal, West's sentence was similar to Donald Harvey's, who, like West, was charged with hindering the Reynolds prosecution and with distribution of a controlled substance. Both West and Harvey testified at Reynolds's trial—but West for the prosecution and Harvey for the defense. They both entered blind pleas before different sentencing judges. And yet, both received "virtually the same sentence." *Id.* at 462a.

The record's corroboration of the affidavit testimony establishes the reasonableness of the state court's finding that there was no deal related to West's trial testimony. *See Aldridge*, 904 F.3d at 879; *Landers*, 776 F.3d at 1297-98. Indeed, it does

so conclusively. *See Baxter*, 45 F.3d at 1507 (denying federal habeas relief on a claim that a witness testified pursuant to a deal with the State where the Assistant District Attorney, the witness, and a law enforcement officer provided sworn testimony that no such deal was made). And while conclusive support was not needed under AEDPA, *see White v. Woodall*, 572 U.S. 415, 427 (2014) (noting, in reversing the grant of habeas relief, that there were "reasonable arguments on both sides [of the issue] - which is all [the State] needs to prevail in [an] AEDPA case"), the evidence was sufficient here, and the district court and Eleventh Circuit were correct not to disturb that finding. To require more would task the State with proving a negative existential to a certainty, which is impossible.

Also incorrect is Reynolds's insistence that the state court's credibility determinations are unreliable in the absence of cross-examination. Pet.29-33. Here, the state postconviction judge was also the trial judge. The state court made credibility determinations, and those determinations, along with the court's express and implied factual findings, are presumed correct under AEDPA. *See Marshall v. Lonberger*, 459 U.S. 422, 434 (1983) ("28 U.S.C. § 2254(d) gives federal habeas courts no license to redetermine credibility of witnesses whose demeanor has been observed by the state trial court, but not by them."); *see also Strong v. Johnson*, 495 F.3d 143, 139 (4th Cir. 2007); *Tanberg v. Sholtis*, 401 F.3d 1151, 1161 (10th Cir. 2005) (a trial court's "determination of credibility of affidavits will not be disturbed on appeal unless that determination is without support in the record, deviated from the appropriate legal standard, or followed a plainly erroneous reading of the record"). Because the state

postconviction judge had the opportunity to personally observe the affiants at trial, the factfinding procedure here was more than sufficient to entitle the state court's findings to deference under AEDPA.

II. The Second Question Presented is Unimportant, and the Eleventh Circuit Faithfully Applies the Plain Meaning of AEDPA.

Reynolds argues that the Eleventh Circuit was wrong to apply both 28 U.S.C. § 2254(d) and § 2254(e) to his petition. The thrust of his argument is that the Eleventh Circuit applies "§ 2254(e)(1) as a threshold matter," but when a petitioner did not present evidence in state court, "there would be a lack of evidence in the state court record on which to rely." Pet.27. So instead, the petition argues, a court should "evaluate the reasonableness of the state court's factual findings under § 2254(d)(2) *outside* the confines" of § 2254(e)(1). Pet.26 (emphasis added). And that would be desirable, Reynolds says, because it would make AEDPA's strictures more "[]surmountable" for federal habeas petitioners. *Id.*

Reynolds's second question is immaterial to this case and to almost every other case governed by AEDPA. His answer to that question is atextual and plainly wrong. The Court has previously declined to take up the same question presented, and it should decline again here.

A. The relationship between § 2254(d) and § 2254(e)(1) made no difference to the decision below.

There is no reason to grant certiorari to clarify the relationship between 28 U.S.C. § 2254(d) and 28 U.S.C. § 2254(e)(1) because the answer will have no bearing on the outcome of Reynolds's habeas petition.

First, Reynolds did not satisfy § 2254(d), so § 2254(e)(1) is irrelevant. The Eleventh Circuit concluded that the ACCA's finding—"there was no agreement" between Ms. West and the prosecution—was not "unreasonable." Pet. App. 24a. The court of appeals reached that conclusion without any reference to § 2254(e)(1) whatsoever. *See id*. It did not apply a clear-and-convincing evidence standard or presumption of correctness. It simply concluded that "fairminded jurists could disagree" about what findings to draw from the state court record, citing *Richter*, which is a proper application of § 2254(d). *Id.* So any debate among the circuits about whether or how to "layer[]" § 2254(d)(2) and (e)(1) is entirely academic for Reynolds.

Thus, even under what Reynolds describes as the rule in the Ninth Circuit, his claim would have failed: "If the findings are unreasonable, then there would be no need to consider whether those findings are correct under § 2254(e)(1) since the court would review the claims *de novo* …." Pet.24. But Reynolds's habeas petition failed at step one—he did not sway the federal courts that the ACCA's findings were unreasonable, so there was no tension between a circuit rule that would apply § 2254(e)(1)'s presumption of correctness and a different circuit rule that would entitle the petitioner in such circumstances to *de novo* review.

Reynolds, for his part, seems to admit begrudgingly that the second question presented played no role in the Eleventh Circuit's analysis. On page 35 of the petition, he writes: "Because it is unclear whether the court's conclusion would have been different" had he been excused from satisfying § 2254(e)(1), "this case presents an ideal vehicle." Pet.35. That's wrong for two reasons. First, it is clear that the result

would not have been different because the Eleventh Circuit rejected his claim by applying only § 2254(d)(2). And second, any lack of clarity is a vice, not a virtue. If the question presented played no role in the reject of Reynolds's claim, then Reynolds may not even have appellate standing to raise the issue on appeal. He would have no "injury 'fairly traceable to the *judgment below*'" and thus no "cognizable Article III stake." *West Virginia v. EPA*, 142 S. Ct. 2587, 2606 (2022).

If Reynolds is right that the second question is one that the Court "has deferred for many years now" despite "confusion percolating amongst the courts below," Pet.35-36, then there should be better vehicles than this one—a case in which the question not only did not *determine* the outcome but had no perceivable effect on the outcome at all. Instead, the issue would be "better resolved in other litigation where … it would be solely dispositive of the case." *Relford v. Commandant*, 401 U.S. 355, 370 (1971).

***Second*,** the Eleventh Circuit did not need a presumption of correctness to conclude that the ACCA had reasonably determined the facts. Reynolds insists that West must have had a deal based on the timing of her criminal charges, plea, and sentence in relation to her testimony in Reynolds's trial. But that hypothesis—in truth, a conspiracy theory—has very little to support it. Reynolds would bear the burden of proof regardless of any presumption of correctness under AEDPA, and he simply did not carry it. Reynolds pointed to an ambiguous memorandum drafted by West's counsel, referencing "agreement with the D.A.," but counsel himself rebutted the inference that the note reflected any kind of *quid pro quo*. He explained (1) that the memo was

the sort of internal memo he would regularly prepare in any criminal case, (2) that it related only to "general discussions" he had with prosecutors about West's sentence and plea, and (3) that he had no recollection of any agreement being in place at the time of the memo. He was unequivocal that there was no agreement of any kind by the time West testified at Reynolds's trial. Corroborating West's and her counsel's accounts was Deputy District Attorney Reed's affidavit, which averred that there was no agreement concerning West's trial testimony.

In sum, Reynolds's only evidence is contradicted by two key witnesses. That's more than enough to say that the state courts did not issue a decision "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). *See Woodall*, 572 U.S. at 427 (noting, in reversing the grant of habeas relief, that there were "reasonable arguments on both sides [of the issue] - which is all [the State] needs to prevail in [an] AEDPA case").

To be sure, Reynolds complains that he would have liked to conduct additional discovery and to develop more evidence. But that does not change that the Eleventh Circuit reached the right result, denying his claim under § 2254(d)(2), without any need to "presume[]" the correctness of the state court's findings under § 2254(e)(1). And if that's the case, then the second question presented is not material. This was not a case, like the Tenth Circuit's decision in *Aldridge*, where the state court's factual determination was a close call, one that could have gone either way such that minute distinctions in how the court characterizes the AEDPA standard might matter. Here,

Reynolds would have lost regardless of how the Eleventh Circuit interpreted AEDPA, so this Court should not grant certiorari.

Third, for the same reason that the second question presented is immaterial here, it is unlikely to matter for many other AEDPA cases either. Under Reynolds's formulation, courts must first consider whether § 2254(d) is satisfied without applying § 2254(e)(1). But if a petitioner has satisfied § 2254(d), then he has proven an "extreme malfunction[] in the state criminal justice system[]" resulting in an error "so lacking in justification" that it is "beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. 102-03. There cannot be many petitioners who prove factual errors of such gravity yet who cannot overcome the default presumption that the state court's factual findings are correct. This is a case in point. If Reynolds had actually proven that the state courts based their decision "on an unreasonable determination of the facts in light of the evidence," 28 U.S.C. § 2254(d)(2), *i.e.*, if he had proven that there really was a plea deal in exchange for testimony in his case, then it's hard to see how he wouldn't have also "rebut[ted] the presumption" that there was no deal, 28 U.S.C. § 2254(e)(1). True, one must have good "evidence" to clear the § 2254(e)(1) hurdle, but that's hardly an "insurmountable barrier," Pet.26, for a petitioner who, by hypothesis, has already shown "in light of the evidence" that the state courts were wrong beyond the possibility of disagreement.

B. The Eleventh Circuit's interpretation of AEDPA is correct, and this Court has already declined to review it.

The plain text of AEDPA does not support Reynolds's position that § 2254(d)(2) must be applied "outside of the confines" of § 2254(e)(1). Pet.26. First, AEDPA's text

is clear that both can and do apply simultaneously. There is no indication that a court must choose between the two or apply them sequentially. Section 2254(d) applies to "any claim adjudicated on the merits" in state court. Section 2254(e)(1) applies in any "proceeding" for habeas relief in which there was "a determination of a factual issue by a State court." Thus, both apply in a case like Reynolds's where a claim in federal habeas was adjudicated in state court and the court made findings of fact. There is simply no conflict between (d)(2), which operates to deny relief unless the state court based its decision on unreasonable factual findings, and (e)(1), which instructs federal courts to presume the correctness of those findings unless proven otherwise.

The two subsections "share some … space," and "there is some logical relationship between them," but they are still "separate requirement[s]" that serve "different functions." *Hayes v. Sec'y, Fla. Dep't of Corr*, 10 F.4th 1203, 1222, 1224 (11th Cir. 2021) (Newsom, J., concurring). Proof of a factual error sufficient to rebut (e)(1)'s presumption does not mean that the state court's ultimate "decision," taken as a whole, was "based on" the unreasonable factual finding. *Id.* (quoting 28 U.S.C. § 2254(d)); *see also Pye v. Warden*, 50 F.4th 1025, 1035 (11th Cir. 2022). For that reason, the two provisions are not rendered "superfluous" when applied together, *contra* Pet.26, and they remain "independent requirements," *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003). Because the Eleventh Circuit simply applies AEDPA as written, it is unsurprising that "[m]ost courts" agree with its approach. *Hayes*, 10 F.4th at 1223 (Newsom, J., concurring); *accord* Pet.26 & n.2 (citing decisions of eight circuits that "layer[]" the two provisions, *i.e.*, give effect to both in a given case). Although this

Court has not addressed the question directly, it has said—without any concern for superfluity—that courts should apply both requirements simultaneously. For instance, in *Landrigan*, the Court wrote:

> The question under AEDPA is not whether a federal court believes the state court's determination was incorrect but whether that determination was unreasonable—a substantially higher threshold. AEDPA *also requires* federal habeas courts to presume the correctness of state courts' factual findings unless applicants rebut this presumption with "clear and convincing evidence." § 2254(e)(1).

550 U.S. at 473-74 (citation omitted; emphasis added). That would be a strange way to describe AEDPA if § 2254(e)(1) "does not apply" in many cases, such as a "§ 2254(d)(2) … challenge … based entirely on the state record" or "if the state court's fact-finding process [is] deemed deficient." Pet.24-25. Reynolds's view injects exceptions that do not exist in the statutory text, and perhaps for this reason, the Court denied a petition for a writ of certiorari in *Pye*, just eighteen months ago, which raised a substantially similar question presented in a case in which it was actually ruled upon by the court below. *See* Pet. for a Writ of Cert. at i, *Pye v. Warden*, No. 23-31 (filed July 7, 2023) ("2. Whether 28 U.S.C. § 2254(e)(1) applies when a state prisoner seeks federal habeas relief solely on the state-court evidentiary record."); *see also id.* at 33 ("[C]ircuits have held that Section 2254(e)(1) … comes into play whenever a prisoner claims relief through Section 2254(d)(2)" except for "[t]he Ninth Circuit.").

Reynolds's counter-argument is premised on a policy view that AEDPA's plain meaning makes it an "almost insurmountable barrier." Pet.26. The petition seems to think AEDPA should contain "a mechanism to litigate a deficient fact-finding process." Pet.27. But the meaning of AEDPA should be defined by its text and structure,

not policy views about its force as an almost "complete bar on federal-court relitigation." *Richter*, 562 U.S. at 102. And AEDPA already has a mechanism for litigating the state court's fact-finding process. If the fact-finding process in a given case was so "deficient," Pet.27, then the petitioner can show as much by arguing that it "resulted in a decision that was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2). But there's no alternative—no avenue within AEDPA for a collateral attack on a "state court's fact-finding *procedures*," *cf. Pye*, 50 F.4th at 1040 n.9 (emphasis added), unrelated to the state court's particular "determination of the facts" in a given case. And it would make no sense to permit such attacks if the petitioner could not prove that the alleged defect caused erroneous factual findings in his case; a petitioner could then receive a windfall, benefiting from procedural problems that in no way prejudiced him.

C. The circuit split amounts to the "confusion" and "struggle" of one court, the Ninth Circuit.

There is great uniformity in the lower courts over the proper application of § 2254(d)(2) and § 2254(e)(1). By and large, they agree that (e)(1) focuses on individual factual findings, and (d)(2) focuses on the reasonability of the ultimate decision of the state court. *See, e.g.*, *Field v. Hallett*, 37 F.4th 8, 16-17 (1st Cir. 2022); *Abdul-Salaam v. Sec'y of Pa. Dep't of Corr.*, 895 F.3d 254, 266 (3d Cir. 2018); *Elmore v. Ozmint*, 661 F.3d 783, 850 (4th Cir. 2011); *Matamoros v. Stephens*, 783 F.3d 212, 215-16 (5th Cir. 2015); *Michael v. Butts*, 59 F.4th 219, 225-26 (6th Cir. 2023), *Shannon v. Hepp*, 27 F.4th 1258, 1267-68 (7th Cir. 2022); *Trussell v. Bowersox*, 447 F.3d 588, 591

(8th Cir. 2006); *Smith v. Duckworth*, 824 F.3d 1233, 1241 (10th Cir. 2016); *Pye*, 50 F.4th at 1035.

It is true that the Ninth Circuit had long applied a different rule to what it called "intrinsic" challenges to a state-court decision, which meant petitions "based entirely on the state record." *Taylor v. Maddox*, 366 F.3d 992, 999 (9th Cir. 2004). In those cases, "a defect in the fact-finding process" itself could satisfy § 2254(d), and (e)(1)'s presumption would not "attach" until "extrinsic" evidence is introduced. *Id.* at 1001, 1008; *accord Hibbler*, 693 F.3d at 1147 ("[i]n some limited circumstances"). But this Court later explained to the Ninth Circuit in *Pinholster* that review under AEDPA is "plainly limited to the state-court record." *Cullen v. Pinholster*, 563 U.S. 170, 185 n.7 (2011). Unless the petitioner first clears AEDPA's deferential hurdles, federal courts cannot entertain "new evidence … de novo," *id.* at 182, so there is no such thing as an "extrinsic" challenge governed by § 2254(d). The Court obliterated the crucial distinction by which the Ninth Circuit set forth a two-step test: first (d)(2)'s "intrinsic review" and then, only if the state court's "process survives," (e)(1)'s standard for "extrinsic review." *Taylor*, 336 F.3d at 1000. Accordingly, the key Ninth Circuit decision creating a split of authority was severely undermined, and the Court's earlier grant of certiorari in *Wood v. Allen*, is not probative of the question's certworthiness today. *Contra* Pet.24.

Whether the Ninth Circuit still regularly applies a deviant interpretation of (d)(2) and (e)(1) is unclear. In a thorough opinion, Judge Bybee noted "some confusion" in the Ninth Circuit's "cases over the interaction between these two provisions."

Murray v. Schriro, 745 F.3d 984, 999 (9th Cir. 2014). The Ninth Circuit will "occasionally read §§ 2254(d)(2) and (e)(1) as though they were to be read together," *i.e.*, as every other circuit reads them. *Id.* at 1000. But that court has "continued to struggle," and its "panel decisions appear to be in a state of confusion." *Id.* at 1001. The "tension" in the Ninth Circuit's own cases was not resolved by the time of *Murray*; when the question has been raised, that court has easily avoided it by deeming the issue "academic" or not "determinative" in the case at hand. *Id.* at 1001.

More recently in *Kipp v. Davis*, the Ninth Circuit seemed to revert to its approach in *Taylor*, stating that a federal habeas petitioner may bring a § 2254(d)(2) challenge alleging that "the fact-finding process itself might be defective." 971 F.3d 939, 953 (9th Cir. 2020). Notably, the court did not offer any basis in AEDPA's text for identifying this "flavor" of AEDPA case. *Id.* at 953-55. (Respectfully, neither did *Taylor*.) But in any event, the separate avenue for avoiding AEDPA, sometimes available in the Ninth Circuit, does not seem to make much of a difference. In *Kipp* itself, the court held that the state court had "misstated the record in making [a] finding about the state of [the victim's] body," which was "central to [the petitioner's claim," and had "ignored evidence that supported [his] claim." *Id.* at 954-55. Those sound like unreasonable determinations of fact and evidence-based rebuttals to the presumption of correctness; it's not obvious that the Ninth Circuit's refusal to apply (e)(1) made any difference; it was effectively dicta, relegated to a footnote. *Id.* at 953 n.12.

If the *Kipp* approach is what the Ninth Circuit meant when *Taylor* permitted § 2254(d) challenges to the "process itself," 366 F.3d at 1001, then there may not be a

meaningful division of authority. If a "defective" process results in a decision based on an unreasonable determination of the facts in light of the evidence, then (d)(2) will be satisfied, and in many if not most cases, the same evidence of defectiveness will overcome the presumption of correctness. And the reverse is true too—any petitioner who cannot overcome the presumption of correctness for any one fact-finding is not likely to prove the decision against him was based on an unreasonable determination of the facts. *See* § II.B, *supra*; *see also Wood*, 558 U.S. at 300 (noting that the propriety of the state court's factual findings will rarely "turn on any interpretive difference regarding the relationship between" (d)(2) and (e)(1)); *see also id.* ("Although we granted certiorari to resolve the question of how §§ 2254(d)(2) and (e)(1) fit together, we find once more that we need not reach this question.").

CONCLUSION

For these reasons, the Court should deny certiorari.

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