No. 24-6941 - Capital Case

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

REPLY BRIEF

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INTRODUCTION

This petition provides this Court with the opportunity to resolve two interrelated and unresolved circuit splits. This Court's review is essential to ensure that all habeas petitioners are afforded a clear, consistent, and fair framework for challenging deficient state court fact-finding under § 2254(d)(2).

ARGUMENT

I. THE CIRCUIT SPLIT ON WHETHER A FEDERAL COURT MAY REVIEW THE PROCEDURAL ADEQUACY OF THE STATE COURT'S DECISION UNDER SECTION 2254(D)(2) SHOULD BE RESOLVED

As recognized by the lower courts, there is a consequential split among the circuits regarding whether and how deficiencies in state court fact-finding are reviewed under § 2254(d)(2). *See, e.g.*, *Pye v. Warden*, 50 F.4th 1025, 1040 n.9 (11th Cir. 2022) (en banc) (recognizing "the circuit split over whether a 'state court's fact-finding procedures' can render its decision unreasonable under AEDPA"); *Landers v. Warden, Atty. Gen. of Ala.*, 776 F.3d 1288, 1298 (11th Cir. 2015) (finding "apparent disagreement among our sister circuits on the extent to which § 2254(d)'s deference is conditioned, if at all, on the state court's fact-finding procedures"); *Robidoux v. O'Brien*, 643 F.3d 331, 340 (1st Cir. 2011) ("Case law is 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 that is due under the habeas statute". In an effort to downplay this split, Alabama contends that every circuit to have addressed the issue considers procedural deficiencies as one factor in assessing the reasonableness of state court factual determinations, BIO 6. But Alabama also concedes that "some circuits might have more developed tests than others" and "seem to identify defects

in state-court procedures more readily and regularly." BOI 9. While Alabama seems to believe that only those splits that encompass diametrically opposite decisions by two or more circuits are cert-worthy, its admission that the various circuits approach this issue on a spectrum demonstrates that this Court's guidance is both necessary and timely.

The divergent approaches taken by the circuits have real consequences for habeas petitioners like Reynolds who were denied evidentiary hearings to resolve key factual disputes. Former federal judges writing as *amici* in support of this petition, including Judge Alex Kozinski—who authored *Taylor v. Maddox*, 366 F.3d 992 (9th Cir. 2004), a seminal case that crystallized the split—and Judge Beverly Martin, who served on the Eleventh Circuit, from which this case originates, underscore this enduring division among the circuits. Br. of Former Federal Judges as Amici Curiae. The Ninth Circuit, when evaluating a § 2254(d)(2) claim, provides a clear framework that permits review of the state court's processes, including whether its fact-finding procedures are defective, *before* applying any presumption of correctness. *Taylor*, 366 F.3d at 1001. Under *Taylor*, a state court's fact-finding process is defective where it, *inter alia*, makes evidentiary findings without holding a hearing or ignores material evidence in the record supporting petitioners' claims. *Id*. While true that the Ninth Circuit has held that a state court's failure to hold an evidentiary hearing does not automatically render its fact-finding process unreasonable, BIO 6, it does require one to resolve "credibility contest[s]" when, like here, the record evidence is consistent with a petitioner's allegations. *See Hibbler v. Benedetti*, 693 F.3d 1140, 1147 (9th Cir.

2012). Indeed, the Ninth Circuit has repeatedly found state court fact-finding deficient and not entitled to deference where it makes factual findings without an evidentiary hearing or other opportunity for the petitioner to present evidence. *E.g.*, *Jones v. Ryan*, 52 F.4th 1104, 1120 (9th Cir. 2022); *Hurles v. Ryan*, 752 F.3d 768, 790–91 (9th Cir. 2014).

While Alabama admits that the Tenth Circuit follows the same approach as the Ninth, BIO 6, it wrongly states that the Sixth Circuit does not. *But see Stermer v. Warren*, 959 F.3d 704, 721 (6th Cir. 2020) (holding § 2254(d)(2) satisfied "if a review of the state court record shows that additional fact-finding was required under clearly established federal law or that the state court's factual determination was unreasonable . . . .") (citing, *inter alia*, *Hurles*, 752 F.3d at 790–91); *see also Pouncy v. Palmer*, Case No. 21-1811, 2025 WL 1341850, at *4 (6th Cir. May 8, 2025) (relief under § 2254(d)(2) may be granted where state court's decision rests on clearly unreasonable fact-finding). Alabama also incorrectly claims that the Seventh Circuit's *McManus v. Neal*, 779 F.3d 634 (7th Cir. 2015), relies on an unreasonable factual finding, not a fact-finding defect. Rather, *McManus* based its decision at least in part on the trial court's failure to hold an adequate competency hearing—a fact-finding defect. *Id.* at 659–60; *see also id.* at 660 n.12 (noting that another way of looking at decision was that legal error infected trial-court's fact-finding process, rendering resulting factual determination unreasonable) (citing *Taylor*, 366 F.3d at 1001).

Other circuits lack such a defined framework for evaluating the procedural adequacy of a state court's fact-finding under § 2254(d)(2). According to Alabama, the First, Third, and Fourth Circuits hold that a state court's procedures "may or may not" affect the reasonableness of its factual determinations. BIO 7. And while the Eleventh Circuit did not "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*, 776 F.3d at 1297, it does not appear to have found a state court's fact-finding process deficient under that standard. Rather, at least one Eleventh Circuit panel stated that petitioners are "stuck" with state court factual findings unless they can be rebutted with clear and convincing evidence. *Hunter v. Sec'y*, 395 F.3d 1196, 1200 (11th Cir. 2005). And while Reynolds maintains that the Fifth Circuit does not consider state court fact-finding defects under § 2254(d)(2), even Alabama's more charitable reading—that the Fifth Circuit has not adopted a rule on whether such defects can render a factual determination unreasonable, BIO 8—only underscores the problem.

A uniform rule is urgently needed—and that rule should align with the Ninth Circuit's approach, which requires a federal court to examine the reliability of the state court's fact-finding process when challenged before any presumption of correctness applies. This application reflects the proper interpretation of § 2254(d)(2) and is also consistent with AEDPA's legislative history. Specifically, the committee statement, the floor debate, and the statutory proposals that were rejected all indicate that AEDPA's omission of the "full and fair" language in § 2254(d) was not

intended to eliminate the requirement that state courts render their fact-findings in a procedural fair manner. Justin Marceau, *Deference and Doubt: The Interaction of AEDPA Section 2254(d)(2) and (e)(1)*, 82 Tul. L. Rev. 385, 427 (2007). Finally, the Ninth Circuit's approach is consistent with this Court's habeas jurisprudence that AEDPA "deference does not imply abandonment or abdication of judicial review." *Miller-El v. Cockrell,* 537 U.S. 322, 340 (2003).[1]

II. WHETHER PETITIONERS MUST MEET SECTION 2254(e)(1) AND SECTION 2254(d)(2) WHEN CHALLENGING THE STATE COURT RECORD IS RIPE FOR REVIEW

Alabama makes four main points about why this Court should not review the second question presented: (1) the Eleventh Circuit did not actually apply § 2254(e)(1) in this case; (2) the Eleventh Circuit would not have needed to apply § 2254(e)(1) to

[1] In an attempt to argue that this case is a poor vehicle for review, Alabama raises several points about the evidence at trial. While Alabama's argument relies on several misrepresentations of the evidence below, it is not relevant to Reynolds's petition and not addressed at this time. Reynolds's argument, as he made before the lower courts, is that the federal courts should not have deferred to the Alabama court's factual determinations under § 2254(d)(2) because its failure to permit cross-examination of West, Montgomery, and Reid in a post-conviction evidentiary hearing and to require Alabama to produce all documents relevant to his *Brady* claim rendered its fact-finding process defective. The extent of deference a federal court should afford under § 2254(d)(2) in the face of these fact-finding deficiencies is a threshold issue that begs this Court's consideration, particularly here where Alabama's case hinged on the testimony of a single alleged eyewitness who Reynolds was not permitted to cross-examine on the evidence of her undisclosed deal with the State, the forensic evidence at best indicates that Reynolds was at the victims' house after the murders, and there is credible evidence, including a third-party confession, that other people committed the crimes. Had Reynolds's case been heard in Ninth Circuit instead of the Eleventh Circuit, Reynolds would have been granted habeas relief. *See and compare Milke v. Ryan*, 711 F.3d 998 (9th Cir. 2013).

deny Reynolds's claims; (3) the Eleventh Circuit's approach was correct; and (4) the question is "immaterial." All are wrong.

First, Alabama claims that the Eleventh Circuit did not rely on § 2254(e) at all. BIO 19. But the Eleventh Circuit said its standard was: "Under § 2254(d)(2), we presume that a state court's factual findings are correct unless rebutted by clear and convincing evidence." Pet App. 19a (citing § 2254(e)(1) and *Pye*, 50 F.4th at 1034–35). Later, when it found that the ACCA's finding that there was no agreement was "not unreasonable," it cited to *Pye* again. Pet. App. 24a. That speaks for itself.

Second, Alabama's argument that the Eleventh Circuit did not need the presumption of correctness to conclude that the ACCA had reasonably determined the facts, BOI 22, does not address whether this Court should review the question presented. Alabama expends significant energy to convince the Court that the factfinding was reasonable below. For example, to downplay the significance of the deal memorandum, Alabama points to Montgomery's affidavit where he said that this was the type of memorandum that he usually prepared in a criminal case. BOI 20–21. Yet Alabama never addresses the inconsistencies—for example, that Montgomery said that it was a summary of the plea hearing and yet, strangely, none of the statements in the memorandum were stated on the record at the plea hearing. More importantly, whatever Alabama's view, quibbling about the strength of the evidence that Reynolds was able to proffer misses the point—if § 2254(e) is the hurdle that petitioners must clear to satisfy § 2254(d), how would *any* petitioner who was

provided a wholly inadequate state court fact-finding process be in a position to present clear and convincing evidence to the contrary?

Reynolds is not arguing for a procedure outside of AEDPA whereby a federal court can find a state's fact-finding process to be deficient, nor is he seeking to "relitigate" his claim, as Alabama contends. Rather, Reynolds is arguing that the combination of §§ 2254(d)(2) and (e)(1) means that there was essentially no federal review at all. Far from receiving a "windfall," BIO 25, Reynolds alleges a constitutional violation—which has never been properly reviewed by any court—that puts his death sentence into question. But because of how the Eleventh Circuit applies these two provisions, Reynolds has almost no way to meaningfully challenge the violation itself or the lower courts' review. Reynolds is not asking for a chance to relitigate; instead, he is asking for an opportunity to litigate the claim fully and fairly for the first time.

Alabama's argument that the issue presented is immaterial, either to Reynolds or more generally, is belied by the fact that this split is widely acknowledged and longstanding. Numerous petitions have been filed on this precise question, including as recently as last year. *See, e.g., Stinski v. Warden*, No. 24-255 (U.S. 2024). And, this Court previously determined that this issue was worthy of review but decided the petition on other grounds. *Wood v. Allen*, 558 U.S. 290, 299 & n.1 (2010). The necessity of this Court's review, however, has not lessened with time. As the Eleventh Circuit recently stated, "this issue is of significant complexity, as evidenced by the literature discussing the caselaw and the different interpretive approaches that exist." *Pye*, 50 F.4th at 1057 (Jordan, J., concurring). It is ripe for review now.

Third, Alabama also claims that the tension between §§ 2254(d)(2) and (e)(1) is immaterial because a petitioner who can satisfy § 2254(d)(2) will also satisfy § 2254(e)(1). BOI 22. That is exactly Reynolds's point—if one has strong enough evidence to satisfy § 2254(e)(1), then he will likely also satisfy § 2254(d)(2). But using § 2254(e)(2) as the threshold inquiry means that certain petitioners, like Reynolds, who were not permitted to develop the state court record, will not be able to surmount § 2254(e)(1), which will then effectively squash § 2254(d)(2) claims.

Finally, although Alabama tries to portray the split as within the Ninth Circuit rather than between the circuits, the case law and commentary instead emphasizes the disparate treatment. Some circuits merge the two provisions into a single heightened standard, like the Eleventh. *See, e.g.*, *Field v. Hallett*, 37 F.4th 8, 16-17 (1st Cir. 2022); *Elmore v. Ozmint*, 661 F.3d 783, 850 (4th Cir. 2011); *Neal v. Vannoy*, 78 F.4th 775, 783 (5th Cir. 2023). But in the Ninth, they do not. *See, e.g.*, *Kipp v. Davis*, 971 F.3d 939, 953 & nn.12–13 (9th Cir. 2020). That is the very definition of a Circuit split, and it is a longstanding and pervasive one on which lower courts are requesting this Court's intervention. *See, e.g.*, *Teti v. Bender*, 507 F.3d 50, 58 (1st Cir. 2007) ("[T]he relationship between the standards enunciated in § 2254(d)(2) and § 2254(e)(1) remains unclear."); *Green v. Sec'y, Dep't of Corr.*, 28 F.4th 1089, 1128 n.85 (11th Cir. 2022) (similar); *Lambert v. Blackwell*, 387 F.3d 210, 235 (3d Cir. 2004) (similar).

III. CERTIORARI SHOULD NOT BE DENIED BECAUSE THE OPINION BELOW WAS UNPUBLISHED

Alabama contends that the decision below makes a poor vehicle because it was unpublished. BOI 9. But whether a circuit court opts to publish its decision does not determine whether this Court grants certiorari. *See, e.g. Riley v. Garland*, No. 22-1609, 2024 WL 1826979 (4th Cir. Apr. 26, 2024) (unpublished), *cert. granted*, 145 S. Ct. 435 (2024); *R.J. Reynolds Vapor Co. v. Food & Drug Admin.*, No. 23-60037, 2024 WL 1945307 (5th Cir. Feb. 2, 2024) (unpublished), *cert. granted*, 145 S. Ct. 116 (2024). In any event, the Eleventh Circuit extensively cited to and relied on *Pye*, a published *en banc* decision. *Pye*, 50 F.4th at 1034–35. Review is warranted even under Alabama's purported "publication" standard.

CONCLUSION

Reynolds's petition for a writ of certiorari should be granted.

Respectfully submitted,

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