OCTOBER TERM, 2024

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

RICHARD ROLAND LAIRD,
Petitioner,

v.

SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS;
SUPERINTENDENT, S.C.I. SOMERSET,
Respondents.

On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit

PETITION FOR WRIT OF CERTIORARI

— CAPITAL CASE —

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CAPITAL CASE

QUESTION PRESENTED

The Antiterrorism and Effective Death Penalty Act prohibits federal habeas corpus relief on any claim that was adjudicated on the merits in state court, unless that adjudication contradicted or unreasonably applied clearly established federal law or unreasonably determined the facts. *See* 28 U.S.C. § 2254(d).

The question presented is: When the last state court to review a petitioner's claim issues a reasoned merits decision—but only on a single component of a multiple-component claim, such as the performance or prejudice prong of a claim under *Strickland v. Washington*, 466 U.S. 668 (1984)—does AEDPA require that a federal habeas court defer to a lower state court's earlier ruling on the other component as the Third and Fifth Circuits have held, or should the federal court conduct de novo review on that component as the Seventh, Ninth, and Eleventh Circuits have held?

PARTIES TO THE PROCEEDINGS

Petitioner Richard Laird was the appellant in the court below and is an indigent prisoner within the Pennsylvania Department of Corrections. Respondents Secretary, Pennsylvania Department of Corrections, and Superintendent, S.C.I. Somerset, maintain custody of Petitioner.

No party is a corporation.

RELATED PROCEEDINGS

United States Court of Appeals for the Third Circuit:

Laird v. Sec'y Pa. Dep't of Corr., No. 17-9000 (habeas corpus appeal after retrial)

Laird v. Horn, No. 01-9012 (Commonwealth's appeal of grant of habeas corpus)

United States District Court for the Eastern District of Pennsylvania:

Laird v. Wetzel, Civ. Action No. 11-1916 (habeas proceeding after retrial)

Laird v. Horn, Civ. A. No. 99-2311 (initial habeas corpus proceeding)

Pennsylvania Supreme Court:

Commonwealth v. Laird, No. 683 CAP (postconviction appeal after retrial)

Commonwealth v. Laird, No. 527 CAP (direct appeal after retrial)

Commonwealth v. Laird, No. 194 CAP (initial postconviction appeal)

Commonwealth v. Chester, Nos. 102 E.D. Appeal 1989, 103
(initial direct appeal)

Court of Common Pleas of Bucks County, Pennsylvania:

Commonwealth v. Laird, No. CR007461988 (postconviction proceeding after retrial)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes

State Cases

State Statutes

Other

PETITION FOR WRIT OF CERTIORARI

Petitioner Richard Laird respectfully requests that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Third Circuit, affirming the district court's judgment denying Laird's petition for writ of habeas corpus.

OPINIONS BELOW

The opinion of the court of appeals affirming the denial of habeas corpus relief is reported at 129 F.4th 227 (3d Cir. 2025) and appears in the Appendix at A1. The memorandum of the district court denying the petition for writ of habeas corpus is unreported and appears in the Appendix at A38. The order of the district court granting in part and denying in part Petitioner's motion to alter or amend the judgment is unreported and appears in the Appendix at A143. The district court's memorandum accompanying the order on the motion to alter or amend the judgment is unpublished and appears in the Appendix at A146. The opinion of the Pennsylvania Supreme Court affirming the denial of postconviction relief is reported at 119 A.3d 972 (Pa. 2015) and appears in the Appendix at A175. The opinion of the Bucks County Court of Common Pleas denying postconviction relief is unreported and appears in the Appendix at A216.

JURISDICTION

The court of appeals issued its opinion affirming the district court's judgment on February 26, 2025. A2. The court of appeals denied Laird's petition for rehearing on April 8, 2025. A251. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). The district court had jurisdiction under 28 U.S.C. §§ 1331 and 2254.

STATUTE INVOLVED

Title 28 U.S.C. § 2254 provides, in pertinent part:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> > (2) 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.

INTRODUCTION

Petitioner Richard Laird and an accomplice were sentenced to death for murdering Anthony Milano in Bucks County, Pennsylvania. A2–3. The prosecution theorized, and the evidence showed, that Laird singled out Milano because of the victim's perceived sexual orientation. NT 2/5/07 at 28. Although the jury declined to credit the proposed aggravating circumstance that the murder involved torture, *see* Trial Ex. CP-4 (Third Circuit App. at 235–37), the crime was unusually violent. Milano was repeatedly slashed in the neck with a box-cutter knife or similar instrument, and the wounds were so deep that Milano was nearly decapitated. NT 2/7/07 at 90, 93–94.

In both state and federal court, Laird has asserted that trial counsel performed ineffectively in developing mitigating evidence. Although the jury heard evidence that Laird had been sexually abused as a child, it did not know that Laird was routinely raped by his father, both orally and anally, from the age of five until the age of eleven. NT 5/24/12 at 76–77, 112–13. Neither did the jury hear expert evidence

about the effects of that abuse. On later postconviction review, Psychologist Dr. David Lisak stated that Laird suffers flashbacks to the "tactile experiences" of sexual assault, including "involuntary gag reflexes" mirroring "the tactile experience of his father's ejaculate in his throat." *Id.* at 199–200; A262.[1] Male-on-male sexual abuse is "utterly humiliating" and violates "the core norms of masculinity." A259. Laird developed a "persona of hyper-masculinity to counter what he really felt about himself." NT 5/24/12 at 115; A267. Laird harbored "intense negative feelings about male-to-male touch," and he reportedly "hated homosexuals." A271. Dr. Lisak explained that Laird's crime may have reflected that Laird "in an extremely intoxicated state" acted from a "long, pent-up rage he was capable of feeling towards any male whom he perceived as wanting to touch him against his will." A272; NT 5/24/12 at 207–08.

The Third Circuit in this case affirmed the district court's denial of habeas relief. A1–37. Departing from the parties' briefs and the district court's reasoning, the Third Circuit declined to review the Pennsylvania Supreme Court's ruling that Laird was not prejudiced by counsel's performance. A28, 36–37. Observing that the Pennsylvania Supreme Court had not reached the question of whether trial counsel

[1] Dr. Lisak's report is among the "evidence *presented* in the State court proceeding." 28 U.S.C. § 2254(d)(2) (emphasis added). Although the postconviction court declined to admit the report, Laird presented the document and moved for its admission as substantive evidence as Pennsylvania law allows. A253–73; NT 5/24/12 at 5–6, 199, 218–19; *see also Commonwealth v. Flor*, 259 A.3d 891, 912 (Pa. 2021); *Commonwealth v. Gibson*, 19 A.3d 512, 516 (Pa. 2011).

performed deficiently, the Third Circuit reviewed the trial-level postconviction court's ruling that found no such deficiency. A28–36. The Third Circuit concluded that the lower court's ruling reasonably applied federal law under AEDPA. A29–36. It therefore affirmed the district court's judgment, even while criticizing as "erroneous" the district court's de novo review of counsel's performance—such de novo review itself following from the Pennsylvania Supreme Court's silence on that question. A28–37.

The procedural history of Laird's claim calls to mind this Court's opinion in *Wilson v. Sellers*, 584 U.S. 122 (2018), which described the "straightforward inquiry" that guides federal habeas review when "the last state court to decide a prisoner's federal claim explains its decision on the merits in a reasoned opinion." *Id.* at 125. In that instance, "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id.*

A related question that this case presents continues to divide the federal courts as it did before *Wilson*: What review is mandated when the highest state court resolved some, but not all, of the elements of a claim? Should the federal habeas court give deference only to the decision of the state's highest court, or must it also defer to lower state courts that have addressed elements of the claim that the highest court left undecided? *Wilson* does not answer that question, but it points in a particular direction: a federal court should review the state courts' last reasoned merits decision on a claim, regardless of whether that decision resolves all elements of the claim. That approach makes sense; it advances AEDPA's interest in comity and efficiency

by reviewing the opinion of a state's highest court as that state's authoritative decision.

The Third Circuit below, unlike other courts of appeals, did not follow *Wilson*'s sign-pointing. Instead, it deferred to the lower postconviction court's determination that counsel performed effectively. The Third Circuit's opinion mirrors the approach taken by the Fifth Circuit, but it conflicts with decisions from the Seventh, Ninth, and Eleventh Circuits, all three of which defer only to the last explained merits ruling from a state court. The Court should grant certiorari to resolve the conflict in favor of the majority position and to simplify habeas review for courts and litigants alike.

STATEMENT OF THE CASE

A. Procedural History

Richard Laird and Frank Chester were tried together in the Bucks County Court of Common Pleas for murder and related charges arising from the 1987 death of Anthony Milano. In 1998, both men were convicted on all charges, including first, second, and third degree murder; both were sentenced to death. Laird's convictions and sentences were affirmed on direct appeal. *See Commonwealth v. Chester*, 587 A.2d 1367 (Pa. 1991), *cert. denied sub nom. Laird v. Pennsylvania*, 502 U.S. 849 (1991). After holding an evidentiary hearing in 1997, the trial court denied relief to Laird under Pennsylvania's Post Conviction Relief Act ("PCRA"). *See* 42 Pa. C.S. §§ 9541–9546. The Pennsylvania Supreme Court affirmed. *See Commonwealth v. Laird*, 726 A.2d 346 (Pa. 1999). Laird then obtained federal habeas relief from the United States District Court for the Eastern District of Pennsylvania, which ruled that the jury's instruction on first degree murder violated due process. *See Laird v.*

Horn, 159 F. Supp. 2d 58, 81–85 (E.D. Pa. 2001). The Commonwealth's appeal was unsuccessful. *See Laird v. Horn*, 414 F.3d 419 (3d Cir. 2005), *cert. denied sub nom. Beard v. Laird*, 546 U.S. 1146 (2006).

With his lesser homicide convictions unaffected by the grant of habeas relief, Laird was separately retried for first degree murder in 2007. A Bucks County jury convicted him of the offense and sentenced him to death, and the Pennsylvania Supreme Court affirmed on direct appeal. *See Commonwealth v. Laird*, 988 A.2d 618 (Pa.), *cert. denied*, 562 U.S. 1069 (2010). The Court of Common Pleas conducted an evidentiary hearing under the PCRA and denied relief in 2014. As relevant to this petition, the PCRA court ruled that retrial counsel did not perform ineffectively, and that Laird was not prejudiced by counsel's failure to develop more particularized evidence describing Laird's childhood sexual abuse and its effects. A240–41. The Pennsylvania Supreme Court affirmed. *Commonwealth v. Laird*, 119 A.3d 972 (Pa. 2015); A175. The court questioned the PCRA court's ruling that expert evidence on the issue "would have been insignificant," but it ruled that Laird was not prejudiced. 119 A.3d at 997–99 (A200–02). The Pennsylvania Supreme Court did not decide whether retrial counsel performed ineffectively with respect to this issue. *Id.*

The federal district court denied Laird's petition for writ of habeas corpus, and it later denied Laird's Rule 59(e) motion in relevant part. A38–174. After granting a certificate of appealability on the ineffective-assistance claim at issue here, the court of appeals affirmed the district court's judgment on February 26, 2025. A1–37. The Third Circuit denied rehearing on April 8, 2025 (A251), and this petition follows.

B. The 2007 Retrial Evidence

This petition relates to Laird's 2007 retrial at which he was re-convicted of first degree murder and re-sentenced to death—and during which the defense presented little of the sexual-abuse evidence described above. The prosecution's evidence showed that on the night of the crime, Laird and Chester encountered the decedent (Anthony Milano) at the Edgely Inn, a bar frequented by Chester in Bristol, Pennsylvania. NT 2/5/07 at 190–92, 200–03. That evening, Laird and Chester started drinking alcohol in the early evening hours. NT 2/7/07 at 41–56. After they consumed over a case of Budweiser at Laird's apartment, Laird and Chester arrived at the Edgely Inn along with Laird's girlfriend and her nine-year-old son, as well as two friends of Chester. NT 2/7/07 at 41–56; NT 2/6/07 at 23–27, 64–69.

At the Edgely Inn, Laird and Chester drank four sixty-four-ounce pitchers of beer and several shots of liquor. NT 2/5/07 at 210–11; A66–68. Laird called another patron a "faggot" and a "pussy" and threatened to "stick a pool cue up his ass." NT 2/6/07 at 29. Milano had arrived and sat at the bar shortly after midnight. NT 2/5/07 at 195. Laird shouted across the bar and ordered Milano to buy him a drink; Laird, Milano, and Chester then drank beers and shots of liquor. *Id.* at 202–03, 210–11. A toxicologist estimated that Laird's blood-alcohol level reached 0.45 that evening. A9, 43, 71, 74–75. At one point Laird or Chester said, "I don't like fucking faggots." NT 2/5/07 at 208–09. Laird commented, "I could beat this pussy[;] . . . I could beat this faggot." NT 2/6/07 at 29. At another point Laird commented, "I'm just sick and tired of these people trying to infiltrate us." NT 2/5/07 at 216. He and Chester also slow-

danced with one another to a song on the jukebox while laughing. *Id.* at 211–13, 258. Laird insisted that Milano buy another round of shots, which Milano did despite indicating that he did not want another. *Id.* at 208–09.

Laird asked Milano for a ride home after the bar closed. *Id.* at 211, 217–18. Chester bought a six-pack of beer, and the three were seen leaving the Edgely Inn between 2:00 and 2:30 AM. *Id.* at 115–17, 217, 251. Laird, Chester, and Milano stopped at a nearby 7-Eleven store and then ended up in an area of Bristol Township (Venice Ashby) known for the sale of drugs. NT 2/8/07 at 154–55; NT 2/5/07 at 163; NT 2/6/07 at 153; NT 5/18/88 at 475–78.

Milano did not return home the following morning, and his parents reported him missing. NT 2/5/07 at 50–52, 80–81. Police located Milano's burned car on the side of the road in Venice Ashby and later found his body. *Id.* at 72–74, 83–98. The medical examiner described numerous deep slash wounds to the neck and throat, nearly severing Milano's head from his body. NT 2/7/07 at 93–94.

Laird and Chester were arrested and charged with murder soon after the discovery of Milano's body. The Commonwealth's theory was that Laird and Chester murdered Milano because he was gay. NT 2/5/07 at 28 ("They didn't like him because he was different. They didn't like him because maybe he dressed differently from them, acted differently. They didn't like him because they thought he was a homosexual."). Defense counsel acknowledged Laird's involvement in the murder, but contested his conviction for first degree murder on grounds that Laird lacked the specific intent for that crime due to the combined effects of his pre-existing brain

damage and severe intoxication on the night of the offense. *Id.* at 40–43, 174–75, 240–47, 252–59, 268–70; NT 2/6/07 at 43–44, 99–105, 115–17, 163–65; 2/7/07 at 41–56; NT 2/8/07 at 27–32, 81–90, 127–45. The jury found Laird guilty of first degree murder. NT 2/9/07 at 93–95.

The Commonwealth alleged two aggravating factors at the penalty phase: murder in the course of committing a felony (kidnapping) under 42 Pa. C.S. § 9711(d)(6), and murder by means of torture under 42 Pa. C.S. § 9711(d)(8). NT 2/12/07 at 13–19. In light of Laird's still-intact kidnapping conviction from his initial trial, the parties stipulated to the (d)(6) aggravating circumstance. *Id.* at 24, 29. The stipulation stated that Laird "did remove Anthony Milano a substantial distance under the circumstances from the place in which he was found . . . [,] the Edgely Inn, with the intent to inflict bodily injury on him." *Id.* at 29.

In mitigation, trial counsel presented an abbreviated version of the evidence offered by their predecessors ten years earlier, on state postconviction review following Laird's initial conviction and death sentence. *See Laird*, 159 F. Supp. 2d at 109–17 (detailing previous postconviction evidence). Retrial counsel conducted no independent investigation for the second trial. Among other shortcuts, counsel spent little time consulting with the mental-health experts who had testified on postconviction review in 1997; counsel spoke with them a few times on the phone and met with them just before their testimony. NT 2/8/07, 72, 100–01, 117, 123; NT 5/23/12 at 20–21, 28–30, 153–56.

Counsel failed to develop a professional relationship with their client, limiting

their meetings to pre-trial interviews that took place when Laird was brought down for court appearances in Bucks County (north of Philadelphia) in a non-private visiting area; counsel refused to travel in order to visit Laird at the prison in Greene County (south of Pittsburgh), having accepted the court's appointment to the case on the condition that such travel would not be required. NT 5/23/12 at 71–76, 125–27; NT 10/30/06 at 144–49; NT 12/13/06 at 32–36. All the while, retrial counsel knew that they were getting incomplete information about sexual abuse: Laird "wouldn't talk to [counsel] about it," and Laird's brother did not want to testify and offered only "vague" information. NT 5/23/12 at 156–59, 170.

Counsel also recognized that victims of sexual abuse are often reluctant to disclose the abuse, as they argued at closing: "Victims of abuse want to cover it up. They don't want to let it out. They're ashamed of themselves." NT 2/13/07 at 149. Prevailing norms of practice recognized as much: "Topics like childhood sexual abuse should . . . not be broached in an initial interview [because] [o]btaining such information typically requires overcoming considerable barriers, such as shame, denial, and repression, as well as other mental or emotional impairments from which the client may suffer." Am. Bar Ass'n, *Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* § 10.7 Commentary (2003). Counsel complained to the trial judge that they could not meet confidentially with Laird in the Bucks County jail, where Laird would be sent for court appearances. NT 10/30/06 at 143 ("Two or three people guard him while I'm talking to him out in the hallway.") But counsel never remedied that problem by driving to Laird's prison in

western Pennsylvania for a professional and private visit.

During the penalty phase, counsel called psychologist Dr. Henry Dee and psychiatrist Dr. Robert Fox—the same experts whose testimony was rejected by the jury during the guilt phase—to testify about Laird's mitigating life history and mental impairments. NT 5/23/12 at 192–94. Counsel did not collaborate with these experts to develop testimony unique to sentencing. *Id.* at 153–56. Instead, counsel met with the experts on the eve and morning of trial to prepare them to testify in support of a guilt-phase defense of diminished capacity. *Id.* at 18–22, 154–56. Counsel admitted that they spent almost no time with Drs. Dee and Fox. See NT 2/8/07 at 100–01, 123; NT 5/23/12 at 20, 28–30, 153–55, 168. Not having seen Laird in over a decade, Dr. Fox spent one hour with him the day before his testimony, and Dr. Dee saw him for thirty minutes on the day he testified. NT 2/8/07 at 100–01, 123.

Counsel were aware that Laird had likely been sexually abused by his father, but they made no attempt to develop this information by retaining an expert trained in male sexual abuse to explain to the jury how such trauma manifests in the adult male—testimony that would have been critical to understanding Laird's troubling conduct. NT 5/23/12 at 156–66. And the recycled witnesses presented only limited evidence that Laird had been sexually abused in the first instance. Both Drs. Dee and Fox were aware that Laird had suffered "sexual abuse," but the trial evidence did not describe the frequency or details of that abuse. NT 2/13/07 at 16–17, 23, 27, 47, 59–63.

Dr. Dee testified that Laird's childhood was "marked by quite severe abuse of

all kinds—physical abuse, emotional abuse and sexual abuse." *Id.* at 59. Consistent with the Commonwealth's theory that the murder was an anti-gay hate crime, Dr. Dee testified on cross-examination that that Laird "hated homosexuals" and had a "long smoldering antagonism towards persons identified as homosexuals" that might explain why Laird "fastened upon Anthony Milano." *Id.* at 98, 122. The prosecution elicited these insights by refreshing Dr. Dee's recollection of a 1994 report from psychiatrist Dr. David Silverman, who had examined Laird during the initial postconviction proceeding after Laird's first trial. *Id.* at 98–99. The Commonwealth did not elicit any other evidence about Dr. Silverman, declining to complete the picture depicted by Dr. Silverstein by declining to elicit his 1994 insight that Laird's homophobia "may have been caused by the fact that at about age 9 he had been required to perform fellatio on an adult male [relative] on a few separate occasions." *Laird*, 159 F. Supp. 2d at 114 n.30 (district court ruling on first habeas petition).

Drs. Dee and Fox testified that Laird had been forced to perform fellatio on his father but without linking that fact to Laird's anti-gay animus. NT 2/13/07 at 17, 59–61. Laird's younger brother Mark described an early childhood memory of seeing his father and Laird naked together in the bedroom. NT 2/12/07 at 78, 97–98. Mark described this experience as "the norm" of his relationship with his parents and brother, observing that "eventually, the beatings and shit got so bad that my mother got the balls to leave him." *Id.* at 90–91.

The Commonwealth argued that child abuse did not explain Laird's crime or make it any "less terrible." NT 2/13/07 at 124–25. "I submit to you that a lot of people

in this world go through difficult things as young children," the prosecutor observed. *Id.* at 120. "They go through difficult things and those people don't do the type of thing that Mr. Laird did to Anthony Milano." *Id.* The jury returned a verdict of death, finding that the single aggravating circumstance (kidnapping) found by all jurors outweighed the mitigating circumstances found by one or more jurors: physical abuse, sexual abuse, emotional abuse, witnessing the abuse of others, the "psychological consequences of the abuse," substance abuse, alcohol abuse, and Laird's favorable conduct in prison. NT 2/13/07 at 194–95. No jurors found that Laird acted under an "extreme mental or emotional disturbance" or that he was "substantially impaired" in his capacity to appreciate the criminality of his conduct or to conform with the law. *Id.* at 194; *see also* Trial Ex. CP-4 (Third Circuit App. at 235–37). The jury declined to find the proposed aggravating circumstance that the murder involved torture. Trial Ex. CP-4 (Third Circuit App. at 235–37).

C. The Postconviction Evidence

The postconviction evidence detailed the sexual abuse suffered by Laird, as well as the effects of that abuse. From the age of five until the age of eleven, Laird was routinely and repeatedly raped orally and anally by his own father. NT 5/24/12 at 76–77, 112–13; A261. Laird's father would often arrive at home "staggering drunk," which is when the abuse occurred. *Id.* at 76; A261. "The sick fuck would rub his dick between my cheeks," Laird reported. A260; NT 5/24/12 at 93. "Every time he came home drunk," he explained, "I knew I would either have to suck his dick or get beaten." A261.

Psychologist Dr. David Lisak stated that Laird suffers flashbacks to the "tactile experiences" of sexual assault. NT 5/24/12 at 199–200; A262. To the present day, Laird experiences "involuntary gag reflexes," which Dr. Lisak described as "literally the tactile experience of his father's ejaculate in his throat." NT 5/24/12 at 199; A262. Laird also suffers from "sudden sensory memories of the feel of his father's naked body, or a sudden pang of rectal pain." A262. The experience of male-on-male sexual abuse is "utterly humiliating for most men," and it brings "helplessness, powerlessness and terror that are the essence of the trauma" and that "violate the core norms of masculinity." A259. Dr. Lisak explained that "the psychological harm is enormously magnified" in children who experience trauma at the hands of those who are supposed to protect them. NT 5/24/12 at 121–22.

Laird felt "worthless" and "intensely ashamed of himself" as a result of the sexual abuse. *Id.* at 115–16. He developed a "persona of hyper-masculinity to counter what he really felt about himself." *Id.* at 115; A267. As Dr. Lisak explained, "[i]f you're male and you feel worthless and you feel like you were weak and vulnerable, . . . [y]ou create this mask of essentially pseudo-invulnerability." NT 5/24/12 at 115; A267. "As I got older, I started to feel I could be the baddest motherfucker," Laird said during the evaluation. A267. Laird harbored "intense negative feelings about male-to-male touch," and he reportedly "hated homosexuals" as Dr. Silverman had observed eighteen years earlier. A271. The crime itself may be attributed to a "long, pent-up rage [Laird] was capable of feeling towards any male whom he perceived as wanting to touch him against his will." A272; NT 5/24/12 at 207–08.

D. The Rulings Below

The district court denied Laird's ineffective-assistance claim. A105–18. Consistent with the parties' briefing, the district court identified the Pennsylvania Supreme Court's opinion as the relevant merits ruling under AEDPA. A116–17; Dist. Dkt. #39 (Pet'r Mem. of Law) at 48–50; Dist. Dkt. #42 (Answer) at 42–52; Dist. Dkt. #51 (Reply) at 2–9. The state supreme court, in turn, reasoned that Laird was not prejudiced by the claimed error, because the evidence relating to Dr. Lisak would have been "largely cumulative" of testimony from Mark Laird as well as Drs. Dee and Fox that Laird had suffered "sexual abuse" as a child. A201. The district court accepted that summary as a "fair characterization of Dr. Lisak's testimony in light of the record." A116. Even though "some of Dr. Lisak's testimony at the 2012 PCRA hearing was not cumulative of the testimony presented at the 2007 trial," the district court upheld as "reasonable" the Pennsylvania Supreme Court's conclusion that Laird suffered no prejudice "because at least one juror found a mitigating factor" that Laird "was, in fact, sexually abused." A27, 116–17.

Next the district court reviewed trial counsel's performance de novo, observing that the Pennsylvania Supreme Court had not reached the issue. A118 n. 15. The district court observed that counsel relied on Drs. Dee and Fox to describe Laird's sexual abuse, that Drs. Dee and Fox relied on the limited information provided by Laird and his brother, and that attorneys are entitled to rely on expert mental-health opinions "as sufficiently complete explorations of all potential areas of mitigation that those experts are qualified to diagnose." *Id.* The court therefore concluded that trial

counsel "did not act unreasonably." *Id.*

As in the district court, the parties on appeal applied AEDPA solely to the Pennsylvania Supreme Court's opinion, and without addressing the lower-court ruling that preceded it. *See* Appellant's Am. Br. (Aug. 28, 2020) at 18–19, 40–48; Appellee's Br. (Sept. 21, 2020) at 44–52; Reply Br. (Nov. 11, 2020) at 1. The parties disputed, then, whether the Pennsylvania Supreme Court was reasonable in finding a lack of prejudice, as well as whether the district court was correct in its de novo ruling upholding trial counsel's performance. *See* Appellant's Am. Br. at 29–32, 40–48; Appellee's Br. at 32–52; Reply Br. at 1–14.

The Third Circuit charted its own course, adhering to its practice of "review[ing] different state courts' analyses of *Strickland*'s prongs as the 'last reasoned' decision[]" on each prong. A29. Because the Pennsylvania Supreme Court had resolved only the question of *Strickland* prejudice, the Third Circuit identified the lower PCRA court's ruling as the state courts' "last reasoned decision" on the question of counsel's performance. A28–29. The court justified acting sua sponte, reasoning that "a State's lawyers cannot waive or forfeit § 2254(d)'s standard." A29 (quotation omitted).

The Third Circuit upheld the PCRA's court's performance ruling as a "reasonable" and "faithful" application of *Strickland* and other precedents. A29–36. In the Third Circuit's view, the PCRA court reasonably determined that "[t]rial counsel were not ineffective for failing to present additional details that would have been insignificant considering the evidence as a whole." A31–32. The court below

declined to decide the question of prejudice despite the adverse prejudice ruling from the Pennsylvania Supreme Court. A29, A36–37. Petitioner moved for rehearing, which the Third Circuit denied. A251.

REASONS FOR GRANTING THE PETITION

The Third Circuit's decision deepens a circuit split on how to apply AEDPA when different layers of state courts have addressed different aspects of a multi-factor federal claim. This split will continue to grow if not curtailed by this Court. Habeas petitioners, after all, routinely seek relief on claims requiring the prisoner to satisfy multiple elements. An ineffective-assistance claim requires the defendant to show that counsel performed deficiently and that the deficiency prejudiced the defense. *See Strickland*, 466 U.S. at 688, 694. A claim under *Brady v. Maryland*, 373 U.S. 83 (1963), requires the defendant to show that the prosecution suppressed evidence, that the evidence was exculpatory, and that the suppressed evidence was material to the defendant's conviction or sentence. *See Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). A *Batson* claim requires the defendant to make a prima facie showing that the prosecution has excluded potential jurors on the basis of race, after which the prosecution may overcome the presumption by articulating a race-neutral explanation for its strikes, which then requires the defendant to prove racial discrimination under all the circumstances. *See Batson v. Kentucky*, 476 U.S. 79, 93–98 (1986).

State courts frequently terminate their analysis after concluding that one element or another lacks the requisite proof—an efficient and desirable practice that this Court has encouraged. *See Strickland*, 466 U.S. at 697 ("no reason" for a court

"to address both components of the inquiry if the defendant makes an insufficient showing on one"). It is inevitable, then, that separate state courts may resolve different requirements or prongs of the same defendant's claim. This Court should instruct the lower courts how to apply AEDPA in such cases.

I. THE DECISION BELOW WORSENS A CIRCUIT SPLIT ON A RECURRING ISSUE CONCERNING FEDERAL HABEAS REVIEW OF STATE-COURT DECISIONS UNDER AEDPA.

Certiorari review is crucial when courts of appeals disagree about an important federal issue. *See* Sup. Ct. R. 10(a). Such is the case here.

A. The Seventh, Eleventh, and Ninth Circuits

The opinion below directly conflicts with the law of multiple circuits. The Seventh Circuit applies § 2254(d) when the highest state-court merits ruling resolves a single component of a defendant's claim, but it reviews any remaining component de novo even when a lower state court has decided it. *See Dunn v. Jess,* 981 F.3d 582, 591 (7th Cir. 2020); *Thomas v. Clements*, 789 F.3d 760, 766–67 (7th Cir. 2015). In *Dunn*, for example, the state trial court reached *Strickland* prejudice but not performance, and the state appellate court reached performance but not prejudice. The Seventh Circuit applied § 2254(d) only to the performance prong because "AEDPA deference only applies to issues that the last reasoned state court decision reached on the merits." 981 F.3d at 591 (quoting *Lentz v. Kennedy*, 967 F.3d 675, 688 (7th Cir. 2020) (itself quoting *Wilson*, 584 U.S. at 125)).

The Eleventh Circuit follows the same approach. *See Knight v. Fla. Dep't of Corr.*, 958 F.3d 1035, 1045–46, 1046 n.3 (11th Cir. 2020). Similar to what happened in *Dunn*, the Florida Supreme Court upheld trial counsel's performance without

reaching the issue of prejudice. The trial court had decided the prejudice prong adversely to Knight, but the Eleventh Circuit decided it de novo. *Id.* at 1044–46. The Eleventh Circuit explained that it had no occasion to "look through" the Florida Supreme Court's decision and defer to the state trial court's prejudice determination. *Id.* at 1045–46, 1046 n.3 (quoting *Wilson*, 584 U.S. at 125).

The Ninth Circuit likewise applies AEDPA deference claim-by-claim rather than issue-by-issue. "[E]ven when one state court adhered to federal law," the court remarked, "if the last court to review the claim erred, the federal court should review the last decision in isolation and not in combination with decisions by other state courts." *Barker v. Fleming*, 423 F.3d 1085, 1093 (9th Cir. 2005). *Barker* involved a *Brady* claim in which the last state-court decision was "contrary to" the rule of *Kyles v. Whitley*, 514 U.S. 419 (1995). *Kyles* requires a court to measure materiality by the cumulative effect of all suppressed evidence, which the Washington Supreme Court failed to do. *See Kyles*, 514 U.S. at 436; *Barker*, 423 F.3d at 1094. Having concluded that the highest state-court merits ruling was "contrary to" *Kyles* under § 2254(d)(1), the Ninth Circuit refused to consider the Washington Court of Appeals' decision on the same claim. *Barker*, 423 F.3d at 1093–94; *see also Castellanos v. Small*, 766 F.3d 1137, 1145–50 (9th Cir. 2014) (similar approach to *Batson* claim). The Ninth Circuit went on to deny relief to Barker under a de novo review of his *Brady* claim. *See Barker*, 423 F.3d at 1095–1101.

B. The Third and Fifth Circuits

Despite a reasoned merits ruling from the Pennsylvania Supreme Court, the

Third Circuit in Laird's case sua sponte applied § 2254(d) to the PCRA court's ruling. A28–36. In support, the court cited its earlier decisions in *Saranchak v. Sec'y Pa. Dep't of Corr.*, 802 F.3d 579, 597 (3d Cir. 2015), and *Bond v. Beard*, 539 F.3d 256, 289 (3d Cir. 2008)); A29. In both of those cases, the court "reviewed the PCRA courts' prejudice-prong analyses as the last reasoned decisions because the Pennsylvania Supreme Court only addressed the performance prong." A29. The Third Circuit discerned "no compelling reason" to distinguish those precedents from Laird's case, in which the Commonwealth's highest court reached only the prejudice prong. *Id.*

The Fifth Circuit ruled similarly in *Loden v. McCarty*, 778 F.3d 484 (5th Cir. 2015). There, the Mississippi Supreme Court declined to decide the prejudice component of the petitioner's ineffective-assistance claim. Because the trial court had ruled on both components, the Fifth Circuit applied § 2254(d) to the inferior ruling on the prejudice prong: "Where a lower state court ruled on an element that a higher state court did not, the lower state court's decision is entitled to AEDPA deference." *Id.* at 494–95. That approach directly contradicts the law of the Seventh, Ninth, and Eleventh Circuits as described above.

II. THE THIRD CIRCUIT'S APPROACH CONFLICTS WITH THIS COURT'S PRECEDENTS AND AEDPA'S PLAIN LANGUAGE.

The ruling below is in tension with this Court's precedents. The Court in *Wilson* explained the "straightforward inquiry" that governs cases in which the last state-court decision is a reasoned merits ruling. 584 U.S. at 125. The federal court "simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id.*

The question at issue in *Wilson* was whether a federal habeas court should "look through" a state appellate court's summary merits ruling and apply AEDPA deference to a lower court's reasoned merits ruling, rather than applying the "no reasonable basis" standard of *Harrington v. Richter*, 562 U.S. 86 (2011), to the higher ruling. The Court answered that question affirmatively, prescribing the same method that ought to govern Laird's case: the federal habeas court must "train its attention on the particular reasons—both legal and factual—why state courts rejected a state prisoner's federal claims" and must "give appropriate deference to *that decision*." *Id.* at 125 (emphasis added). The dissenters in *Wilson* agreed: "[A] federal habeas court must focus its review on the final state court decision on the merits, not any preceding decision by an inferior state court." *Id.* at 135–36 (Gorsuch, J., dissenting). Habeas review applies "to a single state court decision, not to some amalgamation of multiple state court decisions." *Barker*, 423 F.3d at 1093 (citing *Williams v. Taylor*, 529 U.S. 362, 395, 397–99, 405 (2000)).

Richter itself explained that "§ 2254(d) applies when a 'claim,' not a component of one, has been adjudicated." 562 U.S. 98. The Court has elsewhere defined a habeas "claim" as "an asserted federal basis for relief from a state court's judgment of conviction." *Gonzalez v. Crosby*, 545 U.S. 524, 530 (2005). A state court necessarily rejects a "claim" when it concludes that the defendant has failed to prove a required element—whether or not some lower court found additional deficiencies. AEDPA deference therefore extends "straightforward[ly]" to the state courts' last reasoned decision addressing the merits of the petitioner's "claim," *Wilson*, 584 U.S. at 125, and

not to multiple decisions resolving different elements of a single claim.

AEDPA's plain language further undermines the Third and Fifth Circuits' approach. The statute forbids habeas relief on "any claim that was adjudicated on the merits in State court proceedings unless *the adjudication* of the claim . . . resulted in *a decision* that was" either (1) contrary to or an unreasonable application of this Court's precedents or (2) based on an unreasonable determination of the facts. 28 U.S.C. § 2254(d) (emphases added). As explained by the Seventh and Ninth Circuits, the statute speaks of "the adjudication" rather than multiple ones: "Had Congress intended us to give deference to an amalgamation of adjudications, it could have used different language." *Thomas*, 789 F.3d at 767. Likewise, "[t]he reference to a *single decision* underscores that Congress meant federal courts to review only one final state court decision." *Barker*, 423 F.3d at 1093 (emphasis added); *see also Thomas*, 789 F.3d at 767 ("[T]he statute refers to a single decision, rather than multiple decisions.").

The ruling below illustrates the unsoundness of applying AEDPA deference to multiple state-court decisions on the same claim. The Third Circuit latched on to the PCRA court's ruling as the state courts' "last reasoned decision" on the issue of trial counsel's performance. A28–29. The Third Circuit thus upheld as "reasonable" the lower court's rationale that "[t]rial counsel were not ineffective for failing to present additional details that would have been insignificant considering the evidence as a whole." A21, 31, 33, 201, 240. That approach to AEDPA is particularly inapt in Laird's case. The Third Circuit acknowledged that the Pennsylvania Supreme Court "did not agree" that Dr. Lisak's opinions would have been "insignificant" as compared to the

trial mitigation. A21 (ruling below); *see also* A201 (Pennsylvania Supreme Court observing that "we do not necessarily endorse the concept that Dr. Lisak's testimony would have been insignificant"). AEDPA does not require federal courts to defer to a lower state court's opinion that the higher court did not accept. Because the Commonwealth's highest court did not accept the key rationale employed by the PCRA court, that same rationale cannot constitute the state-court "adjudication" of Laird's claim. The higher court's rejection of the lower court's finding precludes a federal court's deference. *See*, *e.g.*, *Amado v. Gonzalez*, 758 F.3d 1119, 1132–33 (9th Cir. 2014) (refusing to defer to lower court's finding that *Brady* evidence was immaterial, because the state appellate court disagreed with that finding and rejected the claim on other grounds).

Moreover, Laird would likely prevail under AEDPA review if the Third Circuit were to address the correct question. That question is the one briefed below: whether the Pennsylvania Supreme Court, which issued the last reasoned decision on the merits of Laird's claim, unreasonably determined that the mitigating evidence from his postconviction proceedings would have been "largely cumulative" of the trial mitigation, so that Laird suffered no prejudice. That question went unanswered below. A37.

The postconviction evidence showed that Laird was repeatedly raped by his father, both orally and anally, from the age of five until the age of eleven. NT 5/24/12 at 76–77, 112–13. In addition to the fact that the trial mitigation did not capture the severity and frequency of the sexual abuse, there was no trial evidence connecting

that abuse to the murder of a victim whom Laird singled out for his perceived sexual orientation and whose community he believed was "trying to infiltrate us." NT 2/5/07 at 216. The missing evidence here was that Laird felt "worthless" and "intensively ashamed of himself" as a result of his father's sexual abuse, that he developed "a kind of hyper-masculinity to counter what he really felt about himself," and that he consequently harbored a "long smoldering antagonism toward persons identified as homosexual." NT 5/24/12 at 115–16; A271–72.

On the trial record's scant evidence of Laird's sexual abuse, by comparison, (1) the prosecutor was able to suggest that Laird was never sexually abused and that any such abuse did not make his crime any "less terrible," NT 2/13/2007 at 124, and (2) the district court described the trial mitigation as capturing only a "single incident of potential sexual abuse." A116. Yes, the Third Circuit disagreed with the latter assessment. A32. But the retrial record did not capture that Laird was "profoundly scarred" by his father's sexual abuse, let alone that the abuse bore a nexus to his crime. A270–72.

As argued to the Third Circuit, the Pennsylvania Supreme Court's decision "was based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d)(2). A state court's ruling that new mitigating evidence is "cumulative" of the trial evidence is a factual determination. *See*, *e.g.*, *Abdul-Salaam v. Sec'y Pa. Dep't of Corr.*, 895 F.3d 254, 266 (3d Cir. 2018). "'Cumulative evidence' is defined as evidence 'which goes to prove what has already been established by other evidence.'" *Smith v. Sec'y N.M. Dep't of Corr.,* 50 F.3d 801, 829 (10th Cir. 1995) (quoting *Black's Law Dictionary* 343

(5th ed. 1979)); *cf. Wong v. Belmontes*, 558 U.S. 15, 22–23 (2009) (death of defendant's ten-month-old sister, grandmother's alcoholism and drug addiction, and family's ongoing "strife" were all described to sentencing jury). For the reasons explained above, the state court's finding of "cumulative" evidence is "objectively unreasonable in light of the evidence presented in the state-court proceeding." *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003).

To the extent that a ruling of "cumulativeness" is a legal conclusion that the defendant was not prejudiced by the absence of additional mitigating evidence at trial, *see Abdul-Salaam*, 895 F.3d at 266 n.5, the state court failed in its duty to consider the totality of evidence from both the trial and the postconviction proceeding. *See Williams*, 529 U.S. at 397–98. The Pennsylvania Supreme Court's ruling therefore contradicts and unreasonably applies *Williams*, which requires a reviewing court "to evaluate the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the [postconviction] proceeding in reweighing it against the evidence in aggravation." *Id.*

The testimony at issue here would have been critical to the jury's choice of sentence: "[E]vidence about the defendant's background and character is relevant because of the belief, long held by this society, that defendants who commit criminal acts that are attributable to a disadvantaged background, or to emotional and mental problems, may be less culpable than defendants who have no such excuse." *Penry v. Lynaugh*, 492 U.S. 302, 319 (1989) (quoting *California v. Brown*, 479 U.S. 538, 545 (1987)). Mitigating evidence is necessarily more compelling when it is "causally

connected to the murder[]." *Thornell v. Jones*, 602 U.S. 154, 166–69 (2024). The sentencer in this case was materially ill-informed.

CONCLUSION

The ruling below worsens an unnecessary circuit split, and it misapplies this Court's precedents as well as the statutorily required analysis of Laird's claim. The Court should grant certiorari and thereafter reverse the judgment of the Third Circuit and remand for further proceedings.

Respectfully submitted,

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