No. ___

IN THE

# Supreme Court of the United States

KARU GENE WHITE,
*Petitioner*,
v.
LAURA PLAPPERT, WARDEN,
*Respondent*.

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

## PETITION FOR A WRIT OF CERTIORARI


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**CAPITAL CASE**

## QUESTIONS PRESENTED

In connection with petitioner's capital sentencing proceeding, trial counsel failed to investigate and present voluminous, powerful mitigation evidence, in a manner that was materially indistinguishable from the ineffective assistance of counsel at issue in *Williams* v. *Taylor*, 529 U.S. 362, 396 (2000), and *Wiggins* v. *Smith*, 539 U.S. 510, 534 (2003). In this federal habeas proceeding, the court of appeals acknowledged that the Kentucky Supreme Court's stated reasons for denying petitioner post-conviction relief contradicted *Williams* and *Wiggins* in important respects. Yet the court of appeals held that the state court's decision was not "contrary to" or "an unreasonable application" of clearly established federal law. 28 U.S.C. 2254(d)(1).

The questions presented are:

1. Whether a state-court decision is "contrary to" federal law where its reasoning and outcome contradict this Court's materially indistinguishable precedents, but the state court correctly cites the governing legal standard in passing.

2. Whether, when a state court's stated reasoning reveals that its decision is contrary to or unreasonably applies federal law, federal habeas courts can deny relief by hypothesizing alternative justifications for the state court's decision.

3. Whether, under 28 U.S.C. 2243, federal habeas courts may deny relief where the petitioner has established that his conviction or sentence is unconstitutional and that he is entitled to relief under 28 U.S.C. 2254(d)(1).

## PARTIES TO THE PROCEEDINGS

Petitioner here, Petitioner-Appellant below, is Karu Gene White.

Respondent here, Respondent-Appellee below, is Laura Plappert, Warden.

## RELATED PROCEEDINGS

The proceedings directly related to this petition are:

*White* v. *Plappert*, No. 21-5958
(6th Cir. March 14, 2025)

*White* v. *Haeberlin*, No. 5:02-cv-492
(E.D. Ky. Sept. 16, 2021)

*White* v. *Kentucky*, No. 1994-SC-0326-MR
(Ky. Aug. 15, 2002)

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**STATUTES**



**OTHER AUTHORITIES**

Petitioner Karu Gene White respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

## OPINIONS BELOW

The panel opinion of the court of appeals (App. 1a-118a) is reported at 131 F.4th 465. The opinion of the district court is available at 2021 WL 4236929. The opinion of the Kentucky Supreme Court denying post-conviction relief (App. 119a-135a) is unpublished.

## JURISDICTION

The judgment of the court of appeals was entered on March 14, 2025. A petition for rehearing en banc was denied on April 30, 2025. On July 2, 2025, the Court extended the time within which to file any petition for a writ of certiorari to and including September 26, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall * * * have the Assistance of Counsel for his defence."

## INTRODUCTION

In this capital case, petitioner's counsel made no effort to develop mitigation evidence to avert a death sentence, opting instead to bet everything on obtaining an acquittal. In cases stretching back a quarter century, this Court has consistently held that capital counsel who make that kind of uninformed choice fail to provide the effective assistance of counsel that the Sixth Amendment guarantees. See *Andrus* v. *Texas*, 590 U.S. 806 (2020); *Porter* v. *McCollum*, 558 U.S. 30 (2009); *Wiggins* v. *Smith*, 539 U.S. 510 (2003);

*Williams* v. *Talyor*, 529 U.S. 362 (2000); see generally *Strickland* v. *Washington*, 466 U.S. 668 (1984). Just as in those cases, counsel's failure to investigate here incurably compromised the proceedings that resulted in petitioner's death sentence. The sentencing jury never heard, because counsel never developed, "vast tranches of mitigating evidence," *Andrus*, 590 U.S. at 816, that "revealed a childhood marked by extreme neglect and privation, [and] a family environment filled with violence and abuse." *Id*. at 810. The jury was therefore in no position to render the kind of reasoned moral response the Eighth Amendment requires before a death sentence may reliably be imposed.

In rejecting petitioner's claim for state post-conviction relief, the Kentucky Supreme Court ruled that the choice by petitioner's counsel to focus exclusively on proving his innocence absolved counsel of any responsibility to investigate mitigating evidence, much less present that evidence at a penalty phase trial—full stop. And the state court applied that rule to a factual scenario materially indistinguishable from the scenarios present in this Court's decisions holding that counsel's performance fell below what the Sixth Amendment requires. A more egregious departure from the clearly established law of this Court is difficult to imagine.

The Sixth Circuit nevertheless held that the Kentucky Supreme Court's decision was neither contrary to nor an unreasonable application of this Court's clearly established law under 28 U.S.C. 2254(d)(1) of the Antiterrorism and Effective Death Penalty Act (AEDPA). But the court of appeals reached that result only by adopting a hyper-deferential standard of review that has been rejected

by a majority of the circuits, and that cannot be reconciled with AEDPA's text or this Court's decisions. Specifically, the court of appeals held that it was free to ignore the Kentucky Supreme Court's actual rationale (despite acknowledging that it appeared to contradict this Court's decisions), and to uphold the state court's ruling on the basis of an alternative hypothetical justification that was in the court of appeals' view not wholly unreasonable, even if it was not a correct application of clearly established law. Even then, the Sixth Circuit was forced to distort this Court's Sixth Amendment jurisprudence beyond recognition in order to defend the reasonableness of its own hypothetical justification—finding "reasonable" precisely the kind of deficient performance that this Court held to be unreasonable applications of *Strickland* under Section 2254(d)(1) in such cases as *Williams* and *Wiggins*. Effectively, therefore, the Sixth Circuit rewrote both this Court's AEDPA jurisprudence and its Sixth Amendment jurisprudence in one fell swoop.

As if that were not enough, the Sixth Circuit also decided that 28 U.S.C. 2243, which provides that courts should dispose of habeas petitions "as law and justice require," should be interpreted to impose an additional hurdle to habeas relief—namely that a petitioner must show not only that he is in custody in violation of the Constitution but also must convince the court that some additional undefined conception of "justice" requires habeas relief. The imposition of that additional requirement for relief—which several other circuits have expressly rejected—cannot be reconciled with precedents of this Court reaching back to the nineteenth century.

This Court's review is manifestly warranted.

## STATEMENT OF THE CASE

### I. Kentucky Trial

A. A grand jury indicted petitioner and two co-defendants for the murder and robbery of three co-owners of a grocery store. They were jointly represented by Kevin Charters and James Early. App. 4a, 74a. The defendants maintained their innocence and asserted an alibi. App. 5a.

In the five months leading up to trial, counsel conducted no background investigation to prepare for the penalty phase in the event petitioner and his co-defendants were convicted of the murders. App. 74a-75a. They followed that course even though they knew both that a conviction was possible, App. 75a (petitioner had access to "unexplained money" after the crime and had purchased a used automobile with cash), and that the Commonwealth was seeking the death penalty. Their "contingency plan" to prevent a death sentence was "to present * * * a very strong defense" at the guilt phase. ROA.4920.[1]

Trial counsel's innocence theory was upended during *voir dire*, when a co-defendant, Chuck Fisher, agreed to testify against the other two defendants in exchange for immunity. App. 64a. Petitioner's counsel hastily pivoted to an insanity defense. They conceded in a pretrial hearing that "this [was] the greatest case of being naive that th[e] [c]ourt has ever encountered on the part of two defense attorneys," ROA.3517, and requested a continuance. The trial

[1] "ROA" refers to the record on appeal filed with the court of appeals. The record can also be found in the district court docket, *White* v. *Haberlin*, 5:02-cv-492 (E.D. Ky.), ECF 124, 125. "ROA.4920" refers to the "Page ID# 4920" used in the district court.

court refused, emphasizing that counsel had "better than five months" to prepare a defense and that "practically everybody knew" that Fisher was going to talk. ROA.3521, 3545.

Only then did trial counsel initiate any real background investigation. ROA.4780, 4912, 4939. Counsel gathered together those members of petitioner's family who happened to be present at the courthouse for *voir dire*, to inquire about petitioner's past. ROA.4939-40, 4968. Counsel focused on developing evidence that might support an insanity defense. Counsel did not conduct the kind of in-depth investigation of petitioner's life history that would have been needed to assess whether a viable mitigation defense at sentencing was possible. ROA.4921-26.

B. Petitioner's family members testified at a competency hearing, which the jury did not attend. The testimony revealed that petitioner's conception was the result of petitioner's mother being raped by her own stepfather. The testimony also established that, as a boy, petitioner witnessed his two-year-old brother drown and his uncle murder his father; that his mother and grandmother regularly whipped him; and that he regularly wet the bed until age 15. App. 79a. The presiding judge found "no actual, valid evidence that this man was insane either [at the time of the crime] or at the present time." ROA.3911.

C. Despite the court's rejection of the factual predicate for the insanity defense, petitioner's counsel pressed that defense at trial, which began a week later. They did not present any supporting expert testimony, relying instead on lay testimony from petitioner and his family, much of which was inaccurate, to try to establish that petitioner was

legally insane. App. 80a-81a. Trial counsel later described their approach as a "product of desperation." ROA.4859. Unconvinced, the jury rejected petitioner's insanity defense and convicted him on all counts.

D. The penalty phase began the next day. Petitioner's counsel declined to make an opening statement and introduced *no* mitigating evidence. App. 81a. None of petitioner's family members or friends was called to testify, even though several later attested that they would have if asked. See, *e.g.*, ROA.4949, 4749, 5175-76, 5300. Instead, counsel reiterated points made unsuccessfully during the guilt-phase closing argument regarding petitioner's possible insanity. After more than six hours of deliberations, the jury split seven-to-five on imposing the death penalty. App. 81a. But after deliberating for three more hours, the jury returned a death sentence, which the trial court imposed. *Ibid.*

## II. Kentucky Post-Conviction Proceedings

A. After completing direct review, petitioner sought state post-conviction relief, alleging, *inter alia*, that counsel performed ineffectively during the penalty phase of his trial. In 1999, the Kentucky post-conviction trial court held an evidentiary hearing. App. 81a. By that time, trial counsel Kevin Charters (who had handled two capital cases and presented insanity defenses in both but no mitigation evidence at the penalty phase) had been disbarred for "[n]eglect to practice" and was operating a liquor store. App. 74a. Forty-three witnesses testified. Their testimony revealed extraordinarily powerful mitigating evidence concerning petitioner's traumatic upbringing that was not known to petitioner's trial counsel or presented at trial. That testimony established that petitioner's father and uncle sexually abused petitioner's half-

sisters (who were also his aunts)—including in the room where petitioner slept as a boy. Petitioner witnessed his uncle rape one of his half-sisters. Children in petitioner's home were forced to drink alcohol for the adults' amusement, and though the jury had heard that petitioner witnessed his brother's drowning as an infant, new evidence showed that petitioner's brother had been forced to drink alcohol the night before his drowning. App. 67a, 82a.

The testimony also elucidated petitioner's history of physical injuries, including head injuries. Petitioner's exposure to violence began in utero: while his mother was pregnant, her step-father (who had impregnated her) and mother beat her and threw her down the stairs in an unsuccessful attempt to induce a miscarriage. App. 83a. The violence continued into petitioner's infancy, when petitioner's mother rammed his head against a door handle. *Ibid.* As a teenager, petitioner's family witnessed him unconscious up to ten times, including after being struck on the head with a "tire buddy" and after several serious automobile and bike accidents. *Ibid.* Petitioner also experienced seizures as a boy, and even attempted suicide.

B. The state post-conviction court denied petitioner's claim. The Kentucky Supreme Court affirmed, concluding that "[b]ecause the defendants originally claimed they were not guilty, there was no reason to investigate [petitioner's] background or his physical or mental health." App. 123a. The court purported to distinguish this Court's decision in *Williams* v. *Taylor*, 529 U.S. 362 (2000)—which held that capital counsel was ineffective for failing to investigate possible mitigation evidence—on the ground that, unlike *Williams*, petitioner's case "d[id]

not involve a total failure to inquire into [petitioner's] life or family background." App. 123a-124a. The court further held that, even if all the unpresented mitigating evidence had been introduced at the penalty phase, the evidence would not "have had such an unquestionably favorable impact that it would have changed the sentence of the jury." App. 124a. For those reasons, the Kentucky Supreme Court denied relief. This Court denied certiorari. *White* v. *Kentucky*, 538 U.S. 940 (2003).

**III. Federal Habeas Proceedings**

A. Petitioner filed a federal habeas petition in the United States District Court for the Eastern District of Kentucky, again raising his ineffective-assistance claims. *White* v. *White*, No. 5:02-cv-492 (KKC), 2021 WL 4236929 (E.D. Ky. Sept. 16, 2021). Applying the standards of the Antiterrorism and Effective Death Penalty Act (AEDPA), 28 U.S.C. 2254(d), the district court denied relief. *Id.* at *85. The Sixth Circuit granted a certificate of appealability. App. 10a.

B. A divided Sixth Circuit panel affirmed. The court acknowledged that the Kentucky Supreme Court applied the wrong Sixth Amendment standard to assess both trial counsel's performance and the resulting prejudice. App. 20a. But the majority did not assess whether the Kentucky Supreme Court's actual reasoning was contrary to or an unreasonable application of this Court's precedents. Instead, the majority "look[ed] at the record before the state court and * * * ask[ed] whether '*any* reasonable argument' supports the state court's decision." App. 14a (emphasis added) (quoting *Davis* v. *Carpenter*, 798 F.3d 468, 474 (6th Cir. 2015)).

The court of appeals asserted that the Kentucky Supreme Court's decision could not have been

"contrary to" this Court's precedent because "[w]hen a state court quotes and cites the applicable Supreme Court precedent" its decision is by definition not contrary to that precedent, and the Kentucky Supreme Court correctly quoted *Strickland*'s general governing test. App. 18a. Nonetheless, the court acknowledged that the Kentucky Supreme Court "*might have * * * contradicted Supreme Court precedent*" when it held that trial counsel were not obligated to perform a background investigation given petitioner's initial claim of innocence. App. 20a (emphasis added). But the court concluded that this contradiction could be disregarded ("not our concern") because, in the court's view, the case's facts were not precisely identical to the facts in this Court's decisions finding counsel's failure to investigate and present mitigating evidence to be deficient performance. *Ibid*. (discussing *Williams*, *Wiggins*, *Rompilla*).

The court then concluded that the Kentucky Supreme Court's decision was not an unreasonable application of this Court's precedents. The court hypothesized that "a fair-minded judge could conclude that White's counsel's conduct was acceptable when assessed under *Strickland*'s general reasonableness standard." App. 31a. The court largely credited the Kentucky Supreme Court's conclusion that petitioner's protestations of innocence absolved counsel of any duty to investigate a possible mitigation case. App. 36a-37a. The court went on to hypothesize several alternative defenses of counsel's performance that the Kentucky Supreme Court had not relied upon. App. 37a-40a.

The court also recognized that the Kentucky Supreme Court's prejudice analysis—specifically, its ruling that the unpresented testimony would not have

had "such an *unquestionably* favorable impact that it would have changed the sentence of the jury," App. 124a (emphasis added)—was not an "indisputably correct paraphrase of Supreme Court precent." App. 24a. Nevertheless, the court disregarded that legal error as a "squabble[] over a few words," and held that it was insufficient "to prove that a state-court decision is 'contrary' to Supreme Court precedent." *Ibid.*

Finally, the court opined that "[e]ven if a petitioner * * * overcomes AEDPA and *Strickland*'s doubly deferential gauntlet and thereby convinces the court that 'law' requires relief, he then must convince the court that 'justice' also warrants relief." App. 17a. But the court did not explain what additional showing petitioner would have had to make to establish that "justice" warranted relief.

C. Judge Stranch dissented. She would have held that "[t]he Kentucky Supreme Court's decision was both contrary to and an unreasonable application of clearly established federal law" because petitioner "demonstrated both deficient performance and prejudice from his trial counsel's representation at the penalty phase." App. 73a.

Judge Stranch argued that the Kentucky Supreme Court contravened this Court's precedent by failing to follow this Court's decision in *Williams* v. *Taylor*, 529 U.S. 362 (2000), which "made clear * * * that counsel always had an 'obligation to conduct a thorough investigation of the defendant's background.'" App. 91a (quoting *Williams*, 529 U.S. at 395-396). The Kentucky Supreme Court's quotation of *Strickland*, Judge Stranch reasoned, "does not excuse the [c]ourt's reliance on a more specific rule that is contrary to clearly established Federal law." App. 93a. That is so, Judge Stranch explained, because a state court cannot

benefit from AEDPA deference by "simply accurately cit[ing] *Strickland* and then assert[ing] a new rule * * * that contravenes Supreme Court precedent." *Ibid.*

Judge Stranch further explained that the Kentucky Supreme Court's conclusion that counsel did not perform deficiently *even after* petitioner's co-defendant agreed to testify for the state was an unreasonable application of clearly established law. App. 94a. Judge Stranch reasoned that, just as in this Court's decision in *Wiggins* v. *Smith*, 539 U.S. 510 (2003), any mitigating evidence that trial counsel collected was "not the result of any deliberate mitigation investigation"—which this Court's precedents require—but merely the "byproduct of a guilt phase investigation." App. 98a.

Turning to prejudice, Judge Stranch argued that the Kentucky Supreme Court had unreasonably applied *Strickland*. She concluded that the present case was like those in which this Court has found that similar mitigating evidence—including evidence of childhood trauma, head injuries, and mental impairments—"might undermine the aggravating factors associated with a particularly brutal murder." App. 106a (citing *Williams*, 529 U.S. at 367-371; *Porter* v. *McCollum*, 558 U.S. 30, 33-34 (2009)). Indeed, Judge Stranch concluded that prejudice here was even stronger than it was in *Williams*, where, unlike here, the defendant had a long history of criminal behavior. Judge Stranch also observed that much of the post-conviction evidence was new—not cumulative. She also faulted the majority for looking only to new mitigating evidence, rather than the "totality of the available mitigation evidence." App. 106a.

## REASONS FOR GRANTING THE PETITION

### I. This Court Should Review the Sixth Circuit's Holding That Petitioner's Trial Counsel Was Effective Despite Conducting a Perfunctory and Eleventh-Hour Mitigation Investigation.

#### A. The Sixth Circuit's affirmance of the Kentucky Supreme Court's decision conflicts with this Court's decisions in *Strickland*, *Williams*, and *Wiggins*.

1. *Strickland* v. *Washington*, 466 U.S. 668 (1984), clearly established that "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." *Id.* at 691. Specifically, *Strickland* established that unless counsel made a reasonable, informed judgment that investigation into a capital sentencing mitigation case is unlikely to prove fruitful, counsel must competently investigate evidence potentially relevant to making such a case, including a "thorough investigation of the defendant's background." *Williams* v. *Taylor*, 529 U.S. 362, 396 (2000) (applying *Strickland*); see also *Wiggins* v. *Smith*, 539 U.S. 510, 534 (2003) (same).

Petitioner's counsel violated this clearly established requirement. Counsel began investigating petitioner's background in earnest only after co-defendant Fisher turned on petitioner during jury selection. ROA.4780. Counsel testified that, up to that point, he believed he "didn't need to" perform "any investigation at all," *ibid.*, and that there was no plan

to present a mitigation case at sentencing if petitioner were convicted, ROA.4920.[2]

That is textbook deficient performance. *Strickland* and *Williams* unambiguously establish that defense counsel has, in all but the rarest capital cases, an "obligation to conduct a thorough investigation of the defendant's background." *Williams*, 529 U.S. at 396 (citing ABA Standards for Criminal Justice 4-4.1, commentary, p. 4-55 (2d ed. 1980)); see also *Andrus* v. *Texas*, 590 U.S. 806, 814 (2020) (per curiam) (same); *Porter* v. *McCollum*, 558 U.S. 30, 39 (2009) (same). It is no answer that petitioner originally claimed innocence. "[A] defendant's proclamation of innocence does not relieve counsel of his normal responsibilities under *Strickland*." *Burt* v. *Titlow*, 571 U.S. 12, 22 (2013); *see Porter* v. *McCollum*, 558 U.S. 30, 40 (2009) ("[Defendant] may have been fatalistic or uncooperative, but that does not obviate the need for defense counsel to conduct some sort of mitigation investigation."). "The duty to investigate exists regardless of the accused's admissions or statements to the lawyer of facts constituting guilt." ABA Standards for Criminal Justice 4-4.1, p. 4-53 (2d ed. 1980).

Accordingly, this Court has repeatedly held that counsel performs deficiently when failing to investigate a defendant's background, even when armed with alternative theories for the penalty phase. See, *e.g.*, *Williams*, 529 U.S. at 396 (counsel's failure to investigate background or prepare for the penalty

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[2] The Sixth Circuit noted that counsel had spent 12 hours interviewing family members in advance of trial. But those interviews focused on shoring up petitioner's alibi defense and obtaining evidence suggesting he was not a violent person—not on preparing a mitigation case. App. 5a.

phase until a week before trial was not justified by tactical decision to focus on defendant's voluntary confession); *Wiggins*, 539 U.S. at 519-520, 532-534 (granting habeas relief under AEDPA where counsel chose to "retry guilt" at sentencing without having investigated sufficiently to know how strong the mitigation case would have been).

The result here should have followed *a fortiori* from this Court's Section 2254(d)(1) application of *Strickland* in *Williams* and *Wiggins*. Petitioner's counsel decided to place all his chips on an acquittal. But there would have been nothing inconsistent about also investigating what kind of mitigation case could be presented in the event of conviction. Counsel's failure to do so left them in no position to make a reasonable judgment about how best to advance petitioner's interest at the penalty phase in the event petitioner was convicted—as *Strickland*, *Williams*, and *Wiggins* clearly required. Those decisions therefore foreclose any argument that counsel's failure to conduct a meaningful mitigation investigation was a reasonable strategic decision. Indeed, counsel conceded that they made no such decision. Their plan all along was to rely entirely on the prospect of an acquittal. ROA.4780.

Counsel's panicked, eve-of-trial scramble to support an insanity defense did not compensate for their previous failures. Counsel did not begin to consider alternatives until they learned that the innocence defense was a nonstarter—a development that the trial judge had described as an obvious possibility for months. And the alternative they hurriedly cobbled together—an insanity argument—was patently inadequate both as a defense to liability and as an effective mitigation strategy in the event of

conviction. ROA.4886-87. Counsel relied solely on the testimony of family members and made no effort to develop the expert testimony that this Court has stated is virtually always essential to an effective insanity defense. See *Ake* v. *Oklahoma*, 470 U.S. 68, 82 (1985). And in developing that defense, counsel focused on evidence that would reveal "the weirdness" in petitioner's past actions (much of which was inaccurate) to show that the charged conduct was a result of mental illness. ROA.4828, 4837. Counsel thus elicited testimony about petitioner's own bad acts, which only incidentally touched on the horrific circumstances in which he was raised. See ROA.4837.

Although one would never know it from their penalty phase presentation, petitioner's counsel learned some disturbing facts about petitioner's background during their shambolic efforts to prepare an insanity defense. In particular, they learned that petitioner was conceived when his mother was raped by her stepfather in her early teens; that his mother hated him and often hit him; that he witnessed his father's murder and his brother's drowning; and that he suffered head injuries. ROA.3550-52, 3682-86. With these signs of a troubled past flashing a bright red flag, competent counsel would have investigated further. *Wiggins*, 539 U.S. at 527 ("In assessing the reasonableness of an attorney's investigation, however, a court must consider not only the quantum of evidence already known to counsel, but also whether the known evidence would lead a reasonable attorney to investigate further."). Petitioner's counsel did not.

As the post-conviction evidence established, a constitutionally adequate investigation would have led to the discovery of "vast tranches of mitigating evidence," *Andrus*, 590 U.S. at 814, that "revealed a

childhood marked by extreme neglect and privation, [and] a family environment filled with violence and abuse," *id*. at 810—precisely the kind of evidence that would have cast his moral culpability for the murders in an entirely different light. Petitioner's family testified that his father and uncles sexually abused other children in the home and impregnated several. The rapes of the children often occurred in the room where petitioner slept, and on at least on one occasion, petitioner witnessed a rape. App. 82a. Alcohol abuse was rampant, and the adults frequently amused themselves by forcing the children, including petitioner, to drink alcohol. That abuse was related to the drowning of petitioner's brother, who, at two years old, was "suffering from a hangover" when he drowned. *Ibid*. Petitioner's father, while drunk, lined the children, including petitioner, against a wall and threatened to kill them while brandishing a pistol. *Ibid*. Petitioner also suffered numerous head injuries: as an infant, his mother intentionally rammed his head against a door handle; he was frequently struck in the head and knocked unconscious; and he experienced multiple seizures. App. 83a. And petitioner's mother and grandmother routinely beat him so severely that he bled. His grandmother even forced him to suck the urine out of his sheets when he wet the bed. App. 82a.

Instead of presenting that overwhelming mitigating evidence, counsel put forth a pitiful penalty-phase case. Counsel waived an opening statement and presented no evidence. ROA.4517. In his closing argument, counsel barely mentioned petitioner's background, instead rehashing topics from the guilt phase such as petitioner's lack of premeditation, his drug use, and the unfairness of his accomplice receiving full immunity. ROA.4523-40.

The jury was thus forced to rely on the evidence submitted during the guilt phase, but that evidence, focused on establishing insanity, was limited and different in kind from what could have been presented if counsel had done a full background investigation. The sentencing jury was thus in no position to make a reliable assessment of petitioner's moral culpability.

2. The prejudice resulting from counsel's deficient performance is equally clear. Deficient performance is prejudicial when "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694. Courts must "evaluate the totality of the available mitigation evidence—both that adduced at trial, and the evidence adduced in the habeas proceeding—in reweighing it against the evidence in aggravation." *Williams*, 529 U.S. at 397-398. This Court has repeatedly found prejudice even when "counsel presented what could be described as a superficially reasonable mitigation theory"—including under AEDPA's deferential standard of review. *Sears* v. *Upton*, 561 U.S. 945, 954 (2010); see also *Williams*, 529 U.S. at 396; *Wiggins*, 539 U.S. at 535-536.

There is far more than a reasonable possibility that, had counsel presented the mitigation evidence that a competent investigation would have uncovered, the sentencing jury would have made a different assessment of petitioner's moral culpability. As discussed above, see pp. 7, 16, *supra*, the jury did not hear about the serious sexual abuse that petitioner repeatedly witnessed (including his father raping his siblings); his attempted suicide; the violence he endured; or the head injuries (some of which caused him to lose consciousness) and seizures he suffered; or the many episodes of his parents forcing his young

siblings to consume alcohol, one of which led to the drowning of a two-year old. The jury also did not hear that petitioner's grandmother routinely beat petitioner until he bled, instead hearing a misleadingly rosy picture of her as petitioner's guardian. Compare ROA.4539 (closing sentencing argument stating that grandmother "did the best she could by him") with ROA.5534-36 (post-conviction testimony describing how grandmother attempted to kill petitioner in utero), ROA.5411-13 (post-conviction testimony describing how grandmother would beat petitioner bloody).

"Had the jury been able to place petitioner's excruciating life history on the mitigati[on] side of the scale, there is a reasonable probability that at least one juror would have struck a different balance." *Wiggins*, 539 U.S. at 537. Similar to *Wiggins*, petitioner here experienced "severe privation and abuse" in his early life, suffered "physical torment," and was exposed to sexual molestation and rape. *Id.* at 534-535. This is exactly the type of "troubled history [this Court] ha[s] declared relevant to assessing a defendant's moral culpability." *Ibid.* Especially given that the jury originally split 5-7 when debating the death penalty, there is a reasonable probability that at least one juror would have changed her vote if presented with the full picture of petitioner's troubled history.

### B. The court of appeals' contrary decision misapplies this Court's AEDPA precedents.

1. The Sixth Circuit recognized that the Kentucky Supreme Court "might have articulated a legal standard that contradicted Supreme Court precedent" when it held that petitioner's counsel had no Sixth

Amendment obligation to investigate mitigation evidence because petitioner was insisting on his innocence. App. 20a. The panel nevertheless held that habeas relief should be denied because the state court, in its view, "properly framed the overarching question" by citing *Strickland*. *Ibid.* (cleaned up). Indeed, the Sixth Circuit went so far as to opine that a state court decision cannot be contrary to established federal law under AEDPA if the state court has cited and quoted the applicable federal precedent. App. 18a.

That is simply incorrect. This Court has made clear that a state court decision is "contrary to" clearly established law when "the state court applies a rule that contradicts the governing law set forth in [this Court's] cases" or when "the state court confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from our precedent." *Williams*, 529 U.S. at 405-406. The Kentucky Supreme Court did both. This Court's decisions in *Williams* and *Wiggins*, both of which applied *Strickland* under AEDPA, make that crystal clear. *Williams*, 529 U.S. at 390 (reasoning that merits of petitioner's claim were "squarely governed by our holding in *Strickland*"); *Wiggins*, 539 U.S. at 522 (same). And in fact, the state court in *Williams* had quoted and cited the governing *Strickland* standard—yet this Court nonetheless held that the state-court decision was contrary to *Strickland*. See *Williams*, 529 U.S. at 397.

That a state-court decision may be "contrary to" federal law despite stating the correct legal standard is confirmed by this Court's formulation of the test as examining whether the state court "*applies* a rule" contradicting federal law. *Williams*, 529 U.S. at 405 (emphasis added); *Bell* v. *Cone*, 535 U.S. 685, 693

(2002) (same). *Sears* v. *Upton*, 561 U.S. 945 (2010), makes this requirement even clearer. In *Sears*, this Court held that the state court had failed to apply the correct prejudice inquiry under *Strickland* despite the court "appear[ing] to have stated the proper prejudice standard." *Id.* at 952. That understanding of Section 2254(d)(1) is further supported by the fact that a state court need not cite, or even be aware, of this Court's cases to pass AEDPA scrutiny. *Early* v. *Packer*, 537 U.S. 3, 8 (2002).

2. It is undeniable that the Kentucky Supreme Court applied a rule—that capital counsel had no duty to investigate mitigation because their client was asserting his innocence—contrary to this Court's established Sixth Amendment law. That the Kentucky Supreme Court cited the governing precedent is of no moment. Its application of that precedent, in the words of the Sixth Circuit, "contradict[s]" established Sixth Amendment law. While the Kentucky court may have stated the *Strickland* standard, "it did not correctly conceptualize how that standard applies to the circumstances of this case." *Sears*, 561 U.S. at 952.

3. Indeed, the decision of the Sixth Circuit creates a circuit split on this very question. In *Hardy* v. *Chappell*, 832 F.3d 1128 (9th Cir. 2016), revised by 849 F.3d 803 (9th Cir. 2016), the Ninth Circuit considered the same issue raised here. Petitioner sought habeas relief under AEDPA for ineffective assistance of counsel. *Id.* at 1135-1136. As here, the state court correctly recited *Strickland*'s test but actually applied a standard inconsistent with this Court's clearly established law. *Id.* at 1136. The Ninth Circuit held that the state court's decision was "contrary to" that clearly established law, reasoning that "it is the

application, not the recitation of a standard that matters for § 2254(d) purposes." *Id.* at 1137 (citing *Sears*, 561 U.S. at 952); accord *Clements* v. *Madden*, 112 F.4th 792 (9th Cir. 2024).

4. The Sixth Circuit also misapplied this Court's AEDPA precedents when it concluded that the Kentucky Supreme Court acted reasonably in concluding that the rule set forth in *Williams* did not control this case. The Kentucky Supreme Court had held that *Williams* was not controlling authority because, unlike *Williams,* petitioner's case "does not involve a total failure to inquire into [petitioner's] life or family background." App. 123a-124a.[3] But what matters is the *rule* that *Williams* clearly established. And that rule imposes on capital counsel an "obligation to conduct a *thorough* investigation of the defendant's background," sufficient to enable reasonable strategic judgments concerning the mitigation theory. *Williams*, 529 U.S. at 396 (emphasis added). *Wiggins* reinforced the rule established in *Strickland* that counsel's obligation to thoroughly investigate defendant's background is not obviated simply because counsel performed a perfunctory initial investigation. *Wiggins*, 539 U.S. at 524 (concluding that, under AEDPA, counsel performed deficiently when they "abandoned their investigation of petitioner's background after having acquired only rudimentary knowledge of his history from a narrow set of sources").

The Sixth Circuit found the Kentucky Supreme Court's conclusion reasonable, but only by ignoring the

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[3] *Williams* did not involve a total failure to conduct this investigation. Family, neighbors, and an expert testified in *Williams*.

rule that *Williams* articulated and instead myopically focusing on inapposite factual distinctions. App. 19a-20a. The court added that petitioner's counsel "presented three days' worth of mitigating testimony," App. 19a, but that is only true if the entirety of defendant's guilt-phase case is counted as "mitigating testimony"—which it could not be, given counsel's focus on proving insanity and presentation of *aggravating* evidence in an effort to bolster the argument that petitioner could not control his behavior. At the penalty phase, counsel presented *no* evidence. In any event, the amount of mitigating evidence presented is irrelevant to the question at hand: whether counsel performed a competent investigation before choosing the mitigation theory it presented. See *Sears*, 561 U.S. at 953 ("[T]hat a [mitigation] theory might be reasonable, in the abstract, does not obviate the need to analyze whether counsel's failure to conduct an adequate mitigation investigation before arriving at this particular theory prejudiced [defendant.]").

5. Finally, the state court made at least two errors in deciding that counsel's deficient performance was not prejudicial. The undiscovered and unpresented mitigating evidence would have given the jury a wholly different sentencing profile. See pp. 7, 16, *supra*. The Kentucky Supreme Court concluded differently by relying on an incorrect prejudice standard, concluding that there was "no possible or reasonable chance that the omitted testimony would have had such an *unquestionably favorable impact* that it would have changed the sentence of the jury." App. 124a (emphasis added). That is not the test. It is whether the mitigating evidence, taken as a whole, is "sufficient to undermine confidence in the outcome." *Rompilla* v. *Beard*, 545 U.S. 374, 393 (2005).

Petitioner met that standard, and no reasonable jurist could disagree.

Second, the state court's rejection of prejudice because "some of the [additional] evidence could have been detrimental to [petitioner's] case," App. 124a, is contrary to clearly established federal law. This Court has granted relief under AEDPA even when the unpresented evidence contained unfavorable facts. *Williams*, 529 U.S. at 396.

The Sixth Circuit sidestepped the state court's erroneous "unquestionably favorable impact" standard by rewriting it to say that there was no reasonable probability the jury would change its mind because the evidence was not "unquestionably favorable." But that reading runs headlong into the state court's second error. A defendant may be prejudiced by evidence that is not unequivocally favorable. *Ibid*.

### C. Review of this question is warranted.

The Sixth Circuit's holding that a state-court decision is not contrary to clearly established federal law so long as the court correctly states the general legal standard, even if it does not actually apply that standard, is of pressing importance. Under that holding, a petitioner may be denied federal habeas relief even when the state-court decision's bottom-line outcome is contrary to federal law. That is irreconcilable with AEDPA, which reflects Congress's intent that petitioners who demonstrate that the state court's "decision" is "contrary to" federal law may obtain relief. 28 U.S.C. 2254(d)(1).

The Sixth Circuit's holding also drains this Court's bedrock criminal procedure decisions of their force. State courts in the Sixth Circuit need only recite the

correct rule and then proceed to apply the rule in a manner that conflicts with materially indistinguishable precedents of this Court. That will render federal habeas review an empty exercise in the Sixth Circuit.

The court of appeals' rejection of petitioner's ineffective-assistance claim is also overwhelmingly important to petitioner himself. Petitioner's counsel failed to perform the mitigation investigation that this Court long ago held was an "obligation" of counsel in capital cases—and as a result, the jury sentenced petitioner to death after hearing only a fraction of the evidence that could have been presented. *Williams*, 529 U.S. at 396.

## II. This Court Should Review the Sixth Circuit's Holding That a Habeas Court May Ignore a State Court's Actual Reasoning and Uphold a State Decision As Reasonable Based on Its Own "Alternative" Reasoning.

Because the Kentucky Supreme Court's actual reasoning contradicted *Strickland*, *Williams*, and *Wiggins* in multiple respects, the Sixth Circuit was able to deny relief only by ignoring the state court's actual reasoning in favor of hypothesizing incorrect-but-reasonable alternative justifications for the decision. That approach is manifestly wrong, was outcome determinative, and further entrenches a deep and enduring circuit split. Review is warranted.

"Where a state court's decision is unaccompanied by an explanation"—for example, "a one-sentence summary order"—a federal habeas court looks to "what arguments or theories * * * *could have supported*[] the state court's decision." *Harrington* v. *Richter*, 562 U.S. 86, 96, 98, 102 (2011) (emphasis

added). Here, however, the Kentucky Supreme Court set forth in detail its reasons for denying post-conviction relief. The Sixth Circuit nevertheless decided that *Richter* authorized it to ignore what the state court *actually held* (even while conceding that the state court "might have * * * contradicted Supreme Court precedent") and to substitute its own "alternative reasoning that 'could have supported' the [state] court's decision." App. 13a (quoting *Richter*, 562 U.S. at 102).

The Sixth Circuit's approach deepens the considerable disagreement among the lower courts about whether a federal habeas court should evaluate the state court's rationale to determine whether it conflicts with or is an unreasonable application of this Court's clearly established law, or whether the federal court should instead put the actual reasoning of the state court to one side and determine whether there exists *any* reasonable hypothetical justification for the outcome the state court reached, even if that justification is incorrect under this Court's precedents.

### A. The Sixth Circuit's decision deepens a circuit conflict.

1. This Court has instructed that a federal habeas court applying the standards of 28 U.S.C. 2254(d) looks to the state court's "specific reasons" in order to determine whether that decision is contrary to or an unreasonable application of established law. *Wilson* v. *Sellers*, 584 U.S. 122, 125 (2018). Most courts of appeals to have considered the question follow that instruction.

For example, in *Dennis* v. *Secretary, Pennsylvania Department of Corrections*, the en banc Third Circuit held that "when the state court pens a clear, reasoned opinion, federal habeas courts may not speculate as to

theories that 'could have supported' the state court's decision." 834 F.3d 263, 283 (3d Cir. 2016) (en banc) (relying on *Wetzel* v. *Lambert*, 565 U.S. 520, 524 (2012)). Such speculation is appropriate only in cases—like *Richter*—where the federal habeas court "cannot be sure of the precise basis for the state court's ruling." *Id*. at 282.

Similarly, the First, Second, Fifth, Seventh, and Ninth Circuits have ruled that when a state court provides a reasoned decision, the federal habeas court looks to the decision's articulated rationale instead of reasons that the state court *could have* given. See *Wooten* v. *Lumpkin*, 113 F.4th 560, 567 (5th Cir. 2024) ("*Wilson* requires us to look to the state court's reasoning, meaning we cannot * * * look only to the state court's conclusion."); *Hudson* v. *Kelly*, 94 F.4th 195, 200-201, 206 (1st Cir. 2024) (citing *Wilson* and concluding that "we do not see how else to read the [state court decision] other than" the articulated reasoning); *Kipp* v. *Davis*, 971 F.3d 939, 952 n.10 (9th Cir. 2020) (a federal habeas court "may look only to the reasoning of the" state court) ; *Winfield* v. *Dorethy*, 956 F.3d 442, 454 (7th Cir. 2020) (identifying "the state court's 'specific reasons' for denying relief" and proceeding to ask "whether that explanation was reasonable" (quoting Wilson, 584 U.S. at 125)); *Scrimo* v. *Lee*, 935 F.3d 103, 111-112 (2d Cir. 2019) (citing *Wilson* and noting that "we * * * consider the rulings and explanations of the trial judge").

2. On the other side of the ledger are the Eighth and Eleventh Circuits, whose approach mirrors the Sixth Circuit's. Despite acknowledging *Wilson*'s instruction, the Eleventh Circuit held that it was "not required * * * to strictly limit our review to the particular justifications that the state court provided,"

but was free to "consider any potential justification for those reasons." *Pye* v. *Warden, Georgia Diagnostic Prison*, 50 F.4th 1025, 1035-1036 (11th Cir. 2022) (en banc) (quoting *Wilson*, 584 U.S. at 125). The Eighth Circuit has approved the same approach. See *Williams* v. *Roper*, 695 F.3d 825, 834-837 (8th Cir. 2012).

### B. The Sixth Circuit's approach is irreconcilable with the text of AEDPA and with this Court's precedents.

The Sixth Circuit read *Richter* as a license to discard the state court's actual reasons for rejecting petitioner's constitutional claim and to conjure an alternative rationale that "could have supported the court's decision." App. 13a (citation modified). That approach cannot be reconciled with this Court's precedents, which hold that when the state court "explains its decision on the merits in a reasoned opinion," the federal habeas court's job is "straightforward": "In that case, a federal habeas court simply reviews the specific reasons given by the state court and defers to *those reasons* if they are reasonable." *Wilson*, 584 U.S. at 125 (emphasis added). This Court has "affirmed this approach time and again." *Ibid.* (citing *Porter* v. *McCollum,* 558 U.S. 30, 39-44 (2009) (*per curiam*); *Rompilla* v. *Beard,* 545 U.S. 374, 388-392 (2005); *Wiggins* v. *Smith,* 539 U.S. 510, 523-538 (2003)); see also *Hittson* v. *Chatman*, 135 S. Ct. 2126, 2127-2128 (2015) (Ginsburg, J., concurring in the denial of certiorari).

As this Court has recognized, AEDPA compels that approach. Section 2254(d) requires a petitioner to show that the relevant state-court "decision" (1) "was contrary to, or involved an unreasonable application

of, clearly established Federal law," or (2) "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). The statute's instruction to "decid[e] whether a state court's *decision* '*involved*' an unreasonable application of federal law or '*was based on*' an unreasonable determination of fact requires the federal habeas court to train its attention on the particular reasons * * * why state courts rejected a state prisoner's federal claims, and to give appropriate deference to that decision." *Wilson*, 584 U.S. at 125 (citation modified).

Of course, if a state-court decision is correct under established law, then the decision cannot be contrary to or an unreasonable application of that law. But where, as here, the state court's decision *is* contrary to existing law (as the Sixth Circuit recognized) and the rationale it has offered is not a reasonable application of existing law, there is no basis—in the statutory text, sound policy, or elemental fairness—for excusing the state court's actions on the ground that the court could have adopted a different rationale that, though incorrect, would not have been unreasonably so. In AEDPA, Congress struck a balance between federalism and finality interests, and the need to ensure that criminal convictions and sentences meet the basic requirements of constitutional reliability. It provided for deference to state court decisions when certain conditions were met but did not foreclose relief in every case in which a reasonable basis for a state court's erroneous application of established law could be hypothesized—doubtless because doing so would have made the protections of the Great Writ almost entirely ineffectual. Courts have no authority to decide that the balance should be struck differently.

See *Am. Tobacco Co.* v. *Patterson*, 456 U.S. 63, 77 (1982).

### C. Review of this question is warranted.

There is a pressing need for a clear and uniform nationwide rule regarding whether federal courts should decide cases under 28 U.S.C. 2254(d) on the basis of state courts' actual rationales for rejecting federal constitutional claims or should instead uphold state-court decisions whenever a more reasonable (but still erroneous) alternative analysis can be hypothesized. Courts and commentators alike have noted that the applicable standard of review remains unclear, and that, without guidance from this Court, the lower courts will continue to reach divergent conclusions. See, *e.g.*, *Pye*, 50 F.4th at 1040 n.9; Josiah Rutledge, Richter*'s Scale: Proving Unreasonableness Under AEDPA*, 32 Geo. Mason L. Rev. 357, 388-392 (2025).

This case is an ideal vehicle for resolving the conflict. The Sixth Circuit acknowledged that the Kentucky Supreme Court "might have * * * contradicted Supreme Court precedent when it stated that '[b]ecause the defendants originally claimed they were not guilty, there was no reason to investigate White's background or his physical or mental health.'" App. 20a (citing *Williams*, 529 U.S. at 396). Indeed, the question is not close. See p. 14, *supra*. The Sixth Circuit was thus able to deny relief only because it thought it had the latitude to ignore the Kentucky Supreme Court's actual reasoning and to instead decide whether any reasonable interpretation of *Strickland* might justify the state court's ultimate decision, even if that interpretation was ultimately incorrect under established law. App. 20a.

In the same vein, the Sixth Circuit acknowledged that the prejudice test the Kentucky Supreme Court applied—whether the unpresented testimony would have had "such an *unquestionably* favorable impact that it would have changed the sentence of the jury"—was contrary to clearly established law. App. 24a (quoting App. 124a) (emphasis added). The correct standard asks whether the mitigating evidence, taken as a whole, is "sufficient to undermine confidence in the outcome," *Rompilla*, 545 U.S. at 393, a standard which Petitioner easily meets. See also *Porter*, 558 U.S. at 44 ("We do not require a defendant to show that counsel's deficient conduct more likely than not altered the outcome of his penalty proceeding." (citation omitted)). Yet the Sixth Circuit dismissed the Kentucky Supreme Court's legal error as a "squabble[] over a few words," replacing the reasoning that the Kentucky court expressly gave with its own "holistic" review of the state court decision. App. 13a, 24a. And by applying AEDPA deference to its own substituted reasoning (not the reasoning the state court actually gave), the Sixth Circuit denied relief.

Review of this question is therefore manifestly warranted.

## III. The Sixth Circuit's Determination That Courts May Deny Habeas Relief Even When a Habeas Petitioner Has Proved That He Is in Custody in Violation of the Constitution Warrants This Court's Review.

The court of appeals' decision merits review for an additional reason. The court seized on 28 U.S.C. 2243's language that a federal habeas court shall "dispose of the matter as law and justice require" to invent a requirement that a habeas petitioner, *in addition to* establishing that he is being held in

custody in violation of clearly established federal constitutional law, must show that "'justice' also warrants relief." App. 10a-11a, 17a. That reading finds no support in the statutory language or in this Court's precedents. If left undisturbed, it will have highly destabilizing effects within the Sixth Circuit, as district courts may believe they can not grant habeas relief in cases in which a petitioner has shown a violation of clearly established law unless the petitioner also makes a showing that "justice" warrants relief.

### A. The Sixth Circuit's decision is incorrect.

The court of appeals' decision to layer on a standalone "justice" predicate for granting habeas relief contradicts more than a century of unbroken precedent.

1. As early as 1890, this Court unambiguously held that the statutory instruction to "dispose" of the petition "as law and justice require" means that "if [the petitioner] is held in custody in violation of the constitution or a law of the United States * * * he must be discharged." *Cunningham* v. *Neagle*, 135 U.S. 1, 41 (1890); *In re Medley*, 134 U.S. 160, 161-162 (1890) (same). Before and after *Cunningham*, this Court has often reiterated the up-to-now uncontroversial principle that the habeas statute "entitle[s]" a petitioner to relief when he demonstrates that his detention is unlawful. See, *e.g.*, *Johnson* v. *Zerbst*, 304 U.S. 458, 469 (1938); *Ex parte Nielsen*, 131 U.S. 176, 184 (1889); *Ex parte Wilson*, 114 U.S. 417, 429 (1885). In 1948, Congress ratified this Court's construction of the "law and justice" provision by recodifying it as Section 2243 without substantive change. See *Wingo* v. *Wedding*, 418 U.S. 461, 468-469 (1974).

Neither this Court nor Congress has ever suggested that Section 2243's "law and justice" language grants habeas courts broad equitable authority to deny relief to petitioners who have proven they are detained in violation of the Constitution. To be sure, this Court has historically exercised its authority "to adjust the scope of the writ in accordance with equitable and prudential considerations." *Danforth* v. *Minnesota*, 552 U.S. 264, 278 (2008). But those adjustments have been strictly limited to procedural rules, such as claims channeling and choice of law. *E.g.*, *Teague* v. *Lane*, 489 U.S. 288 (1989) (non-retroactivity); *Wainwright* v. *Sykes,* 433 U.S. 72 (1977) (procedural default); *Stone* v. *Powell,* 428 U.S. 465 (1976) (cognizability of Fourth Amendment claims). At no point has this Court authorized a federal habeas court to employ its own "equitable and prudential" analysis to require a petitioner to demonstrate that, in addition to his entitlement to relief under law, he must show that relief would be "just."

2. *Brown* v. *Davenport*, 596 U.S. 118 (2022), is not to the contrary. *Brown* held that Section 2254(d)(1)'s requirements did not displace the Court's prior "equitable precedent[]" in *Brecht* v. *Abrahamson*, 507 U.S. 619 (1993), which in turn held that a habeas petitioner must show that an error had a "'substantial and injurious effect or influence' on the verdict." *Brown*, 596 U.S. at 126, 133, 138 (quoting *Brecht*, 507 U.S. at 637). The Court invoked Section 2243 to affirm the well-settled principle that this Court is "authoriz[ed] to adjust the scope of the writ in accordance with equitable and prudential considerations." *Id.* at 132 (quoting *Danforth*, 552 U.S. at 278). And in that context, the Court stated that "even a petitioner who prevails under AEDPA must still today persuade a federal habeas court that

'law and justice require' relief." *Id.* at 134 (quoting 28 U.S.C. 2243). As the very next sentence of the *Brown* opinion makes clear, however, the Court understood its invocation of "law and justice" to refer to the Court's "precedents governing the appropriate exercise of equitable discretion—including *Brecht*." *Ibid.* In other words, petitioners must comply with the Court's longstanding equitable procedural precedents in addition to AEDPA. *Brown* does not, however, suggest that the "law and justice" provision licenses courts to deny relief based on unspecified equitable reasons with respect to petitioners who have demonstrated their legal entitlement to relief under existing law.

### B. No other court of appeals has adopted the Sixth Circuit's interpretation.

Tellingly, no other circuit court has taken the view that habeas petitioners must satisfy a standalone "justice" standard.

The First, Fifth, and Seventh Circuits have declined to interpret Section 2243's "law and justice" language to require a habeas petitioner to satisfy an additional requirement that "justice" warrants the relief he seeks. The Seventh Circuit, for example, interpreted the same language in *Brown* that the Sixth Circuit relied upon here to reach the opposite conclusion. *Jewell* v. *Boughton*, 90 F.4th 1199, 1203 (7th Cir. 2024) (holding that the "law and justice" provision is satisfied under *Brown* when a "petitioner challenging a state court's harmless error ruling" satisfies the *Brecht* standard). The law in the First Circuit is to the same effect. *Watkins* v. *Medeiros*, 36 F.4th 373, 384 (1st Cir. 2022) (citation omitted). And the Fifth Circuit has held that once a petitioner "overcome[s] AEDPA's relitigation bar," the petitioner need only show "that he is in custody in violation of the

constitution or laws or treaties of the United States." *Neal* v. *Vannoy*, 78 F.4th 775, 783 (5th Cir. 2023) (citation omitted).[4]

### C. Review of this question is warranted.

The Sixth Circuit plainly intended its interpretation to bind the district courts in the circuit with respect to what is required for a habeas petitioner to obtain relief.

Even worse, the court of appeals failed to provide guidance as to what additional showing must be made beyond a constitutional violation and compliance with AEDPA's requirements to show that "justice" would be served by granting relief. Must a petitioner make a credible showing of actual innocence to justify relief? May a violation of clearly established constitutional law go unremedied if the reviewing court finds the crime "barbaric," as the court did here? App. 47a, 61a. The Sixth Circuit does not say, all but ensuring that this newly imposed requirement will produce inconsistent and unjust results. On top of all that, it should go without saying that it would be intolerable for different standards for habeas relief to obtain in the Sixth Circuit than in the rest of the country.

Review of the Sixth Circuit's interpretation of Section 2243 is therefore warranted even though that interpretation was not essential to the court's decision in this case.

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[4] In *Crawford* v. *Cain*, 68 F.4th 273 (5th Cir. 2023), a Fifth Circuit panel adopted a reading of Section 2243's "law and justice" provision similar to the one the Sixth Circuit adopted here. The Fifth Circuit sua sponte granted en banc review, vacated the panel's decision, and issued a decision omitting the "law and justice" holding. 122 F.4th 158 (5th Cir. 2024).

## CONCLUSION

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

Respectfully submitted,

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