No. 25-426

In the Supreme Court of the United States

KARU GENE WHITE,
Petitioner,

v.

LAURA PLAPPERT, WARDEN
Respondent.

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

BRIEF IN OPPOSITION

Office of the Kentucky
Attorney General
1024 Capital Center
Drive, Suite 200
Frankfort, KY 40601
(502) 696-5300
Matt.Kuhn@ky.gov

**Counsel of Record*

MATTHEW F. KUHN*
Solicitor General

JOHN H. HEYBURN
Principal Deputy
Solicitor General

JACOB M. ABRAHAMSON
Deputy Solicitor General

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CAPITAL CASE

QUESTIONS PRESENTED

1. Whether the Sixth Circuit correctly held that the Kentucky Supreme Court's 2002 decision was not contrary to clearly established federal law under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)?

2. Whether a federal court applying AEDPA can consider alternative reasoning on which the state court did not rely?

3. Whether the Sixth Circuit correctly applied *Brown v. Davenport*, 596 U.S. 118 (2022), to determine that a petitioner who establishes an AEDPA violation must also overcome a federal court's equitable discretion?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

INTRODUCTION

The Sixth Circuit considered and rejected Karu White's many arguments for AEDPA relief in workmanlike fashion. White lost below not because of any novel issue that warrants this Court's review. He lost because of AEDPA's "dense forest of presumptions and deference" that he cannot overcome. Pet. App. A 17a. More to the point, White lost simply because Congress adopted AEDPA to make it "difficult" to win habeas relief. *See Brown v. Davenport*, 596 U.S. 118, 137 (2022).

White takes particular exception to the Sixth Circuit's discussion of what it viewed as potentially imprecise language in the Kentucky Supreme Court's decision. Pet. App. A 20a–21a, 24a–27a. But all the Sixth Circuit did was apply this Court's well-established rule that a federal habeas court must consider a state court's decision as a whole and give it the benefit of the doubt. *See id.* at 20a, 24a–26a (citing *Woodford v. Visciotti*, 537 U.S. 19, 23–24 (2002) (per curiam)). White does not challenge that rule. Nor does he seriously dispute how the Sixth Circuit applied it here.

Instead of taking the decision below on its terms, White argues that the Sixth Circuit overlooked an AEDPA violation simply because the Kentucky Supreme Court cited the correct legal standard from *Strickland v. Washington*, 466 U.S. 668 (1984). And he argues that the Sixth Circuit used alternative reasoning to make up for the Kentucky Supreme Court's deficient reasoning. But the Sixth Circuit did neither of these things. It faithfully applied this Court's AEDPA and *Strickland* caselaw in straightforward fashion.

White's arguments to the contrary reduce to mere disagreements with the Kentucky Supreme Court's decision. Because ordinary error correction is outside AEDPA's narrow ambit, White offers no compelling reason for the Court to review his case.

STATEMENT OF THE CASE

1. Over 45 years ago, White and two juvenile accomplices robbed and beat to death three elderly victims in a "horrific home invasion." Pet. App. A 1–2a. Local minister Charlie Gross was 75 years old and blind; Charlie's wife Lula was 74; and Lula's brother Sam Chaney was 79. *Id.* The Grosses ran a grocery store on the ground floor of a "small, coal-heated home tucked away in the heart of Appalachia." *Id.* at 2a. The store's earnings paid the "healthcare expenses of their son, Marvin, who suffered from a mental health disorder that relegated him to a nursing home." *Id.* White, then 20 years old, was the Grosses' "lifelong friend." *Id.*

Despite that friendship, White "was looking to pick up some extra cash and figured that the store was a perfect target." *Id.* White spent "months" planning the crime. *Id.* He knew that the Grosses' age and disabilities made it "'easy to knock them out' or kill, if need be." *Id.* (citation omitted). And he knew that they had "stored their money in bulk cash around the house." *Id.* So White recruited his half-brother Tommy Bowling and Bowling's friend Charlie Fisher, both teenagers, to help rob the home. *Id.*

White's group "hitchhiked to the store and waited until it was dark." *Id.* at 3a. White armed himself with a crowbar, and the others wielded a lug wrench and tree limb. *Id.* At White's direction, Fisher entered the

store first and "gave the signal" by putting a soda bottle on the counter in front of Charlie. *Id.* "White and Tommy then bolted through a side door of the store and began brutally bludgeoning the three elderly owners to a gory pulp." *Id.* Sam begged for his life. *Id.* Charlie tried to stand and use his arms to deflect the blows. *Id.* But "[i]n the face of their feeble resistance, White's violence only intensified: He proceeded to plunge his crowbar into the skulls of Sam and Charlie—repeatedly—until their mutilated corpses lay silently in pools of blood." *Id.*

With the victims dead, the trio "ransacked the house in search of cash." *Id.* They took $7,000 and a gun. *Id.* at 4a. White urged Tommy and Fisher to "dispose of evidence and obstruct the murder investigation." *Id.*

The horror White left behind cannot be overstated. "The coroner, state trooper, and detective all testified that it was the most brutal murder they'd ever worked. The coroner likened the scene to a slaughterhouse." *Id.* at 3a. The beatings left the victims with muscles "detached from [their] limbs" and "fingernails . . . stripped from their fingers." *Id.* at 4a. Charlie's "entire head had caved in," with one eye out of his skull. *Id.* at 3a. Lula was completely covered in blood, with "multiple seven-inch gashes" on her head. *Id.* at 4a. And police "found part of Sam's brain seeping out from the back of his head." *Id.* To prepare the victims' bodies for burial, "the coroner had to use large vinyl 'disaster pouches' to contain the pile of each victim's remains." *Id.* (citation omitted).

2. Once authorities caught White and his accomplices, the Commonwealth charged them with burglary, three counts of robbery, and three counts of capital murder. *Id.* Two attorneys initially represented all three defendants jointly—all of whom "maintained their innocence" and claimed "that they were at a nearby college dance the night of the murders." *Id.* Initially, the lawyers "never had 'any hint' that the defendants had committed the crimes." *Id.* (citation omitted). And initially, the prosecution's proof was not overwhelming—without testimony from one of the defendants, the Commonwealth had "only circumstantial evidence." *Id.* at 5a. At that point, both Tommy and Fisher had refused an offer of immunity in exchange for testimony against White. *Id.*

The defense lawyers accordingly "prepared an alibi defense." *Id.* Their preparation entailed "at least a dozen hours" spent "interviewing White's family, friends, and others who knew him." *Id.* When asked about White's personal history, White's family "gave 'no indication' 'at any time' about any 'erratic' details in his childhood, such as child abuse or exposure to traumatic events." *Id.* (citation omitted). The lawyers "believed a deep dive into White's childhood wouldn't have been an efficient use of time." *Id.*

White's trial came first, and his lawyers saw "promise" in an alibi defense. *Id.* But four days into jury selection, Fisher flipped and accepted the Commonwealth's immunity offer. *Id.* at 6a. That change meant the end of White's alibi defense. His lawyers (who had now withdrawn from representing Fisher) turned to "feverishly prepar[ing]" a "new insanity defense" over the next two weeks. *Id.* And because "White's retained psychologist concluded that he

wasn't insane," the defense relied on testimony from lay witnesses. *Id.*

With this change in litigation strategy, White's lawyers re-approached White's family members, who "started to sing a different tune." *Id.* The jury learned "much of" the resulting information about White's background to support his argument that his "horrific upbringing left him insane." *Id.* at 7a. For example, the jury heard that:

- "White's mother attempted to suffocate him as an infant." *Id.* at 63a.
- White's father "beat and raped" his 13-year-old stepdaughter, White's mother. *Id.*
- White was beaten by his father and mother. *Id.* at 63a–65a.
- "White knew that his father intended to kill him and frequently remembered [an] incident" involving his father holding a knife to his throat when he was three years old. *Id.* at 64a.
- White's mother punished White "harder than her other kids, not because he deserved it, but because she hated him." *Id.* at 65a.
- White was kicked out of the house by his grandmother's boyfriend. *Id.* at 66a.
- White witnessed much violence and death, including the drowning of his brother, the murder of his father by his uncle, and the shooting of his grandmother by her boyfriend. *Id.* at 67a–68a.
- White thought that "his grandmother was his [real] mother" until age 14. *Id.* at 68a.
- White's mother hated White and didn't want him. *Id.* at 69a–70a.

- White had night terrors about deaths in his family, but he was not allowed to go to recommended therapy. *Id.* at 70a.
- White "wet the bed as a child and into adulthood." *Id.*
- White required hospitalization after harming himself. *Id.* at 70a–71a.
- White's half-sister "knocked him on the floor and believed she killed him" during a fight. *Id.* at 71a.
- White abused drugs and was smoking by eighth grade. *Id.*
- White struggled academically and was teased at school for it. *Id.* at 71a–72a.

The above is only some of the testimony counsel presented to the jury about White's background. (The Sixth Circuit helpfully provided a comprehensive list of that evidence as an appendix. *Id.* at 63a–72a.) After considering all this proof, the jury found White guilty on all counts. *Id.* at 7a.

Next came the penalty phase. In Kentucky, evidence admitted during the guilt phase of a trial is automatically admitted during the penalty phase. *Id.* at 53a (collecting authorities). White's counsel and the Commonwealth "agreed not to introduce additional evidence." *Id.* at 7a. Instead, "White's counsel recapped the mitigating evidence from the guilt phase, including White's extensive abuse as a child, drug problems, and exposure to violence and murder at a young age." *Id.* In counsel's view, "incapacity born of trauma mitigated [White's] culpability for the crimes." *Id.*

Again, the jury disagreed. It found a statutory aggravator, "unanimously concluded the aggravating

factors outweighed any mitigating evidence," and recommended three death sentences. *Id.* The trial judge adopted the recommendation and sentenced White to death. *Id.* at 7a–8a. The Kentucky Supreme Court unanimously affirmed White's convictions and sentences, and this Court denied certiorari. *White v. Commonwealth*, 671 S.W.2d 241, 247 (Ky. 1984), *cert. denied sub nom. White v. Kentucky*, 469 U.S. 963 (1984). Justices Brennan and Marshall dissented because of their view that "the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments." 469 U.S. at 963.

3. White next sought state postconviction relief, in part for the ineffective-assistance claim he presses here. Pet. App. A 8a. That process began in 1984 and, in the four-plus decades since, has been mired in delays. *See* Pet. App. B 120a; Pet. App. A 61a n.12 (noting dozens of times White has delayed adjudicating the merits of his claims). The first lengthy delay lasted eight years during which "White took no action on his claims." *Id.* at 8a. The trial court dismissed those claims in 1994. *Id.* Next, after five years of appellate wrangling and a remand, the trial court held an evidentiary hearing with 43 witnesses. *Id.*; Pet. App. B 120a. The hearing revealed "additional details about White's child abuse and violent household," along with "White's history of head injuries, seizures, and mental-health issues." Pet. App. A 9a; *see also id.* at 63a–72a.

The Powell County trial court again denied White's motion for postconviction relief, and in 2002 the Kentucky Supreme Court unanimously affirmed. Pet. App. B 135a. As relevant here, the court (i) held that counsel's pretrial investigation was reasonable given

the circumstances, (ii) determined that counsel uncovered and presented sufficient mitigating evidence to overcome a claim of deficient performance, and (iii) held that White's new evidence would not have changed his sentence. *Id.* at 121a–24a.

4. Federal habeas—and more delay—followed. White again alleged ineffective assistance during the penalty phase. Pet. App. A 9a. He also requested, and received, a stay from the district court "so he could pursue an intellectual-disability claim in state court." *Id.* Nine years then passed during which White "'refused' to present the merits" until the Commonwealth paid for "an independent expert to perform a mental evaluation of him." *Id.* (citation omitted). Once the Kentucky Supreme Court rejected that gambit, White was ordered "to undergo a psychiatric evaluation at a state-run facility." *Id.* He still refused, after which the Kentucky Supreme Court rejected his petition to prohibit enforcement of that order. *Id.* at 9a–10a; *see also White v. Commonwealth*, 500 S.W.3d 208, 211–12 (Ky. 2016) (noting White's continued refusal to be evaluated).

Back in federal court, White asked to "use these delays—to which he'd contributed—as grounds for excusing his failure to exhaust that mental-disability claim so that he could include it in his federal habeas petition." Pet. App. A 10a. The district court rejected that request and denied relief on all of White's claims—almost 18 years after he filed his federal petition. *Id.* It also denied a certificate of appealability, but the Sixth Circuit agreed to hear his penalty-phase ineffective-assistance claim. *Id.*

The Sixth Circuit rejected White's appeal by a 2–1 vote. Judge Thapar's opinion began by describing

the "dense forest of presumptions and deference" that "White must navigate" under AEDPA and *Strickland*. *Id.* at 17a. The panel held that (i) "White hasn't shown that the Kentucky Supreme Court contradicted *Strickland*" and (ii) White "hasn't demonstrated that the court unreasonably applied *Strickland*" because "reasonable jurists could conclude that White's counsel's performance was adequate and didn't result in prejudice." *Id.* Judge Stranch dissented. *Id.* at 73a–118a.

White sought rehearing en banc, but no member of the Sixth Circuit requested a vote of the full court. Pet. App. C 136a. This petition followed.

ARGUMENT

White committed his crimes in 1979. Nearly a half century later, he asks this Court to grant certiorari and vacate his three death sentences. During those intervening decades, White has delayed his many appeals again and again. Pet. App. A 8a–10a, 61a n.12. These years of delay have caused real harms—to the victims' families and friends and to the people of Kentucky. *See Calderon v. Thompson*, 523 U.S. 538, 556 (1998). At the very least, White's dilatory conduct underscores his duty to provide a compelling reason for this Court to grant certiorari and thus further delay finality. *See Bucklew v. Precythe*, 587 U.S. 119, 150 (2019) (noting courts' duty to "police carefully" against "unjustified delay" in death-penalty matters).

White's three questions presented do not measure up. As to the first question, White mostly reargues the merits of the Kentucky Supreme Court's 2002 decision

without seriously contending with the deference required by AEDPA and *Strickland*. The second question presented seeks review of an issue that did not matter below and that involves only modest judicial disagreement that does not change the overall analysis. And the third question presented seeks review of an issue that at best could matter in a future case. None of White's questions presented remotely justifies certiorari.

I. The Kentucky Supreme Court's decision was not contrary to clearly established law.

Although White frames his first question presented in terms of AEDPA, he mostly faults the Sixth Circuit for not correcting an error he believes the Kentucky Supreme Court made back in 2002. But federal courts applying AEDPA are not in the business of "ordinary error correction." *Harrington v. Richter*, 562 U.S. 86, 102–03 (2011). The Sixth Circuit's rejection of White's ineffective-assistance claim was a straightforward application of this Court's AEDPA and *Strickland* caselaw. And White's suggestion of a circuit split is strained. Further review of the Sixth Circuit's contrary-to holding is not warranted.

A. White simply refuses to accept that he does not get de novo review of the Kentucky Supreme Court's decision from nearly a quarter century ago. He begins (at 12–18) by making a lengthy *Strickland* argument with only a passing mention of AEDPA. He even faults (at 12) the Sixth Circuit for finding that his trial counsel was "[e]ffective" and for "affirm[ing]" the Kentucky Supreme Court's decision. But that mischaracterizes

the doubly deferential role of a federal court applying AEDPA and *Strickland*.

Under AEDPA, White cannot prevail "unless the [state court's] adjudication of [his ineffective-assistance] 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." 28 U.S.C. § 2254(d).

White focuses his argument on Section 2254(d)'s contrary-to clause. Under that provision, a state court's decision is "contrary to" federal law only if it "arrives at a conclusion opposite to that reached by this Court on a question of law" or "decides a case differently than this Court has on a set of materially indistinguishable facts." *Williams v. Taylor*, 529 U.S. 362, 412–13 (2000). This "highly deferential standard . . . demands that state-court decisions be given the benefit of the doubt." *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (per curiam) (citation omitted). And the focus of this inquiry is the state court's bottom-line "decision." *See Harrington*, 562 U.S. at 98. After all, this Court does not "tell state courts how they must write their opinions." *Coleman v. Thompson*, 501 U.S. 722, 739 (1991).

What's more, the state court's decision is assessed "at the time it was made." *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011). AEDPA "requires federal courts to focus on what a state court knew and did, and to measure state-court decisions against this Court's precedents as of the time the state court renders its

decision." *Greene v. Fisher*, 565 U.S. 34, 38 (2011) (citation omitted) (cleaned up). So this Court's post-2002 caselaw—on which White heavily relies (at 1, 13, 17)—cannot itself form the basis of an AEDPA violation. *See* Pet. App. A 38a. White's repeated emphasis on post-2002 caselaw thus betrays the weakness of his position and demonstrates why this matter is not a good candidate for setting nationwide precedent.

Because White has brought an ineffective-assistance claim, he faces the additional, "highly demanding" *Strickland* standard. *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (per curiam) (citation omitted). It requires White to "show both that his counsel provided deficient assistance and that there was prejudice as a result." *Harrington*, 562 U.S. at 104. Of course, "the more general the rule" at issue, "the more leeway state courts have." *Shinn*, 592 U.S. at 119 (citation omitted). *Strickland*'s rule is no doubt "general," so "a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard." *Id.* (cleaned up). In other words, "deference to the state court" here is "near its apex." *Sexton v. Beaudreaux*, 585 U.S. 961, 968 (2018) (per curiam).

Putting AEDPA and *Strickland* together looks like this: As to deficient performance, a federal habeas court should "take a 'highly deferential' look at counsel's performance through the 'deferential lens of § 2254(d).'" *Cullen*, 563 U.S. at 190 (citations omitted). That means first applying a "'strong presumption' that counsel's representation was within the 'wide range' of reasonable professional assistance." *Harrington*, 562

U.S. at 104 (citation omitted). But because the Kentucky Supreme Court "decided that counsel performed adequately," it also means that this Court "may grant relief only if *every* fairminded jurist would agree that *every* reasonable lawyer would have made a different decision." *Dunn v. Reeves*, 594 U.S. 731, 739–40 (2021) (per curiam) (cleaned up).

The prejudice prong is equally difficult to meet under AEDPA, even assuming that White can otherwise prevail. He must show "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. In this context, it means proof that White's attorney "would have introduced" the new evidence and that the jury "would have returned with a different sentence." *Wong v. Belmontes*, 558 U.S. 15, 20 (2009) (per curiam) (citation omitted). But even that proof is insufficient on AEDPA review. White must also show that *every* fairminded jurist would disagree with the Kentucky Supreme Court's prejudice determination. *See Shinn*, 592 U.S. at 121.

B. Applying this doubly deferential standard, the Sixth Circuit rejected White's claim on both of *Strickland*'s prongs. Pet. App. A 18a.

As to deficient performance, the panel began by noting that the state court identified the correct rule. *Id.* More specifically, the Kentucky Supreme Court asked whether counsel's investigation into White's background was "reasonable under all the circumstances." Pet. App. B 122a. That tracks *Strickland*.

See 466 U.S. at 691 (assessing counsel's decisions "for reasonableness in all the circumstances").

Rather than dispute this overlap in standards, White criticizes (at 13 n.2, 22) the Sixth Circuit's characterization of his counsel's mitigation investigation. But that fact-bound issue doesn't move the needle on whether to grant certiorari. Plus, the record establishes that White's counsel spent "at least a dozen hours . . . interviewing White's family, friends, and others who knew him" before Fisher agreed to testify against him. Pet. App. A 5a. At that time, when counsel believed in White's innocence, White's family "gave 'no indication' 'at any time' about any 'erratic' details in his childhood, such as child abuse or exposure to traumatic events." *Id.* (citation omitted). By contrast, after White's alibi defense was no longer viable, counsel learned about "White's traumatic upbringing" and presented "much" of that evidence to the jury. *Id.* at 6a–7a. As the Sixth Circuit summarized, "[o]ver a three-day period, counsel asked mitigating witnesses well over one thousand questions." *Id.* at 34a. The Sixth Circuit's appendix shows just how much mitigating proof came in. *Id.* at 63a–72a. Despite White's suggestion (at 15), counsel's efforts were not "shambolic."

White next disputes (at 13–14) the state court's distinguishing of *Williams*. Pet. App. B 123a–24a. The Sixth Circuit's response was spot on: the Kentucky Supreme Court "correctly noted that *Williams* didn't control here because White's counsel did present mitigating evidence while Williams' counsel didn't." Pet. App.

A 19a. In addition, "*Williams* didn't confront a situation in which the defendant at first credibly claimed innocence." *Id.* at 21a. The deficient-performance question here—whether the substantial evidence counsel uncovered and presented at trial after White's alibi defense fell apart sufficed under *Strickland*—is altogether different from the question in *Williams*. On this point, the Sixth Circuit was right to invoke this Court's "caution[] . . . to not frame its holdings at too high a level of generality." *Id.* (citing *Nevada v. Jackson*, 569 U.S. 505, 512 (2013) (per curiam)).

White makes much (at 18–20) of the Sixth Circuit's statement that the Kentucky Supreme Court "*might* have articulated a legal standard that 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.'" *Id.* at 20a (citation omitted) (emphasis added). But, as the Sixth Circuit explained, the relevant inquiry is whether the state court's decision as a whole comports with clearly established federal law, giving it the benefit of the doubt. *See Woodford*, 537 U.S. at 23–24. The inquiry is not whether a single sentence contains potentially "imprecise" language in a decision that otherwise cites and applies the correct standard. *See id.*

Given its use of the word "might," the Sixth Circuit also explained that this sentence could be understood as consistent with federal law. Pet. App. A 21a. Whether White's counsel acted reasonably "may be de-

termined or substantially influenced by the defendant's own statements or actions." *Strickland*, 466 U.S. at 691. So the Kentucky Supreme Court was permitted to account for White's false insistence that he was innocent—not to mention his family's initial reticence to share difficult details about his childhood.

As an afterthought, White spends a single paragraph arguing (at 20–21) that the Sixth Circuit created a circuit split in its contrary-to analysis. As evidence, White cites the Ninth Circuit's statement that "it is the application, not the recitation of a standard that matters for § 2254(d) purposes." *Hardy v. Chappell*, 849 F.3d 803, 819 (9th Cir. 2016) (amended opinion). *Hardy*, however, drew this rule from a non-AEDPA case. *Id.* (citing *Sears v. Upton*, 561 U.S. 945, 952 (2010) (per curiam)); *see also* Pet. App. A 38a (distinguishing *Sears* on the basis that it did not apply AEDPA). So to the extent there is any daylight between the decision below and *Hardy*, the latter's failure to base its holding on AEDPA explains any such tension.

In any event, the Sixth Circuit's contrary-to analysis suffices even under the Ninth Circuit's approach. The Sixth Circuit did not end its analysis upon concluding that the Kentucky Supreme Court correctly cited *Strickland*'s standard. The panel went on to address White's arguments that individual parts of the Kentucky Supreme Court's analysis contravened *Strickland*. Pet. App. A 19a–21a. For example, the panel noted that "none of these individual statements from the state court's opinion contradict clearly established Supreme Court precedent." *Id.* at 20a. As part

of its contrary-to analysis, the Sixth Circuit also credited the state court's "overarching focus on the reasonableness of counsel's actions *under the actual circumstances*." *Id.* (emphasis added). As a result, the Sixth Circuit did exactly what the Ninth Circuit said is required.

C. White's prejudice argument (at 17–18) also comes up short. Here as well, the Kentucky Supreme Court "articulated the correct standard." *Id.* at 22a; *see* Pet. App. B 121a, 124a.

White nevertheless disputes (at 22–23) the Kentucky Supreme Court's use of the word "unquestionably" when it stated 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." Pet. App. B 124a. The state court's use of a single adverb does not warrant this Court's plenary review. At best, the Kentucky Supreme Court's word choice is a one-off issue that affects only White.

Even so, the Sixth Circuit correctly reasoned that, under this Court's caselaw, "squabbles over a few words—much less one adverb—aren't enough to prove that a state-court decision is 'contrary' to Supreme Court precedent." Pet. App. A 24a (citing, e.g., *Woodford*, 534 U.S. at 23–24). In fact, the panel explained that the disputed passage could reasonably be read to accord with this Court's caselaw. *Id.* at 25a. The Sixth Circuit also correctly applied this Court's rule that a federal court should endeavor not to interpret a state

court decision in a way that "needlessly create[s] internal inconsistency in the opinion." *Id.* (quoting *Holland v. Jackson*, 542 U.S. 649, 654 (2004) (per curiam)).

White's final prejudice objection (at 23) is that the state court said that "some of the [additional] evidence could have been detrimental to [White's] case. Pet. App. B 124a. But the state court didn't rule that additional mitigating evidence must be all favorable to establish prejudice. It simply said, as part of its weighing inquiry, that White's additional evidence both helps and hurts his position. That is an accurate statement of *Strickland*'s prejudice inquiry. *See Wong*, 558 U.S. at 26 (stating that *Strickland* requires consideration of "all the evidence—the good and the bad—when evaluating prejudice"). And the state court was likewise "correct to state that overwhelming aggravating circumstances make it more difficult for a petitioner to show prejudice from counsel's failure to introduce additional mitigating evidence." Pet. App. A 22a; *accord Wong*, 558 U.S. at 26–28; *Shinn*, 592 U.S. at 121–24.

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At bottom, White asks this Court to engage in ordinary error correction of the Kentucky Supreme Court's decision. White no doubt thinks that AEDPA's standard is too high. But that high standard is the point of AEDPA. *See Harrington*, 562 U.S. at 102 ("If [AEDPA's] standard is difficult to meet, that is because it was meant to be."). The difficulty of proving an AEDPA violation does not, as White suggests (at

23–24), "drain[] this Court's bedrock criminal procedure decisions of their force" or make AEDPA review an "empty exercise." AEDPA's stringent standard appropriately reflects just how profound an intrusion habeas review is on Kentucky's sovereign prerogative to punish criminal offenses within its borders, subject to review in its state courts, with this Court having the final say on appeal. *See Harrington*, 562 U.S. at 103.

II. The Court should not review whether a federal court can consider alternative reasoning under AEDPA.

White's second question presented depends on mischaracterizing the Sixth Circuit's decision. In his view, the panel ruled against him on the basis that a federal court can find an AEDPA violation and then hypothesize an alternative justification for the state court's ruling. But the Sixth Circuit did not apply such a rule here. The Sixth Circuit's actual holding—that a federal court should review a state court decision as a whole and give it the benefit of the doubt—does not justify certiorari. Indeed, White does not seek review on that question. Even if the Court thinks White's second question is squarely presented, no compelling reason exists to review it here.

A. White's second question presented requires some unpacking. According to White (at 29), the Sixth Circuit held that the Kentucky Supreme Court contradicted clearly established precedent of this Court. After identifying such an error, White believes the panel supplied its own alternative rationale that the Kentucky Supreme Court did not adopt.

White's characterization distorts the Sixth Circuit's reasoning. The panel, it is true, noted that the Kentucky Supreme Court "might have articulated a legal standard that contradicted Supreme Court precedent." Pet. App. A 20a. But the panel did not respond by offering alternative reasoning, as White argues. Instead, the panel applied this Court's well-worn rule that a state court's decision must be read as a whole and given the benefit of the doubt. *Id.* at 20a (citing *Harrington*, 562 U.S. at 98; *Woodford*, 537 U.S. at 24). Applying that rule, the panel concluded that the "state court's bottom-line judgment and decision as a whole did not contravene clearly established Supreme Court precedent." *Id.*

White does not contest this rule or dispute its application here. More specifically, he does not challenge the AEDPA proposition that even if a state court uses potentially "imprecise" language, its decision must "be given the benefit of the doubt." *See Woodford*, 537 U.S. at 24. Nor does he dispute that federal habeas courts should not exhibit a "readiness to attribute error" to a state court, given the "presumption that state courts know and follow the law." *Id.* These AEDPA rules are what the Sixth Circuit applied to rule against White. Pet. App. A 20a–21a. And White does not ask the

Court to review how the Sixth Circuit applied those rules.

Contrary to White's contention, the Sixth Circuit did not find an AEDPA violation and then supply an alternative rationale. Although his petition identifies (at 29–30) the two parts of the Sixth Circuit's decision that he believes so held, those portions of the decision applied the AEDPA rules discussed immediately above to hold that the state court's decision as a whole did not violate AEDPA. *See id.* at 20a–21a, 24a–27a. As a result, White asks the Court to review an abstract issue that the decision below does not turn on. Because White's second question presented is not outcome determinative, the Court should deny review.

As White emphasizes (at 25), the Sixth Circuit did discuss a federal court's ability under AEDPA to rely on "alternative reasoning that 'could have supported' the court's decision." *Id.* at 13a–14a (citation omitted). But the court did so in the legal-background section of its decision, where it summarized the "dense forest of presumptions and deference" that White must "navigate" to obtain relief. *Id.* at 17a. Nowhere in its decision did the Sixth Circuit *apply* that background rule to overlook an AEDPA violation. So even though the panel generally discussed the use of alternative reasoning, that rule did not drive its affirmance. This being so, there is no compelling reason to review this abstract issue on this record.

B. In any event, the Sixth Circuit was correct that it can rely on "alternative reasoning that 'could have supported' the [state] court's decision." *Id.* at 13a–14a

(quoting *Harrington*, 562 U.S. at 102). This conclusion follows from both AEDPA's text and this Court's caselaw.

Taking each in turn, Section 2254(d)(1) instructs federal courts to review the "decision" of a state court. So as written, AEDPA keys to the state court's "decision," not to the justifications the court gave en route to that decision. Indeed, a state court need not even provide reasoning to withstand AEDPA review. As this Court has held, "there is no text in [Section 2254(d)] requiring a statement of reasons." *Harrington*, 562 U.S. at 98. What matters under AEDPA is the state court's "decision." As *Harrington* put it, "[t]he statute refers only to a 'decision,' which resulted from an adjudication.'" *Id.*

This Court's caselaw bears out this decision-focused inquiry. *Harrington* instructs that a habeas court's job is to determine "what arguments or theories supported or, as here, *could have supported*, the state court's decision." *Id.* at 102 (emphasis added); *accord Mays v. Hines*, 592 U.S. 385, 391–92 (2021) (per curiam) ("[A] federal court must carefully consider *all* the reasons and evidence supporting the state court's decision. After all, there is no way to hold that a decision was 'lacking in justification' without identifying—let alone rebutting—all of the justifications." (citation omitted) (emphasis added)). This precedent makes clear that a habeas court is not strictly limited to the reasoning provided by the state court. A federal court

may also consult reasoning that "could have supported[] the state court's decision." *Harrington*, 562 U.S. at 102.

White responds (at 24–25) that a federal court can consider alternative reasoning only when the state court did not provide any reasoning. But nothing in AEDPA's text distinguishes between reasoned and unreasoned state court decisions. They are treated the same under AEDPA. In addition, White's view would incentivize state courts not to explain their decisions so as to secure more deferential AEDPA review down the line. If that occurred, the slow process of federal habeas review would get even slower because federal courts would be less likely to have a written baseline by the state courts from which to start. (Recall that White's habeas petition has taken almost a quarter century to get here after the Kentucky Supreme Court issued a reasoned decision.)

White's position is also in tension with how courts write opinions. Sometimes (perhaps often), a court concludes that multiple reasons justify ruling in a party's favor, but whether out of convenience or a desire to decide as little as possible, the court includes only one of those reasons in its decision. White's position requires believing that a state court would not have agreed with alternative reasoning simply because the court reached the same result on different grounds, even if the prevailing party had raised the not-reached argument. That is not how busy state courts work.

White also argues (at 25) that *Wilson v. Sellers* supports him. 584 U.S. 122 (2018). But the narrow "issue" in *Wilson* was how to "find the state court's reasons when the relevant state-court decision on the merits, say, a state supreme court decision, does not come accompanied with reasons." *Id.* at 125. In other words, *Wilson* was about finding the state court's potential reasons, not about limiting which reasons a federal court applying AEDPA can consider. White relies (at 27) on the part of *Wilson* that says that when a state court provides a "reasoned opinion," "a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable." *Id.* But that sentence does not prohibit a federal court from relying on alternative reasoning as necessary. Indeed, two sentences before White's favored quote, *Wilson* cited *Harrington* in emphasizing federal courts' duty "to give appropriate deference to [the state court's] *decision*." *Id.* (emphasis added). So before and after *Wilson*, the "decision" is what matters.

C. White argues (at 25–27) that there is a circuit split about how to apply *Wilson*. But White overstates that disagreement for many of the reasons that the Eleventh Circuit has explained. *Pye v. Warden, Ga. Diagnostic Prison*, 50 F.4th 1025, 1040 n.9 (11th Cir. 2022) (en banc), *cert. denied* 144 S. Ct. 344 (2023). And one of White's favored cases explains why any judicial disagreement does not ultimately matter.

For starters, White's lead citation (at 25) for a decision that diverges from the opinion below is *Dennis v. Secretary, Pennsylvania Department of Corrections*,

834 F.3d 263 (3d Cir. 2016) (en banc). But that decision predates *Wilson*, so it offers no help for White given his reliance on *Wilson*. White's cited Second Circuit case is even less helpful to him, as it in fact considered alternative grounds not relied on by the state court. *Scrimo v. Lee*, 935 F.3d 103, 116 (2d Cir. 2019) ("That is a ruling that the trial court did not make. In any event, the argument is defective."). And post-*Wilson*, the Second Circuit has said that it reviews a state court decision "only for the 'reasonableness' of its bottom-line 'result,' not the 'quality of [its] reasoning.'" *McCray v. Capra*, 45 F.4th 634, 640 (2d Cir. 2022) (citation omitted).

White's cited Seventh Circuit decision is likewise not evidence of a circuit split. It mentioned *Wilson* only in passing before declining to decide how Section 2254(d) applied. *Winfield v. Dorethy*, 956 F.3d 442, 454–55 (7th Cir. 2020). Plus, elsewhere post-*Wilson* the Seventh Circuit has supported reliance on alternative reasoning. *See Flint v. Carr*, 10 F.4th 786, 791–92, 797 (7th Cir. 2021) ("[W]e must deny the writ if we can posit arguments or theories that could have supported the state court's decision . . . ." (citation omitted)).

White's preferred First Circuit precedent does not establish a circuit split, either. As White notes (at 26), his favored decision quoted *Wilson*. *Hudson v. Kelly*, 94 F.4th 195, 200–01, 203 (1st Cir. 2024). But the court never refused to consider alternative justifications. In arguing to the contrary, White cites (at 26) a sentence in which the court simply corrected the petitioner's misunderstanding of the state court's decision.

Id. at 206–07. In any event, after *Wilson*, the First Circuit favorably cited caselaw to the effect that courts should "focus on 'the ultimate legal conclusion that the state court reached and not on whether the state court considered and discussed every angle of the [claim].'" *Strickland v. Goguen*, 3 F.4th 45, 53 (1st Cir. 2021) (citation omitted).

The Ninth Circuit, it is true, reads *Wilson* to say that "we may look only to the reasoning of the [state court]." *Kipp v. Davis*, 971 F.3d 939, 952 n.10 (9th Cir. 2020). But the court reached that conclusion in a footnote in summary fashion without considering the limited scope of *Wilson*'s holding and without addressing *Harrington*'s endorsement of federal courts examining reasons that "could have supported[] the state court's decision." 562 U.S. at 102. So although the cited Ninth Circuit's decision creates tension, it does not establish considered disagreement.

White's best evidence of a circuit conflict is the Fifth Circuit's decision in *Wooten v. Lumpkin*, 113 F.4th 560 (5th Cir. 2024). There, the court stated that "*Wilson* requires us to look to the state court's reasoning, meaning we cannot follow [a prior Fifth Circuit decision's] instruction to look only to the state court's conclusion." *Id.* at 567. But *Wooten* viewed this as a distinction without a difference because a federal court can still address alternative reasoning in support of a state court's decision under the harmless-error rule from *Brecht v. Abrahamson*, 507 U.S. 619 (1993). *Id.* As the Fifth Circuit explained, "[i]n a case where the state court reaches the correct result, but

provides inadequate reasons, habeas relief will be inappropriate because the error in reasoning will be harmless under *Brecht*." *Id.* As a result, White's best case for establishing judicial disagreement about *Wilson* explains why such disagreement is beside the point given that an AEDPA violation alone does not entitle a petitioner to habeas relief. *See infra* Section III.

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All told, White's second question presented addresses a hypothetical issue on this record. Although the decision below supports federal courts considering alternative reasoning, that issue did not drive the result below. Even if the Court disagrees, White's second question does not warrant review. The text of AEDPA and this Court's caselaw favor consideration of alternative reasoning. Although there is some judicial disagreement on this issue, it is not considered and entrenched enough to warrant this Court stepping in, especially given that, as the Fifth Circuit has explained, any judicial disagreement matters not given the harmless-error backstop of *Brecht*.

III. White's third question presented does not warrant review.

White's final question presented is listed last for a reason. The Sixth Circuit did not rest its decision on this ground. The issue White now disputes mostly arose in a single paragraph in the legal-background

section of the panel's decision. No compelling reason exists for the Court to review this nonissue now.

By way of background, one of the habeas statutes that predates AEDPA states that "[t]he court shall summarily hear and determine the facts, and dispose of the matter as *law and justice* require." 28 U.S.C. § 2243 (emphasis added). The Court considered this provision in *Brown v. Davenport*. It held that Section 2243 shows that, in passing AEDPA, "Congress left intact the equitable discretion traditionally invested in federal courts by preexisting habeas statutes." 596 U.S. at 134. In other words, a habeas petitioner who establishes an AEDPA violation is not automatically entitled to habeas relief. The petitioner, *Brown* instructs, must also show entitlement to relief under "this Court's precedents governing the appropriate exercise of equitable discretion—including *Brecht*." *Id.* As *Brown* summarized, "even a petitioner who prevails under AEDPA must still today persuade a federal habeas court that 'law and justice require' relief." *Id.* (quoting 28 U.S.C. § 2243).

In the legal-background section of the decision below, the panel briefly considered this part of *Brown*. Pet. App. A 10a–11a, 17a. And it tracked *Brown* closely. It noted that "if a petitioner like White 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." *Id.* at 17a (citing *Brown*, 596 U.S. at 134). The panel did not meaningfully discuss this further issue as applied to White or to habeas petitioners more generally. The most it said was in the penultimate sentence of its decision: "Despite years of delay, the truth persists: neither law nor justice stand

in the way of [White's] sentence." *Id.* at 61a–62a (footnote omitted). As a result, the panel did not expound on what beyond an AEDPA violation a petitioner must show to win habeas relief. It simply set out *Brown*'s two-part requirement and left it at that.

White cannot seriously dispute the panel's reading of *Brown*. *Brown* squarely held that an AEDPA violation is not enough to secure habeas relief. 596 U.S. at 134. The Sixth Circuit simply noted as much before discussing the merits of White's claims under AEDPA. The panel did not address what beyond an AEDPA violation White must prove to secure habeas relief. That makes sense given the Sixth Circuit's holding that White did not establish an AEDPA violation. In fact, White correctly acknowledges (at 34) that the Sixth Circuit did not "provide guidance as to what additional showing must be made" beyond an AEDPA violation. Given that everyone agrees on this basic point, there is no reason for this Court to decide what the Sixth Circuit didn't decide.

White speculates (at 31, 34) that the Sixth Circuit now allows a free-ranging inquiry into what "justice" requires once an AEDPA violation has been shown. But the panel pegged this inquiry to a federal court's "equitable discretion." Pet. App. A 17a. *Brown* did the same. 596 U.S. at 134 ("[W]hatever else those inquiries involve, they continue to require federal habeas courts to apply this Court's precedents governing the appropriate exercise of equitable discretion—including *Brecht*."). So going forward, Sixth Circuit district

courts will simply do what *Brown* tells them to, as the decision below instructs.

White still suggests (at 31) that Sixth Circuit district courts "may believe they can not [sic] 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." What district courts "may believe" in future cases is not a reason to grant certiorari here. It is a reason to let those future cases work their way through the judicial system. When a circuit court decides what beyond an AEDPA violation a petitioner must show to win habeas relief, this Court can address the issue then as necessary.

CONCLUSION

The Court should deny the petition for a writ of certiorari.

Respectfully submitted,

Office of the Kentucky Attorney General
1024 Capital Center Drive, Suite 200
Frankfort, KY 40601
(502) 696-5300
Matt.Kuhn@ky.gov

**Counsel of Record*

MATTHEW F. KUHN*
Solicitor General

JOHN H. HEYBURN
Principal Deputy Solicitor General

JACOB M. ABRAHAMSON
Deputy Solicitor General