No. 25-426

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
U.S. Court of Appeals for the Sixth Circuit

REPLY BRIEF FOR PETITIONER

DAVID M. BARRON
POST-CONVICTION BRANCH
KY. DEPT. OF PUBLIC ADVOCACY
5 Mill Creek Park, Section 101
Frankfort, KY 40601
(502) 564-3948
david.barron@ky.gov

DONALD B. VERRILLI, JR.
Counsel of Record
GINGER D. ANDERS
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001-5369
(202) 220-1100
Donald.Verrilli@mto.com

Counsel for Petitioner

(additional counsel on inside cover)

ADEEL MOHAMMADI
MUNGER, TOLLES & OLSON LLP
350 S. Grand Ave.,
50th Floor
Los Angeles, CA 90071
(213) 683-9208
adeel.mohammadi@mto.com

EVAN MANN
MUNGER, TOLLES & OLSON LLP
560 Mission Street,
27th Floor
San Francisco, CA 94105
(415) 512-4000
evan.mann@mto.com

Counsel for Petitioner

TABLE OF CONTENTS

Page

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

INTRODUCTION 1

ARGUMENT 2

I. The Sixth Circuit's Decision Distorts AEDPA's Standard Of Review And Disregards This Court's Repeated Holdings That Counsel Has A Duty To Reasonably Investigate Mitigation. 2

II. The Sixth Circuit's Holding That A Habeas Court May Uphold A State Court's Decision Based On "Alternative" Reasoning Conflicts With AEDPA And Decisions Of Other Circuit Courts. 9

III. The Sixth Circuit's Section 2243 Holding Warrants Review. 11

CONCLUSION 12

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Andrus v. *Texas*,
590 U.S. 806 (2020) 6

Brecht v. *Abrahamson*,
507 U.S. 619 (1993) 10

Harrington v. *Richter*,
562 U.S. 86 (2011) 9, 10

Porter v. *McCollum*,
558 U.S. 30 (2009) 1, 4, 6

Rompilla v. *Beard*,
545 U.S. 374 (2005) 1, 4, 6, 7

Strickland v. *Washington*,
466 U.S. 668 (1984) 1, 4, 7

Wiggins v. *Smith*,
539 U.S. 510 (2003) 1, 4, 6

Williams v. *Taylor*,
529 U.S. 362 (2000) 1, 4, 6

Wilson v. *Sellers*,
584 U.S. 122 (2018) 10

FEDERAL STATUTES

28 U.S.C. 2243 11

28 U.S.C. 2254(d) 10, 11

28 U.S.C. 2254(d)(1) 2

INTRODUCTION

Respondent seems to believe it is more difficult for a camel to pass through the eye of a needle than for a federal habeas petitioner to obtain relief. But AEDPA's plain text requires relief if a state court decision is contrary to or an unreasonable application of the law clearly established by this Court when the petitioner's conviction became final. This statutory standard respects state court adjudicatory processes and finality interests by requiring deference when state courts address issues that this Court has not yet resolved. At the same time, it also unambiguously provides for relief when this Court *has* issued a controlling decision and a state court does not faithfully apply it. Respecting the balance Congress struck, this Court has granted relief under AEDPA numerous times in the three decades the statute has been in effect.

Most pertinently, this Court has repeatedly granted relief in cases *materially indistinguishable from this one*: where capital defense counsel failed, without reasonable justification, to investigate and prepare a sentencing mitigation case. *Porter* v. *McCollum*, 558 U.S. 30 (2009); *Rompilla* v. *Beard*, 545 U.S. 374 (2005); *Wiggins* v. *Smith*, 539 U.S. 510 (2003); *Williams* v. *Taylor*, 529 U.S. 362 (2000). As in those cases, trial counsel had no plausible justification for failing to develop a mitigation case. He just arrogantly assumed he would win an acquittal. Petitioner suffered grievous prejudice as a result. AEDPA thus entitles petitioner to relief.

The Sixth Circuit nonetheless denied relief because the Kentucky Supreme Court correctly quoted the "overarching" standard announced in *Strickland* v. *Washington*, 466 U.S. 668 (1984). Pet.App.20a. But what matters under AEDPA is whether the state court

applied this Court's decisions correctly, not whether it quoted them correctly. Here it plainly did not.

The Sixth Circuit's decision thus transforms AEDPA into an unwavering command of supine deference that disrespects the balance Congress struck, as it gives state courts free rein to disregard on-point decisions of this Court so long as they gesture in the direction of the principles stated in those decisions. That is ample reason to grant review.

Review is all the more warranted because the Sixth Circuit's belief that it could uphold the state court based on any reasonable ground it could hypothesize deepens a persistent and acknowledged circuit conflict. Although respondent downplays the conflict, there is no denying that numerous circuits have rejected the approach the Sixth Circuit took here, holding that a court applying AEDPA must evaluate the specific reasons given by a state court for its decision. This circuit conflict is consequential. It will arise frequently in AEDPA cases and will be outcome determinative in many.

ARGUMENT

I. The Sixth Circuit's Decision Distorts AEDPA's Standard Of Review And Disregards This Court's Repeated Holdings That Counsel Has A Duty To Reasonably Investigate Mitigation.

A. The first step for a court adjudicating a petition under 28 U.S.C. 2254(d)(1) is to identify what, if anything, this Court has held on the precise issue presented. If this Court has ruled on the issue, the habeas court must determine whether the state court decision under review is contrary to or unreasonably applies

the law that this Court has established in those rulings.

Respondent makes no real effort to defend the Sixth Circuit's ruling under those AEDPA-prescribed standards—doubtless because the ruling cannot be defended on that basis. Tracking the Sixth Circuit majority, respondent contends that a state-court decision survives AEDPA review so long as (i) the state court has generally identified the applicable decisions of this Court and (ii) the federal habeas court can come up with "any reasonable argument" (Pet.App.14a) that the state court's ruling is not inconsistent with those decisions. Opp.11. It was therefore enough, on this view, that the Kentucky Supreme Court quoted *Strickland*'s rule that counsel's performance should be reviewed under a deferential "reasonableness" standard and then concluded that counsel's failure to investigate mitigation was reasonable given his client's profession of innocence until just before trial. Opp.13, 16-17. In other words, the Sixth Circuit held that the Kentucky court was free to assess on a blank slate whether trial counsel's actions were reasonable given the totality of the circumstances—as though this Court had never confronted the specific question that was before the state court.

But the issue on which the Sixth Circuit should have focused was whether this Court has addressed when counsel's failure to thoroughly investigate his client's background to develop a sentencing mitigation case deprives the client of his right to effective assistance of counsel. This Court has, of course, repeatedly addressed that precise question in cases applying AEDPA's standard of review and held that state-court decisions rejecting Sixth Amendment challenges to

counsel's performance in circumstances materially indistinguishable from this case were contrary to or unreasonable applications of *Strickland*. See *Porter*; *Rompilla*; *Wiggins*; *Williams*, *supra*.

Indeed, it is remarkable, given the frequency and specificity of this Court's rulings, that neither the Kentucky Supreme Court nor the Sixth Circuit *ever mentioned* the specific sentence in *Strickland* that provided the rule of decision in *Porter*, *Rompilla*, *Wiggins*, and *Williams* and that should have provided the rule of decision here: "counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." 466 U.S. at 691; see *Porter*, 558 U.S. at 39 (applying this rule); *Rompilla*, 545 U.S. at 380-381 (same); *Wiggins*, 539 U.S. at 521-522 (same); *Williams*, 529 U.S. at 390, 396 (same). In every one of those decisions, this Court held that counsel's performance fell below *Strickland*'s clearly established standard of performance—even when accounting for *Strickland*'s deference to counsel that the Kentucky Supreme Court and the Sixth Circuit invoked to reject White's Sixth Amendment claim here. In each case, counsel had defaulted on its obligation—its "duty" in *Strickland*'s words—to conduct a reasonable investigation of his client's background.

To put it bluntly, the Sixth Circuit all but ignored a quarter-century of binding authority from this Court explaining how *Strickland*'s clearly established law applies under AEDPA in circumstances just like those present here. And the Sixth Circuit did so, ironically, by making the very same analytical error that it chastised petitioner's habeas counsel for making: "fram[ing] [this Court's] holdings at too high a level of

generality." Pet.App.21a. The Sixth Circuit repeatedly stated that the proper inquiry under AEDPA is whether the state court "properly framed the overarching question"—a standard the Sixth Circuit viewed as satisfied by the Kentucky court's "citing, quoting, and paraphrasing of *Strickland*" and its "overarching" acknowledgment of *Strickland*'s reasonableness test. Pet.App.20a; *id*. at 18a, 19a. But that is *not* the question AEDPA directs federal courts to answer. The question under AEDPA in this case is whether the state court's conclusion that petitioner's lawyer had no Sixth Amendment obligation to investigate mitigation because petitioner professed innocence (a ruling even the Sixth Circuit admitted "might have * * * contradicted" this Court's precedent, Pet.App.20a) was contrary to, or an unreasonable application of, *Strickland* as explicated in *Williams*, *Wiggins*, *Rompilla* and *Porter*.[1] It indisputably was.

In each decision, this Court held that counsel performed deficiently under *Strickland* by failing to conduct an adequate investigation into mitigation, even though—as here—counsel had articulated a reason for not doing so. In *Wiggins*, counsel investigated possible mitigating evidence but abandoned that effort prematurely after deciding to "retry guilt" at sentencing—where, as here, the defendant had professed innocence and the prospects for acquittal were, if anything, a

---

[1] Respondent suggests *Wiggins*, *Rompilla*, and *Porter* are irrelevant because they were decided after the Kentucky Supreme Court ruled. But, as petitioner has explained, Pet.12, 19, those decisions held that *Strickland* had already clearly established the rule they were applying. They thus bear directly on whether the Kentucky court's decision was contrary to or an unreasonable application of *Strickland*. Respondent does not offer any response.

good deal better than they were here. 539 U.S. at 518-519. And in *Williams*, trial counsel decided to forego a mitigation case in favor of seeking mercy based on his client's confession. 529 U.S. at 396; see *Rompilla*, 545 U.S. at 383 (failure to examine court file on prior conviction was unreasonable even though counsel had developed other mitigation evidence); *Porter*, 558 U.S. at 40 (failure to investigate mitigation was unreasonable even though client was "fatalistic and uncooperative"). The point of those cases—all explicating clearly established law under AEDPA—is that, as *Strickland* unambiguously held, counsel who fails to develop a mitigation case for sentencing without having done enough investigation to reasonably conclude that further effort would be fruitless has not provided the minimum level of competent lawyering that the Sixth Amendment guarantees.

A finding that petitioner's counsel performed deficiently follows a fortiori from those holdings. Unlike counsel in *Williams*, *Wiggins*, *Rompilla*, and *Porter*, White's lawyer had no reason—and offered none—for failing to prepare for sentencing by developing a mitigation case. He testified that he was so sure he would win acquittal that he needn't bother to do "any investigation at all" into mitigation. ROA.4780. Under this Court's controlling authority, that is deficient performance *by definition*. *E.g., Wiggins*, 539 U.S. at 526. And the deficiency was not overcome by counsel's last-minute scramble to investigate petitioner's background. Counsel sought only evidence that he could cobble together to support an insanity defense (and he failed to procure an expert at that), some of which would prove to be affirmatively harmful at sentencing. His shambolic efforts failed to uncover "vast tranches of mitigating evidence," *Andrus* v. *Texas*, 590 U.S. 806, 814 (2020), that could have been used to make a strong

mitigation case at the sentencing phase of the proceeding. Pet.15-17.

B. Identical errors infect the Sixth Circuit's treatment of *Strickland*'s prejudice inquiry, which requires only "a reasonable probability" of a different result. 466 U.S. at 694; see *Rompilla*, 545 U.S. at 393 (inquiry focuses on whether mitigating evidence as a whole "is sufficient to undermine confidence in the outcome" (citation modified)). The Kentucky Supreme Court set the bar much higher. It found no prejudice because the omitted evidence would not have had "such an unquestionably favorable impact that it would have changed the sentence of the jury." Pet.App.124a. Respondent dismisses that error as a "one-off" misuse of a "single adverb." Opp.17. But words matter, particularly when they purport to articulate the governing legal test. The Kentucky court indisputably demanded much more than is required by clearly established law. But rather than acknowledge the conflict, the Sixth Circuit again held that AEDPA authorized it to overlook that legal error because the Kentucky court was in the ballpark.

Respondent tries to minimize the significance of the Sixth Circuit's approval of the Kentucky Supreme Court's impossibly high bar for prejudice by claiming the jury heard evidence about petitioner's background during the guilt phase that it could consider at sentencing. Opp.5-6. But respondent does not grapple with petitioner's points that: (i) vast amounts of additional mitigating evidence were uncovered by post-conviction counsel, including severe violence perpetrated on petitioner by family members including his grandmother who raised him, his repeated serious head injuries, his suicide attempt, and his witnessing

of incestuous sexual abuse (Pet.6-7, 16-18); (ii) the evidence of petitioner's background presented at the guilt phase aimed to establish insanity, and some of that evidence was *aggravating* (Pet.15); (iii) neither counsel nor the jury instructions informed the jury at sentencing that they could consider the guilt-phase evidence in mitigation (Pet.6); and (iv) even given everything above, the jury still initially split 7-5 on death. Instead, counsel focused on different arguments against death—just as happened in *Williams*, *Wiggins*, *Rompilla* and *Porter*.

C. The Sixth Circuit's decision reflects a level of disregard for this Court's precedents—as well as AEDPA's specific statutory commands—that demands review. AEDPA does not license inferior courts to freelance as the Sixth Circuit did here. The statute strikes a balance: it recognizes important comity and finality interests by providing that petitioners generally cannot obtain relief without showing that a state court failed to follow clearly established legal rules, but at the same time Congress made clear that respect for the rule of law requires that petitioners obtain relief when they make that showing. AEDPA does not authorize habeas courts to ignore precisely on-point precedents of this Court in the name of "deference." Rather, courts must respect both sides of the balance Congress struck. Doing so is particularly important where, as here, counsel's deficient performance undermines the reliability of the entire proceeding and the death sentence it produced.

Unless this Court intervenes, courts in the Sixth Circuit will feel not only free to but bound to apply the kind of supine deference that the decision below prescribes. Those considerations would justify review even if the decision below had not created a conflict on

this issue with the Ninth Circuit. Pet.20. The existence of this conflict only underscores the need for this Court's intervention.

II. The Sixth Circuit's Holding That A Habeas Court May Uphold A State Court's Decision Based On "Alternative" Reasoning Conflicts With AEDPA And Decisions Of Other Circuit Courts.

As the above discussion illustrates, the Sixth Circuit denied relief because it believed it was free to hypothesize "any reasonable argument" that might support the Kentucky Supreme Court's result—even if that court's actual reasoning was contrary to clearly established law. Pet.App.14a. The courts of appeals sharply disagree on that very question. Pet.24-30. Review of the second question presented is therefore manifestly warranted, particularly given that the Sixth Circuit was able to deny relief only by disregarding the legal rule that the Kentucky Supreme Court actually applied—which, as shown above, was indisputably contrary to clearly established law—and instead manufacturing an "alternative" rationale that it could defend as "reasonable." Pet.App.13a-14a.

Respondent argues against review, first contending the Sixth Circuit did not actually conjure an alternative rationale to justify the Kentucky Supreme Court's result, but merely read that decision "as a whole" with appropriate deference. Opp.20. That is not what the Sixth Circuit said it did. The court expressly invoked *Harrington* v. *Richter*, 562 U.S. 86 (2011)—which governs when the state court has not provided *any* reasons—to justify providing its own "alternative reasoning that 'could have supported' the [state] court's decision" here, *where the state court did*

provide specific reasons. Pet.App.13a (quoting *Harrington*, 562 U.S. at 102).

Respondent also (Opp.24-25) downplays the circuit conflict by suggesting that several of the conflicting decisions, Pet.25-27, predated *Wilson* v. *Sellers*, 584 U.S. 122, 125 (2018), which clarified that habeas courts must evaluate the "specific reasons" given by a state court for rejecting a claim. Putting aside the fact that many cases cited in the petition post-date *Wilson* (Pet.26), the conflict is not any less significant merely because other courts accurately anticipated *Wilson*. The fact remains that numerous courts of appeals have rejected the Sixth Circuit's approach.

Finally, respondent contends the Sixth Circuit was correct that it had authority to come up with its own "alternative reasoning." Opp.21-23. But AEDPA's text requires habeas courts to pass judgment on the state court's "*decision*"—i.e., the specific reasons the state court provided. 28 U.S.C. 2254(d) (emphasis added). And *Wilson* unambiguously held AEDPA requires exactly that in cases in which a state court has given specific reasons for rejecting a constitutional claim. 584 U.S. at 125. At the very least, the fact that so many courts have read *Wilson* to foreclose the Sixth Circuit's approach here—while the Sixth, Eighth, and Eleventh Circuits have read *Harrington* to authorize it—confirms the need for clarity from this Court, particularly given how frequently the question recurs.[2]

---

[2] Of course, a petitioner may not be entitled to relief where the state court's reasoning was erroneous but its bottom-line result was *correct* under applicable law. *Brecht* v. *Abrahamson*, 507 U.S. 619 (1993); Opp.26. The Sixth Circuit's approach is different: it requires federal courts to deny relief in cases where the state court's ruling is *not* correct, so long as the decision can

(footnote continued)

III. The Sixth Circuit's Section 2243 Holding Warrants Review.

Respondent also contends the third question presented—whether 28 U.S.C. 2243 authorizes courts to deny relief even where a petitioner established his conviction or sentence is unconstitutional and that he is entitled to relief under Section 2254(d)—is not worthy of review because (as the petition acknowledged) the Sixth Circuit did not rely on Section 2243 to deny relief here. But the fact remains that district courts in the Sixth Circuit have been instructed that they may deny habeas relief even to petitioners who would be entitled to relief under AEDPA —without any principled guidance as to how that purported authority should be exercised. Respondent does not acknowledge, much less address, that point. So even if the third question presented would not require review standing alone, it plainly does when considered together with the other cert-worthy questions presented.[3]

---

be characterized as not *unreasonable* under any imagined rationale. But AEDPA does not authorize denying habeas relief in those circumstances. Once a state court's actual reasoning has been shown to be contrary to or an unreasonable application of this Court's clearly established law, AEDPA requires relief absent harmlessness or some procedural bar. Such state-court errors are thus hardly "beside the point," as respondent puts it, Opp.26-27; they are grounds for relief, Pet.28-29.

[3] Respondent attempts to take advantage of the Sixth Circuit's reasoning, suggesting this Court should deny review without regard to the merits solely because petitioner's conviction occurred many years ago. Opp.9. But neither the Sixth Circuit nor the Kentucky Supreme Court decided this case on that basis, and petitioner complied with all applicable statutes of limitations. So the alleged delay is no justification for declining review of a decision that drastically alters AEDPA law and

(footnote continued)

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DAVID M. BARRON
POST-CONVICTION BRANCH
KY. DEPT. OF PUBLIC ADVOCACY
5 Mill Creek Park,
Section 101
Frankfort, KY 40601
(502) 564-3948
david.barron@ky.gov

DONALD B. VERRILLI, JR.
Counsel of Record
GINGER D. ANDERS
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001-5369
(202) 220-1100
Donald.Verrilli@mto.com

ADEEL MOHAMMADI
MUNGER, TOLLES & OLSON LLP
350 S. Grand Ave.,
50th Floor
Los Angeles, CA 90071
(213) 683-9208
adeel.mohammadi@mto.com

EVAN MANN
MUNGER, TOLLES & OLSON LLP
560 Mission Street,
27th Floor
San Francisco, CA 94105
(415) 512-4000
evan.mann@mto.com

Counsel for Petitioner

January 6, 2026

---

deepens a circuit conflict. In all events, much of the elapsed time is attributable to the post-conviction state courts' delay in ruling on petitioner's post-conviction filings, including while petitioner sought intellectual-disability testing (an evaluation habeas counsel obtained reported an IQ of 67). Pet.App.8a-10a; Pet.C.A.Reply.28 n.10.