No. ________

In the Supreme Court of the United States

THOMAS MITCHELL OVERTON, PETITIONER

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

ERIC T. KOHAN
Counsel of Record
SARAH ELLER
MALAVIKA LOBO
Wilson Sonsini
Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
ekohan@wsgr.com

Counsel for Petitioner

CAPITAL CASE
QUESTIONS PRESENTED

The Antiterrorism and Effective Death Penalty Act ("AEDPA") prevents federal courts from granting habeas petitions for constitutional violations regarding state court criminal convictions unless the state's adjudication of the claim "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d)(1). This Court has held that to overcome "AEDPA deference," the application of the federal law must be unreasonable, a standard higher than that of "clear error." *Williams v. Taylor*, 529 U.S. 362, 411 (2000); *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). In *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), this Court held that "the 'final interpretation of the laws'" would be in "the proper and peculiar province of the courts." *Id.* at 385 (citation omitted). The first question presented is:

1. Whether AEDPA deference is unconstitutional under *Loper Bright*.

Under the prejudice standard for a Sixth Amendment ineffective assistance of counsel claim and the materiality standard under *Brady v. Maryland*, 373 U.S. 83 (1963), a petitioner does not have to show that he would have been acquitted but for the constitutional violation; he only needs to show that there is a reasonable probability that the result of the trial would have been different, which is a probability sufficient to undermine confidence in the outcome. The Eleventh Circuit—like all of the courts to consider this issue before it—held Mr. Overton to a higher standard, one that requires him to completely undermine the reliability of the DNA evidence offered against him even though the constitutional errors prohibited Mr. Overton from challenging the DNA evidence. A defendant cannot receive the protections of a fair trial when the errors themselves caused the crucial evidence to be admitted. The second question presented is:

2. Whether, under this Court's tests for prejudice for ineffective assistance of counsel or materiality for a violation of *Brady v. Maryland*, 373 U.S. 83 (1963), a defendant is required to discredit evidence that was admitted as a direct result of the constitutional errors committed against him to show a reasonable probability that the result of the trial would have been different.

PARTIES TO THE PROCEEDINGS

Petitioner is Thomas Mitchell Overton. Respondent is the Secretary of the Florida Department of Corrections.

RELATED PROCEEDINGS

United States Court of Appeals for the Eleventh Circuit (11th Cir.), Nos. 16-10654-P and 21-13309-P, *Thomas Mitchell Overton v. Secretary, Department of Corrections*, judgment entered June 26, 2025 (affirming district court's denial of habeas petition).

United States District Court for the Southern District of Florida, No. 13-10172-CIV-MOORE, *Thomas Mitchell Overton v. Julie L. Jones, Secretary, Florida Department of Corrections*, judgment entered January 12, 2016 (denying petition for writ of habeas corpus).

Florida Supreme Court, Nos. SC04-2071, SC05-964, and SC06-237, *Thomas Mitchell Overton v. State of Florida*; *Thomas Mitchell Overton v. James R. McDonough, etc.*, judgment entered November 29, 2007.

Florida Supreme Court, No. SC95404, *Thomas Overton v. State of Florida*, judgment entered September 13, 2001.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Rules

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner Thomas Mitchell Overton respectfully seeks a writ of certiorari to review an order issued by the United States Court of Appeals for the Eleventh Circuit.

This case presents two questions of nationwide importance.

First, this Court recently held in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), that "the 'final interpretation of the laws'" is in "the proper and peculiar province of the courts." *Id.* at 385 (citation omitted). This holding runs counter to the caselaw interpreting the Antiterrorism and Effective Death Penalty Act ("AEDPA"), which holds that federal courts are required to defer to the state court's adjudication of criminal convictions unless that adjudication involved an "unreasonable" application of federal law. *Williams v. Taylor*, 529 U.S. 362, 411 (2000); 28 U.S.C. § 2254(d)(1). Scholars and courts have questioned whether *Loper Bright*'s holding renders AEDPA deference unconstitutional. *See, e.g.*, Anthony G. Amsterdam & James S. Liebman, *Loper Bright and the Great Writ*, 56 COLUM. HUMAN RIGHTS L. REV. 54 (2025); *Sanders v. Plappert*, Case No. 16-06152 (6th Cir.). This Court should grant certiorari and confirm AEDPA deference is unconstitutional.

Second, under both the prejudice standard for a Sixth Amendment ineffective assistance of counsel claim and the materiality standard under *Brady v. Maryland*, 373 U.S. 83 (1963), a petitioner does not have to show that he would have been acquitted but for the constitutional violation. Rather, he need only show a reasonable probability that the result of the trial would have been different—in other words, a probability sufficient to undermine confidence in the outcome. The Eleventh Circuit held Mr. Overton to a higher standard that required him to completely undermine the reliability of the DNA evidence even though the constitutional errors impacted Mr. Overton's ability to challenge the admissibility of the DNA evidence. This Court should grant certiorari and confirm "reasonable probability" is the proper standard for both an ineffective assistance of counsel claim under the Sixth Amendment and the materiality standard under *Brady*.

OPINIONS BELOW

The Eleventh Circuit's opinions are available at 2025 U.S. App. LEXIS 2117* (January 30, 2025) and 2025 U.S. App. LEXIS 15819* (June 26, 2025). The opinion from June 26, 2025 is reprinted at 1a (References to the Appendix to the petition are in the form "__a.").

The district court's opinion is reported at 155 F. Supp. 3d 1253 and is reprinted at 42a.

JURISDICTION

The Eleventh Circuit issued its amended decision on June 26, 2025. This Court granted Mr. Overton's application for an extension of time to file this petition until October 24, 2025. Petitioner timely invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Antiterrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d)(1)-(2) provides:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to

> the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

The Sixth Amendment to the U.S. Constitution provides:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

STATEMENT

A. Background

1. Police Struggle to Find the Killer of a Young Couple in the Florida Keys.

On August 22, 1991, a married couple was discovered murdered in their home in Tavernier Keys, Florida. 3a. Inexperienced investigators, including one trained as a veterinarian and one who had only processed a single crime scene previously, collected hair follicles, fingerprints, palm prints, shoe prints, tire tracks, and bullet shell casings believed to belong to the murderers. Because the victims struggled violently against their assailants, the investigators also swabbed under the victims' fingernails for DNA evidence and used a luma light tool to examine the victims for bodily fluids of the assailants. 3a-4a. While the investigators detected what they claim was seminal fluid on the wife's body, the medical examiner did not find any sperm cells on her body during her autopsy. 4a, 109a.

The case went cold for many years despite all of the forensic evidence collected. 5a. The Monroe County Sheriff's Office ("MCSO") investigated one the victims, his brother, and the next-door-neighbor who discovered the bodies, but could not figure out who committed the crime. (11th Cir. No. 16-10654, ECF No. 96 ("Br.") at 74). Years went by without an arrest, and public pressure to solve one of the most highly publicized murders in the area increased.

This led police to set their sights on Mr. Overton, who was a known figure to the MCSO and on whom the MCSO had tried to pin crimes in the past. 5a. Without any physical evidence tying Mr. Overton to the murders, police retrieved Mr. Overton's blood after he cut himself with a razor while in police custody in 1996 to compare it to the forensic evidence found at the scene. *Id.* Amongst all of the forensic evidence the MCSO collected, Mr. Overton's DNA matched just one piece of evidence—cuttings purportedly retrieved from the victims' bedsheet. 5a-6a. Mr. Overton was charged with the victims' murders. 6a.

2. The DNA Evidence Was Compromised Due to Dr. Pope's Improper Evidence Collection and Storage Practices.

Evidence from the scene was collected by Dr. Donald Pope, MCSO serologist. 4a-5a. Discovery revealed that Dr. Pope's collection and storage of the evidence tested for DNA was significantly flawed and fell below acceptable scientific standards. Indeed, the Eleventh Circuit acknowledged that it was "troubled" by the way Dr. Pope handled the evidence. 32a.

When Dr. Pope initially collected the bedsheets from the scene, he placed the bedsheets into a brown bag and sealed the bag, signing the seal with the name of his supervisor, Detective Robert Petrick. 12a, Br. at 28. That bag was transported to the MCSO's evidence room from the crime scene. 11a. When Dr. Pope picked up the bag two days later, however, the bag was unsealed. 11a, Br. at 29. There has never been an explanation for why the bag was unsealed or who had access to the bedsheets in those two days.

Dr. Pope then took the bedsheets—along with multiple other pieces of evidence from the crime scene—to his personal home, where he stored evidence from dozens of other active, open cases in Monroe County. 18a-19a, Br. at 29-30. While at his home, Dr. Pope repeatedly mislabeled the evidence, lost critical pieces of evidence, and transported the evidence over 200 miles to eight different locations for almost two years without documenting those journeys. 105a-106a, Br. at 30-33. This left the evidence open to cross-contamination and potential tampering, raising the question of whether the evidence collected from the victims' home was actually the evidence tested for DNA several years later.

Further, Dr. Pope had no documentation to back up his work. 11a, 105a. He claims to have taken ten cuttings from the bedsheet, then split each cutting in half to create ten testing samples and ten control samples. Br. at 30-31. However, Dr. Pope discarded the control samples, which were never found. *Id.* at 31. He transported the cuttings to and from uncertified hospital laboratories to conduct his undocumented tests. 105a-106a; Br. at 31. He had police officers bring him the cuttings without confirming the officers handled them properly. 11a, Br. at 31. Dr. Pope ran tests on the cuttings without documenting anything that he did, and when asked about his lack of documentation, Dr. Pope simply testified that he thought paperwork was unnecessary and a "pain in the butt." 106a.

When Dr. Pope suddenly retired from the MCSO in April 1993, he returned the cuttings from his home to the Sheriff's Office. Br. at 33. The cuttings were in an unsealed envelope and stacked amongst other envelopes containing unsealed serological evidence from all of his other cases, without any regard for protecting the evidence against cross-contamination. Br. at 33-34.

Incredulously, the MCSO decided to cover up Dr. Pope's evidence storage and documentation mistakes. Diane O'Dell, the MCSO property room manager, created a property receipt from scratch—backdating the receipt to show when the cuttings were created, who created them, and when they were turned over to her custody. Br. at 33-34. She then sealed the cuttings herself and sent them to the state laboratory run by the Florida Department of Law Enforcement ("FDLE"). *Id.* There is no evidence that the FDLE laboratory knew of Dr. Pope's collection and storage practices, or that the evidence was unsealed and open for tampering and cross-contamination for nearly two years. Had FDLE been aware of these facts, it is almost certain that FDLE's protocols would have prevented FDLE from testing the cuttings.

3. Trial Counsel Failed to Challenge the DNA Evidence.

Mr. Overton's appointed trial counsel admittedly had little experience with DNA evidence—they had never taken a DNA case to trial and had not previously used a DNA expert. Br. at 35-36. Nonetheless, Mr. Overton's counsel later testified that they did not review any specific materials concerning the proper forensic collection of DNA evidence or chain of custody to prepare for Mr. Overton's defense. *Id.* And in the first ten months of their representation of Mr. Overton, his trial counsel made no efforts to seek any discovery about the DNA testing done in this case. Br. at 36. For example, when given the opportunity to visit one of the labs where the DNA samples were tested to review documents, trial counsel declined because they were purportedly focused on preparing for trial. 92a.

Trial counsel's performance was so lacking that the original judge assigned to the case recused himself and issued a "Memorandum of Concern" criticizing trial counsel's performance and questioning whether they had the minimal qualifications necessary to represent Mr. Overton:

> [T]he Court found little if any preparation for the defense had taken place, no depositions taken, and no substantive motions filed or set[.] * * * A review of the file by the Court finds that no substantive Motions and hearings have been set by Defense Counsel on behalf of the Defendant since Mr. Smith's entry of appearance as counsel of record[.] * * * Despite the Court's consistent offer to Defense counsel to use the offices of the Court to compel discovery, no motions to compel have been set for hearing[.] * * * This case is basically a DNA case, yet no substantive motions have been filed to require the strict standards set forth by the Florida Supreme Court in DNA cases. * * * The Court has been concerned that the qualifications as well as the performance and conduct thus far of the defense attorneys have failed to meet even the minimum qualifications[.] * * *

86a-87a, Br. at 36-37.

Finally, just weeks before trial, Mr. Overton's appointed defense counsel requested a hearing under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923), to challenge the admissibility of the DNA evidence. 7a-8a. However, counsel failed to prepare for the *Frye* hearing and planned to request a continuance, despite warnings from the trial court that further continuances would not be granted. 8a. Even more egregious was that their request for a continuance was based on a lack of discovery—discovery that *they* delayed requesting for months. *Id.* Unsurprisingly, the trial court denied the continuance. *Id.*

Despite counsel's prior representations that they could not conduct basic discovery because they were busy preparing for trial, counsel was utterly unprepared to proceed with the *Frye* hearing. And instead of making a sincere effort to discredit the only piece of evidence offered against Mr. Overton, his trial counsel decided to do nothing. *Id.* They did not cross examine any witnesses, put up witnesses of their own, or request that the DNA evidence be excluded given Dr. Pope's egregious misconduct. *Id.* Accordingly, the trial court ruled that the DNA evidence was admissible. 9a. Thus, Mr. Overton's counsel forfeited the one opportunity they had to exclude the only evidence tying Mr. Overton to the underlying crime, even though Mr. Overton's counsel affirmatively requested the *Frye* hearing, and there were ample grounds for its exclusion.

3. Dr. Pope's Evidence Was Previously Rejected by the Same Laboratory for Improper Collection and Documentation.

After trial, Mr. Overton learned for the first time that Dr. Pope's evidence was previously rejected by the same FDLE laboratory that tested the cuttings in his case. 13a. The laboratory refused to test Dr. Pope's evidence for the same errors he made in this case—improper evidence collection and documentation. 13a.

On November 11, 1991—just 82 days after Dr. Pope collected evidence from the crime scene at issue here—Dr. Pope collected evidence from the victim in a case later brought against Lloyd Allen. Br. at 51, *see Allen v.* State, 854 So. 2d 1255, 1259 (Fla. 2003). This included hairs that Dr. Pope retrieved from the victim herself and stray hairs found on her person. Br. at 51. Dr. Pope sent the hairs to the FDLE laboratory on

June 4, 1992—several months before the cuttings in Mr. Overton's case were sent to FDLE. Br. at 51-52. But the FDLE laboratory rejected that evidence and refused to test it. *Id.* As the laboratory explained, it could not test the evidence because Dr. Pope failed to properly collect and document it: "known hair samples must be packaged in separate containers." *Id.*

In contrast, there is no evidence that the FDLE laboratory here knew of Dr. Pope's evidence collection and storage practices. The laboratory did not know that, for example, Dr. Pope stored the evidence in his own home, exposed the evidence to cross-contamination from other cases, did not document any of his tests on the samples, lost half the samples, or that he returned the evidence to the MCSO unsealed and stacked amongst evidence from dozens of other cases. And the laboratory did not know that because of the MCSO's efforts to cover for Dr. Pope. Indeed, after having Dr. Pope's evidence previously rejected from the FDLE laboratory, the MCSO made sure that it would not happen again—they created a post-hoc property receipt, sealed the evidence, and otherwise failed to inform the FDLE laboratory of Dr. Pope's actions. 35a.

Had FDLE known of Dr. Pope's errors and practices, it is highly likely that the laboratory would have refused to test the evidence. But the State's suppression of this evidence prevented Mr. Overton's counsel from using this evidence at the *Frye* hearing or during trial. The State's constitutional violation was further compounded when the same cuttings were later sent to Bode Technology Group ("Bode") for retesting. 6a. The tainted samples produced another positive match, giving the initial FDLE test results the appearance of greater certainty. *Id.* With this evidence, trial counsel could have cross examined both laboratories that tested the evidence here and shown that Dr. Pope's practices fell well below acceptable scientific standards. This likely would have led to the exclusion of the DNA evidence outright or the significant weakening of the DNA evidence at trial.

B. Procedural History

Based on this DNA evidence and Dr. Pope's testimony, on February 1, 1999, Mr. Overton was convicted of the murders and sentenced to death by a judge and a non-unanimous jury verdict. 13a. He exhausted his direct appeals on May 13, 2002. *Id*. Mr. Overton's first state application for post-conviction relief was denied on November 29, 2007, and his second was denied on October 31, 2013. 56a. Mr. Overton's federal habeas petition was denied by the district court in 2016. 43a-148a.

On June 27, 2019, the Eleventh Circuit Court of Appeals granted Mr. Overton a certificate of appealability on three questions, two of which are relevant for this petition. 19a. The first was whether his trial counsel was ineffective in their failure to prepare for and participate in the *Frye* hearing, and the second was whether the state's suppression of the FDLE laboratory's rejection of Dr. Pope's evidence in another case was material under *Brady*. 26a-39a.

On January 31, 2025, the Eleventh Circuit affirmed the district court's denial of Mr. Overton's habeas petition. (11th Cir. 16-10654, ECF No. 133). After holding that Mr. Overton's federal habeas petition was timely filed, *id.* at 23-28, the panel affirmed the district court's denial of Mr. Overton's two substantive claims that it certified for appeal. First, the panel bypassed the first prong for an ineffective assistance of counsel claim under *Strickland v. Washington*, 466

U.S. 668, 687 (1984) and held that Mr. Overton could not show prejudice under *Strickland*'s second prong. *Id.* at 28-34. While acknowledging that it was "troubled by Pope's handling of the DNA evidence in this case," the panel held that Mr. Overton did not show that the Florida Supreme Court's affirmance of the admission of the DNA evidence "was so wrong as to be unreasonable." *Id.* at 34.

Second, the panel denied Mr. Overton's claim under *Brady* for a failure to show materiality. The panel held that the undisclosed evidence would not have changed the "evidentiary landscape" at trial, and thus simply would have been "cumulative" impeachment evidence. *Id.* at 37. It additionally held that Mr. Overton did not show that the Florida Supreme Court's denial of this claim was "clearly and convincingly erroneous," invoking the standard for deference to factual findings by the state court below. *Id.* at 37; 28 U.S.C. § 2254(e)(1).

On March 6, 2025, Mr. Overton filed a petition for rehearing, asserting three arguments. (11th Cir. 16-10654, ECF No. 137). First, he argued that the panel applied an incorrectly heightened standard for prejudice under *Strickland* by requiring Mr. Overton to show that the DNA evidence would have been excluded absent the constitutional errors. *Id.* at 8-10. Second, he argued that the panel afforded the state court's materiality finding under *Brady* an improper level of deference by requiring Mr. Overton to show that the finding was "not clearly and convincingly erroneous" under 28 U.S.C. § 2254(e)(1). *Id.* at 10-11. Third, Mr. Overton argued that the panel's (and district court's) reliance on AEDPA deference was unconstitutional under *Loper Bright*. *Id.* at 12-15.

The Eleventh Circuit issued an amended opinion but denied the petition on June 26, 2025. 2a-39a. In its amended opinion, the panel maintained its reasoning with respect to the timeliness of Mr. Overton's petition and Mr. Overton's ineffective assistance of counsel claim (26a-32a) but amended its reasoning in denying Mr. Overton's claim under *Brady* (32a-39a). Now, it no longer relied on the clear and convincing standard to uphold the Florida Supreme Court's *Brady* analysis. Instead, it held that (1) the Florida Supreme Court's holding that the undisclosed evidence was cumulative impeachment evidence was not unreasonable; and (2) the undisclosed evidence was not material. 35a-39a.

REASONS FOR GRANTING THE PETITION

A petition for a writ of certiorari may be granted where "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(c).

The Eleventh Circuit here refused to answer a question of paramount importance to federal habeas law—whether AEDPA deference can continue after *Loper Bright*. Indeed, this Court explained in *Loper Bright* that a federal court's independent judgment is needed to ensure the proper interpretation of the laws. Yet AEPDA deference removes the power of judicial review of federal constitutional questions from federal courts—exactly what *Loper Bright* condemns. Mr. Overton here was particularly affected by AEDPA deference because (1) the Eleventh Circuit heavily relied on AEDPA deference in affirming the district court's order; and (2) Mr. Overton's many other claims that were not certified for appeal were equally rejected under AEDPA deference. This Court should accept the first question presented to ensure that federal courts are not unconstitutionally prevented from exercising their independent authority when considering criminal defendants' and habeas petitioners' challenges to the fairness of their state court proceedings.

Instead of considering the validity of AEDPA deference, the Eleventh Circuit upheld its prior ruling based on a prejudice standard under the Sixth Amendment and a materiality standard under *Brady v. Maryland* that threaten the constitutional rights of people like Mr. Overton, who were deprived of a fair trial and prohibited from challenging the crucial evidence that led to their convictions due to constitutional errors infecting their trials. This Court should accept the second question presented to ensure that these impossibly high prejudice and materiality standards are not imposed on future criminal defendants and habeas petitioners.

I. This Court Should Grant the Petition Because AEDPA Deference Is Unconstitutional.

AEDPA prohibits federal courts from granting petitions for writs of habeas corpus regarding state court criminal convictions unless the state's adjudication of the claim resulted in a decision that: (1) "was contrary to * * * clearly established Federal law;" (2) "involved an unreasonable application of[] clearly established Federal law;" or (3) "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)-(2). This Court has interpreted AEDPA to impose a "highly deferential standard for evaluating state-court rulings." *Woodford* *v. Visciotti*, 537 U.S. 19, 24, (2002) (quoting *Lindh v. Murphy*, 521 U.S. 320, 333 (1997)).

Under AEDPA, "a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Williams v. Taylor*, 529 U.S. 362, 411 (2000). "Rather, that application must also be unreasonable," even though AEDPA does not, on its face, require an unreasonable application of clearly established federal law in all instances. *Id.*; 28 U.S.C. § 2254(d)(1) (precluding habeas relief unless the state court adjudication "resulted in a decision that was contrary to, ***or*** involved an unreasonable application of, clearly established Federal law" (emphasis added)); *see also id*. at subd. (d)(2) (precluding habeas relief unless the state court adjudication "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding"). Nor does AEDPA, on its face, limit the federal courts' independent power to interpret the law. To the contrary, AEDPA explicitly identifies "Federal law, as determined by the Supreme Court of the United States" as the supreme authority. *Id*. at subd. (d)(1).

The so-called "AEDPA deference" created by this Court in *Williams* is substantial—so substantial that even when a state-court ruling leaves a federal court with a "firm conviction" that the ruling was incorrect, *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003) (citations omitted), or where the state court applied a standard that was "flat-out wrong," *Johnson v. Williams*, 568 U.S. 289, 310 (2013) (Scalia, J., concurring), the federal court must set aside its judgment in favor of the clearly incorrect state-court ruling. Even when a federal court *knows* a person's sentence violates the Constitution, AEDPA deference precludes that court from taking any action.

Both the Eleventh Circuit panel and the district court relied on AEDPA deference in rejecting Mr. Overton's petition. When the district court considered Mr. Overton's petition, it explained that it could not grant the petition "[e]ven if the Court believed the Florida Supreme Court's determination to be an incorrect one." 65a. When the Eleventh Circuit panel considered Mr. Overton's petition, it noted that it was "troubled by Pope's handling of the DNA evidence in this case" and agreed that the state court imposed a higher standard for the exclusion of DNA evidence than the law required. 32a. Nonetheless, the panel rejected Mr. Overton's petition because of "the deference AEDPA requires." *Id.*

This Court's recent decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) calls into question whether Article III courts may be forced to forgo their independent judgment in favor of obviously erroneous state-court rulings, as AEDPA deference requires. In *Loper Bright*, this Court overturned the doctrine of "*Chevron* deference," as set forth in *Chevron, U.S.A., Inc. v. Natural Resource Defense Council, Inc.*, 467 U.S. 837 (1984). 603 U.S. at 412-13. Like AEDPA deference, *Chevron* deference constituted a regime of mandatory deference by federal courts to agencies' interpretations of federal statutes, demanding that "courts mechanically afford *binding* deference to agency interpretations, including those that have been inconsistent over time." *Id.* at 399.

The Majority explained that mandatory deference to an agency's determination, even if that determination was incorrect, flouted the Framers' intent that "the final 'interpretation of the laws'" would be in "the proper and peculiar province of the courts." *Id.* at 385 (citation omitted). Justices Thomas and Gorsuch wrote separately to explain that *Chevron* deference conflicted with federal judicial power as dictated by Article III. They concluded that "[t]he judicial power, as originally understood, requires a court to exercise its independent judgment in interpreting and expounding upon the laws," *id.* at 414 (Thomas, J., concurring) (citation omitted), and that the "duty of independent judgment is perhaps 'the defining characteristi[c] of Article III judges.'" *Id.* at 430 (Gorsuch, J., concurring) (alteration in original) (citation omitted). Because *Chevron* deference required federal courts to accept one interpretation of the law even if they thought another was correct, *Chevron* deference prevented federal courts from exercising their independent judgment, allowing agencies "to dictate the outcome of cases through erroneous interpretations." *Id.* at 414 (Thomas, J., concurring) (citation omitted).

This Court's determination that it is unconstitutional to require Article III courts to "almost reflexively defer" to agency decisions is not limited to deference to agency decisions. *Id.* at 437 (Gorsuch, J., concurring). Indeed, as this Court explained, even where courts confront statutory ambiguities in "cases that do not involve agency interpretations," "the ambiguity is not a delegation to ***anybody***, and a court is not somehow relieved of its obligation to independently interpret the statute." *Id.* at 400 (emphasis added). Thus, the Majority explained, it is incumbent on the courts to use "every tool at their disposal" to resolve statutory ambiguities without being constrained by deference—to agencies or otherwise. *Id*.

Justice Stevens previously made similar observations about AEDPA deference. "At the core of [Article III] power is the federal courts' independent responsibility—independent from its coequal branches in the Federal Government, and independent from the separate authority of the several States—to interpret federal law." *Williams*, 529 U.S. at 378-79 (Stevens, J., concurring). But AEDPA deference "would require the federal courts to cede this authority to the courts of the States," which "would be inconsistent with the practice that federal judges have traditionally followed in discharging their duties under Article III." *Id.* at 379 (Stevens, J., concurring). Quoting Judge Easterbrook, Justice Stevens also pointed out that AEDPA deference would lead to an absurd result whereby different state courts could adopt differing interpretations of federal law, and federal courts could do nothing about it. *Id*. at 387 n.13 ('[AEDPA] does not tell us to 'defer' to state decisions, as if the Constitution means one thing in Wisconsin and another in Indiana. * * * Congress did not delegate interpretive or executive power to the state courts. They exercise powers under their domestic law, constrained by the Constitution of the United States. 'Deference' to the jurisdictions bound by those constraints is not sensible." (quoting *Lindh v. Murphy*, 96 F.3d 856, 868 (7th Cir. 1996), r*ev'd on other grounds*, 521 U.S. 320 (1997))). Thus, to the extent AEDPA requires federal courts to "defer to a state-court application of the federal law that is, in the independent judgment of the federal court, in error," such deference invades the federal courts' constitutional authority. *Id*. at 387.

Since *Loper Bright*, numerous Article III courts have contemplated whether AEDPA deference is unconstitutional for the reasons expressed by Justice Stevens over 25 years ago. One court noted that "if *Chevron* deference is contrary to the principles of federal judicial independence, then so too would AEDPA deference." *Romero-Manzo v. Breitenbach*, No. 3:22-cv-00475-ART-CLB, 2025 U.S. Dist. LEXIS 176492, at *6 n.4 (D. Nev. Sept. 10, 2025). Another was persuaded that the legality of AEDPA deference post-*Loper Bright* was worth further consideration. *See Washington v. Marshall*, No. 2:14-cv-60-ECM, 2025 U.S. Dist. LEXIS 22364, at *5 (M.D. Ala. Feb. 7, 2025) (granting certificate of appealability on constitutionality of AEDPA deference).

If the mandatory deference created by *Chevron* is unconstitutional for the reasons this Court described in *Loper Bright*, then the mandatory deference created by *Williams* and the cases that followed cannot stand. Like *Chevron* deference, AEDPA deference impedes "the basic judicial task of 'say[ing] what the law is,'" *Loper Bright*, 603 U.S. at 410 (alteration in original) (citation omitted), and violates "the unremarkable, yet elemental proposition reflected by judicial practice dating back to *Marbury*: that courts decide legal questions by applying their own judgment," *Id.* at 392-93; *see also Marbury v. Madison*, 5 U.S. 137, 177 (1803) ("It is emphatically the province and duty of the judicial department to say what the law is.").

AEDPA deference not only conflicts with the federal judiciary's obligation to say what the law is; it also runs afoul of the Supremacy Clause, which binds the federal judiciary's interpretation of the U.S. Constitution upon "the Judges in every State." U.S. Const. art. VI, cl. 2. Rather than giving Article III courts supreme authority to interpret the U.S. Constitution as the Framers envisioned, AEDPA deference explicitly requires the federal judiciary to defer to a state court's application of federal constitutional law, even where the federal court knows that the application is wrong or that it would come out differently on independent review. *See Lockyer*, 538 U.S. at 75-76; *see also Shinn v. Kayer*, 592 U.S. 111, 124 (2020) ("Under AEDPA, state courts play the leading role in assessing challenges to state sentences based on federal law."). Such deference cannot be squared with the Constitution or the Court's decision in *Loper Bright*.

Had the federal courts not been constrained by AEDPA deference in Mr. Overton's case, it is highly likely that Mr. Overton would not still be on death row today. Both the district court and Eleventh Circuit noted grave errors in the state court proceedings. The district court observed that even though Mr. Overton's defense counsel "was aware of the crucial role that the admission of DNA evidence would play" and "had an abundance of time to prepare to defend against the DNA evidence," Mr. Overton's counsel instead chose to do nothing. 86a. As recounted by the federal district court, Mr. Overton's counsel "made the decision to stand mute during the testimony of the State's experts" and "did not ask a single question on cross-examination." 89a. As a result, "the single most important piece of evidence against Mr. Overton" was admitted into evidence. 86a. The Eleventh Circuit stated that it was "troubled by Pope's handling of the DNA evidence" and agreed with Mr. Overton that the Florida Supreme Court applied the incorrect standard when considering his *Strickland* argument. 32a. In any other case, these errors would have been grounds for a conviction to be vacated. However, because Mr. Overton was convicted and sentenced to death, the district court and Eleventh Circuit were bound by AEDPA deference to set aside their independent judgment in favor of the plainly erroneous judgment of the Florida Supreme Court.

This is also a question of great national significance. The continued viability of AEDPA deference not only impacts Mr. Overton's petition, but the petition of every single person imprisoned, convicted, and/or sentenced to death in violation of their constitutional rights. Certiorari should be granted so that this Court can declare AEDPA deference unconstitutional.

II. The Eleventh Circuit, and the Courts Below, Established an Impossible Prejudice and Materiality Standard.

A. The Prejudice and Materiality Standards Under the Sixth Amendment and *Brady* Do Not Require Certainty of a Different Outcome.

The standard for proving prejudice under the Sixth Amendment or materiality under *Brady* is well established. In *Strickland v. Washington*, this Court clarified the two-part test necessary to show ineffective assistance of trial counsel. 466 U.S. 668, 687 (1984). For the second prong—prejudice—a petitioner must show that "counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* To define the "appropriate test" for prejudice, this Court looked to "the test for materiality of exculpatory information not disclosed to the defense by the prosecution," i.e., the test established to determine if there is a violation under *Brady v. Maryland*. *Id.* at 694. "The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.*

Notably, the defendant making an ineffective assistance of counsel claim under *Strickland* or suppression of exculpatory evidence claim under *Brady* holds no responsibility in showing that the outcome of the trial, definitively, would have been different. Indeed, this Court even rejected a standard that required a defendant to show that the error "more likely than not altered the outcome in the case." *Id.* at 693. Later, in the context of *Brady*, this Court again held that "a showing of materiality does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal." *Kyles v. Whitley*, 514 U.S. 419, 434 (1995).

The standard under *Brady* and *Strickland* is intentionally low because of the harm these constitutional errors have on the fairness of the underlying trial used to secure the conviction. In *Strickland*, the Court compared the low prejudice standard to the higher standard for a claim based on newly discovered evidence:

> The high standard for newly discovered evidence claims presupposes that all the essential elements of a presumptively accurate and fair proceeding were present in the proceeding whose result is challenged. An ineffective assistance claim asserts the absence of one of the crucial assurances that the result of the proceeding is reliable, so finality concerns are somewhat weaker and the appropriate standard of prejudice should be somewhat lower. The result of a proceeding can be rendered unreliable, and

> hence the proceeding itself unfair, even if the errors of counsel cannot be shown by a preponderance of the evidence to have determined the outcome.

466 U.S. at 694 (citation omitted).

This standard, then, implements the Constitution's utmost protection of fair process in criminal trials. When trial counsel's performance falls below constitutional standards, the defendant did not receive a fair trial. The same is true when exculpatory evidence is not disclosed to the defendant. And when a defendant is not given a fair trial, the Constitution ensures that a defendant will receive the due process he deserves by vacating the results of the unfair trial and giving him a new one.

B. The Constitutional Errors Prevented Mr. Overton From Challenging the Admissibility of the Evidence Used to Convict Him.

The entire case against Mr. Overton was based on a positive DNA match from seminal fluid found on cuttings from the crime scene bedding, years after the crime, by the FDLE laboratory and by the independent Bode laboratory. 5a-6a. At the crime scene, police found fingerprints, palmprints, footprints, and hair—but none of that evidence matched Mr. Overton. Br. at 72-73. Police also found three blood types—one of which could not be matched to Mr. Overton or the victims. *Id.* at 110, n.21. Nor did police identify any other DNA evidence that matched Mr. Overton. *Id.* at 72-73. No one saw Mr. Overton near the crime scene, and no one testified to any connection between Mr. Overton and the victims. *Id.* Without this DNA evidence, the State simply had no case against Mr. Overton, and it was imperative to the State's case that it be admitted.

The DNA evidence, though, was inherently unreliable because of the way it was collected and stored by Dr. Pope. Dr. Pope did not take any care to follow any acceptable evidence collection protocol when working this crime scene. His shoddy work included taking the evidence to his own personal home, hanging it in his spare bedroom, and storing the serological evidence in his personal refrigerator amongst all the serological evidence for every case he worked. 11a. Dr. Pope testified he had done this with evidence in multiple other cases on which he worked. Br. at 30. It also involved transporting the evidence to and from unsanctioned laboratories Dr. Pope used to work in as a veterinarian before joining law enforcement. *Id.* at 31. Then, when Dr. Pope finally returned the cuttings to the Sheriff's Office on his retirement, they were packed in Tupperware containers with serological evidence from dozens of other cases, unsealed, without any chain of custody paperwork, and without any regard to preventing any commingling or cross-contamination. Br. at 33-34.

Unquestionably, Dr. Pope's collection and storage of the DNA evidence fell below acceptable scientific standards. Dr. Randall Libby, an expert witness for Mr. Overton during post-conviction proceedings, testified as much: "I don't know anyone in the scientific community which would think that's acceptable, taking it to his home. I think that's very bad practice." Br. at 33. When asked if that could have impacted the DNA evidence, Dr. Libby stated that "[d]epending on the conditions of his house and the environmental conditions, absolutely." *Id.*

Beyond Dr. Pope's improper handling of the DNA evidence was the way the evidence was documented from its collection to the FDLE laboratory. This started from the moment the evidence was collected from the scene—Dr. Pope claims to have sealed the bag containing the bedsheets, but that same bag was found unsealed when he picked it up, open for anyone to access for nearly two days. *Id.* at 29. Dr. Pope then made ten cuttings from the bedding, cut them in half for twenty total, then held on to the evidence for nearly two years without documenting anything more than a blood type test. Br. at 30-31. Without this proper cataloguing of the evidence from its collection to the laboratory's receipt of the evidence, there is no guarantee that the evidence that was sent to FDLE or Bode was the same evidence that was collected from the crime scene. Regardless of how sound FDLE's or Bode's *testing* protocols were, the evidence was inherently unreliable by generally accepted scientific standards before ever arriving on either lab's doorstep.

Dr. Pope's improper work left the evidence open to challenge before and during trial. But the constitutional errors prevented Mr. Overton from seriously challenging the DNA evidence. There is no question that competent counsel should have made a realistic challenge to the DNA evidence's admissibility before trial—if the DNA evidence is not admissible, then the State has no case. Regardless, Mr. Overton's ineffective trial counsel failed to make that challenge or even adequately educate themselves regarding DNA evidence, even after requesting that opportunity. 13a-14a. Trial counsel's grand plan was to hope they won on appeal on a tangential discovery issue—one they caused by their delay—rather than challenging the admissibility of the DNA evidence at every moment possible. *Id.* This, essentially, forfeited Mr. Overton's ability to challenge the DNA evidence's admissibility before trial in favor of a tangential discovery appeal—one caused by Mr. Overton's trial counsel in the first place. And even then, Mr. Overton's counsel still failed to challenge the admissibility of the DNA during trial. *See, e.g.*, 97a ("The trial court was not presented with the specific argument that the DNA evidence should be excluded due to an alleged broken chain of custody."). Trial counsel's incompetence prevented Mr. Overton from having any chance of ensuring that the only piece of physical evidence offered against him was scientifically acceptable.

Even competent counsel, though, would have been prohibited from fully challenging the DNA evidence because of the State's suppression of the FDLE laboratory's rejection of Dr. Pope's evidence in another case. There, the same laboratory that made the first match to Mr. Overton in his case rejected Dr. Pope's evidence because he failed to follow proper protocol. 13a. Here, there was no evidence that the laboratory was made aware of Dr. Pope's "troubl[ing]" practices before receiving the DNA evidence, so they tested it without question. 32a. Had the laboratory known of Dr. Pope's practices, like they did in *Allen*, the suppressed evidence shows that the laboratory would not have tested it because the evidence was scientifically unreliable. Nor would the evidence have been retested by Bode.

C. The Court Should Grant the Petition to Ensure that Defendants Are Not Required to Discredit Evidence Admitted Because of Constitutional Errors.

The Eleventh Circuit acknowledged that Mr. Overton does not have to prove that the DNA evidence would have been excluded, but then used evidence of the match against Mr. Overton to explain why there was no prejudice or materiality. The panel held that they "agree that Overton need not 'definitively prove that DNA test results would have been excluded' to warrant habeas relief." 32a. In that same paragraph, however, the panel held that Mr. Overton could not show that "the Florida Supreme Court's conclusion that the evidence was admissible was so wrong as to be unreasonable." *Id.* This is a distinction without a difference—requiring Mr. Overton to show that it was unreasonable to admit the DNA evidence is tantamount to saying that Mr. Overton needs to prove that the DNA evidence, definitively, should have been excluded.

The courts below set a dangerous precedent for ineffective assistance of counsel claims and *Brady* claims, where the government can be ensured that a defendant's constitutional rights play second fiddle to the evidence admitted as a direct result of those same errors. Had Mr. Overton been given a fair process in the first place, this case likely would not be here, as competent counsel would have used all the evidence available to continuously challenge the DNA's evidence's credibility. Without that fair process, however, the DNA evidence was admitted without challenge and was never asked to be excluded from trial. Now, Mr. Overton is stuck arguing against the admissibility of that evidence while seeking habeas relief instead of being afforded that opportunity from the beginning.

The constitutional errors denied Mr. Overton the fair process to which he is entitled under the Constitution, which is protected by the Sixth Amendment and the principles this Court established in *Brady v. Maryland*. A fair process would have guaranteed Mr. Overton constitutionally competent counsel to challenge the admissibility of the DNA evidence, rather than counsel who refused to prepare to challenge the DNA evidence, sat mute while the State admitted that DNA evidence, and failed to even move for the evidence's exclusion during trial. And a fair process would have ensured that the laboratory's refusal to test Dr. Pope's other improperly collected evidence would have been before both the judge and the jury, increasing the likelihood that the DNA evidence would have been excluded or deemed unreliable to convict beyond a reasonable doubt. Instead, that very evidence was used against Mr. Overton, secured his conviction, and sentenced him to death. No confidence in the verdict can remain where the very evidence used to secure the conviction was admitted over multiple constitutional errors.

The Eleventh Circuit's decision, like the decisions of the courts below, placed process over results. It should not matter what the DNA test results say when the reliability and admissibility of that DNA evidence was directly impacted by the constitutional errors from which Mr. Overton suffered. The very fact that the DNA evidence was admitted without a true challenge by Mr. Overton's counsel—because of their incompetence and the State's suppression of evidence—shows that there can be no confidence in the verdict. Holding otherwise directly harms the protections to which people like Mr. Overton are entitled when they are accused of any crime, let alone crimes of this magnitude. This Court should grant certiorari in this case to ensure that the Eleventh Circuit's heightened prejudice and materiality standards are not applied moving forward.

CONCLUSION

For the foregoing reasons, certiorari should be granted.

Respectfully submitted,

ERIC T. KOHAN
Counsel of Record
SARAH ELLER
MALAVIKA LOBO
Wilson Sonsini
Goodrich & Rosati, P.C.
650 Page Mill Road
Palo Alto, CA 94304
(650) 493-9300
ekohan@wsgr.com

Counsel for Petitioner

OCTOBER 24, 2025