

No. 25-6683

In the Supreme Court of the United States

RODERICK LESHUN RANKIN,
Petitioner,

v.

DEXTER PAYNE, Director,
Arkansas Division of Correction
Respondent.

**On Petition for Writ of Certiorari
To the United States Court of Appeals
For the Eighth Circuit**

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether evidence that is available at the time of trial is “new” under *Schlup v. Delo*, 513 U.S. 298 (1995), potentially allowing Petitioner to overcome his procedural default of a claim that the lower courts have already rejected on the merits.
2. Whether, based on the specific facts of this case, the Eighth Circuit correctly concluded that trial counsel’s performance was constitutionally adequate under the well-established standard in *Strickland v. Washington*, 466 U.S. 668 (1984).
3. Whether the Court should hold this case pending its decision in *Hamm v. Smith*, No. 24-872, and prolong this habeas case when Petitioner does not specifically identify or challenge a purported error in the lower courts’ intellectual-disability analysis.

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INTRODUCTION

Over thirty years ago, Roderick Rankin murdered his ex-girlfriend's family—just as he had threatened to do—and confessed to the murders. After hearing Rankin's confession and other evidence proving his guilt, a jury unanimously convicted Rankin and sentenced him to death. Rankin now seeks habeas relief and urges this Court to grant certiorari on three questions. None merit this Court's review.

First, Rankin insists this Court must resolve whether any evidence not presented to the jury counts as “new evidence” that can show a petitioner's “actual innocence” to excuse a procedural default of an underlying habeas claim under *Schlup v. Delo*, 513 U.S. 298 (1995). But this Court's review of that question is unwarranted. For starters, even if that question otherwise merited review, this case is a poor vehicle for considering it. That's because the lower courts already rejected Rankin's underlying, procedurally defaulted ineffective-assistance-of-counsel claim on the merits. Moreover, the supposedly “new evidence” Rankin presents—including statements from Rankin's family and friends suggesting for the first time that his now-deceased brother is the actual murderer—is suspect at best. And a reasonable juror could still convict Rankin even considering this allegedly new evidence based on Rankin's confession to the murders, connection to the murder weapon, witness testimony, and other evidence confirming his guilt. So even if this Court were to adopt the rule Rankin prefers, which would allow any evidence to count as “new evidence” as long as it was not presented to the jury, it would not change the outcome here. He would still not be entitled to habeas relief. In any event, this Court's review

is unwarranted on the “new evidence” question, because Rankin overstates the conflict in the lower courts on it, and the Eighth Circuit’s rule that evidence must be “newly discovered” to allow petitioners to use *Schlup*’s actual-innocence gateway to obtain a merits determination on their underlying constitutional claim is correct.

Second, Rankin asks this Court to review the lower courts’ application of the *Strickland* ineffective-assistance standard to the facts here, but he presents no “compelling reason” why the Court should do so. Instead, Rankin asks for mere error correction. The Court should decline that request, especially considering that the lower courts’ *Strickland* analysis was correct.

Third, despite not identifying any purported error in the lower courts’ analysis of his *Atkins* claim, Rankin urges this Court to hold his petition in abeyance pending its decision in *Hamm v. Smith*, No. 24-872, regarding how courts should assess IQ scores. But Rankin’s desired outcome for *Hamm* is a rule the parties do not advance in that case: that state courts must always consider a combined version of multiple IQ tests in assessing intellectual disability. Regardless, Rankin’s hoped-for rule would not help him, including because he forfeited any argument that his multiple IQ scores should have been combined. In sum, Rankin’s petition should be denied.

STATEMENT OF THE CASE

A. Rankin confessed to murders he repeatedly threatened to commit, and a unanimous jury found him guilty.

In December 1994, after repeatedly threatening to do so, Roderick Rankin murdered Ernestine Halford, Nathaniel Halford, and Zena Reynolds in Pine Bluff, Arkansas. Rankin’s victims were the parents (the Halfords) and sister (Zena) of his

ex-girlfriend, Sonyae Reynolds. Pet. App. A2. As Rankin explained when confessing to the triple homicide, *id.* at A3, he and Sonyae had experienced “relationship problems,” and Rankin blamed Sonyae’s mother for their recent break up. TR 1265. Indeed, Rankin and Sonyae’s relationship, which began as a result of an introduction by Sonyae’s sister, Zena, and Rankin’s brother, Rodney, had long been marked by violence. Pet. App. A4; TR 1037. At Rankin’s trial, Sonyae testified that Rankin had hit her on numerous occasions and had repeatedly threatened to kill Sonyae and her family “if [she] left him.” TR 1037. In 1994, when Sonyae became pregnant by another man, Rankin reacted violently. *Id.* at 1041. He grabbed the pregnant Sonyae by the neck and hit her face and side. *Id.* at 1041, 1432. Sonyae’s child was stillborn in August 1994. *Id.*

In September 1994, Sonyae finally broke up with Rankin; however, he refused to leave her alone. *Id.* at 1044-45. To escape Rankin, Sonyae moved from Pine Bluff to San Marcos, Texas, where she enrolled in a Job Corps training program in November 1994. *Id.* at 1045. But Rankin continued to threaten Sonyae, calling her and warning that he would “kill [her] and [her] family” if she was “talking to anybody [else].” *Id.* After repeated calls and threats, Rankin unexpectedly arrived in the Job Corps cafeteria when Sonyae was having dinner one day. *Id.* Sonyae fled to her dorm, but Rankin caught her and began punching her in the head and stomach. *Id.* at 1046. Sonyae’s residential advisor tried to intervene, but Rankin hit her too and “knocked her out of the way.” *Id.* He then kept hitting Sonyae. *Id.* at 1046, 1439. Rankin then put his arm around Sonyae, telling everyone that they were married and

“he wasn’t going to leave without [her].” *Id.* at 1047-48. Fortunately, Rankin was separated from Sonyae when security arrived, and the police were called. *Id.* at 1048. Sonyae did not see Rankin again in San Marcos, *id.*, but Rankin called her again and, once again, threatened to kill her and her family if she did not come back to him, *id.* at 1082.

At the end of December 1994, Sonyae returned to her family’s Pine Bluff apartment to celebrate Christmas with her mother Ernestine, her stepfather Nathaniel, her sister Zena, and Zena’s two young children. *Id.* at 1048, 1082. In the early morning hours of December 27, Sonyae, Ernestine, and Nathaniel were asleep in their respective bedrooms, while Zena and her two small children were in the living room. Pet. App. A2; A23. Sonyae awoke around 3:00 a.m. to the sound of the apartment’s front door breaking open. *Id.* at A2. Sonyae immediately hid in her bedroom closet. *Id.* From there, she heard gunshots and her family screaming. *Id.* The shooter then opened Sonyae’s bedroom door, hesitated, and then left after a few moments. *Id.* As Rankin explained in his confession, he knew Sonyae was there, but he “got scared” and decided to run away. TR 1265; Pet. App. A4. After hiding in the closet for a few more minutes, Sonyae exited her hiding spot to check on her family members. Pet. App. A23.

Sonyae found the slain bodies of Ernestine, Nathaniel, and Zena. *Id.* All three had died from contact gunshots to the head. *Id.* Zena’s two young children were crying beside their mother’s body but were physically unharmed. TR 1016, 1053; Pet. App. A3. Terrified, Sonyae moved her nephew away from Zena’s bloody body, hid by

her mother's bed, and called 911. TR 995-98, 1052, 1084, 1098-99. Desperate for an ambulance and police "to come right then," and uncertain whether the shooter was lingering nearby, Sonyae didn't want to get into the specifics of what she saw and told the 911 operator that she couldn't describe the shooter. *Id.* at 999-1003, 1084-88.

When police arrived, Sonyae was still terrified, "almost to the point of hysteria." *Id.* at 1032. During the police interview at 4:00 a.m. that morning, just an hour after the murders, she explained that the shooter had been wearing blue pants and a black and gray jacket with "writing or a picture" on it. *Id.* at 1283-84; Pet. App. A24, A3. Sonyae initially told the police that she did not think the man she had seen was Rankin because the legs seemed short. TR 1286. However, a neighbor explained that she had seen a tall man wearing a dark jacket and jeans running from the apartment after the shootings. Pet. App. A24. Sonyae believed that this must have been Rankin, especially in light of his threats to kill her family and the fact that the clothes looked like Rankin's. TR 1050-51, 1286, 1091-93, Pet. App. A24. So Sonyae directed the police to Rankin's mother's house, where Rankin lived. Pet. App. A24.

The police went to the home that same morning, at about 8:00 am. *Id.* at A3. Rankin had been sleeping on a couch in the living room. *Id.* The police found a pair of size 12, navy Reebok shoes under that couch. *Id.* They also found a black and gray jacket with a "Sox" emblem on the back and six pairs of jeans hidden behind a dresser in Rankin's bedroom. *Id.* at A3, A24; TR 1284. Officers seized all these items, TR 1246-48, arrested Rankin, and questioned him at the police station, Pet App. A3.

Initially, Rankin denied committing the murders. But around two hours into the interview, the officers told Rankin that they had found the suspected murder weapon, a nine-millimeter Hi-Point pistol. *Id.* at A3, TR 1255. Confronted with this evidence, Rankin told the officers “[y]ou don’t have to show me that because I’m going to talk to you.” TR 1255. Rankin then confessed to the murders. He explained that he and Sonyae had been together for three years but were having “relationship problems” and had recently broken up, which he blamed on Sonyae’s mother. *Id.* at 1265. He confessed to kicking in the door of the apartment and seeing Zena and her young children on the couch. *Id.* at 1263. And he then confessed that he shot Zena, Ernestine, and Nathaniel, in that order. *Id.* at 1264. He admitted that he knew Sonyae was there too, but said that he got scared and ran away without finding and killing her. *Id.* at 1265. Rankin also confirmed that the navy shoes the police had seized were his, and that he had worn them during the murders. *Id.* at 1262. And Rankin apologized, saying “this is not what I meant to happen and I’m sorry, but I know that won’t bring them back.” *Id.* at 1266; Pet. App. A4.

Investigators later determined that Rankin’s navy shoes generally (though not definitively) matched a footprint on the apartment door that the shooter had kicked in. Pet. App. A4. Likewise, human blood was detected on the shoes and on one pair of the seized jeans. *Id.*¹ Rankin confirmed that those jeans were his too, along with the gray and black “Sox” jacket. *Id.* at A5; TR 1448-49. As for the pistol,

¹ Rankin successfully excluded the evidence regarding the jeans from his trial, however, because investigators were “unable to determine whether [the] blood ... was related to the murders.” *Rankin v. State*, 948 S.W.2d 397, 401 (Ark. 1997).

investigators discovered that it had been stolen in a recent burglary, along with a VCR and CDs that were found at Rankin's mother's house. Pet. App. A23, TR 1233-37. Rankin testified at trial that he had hidden the VCR at his mother's house. TR 1441, Pet. App. A4. The pistol was the murder weapon, because it matched the shell casings found at the murder scene. Pet. App. A4.

At trial, the jury heard from numerous witnesses, including Sonyae, who detailed Rankin's history of violence and threats toward her and her family. *Id.* at A4. And while she had not been able to identify Rankin as the man she had seen immediately after the murders, Sonyae testified that she now believed it was Rankin because she recognized the various items of clothing as his. *Id.* Rankin also testified at trial. He admitted that he had previously hit Sonyae on the occasions she detailed. TR 1433, 1461, 1481. But he denied murdering Sonyae's family, claiming that his confession—which had been taped and was played for the jury—was false and the result of the police telling him information about the murders. Pet. App. A26. Contrary to other witnesses' testimony that Rankin confessed after seeing the murder weapon that had been recovered, Rankin claimed he confessed because the officers had arrested his mother, Elaine Trimble, and his brother Rodney, and because he wanted to protect his brother. TR 1445-47. However, on cross-examination, Rankin admitted that his brother and mother were not arrested and that, after giving his initial confession and knowing they were not arrested, Rankin gave another statement explaining how he left the murder scene and did not retract his initial confession in that statement. *Id.* at 1478-79. Rankin also confirmed that he was not

suggesting that Rodney was the murderer rather than him. *Id.* at 1462. As for the VCR and CDs that were stolen from the same house as the pistol used to commit the triple homicide, Rankin claimed that those items were from a friend and that he didn't know they were stolen. Pet. App. A5. However, he acknowledged hiding them. TR 1441.

After hearing and weighing all the evidence, the jury unanimously found Rankin guilty of the three murders, and sentenced him to death. Pet. App. A5.

B. The state courts rejected Rankin's intellectual-disability claim after considering his IQ scores and adaptive functioning.

Rankin appealed his conviction and sentence, but they were affirmed on direct appeal, and his state collateral proceedings were similarly unsuccessful. *Id.*; *Rankin*, 948 S.W.2d at 401; *Rankin v. State*, 1 S.W.3d 14, 18-20 (Ark. 1999); *Rankin v. State*, 227 S.W.3d 924, 925 (Ark. 2006). One of Rankin's rejected claims was that the trial court erred by refusing to find that he was intellectually disabled at the time of the murders and thus ineligible for the death penalty. Pet. App. A118. Before trial, and less than two months after the murders, Rankin took an IQ test administered by David Nanak, a psychological examiner at the Southeast Arkansas Mental Health Center. *Id.* at A119. Rankin scored a 66, *id.*, but then moved for a second evaluation at the State's expense, asking to retain Dr. Phillip Murphy, *id.* at A8. The trial court granted Rankin's motion, and Rankin scored a 72 on that second IQ test administered by Murphy. *Id.* The trial court then ordered a third evaluation by Dr. John Anderson, but Anderson was unable to conduct a formal assessment because Rankin refused to participate in one. *Id.* Anderson found Rankin "polite," but "evasive and minimally

cooperative,” and believed that Rankin was “intentionally reporting symptoms of a mental illness for secondary gain.” *Id.* at A120, A8. Anderson also found Rankin “competent” and “coherent.” *Id.* at A120.

At a hearing to determine whether Rankin was death-penalty eligible, Nanak and Anderson both testified, along with Rankin’s junior high math teacher, Barbara Hubanks. *Id.* at A8, A119-20. Nanak explained that, for many reasons, the 72 Rankin scored on the IQ test administered by Murphy was likely more accurate than the lower score on Nanak’s test. *Id.* at A8-A9, A118-20. For instance, the 72 was more consistent with Rankin’s standardized test scores from school. *Id.* at A9. And Rankin’s lower score on the initial test probably resulted from Rankin’s high anxiety levels in the immediate aftermath of the murders and his arrest—and from Rankin’s intentional efforts to obtain a lower score. *Id.* at A9, A120. Both Nanak and Anderson explained that Rankin’s six-point improvement on the second test could not be attributed to any familiarity Rankin might have gained with the test the first time around. *Id.* at A9, A120.² Nanak further testified that Rankin’s adaptive functioning was “acceptable,” *id.* at A9, including because “he was able to get along with others, function within a group, sustain relationships, and take care of his personal needs,” *id.* at A120. Hubanks, meanwhile, explained that while Rankin had been below grade level when she taught him, he was not at a special-needs level. *Id.* at A9, A38. She

² While Rankin now contends that Murphy testified to the contrary, Pet. 4, Murphy did not even appear at the hearing, Pet. App A38-9.

also agreed that Rankin's level of adaptive functioning was acceptable. *Id.* at A9, A38.

Based on this evidence, the trial court determined Rankin had not shown he was intellectually disabled, and the Arkansas Supreme Court affirmed on appeal. *Id.* at A120. After his efforts to obtain relief in state court failed, Rankin filed a habeas petition in federal district court. Pet. App. A5. But because Rankin's petition included claims he had not exhausted in state court, the district court stayed the habeas proceeding to provide Rankin an opportunity to do so. *Id.*

C. After Rankin's brother Rodney died, Rodney was blamed for the murders for the first time.

Meanwhile, Rankin's brother Rodney died in 2006, and his mother Elaine died in 2009. *Id.* Rankin's habeas counsel subsequently reached out to Pastor Augustine Bailey, who claimed for the first time in 2009 that mere days after the triple homicide in 1994 Rodney told her that he was the actual murderer. *Id.* Bailey was a longtime friend of Rankin's family, and she later became one of several pastors at Elaine's church. *Id.* at A162, A164, A172-73. Because Bailey was herself seriously ill (and eventually died in 2011), the district court temporarily reopened the habeas proceeding so she could be deposed. *Id.* at A5.

Bailey claimed that, a few days after the murders while Rankin was in jail, Rodney and Elaine came to a church clothes drive, and Rodney told Bailey that he wanted to speak with her in private. *Id.* at A145-46. Bailey said that Rodney then asked her rhetorically "What if these are the shoes that kicked in that door over there, and this is the blood on my shoe?" *Id.* at A178. Bailey claimed that she looked down

and saw blood on Rodney's "dark looking" tennis shoes, *id.*, and that Rodney then asked, while wearing a baseball jacket, "What if this is the jacket that they saw the person that had did the killings running away in?" *Id.* at A146. She said that Rodney then confessed to the murders, but said that "he was going to talk to [Rankin] and have him take the fall." *Id.* at A146-47. Bailey claimed that Rodney again confessed a week later when she was with both Rodney and Elaine. *Id.* at A147-48.

Bailey said that she spoke with both Rodney and Elaine on numerous occasions after Rodney's confessions—including about Rankin's trial—but Rodney's confessions "never came up" again. *Id.* at A149-50, A181. And Bailey said that she had never told anyone of Rodney's threat or confessions because she believed she was bound to confidentiality due to her role as a minister and counselor. *Id.* at A5. But she felt that she could speak freely now that both Rodney and Elaine had died. *Id.* at A5, A154.

Based on Bailey's testimony, Rankin asked the Arkansas Supreme Court to recall the mandate in his state court collateral proceedings and reinvest jurisdiction in the trial court so that it could consider his petition for a writ of *error coram nobis*. *Id.* at A6. Rankin also filed a lengthy appendix with Bailey's testimony and hundreds of pages of other purported evidence that had never been presented to a court previously. *See* Dist. Dkt. No. 104. The appendix included affidavits postdating Rodney's death, which stated that various friends and family members did not think Rankin could have committed the murders, but that Rodney might have based on his violent personality and troubled relationship with Zena. Pet. App A14; Dist. Dkt. No.

104-4. The affidavits also suggested that the size 12, navy Reebok shoes—which Rankin himself had said were his—could not have belonged to Rankin because he wore a size 14. Pet. App A14; Dist. Dkt. No. 104-4. The appendix also included an affidavit from an Arkansas prison official stating that Rankin had been issued size 14 shoes. Dist. Dkt. No. 104-4 at 36.

Meanwhile, Rankin’s friends and family claimed that Rodney had had smaller feet than Rankin—and Rankin’s uncle “believe[d]” Rodney was a size 12, specifically. Dist. Dkt. No. 104-4 at 19. Likewise, affiants said that Rodney had been “heavier-set and shorter than Rankin.” Pet. App. A14. And the appendix included a photo purportedly showing that the blood-stained jeans, which Rankin had said were his, were wider and shorter than another pair of jeans officers had seized from behind Rankin’s dresser. Dist. Dkt. No. 104-4 at 37. The appendix also featured affidavits from Rankin’s trial lawyer, Gene McKissic, who claimed that Rankin had told him that Rodney had confessed to the murders. *Id.* at A241. McKissic said that an unidentified police officer had also told him Rodney was a “prime suspect” in a different murder investigation. *Id.* at A242. Finally, the appendix included two reports—from more than a decade after the murders—purportedly showing that Rankin was intellectually disabled. *See id.* at A12; Dist. Dkt. No. 104-3 at 1-26.

The Arkansas Supreme Court denied Rankin’s motion to recall the mandate and reinvest jurisdiction in the state trial court to consider his *error coram nobis* petition based on this newly presented evidence. Pet. App. A6.

D. The district court and Eighth Circuit rejected Rankin’s claims on the merits.

Back in federal court, Rankin sought habeas relief on numerous claims. *See* Pet. App. A91-92 (listing Rankin’s various claims). As relevant here, those included claims that (1) Rankin’s trial counsel was ineffective for failing to investigate and present evidence that Rodney was the true murderer, and (2) Rankin was death penalty ineligible because he was intellectually disabled at the time of the murders. Although the ineffective-assistance-of-counsel claim was procedurally defaulted because Rankin never raised it in state court, Pet. App. A67, Rankin argued the default was excused under *Schlup v. Delo*, 513 U.S. 298 (1995), because Bailey’s testimony and other appendix evidence in his *error coram nobis* petition was “new evidence” that established his “actual innocence” of the murders, Pet. App. A88-89.

The district court considered and rejected the ineffective-assistance and intellectual-disability claims on the merits. It noted that the *coram-nobis* appendix was not part of the state court record and ruled that 28 U.S.C. § 2254(e)(2) and *Shinn v. Ramirez*, 596 U.S. 366 (2022), barred consideration of the newly presented evidence in that appendix. Pet. App. A40, A67. Nevertheless, the district court determined that, even if it were to consider that new evidence, Rankin’s ineffective-assistance claim would still fail. *Id.* at A79. And because the ineffective-assistance claim failed on the merits, the district court declined to consider whether Rankin’s procedural default of that claim was excused under *Schlup*. *Id.* at A90.

The Eighth Circuit unanimously affirmed the district court’s rejection of Rankin’s intellectual-disability and ineffective-assistance claims on the merits. *Id.*

at A7-12, A16-17. It also concluded that the district court properly rejected Rankin’s ineffective-assistance claim because that claim was procedurally defaulted. *Id.* at A12. It reasoned that the procedural default was not excused because the evidence in the appendix was not “new” within the meaning of *Schlup*. *Id.* at A13-16. Rankin then petitioned for rehearing en banc, which was denied without a single dissent. *Id.* at A125.

Rankin now petitions for this Court’s review.

REASONS FOR DENYING THE PETITION

This Court should deny the petition. Not only do none of the questions merit this Court’s review, but this case is also a poor vehicle for the only question that implicates a circuit split: what constitutes “new evidence” that can excuse a procedural default under *Schlup*. Regardless of whether Rankin can use the *Schlup* gateway to excuse his procedural default of his ineffective-assistance of counsel claim, both lower courts have already correctly found that claim meritless. So even if the “new evidence” question warrants the Court’s review, the Court should deny Rankin’s petition and wait for a better vehicle—as it has repeatedly done with petitions raising this issue in recent years. *See, e.g., Crow v. Fontenot*, 142 S. Ct. 2777 (2022) (No. 21-970); *Hancock v. Davis*, 587 U.S. 1063 (2019) (No. 18-940); *State Correctional Institution at Fayette v. Reeves*, 587 U.S. 1070 (2019) (No. 18-543).

Rankin’s remaining two questions are even less cert-worthy because both are, at best, requests for error correction when the lower courts did not err. Furthermore, Rankin cannot identify any compelling reasons why this Court should review the Eighth Circuit’s fact-intensive conclusion that trial counsel’s performance was

constitutionally adequate under *Strickland*'s well-established standard. Nor can Rankin provide any persuasive reason why this Court should hold the case in abeyance pending its decision in *Hamm v. Smith*, including because Rankin forfeited any argument that could benefit from the outcome he hopes for in *Hamm*.

I. THE “NEW EVIDENCE” QUESTION IS NOT OUTCOME DETERMINATIVE, COULD BENEFIT FROM FURTHER PERCOLATION, AND WAS CORRECTLY DECIDED BELOW.

Although this Court has not recognized a “freestanding claim[] of actual innocence” as a basis for habeas relief, *Herrera v. Collins*, 506 U.S. 390, 405 (1993), “new evidence” of “actual innocence” can, in rare circumstances, excuse a petitioner’s procedural default of a conventional habeas claim, such as an alleged *Brady* violation, *Schlup*, 513 U.S. at 315. The “claim of innocence” in those circumstances operates as “a gateway through which a habeas petitioner must pass to have his otherwise barred constitutional claim considered on the merits.” *Id.* (quoting *Herrera* 506 U.S. at 404). To “avoid a procedural bar” with a gateway-innocence claim under *Schlup*, “the petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence.” *Id.* at 327.

The Eighth Circuit has previously held that such “new evidence” must have been unavailable at trial and “could not have been discovered earlier through the exercise of due diligence.” *Armine v. Bowersox*, 128 F.3d 1222, 1230 (8th Cir. 1997); see *Schlup*, 513 U.S. at 332 (O’Connor, J., concurring) (noting that the evidence must be “newly discovered”). Based on that precedent, the Eighth Circuit concluded below that evidence in Rankin’s *coram-nobis* appendix was not “new evidence” under *Schlup* because the factual basis for it—Rodney’s purported commission of the

murders—was available at the time of trial, including because Rankin purportedly told counsel before trial that Rodney confessed to the murders. Pet. App. A15.

Rankin asks this Court to grant review and decide evidence needs only to be newly presented, not newly discovered, to constitute new reliable evidence that can excuse a procedural default under *Schlup*. But Rankin has not shown that consideration of that question is warranted in this case, especially because the lower courts have already considered—and rejected—his procedurally defaulted claim on the merits.

A. This case is a poor vehicle for deciding the “new evidence” question because its resolution will not alter this case’s outcome.

Even if the first question presented merited the Court’s review, this case is a poor vehicle for considering it. Whether Rankin has presented “new evidence” establishing his innocence under *Schlup* is merely “a gateway” Rankin must “pass to have his otherwise” procedurally defaulted ineffective-assistance claim “considered on the merits.” *Schlup*, 513 U.S. at 315 (citation omitted). But both the district court and the unanimous Eighth Circuit already considered and rejected that procedurally defaulted claim on the merits. That means the Eighth Circuit’s alternative *Schlup* holding was not outcome-determinative, so this Court’s review of it would be academic and provide no relief to Rankin. Cf., e.g., *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (“We are not permitted to render an advisory opinion, and if the same judgment would be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion.”). And resolving a question that is not outcome determinative would be especially

problematic in this context because federal courts “may *never* needlessly prolong a habeas case, particularly given the essential need to promote the finality of state convictions.” *Shoop v. Twyford*, 596 U.S. 811, 820 (2022) (quoting *Shinn*, 596 U.S. at 390).

Recognizing that review of his *Schlup* question would be meaningless to him standing alone, Rankin also asks this Court to consider whether the lower courts misapplied the well-established *Strickland* standard in rejecting his procedurally defaulted ineffective-assistance claim on the merits. Pet. i, 21-25. But Rankin identifies no “compelling reason[]”—such as a conflict in authority—why this Court should do so. *See* Sup. Ct. R. 10(a)-(c). Nor could he, considering that the standard for such claims is both well established and inherently fact bound. This Court is “not a court of error correction.” *Martin v. Blessing*, 571 U.S. 1040, 1045 (2013) (Alito, J., statement respecting cert denial); Stephen G. Breyer, *Reflections on the Role of Appellate Courts: A View from the Supreme Court*, 8 J. App. Prac. & Process 91, 92 (2006) (“Rather than correcting errors . . . the Supreme Court is charged with providing a uniform rule of federal law in areas that require one.”).³ Yet to provide any meaningful review here, it would have to sit as one. This case is thus a poor vehicle for considering the threshold, “new evidence” question—even if it were otherwise cert-worthy.

³ And regardless, as explained below, the lower courts committed no error in rejecting Rankin’s ineffective-assistance claim on the merits. *See infra* at 27-29.

What's more, even focusing on only the threshold issue of whether *Schlup* excuses Rankin's procedural default of his meritless claim, the "new evidence" question is just the beginning of the inquiry. Rankin would also have to show that not a single reasonable juror would convict him based on both his newly presented evidence and the incriminating evidence presented at trial. *See House v. Bell*, 547 U.S. 518, 537 (2006) (explaining that the *Schlup* inquiry requires consideration of "all the evidence, old and new, incriminating and exculpatory" (citation omitted)). And Rankin cannot make this showing. Rankin had not only threatened to commit the murders, but he also *confessed* to them. Moreover, testimony and physical evidence—including Rankin's possession of the stolen VCR and CDs linked to the murder weapon—further confirmed his guilt.

Given all the incriminating evidence, Rankin cannot show that, even considering the purported new evidence, it is "more likely than not any reasonable juror would have reasonable doubt" about his guilt. *Id.* at 538. After all, Bailey's allegations—a decade after the murders—that the newly deceased Rodney had confessed to the crime are highly "suspect." *See Herrera*, 506 U.S. at 423 (O'Connor, J., concurring) (noting that such developments are common in death-penalty cases and must be regarded with "skepticism"). So too are the belated affidavits from Rankin's friends and family that seek to cast suspicion onto Rodney. *Id.* A reasonable juror would view these belated, "convenient[]" attempts to "blame a dead man—someone who will neither contest the allegations nor suffer punishment as a result of them"—with "skepticism." *Id.* Considering "the timing of the submission and the

likely credibility of the affiants,” the “probable reliability” of Rankin’s newly presented evidence is low at best. *Schlup*, 513 U.S. at 332.⁴

On top of the questionable timing and convenient blaming of a recently deceased brother, Bailey’s story makes no sense. For instance, she claimed that Rodney first confessed at the church clothes drive several days after the murders and was wearing the shoes and jacket that witnesses described the murderer wearing. But police seized the jacket described by witnesses (and Bailey) and shoes with blood within hours of the crime, so Rodney could not possibly have been wearing them. TR 1246-48. And it strains credulity that Rodney—while accompanying his mother to a church event and trying to frame his brother—would openly wear the blood-stained shoes and jacket that witnesses had seen. That’s especially true when, according to Bailey’s account, Rodney was aware of the evidentiary significance of these items at that point, describing them as the shoes that kicked in that door” and “the jacket that they saw [the murderer] running away in.” Pet. App. A178. Further, while Bailey claimed that Rodney told her that he planned to convince Rankin to “take the fall,” *id.* at A146-47, Rankin was already in jail and had confessed days earlier, *see id.* at A3.

As for the suggestion that the navy shoes could not have been Rankin’s because they were a smaller size than what he typically wore, Rankin himself confirmed that they were his. TR 1262. And neither Rankin, nor his friends or family, testified that

⁴ Moreover, Rankin’s own testimony at trial indicated he did not believe Rodney was the actual murderer. Pet. App. A5; TR. 1426.

Rankin wore larger size shoes (or that Rodney wore smaller shoes) until years after the crime and after Rodney's death. Likewise, Rankin confirmed that the blood-stained pants were his and no one testified otherwise, underscoring the unreliability of the belated contrary assertions. In any event, the pants were excluded from trial because forensics could not definitively establish that the blood was related to the murders.

In sum, when Rankin's confession, physical evidence linking him to the murder weapon, and witness testimony is considered alongside Rankin's newly presented evidence, a reasonable juror could still find Rankin guilty beyond reasonable doubt. *See House*, 547 U.S. at 537. So even if Rankin has presented qualifying "new evidence," his procedural default would not be excused under *Schlup*. He has not "present[ed] evidence of [his] innocence" that is "so strong" that it undermines "confidence in the outcome of the trial." *Schlup*, 513 U.S. at 316. And none of that matters in the first place because, as the lower courts concluded, Rankin's defaulted ineffective-assistance claim also fails on the merits. Because review by this Court would "needlessly prolong [this] habeas case," *Shoop*, 596 U.S. at 820, it is a poor vehicle for considering what constitutes "new evidence" under *Schlup*. That alone is reason enough to deny the petition, *see id.*; *Herb*, 324 U.S. at 126, and that's especially true here when there is another petition pending right now in a case that would be a better vehicle, *see Dotson v. Wolfe*, No. 25-664.

B. The circuit split is overstated.

The Court should also deny the petition because the conflict between lower courts' application of *Schlup* is overstated and the issue could benefit from further percolation. Rankin points to the circuit split on whether evidence that was available and discoverable with the exercise of diligence at the time of trial counts as “new evidence” under *Schlup*, or whether such previously available evidence does not qualify as “new.” Pet. 16. The Eighth Circuit has adopted the latter rule, under which evidence must be “newly discovered” to excuse a procedural default. *Armine*, 128 F.3d at 1230. Some courts have adopted the former rule, under which evidence is “new” so long as it was not presented at trial, even if it was otherwise available. But Rankin exaggerates the depth of the split, and many circuits have yet to weigh in on the issue.

For instance, Rankin contends that six circuits have “squarely rejected” the Eighth Circuit’s standard. Pet. 16. But that is not borne out by the cited cases. For instance, Rankin cites *Cleveland v. Bradshaw*, 693 F.3d 626 (6th Cir. 2012), and *Rivas v. Fischer*, 687 F.3d 514 (2d Cir. 2012). But those cases did not even involve claims that were procedurally defaulted for failure to exhaust state court remedies. Rather, they considered whether petitioners’ failure to comply with AEDPA’s statute of limitations was excused. *See Cleveland*, 693 F.3d at 627; *Rivas*, 687 F.3d at 517-18. And as Rankin himself acknowledges, Pet. 19, the Eighth Circuit distinguishes between these two issues in applying the “new evidence” standard, Pet. App. A13. So

Cleveland and *Rivas* do not conflict with the Eighth Circuit’s approach with respect to procedurally defaulted claims.

Even ignoring that distinction, *Cleveland* and *Rivas* do not “squarely reject” the Eighth Circuit’s approach to “new evidence” in assessing whether a procedural default is excused. Pet. 16. To the contrary, in *Cleveland*, the Sixth Circuit expressly declined to decide where it falls on the circuit split and whether “there is a meaningful difference between ‘newly discovered’ and ‘newly presented’ evidence” under *Schlup*. *Cleveland*, 693 F.3d at 633 (quoting *Connolly v. Howes*, 304 F. App’x 412, 419 (6th Cir. 2008) (Sutton, J., concurring)). Nor did the Second Circuit “squarely reject” the Eighth Circuit’s approach in *Rivas*. Pet. 16. Indeed, in assessing the gateway-innocence claim, the Second Circuit did not even discuss whether the relevant evidence that the prosecution had allegedly failed to disclose was “new” under *Schlup*, much less the Eighth Circuit’s standard. 687 F.3d at 539–47. So *Cleveland* and *Rivas* do not clearly conflict with the Eighth Circuit’s approach.

Accordingly, only four circuits—not six—have “squarely rejected” the “newly discovered” standard in this context. Notably, one of those circuits, the Ninth, has indicated that it “will need to address” en banc whether Justice O’Connor’s *Schlup* concurrence, which explains habeas petitioners must produce “newly discovered” evidence, is controlling. *Pratt v. Filson*, 705 F. App’x 523, 525 (9th Cir. 2017) (per curiam); see *Griffin v. Johnson*, 350 F.3d 956, 962 (9th Cir. 2003) (acknowledging that Justice O’Connor’s concurrence may be controlling but earlier and binding panel

precedent required only “‘newly presented’ evidence” for actual-innocence claims).⁵ And two of those circuits decided to weigh in on the circuit split within the last few years. *See Wolfe v. Dotson*, 144 F.4th 218, 234 (4th Cir. 2025), *petition for cert. filed* Dec. 4, 2025 (No. 25-664); *Fontenot v. Crow*, 4 F.4th 982, 1032–33 (10th Cir. 2021). On the other side of the split, only the Eighth and Third Circuits have definitively adopted the “newly discovered” standard according to Rankin. *See* Pet. 16-17. The issue could thus benefit from further percolation, and there will be other opportunities for the Court to address the issue in cases that are better vehicles.

C. The Eighth Circuit’s rule is correct.

This Court should also deny review because the Eighth Circuit’s determination that a gateway-innocence claim requires evidence to be newly discovered is correct. For starters, it is the rule announced in *Schlup* itself. As Justice O’Connor explained in her concurrence, a petitioner’s evidence of actual innocence must be “newly discovered” to overcome procedural default, *Schlup*, 513 U.S. at 332 (O’Connor, J., concurring), and her concurrence is persuasive at the very least. Indeed, it could even be considered controlling under *Marks v. United States*, 430 U.S. 188, 193 (1977), as several courts have concluded. *See, e.g., Bonner v. Willis*, No. 10-21670-CIV, 2011 WL 836929, at *3 n.4 (S.D. Fla. Mar. 3, 2011); *Jackson v. Chatman*, No. 1:13-CV-

⁵ Regardless, the Ninth Circuit has applied its standard in a way that leads to the same outcome—evidence that was known to the petitioner at the time of trial is not new reliable evidence to establish a gateway-innocence claim. *See Chestang v. Sisto*, 522 F. App’x 389, 391 (9th Cir. 2013) (per curiam) (concluding the petitioner could not establish a gateway-innocence claim based on a new declaration that concerned events that pre-dated trial and were within the petitioner’s knowledge based, in part, on the petitioner’s unexplained delay in presenting the new evidence and earlier confession).

2270-MHS-JFK, 2014 WL 12521304, at *2 (N.D. Ga. Jan. 13, 2014), *aff'd*, 589 F. App'x 490 (11th Cir. 2014) (per curiam); *Pratt*, 705 F. App'x at 525. The Eighth Circuit's rule is therefore correct and consistent with this Court's precedent.

Meanwhile, the rule Rankin prefers—which would treat any evidence as “new” so long as it was not presented at trial—contravenes both precedent and the “principles of comity and finality that govern every federal habeas case.” *Shinn*, 596 U.S. at 382.⁶ Indeed, it would reduce state court trials to a mere “tryout on the road to federal habeas relief.” *Id.* at 377 (citations omitted). For instance, it would provide a complete federal do-over to defendants who decline to investigate or develop available, potentially exculpatory evidence before trial. Worse, it would allow criminal defendants to refrain from presenting particular evidence at trial for tactical reasons, only to turn around and rely on that same evidence to seek federal habeas relief depending on how things go in state court. Likewise, after selecting one strategy and corresponding set of evidence for trial, defendants could simply try another that was never presented to the state courts in their federal habeas proceeding.

⁶ To the extent Rankin suggests an alternative rule under which evidence that was available at the time of trial may nevertheless be considered “new” if counsel was ineffective in failing to discover it, *see* Pet. 17, Rankin would not benefit from such a standard based on his own arguments. Indeed, the purportedly “new” evidence Rankin primarily relies upon is Bailey's testimony, *see, e.g., id.* at i, in which she explained she would not have given such testimony at the time of trial because Rodney and Elaine were still alive. So taking Bailey at her word, Rankin's trial counsel could not have been ineffective in failing to discover Rodney's confession to her. And regardless, Rankin's ineffective-assistance claim fails on the merits. *See infra* at 27-29.

Rankin's rule would also permit petitioners to circumvent AEDPA and the deference owed to state court rulings under it. 28 U.S.C. § 2254(d)-(e). Rather than risk an unfavorable ruling in state court and corresponding federal deference, petitioners could strategically "reserve[]" claims in their state proceedings, and then freely present those unexhausted claims and supporting evidence to a federal court in the first instance. *Murray v. Carrier*, 477 U.S. 478, 492 (1986). Indeed, "[s]tate prisoners already have a strong incentive to save claims for federal habeas proceedings in order to avoid the highly deferential standard of review that applies to claims properly raised in state court." *Shinn*, 586 U.S. at 391. Rankin's rule would improperly "encourage" more of such "sandbag[ging]." *Id.*⁷

While Rankin suggests that the Eighth Circuit's rule is inconsistent with this Court's precedent, *see* Pet. 17-18, he entirely ignores that Justice O'Connor said that *Schlup*'s standard was "higher than that required for prejudice" and required a petitioner to show "it is more likely than not that no reasonable juror would have convicted him in light of *newly discovered* evidence of innocence," *Schlup*, 513 U.S. at 332-33 (O'Connor, J., concurring) (citation omitted) (emphasis added). Rankin also tellingly ignores the decisions viewing Justice O'Connor's concurrence as controlling or at least a persuasive clarification of the standard. *See, e.g., Bonner*, 2011 WL 836929, at *3; *Pratt*, 705 F. App'x at 525. Rankin instead relies on *House's*

⁷ And of course, given that state and federal collateral proceedings often already take many years, by the time the petitioners finally present their claims to the federal court, both the old and "new" evidence will very "often [be] stale." *Herrera*, 506 U.S. at 417. Indeed, in this case, Rankin's "new" evidence is about as stale as it could be—Rodney, Elaine, and Bailey all died decades ago.

explanation that, in assessing whether a petitioner has established “actual innocence” under *Schlup*, courts must consider both the “old and new” evidence. 547 U.S. at 538. But that requirement obviously does not answer the antecedent question of what evidence counts as “new” in the first place.

Rankin also claims support from *McQuiggin v. Perkins*, 569 U.S. 383 (2013), but that case addressed whether a threshold showing of diligence was required to overcome AEDPA’s statute of limitations—not procedural default via failure to exhaust claims in state court. *Id.* at 399. Moreover, the application of a *federal* statute of limitations obviously implicates issues of “comity and finality” less directly than an attack on a state conviction on grounds never even presented to state courts. *Shinn*, 596 U.S. at 382. Rankin’s invocation of these cases is therefore unavailing.⁸

In sum, the Eighth Circuit’s rule that evidence must be “newly discovered” to overcome a procedural default with a gateway-innocence claim is correct, and Rankin’s petition should therefore be denied on the first question.

⁸ After attacking the “newly discovered” standard, Rankin shifts gears, essentially suggesting that the Eighth Circuit misapplied that standard in concluding that the evidence in his *coram-nobis* appendix was not “new.” Pet. 20. But that is simply another request for mere error correction that does not even implicate the circuit split that Rankin identifies or resolve his question presented. *Martin*, 571 U.S. at 1045. Regardless, the Eighth Circuit did not err in applying the “newly discovered” standard. As that court explained, if the appendix evidence were true, then both Rankin and his trial counsel had evidence that Rodney confessed to the murders *before* trial because an affidavit in the appendix claims that Rankin himself told his trial attorney (McKissic) that Rodney confessed to the murders before Rankin’s trial. Pet. App. A241. So the evidence was not truly new and was not new reliable evidence in any event. *See, e.g., Chestang*, 522 F. App’x at 391 (concluding that a recent declaration of guilt by another individual was not new reliable evidence to establish a gateway-innocence claim when, if the declaration were true, petitioner would have possessed knowledge of that individual’s guilt at the time of trial).

II. THE COURT SHOULD DECLINE RANKIN'S REQUEST FOR ERROR CORRECTION OF THE LOWER COURT'S *STRICKLAND* ANALYSIS.

Rankin also asks this Court to grant certiorari to consider whether the Eighth Circuit misapplied the well-established *Strickland* standard in rejecting his claim that trial counsel was ineffective for failing to investigate and present evidence of Rodney's supposed guilt. As explained above, Rankin's request is for pure error correction, and the Court should therefore decline to review this issue. *See supra* at 17; *Martin*, 571 U.S. at 1045 (explaining that this Court is "not a court of error correction"). In any event, the lower courts did not err in rejecting Rankin's claim.

As a threshold matter, Rankin does not contest the district court's conclusion that, because the *coram-nobis* appendix was not part of the state court record, consideration of it in assessing his ineffective assistance claim is barred under 28 U.S.C. § 2254(e)(2). *See* Pet. App. A40, A67. The Eighth Circuit did not disturb that ruling, nor does Rankin address it in his petition. But Rankin nevertheless relies exclusively on the newly presented evidence in the appendix to argue that the lower courts misapplied *Strickland* to the facts. *See* Pet. 21-25. That's unsurprising, because nothing in the state court record suggests that Rodney might be guilty. Rankin's ineffective assistance claim therefore plainly fails.

And even if the newly presented evidence in the appendix could be considered, as both the district court and the Eighth Circuit concluded, it "fall[s] short of demonstrating attorney error." Pet. App. A79, A17. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments."

Strickland v. Washington, 466 U.S. 668, 691 (1984). Rankin primarily contends that his trial counsel’s performance was deficient because he failed to investigate whether the navy shoes and blood-stained pants were Rodney’s. But Rankin consistently said that these items were his, *see* TR 1262, and other evidence confirmed as much—including the fact that the police found the shoes under the couch where Rankin was sleeping. Pet. App. A3, *Id.* at A5; TR 1449. And no contemporaneous evidence provided any reason to think that these items might actually belong to Rodney.

Accordingly, trial counsel’s decision to address this and other “physical and forensic” evidence by arguing that it was “inconsistent and unconvincing,” Pet. App. 3, rather than trying to use it to blame Rodney, was imminently reasonable under the circumstances, *Strickland*, 466 U.S. at 691. Indeed, trial counsel achieved some success with his chosen strategy, excluding the blood-stained jeans because they could not be conclusively linked to the murders. *See Rankin*, 948 S.W.2d at 401; Pet. App. A15. For similar reasons, trial counsel was not unreasonable for not further investigating and attempting to present evidence of Rodney’s supposedly violent character and potential motives for committing the murders—especially considering such evidence would have been inadmissible under Arkansas law. *See* Pet. App. A17 (citing *Zinger v. State*, 852 S.W.2d 320, 323 (Ark. 1993)).

While Rankin suggests that the lower courts wrongly judged trial counsel’s performance using hindsight, it is Rankin who makes that mistake. His assessment of trial counsel’s performance is plainly animated by the sudden willingness of Rankin’s friends and family to blame Rodney decades after the murders. But as the

Eighth Circuit explained, at the time of trial, there was simply a “lack of evidence pointing to Rodney.” Pet. App. A17. Accordingly, trial counsel’s decision not to pursue a trial strategy of blaming Rodney was not unreasonable—especially when afforded the “heavy measure of deference” it is due. *Strickland*, 466 U.S. at 691.

For these reasons, the Court should deny review of the second question too.

III. THERE IS NO REASON TO HOLD RANKIN’S PETITION PENDING THIS COURT’S DECISION IN *HAMM V. SMITH*, INCLUDING BECAUSE RANKIN FORFEITED HIS RELATED ARGUMENT.

Rankin’s third question presented—whether the Court should “hold this case pending its decision in *Hamm v. Smith*, No. 24-872,” Pet. i—is also not cert-worthy. Rankin presents no “compelling reason” why the Court should grant review on that question. *See* Sup. Ct. R. 10.

Although Rankin hints that the Eighth Circuit may have erred, he fails to identify a specific error that he would like this Court to review. Pet. i, 25-27. Nor could he. Because Arkansas’s statutory prohibition on executing an intellectually disabled defendant is concurrent with the right established in *Atkins*, the Arkansas courts’ pre-*Atkins* determination that Rankin was not intellectually disabled is entitled to AEDPA deference. Pet. App. A8 (citing *Roberts v. Payne*, 113 F.4th 801, 808 (8th Cir. 2024)); *see Atkins v. Virginia*, 536 U.S. 304, 317 (2002) (“leav[ing] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences”). And the lower courts rightly concluded that the state courts’ determination that Rankin was not intellectually disabled was not unreasonable. Pet. App. A9-A12. They also rightly concluded that consideration of Rankin’s newly presented evidence—reports on Rankin’s intellectual

abilities from more than a decade after the murders—was barred under 28 U.S.C. § 2254(e)(2). *Id.* at A12.

Nevertheless, Rankin appears to believe that a ruling in *Hamm* could help him. He is wrong. Though not clear, Rankin appears to believe that, if the Court were to rule that multiple IQ scores must be combined when assessing a potential intellectual disability under *Atkins*, that would mean Arkansas courts did not in fact adjudicate his *Atkins* claim because they did not consider a composite version of his IQ scores. Pet. 25-27. On Rankin’s view, the upshot would seemingly be that AEDPA would not apply.

There are many problems with Rankin’s vague, bare-bones argument. For starters, Rankin forfeited it. He did not contend below that his IQ scores should be combined in some way. Instead, he argued that both scores *separately* demonstrated he was of significantly subaverage intellectual functioning. *See, e.g.*, Appellants Brief, No. 23-3526, at 74-75 (8th Cir. Sept. 13, 2024); *United States v. Jones*, 565 U.S. 400 (2012) (deeming argument not raised below forfeited).

Moreover, while Rankin suggests that Alabama and the United States urge this Court to rule in *Hamm* that combining scores is constitutionally required, that is inaccurate. Both (correctly) argue that States have discretion in how to assess multiple IQ scores. *See, e.g.*, Petitioner’s Br., *Hamm v. Smith*, No. 24-872, at 2 (“[W]hether and how to weigh multiple IQ scores is left to state discretion.” (citation omitted)); U.S. Br., *Hamm v. Smith*, No. 24-872, at 19 (“This is not to say the Eighth Amendment prescribes a specific approach to analyzing multiple IQ tests, be it

averaging or a composite or taking the median. It does not.”). In any event, the Eighth Amendment certainly does not require States to mechanically combine scores in every case regardless of mistakes in administration or other evidence of unreliability. For example, “it is abundantly clear that a state court may discount IQ scores where there is evidence of malingering,” *Clemons v. Comm’r, Ala. Dep’t of Corr.*, 967 F.3d 1231, 1248 (11th Cir. 2020). Here, the Arkansas courts deemed Rankin’s higher IQ score more accurate based in part on precisely such evidence, Pet. App. A7, A11, so even a rule stating that scores must generally be combined would provide Rankin with no avenue for obtaining relief.

Regardless, even if this Court ruled in *Hamm* that scores must *always* be combined, it still would not help *Rankin*. For starters, Rankin’s apparent assumption that such an outcome would mean that the state court ruling was suddenly no longer an adjudication of his *Atkins* claim at all—and therefore not entitled to any deference under 28 U.S.C. § 2254(d)—is both unexplained and wrong. But even if Rankin is correct, the state court’s related factual findings would still be “presumed correct” under § 2254(e)(1), as the district court concluded. *See* Pet. App. A40.

Finally, and relatedly, as Rankin himself explains, to establish that he is intellectually disabled, he cannot just show subaverage intellectual functioning. *See* Pet. 25. He must instead also show a “significant deficit or impairment in adaptive function.” *Id.* (quoting *Atkins*, 536 U.S. at 319; Ark. Code Ann. § 5-4-618(a)(1)). And testimony from the various experts and Rankin’s teacher established that his adaptive functioning was satisfactory. *See* Pet. App. A7-A9, A11. So even if *Hamm*

could help Rankin with respect to IQ scores, the state courts' finding that he is not intellectually disabled would still be correct—especially under § 2254(e)(1)'s heavy presumption.

Accordingly, there is no reason for this Court to hold Rankin's petition pending its decision in *Hamm* and no reason for this Court to grant review on the third question presented.

CONCLUSION

The Court should deny the petition.

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