OCTOBER TERM, 2026

CASE NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

Briley Piper,
Petitioner,

v.

Attorney General for the State of South Dakota;
Tabatha Benting, Warden, South Dakota State Penitentiary,
Respondents;
United States of America,
Intervenor.

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

PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

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Dated: November 13, 2026

CAPITAL CASE

QUESTIONS PRESENTED

1. Does 28 U.S.C. § 2254(d)(1) violate Article III of the United States Constitution because it requires federal judges to defer to the decisions of non–Article III actors, on federal constitutional questions, that are wrong but not unreasonable?

2. Where a state procedural bar was applied in novel and unforeseeable circumstances, was the determination that the bar was adequate to bar federal habeas review contrary to *Cruz v. Arizona*, 598 U.S. 17 (2023)?

PARTIES TO THE PROCEEDING BELOW

Petitioner Briley Piper was the Appellant in the court below, is indigent, and is incarcerated under sentence of death within the South Dakota Department of Corrections. The Attorney General of the State of South Dakota and the Warden[1] of the South Dakota State Penitentiary are the Respondents and were the Appellees below. The United States of America is Intervenor. No party is a corporation.

[1] Joseph Roemmich was the Warden when the court below entered its judgment, but he has since been replaced by Tabatha Benting. Fed. R. Civ. P. 25(d).

RELATED PROCEEDINGS

Fourth Judicial Circuit, Lawrence County, South Dakota

State of South Dakota v. Briley W. Piper, Crim. No. 00-431 (Lawrence Cnty., 4th Judicial Cir.)

South Dakota Supreme Court

State v. Piper, No. 21813, 709 N.W.2d 783 (S.D. 2006) (judgment entered Jan. 4, 2006)
Piper v. Weber, No. 24868, 771 N.W.2d 352 (S.D. 2009) (judgment entered July 29, 2009)
State v. Piper, No. 26126, 842 N.W.2d 338 (S.D. 2014) (judgment entered Jan. 8, 2014)
Piper v. Young, No. 28153, 936 N.W.2d 793 (S.D. 2019) (judgment entered Dec. 11, 2019)

United States District Court for the District of South Dakota

Piper v. Jackley, No. 5:20-CV-05074 (D.S.D. 2025) (judgment entered July 16, 2025)

United States Court of Appeals for the Eighth Circuit

Piper v. Att'y Gen. for S.D., No. 25-2617 (8th Cir. 2026) (judgment entered May 4, 2026)

United States Supreme Court

Piper v. Young, No. 19-1338, 592 U.S. 917 (2020) (certiorari denied Oct. 5, 2020)

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PETITION FOR WRIT OF CERTIORARI

Briley Piper respectfully petitions that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals affirming the denial of habeas corpus relief is reported at 174 F.4th 1070 (8th Cir. 2026) and appears in the Appendix at A2–A21. The orders of the district court denying the petition for writ of habeas corpus are unreported and appear in the Appendix at A38–A108 and A109–A228. The order of the district court denying Piper's motion to alter or amend the judgment and granting in part Piper's motion for a certificate of appealability (COA) is unreported and appears in the Appendix at A22–A37. The relevant state-court opinion is reported at 936 N.W.2d 793 (S.D. 2019) and appears in the Appendix at A229–A249.

JURISDICTION

The court of appeals issued its opinion affirming the district court's judgment on May 4, 2026, and it denied Piper's petition for rehearing on June 18, 2026. A2–A21, A1. On September 3, 2026, Justice Kavanaugh extended the time within which to file this petition to November 15, 2026. *See* No. 26A281. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Piper challenges the constitutionality of 28 U.S.C. § 2254(d)(1). Title 28 U.S.C. § 2403(a) thus applies, and Piper will serve this Petition on the Solicitor General of the United States. The United States District Court for the District of South Dakota certified to the United States Attorney General that Piper challenged the

constitutionality of 28 U.S.C. § 2254(d)(1) in his federal habeas proceedings, and the United States of America intervened in the court of appeals.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III provides, in relevant part, that "[t]he judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, [and] the Laws of the United States."

Title 28 U.S.C. § 2254 provides, in relevant part:

> **(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; . . . .

Section 1 of the Fourteenth Amendment provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

STATEMENT OF THE CASE

Procedural History

On September 7, 2000, Piper and codefendants Elijah Page and Darrell Hoadley were charged with first-degree murder and related charges for the murder of Chester Allan Poage. On January 3, 2001, the court accepted Piper's guilty plea to felony murder. Piper pleaded guilty to this capital charge despite there being no plea offer. Acting on the advice of counsel, Piper agreed to waive a jury for both the guilt-innocence determination and the sentencing determination. On January 19, 2001, after hearing the evidence, the court imposed a sentence of death on the murder

count. On other counts, the court imposed a sentence of life without parole plus an aggregate term of sixty years' imprisonment. R. Doc. 2, at 284, 325.[2]

The South Dakota Supreme Court affirmed his conviction and sentence on January 4, 2006. A308. Two Justices dissented, concluding that Piper's death sentence was grossly disproportionate to the life sentence given to his similarly culpable codefendant Darrell Hoadley. A314. Piper then sought state habeas corpus relief, which was denied on April 4, 2008. R. Doc. 2, at 311. On July 29, 2009, the South Dakota Supreme Court affirmed the conviction but vacated Piper's death sentence. A273. The Court concluded that, when Piper pleaded guilty, he did not knowingly and voluntarily waive his right to have a jury determine his sentence because the trial court conducted a constitutionally insufficient colloquy. A267–A268. On remand, Piper moved to withdraw his original guilty plea, but the trial court denied the motion.

At the penalty retrial, the jury sentenced Piper to death. The South Dakota Supreme Court affirmed the death sentence on direct appeal. A251. Piper timely filed a state habeas petition seeking relief from his conviction and sentence. R. Doc. 2-1, at 44. After a hearing, relief was denied. R. Doc. 2, at 315. The South Dakota Supreme Court affirmed the order denying habeas relief. A235.

Piper filed his petition for writ of habeas corpus in federal district court, R. Doc. 1, and later, an amended petition, R. Doc. 67.[3] On May 30, 2024, Respondents moved for summary judgment. R. Doc. 126. After considering various procedural

[2] "R. Doc. __" refers to the ECF docket number in the federal district court below.

[3] The district court had jurisdiction under 28 U.S.C. §§ 1331 and 2254.

issues and the remaining substantive claims, the district court granted the motion and dismissed the amended petition. A38–A108. Piper timely moved to alter or amend judgment, R. Doc. 146, and moved for a COA, R. Doc. 147. The district court denied the motion to alter or amend but granted the motion for a COA in part. A22–A37. Piper timely filed his notice of appeal, R. Doc. 152, and the Eighth Circuit granted Piper's motion to expand the COA, Dkt. No. 5576516.[4] That court affirmed the denial of relief, A2–A21, and denied Piper's motion for rehearing, A1. This petition follows.

Factual Background

At the penalty retrial, the State's evidence showed that, on March 12, 2000, nineteen-year-old Piper and his two codefendants, eighteen-year-old Elijah Page and twenty-year-old Darrell Hoadley, decided to burglarize Chester Allan Poage's house. The defendants knew Poage and had been at his family's home. They originally planned to lure Poage to Elijah Page's house, where one of the three would keep him occupied while the other two returned to the Poage home and committed the burglary.

But the planned burglary went horribly wrong after Page, who had found an antique gun in Poage's house, pulled it on Poage. The encounter descended into a series of violent acts. Poage was kicked in the face and tied to a chair while the defendants discussed what to do to him. During this discussion, Poage was forced to drink some kind of caustic liquid. He was taken by car to a remote location where the three young men compelled Poage to remove most of his clothing. The attackers tried

[4] "Dkt. No. __" refers to the ECF docket number in the Eighth Circuit below.

to bury him in snow, stabbed him in the head and neck, tried to drown him in a creek, and ultimately killed him by dropping a large stone on his head. Piper has admitted that he directly participated in most of these violent acts. But the testimony was consistent that Piper returned to the car before the final act with the stone that caused Poage's death. The three left the jurisdiction in Poage's car with items stolen from his house.

Ultimately, all three were arrested and made incriminating statements. Hoadley received a life sentence after a jury trial. Both Page and Piper were sentenced to death. In 2007, Page waived further challenges to his conviction and sentence and was executed.

In the years prior to his 2011 penalty retrial, Piper had experienced a sincere and profound conversion to Catholicism. Father Gary Ternes (who arranged Briley's baptism) and Sister Gabriella Crowley (Piper's godmother) testified on Piper's behalf at his penalty-phase retrial. Sister Crowley described the "spiritual journey" and the "friendship journey" that Piper had undertaken with her. R. Doc. 121-17, at 142. She described his change and maturation, including how he spoke about his family, how he described his close relationship with his nieces, and how diligently he pursued academic opportunities. *Id.* at 144. She described "a very deep relationship" with Piper and said that she "fe[lt] like family to him." *Id.* at 146. During Sister Crowley's cross-examination, the State convinced Crowley, without evidence, that she had violated a prison policy when she helped Piper write to another incarcerated individual. *Id.* at 148–49. The prosecutor asked whether "Mr. Piper has manipulated your

friendship to get you to do something that he's not allowed to do." *Id.* at 150. In closing argument, the prosecutor argued that Piper was such "a major manipulator" that he "conned" his own godmother "into doing something that he wasn't allowed to do." R. Doc. 121-17, at 268–69.

In state habeas proceedings, trial counsel testified that they learned after trial that Sister Crowley had actually not violated prison policy. R. Doc. 120, at 225, 289. One of Piper's trial counsel testified that he regretted that he did not ask for a recess to obtain the policy to rebut the prosecutor's false impeachment of Sister Crowley. R. Doc. 120, at 292–93. Trial counsel had believed that Sister Crowley's testimony would "present Briley in a positive way." R. Doc. 120, at 292. Counsel testified that the impeachment based on a prison policy that the nun had not actually violated "was a blow" and was "damaging." *Id.* Counsel lamented that he had "handled this really badly" and that, given the opportunity, he would have done things differently. R. Doc. 120, at 292–93. Piper's habeas claim alleging that trial counsel was ineffective in handling Sister Crowley's testimony is one of the claims that was denied under AEDPA deference.

REASONS FOR GRANTING THE PETITION

I. WHETHER 28 U.S.C. § 2254(D)(1) IS UNCONSTITUTIONAL IS AN IMPORTANT QUESTION OF FEDERAL LAW THAT AFFECTS NEARLY EVERY FEDERAL HABEAS CASE.

"[I]n cases where a court's own judgment differ[s] from that of other high functionaries, the court [i]s not at liberty to surrender, or to waive it." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 386–87 (2024) (citation modified). The Article III 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).

Two Terms ago, in *Loper Bright*, this Court affirmed those basic constitutional principles when it overruled *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984). *Chevron* and its progeny had required Article III judges to defer to interpretations of federal law rendered by non–Article III actors as long as those interpretations, even if wrong, were reasonable. This doctrine of so-called "*Chevron* deference" was firmly established—indeed, it had bound the federal courts for forty years. But the Court unshackled the federal judiciary from *Chevron*'s misguided experiment in *Loper Bright*, concluding that forcing Article III judges to defer to the decisions of non–Article III actors on questions of federal law served as "an impediment, rather than an aid, to accomplishing the basic judicial task of 'saying what the law is.'" 603 U.S. at 410 (quoting *Marbury v. Madison*, 5 U.S. 137, 177 (1803)) (citation modified).

Today, despite *Loper Bright*, the federal judiciary remains impeded from saying what the law is in habeas cases. The Antiterrorism and Effective Death Penalty Act (AEDPA), like *Chevron*, prohibits Article III judges from exercising their independent judgment on questions of federal law. AEDPA bars a federal court from issuing a writ of habeas corpus on a federal claim for relief unless the state court's prior merits adjudication of the same claim "was contrary to, or involved an unreasonable applicable of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). This provision requires Article III judges

to acquiesce to the decisions of non–Article III actors on questions of federal law—even when those decisions are wrong—unless the prior decision contradicts "existing law beyond any possibility for fairminded disagreement." *White v. Woodall*, 572 U.S. 415, 420 (2014) (internal quotation marks omitted).

AEDPA was a radical change to historical practice. Before AEDPA, federal courts exercised their independent authority to decide questions of federal constitutional law that rendered a state-court criminal conviction unconstitutional. Since the founding of our nation, it had been the federal courts' responsibility to determine whether the state courts had correctly applied federal constitutional law. But AEDPA changed 200 years of federal practice. Never before had federal courts been compelled to defer to incorrect determinations of federal law. Petitioner's challenge seeks to undo this radical redistribution of constitutional authority and restore the duty and obligation of federal courts to decide federal constitutional questions.

AEDPA's statutory deference provision is unconstitutional. Like *Chevron*, AEDPA "force[s] Article III courts to enforce and give credence to unconstitutional actions" committed by non–Article III actors. *Sanders v. Plappert*, 168 F.4th 837, 886 (6th Cir. 2026) (Stranch, J., dissenting). AEDPA, passed in 1996, is of much newer vintage than *Chevron* was. And yet after only thirty years, its deference provision has dispossessed the judicial branch of its core function.

A. This Case Provides the Vehicle for the Court to Address the Constitutional and Institutional Implications of *Loper Bright*.

Petitioner Briley Piper asks the Court to grant his petition for certiorari and declare 28 U.S.C. § 2254(d)(1) unconstitutional. Piper is the only person on South

Dakota's death row. But the question that his case presents is not fundamentally about habeas corpus or the death penalty. Instead, Piper asks this Court to answer the crucial question that the *Loper Bright* majority did not reach: whether Congress can, by statute, force Article III judges to defer to non–Article III decisionmakers on questions of federal law. *See Loper Bright*, 603 U.S. at 414 (Thomas, J., concurring); *id.* at 421 (Gorsuch, J., concurring).

This is a matter of profound institutional and constitutional importance. And for as long as it remains open, Congress and the President remain free to pass unconstitutional deference statutes that carve away at the judiciary's power. Today, the statute at issue is AEDPA. But in the future—and in any number of contexts—Congress and the President could require the federal judiciary to defer to interpretations of federal law rendered by the state courts, state legislatures, state agencies, or state governors. It could even codify *Chevron* by amending the Administrative Procedure Act.

That cannot be so. Article III of the United States Constitution cannot "preserve the integrity of judicial decisionmaking if the other branches of the Federal Government could confer the Government's 'judicial Power' on entities outside Article III." *Stern v. Marshall*, 564 U.S. 462, 484 (2011). "Congress has the power (within limits) to tell the courts what classes of cases they may decide, but not to prescribe or superintend how they decide those cases." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013). Because the federal judiciary is "not at liberty to surrender" its independent

judgment on questions of federal law, *Loper Bright*, 603 U.S. at 387 (internal quotation marks omitted), 28 U.S.C. § 2254(d)(1) cannot be constitutional.

This Court's recent cases also demonstrate that institutional reasons counsel in favor of granting certiorari in this case. Because the Court's core reasoning in *Loper Bright* cast doubt on the constitutionality of statutory and regulatory frameworks that require federal courts to defer to non–Article III decisionmakers, further guidance on *Loper Bright*'s reach is needed. Already this Term, for instance, the Court has considered the extent to which *Loper Bright* has upended prior case law requiring Article III courts to defer to the Commentary in the Federal Sentencing Guidelines. *See Beaird v. United States*, 25-5343 (argued Oct. 13, 2026). Questions regarding the legality of deference requirements will continue to arise. The Court should therefore grant this petition for certiorari and clarify that deference provisions like AEDPA's are unconstitutional.

The Court's decision in *Beaird* is also likely to include further guidance on the Court's understanding of *Loper Bright*'s reach. Piper therefore asks that the Court, at a minimum, hold his petition in abeyance pending its decision in *Beaird*. Similarly, the petitioner in *Sanders v. Plappert*, No. 26-5839 (petition for certiorari filed Oct. 9, 2026), raises substantially the same question that Piper raises in this petition. Piper asks that this Court grant these petitions together, or hold Piper's petition pending resolution of *Sanders*.

AEDPA's redistribution of power raises important questions of constitutional law that affect nearly every habeas corpus petition brought to our federal courts. As

described in detail below, that change is inconsistent with the historical role of federal courts envisioned by the Framers. Given the importance of the questions raised by AEDPA, this Court should grant review.

B. Section 2254(d)(1)'s Deference Is Substantially Similar to the *Chevron* Deference that the Court Struck Down in *Loper Bright*.

In *Loper Bright*, this Court overruled the *Chevron* doctrine, under which federal courts, in certain circumstances, had to defer to a federal agency's interpretation of a federal statute. *Loper Bright*, 603 U.S. at 412. This Court reasoned that, under Article III of the Federal Constitution, a federal court's judgment must be "independent," *id.* at 385, because "[i]t is emphatically the province and duty of the judicial department to say what the law is," *id.* (quoting *Marbury*, 5 U.S. at 177). The Court thus reaffirmed the supremacy of Article III courts in "the final 'interpretation of the laws.'" *Id.* (quoting The Federalist No. 78 (Alexander Hamilton)). This is the "solemn duty" of an Article III court. *Id.* (quoting *United States v. Dickson*, 40 U.S. 141, 162 (1841)).

The Framers did not allow state-court judges to bind federal courts to determinations of federal constitutional law, particularly when those determinations might be wrong but not unreasonable. "State judges, holding their offices during pleasure, or from year to year, will be too little independent to be relied upon for an inflexible execution of the national laws." The Federalist No. 81, at 486 (Alexander Hamilton) (Clinton Rossiter ed., 1961).

Similarly, Congress cannot, through 28 U.S.C. § 2254, override a federal court's Article III power of independent judgment of the law by purporting to enact a

rule of deference. AEDPA imposes the same harms as *Chevron*. Accordingly, AEDPA deference is unconstitutional, and federal courts must exercise independent judgment in deciding whether Piper is "in custody in violation of the Constitution or law or treaties of the United States" and thus entitled to habeas corpus relief. 28 U.S.C. § 2241(c)(3).

Deference to erroneous state-court decisions of constitutional law compels federal courts to abdicate their role as independent Article III entities because the outcome of the cases before them wholly depends upon a non–Article III, non-independent entity's interpretation of the Federal Constitution. Federal habeas review thus must be without AEDPA deference. "Otherwise, judicial judgment would not be independent at all." *Loper Bright*, 603 U.S. at 386. After all, "the legislative power is confined to making the law, and cannot interfere in the interpretation: which is the natural and exclusive province of the judicial branch of the government." *Respublica v. Oswald*, 1 U.S. 319, 328 n.* (1788).

C. History Supports the Conclusion that § 2254(d)(1) Is Unconstitutional.

The Framers required Article III courts, in reviewing state judges' federal-question decisions, to maintain the Constitution's supremacy. *See* The Federalist No. 10, at 77 (James Madison) (Clinton Rossiter ed., 1961).[5] Article III and the Supremacy Clause were linked to protect against "much" there was "to fear from the bias of

[5] For a more in-depth discussion of the Framers' motives and actions regarding Article III courts' supremacy, *see* Anthony G. Amsterdam & James S. Liebman, Loper Bright *and the Great Writ*, 56 Colum. Hum. Rts. L. Rev. 54, 66–82 (2025) (hereinafter "Amsterdam & Liebman").

local views and prejudices and from the interference of local regulations." The Federalist No. 22, at 150–51 (Alexander Hamilton) (Clinton Rossiter ed., 1961). Allowing state judges to have the last word on federal constitutional questions would be unworkable because the "inflexible and uniform adherence to the rights of the Constitution, and of individuals, which we perceive to be indispensable in the courts of justice, can . . . not be expected from judges who hold their offices by temporary commission." The Federalist No. 78, at 470–71 (Clinton Rossiter ed., 1961). There would be too high a risk that state judges' decisions might be driven by the "deference . . . to that authority to which they owe their official existence." The Federalist No. 22, at 151. Accordingly, there was a "necessity for leaving the door of [federal] appeal as wide as possible." The Federalist No. 81, at 486.

D. Article III Power Historically Effectuated Supreme Constitutional Law.

Congress has continually expanded Article III jurisdiction to apply the Federal Constitution—and hold state courts to it—in cases of "improper Verdicts in State tribunals obtained under the biassed directions of a dependent Judge, or the local prejudices of an undirected jury," 1 The Records of the Federal Convention of 1787, at 124 (Max Farrand ed., 1911) (James Madison), through both Article III review on writ of error to this Court and writ of habeas corpus to all Article III courts. *See* Amsterdam & Liebman at 88–94. This Court preserved this power until Congress purported to restrict it in AEDPA. *Id.* at 94.

And yet, as this Court observed in *Loper Bright*, "[s]ince the start of our Republic, courts have 'decide[d] . . . questions of law' and 'interpret[ed] constitutional

and statutory provisions' by applying their own legal judgment." 603 U.S. at 392 n.4. AEDPA ignores this bedrock of federal constitutional law:

> AEDPA deference instructs federal courts with jurisdiction over the constitutionality of a prisoner's custody and of state judges' decisions approving it to *forbear* doing what *Marbury* says they must do: "say what the law is"; "declar[e] what shall be the *Supreme* law of the land"; "obey" all "parts of" the Constitution; and apply their independent judgment of it *without* bowing to a non-Article-III authority's reasonable approximation. The rare habeas court that does say what the law is must then forbear doing anything about it, thereby violating *Hayburn's Case* by advising on legal meanings it can't "obey," much less enforce.

Amsterdam & Liebman at 98. "[T]he judicial Power of the United States can no more be shared" with non–Article III actors "than the Chief Executive, for example, can share with the Judiciary the veto power, or the Congress share with the Judiciary the power to override a Presidential veto." *Stern*, 564 U.S. at 483 (citation modified). In other words, "Article III could neither serve its purpose in the system of checks and balances nor preserve the integrity of judicial decisionmaking if the other branches of the Federal Government could confer the Government's 'judicial Power' on entities outside Article III." *Id.* at 484.

Just as *Chevron* deference blinded the Court to fundamental constitutional principles, so does AEDPA. The Article III principles reaffirmed by this Court in *Loper Bright* apply with at least equal force to AEDPA deference. Simply substitute "AEDPA" for "*Chevron*": "[AEDPA] has thus become an impediment . . . to accomplishing the basic judicial task of 'say[ing] what the law is,'" 603 U.S. at 410 (citation omitted); as for the exercise of independent judgment, AEDPA 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 391–

92.

While "Congress can strip the courts of jurisdiction to hear certain types of cases," it "cannot use its power to regulate procedure to functionally effectuate an unconstitutional rule of decision." *Sanders*, 168 F.4th at 878 (Stranch, J., dissenting). That is why "Congress, with AEDPA, has attempted to do the same thing th[is] Court" has previously found impermissible: "using a 'legislative arrangement' designed to give effect to an unconstitutional action of a non-Article III entity on grounds that the same non-Article III entity reviewed the action and said it was not unconstitutional. Such a law cannot stand." *Id.* (quoting *St. Joseph Stock Yards Co. v. United States*, 298 U.S. 38, 52 (1936)).

AEDPA binds federal judges to accept a state court's erroneous interpretation of federal constitutional law, so long as that interpretation is not unreasonable. Thus, federal courts are stripped of their Article III authority to determine and enforce the Constitution correctly. As Justice Gorsuch has noted, federal courts did not traditionally "defer" to "reasonable" interpretations of law propounded by non–Article III actors. *Loper Bright*, 603 U.S. at 430 (Gorsuch, J., concurring). Critically, such "deference" fails to insulate Article III adjudications "from power and politics . . . as the federal judicial oath demands," unfairly tipping the scales of justice in favor of "the most powerful." *Id.* at 433.

E. Federal Appellate Judges Disagree as to the Constitutionality of AEDPA Deference.

In briskly rejecting Piper's argument that AEDPA deference is unconstitutional, the Eighth Circuit cited the Sixth Circuit's decision in *Sanders*. However, the

Eighth Circuit failed to acknowledge that *Sanders* was a divided decision and failed to confront any of the dissent's reasoning. For example, the Eighth Circuit ignored the *Sanders* dissent's exhaustive historical survey of, inter alia, the Federalist Papers, the Papers of James Madison, the Records of the Federal Convention of 1787, and both early and recent case law of this Court. 168 F.4th at 872–74 (Stranch, J., dissenting). The Eighth Circuit ignored the dissent's explication of the teaching of *United States v. Klein*, 80 U.S. 128 (1871), that "Congress cannot use its power to regulate procedure to functionally effectuate an unconstitutional rule of decision." 168 F.4th at 878 (Stranch, J., dissenting); *id.* at 874–81. And it ignored the dissent's brick-by-brick dismantling of the majority's argument in support of AEDPA's constitutionality. *Id.* at 881–86.

The Eighth Circuit found it "[n]otabl[e]" that this Court recently reiterated in *Andrew v. White*, 604 U.S. 86 (2025), the narrowness of a state prisoner's grounds for habeas relief in federal court under AEDPA. A7. But that is of little note. This Court was not, in that case, passing on whether AEDPA is constitutional. It has never done so. Consider that this Court applied *Chevron* deference many times before it held such deference unlawful in *Loper Bright*. Similarly here, this Court's frequent application of AEDPA deference does not establish that such deference is constitutional, where this Court has never addressed that question. As the *Sanders* dissent concluded:

> AEDPA deference is a wolf in sheep's clothing. It may be dressed up as a simple remedies provision, but in substance, AEDPA contains Congress's attempt to use remedies to do what it cannot do on its own: force Article III courts to enforce and give credence to unconstitutional actions

> by state courts that deprive prisoners of their constitutional rights. It disrupts the delicate balance of power between state courts and Article III federal courts established by the Founders in 1787. Congress asks that we look only to the sheep. Over a century of Supreme Court caselaw demands that we acknowledge the wolf. AEDPA is unconstitutional.

168 F.4th at 886.

Prior to AEDPA, federal habeas courts reviewed federal constitutional questions in habeas cases de novo. While state-court findings of fact were presumed correct, state-court determinations of federal law were not. *See Miller v. Fenton*, 474 U.S. 104, 110 (1985) (recognizing the federal courts' "historic duty" to make an independent evaluation of legal issues in habeas proceedings). This Court has explained:

> Under the federal habeas statute as it stood in 1992, then, our precedents dictated that a federal court should grant a state prisoner's petition for habeas relief if that court were to conclude in its independent judgment that the relevant state court had erred on a question of constitutional law or on a mixed constitutional question.

Williams v. Taylor, 529 U.S. 362, 402 (2000) (O'Connor, J., concurring).

AEDPA changed that. It was AEDPA that restricted federal-court review of legal issues and required federal courts to defer to reasonable decisions made by the state court, *even when those decisions were wrong*. *Id.* at 402–03. For over 100 years prior to AEDPA, federal courts provided independent, not deferential, review of federal constitutional questions arising out of state criminal convictions.

Judge Stranch's dissent shows, at a minimum, that the constitutionality of AEDPA deference is a serious and fiercely debated question.

F. Federal Courts Should Review Piper's Claims De Novo.

A federal court can certainly consider a state court's decision and review its reasoning. But it cannot be bound to the state court's decision. After all,

> AEDPA deference is far worse than *Chevron* deference was.[] Unlike AEDPA deference, *Chevron* never delegated the content, interpretation, and enforcement of the *Constitution* to non-Article-III actors. It never let those actors defend doubtful decisions by saying nothing or as little as possible about how those decisions accorded with the law. It never forced federal courts to invent reasons that non-Article-III actors did not offer or to defer without first going through a process where you "don't [just] say, 'oh, it's difficult'" and give up, but instead you "work hard to figure out" the law's meaning using "every tool you can."[]

Amsterdam & Liebman at 154 (quoting *Relentless, Inc. v. Dep't of Com.*, 144 S. Ct. 325, OA Tr. 12–13, 18–20 (Kagan, J.)).

The Federal Constitution must be "independently interpreted, applied, and effectuated by nonpartisan, tenured judges given jurisdiction and thereby endowed with the judicial power to maintain the Constitution as the supreme law of the land *notwithstanding anything* in state law to the contrary." *Id.* at 157. AEDPA deference is "treason to the [C]onstitution," *Cohens v. Virginia*, 19 U.S. 264, 404 (1821) (rejecting limits to Supreme Court's jurisdiction over federal questions), and accordingly federal courts should not utilize it in adjudicating Piper's claims.

The application of AEDPA deference here is not academic: The district court below exercised deference under § 2254(d)(1) as to several of Piper's claims, including juror claims (Claims III and IV) and ineffective-assistance-of-counsel claims (Claims V and VI). A76–A98.

Litigants and courts expend immense energy on § 2254(d)(1) arguments, and in the wake of this Court's decision in *Loper Bright*, they have expended much further energy on the question whether deference under § 2254(d)(1) is constitutional. This Court should address this exceptionally important question directly.

II. THE STATE COURT'S DENIAL OF PETITIONER'S GUILTY PLEA WITHDRAWAL MOTION BASED ON A STATE PROCEDURAL BAR WAS NOVEL AND UNFORESEEABLE; THE EIGHTH CIRCUIT FAILED TO ADDRESS PETITIONER'S ARGUMENTS.

When a state court denies a petitioner's federal claim on a state-law ground, a federal habeas court is presumptively barred from considering the merits of that claim, so long as the basis for the state court's decision is "*independent* of the federal question and *adequate* to support the judgment." *Lee v. Kemna*, 534 U.S. 362, 375 (2002) (internal quotation marks omitted). A state-law basis is not "adequate" unless it reflects a "firmly established and regularly followed" state-court practice that puts a petitioner on notice of the court's procedural expectations. *Id.* at 376. The application of a state rule in a way that is "novel and unforeseeable" and "lack[ing] fair or substantial support in prior state law" in the context presented is not adequate. *Cruz v. Arizona*, 598 U.S. 17, 30–31 (2023) (internal quotation marks omitted). The lower court's rulings were contrary to this Court's case law as to adequacy and present an important question that would provide much-needed guidance to the lower courts on when a state procedural rule will preclude federal merits review.

This Court should grant certiorari, vacate the Eighth Circuit's judgment, and remand this case to address Piper's novelty argument in the first instance. Even under AEDPA, Piper is entitled to one full and fair habeas review. He should not face execution when his legitimate arguments on appeal have not been addressed by the appellate court. *See Corcoran v. Levenhagen*, 558 U.S. 1, 2 (2009) (per curiam) (vacating and remanding where court of appeals dismissed death-sentenced prisoner's habeas petition without addressing, or ordering district court to address, all claims

raised). Alternatively, this Court should grant certiorari to review Piper's challenges to the adequacy of the state court's application of the res judicata rule.

A. Factual Background

When Piper offered his guilty plea to felony murder in 2001, the judge inaccurately advised him about the law in two key respects: first, he told Piper that his plea would automatically waive a sentencing jury and necessarily entail sentencing by the judge, and second, he explained that if Piper did not waive a jury, all twelve jurors would have to agree before he could receive a life sentence. The effect of this misinformation was to tell Piper that he had only two alternatives: having a full jury trial on guilt or innocence and then attempting to persuade all twelve laypeople to spare his life, or pleading guilty and then attempting to persuade only one judge to do so. In truth, South Dakota law made jury sentencing available whether Piper went to trial or pleaded guilty. And, at a jury sentencing, he would have received a life sentence if even one juror voted for life—that is, he did not need to persuade all jurors to spare his life in order to receive a life sentence. A267. Because of the combined effect of the judge's and counsels' inaccurate advice, Piper's guilty plea was neither knowing, intelligent, nor voluntary, and his conviction accordingly violated his rights under the Fifth, Sixth, and Fourteenth Amendments. *Boykin v. Alabama*, 395 U.S. 238, 243 (1969).

The South Dakota Supreme Court twice reviewed what the trial judge had told Piper, and twice held that the judge's explanation was wrong. On direct appeal, Piper argued that controlling statutory provisions were unconstitutional under *Ring v. Arizona*, 536 U.S. 584, 609 (2002), because they did not "provide defendants who plead

guilty with an opportunity to have the aggravating circumstances found by a jury as opposed to a judge." *State v. Piper*, 709 N.W.2d 783, 803 (S.D. 2006) ("*Piper-I*") (A290). The court rejected this interpretation, holding that a capital defendant who pleaded guilty did *not* automatically waive a sentencing jury. Nevertheless, focusing only on the jury trial right and not the implications of the unanimity requirement (which were not before it), the court went on to hold that Piper had waived his right to challenge the jury sentencing scheme. A297–A298. The court thus established that the information given to Piper at the time of his guilty plea was inaccurate under state law.

In *Piper v. Weber*, 771 N.W.2d 352 (S.D. 2009) ("*Piper-II*") (A264–A273), the South Dakota Supreme Court considered the two inaccurate instructions—one about jury waiver and the other about jury unanimity—together. It faulted the trial judge because he "did not explain to Piper that if the jury did not unanimously decide to impose death, then a life sentence would be imposed. The judge only explained that 'all 12 jurors must agree on the penalty.'" A271. And the South Dakota Supreme Court reasoned that "the judge's explanation [did not] point out that if Piper chose to let the jury decide whether to impose the death penalty, one juror could spare him from death." *Id.* The court added that, "when Piper entered his guilty plea, he was doing so under counsels' advice that by entering his guilty plea, he was not entitled to a jury on the sentencing phase. The judge's explanation did not clearly dispel that misunderstanding." *Id.* The state supreme court held that, because of both pieces of inaccurate advice, Piper had not "validly waived his right to a jury on the death

penalty phase." A267.

When Piper challenged the misinformation about juror unanimity in his first state habeas petition, his lawyer told him that he did not have to challenge the guilty plea itself at that time. His lawyer told him that if he won a new sentencing, Piper would then be able to challenge his guilty plea. In fact, the lawyer guaranteed it, saying that Piper would have an "absolute right" to withdraw his guilty plea at a later time. R. Doc. 120, at 347. Piper accepted and relied on that advice. R. Doc. 120, at 349.

Prior to his resentencing hearing in trial court, Piper sought to withdraw his guilty plea, asserting that the plea was not knowing and voluntary owing to the misinformation he was given. South Dakota law provides a procedural mechanism to file such a motion:

> A motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed or imposition of sentence is suspended; but to correct manifest injustice a court after sentence may set aside a judgment of conviction and permit the defendant to withdraw his plea.

SD CL § 23A-27-11.

The trial court denied Piper's motion and, in *Piper v. Young*, 936 N.W.2d 793 (S.D. 2019) ("*Piper-IV*") (A229–A249), the South Dakota Supreme Court affirmed. That court did not address the merits of Piper's claim that his guilty plea was unconstitutionally obtained. Rather, the court held that "[t]he plain text" of section 23A-27-11 "does not purport to displace other limitations that might restrict the availability of motions to withdraw guilty pleas" such as "claim preclusion." A241. Applying this principle, the court concluded that Piper's challenge to the constitutionality of his

guilty plea was barred under res judicata because Piper could have raised, but did not raise, the issue in prior direct appeal and collateral proceedings.

On federal habeas review, Piper argued, inter alia, that the state court's application of res judicata was not an adequate procedural rule barring review of his substantive claims for two reasons: (1) the res judicata rule was not regularly followed and consistently applied in South Dakota; and (2) South Dakota applied its rule in a novel and unforeseeable way under circumstances that had not previously been subject to the rule's application. The district court rejected each of those arguments and found the claim defaulted without addressing the merits of the claim. A217–A226.[6]

On appeal, the Eighth Circuit concluded that the rule was not inadequate even though the state court had not applied the rule in some cases. But the Eighth Circuit ended its holding there. It did not engage the unrebutted facts, nor did it meaningfully address Piper's argument that the application of the rule was novel and unforeseeable.

As a result, Piper has never had federal habeas review of the merits of his challenge to his guilty plea. Particularly in a capital case, the federal courts should give careful consideration to a petitioner's arguments that a state-law basis for rejecting a petitioner's claim is not adequate. But the court of appeals did not do that. It did not address Piper's novelty-and-foreseeability argument and did not address the merits of his constitutional claim. It did not even reject them summarily. A9–A10.

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[6] Piper also challenged whether the state procedural bar was independent of federal law. *Id.* He does not raise the independence argument in his petition to this Court.

Though counsel's advice was soundly rooted in South Dakota law and procedure, the South Dakota Supreme Court later ruled that it was incorrect. Piper was granted a new sentencing, but he was not allowed to withdraw his plea. Piper twice challenged this ruling—in *State v. Piper*, 842 N.W.2d 338 (S.D. 2014) ("*Piper-III*") (A250–A263), and *Piper-IV* (A229–A249)—but in each instance, the South Dakota Supreme Court ruled that his challenge was too late: in *Piper-III* because the trial court lacked jurisdiction to consider his withdrawal motion, and in *Piper-IV* because of the application of the res judicata rule.

B. The Application of a State-Court Procedural Bar Was Unforeseeable in the Novel Circumstances Here; the Eighth Circuit Failed to Address Foreseeability, Contrary to *Cruz v. Arizona*.

"Novelty in procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal constitutional rights." *NAACP v. Alabama ex rel. Patterson*, 357 U.S. 449, 457–58 (1958).

The circumstances of this case were novel. South Dakota's statute governing motions to withdraw guilty pleas permits withdrawal "before sentence is imposed or imposition of sentence is suspended." SD CL § 23A-27-11. The South Dakota Supreme Court has held that presentence motions to withdraw a plea should be liberally granted: the movant "need only state a tenable reason why withdrawal should be permitted." *State v. Engelmann*, 541 N.W.2d 96, 100 (S.D. 1995). And even after final judgment has been imposed, a court may grant a defendant's motion to withdraw a guilty plea to prevent "manifest injustice." SD CL § 23A-27-11.

There was no South Dakota statute or case barring a prisoner whose death sentence had been reversed and who was awaiting resentencing from exercising his rights under the statute to move to withdraw his plea. Indeed, the district court acknowledged that "the court had never applied res judicata to a factual situation like Piper's." A222. It is therefore not surprising that, during the litigation of *Piper-II*, Piper's extremely experienced appellate attorney advised him that it would have been "premature" to move to withdraw his guilty plea at that time. R. Doc. 120, at 347. Instead, counsel advised Piper that if sentencing relief was granted, "the rules of criminal procedure gave him an absolute right to move [to withdraw] his plea. . . . [H]e would have the opportunity to do it later, and in fact, state law here gives him that opportunity." *Id.*

In *Cruz v. Arizona*, this Court held that a state court's application of an established rule was not adequate when the application was itself novel. In an "exceptional case[]" a "generally sound rule" can be applied in a way that renders the rule inadequate to bar federal review. 598 U.S. at 26 (citing *Lee*, 534 U.S. at 376). *Cruz* held that novelty in the application of procedural rules cannot be used to thwart federal review for those who seek vindication of their federal constitutional rights. *Id.* at 26–29. When the application of a procedural rule is without fair or substantial support such that a defendant cannot reasonably predict its application to his particular circumstances, the application of the rule is inadequate. *Id.*

The lesson from *Cruz* is that the adequacy of a state procedural rule may vary from case to case because adequacy is dependent on the particular circumstances of

each case. In this case, however, the Eighth Circuit never addressed the novelty of the state court's application of res judicata to the particular circumstances (a vacated death sentence remanded for resentencing) of this case.

Instead, the Eighth Circuit determined that the rule was adequate because it was applied in most, though not all, cases where a claim had not been previously raised. Relying on *Rhines v. Young*, 899 F.3d 482 (8th Cir. 2018), the court held that the res judicata rule was adequate and independent, without ever addressing the novelty of its application to Piper's particular circumstances. A7–A10. The application of res judicata in this instance was novel: the state court cited only a single relevant case for the proposition that "a habeas petitioner's effort to withdraw his guilty plea" under section 23A-27-11 can be "barred under res judicata principles," yet even that case post-dated the proceedings at which Piper should have purportedly been on notice to file his motion. A241 (citing *Legrand v. Weber*, 855 N.W.2d 121, 130 (S.D. 2014)). The Eighth Circuit, by failing to address the novelty of the application in this case, acted contrary to *Cruz*. Indeed, the Eighth Circuit opinion contains no mention or discussion of this Court's decision in *Cruz*.

The Eighth Circuit did not meaningfully engage with the plea-withdrawal statute or counsel's reasonable interpretation of it. Instead of addressing the novelty and foreseeability issues, the Eighth Circuit seemed to believe that the issue was one of cause. "Piper has not shown cause to excuse his default. His counsel's belief that South Dakota law would allow Piper to withdraw his guilty pleas if he was successful in getting his sentence vacated does not establish cause." A10. The court's cause

analysis missed the point. The issue was not one of cause for the default. Rather, the key issues here, as in *Cruz*, were novelty and foreseeability—which address whether there was a default in the first place.

South Dakota's application of res judicata to the unique circumstances of Piper's case was novel, not firmly established, and not readily ascertainable. The application of the res judicata bar to the novel circumstances presented here makes this case different from any other South Dakota case in which the res judicata bar was applied or excused. It does not matter whether the res judicata bar is consistently followed and regularly applied in other cases that do not present novel circumstances. What matters here is whether Piper's counsel could have reasonably foreseen the novelty of its application. Yet the Eighth Circuit never addressed the novelty argument.

A court of appeals should not be allowed to turn a blind eye to this Court's precedent, particularly in a capital case. It should look to a case like *Cruz* to guide its analysis. Yet here, the Eighth Circuit simply ignored this Court's binding authority and acted as if it did not exist.

The district court recognized that Piper's challenge to the adequacy of the res judicata bar raised a substantial claim of error. At the very least, in a capital case, which requires heightened appellate scrutiny, *see, e.g.*, *Zant v. Stephens*, 462 U.S. 862, 885 (1983), the petitioner deserves to have the claims on which a COA was granted—and arguments supported by this Court's precedents offered to advance the claims—addressed by the appellate courts. In this case, however, in its haste, the

court of appeals did not address the arguments before it. This Court should grant certiorari, vacate the Eighth Circuit's judgment, and remand the case with instructions that require the Eighth Circuit to address the adequacy of the state procedural bar in light of *Cruz*. Alternatively, this Court should grant certiorari and review the merits of the issue.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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