NO. _____

IN THE

SUPREME COURT OF THE UNITED STATES

FORREST HENRY GILLIAM, Petitioner,

VS.

PATRICK COVELLO, WARDEN, Respondent.

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

PETITION FOR WRIT OF CERTIORARI

ALEXIS HALLER
Counsel of Record
LAW OFFICE OF ALEXIS HALLER, P.C.
7960B Soquel Drive, #130
Aptos, California 95003
(831) 685-4730
ahaller@ahlawoffice.com

Counsel of Record for Petitioner,
FORREST HENRY GILLIAM

QUESTIONS PRESENTED

A California jury rejected petitioner's insanity defense to charges of murder and attempted murder, and he is serving a sentence of 124 years to life. On federal habeas review, the district court held that a challenge to the sufficiency of the evidence supporting that verdict raises no federal due process question because state law places the burden of proving insanity on the defendant. It declined to follow a contrary decision of the Fifth Circuit and held, in the alternative, that 28 U.S.C. § 2254(d) would bar relief. The Ninth Circuit denied a certificate of appealability in a summary order.

The questions presented are:

1. Whether the sufficiency-of-the-evidence standard of *Jackson v. Virginia*, 443 U.S. 307 (1979), applies to a jury's rejection of an insanity defense when state law assigns the burden of proving insanity to the defendant.
2. Whether a court of appeals may deny a certificate of appealability on a constitutional question that its own precedent has not resolved and on which another court of appeals has upheld a grant of habeas relief.
3. Whether 28 U.S.C. § 2254(d)(1) violates Article III by requiring a federal habeas court to deny relief when a state court's application of federal constitutional law was incorrect but not unreasonable.

LIST OF PARTIES

Petitioner is Forrest Henry Gilliam, who was the petitioner in the district court and the appellant in the court of appeals. Respondent is Patrick Covello, Warden, who was the respondent in the district court and the appellee in the court of appeals.

RELATED PROCEEDINGS

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

1. *People v. Gilliam*, No. STK-CR-FDV-2018-0012878, Superior Court of California, County of San Joaquin (judgment entered August 29, 2022).
2. *People v. Gilliam*, No. C097209, California Court of Appeal, Third Appellate District (judgment affirmed December 14, 2023).
3. *People v. Gilliam*, No. S283412, Supreme Court of California (review denied February 21, 2024).
4. *Gilliam v. Covello*, No. 2:24-cv-01613-WBS-AC, United States District Court for the Eastern District of California (judgment entered January 9, 2026).
5. *Gilliam v. Covello*, No. 26-830, United States Court of Appeals for the Ninth Circuit (certificate of appealability denied August 24, 2026).

TABLE OF CONTENTS

QUESTIONS PRESENTED i

LIST OF PARTIES ii

RELATED PROCEEDINGS ii

TABLE OF AUTHORITIES v

OPINIONS BELOW 1

JURISDICTION 1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

A. Trial Court Proceedings 3

1. Charges, Competency Proceedings, and Guilt Phase 3

2. Sanity Phase 5

B. Direct Appeal 11

C. Federal Habeas Proceedings 12

REASONS FOR GRANTING THE WRIT 15

I. The Court Should Resolve the Conflict Over Whether *Jackson* Applies to a Sanity Verdict When the Defendant Bears the Burden of Proof 16

A. The Fifth and Sixth Circuits Have Reached Opposite Conclusions, and State Courts of Last Resort Are Likewise Divided 17

B. The Question Is Important and Recurring 22

C. The Decision Below Is Incorrect 23

D. This Case Is a Suitable Vehicle 28

II. The Denial of a Certificate of Appealability Conflicts with This Court's Precedents, and the Petition Should Be Held for *Berry v. United States* If Plenary Review Is Not Granted 31

III. The Court Should Decide Whether Section 2254(d)(1) Is Consistent with Article III 34

A. The Question Is Important, Recurring, and Unresolved by This Court 34

B. Section 2254(d)(1) Raises a Serious Article III Question 36

C. This Case Illustrates the Problem, and the Petition Should at a Minimum Be Held for *Sanders v. Plappert* 39

CONCLUSION 40

APPENDIX

Appendix A Order of the United States Court of Appeals for the Ninth Circuit Denying a Certificate of Appealability (Aug. 24, 2026) 1a

Appendix B Order of the United States District Court for the Eastern District of California Adopting Findings and Recommendations and Denying the Petition (Jan. 9, 2026) 2a

Appendix C Findings and Recommendations of the United States Magistrate Judge (Oct. 24, 2025) 4a

Appendix D Opinion of the California Court of Appeal, Third Appellate District (Dec. 14, 2023) 21a

Appendix E Order of the Supreme Court of California Denying Review (Feb. 21, 2024) 44a

TABLE OF AUTHORITIES

Cases

Allen v. Ornoski,
435 F.3d 946 (9th Cir. 2006) 32

Allen v. Redman,
858 F.2d 1194 (6th Cir. 1988) 19, 20, 26

Andrew v. White,
604 U.S. 86 (2025) 27

Bank Markazi v. Peterson,
578 U.S. 212 (2016) 37

Barefoot v. Estelle,
463 U.S. 880 (1983) 32

Berry v. United States,
No. 25-7026 (U.S. cert. granted Oct. 13, 2026).....16, 31, 33, 40

Bradford v. Vang,
175 F.4th 1182 (9th Cir. 2026) 15, 34–36, 38, 40

Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.,
509 U.S. 209 (1993) 30

Brown v. Davenport,
596 U.S. 118 (2022) 13, 34

Buck v. Davis,
580 U.S. 100 (2017) 16, 31, 33

Caldwell v. Russell,
181 F.3d 731 (6th Cir. 1999) 20, 21

City of Arlington v. FCC,
569 U.S. 290 (2013) 37

Clark v. Arizona,
548 U.S. 735 (2006) 25

Cobb v. Thaler,
682 F.3d 364 (5th Cir. 2012) 36

Crater v. Galaza,
491 F.3d 1119 (9th Cir. 2007) 13, 34, 36, 38

Crater v. Galaza,
508 F.3d 1261 (9th Cir. 2007) 35

DeBruyn v. Douglas,
168 F.4th 913 (6th Cir. 2026) 35

Duffy v. Foltz,
804 F.2d 50 (6th Cir. 1986) 19, 20

Engle v. Isaac,
456 U.S. 107 (1982) 26, 27

Evans v. Thompson,
518 F.3d 1 (1st Cir. 2008).....36

Evans v. Thompson,
524 F.3d 1 (1st Cir. 2008).....35

Felker v. Turpin,
518 U.S. 651 (1996) 13, 34, 35

Fulghum v. Ford,
850 F.2d 1529 (11th Cir. 1988) 19

Gall v. Parker,
231 F.3d 265 (6th Cir. 2000) 20, 22

Gilmore v. Taylor,
508 U.S. 333 (1993) 26, 27

Green v. French,
143 F.3d 865 (4th Cir. 1998) 36

Hamilton v. Secretary, Florida Department of Corrections,
793 F.3d 1261 (11th Cir. 2015) 33

Hawkins v. Horal,
572 F. App'x 480 (9th Cir. 2014) 21, 22, 24, 32

Hayward v. Marshall,
603 F.3d 546 (9th Cir. 2010) (en banc) 35

Hebert v. Rogers,
890 F.3d 213 (5th Cir. 2018) 18, 29

Hicks v. Oklahoma,
447 U.S. 343 (1980) 25

Hohn v. United States,
524 U.S. 236 (1998) 1

Hooks v. Workman,
689 F.3d 1148 (10th Cir. 2012) 19, 27, 28

In re Winship,
397 U.S. 358 (1970) 13, 23, 27

Irons v. Carey,
505 F.3d 846 (9th Cir. 2007) 35

Jackson v. Virginia,
443 U.S. 307 (1979) .....i, 12–14, 16–19, 21, 23–25, 27, 28, 30, 39

Kahler v. Kansas,
589 U.S. 271 (2020) 25

Lambright v. Stewart,
220 F.3d 1022 (9th Cir. 2000) 15, 32

Leland v. Oregon,
343 U.S. 790 (1952) 22, 24

Lewis v. Jeffers,
497 U.S. 764 (1990) 24, 25

Lindh v. Murphy,
96 F.3d 856 (7th Cir. 1996) (en banc) 35, 36

Loper Bright Enterprises v. Raimondo,
603 U.S. 369 (2024) 12, 36–37

Lozada v. Deeds,
498 U.S. 430 (1991) 16, 31, 32

Mackey v. Dutton,
217 F.3d 399 (6th Cir. 2000) 20

Maquiz MacDonald v. Hedgpeth,
907 F.3d 1212 (9th Cir. 2018) 30

Marbury v. Madison,
5 U.S. (1 Cranch) 137 (1803) 36

Maria v. Muniz,
704 F. App'x 641 (9th Cir. 2017) 21, 32

Matlock v. State,
392 S.W.3d 662 (Tex. Crim. App. 2013) 21, 23

Maynard v. Boone,
468 F.3d 665 (10th Cir. 2006) 19

Miller-El v. Cockrell,
537 U.S. 322 (2003) 15, 16, 28, 31, 32, 40

Moore v. Duckworth,
443 U.S. 713 (1979) 13, 18, 20, 24, 25, 28

Perez v. Cain,
529 F.3d 588 (5th Cir. 2008) 14, 17, 22, 27–29, 32

Piper v. Attorney General for the State of South Dakota,
174 F.4th 1070 (8th Cir. 2026) 35

Pop v. Yarborough,
354 F. Supp. 2d 1132 (C.D. Cal. 2005) 22

Richardson v. Warden, Lebanon Correctional Institution,
384 F. App'x 479 (6th Cir. 2010) 21, 28

Sadowski v. Grounds,
742 F. App'x 311 (9th Cir. 2018) 21, 28, 32

Sanders v. Plappert,
168 F.4th 837 (6th Cir.), *petition for cert. filed*, No. 26-5839 (U.S. Oct. 9, 2026) 16, 34–36, 38–40

State v. Garrett,
216 N.E.3d 569 (Ohio 2022) 21

State v. Hancock,
840 N.E.2d 1032 (Ohio 2006) 21, 23

State v. Roy,
395 So. 2d 664 (La. 1981) 18, 21, 23

Superintendent, Massachusetts Correctional Institution v. Hill,
472 U.S. 445 (1985) 25, 26

Swarthout v. Cooke,
562 U.S. 216 (2011) 26

Thompson v. Louisville,
362 U.S. 199 (1960) 23

United States v. Barton,
992 F.2d 66 (5th Cir. 1993) 27

United States v. Dickson,
40 U.S. (15 Pet.) 141 (1841).....37

Urias-Orellana v. Bondi,
607 U.S. 537 (2026) 37

Welch v. United States,
578 U.S. 120 (2016) 33

White v. Woodall,
572 U.S. 415 (2014) 27, 28

Williams v. Taylor,
529 U.S. 362 (2000) 34, 36, 38

Constitutional Provisions

U.S. Const. art. III, § 1.....2, 36

U.S. Const. amend. XIV 2

Statutes and Rules

18 U.S.C. § 17(b).....22, 27

28 U.S.C. § 1254(1).....1

28 U.S.C. § 1257 38

28 U.S.C. § 2241 12

28 U.S.C. § 2253(c) 2, 15

28 U.S.C. § 2254(a) 37

28 U.S.C. § 2254(d) ..... i, 2, 12, 14–17, 19, 23, 27, 28, 30, 32, 34–39

28 U.S.C. § 2403(a) 1

Cal. Penal Code § 25(b) 2, 5

Cal. Penal Code § 29.8 ..... 3, 5

Cal. Penal Code § 1026(a) 24

Mich. Comp. Laws § 768.21a(3) 20

Fed. R. Civ. P. 5.1 13

Sup. Ct. R. 13.1 1

Sup. Ct. R. 14.1(b)(iii) ii

Sup. Ct. R. 29.4(b) 1

9th Cir. R. 36-3 33

Other Authorities

Anthony G. Amsterdam & James S. Liebman, *Loper Bright and the Great Writ*, 56 Colum. Hum. Rts. L. Rev. 54 (2025) 38

Brief of Amici Curiae Former Federal Judges Supporting Petitioner, *Sanders v. Plappert*, No. 26-5839 (U.S. Nov. 13, 2026) 36

1 The Records of the Federal Convention of 1787 (Max Farrand ed., 1911) 38

Richard A. Wise & Denitsa R. Mavrova Heinrich, *Toward a More Scientific Jurisprudence of Insanity*, 95 Temp. L. Rev. 45 (2022) 22

Petitioner Forrest Henry Gilliam respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The order of the United States Court of Appeals for the Ninth Circuit denying a certificate of appealability is unreported and is attached as Appendix A. The order of the United States District Court for the Eastern District of California adopting the magistrate judge's findings and recommendations and denying the petition for a writ of habeas corpus is unreported and is attached as Appendix B. The magistrate judge's findings and recommendations are unreported and are attached as Appendix C. The unpublished opinion of the California Court of Appeal, Third Appellate District, is attached as Appendix D. The order of the California Supreme Court denying review is attached as Appendix E.

JURISDICTION

The court of appeals entered its order denying a certificate of appealability on August 24, 2026. App. 1a. No petition for rehearing was filed. This petition is timely under Rule 13.1. The Court has jurisdiction under 28 U.S.C. § 1254(1). *See Hohn v. United States*, 524 U.S. 236, 253 (1998) (holding that the Court has jurisdiction under § 1254(1) to review the denial of an application for a certificate of appealability by a circuit judge or a panel of a court of appeals).

Because this petition draws into question the constitutionality of an Act of Congress, and neither the United States nor any federal agency, officer, or employee is a party, 28 U.S.C. § 2403(a) may apply. This petition is being served on the Solicitor General of the United States as required by Rule 29.4(b). Neither the district court nor the court of appeals

certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question. *See* App. 12a n.6.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, Section 1 of the United States Constitution provides in relevant part:

> "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

The Fourteenth Amendment to the United States Constitution provides in relevant part:

> "[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . ."

28 U.S.C. § 2253(c)(2) provides:

> "A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right."

28 U.S.C. § 2254(d) provides:

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

California Penal Code § 25(b) provides:

> "In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or

> understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense."

California Penal Code § 29.8 provides in relevant part:

> "In any criminal proceeding in which a plea of not guilty by reason of insanity is entered, this defense shall not be found by the trier of fact solely on the basis of a personality or adjustment disorder, a seizure disorder, or an addiction to, or abuse of, intoxicating substances."

STATEMENT OF THE CASE

A. Trial Court Proceedings

1. Charges, Competency Proceedings, and Guilt Phase

In 2018, petitioner was charged in the San Joaquin County Superior Court with the murder of Gloria Navarro ("Gloria"), the attempted murder of Steven Navarro ("Steven"), and being a felon in possession of a firearm. Dkt. 17-1, 1CT 1–3, 9.[1] The trial court suspended the proceedings to evaluate petitioner's competency and later found him mentally incompetent to stand trial. App. 4a–5a; Dkt. 17-1, 1CT 17, 31. The court committed petitioner for inpatient treatment at Atascadero State Hospital ("ASH"), where he was treated with antipsychotic medication for approximately ten months. Dkt. 17-1, 1CT 30, 36; Dkt. 17-19, 14RT 882–83. At the hearing on restoration of competency, the trial court remarked that, with one exception among the evaluators, "it's pretty clear

[1] The state court record was filed in the district court at Dkts. 17 to 17-39. Record citations refer to the relevant ECF number ("Dkt.") as well as the original clerk's transcript ("CT") or reporter's transcript ("RT") volume. Citations to the appendix ("App.") refer to its consecutively numbered pages.

[petitioner is] suffering from schizophrenia." Dkt. 17-8, 3RT 165. Petitioner pleaded not guilty and not guilty by reason of insanity. Dkt. 17-1, 1CT 230.

The evidence at the guilt phase showed that petitioner shared a bedroom with Steven in a Stockton house where Steven's mother, Gloria, also lived. Dkt. 17-1, 1CT 122–24.[2] Petitioner had lived in the house for four or five years, and he and Steven had a sexual relationship. Dkt. 17-1, 1CT 125, 129. Both Steven and another housemate, Scott Wall, observed bizarre comments and odd behavior by petitioner over a period of years. Dkt. 17-1, 1CT 134, 143; Dkt. 17-12, 7RT 360–62. Petitioner told people that Steven was his father, though, as Steven put it, "nobody believed him." Dkt. 17-1, 1CT 135. Wall recalled instances when petitioner appeared to be speaking to someone who was not present. Dkt. 17-12, 7RT 360. Steven testified that "[w]e all suggested" petitioner undergo mental health treatment. Dkt. 17-1, 1CT 143.

In the early morning hours of October 14, 2018, petitioner shot Steven as Steven slept, then turned and shot Gloria in her bedroom. Dkt. 17-1, 1CT 123, 126, 137, 140. Gloria was killed. Dkt. 17-13, 8RT 463. Steven survived with multiple gunshot wounds. Dkt. 17-1, 1CT 127–29. Petitioner was arrested later that day with the firearm in his possession. Dkt. 17-13, 8RT 444–45. According to a detective, petitioner said that he was angry at Steven, and that he shot Gloria because she had taken his benefits card and locked

[2] Steven died before trial of causes unrelated to the shooting, and his testimony from the preliminary hearing was admitted at trial. App. 23a n.4.

him out of the house. App. 5a–6a. When left alone in the interview room, petitioner spoke to himself. Dkt. 17-15, 10RT 672–73.

Petitioner was the sole defense witness at the guilt phase. Dkt. 17-15, 10RT 628. He testified that he was then taking Zyprexa for schizophrenia and that, after his arrest, he had spent ten months at ASH. Dkt. 17-15, 10RT 629–30. He stated that he believed Steven had previously shot his teeth out with a firearm. Dkt. 17-15, 10RT 633. He acknowledged using methamphetamine within 24 hours of the shooting. Dkt. 17-15, 10RT 664. As to the shootings, petitioner testified that he blacked out and fired three shots at Steven, and that he shot Gloria because he "thought she was going for a weapon." Dkt. 17-15, 10RT 637–39. The jury found petitioner guilty on all counts. Dkt. 17-2, 2CT 341–45.

2. Sanity Phase

Governing law. Under California law, a defendant who pleads not guilty by reason of insanity must prove by a preponderance of the evidence that he "was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense." Cal. Penal Code § 25(b). Although the statute is phrased in the conjunctive, the California Supreme Court has read it to require proof of only one of the two incapacities. App. 33a n.9. The defense may not be found "solely on the basis of . . . an addiction to, or abuse of, intoxicating substances." Cal. Penal Code § 29.8. As the state appellate court explained, substance abuse defeats the defense only when it is the sole cause of the incapacity or of the mental disorder that produced it. App. 33a–34a.

Defense case. Dr. Theresa Fraser, a forensic psychologist at ASH, evaluated petitioner during his hospitalization. Dkt. 17-19, 14RT 878–80. She testified that shortly after admission, petitioner showed evidence of hallucinations and began discussing delusional beliefs with thought disorganization. Dkt. 17-19, 14RT 880. His delusions included beliefs that his brothers had placed implants in his teeth causing "worms and maggots" to come out, that a gunshot to his mouth had caused the implants to leak poison, and that the deceased victim was still alive and speaking to him. Dkt. 17-19, 14RT 881–82. Dr. Fraser explained that a fixed delusion is "a very common hallmark of schizophrenia." Dkt. 17-19, 14RT 885. Petitioner endorsed these beliefs throughout most of his hospitalization. Dkt. 17-19, 14RT 881. He tended to minimize or deny symptoms rather than endorse them, which was inconsistent with malingering. Dkt. 17-19, 14RT 898.

Petitioner was diagnosed with schizophrenia at ASH, and this remained his diagnosis at discharge. Dkt. 17-19, 14RT 882. He was prescribed Zyprexa, an antipsychotic, with the dosage escalating from 10mg to 45mg. Dkt. 17-19, 14RT 882–83. He responded positively, but his delusions had not resolved when he left ASH. Dkt. 17-19, 14RT 884–85. Dr. Fraser testified that the symptoms of a substance-induced psychosis "typically" resolve "very rapidly" with medication unless it has "become a more settled psychosis," and that a strictly substance-induced disorder "would have ceased" in the months after the substance was discontinued. Dkt. 17-19, 14RT 885–86. She acknowledged that methamphetamine possibly was "at least some contributor to the initial onset of his psychotic symptoms." Dkt. 17-19, 14RT 893. But petitioner's symptoms persisted for more than six months and "did not readily resolve with a low dosage of

antipsychotics," which she considered "more characteristic of a schizophrenia spectrum disorder as opposed to just strictly a very short term substance-induced psychotic disorder." Dkt. 17-19, 14RT 893. Dr. Fraser did not offer an opinion on legal sanity. App. 7a.

Dr. Richard Blak, a clinical and forensic psychologist, interviewed petitioner in May 2022 and spent at least 17 hours on the case. Dkt. 17-20, 15RT 911, 940–41. He diagnosed petitioner with schizophrenia and substance use disorder. Dkt. 17-20, 15RT 916. During his evaluation, petitioner still expressed the delusions documented at ASH, including that his brothers had shot out his teeth, that implants were causing "maggots or worms" in his mouth, and that his teeth were leaking poison. Dkt. 17-20, 15RT 919. He also believed that Steven was his biological father. Dkt. 17-20, 15RT 919, 922–23. Dr. Blak noted that petitioner's ten-month stay at ASH was unusually long and that 45mg of Zyprexa was "a pretty heavy dose." Dkt. 17-20, 15RT 918, 923. He testified that if petitioner's condition were "just substance induced psychosis," he "would clear up sooner or later." Dkt. 17-20, 15RT 935. Dr. Blak opined that schizophrenia was "the major contributor or the nexus" of the interactions "that led to his offense," and that petitioner was legally insane at the time of the shootings. Dkt. 17-20, 15RT 935, 938.

Prosecution case. Two court-appointed experts, Dr. Gary Cavanaugh and Dr. Wendy Weiss, testified for the prosecution. Dkt. 17-20, 15RT 961, 1002.

Dr. Cavanaugh, a psychiatrist, had evaluated petitioner in 2008 for competency in another case and found no psychotic disorder. Dkt. 17-20, 15RT 967–68, 971. He testified that petitioner "was not able to think through his actions, there's no doubt about that," and that, although he could not be certain because he had not seen petitioner at the time,

petitioner "probably was not aware that it was wrong." Dkt. 17-20, 15RT 977–78; *see also* Dkt. 17-20, 15RT 999. He attributed that condition to a "methamphetamine induced psychotic disorder," "[e]ither induced or accentuated," and "not schizophrenia." Dkt. 17-20, 15RT 975, 978. In his opinion petitioner "understood what he was doing," and although he was "not sure that [petitioner] realized it was wrong at the time," he did not "think [petitioner] was delusional." Dkt. 17-20, 15RT 978–79. He found petitioner legally sane because, in his opinion, "this is not schizophrenia, this is methamphetamine-induced psychotic disorder." Dkt. 17-20, 15RT 979; *see also* Dkt. 17-20, 15RT 999. He based his diagnosis on a "longitudinal" analysis that drew on his 2008 interview, the crime report, and other evaluators' reports, including those of Dr. Blak and the state hospital. Dkt. 17-20, 15RT 967–68, 970, 975, 989.

Dr. Cavanaugh also made several concessions. In explaining his method, he testified that he could not "cross-sectionally tell the difference" between methamphetamine-induced psychosis and schizophrenia, but that "if [he] had the history, that would . . . nail it." Dkt. 17-20, 15RT 977. He never contacted any of petitioner's family members. Dkt. 17-20, 15RT 990. He agreed that Steven had described bizarre behaviors several years before the shooting, which he characterized as a "longitudinal" fact. Dkt. 17-20, 15RT 994. Although his diagnosis drew on his 2008 interview, he conceded that schizophrenia can emerge over several years or even a few months, Dkt. 17-20, 15RT 967–69, 998, and that individuals with mental illness sometimes self-medicate with substances, Dkt. 17-20, 15RT 995.

Dr. Weiss, a forensic psychologist, interviewed petitioner twice in late 2021. Dkt. 17-20, 15RT 1003, 1007. She opined that petitioner was not legally insane. In her view, petitioner "did not appear to lack an ability to understand and appreciate his behavior due to a mental disorder, disease, or defect," and although there "might have been some perceptual distortions," she believed "they were the result of the methamphetamine intoxication." Dkt. 17-20, 15RT 1016. She agreed that petitioner had acted in a "purposeful goal-directed way." Dkt. 17-20, 15RT 1017.

Dr. Weiss acknowledged gaps in the information available to her when she evaluated petitioner. She had only the police report and jail medical and psychiatric records. Dkt. 17-20, 15RT 1007. She did not receive the ASH progress reports, the competency evaluations, the recording of petitioner's police interview, or the reports of Drs. Blak and Cavanaugh until shortly before she testified. Dkt. 17-20, 15RT 1007–08. She testified that with those records, she would have approached the interview differently and asked different questions. Dkt. 17-20, 15RT 1017–18. Apart from a one-line jail note about petitioner's teeth and maggots, she was unaware of the specifics of his delusions and did not ask him about those beliefs. Dkt. 17-20, 15RT 1018–19. As to whether her diagnosis was methamphetamine-induced psychosis, she answered that this was her opinion, but that she "didn't specifically give that diagnosis" and "hadn't developed a diagnosis because [she] didn't really have a lot of information." Dkt. 17-20, 15RT 1020.

As to the cause of petitioner's condition, Dr. Weiss testified that his "methamphetamine abuse in my opinion likely precipitated the onset of a mental illness." Dkt. 17-20, 15RT 1031. She continued: "The etiology is, I can't say with certainty that

it's because he used methamphetamine. Perhaps he would have developed this disorder anyhow." Dkt. 17-20, 15RT 1031. She added that petitioner's symptoms "were certainly exacerbated and magnified if not solely caused by the methamphetamine use and intoxication." Dkt. 17-20, 15RT 1031. She later reiterated that petitioner "likely . . . has developed a mental disorder and that he may have developed that disorder in the absence of methamphetamine use, or the etiology may have been the result of the methamphetamine use." Dkt. 17-20, 15RT 1033. She acknowledged that schizophrenia could be hereditary and that petitioner reported his brother received disability benefits for schizophrenia. Dkt. 17-20, 15RT 1033–34. Dr. Weiss further noted that petitioner was still exhibiting psychotic symptoms seven months after the presumed termination of his methamphetamine use. Dkt. 17-20, 15RT 1021–22.

Verdict and sentence. The jury began deliberating in the sanity phase on June 16, 2022. Dkt. 17-2, 2CT 498. On June 21, the foreperson sent a note stating, "We cannot reach a decision on Counts One and Two." Dkt. 17-23, 18RT 1128; *see* Dkt. 17-2, 2CT 517. Asked for the numerical division "without telling me which way," the foreperson reported that the jury stood 8–4 on the murder count and 10–2 on the attempted murder count. Dkt. 17-23, 18RT 1128–29. At the court's invitation, the jurors submitted written questions for further argument, the first of which sought clarification of Dr. Fraser's "longitudinal history" for petitioner and whether that history was based solely on self-reporting. Dkt. 17-23, 18RT 1129–30; Dkt. 17-2, 2CT 518; Dkt. 17-24, 19RT 1153. After additional closing arguments, the jury found petitioner legally sane on both counts on June 22. Dkt. 17-24, 19RT 1169–71; Dkt. 17-2, 2CT 503–04. The jury had reached its sanity

verdict on the firearm count on June 17, when it reported that it was still deliberating on the other two counts. Dkt. 17-22, 17RT 1122; Dkt. 17-24, 19RT 1171. Petitioner was sentenced to 124 years to life in prison. Dkt. 17-26, 21RT 1200–02.

B. Direct Appeal

On appeal, petitioner challenged the sufficiency of the evidence supporting the sanity verdict. App. 32a. The California Court of Appeal affirmed, concluding that "a reasonable jury could have found that defendant failed to prove he was legally insane at the time of the shooting by a preponderance of the evidence." App. 34a. The court stated that "[b]ecause the defendant has the burden of proof on the issue of insanity, 'the question on appeal is not so much the substantiality of the evidence favoring the jury's finding as whether the evidence contrary to that finding is of such weight and character that the jury could not reasonably reject it.'" *Id.* (citation omitted). It reasoned that the court-appointed experts "concluded that defendant was not suffering from schizophrenia but rather methamphetamine-induced psychosis," and that "[p]roviding the experts were adequately qualified, which defendant did not dispute, the jury was entitled to evaluate and weigh their opinions." App. 35a. In the court's view, "[n]othing more is required to uphold the jury's sanity verdict." *Id.* Petitioner sought review in the California Supreme Court, contending that the evidence was insufficient under the Due Process Clause to sustain the verdict. Dkt. 17-38 at 11. That court denied review on February 21, 2024. App. 44a.

C. Federal Habeas Proceedings

Petitioner sought a writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the Eastern District of California, which had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The court appointed counsel, and petitioner filed an amended petition. Dkt. 20. He contended that the evidence was constitutionally insufficient to support the sanity verdict under *Jackson*, that the state court's decision rested on an unreasonable determination of the facts under § 2254(d)(2), and that § 2254(d)(1) violates Article III by requiring a federal court to defer to a state court's resolution of a federal constitutional question. Dkt. 20 at 27–44; Dkt. 31 at 3–12. Respondent's answer stated that the petition "appears to be exhausted" to the extent it renewed petitioner's direct appeal claims, and it defended the state court's decision under § 2254(d). Dkt. 28 at 1, 13–15.

The magistrate judge recommended that the petition be denied. App. 4a–20a. She first rejected the Article III challenge. In her view, *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), on which petitioner relied, did not bear on the question because "[n]o federal agency interpretation is at issue here," and "[n]othing in the holding or reasoning of *Loper Bright* implicates Congress's authority to limit federal habeas relief or compels a conclusion that the court's Article III authority is abridged by § 2254(d)." App. 13a. The

magistrate judge relied on *Felker v. Turpin*, 518 U.S. 651 (1996), *Brown v. Davenport*, 596 U.S. 118 (2022), and *Crater v. Galaza*, 491 F.3d 1119 (9th Cir. 2007). App. 13a.[3]

Turning to the sufficiency claim, the magistrate judge began from the premise that a state court cannot unreasonably apply federal law "if the Supreme Court itself has never applied a rule in the particular context at issue." App. 16a. She stated that this Court "has never held that due process review under *Jackson v. Virginia* applies categorically to sanity findings, or to any other issue related to an affirmative defense on which the defendant bears the burden of proof," and that "other courts have found that habeas relief is categorically unavailable on claims like the one presented here." App. 17a (footnote omitted). She agreed with those courts. *Id.* Because sanity is not an element that the prosecution must prove beyond a reasonable doubt under California law, the magistrate judge reasoned, *In re Winship*, 397 U.S. 358 (1970), does not apply, and "[w]here *Winship* does not apply in the first instance, *Jackson* is inapposite by its own terms." *Id.* (footnote omitted). She added that "[a]bsent an underlying due process entitlement at trial, there is nothing for *Jackson* to protect," and that review of the sufficiency of the evidence in this setting "is entirely a matter of state law." *Id.* at 18a. The magistrate judge distinguished *Moore v. Duckworth*, 443 U.S. 713 (1979) (per curiam), on the ground that the State bore

[3] The magistrate judge observed that petitioner had not served notice of the constitutional challenge on the Attorney General of the United States under Federal Rule of Civil Procedure 5.1, but proceeded to reject the challenge as Rule 5.1(c) permits. App. 12a n.6.

the burden of proving sanity in that case. App. 17a n.7. She acknowledged that the Fifth Circuit applied *Jackson* to a sanity verdict in *Perez v. Cain*, 529 F.3d 588 (5th Cir. 2008), where the defendant bore the burden, but she stated that she did "not find it persuasive." App. 17a–18a n.8.

In the alternative, the magistrate judge concluded that relief would be unavailable "[e]ven assuming arguendo that *Jackson* applies by analogy." App. 18a. Applying what she described as a "double dose of deference," she reasoned that "[t]wo out of three qualified experts who opined on the ultimate question of legal insanity found petitioner to have been sane," that the experts "were equally divided" on the relationship between petitioner's psychotic symptoms and his methamphetamine use, and that the jury's choice among experts was a credibility determination. *Id.* at 18a–19a (quotation and footnote omitted). She stated that the federal court "may only review the state court's judgment for objective unreasonableness." *Id.* at 19a. She asked whether the state court "made dispositive factual findings that were objectively unreasonable," *id.* at 18a, but did not separately analyze petitioner's argument under § 2254(d)(2). *See id.* at 11a, 16a–19a.

Petitioner filed objections. Dkt. 35. The district court adopted the findings and recommendations in full, denied the petition, and declined to issue a certificate of appealability "[f]or the reasons set forth in the magistrate judge's findings and recommendations." App. 3a.

Petitioner appealed and moved for a certificate of appealability on four issues, including the Article III challenge to § 2254(d)(1) and the applicability of *Jackson* to the sanity verdict. Ninth Cir. Dkt. 3. On the *Jackson* issue, the motion relied on *Perez* and on

the Ninth Circuit's rule that a conflicting decision of another circuit makes a question debatable. Ninth Cir. Dkt. 3 at 13–14 (citing *Lambright v. Stewart*, 220 F.3d 1022, 1025–26 (9th Cir. 2000)). While the motion was pending, the Ninth Circuit rejected a constitutional challenge to the deferential standard of § 2254(d) in another case. *Bradford v. Vang*, 175 F.4th 1182, 1199–1204 (9th Cir. 2026). On August 24, 2026, a two-judge panel denied petitioner's motion. The order states that the request "is denied because appellant has not made a 'substantial showing of the denial of a constitutional right.' 28 U.S.C. § 2253(c)(2); *see also Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)." App. 1a. It contains no further reasoning.

REASONS FOR GRANTING THE WRIT

Petitioner was diagnosed with schizophrenia at the state hospital that treated him for ten months, and a defense expert who evaluated him concluded that he was legally insane when he fired the shots. The two court-appointed experts called by the prosecution attributed his condition at the time of the shootings to methamphetamine. Yet one of them testified that petitioner probably did not know that what he did was wrong, and both left open whether the drug was the sole cause of his illness. Under California law, that is the question on which the sanity defense turns.

During its sanity-phase deliberations, the jury reported that it could not reach a decision on the murder and attempted murder counts before finding petitioner sane the next day. The California Court of Appeal affirmed, reasoning that the conflict among qualified experts was for the jury to resolve. On federal habeas review, the district court held that the Due Process Clause does not reach a sanity verdict when state law places the burden of

proving insanity on the defendant, and that 28 U.S.C. § 2254(d) would require the state court's answer to stand in any event. The Ninth Circuit then denied a certificate of appealability in a summary order. No federal court has decided for itself whether the record can support the verdict.

Each of the federal rulings warrants review. On the first question, review is needed to resolve a long-standing conflict. The Fifth Circuit and the Louisiana Supreme Court apply *Jackson* to a jury's rejection of an insanity defense that the defendant had to prove, while the Sixth Circuit and the Supreme Court of Ohio hold that such a verdict raises no federal question. On the second, the denial of a certificate of appealability on an issue that has divided the courts of appeals is difficult to reconcile with *Lozada v. Deeds*, 498 U.S. 430 (1991) (per curiam), *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and *Buck v. Davis*, 580 U.S. 100 (2017), and the Court has granted certiorari on a closely related question in *Berry v. United States*, No. 25-7026. On the third, a constitutional question that this Court has never decided was resolved against habeas petitioners by three courts of appeals in 2026, one of them over a detailed dissent, and is now before the Court in *Sanders v. Plappert*, No. 26-5839. The Court should grant the petition or, at a minimum, hold it for *Berry* and *Sanders*.

I. The Court Should Resolve the Conflict Over Whether *Jackson* Applies to a Sanity Verdict When the Defendant Bears the Burden of Proof

The first question presented warrants review. It has divided the federal courts of appeals and the state courts of last resort, it arises in every jurisdiction that places the

burden of proving insanity on the defendant, the district court answered it incorrectly, and this case is a suitable vehicle for resolving it.

A. The Fifth and Sixth Circuits Have Reached Opposite Conclusions, and State Courts of Last Resort Are Likewise Divided

In *Perez v. Cain*, 529 F.3d 588 (5th Cir. 2008), the Fifth Circuit affirmed a grant of habeas relief to a Louisiana prisoner on the ground that the evidence did not support the jury's rejection of his insanity defense. Louisiana, like California, presumes sanity and requires the defendant to prove insanity by a preponderance of the evidence. *Id.* at 594. The Fifth Circuit explained that "the Supreme Court's decision in *Jackson v. Virginia* provides the standard for testing the sufficiency of the evidence," and it applied that standard to the sanity verdict. *Id.* It identified the governing question as "whether, viewing the evidence in the light most favorable to the state, any rational trier of fact could have found beyond a reasonable doubt that [the defendant] did not prove by a preponderance of the evidence that he was insane at the time of the offense." *Id.* Applying 28 U.S.C. § 2254(d)(1), the court concluded that the state appellate court's decision upholding the verdict "was an objectively unreasonable application of federal law." *Id.* at 599.

Perez did not separately discuss whether assigning the burden to the defendant removes a sanity verdict from *Jackson*'s reach. Its judgment nonetheless depended on the conclusion that *Jackson* is clearly established federal law for a challenge to a sanity verdict in a State that places the burden on the defendant, because relief under § 2254(d)(1) is unavailable otherwise. The Fifth Circuit has since described *Perez* as "[t]he leading case in our circuit on this issue," and it has applied the *Perez* formulation as what it had

"previously held." *Hebert v. Rogers*, 890 F.3d 213, 224–25 (5th Cir. 2018). *Hebert* denied relief because "the jury had objective reasons to reject the expert testimony from the four defense experts," but it treated the claim as cognizable and decided it under the *Jackson* standard. *Id.* at 224–27.

The Fifth Circuit's approach is consistent with *Moore v. Duckworth*, 443 U.S. 713 (1979) (per curiam), decided days after *Jackson*. There, this Court held that a state prisoner who challenged the evidence of his sanity was entitled to review under *Jackson*, deferring to Indiana law on how sanity may be proved and concluding that "under the standard enunciated in *Jackson v. Virginia*, the evidence in support of this conviction was constitutionally adequate." *Id.* at 714–15.

Although Indiana then placed the burden of proving sanity on the prosecution, the Louisiana Supreme Court has read *Moore* to reach a defense that the defendant must prove. After adopting *Jackson* for challenges to the proof of an element, that court concluded on direct review that "[d]ue process now appears to require extension of the test to situations where the defendant pleads the affirmative defense of insanity." *State v. Roy*, 395 So. 2d 664, 667 (La. 1981). It understood *Moore* to hold "that the rule of *Jackson v. Virginia* was to be followed in reviewing the conviction of a state court prisoner who had pleaded insanity." *Id*. The court then reversed the conviction before it, reasoning that the conduct on which the State relied "could not by any rational fact finder be said to overcome the overwhelming evidence of insanity." *Id.* at 669.

Two other courts of appeals have reviewed, in habeas cases, jury findings on which the defendant bore the burden of proof. The Eleventh Circuit did so for a sanity verdict in

a Georgia case, although under Georgia law "[p]roof of sanity is explicitly not an element of the prosecution's case." *Fulghum v. Ford*, 850 F.2d 1529, 1532 (11th Cir. 1988). It asked whether "a rational trier of fact could have found that the defendant failed to prove by a preponderance of the evidence that he was insane at the time of the crime," and it decided the claim on that standard. *Id.* at 1533–34 (quotation omitted). The Tenth Circuit has applied *Jackson* under § 2254(d)(1) to a jury's finding that a capital defendant had not proved that he was intellectually disabled, explaining that "[t]he different standard of proof requires us to tailor *Jackson* to fit this context." *Hooks v. Workman*, 689 F.3d 1148, 1166–67 (10th Cir. 2012); *see also Maynard v. Boone*, 468 F.3d 665, 674 (10th Cir. 2006) (same standard for a jury's finding of competency to stand trial). The court added that "*Jackson*'s rational-trier-of-fact standard is clearly established federal law even when, as here, the standard of proof is a preponderance of the evidence and the burden of proof at trial rested on the habeas applicant." *Hooks*, 689 F.3d at 1166 n.6.

The Sixth Circuit holds the opposite. Under its decisions, a habeas petitioner "is precluded from challenging the sufficiency of the evidence of sanity in a habeas corpus proceeding" unless state law makes sanity an element of the offense. *Allen v. Redman*, 858 F.2d 1194, 1195 (6th Cir. 1988); *accord Duffy v. Foltz*, 804 F.2d 50, 53–54 (6th Cir. 1986). That is so even where the State has assumed the burden of proving sanity beyond a reasonable doubt, because a State may "carry the burden of proof with respect to a properly raised defense while insulating that portion of its case from habeas corpus review." *Allen*

v. Redman, 858 F.2d at 1198. The court added in dictum that if state law placed the burden on the defendant, "it is clear that no habeas review would be permissible." *Id.*[4]

In *Gall v. Parker*, 231 F.3d 265 (6th Cir. 2000), a Kentucky prisoner argued that his due process rights were violated because the evidence showed that he was insane. The court refused to reach the merits. It reasoned that "[i]n Kentucky, . . . sanity is not an element of murder, and insanity does not negate an element of murder. We thus can not review this claim." *Id.* at 307. The court emphasized that Kentucky law "places the burden of proving legal insanity squarely on a defendant's shoulders." *Id.* The Sixth Circuit has also stated that "the due process 'sufficient evidence' guarantee does not implicate affirmative defenses," *Caldwell v. Russell*, 181 F.3d 731, 740 (6th Cir. 1999), *abrogated on other grounds as recognized in Mackey v. Dutton*, 217 F.3d 399, 406 (6th Cir. 2000), and in an unpublished decision it has applied that rule under AEDPA to an Ohio prisoner's insanity defense, holding that the claim "does not invoke a clearly established Federal law,"

[4] *Duffy* and *Allen v. Redman* arose when Michigan required the prosecution to prove sanity beyond a reasonable doubt once the defendant introduced evidence of insanity. *Allen v. Redman*, 858 F.2d at 1197. Michigan has since placed the burden of proving insanity on the defendant. Mich. Comp. Laws § 768.21a(3). The Sixth Circuit did not mention *Moore* in *Duffy*, in *Allen v. Redman*, or in *Gall*, discussed below, although *Duffy* and *Allen v. Redman*, like *Moore*, involved a State that bore the burden of proving sanity.

Richardson v. Warden, Lebanon Correctional Institution, 384 F. App'x 479, 482 (6th Cir. 2010).

In the words of the Supreme Court of Ohio, "[c]ourts have divided over whether and how sufficiency-of-the-evidence review under *Jackson v. Virginia* applies to affirmative defenses." *State v. Hancock*, 840 N.E.2d 1032, 1043 (Ohio 2006). That court contrasted *Roy* with the Sixth Circuit's decision in *Caldwell* and sided with the Sixth Circuit, holding that "[t]he insanity defense does not involve 'the substantive elements of the criminal offense.'" *Id.* It declined to revisit that holding in 2022. *State v. Garrett*, 216 N.E.3d 569, 604–05 (Ohio 2022). The Texas Court of Criminal Appeals likewise holds that *Jackson* "does not apply to elements of an affirmative defense that the defendant must prove by a preponderance of the evidence," and it reviews the rejection of such a defense only under state-law standards. *Matlock v. State*, 392 S.W.3d 662, 667 (Tex. Crim. App. 2013).

Petitioner is aware of no published decision of the Ninth Circuit that resolves the question. One unpublished decision reasoned that a California prisoner had "not shown that there is a state or federal right to have the State prove sanity where it is not an element of the crime." *Hawkins v. Horal*, 572 F. App'x 480, 480–81 (9th Cir.), *cert. denied*, 574 U.S. 917 (2014). A later one "assume[d], without deciding, that this claim is cognizable on habeas review." *Maria v. Muniz*, 704 F. App'x 641, 644 (9th Cir. 2017). A third held that the prisoner had "fail[ed] to identify any clearly established Supreme Court precedent authorizing a constitutional challenge to the sufficiency of the evidence supporting an affirmative defense of insanity." *Sadowski v. Grounds*, 742 F. App'x 311, 313 (9th Cir.

2018), *cert. denied*, 139 S. Ct. 1206 (2019). District courts in the circuit have questioned whether the claim is cognizable. *See, e.g.*, *Pop v. Yarborough*, 354 F. Supp. 2d 1132, 1138 (C.D. Cal. 2005). The district court here went further and held the claim unavailable. It relied on *Gall* and *Hawkins* and declined to follow *Perez*. App. 17a–18a & nn.7–8.

As a result, the availability of federal review of a sanity verdict depends on where the prisoner was convicted and, in some courts, on how his State allocates the burden of proof. A Louisiana prisoner who raised the same kind of claim obtained the writ, while a prisoner convicted in Kentucky, Michigan, or Ohio cannot have the claim heard at all. Petitioner, convicted in California, was told that the claim is unavailable and was then denied leave to appeal.

B. The Question Is Important and Recurring

This Court has held that a State may require a defendant to prove insanity. *Leland v. Oregon*, 343 U.S. 790, 798–99 (1952). Most States now do so, as does Congress for federal prosecutions. Richard A. Wise & Denitsa R. Mavrova Heinrich, *Toward a More Scientific Jurisprudence of Insanity*, 95 Temp. L. Rev. 45, 77 (2022); 18 U.S.C. § 17(b). In those jurisdictions the sanity verdict, and not the guilt verdict, decides whether a mentally ill defendant is punished as a criminal or committed for treatment. Under the rule applied in the district court, the Due Process Clause does not reach that verdict, however thin the evidence supporting it. The result is that the finding on which a mentally ill defendant's liberty most often depends receives less constitutional protection than any element of the offense, including elements that are rarely in dispute.

This important question recurs. The Ninth Circuit has addressed it in at least three appeals since 2014, and the Fifth Circuit, the Sixth Circuit, and the Supreme Court of Ohio have each returned to it more than once. *See supra* Part I.A. It arises on direct appeal as well, where § 2254(d) plays no part, and state courts of last resort are divided there too. *Compare Roy*, 395 So. 2d at 667, *with Hancock*, 840 N.E.2d at 1043; *see also Matlock*, 392 S.W.3d at 667. Absent review by this Court, the conflict will persist.

C. The Decision Below Is Incorrect

Jackson held that the Due Process Clause forbids a criminal conviction that no rational trier of fact could have reached on the evidence. 443 U.S. at 319, 324. The district court confined that rule to the elements that *Winship* requires the prosecution to prove. App. 17a–18a. That reading of *Jackson* is too narrow.

Before *Winship*, this Court had held "that a conviction based upon a record wholly devoid of any relevant evidence of a crucial element of the offense charged is constitutionally infirm." *Jackson*, 443 U.S. at 314 (discussing *Thompson v. Louisville*, 362 U.S. 199 (1960)). *Jackson* strengthened that protection in light of *Winship*. *Id.* at 318–20. It also directed that its standard "be applied with explicit reference to the substantive elements of the criminal offense as defined by state law." *Id.* at 324 n.16. State law, in other words, identifies the facts on which criminal punishment depends, and the Due Process Clause requires that a jury's findings on those facts have a rational basis in the evidence.

In California, sanity is such a fact. State law provides that persons who are mentally incapacitated "are deemed incapable of committing crimes." App. 32a. A defendant found

insane is not sentenced to prison and is instead subject to commitment for treatment. *See* Cal. Penal Code § 1026(a). The sanity verdict is therefore the determination on which petitioner's sentence of 124 years to life rests.

The district court, like the Ninth Circuit in *Hawkins*, read *Moore* as limited to States that assign the burden to the prosecution. App. 17a n.7; *Hawkins*, 572 F. App'x at 480. But the Constitution did not require Indiana to prove sanity in *Moore*. *See Leland*, 343 U.S. at 798–99. This Court nevertheless applied *Jackson* to the evidence of sanity, a fact that Indiana law made decisive of criminal liability. *Moore*, 443 U.S. at 714–15. *Moore* thus shows that *Jackson* is not confined to facts that the Constitution requires the State to prove. California likewise makes sanity decisive of criminal liability. That it assigns the burden of proof to the defendant changes the rationality inquiry, but it does not justify eliminating it altogether.

The Court has also applied *Jackson* to a finding that is not an element of any offense. The question in *Lewis v. Jeffers*, 497 U.S. 764 (1990), was what standard governs federal habeas review of a state court's finding of an aggravating circumstance in a capital case, and the Court held that it is "the 'rational factfinder' standard established in *Jackson v. Virginia*." *Id.* at 781. It explained that "[a]lthough aggravating circumstances are not 'elements' of any offense, the standard of federal review for determining whether a state court has violated the Fourteenth Amendment's guarantee against wholly arbitrary deprivations of liberty is equally applicable in safeguarding the Eighth Amendment's bedrock guarantee against the arbitrary or capricious imposition of the death penalty." *Id.* at 782 (citation omitted). The State bore the burden of proof on the finding at issue in

Jeffers, as it did in *Moore*. Even so, *Jeffers* undercuts the district court's premise. App. 17a.

It does not matter that "due process imposes no single canonical formulation of legal insanity." *Clark v. Arizona*, 548 U.S. 735, 753 (2006); *see also Kahler v. Kansas*, 589 U.S. 271 (2020). Petitioner does not ask the Court to prescribe an insanity test or to reallocate the burden. California has chosen its test, has made it the measure of criminal responsibility, and has entrusted its application to a jury. When state law makes a defendant's liberty depend on a jury's finding, the Due Process Clause protects against an arbitrary finding.

Two of this Court's decisions apply that principle. In *Hicks v. Oklahoma*, 447 U.S. 343 (1980), the Court held that a defendant entitled under state law to have a jury fix his punishment has "a substantial and legitimate expectation that he will be deprived of his liberty only to the extent determined by the jury," and that this "liberty interest is one that the Fourteenth Amendment preserves against arbitrary deprivation by the State." *Id.* at 346. And in *Superintendent, Massachusetts Correctional Institution v. Hill*, 472 U.S. 445 (1985), the Court held that where state law creates a liberty interest in good time credits, their revocation must be supported by "some evidence," explaining that "a governmental decision resulting in the loss of an important liberty interest violates due process if the decision is not supported by any evidence." *Id.* at 455. *Hill* identified *Jackson* as the measure of "the amount of evidence necessary to support" a criminal conviction. *Id.* at 456. A sanity verdict that no rational jury could return on the evidence is an arbitrary

deprivation of the same kind, and a far more consequential one, because it decides whether the defendant will be punished as a criminal at all.

The Court's decision in *Swarthout v. Cooke*, 562 U.S. 216 (2011) (per curiam), is not to the contrary. There, the Court reversed decisions that had granted habeas relief on the ground that California misapplied its own "some evidence" standard for parole. It explained that there is "no right under the Federal Constitution to be conditionally released before the expiration of a valid sentence," that "the only federal right at issue is procedural," and that treating a state evidentiary rule as a component of the liberty interest "would subject to federal-court merits review the application of all state-prescribed procedures in cases involving liberty or property interests, including (of course) those in criminal prosecutions." *Id.* at 220–22. That reasoning does not reach petitioner's claim. He does not ask a federal court to enforce California's own standard for reviewing sanity verdicts. He invokes the minimum evidentiary standard that the Due Process Clause itself imposes, and he challenges the verdict that determined whether he would be sentenced to prison at all. *See id.* at 222 (Ginsburg, J., concurring) (stating that if state law "entitled prisoners to parole upon satisfaction of specified criteria, then *Hill* would be closely in point").

The Sixth Circuit derived its contrary rule from *Engle v. Isaac*, 456 U.S. 107 (1982), *see Allen v. Redman*, 858 F.2d at 1197–98, but neither *Engle* nor *Gilmore v. Taylor*, 508 U.S. 333 (1993), decided the question. *Engle* involved jury instructions that required the prisoners to prove self-defense. The Court rejected the prisoners' argument that Ohio law made the absence of self-defense an element and concluded that the claim "does no more

than suggest that the instructions at respondents' trials may have violated state law." 456 U.S. at 119–21. *Gilmore* also concerned jury instructions. The Court described an affirmative defense as a matter "with respect to which *Winship*'s due process guarantee does not apply," 508 U.S. at 343, but found it unnecessary to address the State's contention that an instructional error concerning an affirmative defense "is one wholly of state law," *id.* at 341. Neither opinion cites *Jackson* or considers whether a verdict that no rational jury could return on the evidence deprives a defendant of liberty without due process.

The Fifth Circuit's formulation shows that *Jackson* can be applied to a sanity verdict without disturbing the State's allocation of the burden. The reviewing court asks whether any rational trier of fact could have found that the defendant failed to carry his burden. *Perez*, 529 F.3d at 594; *accord Hooks*, 689 F.3d at 1166. Federal courts conduct the same inquiry on direct appeal when a jury rejects an insanity defense that the defendant was required to prove under 18 U.S.C. § 17(b). *See, e.g.*, *United States v. Barton*, 992 F.2d 66, 68–70 (5th Cir. 1993). Recognizing a federal floor would not change how sanity is tried. It would ensure only that a verdict that determines whether a person is imprisoned for life is not beyond the reach of the Due Process Clause.

The district court's starting premise, that § 2254(d)(1) forecloses relief whenever this Court "has never applied a rule in the particular context at issue," App. 16a, is in tension with *Andrew v. White*, 604 U.S. 86, 94 (2025) (per curiam), which held that "[g]eneral legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court." Petitioner recognizes that § 2254(d)(1) "does not require state courts to extend" this Court's precedents. *White v. Woodall*, 572 U.S. 415,

426 (2014) (emphasis omitted). But "[c]ertain principles are fundamental enough that when new factual permutations arise, the necessity to apply the earlier rule will be beyond doubt." *Woodall*, 572 U.S. at 427 (quotation omitted). The Fifth Circuit necessarily treated *Jackson* as such a principle when it affirmed the writ in *Perez*, 529 F.3d at 594, 599, and the Tenth Circuit has said so expressly, *Hooks*, 689 F.3d at 1166 n.6. The Sixth Circuit and the Ninth Circuit have held the opposite in unpublished decisions. *Richardson*, 384 F. App'x at 482; *Sadowski*, 742 F. App'x at 313. That disagreement is fairly included in the first question presented, and it is a further reason for review.

D. This Case Is a Suitable Vehicle

Petitioner raised the *Jackson* claim at each stage of the federal proceedings, and the district court decided it. The court's principal ruling was that such a claim is unavailable when state law places the burden on the defendant, and it considered and rejected the Fifth Circuit's contrary decision by name. App. 17a–18a & n.8. Petitioner seeks the application of *Jackson*'s existing rationality requirement to sanity, a subject to which *Moore* already applied it, with the inquiry adjusted to California's allocation of the burden of proof. *See Moore*, 443 U.S. at 714–15; *supra* Part I.C.

The district court's alternative ruling does not stand in the way of review. That ruling was made under § 2254(d) with what the court called a "double dose of deference," App. 18a, and it is therefore bound up with the third question presented. And because this case arises from the denial of a certificate of appealability, the question is whether the district court's application of § 2254(d) "was debatable amongst jurists of reason." *Miller-El*, 537 U.S. at 336.

On this record, it was. The question under California law was not whether methamphetamine contributed to petitioner's illness, but whether it alone caused the incapacity or the disorder that produced it. App. 33a–34a. Unlike the experts in *Perez*, the experts here did not all find petitioner insane. *Cf. Hebert*, 890 F.3d at 225–27. But Dr. Cavanaugh testified that petitioner "probably was not aware that it was wrong," Dkt. 17-20, 15RT 977–78, so his opinion that petitioner was sane depended on the cause of the psychosis. On that subject, he described petitioner's condition as a methamphetamine-induced psychotic disorder, "[e]ither induced or accentuated," a description that leaves open whether the drug caused the illness or only aggravated it. Dkt. 17-20, 15RT 975. He testified that the two conditions cannot be distinguished without the patient's history, yet he did not speak with petitioner's family. Dkt. 17-20, 15RT 977, 990. He called his analysis "longitudinal," but he agreed that Steven's account of bizarre behavior years before the shooting was a "longitudinal" fact, and he acknowledged that schizophrenia can develop over as little as a few months. Dkt. 17-20, 15RT 968–69, 989, 994, 998.

Dr. Weiss believed that methamphetamine "likely precipitated" petitioner's illness, but she could not "say with certainty" that it was the cause and allowed that "[p]erhaps he would have developed this disorder anyhow." Dkt. 17-20, 15RT 1031. She described the causation question as "not straightforward black and white," and said that "having read all the records," she thought petitioner "has developed a mental illness over time." Dkt. 17-20, 15RT 1031. She acknowledged that schizophrenia can be hereditary, and she had seen reports that petitioner told doctors that one of his brothers received disability benefits for schizophrenia. Dkt. 17-20, 15RT 1033–34. Dr. Weiss adhered to her opinion that

petitioner's psychosis was methamphetamine-induced, Dkt. 17-20, 15RT 1031, but she formed that opinion without the hospital records, and she did not ask petitioner about the delusional beliefs those records describe. Dkt. 17-20, 15RT 1007–08, 1018–20. She had not developed a diagnosis, she explained, because she "didn't really have a lot of information." Dkt. 17-20, 15RT 1020.

Both court-appointed experts thus allowed for the possibility that methamphetamine was not the sole cause of petitioner's illness, the question that California law made decisive. Against that testimony stood a schizophrenia diagnosis informed by "the round-the-clock observation of hospital staff" during a ten-month commitment, treatment with escalating doses of an antipsychotic, and fixed delusions that persisted for years in custody. Dkt. 17-19, 14RT 882–86, 891, 893; Dkt. 17-20, 15RT 918–19, 922–23, 934–35. Opinions formed without the family history or the hospital records could not rationally justify rejecting that diagnosis. *Cf. Brooke Group Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 242 (1993) ("When an expert opinion is not supported by sufficient facts to validate it in the eyes of the law, or when indisputable record facts contradict or otherwise render the opinion unreasonable, it cannot support a jury's verdict."); *Maquiz MacDonald v. Hedgpeth*, 907 F.3d 1212, 1220–21 (9th Cir. 2018) (holding that the state courts unreasonably rejected a *Jackson* challenge to a gang enhancement where the expert's opinions were "purely conclusory and factually unsupported" (quotation omitted)). Whether § 2254(d) forecloses relief on this record is at least debatable, and the present posture requires no more.

The first question is therefore properly presented, and the Court can resolve it in this case.

II. The Denial of a Certificate of Appealability Conflicts with This Court's Precedents, and the Petition Should Be Held for *Berry v. United States* If Plenary Review Is Not Granted

An applicant is entitled to a certificate of appealability upon "demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327. That threshold inquiry "does not require full consideration of the factual or legal bases adduced in support of the claims." *Id.* at 336. Indeed, "a claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Id.* at 338. A court of appeals that denies a certificate by "first deciding the merits of an appeal" is "in essence deciding an appeal without jurisdiction." *Id.* at 336–37; *see also Buck*, 580 U.S. at 115–17.

The Court applied that standard to circumstances like these in *Lozada*. The district court had denied habeas relief on the ground that the petitioner could not show prejudice from counsel's alleged failure to tell him of his right to appeal, and the Ninth Circuit denied a certificate of probable cause "in a one-sentence order." 498 U.S. at 430–31. This Court reversed. It concluded that the issue "could be resolved in a different manner from the one followed by the District Court," because "at least two Courts of Appeals have presumed prejudice in this situation." *Id.* at 432. The Court noted that the Ninth Circuit's order "did not cite or analyze this line of authority." *Id.* The standard for a certificate of appealability

is the one that *Lozada* applied. *See Miller-El*, 537 U.S. at 336 (explaining that Congress "codified our standard, announced in *Barefoot v. Estelle*," 463 U.S. 880 (1983)).

The Ninth Circuit has read *Lozada* to mean that "the fact another circuit opposes our view satisfies the standard for obtaining a COA," *Lambright*, 220 F.3d at 1027–28, and it has held that "[e]ven if a question is well settled in our circuit, a constitutional claim is debatable if another circuit has issued a conflicting ruling," *Allen v. Ornoski*, 435 F.3d 946, 951 (9th Cir. 2006). Petitioner made a comparable showing. The Fifth Circuit has upheld a grant of the writ on a claim of the same kind, under the same provision of AEDPA that the district court held to bar relief here. *Perez*, 529 F.3d at 594, 599. The district court addressed *Perez* and found it unpersuasive. App. 17a–18a n.8. No published decision of the Ninth Circuit, so far as petitioner is aware, resolves the question. That court's unpublished decisions have rejected such claims on differing grounds, and one expressly left open whether the claim is cognizable. *Compare Maria*, 704 F. App'x at 644, *with Sadowski*, 742 F. App'x at 313, *and Hawkins*, 572 F. App'x at 480–81. In each of those cases, however, the court of appeals heard the appeal. Here it denied a certificate in an order that cites neither *Perez* nor *Lambright*, both of which petitioner's motion invoked. Ninth Cir. Dkt. 3 at 13–14; App. 1a.

Nor does the district court's alternative ruling justify the denial. The order below does not say that it rests on that ruling, and the ruling is itself debatable even if § 2254(d)(1) is valid, because, as shown in Part I.D, both court-appointed experts allowed for the possibility that methamphetamine was not the sole cause of petitioner's illness. *See Miller-El*, 537 U.S. at 336–38.

A related question is already before the Court. *Berry v. United States*, No. 25-7026 (cert. granted Oct. 13, 2026), which arises from the Eleventh Circuit, asks whether a certificate of appealability should issue when binding circuit precedent resolves an issue against the applicant but another circuit has resolved it in his favor. The Eleventh Circuit denies a certificate in that situation on the ground that "reasonable jurists will follow controlling law." *Hamilton v. Secretary, Florida Department of Corrections*, 793 F.3d 1261, 1266 (11th Cir. 2015) (per curiam) (quotation omitted). This case differs from *Berry* in a respect that favors petitioner, because he is aware of no precedent of the Ninth Circuit that forecloses his position on the first question presented. A decision in *Berry* that a conflict among the circuits makes an issue debatable would call the order below into question. And a decision that binding circuit precedent can justify the denial of a certificate would not resolve this case, where such precedent is absent. *See* 9th Cir. R. 36-3 (providing that unpublished dispositions are not precedent, with exceptions not relevant here). If the Court does not grant plenary review, the petition should be held for *Berry* and resolved in light of that decision.

This Court has reviewed denials of certificates of appealability and, where appropriate, has resolved the underlying legal question in that posture. *See Welch v. United States*, 578 U.S. 120, 127–28, 135 (2016); *Buck*, 580 U.S. at 128. The Court may do the same here. At a minimum, the Court should vacate the order below and remand with instructions to issue a certificate of appealability on the first question presented.

III. The Court Should Decide Whether Section 2254(d)(1) Is Consistent with Article III

The third question warrants review in its own right. Failing that, the petition should be held for *Sanders v. Plappert*, No. 26-5839, which presents the same question.

A. The Question Is Important, Recurring, and Unresolved by This Court

Section 2254(d)(1) limits relief on every federal habeas claim that a state court has rejected on the merits. As construed by this Court, the provision means that "a federal habeas court may not issue the writ simply because that court concludes in its independent judgment that the relevant state-court decision applied clearly established federal law erroneously or incorrectly." *Williams v. Taylor*, 529 U.S. 362, 411 (2000). The Ninth Circuit made the same point in *Bradford*, stating that the statute "precludes the exercise of independent judgment on collateral habeas review." 175 F.4th at 1201.

Whether Congress may impose that constraint on an Article III court is a question this Court has not decided. The Court has applied § 2254(d)(1) many times, and it has described AEDPA as supplying "a constitutionally valid rule of decision." *Brown v. Davenport*, 596 U.S. 118, 127 (2022). Petitioner is aware of no decision of this Court, however, that has addressed an Article III challenge to the provision. *See Crater v. Galaza*, 491 F.3d 1119, 1129 (9th Cir. 2007) (acknowledging that "the Court has not squarely addressed its constitutional validity"); *Sanders v. Plappert*, 168 F.4th 837, 881–82 (6th Cir. 2026) (Stranch, J., dissenting) (stating that this Court "has merely *assumed* [the statute's] constitutionality" and "has never held that it is constitutional") (emphasis in original). *Felker v. Turpin*, 518 U.S. 651 (1996), on which the district court relied, concerned the

statute's limits on second or successive applications and rejected challenges under the Exceptions Clause and the Suspension Clause. *Id.* at 658–64.

Federal judges have disagreed about the question since the statute was enacted. *See, e.g.*, *Lindh v. Murphy*, 96 F.3d 856, 885–90 (7th Cir. 1996) (en banc) (Ripple, J., joined by Rovner, J., dissenting), *rev'd on other grounds*, 521 U.S. 320 (1997); *Irons v. Carey*, 505 F.3d 846, 854–59 (9th Cir. 2007) (Noonan, J., concurring), *overruled on other grounds by Hayward v. Marshall*, 603 F.3d 546, 555 (9th Cir. 2010) (en banc); *Crater v. Galaza*, 508 F.3d 1261, 1261–70 (9th Cir. 2007) (Reinhardt, J., joined by Pregerson, Gould, Paez, and Berzon, JJ., dissenting from denial of rehearing en banc); *Evans v. Thompson*, 524 F.3d 1, 1–5 (1st Cir. 2008) (Lipez, J., joined by Torruella, J., dissenting from denial of rehearing en banc). The disagreement sharpened this year. In *Sanders*, a divided panel of the Sixth Circuit upheld § 2254(d), concluding that "[t]he caselaw and the history show that AEDPA is constitutional." 168 F.4th at 853. Judge Stranch dissented and "would hold that the § 2254(d) standard is unconstitutional." *Id.* at 872 (Stranch, J., dissenting). In her view, the Founders "would have objected to a rule that required federal courts to subject their interpretation of the Constitution, even in a single case, to that of the state courts," because "[d]oing so would undermine the very purpose of lower federal courts—stopping biased state judges from circumventing the Constitution." *Id.* at 873. The Eighth and Ninth Circuits have since reached the same result as the Sixth Circuit majority. *Piper v. Attorney General for the State of South Dakota*, 174 F.4th 1070, 1076 (8th Cir. 2026); *Bradford*, 175 F.4th at 1199–1204; *see also DeBruyn v. Douglas*, 168 F.4th 913, 923–24 (6th Cir.) (following *Sanders*), *cert. denied*, No. 26-382 (U.S. Nov. 9, 2026).

Petitioner acknowledges that every court of appeals to decide the question has upheld the statute. *See, e.g.*, *Cobb v. Thaler*, 682 F.3d 364, 373–77 (5th Cir. 2012); *Evans v. Thompson*, 518 F.3d 1, 4–12 (1st Cir. 2008); *Crater*, 491 F.3d at 1124–30; *Green v. French*, 143 F.3d 865, 874–75 (4th Cir. 1998), *abrogated on other grounds by Williams v. Taylor*, 529 U.S. 362 (2000); *Lindh*, 96 F.3d at 867–74; *see also Sanders*, 168 F.4th at 849 & n.3 (collecting cases). There is no conflict in outcomes, and one is unlikely to arise. *See* Brief of Amici Curiae Former Federal Judges Supporting Petitioner at 2, *Sanders v. Plappert*, No. 26-5839 (U.S. Nov. 13, 2026) (taking no position on the merits but observing that "[a] circuit split is unlikely ever to develop"). Review is nonetheless warranted because the question concerns the constitutionality of an Act of Congress that governs most federal habeas litigation, because only this Court can definitively resolve it, and because the opinions in *Sanders* and *Bradford* have now set out the competing positions in full.

B. Section 2254(d)(1) Raises a Serious Article III Question

Article III vests "[t]he judicial Power of the United States" in this Court and in the inferior courts that Congress establishes. Since *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803), that power has been understood to include "the province and duty of the judicial department to say what the law is" in the cases a court decides. *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024), restated the principle. The Court explained that "the Framers structured the Constitution to allow judges to exercise that judgment independent of influence from the political branches." *Id.* at 385. It also recalled the early understanding that a court whose judgment differed from that of another institution was

"not at liberty to surrender, or to waive it." *Id.* at 386–87 (quoting *United States v. Dickson*, 40 U.S. (15 Pet.) 141, 162 (1841)).

To be sure, *Loper Bright*'s holding rested on the Administrative Procedure Act, and the Court has since explained that the decision "is not applicable 'when a particular statute' mandates deferential review or otherwise 'delegates authority to an agency consistent with constitutional limits.'" *Urias-Orellana v. Bondi*, 607 U.S. 537, 550 n.6 (2026) (quoting *Loper Bright*, 603 U.S. at 413). But *Urias-Orellana* concerned judicial review of an agency determination under the immigration laws. It did not consider whether Congress may direct a federal court to defer to a state court on the meaning of the Constitution in a case within the federal court's jurisdiction. That is the question here, and three features of § 2254(d)(1) make it a serious one.

First, the statute does not withdraw jurisdiction. Congress has authorized the federal courts to decide whether a state prisoner is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a). Having conferred that jurisdiction, Congress has directed in § 2254(d)(1) that the court deny relief even when it concludes that the custody does violate the Constitution, so long as the state court's contrary view was not unreasonable. Congress "has the power (within limits) to tell the courts what classes of cases they may decide," but it may not "prescribe or superintend how they decide those cases." *City of Arlington v. FCC*, 569 U.S. 290, 297 (2013) (citations omitted); *see also Bank Markazi v. Peterson*, 578 U.S. 212, 225 (2016) (stating that Congress "may not usurp a court's power to interpret and apply the law to the circumstances before it") (cleaned up).

Second, the deference runs to state courts on questions of federal constitutional law. Whatever latitude Congress has to assign the interpretation of a statute to the agency that administers it, "[n]either Congress nor any other authority save the American people by amendment may delegate the making of constitutional law." Anthony G. Amsterdam & James S. Liebman, *Loper Bright and the Great Writ*, 56 Colum. Hum. Rts. L. Rev. 54, 54 (2025). The deference is also hard to reconcile with the reasons for creating inferior federal courts, which rested in part on doubts about the reliability of state tribunals. *See* 1 The Records of the Federal Convention of 1787, at 124 (Max Farrand ed., 1911) (statement of James Madison) (referring to "improper Verdicts in State tribunals obtained under the biassed directions of a dependent Judge, or the local prejudices of an undirected jury").

Third, the principal answers given by the courts of appeals do not resolve the difficulty. One is that § 2254(d)(1) limits only the remedy and "simply modifies the preconditions for habeas relief." *Crater*, 491 F.3d at 1125. A rule that tells a court which of two readings of the Constitution must prevail in the case before it, however, operates on the judgment and not merely on the remedy. Another answer is that this Court's direct review of state judgments under 28 U.S.C. § 1257 is unaffected by the statute. *Bradford*, 175 F.4th at 1202. Yet Article III vests the judicial power in the inferior federal courts as well as in this Court, and § 2254(d)(1) constrains this Court too when it reviews a habeas judgment. The courts of appeals have also relied on the history of federal habeas review of state convictions. *See id.* at 1203; *Sanders*, 168 F.4th at 848–54. Before 1996, however, a federal habeas court was required to "exercise its independent judgment when deciding both questions of constitutional law and mixed constitutional questions." *Williams*, 529

U.S. at 400 (opinion of O'Connor, J.). Judge Stranch's dissent addresses the history at length, *Sanders*, 168 F.4th at 872–86 (Stranch, J., dissenting), and the disagreement between the two opinions is itself a reason for this Court's review.

C. This Case Illustrates the Problem, and the Petition Should at a Minimum Be Held for *Sanders v. Plappert*

The third question matters here because of the district court's alternative ruling. On the threshold question whether *Jackson* applies, the magistrate judge gave her own reasons for agreeing with the courts that have found the claim unavailable. App. 17a–18a. But in ruling that petitioner could not prevail even if *Jackson* applies, the court did not decide for itself whether a rational jury could have found petitioner sane. It applied a "double dose of deference" and stated that it "may only review the state court's judgment for objective unreasonableness." *Id.* at 18a–19a (quotation omitted). If petitioner is right on the first question presented and § 2254(d)(1) is invalid, he is entitled to a federal court's independent judgment on that claim.

Petitioner preserved the Article III challenge in each of his district court filings and in his motion for a certificate of appealability. Dkt. 20 at 27–38; Dkt. 31 at 3–6; Dkt. 35 at 2–6; Ninth Cir. Dkt. 3 at 9–13.

The same question is the first question presented in *Sanders v. Plappert*, No. 26-5839 (petition for a writ of certiorari filed Oct. 9, 2026), which asks whether § 2254(d)(1) violates Article III, the separation of powers, or both. If the Court grants review in *Sanders* or in another case presenting the question, petitioner respectfully requests that this petition be held pending that decision and then disposed of as appropriate in light of it.

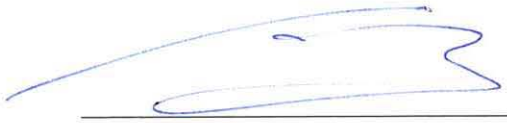
The denial of a certificate of appealability does not prevent that disposition. Although *Bradford* bound the panel below on the merits, a question that a circuit judge has answered in the applicant's favor in a reasoned opinion, and that is the subject of a pending petition in this Court, is "adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327 (quotation omitted).

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the petition should be held pending the decision in *Berry v. United States*, No. 25-7026, and the disposition of *Sanders v. Plappert*, No. 26-5839, and then disposed of as appropriate.

Dated: November 20, 2026

Respectfully submitted,



ALEXIS HALLER
Counsel of Record
Attorney for Petitioner,
Forrest Henry Gilliam