No. 23-682

In the Supreme Court of the United States

STATE OF ALABAMA,

Petitioner,

v.

MARCUS BERNARD WILLIAMS,

Respondent.

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

BRIEF OF THE COMMONWEALTH OF VIRGINIA AND 17 OTHER STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

JASON S. MIYARES
Attorney General of Virginia

KEVIN M. GALLAGHER
Deputy Solicitor General

RICK W. EBERSTADT
Assistant Solicitor General

ANDREW N. FERGUSON
Solicitor General
Counsel of Record

ERIKA L. MALEY
Principal Deputy Solicitor General

OFFICE OF THE VIRGINIA ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
aferguson@oag.state.va.us

Counsel for Amicus Curiae *the Commonwealth of Virginia*

(Additional Counsel listed on Signature Page)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTERESTS OF *AMICI CURIAE* [1]

Amici curiae are the Commonwealth of Virginia, the State of Alaska, the State of Florida, the State of Idaho, the State of Indiana, the State of Iowa, the State of Kansas, the Commonwealth of Kentucky, the State of Louisiana, the State of Mississippi, the State of Missouri, the State of Montana, the State of Nebraska, the State of South Carolina, the State of South Dakota, the State of Texas, the State of Utah, and the State of West Virginia (collectively, the *Amici* States). *Amici* States submit this brief in support of the State of Alabama's petition for a writ of certiorari.

The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") provides limited federal habeas review of a state prisoner's claims. Those limits are especially strict whenever a state court has already decided the prisoner's claims on the merits. This rule of deference to state courts respects our federal structure by protecting States' sovereign authority to adjudicate violations of their criminal laws through their own legal processes. The Eleventh Circuit, however, expanded the reach of federal habeas review by narrowing the circumstances in which a claim has been "adjudicated on the merits in State court proceedings." 28 U.S.C. § 2254(d).

Amici States have a significant interest in this case, as federal habeas review impinges upon state sovereignty. AEDPA deference requires federal courts to overturn state criminal decisions only sparingly and with great care. States have a strong interest in the finality of their own criminal convictions, and in

---

[1] Under Supreme Court Rule 37.2(a), *amici curiae* notified counsel of record of their intent to file this brief at least 10 days prior to the due date for the brief.

their independent authority to punish criminal offenders. Liberality of federal habeas review undermines core considerations of federalism.

Accordingly, *Amici* States seek to ensure that federal courts do not broaden the scope of the federal habeas statute by refusing deference to a state appellate court's procedural affirmance of a trial court's merits opinion. In addition to contradicting the text of AEDPA, that approach also ignores the realities of state habeas dockets, and would require state appellate courts to change their method of writing and affirming judgments. States have an interest in the independence of their own judicial systems and ask this Court to protect that interest here.

INTRODUCTION AND SUMMARY OF ARGUMENT

Federal habeas review threads a narrow needle between the proper concurrent roles of federal authority and state sovereignty. For that reason, the "availability of habeas relief" to review state-court convictions is "narrowly circumscribed" to "respect our system of dual sovereignty." *Shinn* v. *Ramirez*, 596 U.S. 366, 375 (2022). Here, the Eleventh Circuit exceeded Congress's limits on federal habeas review by ruling that a state trial court merits decision was not entitled to AEDPA deference when a state appellate court had affirmed that merits decision on procedural grounds. Whether the federal reviewing court owes the state merits decision AEDPA deference under those circumstances is a question that has divided the federal courts of appeals. As Judge Easterbrook observed, it is a question that "belongs on the Supreme Court's plate." *Thomas* v. *Clements*, 797 F.3d 445, 446 (7th Cir. 2015) (Easterbrook, J., concurring in the denial of rehearing en banc); see also Pet. 22–25.

Amici States write separately to emphasize the importance of this issue to the States. All of the *Amici* States have a strong interest in protecting their authority to adjudicate their own criminal proceedings—authority they enjoyed before entering the Constitution, and which they did not surrender when they entered the compact. States have a fundamental interest in the finality of their own criminal convictions. This finality "is essential to both the retributive and deterrent functions of criminal law," *Shinn*, 596 U.S. at 391 (cleaned up), and is critical to the important state interest in caring for the victims of crime. Federal habeas intervention thus imposes significant costs on state criminal justice systems by "disturb[ing] the State's significant interest in repose for concluded litigation," *Harrington* v. *Richter*, 562 U.S. 86, 103 (2011) (quotation marks omitted), and must be applied sparingly.

In light of those principles, AEDPA deference to state merits decisions must apply when a state court decides a claim on the merits and the state appellate court does not reverse that decision. "When two state courts give different reasons, and the second (a court of appeals or state supreme court) does not disagree with the first (a trial court or intermediate appellate court), there is little reason to treat the first as having been obliterated." *Thomas*, 797 F.3d at 446 (Easterbrook, J., concurring in denial of rehearing en banc). Indeed, "[r]espect for the state judiciary requires considering both." *Ibid.* The Eleventh Circuit did not apply that deference here and its lack of deference was extremely consequential—a decades-old conviction for an infamous crime was reopened by the application of the wrong legal standard.

The Eleventh Circuit was incorrect to conclude that a state appellate court intends to obviate the trial court's merits ruling when it affirms on procedural grounds. State appellate courts face "very heavy" workloads, and their opinions "must be read with that factor in mind." *Johnson* v. *Williams*, 568 U.S. 289, 300 (2013). Many such courts that affirm a judgment will do so on the simplest available grounds—including procedural grounds—even when they would agree that other grounds (such as the merits) are also sufficient. And a federal court's assumption otherwise would, in practice, require state appellate courts to alter their opinion writing by unnecessarily including an additional merits ruling beyond the often-simpler procedural affirmance.

This Court should grant the petition and reverse to protect the States from this federal intrusion.

BACKGROUND

I. Williams's crimes and conviction

Shortly after midnight on November 6, 1996, Williams broke into the locked home of Melanie Dawn Rowell, where Rowell (a single mother) and her two young children were sleeping. *Williams* v. *State*, 795 So. 2d 753, 761 (Ala. Crim. App. 1999). After grabbing a knife from the kitchen countertop, Williams climbed the stairs, taking off his pants along the way. *Ibid.* He peeked into the children's room to ensure that they were asleep before he entered Rowell's room. *Ibid.*

Williams climbed on top of the still-sleeping Rowell and began to take off her clothes. *Williams*, 795 So. 2d at 761. Rowell woke up and began to scream, so Williams put his hand over her mouth to silence her. *Id.* at 762. When this failed to prevent her efforts to escape him, Williams put his hands around her neck and

strangled her to death. *Ibid.* He then proceeded to have sex with her lifeless body for "15 to 20 minutes." *Ibid.* Afterward he stole her purse. *Ibid.*

Less than three weeks later, in the early morning hours, Williams decided to break into the house of a woman named Lottie Turner. App. 160 n.9. Williams opened her bedroom window, took his clothes off, and entered her bedroom where she was sleeping. *Ibid.* Naked, he climbed into her bed and got on top of her. *Ibid.* When she woke up and struggled to escape, he held her down. *Ibid.* Williams repeatedly told Turner that "all I want[] is sex." *Ibid.* He fondled her breasts and rubbed his penis on her while he held her in the bed against her will. *Ibid.* The ordeal did not end until 6:30 a.m. when he finally decided to leave. *Ibid.*

The police caught Williams in response to his sexual assault of Turner, at which point he also confessed that he had killed Rowell. App. 39. He was subsequently tried for Rowell's rape and murder. App. 5, 160 n.9. Because he faced "overwhelming evidence" of his guilt, his defense "argued only that, although he intended to rape Ms. Rowell, he did not intend to kill her." App. 39. The jury convicted Williams of capital murder for intentionally causing Ms. Rowell's death during a rape or attempted rape in violation of Alabama Code § 13A-5-40(a)(3). App. 39–40.

Williams's penalty phase proceeded the next day with the same jury. App. 40. Williams's counsel elicited testimony as to Williams's difficult upbringing and unstable home life. App. 40–42. The jury did not learn about Williams's sexual assault of Turner weeks after he had raped and murdered Rowell. *Ibid.* Nonetheless, the jury recommended that Williams be sentenced to death. App. 42. The trial court then heard

Williams testify about his remorse, and heard Rowell's mother testify about the impact of Rowell's murder on the family, including her young children. *Ibid.* The trial court found that the aggravating factor of Williams's murder while committing a rape outweighed the other mitigating factors, and sentenced Williams to death. *Ibid.* The Alabama Court of Appeals affirmed the conviction and sentence, as did the Alabama Supreme Court. See *Williams* v. *State*, 795 So. 2d 753 (Ala. Crim. App. 1999); *Ex Parte Williams*, 795 So. 2d 785 (2001). This Court denied certiorari review. See *Williams* v. *Alabama*, 535 U.S. 900 (2001).

II. Williams's state and federal postconviction proceedings

Williams sought state habeas review, raising (among other claims) the claim that he received ineffective assistance of counsel during his penalty phase when his counsel had failed to conduct a reasonable investigation about his history of sexual abuse. App. 591–606. The state trial court denied Williams's claim on the merits in a lengthy opinion. App. 555–608.

The Alabama Court of Appeals affirmed the judgment of the state trial court in an unpublished opinion. App. 521–54. That court did not address the merits of Williams's claims; instead, it held that Williams's ineffective assistance of counsel claims were "procedurally barred from review because Williams raised allegations of ineffective assistance of counsel on direct appeal and those claims were addressed by this Court and by the Alabama Supreme Court on certiorari review." App. 540–41 (citing Rule 32.2(a)(4),

Ala. R. Crim. P.).[2] The Alabama Supreme Court denied certiorari. Pet. 12.

Williams subsequently filed a federal habeas petition in the U.S. District Court for the Northern District of Alabama, pursuant to 28 U.S.C. § 2254. His petition raised eight claims involving ineffective assistance of counsel during the penalty phase. App. 9–10 n.2. The district court denied Williams's petition. App. 231. The court held that it owed deference under 28 U.S.C. § 2254(d) to the state trial court's Rule 32 decision on the ineffective assistance of counsel claims. App. 231. Under that deferential standard of review, the district court concluded that the state trial court's rejection of Williams's claims had not been contrary to, or an unreasonable application of, this Court's precedent in *Strickland* v. *Washington*, 466 U.S. 668 (1984).

Williams appealed, and the United States Court of Appeals for the Eleventh Circuit reversed in 2015. The court observed that the state trial court had indeed adjudicated the question "on the merits," but held that federal courts nonetheless did not owe deference to that merits decision because the state court of appeals had affirmed on different, jurisdictional grounds. App. 234. Citing this Court's decision in *Harrington* v. *Richter*, 562 U.S. 86 (2011), the Eleventh Circuit held that a state court's merits decision is not owed deference when the state appellate court decides that those claims were "procedurally barred"; it also held that the state court of appeals had "rejected" the trial court merits decision "on the basis of state law"

---

[2] Although the Alabama Court of Appeals considered this procedural bar to be jurisdictional, the Alabama Supreme Court later clarified that Rule 32's procedural bar was not jurisdictional. *Ex parte Clemons*, 55 So. 3d 348, 353 (Ala. 2007).

when the former held that the petition was jurisdictionally barred, even though the State's highest court later explained that the bar was procedural rather than jurisdictional. App. 234. AEDPA deference would not be due, the Eleventh Circuit held, unless the state court of appeals affirmatively made "alternative, but consistent, merits determinations." App. 235.

The Eleventh Circuit ultimately remanded to the federal district court to decide whether to hold a hearing on Williams's claim that his lawyer had failed to investigate sexual abuse that Williams had suffered as a child. App. 240. On remand, the federal district court held a hearing on Williams's claim. App. 4. Initially, that court again denied habeas relief, holding that even if trial counsel had been unreasonable in failing to investigate Williams's childhood sexual abuse, Williams was unable to show prejudice because the prosecutor would have countered by introducing evidence of Williams's sexual assault of Turner. App. 216, 219 n.9. But then, on a later motion, the district court reversed itself and granted Williams habeas relief on a de novo review. App. 11 n.3.

In July 2023, a divided Eleventh Circuit panel affirmed the federal district court's second decision. App. 3–27. According the state trial court's merits determination no deference, the majority held that Williams's counsel had unreasonably failed to investigate Williams's childhood sexual abuse before the penalty phase of his trial for the murder and rape of Rowell. App. 16. The majority also held that this failure had prejudiced Williams, and thus affirmed the district court's grant of habeas corpus relief. App. 27. The dissent responded that Williams's relatively weak mitigating evidence of his childhood abuse did not

outweigh the brutality of his crimes, the undisputed nature of the evidence that he committed them, the fact that the mitigating evidence might well have harmed rather than helped Williams's case, and the likelihood that the State would have informed the jury that Williams had subsequently sexually assaulted Turner in a similar manner. App. 27–34.

ARGUMENT

I. Federal habeas review undermines state sovereignty, and must be applied only sparingly to comport with principles of federalism

Federal habeas review overrides state court criminal-law determinations, and thus inherently undermines state sovereignty. "From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States." *Kansas* v. *Garcia*, 140 S. Ct. 791, 806 (2020). The power to convict and punish criminals lies at the heart of the States' "residuary and inviolable sovereignty." The Federalist No. 39, p. 245 (C. Rossiter ed. 1961) (J. Madison). Because federal habeas review "overrides the States' core power to enforce criminal law," *Shinn* v. *Ramirez*, 596 U.S. 366, 376 (2022), it "'entails significant costs'" on our federal system and "'intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority,'" *Davila* v. *Davis*, 582 U.S. 521, 537 (2017) (quoting *Engle* v. *Isaac*, 456 U.S. 107 (1982), and *Harrington* v. *Richter*, 562 U.S. 86, 103 (2011)). Because of the affront that federal habeas review poses to federalism, it must be applied sparingly.

1. Broad federal habeas review impinges directly upon the strong state interest in criminal adjudication. This Court has been "careful to limit the scope of

federal intrusion into state criminal adjudications" because it recognizes "the States' interest in the integrity of their criminal and collateral proceedings." *Williams* v. *Taylor*, 529 U.S. 420, 436 (2000); see also *Hill* v. *McDonough*, 547 U.S. 573, 584 (2006) ("[E]quity must be sensitive to the State's strong interest in enforcing its criminal judgments without undue interference from the federal courts."). Federal habeas review runs headlong into States' strong interests in their own criminal adjudications in several ways.

First, States have a fundamental interest in the finality of their criminal convictions. This Court has recognized criminal finality as an "important value[]," *Stutson* v. *United States*, 516 U.S. 193, 197 (1996), that is "essential to both the retributive and deterrent functions of criminal law," *Shinn*, 596 U.S. at 391 (cleaned up). Additionally, finality "enhances the quality of judging" and serves "to preserve the federal balance." *Calderon* v. *Thompson*, 523 U.S. 538, 555 (1998). Thus, finality serves "goals important to our system of criminal justice and to federalism." *Kuhlmann* v. *Wilson*, 477 U.S. 436, 453 n.16 (1986); see also *Coleman* v. *Thompson*, 501 U.S. 722, 746 (1991) (there are "strong state interests in the finality of its criminal litigation"); *Lockhart* v. *Fretwell*, 506 U.S. 364, 372 (1993) (maintaining "a respect for the States' strong interest in the finality of criminal convictions"). Put simply, "finality of state convictions is a *state* interest, not a federal one." *Danforth* v. *Minnesota*, 552 U.S. 264, 280 (2008) (emphasis in original).

Federal habeas review undermines this interest by attacking that finality. The States have the sovereign power to enforce "societal norms through criminal

law." *Calderon*, 523 U.S. at 556 (quotation marks omitted). Yet federal "writs of habeas corpus frequently cost society the right to punish admitted offenders." *Engle*, 456 U.S. at 127. This attack on the finality of state criminal convictions also harms state interests in protecting victims. "Only with real finality can the victims of crime move forward knowing the moral judgment will be carried out." *Calderon*, 523 U.S. at 556. "To unsettle these expectations is to inflict a profound injury to the powerful and legitimate interest in punishing the guilty, an interest shared by the State and the victims of crime alike." *Ibid.* (quotation marks and citation omitted).

Second, federal habeas intervention also imposes significant financial and institutional costs on state criminal justice systems. Federal habeas review "disturbs the State's significant interest in repose for concluded litigation, [and] denies society the right to punish some admitted offenders." *Davila*, 582 U.S. at 537 (quotation marks omitted). It also undermines the States' investment in their criminal trials. See *ibid.* (federal habeas "degrades the prominence of the [State] trial" (quotation marks omitted)). "If the state trial is merely a tryout on the road to federal habeas relief, that detracts from the perception of the trial of a criminal case in state court as a decisive and portentous event." *Shinn*, 596 U.S. at 377 (citation and quotation marks omitted) (cleaned up). Further, based on the "[p]assage of time, erosion of memory, and dispersion of witnesses," the federal habeas writ "in practice" may "reward the accused with complete freedom from prosecution" regardless of guilt. *Engle*, 456 U.S. at 127–28. Therefore, the cost that federal habeas imposes on States' law enforcement institutions is substantial.

2. Given the intrusions onto state sovereignty that federal habeas review necessarily poses, Congress strictly limited federal review of final state court judgments. Congress passed AEDPA "to further the principles of comity, finality, and federalism." *Williams*, 529 U.S. at 436. And this Court has recognized that federal habeas review cannot serve as "a substitute for ordinary error correction through appeal." *Harrington*, 562 U.S. at 102–03. The writ of habeas corpus is an "extraordinary remedy" that guards only against "extreme malfunctions in the state criminal justice systems." *Id.* at 102. "To ensure that federal habeas corpus retains its narrow role, AEDPA imposes several limits on habeas relief." *Shinn*, 596 U.S. at 377.

As relevant here, AEDPA provides that "[a]n 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 "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." 28 U.S.C. § 2254(d). "This standard," this Court has repeatedly told lower courts, "is difficult to meet." *Metrish* v. *Lancaster*, 569 U.S. 351, 357–58 (2013) (quotation marks omitted). "Clearly established law" signifies "the holdings, as opposed to the dicta, of this Court's decisions." *Williams*, 529 U.S. at 412. And an "unreasonable application of those holdings must be objectively unreasonable, not merely wrong; even clear error will not suffice." *White* v. *Woodall*, 572 U.S. 415, 419 (2014) (cleaned up). Rather, "[a]s a condition for obtaining habeas corpus from a federal court, a state prisoner must show that

the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

This standard is difficult to meet "because it was meant to be." *Harrington*, 562 U.S. at 102. This Court repeatedly has affirmed that "the States possess sovereignty concurrent with that of the Federal Government, subject only to limitations imposed by the Supremacy Clause," and that "this system of dual sovereignty" requires that "state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Burt* v. *Titlow*, 571 U.S. 12, 19 (2013) (cleaned up) (quoting *Tafflin* v. *Levitt*, 493 U.S. 455, 458 (1990)). Section 2254(d) was "designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions." *Harrington*, 562 U.S. at 103. It therefore limits federal habeas authority only to those "cases where there is no possibility fairminded jurists could disagree that the state court's decision conflicts with this Court's precedents," but it "goes no further." *Id.* at 102; see also *ibid.* (Section 2254(d) "stops short of imposing a complete bar on federal-court relitigation of claims already rejected in state proceedings"). And the reasons for treating state court merits determination this way "are familiar": federal habeas review "frustrates both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights," "disturbs the State's significant interest in repose for concluded litigation," "denies society the right to punish some admitted offenders," and "intrudes on state sovereignty to a degree matched by few exercises of

federal judicial authority." *Davila*, 582 U.S. at 537 (quotation marks omitted). The Eleventh Circuit's ruling below was contrary to these critical principles.

II. AEDPA deference is required when state appellate courts do not reverse prior merits decisions

Despite these clear principles, the Eleventh Circuit held that federal courts do not owe deference under Section 2254(d) to state trial court merits determinations when a state appellate court later affirmed the judgment of the state trial court on a different ground. That decision violates this Court's precedents and the plain text of AEDPA, and exacerbates a circuit split. Whether "the first in a sequence of state-court decisions should be ignored has divided the courts of appeals," and so the subject "belongs on [this Court's] plate." *Thomas* v. *Clements*, 797 F.3d 445, 446 (7th Cir. 2015) (Easterbrook, J., concurring in the denial of rehearing en banc).

The Eleventh Circuit below decided that when a state court of appeals affirmed a merits decision on procedural grounds, federal courts are no longer required to defer to the state trial court's merits decision. That approach turns AEDPA deference on its head. "When two state courts give different reasons, and the second (a court of appeals or state supreme court) does not disagree with the first (a trial court or intermediate appellate court), there is little reason to treat the first as having been obliterated. Respect for the state judiciary requires considering both." *Thomas*, 797 F.3d at 446 (Easterbrook, J.). When a state appellate court affirms the trial court's judgment, principles of federalism require that the federal

habeas court apply AEDPA deference rather than seek an end-run around state sovereignty.

AEDPA's plain text compels this result. The statute directs federal courts to defer to state courts "with respect to any claim that was adjudicated on the merits in State court proceedings." 28 U.S.C. § 2254(d). When a trial court reaches a decision on the merits, and the state appellate courts do not reverse that decision, the merits adjudication remains in place regardless of whether it was affirmed on other grounds. The claim was, quite literally, "adjudicated on the merits in State court proceedings." *Ibid.*; see also *Wiggins* v. *Smith*, 539 U.S. 510, 534 (2003) ("[O]ur review is not circumscribed by a state court conclusion with respect to prejudice, as *neither of the state courts below* reached this prong of the *Strickland* analysis." (emphasis added)).

Yet despite the plain text of the statute, federal courts of appeals are divided on whether AEDPA deference applies to state merits decisions that are affirmed on other grounds. The Fifth Circuit has held that a state trial court's merits decision must receive AEDPA deference when the higher state courts did not rule on the merits. *Loden* v. *McCarty*, 778 F.3d 484, 495 (5th Cir. 2015). The Sixth, Seventh, and Ninth Circuits, by contrast, have held that only the last-in-time state court opinion that included reasoning is owed AEDPA deference. See *Barton* v. *Warden, Southern Ohio Correctional Facility*, 786 F.3d 450, 462 (6th Cir. 2015); *Thomas* v. *Clements*, 789 F.3d 760, 766–68 (7th Cir. 2015); *Barker* v. *Fleming*, 423 F.3d 1085, 1092–93 (9th Cir. 2005). The Third, and now the Eleventh, Circuits seem to oscillate between holding that a state court's procedural affirmance

obviates any need to defer to the prior merits decision, see App. 224; *Thomas* v. *Horn*, 570 F.3d 105, 115 (3d Cir. 2009), and holding that deference is due to a state court's merits ruling so long as nothing in the appellate court's ruling undermined the ruling below, see *Collins* v. *Secretary of Pa. Dep't of Corr.*, 742 F.3d 528, 545–46 (3d Cir. 2014); *Loggins* v. *Thomas*, 654 F.3d 1204, 1217–18 (11th Cir. 2011). This Court should settle the dispute here.

The dispute is far from academic. As the Eleventh Circuit recognized, "[a]s is often the case when considering a state prisoner's habeas petition, the applicable standard of review is of critical importance." App. 232. In the normal course, strict AEDPA deference would have applied to the state court merits determination. See pp.12–14, *supra*. And, because Williams brought ineffective assistance of counsel claims, federal court review would have been *doubly* deferential to the state court determination. As this Court has held, "[e]stablishing that a state court's application of *Strickland* was unreasonable under § 2254(d) is all the more difficult" because "[t]he standards created by *Strickland* and § 2254 are both highly deferential and when the two apply in tandem, review is doubly so." *Harrington*, 562 U.S. at 105 (quotation marks omitted). A federal court's analysis would be informed by the "general" nature of *Strickland*'s standard: general rules offer courts greater "leeway . . . in reaching outcomes in case-by-case determinations." *Yarborough* v. *Alvarado*, 541 U.S. 652, 664 (2004); see also *Harrington*, 562 U.S. at 105 ("The *Strickland* standard is a general one, so the range of reasonable applications is substantial."). When § 2254(d) applies to a *Strickland* claim, "the question is not whether counsel's actions were reasonable"; instead, "[t]he question is whether

there is any reasonable argument that counsel satisfied *Strickland*'s deferential standard." *Harrington*, 562 U.S. at 105.

Instead, once the Eleventh Circuit determined that Section 2254(d) did not apply, the district court was free to review the claim de novo. App. 4. Rather than apply the proper "doubly deferential" standard, the federal court came to its own determination of the merits of Williams's claim. Far from showing "respect for the state court judgment," App. 236, the Eleventh Circuit invited the district court to undermine and reopen a decades-old conviction. This was improper. As this Court recently reminded lower courts, "a federal habeas court may *never* needlessly prolong a habeas case." *Shinn*, 596 U.S. at 390 (quotation marks omitted).

The Eleventh Circuit below failed to apply the deference that AEDPA requires and thereby unreasonably displaced strong state interests. Because federal habeas review undermines a State's sovereign authority over its own criminal adjudication, courts must apply it sparingly; overbroad use of federal habeas review subverts the dual sovereignty that federalism is meant to protect. Those principles, bolstered by the text of AEDPA, require genuine AEDPA deference here—deference that the Eleventh Circuit refused to apply below.

III. Adoption of the Eleventh Circuit's rule seriously harms state court practice and procedure

The Eleventh Circuit's rule also ignores practical considerations specific to state courts. It is incorrect to assume that state appellate courts disagree with merits decisions when they affirm judgments on procedural grounds. A federal assumption that a

procedural affirmance signals disagreement with an underlying merits determination would require state courts of appeals to alter their opinion writing process to reach the same result by different means—an unnecessary and improper cost imposed on state courts.

Many state appellate courts face a heavy caseload and will affirm on the simplest grounds in the interest of judicial economy. As this Court has observed, "the caseloads shouldered by many state appellate courts are very heavy, and the opinions issued by these courts must be read with that factor in mind." *Johnson* v. *Williams*, 568 U.S. 289, 300 (2013). Moreover, "there are instances in which a state court may simply regard a claim as too insubstantial to merit discussion," and some state courts have "expressly stated that [they have] no obligation to address claims that lack arguable merit." *Id.* at 299. It is unreasonable for a federal habeas court to assume that a state court's procedural affirmance implicitly overrules the prior merits determination when the state court said nothing disagreeing with that determination or even calling it into question.

Thus, federal courts should not interpret a state appellate procedural affirmance as if "it disagreed with or meant to discredit" the merits determination. *Hammond* v. *Hall*, 586 F.3d 1289, 1331 (11th Cir. 2009). All that a federal habeas court should infer from such an affirmance is that the state court "believed that was the easier route," rather than that it "disagreed with or meant to discredit the different route the trial court took to the same destination." *Ibid.*

If federal courts assume otherwise, state appellate courts in practice will be forced to change their

opinion writing to assuage federal courts—an improper federal intrusion into the state judiciary. State courts that currently affirm merits decisions on the simplest possible grounds would be forced instead to add a new merits section to such opinions simply to mollify federal habeas courts. But "federal courts have no authority to impose mandatory opinion-writing standards on state courts." *Johnson*, 568 U.S. at 300; see also *Coleman* v. *Thompson*, 501 U.S. 722, 739 (1991) ("[W]e have no power to tell state courts how they must write their opinions."). A federal court undermines the state-federal comity that AEDPA is intended to protect by denying deference to a state trial court holding that no state court ever overruled.

It is unreasonable and incorrect for federal courts to assume that a procedural affirmance is intended to obviate a prior merits ruling. Federal courts should not force state courts to alter their manner of explaining their case adjudications based on this erroneous assumption.

CONCLUSION

This Court should grant the petition.

January 25, 2024

Respectfully submitted,

JASON S. MIYARES
Attorney General
of Virginia

ANDREW N. FERGUSON
Solicitor General
Counsel of Record

KEVIN M. GALLAGHER
Deputy Solicitor
General

ERIKA L. MALEY
Principal Deputy Solicitor
General

RICK W. EBERSTADT
Assistant Solicitor
General

OFFICE OF THE VIRGINIA
ATTORNEY GENERAL
202 North Ninth Street
Richmond, Virginia 23219
(804) 786-2071
aferguson@oag.state.va.us

Counsel for Amicus Curiae *the Commonwealth of Virginia*

Counsel for Additional Amici *States*

TREG TAYLOR
Attorney General
State of Alaska

ASHLEY MOODY
Attorney General
State of Florida

RAÚL R. LABRADOR
Attorney General
State of Idaho

THEODORE E. ROKITA
Attorney General
State of Indiana

BRENNA BIRD
Attorney General
State of Iowa

KRIS KOBACH
Attorney General
State of Kansas

RUSSELL COLEMAN
Attorney General
Commw. of Kentucky

LIZ MURRILL
Attorney General
State of Louisiana

LYNN FITCH
Attorney General
State of Mississippi

ANDREW BAILEY
Attorney General
State of Missouri

AUSTIN KNUDSEN
Attorney General
State of Montana

MICHAEL T. HILGERS
Attorney General
State of Nebraska

ALAN WILSON
Attorney General
State of South Carolina

MARTY JACKLEY
Attorney General
State of South Dakota

KEN PAXTON
Attorney General
State of Texas

SEAN D. REYES
Attorney General
State of Utah

PATRICK MORRISEY
Attorney General
State of West Virginia