No. 11-465

In the
Supreme Court of the United States

DEBORAH K. JOHNSON, Acting Warden,
PETITIONER,
v.
TARA SHENEVA WILLIAMS,
RESPONDENT.

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

BRIEF OF *AMICI CURIAE* STATES OF ILLINOIS, ALABAMA, ALASKA, ARIZONA, COLORADO, DELAWARE, FLORIDA, GEORGIA, HAWAII, IDAHO, INDIANA, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MISSISSIPPI, MONTANA, NEW MEXICO, NORTH DAKOTA, OKLAHOMA, OREGON, RHODE ISLAND, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, TEXAS, UTAH, VIRGINIA, WASHINGTON, WISCONSIN, AND WYOMING IN SUPPORT OF PETITIONER

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INTEREST OF THE *AMICI CURIAE*

The States have an interest in the orderly implementation of their criminal laws and in the finality of their courts' criminal judgments. Compliance with § 2254(d) serves these important interests.

STATEMENT

In her direct appeal from her murder conviction, respondent argued that the trial court erred in discharging a juror during deliberations on the ground that the juror was "biased against the prosecution." Pet. App. 88a, 96a, 103a. The California Court of Appeal sustained respondent's conviction. That court held that the trial court did not err under California law, which allows the removal of a juror who "upon * * * good cause shown to the court is found to be unable to perform [her] duty." Pet. App. 103a (internal quotations omitted, brackets in original). Observing that "actual bias" is "good cause" to dismiss a juror under California law, the court relied on state and federal constitutional standards to hold that the record supported the trial court's finding of juror bias. Pet. App. 104a. Although the state appellate court's opinion did not expressly address respondent's claim that the juror's discharge violated the Sixth Amendment, respondent did not file a rehearing petition, as California rules contemplate. See Cal. R. Ct. 8.268. The California Supreme Court denied respondent's request for further appellate review. Pet. App. 85a.

After unsuccessfully pursuing her juror-removal claim in a state habeas petition, Pet. App. 79a-84a,

respondent advanced this same claim on federal habeas, and while the district court denied her petition, the Ninth Circuit reversed and granted the writ, Pet. App. 53a, 58a, 67a-70a. As relevant here, the Ninth Circuit declined to apply § 2254(d) deference to the state court's decision on direct appeal, on the theory that the California Court of Appeal must have "overlooked or disregarded" respondent's federal juror-removal claim. Pet. App. 24a. The Ninth Circuit acknowledged this Court's recent holding that § 2254(d) applies even "'when a state court's order is unaccompanied by an opinion explaining the reasons relief has been denied,'" but distinguished that decision because here the state court "provided a lengthy, reasoned explanation for its denial of Williams's appeal," and "none of those reasons addressed her Sixth Amendment claim." Pet. App. 23a (quoting *Harrington v. Richter*, 131 S. Ct. 770, 784-785 (2011)).

SUMMARY OF ARGUMENT

Congress enacted AEDPA "to further the principles of comity, finality, and federalism." *Williams v. Taylor*, 529 U.S. 420, 436 (2000). To that end, the statute "leaves primary responsibility [for resolving state prisoners' constitutional claims] with the state courts," *Cullen v. Pinholster*, 131 S. Ct. 1388, 1399 (2011) (internal quotation marks omitted), and "demands that state-court decisions be given the benefit of the doubt," *Woodford v. Visciotti*, 537 U.S. 19, 24 (2002) (*per curiam*). The Ninth Circuit's readiness to attribute to the state court carelessness (at best) or bad faith (at worst) is plainly inconsistent with the "vital relation of mutual respect and common purpose existing between

the States and the federal courts," *Williams*, 529 U.S. at 436, which recognizes that "[s]tate courts are coequal parts of our national judicial system and give serious attention to their responsibilities for enforcing the commands of the Constitution," *Sawyer v. Smith*, 497 U.S. 227, 241 (1990).

Moreover, the Ninth Circuit's approach creates serious practical problems for both federal and state courts. It requires busy federal judges to engage in often complicated, time-consuming, and ultimately non-binding comparisons of state and federal law. And because prisoners are rewarded with *de novo* review if a state court "overlooks" a federal claim, the Ninth Circuit's rule encourages prisoners to obscure their federal claims in state courts, and discourages them from providing state courts an opportunity to correct any mistakes, including through a petition for rehearing. Further, by subjecting a state-court decision to *de novo* review when it provides some explanation, but affording that decision deference when the state court says nothing at all, the Ninth Circuit's rule unfairly penalizes state courts for issuing reasoned decisions.

Finally, the decision below suffers from serious doctrinal failings. To avoid § 2254(d) deference, the Ninth Circuit relied heavily on select language from *Richter*, but the court misread that decision, which squarely holds that § 2254(d) does not "requir[e] a statement of reasons" for a state court's rejection of a federal claim. 131 S. Ct. at 784. And the Ninth Circuit adopted a rule that cannot be reconciled with the structure and purpose of AEDPA, which, unless the

state court has expressly declined to resolve a clearly presented federal claim, presents federal courts with a choice between two options: they must either afford § 2254(d) deference or apply the procedural default doctrine. For all these reasons, the judgment below should be reversed.

ARGUMENT

The question before the Court is what to infer from silence in a state court decision. For several reasons—in addition to those ably presented in petitioner's brief—federal courts must presume from silence that the state court recognized but summarily rejected a criminal defendant's federal claim, not, as the Ninth Circuit held, that the court "overlooked" or "disregarded" it.

1. The Ninth Circuit's rule infers from silence that a state court either intentionally "disregarded" or carelessly "overlooked" a clearly presented federal claim. Pet. App. 24a. More than this, the ruling below assumes that state courts cannot be trusted to correct their own errors, even when such missteps are brought to their attention. This holding threatens the "vital relation of mutual respect and common purpose existing between the States and the federal courts." *Williams*, 529 U.S. at 436. And it disregards the long-held understanding that state courts faithfully vindicate federal constitutional rights.

a. "'[S]tate courts have the solemn responsibility equally with the federal courts' to safeguard constitutional rights." *Trainor v. Hernandez*, 431 U.S. 434, 443 (1977) (quoting *Steffel v. Thompson*, 415 U.S.

452, 460-461 (1974)); see also *Stone v. Powell*, 428 U.S. 465, 493 n.35 (1976) ("State courts, like federal courts, have a constitutional obligation to safeguard personal liberties and to uphold federal law."); U.S. Const. art. VI (declaring that "all * * * judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution," and that "the Judges in every State shall be bound" by "the supreme Law of the Land"). Accordingly, this Court has long recognized that, as "coequal parts of our national judicial system," state courts "give serious attention to their responsibilities for enforcing the commands of the Constitution." *Sawyer*, 497 U.S. at 241. And the Court has rejected, as "stem[ming] from a basic mistrust of the state courts as fair and competent forums for the adjudication of federal constitutional rights," "the view that [*de novo*] federal habeas corpus review [of state convictions] is necessary to effectuate [constitutional rights]." *Stone*, 428 U.S. at 493 n.35. In short, since long before AEDPA, this Court has been "unwilling to assume * * * a general lack of appropriate sensitivity to constitutional rights in the trial and appellate courts of the several States." *Ibid.*; see also *Allen v. McCurry*, 449 U.S. 90, 105 (1980) (noting *Stone*'s "emphatic reaffirmation * * * of the constitutional obligation of the state courts to uphold federal law, and its expression of confidence in their ability to do so").

The Ninth Circuit's assumption that a state court "either overlooked or disregarded" a federal claim, Pet. App. 24a, fails to afford even "[m]inimal respect for the state processes," which necessarily "precludes any

presumption that the state courts will not safeguard federal constitutional rights," *Middlesex County Ethics Comm. v. Garden State Bar Ass'n*, 457 U.S. 423, 431 (1982) (emphasis in original). Rather, proper respect for the competence and integrity of state courts compels the opposite assumption—that when a prisoner fairly presents a constitutional challenge to his conviction, and the state court denies relief without expressly declining to consider that claim, the state court faithfully considered and rejected it. Cf. *Visciotti*, 537 U.S. at 24 ("readiness to attribute error is inconsistent with the presumption that state courts know and follow the law").

b. The fundamental distrust of state courts underlying the Ninth Circuit's rule becomes even clearer when one considers that criminal defendants in respondent's position may seek rehearing. Indeed, the rehearing procedure exists precisely to ensure that courts reach and resolve every claim. In California, for example, "[p]etitions for rehearing * * *enabl[e] counsel to direct the attention of the court to matters presented at the argument which may have been overlooked in the decision." *San Francisco v. Pacific Bank*, 26 P. 835, 835 (1891); see also Cal. R. Ct. 8.268. If respondent believed that the California Court of Appeal had overlooked her Sixth Amendment claim, she could (and should) have filed a petition for rehearing. If this effort failed, it would have confirmed that the appellate court considered and rejected her Sixth Amendment claim. And even a failed effort at reconsideration would have opened the door to California Supreme Court review. See Cal. R. Ct. 8.500(c)(2) (party seeking state supreme

court review is bound by "the Court of Appeal opinion's statement of the issues and facts unless the party has called the Court of Appeal's attention to any alleged omission or misstatement of an issue or fact in a petition for rehearing").

The existence of such backstops within state court systems makes the Ninth Circuit's rule even more extreme. The decision below not only improperly infers from silence that state courts "overlooked" or "disregarded" a federal claim in the first instance, but it further presumes that these courts will *refuse* to rectify that error when it is brought to their attention. This approach improperly "denigrates the judges who serve on the state courts," for it takes as its starting point "that they will not enforce the supreme law of the land." *Atascadero State Hosp. v. Scanlon*, 473 U.S. 234, 238 n.2 (1985); see also *Stone*, 428 U.S. at 493 n.35 (rejecting "basic mistrust of the state courts as fair and competent forums for the adjudication of federal constitutional rights").

c. Finally, in the extraordinary event that a state court disregards a federal claim and then affirmatively refuses to correct its error, the criminal defendant has recourse in the federal courts even without the Ninth Circuit's rule. This Court is available to correct the state court's oversight on direct appeal. See *Stone*, 428 U.S. at 493 n.35 (dismissing argument that "the oversight jurisdiction of this Court on certiorari is an inadequate safeguard" for state prisoners' constitutional rights). And federal habeas relief remains available if the state court's judgment is

"contrary to, or involved an unreasonable application of, clearly established Federal law." 28 U.S.C. § 2254(d)(1).

2. The Ninth Circuit's rule not only upends the long-established presumption that state courts faithfully apply federal law, but it promises a host of practical problems as well.

a. First, as the decision below itself illustrates, the rule requires federal courts to engage in often complex and time-consuming comparisons between state and federal law. As the Ninth Circuit acknowledged, Pet. App. 23a, § 2254(d) does not require a state court to cite (or even be aware of) this Court's governing decisions. See *Early v. Packer*, 537 U.S. 3, 8 (2002) (*per curiam*). This means that, before concluding that a state court failed to address a federal claim, a federal habeas court must determine whether any state-law claims that the state court *did* decide also resolved the federal question. Thus, the Ninth Circuit here had to decide whether respondent's Sixth Amendment claim was "the same claim rejected on the merits" by the California Court of Appeal, *ibid.*, which required a complicated analysis of a novel issue of California law—whether "a juror discharge * * * that is permissible under [state law] could nonetheless violate the Sixth Amendment." Pet. App. 26a-27a. In the end, the court concluded that the California courts did "not appear to have considered" the issue. Pet. App. 26a. Putting aside whether the Ninth Circuit's analysis of California law was correct

(and it likely was not),[1] it was necessary only because the court was unwilling to give the state court decision "the benefit of the doubt." *Visciotti*, 537 U.S. at 24. If this Court approves the Ninth Circuit's approach, it will compel lower federal courts to devote their scarce resources to a new line of inquiry in federal habeas cases—a detailed comparison between state and federal protections. And this case illustrates how challenging this comparison can be.

Likewise, in *Childers v. Floyd*, 642 F.3d 953 (11th Cir. 2011), the majority and dissent engaged in a lengthy debate over whether a holding that the trial court had not violated a Florida evidentiary rule necessarily resolved a claim under the Sixth Amendment's Confrontation Clause. Compare *id.* at

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[1] *People v. Cleveland*, 21 P. 3d 1225 (Cal. 2001), addressed a prisoner's claim (like respondent's here) that the trial court had violated his "right to a unanimous jury by dismissing a 'holdout' juror." *Id.* at 1230. The state supreme court "agree[d]" with lower federal court decisions holding that, under the Sixth Amendment, "a court may not dismiss a juror during deliberations because that juror harbors doubts about the sufficiency of the prosecution's evidence." *Id.* at 1236. The court parted ways with these lower federal court decisions only over the standard trial courts employ when deciding whether to discharge a juror for an alleged failure to deliberate. See *id.* 1236-1237. Thus, the Ninth Circuit's view that *Cleveland* "was not a constitutional decision," Pet. App. 26a, is not the only—or even the best—reading of that case, and other California decisions hold that "[t]he California process for the substitution of jurors * * * preserves the essential features of the jury trial required by the Sixth Amendment." *E.g.*, *People v. Bowers*, 104 Cal. Rptr. 2d 726, 732 (Cal. Ct. App. 2001).

969-971, with *id.* at 989-992 (Barkett, *J.*, dissenting). Similarly, in *Brown v. Bobby*, 656 F.3d 325 (6th Cir. 2011), the majority and dissent disagreed over whether Ohio's speedy-trial protections were sufficiently similar to those under the Sixth Amendment, so that the rejection of a claim under state law would necessarily resolve a federal claim. Compare *id.* at 329-332 (majority op.), with *id.* at 338-339 (Cole, *J.*, dissenting).

Compounding the problem, conclusions by federal courts on the substance of state rights are not binding on state courts. Only the latter "are the ultimate expositors of state law." *Mullaney v. Wilbur*, 421 U.S. 684, 691 (1975) (noting this Court's "repeated[]" holdings to that effect). Accordingly, a federal court's determination on an issue of state law "may be discredited at any time—thus essentially rendering the federal-court decision advisory and the litigation underlying it meaningless." *Moore v. Sims*, 442 U.S. 415, 428 (1979); see also *R.R. Comm'n v. Pullman Co.*, 312 U.S. 496, 499 (1941) ("no matter how seasoned the judgment of [a federal] court may be" on a question of state law, "it cannot escape being a forecast rather than a determination"). This opens the door wide to unfairness in federal habeas proceedings, where, under the Ninth Circuit's rule, whether a petitioner receives *de novo* review turns on a federal court's interpretation of state law that may prove false with the next state court decision.

b. Moreover, the rule encourages state defendants who would prefer that federal, rather than state, courts adjudicate their federal claims to obscure those claims in state court, in the hopes that the latter will

"overlook" them. And the rule discourages these same defendants from affording state courts the opportunity to correct their mistakes, in the event they do "overlook" a federal claim. As explained, respondent could have made the appellate court's alleged failure to resolve her Sixth Amendment claim the subject of a petition for rehearing, but she declined to do so. The Ninth Circuit's rule rewards this decision, and it gives future defendants little incentive either to present their federal claims clearly in state court, or to give state courts a chance to rectify any alleged omissions. This perverse incentive structure is squarely at odds with "[f]ederal-state comity," which requires a state prisoner to "give the state court an opportunity to rule on the merits of h[er] claim" in the first instance, "before asking the federal court to 'correct' a state court's mistake." *Childers*, 642 F.3d at 967; see also *Coleman v. Thompson*, 501 U.S. 722, 732 (1991) ("the States' interest in correcting their own mistakes" should be "respected in all federal habeas cases").

c. The Ninth Circuit's rule also penalizes state courts that provide reasoned opinions. As this Court has recognized, state courts have crowded dockets, and it may not be an effective use of their limited resources to issue an explained opinion in every case. See *Richter*, 131 S. Ct. at 784 (describing California Supreme Court's heavy caseload). Thus, state courts may issue decisions that summarily dispose of all claims or, alternately, provide an explained decision for fewer than all claims. See *Childers*, 642 F.3d at 968 ("State courts with busy dockets may choose to summarily deny claims they deem weak and instead focus on claims requiring

greater thought," or "decide the merits of claims using state law, with which the state courts are more likely familiar."). Under the decision below, however, a state court's summary disposition always receives § 2254(d) deference, while claims omitted from an otherwise fully explained opinion do not. Requiring state courts to issue opinions that expressly address each claim individually may improperly discourage those courts from issuing explained opinions at all. See *Childers*, 642 F.3d at 971 ("Given that the District Court of Appeal's decision would receive deference had it said nothing at all, see *Harrington*, 131 S. Ct. at 784-785, we cannot say that this minor difference gives a federal court license to conduct *de novo* review."). This is not only an unfavorable result in its own right, but it threatens to intrude on opinion-writing practices, which are properly an area of state prerogative. See *Coleman*, 501 U.S. at 739 ("[W]e have no power to tell state courts how they must write their opinions.").

3. Finally, the Ninth Circuit's rule—aside from its basic mistrust of state courts and significant practical problems—rests on a misreading of *Richter* and is inconsistent with the structure and purpose of AEDPA.

a. *Richter* held that, "[w]hen a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary." 131 S. Ct. at 784-785. Relying heavily on this language, the Ninth Circuit concluded that the state appellate court's silence regarding respondent's Sixth Amendment claim was "a compelling 'indication'

that the court either overlooked or disregarded her Sixth Amendment claim entirely, rather than that it adjudicated the claim but offered no explanation for its decision." Pet. App. 24a (quoting *Richter*, 131 S. Ct. at 785). The court thus held that "the *Richter* presumption is overcome," justifying *de novo* review. *Ibid*. The Ninth Circuit, however, misunderstood this passage from *Richter* on which it so heavily relied.

The presumption that "may be overcome when there is reason to think some other explanation for the state court's decision is more likely" is that the state court's unexplained decision was *on the merits* rather than on an independent, procedural ground. *Richter*, 131 S. Ct. at 785. The two cases on which *Richter* relies for the foregoing passage make this clear. *Harris v. Reed*, 489 U.S. 255 (1989), held that a state court decision fairly appearing to rest on the merits of the prisoner's claim will not be deemed to rest on an independent and adequate state procedural ground (which would bar federal habeas review) "unless the last state court rendering a judgment in the case clearly and expressly states that its judgment rests on a state procedural bar." *Id*. at 263 (internal quotation marks omitted). And *Ylst v. Nunnemaker*, 501 U.S. 797 (1991), followed suit by holding that where a state court expressly rejects a claim on procedural grounds, a later state court decision silently rejecting that claim is exempt from *Harris*' presumption, for in that instance it is more likely that the later court's silent decision was on the same ground as the earlier court's reasoned one. See *id*. at 803-804.

Thus, the passage from *Richter* on which the Ninth Circuit relied does no more than reaffirm the role of *Ylst* and *Harris* in determining whether a state court's adjudication of a claim is on the merits or on a procedural ground. The question here, however, is not the *reason* for the state court's adverse adjudication of respondent's Sixth Amendment claim, but whether the court adjudicated that claim at all, and nothing in the foregoing passage from *Richter* qualifies the Court's holding "that § 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'" 131 S. Ct. at 785. Contrary to the Ninth Circuit's misreading of language in *Richter*, therefore, the governing rule is that a state court adjudicates a fairly presented federal claim when it silently denies relief on that claim without expressly declining to consider it. Cf. *Castille v. Peoples*, 489 U.S. 346, 351 (1989) (equating state court's silence regarding fairly presented claim with its "implied[ ] reject[ion]"); see also *Webb v. Webb*, 451 U.S. 493, 501 (1981) (recognizing that state courts may "silently resolve[ ]" fairly presented claims); *Angel v. Bullington*, 330 U.S. 183, 190 (1947) (same).

b. The Ninth Circuit's decision is also inconsistent with the architecture and purpose of AEDPA. AEDPA's "basic structure" is "designed to confirm that state courts are the principal forum for asserting constitutional challenges to state convictions." *Richter*, 131 S. Ct. at 787. And its twin pillars are § 2254(b)'s exhaustion requirement (with the attendant doctrine of procedural default) and § 2254(d)'s relitigation bar.

Section 2254(b) provides that "a habeas petitioner challenging a state conviction must first attempt to present his claim in state court." *Richter*, 131 S. Ct. at 787. Accordingly, if a prisoner fails "to give the state courts a full and fair opportunity to resolve federal constitutional claims," *O'Sullivan v. Boerckel*, 526 U.S. 838, 845 (1999), or if the state courts reject federal constitutional claims "pursuant to an independent and adequate state procedural rule," *Coleman*, 501 U.S. at 750, federal habeas review of those claims is barred, unless the habeas petitioner can satisfy either the cause-and-prejudice exception or the fundamental-miscarriage-of-justice exception, see *ibid*.

For its part, § 2254(d) "complements the exhaustion requirement and the doctrine of procedural bar." *Richter*, 131 S. Ct. at 787. Just as exhaustion and procedural default promote comity, finality, and federalism by "channel[ing] prisoners' claims first to the state courts," *Pinholster*, 131 S. Ct. at 1398-1399, and giving state courts the first opportunity to resolve federal claims, see *Coleman*, 501 U.S. at 732, § 2254(d) promotes these same interests by "ensur[ing] that state proceedings are the central process, not just a preliminary step for a later federal habeas proceeding," *Richter*, 131 S. Ct. at 787.

Thus, courts have correctly recognized that "[t]he concept of an 'adjudication on the merits' is the corollary of the long-held requirement that a state prisoner first exhaust his claims in state court." *Childers*, 642 F.3d at 967. It is a term of art in federal habeas law, implementing a structure that ("[a]ssuming that the independent state procedural bar is adequate to

support the judgment and not excused by a showing of either cause and prejudice or a fundamental miscarriage of justice") "present[s] federal habeas courts with a binary circumstance: [they] either apply AEDPA deference to review a state court's disposition of a federal claim or refuse to review the claim because of a procedural bar properly raised." *Jimenez v. Walker*, 458 F.3d 130, 145 & n.18 (2d Cir. 2006); see also *Childers*, 642 F.3d at 968 ("an 'adjudication on the merits' is best defined as any state court decision that does not rest solely on a state procedural bar"); *Muth v. Frank*, 412 F.3d 808, 815 (7th Cir. 2005) ("An adjudication on the merits is perhaps best understood by stating what it is not: it is not the resolution of a claim on procedural grounds."). This structure leaves no room for the Ninth Circuit's rule, which holds that a claim may be at once fairly presented to a state court (so that it meets the exhaustion requirement) and not rejected by the state court on procedural grounds (so that it survives the procedural default doctrine) yet nevertheless not adjudicated on the merits (so that § 2254(d) does not apply to federal habeas review of that claim).

In short, by failing to afford § 2254(d) deference, the Ninth Circuit "improper[ly] interven[ed] in state criminal processes, contrary to the purpose and mandate of AEDPA and to the now well-settled meaning and function of habeas corpus in the federal system." *Richter*, 131 S. Ct. at 787.

* * *

The Ninth Circuit's rule upsets the longstanding presumption that state courts faithfully apply federal

constitutional law, yields substantial practical problems and a range of perverse incentives, and has serious doctrinal flaws. The proper rule is simple: if a criminal defendant fairly presented a federal claim in state court, that court is presumed to have addressed and rejected that claim unless the court expressly declined to consider it.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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