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

REPLY BRIEF

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
DONALD E. DE NICOLA
Deputy State Solicitor General
LAWRENCE M. DANIELS
Supervising Deputy Attorney General
XIOMARA COSTELLO
Deputy Attorney General

JAMES WILLIAM BILDERBACK II
Supervising Deputy Attorney General

STEPHANIE C. BRENAN
Deputy Attorney General
Counsel of Record
300 South Spring Street
Suite 1702
Los Angeles, California 90013
(213) 897-2056
Stephanie.Brenan@doj.ca.gov
Counsel for Petitioner

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

TABLE OF AUTHORITIES – Continued

STATUTES

REPLY BRIEF

A federal habeas court must apply deferential review under 28 U.S.C. § 2254(d) to claims adjudicated on the merits by a state court. As explained in the State's brief on the merits, a state court has adjudicated the entire claim "on the merits" under § 2254(d) when it has addressed an alleged error on substantive grounds, absent a plain statement to the contrary.

Where a state court has addressed and rejected on substantive grounds the argument that an asserted flaw in the trial requires reversal of a criminal conviction, the most realistic interpretation is that the state court adjudicated the entirety of the claim of error on its merits. State judges know and take seriously their sworn obligation to enforce the federal constitutional rules that govern state trials, and would hardly believe themselves authorized to affirm a conviction as valid under local law in the face of a properly presented argument that relief is nonetheless required by the federal Constitution. This most convincing interpretation of such a state court ruling also serves the purpose of AEDPA's habeas corpus reforms: to limit federal court intrusion into state criminal proceedings. See *Williams (Michael)* v. *Taylor*, 529 U.S. 420, 436 (2000). This interpretation affords proper respect for the state courts' competence and integrity. And it comports most closely with this Court's jurisprudence, which takes a realistically broad view of what qualifies as an adjudication on the merits. See, *e.g.*, *Harrington* v. *Richter*, 131 S. Ct.

770, 784-85 (2011); *Early* v. *Packer*, 537 U.S. 3, 8 (2002) (per curiam).

The Ninth Circuit's contrary approach—purportedly applying the *Richter* merits-adjudication presumption, finding it overcome by a dubious negative inference, and concluding that the state court had ignored a federal constitutional claim—finds no support in real life, logic, or the law. Its assumption that the state court either overlooked or ignored a presented federal constitutional argument is an unrealistic interpretation of the state-court opinion. It is also antithetical to the respect due state courts, especially in the AEDPA era.

The Ninth Circuit's "grading papers" approach to state court opinions is incompatible with AEDPA. The effect of the Ninth Circuit's decision would be to require federal habeas courts to focus on the legal standard used by the state courts to determine the adjudication question. That approach illogically conflates the threshold "adjudication" question with the subsequent § 2254(d)(1) deferential-review test. Even worse, it would allow a federal court to grant habeas corpus relief based on its own view of a debatable constitutional-law question—without regard to § 2254(d)'s preclusion of relief except in cases where the state court's ruling runs afoul of the law only as "clearly established" in the strict holdings of this Court. The Ninth Circuit's decision imprudently requires the federal court to take on the uncomfortable role of authoritative expositor on matters of state, rather than federal, law.

As the State shows in its Reply below, respondent Williams's and amicus National Association of Criminal Defense Lawyers' (NACDL) proposed approaches to the "adjudication" question fare no better than the Ninth Circuit's.

ARGUMENT

WILLIAMS'S AND NACDL'S ARGUMENTS EMPHASIZE IRRELEVANT INQUIRIES AND FORMULAIC LANGUAGE

Respondent Williams and amicus NACDL seek to impose upon the state courts various untenable preconditions to the deference that § 2254(d) accords to state merits adjudications of federal claims. They would accept as worthy of deference an adjudication explicitly based solely on state law, provided that the federal habeas court subsequently deems the cited state law to be as protective of the defendant's constitutional right as that federal court's own—perhaps debatable or idiosyncratic—view of the corollary federal rule. In the alternative, they would require the state courts to have explicitly addressed the federal argument using language that the federal court later deems satisfactory. NACDL proffers a third alternative, in which a state court determination would be worthy of deference so long as the state court tacked on a catch-all phrase such as "all other claims are meritless and are rejected." None of these approaches withstands scrutiny.

A. The "Legal Standard" Rule Conflates Different § 2254(d) Inquiries and Would Circumvent § 2254(d) Altogether

Williams and NACDL embrace an "adjudication" rule inherent in the Ninth Circuit's decision that would require a federal habeas court to parse the language of the legal standard the state court applied to the petitioner's claim to determine if it complied with what the federal court believes the federal standard should be. Resp't Br. at 21, 27-28, 49-51, 57; NACDL Br. at 26, 30-33; see PA 25a-27a. But that rule would conflate the threshold "adjudication" question with the subsequent "contrary to" analysis under § 2254(d)(1), an unsupportable construction of the statute. And it would permit a federal habeas court to grant relief, in circumvention of § 2254(d) deferential review, based entirely upon that court's own extensions of Supreme Court precedent beyond the law as "clearly established" only by this Court's square holdings—the touchstone of deferential review under § 2254(d).

1. This approach conflicts with this Court's decision in *Early* v. *Packer*, which explained that "[a]voiding the[ ] pitfalls" of § 2254(d)(1) "does not require citation of our cases—indeed, it does not even require *awareness* of our cases, so long as neither the reasoning nor the result of the state-court decision contradicts them."[1] 537 U.S. at 8. If a state court need not

[1] In light of this holding in *Packer*, Williams and NACDL's reliance on dicta in *Chadwick* v. *Janecka*, 312 F.3d 597, 606 (3d Cir. 2002)—describing three pre-*Packer* circuit cases standing

(Continued on following page)

even be aware of this Court's cases for its decision to receive § 2254(d)(1) deference for rulings not "contrary to . . . clearly established Federal law," then it would be illogical to nevertheless require a state court to be aware of, and to explicitly discuss, federal law in order to meet the "adjudication" standard at the threshold of § 2254(d) analysis.

Williams and NACDL misread *Packer*, claiming that it recognized that a state court may *implicitly*

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for the proposition that a misunderstood claim is an unadjudicated claim—is misplaced. See Resp't Br. at 31; NACDL Br. at 13. One of those cases is *Hameen* v. *Delaware*, 212 F.3d 226 (3d Cir. 2000), in which the Third Circuit held that the state court did not "pass on" the defendant's constitutional "argument" because the state court had read one of this Court's cases "too broadly" and thus the Third Circuit could not say that the state court "took into account controlling Supreme Court decisions," which it viewed as "critical" to the adjudication question. *Id*. at 248. *Hameen*'s view conflicts with *Packer*, which rejected the notion that a state court need be aware of this Court's decisions. The second case, *Everett* v. *Beard*, 290 F.3d 500 (3d Cir. 2002), relied on this portion of *Hameen*, so it similarly fails. See *id*. at 507-08. Reliance on the third case, *Appel* v. *Horn*, 250 F.3d 203 (3d Cir. 2001), fails for a different reason. There, the Third Circuit found no merits adjudication where the state court had analyzed a defendant's complaint about his counsel as an ineffective-counsel claim, which is evaluated under *Strickland* v. *Washington*, 466 U.S. 668 (1984), instead of as a constructive-denial-of-counsel claim, which is evaluated under *United States* v. *Cronic*, 466 U.S. 648 (1984). *Appel*, 250 F.3d at 210-11. But a federal habeas court's consideration of whether a state court applied the correct test—*Strickland* as opposed to *Cronic*—is properly addressed under § 2254(d)(1). See, *e.g.*, *Wright* v. *Van Patten*, 552 U.S. 120, 122-26 (2008) (per curiam); *Bell* v. *Cone*, 535 U.S. 685, 694-98 (2002).

adjudicate a constitutional claim—i.e., adjudicate the claim without citing federal law—but only *if* state law provides equal or greater protection than federal law. Resp't Br. at 27-28; NACDL Br. at 33. But *Packer* did not hold that. Rather, in *Packer*, this Court concluded that § 2254(d) applied because the state court had adjudicated the same "jury-coercion claim" presented in the federal petition. *Packer*, 537 U.S. at 8. Then, moving to the subsection (d)(1) analysis, this Court found especially puzzling the circuit court's conclusion that the state court's decision was "contrary to" Supreme Court precedent given that the state court had cited a state case imposing greater protection than federal law. *Id*. Williams and NACDL incorrectly conflate the adjudication determination with *Packer*'s separate determination that the adjudication precluded habeas relief because the state court's ruling was not "contrary to" clearly established law under the § 2254(d)(1) standard of review.

And this is precisely the problem with the assumption underlying the Ninth Circuit's decision and the rule proffered by Williams and NACDL. Under that misguided rule, a federal habeas court may conclude that no adjudication ever took place, and thereby circumvent the application of § 2254(d) altogether, if it believes in its independent judgment that the state-law standard failed to sufficiently protect the challenged constitutional right. Resp't Br. at 21, 27-28, 49-51, 57; NACDL Br. at 26, 30-33. But that analytical framework transforms the "contrary to" analysis under § 2254(d)(1) into the threshold inquiry

of whether there was even a merits adjudication. Examining whether a state court "applie[d] a rule that contradicts the governing law set forth in [this Court's] cases[ ]" is part of the analysis under § 2254(d)(1) for determining whether a state-court's "decision" is "contrary to" this Court's clearly established precedent. *Williams (Terry)* v. *Taylor*, 529 U.S. 362, 405 (2000). Requiring this analysis at the threshold makes the "contrary to" analysis in subsection (d)(1) pointless. The rule advocated by Williams and NACDL swallows it entirely.

2. Worse, their approach would allow a federal habeas court—in the guise of deciding the threshold "adjudication" question—to discard a state court opinion upon concluding that it had evaluated the petitioner's claim under a standard that varies from the law of the circuit, even where the state court ruling was not objectively unreasonable or contrary to the strict holdings of this Court's precedents: the broad boundaries of the deferential rule precluding relief in § 2254(d)(1). *Carey* v. *Musladin*, 549 U.S. 70, 74, 77 (2006); see *Renico* v. *Lett*, 130 S. Ct. 1855, 1866 (2010) (circuit precedent does not constitute "clearly established Federal law," so "any failure to apply [the Sixth Circuit's] decision cannot independently authorize habeas relief under AEDPA").

Even if the standard applied by the state court were relevant at all on the threshold "adjudication" question—a proposition the State disputes, see *ante* at 6-7—it would not make sense to compare that

standard only with the standard reflected in the circuit's own jurisprudence. While state courts are bound by this Court's decisions on federal questions, *Chesapeake & O. Ry. Co*. v. *Martin*, 283 U.S. 209, 220-21 (1931), decisions by lower federal courts on federal questions are not binding on state courts. See, *e.g., People* v. *Bradley*, 460 P.2d 129, 132 (Cal. 1969). So a deviation by the state court from one circuit's own standard would not logically show that the state court had failed to consider the federal constitutional argument. Rather, a federal habeas court would need to consider whether the state standard was contrary to this Court's holdings or, perhaps, whether reasonable jurists could have concluded that the standard applied by the state court protected the federal constitutional right.

Needless to say, also, Williams's approach—permitting a comparison between the state-law standard and the federal standard as interpreted by a circuit court, Resp't Br. at 50-51—would disembowel the § 2254(d) deference that is Congress' centerpiece reform of habeas corpus in AEDPA. Williams should have been denied relief under § 2254(d)(1) because the state court decision to dismiss a biased juror was neither objectively unreasonable nor contrary to the square holdings of this Court's precedent. Rather than properly confining itself to this Court's precedent, the Ninth Circuit found fault with the state court for failing to adopt circuit court precedent. PA 26a.

The Ninth Circuit in essence granted relief because the California Court of Appeal had not applied,

as a federal constitutional rule, language from the Circuit's own precedent in *United States* v. *Symington*, 195 F.3d 1080 (9th Cir. 1999). Indeed, it did so notwithstanding that the Ninth Circuit previously had held that "*Symington* did not establish that such juror dismissals were inappropriate as a matter of constitutional right." *Brewer* v. *Hall*, 378 F.3d 952, 957 (9th Cir. 2004). The Ninth Circuit simultaneously acknowledged and evaded that language by holding *in this case* that the *Symington* test was the federal constitutional standard. PA 38a n.16. However, *United States* v. *Brown*, 823 F.2d 591 (D.C. Cir. 1987)—the case upon which the Ninth Circuit relied to change its view of *Symington*, PA 38a n.16—focused on a federal criminal defendant's right to a *unanimous* jury, *Brown*, 823 F.2d at 595-96, a right this Court has held is not applicable to criminal defendants in state trials. See *Apodaca* v. *Oregon*, 406 U.S. 404 (1972); *Johnson* v. *Louisiana*, 406 U.S. 356 (1972); accord *McDonald* v. *City of Chicago*, 130 S. Ct. 3020, 3035-36 n.14 (2010). More fundamentally, all of the Ninth Circuit's analysis proceeded without regard to whether the purported *Symington* rule had been "clearly established" by this Court, the measure for deference set out in § 2254(d). See *Howes* v. *Fields*, 132 S. Ct. 1181, 1187 (2012); *Musladin*, 549 U.S. at 74; *Terry Williams*, 529 U.S. at 412.

Moreover, as ably shown in the State of Illinois's amici curiae brief, Br. of Ill. et al. at 8-9, asking federal courts to parse state court opinions and, based on that parsing, expound on state law for the purpose

of comparing its view of state law with the federal court's own understanding of federal law, is a perilous and imprudent exercise. This case illustrates that point.

Contrary to the Ninth Circuit's conclusion that California has never considered the federal constitutional restraints on a trial court's ability to remove a juror during deliberations, PA 26a, the California Supreme Court has explained that California's test for removing a juror—that a juror may be discharged "if it appears as a 'demonstrable reality' that the juror is unable or unwilling to deliberate[,]" *People* v. *Cleveland*, 21 P.3d 1225, 1237 (Cal. 2001)[2]—is a "heightened standard . . . used by reviewing courts to protect a defendant's fundamental rights to due process and a fair trial, based on the individual votes of an unbiased jury, which are also hallmarks in American jurisprudence." *People* v. *Allen*, 264 P.3d 336, 344 (Cal. 2011) (citing *People* v. *Barnwell*, 162 P.3d 596, 605 (Cal. 2007) (explaining that the "heightened standard" of the demonstrable-reality test "reflects an appellate court's obligation to protect a defendant's fundamental rights to due process and to a fair trial by an unbiased jury")); *Cleveland*, 21 P.3d at 1239 (Werdegar, J., concurring) (because of "the need for additional protection of an accused's constitutional rights," the test for affirming a trial court's removal of

[2] *Cleveland* was the opinion the California Supreme Court ordered the state Court of Appeal to apply to Williams's claim. See JA 3.

a juror is the "demonstrable reality" test, which requires a "stronger evidentiary showing than mere substantial evidence"); see *People* v. *Lomax*, 234 P.3d 377, 418-25 (Cal. 2010) (applying the "demonstrable reality" test to a defendant's claim that the trial court's improper removal of a juror violated his constitutional rights to due process, trial by jury, and freedom from cruel and unusual punishment, as guaranteed by the state and federal Constitutions).

Thus, when inquiring into the substantive standard applied by the state Court of Appeal under state-court jurisprudence as a means for determining whether the state had "adjudicated" Williams's federal claim on the merits, Williams and NACDL ask the wrong question. And, in expounding on the standard endorsed by state-court precedents, the Ninth Circuit fell into the common mistake of coming up with the wrong state-law answer.[3] The effect of such a flawed undertaking was even more egregious: it

[3] Misinterpretation of state law by the Ninth Circuit is not an isolated occurrence. See, *e.g.*, *People* v. *Albillar*, 244 P.3d 1062, 1074-75 (Cal. 2010) (disapproving the Ninth Circuit's interpretation of California's gang-enhancement sentencing statute); *In re Robbins*, 959 P.2d 311, 326 n.15 (Cal. 1998) (noting that the Ninth Circuit had misread a state case regarding counsel's duty to investigate); *People* v. *Santamaria*, 884 P.2d 81, 91-93 (Cal. 1994) (noting the Ninth Circuit's misunderstanding of California law regarding murder). Moreover, when a federal habeas court misunderstands state law, it has "the power to effectively overrule" a state court's subsequent decision that the federal habeas court's interpretation was wrong. *Santamaria*, 884 P.2d at 92.

short-circuited the fundamental deferential-review standard of § 2254(d).

B. To Require State Courts to Explicitly Address a Federal Argument Would Undermine Comity and Disregard the Reality of State-Court Litigation

In the alternative, Williams and NACDL, like the Ninth Circuit, would deign to grant deference to a state court's explained decision, provided the court showed its work by explicitly mentioning the defendant's federal argument. PA 23a-25a; Resp't Br. at 29, 32-33, 40-41; NACDL Br. at 7-10, 12-15.

1. Such a requirement, however, would interfere with the principle of comity reflected in AEDPA specifically and in habeas corpus law generally. For example, California does not require its courts to recite each assertion made by a defendant; instead, it permits its courts to summarily describe the contentions and the reasons they fail. *People* v. *Kelly*, 146 P.3d 547, 556 (Cal. 2006). But, under the Ninth Circuit approach that Williams and NACDL support, a state court would be required to recite the federal constitutional assertion made by a defendant—even though the state's Constitution does not require that level of definition—before the federal court would be required to show deference to the state court's decision. Not only would such a requirement "smack[ ] of a 'grading papers' approach that is outmoded in the post-AEDPA era[,]" *Wright* v. *Sec'y for Dep't of Corr.*, 278 F.3d

1245, 1255 (11th Cir. 2002), but it would contravene this Court's admonition to federal courts that they "have no power to tell state courts how they must write their opinions[,]" *Coleman* v. *Thompson*, 501 U.S. 722, 739 (1991). While a particular state-court opinion might not be "a model of clarity," federal habeas corpus is "not a license to penalize a state court for its opinion-writing technique." *Lafler* v. *Cooper*, 132 S. Ct. 1376, 1396 (2012) (Scalia, J., dissenting).

2. The second problem with Williams and NACDL's proposal is that, as applied in this case, it is built on the faulty premise that the state court opinion here failed to mention a factually and legally independent federal claim. The situation presented by this case is *not* one where a state prisoner presented three factually and legally independent claims, but the state court referred only to two of them. Cf. *Norde* v. *Keane*, 294 F.3d 401, 410 (2d Cir. 2002) (no § 2254(d) deference to Sixth Amendment right-to-be-present and right-to-counsel claims where the state court addressed only a sufficiency-of-the-evidence claim, a prosecutorial-misconduct claim, and a claim that the prosecutor's inquiry into defendant's prior convictions was prejudicial). Rather, in this case, Williams presented to the state court a single claim that a juror was improperly removed, supported by an argument that relied on both state and federal law. JA 25-67. Thus, Williams presented a single, integrated claim, albeit one supported by state and federal law citations.

As did the Ninth Circuit, Williams and NACDL insist that Williams presented two "claims" in the state court because she supported her contention in her state appeal—that the trial judge had prejudicially erred in dismissing Juror No. 6—with citations to state and federal law. See PA 21a-22a; Resp't Br. at 7-9; NACDL Br. at 27-29. But this narrow conception of "claim"—that the source of the law presented in support of an argument can multiply the number of "claims"—is out of place in the context of state-court litigation.

Unlike federal habeas courts, state courts decide both state-law and federal constitutional questions that pertain to any single alleged claim that a reversible error occurred at the trial. There is no good reason to expect—much less to insist—that a state court should serially and explicitly address every point of law presented in support of a claim that error occurred at trial. A federal habeas court's conception of "claim," for purposes of federal-question, exhaustion, and successive-petition restrictions on its power, would be an ill-fitting and artificial construct if imposed on state courts. Rather, when considering a state-court opinion, "claim" should be interpreted in a "commonsense way." See *United States* v. *Tohono O'Odham Nation*, 131 S. Ct. 1723, 1729 (2011). A state court has adjudicated a single claim, regardless of whether the claim was supported by multiple legal theories. See *NAACP* v. *Am. Family Mut. Ins.*

Co., 978 F.2d 287, 292 (7th Cir. 1992) ("different legal theories . . . do not multiply the number of claims").

Here, the California Court of Appeal concluded that, contrary to Williams's arguments, Juror No. 6 was properly removed for bias so that no error occurred. PA 104a. Thus, it adjudicated Williams's juror-removal claim on the merits. And that merits determination is entitled to deference under § 2254(d).

For this reason, Williams's suggestion that the State is asking for a "presumption," Resp't Br. at 34-35, is incorrect. Because the state court addressed and rejected on substantive grounds Williams's contention that Juror No. 6 was improperly removed for bias, the state court actually adjudicated the entirety of her claim of error on its merits. There is no need for a "presumption."

C. The Absence of "Catch-All Language" of Debatable Utility Is Not a Significant Factor in Reviewing a State-Court Decision for an Adjudication on the Merits

In an argument that strays from what the Ninth Circuit and Williams seem to require, amicus NACDL asserts that the fault for any ambiguity in a state court's opinion lies with the state court, and it suggests that state courts may solve this problem by simply including a statement that "'all other claims are meritless and are rejected[.]'" NACDL Br. at 20-21. Contrary to NACDL's protestation that it would

not require the state court to use "magic words" to ensure later AEDPA deference, NACDL Br. at 21, that is exactly what it is suggesting. Such a superficial requirement would seem to be of doubtful utility.

As this case illustrates, the use of broad or "catch-all" language would seem to have little effect. Here, the California Court of Appeal used broad language when describing Williams's juror-removal claim: "Williams contends the trial court erred by discharging one of the jurors during deliberations." PA 97a. The state court's description of the basic issue has neither state-law nor federal constitutional connotations. And the state court broadly rejected this claim when, in the next sentence, it declared: "This claim is meritless." *Id*. Nevertheless, the Ninth Circuit found this broad language insufficient to encompass the federal-law aspect of Williams's claim.

The Ninth Circuit's rejection of the state court's use of broad language in this case, therefore, illustrates how little effect NACDL's "catch-all phrase" would have. The "legal standard" rule, endorsed by Williams, easily could be said to undercut any catch-all phrase. That is, even if the state court expressly purported to reject the federal argument, a federal habeas court might later determine that the state court really did not do so because, in the federal court's opinion, the state court nonetheless had applied the wrong rule. Because a catch-all phrase would add virtually nothing of substance to an opinion, litigants such as Williams doubtless would argue

that federal courts should view "catch-all" language as merely reflexive and not indicative of an actual adjudication of the federal argument.

NACDL's effort to use one of this Court's "plain statement" cases, *Michigan* v. *Long*, 463 U.S. 1032 (1983), as a justification for requiring state courts to clarify their decisions, see NACDL Br. at 21-23, is misplaced. In *Long*, this Court held that the federal court must presume a state court decided a case on federal law grounds when the "state court decision fairly appears to rest primarily on federal law, or to be interwoven with the federal law," but the state court's imposition of an independent and adequate state ground "is not clear from the face of the opinion. . . ." *Long*, 463 U.S. at 1040-41. NACDL argues that "*Long* resolved ambiguity *in favor of federal-court review*." NACDL Br. at 23. But the analogy is inapt. In *Long*, an independent and adequate state procedural bar would have precluded federal habeas review altogether. *Long*, 463 U.S. at 1038 n.4. That, however, is not the case here. Where a federal habeas court believes the state court relied exclusively on state law, an "adjudication" finding as to the entire claim would not prohibit federal habeas review. Rather, a petitioner would receive review under subsection (d). Thus, contrary to NACDL's suggestion, NACDL Br. at 23, an allegedly "ambiguous" state-court opinion would *not* stand as a barrier to federal review. Moreover, a state prisoner could receive de novo review if, upon conducting review under

§ 2254(d)(1), the federal court found the state court's decision fell within that provision's "contrary to" clause. See *Terry Williams*, 529 U.S. at 406.

D. The Other Arguments Made By Williams and NACDL Are Equally Unpersuasive

In disputing the State's view that the state court adjudicated Williams's juror-removal claim on the merits, Williams and NACDL make a number of other assertions, none of which have merit.

1. Williams mistakenly tries to answer the "adjudication" question by focusing on cases where a state court elected, indisputably, to resolve a claim without reaching the merits of all, or part of, the claim. Thus, she relies on *Cone* v. *Bell*, 556 U.S. 449 (2009), a case where the state court imposed an invalid procedural bar, and on a triumvirate of cases—*Porter* v. *McCollum*, 130 S. Ct. 447 (2009) (per curiam), *Rompilla* v. *Beard*, 545 U.S. 374 (2005), and *Wiggins* v. *Smith*, 539 U.S. 510 (2003)—where the state courts decided the ineffective-assistance-of-counsel claims by resolving one prong of the two-pronged *Strickland* test. Resp't Br. at 24-26. These cases are inapposite.

It is certainly true that, when a state court imposes a procedural bar and declines to reach the merits of the claim, it has not adjudicated the claim on the merits. See, *e.g., Richter*, 131 S. Ct. at 784-85. But the question presented here does not involve any

explicit invocation of a procedural bar by the state court. So, Williams's reliance on *Cone* is puzzling.

Nor do *Porter*, *Rompilla*, and *Wiggins* assist her. In those cases, the state courts appropriately *elected* to engage in only one of two potentially dispositive inquiries—an approach this Court has recommended for disposing of an ineffective-counsel claim. See *Strickland*, 466 U.S. at 697. In that context, the state court's understandable silence as to the other prong does not suggest that the state court erroneously overlooked the other prong. Rather, following this Court's recommended approach, the state court would have believed it had fully adjudicated the claim by resolving one prong of the *Strickland* test adversely to the petitioner; it did not need to reach the other. Thus, the *Wiggins-Rompilla-Porter* situation is different because, in those cases, the federal courts are not criticizing the state courts for intentionally or neglectfully failing to adjudicate a presented claim.

2. In support of their "no adjudication" argument, Williams and NACDL observe that this Court previously has found in the exhaustion context that state courts sometimes ignore claims. Resp't Br. at 41-42 (discussing *Smith* v. *Digmon*, 434 U.S. 332, 333 (1978) (per curiam), and *Dye* v. *Hofbauer*, 546 U.S. 1, 3 (2005) (per curiam)); see NACDL Br. at 11-12. Even if a state court in the rare case might overlook a claim, federal habeas courts should not assume that a state court did so when it came to grips with the state

prisoner's argument that a mistake warranting reversal occurred at trial. See Pet'r Br. at 25-33.

And, contrary to Williams and NACDL's suggestion, the State never argued that petitions for rehearing are somehow required for exhaustion of state court remedies. Cf. Resp't Br. at 58; NACDL Br. at 10-11 n.2. Rather, as the State explained, this state-court remedy exists to forestall the possibility that a claim may simply be overlooked or ignored. Pet'r Br. at 45. So, federal habeas courts need not fear that a petitioner will be left without a remedy if a state court ever does actually overlook or ignore a claim. Rather, Williams's failure to seek that remedy—which is designed to direct the court's attention to a matter which may have been overlooked in the decision—suggests that she never sincerely believed that the California Court of Appeal had overlooked any claim. This conclusion is bolstered by Williams's argument in the Ninth Circuit that § 2254(d) controlled the outcome of this case. AOB 28-29.

Regardless, this Court has intimated that it would not view an "ignored" claim as unadjudicated. In a subsequent discussion of *Digmon*, this Court described the "ignored" claim there as "therefore impliedly rejected[.]" *Castille* v. *Peoples*, 489 U.S. 346, 351 (1989).[4] Seeking to avoid the impact of this Court's

[4] In light of this Court's statement in *Castille*, the State disputes NACDL's assertion that the State has agreed that review is automatically de novo when a state court has overlooked or ignored a claim. See NACDL Br. at 2.

"impliedly rejected" language in *Castille*, NACDL suggests that it should be limited only to situations "when such treatment is inconsequential, or even beneficial to the claimant." NACDL Br. at 19. But that outcome-driven, selective-application approach is unprincipled. Under NACDL's proposal, a federal habeas court would first have to determine de novo whether the claim has merit. If it has merit, then a federal habeas court would have to pretend that this Court never said what it did in *Castille*. But if it finds the claim to be meritless, then it could acknowledge this Court's statement in *Castille*. Such an arbitrary approach is an untenable method for promoting regularity of decisions.

Finally, NACDL argues that this Court's "implicitly rejected" language in *Clemons* v. *Mississippi*, 494 U.S. 738, 747-48 n.3 (1990), is inapplicable to the adjudication question because *Clemons* involved this Court's refusal to address "arguments." NACDL Br. at 18. But, here, the Ninth Circuit initially described Williams's juror-removal challenge in just such terms. Specifically, the Ninth Circuit wrote: "Before the [California] Court of Appeal, Williams made two *arguments* relevant to *the issue* relevant now before us." PA 20a-21a (emphasis added). Accordingly, the Ninth Circuit acknowledged that Williams had presented a single juror-removal claim, supported by state-law and federal constitutional arguments, to the California Court of Appeal.

* * *

The Ninth Circuit's conclusion that the state court overlooked or ignored a claim is an unrealistic view of the state-court opinion. "This readiness to attribute error is inconsistent with the presumption that state courts know and follow the law." *Woodford* v. *Visciotti*, 537 U.S. 19, 24 (2002) (per curiam). A realistic view of the state court's decision, combined with the proper deference to the state courts and the spirit of AEDPA, compel the conclusion that the California Court of Appeal—which denied relief in an explained decision discussing the propriety of the juror's removal—adjudicated Williams's juror-removal claim on the merits. Thus, the Ninth Circuit erred in failing to review the adjudication deferentially under § 2254(d).

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CONCLUSION

The judgment of the Ninth Circuit Court of Appeals should be reversed.

Respectfully submitted,

KAMALA D. HARRIS
Attorney General of California
DANE R. GILLETTE
Chief Assistant Attorney General
LANCE E. WINTERS
Senior Assistant Attorney General
DONALD E. DE NICOLA
Deputy State Solicitor General
LAWRENCE M. DANIELS
Supervising Deputy Attorney General
XIOMARA COSTELLO
Deputy Attorney General
JAMES WILLIAM BILDERBACK II
Supervising Deputy Attorney General

STEPHANIE C. BRENAN
Deputy Attorney General
Counsel of Record

Counsel for Petitioner

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