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No. 08-9156

IN THE
Supreme Court of the United States

HOLLY WOOD,
Petitioner,

v.

RICHARD ALLEN, Commissioner,
Alabama Department of Corrections, ET AL.,
Respondent.

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

BRIEF OF INDIANA AND 18 ADDITIONAL STATES AS *AMICI CURIAE* IN SUPPORT OF RESPONDENT

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QUESTIONS PRESENTED

1. Whether a state court's decision on post-conviction review is based on an unreasonable determination of the facts when it concludes that, during the sentencing phase of a capital case, the failure of a novice attorney with no criminal law experience to pursue or present evidence of defendant's severely impaired mental functioning was a strategic decision, while the court ignores evidence in the record before it that demonstrates otherwise?

2. Whether the rule followed by some circuits, including the majority in this case, abdicates the court's judicial review function under the Antiterrorism and Effective Death Penalty Act by failing to determine whether a state court decision was unreasonable in light of the entire state court record and instead focusing solely on whether there is clear and convincing evidence in that record to rebut certain subsidiary factual findings?

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INTEREST OF AMICI CURIAE

The *amici* States have an obligation to protect the finality of the judgments entered by their courts—an obligation that is even more compelling when it involves criminal judgments. Undoing finality in habeas corpus litigation in the federal courts can undermine the States' interests in ensuring safety, deterring crime, and rehabilitating criminal offenders. The passage of time that accompanies even successful collateral attacks increases the risk of unfair or inaccurate retrials. Moreover, comity and federalism require the federal courts to refrain from overreaching in the exercise of their authority to review state court criminal judgments under 28 U.S.C. § 2254.

This case asks the Court to interpret two provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) that strengthened the longstanding deference owed to state court factual findings. The *amici* States encourage the Court to construe those provisions consistent with both their letter and intent, ensuring that state court factual determinations are properly respected during the intrusive, albeit limited, federal habeas corpus review process.

SUMMARY OF THE ARGUMENT

Respondent is correct in maintaining that 28 U.S.C. § 2254(e)(1) applies to all § 2254 habeas corpus cases and that § 2254(d)(2) and (e)(1) have independent meanings yet operate in a coordinated way to narrow the scope of a federal habeas court's review of state court factual findings. The *amici*

States, however, offer additional perspective on these questions.

First, *amici* States suggest that the Court explain that the proper standard for judging whether a state court's factual adjudication is "unreasonable" under § 2254(d)(2) is for federal courts to ask whether the state court record contains rational support for the findings—in other words, federal courts should examine the record for sufficient evidence under the standard of *Jackson v. Virginia*, 443 U.S. 307 (1979). These standards are logically identical, and the Court should explicitly so hold.

Second, the *amici* States discuss additional, common scenarios that arise in habeas corpus litigation and examine how those situations will be affected by Petitioner's and Respondent's proposals. Most significantly, Petitioner's suggestion that § 2254(e)(1) can apply only to federal evidentiary hearings fails to account for the increasing number of prisoners who have supplemented the factual basis for their constitutional claims during state post-conviction review even though the merits of their claims were adjudicated at the trial or on direct appeal. Without § 2254(e)(1) operating in all cases, there is no provision for federal review of such facts. It strains credulity to insist that Congress intended to either allow prisoners to avoid any sort of deferential review of their evidence, or, on the other hand, preclude them from receiving federal review of their "new" evidence at all. Properly understood, § 2254(d)(2) and (e)(1) operate together to balance these competing interests.

Simply put, AEDPA's structure for reviewing factual findings, as provided by § 2254(d)(2) and (e)(1), provide a comprehensive method for evaluating state court factfinding while ensuring that federal courts respect and defer to those judgments in appropriate circumstances. The Court should affirm the judgment of the court of appeals.

ARGUMENT

The *amici* States agree with Respondent that 28 U.S.C. § 2254(e)(1) applies to all §2254 habeas corpus cases and that § 2254(d)(2) and (e)(1) have independent meanings yet operate in a coordinated way to narrow the scope of a federal habeas court's review of state court factual findings. These provisions are both critical to AEDPA operating in the manner intended by Congress. Petitioner and his *amici*, however, suggest arguments that run contrary to both AEDPA's text and well-recognized Congressional intent. Moreover, Petitioner's arguments harm the ability of many of his fellow state prisoners who seek federal review of their confinement. The Court should use this opportunity to provide additional guidance to the federal courts on the proper operation of § 2254(d)(2) and (e)(1).

I. Federal courts are prohibited under 28 U.S.C. § 2254(d)(2) and (e)(1) from rejecting state court factual determinations where the state court record supports the state court findings

The Court should interpret the "unreasonable determination" clause of § 2254(d)(2) as requiring habeas petitioners to show that no rational support

for a state court's factual determinations is found within the state court record. Section 2254(d)(2) provides:

> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> * * *
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings.

The "unreasonable determination" standard of § 2254(d)(2) has escaped the Court's specific definition even though it has had occasion to consider it in several cases. *See generally Wiggins v. Smith*, 539 U.S. 510 (2003); *Miller-El v. Dretke*, 545 U.S. 231 (2005); *Rice v. Collins*, 546 U.S. 333 (2006). The Court's precedents in reviewing state court factfinding in similar contexts and in earlier iterations of habeas review provide guidance on what Congress meant when enacting the "unreasonable determination" standard. While courts know that this requires a showing that the state court's factual findings were objectively unreasonable, *Miller-El v. Cockrell*, 537 U.S. 322, 340 (2003), the Court has not provided additional guidance as to this meaning like it has done in the context of § 2254(d)(1). *Williams v. Taylor*, 529 U.S. 362, 399 (2000) (opinion of O'Connor, J.).

Section 2254(d)(2) commands federal courts to review qualifying factual determinations for rational support in the evidence presented to the state court. This inquiry, which has its roots in the *Jackson v. Virginia*, 443 U.S. 307 (1979), test for reviewing guilty verdicts for sufficiency of the evidence, is an appropriately deferential inquiry into factfinding reasonableness and has a well-defined meaning that is widely understood and regularly applied.

1. The "unreasonable determination" standard in § 2254(d)(2) shares the same level of review as the objectively "unreasonable application" standard in § 2254(d)(1) that establishes the preclusive effect of state court adjudications of legal questions. The "unreasonable application" standard is more deferential than the "clear error" standard that governs review of a district court's factfinding. *Lockyer v. Andrade*, 538 U.S. 63, 75 (2003); *accord Williams*, 529 U.S. at 409-11 (an unreasonable application of federal law is an objectively unreasonable one and is altogether different from an incorrect application of the law). Repeated uses of "unreasonable" in the same section of AEDPA should bear the same meaning. *Estate of Cowart v. Niklos Drilling Co.*, 505 U.S. 469, 478 (1992).

Viewed another way, it is unreasonable to believe that Congress required more scrutiny of state court factfinding than it required of state court rulings applying federal constitutional law. Broad questions of constitutional law implicate a far greater federal interest than case-specific findings of historical facts, and yet even prior to AEDPA, the Court accorded state courts considerable deference in finding the facts where it accorded little or none to the same

state court's determinations of federal law. *Compare Miller v. Fenton*, 474 U.S. 104, 112 (1985) (declining to presume correct state court findings on questions of law and mixed questions of law and fact), *with Sumner v. Mata*, 449 U.S. 539, 549-50 (1981) (discussing history and intent of former § 2254(d)).

2. This Court's pre-AEDPA precedents and Congress's well-recognized purpose to further restrict the availability of habeas relief under AEDPA also support using the *Jackson* rational-support test to review state court factfinding for objective unreasonableness. Prior to AEDPA, even while federal habeas courts demonstrated the historically lowest amount of deference to state court determinations of law and mixed questions of law and fact, *Wright v. West*, 505 U.S. 277, 286-91 (1992) (plurality), federal courts recognized their obligation to demonstrate a high measure of deference for state court determinations of historical facts. *Sumner,* 449 U.S. at 546-47.

In *Marshall v. Lonberger*, 459 U.S. 422 (1982), the Court reversed a court of appeals' decision to credit the prisoner's testimony and set aside the state court factual findings as not "fairly supported by the record" pursuant to the former 28 U.S.C. § 2254(d)(8) (1995). 459 U.S. at 431. In so doing, the Court explained that the factual determinations, along with "the inferences fairly deductible" from them were binding and fairly established that the prisoner's guilty plea was intelligent and voluntary. *Id.* at 437-38. Federal courts had "no license to redetermine the credibility of witnesses" whose testimony was observed by the state courts, and must defer to state court where the federal court

merely disagreed with the state court's factual determinations. *Id.* at 434.

In *Maggio v. Fulford*, 462 U.S. 111 (1983) (*per curiam*), the Court condemned a federal court of appeals that, in light of uncontradicted expert testimony from the defendant's psychologist, rejected as not "fairly supported by the record" the state court finding that there was insufficient doubt as to a defendant's competency to stand trial so as to necessitate a formal inquiry. 462 U.S. at 113-17. The Court made clear that federal courts were prohibited from substituting their own judgment for that of the state courts. *Id.* at 113. Similarly, in *Rushen v. Spain*, 464 U.S. 114 (1983) (*per curiam*), the Court emphasized that a "state court's determinations about witness credibility and inferences to be drawn from the testimony were binding" on federal courts. 464 U.S. at 121 n.6.

Moreover, the Court has recognized that review of state court factfinding in habeas corpus must necessarily be no more far-reaching than review of federal court factfinding. "We greatly doubt that Congress, when it used the language 'fairly supported by the record' considered 'as a whole,' intended to authorize broader federal review of state court credibility determinations than are authorized in appeals within the federal system itself." *Lonberger*, 459 U.S. at 434-35. *See also Wainwright v. Witt*, 469 U.S. 412, 427, 428 n.9 (1985) ("given federal factfinding is accorded deferential review on direct appeal, "the respect paid to such findings in habeas proceedings certainly should be no less."); *Hernandez v. New York*, 500 U.S. 352, 369 (1991) (plurality) ("It would 'pervert the concept of

federalism'. . . to conduct a more searching review of findings made in state trial court than we conduct with respect to federal district court findings").

Federal court factfinding is reviewed for "clear error," a basic precept of which is that "[w]here there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous." *Hernandez*, 500 U.S. at 369 (quoting *Anderson v. Bessemer City,* 470 U.S. 564, 574 (1985)). Even in the context of direct review of state court judgments, the Court defers to state court factual findings absent clear error, even when the issue is dispositive of a constitutional dispute. *Hernandez*, 500 U.S. at 366-69. At a minimum, the Court recognized Congressional intent that state court factual findings be reviewed for no less than clear error when determining whether a petitioner could avoid the presumption of correctness found in the former § 2254(d) by showing that there was not "fair support" in the record for the state court's determinations.

However, the Court prior to AEDPA recognized that some circumstances necessitated greater deference than that provided by "clear error" review and proscribed a review for rationality and reasonableness. Chief among those instances was *Jackson*, which held that a state court's findings of the factual elements of an offense were binding under § 2254 if the trial court permitted "any rational factfinder" to conclude that the elements were proved beyond a reasonable doubt. 443 U.S. at 319. Under this rationality review, a prisoner's challenge to the state court factfinding cannot prevail is merely based upon inferences from the

evidence that are different from other rational permissible inferences that could be drawn. *Id.*

The Court extended the *Jackson* standard to federal court review of state court factfinding not involving the elements of crimes to which a lesser standard of proof applies. *Lewis v. Jeffers*, 497 U.S. 764, 780-82 (1990) ([I]n determining whether a state court's application of its constitutionally adequate aggravating circumstance was so erroneous as to raise an independent due process or Eighth Amendment violation, we think the more appropriate standard is the "rational factfinder" standard"). *See also Parke v. Raley*, 506 U.S. 20, 36 (1992) (suggesting, but not deciding, that the *Jackson* standard may be appropriate to review the voluntariness of a prior guilty plea in the context of Kentucky's persistent felony offender sentencing scheme).

Against this backdrop, Congress enacted AEDPA and placed "more, rather than fewer, limits on the power of federal courts" to grant habeas corpus relief. *Miller-El*, 537 U.S. at 337. *See also Woodford v. Garceau*, 538 U.S. 202, 206 (2003); *Duncan v. Walker*, 533 U.S. 167, 178 (2001). By abandoning the prior *de novo* review of legal questions and deferential review of factual determinations for a singular "unreasonableness" review, Congress indicated its intent to provide for a habeas review of both legal and factual questions with objectiveness and rationality as its lodestars. The *Jackson* standard provides that review for state court factual decisions.

3. The current § 2254(d)(2) standard of heightened deference—review that is both less intrusive than the "clear error" standard and dependent upon the objective question of whether the evidence before the state court would have compelled all reasonable factfinders to agree with the habeas petitioner—equates with the rational support standard of *Jackson*. The *Jackson* inquiry is one of reasonableness, 443 U.S. at 325, and asks whether "no rational trier of fact could have found" the pertinent fact, under the applicable standard of proof, in light of the record before the factfinder. *Id.* at 324.

This review queries whether any "substantial evidence" supports the trier of fact's determination. *Glasser v. United States*, 315 U.S. 60, 80 (1942); *Jackson*, 443 U.S. at 318-19 & n.12; *Powell v. United States*, 469 U.S. 57, 67 (1984). The reviewing court examines the record in the light most favorable to the factual determination and presumes in support of it the existence of every fact that reasonably may be deduced from the evidence. *Jackson*, 443 U.S. at 325; *Glasser*, 315 U.S. at 79. It does not "weigh the evidence" or "determine the credibility of witnesses." *Glasser*, 315 U.S. at 79. *See also Schlup v. Delo*, 513 U.S. 298, 330 (1995) ("under *Jackson*, the assessment of the credibility of witnesses is generally beyond the scope of review."). These standards provide useful guidance for judges well-versed in the requirements of *Jackson*. *Cf. Williams*, 529 U.S. at 409 (criticizing the formulation of the "unreasonable application" standard by reference to "reasonable jurists" as being unhelpful to courts).

II. Sections 2254(d)(2) and (e)(1), together and separately, restrict federal court second-guessing of state court factual findings and preclude habeas relief where state courts have reached reasonable factual decisions

Regardless of how one defines the "unreasonable determination" clause, § 2254(d)(2) and (e)(1) work together and separately to ensure that federal courts accord state court factual findings substantial respect and deference by limiting not only a federal court's ability to second-guess the state court factfinders, but also restrict the availability of habeas relief for factual disputes. AEDPA's reforms strengthened the preclusive effect of factual determinations made in the state courts, where our system of appellate and collateral review of criminal judgments has traditionally channeled primary responsibility.

In this regard, the majority of circuits properly understand the cooperative, yet distinct, roles that § 2254(d)(2) and (e)(1) play in delimiting the scope of federal habeas review of state court factual findings. Through these statutes, Congress has deliberately required federal courts to afford a broad presumption of correctness to all state court factual findings (subject to an appreciably high burden of proving them incorrect) while at the same time restricting the circumstances under which a court may grant habeas relief based on allegedly incorrect factual determinations.

The distinction may initially appear subtle. Each subsection, however, plays a distinct, indispensable

role in implementing Congress's intent to strengthen the preclusive effect of state court factual findings. In sum, sections (d)(2) and (e)(1) bind federal courts to state court factual determinations unless those findings are both clearly and convincingly wrong in light of the totality of the evidence and lack any rational support in light of only that evidence presented to the state court.

A. Section 2254(d)(2) requires deference to factual findings supporting a state court merits determination.

The structure and text of § 2254(d)(2) is noteworthy for several reasons. First, § 2254(d)(2) governs the federal courts' authority to grant habeas corpus relief. Second, it applies only to claims that a state court adjudicated on the merits. Third, relief is available only if a state court's factual determination is "unreasonable." Fourth, the federal courts are permitted to judge the reasonableness of a state court's factual findings only with regard to the "evidence presented in the State court proceedings."

These qualifications thus define the scope of a federal court's "unreasonableness" review, but they speak nothing of the appropriate level of deference federal courts must pay to other state court factual findings that fall outside § 2254(d)(2)'s scope. Such findings might relate to background facts or collateral issues whose full importance to the resolution of a prisoner's claims becomes apparent only in federal court. They might involve evidence developed after the state court made its finding but before federal habeas review, such as during state post-conviction review. Or, as Petitioner and his

amici point out, they might involve the unusual occasion were new evidence is developed during a federal evidentiary hearing that clearly and convincingly proves a state court factual finding to have been wrong. It is these various forms of factual findings that lie outside of the purview of § 2254(d)(2) where § 2254(e)(1) is particularly important.

B. Section 2254(e)(1) affords a presumption of correctness for other state court factual determinations.

Section 2254(e)(1) speaks in broad terms and applies universally to all habeas corpus petitions.

> (e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

That AEDPA made the presumption of correctness unconditional marks a significant change in habeas jurisprudence. The prior presumption of correctness statute, the former § 2254(d), conditioned the presumption on three prerequisites (an evidentiary hearing in state court on the merits of the factual issue, made by a court of competent jurisdiction, resulting in written findings of fact) that the State had the burden of establishing. Once established, the presumption could be rebutted by

"convincing" evidence of erroneousness or avoided altogether if one of eight conditions existed. 28 U.S.C. § 2254(d)(8) (1995) (presumption conditioned on "adequate" state procedures, "full and fair hearing" in state court, presence of counsel in the state hearing, federal court satisfaction that the factual determination was "fairly supported" by the state court record, etc.).[1]

AEDPA also amended a prisoner's burden to overcome the presumption by, if anything, strengthening the burden by requiring "clear and convincing" evidence, rather than only "convincing" evidence, that the state court erroneously found the facts. That is an extremely heavy burden, and such evidence leaves the question in no doubt. *Schneiderman v. United States*, 320 U.S. 118, 135 (1943). Indeed, this presumption is "typically *relief barring*." Randy Hertz & James S. Leibman, 1 FEDERAL HABEAS CORPUS PRACTICE AND PROCEDURE §20.2c at 919 (5th Ed. 2005) (emphasis in original).

C. Sections 2254(d)(2) and (e)(1) separately address common habeas scenarios.

1. When their express terms are contrasted, three key differences between § 2254(d)(2) and (e)(1) emerge. First, application of § 2254(d)(2) is predicated on the state court having *actually adjudicated the merits* of the prisoner's legal claim. Section 2254(e)(1), on the other hand, has no such requirement. Indeed, AEDPA completely unmoored the presumption of correctness from any state court

[1] Respondent has reproduced the entire text of the former version of § 2254(d) at pages 2a-3a of the merits brief.

merits adjudications. *Compare* 28 U.S.C. § 2254(d) (1995) (requiring state courts to have fully adjudicated a factual issue following a full and fair hearing before a presumption of correctness attached), *with* 28 U.S.C. § 2254(e)(1) (only requirement is that a state court have "determin[ed] a factual issue").

2. Section 2254(d)(2) review is constrained to only those factual findings that *actually formed the basis* for the state court's decision, while the presumption of correctness in § 2254(e)(1) applies to *all* discrete factual findings, regardless whether essential to the state court judgment. *Miller-El*, 537 U.S. at 341. Section 2254(e)(1) permits federal courts to reevaluate any factual finding, so long as the prisoner produces clear and convincing evidence that the state court was wrong. This distinction is important in cases where a prisoner asks the habeas court to reconsider the evidence relating to factual issues upon which the state court did not base its decision (perhaps it was a collateral issue, or even irrelevant in the state court's view) but which the prisoner—and perhaps a federal habeas court—may find to be of more importance to the merits of the claim. While these instances may be rare, Petitioner's reading of § 2254(e)(1) would foreclose those prisoners from receiving any review whatever of their additional evidence.

3. Perhaps most significantly, § 2254(d)(2) limits a federal court to considering *only the evidence actually presented in the state court proceeding where the adjudication was made* when judging the reasonableness of a factual determination. There is no such temporal limitation on evidence in

§ 2254(e)(1). Under the *amici* States' reading of § 2254(e)(1), prisoners can rebut the presumption of correctness with evidence developed in state court proceedings that came *after* the initial adjudication of their claim—even if that evidence was unknown to the state court at the time of the factual finding. Petitioner's reading of § 2254(e), however, would not permit federal review of those facts. While prisoners must still satisfy § 2254(d) in order to receive relief, restricting the ability of prisoners to rebut the presumption of correctness to only the handful of cases that qualify for an evidentiary hearing will effectively prevent some habeas petitioners from receiving federal court review of all of the evidence tending to show a state court made an erroneous factual finding.

In light of the expansion of vigorous state post-conviction review and the common practice of litigating ineffective assistance of counsel claims during that stage of review, States have seen their prisoners increasingly use state post-conviction review to develop additional facts that relate to a host of claims that were adjudicated before, at, or immediately after trial. For example, a prisoner raises a claim of ineffective assistance of counsel during state post-conviction review and presents evidence showing that his trial counsel failed to present certain medical evidence to the trial court that could have affected the trial judge's finding that he was competent to stand trial.[2] Although the prisoner also asked the state post-conviction courts to revisit the freestanding question of competency,

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[2] Practically any claim that is contingent on factual findings made before, during, or immediately after trial could be substitute for the competency claim used in this example.

the state courts refuse to reconsider the freestanding issue but reject the ineffective assistance of counsel claim.

On federal habeas review, the only mechanism by which that prisoner could ask a federal court to consider his "new" evidence would be through § 2254(e). While federal courts may, consistent with § 2254(e)(1) and (2), consider through expansion of the record or evidentiary hearings new evidence that was unavailable to the state courts, evidentiary hearings are unavailable in practically all habeas petitions. In our example, the prisoner could not receive a federal evidentiary hearing because his "new" evidence was already fully developed in state court, was discoverable through the exercise of due diligence at the time of trial, and cannot prove "by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the [prisoner] guilty of the underlying offense." 28 U.S.C. § 2254(e)(2). *Cf. Williams v. Taylor*, 529 U.S. 420, 441-45 (2000).

The prisoner is therefore left with an impossible burden: prove that the state court's competency finding is objectively unreasonable given the evidence actually presented during the competency hearing. Petitioner's overly narrow view of the presumption of correctness would conclusively preclude federal-court consideration of any evidence that fails to satisfy the criteria for an evidentiary hearing but nevertheless is contained within the state court record before the federal court.

4. None of this is to say, however, that § 2254(e)(1) provides independent authority to grant

habeas relief. AEDPA still requires habeas petitioners to show that the state courts legal conclusions or factual determinations are unreasonable under § 2254(d). This is because the touchstone of a § 2254(e)(1) analysis is not the reasonableness of a state court's factual finding, but its correctness, and AEDPA limits habeas relief to cases where the state court acted objectively unreasonably. While not presented in this case, AEDPA might permit a federal court, in cases where the prisoner has satisfied his burden of presenting clear and convincing evidence at a federal evidentiary hearing, to review a state court finding for reasonableness under § 2254(d)(2) in light of the newly developed and highly persuasive evidence.[3]

Indeed, as Respondent observes, *Respondent's Br.* at 37 n.12, there are instances—perhaps rare—where a state court factual determination is reasonable even if proven erroneous through clear and convincing evidence. *Lockyer*, 538 U.S. at 75 ("unreasonableness" review is more deferential than "clear error" review). That question is academic here, where Wood's claim rests entirely on evidence developed in state court at the time of the factfinding.

[3] While such a reading strains the text of both subsections, it does less violence than Petitioner's view that § 2254(e) provides an avenue for relief independent of § 2254(d). This narrow issue, however, is best addressed only after thorough consideration in a case that squarely presents it; this case is not that vehicle.

* * *

Respondent's understanding—and that of a majority of circuits—of the interplay between § 2254(d)(2) and (e)(1) when reviewing factual findings based solely on the evidence presented to the state court is consistent with Congress's intent in enacting AEDPA: to require deference to reasonable state court judgments in finally adjudicating habeas claims, while restricting federal courts from inappropriately substituting their judgment for that of the state courts during the adjudication process.

As explained fully by Respondent, these subsections work together in similar ways in cases where, as in a vast majority of federal habeas petitions, a prisoner does not present new evidence of a "clear and convincing" nature and instead merely asks the federal court to second-guess the state court's resolution of the factual issues. Because that prisoner cannot present evidence different from that which he presented to the state courts, he cannot overcome the AEDPA-enhanced presumption of correctness found in § 2254(e)(1) unless the state court record contains clear and convincing evidence that leads unquestionably to a finding contrary to the state courts. Even then, the plain language of AEDPA requires federal courts to defer to the state court judgment so long as the state court record provides a minimum level of reasonable support for the state court's findings. In such circumstances, it is appropriate for federal courts to view the standards of § 2254(d)(2) and (e)(1) as requiring a prisoner to prove his factual assertions by clear and convincing evidence while at the same

time showing that the state court decision was objectively unreasonable in finding the facts to the contrary. This case is such an example.

CONCLUSION

The Court should affirm the judgment of the Court of Appeals.

Respectfully submitted,

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