No. 09-587

In The
Supreme Court of the United States

KELLY HARRINGTON, WARDEN, PETITIONER

v.

JOSHUA RICHTER

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

BRIEF OF TEXAS, ALABAMA, ARIZONA, ARKANSAS, CONNECTICUT, DELAWARE, FLORIDA, HAWAII, IDAHO, ILLINOIS, INDIANA, IOWA, KANSAS, LOUISIANA, MARYLAND, MASSACHUSETTS, MICHIGAN, MISSISSIPPI, MISSOURI, NEBRASKA, NEW MEXICO, NORTH DAKOTA, OHIO, OKLAHOMA, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, UTAH, VIRGINIA, WASHINGTON, WISCONSIN, AND WYOMING AS AMICI CURIAE IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE

As direct beneficiaries of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), amici States have an interest in promoting "the principles of comity, finality, and federalism" that motivated Congress to enact the statute. *Michael Williams* v. *Taylor*, 529 U.S. 420, 436 (2000). The question presented in this case concerns 28 U.S.C. 2254(d)(1), a provision "Congress viewed * * * as an important means by which its goals for habeas reform would be achieved." *Terry Williams* v. *Taylor*, 529 U.S. 362, 404 (2000). In deciding whether to accord Section 2254(d)(1)'s "AEDPA deference" to summary dispositions, this Court will influence the conduct of

judicial business in state and federal courts across the country. Accordingly, thirty-three amici States respectfully submit this brief in support of petitioner.

SUMMARY OF ARGUMENT

In granting the petition for a writ of certiorari, the Court asked, "Does AEDPA deference apply to a state court's summary disposition of a claim, including a claim under *Strickland* v. *Washington*, 466 U.S. 668 (1984)?" *Harrington* v. *Richter*, 130 S. Ct. 1506, 1506-1507 (2010). Amici States urge the Court to answer its question in the affirmative. Summary dispositions are common in many state courts. To date, most federal courts have properly accorded AEDPA deference to these summary dispositions, as required by the text of 28 U.S.C. 2254(d)(1) itself. A contrary holding by this Court would have harmful implications for our federal system. This Court should reverse the judgment of the Ninth Circuit and confirm that AEDPA deference applies to all state-court decisions, including summary dispositions.

ARGUMENT

The phrase "AEDPA deference" describes a complex relationship between state and federal courts in the habeas context. A federal court entertaining a state prisoner's habeas petition does not sit to review a state court's judgment. See *Lambrix* v. *Singletary*, 520 U.S. 518, 523 (1997); *Schechtman* v. *Foster*, 172 F.2d 339, 341 (2d Cir. 1949) (L. Hand, J.). But neither are state-court proceedings irrelevant on federal habeas review under AEDPA. The pertinent statute provides:

> An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim * * * resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States * * * .

28 U.S.C. 2254(d)(1).

Although the word "deference" does not appear in the text, deference is plainly contemplated by the statute, as this Court has repeatedly recognized. See, *e.g.*, *Renico* v. *Lett*, No. 09-338, slip op. at 6 n.1 (U.S. May 3, 2010) (collecting cases in which the term "deference" is used "to describe the effect of the threshold restrictions in 28 U.S.C. § 2254(d) on granting federal habeas relief to state prisoners"); *Bell* v. *Cone*, 543 U.S. 447, 447 (2005) (per curiam) (noting "the deference [to state courts] required by 28 U.S.C. § 2254(d)"); *Lindh* v. *Murphy*, 521 U.S. 320, 333 n.7 (1997) (noting "§ 2254(d)'s highly deferential standard for evaluating state-court rulings"). Once a state court adjudicates the merits of a prisoner's claim, a federal court is powerless to grant habeas relief unless the state court's decision runs afoul of this Court's clearly established precedent. Thus constrained by statute, a federal court must forgo de novo consideration and defer to a state court, even though the latter may be incorrect on a point of federal law. See *Terry Williams* v. *Taylor*, 529 U.S. 362, 410-411 (2000).

The Court has asked whether this limitation on federal judicial power vanishes when a state court resolves a case by "summary disposition"—that is, where judgment is unaccompanied by an opinion that explains the court's reasons for denying a particular federal claim. *Harrington* v. *Richter*, 130 S. Ct. 1506, 1506-1507 (2010) (posing this question); see also *Smith* v. *Spisak*, 130 S. Ct. 676, 688 (2010) (declining to resolve this question). Amici States submit that summary dispositions, of which there are many, are no less worthy of AEDPA deference than any other state-court decisions.

A. State Courts Across The Country Deliver Summary Dispositions

The ineffective-assistance claim that respondent urges in his federal habeas petition was addressed by summary disposition in the courts of California. *Richter* v. *Hickman*, 578 F.3d 944, 951 n.5 (9th Cir. 2009) (en banc) ("Here, the California Supreme Court denied Richter's habeas petition in one sentence, without providing any reasoning for its decision. No other state court commented on Richter's claim * * * ."). According to petitioner, Pet'r Br. 29-30 & n.9, such summary dispositions are common in California state courts.

California is not unusual in this regard. In Texas, for example, the Court of Criminal Appeals has denied thousands of habeas applications in non-capital cases without written order. See, *e.g.*, *Court of Criminal Appeals Activity: FY 2009*, at 2, available at http://www.courts.state.tx.us/pubs/AR2009/cca/cca-activity-report-2009.pdf (reporting 946 denials of habeas relief without written order); *Court of Criminal Appeals Activity: FY 2008*, at 2, available at

http://www.courts.state.tx.us/pubs/AR2008/cca/cca-activity-report-2008.pdf (reporting 1058 denials of habeas relief without written order); *Court of Criminal Appeals Activity for the Year Ended August 31, 1996*, at 5 (reporting 2704 denials of habeas relief without written order). This shared trait of Texas and California predates AEDPA's enactment. See Victor E. Flango & Patricia McKenna, *Federal Habeas Corpus Review of State Court Convictions*, 31 Cal. W. L. Rev. 237, 262 (1995) (reporting that, in a study of state courts in Alabama, California, New York, and Texas, "about seventy-five percent of [habeas] petitions were dismissed or denied summarily without a reason").

Summary dispositions are found in other States. See, *e.g.*, Administrative Office of Courts, *Alabama Unified Judicial System: FY 2008 Annual Report & Statistics* 8, available at http://www.alacourt.gov/Annual%20Reports/2008AOCAnnualReport.pdf (noting that state supreme court issued 1506 decisions without opinion and 252 decisions with opinion, in disposing of 698 direct appeals); Office of the Administrative Director, *Alaska Court System: Annual Statistical Report* 8, 14 (2009), available at http://www.courts.alaska.gov/reports/annualrep-fy09.pdf (noting that state supreme court issued 120 dispositions by published opinion and 40 summary dispositions on merits, while state court of appeals issued 48 dispositions by published opinion and 157 summarily on merits); Hon. Chase T. Rogers, *Biennial Connecticut Judicial Branch Report and Statistics 2006-2008*, at 37, available at http://www.jud.ct.gov/Publications/BiennialReport2006-08.pdf (noting that state appellate courts disposed of 298

criminal appeals by opinion and 101 criminal appeals by other means); District Court of Appeal Workload and Jurisdiction Assessment Committee, *Report and Recommendations* appendix A (Nov. 2006), available at http://www.floridasupremecourt.org/pub_info/documents/DCAWorkload/2006_DCAReport.pdf (noting that, in Florida appellate courts, 38.0% of criminal cases and 65.8% of post-conviction cases were disposed of by short, per curiam affirmance); Hon. Ronald T.Y. Moon, *The Judiciary, State of Hawai'i: 2009 Annual Report Statistical Supplement* tbl. 1, available at http://www.courts.state.hi.us/docs/news_and_reports_docs/annual_reports/Jud_Statistical_Sup_2009.pdf (noting that state supreme court and court of appeals decided 19 criminal cases by published opinion, 19 criminal cases by memorandum opinion, and 160 criminal cases by summary disposition order); Administrative Office of the Illinois Courts, *Annual Report of the Illinois Courts: Statistical Summary* 130 (2008), available at http://www.state.il.us/court/SupremeCourt/AnnualReport/2008/StatsSumm/2008_Statistical_Summary.pdf (reporting that of 3755 criminal cases disposed by state appellate court, 850 were disposed of without written opinion or order); Hon. Gerald W. VandeWalle, *2009 Annual Report: North Dakota Court System* 9, available at http://www.ndcourts.gov/_court/News/ndcourtsar2009.pdf (noting that state supreme court disposed of 130 criminal cases, 34 of them by summary disposition); Wisconsin Court System, *Court of Appeals Annual Report* 3 (2009), available at http://www.wicourts.gov/ca/DisplayDocument.pdf?content=pdf&seqNo=47578 (noting that 28% of total case terminations in state courts of appeals were by summary disposition);

Court Statistics Project, *State Court Caseload Statistics: An Analysis of 2007 State Court Caseloads* tbl. 16 (2009) (describing opinions reported by state appellate courts across the country). Some States explicitly provide by rule for summary dispositions in their courts. See, *e.g.*, Ala. R. Crim. P. 32.7(d); Ariz. R. Crim. P. 32.6(c); Del. Super. Ct. R. Crim. P. 61(d)(4); N.D. R. App. P. 35.1; Utah R. Civ. P. 65C(h)(1).

The foregoing materials illustrate the most obvious form of state-court summary disposition, in which an entire case is dispatched without opinion. Another form of summary disposition is the otherwise lengthy opinion that notes a state court's denial of a federal claim without providing a rationale. See, *e.g.*, *Smith* v. *Spisak*, 130 S. Ct. 676, 688 (2010) (noting summary rejection of federal claim as "not well-taken" in state court); *Blankenship* v. *Hall*, 542 F.3d 1253, 1270-1271 (11th Cir. 2008) (noting summary rejection of federal claim as "without merit" in state court); *James* v. *Bowersox*, 187 F.3d 866, 869 (8th Cir. 1999) (same).

B. There Is Widespread Agreement Among The Federal Courts That Summary Dispositions Warrant AEDPA Deference Under Section 2254(d)

The prevalence of summary dispositions in the state courts has caused federal courts of appeals to consider whether such decisions are entitled to AEDPA deference. "Nearly every circuit has concluded that when a state court denies a federal constitutional claim but writes no opinion articulating its reasoning, the summary nature of a state court's decision does not lessen the deference

that it is due." Richard H. Fallon, Jr. et al., *Hart and Wechsler's The Federal Courts and The Federal System* 1262 (6th ed. 2009) [hereinafter *Hart & Wechsler*] (internal quotation marks omitted). The collective wisdom of the circuits may inform this Court's resolution of the question it has posed.

Several circuits have read the statutory text to require AEDPA deference for summary dispositions. Under 28 U.S.C. 2254(d)(1), federal habeas authority depends on an evaluation of the "decision" of a state court. A *decision* must be distinguished from an *opinion*, with the latter being an explanation offered in support of the former. See John Chipman Gray, *The Nature and Sources of the Law* 261 (2d ed. 1921) ("In order that an opinion may have the weight of a precedent, * * * it must be an opinion the formation of which is necessary for the decision of a particular case; in other words, it must not be *obiter dictum*."); Note, *Decisions Without Opinions*, 34 Harv. L. Rev. 314, 315 (1921) (referring to "an opinion as distinguished from the actual decision"). The circuits have noted the import of Congress's word choice. *E.g.*, *Neal* v. *Puckett*, 286 F.3d 230, 246 (5th Cir. 2002) (en banc) (per curiam) ("It seems clear to us that a federal habeas court is authorized by Section 2254(d) to review only a state court's 'decision,' and not the written opinion explaining that decision."). As the Eleventh Circuit has explained:

> A judicial decision and a judicial opinion are not the same thing. * * * The statutory language focuses on the result, not on the reasoning that led to the result, and nothing in that language requires the state court adjudication that has resulted in a

> decision to be accompanied by an opinion that explains the state court's rationale.

Wright v. *Sec'y for Dep't of Corrs.*, 278 F.3d 1245, 1255 (11th Cir. 2002) (holding "plain language of § 2254(d)(1)" dictates AEDPA deference for summary dispositions); see also *Sellan* v. *Kuhlman*, 261 F.3d 303, 311-312 (2d Cir. 2001) (reaching same conclusion, based on "plain meaning of § 2254(d)(1)").

AEDPA deference to summary dispositions is also driven by considerations of comity. See *Wright*, 278 F.3d at 1255 ("Telling state courts when and how to write opinions to accompany their decisions is no way to promote comity."); *Bell* v. *Jarvis*, 236 F.3d 149, 158 (4th Cir. 2000) (en banc) ("[The] state court did not articulate the rationale underlying its rejection of [a federal] claim. However, we may not presume that [the] summary order is indicative of a cursory or haphazard review of [the] petitioner's claims." (internal quotation marks omitted)). Judge Posner has explained that review of a state court's articulated reasoning "would place the federal court in just the kind of tutelary relation to the state courts that [AEDPA is] designed to end." *Hennon* v. *Cooper*, 109 F.3d 330, 335 (7th Cir. 1997). Other circuits have employed a schoolhouse analogy to illustrate this concern. See *Rashad* v. *Walsh*, 300 F.3d 27, 45 (1st Cir. 2002) ("It is not our function * * * to grade a state court opinion as if it were a law school examination. Rather, we review the state court's ultimate findings and conclusions to ascertain whether they constitute an unreasonable application of clearly established Supreme Court precedent."); *Wright*, 278 F.3d at 1255 ("Requiring state courts to put forward rationales for their decisions so that

federal courts can examine their thinking smacks of a 'grading papers' approach that is outmoded in the post-AEDPA era."); *Cruz* v. *Miller*, 255 F.3d 77, 86 (2d Cir. 2001) ("[W]e are determining the reasonableness of the state courts' 'decision,' 28 U.S.C. § 2254(d)(1), not grading their papers.").

The near-consensus amongst the lower courts is also consistent with prior rulings of this Court. In *Chadwick* v. *Janecka*, 312 F.3d 597, 605 (3d Cir. 2002), for example, a habeas petitioner argued that AEDPA deference did not apply because the state court had "denied relief without any statement of reasons at all." The Third Circuit rejected this argument as "contrary to Supreme Court precedent" on the subject of "summary dispositions." *Id.* at 605-606. Writing for the court, then-Judge Alito explained that *Weeks* v. *Angelone*, 528 U.S. 225, 237 (2000), "clearly held that the § 2254(d) standards apply when a state supreme court rejects a claim without giving any indication of how it reached its decision." *Chadwick*, 312 F.3d at 606 (internal quotation marks omitted). See also *Muth* v. *Frank*, 412 F.3d 808, 815 & n.6 (7th Cir. 2005) (noting *Weeks*'s deferential treatment of a state court's summary disposition); *Henderson* v. *Cockrell*, 333 F.3d 592, 598 (5th Cir. 2003) (same); *Bell*, 236 F.3d at 161 n.8 (same).

Accordingly, the circuits have overwhelmingly concluded that, under 28 U.S.C. 2254(d)(1), a federal habeas court must examine a state court's result, rather than its rationale. See, *e.g.*, *Clements* v. *Clarke*, 592 F.3d 45, 55-56 (1st Cir. 2010) ("It is the result to which we owe deference, not the opinion expounding it."); *Cruz*, 255 F.3d at 86 ("Several

circuits have noted that, in making the 'reasonable application' determination, they would look to the result of a state court's consideration of a criminal defendant's claim."); *Schaetzle* v. *Cockrell*, 343 F.3d 440, 443 (5th Cir. 2003) ("Because a federal habeas court only reviews the reasonableness of the state court's ultimate decision, the AEDPA inquiry is not altered when, as in this case, state habeas relief is denied without an opinion."); *Irick* v. *Bell*, 565 F.3d 315, 320 (6th Cir. 2009) ("[W]e must 'focus on the result of the state court's decision, applying' AEDPA deference to the result reached, not the reasoning used." (quoting *Harris* v. *Stovall*, 212 F.3d 940, 943 n.1 (6th Cir. 2000))); *Hough* v. *Anderson*, 272 F.3d 878, 897 n.7 (7th Cir. 2001) ("Under AEDPA, it is a state court's resolution of an issue, as opposed to its reasoning process, that must be treated with deference."); *Aycox* v. *Lytle*, 196 F.3d 1174, 1177 (10th Cir. 1999) ("[W]e owe deference to the state court's *result*, even if its reasoning is not expressly stated."); *Wright*, 278 F.3d at 1255 ("The statutory language focuses on the result, not on the reasoning that led to the result * * * ."); cf. *Fullwood* v. *Lee*, 290 F.3d 663, 677 (4th Cir. 2002) ("When the state court decision being reviewed by a federal habeas court fails to provide any rationale for its decision, we still apply the deferential standard of review mandated by Congress [in AEDPA]."); *Brown* v. *Luebbers*, 371 F.3d 458, 462 (8th Cir. 2004) (en banc) ("[T]he 'summary nature' of the [state court's] discussion of the federal constitutional question does not preclude application of the AEDPA standard.").

The lone outlier on the subject of AEDPA deference for summary dispositions is the Ninth

Circuit, which appears to have crafted a curious brand of intermediate deference. See, *e.g.*, *Brazzel* v. *Washington*, 491 F.3d 976, 981 (9th Cir. 2007) ("We have relaxed AEDPA's strict standard of review when the state court reaches a decision on the merits but provides no reasoning to support its conclusion." (quoting *Pirtle* v. *Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002))); *Brown* v. *Palmateer*, 379 F.3d 1089, 1092 (9th Cir. 2004) (declaring that if the state court "provide[s] no *ratio decidendi* to review," the federal court "accord[s] the state court decision[] less deference than in standard habeas cases"); *Delgado* v. *Lewis*, 223 F.3d 976, 982 (9th Cir. 2000) (suggesting that, absent an opinion, a state-court decision does "not warrant the deference we might usually apply," and that "an independent review of the record is required to determine whether the state court clearly erred in its application of controlling federal law" (quoting *Delgado* v. *Lewis*, 168 F.3d 1148, 1152 (9th Cir.), opinion withdrawn, 181 F.3d 1087 (9th Cir. 1999))). The opinion below declined to address this issue. *Richter* v. *Hickman*, 578 F.3d 944, 951 n.5 (9th Cir. 2009) (en banc) ("[W]e need not determine whether or when an unreasoned state court decision warrants AEDPA deference.").

Courts of the forty-one States outside the Ninth Circuit, see 28 U.S.C. 41, presently operate on the understanding that their summary dispositions will receive AEDPA deference on federal habeas review. To hold otherwise in this case would upset the sound precedent of most federal courts, along with the settled expectations of most state courts.

C. Denying AEDPA Deference To Summary Dispositions Would Offend The Principles Section 2254(d) Was Enacted To Promote

The general aim of AEDPA was to promote values of comity, finality, and federalism. *E.g.*, *Panetti* v. *Quarterman*, 551 U.S. 930, 945 (2007); *Day* v. *McDonough*, 547 U.S. 198, 208 (2006); *Mayle* v. *Felix*, 545 U.S. 644, 663 (2005); *Carey* v. *Saffold*, 536 U.S. 214, 220 (2002); *Duncan* v. *Walker*, 533 U.S. 167, 178 (2001); *Michael Williams* v. *Taylor*, 529 U.S. 420, 436 (2000). Congress included Section 2254(d), which has been described as "AEDPA's most important provision," *Hart & Wechsler*, *supra*, at 1158, as a means of achieving that worthy goal. See *Woodford* v. *Garceau*, 538 U.S. 202, 206 (2003); *Terry Williams* v. *Taylor*, 529 U.S. 362, 404 (2000). The principles of comity, finality, and federalism are not advanced, and are indeed offended, by an interpretation of Section 2254(d) that makes a state-court opinion the *sine qua non* of AEDPA deference.

Such an interpretation is premised on a dubious set of assumptions about state courts. At best, the denial of AEDPA deference to summary dispositions has been justified on the ground that federal courts are supposedly unable to determine whether a "claim [has been] adjudicated on the merits," 28 U.S.C. 2254(d), absent an opinion explaining the state court's decision. See 2 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* § 32.2, at 1574 & n.8 (5th ed. 2005). On this view, a federal habeas court assumes the state court avoided the merits unless there is written indication to the contrary. But habeas jurisprudence elsewhere adopts precisely the opposite default rule:

> Decisions * * * dealing with ambiguous state court rulings have established a presumption that the ambiguous state court decision rests on a denial of the claim on the merits and hence there is no procedural default barring habeas review, see *Harris* v. *Reed*, 489 U.S. 255 (1989), but the presumption can be rebutted, see *Coleman* v. *Thompson*, 501 U.S. 722 (1991); *Ylst* v. *Nunnemaker*, 501 U.S. 797 (1991).

Hart & Wechsler, *supra*, at 1290. As the law of procedural default illustrates, federal habeas courts should not assume that every state-court summary disposition failed to address claims on the merits. See, *e.g.*, *Schaetzle* v. *Cockrell*, 343 F.3d 440, 443 (5th Cir. 2003).[1]

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[1] Not every summary disposition is opaque as to whether there has been a merits adjudication. Consider the state-court opinion that tersely rejects a federal claim as "without merit." To take another example, Texas courts use terms of art to indicate the nature of their decisions. See *Ex parte Torres*, 943 S.W.2d 469, 472 (Tex. Crim. App. 1997) ("In our writ jurisprudence, a 'denial' signifies that we addressed and rejected the merits of a particular claim while a 'dismissal' means that we declined to consider the claim for reasons unrelated to the claim's merits."). Of course, if the circumstances of a given summary disposition show that the state court has not adjudicated the merits, AEDPA deference will not be appropriate under Section 2254(d). Cf. *Chadwick* v. *Janecka*, 312 F.3d 597, 606 (3d Cir. 2002) (Alito, J.) ("[I]f an examination of the opinions of the state courts shows that they misunderstood the nature of a properly exhausted claim and thus failed to adjudicate that claim on the merits, the deferential standards of review in AEDPA do not apply.").

Refusal to give AEDPA deference to summary dispositions also betrays a troubling assumption that state courts do not write opinions because they are lazy or incompetent—so much so that they cannot be trusted to vindicate federal rights. Under this view, a state court must offer written proof that it is capable of "correctly identif[ying] the governing legal rule [and] appl[ying] it []reasonably to the facts of a particular prisoner's case," *Terry Williams*, 529 U.S. at 407-408, before AEDPA deference can be meted out by a federal court. See, *e.g.*, *Niederstadt* v. *Nixon*, 505 F.3d 832, 842-843 (8th Cir. 2007) (en banc) (M. Arnold, J., dissenting) ("I see no reason to encourage state courts to be laconic. * * * [I]f a state wants to claim the shelter that [AEDPA] provides, it has the burden to show that it is entitled to it."); *Delgado* v. *Lewis*, 223 F.3d 976, 981-982 (9th Cir. 2000) ("When a state court does not furnish a basis for its reasoning, we have no basis other than the record for knowing whether the state court correctly identified the governing legal principle or was extending the principle into a new context.").

Such negative assumptions about state courts are inappropriate. Regardless of the summary nature of a disposition, a federal court should "presum[e] that state courts know and follow the law." *Woodford* v. *Visciotti*, 537 U.S. 19, 24 (2002) (per curiam). State judges, no less than their federal counterparts, are duty-bound to support the Constitution of the United States. See 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"); *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."); *Brown* v. *Allen*, 344 U.S. 443, 499 (1953) (Frankfurter, J.) ("[State courts] are under the same duty as the federal courts to respect rights under the United States Constitution."); *Ex parte Royall*, 117 U.S. 241, 251 (1886) (Harlan, J.) (noting that state and federal courts are "equally bound to guard and protect rights secured by the constitution"). Absence of a written opinion does not signal a failure to carry out this constitutional duty, and "[i]t denigrates the judges who serve on the state courts to suggest that they will not enforce the supreme law of the land." *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 240 n.2 (1985); see also *Coleman* v. *Thompson*, 501 U.S. 722, 739 (1991) ("[W]e have no power to tell state courts how they must write their opinions.").[2]

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[2] In the habeas context, the esteem in which state courts are held is evident in the exhaustion requirement, now codified at 28 U.S.C. 2254(b)-(c). "The exhaustion requirement * * * serves to minimize friction between our federal and state systems of justice by allowing the State an initial opportunity to pass upon and correct alleged violations of prisoners' federal rights." *Duckworth* v. *Serrano*, 454 U.S. 1, 3 (1981) (per curiam). Yet friction would be the natural product of a system in which state courts are made to consider federal claims by way of exhaustion, see 28 U.S.C. 2254(b)-(c), told that their decisions will receive deference, see 28 U.S.C. 2254(d), and then informed that their summary dispositions do not make the grade—or that additional writing is required before federal courts will acknowledge their work.

Section 2254(d) confirms that federal habeas courts owe a duty of respect to the state courts. That provision "demands that state-court decisions be given the benefit of the doubt," *Visciotti*, 537 U.S. at 24, and forbids the skepticism about state-court competence described above. As this Court recently noted, "AEDPA prevents defendants—and federal courts—from using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts." *Renico* v. *Lett*, No. 09-338, slip op. at 12 (U.S. May 3, 2010); cf. Paul M. Bator, *Finality in Criminal Law and Federal Habeas Corpus for State Prisoners*, 76 Harv. L. Rev. 441, 451 (1963) ("What seems so objectionable is second-guessing merely for the sake of second-guessing, in the service of the illusory notion that if we only try hard enough we will find the 'truth.'").

Amici States obviously do not oppose the practice of opinion writing. State-court opinions have always been useful to federal courts on habeas review. But Section 2254(d)(1) has substantially altered the role of state-court opinions in federal habeas proceedings. From the time of *Brown* v. *Allen*, 344 U.S. 443 (1953), until AEDPA's enactment, federal courts routinely relitigated federal constitutional questions that had been fully and fairly litigated in state court. See, *e.g.*, *Wright* v. *West*, 505 U.S. 277, 285-289 (1992) (plurality opinion of Thomas, J.); *Hart & Wechsler*, *supra*, at 1228. During this era of plenary habeas authority, a state court could only affect federal habeas outcomes by exercising the power to persuade—that is, by writing an opinion that a federal court would later approve as a correct statement of federal law. See *Brown*, 344 U.S. at 508

(Frankfurter, J.) ("Although there is no need for the federal judge, if he could, to shut his eyes to the State consideration of such issues, no binding weight is to be attached to the State determination."); cf. Henry J. Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 165 n.125 (1970) ("When I am confident that the issue has received real attention and the state trial and appellate judges have been in accord among themselves, I see no sufficient reason to elevate my views over theirs in a close case. The main difficulty is when one cannot be sure that the state courts, or at any rate the state appellate courts, have focused on the issue. Greater writing of opinions, however brief and informal, would alleviate the problem." (citation omitted)).

But after AEDPA, a federal court may no longer grant habeas relief simply because, in its independent view, the state court's decision was incorrect on a point of federal law. See *Terry Williams*, 529 U.S. at 410-411. Congress's enactment of Section 2254(d)(1) reflects its judgment that the decisions of state courts are worthy of trust and deference.

The potential for friction between state and federal courts has long been recognized as a risk inherent to the enterprise of federal habeas review. See *Darr* v. *Burford*, 339 U.S. 200, 204 (1950) ("[S]ince the 1867 statute granted jurisdiction to federal courts to examine into alleged unconstitutional restraint of prisoners by state power it created an area of potential conflict between state and federal courts."). Section 2254(d) should not be given an interpretation that aggravates the

old problems it was meant to solve. AEDPA deference applies to summary dispositions of state courts.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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