No. _____

In the Supreme Court of the United States

BONITA HOFFNER, PETITIONER

v.

REGINALD WALKER

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Michigan Court of Appeals' prejudice ruling under *Strickland* v. *Washington*, 466 U.S. 668 (1984), rested on "an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement" so as to justify habeas relief. *Metrish* v. *Lancaster*, 133 S. Ct. 1781, 1786–87 (2013) (quoting *Harrington* v. *Richter*, 131 S. Ct. 770, 786–87 (2011)).

PARTIES TO THE PROCEEDING

There are no parties to the proceedings other than those listed in the opinion. The petitioner is Bonita Hoffner, warden of a Michigan correctional facility. The respondent is Reginald Walker, an inmate.

TABLE OF CONTENTS

PETITION APPENDIX TABLE OF CONTENTS

TRANSCRIPTS

TABLE OF AUTHORITIES

Cases

Statutes

Rules

OPINIONS BELOW

The opinion of the Sixth Circuit, App. 1a–25a, is not reported but is available at 2013 WL 4406932. The opinion of the district court, App. 60a–84a, is not reported but is available at 2010 WL 200813. The opinion of the Michigan Court of Appeals, App. 86a–90a, is not reported but is available at 2005 WL 657727.

JURISDICTION

The Sixth Circuit entered its opinion and judgment on August 16, 2013. App. 1a. An order denying the State of Michigan's motion to stay the mandate was entered on September 9, 2013. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 104–132, 104, 110 Stat. 1214, 1219 (codified at 28 U.S.C. § 2241 *et seq*.), provides in § 2254:

> (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-
>
> > (1) 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; or
> >
> > (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 proceeding.
>
> (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.

INTRODUCTION

This is a Sixth Circuit decision granting habeas relief. This Court has repeatedly vacated and remanded or reversed—at times peremptorily—Sixth Circuit Court of Appeals decisions granting habeas relief when Sixth Circuit panels have disregarded this Court's decisions and the lofty standard that Congress established in AEDPA, the Antiterrorism and Effective Death Penalty Act of 1996.[1]

In fact, this Court previously granted a writ of certiorari in this very case, vacated the Sixth Circuit's grant of habeas relief, and remanded the case for reconsideration in light of *Parker* v. *Matthews*, 132 S. Ct. 2148 (2012), one of those earlier reversals. In *Matthews*, this Court reversed another Sixth Circuit habeas grant, describing the grant as "a textbook example of what [AEDPA] proscribes: 'using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts.'" *Id.* at 2149 (quotation omitted). Undeterred, the Sixth Circuit has now granted habeas relief to Mr. Walker a second time.

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[1] E.g., *Burt* v. *Titlow*, __ S. Ct. __, 2013 WL 5904117 (Nov. 5, 2013); *Metrish* v. *Lancaster*, 133 S. Ct. 1781 (2013); *McQuiggin* v. *Perkins*, 133 S. Ct. 1924 (2013); *Parker* v. *Matthews*, 132 S. Ct. 2148 (2012); *Lovell* v. *Duffey*, 132 S. Ct. 1790 (2012); *Sheets* v. *Simpson*, 132 S. Ct. 1632 (2012); *Howes* v. *Fields*, 132 S. Ct. 1181 (2012); *Stovall* v. *Miller*, 132 S. Ct. 573 (2011); *Bobby* v. *Mitts*, 131 S. Ct. 1762 (2011); *Bobby* v. *Dixon*, 132 S. Ct. 26 (2011); *Renico* v. *Lett*, 559 U.S. 766 (2010); *Berghuis* v. *Smith*, 130 S. Ct. 1382 (2010); *Smith* v. *Spisak*, 130 S. Ct. 676 (2010); and *Berghuis* v. *Thompkins*, 130 S. Ct. 2250 (2010).

A jury convicted respondent Reginald Walker of first-degree murder. Walker shot Larry Troup after being "bumped" in a drug store. At trial, Walker testified that he acted in self-defense, that his gun discharged accidentally, and that he was intoxicated. On appeal, Walker claimed that his trial counsel was ineffective for not investigating and raising an insanity defense. The Michigan Court of Appeals determined that Walker could not establish prejudice. On federal habeas review, the district court, recognizing its limited role under AEDPA, found that the state court reasonably applied *Strickland* v. *Washington*, 466 U.S. 668 (1984).

Although habeas relief is supposed to be an extraordinary remedy, the Sixth Circuit, over a dissent, granted Walker relief. This Court then vacated that decision and remanded the case for further consideration in light of *Matthews*. But the Sixth Circuit again granted Walker habeas relief, again over a dissent. In overturning Walker's 13-year-old murder conviction for the second time, the panel majority erred in two ways.

First, the panel majority construed *Matthews* to hold only that circuit precedent does not constitute clearly established federal law. But the panel majority ignored the broader holding of *Matthews*: that AEDPA prohibits using federal habeas review to second-guess reasonable state-court decisions. *Matthews* affirms this Court's description of habeas corpus as a guard against extreme malfunctions by state courts. The panel majority's failure to comply with *all* of *Matthews'* dictates presents a substantial question of federal habeas jurisprudence.

Second, the panel majority failed to properly defer to the state court's decision. Rather than read the state-court opinion in its entirety and presume that the state court knew and followed the law, see App. 87a n.6 (state court correctly stating *Strickland*'s prejudice prong), the panel majority said the state court failed to apply the correct rule—which is the exact opposite of what the panel majority said in its first opinion in this case. The panel majority also faulted the state court for using a shorthand phrase for the prejudice standard: for saying that establishing prejudice requires showing "a reasonably likely chance of acquittal," instead of a reasonable probability that "the result of the proceeding would have been different." App. 11a. But the state court was only following the lead of this Court, which has used the same shorthand to describe prejudice in an insanity case: "To prevail on his ineffective-assistance claim, Mirzayance must show, therefore, that there is a 'reasonable probability' that he would have prevailed on his insanity defense had he pursued it." *Knowles* v. *Mirzayance*, 556 U.S. 111, 127 (2009). The panel majority also improperly expanded this Court's precedent in assessing *Strickland* prejudice when it considered outcomes not contemplated by this Court. And instead of giving the state court leeway in its application of *Strickland*, as is appropriate, the panel majority was quick to fault the state court for its "conclusory" analysis and the factors it considered.

The petition for certiorari should be granted and the Sixth Circuit summarily reversed.

STATEMENT OF THE CASE

A. Factual background

A jury convicted Reginald Walker of first-degree murder and possession of a firearm during the commission of a felony. Walker was in a drug store when two men entered to purchase beer and one of them "bumped" him. The parties exchanged words, then Walker pulled out a handgun. He fired three or four shots and killed one of the men instantly. Neither of the other individuals was armed. Walker "picked up the clip that had fallen to the floor, put it in his pocket, and walked out the store." App. 92a.

After leaving the scene of the crime, Walker fled to an abandoned house; there, he hid the murder weapon in a hole in the wall. He then lied to police repeatedly, giving them aliases on three different occasions. App. 89a–90a. Despite these calculated and deliberate actions, Walker claimed at trial that he acted in self-defense, that his gun discharged accidentally, and that he was intoxicated.

B. State-court proceedings

On appeal and on habeas review, Walker asserted that he was legally insane at the time of the murder and that trial counsel was ineffective for not investigating and raising an insanity defense. Without knowing trial counsel's reasons for not raising the defense, the Michigan Court of Appeals concluded that counsel's performance was deficient, and remanded the case to the state trial court for a

Ginther[2] hearing to determine whether Walker was prejudiced by counsel's deficient performance. App. 91a.

At the *Ginther* hearing, Walker called psychologist Steven Miller, Ph.D. Dr. Miller, who interviewed Walker nearly two years after the shooting, opined Walker was legally insane at the time of the incident. App. 123a, 133a. Dr. Miller testified that he did not consider post-incident behavior, because he did not know how to give it weight, and he believed he could reconstruct a person's mental state solely from an evaluation of the person's cognitive processes, which rely on the person's statements, medical history, and clinical findings, not the person's actual behavior. Upon the trial court's continued questioning, Dr. Miller admitted that he was unaware of Walker's deliberate, post-crime behavior. App. 183a–86a.

Forensic psychiatrist Dexter Lee Fields, M.D., also testified about his pre-trial examination of Walker and opined that Walker was not legally insane at the time of the shooting. Dr. Fields was aware of Walker's history and had examined Walker on prior occasions; he also knew that Walker did not want to proceed with an insanity defense in a 1985 case. App. 191a–94a; 233a–34a. Dr. Fields was not aware of a condition that Dr. Miller described—where an individual could go in and out of legal insanity. App. 168a–69a; 241a.

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[2] Evidentiary hearings on allegations of ineffective assistance of counsel are referred to as *Ginther* hearings in Michigan, pursuant to *People* v. *Ginther*, 212 N.W.2d 922 (Mich. 1973).

Walker's trial counsel testified that even with the independent evaluation, he would not have pursued the insanity defense, for four reasons: because he was afraid it would lead to evidence being admitted concerning an assault with intent to murder that Walker committed around the same time as the murder in this case; it was the defense's burden to establish insanity by a preponderance of the evidence; he was afraid of a compromise verdict;[3] and he believed the jury was less likely to accept the insanity theory than the self-defense theory. App. 209a–10a.

Based on the evidence presented at the hearing, the state trial court found that Walker was not prejudiced by the failure to investigate and pursue an insanity defense. 6/4/03 Tr. at 5, 27–28. Among the various factors that the state trial court found undermined an insanity defense was the state-court finding that the record was "replete with instances" where Walker had given Dr. Fields and Dr. Miller

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[3] A defendant in Michigan may be found guilty but mentally ill when he properly raises an insanity defense, is found guilty beyond a reasonable doubt, has established mental illness under the Public Health Code's definition, but has not proven insanity by a preponderance of the evidence. Mich. Comp. Laws § 768.36. In fact, defendants have raised ineffective-assistance-of-counsel claims where counsel has asserted an insanity defense, because a guilty-but-mentally-ill conviction subjects the defendant to the same sentence as an ordinary guilty conviction. See *People* v. *Martinez*, No. 293562, 2010 WL 5129862, at *4 (Mich. Ct. App. Dec. 16, 2010) (defendant claiming that the insanity defense is "almost impossible for an attorney to prove," and "a reasonable attorney would have known that the likely outcome of such a defense was that of . . . guilty but mentally ill.").

conflicting information and explanations of what happened. 6/4/03 Tr. at 9–11. In other words, Walker's stories changed depending on the person to whom he was talking.[4]

On appeal, the Michigan Court of Appeals concluded that Walker could not show *Strickland* prejudice, which the court defined as a deprivation "of a reasonably likely chance of acquittal," or "a reasonable probability that, but for counsel's errors, the result of the proceeding would have been different." App. 88a, 87a n.6 (citations omitted)). That was because Walker's counsel reasonably believed that although Walker "was mentally ill," Walker would not "be successful in proving his legal insanity." App. 89a. See *People* v. *Carpenter*, 627 N.W.2d 276 (Mich. 2001) (in Michigan, mental illness short of legal insanity does not relieve a defendant from criminal responsibility).

The Michigan Court of Appeals relied on a number of factors in reaching this conclusion:

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[4] The state trial court also disagreed with Walker's claim that trial counsel rejected "out of hand" the insanity defense, 6/4/03 Tr. at 22, and instead found that counsel made a "sound, legal, strategic decision" to not go with the insanity defense. 6/4/03 Tr. at 26. While the trial court's finding of no deficient performance is supported by the record, and while the Michigan Court of Appeals' resolution of *Strickland's* first prong in Walker's favor was not entitled to deference under AEDPA, *Daniels* v. *Lafler*, 501 F.3d 735, 740 (6th Cir. 2007) (quoting *Fry* v. *Pliler*, 127 S. Ct. 2321, 2327 (2007)), the Michigan Court of Appeals' ultimate finding of no prejudice was nevertheless a reasonable application of *Strickland*.

- Dr. Dexter Fields conducted a competency and criminal-responsibility evaluation, concluding that Walker was competent to stand trial and was not mentally ill at the time of the offense.

- Nothing in the police investigator's report or Walker's own narrative suggested that he was confused.

- After shooting his victim, Walker picked up the clip.

- Walker then fled to an abandoned house to hide his murder weapon in a hole.

- Finally, Walker lied to police, giving them aliases on three different occasions.

App. 89a–90a. Thus, "[e]ven with Dr. Ste[v]en Miller's testimony in favor of an insanity defense, in light of evidence that defendant had the consciousness of guilt, we conclude that there is not a reasonable probability that defendant had a likely chance of acquittal." App. 90a.

The Michigan Supreme Court denied Walker's application for leave to appeal. App. 85a.

C. Federal habeas corpus proceedings

Through counsel, Walker filed a petition for a writ of habeas corpus. The district court denied the petition and adopted the magistrate's report and recommendation, which reasoned that the state-court decision was not objectively unreasonable because of conflicting expert testimony and evidence

of consciousness of guilt. App. 65a. The district court granted a certificate of appealability on the sole issue of whether the state court unreasonably applied clearly established United States Supreme Court precedent. App. 59a.

On September 2, 2011, the Sixth Circuit, over a dissent, vacated Walker's murder conviction the first time. *Walker* v. *McQuiggin*, 656 F.3d 311 (6th Cir. 2011) ("*Walker I*"); App. 27a. This Court then granted the State of Michigan's petition for writ of certiorari and vacated and remanded the Sixth Circuit's opinion in light of *Parker* v. *Matthews*, 132 S. Ct. 2148 (2012). *Howes* v. *Walker*, 132 S. Ct. 2741 (2012); App. 26a. On August 16, 2013, the Sixth Circuit, again over dissent, granted habeas relief to Walker. *Walker* v. *Hoffner*, __ Fed. App'x __, 2013 WL 4406932 (2013) ("*Walker II*"); App. 1a.

On remand, the panel majority reversed the district court's decision for three main reasons, all of which the State challenges. First, the panel majority concluded that the Michigan Court of Appeals failed to state the correct *Strickland* rule. App. 11a–12a & n.4. Second, the panel majority said that even if the Michigan Court of Appeals had stated the correct rule, it "improperly applied" the rule. App. 13a. Third, the panel majority concluded that *Matthews* did "not alter the result" of its prior decision to grant habeas relief. App. 21a. The panel majority ordered that "Walker be released from custody unless the State of Michigan commences a new trial within 180 days of the date of this order." App. 22a.

As in *Walker I*, Judge Cook dissented. Judge Cook noted that although the panel majority retreated from some of its *Walker I* criticisms, the panel reached a new conclusion—"the state court failed to apply the correct *Strickland* rule"—that departs from what the panel majority held in *Walker I*. App. 23a (Cook, J., dissenting). Judge Cook further explained that the panel majority "overlooks the fact" that the state court got the standard right, and neither gave the state-court decision the benefit of the doubt nor presumed that the state court knew and followed the law. App. 23a (Cook, J., dissenting). Moreover, the state-court's prejudice analysis was not "objectively unreasonable." App. 25a (Cook, J., dissenting) ("The state court weighed [Walker's] new mitigating evidence against Dr. Field's contrary reports and [Walker's] multiple attempts to conceal the murder, ultimately agreeing with defense counsel that [Walker's] insanity defense would be unavailing. That conclusion is not objectively unreasonable; fairminded jurists could (and did) disagree on this point.").

REASONS FOR GRANTING THE PETITION

I. The petition should be granted to reiterate this Court's repeated admonitions to the Sixth Circuit regarding deference owed to state-court determinations under AEDPA.

Habeas corpus is an "extraordinary remedy," *Bousley* v. *United States*, 523 U.S. 614, 621 (1998). While the burden that a prisoner must meet under AEDPA is a demanding one that is "difficult to meet," *Metrish* v. *Lancaster*, 133 S. Ct. 1781, 1786–87 (2013) (quoting *Harrington* v. *Richter*, 131 S. Ct. 770, 786 (2011)), the panel majority here found that Walker met it. The panel majority's decision warrants reversal for several reasons, each of which presents a substantial question.

A. The panel majority ignored the full scope of *Matthews*.

After this Court vacated the Sixth Circuit's first judgment granting habeas relief to Walker and remanded the case for consideration of *Parker* v. *Matthews*, 132 S. Ct. 2148 (2012), the Sixth Circuit, on remand, concluded that its prior decision was unaffected by *Matthews*. App. 21a. But *Matthews* categorically impacts the panel majority's original decision. Rather than again grant habeas relief, the Sixth Circuit should have affirmed the District Court's proper denial of habeas relief.

In *Matthews*, this Court summarily reversed a Sixth Circuit grant of habeas relief to a Kentucky prisoner.[5] In so doing, this Court reiterated that AEDPA imposes a "difficult to meet" and "highly deferential" standard for evaluating state-court rulings, especially when general standards are involved. *Matthews*, 132 S. Ct. at 2151, 2155 (quoting *Cullen* v. *Pinholster*, 131 S. Ct. 1388, 1398 (2011)). This Court described the grant as "a textbook example of what [AEDPA] proscribes: 'using federal habeas corpus review as a vehicle to second-guess the reasonable decisions of state courts.'" *Matthews*, 132 S. Ct. at 2149 (quoting *Renico* v. *Lett*, 130 S. Ct. 1855, 1866 (2010)).

Remarkably, the panel majority read this Court's decision in *Matthews* as "*strengthen[ing]* [the panel's] belief that the Michigan court's decision was unreasonable." App. 20a (emphasis added). While the panel majority discussed *Matthews* and recognized that it had wrongly applied its own circuit precedent in *Walker I*, it read *Matthews* far too narrowly. App. 21a ("the primary application of the *Parker* decision must be to limit this Court's analysis to clearly established law as determined by the Supreme Court.").

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[5] Although *Matthews* dealt with sufficiency and prosecutorial misconduct issues, it presents some factual similarities to Walker's. Both cases involve habeas petitioners who did not contest that they killed their victims. Both cases also involve post-crime evidence belying the petitioners' assertions about their mental states. For instance, after the murders, both Matthews and Walker took steps to hide their murder weapons, and both men lied to police. *Matthews*, 132 S. Ct. at 2153.

But *Matthews* stands for more than just the proposition that a federal habeas court must look only to this Court's precedent as the basis for clearly established law. *Matthews* reiterated AEDPA's difficult-to-meet standard and warned federal habeas courts to give significant deference to a state court's reasonable decision, particularly when general standards are at issue. The panel majority's failure to do so here, and its failure to consider the broader dictates of *Matthews*, presents a substantial question of federal habeas jurisprudence to this Court.

Oddly, the panel majority found that the Michigan Court of Appeals "usurped the fact-finding province of the jury." App. 20a. But appellate courts frequently must assess the evidence to determine whether allegations of deficient performance by counsel resulted in prejudice, and *Strickland* expressly directs courts to do so to determine whether the defendant was prejudiced. *Strickland*, 466 U.S. at 696 ("In making [a prejudice] determination, a court hearing an ineffectiveness claim must consider the totality of the evidence before the judge or jury.") The Michigan Court of Appeals did just that: it considered all of the evidence and reasonably determined that Walker was not prejudiced by the failure to present an insanity defense. By substituting its judgment for the reasonable decision of the Michigan Court of Appeals, it was the panel majority that usurped the province of the state court.[6]

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[6] The panel majority's attempt to distinguish *Matthews* by pointing to the "full record" in that case is of no moment; the Michigan Court of Appeals had a full hearing on Walker's

B. The Michigan Court of Appeals' decision is entirely consistent with this Court's precedent.

Habeas corpus is a guard against *extreme malfunctions* in the state criminal justice systems. *Richter*, 131 S. Ct. at 786–87 (internal quotations omitted) (emphasis added). A state prisoner seeking habeas relief must show that the state court's ruling on a claim "was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Id*. There are no such circumstances here.

1. The state court applied the correct rule.

First, the state court applied the correct rule—and Walker has not argued otherwise. The panel majority's conclusion that the state court articulated the wrong rule is, as Judge Cook pointed out, directly at odds with its explicit statement in *Walker I*—that the state court had "properly stat[ed] the *Strickland* standard for prejudice." App. 23a (quoting 656 F.3d at 320) (Cook, J., dissenting). Judge Cook also correctly noted that the panel majority "overlooks the fact" that the state court got the standard exactly right. *Id*. Compare App. 87a n.6 (citing state-court authority in its discussion of *Strickland* and defining prejudice as "a reasonable probability that, but for

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mental state and could evaluate whether Walker was prejudiced by trial counsel's purported error. The panel majority's real problem with the state court's decision was that it disagreed with the state court's ultimate conclusion, and therefore pronounced it "unreasonable." App. 21a.

counsel's errors, the result of the proceeding would have been different"), with *Strickland*, 466 U.S. at 694 ("The defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."). The state court also used *Strickland's* "reasonable probability" standard in its conclusion. App. 90a (finding that "there is not a reasonable probability that defendant had a likely chance of acquittal.").

The panel majority faulted the state court for relating the reasonable probability of *Strickland's* prejudice prong "to the chance of an acquittal," App. __ (2013 op. at *5), but the Sixth Circuit itself has explicitly linked the two. See *Avery* v. *Preslesnik*, 548 F.3d 434, 439 (6th Cir. 2008) ("We do not ask whether [the petitioner] was ultimately innocent, but, rather, whether he was deprived [of] a reasonable shot of acquittal.")[7] More important, as Judge Cook explained, this Court has also equated the two:

> [T]he fact that the state court twice referred to a "likely chance of acquittal" in its application of the rule—without corresponding language excluding other outcomes—does not reflect an attempt to raise *Strickland's* prejudice bar. *Cf. Cullen* v.

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[7] Other circuits have done the same. E.g., *Skinner* v. *Quarterman*, 528 F.3d 336, 343–344 (5th Cir. 2008) (reasonable probability of acquittal); *Cagle* v. *Norris*, 474 F.3d 1090, 1096 (8th Cir. 2007) (reasonable probability of acquittal); *Gibbs* v. *VanNatta*, 329 F.3d 582, 584 (7th Cir. 2003) (reasonable shot at acquittal).

> *Pinholster*, 131 S. Ct. 1388, 1404 (2011) (clarifying that a "reasonable probability . . . sufficient to undermine confidence in the outcome," under *Strickland*, "requires a 'substantial,' not just 'conceivable,' likelihood of a different result" (citation omitted)); *Knowles* v. *Mirzayance*, 556 U.S. 111, 127–28 (2009) (reversing habeas relief and rejecting *Strickland* claim where petitioner failed to show a "'reasonable probability' that he would have *prevailed* on his insanity defense had he pursued it." [App. 23a–24a (Cook, J., dissenting) (emphasis added).]

In assessing prejudice on an ineffective-assistance claim, this Court has said that "the question is whether there is a reasonable probability that . . . the factfinder would have had a reasonable doubt respecting guilt." *Strickland*, 466 U.S. at 695. In the context of a claim alleging failure to raise an insanity defense, the habeas petitioner must, as noted above, show a "'reasonable probability' that he would have *prevailed* on his insanity defense had he pursued it." (emphasis added). *Mirzayance*, 556 U.S. at 127. The panel majority ignored the above language from *Strickland* and *Mirzayance*—indeed, it did not even cite *Mirzayance*. But a reasonable doubt respecting guilt or a reasonable probability of prevailing on an insanity defense (i.e., an acquittal) is the only proper different outcome that should have been considered. The state court did precisely that.

By considering other outcomes like guilty but mentally ill[8] and a hung jury, neither of which were mentioned in *Mirzayance*, the panel majority expanded this Court's precedent without justification and effectively created a new rule.[9] This is the complete antithesis of what should occur on federal habeas review of a state-court decision.

In the end, not only did the state court apply the correct rule, but the panel majority's contrary conclusion conflicts with the requirement that federal courts must give state-court decisions the benefit of the doubt, *Cullen* v. *Pinholster*, 131 S. Ct. 1388, 1398 (2011), and must "presum[e] that state

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[8] At one point the panel majority referenced "guilty by reason of mental insanity" as a possible outcome, App. 12a, but such a verdict does not exist in Michigan. The verdict may be "guilty but mentally ill" or "not guilty by reason of insanity." This was either a typographical error or a misunderstanding of Michigan law.

[9] These other outcomes do not reflect a "reasonable doubt respecting guilt" or "prevail[ing]" on an insanity defense. A jury may be hung for any number of reasons and such an outcome would have resulted in new trial proceedings against Walker. The panel majority's belief that a guilty-but-mentally-ill verdict would have been more "favorable" to Walker, App. 14a, also reflects a fundamental misapprehension of Michigan law. See *People* v. *Hanna*, 2001 WL 1512130, at *6 (Mich. Ct. App. Nov. 27, 2001) (In Michigan, "a verdict of guilty but mentally ill carries the same result as a verdict simply of guilty."); see also Mich. Comp. Laws § 768.36(3) (noting that with a guilty-but-mentally-ill verdict, the department of corrections is responsible for evaluating the defendant and providing any required psychiatric treatment.) In fact, part of the reason that trial counsel did not want to present an insanity defense in Walker's case was his concern that the jury could return a "compromise verdict" of guilty but mentally ill, which, according to counsel, would *not* have been a victory. App. 209a.

courts know and follow the law." *Woodford* v. *Visciotti*, 537 U.S. 19, 24 (2002).

2. The state court's decision was reasonable under AEDPA.

Since the state court applied the correct rule, the only question is whether it unreasonably applied this Court's precedent. Under AEDPA, "an *unreasonable* application of federal law is different from an *incorrect* application of federal law." *Richter*, 131 S. Ct. at 785 (quoting *Williams* v. *Taylor*, 529 U.S. 362, 410 (2000)). A federal court may not issue the writ simply because it concludes that the state court applied clearly established federal law erroneously or incorrectly. *Renico* v. *Lett*, 559 U.S. 766, 773 (2010). Rather, the state-court decision must be objectively unreasonable. *Id.* "[E]ven a strong case for relief does not mean the state court's contrary conclusion was unreasonable." *Richter*, 131 S. Ct. at 786.

Further, "evaluating whether a rule application was unreasonable requires considering the rule's specificity. The more general the rule, the more leeway courts have in reaching outcomes in case-by-case determinations.") *Richter*, 131 S. Ct. at 786 (quoting *Yarborough* v. *Alvarado*, 541 U.S. 652, 664 (2004); *Mirzayance*, 556 U.S. at 112 ("[B]ecause the *Strickland* standard is a general standard, a state court has even more latitude to reasonably determine that a defendant has not satisfied that standard.").[10]

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[10] In its haste to (again) grant habeas relief to Walker, the panel majority repeatedly misstated the correct standard. App.

For two reasons, the panel majority erred in finding that the Michigan Court of Appeals unreasonably applied *Strickland*.

First, the panel majority chided the state court for its "conclusory" prejudice analysis. App. 14a ("Having found deficient performance, the court was required to analyze prejudice, which it failed to do in anything but the most conclusory terms, and its failure to do so was error."). But this Court's precedent does not require a state court to pen a novel; AEDPA deference applies even if a state court does not give *any* reasons for its decision. *Richter*, 131 S. Ct. at 784–85; accord *Johnson* v. *Williams*, 133 S. Ct. 1088, 1096 (2013) ("When a state court rejects a federal claim without expressly addressing that claim, a federal habeas court must presume that the federal claim was adjudicated on the merits. . . .") Relying on a pre-*Richter* decision, the panel majority erred in criticizing the depth of the state court's prejudice analysis.

That the state court may have expressed doubts about its previous deficiency finding is of no moment; the state court ultimately found no prejudice in accord with this Court's precedent. As Judge Cook explained, the state court "weighed [Walker's] new mitigating evidence against Dr. Field's contrary

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9a, 13a, & 15a (indicating that the state court "*improperly* applied the [*Strickland*] standard," and that "the [state] court failed to *properly* apply the rule.") (emphasis added). The question on habeas is not whether the state court's determination was improper or incorrect, "but whether that determination was unreasonable—a substantially higher threshold." *Mirzayance*, 129 S. Ct. at 1420 (quoting *Schriro* v. *Landrigan*, 550 U.S. 465, 473 (2007)).

reports and [Walker's] multiple attempts to conceal the murder, ultimately agreeing with defense counsel that [Walker's] insanity defense would be unavailing." App. 25a (Cook, J., dissenting).

Second, the panel majority deemed the state-court decision unreasonable given Walker's "extensive history of mental illness that the jury was never confronted with." App. 15a. But that Walker may have been mentally ill is insufficient to establish an insanity defense under Michigan law. Mental illness and legal insanity are different, and in Michigan mental illness short of insanity does not relieve a defendant from criminal responsibility. *People* v. *Carpenter*, 627 N.W.2d 276 (Mich. 2001).[11] Indeed, in *Walker I* the panel majority correctly quoted Michigan's legal-insanity statute, which expressly stated that "'[m]ental illness . . . does *not* . . . constitute a defense of legal insanity.'" 43a (quoting Mich. Comp. Laws § 768.21a, emphasis added). The panel majority failed to adhere to this distinction it had previously acknowledged. Nor did it discuss how Walker's mental illness would have helped him establish insanity under Michigan law—or acknowledge the many factors that would have undermined an insanity defense.

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[11] Michigan follows the *M'Naghten* rule. See *Clark* v. *Arizona*, 548 U.S. 735, 747 (2006) ("it must be clearly proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason . . . as not to know the nature and quality of the act he was doing; or, if he did know it, that he did not know he was doing what was wrong"). See Mich. Comp. Laws § 768.21a. This Court also discussed Michigan's insanity defense in *Metrish* v. *Lancaster*, 133 S. Ct. 1781 (2013).

The state-court decision was entitled to far more deference than the panel majority gave it. And there is no sign that the panel majority gave the state court the "more leeway" it was entitled to in applying the general rule of *Strickland*. While the panel majority believed that Walker was prejudiced by counsel's failure to present an insanity defense, it was at least reasonable for the state court to conclude otherwise. As Judge Cook correctly noted, the state court's decision was "not objectively unreasonable; fairminded jurists could (and did) disagree on this point." App. 25a (Cook, J., dissenting).[12]

Summary reversal of the Sixth Circuit's judgment is appropriate because the decision below is "flatly contrary to this Court's controlling precedent"—namely, this Court's precedent concerning AEDPA and concerning prejudice in ineffective-assistance-of-counsel claims. *Arkansas* v. *Sullivan*, 532 U.S. 769, 771 (2001) (per curiam); see also Sup. Ct. R. 16.1. This would not be the first summary reversal of the Sixth Circuit in a habeas case. See *Parker* v. *Matthews*, 132 S. Ct. 2148 (2012) (per curiam); *Bobby* v. *Mitts*, 131 S. Ct. 1762 (2011); *Bobby* v. *Dixon*, 132 S. Ct. 26 (2011) (per curiam); *Stovall* v. *Miller*, 132 S. Ct. 573 (2011) (per curiam).

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[12] Three judges on the Michigan Court of Appeals (on the merits), seven justices of the Michigan Supreme Court (denying Walker's application without dissent), one magistrate judge (in a report and recommendation), one District Court judge (adopting that report and recommendation), and one judge on the Sixth Circuit's panel (Cook, J., dissenting) would not grant relief.

It has been said that a summary reversal should not be used to "make[] new law." *Bunkley* v. *Florida*, 538 U.S. 835, 842 (2003) (Rehnquist, C.J., dissenting). The Court would make no new law in summarily reversing the judgment below, because the relevant law was already made. But a summary reversal would be useful. The Sixth Circuit continues to deprive reasonable state-court decisions of the significant deference they are owed and to use federal habeas review as a vehicle to second-guess and overturn such decisions. Given this Court's repeated pronouncements of how limited federal habeas review should be, this Court should let the Sixth Circuit know that it intends to ensure observance of Congress's abridgement of their habeas power.

Because the state-court decision was consistent with this Court's habeas jurisprudence, certiorari should be granted, and the decision of the Sixth Circuit should be reversed either summarily, Sup. Ct. R. 16(1), or in the ordinary course. Sup. Ct. R. 16(2).

CONCLUSION

A petition for writ of certiorari should be granted and the Sixth Circuit summarily reversed.

Respectfully submitted,

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