No. 13-1073

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES L. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTIONS,

Petitioner,

vs.

STEVEN CRAIG JAMES,

Respondent.

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

REPLY TO BRIEF IN OPPOSITION

THOMAS C. HORNE
Attorney General

ROBERT L. ELLMAN
Solicitor General

JEFFREY A. ZICK
Chief Counsel

LACEY STOVER GARD
Assistant Attorney General
(Attorney of Record)

NICHOLAS KLINGERMAN
Capital Litigation Section
400 West Congress,
Bldg. S-315
Tucson, Arizona 85701
Telephone: (520) 628-6654

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ARGUMENT

I

THIS COURT SHOULD GRANT CERTIORARI BECAUSE THE NINTH CIRCUIT, IN CONFLICT WITH AEPDA AND THIS COURT'S PRECEDENT, REFUSED TO ACKNOWLEDGE A STATE-COURT MERITS ADJUDICATION, AND THUS REFUSED TO APPLY AEDPA DEFERENCE, MERELY BECAUSE THE STATE COURT ALSO REJECTED THE CLAIM ON PROCEDURAL GROUNDS.

This case presents a compelling question of exceptional importance: in a case governed by the Anti-terrorism and Effective Death Penalty Act ("AEDPA"), must a federal court presume that a state court adjudicated a claim on the merits when the state court's ruling includes both a procedural bar to finding relief and a summary denial finding no colorable claims? (Petition, at i.) Instead of addressing this question, James attempts to prove that the state court did not resolve his claim on the merits and to persuade this Court that the presumptions established in *Williams* and *Richter*[1] apply only in silent-denial cases. AEDPA is "a provision of law that some federal judges find too confining, but that all federal judges must obey." *White v. Woodall*, No. 12–794, slip op. at 1 (U.S. Apr. 23, 2014). This Court should grant certiorari and once again instruct the Ninth Circuit to follow

[1] *Johnson v. Williams*, __ U.S. __, 133 S. Ct. 1088 (2013), and *Harrington v. Richter*, __ U.S. __, 131 S. Ct. 770 (2011).

AEDPA's constricting mandate. *See Cash v. Maxwell*, __ U.S. __ 132 S. Ct. 611, 616–17 (2012) (Scalia, J., dissenting from the denial of certiorari) (collecting cases in which the Supreme Court has reversed habeas corpus decisions from the Ninth Circuit and stating, "The only way this Court can ensure observance of Congress's abridgment of [the] habeas power is to perform the unaccustomed task of reviewing utterly fact-bound decisions that present no disputed issues of law. We have often not shrunk from that task, which we have found particularly needful with regard to decisions of the Ninth Circuit.").

A. *The state court clearly and unambiguously rejected James' claim on the merits in the alternative to its imposition of a procedural bar, and the cumbersome analysis the Ninth Circuit employed to determine otherwise contravenes AEDPA.*

In its order denying post-conviction relief ("PCR"), the state court found, "*[a]s to the entire petition*," that James had failed to present a colorable claim for relief, that there were "no genuine or material issues of fact or law that would entitle the petitioner to an evidentiary hearing," and that there was "no reasonable probability that any of [the] facts presented would have changed the result of the trial or sentencing." (App. D, at D-50–D-51, emphasis added.) The state court's language is not ambiguous: it is a clear merits ruling and the Ninth Circuit should have deferred to it. *See* 28 U.S.C. § 2254(d). Instead, the court went to extraordinary lengths—which James repeats in his brief in opposition—to prove that the

state courts did *not* enter a merits ruling. *See James (IV) v. Ryan*, 733 F.3d 911, 915–16 (9th Cir. 2013); *James (III) v. Ryan*, 679 F.3d 780, 802–03 (9th Cir. 2012), *vacated* __ U.S. __, 133 S. Ct. 1579 (2013) (mem.). In effect, the court presumed—contrary to AEDPA, *Richter*, and *Williams*—that the state court did *not* adjudicate the claim on the merits and, after confirming that presumption, determined that it was not bound by AEDPA deference. *See James IV*, 733 F.3d at 915 ("If the State were correct that the last paragraph of the third PCR court's opinion was an alternative holding, *Williams* might require us to presume it was a holding on the merits. But, as we stated in [*James III*] that paragraph was *not* an alternative holding.").

Moreover, even if the state court's order were unclear or reasonably susceptible to two interpretations (one in which the court resolved the claim on procedural grounds and the other in which it resolved the claim on *both* procedural grounds and the merits), AEDPA *required* the Ninth Circuit to give the state court the "benefit of the doubt" and presume that it alternatively resolved the claim on the merits. *Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotations omitted); *see Brady v. Pfister*, 711 F.3d 818, 826 (7th Cir. 2013) ("The presumption the *Williams* court adopted … means that state courts must be given the benefit of the doubt when their opinions do not cover every topic raised by the *habeas corpus* petitioner."); *see also Williams*, __ U.S. at __, 133 S.Ct. at 1100 (Scalia, J., concurring in the judgment) ("[A]s we have affirmed and reaffirmed recently, where a claim has been denied, but it is unclear from the record whether

the denial was on the merits or on another basis, we presume the former."); *cf. Woodall*, No. 12–794, slip op. at 11–12 ("[T]here are reasonable arguments on both sides of the issue—which is all [the state] needs to prevail in this AEDPA case."); *cf. Smith v. Or. Bd. of Parole & Post-Prison Supervision,* 736 F.3d 857, 860 (9th Cir. 2013) ("Indeed, the cursory rejection of Smith's appeal makes it quite plausible that the Oregon Court of Appeals reached the merits of his Sixth Amendment claim."). The court failed to do so here.

In support of his argument that no state-court merits adjudication exists, James asserts incorrectly that "well-settled Arizona law barred the third PCR court from reaching the merits of James's penalty phase IAC [ineffective-assistance-of-counsel] claim" as an alternative to its preclusion ruling. (Brief in Opposition, at 11.) He first contends that the "law of the case" doctrine prevented the trial court from overruling the previous PCR courts' preclusion rulings. (*Id.* at 12–14.) Even if James is correct, the "law of the case" doctrine did not prevent the third PCR court from *alternatively* concluding that James' penalty phase IAC claims were meritless. *Cf. Dancing Sunshines Lounge v. Indus. Comm'n of Ariz.*, 720 P.2d 81, 83–84 (Ariz. 1986) ("The doctrine of law of the case' is generally held to be a rule of policy and not one of law. Further, this court has recognized that the doctrine of law of the case is a harsh rule and that it should not be strictly applied when it would result in a manifestly unjust decision.").

Second, James contends that the third PCR court was powerless to alternatively address the merits of his penalty-phase IAC claims because Arizona Rule of Criminal Procedure 32.6(c) "barred a merits adjudication of James's IAC claims after the PCR court had already ruled them precluded." (Brief in Opposition, at 15.) This is an inaccurate statement of Arizona law. Nothing in Arizona Rule of Criminal Procedure 32.6(c) prohibits alternative merits rulings. In fact, Arizona courts routinely make them. *See, e.g.*, *State v. Spreitz*, 39 P.3d 525, 527, ¶ 10 (Ariz. 2002) ("To the extent that the trial court in this case ruled [IAC claims were precluded], we reverse that part its ruling. The trial court alternatively addressed the merits of the ineffectiveness claims, and we affirm those findings."); *State v. Mata*, 916 P.2d 1035, 1038 (Ariz. 1996) ("The trial court held the claim to be precluded and alternatively found the claim lacked merit."). James' incorrect understanding of Arizona law does not justify denying certiorari on this important issue.

Third, James argues that Respondent "interprets the final paragraph of the PCR court's opinion totally out of context, in a manner inconsistent with the record as a whole." (Brief in Opposition, at 18.) James, like the Ninth Circuit panel, contends that the third PCR court's final paragraph only commented on the need for an evidentiary hearing. (*Id.* at 18–20.) *See James IV*, 733 F.3d at 915–16. James' argument ignores the plain language of the court's last paragraph, which addressed the "entire petition" and found "no reasonable probability that any of [the] facts presented would have changed the result of the trial or

sentencing." (App. D, at D-50–D-51.) Respondent did not "interpret" the court's ruling—he accepted the court's language at face value. Conversely, James and the Ninth Circuit, as previously discussed, went to great lengths to "interpret" the state court's order to find no merits resolution. AEDPA precludes this type of "interpretation," and compels a federal habeas court to follow a state court's plain and unambiguous language.

Fourth, James argues that "[t]he State's own pleadings, over twenty-six years, demonstrate that the state court did not adjudicate the IAC claim on the merits." (Brief in Opposition, at 20–34.) He contends that "[a]pplying *Williams*'s 'litigation strategy' analysis to the present case provides additional evidence that the state courts denied James's penalty phase IAC claim *solely* as precluded." (*Id.*) But that Respondent encouraged the state court to resolve the claim only on procedural grounds and not reach its merits is of no moment. The state court's decision to address the merits triggered mandatory AEDPA deference, regardless of what the State did or did not argue in state court. *See* 28 U.S.C. § 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 …" unless statutory exceptions are satisfied) (emphasis added); *Moore v. Mitchell*, 708 F.3d 760, 781 (6th Cir. 2013) ("The Supreme Court has given plenty of indication that the restrictions of AEDPA are strong and binding on federal courts. These restrictions have all the

hallmarks of a jurisdictional limitation on the power of the federal courts themselves.").

Likewise, that Respondents did not argue in district court or in his early Ninth Circuit pleadings that the claim had been resolved on the merits is insignificant. AEDPA is an inherent limitation on a federal court's authority, and its applicability turns on the state court's ruling, not on a party's arguments. *See Moore*, 708 F.3d at 781. This Court should reject James' arguments and grant certiorari to consider this compelling issue.

B. *The Ninth Circuit unreasonably restricted the Williams/Richter presumption to silent-denial cases.*

Both the Ninth Circuit in its opinion and James in his Brief in Opposition attempt to limit the *Williams/Richter* presumption to cases in which the state courts deny a federal claim without discussion, and do not reject the claim on procedural grounds. In his Brief in Opposition, James relies on *Harris v. Reed*, 489 U.S. 255, 265–66 (1989), to argue "that the presumption of a merits adjudication is inapplicable when the state court declares 'clearly and expressly' in a 'plain statement' that it relies on a state procedural rule to deny a federal claim." (Brief in Opposition, at 8.)

But nothing in *Harris precludes* a state court from entering an alternative merits ruling, or holds that a federal court may not presume that a state-court ruling collectively denying *all claims in the petition on their merits* constitutes a merits adjudication of a

claim also rejected on procedural grounds. In fact, at least one federal circuit presumes that a state court resolved the merits of a claim unless the court clearly states that its decision was based *solely* on state procedural rules. *Childers v. Floyd*, 642 F.3d 953, 968–69 (11th Cir. 2011), *vacated* __ U.S. __, 133 S. Ct. 1452 (2013) (mem.), *and reinstated* 736 F.3d 1331 (11th Cir. 2013) (defining merits adjudication as "any state court decision that does not rest *solely* on a state procedural bar" and stating that "unless the state court clearly states that its decision was based *solely* on a state procedural rule, we will presume that the state court has rendered an adjudication on the merits when the petitioner's claim 'is the same claim rejected' by the state court") (quoting *Early v. Packer*, 537 U.S. 3, 8 (2002)) (emphasis added).

Nor does *Harris* stand for the principle that an alternative merits ruling would not be entitled to AEDPA deference—in fact, the Ninth Circuit recognized in *James III* that deference *would* apply. 679 F.3d at 802 (citing *Stephens v. Branker*, 570 F.3d 198, 208 (4th Cir. 2009)). This Court should grant certiorari to clarify that a state court does not forfeit the *Williams*/*Richter* presumption by rejecting a claim on procedural grounds and also summarily denying it on the merits.

CONCLUSION

As stated in the certiorari petition and above, the Ninth Circuit ignored a clear state-court merits ruling, and instead microscopically analyzed the language and structure of the state court's opinion with the goal of evading AEDPA deference. This

analysis, combined with the court's excessively narrow reading of *Williams* and *Richter*, conflicts with this Court's AEDPA jurisprudence. Moreover, the opinion will adversely affect state-court opinion writing, and chill state courts from resolving claims on both procedural grounds and the merits. For these reasons, Petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted

THOMAS C. HORNE
Attorney General

ROBERT ELLMAN
Solicitor General

JEFFREY A. ZICK
Chief Counsel

LACEY STOVER GARD
Assistant Attorney General
(Attorney of Record)

NICHOLAS KLINGERMAN
Capital Litigation Section
400 West Congress,
Bldg. S-315
Tucson, Arizona 85701
Telephone: (520) 628-6654

#3785337