No. 14-_____

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES L. RYAN, DIRECTOR, ARIZONA DEPARTMENT OF CORRECTONS

Petitioner,

VS.

STEVEN CRAIG JAMES,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Does AEDPA require a presumption that claims are adjudicated on the merits where a state court ruling offers both a procedural bar to relief and a summary denial finding no colorable claims?

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The Ninth Circuit's opinion affirming in part, reversing in part, and remanding in part is reported at *James v. Ryan* (*James IV*), 733 F.3d 911 (9th Cir. 2013). (App. F.) That opinion is the subject of this certiorari petition. Following *James IV*, the Ninth Circuit denied rehearing *en banc* on December 5, 2013, (App. H), and stayed the mandate on January 3, 2014, (App. G), pending this Court's consideration of this petition. The opinion in *James IV* was issued following this Court's order vacating and remanding the previous panel opinion "in light of *Johnson v. Williams*," 133 S. Ct. 1088 (2013). *Ryan v. James*, 133 S. Ct. 1579 (2013).

The previous panel opinion is reported at *James v. Ryan* (*James III*), 679 F.3d 780 (9th Cir. 2012). (App. A.) *James III* amended and superseded the previous panel opinion, *James v. Schriro (James II)*, 659 F.3d 855 (9th Cir. 2011), and denied rehearing *en banc*.

The district court's unpublished decision and order denying James habeas relief (App. B) is reported at *James v. Schriro*, 2008 WL 2796395 (D. Ariz. July 18, 2008). The district court denied James' motion to alter or amend the judgment in an unpublished and unreported order (App. C).

The state post-conviction relief (PCR) court denied the PCR petition relevant to James' present claim in an unreported minute entry. (App. D.) The Arizona Supreme Court's summary order denying

review of the PCR court's order is also unpublished. (App. E.)

The Arizona Supreme Court's opinion affirming James' convictions and death sentence on direct appeal is reported at *State v. James (James I)*, 685 P.2d 1293 (Ariz. 1984). This Court's memorandum decision denying certiorari review is reported at *James v. Arizona*, 469 U.S. 990 (1984)..

STATEMENT OF JURISDICTION

In 2013, this Court granted Petitioner's petition for writ of certiorari from the Ninth Circuit's decision granting habeas relief, vacated the Ninth Circuit's opinion, and remanded "for further consideration in light of *Johnson v. Williams*," 133 S. Ct. 1088 (2013). On remand, a panel of the Ninth Circuit held that *Williams* was inapplicable and again granted habeas relief. *James IV*, 733 F.3d at 915–16. On December 5, 2013, the Ninth Circuit denied Petitioner's petition for rehearing in a published order. This Court's jurisdiction is timely invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS, AND RULES

The Sixth Amendment to the United States Constitution provides:

> In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence.

The Fourteenth Amendment to the United States Constitution provides, in pertinent part:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law.

28 U.S.C. § 2254(d) provides, in relevant part:

> (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.

INTRODUCTION

The state post-conviction court rejected James' ineffective-assistance-of-counsel (IAC) claim as procedurally barred. (App. D., at D-32–D-36.) At the

end of its order, the court expressly determined, "[a]s to the entire petition," that James had presented "[n]o colorable claims" for relief. (*Id.* at D-50–D-51.) A panel of the Ninth Circuit Court of Appeals determined that the state court had not adjudicated James' IAC claim on the merits because it had specifically analyzed that claim only on procedural grounds. *James IV*, 733 F.3d at 915–16. This decision contravenes AEDPA and this Court's habeas jurisprudence.

Further, the decision unreasonably, and contrary to this Court's precedent, dictates how state courts should craft their opinions. It will also likely have wide-ranging effects within the Ninth Circuit. Most notably, the opinion will chill state courts from discussing a claim's merits at any length. It will also discourage state courts from entering alternative merits rulings when they find claims procedurally barred. And given the Ninth Circuit's refusal to recognize that a comprehensive merits denial of *all claims in a petition* constitutes a merits ruling, the opinion deprives state courts of guidance about how to craft their opinions in a manner sufficient to withstand scrutiny by federal courts. This Court's intervention is necessary to instruct lower courts on the application AEDPA when a state court applies a procedural bar and also offers a summery denial finding no colorable claims.

STATEMENT OF THE CASE

A jury convicted James of first-degree murder and kidnapping. *See James I*, 685 P.2d at 1296. James, along with codefendants Lawrence Libberton and Martin Norton, severely beat the victim, Juan Maya, before stealing his wallet, car, and personal belongings. *See id.*; *State v. Libberton*, 685 P.2d 1284, 1287–88 (Ariz. 1984). James then told the others that "[t]he only thing we can do is kill" Maya. *Id.* at 1287. James said that they could hide Maya's body in a mineshaft on his parents' property in Salome, Arizona. *Id.* Libberton agreed and, at gunpoint, forced Maya into his own car for the almost two-hour drive to Salome. *Id.* On the way, James used one of Maya's credit cards to buy gasoline and cigarettes. *Id.* A police officer also stopped James for speeding, at which time he exited the car to talk to the officer while Libberton threatened to shoot Maya if he said anything. *Id.* The group then proceeded to Salome, arriving at James' parents' property shortly before daybreak. *Id.*

After exiting Maya's vehicle, Libberton gave James the gun, and James ordered Maya to walk up the side of a small mountain to the mineshaft. *Id.* Maya asked if he could smoke a cigarette; James and Libberton permitted him to do so before they began their final assault. *Id.* James then ordered Maya to walk to the shaft, a hole approximately five feet in diameter with a beam across the top. *Id.* Maya begged, "don't kill me," but James fired the gun twice, releasing sparks, instead of bullets, because the gun was filled with debris. *Id.* Maya's ordeal continued:

> Maya ran at James, grabbed the gun, struggled with James, and fell to the ground. [Libberton] grabbed a five-pound rock and began beating Maya on the back of the head and shoulders with it. Maya was still struggling with James for the gun. Norton handed [Libberton] a board, with which [Libberton] struck Maya on the back, forcing Maya to let go of the gun. James then shot in the direction of Maya's head. As before, only sparks came out of the gun. Maya was still conscious, making "gurgling sounds," and moaning. [Libberton] grabbed the gun from James and fired it at Maya's head. Again, the gun malfunctioned. Maya was still not dead, so all three assailants picked up large rocks and slammed them on the back of Maya's head as Maya lay face down. After about five blows Maya lay unconscious. [Libberton] and James dragged Maya to the mine shaft and threw him in.

Id. at 1287–88. The trial court sentenced James to death for first-degree murder and to 21 years' imprisonment for kidnapping. *James I*, 685 P.2d at 1296.[1]

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[1] Following his conviction in a separate jury trial for first-degree murder, among other offenses, the trial court sentenced Libberton to death. *Libberton*, 685
(Continued)

2. *State PCR proceedings.*

After the direct appeal, *id.* at 1301, James filed a number of state PCR petitions. *See James III*, 679 F.3d at 799–801. In his first petition, which he filed in 1985, James claimed that counsel was ineffective for failing to investigate and present evidence of James' potential for rehabilitation and his LSD intoxication at the time he killed Maya. *Id.* The PCR court dismissed the claims as precluded under Arizona Rule of Criminal Procedure 32.2(a)(3) because James could have raised them on direct appeal. *Id.* at 799–801, 806–07.

In 1991, James filed a second PCR petition; he did not present a freestanding IAC claim, but alleged trial, appellate, and first PCR counsel's ineffectiveness to excuse any procedurally-barred claims. *Id.* at 799–800. The PCR court found James' IAC claims precluded because he had litigated similar claims in his first PCR petition. *Id.*

(Continued).

P.2d at 1286. In a separate opinion authored by the same judge that authored the opinion in James' case (Judge William A. Fletcher), the Ninth Circuit granted habeas relief with respect to Libberton's sentence. *Libberton v. Ryan*, 583 F.3d 1147, 1169–73 (9th Cir. 2009). Integral to the Ninth Circuit's ruling, were its own findings that James had a "violent nature," that he was the instigator of Maya's murder, and that Libberton was merely a "follower." *Id.*

In his third PCR proceeding—filed for the purpose of exhausting certain claims in his 1993 federal habeas corpus petition, which the district court had dismissed without prejudice—James raised the IAC at sentencing claim on which the Ninth Circuit ultimately granted relief. *Id.* at 800. The PCR court found the claim procedurally barred under Arizona Rule of Criminal Procedure 32.2(a)(3): "To the extent that the [IAC] claims were precluded in the first petition, they were precluded in the second, and are precluded now in the third petition. . . . Those issues were and are precluded under Rule 32.2(a)(3). That is the law of the case." (App. D, at D-32–D-34.) The court alternatively found the IAC claims barred because James failed to raise them in his second PCR petition. (*Id.* at D-34–D-36.) At the end of its order denying relief, the PCR court rejected the petition, in its entirety, for failing to state a colorable claim for relief:

> As to the *entire petition*, the court finds that there are no genuine or material issues of fact or law that are in dispute that would entitle the petitioner to an evidentiary hearing. *No colorable claims have been made*. An evidentiary hearing is required only when there is a colorable claim. To be colorable, a claim must have the appearance of validity. The court has assumed that all of the allegations are true. *There is no reasonable probability that any of [the] facts presented would have changed the result of the trial or sentencing*. Further

> proceedings would not serve any useful purpose. The petition and all of the claims in the petition are dismissed.

(*Id.* at D-50–D-51; emphasis added and internal citation omitted.)

3. ***District court proceedings.***

James filed a petition for writ of habeas corpus on June 29, 2000, raising, among others, the present IAC claim. *James III*, 679 F.3d at 801. He also expanded the record with 82 exhibits, the majority of which related to the IAC claim. *Id.* The district court rejected Petitioner's procedural default defense, finding that the Arizona courts had not regularly applied the requirement that IAC claims be raised on direct appeal. *Id.* at 806.

On July 18, 2008, the district court reviewed James' IAC claim *de novo* and rejected it, concluding that, even if counsel performed deficiently, James failed to demonstrate prejudice under *Strickland v. Washington*, 466 U.S. 668 (1984). (App. B, at B-69–B-117.). Noting that it had fully considered evidence James proffered in federal court, the district court concluded that James was not entitled to further evidentiary development because he had failed to allege "facts which, if proved, would entitle him to relief." (*Id.* at B-115–B-116.)

On August 12, 2008, the district court denied James' motion to alter or amend the judgment based on newly-proffered declarations from five witnesses.

(App. C.) The court found that the declarations did not change its prior conclusion that "nothing offered by [James] in support of his habeas petition was of such a nature as to create a reasonabl[e] probability that if it had been presented to the sentencing court [James] would not have been sentenced to death." (*Id.* at C-7.) Accordingly, the court denied the motion. (*Id.* at C-12.)

4. *Ninth Circuit proceedings.*

A panel of the Ninth Circuit reversed the district court, finding that "counsel's complete failure to investigate and present mitigating evidence of James's troubled childhood, his mental illness, and his history of chronic drug abuse constituted deficient performance" and that counsel's deficient performance prejudiced James. *James II*, 659 F.3d at 860. The panel concluded that an evidentiary hearing was unwarranted and remanded the case to the district court with instructions *to grant the habeas writ* with respect to James' death sentence. *Id.* at 892.

Petitioner moved for panel rehearing and rehearing *en banc*, arguing that (1) the panel decision overlooked the state court's alternative merits ruling on James' IAC claim, which was entitled to AEDPA deference, and (2) even if the state courts did not render a merits decision, the panel erred by granting relief rather than remanding to district court for an evidentiary hearing, where Petitioner would have the opportunity to cross-examine the witnesses who provided affidavits on James' behalf. *See James III*, 679 F.3d at 802, 820–21.

The panel denied Petitioner's motion. *Id.* at 785. In the same order, the panel withdrew its prior opinion and issued a superseding one, which differed materially from the original opinion in limited respects. Most significantly, the panel found that Petitioner had waived their argument that the state courts entered an alternative merits ruling on James' claim by raising it for the first time in the motion for rehearing. *Id.* at 802. Waiver notwithstanding, the panel concluded that the state court had not resolved the IAC claim on the merits because, unlike other claims in the post-conviction petition, it did not *individually analyze* that claim. *Id.* at 802–03. The panel distinguished this Court's decision in *Harrington v. Richter*, 131 S. Ct. 770 (2011), on the ground that *Richter* applies only when "the state court 'did not say it was denying the claim for any … reason'" other than on the merits. *Id.* (quoting *Richter*, 131 S. Ct. at 784–85). In James' case, the panel continued, the state court "expressly stated that it denied James'[] ineffective assistance of counsel claim as procedurally barred." *James III*, 679 F.3d at 802–03.

Petitioner then filed a petition for writ of certiorari. In a memorandum decision, this Court granted Petitioner's petition, vacated the Ninth Circuit's judgment, and ordered that the Ninth Circuit consider the PCR court's decision "in light of *Johnson v. Williams*, [133 S. Ct. 1088 (2013)]." *Ryan v. James*, 133 S. Ct. 1579 (2013). On remand, the panel held that the *Richter* and *Williams* presumptions were inapplicable because "the adjudicated-on-the-merits presumption arises when the state court is silent concerning the reasons for denying the federal claim."

James IV, 733 F.3d at 915. Perceiving itself relieved of the *Richter* and *Williams* presumptions, the panel again rejected Petitioner's argument that the PCR court issued an alternative merits ruling. *Id.* at 915–16. It concluded that the plain language and context of the state court decision's last paragraph "make clear that it 'simply clarified that no evidentiary hearing was necessary' for James's claims." *Id.* (quoting *James III*, 679 F.3d at 803). Accordingly, the panel granted James' petition for writ of habeas corpus on his sentencing claims. *Id.* at 916.

REASONS FOR GRANTING CERTIORARI

By refusing to apply AEDPA deference in the face of a clear state-court merits ruling, and despite this Court's repeated directives that it respect the statutory limitations on its federal habeas power,[2] the Ninth Circuit has issued yet another opinion that conflicts with this Court's precedent and contravenes AEDPA. The decision creates a split of authority not

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[2] *See Cash v. Maxwell*, 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.").

between circuits, but between the Ninth Circuit and this Court. Such decisions compel per curiam error correction in order to prevent, rather than resolve, a split of authority.

Worse still, by suggesting that only a state court's silent denial of federal constitutional claim is entitled to deference, the Ninth Circuit has created a disincentive for state courts to directly address a claim's merits and has effectively dictated how state courts should craft their opinions. This Court's intervention is again necessary to guide the Ninth Circuit's application of AEDPA. *See* U.S. Sup. Ct. R. 10.

In James' third PCR proceeding, the state court found James' IAC claim precluded under Rule 32.2(a)(3) of the Arizona Rules of Criminal Procedure, but further found that the petition *as a whole* failed to present a colorable claim. (App. D, at D-32–D-36, D-50–D-51.) This is a merits ruling under Arizona law. *State v. Bennett*, 146 P.3d 63, 68 (Ariz. 2006) ("A colorable claim is 'one that, if the allegations are true, might have changed the outcome.'" (quoting *State v. Runningeagle*, 859 P.2d 169, 173 (Ariz. 1993))). Nonetheless, and notwithstanding this Court's directive that federal courts give state courts the "benefit of the doubt" when deciding whether they have adjudicated a claim on the merits, *see Renico v. Lett*, 559 U.S. 766, 773 (2010) (quotations omitted), the Ninth Circuit found that the state court had *not* made a merits decision. *See also 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.") In so holding, the Ninth Circuit unreasonably, and illogically, interpreted *Richter* and *Williams* to apply only where a state court "denies relief on a federal claim without specifically addressing the claim." *James IV*, 733 F.3d at 915.

Congress enacted AEPDA to ensure that *state courts* remain the primary forum for resolving claims of federal constitutional error. *See Richter*, 131 S. Ct. at 787 ("Section 2254(d) thus complements the exhaustion requirement and the doctrine of procedural bar to ensure the state proceedings are the central process, not just a preliminary step for a later federal habeas proceeding."). Consistent with this recognition, in *Richter* and *Williams* this Court left no doubt that federal courts resolving claims in section 2254 cases must presume that a state court adjudicated a claim on its merits. *See Williams*, 133 S. Ct. at 1096–97 & n.3 (describing circumstances in which a party can rebut the *Williams* presumption); *see id.* at 1100 (Scalia, J., concurring) ("[A]s we have affirmed and reaffirmed recently, where a claim has been denied, but it is unclear form the record whether the denial was on the merits or on another basis, we presume the former."); *Richter*, 131 S. Ct. at 784–85 ("When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law procedural principles to the contrary."); *cf. Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam) (a state court decision is entitled to AEDPA deference, even if the state court does not cite, or is unaware of, this Court's precedent).

To further AEDPA's goals, a federal court must apply this presumption regardless whether a state court specifically addressed the merits of a federal constitutional claim or instead issued a more comprehensive ruling collectively rejecting all claims as not colorable. The Ninth Circuit flagrantly ignored the *Richter* and *Williams* presumption here. For these compelling reasons, this Court should grant certiorari. *See* U.S. Sup. Ct. R. 10.

I

THE NINTH CIRCUIT UNREASONABLY RESTRICTED *RICHTER* AND *WILLIAMS* TO SILENT-DENIAL CASES AND REFUSED TO PRESUME THAT THE PCR COURT REJECTED JAMES' CLAIM ON ITS MERITS, DESPITE THE PCR COURT'S STATEMENT COLLECTIVELY REJECTING ALL CLAIMS IN THE PETITION ON THEIR MERITS.

The Ninth Circuit in this case "offers a new way to evade AEDPA deference." *Hurles v. Ryan*, 706 F.3d 1021, 1040 (9th Cir. 2013) (Ikuta, J., dissenting). After microscopically examining the structure and language of the state court's opinion, and unreasonably restricting the scope of this Court's holdings in *Richter* and *Williams*, the panel determined that the state court's express merits adjudication of James' IAC claim was not, in reality, a merits decision, but was instead a ruling on the necessity of an evidentiary hearing. *James IV*, 733 F.3d at 915–16. In essence, the Ninth Circuit employed a procedure directly opposite to what this Court has required: it presumed that the state

court did *not* adjudicate the claim on the merits and, after confirming that presumption, determined that AEDPA did not apply. *See id.* 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 II*, that paragraph was *not* an alternative holding."). This decision is not only erroneous, it directly conflicts with this Court's precedent and compels this Court's intervention. *See* U.S. Sup. Ct. R. 10.

In a series of recent cases culminating with *Burt v. Titlow*, this Court has clarified the statutory scope of federal habeas corpus review under AEDPA and enforced Congress' intent that state courts provide the primary forum for state prisoners to litigate federal claims. 134 S. Ct. 10, 15 (2013) ("AEDPA recognizes a foundational principle of our federal system: State courts are adequate forums for the vindication of federal rights."); *Williams*, 133 S. Ct. at 1097 (stating that state courts have the "primary responsibility" for adjudicating federal claims (internal quotation marks omitted)); *Cullen v. Pinholster*, 131 S. Ct. 1388, 1398–1401 (2011) (when a state court has resolved a claim on the merits, a federal habeas court may only consider evidence that was before the state court to determine whether a petitioner has satisfied 28 U.S.C. § 2254(d)(1)); *Richter*, 131 S. Ct. at 783–87 (reaffirming AEDPA's highly deferential standard of review; holding that a state court's unexplained denial of a federal claim is presumed to be a merits ruling; and determining that, to warrant relief under AEDPA, a petitioner must show that "there was no reasonable

basis for the state court to deny relief"); *Premo v. Moore*, 131 S. Ct. 733, 739–46 (2011) (reaffirming that *Strickland*, 466 U.S. 688, supplies the clearly-established federal law for an ineffective-assistance-of-counsel claim and applying AEDPA deference to a state court's resolution of a Strickland claim where it was unclear whether the state court resolved the claim on the deficient performance or prejudice prong).

Most importantly, this Court held in *Richter* that 28 U.S.C. "§ 2254(d) does not require a state court to give reasons before its decision can be deemed to have been 'adjudicated on the merits.'" 131 S. Ct. at 785. In so holding, this Court reasoned that "[t]here is no text in the statute requiring a statement of reasons" for the state court's decision; rather, "[t]he statute refers only to a 'decision,' which resulted from an 'adjudication.'" *Id.* at 784 (quoting 28 U.S.C § 2254(d)). A state court can summarily deny a claim, with no discussion, and that ruling is entitled to AEDPA deference. This Court subsequently applied that holding in *Williams* to conclude that the adjudicated-on-the-merits presumption applies to state court rulings that expressly address some, but not all, of a defendant's claims. *Williams*, 133 S. Ct. at 1094–99.

In *James IV*, the panel appeared initially to apply the presumption that the PCR court adjudicated James' claims on the merits. *James IV*, 733 F.3d at 914 ("James must convince us that, under *Williams*, the third PCR court did not adjudicate the claim 'on the merits.'" (quoting 28 U.S.C. § 2254(d))). However, the panel immediately discarded that presumption by finding *Richter* and *Williams* inapplicable simply

because those cases address situations "where the state court denies relief on a federal claim without specifically addressing the claim." *Id.* at 915. In this case, the panel continued, the state court dismissed James' claim solely on procedural grounds and the state court's final paragraph was, in the panel's opinion, designed to "'simply clarif[y] that no evidentiary hearing was necessary for James's claims.'" *Id.* at 915–16 (quoting *James III*, 679 F.3d at 803). This was so, the panel reasoned, because "the third PCR court addressed James's claims—including his penalty-phase IAC claim—in detail" but "'never discussed the merits of James's ineffective assistance of counsel claim.'" *Id.* at 915 (quoting *James III*, 679 F.3d at 803).

But contrary to the Ninth Circuit's analysis, a determination that a claim is not colorable—whether made in the context of determining the need for an evidentiary hearing or otherwise[3]—is a merits

[3] The PCR court's plain language confirms that the final paragraph was something more than a comment on the necessity for an evidentiary hearing. The court had already denied every claim in the petition with explanation. (*See generally* App. D, at D-1–D-51.) To only comment on the availability of an evidentiary hearing, the PCR court could have stated: "Based on preceding discussion, Petitioner is not entitled to an evidentiary hearing." Rather, the PCR court's final paragraph discussed the "entire petition" in the context of "all of the allegations." (*Id.* at D-50–
(Continued)

determination under Arizona law. *See Bennett*, 146 P.3d at 68. The PCR court order's final paragraph therefore adjudicates on the merits *every claim in the PCR petition*. The state court's failure to address the merits of James' IAC claim individually is of no moment, as the court presumably "regard[ed] [the IAC] claim as too insubstantial to merit [individual] discussion." *Williams*, 133 S. Ct. at 1095; *see Cannedy v. Adams*, 733 F.3d 794, 800 (9th Cir. 2013) (O'Scannlain, J., dissenting from the denial of rehearing en banc) ("The first principle [for interpreting state-court decisions] is: use common sense. In interpreting the silence of state courts, the Supreme Court consistently invokes that threshold rule. Taking into account the circumstances surrounding the state court's unexplained decisions, the Supreme Court tells us to adopt the most logical explanation for the state court's actions."). And even assuming that the paragraph at issue is subject to multiple different constructions, AEDPA requires that a federal court interpret it as a merits ruling. *See Harris v. Reed*, 489 U.S. 255, 264 n.10, 265 (1989) (state courts are presumed to issue merits decisions, and state must overcome presumption by clearly and expressly invoking "a state procedural bar rule as a separate basis for decision").[4] The Ninth Circuit ignored that requirement.

(Continued).

D-51.) If not intended as an alternative ruling, the final paragraph is superfluous.

[4] *Harris* also makes clear that a state court's alternative merits ruling does not vitiate its imposition of a procedural bar. 489 U.S. at 264 n.10. The (Continued)

The Ninth Circuit's effort to limit *Richter* and *Williams* to cases in which a state court gives no reason for its denial of a federal claim fails. Although *Richter* and *Williams* were both silent-denial cases, nothing in those opinions *limits* their holdings to such cases. And interpreting them in such a manner is inconsistent with both this Court's recent precedent. *See Harris*, 489 U.S. at 264 n.10; *see also Premo*, 131 S. Ct. at 740 (applying AEDPA deference to both prongs of *Strickland* where it was unclear upon which prong state court based its decision).

Further, the portion of *Richter* upon which the panel relied to justify its interpretation—this Court's statement that "[i]t may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law principles to the contrary"—is unavailing. *James IV*, 733 F.3d at 914–15 (quoting *Richter*, 131 S. Ct. at 784–85). In the portion of *Richter* quoted above, this Court merely responded to the prisoner's claim that § 2254(d) did not apply because the state court did not expressly state that it had adjudicated his claim on the merits. 131 S. Ct. at 784–85.

(Continued).

converse should also apply: a state court's imposition of a procedural bar should not, as the Ninth Circuit essentially concluded it did here, vitiate its alternative merits ruling and deprive the state court's decision of AEDPA deference.

But nothing in the foregoing passage holds that a state court's summary dismissal of a claim in the alternative to imposition of a procedural bar does not constitute a merits ruling. Rather, federal courts may presume that a state court resolved a claim on its merits, absent an express indication that it resolved the claim solely on procedural grounds. *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."). In this particular case, the Ninth Circuit was required to presume that the PCR court's final paragraph, which expressly disposed of *all claims* in the petition as not colorable, was an alternative merits ruling. The court's failure to follow that requirement—and its most recent departure from AEDPA—warrants certiorari.

II

THE NINTH CIRCUIT'S OPINION WILL ADVERSELY AFFECT STATE-COURT OPINION-WRITING, AND WILL FRUSTRATE AEDPA'S GOAL OF PROMOTING FEDERAL-STATE COMITY.

In *Coleman v. Thompson*, this Court stated, "We encourage state courts to express plainly, in every decision potentially subject to federal review, the grounds upon which their judgments rest, but we will not impose on state courts the responsibility for using

particular language in every case in which a state prisoner presents a federal claim . . . ." 501 U.S. 722, 739 (1991). Contrary to this principle, the Ninth Circuit's opinion directs state courts how to write decisions, and is likely to have wide-ranging implications in states within the Ninth Circuit.

The panel's opinion encourages state courts to avoid addressing a claim's merits in anything other than a summary fashion. There is no uniform national practice to crafting post-conviction orders. *See Williams*, 133 S. Ct. at 1094. State courts may have valid reasons for addressing claims in detail in some cases and not in others, but now may decline to do so in *all* cases for fear of including language or other content that may, years later, open the door to a federal court casting aside their rulings and deciding the issue anew. In addition, the opinion discourages state courts from ruling on a claim's merits in the alternative to imposing a procedural bar, as doing so will not insulate the decision if the procedural bar is set aside.[5] The

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[5] In its prior decision in this case, the Ninth Circuit recognized that an alternative merits ruling is entitled to AEDPA deference. *See James III*, 679 F.3d at 802 ("The state contends that this paragraph is an 'alternative ruling on the merits' by the third PCR court. If this were so, the state court's ruling on this claim would be subject to deferential review under AEDPA."); *see also Stephens v. Branker*, 570 F.3d 198, 208 (4th Cir. 2009) ("[W]e agree with our sister circuits that an alternative merits determination to a procedural bar ruling is entitled to AEDPA
(Continued)

Ninth Circuit opinion thus threatens to infringe upon state-court sovereignty and frustrate the principles AEDPA is designed to promote: "comity, finality, and federalism." *Williams v. Taylor*, 529 U.S. 420, 436, (2000).

Simply stated, the Ninth Circuit's opinion creates an unclear standard that deprives state courts of the ability to determine whether their rulings are entitled to deference on federal review. As Justice Scalia recognized, "Imagine that the state court formulated its judgment as follows: 'All claims raised by the defendant have been considered and denied.' I cannot believe that the Court would require federal courts to test the veracity of that statement." *Williams*, 133 S. Ct. at 1101–02 (Scalia, J., concurring). Here, the Ninth Circuit did precisely that. In fact, the PCR court's ruling demonstrates why a federal court's refusal to apply a merits presumption "would occasionally miss the mark," *id.* at 1096–97: the state court, by its plain language, decided the merits of the *entire petition* in its final paragraph. The court did not

(Continued).

deference."); *Brooks v. Bagley*, 513 F.3d 618, 624–25 (6th Cir. 2008) (noting, in finding alternative merits ruling subject to AEDPA deference, that "[t]he language of the statute does not draw a distinction between cases involving alternative rulings; it refers broadly to 'any claim that was adjudicated on the merits in State court proceedings'" (quoting 28 U.S.C. § 2254(d))). The court avoided applying deference here by unreasonably determining that the state court did not enter an alternative merits decision.

limit its decision to non-precluded claims, stating that it had considered "all of the allegations." (App D, at D-50–D-51.) Nonetheless, the decision was not given deference on federal review because the court had not, in the Ninth Circuit's opinion, used the proper language. This result is unacceptable, and this Court should grant certiorari review to prevent it.

CONCLUSION

This Court should grant the petition for writ of certiorari, and reverse that part of the Ninth Circuit opinion remanding to the district court for issuance of the habeas writ with respect to James' sentence.

Respectfully submitted,

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