No. 13-9085

In the Supreme Court of the United States

TARA SHENEVA WILLIAMS,

Petitioner,

v.

DEBORAH K. JOHNSON, ACTING WARDEN,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Ninth Circuit on remand from this Court should have disregarded the statement in this Court's opinion that petitioner was not entitled to habeas relief where this Court had not granted certiorari on the question of petitioner's entitlement to relief and the statement was unaccompanied by a separate statement of reasons.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES
(continued)

Page

STATEMENT OF THE CASE

The question presented in the certiorari petition arises from post-remand litigation following this Court's decision in *Johnson* v. *Williams*, 133 S. Ct. 1088, *reh'g denied*, 133 S. Ct. 1858 (2013).

1. This Court in *Williams* summarized the facts of the underlying crime and the trial as follows:

> In October 1993, [petitioner] Tara Williams took two of her friends for a drive in southern California with the objective of committing a robbery. They stopped at a liquor store in Long Beach, and while Williams waited in the getaway car, her friends stole money from the cash register and fatally shot the store's owner. Williams then drove one of her friends away, and the other fled on foot. Williams avoided capture for five years but was ultimately apprehended and charged with first-degree murder.
>
> At trial, Williams admitted that she had served as the getaway driver but claimed that she did not know that her friends were going to rob the liquor store at the particular time in question. Instead, she contended that the three friends had agreed only that they would "case" the store and would possibly return later that evening to rob it. The State countered that, regardless of whether Williams knew precisely when and where the robbery was to take place, she had agreed to help commit a robbery and that this was sufficient to provide the predicate for felony murder under California law.
>
> After deliberating for about three hours, the jury foreman sent the judge two notes. The first note asked the following question:
>
> > " 'Is it legally permissible for a juror to interpret . . . the jury instructions to mean that the conspiracy should involve a plan to commit a specific robbery rather than a general plan to commit robberies in the future?' " Tr. 1247.
>
> The second note stated:
>
> > "I wish to inform you that we have one juror who . . . has expressed an intention to disregard the law . . .

> and . . . has expressed concern relative to the severity of the charge (first degree murder)." *Id.*, at 1246.
>
> The judge told the jury that the answer to the question in the first note was "no." *Id.*, at 1249. Then, over Williams' objection, the judge briefly questioned the foreman outside the presence of the rest of the jury about the second note. The foreman said that he thought the judge's answer to the first note might resolve the problem, and the judge instructed the jury to resume its deliberations.
>
> The next morning, once again over Williams' objection, the judge decided to inquire further about the foreman's second note. On questioning by the judge and lawyers for both parties, the foreman testified that Juror 6 had brought up past instances of jury nullification. The foreman also expressed doubt about whether Juror 6 was willing to apply the felony-murder rule. The trial judge then ordered questioning of Juror 6, who first denied and then admitted bringing up instances of nullification. Juror 6 also testified that this was a serious case and that he would vote to convict only if he was "very convinced . . . beyond a reasonable doubt." *Id.*, at 1280. He later clarified that in his view "convinced beyond a reasonable doubt" and "very convinced beyond a reasonable doubt" meant the same thing. *Id.*, at 1281. After taking testimony from the remaining jurors, who corroborated the foreman's testimony to varying degrees, the trial judge dismissed Juror 6 for bias. With an alternate juror in place, the jury convicted Williams of first-degree murder.

Pet. App. 72a-73a (ellipses in *Williams*).

Williams then challenged her conviction both in the state and federal courts, as this Court also described:

> On appeal to the California Court of Appeal, Williams argued, among other things, that the discharge of Juror 6 violated both the Sixth Amendment and the California Penal Code, which allows a California trial judge to dismiss a juror who "upon . . . good cause shown to the court is found to be unable to perform his or her duty." Cal. Penal Code Ann. § 1089 (West 2004). Although Williams' brief challenged the questioning and dismissal of Juror 6 on both state and federal grounds, it did not clearly distinguish between these two lines of authority.

In a written opinion affirming Williams' conviction, the California Court of Appeal devoted several pages to discussing the propriety of the trial judge's decision to dismiss the juror. *People* v. *Taylor*, No. B137365 (Mar. 27, 2001). The court held that Juror 6 had been properly dismissed for bias and quoted this Court's definition of "impartiality" in *United States* v. *Wood*, 299 U.S. 123, 145-146 (1936). But despite its extended discussion of Juror 6's dismissal and the questioning that preceded it, the California Court of Appeal never expressly acknowledged that it was deciding a Sixth Amendment issue.

Williams petitioned the California Supreme Court for review, and while her petition was pending, that court decided *People* v. *Cleveland*, 25 Cal. 4th 466, 21 P. 3d 1225 (2001), which held that a trial court had abused its discretion by dismissing for failure to deliberate a juror who appeared to disagree with the rest of the jury about the evidence. The California Supreme Court granted Williams' petition for review and remanded her case for further consideration in light of this intervening authority. *People* v. *Taylor*, No. S097387 (July 11, 2001).

On remand, the California Court of Appeal issued a revised opinion holding that the trial court had not abused its discretion by questioning the jury and dismissing Juror 6. Williams argued that Juror 6—like the holdout juror in *Cleveland*—was dismissed because he was uncooperative with other jurors who did not share his view of the evidence. But the California Court of Appeal disagreed, explaining that Williams' argument "not only misstate[d] the evidence," but also "ignore[d] the trial court's explanation that it was discharging Juror No. 6 because he had shown himself to be biased, *not* because he was failing to deliberate or engaging in juror nullification." *People* v. *Taylor*, No. B137365 (Jan. 18, 2002), App. to Pet. for Cert. 105a. As in its earlier opinion, the California Court of Appeal quoted our definition of juror bias in *Wood*, but the court did not expressly acknowledge that Williams had invoked a federal basis for her argument. Despite that omission, however, Williams did not seek rehearing or otherwise suggest that the court had overlooked her federal claim. Instead, she filed another petition for review in the California Supreme Court, but this time that court denied relief in a one-sentence order. *People* v. *Taylor*, No. S104661 (Apr. 10, 2002), App. to Pet. for Cert. 85a.

Williams sought but failed to obtain relief through state habeas proceedings, and she then filed a federal habeas petition under 28 U.S.C. § 2254. The District Court applied AEDPA's

> deferential standard of review for claims previously adjudicated on the merits and denied relief. *Williams* v. *Mitchell*, No. 03–2691 (CD Cal., May 30, 2007), App. to Pet. for Cert. 57a. In so holding, the District Court adopted a Magistrate Judge's finding that the evidence "amply support[ed] the trial judge's determination that good cause existed for the discharge of Juror 6." *Williams v. Mitchell*, No. 03–2691 (CD Cal., Mar. 19, 2007), *id.*, at 70a.
>
> The Ninth Circuit reversed. Unlike the District Court, the Ninth Circuit declined to apply the deferential standard of review contained in § 2254(d). The Ninth Circuit took this approach because it thought it "obvious" that the State Court of Appeal had "overlooked or disregarded" Williams' Sixth Amendment claim. [Footnote omitted.] *Williams* v. *Cavazos*, 646 F. 3d 626, 639 (2011). The Ninth Circuit reasoned that *Cleveland*, the State Supreme Court decision on which the State Court of Appeal had relied, "was not a constitutional decision," 646 F. 3d, at 640, and the Ninth Circuit attributed no significance to the state court's citation of our decision in *Wood*. Reviewing Williams' Sixth Amendment claim *de novo*, the Ninth Circuit applied its own precedent and held that the questioning and dismissal of Juror 6 violated the Sixth Amendment. 646 F. 3d, at 646-647. We granted the warden's petition for a writ of certiorari, 565 U.S. __ (2012), in order to decide whether the Ninth Circuit erred by refusing to afford AEDPA deference to the California Court of Appeal's decision.

Pet. App. 73a-76a (ellipsis in original).

2. The State filed a petition for a writ of certiorari raising two questions. The first question was "[w]hether a habeas petitioner's claim has been 'adjudicated on the merits' for purposes of 28 U.S.C. § 2254(d) where the state court denied relief in an explained decision but did not expressly acknowledge a federal-law basis for the claim." The second question was "[w]hether, under § 2254, a federal habeas court (a) may grant relief on the ground that the petitioner had a Sixth Amendment right to retain a biased juror on the panel and (b) may reject a state court's finding of juror bias

because it disagrees with the finding and the reasons stated for it, even where the finding was rationally supported by evidence in the state-court record." Pet. App. 119a. This Court granted certiorari, but only on the first question. *Id.* at 93a.

In its decision, this Court concluded that the rule of *Harrington* v. *Richter*, 562 U.S. __, 131 S. Ct. 770 (2011)—that a state court's summary denial order is presumed to be an adjudication on the merits of a federal claim—applies "when the state court addresses some of the claims raised by a defendant but not a claim that is later raised in a federal habeas proceeding." Pet. App. 71a. The Court then stated its holding as follows:

> Applying this rule in the present case, we hold that the federal claim at issue here (a Sixth Amendment jury trial claim) must be presumed to have been adjudicated on the merits by the California courts, that this presumption was not adequately rebutted, that the restrictive standard of review set out in § 2254(d)(2) consequently applies, *and that under that standard* [*Williams*] *is not entitled to habeas relief.* We therefore reverse the judgment of the Court of Appeals.

Id. (emphasis added). In the final sentence of the opinion, the Court stated: "The case is remanded for further proceedings consistent with this opinion." *Id.* at 85a.

3. Williams petitioned for rehearing, arguing that this Court had erred by including the last part of its holding—"under that standard [Williams] is not entitled to habeas relief"—in the opinion. Pet. App. 99a-104a. She noted that this Court had issued a limited grant of certiorari and

that the "body of the [Court's] opinion" did not contain a section 2254(d)(2) "deferential analysis of [her] Sixth Amendment claim." *Id.* at 103a. And she inferred that it was "highly unlikely" that this Court "intended" that clause to adjudicate her substantive claim. *Id.* at 100a-103a. She asked this Court to delete the twelve-word statement from the opinion so as to clarify that she could proceed on her claim on remand in the Ninth Circuit. *Id.* at 104a.

This Court summarily denied Williams' rehearing petition. Pet. App. 94a.

4. "In accordance with" this Court's opinion, and "taking note" of the Court's denial of rehearing, the Ninth Circuit on remand affirmed the district court's denial of habeas relief. *Williams* v. *Johnson*, 720 F.3d 1212 (9th Cir. 2013) (per curiam); Pet. App. 1a-2a. In separate concurring opinions, two judges explained that this Court's mandate (i.e., its holding in *Williams*) included its ruling that petitioner was not entitled to habeas relief and that the Ninth Circuit was required to follow that mandate. Pet. App. at 2a-5a (Reinhardt, J., concurring); *id.* at 5a-6a (Kozinski, C.J., concurring). Judge Reinhardt explained:

> We are, of course, required to follow the mandate of the Supreme Court. We are also required to assume that the Court meant what it said in the introduction of its opinion, in which it appears to have denied Williams's habeas claim, and that it fully considered the petition for rehearing when it refused to reconsider its decision. Given the introduction to the Court's opinion, and particularly its denial of the petition for rehearing, I believe that we have no option but to conclude that the Court has deliberately

> precluded us from considering the merits of Williams's habeas petition under AEDPA.

Id. at 5a (Reinhardt, J., concurring). Likewise, Chief Judge Kozinski stated that he had "no doubt" that this Court had "ruled on the issue" of whether "the trial judge's actions here complied with clearly established Supreme Court precedent" when it issued its *Williams* opinion "and it stood by that holding when it denied the petition for rehearing." *Id.* at 6a.

Williams sought rehearing in the Ninth Circuit on the ground that this Court's opinion did not foreclose consideration of her entitlement to relief on her Sixth Amendment claim. *Williams* v. *Johnson*, No. 07-56127, Reh. Pet. The Ninth Circuit denied Williams' petition. Pet. App. 95a.

REASONS FOR DENYING THE WRIT

Williams argues that the court of appeals erred in construing this Court's mandate to foreclose further consideration, on remand, of the merits of her Sixth Amendment claim (Pet. 10-17), and more broadly that this Court lacked jurisdiction to resolve that claim because it fell outside this Court's limited grant of certiorari (Pet. 17-22). Those arguments do not warrant review because the court of appeals correctly applied the mandate rule; it is well settled that a limited grant of certiorari does not operate as a jurisdictional bar to this Court's consideration of any question presented by a case; and Williams' underlying claim would not support relief under the deferential standard of review prescribed by 28 U.S.C. § 2254(d)—as the magistrate judge and the district court concluded in 2007.

1. Williams first argues (Pet. 10-17) that resolution of her Sixth Amendment claim was "plainly outside the compass of this Court's decision" (Pet. 14). As the court of appeals concluded, however, that position cannot be reconciled with the plain language of this Court's opinion. *See* Pet. App. 1a-6a.

This Court has "consistently held that an inferior court has no power or authority to deviate from the mandate issued by an appellate court." *Briggs* v. *Pennsylvania R. Co.*, 334 U.S. 304, 306 (1948); see *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 136 (1967) ("No one, except this Court, has authority to alter or modify our mandate."). Thus:

> When a case has been once decided by this court on appeal, and remanded to the circuit court, whatever was before this court, and disposed of by its decree, is considered as finally settled. The circuit court is bound by the decree as the law of the case, and must carry it into execution according to the mandate. That court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon any matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.

In re Sanford Fork & Tool Co., 160 U.S. 247, 255 (1895).

Here, in addition, Williams' petition re-asserts arguments she previously made to this Court in her petition for rehearing petition (see Pet. App. 99a-104a), which this Court summarily denied (*id.* at 94a). In the rehearing petition, she observed that this Court had declined to grant certiorari on the Warden's Question 2. *Id.* at 101a. She makes the same observation here. Pet. 14. In the rehearing petition, she noted that the

Ninth Circuit had not reached the question whether she was entitled to relief under § 2254(d)'s deferential standard of review. Pet. App. 100a. Again, she notes the same thing here. Pet. 14. In her rehearing petition, she argued that some Justices were "trouble[d]" at oral argument by the mid-deliberation juror examination, i.e., "the merits of [her] substantive claim [that] were not before the Court." Pet. App. 101a. Here, she argues that four Justices "indicated at oral argument that Question 2 was troublesome but outside the scope of the Court's review." Pet. 14. In the rehearing petition, she noted that this Court's opinion acknowledged the limited grant of certiorari. Pet. App. 102a. She does the same here. Pet. 14.

Arguments concerning the intended scope of this Court's mandate that did not persuade the Court to amend its opinion promptly after it was issued, and that would affect only the parties to this case, do not warrant further review now.

2. Williams' second question presented reframes the first in jurisdictional terms. Pet. 17-22. She appears to argue that 28 U.S.C. § 1254(1) limits this Court's jurisdiction to questions upon which it has specifically granted certiorari, either expressly or by necessary implication. Pet. 18-19. It is, however, well settled that a limited grant of certiorari does not bar the Court from reaching any issue that the Court deems it appropriate to decide in order to resolve a "case" in which the Court has granted review under section 1254(1).

Williams contends that this Court "[n]ever has . . . addressed the *jurisdictional* implications" of deciding questions outside a limited grant of certiorari. Pet. 18. But, as she acknowledges (Pet. 19), in *Piper Aircraft Co.* v. *Reyno*, 454 U.S. 235, 246 n.12 (1981), the Court expressly held that "An order limiting the grant of certiorari does not operate as a jurisdictional bar." Indeed, the Court's Rules specifically permit the Court to "consider a plain error not among the questions presented but evident from the record and otherwise within its jurisdiction to decide," S. Ct. R. 24.1(a)—a provision that would be impermissible if failure to grant review on a particular question raised any jurisdictional bar.

Williams contends that this Court has reached questions outside the original limited grant of certiorari only: (1) when it has expressly stated that it is doing so; (2) when it is necessary for the proper resolution of the case; or (3) in cases decided under the former jurisdictional statute, which did not contain "the 'granted' language of the present statute [28 U.S.C. § 1254(1)]." Pet. 20-21. She argues that none of those situations applies here, and that the Court's jurisdiction was therefore strictly confined to the standard-of-review question on which it had expressly granted certiorari. *Id.* There is, however, no authority for any such limitation.

As to the first point, this Court may make an express statement to "ensure" its "jurisdiction over all of the question at issue in th[e] case," and to afford parties a chance to brief a question before decision. See *Verizon*

Maryland Inc. v. *Public Service Comm'n of Maryland*, 534 U.S. 1072 (2001). Williams cites, however, no authority requiring, as prerequisite to jurisdiction, that this Court "affirmative[ly] declare[]" that it is reaching a question as a prerequisite to exercising jurisdiction. Pet. 20. There is none.

As to the second point, Williams acknowledges (Pet. 20) that this Court "may consider questions outside the scope of the limited order when resolution of those questions is necessary for the proper disposition of the case." *Piper Aircraft Co.*, 454 U.S. at 246 n.12 (and cases cited). She argues that "resolution of [the Warden's] Question 2 was [not] necessary to the proper resolution of antecedent Question 1." Pet. at 20. But *Piper Aircraft Co.* referred to the "proper disposition of *the case*." 454 U.S. at 246 n.12 (emphasis added). That reference corresponds to the language of section 1254(1), which authorizes the Court to review "[c]ases" on the petition of any party to the "case." Cf. *United States* v. *Locke*, 471 U.S. 84, 92 (1985) (appeal under former 28 U.S.C. § 1952, which authorized direct appeals from orders or judgments holding statutes unconstitutional, "br[ought] before this Court not merely the constitutional question decided below, but the entire case"). Within any given "case" under review by the Court, any limitation on reaching particular *issues* is a matter of prudence or discretion, not of jurisdiction.

Finally, as to Williams' third point—that cases where this Court has reached new questions were decided under the former jurisdictional statute—

Williams herself acknowledges that the Court has also reached such questions under the current statute, 28 U.S.C. § 1254(1). Pet. 21 (suggesting that the Court "potentially contravened § 1254(1)" when deciding *Redrup* v. *New York*, 386 U.S. 767 (1967)).

This Court had the power to decide that Williams' Sixth Amendment claim could not survive deferential review under § 2254(d) even though the Ninth Circuit in its original opinion had not applied § 2254(d) and no argument on the Sixth Amendment claim was presented to this Court in the merits briefing. In *Story Parchment Co.* v. *Paterson Parchment Paper Co.*, 282 U.S. 555 (1931), this Court explained:

> Other assignments of error made on the appeal from the District Court were not considered by the court below. No argument in support of these assignments has been submitted here, and respondents assume that they will be remitted for the consideration of the court below if the judgment of that court be reversed. The entire record, however, is before this court with power to review the action of the Court of Appeals and direct such disposition of the case as that court might have made of it upon the appeal from the District Court. *Lutcher & Moore Lumber Co.* v. *Knight*, 217 U. S. 257, 267, 30 S. Ct. 505, 54 L. Ed. 757; *Delk* v. *St. Louis & San Francisco R. R.*, 220 U. S. 580, 588, 31 S. Ct. 617, 55 L. Ed. 590. And *see Langnes* v. *Green*, *supra*. Accordingly, we have examined these assignments, some eight in number. One or more of them involve questions which have been disposed of by the foregoing opinion. We find nothing in any of the others of sufficient substance or materiality to call for consideration."

Id. at 567-68.

Here, similarly, this Court observed that the federal district court had "applied AEDPA's deferential standard of review for claims previously

adjudicated on the merits and denied relief." Pet. App. 75a. "In so holding," the Court explained, "the District Court adopted a Magistrate Judge's finding that the evidence 'amply support[ed] the trial judge's determination that good cause existed for the discharge of Juror 6.'" *Id.* (brackets in *Williams*). And the Court observed that, "[u]like the District Court, the Ninth Circuit declined to apply the deferential standard of review contained in § 2254(d)." *Id.*

Further, as in *Story Parchment Co.*, this Court had the entire case and record before it. See, e.g., S. Ct. R. 26.2. And the certiorari-stage pleadings sufficiently framed and briefed the substantive Sixth Amendment issue. See 11-465 Pet. 22-29; 11-465 Opp. 24-32; 11-465 Cert. Reply 7-9; see also Pet. 21 (noting that, under Williams' proposed jurisdictional rule, Court could enter an order formally expanding grant of certiorari and then "summarily decide the [new] question based on the certiorari-stage briefing, as it frequently does in habeas cases"). Thus, this Court had both the power and good reason to direct the disposition that the magistrate judge and the district court had concluded was appropriate on deferential AEDPA review, and that the Ninth Circuit should have affirmed.

3. Finally, further review is not warranted because the district court had good grounds for accepting the magistrate judge's recommendation and ruling that Williams' Sixth Amendment claim provides no basis for relief under sections 2254(d)(2) and (e)(1). The state trial judge removed a juror

after inquiring into the matter and concluding that the juror was biased. That determination was essentially one of credibility, and is a factual determination that precludes habeas relief in federal court because it was not "objectively unreasonable" in light of the state court record," (d)(2), and because Williams has not overcome it with "clear and convincing evidence" to the contrary, see (e)(1).

This Court's recitation of the facts of the examination of the juror in this case illustrates that the state-court record reasonably supported the state courts' finding of bias. Juror 6 initially denied but then admitted bringing instances of juror nullification to the attention of his fellow jurors; he stated he would vote to convict only if he were "'very convinced . . . beyond a reasonable doubt[]'"; and fellow jurors (to varying degrees) recounted that Juror 6 expressed unwillingness to apply the felony-murder rule to an aider and abettor. Pet. App. 73a (ellipsis in original).

An actually biased person—a person having "'a state of mind that leads to an inference that the person will not act with entire impartiality,'" *Estrada* v. *Scribner*, 512 F.3d 1227, 1240 (9th Cir. 2008)—may not served as a juror. *United States* v. *Wood*, 299 U.S. at 133 ("All persons otherwise qualified for jury service are subject to examination for actual bias."); *Estrada*, 512 F.3d at 1235 ("The presence of a biased juror is structural error."). Williams had no clearly established constitutional right to keep such a juror on the panel.

CONCLUSION

The petition for a writ certiorari should be denied.

Dated: May 14, 2014

Respectfully submitted,

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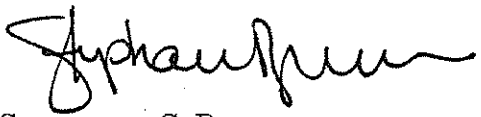

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DEBORAH K. JOHNSON, ACTING WARDEN, *Respondent.*

CERTIFICATE OF COMPLIANCE

Pursuant to Supreme Court Rule 33.2(b), I certify that the Respondent's Brief in Opposition to Petition for Writ of Certiorari consists of 15 pages, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 14, 2014
Respectfully submitted,

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CERTIFICATE OF SERVICE BY MAIL

I, Stephanie C. Brenan, Deputy Attorney General, a member of the Bar of this Court hereby certify that on **May 14, 2014**, a copy of the RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI in the above-entitled case was mailed, first class postage prepaid to:

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I further certify that all parties required to be served have been served.

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