No. 20-7932

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2020

VIRGIL DELANO PRESNELL,
Petitioner

-v-

BENJAMIN FORD, Warden,
Georgia Diagnostic Prison,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI
Capital Case

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-Capital Case-

QUESTION PRESENTED

Does *Wilson v. Sellers*, 138 S. Ct. 1188 (2018), permit a federal habeas court to assign "implicit" factual findings to a state court's order when applying 2254(d)'s limitations on relief, or must it rely only upon the specific findings and conclusions offered by the state courts when adjudicating the petitioner's claims?

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Respondent opens his brief with a concession. He admits that, in Mr. Presnell's case, the Eleventh Circuit "reviewed the state court's decision [by] asking if there was ***any reasonable way*** to agree with the state court." Respondent's Brief in Opposition at 3 (hereinafter "Resp. Br.") (emphasis mine). Respondent calls this approach to habeas review "correct[]." *Id.*[1]

The trouble with Respondent's statement is that this Court has already repudiated the Eleventh Circuit for employing exactly that approach. *Wilson v. Sellers*, 138 S. Ct. 1188 (2018). And at the time that *Wilson* was being litigated, Respondent's counsel believed that the approach was so thoroughly *in*correct that they refused to defend it, forcing the court to appoint *amicus curiae*. This Court should reject Respondent's arguments and grant certiorari to insist that the Eleventh Circuit comply with its explicit command in *Wilson*.

I. *WILSON* APPLIES TO MR. PRESNELL'S CASE.

As amended by the Anti-Terrorism and Effective Death Penalty Act ("AEDPA"), 28 U.S.C. § 2254(d) requires a federal court that is addressing a federal habeas petition from a state prisoner to determine whether the state court's merits adjudication "was contrary to, or involved an unreasonable application of, clearly established federal law," or "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." That analysis

[1] *See also ibid.* at 24 ("the [Eleventh Circuit] court of appeals correctly approached the issue of performance by asking if there was **any reasonable way** to agree with the state court.") (emphasis mine).

"requires federal courts to **'focu[s] on what a state court knew and did[.]'"** *Greene v. Fisher*, 565 U.S. 34, 38 (2011) (quoting *Cullen v. Pinholster*, 563 U.S. 170, 182 (2011)) (emphasis mine).

In Georgia, a state habeas court must issue written factual findings and legal conclusions when adjudicating a capital habeas petition. *See* O.C.G.A. § 9-14-49. If the state habeas court denies relief, the petitioner may apply to the Supreme Court of Georgia for a certificate of probable cause to appeal (CPC) the habeas court's decision. The Supreme Court of Georgia usually issues its decision on a petitioner's CPC application in the form of a summary denial. *See Redmon v. Johnson*, 809 S.E.2d 468 (Ga. 2018).

A. THE ESTABLISHMENT OF THE "LOOK-THROUGH" ANALYSIS

Once the AEDPA took effect, the Eleventh Circuit focused its § 2254(d) review on the reasoned decision of the state habeas court when the Supreme Court of Georgia had issued a summary denial. This practice was known as the "look-through" approach. The practice comported with the law – because the state habeas court was the last court to describe what it "knew and did," *Greene*, 565 U.S. at 38 – as well as made practical sense. In fact, the look-through approach pre-dated the promulgation of the AEDPA, having been established by *Ylst v. Nunnemaker*, 501 U.S. 797 (1991), five years prior to AEDPA's adoption. As *Ylst* explained:

> … many formulary [summary] orders are not meant to convey *anything* as to the reason for the decision. Attributing a reason is therefore both difficult and artificial. We think that the attribution necessary for federal habeas purposes can be facilitated, and sound results more often assured, by applying the following presumption: Where there has been one reasoned state

> judgment rejecting a federal claim, later unexplained orders upholding that judgment or rejecting the same claim rest upon the same ground.

Id. at 799-800.

In 2011, this Court reviewed the case of a California habeas petitioner who had applied for habeas relief directly to the California Supreme Court, as permitted by California law. *Harrington v. Richter*, 562 U.S. 86, 96 (2011). The California Supreme Court denied Richter's petition *without opinion*. He filed a federal habeas petition pursuant to § 2254(d) in the Eastern District of California, which the court denied. *Id.* at 97. The *en banc* Ninth Circuit, conducting *de novo* review, reversed the district court. *Id.* The Ninth Circuit questioned whether § 2254(d) even applied to Richter's petition since the California Supreme Court had issued only a summary denial, but determined that the decision was unreasonable regardless. This Court granted certiorari, reversed, and held, *inter alia*, that "[w]here a state court's decision *is unaccompanied by an explanation*, the habeas petitioner's burden [under § 2254(d)] still must be met by showing there was *no reasonable basis* for the state court to deny relief." *Id.* at 98 (emphases added).

For decades, circuit courts across the nation uniformly and routinely employed the *Ylst* look-through approach when adjudicating habeas petitions in which the state habeas court had issued a reasoned opinion.[2] But the Eleventh Circuit abruptly about-faced in 2014 after the petitioner in *Jones v. Warden*, 746

[2] *See Wilson*, 138 S. Ct. at 1194 ("Since *Ylst*, every Circuit to have considered the matter has applied this presumption, often called the 'look through' presumption, but for the Eleventh Circuit… And most Federal Circuits applied it prior to *Ylst*.").

F.3d 1170 (11th Cir. 2014), sought rehearing. Comporting with typical practice, the original three-judge panel in Mr. Jones's case had looked through the Supreme Court of Georgia's summary denial and analyzed the state habeas court's decision on his *Strickland v. Washington*, 466 U.S. 668 (1984), claim. *Id.* at 1174. On rehearing, however, the panel adopted a different approach, holding that *Richter*, not *Ylst*, should apply to habeas petitions from prisoners in state custody:

> The Georgia Supreme Court's denial of the application for a certificate of probable cause to appeal was the final state-court determination of Jones's *Strickland* claim. …Though the Georgia Supreme Court did not give reasons for its decision, "[w]here a state court's decision is unaccompanied by an explanation, the habeas petitioner's burden still must be met by showing that there **was no reasonable basis for the state court to deny relief**."
>
> … [W]e look to **the Georgia Supreme Court's action** as the final state merits determination.

Jones v. Warden, 753 F.3d 1171, 1182 (11th Cir. 2014) (quoting *Richter*, 562 U.S. at 98) (emphases supplied). Unmoored from any reasoned decision, then, the panel devised its own rationale for the Supreme Court of Georgia's ruling denying relief, and deferred to that imagined decision.

This Court soon began indicating that the circuit had gone astray in its adjudication of habeas petitions. In *Hittson v. Chatman*, 576 U.S. 1028 (2015), *cert. denied*, Justice Ginsburg concurred in the denial of certiorari, but wrote separately to explain that the Eleventh Circuit had "plainly erred" by rejecting *Ylst*'s look-through approach and applying *Richter* in Mr. Hittson's case. *Id.* at 1028. *Ylst*, she said, requires that a federal habeas court look through a summary adjudication "to determine the particular reasons why the state court rejected the claim on the

merits," *id.*, not "consider hypothetical theories[3] that could have supported the Georgia Supreme Court's unexplained order," *ibid.* Justice Ginsburg noted that she was concurring in the denial of certiorari only because the district court *did* "'look through' to the last reasoned state-court opinion, and for the reasons given by that court, I am convinced that the Eleventh Circuit would have reached the same conclusion had it properly applied *Ylst*." *Id.* Because Mr. Wilson's petition for *en banc* rehearing was pending before the Eleventh Circuit, Justice Ginsburg noted that the Eleventh Circuit "[has] an opportunity to correct its error without the need for this Court to intervene." *Id.*

Three days later, the Court once again confirmed that the *Ylst* look-through approach applied in cases where a reasoned state court decision existed. *See Brumfield v. Cain*, 576 U.S. 305, 313 (2015) ("In conducting the § 2254(d)(2) inquiry, we, like the courts below, 'look through' the Louisiana Supreme Court's summary

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[3] Mr. Presnell cited *Hittson*'s "hypothetical theories" language repeatedly throughout his petition. In footnote 7 of Respondent's brief, he claims that Mr. Presnell "does not provide a citation for this quotation and the Warden was unable to locate this specific quote." Resp. Br. at 19. Undersigned counsel apologizes for omitting the citation to *Hittson* in the specific sentence to which Respondent refers, but notes that she cited it in the very next sentence, *see* Pet. Br. at 12; at the beginning of the petition, *see ibid.* at 2 ("*Wilson* required the Eleventh Circuit to defer to state court findings, not contrive 'hypothetical theories,' *Hittson v. Chatman*, 576 U.S. 1028 (2015) (GINSBURG, J., concurring in denial of certiorari), to support its denial of relief."); and again later in the brief, *see ibid.* at 17 ("In other words, the Circuit was required to defer to the specific findings – or, as this Court put it, the 'particular reasons' – that the state court provided in its adjudication of Mr. Presnell's claim, not on its own 'hypothetical theories,' *Hittson*, *supra*, for denying relief.").

denial of [the] petition for review and evaluate the state trial court's reasoned decision[.]").

The Eleventh Circuit then took up the issue *en banc* in *Wilson v. Warden*, 834 F.3d 1227 (11th Cir. 2016) (en banc). Because Respondent agreed with Petitioner that the *Ylst* look-through approach should apply, the circuit was forced to appoint outside counsel as *amicus curiae* to defend the circuit's interpretation. But in the end, and over vigorous and numerous dissents, the Eleventh Circuit affirmed that *Richter*'s "any reasonable basis" standard, not *Ylst*, should apply. *Wilson*, 138 S. Ct. at 1194. The circuit continued using *Richter* to affirm denials of relief on the basis of newly proffered state-court rationales.[4] This Court then granted certiorari.[5]

In *Wilson*, this Court held, simply, "that federal habeas law employs a 'look through' presumption." *Id.* at 1193. When the last decision on the merits has summarily left undisturbed an earlier state court merits ruling, a federal court "should 'look through' the unexplained decision to the last related state-court decision that does provide a relevant rationale" and "presume that the unexplained decision adopted the same reasoning," *ibid.* at 1192. In other words, *Ylst*, not *Richter*, applied.

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[4] *See, e.g.*, *Butts v. GDCP Warden*, 850 F.3d 1201, 1204 (11th Cir. 2017); *Lucas v. Warden, GDCP*, 771 F.3d 785, 792 (11th Cir. 2014); *Hittson v. GDCP Warden*, 759 F.3d 1210, 1232-33 (11th Cir. 2014).

[5] The Eleventh Circuit stayed the briefing schedule in Mr. Presnell's case pending this Court's decision in *Wilson* on March 21, 2018. Respondent did not oppose.

B. *RICHTER*'S "ANY REASONABLE BASIS" STANDARD DID NOT SURVIVE *WILSON* IN CASES LIKE MR. PRESNELL'S.

Because the Supreme Court of Georgia issued a summary denial in Mr. Presnell's case, *see* Pet. App. 5, the Eleventh Circuit should have applied *Wilson* in adjudicating his case.[6] In spite of the plain, straightforward language of *Wilson*, the Eleventh Circuit applied *Richter* instead – but they did so without admitting it. They issued their own findings, some of which they deemed "implicit," Pet. App. 1 at 58 n. 55, while purporting to adhere to *Wilson*'s mandate, *ibid*. at 59.

Respondent concedes that the circuit applied *Richter*'s "any reasonable basis" standard instead of the *Wilson* and *Ylst* look-through approach in Mr. Presnell's case, but repeatedly argues that the Eleventh Circuit was *correct* in doing so. Respondent goes so far as to try to revive *Richter*'s application in cases where a reasoned opinion by the state habeas court exists, an approach this Court condemned only three terms ago. Respondent argues: "Contrary to Presnell's suggestion, this Court has not limited [*Richter*'s] holding to summary state court opinions." Resp. Br. at 20.

But that is **exactly** what *Wilson* did:

> *Richter* does not control here. [] *Richter* did not directly concern the issue before us—whether to "look through" the silent state higher court opinion to the reasoned opinion of a lower court in order to determine the reasons for the higher court's decision. Indeed, it could not have considered that matter, for in *Richter*, there was no lower court opinion to look to.

[6] Neither Respondent nor the Eleventh Circuit offered any reason that the *Wilson* presumption that the higher court adopted the state habeas court's reasoning had been rebutted.

Id. at 1195; *see also Hittson*, 576 U.S. at 1028 (GINSBURG, J., concurring in the denial of certiorari) ("In *Richter*, the only state court to reject the prisoner's federal claim had done so in an unexplained order. With no reasoned opinion to look through to, the Court had no occasion to cast doubt on *Ylst*. To the contrary, the Court cited *Ylst* approvingly in *Richter*, and did so again two years later in *Johnson v. Williams*."); *ibid.* ("*Richter's* [any-reasonable-basis] inquiry was necessary, however, because *no* state court 'opinion explain[ed] the reasons relief ha[d] been denied.' In that circumstance, a federal habeas court can assess whether the state court's decision '*involved* an unreasonable application of ...clearly established Federal law,' § 2254(d)(1) (emphasis added), only by hypothesizing reasons that might have supported it. But *Richter* makes clear that where the state court's real reasons can be ascertained, the § 2254(d) analysis can and should be based on the actual 'arguments or theories [that] supported ... the state court's decision.'" (citing *Richter*, 562 U.S. at 102)).

The any-reasonable-basis inquiry, as applied to cases where there is a reasoned order from the state habeas court and a summary denial from the state supreme court, did not survive *Wilson*.

Grasping at straws, then, Respondent cites *Shoop v. Hill*, 139 S. Ct. 504 (2019), and argues that the Court applied *Richter* there even though a reasoned state court opinion existed, so the "any reasonable basis" standard must live on. Indeed the Court did cite *Richter* in *Shoop* – for an entirely different point of law. As Respondent *himself* notes, *Shoop* cited *Richter* when "analyzing whether the state

court's *reasoned* opinion was 'so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'"[7] Resp. Br. at 20 (quoting *Shoop*, 139 S. Ct. at 504) (emphasis in original). This is **the § 2254(d)(1) analysis** of whether a state court's decision was "contrary to, or involved an unreasonable application of, clearly established Federal law," not the decision to which a reviewing court should refer.[8] The *Wilson* issue is the threshold through which a court must pass before it can even reach the § 2254(d) analysis. They are separate and distinct inquiries.

Respondent makes this argument repeatedly throughout his brief. He argues that this Court applied *Richter* in *Woods v. Etherton*, 136 S. Ct. 1149 (2016) (per curiam), *White v. Wheeler*, 577 U.S. 73 (2015) (per curiam), and *Burt v. Titlow*, 571 U.S. 12 (2013), in order to cite "additional reasons not provided by state courts in reasoned decisions to affirm the denial of relief under § 2254(d)." Resp. Br. at 21. Leaving aside the fact that all of Respondent's cases **pre-date *Wilson***, none of them were citing *Richter* for the any-reasonable-basis standard. They *all* cited

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[7] Further, in *Shoop*, this Court did not actually analyze the state court opinion. It remanded because the circuit court had improperly relied on intervening decisions from this Court to find the state court decision unreasonable. *See Shoop*, 139 S. Ct. at 509.

[8] The "beyond any possibility for fairminded disagreement" language did not even originate with *Richter*. *Richter* was quoting *Yarbrough v. Alvarado*, 541 U.S. 652 (2001). *See Richter*, 562 U.S. at 786 ("A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision (quoting *Yarbrough*, 541 U.S. at 664)).

Richter (which, in turn, cited *Yarbrough*) for the "fairminded jurist" standard for § 2254(d)(1) review. *Etherton* cites *Richter* once:

> Etherton next sought federal habeas relief. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), federal habeas relief was available to him only if the state court's decision "was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States." 28 U.S.C. § 2254(d)(1). "A state court's determination that a claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could disagree' on the correctness of the state court's decision." *Harrington v. Richter,* 562 U.S. 86, 101, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011) (quoting *Yarborough v. Alvarado,* 541 U.S. 652, 664, 124 S.Ct. 2140, 158 L.Ed.2d 938 (2004)). …

Etherton, 136 S. Ct. at 1151.

Wheeler quoted a different case, which in turn quoted *Richter*. That was the only citation to *Richter* in *Wheeler*:

> Under § 2254(d)(1), " 'a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *White v. Woodall,* 572 U.S. ——, ——, 134 S.Ct. 1697, 1702, 188 L.Ed.2d 698 (2014) (quoting *Harrington v. Richter,* 562 U.S. 86, 103, 131 S.Ct. 770, 178 L.Ed.2d 624 (2011)). The Court of Appeals was required to apply this deferential standard to the state court's analysis of respondent's juror exclusion claim.

Wheeler, 577 U.S. at 76–77.

And *Titlow* explained:

> …AEDPA erects a formidable barrier to federal habeas relief for prisoners whose claims have been adjudicated in state court. AEDPA requires "a state prisoner [to] show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error ... beyond any possibility for fairminded disagreement." *Harrington v. Richter,* 562 U.S. ——, ——, 131 S.Ct. 770, 786–787, 178 L.Ed.2d 624 (2011). …

Titlow, 571 U.S. at 19-20. In fact, Respondent admits this, even as he also argues otherwise. *See* Resp. Br. at 21-22 (explaining in parentheticals that the cited cases apply *Richter* for the "fairminded jurist" standard).

Respondent's argument is nothing but a smoke screen.

C. RESPONDENT ARGUES AGAINST AN ARGUMENT MR. PRESNELL DID NOT MAKE.

So, having admitted – as he must – that the Eleventh Circuit engaged in exactly the conduct that *Wilson* proscribes in Mr. Presnell's case, Respondent devotes the rest of his brief to inventing an argument that Mr. Presnell did not make, and then dismantling it.

Respondent alleges that Mr. Presnell argued that the Eleventh Circuit may not "review[] the state court record" when analyzing whether a state court unreasonably adjudicated a habeas petitioner's claims pursuant to 28 U.S.C. § 2254(d). Resp. Br. at 3; *ibid*. at 19 ("However, the *Wilson* Court never held that a federal court was 'barred' from **reviewing the record** to determine whether the state court's decision was reasonable." (emphasis mine)).

The question that Mr. Presnell presented was not whether a federal habeas court may "review" a state court record; of course it *must* review it, so Mr. Presnell never argued otherwise. In fact, Mr. Presnell never even addressed a federal court's "review" of the state court record, let alone argued that *Wilson* prohibits it. No variation of the phrase "review the record" appears anywhere in Mr. Presnell's petition. What Mr. Presnell argued – because it is what this Court commanded in

Wilson – is that a federal court must *defer to* the reasons cited by the state court when they affirm a state court's denial of relief. *Wilson*, 138 S. Ct. at 1194.

The Court should ignore Respondent's irrelevant argument.

II. THE ELEVENTH CIRCUIT DISREGARDED *WILSON* IN ADJUDICATING MR. PRESNELL'S CASE.

The facts are these: in Mr. Presnell's case, the Eleventh Circuit failed to engage in the deferential review that *Wilson* requires. The Court issued its own factual findings and legal conclusions regarding the central facts in Mr. Presnell's *Strickland* claim: the testimony of his mother, Lois Samples, regarding her alcohol consumption during her pregnancy, and Mr. Presnell's subsequent diagnosis with fetal alcohol spectrum disorder (FASD). The state habeas court was **silent** as to these issues.

The circuit found that Mr. Presnell's FASD diagnosis rested on Lois's testimony "that she consumed alcohol during the entire time she was pregnant with Petitioner"; and, accordingly, that "the credibility of the diagnosis would depend on Lois's credibility."[9] Pet. App. 1 at 66. The circuit also determined that a jury "would have been unlikely to believe Lois's claim that she drank alcohol during her entire pregnancy," because the affidavits of other family members did not contain information about her drinking habits even though she lived with them during her pregnancy, so "Petitioner can therefore not show [*Strickland*] prejudice." *Id.*

[9] This is incorrect. As Mr. Presnell explains *infra*, the diagnosis was also rendered because Mr. Presnell displays the symptoms and effects of FASD. Lois's affidavit was not the only evidence of Mr. Presnell's FASD; it was merely the foundation.

As Mr. Presnell explained in his petition, and as is clear from the record, Lois did not live with her family for her entire pregnancy. Respondent attempts to buttress the circuit's finding by suggesting, *inter alia*, that Lois must have consumed alcohol *every day* in order for Mr. Presnell to be afflicted with FASD, so if she lived with her family during her pregnancy for any length of time and they did not witness *and testify* regarding her drinking, then she did not drink while she was pregnant with Mr. Presnell. Resp. Br. at 26-27. That is clearly not the case. According to habeas expert Dr. Ricardo Weinstein, "both the extent and pattern of [Lois's] drinking while pregnant [ ] dramatically increased the likelihood that Mr. Presnell would suffer the neuropsychological consequences associated with FASD." D.6-84:2307. She "was a binge-drinker, consuming large quantities of strong liquor in a very short period of time." *Id.* at 2307-08. "It is not so much the total amount of alcohol that is consumed, but rather, the *high number of drinks consumed on one occasion*, producing a high peak blood alcohol concentration, that appears to be a greater risk factor for" FASD. *Id.* at 2306-07 (emphasis added).

If Lois had simply said that she drank during her pregnancy, but Mr. Presnell had no corresponding deficits, the situation facing the jury and the courts would have been much different. But Mr. Presnell presented significant evidence of the severe effects of Lois's binge-drinking. His brain damage both corroborates Lois's alcohol consumption and demonstrates its consequences. All Mr. Presnell was required to show is that Lois's testimony – and the FASD diagnosis that arose from it – would have convinced *a single juror* that he deserved a sentence less than

death. *See Wiggins v. Smith*, 539 U.S. 510, 537 (2003) (prejudice exists where a petitioner establishes that "a reasonable probability [exists] that at least one juror would have struck a different balance" if they had heard the omitted evidence.). He did so. The circuit's contrary finding was barred by *Wilson* and clearly erroneous.

Finally, with respect to Mr. Presnell's contention that the Eleventh Circuit is attempting to make an end run around *Wilson* by justifying a particular finding as "implicit" in the state court's order, Respondent argues that the Eleventh Circuit's finding was not "pivotal" or "unreasonable." Resp. Br. at 26. Respondent's argument reveals much. The § 2254(d) analysis focuses on whether *the state court*, not the Eleventh Circuit, was "unreasonable." And whether or not it was "pivotal" to the circuit's decision is irrelevant. The inquiry is whether the finding should have been made at all—the answer is clearly no—and whether the finding contributed to the federal court's decision—the answer is clearly yes.

III. THE ELEVENTH CIRCUIT CONSISTENTLY REFUSES TO APPLY *WILSON*.

Mr. Presnell's case is not an isolated incident. The Eleventh Circuit has engaged in a pattern and practice of defying this Court's explicit command in *Wilson*. *See, e.g., Esposito v. Warden*, 818 F. App'x 962, 973-74 (11th Cir. 2020), *cert. denied sub nom.*; *Jenkins v. Comm'r, Alabama Dep't of Corr.*, 963 F.3d 1248 (11th Cir. 2020), *cert. denied sub nom. Jenkins v. Dunn*, No. 20-6972, 2021 WL 1951891 (May 17, 2021); *Tollette v. Warden, GDCP,* 816 F. App'x 361 (11th Cir. 2020), *cert. denied sub nom. Tollette v. Ford,* No. 20-6876, 2021 WL 1602682 (U.S. Apr. 26, 2021); *see also Whatley v. Warden, GDCP*, 955 F.3d 924 (11th Cir. 2020) (Martin, J.,

dissenting) (criticizing the Eleventh Circuit for failing to abide by *Wilson*'s command to review "'the specific reasons given by the state court' for denying the petitioner's claim 'and defer[ ] to those reasons if they are reasonable.'"). For instance, in *Esposito*, the Eleventh Circuit not only failed to defer to the state habeas court's conclusions, it reached findings that the state court had in fact *rejected*. *See Esposito*, 818 Fed. Appx. at 973-74.

The long and short of it is this: the Eleventh Circuit has repeatedly flouted *Wilson* – a fact that Respondent himself concedes. *See* Resp. Br. at 3 (the Eleventh Circuit "reviewed the state court's decision [by] asking if there was ***any reasonable way*** to agree with the state court." (emphasis mine)); *ibid*. at 24 ("the court of appeals correctly approached the issue of performance by asking if there was any reasonable way to agree with the state court."). This Court is the only body that can ensure that the Eleventh Circuit complies with its precedent, and it should.

CONCLUSION

This Court should grant Mr. Presnell's petition for writ of *certiorari*.

Respectfully submitted on this, the 18th day of June, 2021.

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