No. 22-5058

In the Supreme Court of the United States

DAVEL CHINN,

Petitioner,

v.

TIM SHOOP, Warden

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Did Ohio's state courts unreasonably apply clearly established federal law when they rejected the petitioner's *Brady* claim?

LIST OF PARTIES

The Petitioner is Davel Chinn, an inmate at the Chillicothe Correctional Institution.

The Respondent is Tim Shoop, the Warden of the Chillicothe Correctional Institution.

LIST OF DIRECTLY RELATED PROCEEDINGS

Chinn's petition for a writ of certiorari does not comply with S. Ct. R.14.1(b)(iii). It does not contain "a list of all proceedings in state and federal trial and appellate courts, including proceedings in this Court, that are directly related" to this case. A list of all such proceedings appears below:

Supreme Court of the United States

Chinn v. Ohio, No. 99-6946 (Jan. 18, 2000)

Chinn v. Ohio, No. 92-6562 (Jan. 11, 1993)

Sixth Circuit Court of Appeals

Chinn v. Warden, Chillicothe Corr. Inst., No. 20-3982 (Feb. 4, 2022)

United States District Court of Ohio, Southern District

Chinn v. Jenkins, No. 3:02-cv-512 (Aug. 18, 2020)

Supreme Court of Ohio

State v. Chinn, No. 2020-0284 (May 12, 2020)

State v. Chinn, No. 2001-1532 (Nov. 7, 2001)

State v. Chinn, No. 1998-2047 (Feb. 2, 1999)

State v. Chinn, No. 1997-2020 (June 2, 1999)

State v. Chinn, No. 1996-1561 (Sept. 19, 1996)

State v. Chinn, No. 1992-0385 (June 24, 1992)

Ohio Second District Court of Appeals

State v. Chinn, No. 28345 (Jan. 10, 2020)

State v. Chinn, No. 18535 (July 13, 2001)

State v. Chinn, No. 11835 (Dec. 27, 1991)

State v. Chinn, No. 16764 (Aug. 21, 1998)

State v. Chinn, No. 16206 (Aug. 15, 1997)

State v. Chinn, No. 15009 (June 21, 1996)

State v. Chinn, No. 11835 (Dec. 27, 1991)

Ohio Court of Common Pleas, Montgomery County

State v. Chinn, No. 89-CR-768 (Sept. 1, 1989)

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INTRODUCTION

Davel Chinn seeks pure error correction. He claims the State of Ohio withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). And he claims that both the District Court and the Sixth Circuit erred by failing to award habeas relief based on that claim. On this ground, Chinn seeks summary reversal. But the lower courts correctly rejected Chinn's *Brady* claim. If nothing else, neither court committed the sort of egregious error that justifies "the strong medicine of summary reversal." *Pavan v. Smith*, 137 S. Ct. 2075, 2080 (2017) (Gorsuch, J., dissenting). Further, this is a poor vehicle for addressing the question that Chinn's petition raises. The Court should deny the petition for a writ of certiorari.

STATEMENT

1. In late January of 1989, Davel Chinn (who sometimes went by "Tony") completed a midterm exam at Cambridge Technical Institute in Dayton, Ohio. Pet.App.A-209. After completing the exam, he connected with Marcus Washington. *Id.* At some point, Chinn showed Washington a .22 caliber revolver and suggested finding someone to rob. *Id.*

Their search ended when they found Bryan Jones and Gary Welborn. *Id.* Jones and Welborn had parked their cars side-by-side, with the driver's side windows facing each other, in a nearby parking lot. *Id.* Washington approached Jones from behind. Chinn approached Welborn. *Id.* Chinn pressed his revolver against Welborn's head and demanded money. *Id.* Chinn told the men that they "better have at least a hundred dollars between [them] or he'd kill [them] both." *Id.* After Jones and Welborn handed over their wallets, Chinn and Washington discussed which car they

wanted to steal. *Id.* They decided to steal both. *Id.* Washington got into the driver's seat of Jones's car, forcing Jones into the passenger seat. *Id.* But Welborn managed to escape, with his car, before Chinn could take it. *Id.* Welborn drove immediately to a police station and reported the incident. *Id.*

Left with only one car to steal, Chinn entered Jones's black Chevrolet Cavalier and placed the revolver against Jones's neck. *Id.* Washington drove away. At some point, Chinn told Washington to turn around and pull the car over to the side of the road. Pet.App.A-209–10. Chinn exited the car. Pet.App.A-210. He removed Jones from the car and shot him in the arm. *Id.* Apparently carrying through on his earlier threat to shoot Jones and Welborn if they did not have at least a hundred dollars between them, *see* Pet.App.A-209, Chinn told Washington that he shot Jones because Jones "didn't have enough money" and because he could have identified them, Pet.App.A-210. Chinn's single shot killed Jones; it perforated his main pulmonary artery, causing a massive acute hemorrhage. *Id.*

After the murder, Chinn and Washington drove back to Dayton. *Id.* They stopped at the home of Christopher Ward, a friend of Washington's. *Id.* Washington introduced Chinn as "Tony." *Id.* Ward and Washington spoke for between thirty and forty-five minutes before Washington and Chinn drove away. *Id.* But later that evening, Washington returned and told Ward that the man he had introduced as "Tony" had shot someone earlier that evening. *Id.*

Ward went to the police, who arrested Washington several days later. *Id.* Washington confessed to his role in the robbery, kidnapping, and murder of Jones.

Id. But because he knew Chinn only as "Tony," he was unable to give the police Chinn's full name or his address. *Id.* He did, however, give the police a description of Chinn and, on the basis of that description, the police prepared a composite sketch. *Id.*

That sketch led to Chinn's arrest. A local newspaper published the sketch, along with an article stating that the suspect went by the name of Tony. Shirley Ann Cox, who worked as a receptionist, saw the sketch and recognized the suspect as someone who had visited her place of business and identified himself as Tony Chinn. *Id.* Cox called the police, told them she had seen the suspect, and gave them Chinn's name. *Id.*

The police obtained a photo of Chinn and used it in a photo lineup that they showed to Washington and Ward. *Id.* Washington identified Chinn as the man who shot Jones. *Id.* And Ward identified Chinn as the man who had been with Washington in Jones's stolen car the night of the murder. Pet.App.A-210–11. The police arrested Chinn and placed him in a lineup viewed by, among others, Welbourn, Cox, Ward, and Washington. Pet.App.A-211. Welbourn attempted to identify the man who robbed him based on the voices of the individuals in the lineup, but identified someone other than Chinn. *Id.* Ward and Cox both identified Chinn. *Id.* Washington eventually identified Chinn as well. *Id.* He initially told the police that the man who murdered Jones was not in the lineup but, after leaving the room where the lineup was conducted, he identified Chinn and explained to the police that he had not done

so sooner because he was afraid that Chinn could see him through the screen in the room where the lineup was conducted. *Id.*

2. A grand jury indicted Chinn for the aggravated murder of Jones, with three death-penalty specifications: (1) committing murder for the purpose of escaping detection for another crime; (2) committing murder in the course of an aggravated robbery; and (3) committing murder in the course of committing kidnapping. *Id.* The grand jury also indicted Chinn for three counts of aggravated robbery, one count of kidnapping, and one count of abduction. *Id.* Each count of the indictment carried a firearm specification. *Id.*

Chinn went to trial. A jury of his peers convicted him on all counts. *Id.* It further recommended sentencing Chinn to death. The trial court accepted that recommendation and imposed a death sentence. *Id.*

Chinn appealed, with some early success. An Ohio appellate court ordered him resentenced because of sentencing errors the lower court had committed. Pet.App. A.-211–12. Then the court reversed again on the ground that the trial court had wrongly denied Chinn's request to be present during resentencing. Pet.App.A-212. But the trial court's third try proved to be the charm: it reimposed the death penalty, which the Ohio Court of Appeals affirmed. The Supreme Court of Ohio affirmed in all respects. *See id.*

3. In addition to filing a direct appeal, Chinn sought state-postconviction relief. *See* Pet.App.A-199. His petition asserted seven grounds for relief. Pet.App. A-231. The trial court denied his petition without a hearing. *Id.* After a partially

successful appeal, which resulted in a remand so that the trial court could hold an evidentiary hearing on two claims of ineffective assistance of counsel, *see id.*, Chinn sought to amend his postconviction petition. He wanted to add a claim that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose Washington's juvenile records. Pet.App.A-206. Those records indicated, among other things, that Washington had a "moderate range" intellectual disability and that his "IQ had been below the lowest two percent of the nation." Pet.App.A-201. According to Chinn, the State's failure to disclose those records prejudiced him because, had the State turned over the records, Chinn could have used them to impeach Washington's testimony. Further, Chinn claimed, he could have used that information to cast doubt on Washington's identification of Chinn as the man who shot and killed Jones. *See* Pet.App. A-207. The trial court denied Chinn's motion to amend, Pet.App.A-206.

The Ohio Court of Appeals affirmed. Pet.App.A-207. It held that the trial court had correctly denied Chinn's motion to amend his postconviction petition. Pet.App. A-206–07. Chinn's motion, it held, was untimely. *Id.* And even had it been timely, the claim failed on the merits. Pet.App.A-207. In reaching this conclusion, the court applied the test that this Court established in *Brady* and discussed in *United States v. Bagley*, 473 U.S. 667 (1985). Specifically, the court recognized that the failure to turn over information violates *Brady* only if the information is "material"—and only if there is a "reasonable probability" that, "had the records been disclosed to the defense, the result of the trial would have been different." Pet.App.A-207. The court determined that Chinn could not make this showing.

At that point, Chinn sought discretionary review in the Supreme Court of Ohio, but to no avail. The court declined to hear the case. *State v. Chinn*, 93 Ohio St. 3d 1473 (2001).

4. Chinn then sought federal habeas relief. His petition raised twenty claims, including the *Brady* claim relating to Washington's juvenile records. *See* R.3, Petition at 8–10. And in 2020—eighteen years after Chinn sought habeas relief, and thirty-one years after the murder—the District Court denied Chinn's petition. Pet.App.A-20. The court granted Chinn a certificate of appealability on three of his claims for relief, including the *Brady* claim. *See* Pet.App.A-83.

Chinn appealed, and the Sixth Circuit affirmed. Pet.App.A-7. It held that the Ohio appellate court, which was the last state court to consider the merits of Chinn's *Brady* claim, had not unreasonably applied clearly established federal law when it rejected that claim. Pet.App.A-6–A-7. The *Brady* standard, the Sixth Circuit wrote, is a general one that leaves courts with great leeway "in reaching" particular outcomes based on "case-by-case determinations." Pet.App.A-6 (quoting *Renico v. Lett*, 559 U.S. 766, 776 (2010)). Given that leeway, there was no basis for granting Chinn's petition for a writ of habeas corpus. Among other things, there was no precedent from this Court "that would compel every fairminded jurist to hold that the State committed a *Brady* error." Pet.App.A-7.

REASONS FOR DENYING THE WRIT

The Antiterrorist and Effective Death Penalty Act, or "AEDPA," governs requests for federal habeas relief. It prohibits federal courts from awarding habeas relief except in narrow circumstances. Just one is relevant here. AEDPA lifts its

prohibition on awarding habeas relief with respect to petitioners who are in custody because of a state-court "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." 28 U.S.C. §2254(d)(2). Chinn's *Brady* claim would fail even on *de novo* review. It therefore lacks any merit at all under AEDPA's more-deferential standard.

I. The Ohio Court of Appeals correctly rejected Chinn's *Brady* claim.

To prove a violation of the rule set forth in *Brady v. Maryland*, 373 U.S. 83, 87 (1963), a defendant must make three showings. *First*, he must show that the government failed to disclose evidence favorable to his case. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). *Second*, he must show that the prosecution suppressed that evidence. *Id.* *Third*, he must show that prejudice ensued. *Id.* In Chinn's state-court proceedings, everyone agreed that the prosecution failed to turn over favorable impeachment evidence—namely, Washington's juvenile records. *See* Pet.App.A-4. Thus, his state proceedings posed just one question relevant to the *Brady* issue: Did the government's non-disclosure prejudice Chinn's case?

The Ohio Court of Appeals correctly answered that question in the negative. Non-disclosure of material evidence is prejudicial only "'if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.'" *Kyles v. Whitley*, 514 U.S. 419, 433–34 (1995) (quoting *Bagley*, 473 U.S. at 682 (opinion of Blackmun, J.)). This reasonable-probability-of-a-different-result standard mirrors the standard that this Court adopted for assessing prejudice under *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Under

both tests, a "reasonable probability" of a different result "is a probability sufficient to undermine confidence in the outcome" of a trial. *Id.* The difference between this "standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" *Harrington v. Richter*, 562 U.S. 86, 112 (2011) (quoting *Strickland*, 466 U.S. at 697).

Chinn cannot satisfy that standard, as the Ohio Court of Appeals correctly explained. *See* Pet.App.A-207; *see also* Pet.App.A-203–05 (discussing prejudice for purposes of *Strickland*). Washington's juvenile records were useful, if at all, only as impeachment evidence. The only relevant question raised by those records was whether Washington's low IQ negatively affected his ability to perceive, remember, and recount the events surrounding Jones's murder. *See* Pet.App.A-207; *see also* Pet.App. A-205. And the answer to that question was disputed. While Chinn presented expert testimony suggesting that individuals with intellectual disabilities "show a decreased accuracy rate in making later identifications," *see* Pet.App.A-205, other witnesses testified that little can be learned by looking at IQ alone, and that Washington's description of the events surrounding Jones's murder remained consistent over time, enhancing their credibility, *see* Pet.App.A-204-05. Even Chinn's trial attorney was not able to say with any certainty that Washington's juvenile records would have provided valuable impeachment material. Pet.App.A-207. But even if Washington's records could have been used to impeach him, he was not the State's only witness. Ward, for example, saw Chinn on the night of the murder in the same black Cavalier that Chinn and Washington had just stolen from Jones. Pet.App.A-204. And there was

nothing in Washington's juvenile records that would call Ward's testimony into question. *See id.* Taken together then, the cumulative effect of the suppression of Washington's juvenile records was insufficient to "undermine[] confidence in the outcome" of Chinn's trial. *See Kyles*, 514 U.S. at 434 (quoting *Bagley*, 473 U.S. at 678).

2. Chinn insists that the Sixth Circuit rejected his *Brady* arguments based on a misunderstanding of the relevant precedent. More precisely, he reads the Sixth Circuit's opinion as holding that prejudice, in the *Brady* context, is assessed under "a 'more likely that not' standard." Pet.12. But that is not what the Sixth Circuit said. True, it recognized that "[t]he *Brady* question now is whether it is more probable than not that the withheld evidence would have created a different result." Pet.App.A-4. If that were all the Sixth Circuit said, Chinn would perhaps have a stronger *Brady* claim. But the Sixth Circuit said much more. After noting the similarities between *Brady*'s prejudice standard and a "more-probable-than-not standard," Pet.App.A-4, the Circuit noted that the two standards *are not* the same. *Id.* And it expressly recognized that "there is a 'slight' difference between more-probable-than-not and 'reasonable probability.'" *Id.* That is correct. Indeed, it is precisely what this Court said in *Harrington*. 562 U.S. at 112. Read in context, the language from the Sixth Circuit's opinion is simply shorthand for the relevant inquiry; the Sixth Circuit expressly rejected, and so could not have adopted, a more-probable-than-not standard.

It is unclear what aspect of this analysis Chinn finds problematic. Chinn acknowledges, for example, that *Brady* claims and *Strickland* ineffective-assistance-of-counsel claims employ the same standard for determining prejudice. *See* Pet.12

n.1. And he further acknowledges that the Sixth Circuit accurately quoted this Court's statement in *Harrington* that the difference between the *Brady* prejudice standard and "a more-probable-than-not standard is slight and matters only in the rarest of cases." *See* Pet.12 (quoting Pet.App.A-4). What, then, is the problem? The only conclusion one can draw is that Chinn disagrees with the structure of the Sixth Circuit's opinion. That is, he seems to disagree with the Sixth Circuit's decision to first articulate the more-probable-than-not standard before noting that a modified version of that standard applies to *Brady* and *Strickland* claims. *See* Pet.App.A-4. According to Chinn, the Sixth Circuit should have started with the premise that a defendant alleging a *Brady* violation must show only that "the likelihood of a different result is great enough to undermine confidence in the outcome of the trial," Pet.11–12 (quotation, internal quotation marks, and alteration omitted), and noted the similarities between that standard and a more-probable-than-not standard only after that, *see* Pet.12–13. Perhaps that would have been a better way to write an opinion, Perhaps not. But the two formulations are materially identical—either way, the analysis would have been the same.

This dispute about how best to write the opinion makes no difference anyway. "This Court, like all federal appellate courts, does not review lower courts' opinions, but their *judgments*." *Jennings v. Stephens*, 574 U.S. 271, 277 (2015). Because the Sixth Circuit's *judgment* is correct—because it correctly concluded that Chinn cannot prevail on his *Brady* claim, especially under AEDPA's demanding standards, *see below* 11–14,—there is no error for this Court to reverse.

Perhaps Chinn disagrees with the prejudice standard itself. But if that is the case, then his issue is not with the Sixth Circuit. It is with this Court, whose decisions the Sixth Circuit accurately quoted. *See* Pet.App.A-4 (quoting *Harrington*, 562 U.S. at 111–12). Properly applying this Court's decisions is not an error, however, much less an error so egregious that it would justify the summary relief that Chinn seeks.

II. The state courts did not unreasonably apply clearly established federal law.

While Chinn's *Brady* arguments fail even on *de novo* review, they are doomed under AEDPA. And AEDPA governs this case. Again, AEDPA generally prohibits federal courts from awarding habeas relief. But it makes an exception for cases in which petitioners are in custody because of a state-court "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." §2254(d)(1).

That is an exceptionally demanding standard. As an initial matter, "clearly established Federal law as determined by the Supreme Court" includes *only* this Court's holdings. *Williams v. Taylor*, 529 U.S. 362, 412 (2000). Supreme Court dicta does not count. *Id.* Neither does circuit precedent. *See Parker v. Matthews*, 567 U.S. 37, 48–49 (2012). A state-court decision is "contrary to" one of this Court's decisions only if it "applies a rule that contradicts the governing law set forth in [this Court's] cases," or "confronts a set of facts that are materially indistinguishable from a decision of this Court and nevertheless arrives at a result different from [its] precedent." *Williams*, 529 U.S. at 405–06. A state-court decision constitutes an "unreasonable application" of this Court's holdings only where the application is "so lacking in

justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103. Because this requires much more than mere error, *Cavazos v. Smith*, 565 U.S. 1, 2 (2011) (*per curiam*), a federal court may not override a state court's decision under the unreasonable-application prong of §2254(d)(1) even when a "petitioner offers 'a strong case for relief.'" *Mays v. Hines*, 141 S. Ct. 1145, 1149 (2021) (*per curiam*) (quoting *Harrington*, 562 U.S. at 102). Instead, federal courts may grant habeas relief only if there was an "'extreme malfunction[]'" in the state's criminal-justice system. *Id.* (quoting *Harrington*, 562 U.S. at 102).

Chinn does not even discuss this standard, let alone suggest that the Sixth Circuit's decision created any uncertainty about how to apply it. He simply asserts, without any support, that the state-court decision denying his *Brady* claim is not entitled to AEDPA deference. *See* Pet.14. That is incorrect. The state court's decision neither was contrary to, nor constituted an unreasonable application of, this Court's holdings.

Contrary to. Chinn does not make any argument with respect to §2254(d)(1)'s "contrary" prong. Understandably so. The Sixth Circuit identified, and applied, the prejudice standard set forth by governing precedent. *See* Pet.App.A-207. Further, there is no decision from this Court that involved a set of facts that are materially indistinguishable from the facts of Chinn's case. Therefore, the state court's decision was not "contrary to" this Court's decisions.

Unreasonably applied. Chinn tries, but fails, to show that the Ohio Court of Appeals unreasonably applied this Court's *Brady* precedents. According to him, "no fairminded jurist could agree with the Ohio Court of Appeals' rejection of [his] claim." Pet.14. But Chinn develops no argument capable of supporting that claim. Nor could he. The Ohio Court of Appeals, after identifying the controlling standard for prejudice under *Brady*, *see* Pet.App.A-207, reasonably concluded that Chinn was not prejudiced by the State's failure to turn over Washington's juvenile records. It noted, among other things, that Washington was not the only witness who connected Chinn to Jones's murder. Pet.App.A-207. Correctly so; Ward also testified that he saw Chinn in Jones's stolen black Cavalier. *See* Pet.App.A-204. The court further concluded that the impeachment value of Washington's juvenile records was low. Pet. App.A-207. Even Chinn's trial attorney was not able to say with confidence that he would have relied on those records to impeach Washington's testimony, *id.*, and there was conflicting expert testimony about whether Washington's low IQ would have, by itself, been enough to call into question his testimony linking Chinn to Jones's murder, *see id.* Chinn might disagree with the state court's analysis, but he cannot say that its decision was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington*, 562 U.S. at 103.

Chinn's response to all this is unavailing. He asserts that the state court that rejected his *Brady* claim did so "because" it concluded that "Washington's identification testimony was not central to the prosecution's case." Pet.14. But that is not

what the state court did. To the contrary, the state court acknowledged that, "[a]t Chinn's trial, the state's key witness was Marvin Washington, a juvenile who testified that he had helped Chinn rob and murder Jones." Pet.App.A-200. It further stated that the "main witness against Chinn was Washington." Pet.App.A-204. So the state court did not reject Chinn's *Brady* claim based on an underestimation of the value of Washington's testimony. Instead, it rejected that claim because it concluded there was no "reasonable probability" that, had Washington's juvenile records been disclosed, that "the result of the proceeding would have been different." Pet.App.A-207 (quotation omitted). The state court's decision was not unreasonable and is therefore entitled to AEDPA deference.

III. This case is a poor vehicle to consider Chinn's question presented because there are alternative bases for affirmance.

In any event, Chinn's habeas claim fails for two additional reasons.

First, Chinn procedurally defaulted his *Brady* claim. That provides an independent basis for affirming the Sixth Circuit's judgment.

"A federal habeas court generally may consider a state prisoner's federal claim only if he has first presented that claim to the state court in accordance with state procedures." *Shinn v. Ramirez*, 142 S. Ct. 1718, 1728 (2022). Chinn did not present his *Brady* claim in accordance with Ohio procedures because he did not include that claim in his original state-court petition for postconviction relief. *See* Pet.App.A-199. He sought to amend his postconviction petition and add that claim only after the trial court had already rejected his petition, and after a court of appeals had reversed the trial court's decision. *See id.*; *see also* Pet.App.A-206–07. On remand, the trial court

denied Chinn's motion to amend his postconviction petition, and the court of appeals affirmed. Chinn's efforts to raise his *Brady* claim, the appellate court held, came too late. Pet.App.A-206–07. And because Chinn did not properly raise that claim in state court, the claim cannot now provide the basis for habeas relief. *See Shinn*, 142 S. Ct. at 1728.

The fact that the state court of appeals ultimately addressed the merits of Chinn's *Brady* claim cannot save him from his procedural default. State courts do not cure procedural defaults simply by "reaching the merits of a federal claim in an alternative holding." *Harris v. Reed*, 489, U.S. 255, 254 n.10 (1989). To the contrary, a state court "may reach a federal question without sacrificing its interests in finality, federalism, and comity." *Id.* That is what the state appellate court did here. After holding that Chinn failed to properly raise and preserve his *Brady* claim, Pet.App. A-206–07, the court assumed "*arguendo*" that Chinn had preserved the claim and rejected it on the merits, Pet.App.A-207.

Second, there is another alternative basis for affirming the Sixth Circuit: because Chinn has identified *at most* a technical error in a trial that ended about three decades ago, he has not shown that justice requires awarding habeas relief.

Even when the requirements of §2254 are satisfied, federal courts are not *required* to grant a petition for a writ of habeas corpus. The granting of habeas relief remains a discretionary act. *See Brown v. Davenport*, 142 S. Ct. 1510, 1520 (2022). A federal court "may" grant a petition for a writ of habeas corpus, 28 U.S.C. §2241(a), when "law and justice require," 28 U.S.C. §2243. This language is discretionary. The

only mandatory language limits when and how the power to grant habeas relief may be exercised. When a petitioner is in custody pursuant to a state-court judgment, for example, a federal court may grant habeas relief "*only* on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." §2254(a) (emphasis added). And even then, it may do so *only* in limited circumstances. For example, courts may award habeas relief if the state court's decision either: (1) was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by [this Court]"; 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." §2254(d)(1). In other words, while there are statutory prohibitions that prevent federal courts from granting habeas relief, there is no statutory language that *requires* federal courts to grant such relief. *See Brown*, 142 S. Ct. at 1524.

Because "justice" does not require upending the result of Chinn's long-ago-concluded trial based on a supposed *Brady* violation that was minor if it was a violation at all, the Sixth Circuit's judgment could be affirmed without reaching the question whether the court properly resolved the *Brady* issue.

CONCLUSION

The Court should deny Chinn's petition for a writ of certiorari.

Respectfully submitted,

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