No. 16-7601

In the

Supreme Court of the United States

TARA SHEVENA WILLIAMS,
Petitioner,

v.

DERRAL ADAMS, WARDEN OF THE CENTRAL CALIFORNIA WOMEN'S FACILITY IN CHOWCHILLA,
Respondent.

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

BRIEF FOR CALIFORNIA ATTORNEYS FOR CRIMINAL JUSTICE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICUS CURIAE[1]

California Attorneys for Criminal Justice (CACJ) is a non-profit organization of criminal defense lawyers founded in 1972. Most of CACJ's membership

[1] Pursuant to Supreme Court Rule 37.3(a), amicus certifies that all parties have consented to the filing of this brief. Pursuant to Supreme Court Rule 37.6, amicus certifies that no counsel for any party authored this brief in whole or in part, no party or party's counsel made a monetary contribution to fund its preparation or submission, and no person other than amicus or its counsel made such a monetary contribution.

practices in the federal and state courts located throughout California. CACJ has among its stated specific purposes the preservation of due process and equal protection of the law for the benefit of all persons. CACJ's appearance here underscores its interest in ensuring the presentation of arguments aimed at preserving the right to a jury trial as provided by the Sixth Amendment.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The Ninth Circuit decision at issue here, Pet. App. 1a, undermines the federal courts' responsibility under the Antiterrorism and Effective Death Penalty Act (AEDPA) to ensure that state-law convictions are not based on unreasonable factual findings. Specifically, under the Ninth Circuit's holding, effective habeas review will no longer be available when state appellate courts unreasonably exceed their authority and affirm convictions based on facts they are not authorized to find.

I. The Ninth Circuit's holding below allows federal district courts to affirm convictions based on factual findings that are categorically "unreasonable" under AEDPA because they are not legally authorized. In this case, California law clearly prohibited the Court of Appeal from making—and then affirming a conviction based on—factual findings that directly contradict the trial record. But the Ninth Circuit failed to consider jurisdictional limitations on the appellate court's fact-finding and instead deferred to its unauthorized factual conclusions, thereby eviscerating federal habeas review under AEDPA. By allowing the appellate court to reach whatever factual

conclusions it wanted, "unconstrained" by the trial record, Pet. App. 12a, the Ninth Circuit flouted its responsibility to examine whether those factual findings were reasonable as AEDPA requires.

This decision to ignore the half of AEDPA requiring convictions to be based on *reasonable* findings of fact will have far-reaching consequences. It is especially concerning in California because of that state's lax standard for dismissing jurors who are hesitant to convict. Three members of this Court have found California's system "troublesome," because it allows trial judges to interfere with jury deliberations. Under the Ninth Circuit's holding, that troublesome process will be insulated from essential federal review.

The holding below will have broad implications throughout the Ninth Circuit, as well, because it was not limited to California law. Many states in the Ninth Circuit clearly limit their appellate courts' ability to make factual findings, and the Ninth Circuit's holding may prevent many state-court petitioners from challenging the factual sufficiency of their convictions, especially since the court did not give clear guidance on the limits of its holding.

II. The Ninth Circuit's decision also threatens the principles of federalism and comity that AEDPA was designed to protect. This Court has repeatedly recognized AEDPA's role in promoting respect for state procedural and jurisdictional rules. That respect must include respecting the limits states place on their courts. But the holding below allows federal

courts to ignore state laws that Congress intended them to uphold.

Finally, the Ninth Circuit's holding runs contrary to this Court's habeas corpus jurisprudence. The Court has long adhered to a "procedural default" rule that bars federal habeas review for petitioners who fail to comply with state procedural rules. That line of cases rests on the importance of protecting states' ability to govern themselves and ensure the orderly administration of their own court systems. Disregarding state-law limits on courts' authority, as the Ninth Circuit now requires, cannot be squared with the principles this Court has sought to protect in its habeas corpus cases. Because the Ninth Circuit has jeopardized the rights of thousands of habeas petitioners and ignored fundamental principles of federalism, as well as the plain statutory text of AEDPA, the Court should grant the petition and reverse the decision below.

ARGUMENT

I. THE NINTH CIRCUIT HAS SIGNIFICANTLY CURTAILED FEDERAL HABEAS REVIEW FOR STATE DEFENDANTS.

Under the Antiterrorism and Effective Death Penalty Act (AEDPA), state defendants have only two avenues of federal habeas relief: showing that their convictions violate clearly established federal law as determined by this Court or showing that they rest on an "unreasonable determination of the facts in light of the evidence presented[.]" 28 U.S.C. § 2254(d)(1), (2). By holding that appellate courts can make their own, new factual findings, the Ninth Circuit has effectively

eliminated the second path in an important category of cases. If the Ninth Circuit's holding is not reviewed and reversed, federal courts will be free to overlook unreasonable determinations of fact by appellate courts, effectively removing § 2254(d)(2) from the statute and thus eliminating half of the already-limited "federal court safety-valve" that AEDPA was meant to preserve. Hon. Alex Kozinski, *Criminal Law 2.0*, 44 Geo. L.J. Ann. Rev. Crim. Proc. iii, xli (2015).

A. The Ninth Circuit's Decision Strips Federal Courts of Their Responsibilities Under AEDPA.

Federal courts have a "virtually unflagging obligation * * * to exercise the jurisdiction given them." *Colo. River Water Conservation Dist.* v. *United States*, 424 U.S. 800, 817 (1976). But the Ninth Circuit's holding—that state appellate courts are "entitled to make [their] own factual findings, unconstrained by what the trial court did," Pet. App. 12a—prohibits federal district courts from reviewing the reasonableness of certain state-court factual findings as required by AEDPA. 28 U.S.C. § 2254(d)(2).

Protecting the integrity of *state*-court proceedings is an important element of *federal* jurisdiction. Federal habeas courts provide "a final safeguard for the relatively rare but compelling cases where state courts [have] allowed a miscarriage of justice to occur." Kozinski, *supra* at xli. Although AEDPA narrowed that jurisdiction, § 2254(d) demonstrates Congress's clear intent that federal courts retain authority to correct certain errors that state courts fail to correct themselves. The Ninth Circuit

abandoned this essential federal prerogative when it treated a state court system's failure as though it were a feature of the state judicial system.

Petitioner Tara Williams sought review of her felony murder conviction, arguing that the California trial court had improperly dismissed a holdout juror who favored acquittal. Pet. App. 5a-6a. The state appellate court decision upholding her conviction—and concluding that the juror dismissal was lawful—turned on the *appellate court's* factual conclusion that the dissenting juror was biased and unwilling to follow the law. That conclusion directly contradicted the trial record, *id.* at 13a (Reinhardt, J., dissenting), but the Ninth Circuit majority waved that concern away simply because the state appellate court was—supposedly—allowed to make its own independent factual determinations. *Id.* at 11a-12a. That surprising conclusion distorts federal court jurisdiction under § 2254(d)(2) in two ways.

First, by requiring deference to all state appellate-court factual findings, the Ninth Circuit disregarded clear state-law limits on appellate-court jurisdiction, such as the "fundamental principle of the California court system * * * that the reviewing court's function is to correct errors of law and not to pass on questions of fact." *Hillery* v. *Pulley*, 563 F. Supp. 1228, 1237 (E.D. Cal. 1984), *aff'd* 733 F.2d 644 (9th Cir. 1984), *aff'd sub nom. Vasquez* v. *Hillery*, 474 U.S. 254 (1986). Under the California Constitution, appellate courts cannot be given fact-finding authority except in cases where a "jury trial is waived or [is] not a matter of

right."[2] Cal. Const. Art. 6 § 11(c); Cal. Civ. Proc. Code § 909 (allowing limited appellate-court fact-finding where jury trial was waived or not a matter of right). The Ninth Circuit overlooked that any factual finding that exceeds an appellate court's jurisdiction—particularly constitutional limits as relevant here—is made unlawfully and is thus inherently "unreasonable" under AEDPA. The Ninth Circuit now takes precisely the opposite view, treating such decisions as though they were reasonable *per se*. Even if the California Court of Appeal had been authorized to make fact findings in this case—and it was not—the Ninth Circuit's broad holding and failure to even examine state-law jurisdictional rules will reverberate through future cases, to the detriment of state defendants.

Second, even when state courts are authorized by state law to make new factual findings on appellate review, federal courts must still determine whether those findings were reasonable "in light of the evidence presented." 28 U.S.C. § 2254(d)(2); *see, e.g.*,

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[2] Under limited circumstances in non-jury cases, California appellate courts may make factual findings contrary to, or additional to those made by the trial court, and may take additional evidence. Cal. Civ. Proc. Code § 909. But that authority is limited to cases where trial by jury was waived or not a matter of right. *Id.* Moreover, California appellate courts must respect the findings of the trail court. *See Tupman* v. *Haverkern*, 280 P. 970, 974 (Cal. 1929) (holding that predecessor to current constitutional provision did not "abrogate the general rule respecting the powers of the trial court in its determination of questions of fact or the rule that the reviewing court is bound by the findings of the trial court").

Sumner v. *Mata*, 449 U.S. 539 (1981) (evaluating reasonableness of factual findings made for the first time in state-court appeal).[3] Although the Ninth Circuit did briefly consider whether the Court of Appeal's decision had support in the record, Pet. App. 10a-11a, its opinion makes it clear that that examination was not required, because "even if" the trial judge did not make a particular finding, "the state appellate court *did* make such a finding."[4] *Id.* at 12a (emphasis in original).

In fact, the Ninth Circuit explicitly authorized state appellate courts to contradict trial courts

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[3] The Ninth Circuit held that *Sumner* v. *Mata* requires it to defer to factual findings made for the first time on appeal. Pet. App. 12a. But *Sumner* involved a question that was not presented until the defendant's appeal, and therefore did not contradict a trial judge's express findings. 449 U.S. at 547 ("[T]here was no reason for the state trial court to consider the issue because respondent failed to raise the issue at the trial level."). The question of why a holdout juror is dismissed will necessarily be made—and was made here—for the first time in the trial court. The Court has also recognized that *Sumner* may not apply at all to appellate-court factual findings that turn on credibility determinations that cannot be made on a paper record. *Cabana* v. *Bullock*, 474 U.S. 376, 388 n.5 (1985). And § 2254(d)(2) still requires federal habeas courts to determine whether appellate factual findings are *reasonable*, not simply to "defer to" them.

[4] This logic is especially dangerous because there is no obvious reason to limit it to *appellate* factual findings. *Juries* are also undoubtedly "entitled to make [their] own factual findings," and the Ninth Circuit's decision risks making § 2254(d)(2) a dead letter when juries make findings that contradict the record as well.

without fear of a collateral reversal, holding that "[f]ederal habeas courts enforce reasonableness, not concordance." *Id.* As explained above, the lack of "concordance" between a trial court and an appellate court that state law does not permit to make new factual findings is inherently unreasonable. But even if this holding could be understood to leave some federal review under § 2254(d)(2) intact, it provides federal trial courts no guidance on *how* to apply § 2254(d)(2) when appellate courts make findings inconsistent with the trial record. When does a lack of "concordance" between the trial and appellate records (which is apparently permissible) become "unreasonable" (and perhaps subject to AEDPA review)? The Ninth Circuit provides no answer, and the simplest reading of its opinion is that federal courts simply should not review appellate-court fact findings.

B. The Ninth Circuit's Rule Could Harm Thousands of State-Court Defendants Outside of California.

The holding below will deprive state-court defendants throughout the Ninth Circuit of meaningful habeas review when their convictions are based on unreasonable factual findings. The Court of Appeals held that "[t]he state appellate court was entitled to make its own factual findings, unconstrained by what the trial court did," Pet. App. 12a. In reaching that conclusion, the Court did not analyze, or even acknowledge, the relevant state law that limited the jurisdiction of the court whose decision it was reviewing. Instead, the Ninth Circuit broadly explained that it was not required to ensure

that "the state courts' last reasoned decision" was "consistent with the findings of the lower state courts." *Id*. at 11a. Because the Ninth Circuit did not ground its sweeping holding in California state law, its decision presumably requires future federal courts to ignore similar jurisdictional limits in other states.

The ramifications of that decision will be tremendous in the Ninth Circuit, where more than a quarter of federal habeas petitions were filed in 2014-2015.[5] And numerous states in the Ninth Circuit place clear restrictions on appellate courts' fact-finding abilities,[6] so defendants convicted in state courts throughout the Ninth Circuit may lose the ability to

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[5] Federal Judicial Caseload Statistics, Table B-7 at 2, United States Courts (2015), http://www.uscourts.gov/sites/default/files/b07mar15_0.pdf.

[6] *See, e.g.*, *Bale* v. *Allison*, 294 P.3d 789, 801 (Wash. Ct. App. 2013) (quoting *Quinn* v. *Cherry Lane Auto Plaza, Inc.*, 225 P.3d 266, 270 (Wash. Ct. App. 2009)) ("Appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier-of-fact."); *Shriners Hosp. for Children* v. *Woods*, 380 P.3d 999, 1002 (Or. Ct. App. 2016) ("[W]e cannot make a factual determination on appeal."); *Stoneman* v. *Drollinger*, 64 P.3d 997, 1004 (Mont. 2003) ("This Court does not engage in fact-finding * * * . "); *In re City of Shelley*, 255 P.3d 1175, 1180 (Idaho 2011) ("Because this Court is sitting in an appellate capacity * * * we are bound to consider only the record and cannot find facts * * * ."); *Liu* v. *Christopher Homes, LLC*, 321 P.3d 875, 881 (Nev. 2014) ("In our appellate capacity, we do not resolve matters of fact for the first time on appeal."); *Snavely* v. *St. John ex rel. Estate of Snavely*, 140 P.3d 492, 495 (Mont. 2006) ("It is not this Court's task, however, to review the record with the purpose of making our own findings.").

challenge the factual basis for their convictions, as long as the appellate court relied on factual conclusions to affirm that conviction. For the thousands of Ninth Circuit defendants challenging their state-court convictions each year, this means relief may only be available for convictions that violate this Court's established law. 28 U.S.C. § 2254(d)(1). Thus, for a large portion of the country, the Ninth Circuit's decision effectively cuts off one of the few avenues to habeas review that Congress expressly left open. Certiorari should be granted so that the Court can review this significant departure from AEDPA's text and purposes.

C. California Courts Can Now Interfere With Jury Deliberations With Less Federal Recourse.

The holding below is especially concerning in California, given that state's high volume of criminal jury trials and its disruptive standard for removing holdout jurors. This case vividly demonstrates that in California, the decision whether to dismiss a minority juror who is unpersuaded by the evidence depends greatly on judges' views of the facts. Since, at a minimum, AEDPA requires those factual findings to be reasonable, excessive deference to state-court fact-finding forecloses federal review of a state procedure that three members of this Court have already found "troublesome." *See infra* at 12.

California law requires trial courts to conduct an inquiry when there is a "demonstrable reality" that a juror is biased. *People* v. *Barnwell*, 162 P.3d 596, 605 (Cal. 2007). As Justice Sotomayor succinctly described

it, California allows "trial judges [to] intrude in the deliberative process of juries." Pet. App. 170a. This approach, identified by one academic as "the worst of the worst," is highly coercive for minority jurors who are legitimately unpersuaded by the evidence because it requires an "intrusive inquiry when a juror holding out against an overwhelming majority has been identified." *See* Jason D. Reichelt, *Standing Alone: Conformity, Coercion, and the Protection of the Holdout Juror*, 40 U. Mich. J. L. Reform 569, 585-88 (2007). That procedure—which has included "relentlessly question[ing] every juror"—risks "effectively coerced verdicts." *People* v. *Hightower*, 114 Cal. Rptr. 2d 680, 696-698 (Ct. App. 2001) (Kay, J., dissenting).

At an earlier stage of this case, Justices Kennedy, Ginsburg, and Sotomayor described California's procedure as "troublesome." Pet. App at. 167a, 168a, 170a. As troublesome as California's procedure is on its own, the Ninth Circuit has made it worse by denying California defendants an effective way to challenge their convictions after courts tinker with the composition of juries. California's treatment of holdout jurors creates a particular risk that jurors will be dismissed—or pressured to change their votes—for having legitimate disagreements about the evidence, making AEDPA review an indispensable tool for protecting defendants' right to a fair trial. As Judge Reinhardt pointed out in dissent, "Even under AEDPA's extraordinarily deferential standard of review, this court also has found on a number of occasions over the past fifteen years that a California trial judge improperly coerced or removed a holdout juror." *Id.* at 17a.

If left in place, the Ninth Circuit's ruling could affect hundreds of California defendants a year. One line of research suggests that in 5 percent of cases, minority jurors actually persuade the majority to change its verdict, usually in favor of acquittal. Valerie P. Hans, *Deliberation and Dissent: 12 Angry Men Versus the Empirical Reality of Juries*, 82 Chi.-Kent L. Rev. 579, 584 (2007). Since there were 8,269 criminal jury trials in California in 2014,[7] minority jurors could potentially make the difference between conviction and acquittal for more than 400 California defendants. The Ninth Circuit undermined holdout jurors' ability to carry out their vital role, by giving state appellate courts carte blanche to dismiss jurors who are not deliberating, without any meaningful federal review.

II. THE NINTH CIRCUIT'S DECISION THREATENS FEDERALISM AND COMITY.

By allowing state appellate courts to make their own factual findings, without regard for state laws prohibiting that practice, the Ninth Circuit has required federal courts to disregard the jurisdictional limits states place on their courts. This runs contrary to the purposes of AEDPA, which was designed to *promote* federalism and respect for state courts, and it fails to adhere to the principles behind the Court's federal habeas jurisprudence. *See Williams* v. *Taylor*,

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[7] 2015 Court Statistics Report, Statewide Caseload Trends at 79, Judicial Council of California (2015), http://www.courts.ca.gov/documents/2015-Court-Statistics-Report.pdf. In fiscal year 2014, there were 5,545 felony jury trials and 2,724 misdemeanor jury trials.

529 U.S. 420, 436 (2000) ("In keeping this delicate balance we have been careful to limit the scope of federal intrusion into state criminal adjudications and to safeguard the States' interest in the integrity of their criminal and collateral proceedings.") This Court's review is needed to stop the erosion of AEDPA's foundation.

A. Congress adopted AEDPA to Promote Respect for State Court Systems.

"There is no doubt Congress intended AEDPA to advance" "comity, finality, and federalism." *Id.*; *see also Sumner*, 449 U.S. at 547 (noting the "interest in federalism recognized by Congress in enacting § 2254(d)"). The Ninth Circuit overlooked these concerns when it ignored state constitutional limits on appellate court jurisdiction by deferring to appellate fact-finding that should have been barred by state law. Thus, the current law in the Ninth Circuit is that a federal court must ignore state-law limits on fact-finding authority when determining whether "an unreasonable determination of facts" occurred. 28 U.S.C. § 2254(d)(2).

That result cannot be squared with AEDPA's goal of protecting the "integrity of legal proceedings within our system of federalism." *Martinez* v. *Ryan*, 566 U.S. 1, 9 (2012); *see also Dixon* v. *Baker*, --- F.3d ---, 2017 WL 460656 (9th Cir. 2017) (recognizing federalism and comity interests implicated by federal habeas review). Respect for state legal systems must include respecting the limits state courts and legislatures place on appellate courts' authority. As state and federal courts and legislatures have repeatedly recognized, there are good reasons for these

limitations, including the trial court's direct access to witness testimony and, as pertinent here, the sworn statements of jurors. *See, e.g.*, Fed. R. Civ. P. 52(a)(6) ("Findings of fact, whether based on oral or other evidence, must not be set aside unless clearly erroneous, and the reviewing court must give due regard to the trial court's opportunity to judge the witnesses' credibility.").

Comity should have prevented the Ninth Circuit from so casually sweeping aside those limitations. That core principle prohibits federal courts from "circumvent[ing] the jurisdictional limits of direct review, and undermin[ing] the State's interest in enforcing its laws." *Martinez*, 566 U.S. at 26 (Scalia, J., dissenting) (quoting *Lee* v. *Kemna*, 534 U.S. 362, 388 (2002) (Kennedy, J., dissenting) (internal quotation marks omitted). But this is the exact result the Ninth Circuit now requires: circumventing state laws designed to limit state-court authority. When a state court affirms a conviction based on factual findings it was not entitled to make, a federal court that accepts and defers to those illegal factual findings threatens the integrity of jurisdictional limits states impose on themselves.

B. The Ninth Circuit's Rule Is Inconsistent With this Court's Established Habeas Law.

The Ninth Circuit's rule is also in tension with the Court's precedent. In a long line of cases, this Court has recognized a procedural default rule that prohibits habeas petitioners from presenting issues that a state court chose not to hear because the defendant did not follow a state procedural rule. *See Parker* v. *Dugger*, 498 U.S. 308 (1991); *Wainwright* v.

Sykes, 433 U.S. 72 (1977). This rule is intended to promote respect for state procedural rules, because a "State's procedural rules are of vital importance to the orderly administration of its criminal courts." *Lambrix* v. *Singletary*, 520 U.S. 518, 525 (1997); *see also Martinez*, 566 U.S. at 9.

The Ninth Circuit disregarded this principle when it failed to respect California's constitutional limit on appellate-court fact-finding. *See supra* at 6-7. Even more so than a purely procedural rule, a state's decision to withhold jurisdiction from a court—and to enshrine that decision in its constitution—is an essential exercise of state sovereignty that federal courts may not ignore.

Just last term, the Court "summarily reverse[d]" the Ninth Circuit for ignoring a California procedural rule that should have barred a habeas petition. *Johnson* v. *Lee*, 136 S. Ct. 1802, 1804 (2016). Federal courts should not be allowed any greater leeway to disregard state jurisdictional rules when they *favor* habeas relief. The Court should grant the petition and confirm that when state courts exceed their authority to affirm a conviction, federal courts must exercise their own authority to reverse unlawful convictions under AEDPA.

* * * * *

The Ninth Circuit's deference to a state appellate court's factual finding that was prohibited by law and contradicted by the record has seriously undermined the habeas regime that Congress established under AEDPA, and disrupted fundamental principles of federalism. The burden of these structural errors will

be borne by thousands of state-court defendants throughout the Ninth Circuit who will lose the ability to challenge their convictions as Congress intended. The Court should restore those defendants' federal habeas rights.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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