No. 02-524

In the
Supreme Court of the United States

JANETTE PRICE, WARDEN,
Petitioner,

v.

DUYONN ANDRE VINCENT,
Respondent.

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

BRIEF OF *AMICI CURIAE* STATES OF TEXAS, ALABAMA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, GEORGIA, HAWAII, IDAHO, INDIANA, LOUISIANA, MARYLAND, MASSACHUSETTS, MONTANA, NEBRASKA, NORTH DAKOTA, OHIO, OREGON, SOUTH CAROLINA, SOUTH DAKOTA, AND UTAH IN SUPPORT OF PETITIONER

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STATEMENT OF *AMICI CURIAE* INTEREST

Texas, and the 21 other states that join in this brief, urge the Court to reverse the decision of the Sixth Circuit in *Vincent v. Jones*, 292 F.3d 506 (CA6 1998), *cert. granted*, 123 S.Ct. 816 (2003) (No. 02-524). This case presents an important question affecting the States' interest in the correct standard of review to be applied in federal habeas proceedings. At issue is whether a federal court reviewing a writ of habeas corpus can bypass the statutory scheme established by Congress in the Antiterrorism and Effective Death Penalty Act (AEDPA) and review issues—that were adjudicated by the state court—under a pre-AEDPA standard of review, *i.e.*, *de novo*.

In enacting the AEDPA, Congress limited a federal court's power to grant habeas relief based on a claim already adjudicated by the state courts. Generally, because of exhaustion and procedural default principles, a federal court will review a habeas petitioner's constitutional claims only after those claims have been adjudicated by a state court. And, the AEDPA mandates increased deference by federal courts to the factual findings and legal determinations of the state courts.

The Sixth Circuit's *de novo* review of Vincent's double jeopardy claim significantly weakens the AEDPA standard of review, undermines the States' legitimate interests in having the first opportunity to right their mistakes, and thus offends state sovereignty. *Amici* States' interests are served by the Court's resolution of the question presented regarding the Sixth Circuit's failure to apply the highly deferential standard of review in 28 U.S.C. §§2254(d) and (e).

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Amici file this brief because the States have a strong interest in ensuring that their state court decisions are accorded proper deference by federal courts. The Sixth Circuit's decision makes the States subject to a review of federal habeas petitions without proper deference to state courts' adjudication of constitutional claims. While *Amici* support Petitioner's request that the Court reverse the Sixth Circuit's decision based on the legal merits of the issues presented, *Amici*'s brief focuses on the AEDPA standard of review as it relates to questions 1 and 2 of the questions presented in this case.

SUMMARY OF THE ARGUMENT

With the passage of the AEDPA, Congress redefined the scope of a federal court's review of a state criminal conviction. Specifically, under the standard of review set forth in 28 U.S.C. §2254(d), a federal court is barred from granting habeas relief without affording substantial deference to the state court's adjudication of the claims.

Under the AEDPA, factual determinations by the state court must be presumed correct, absent clear and convincing evidence to the contrary, and legal decisions must be upheld unless they are either "contrary to" "clearly established Federal law, as determined by the Supreme Court of the United States" or "an unreasonable application of" that clearly established law.

Inexplicably, the Sixth Circuit's *de novo* review of the Michigan Supreme Court's decision ignored the standard of review set forth in the AEDPA. Because it deemed the critical question to be legal in character, the Sixth Circuit believed it could simply set aside the Michigan Supreme Court's conclusion and resolve the matter *de novo*. But, under the AEDPA, when a state court both identifies the governing rule of law and reasonably applies that rule, a federal habeas court cannot disregard that decision and come to its own independent conclusion. If the state court's decision complies with the terms of the AEDPA—that is, the decision is not an objectively unreasonable application of clearly established federal law—then the federal court may not gainsay the state court's judgment.

The Michigan Supreme Court properly identified the controlling rule of law, reasonably applied it to the facts of this case, and decided that Vincent's double jeopardy rights had not been violated. The Sixth Circuit neither applied the proper standard of review to the Michigan Supreme Court's decision nor explained its reason for failing to do so.

Acceptance of the Sixth Circuit's failure to apply the AEDPA standards of review would subvert the important interests of finality, comity, and federalism underlying Congress's intent in enacting the AEDPA. Federalism concerns demand that a federal court apply the proper standard of review when considering a claim that was adjudicated on the merits and rejected by a state's highest court. Because the Sixth Circuit's decision is contrary to the AEDPA and to the principles of federalism, it should be reversed.

ARGUMENT

I. THE PLAIN LANGUAGE OF THE AEDPA AND PRINCIPLES OF FEDERALISM DICTATE THAT A FEDERAL COURT SHOULD RESPECT A STATE COURT'S ADJUDICATION OF A CONSTITUTIONAL CLAIM.

The AEDPA "places a new constraint on the power of a federal habeas court to grant a state prisoner's application for a writ of habeas corpus." *Williams v. Taylor*, 529 U.S. 362, 412 (2000) (O'Connor, J.). Section 2254(d) precludes federal courts from granting habeas relief as to any claim that was adjudicated on the merits in a state court proceeding unless such adjudication:

> (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
>
> (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. §§2254(d)(1), (2).

Factual issues determined by a state court are presumed to be correct, and the petitioner bears the burden of rebutting this presumption by clear and convincing evidence. 28 U.S.C. §2254(e)(1). Thus, for both legal and factual determinations, the AEDPA demands increased federal deference to state court decisions.

On April 18, 2000, this Court issued its decision in *Williams v. Taylor* in which the Court construed the AEDPA's standard of review as set forth in amended §2254(d)(1). Justice O'Connor delivered the opinion of the Court with respect to the proper interpretation of the new standard of review. *Williams*, 529 U.S., at 402-13.

Construing §2254(d)(1), the Court determined that a state court decision can be "contrary to" clearly established federal law only if the state court: (1) applies a rule that contradicts governing Supreme Court precedent, or (2) confronts a set of facts materially indistinguishable from a decision of the Court but nevertheless arrives at a different result. *Id.*, at 405-06.

Under the "unreasonable application" clause, a federal habeas court should inquire "whether the state court's application of clearly established federal law was objectively unreasonable." *Id.*, at 409. The Court stressed that an unreasonable application of federal law is different from an incorrect application of such law and a federal habeas court may not grant relief unless that court determines that a state court's incorrect or erroneous application of clearly established federal law was also objectively unreasonable. *Id.*, at 411.

In this case, the Sixth Circuit improperly ignored the standards of review under 28 U.S.C. §§2254(d)(1)-(2), (e)(1), and accorded no deference to the Michigan Supreme Court's decision rejecting Vincent's double jeopardy claim. Rather than apply the correct AEPDA standard, the Sixth Circuit considered Vincent's claim *de novo* and affirmed the district court's grant of the writ.

Federalism concerns—and the express terms of the AEDPA—demand that a federal court accord proper deference to a state court's decision, particularly when the state court relied on

controlling Supreme Court precedent in dismissing the same claim. *See infra* Part II. Failing to accord deference to a state court's decision, and proceeding with a *de novo* review, shows a disregard for state judicial procedures. It also undermines the fundamental principle that states are coequal sovereigns fully capable of abiding by their constitutional duty to protect and enforce federal constitutional rights. *See* U.S. CONST. art. VI, cl. 3 ("[A]ll executive and judicial Officers, both of the United States and of the several states, shall be bound by oath or Affirmation, to support this Constitution."). The Sixth Circuit's opinion completely disregards the standards of deference and review set forth in the AEDPA.

II. THE SIXTH CIRCUIT FAILED TO APPLY THE AEDPA'S STANDARD OF REVIEW AS INTERPRETED BY THE COURT IN *WILLIAMS V. TAYLOR*.

The Sixth Circuit noted but did not apply the AEDPA standard of review. In a section titled "Standard of Review," the court of appeals stated that "[a] district court's legal conclusions in a habeas proceeding are reviewed *de novo* and its factual findings are reviewed for clear error." *Jones*, 292 F.3d, at 510 (citing *House v. Bell*, 283 F.3d 737 (CA6 2002)). Then, immediately following this statement, the court set forth, verbatim, the language of §2254(d)—the AEDPA standard of review. *Id.* (quoting 28 U.S.C. §2254(d); *Williams v. Taylor*, *supra*). Notwithstanding its recitation of the AEDPA standard of review, the Sixth Circuit's opinion is devoid of any analysis actually applying this standard to the Michigan Supreme Court's decision.

Under §2254(d)(1), a state court decision is "contrary to" clearly established Supreme Court precedent "if the state court applies a rule that contradicts the governing law set forth in" this Court's decisions. *Williams*, 529 U.S., at 405. In this case, the Michigan Supreme Court's decision would be "contrary to" this Court's clearly established precedent if it had held, for example, that a directed verdict was not an acquittal that invoked double jeopardy protections—but that is not what the Michigan Supreme Court held. *See People v. Vincent*, 565 N.W.2d 629, 633 (Mich. 1997) (citing *Smalis v. Pennsylvania*, 476

U.S. 140, 142 (1986)); *see also, e.g., United States v. Martin Linen Supply Co.*, 430 U.S. 564, 573 (1977); *Fong Foo v. United States*, 369 U.S. 141, 143 (1962). The Michigan Supreme Court explicitly cited this Court's controlling jurisprudence and stated that "if a directed verdict were rendered, further proceedings would violate [Vincent's] double jeopardy rights." *Vincent*, 565 N.W.2d, at 633.

Moreover, the Michigan Supreme Court aptly noted "[u]ltimately what we must determine is 'whether the ruling of the judge, whatever its label, actually represents a resolution, correct or not, of some or all of the factual elements of the offense charged.'" *Id.* (citing *Martin Linen*, 430 U.S., at 571). Accordingly, after reviewing the facts of the case under these standards, the Michigan Supreme Court held that the statements of the trial judge regarding the motions for directed verdicts "did not represent an actual resolution of some or all of the factual elements of the offense charged. Therefore, further proceedings were not barred by the Double Jeopardy Clause, and [Vincent's] rights were not violated." *Id.*, at 633.

Since the Court issued its decision in *Williams*, the courts of appeals have routinely applied the AEDPA standard of review in federal habeas proceedings. *See Cox v. Miller*, 296 F.3d 89, 101 (CA2 2002), *petition for cert. filed*, 71 U.S.L.W. 3430 (U.S. Dec. 11, 2002) (No.02-937); *Greene v. Lambert*, 288 F.3d 1081, 1088 (CA9 2002); *Revilla v. Gibson*, 283 F.3d 1203, 1209-10 (CA10), *cert. denied*, 123 S.Ct. 541 (2002); *Valdez v. Cockrell*, 274 F.3d 941, 946-47 (CA5 2001), *cert. denied*, 123 S.Ct. 106 (2002); *Fortini v. Murphy*, 257 F.3d 39, 47 (CA1 2001), *cert. denied*, 535 U.S. 1018 (2002); *Romine v. Head*, 253 F.3d 1349, 1364 (CA11 2001), *cert. denied*, 535 U.S. 1011 (2002); *Bell v. Jarvis*, 236 F.3d 149, 162 (CA4 2000); *Hameen v. Delaware*, 212 F.3d 226, 235 (CA3 2000), *cert. denied*, 532 U.S. 924 (2001). By contrast, in this case, the Sixth Circuit did not review the Michigan Supreme Court's decision to determine whether it was "contrary to" or involved an "unreasonable application of, clearly established Federal law," as determined by this Court.

Instead, the Sixth Circuit expressly stated that, because the question whether a directed verdict was granted was a legal and not a factual question, in its judgment, it was "not bound by the holding of the Michigan Supreme Court that the trial judge's statements did not constitute a directed verdict under Michigan law." *Jones*, 292 F.3d, at 511.

In truth, although "the proper characterization of a question as one of fact or law is sometimes slippery," *Thompson v. Keohane*, 516 U.S. 99, 110-11 (1995), the question of whether the trial judge actually granted a directed verdict is best framed as a mixed question of fact and law. Disaggregated, the question entails an inquiry into what in fact transpired in the trial court, and what, in turn, was the legal significance of those events—procedurally, under Michigan law, and substantively, whether the court's action represented a resolution of the factual elements of the first-degree murder charge.

The Sixth Circuit conflated this inquiry into one determination, which it described as "the legal significance of [the trial judge's] statements." *Jones*, 292 F.3d, at 511. And, for reasons it did not explain, the Sixth Circuit believed that the legal nature of that question freed it from the constraints of AEDPA and rendered it "not bound" by the decision of the Michigan Supreme Court.

Even if the Sixth Circuit were correct, and the determination of whether a directed verdict had been entered was a pure question of law, its conclusion that no deference was therefore due was directly contrary to the AEDPA and this Court's holding in *Williams*. Even on pure questions of law, a federal habeas court can set aside a state court decision only when that decision is "contrary to" "clearly established Federal law, as determined by the Supreme Court of the United States" or "an unreasonable application of" clearly established law. The Michigan Supreme Court's decision was neither.

The Michigan Supreme Court correctly recognized that, based on this Court's controlling precedent, a directed verdict would bar further proceedings pertaining to guilt or innocence for first-degree murder.

Vincent, 565 N.W.2d, at 633. In fact, the Michigan Supreme Court specifically noted that the rule in *Smalis* controlled the disposition of Vincent's double jeopardy claim. *Id.*; *see also Smalis*, 476 U.S., at 142 (holding that when a trial court's ruling amounts to an acquittal, jeopardy bars further proceedings). Thus, the Michigan Supreme Court's application of the controlling rule of law cannot be said to "contrary to" this Court's governing precedent. *See Williams*, 529 U.S., at 405-06.

In applying that legal standard to the facts before it, the Michigan Supreme Court held that the statements of the trial judge did not amount to a ruling on the motions for directed verdict. *Vincent*, 565 N.W.2d, at 635.[1] That decision would not be binding on the federal habeas court—if, and only if, it were objectively unreasonable. *See Williams*, 529 U.S., at 413 ("Under the 'unreasonable application' clause, a federal habeas court may grant the writ if the state court identifies the correct governing legal principle from this Court's decisions but unreasonably applies that principle to the facts of the prisoner's case.").

But the Sixth Circuit did not determine whether the Michigan Supreme Court's decision unreasonably applied *Smalis*'s rule to the facts of Vincent's case. Instead, contrary to the AEDPA, it simply conducted its own *de novo* review.

Although the Sixth Circuit may have disagreed with the Michigan Supreme Court's application of the legal standards, it could not, and did not, find them objectively unreasonable. Indeed, in evaluating Vincent's double jeopardy claim under this Court's proper precedent, the Michigan Supreme Court stated:

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1. To the extent that determination was based on factual issues, such as the context of the trial judge's statements, and the confusion and uncertainty evidenced therein, those factual issues are entitled to a presumption of correctness in federal court. *See* 28 U.S.C. §2254(e)(1). The Sixth Circuit did not discuss this possibility.

> We are aware that how the judge characterizes his statement is not controlling, nor is the form of the so-called ruling controlling, but in this case we find that the judge was correct. *He had not directed a verdict*. Statements couched in the terms 'my impression,' 'I think,' 'in the event that it's not our premeditation planning episode,' and 'it may very well be,' do not resound in finality. To the contrary they are clearly equivocal. We would be hard pressed to call this kind of indecisive pondering a final judgment of acquittal. *Vincent*, 565 N.W.2d, at 635.

While another court might have come to a different conclusion, to deem these equivocal oral statements from the bench—revisited moments thereafter with the trial judge's agreeing to hear from the prosecution for its arguments on the matter the next morning, *Vincent*, 292 F.3d, at 508—as something less than the entry of a directed verdict is, at the very least, not unreasonable.

Under the plain language of §2254(d)(1), the Sixth Circuit was required to defer to the Michigan Supreme Court's decision and analyze: (1) whether the Michigan Supreme Court applied a rule of law that contradicted this Court's governing precedent; (2) whether the Michigan Supreme Court confronted a set of facts materially indistinguishable from a decision of the Court but nevertheless arrived at a different result; or (3) whether the Michigan Supreme Court's decision was an objectively unreasonable application of clearly established law. *See* 28 U.S.C. §2254(d)(1); *see also Williams*, 529 U.S., at 405-06, 411. The Sixth Circuit engaged in none of this analysis.

The Sixth Circuit's decision fails to accord proper deference to the state court's adjudication. While the Michigan Supreme Court adjudicated Vincent's double jeopardy claim on the merits based on controlling federal law as determined by this Court and rejected his claim, the Sixth Circuit granted habeas relief without any deference to its opinion. This result does not square with principles of finality, comity,

and judicial efficiency that underlie Congress's intent in enacting the AEDPA.

Because a state pays a high price[2] when a federal court grants habeas relief without deferring to the state court's adjudication of the same claim, the Court should not let the Sixth Circuit's decision stand. The reasoning employed by the lower court is fundamentally flawed and will undermine Congress's efforts of ensuring that federal courts pay proper respect to a state court's decision. *See Williams*, 529 U.S., at 404 ("It cannot be disputed that Congress viewed §2254(d)(1) as an important means by which its goals for habeas reform would be achieved."). Because the Sixth Circuit's decision violates the express terms of the AEDPA and fundamental principles of federalism, it should be reversed.

CONCLUSION

For these reasons, *Amici* respectfully submit that the judgment of the court of appeals should be reversed.

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2. As the Court stated in *Coleman v. Thompson*, 501 U.S. 722, 738-39 (1991):

> "[M]ost of the price paid for federal review of state prisoner claims is paid by the State. . . . It is the State that pays the price in terms of the uncertainty and delay added to the enforcement of its criminal laws. It is the State that must retry the petitioner if the federal courts reverse his conviction."

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