FEDERAL COURTS — HABEAS CORPUS — SEVENTH CIRCUIT GRANTS HABEAS RELIEF UNDER 28 U.S.C. § 2254(D) TO PETITIONER ALLEGING *BRADY* VIOLATION DUE TO HIDDEN EVIDENCE OF WITNESS HYPNOSIS. — *Sims v. Hyatte*, 914 F.3d 1078 (7th Cir. 2019), *reh'g and reh'g en banc denied*, No. 18-1573, 2019 U.S. App. LEXIS 6558 (7th Cir. Mar. 4, 2019).

Since the Founding, the constitutional privilege of habeas corpus has been a "vital instrument for the protection of individual liberty."[1] For prisoners found guilty by state courts, federal habeas review is often the last hope to reverse an unjust conviction.[2] Under 28 U.S.C. § 2254(d),[3] habeas relief is permitted to state defendants when a state court has made an "unreasonable application of[] clearly established Federal law,"[4] a standard that the Supreme Court has interpreted narrowly.[5] Thus, federal courts must sometimes respect state court decisions that may violate a defendant's constitutional rights but are nonetheless "reasonable" under the Supreme Court's interpretation of the term.[6] Recently, in *Sims v. Hyatte*,[7] the Seventh Circuit granted habeas relief to an Indiana prisoner, holding that the state court's decision — which found evidence of a key witness's hypnosis to be immaterial — was an "unreasonable application" of federal law.[8] *Sims* was wrongly decided by a majority that did not adequately justify its grant of habeas relief. And far from being an outlier, *Sims* fits into a larger pattern of federal habeas jurisprudence wherein some federal judges are reluctant to obey the Supreme Court's strict interpretation of § 2254(d).

In November 1993, security guard Shane Carey was sitting in his car around 7:00 p.m. when a man approached him, pulled out a gun, and shot him in the face through the driver-side window.[9] The injured Carey made his way to a telephone, contacted the police, and provided a description of his assailant once they arrived.[10] Carey was shown at least six photographs in the hospital that evening, including one photograph of Mack Sims,[11] whom the police had arrested based on Carey's

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1 Boumediene v. Bush, 553 U.S. 723, 743 (2008).

2 *See* CHARLES DOYLE, CONG. RESEARCH SERV., RL33391, FEDERAL HABEAS CORPUS: A BRIEF LEGAL OVERVIEW 1 (2006).

3 28 U.S.C. § 2254(d) (2012).

4 *Id.* § 2254(d)(1).

5 *See, e.g.*, Woods v. Donald, 135 S. Ct. 1372, 1376 (2015) (per curiam).

6 *See id.* (holding that even "clear error" may nonetheless be reasonable).

7 914 F.3d 1078 (7th Cir. 2019).

8 *See id.* at 1087.

9 *Id.* at 1080–81.

10 *Id.* at 1081.

11 Sims v. Warden, No. 14-CV-1936, 2018 WL 723461, at *1 (N.D. Ind. Feb. 6, 2018) (citing Sims v. State, No. 20A04-9510-CR-398 (Ind. Ct. App. Aug. 9, 1996)).

description.[12] Carey identified Sims as his assailant, and did so again in similar photographic lineups both two days and two weeks later.[13] No witness other than Carey could provide a description of the shooter, nor was any firearm or physical evidence ever recovered, but Sims was charged with attempted murder.[14] At trial, the prosecution leaned heavily on Carey's identification of Sims.[15] In response, the defense impeached Carey for several inconsistencies in his testimony[16] and demonstrated that Carey's identifications were not always accurate or "unequivocal."[17] Furthermore, Carey testified at trial that he may have been shown a single picture of Sims *before* any identification lineups occurred.[18] Despite these issues, Sims was found guilty of attempted murder and sentenced to thirty-five years in prison.[19]

Over seventeen years later, in February 2012, a deputy prosecuting attorney revealed at a postconviction hearing that the prosecution had arranged and paid for Carey to undergo a pretrial session of hypnosis to "sharpen his recollection concerning the shooting."[20] The postconviction court immediately held a hearing in which the prosecution testified that the hypnosis had merely "made [Carey] more certain about his previous identifications of Sims."[21] The court denied Sims relief, holding that there was no reasonable probability that disclosure would have changed the result of the trial (the "materiality" standard required under *Brady v. Maryland*[22]) and that Carey's testimony was admissible as a matter of Indiana law.[23] The Court of Appeals of Indiana affirmed, finding

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12 Sims v. State, No. 20A03-1210-PC-431, 2013 WL 3526759, at *3 (Ind. Ct. App. July 15, 2013).

13 *Sims*, 2018 WL 723461, at *1 (quoting *Sims*, No. 20A04-9510-CR-398); *Sims*, 2013 WL 3526759, at *1.

14 *Sims*, 914 F.3d at 1081.

15 *See id.* at 1081–82; *Sims*, 2013 WL 3526759, at *1.

16 *Sims*, 914 F.3d at 1083. Carey gave conflicting accounts as to his assailant's hair ("short hair or . . . bald" versus "curly and longer") and footwear ("combat boots" versus "Nike sneakers"), but argued that "his memory had improved over time on the matter." *Id.* Carey also testified that the lighting during the shooting was "subdued" and "somewhat faint" and that he had not been wearing his glasses. *Id.*

17 *Id.* at 1082. The defense demonstrated that Carey did not always successfully identify Sims in photographic lineups, with one such failure taking place shortly before trial. *Id.*

18 *Sims*, 2018 WL 723461, at *1; *see also Sims*, 914 F.3d at 1082–83. The defense requested a mistrial, but was unsuccessful. *Sims*, 914 F.3d at 1083. The court ruled that there was "no evidence" definitively proving that the single photograph of Sims was ever shown. *Id.*

19 *Id.* at 1084. A subsequent attempt by the defense to move for a new trial based on the single photograph issue was unsuccessful, *Sims*, 2018 WL 723461, at *1, as was a direct appeal, *id.* at *2.

20 *Sims*, 2013 WL 3526759, at *1.

21 *Id.* at *2.

22 373 U.S. 83 (1963). In *Brady*, the Court held that a defendant's due process rights are violated when the prosecution withholds material evidence favorable to the defense. *Id.* at 87. Evidence is material only if there is "a reasonable probability that [a defendant's] conviction or sentence would have been different had [the withheld evidence] been disclosed" to the defense. Strickler v. Greene, 527 U.S. 263, 296 (1999).

23 *Sims*, 914 F.3d at 1085–86.

that the record supported the lower court's decision and stating that appellate courts could not "reweigh evidence."[24] The court acknowledged that under Indiana law, "[e]vidence derived from a hypnotically entranced witness is inherently unreliable . . . and is therefore inadmissible"[25] unless the witness's in-court identification had a "sufficient *independent* factual basis."[26] But it concluded that "Carey's numerous pre-hypnotic descriptions and identifications of Sims [were] sufficient to establish an independent basis for his post-hypnotic in-court identification"[27] such that there was no reasonable probability that the outcome of the trial would have been different had the hypnosis been disclosed.[28] The Indiana Supreme Court declined relief on appeal.[29]

Having exhausted state remedies, Sims filed a federal petition for writ of habeas corpus, which the District Court for the Northern District of Indiana denied.[30] The district court explained that under 28 U.S.C. § 2254(d), federal courts cannot grant such petitions *unless* the state court proceedings "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"[31] or "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."[32] The Supreme Court has interpreted this statute to mean that a state court decision "must be objectively unreasonable, not merely wrong; even clear error will not suffice."[33] The district court then held that under this high standard, habeas relief was not warranted in Sims's case.[34] While "[r]easonable jurists might disagree" with the state court's application of the *Brady* rule, the court reasoned that "fairminded disagreement is not a basis for habeas corpus relief. Indeed, fairminded disagreement *precludes* habeas corpus relief."[35] Nevertheless,

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[24] *Sims*, 2013 WL 3526759, at *5; *see also Sims*, 914 F.3d at 1086.

[25] *Sims*, 2013 WL 3526759, at *3 (citing Rowley v. State, 483 N.E.2d 1078, 1081 (Ind. 1985)).

[26] *Sims*, 914 F.3d at 1088 (emphasis added).

[27] *Sims*, 2013 WL 3526759, at *5.

[28] *Id.* at *6.

[29] *Sims*, 914 F.3d at 1086.

[30] Sims v. Warden, No. 14-CV-1936, 2018 WL 723461, at *7 (N.D. Ind. Feb. 6, 2018).

[31] *Id.* at *5 (quoting 28 U.S.C. § 2254(d)(1) (2012)).

[32] *Id.* (quoting 28 U.S.C. § 2254(d)(2)).

[33] *Id.* (quoting Woods v. Donald, 135 S. Ct. 1372, 1376 (2015) (per curiam)).

[34] *Id.* at *6. The court separately addressed the requirements of both § 2254(d)(1) and § 2254(d)(2), but on appeal, Sims argued only that § 2254(d)(1) applied to his case. *See Sims*, 914 F.3d at 1095 n.1 (Barrett, J., dissenting).

[35] *Sims*, 2018 WL 723461, at *7 (emphasis added) (citing Harrington v. Richter, 562 U.S. 86, 101 (2011)).

acknowledging the "troubling" facts and "difficult" implications posed by the case, the court issued a certificate of appealability.[36]

The Seventh Circuit reversed. Writing for the panel, Judge Bauer[37] held that the state court's decision was both contrary to and an unreasonable application of federal law when it mistakenly confused the question of *Brady* materiality with the separate standard of evidence admissibility.[38] Judge Bauer began by defining the "clearly established" federal law regarding *Brady* disclosures, explaining that "suppression of strong and non-cumulative evidence related to the credibility of an important witness is material under *Brady*" when that witness's testimony is "critical" to the prosecution, as Carey's was.[39] The majority held that the hypnosis evidence was material because had it not been withheld from the defense, Carey's cross-examination would have changed dramatically.[40] Such evidence would have "subjected [Carey's testimony] to withering cross-examination" and ultimately "severely undermined" Carey's credibility, which was crucial to the prosecution's case.[41] Because "the suppression of the evidence was clearly a violation under *Brady*," Judge Bauer concluded, reversal was required.[42]

Judge Barrett dissented. Though she agreed that the undisclosed evidence of Carey's hypnosis constituted a *Brady* violation,[43] Judge Barrett argued that the majority had "fail[ed] to give the Indiana Court of Appeals the deference required by 28 U.S.C. § 2254(d)."[44] Instead, the majority had simply, and wrongly, "ask[ed] whether the suppressed evidence of hypnosis create[d] a reasonable probability of a different result";[45] it had approached the case de novo in defiance of § 2254(d).[46] To justify this decision, the majority opinion had mischaracterized the

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[36] *Id.* A court of appeals may not hear a habeas corpus appeal originating from a state court decision unless a certificate of appealability is issued. 28 U.S.C. § 2253(c)(1)(A). This occurs "only if the applicant has made a substantial showing of the denial of a constitutional right." *Id.* § 2253(c)(2).

[37] Judge Bauer was joined by Judge Hamilton.

[38] *Sims*, 914 F.3d at 1088–89. Because the majority seemingly collapsed both prongs of § 2254(d)(1) into a single inquiry and because the majority's "stronger argument" seems to rest on the "unreasonable application" prong, *id.* at 1094 (Barrett, J., dissenting), this comment will view the majority's reasoning in that light.

[39] *Id.* at 1088 (majority opinion).

[40] *Id.* at 1089.

[41] *Id.* at 1091.

[42] *Id.* at 1092. One month later, the Seventh Circuit denied the prosecution's petition for a rehearing or rehearing en banc. Sims v. Hyatte, No. 18-1573, 2019 U.S. App. LEXIS 6558 (7th Cir. Mar. 4, 2019).

[43] *See Sims*, 914 F.3d at 1092 (Barrett, J., dissenting).

[44] *Id.*

[45] *Id.* at 1094.

[46] *See id.* at 1096.

Supreme Court's *Brady* jurisprudence[47] and the reasoning of the Indiana courts (which had *not* conflated the *Brady* materiality standard with that for evidence admissibility).[48] But in Judge Barrett's view, the majority's approach was still not enough to overcome the requirements of § 2254(d). Because the Indiana Court of Appeals had not erred "beyond any possibility for fairminded disagreement," federal courts were not authorized to grant Sims's habeas petition, even if they believed — as the Seventh Circuit did — that a *Brady* violation had occurred.[49]

Sims illustrates the ongoing tension between the Supreme Court's interpretation of § 2254(d) and the federal courts that apply it. Section 2254(d) restricts the availability of habeas relief, and the Court's subsequent jurisprudence has since imposed even tighter limits. In *Sims*, the majority did not apply the proper standard of review, which requires that no fairminded jurist disagree that habeas relief is warranted. Instead, the Seventh Circuit resisted the Supreme Court's habeas requirements, just as some other circuits have recently done. This pattern of resistance oversteps the role of federal inferior courts, which should faithfully apply habeas law even when it precludes relief in hard cases.

Federal courts have limited power to grant habeas relief. While their ability to review state convictions grew throughout the twentieth century,[50] so too did questions and concerns about judicial economy[51] and federalism.[52] By the mid-1990s, federal habeas review of state convictions had been labeled "the most controversial and friction-producing issue in the relation between the federal courts and the states."[53] To

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[47] *See id.* at 1092–93 (arguing that "contrary to the majority's suggestion, the Supreme Court has never announced a hard-and-fast rule requiring a new trial when non-cumulative evidence related to the credibility of an important witness is suppressed," *id.* at 1093).

[48] *See id.* at 1093–94 (arguing that "[w]hen it moved to the *Brady* issue, the [Indiana] court squarely identified and applied *Brady*," *id.* at 1093, and that "[t]he majority is plainly correct that '*Brady*'s materiality standard is not an admissibility test,' but neither the Indiana Court of Appeals nor the trial court treated it like one," *id.* at 1094 (citation omitted) (quoting *id.* at 1089 (majority opinion))).

[49] *Id.* at 1099 (quoting Harrington v. Richter, 562 U.S. 86, 103 (2011)).

[50] *See* NANCY J. KING & JOSEPH L. HOFFMANN, HABEAS FOR THE TWENTY-FIRST CENTURY 48–66 (2011) (outlining a brief history of habeas review of state convictions).

[51] *See id.* at 86 (labeling habeas litigation of state noncapital cases "an appalling waste of resources"); Anthony Gregory, *"The Tissue of the Structure": Habeas Corpus and the Great Writ's Paradox of Power and Liberty*, 16 INDEP. REV. 53, 61 (2011) (identifying "intractable problems of balancing the interests of 'finality' and economical use of resources, on the one hand, and of justice, on the other").

[52] Scholars acknowledge the prominent role originally held by states in correcting constitutional violations. *See, e.g.*, Stephen I. Vladeck, *Constitutional Remedies in Federalism's Forgotten Shadow*, 107 CALIF. L. REV. 1043, 1059 (2019) (observing that "when it comes to the scope of remedies for federal constitutional violations, state courts — and state remedies — were usually meant to play an important role"). The Supreme Court has also noted federalism's importance in the context of habeas relief. *See, e.g.*, Shoop v. Hill, 139 S. Ct. 504, 506 (2019); Williams v. Taylor, 529 U.S. 420, 436 (2000).

[53] Victor E. Flango & Patricia McKenna, *Federal Habeas Corpus Review of State Court Convictions*, 31 CAL. W. L. REV. 237, 238 (1995) (quoting 17A CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4261 (2d ed. 1988)).

relieve this tension, Congress passed the Antiterrorism and Effective Death Penalty Act[54] (AEDPA) in 1996, which established the current scope of habeas relief in what later became § 2254(d).[55] The Supreme Court has defined the § 2254(d) standard to be exceptionally strict. In *Williams v. Taylor*,[56] the Court held that an unreasonable application of federal law is more than simply an *incorrect* application.[57] And in *Harrington v. Richter*,[58] the Court limited the standard further by requiring that relief be granted only where no "fairminded" jurist could have agreed with the state court's application of the law.[59] Subsequent decisions have reaffirmed that the hurdle imposed by § 2254(d) is "extremely difficult for petitioners to overcome."[60]

The Indiana court's decision did not meet the required "fairminded jurist" standard articulated in *Harrington*; consequently, the Seventh Circuit should not have granted relief in *Sims*. A federal court may disregard a state ruling and grant a habeas petition only when the state ruling is "so lacking in justification that there was an error well understood and comprehended in existing law *beyond any possibility for fairminded disagreement*."[61] The majority opinion faulted the state court for failing to weigh the evidence according to the proper standard for *Brady* materiality; rather than considering the possible impeachment effects of the withheld evidence on the strength of the prosecution's case, it reasoned, the state court relied too heavily on the evidence admissibility standard in its assessment.[62] But this critique of the state court's reasoning misses the point. Rather than asking if the state court ruled correctly, the Seventh Circuit should have asked "if fairminded jurists could disagree" about its ruling.[63] The decisions of the courts below, together with the dissent, answer in the affirmative.

The majority's failure to apply the proper standard in *Sims* embodies a wider trend of friction between the Supreme Court's interpretation

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54 Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (codified as amended in scattered sections of the U.S. Code).

55 *See* Judith L. Ritter, *The Voice of Reason — Why Recent Judicial Interpretations of the Antiterrorism and Effective Death Penalty Act's Restrictions on Habeas Corpus Are Wrong*, 37 SEATTLE U. L. REV. 55, 72–75 (2013) (summarizing the legislative intent behind AEDPA).

56 529 U.S. 362 (2000).

57 *Id.* at 410–11.

58 562 U.S. 86 (2011).

59 *Id.* at 101–02 ("Under § 2254(d), a habeas court must determine what arguments or theories supported . . . the state court's decision; and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." *Id.* at 102.).

60 RICHARD H. FALLON, JR., ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 1314 (7th ed. 2015).

61 Shoop v. Hill, 139 S. Ct. 504, 506 (2019) (emphasis added) (quoting *Harrington*, 562 U.S. at 103).

62 *Sims*, 914 F.3d at 1088–89.

63 *Id.* at 1095 (Barrett, J., dissenting) (quoting Kidd v. Lemke, 734 F.3d 696, 703 (7th Cir. 2013)).

of § 2254(d) and the lower courts that must follow it. The Supreme Court has firmly and consistently overturned lower courts that, in its view, improperly grant habeas relief without satisfying § 2254(d).[64] Originally, *Williams* was viewed by some courts of appeals as leaving an "interpretive gap" as to what constituted an "unreasonable application" of federal law; the Ninth Circuit, for instance, chose to apply a clear error standard.[65] But in *Harrington*, the Court closed any possible gaps with the "no reasonable jurist" test that now binds lower courts.[66] Federal judges — particularly those on the Sixth and Ninth Circuits — have chafed against this standard[67] and continue to challenge the Supreme Court's interpretation of § 2254(d).[68] In *Sims*, the Seventh Circuit has joined these judges in resisting the Court's standard when a state court's judgment is clearly erroneous, but not objectively unreasonable.

But while federal judges may disagree with current habeas law, they are still required to follow it. The trend of circuit courts attempting to soften the *Harrington* standard merely proves the truism that "hard cases make bad law";[69] a factually difficult case like *Sims* should not become an opportunity for a federal court to "substitute[] its own judgment for that of [a] state court" without authorization.[70] It is no secret that the Supreme Court's habeas jurisprudence has many critics. Some argue that the Court's rigid interpretation of the § 2254(d) standard is not required by the text of the statute, while others suggest that the

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[64] *See* FALLON ET AL., *supra* note 60, at 1314 (noting that from 2005 to 2013, the Court barred relief under § 2254(d) in thirty of thirty-five habeas cases).

[65] Stephen R. Reinhardt, Essay, *The Demise of Habeas Corpus and the Rise of Qualified Immunity: The Court's Ever Increasing Limitations on the Development and Enforcement of Constitutional Rights and Some Particularly Unfortunate Consequences*, 113 MICH. L. REV. 1219, 1226 (2015). *But see* Diarmuid F. O'Scannlain, *A Decade of Reversal: The Ninth Circuit's Record in the Supreme Court Through October Term 2010*, 87 NOTRE DAME L. REV. 2165, 2168 (2012) (calling the Ninth Circuit's pre-*Harrington* habeas record "especially troubling").

[66] *See Harrington*, 562 U.S. at 101–02.

[67] *See* RICHARD H. FALLON, JR., ET AL., HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 105 (7th ed. Supp. 2019) (noting that in 2014 and 2015 alone, the Court reversed grants of habeas relief in seven of the eight habeas cases it heard, all but one of which came from the Sixth or Ninth Circuits); *see also* Cash v. Maxwell, 565 U.S. 1138, 1147 (2012) (Scalia, J., dissenting from denial of certiorari) (lamenting the "regrettable reality that some federal judges *like* to second-guess state courts," particularly in the Ninth Circuit).

[68] *See generally* Eve Brensike Primus, *Equitable Gateways: Toward Expanded Federal Habeas Corpus Review of State-Court Criminal Convictions*, 61 ARIZ. L. REV. 291, 293, 305–17 (2019) (examining "equitable gateways" through which courts "cut through the doctrinal morass" of habeas restrictions, *id.* at 293). In response, the Supreme Court has simply reinforced its position time and time again. *See, e.g.*, White v. Woodall, 134 S. Ct. 1697, 1701 (2014) (calling § 2254(d) "a provision of law that some federal judges find too confining, but that all federal judges must obey"). The Court's habeas jurisprudence mirrors its approach to qualified immunity cases, in which it has also "sent a clear message to lower courts" via reversals and vacations, expecting lower courts to follow suit. Joanna C. Schwartz, *How Qualified Immunity Fails*, 127 YALE L.J. 2, 6 (2017).

[69] N. Sec. Co. v. United States, 193 U.S. 197, 400 (1904) (Holmes, J., dissenting).

[70] Woodford v. Visciotti, 537 U.S. 19, 25 (2002) (per curiam).

Court's reliance on the underlying principles of AEDPA — such as the "further[ance of] the principles of comity, finality, and federalism"[71] — does not justify its rulings.[72] Still others take issue with the "no fair-minded jurist" test, noting that any habeas relief at the appellate level will often *create* disagreement among presumably fairminded federal jurists.[73] But while such debate can help guide congressional lawmaking and Supreme Court jurisprudence, it has no place in determining the judgments of inferior federal courts. Even if circuit judges feel "compelled to place their stamp of approval on constitutional error" under the current standard,[74] it is not their place to defy it.

In *The Federalist No. 80*, Alexander Hamilton noted that Congress would have "ample authority to make . . . exceptions" when federal jurisdiction was inadequate.[75] With § 2254(d), Congress has done just that by allowing federal courts to grant relief to state defendants when federal law is unreasonably applied — but *only* then. The Supreme Court's narrow interpretation of the statute can require federal courts to make a sobering choice: uphold the law, or correct an erroneous, but reasonable, state decision. *Sims* was wrongly decided because the Seventh Circuit chose the latter. While the proper scope of federal habeas review is a matter of ongoing debate,[76] the role of federal judges in that debate is not. Many judges believe that "[f]ederal habeas corpus review of state criminal convictions is a mess."[77] But if these judges choose to challenge the Supreme Court's clear standards rather than apply them, it will only get messier.

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[71] Williams v. Taylor, 529 U.S. 420, 436 (2000).

[72] *Compare* Reinhardt, *supra* note 65, at 1229 (arguing that the Court's "wildly expansive characterization of AEDPA goes far beyond the ordinary meaning" of the statute), *and* Ritter, *supra* note 55, at 75–77, *with* ERIC M. FREEDMAN, HABEAS CORPUS: RETHINKING THE GREAT WRIT OF LIBERTY 152 (2001) ("[T]he view of federalism that animated the framers supports careful federal review of state court criminal convictions, not deference to the sovereign rights of states to deprive citizens of Constitutionally protected liberty."). Some critics also believe that principles of judicial economy provide similarly inadequate support. *See, e.g.*, Gregory, *supra* note 51, at 78 (arguing that "creating more obstacles to review can be counterproductive" to efficiency goals).

[73] *See* Ritter, *supra* note 55, at 70–72 ("Must the deciding federal court deny the writ unless it is willing to imply that . . . jurists were not fair-minded? Presumably the answer is yes." *Id.* at 72.).

[74] Lynn Adelman, *Who Killed Habeas Corpus?*, DISSENT (Winter 2018), www.dissentmagazine.org/article/who-killed-habeas-corpus-bill-clinton-aedpa-states-rights [https://perma.cc/XGN9-37T7].

[75] THE FEDERALIST No. 80, at 480 (Alexander Hamilton) (Clinton Rossiter ed., 2003) (emphasis omitted).

[76] *See* Stephanie Roberts Hartung, *Habeas Corpus for the Innocent*, 19 U. PA. J.L. & SOC. CHANGE 1, 16–17 (2016) (summarizing arguments for expanding and contracting habeas review of state convictions).

[77] Primus, *supra* note 68, at 292; *see also, e.g.*, Reinhardt, *supra* note 65, at 1220 (calling the current habeas regime "a twisted labyrinth of deliberately crafted legal obstacles that make it as difficult for habeas petitioners to succeed in pursuing the Writ as it would be for a Supreme Court Justice to strike out Babe Ruth, Joe DiMaggio, and Mickey Mantle in succession — even with the Chief Justice calling balls and strikes"); Jeffrey S. Sutton & Brittany Jones, Essay, *The Certiorari Process and State Court Decisions*, 131 HARV. L. REV. F. 167, 177 (2018) (noting disadvantages to state defendants and failing to find "[a]ny justification for disparate treatment of two criminal defendants raising potentially identical claims under the same U.S. Constitution").