

Opinion of ALITO, J.

SUPREME COURT OF THE UNITED STATES

No. 09–1088

VINCENT CULLEN, ACTING WARDEN, PETITIONER
v. SCOTT LYNN PINHOLSTER

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

[April 4, 2011]

JUSTICE ALITO, concurring in part and concurring in the judgment.

Although I concur in the Court’s judgment, I agree with the conclusion reached in Part I of the dissent, namely, that, when an evidentiary hearing is properly held in federal court, review under 28 U. S. C. §2254(d)(1) must take into account the evidence admitted at that hearing. As the dissent points out, refusing to consider the evidence received in the hearing in federal court gives §2254(e)(2) an implausibly narrow scope and will lead either to results that Congress surely did not intend or to the distortion of other provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), 110 Stat. 1214, and the law on “cause and prejudice.” See *post*, at 9–12 (opinion of SOTOMAYOR, J.).

Under AEDPA evidentiary hearings in federal court should be rare. The petitioner generally must have made a diligent effort to produce in state court the new evidence on which he seeks to rely. See §2254(e)(2); *Williams v. Taylor*, 529 U. S. 420, 433–434 (2000). If that requirement is not satisfied, the petitioner may establish the factual predicate for a claim in a federal-court hearing only if, among other things, “the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder

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would have found the applicant guilty of the underlying offense.” §2254(e)(2)(B).

Even when the petitioner does satisfy the diligence standard adopted in *Williams v. Taylor*, *supra*, a hearing should not be held in federal court unless the new evidence that the petitioner seeks to introduce was not and could not have been offered in the state-court proceeding. Section 2254(e)(2) bars a hearing in certain situations, but it does not mean that a hearing is allowed in all other situations. See *Schriro v. Landrigan*, 550 U. S. 465, 473–474 (2007). The whole thrust of AEDPA is essentially to reserve federal habeas relief for those cases in which the state courts acted unreasonably. See §§2254(d)(1), (2), (e)(1). Permitting a petitioner to obtain federal habeas relief on the basis of evidence that could have been but was not offered in state court would upset this scheme.

In this case, for essentially the reasons set out in the dissent from the Court of Appeals’ en banc decision, see *Pinholster v. Ayers*, 590 F. 3d 651, 688–691 (CA9 2009) (opinion of Kozinski, J.), I would hold that the federal-court hearing should not have been held because respondent did not diligently present his new evidence to the California courts. And I join all but Part II of the opinion of the Court, as I agree that the decision of the state court represented a reasonable application of clearly established Supreme Court precedent in light of the state-court record.