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March 15, 2017

Honorable Scott Harris
Clerk of the United States Supreme Court
1 First Street, N.E.
Washington, D.C. 20543

RE: *Marion Wilson v. Eric Sellers, Warden*
Case No. 16-6855

Dear Mr. Harris:

This letter is to clarify the Warden's position on the merits. In accordance with the en banc U.S. Court of Appeals for the Eleventh Circuit, the Warden will argue that *Ylst v. Nunnemaker*, 501 U.S. 797 (1991), was not "abrogate[ed]" by *Harrington v. Richter*, 562 U.S. 86 (2011). *Ylst*, which began a practice of "looking through" summary denials, was decided before the enactment of the Antiterrorism and Effective Death Penalty Act and did not consider how to review summary *merits* adjudications under 28 U.S.C. § 2254(d). Moreover, the plain language of § 2254(d), recently reinforced by this Court's decision in *Richter*, neither contemplates nor requires this practice.

Also in accordance with the en banc Eleventh Circuit, the Warden will argue that a federal court should "look through" a summary denial to a lower court's reasoned opinion to determine whether a claim was denied on the merits or dismissed due to a procedural bar. (Pet. App. A at 1234-35, 1238). The Warden also will support the Eleventh Circuit's determination that a federal court "may look to a previous opinion as one example of a reasonable application of law or determination of fact." *Id.* at 1239. But the Warden will not defend the position that the law

RE: *Marion Wilson v. Eric Sellers, Warden*

Case No. 16-6855

March 15, 2017

Page 2

mandates that a federal court “look through” a summary merits adjudication based upon the practice that has evolved from *Ylst*. In sum, the Warden will argue that deference under § 2254(d) should be given to the last state court adjudication on the merits, even when that adjudication is unexplained.

Sincerely,



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