No. 18-9659

In the Supreme Court of the United States

IN RE QUISI BRYAN,

Petitioner,

v.

TIM SHOOP, Warden

Respondent.

ON PETITION FOR WRIT OF HABEAS CORPUS

BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF HABEAS CORPUS

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CAPITAL CASE – EXECUTION SET FOR OCTOBER 26, 2022

QUESTIONS PRESENTED

1. The Supreme Court of Ohio affirmed Quisi Bryan's direct appeal in 2004. Bryan alleges an error in one of the court's alternative holdings that, if it was an error at all, was an error of *state* law. Is Bryan entitled to an original writ of habeas corpus?

2. Should this Court grant an original writ of habeas corpus to review the Sixth Circuit's correct application of the jurisdictional bar on second or successive petitions?

LIST OF PARTIES

The Petitioner is Quisi Bryan, an inmate at the Chillicothe Correctional Institution.

The Respondent is Tim Shoop, the Warden of the Chillicothe Correctional Institution.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *State of Ohio v. Quisi Bryan*, CR393660 (Cuyahoga Ct. Com. Pl.) (sentence entered December 19, 2000, postconviction relief denied November 18, 2005 and May 11, 2009, motion for new mitigation trial denied April 10, 2017).

2. *State of Ohio v. Quisi Bryan*, 2001-0253 (Ohio) (decided March 17, 2004, reconsideration denied and mandate issued May 12, 2004, motion for relief denied March 15, 2017).

3. *State of Ohio v. Quisi Bryan*, CA-05-087482 (Cuyahoga Ct. App.) (appeal dismissed October 10, 2006).

4. *State of Ohio v. Quisi Bryan*, CA-09-093038 (Cuyahoga Ct. App.) (decided May 13, 2010).

5. *State of Ohio v. Quisi Bryan*, 2010-1187 (Ohio) (jurisdiction declined December 15, 2010).

6. *Quisi Bryan v. David Bobby*, 1:11-cv-00060 (N.D. Ohio) (judgments entered on July 16, 2015 and July 5, 2018).

7. *Quisi Bryan v. David Bobby*, 15-3778, 15-3834 (6th Cir.) (decided December 15, 2016, mandate issued October 6, 2017).

8. *Quisi Bryan v. Charlotte Jenkins*, 16-9680 (U.S.) (certiorari denied October 2, 2017).

9. *State of Ohio v. Quisi Bryan*, CA-17-105774 (Cuyahoga Ct. App.) (judgment entered March 29, 2018).

10. *Quisi Bryan v. Tim Shoop*, 1:18-cv-00591 (N.D. Ohio) (judgment entered June 12, 2018).

11. *In re Quisi Bryan*, 18-3557 (6th Cir.) (permission to file a second petition denied February 19, 2019).

12. *Quisi Bryan v. Tim Shoop*, 18-9372 (U.S.) (petition for writ of certiorari filed May 17, 2019).

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Rules

INTRODUCTION

Almost twenty years ago, an Ohio jury convicted Petitioner Quisi Bryan of murdering a police officer and attempting to murder a witness. The jury recommended a death sentence and a state trial court accepted that recommendation. Then began the proceedings that gave rise to this case. Bryan first directly appealed his case all the way to the Ohio Supreme Court, unsuccessfully. *State v. Bryan,* 101 Ohio St.3d 272 (2004). Relevant here, he argued that the prosecutor in his case had made improper statements during the guilt and penalty phases of his trial. Bryan argued that these statements prejudiced his ability to avoid a death sentence. The Ohio Supreme Court rejected that argument for two reasons. *First*, it held that the statements did not constitute reversible error under the applicable plain-error standard. *Second*, it held that its independent reweighing of the aggravating and mitigating circumstances cured any potential impacts the statements might have had.

Bryan sought state post-conviction relief, unsuccessfully. *See State v. Bryan*, 127 Ohio St.3d 1461 (2010); *State v. Bryan*, 2010-Ohio-2088, ¶1 (Ohio Ct. App.). He then petitioned for *federal* habeas relief, unsuccessfully. In federal court, Bryan sought habeas relief based on the same allegedly improper statements that he relied on in the state courts. The District Court and Sixth Circuit both refused to upset the Ohio Supreme Court's holding. This Court denied certiorari. *Bryan v. Jenkins*, 138 S. Ct. 179 (2017).

Bryan is now taking another crack at federal habeas relief. According to Bryan, the Ohio Supreme Court violated *Hurst v. Florida*, 136 S. Ct. 616 (2016), by

rejecting his prosecutorial-misconduct argument after independently reweighing the aggravating and mitigating circumstances. Bryan is pursuing this theory in multiple ways. Before filing an original petition with this Court, Bryan tried to file a second habeas petition in the District Court. Both the District Court and the Sixth Circuit refused to consider that petition under 28 U.S.C. §2244(b)(2), which prohibits "second or successive" petitions. *See In re Bryan*, No. 18-3557, 2019 U.S. App. LEXIS 4840 (6th Cir. Feb. 19, 2019), included at Pet.App.1–4. In May, Bryan asked this Court for a writ of certiorari. *See Bryan v. Shoop*, No. 18-9372. The Warden filed his brief in opposition last month, arguing that this Court should deny review.

This Court should also deny Bryan's petition for an original writ of habeas corpus. To begin with, Bryan alleges a violation of state law, not federal law. *Hurst* does not apply retroactively as a matter of federal law, so if it applies at all, it applies as a matter of state law. And that means there is no basis for *federal* habeas relief. But Bryan's claim would fail regardless. Ohio's capital-sentencing scheme does not violate *Hurst*. And even if the Ohio Supreme Court had violated *Hurst* in this case when it reweighed the aggravating and mitigating factors, that supposed error would not entitle Bryan to relief. Bryan does not, and cannot, challenge the Ohio Supreme Court's primary holding that the prosecutor's statements were not reversible error—a holding that it reached without regard to the allegedly problematic reweighing.

Bryan also seeks review of the Sixth Circuit's determination that his petition was second or successive. That issue is properly presented in a petition for a writ of certiorari from the Sixth Circuit's judgment, not in an original writ of habeas corpus. Regardless, Bryan is not entitled to relief because the Sixth Circuit properly applied the jurisdictional bar on second or successive petitions, and because its proper application implicates no split or issue of great importance.

JURISDICTION

The Court has jurisdiction over an original application for habeas relief under 28 U.S.C. §§2241 and 2254. *See Felker v. Turpin*, 518 U.S. 651, 660–61 (1996).

STATEMENT

1. This case should be about a traffic stop. Officer Wayne Leon pulled over Petitioner Quisi Bryant on June 25, 2000. *See Bryan v. Bobby*, 843 F.3d 1099, 1104 (6th Cir. 2016). Leon noticed that Bryan's temporary tags had been altered, so he took Bryan's license to run a police check. *Id.* While Leon called the police station, Bryan—a drug dealer, who was on parole for an attempted robbery and subject to an outstanding arrest warrant for a parole violation—shot Leon in the face. Leon died instantly. *Id.*

A witness, Kenneth Niedhammer, heard the shot that killed Leon while stopped at a traffic light. *Id.* Niedhammer saw Leon's body and he saw Bryan erratically fleeing the scene. *Id.* He followed Bryan, who twice exited his car to shoot at Niedhammer. *Id.* Bryan missed. The police eventually caught Bryan, and the State charged him with murdering Leon and attempting to murder Niedhammer. *Id.*

2. An Ohio jury convicted Bryan of both crimes. *Bryan*, 843 F.3d at 1104. In the penalty phase of Bryan's trial, the jury recommended a death sentence. The trial court accepted its recommendation and sentenced Bryan to death. *Id.* at 1105.

Bryan directly appealed his conviction and sentence, ultimately reaching the Ohio Supreme Court. *State v. Bryan,* 101 Ohio St.3d 272 (2004). There, Bryan argued that the prosecutor made a number of improper statements during the guilt phase of his trial—for example, he remarked on the underlying facts of Bryan's prior convictions. *Id.* at 291–94, 297–300. The Ohio Supreme Court agreed that some of the remarks were improper. *Id*. at 291. But it found no *reversible* error. *Id.* at 292. The reason for this was that Bryan failed to preserve most of his challenges to the prosecutor's remarks, meaning they could be reviewed only for plain error. *Id.* at 292–94. The court held that each error was either harmless or insufficiently egregious to satisfy the very high plain-error standard. It therefore affirmed Bryan's conviction. *Id.*

The court likewise rejected Bryan's challenges concerning the prosecutor's statements during the *penalty* phase. *Id.* at 297–300. The court held that some of the challenged statements were "within the realm of fair comment," *id.* at 298, inside the "latitude accorded both parties," *id.* at 299, or "fair rebuttal," *id.* at 300. It determined that other statements were improper, but it again found no error egregious enough to warrant reversal under the plain-error standard. *Id.* at 299. *In the alternative*, the court reweighed the aggravating and mitigating circumstances pertaining to the death sentence, and concluded that Bryan's death

sentence was proportionate to death sentences approved in similar cases. *See id.* at 307. The court held that its "independent assessment of the sentence ha[d] cured any lingering impact from the prosecutor's comments." *Id.* at 299.

3. After unsuccessfully pursuing state post-conviction relief, Bryan filed his first federal habeas petition in 2011, raising sixteen claims. *Bryan v. Bobby*, 114 F. Supp.3d 467, 483–85 (N.D. Ohio 2015). As in his direct appeal, Bryan sought relief based on alleged prosecutorial misconduct at both the guilt and penalty phases. *Id.* at 484. The District Court denied relief on that claim. The Sixth Circuit affirmed in relevant part, and this Court denied Bryan's petition for certiorari. *Bryan v. Jenkins*, 138 S. Ct. 179 (2017).

4. Following this Court's decision in *Hurst v. Florida*, 136 S. Ct. 616 (2016), Bryan returned to the Ohio Supreme Court, moving to reopen his case in light of *Hurst*. In *Hurst*, this Court had held that juries, not judges, must "find each fact necessary to impose a sentence of death." *Id.* at 619. According to Bryan, the Ohio Supreme Court violated *Hurst* when it affirmed his death sentence after independently reweighing the aggravating and mitigating circumstances. Mot. for Relief, No. 2001-0253 (Jan. 12, 2017), available at https://www.supremecourt.ohio.gov/Clerk/ecms/#/caseinfo/2001/0253. *Hurst* does not apply retroactively. But Bryan argued that the Ohio Supreme Court implicitly decided, as a matter of state law, to make *Hurst* retroactive through a summary remand in *State v. Kirkland*, 145 Ohio St.3d 1455 (2016). *See* Mot. for Relief 6. He therefore asked the court to reopen his case, retroactively apply *Hurst*, and award him relief.

The Ohio Supreme Court summarily denied Bryan's motion. *State v. Bryan*, 148 Ohio St.3d 1423 (2017).

5. Once the Ohio Supreme Court denied Bryan's motion, he tried to file a second habeas petition in the United States District Court for the Northern District of Ohio. There, he argued that "it was unconstitutional under *Hurst v. Florida*, 136 S. Ct. 616 (2016), for the Ohio Supreme Court to have used independent reweighing to cure the penalty-phase prosecutorial misconduct in his case." Pet.App.1. The District Court determined that the petition was "second or successive" under 28 U.S.C. §2244(b)(2), and transferred the case to the Sixth Circuit. *Bryan v. Shoop*, No. 1:18CV591, 2018 U.S. Dist. LEXIS 97990 (N.D. Ohio June 12, 2018).

The Sixth Circuit agreed with the District Court. It first explained that §2244(b)(2) generally prohibits filing "second or successive § 2254 petition[s]," but that there are "two exceptions." Pet.App.2. Specifically, courts may permit such petitions if they rest on "newly discovered evidence," §2244(b)(2)(B), or "a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable," §2244(b)(2)(A). Pet.App.2 (internal quotation marks omitted). Bryan relied on the second of these exceptions, since he claimed entitlement to relief under *Hurst*. Pet.App.2. However, the Sixth Circuit explained, "the Supreme Court has not made [*Hurst*] retroactive." Pet.App.2 (citing *In re Coley*, 871 F.3d 455, 457 (6th Cir. 2017)). Thus, Bryan's claim did not fall into either of the two exceptions that allow courts to entertain second or successive petitions.

Bryan made one other argument: he argued that his petition was not second or successive in the first place. More specifically, Bryan argued that his *Hurst* claim "was previously unripe," bringing it "outside § 2244's ambit." Pet.App.2. The *Hurst* claim, he said, became ripe only when the Ohio Supreme Court issued its unexplained summary remand in *Kirkland*, 145 Ohio St.3d 1455, which Bryan understood as making *Hurst* retroactive under state law. *See* Pet.App.2–3.

The Sixth Circuit rejected this argument, concluding that Bryan's *Hurst* claim was "ripe" long before *Hurst* made it legally viable. The court recognized "that not all second-in-time petitions are 'second or successive.'" Pet.App.3 (quoting *Panetti v. Quarterman*, 551 U.S. 930, 944 (2007)). And it assumed for the sake of argument that Bryan had "correctly interpreted both *Hurst* and the Ohio Supreme Court's unexplained" ruling in *Kirkland*. Pet.App.3. But it held that, despite all this, Bryan's claim ripened in 2004, "before he first reached federal court," Pet.App.3, since the alleged error occurred when the Ohio Supreme Court independently reweighed the evidence. In other words, Bryan's claim was ripe in 2004, regardless of whether Bryan would have prevailed had he raised it.

6. On May 17, 2019, Bryan petitioned this Court for a writ of certiorari, which remains pending. *See Bryan v. Shoop*, No. 18-9372. In that petition, he challenged the Sixth Circuit's application of §2244(b)(2) and its related ripeness conclusion. The Warden filed his brief in opposition to certiorari on July 17, 2019. Bryan additionally filed this petition for an original writ of habeas corpus, asking this

Court to review directly the *Hurst* claim that the lower courts held they were barred from entertaining.

REASONS FOR DENYING THE WRIT

This Court should deny the petition for an original writ. Bryan does not show the "exceptional circumstances" needed for the extraordinary relief he requests. *See* Sup. Ct. R. 20.4(a).

I. Bryan has not identified exceptional circumstances that would justify granting his original writ of habeas corpus.

While the Court has the power to grant an original writ of habeas corpus, 28 U.S.C. §2241(a), it uses that power sparingly, *see* Sup. Ct. R. 20.4(a). To justify such a writ, "the petitioner must show that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court." *Id*. The relief is "rarely granted." *Id*.

Bryan has fallen far short of demonstrating exceptional circumstances. To the contrary, his petition is meritless. As an initial matter, his claim does not present a basis for federal relief, because the alleged error in the state-court proceedings was an error of state law if it was an error at all. Even if the claim arose under federal law, it would fail on the merits. And even if Bryan were right on the merits, he would *still* not be entitled to a writ of habeas corpus, because the Supreme Court of Ohio upheld his conviction on an alternative ground that Bryan does not challenge.

A. Bryan alleges a violation of state law, not federal law.

To win habeas relief, Bryan must show that the Ohio Supreme Court violated his federal constitutional rights. Bryan claims the court did just that, by reweighing the aggravating and mitigating evidence, thereby violating *Hurst*. *See* Pet.14.

The problem is that Bryan's claim alleges a violation of state law, not federal law. *Hurst* does not apply retroactively as a matter of federal law. So if it applies here at all, it applies because the Supreme Court of Ohio exercised its state-law authority to give *Hurst* retroactive effect. When States choose to give "broader retroactive effect to this Court's new rules," they do so as a matter of "*state* law," not federal law. *Danforth v. Minnesota*, 552 U.S. 264, 289 (2008) (emphasis in original). Thus, even if Bryan is right that Ohio acted "within its sovereign right" to make *Hurst* retroactive as a matter of state law, Pet.31, that would not give rise to a *federal* constitutional claim.

Regardless, the Ohio Supreme Court has not retroactively applied *Hurst*. *See State v. Belton*, 149 Ohio St.3d 165, 176 (2016). Instead, it has held that Ohio law *complies* with *Hurst*, because it does not allow a judge "to make a factual finding during the sentencing phase that will expose a defendant to greater punishment." *Id.* at 176. Because Ohio law complies with *Hurst*, the Supreme Court of Ohio has never had occasion to announce whether *Hurst* applies retroactively as a matter of state law. Bryan's contrary argument rests entirely on *State v. Kirkland*, 145 Ohio St.3d 1455 (2016). But that summary remand contains no analysis or discussion, and thus never addresses whether *Hurst* applies retroactively as a matter of state law. Indeed, it never addresses anything at all. The State made this precise point

in its brief in opposition to Bryan's petition for a writ of certiorari. *See* Brief in Opposition at 13, *Bryan v. Shoop*, No. 18-9372. Bryan's reply failed to respond to this point, likely because there is no way to twist an unreasoned summary remand into a holding on *Hurst*'s retroactivity.

In sum, Ohio has never held that *Hurst* is retroactively applicable. And even if it had, any retroactive violation of "*Hurst*" would be a violation of state law, not federal law.

B. Ohio's death-penalty scheme is consistent with *Hurst*.

Regardless, Ohio's capital-sentencing system comports with *Hurst*. In *Hurst*, the Court invalidated Florida's capital-sentencing system because it allowed a judge to increase the maximum punishment—from life imprisonment to a death sentence—"based on her own factfinding." 136 S. Ct. at 620–22. That, the Court held, violated the Sixth Amendment right to a jury trial, under which "any fact that 'expose[s] the defendant to a greater punishment than that authorized by the jury's guilty verdict' is an 'element' that must be submitted to a jury." *Id*. at 621 (quoting *Apprendi v. New Jersey*, 530 U.S. 466, 494 (2000)).

Ohio's approach is much different than Florida's. For a defendant to be death-penalty eligible under Ohio law, the State must charge and prove an aggravating circumstance at the guilt phase and the jury must find an aggravating circumstance beyond a reasonable doubt. *See* Ohio Rev. Code §2929.03 (addressing sentencing for aggravated murder); Ohio Rev. Code §2929.04(A) (listing aggravating circumstances). Then, at the mitigation phase, the jury must determine beyond a reasonable doubt that that the aggravating circumstances outweigh any mitigating

factors. Ohio Rev. Code §2929.03(D)(1). Only then, if the jury recommends death, does a court independently weigh mitigating factors against whatever aggravating circumstance the jury found. Ohio Rev. Code §2929.03(D)(3); *see also* Ohio Rev. Code §2929.05(A) (mandating, upon appeal, that the Ohio Supreme Court independently weigh "whether the aggravating circumstances the offender was found guilty of committing outweigh the mitigating factors in the case"). As a result, the court cannot impose a death sentence unless the jury first decides that a death sentence would be appropriate.

Ohio's scheme does not violate *Hurst*. It tasks juries with finding every fact necessary to support a death sentence. In other words, it is impossible for a judge to increase a sentence based on judge-found facts. A judge's only options are to (1) impose the jury's recommended sentence or (2) impose a *lesser* sentence. *See* Ohio Rev. Code §2929.03(D)(1)–(3). The Ohio Supreme Court has already held, on multiple occasions, that Ohio's capital-sentencing system complies with *Hurst*. *State v. Goff*, 154 Ohio St.3d 218, 224–26 (2018); *State v. Mason*, 153 Ohio St.3d 476 (2018); *Belton*, 149 Ohio St.3d at 176. This Court has denied review of the issue. *Goff v. Ohio*, No. 18-8016, 2019 U.S. LEXIS 4043 (U.S.) (cert. denied June 17, 2019); *Mason v. Ohio*, 139 S. Ct. 456 (2018); *Belton v. Ohio*, 137 S. Ct. 2296 (2017).

C. Bryan attacks the Ohio Supreme Court's *alternative* analysis.

In light of the foregoing, Bryan's complaint seems to rest not with Ohio's capital-sentencing scheme generally, but rather with the Ohio Supreme Court's determination that it cured any "lingering impact" from the prosecutor's improper statements by independently reweighing the aggravating and mitigating

circumstances. Pet.10 (quoting *Bryan*, 101 Ohio St.3d at 299). In other words, Bryan argues that, even if Ohio courts *generally* comply with *Hurst*, the Ohio Supreme Court violated *Hurst in his case* by weighing the evidence and determining whether that evidence supported a death sentence.

There are two problems with Bryan's seeking review of that narrower issue. First, it is specific to Bryan, and so presents no issue of exceptional importance. Second, and more fundamentally, the Supreme Court of Ohio independently reweighed the evidence only to support its *alternative* holding. The court's *primary* holding was that the prosecutor's improper remarks—both at the guilt and penalty phases—did not amount to reversible error. *Bryan*, 101 Ohio St.3d at 291–94, 297–99. Because of that primary holding, which Bryan tried and failed to challenge in his first proceedings, the Supreme Court of Ohio did not even need to reweigh the evidence. And because Bryan does not (and cannot) challenge the court's primary holding, any error in the reweighing was harmless.

In the reply brief Bryan filed supporting his petition for certiorari, Bryan argued that at least part of the Supreme Court of Ohio's holding rested entirely on the Court's reweighing of aggravating and mitigating circumstances. More specifically, he said the Supreme Court of Ohio rejected some of his penalty-phase prosecutorial misconduct claims based *exclusively* on its reweighing of the aggravating and mitigating circumstances. Reply at 5, *Bryan v. Shoop*, No. 18-9372. That is not what the Supreme Court of Ohio's opinion says. In the relevant passage, the court, after

concluding that the prosecutor made several improper remarks, supports its rejection of Bryan's argument for the following reasons:

> [W]e find no plain error in view of the proven aggravating circumstances and the lack of significant mitigating evidence. *Moreover*, our independent assessment of the sentence has cured any lingering impact from the prosecutor's comments.

Bryan, 101 Ohio St. 3d at 299 (emphasis added). In other words, the Court rejected Bryan's argument under the plain-error standard, and then held *in the alternative* that its reweighing cured any prejudice. Perhaps Bryan thinks the court erred in applying plain-error review. But any such error would be an error of state law, not federal law.

II. Bryan is not entitled to a writ of habeas corpus based on the Sixth Circuit's correct application of the jurisdictional bar on filing second or successive petitions.

Bryan additionally argues that, in his earlier federal habeas corpus proceedings, the Sixth Circuit erred in holding that his petition was second or successive. This is not the right vehicle for raising that argument, which is perhaps why Bryan raised the same argument in a petition for a writ of certiorari that he filed at roughly the same time as his habeas corpus petition. *See Bryan v. Shoop*, 18-3972. Regardless, the Court should decline to review the issue because the Sixth Circuit correctly applied the doctrine and because its ruling presents no issue of exceptional public importance. Though the State already made these arguments in its response to Bryan's petition for a writ of certiorari, *see* Brief in Opposition at 10–12, *Bryan v. Shoop*, 18-3972, it will repeat them here for the sake of completeness.

A. The Sixth Circuit's correct application of the second-or-successive doctrine does not implicate a circuit split.

Bryan concedes that the factual basis for his claim—the Ohio Supreme Court's independent reweighing of the aggravating and mitigating circumstances in his case—"may have been apparent at the time of his initial habeas petition." Pet. 36. But he contends that his habeas claim was not "legally cognizable" until "federal law changed" (apparently through *Hurst*) and then state law changed (when the Ohio Supreme Court supposedly made *Hurst* retroactive through an unexplained order). Pet.36.

Bryan, however, does not cite any case from any circuit holding that a habeas claim becomes ripe only once the law changes to make that claim legally viable. Indeed, the circuits agree that legal viability is irrelevant to ripeness. *See, e.g.*, *Ybarra v. Filson*, 869 F.3d 1016, 1031 (9th Cir. 2017) (rejecting a *Hurst* claim as a "disguised and unauthorized second or successive habeas petition"); *United States v. Claycomb*, 577 F. App'x. 804, 805 (10th Cir. 2014) ("But what makes a claim unripe is that the factual predicate has not matured, not that the law was unsettled."); *United States v. Obeid*, 707 F.3d 898, 902 (7th Cir. 2013) ("[C]ourts have been careful to distinguish genuinely unripe claims (where the factual predicate that gives rise to the claim has not yet occurred) from those in which the petitioner merely has some excuse for failing to raise the claim in his initial petition . . . only the former class of petitions escapes classification as 'second or successive.'"); *Johnson v. Wynder*, 408 F. App'x. 616, 619 (3d Cir. 2010) ("[T]hat a legal argument is unlikely to succeed, or is even futile, does not make it unripe."); *Garcia v. Quarterman*, 573

F.3d 214, 220 (5th Cir. 2009) (rejecting an interpretation of "non-successive" as encompassing a legal theory "unavailable to [the petitioner] at the time of [the] first habeas petition").

The circuits' agreement makes sense in light of §2244(b)(2)(A). That provision already addresses when a "second or successive" petition can proceed because of a new legal rule. It says that petitioners may file an otherwise second or successive petition if "the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable." If, as Bryan contends, petitions are not second or successive when they raise claims that became legally viable *after* the petitioner's first habeas petition, then §2244(b)(2)(A) is superfluous—under Bryan's reading, the statutory exception for "new rule[s]" applies *only* to petitions that are not second or successive in the first place. *In re Coley*, 871 F.3d 455, 457–58 (6th Cir. 2017); *see also Ybarra*, 869 F.3d at 1031 (explaining that "AEDPA already establishes a procedure to address" previously unavailable constitutional rules).

In sum, the Sixth Circuit correctly applied the second-or-successive doctrine to Bryan's case, and every other circuit would apply the doctrine in exactly the same way.

B. This case does not present any issues of broad, general importance.

Nothing in Bryan's petition suggests this case presents issues of broad importance. Bryan counters that review is necessary to ensure that federal courts can properly supervise state courts' application of federal law. *See, e.g.*, Pet.32–33.

That is not a serious concern. This Court can and does grant certiorari to review directly state-court decisions. *See, e.g.*, *Flowers v. Mississippi*, 139 S. Ct. 2228 (2019). Federal courts can review issues raised within a *first* habeas petition. *See* 28 U.S.C. §2254(d). And federal courts can review second petitions that fall within already-existing exceptions for "second or successive" petitions. 28 U.S.C. §2254(b)(2). Finally, petitioners can file original writs of habeas corpus in this Court—Bryan himself has done just that, though his claim fails on the merits for the reasons outlined above. With all these opportunities for review, Bryan's concerns about a lack of federal oversight are overblown. This case presents no reason to upset the balance Congress struck in placing limits on second or successive habeas petitions.

CONCLUSION

The Court should deny Bryan's petition for an original writ of habeas corpus. It should also deny Bryan's alternative request to transfer his petition to the District Court.

Respectfully submitted,

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