IN THE
SUPREME COURT OF THE UNITED STATES

No.

JON HALL
Petitioner,

v.

TONY MAYS, Warden,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

*****CAPITAL CASE*****

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QUESTION PRESENTED

1) In *Kyles v. Whitley*, 514 U.S. 419, 437 (1995), this Court held that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Lower courts have struggled to define the scope of this obligation when individuals and entities other than investigating law enforcement officers are involved with the prosecution. Some courts—such as the Sixth Circuit here—hold it is determinative that the evidence is not in the hands of the prosecution or investigating law enforcement officers. Other circuits—including the Third, Fifth, Ninth, and Tenth—hold that courts must examine the functional relationship between the prosecution and the entity to determine whether such an obligation exists.

The question presented is: In circumstances where the favorable evidence lies in the hands of a governmental entity other than law enforcement or the prosecution, what is the proper inquiry to determine whether that entity is acting on behalf of the prosecution, such that the prosecution is obligated to discover and disclose *Brady* material held by that entity?

LIST OF RELATED PROCEEDINGS

A. Direct Appeal

Hall v. Tennessee, 531 U.S. 837 (2000).
State v. Hall, 8 S.W.3d 593 (Tenn. 1999.
State v. Hall, No. 02C01-9703-CC-00095, 1998 WL 208051 (Tenn. Crim. App. Apr. 29, 1998).

B. State Post-conviction

Hall v. State, No. W2003-00669-CCA-R3PD, 2005 WL 22951 (Tenn. Crim. App. Jan. 5, 2005), *perm. app. denied* (Tenn. June 20, 2005).

C. Federal Habeas

Hall v. Mays, 7 F.4th 433 (6th Cir. 2021).
Hall v. Carpenter, No. 05-1199, 2015 WL 1464017 (W.D. Tenn. Mar. 30, 2015).

TABLE OF CONTENTS

QUESTION PRESENTED i

RELATED PROCEEDINGS ii

TABLE OF AUTHORITIES iv

OPNIONS AND ORDERS BELOW 1

JURISIDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 2

A. Procedural History 2
B. Confusion in the courts below 4
C. The case of Jon Hall 6

REASONS FOR GRANTING CERTIORARI 9

A. The Circuit Court require guidance as to the scope of the prosecutor's *Brady* duty to learn of favorable evidence 9
1. Information known to prosecutors and police in an overlapping investigation 10
2. Records from child welfare agencies 13
3. Government witnesses' criminal history 14
4. Brady evidence in the hands of closely related government agencies and individuals 16
5. Records in the possession of correctional facilities 17

B. Mr. Hall's case presents the ideal vehicle to resolve the circuit split and resolve the scope of the prosecution's duties 24

CONCLUSION 32

TABLE OF AUTHORITIES

Cases:

Avila v. Quarterman, 560 F. 3d 299, 307 (5th Cir. 2009) 8

Banks v. Dretke, 540 U.S. 668, 701 (2004) 31

Brady v. Maryland, 373 U.S. 83 (1963) 4

Carriger v. Stewart, 132 f. 3d 463, 480 (9th Cir. 1997) 6, 18, 19, 22

Com v. Donahue, 487 N.E. 2d 1351, 1356 (Mass. 1986) 12

Connick v. Thompson, 563 U.S. 51, 105-106 (2011) 31

East v. Scott, 55 F. 3d 996 (5th Cir. 1995) 14

Giglio v. United States, 405 U.S. 150,154 (1972) 30

Gonzalez v. Wong, 667 F.3d 965 (9th Cir. 2011) 19, 21, 22

Hall v. Bell, 05-01199 (W.D. Tenn. Apr. 3, 2006) 3

Hall v. Bell, 05-1199 (W.D. Ten. Apr. 14, 2010) 3

Hall v. Carpenter, No. 05-1199, 2015 WL 1464017, (W.D. Tenn. Mar. 30, 2015)ii, 2, 3

Hall v. Colson, 10-5658 (6th Cir. Feb. 4, 2013) 3

Hall v. Mays, 7 F.4th 433 (6th Cir. 2021) ..... *passim*

Hall v. Mays, 15-5456 (6th Cir. Sept. 21, 2021) 2,4

Hall v. Mays, 15-5436 (6th Cir. Oct. 26, 2017) 4

Hall v. State, No. W2033-00669-CCA-R3PD, 2005 WL 22951 (Tenn. Crim. App. Jan. 5, 2005) ..... ii, 3

Hall v. Tennessee, 531 U.S. 837 (2000) ..... ii, 3

In re Nw. Airlines Corp., 383 B.R. 283, 292 (Bankr. S.D.N.Y. 2008) 30

In re Rice, 828 P. 2d 1086, 1089 (Wash. 1992) 12

Junta v. Thomas, 615 F. 3d 67, (1st Cir. 2010) 4

Kyles v. Whitley, 514 U.S. 419 (1995) ..... i, 4

Lavallee v. Coplan, 374 F.3d 41, 44-45 (1st Cir. 2004) 13

Lee v. United States, 343 U.S. 747, 757 (1952) 8

Love v. Johnson, 57 F. 3d 1305, 1314 (4th Cir. 1995) 13

Martinez v. Ryan, 566 U.S. 1 (2012) 3

Moon v. Head, 285 F. 3d 1301, 1309 (11th Cir. 2002) 5, 12

Pennsylvania v. Ritchie, 480 U.S. 39 (1987) 13

Pitonyak v. Stephens, 735 F. 3d 525, 533 (5th Cir. 2013) 5

Smith v. Secretary of New Mexico Dept. Of Corrections, 50 F. 3d 801

(10th Cir. 1995) 11

State v. Durant, 844 S.E. 2d 49,54 (2020) 15

State v. Hall, 8 S.W. 3d 593, 595-96 (Ten. 1999) ..... ii, 2

State v. Hall, No. 02C01-9703-CC-00095, 1998 WL 208051 (Tenn. Crim. App. Apr. 29, 1998). ii

State v. Pliego, 974 P.2d 279, 283 (Utah 1999) 15

Strickler v. Green, 527 U.S. 263,289 (1999) 24

Sutton v. Carpenter, 617 F. App'x 434 (6th Cir. 2015) 17

Tiscareno v. Anderson, 639 F. 3d 1016, 1021 (10th Cir. 2011) 5

United States v. Antone, 603 F. 2d 566 (5th Cir. 1979) 11

United States v. Bagley, 473 U.S. 667, 676 (1986) 31

United States v. Bernal-Obeso, 989 F. 2d 331,333-34 (9th Cir. 1993) 22

United States v. Bin Laden, 397 F. Supp. 2d 465, 484 (S.D. N.Y. 2005)..... 4

United States v. Brooks, 966 F. 2d 1500, 1503 (D.C. Cir. 1992)..... 9, 13

United States v. Combs, 267 F. 3d 1167, 1175 (10th Cir. 2001)..... 5

United States v. Deutsch, 475 F. 2d (5th Cir. 1973) 16

United States v. Giglio, 405 U.S. 150, 154-55 (1972) 31

United States v. Gil, 297 F.3d 93, 106 (2d Cir. 2002) 8

United States v. Hall, 434 F.3d 42 (1st Cir. 2006) 15

United States v. Henry, 749 F. 2d (5th Cir. 198) 16

United States v. Meros, 866 F. 2d 1304, 1309 (11th Cir. 1989) 8

United States v. Morris, 80 F. 3d 1151, 1169 (7th Cir. 1996) 8

United States v. Pelullo, 399 F. 3d 197, 212 (3d Cir. 2005)..... 8

United States v. Perdomo, 929 F. 2d 967, 970 (3d Cir. 1991) 14, 15

United States v. Risha, 445 F. 3d 298, 304 (3d Cir. 2006)..... 9, 10

United States v. Robinson, 809 F.3d 991, 996 (8th Cir. 2016) 5

United States ex rel. Smith v. Fairman, 769 F. 2d 386, 391 (7th Cir. 1985) 11

United States v. Thornton, 1 F.3d 149 (3d Cir. 1993) 16

United States v. Wilson, 237 F. 3d 827 (7th Cir. 2001)..... 6, 20, 21

Statutes:

28 U.S.C. § 1254(1) 2

Other Authorities:

U.S. Const., amend XIV § 1..... 2

U.S. Const., amend VIII 2

Sup. Ct. R. 10(a)&(c) 9, 23, 31

Agency § 272 (Am. L. Inst. 1958) 30

Agency § 2.01 (Am.L. Inst. 2006) 30

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PETITION FOR WRIT OF CERTIORARI

Jon Hall respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit affirming the denial of his petition for a writ of habeas corpus is reported. *See Hall v. Mays*, 7 F.4th 433 (6th Cir. 2021), Appendix ("App.")B. A timely petition for rehearing was denied. App. A. The order of the United States District Court for the Western District of Tennessee denying Mr. Hall's petition for a writ of habeas corpus is

unreported. *See Hall v. Carpenter*, No. 05-1199, 2015 WL 1464017, at *1 (W.D. Tenn. Mar. 30, 2015), App. D.

JURISDICTION

The court of appeals entered judgment on August 3, 2021, *Hall*, 7 F.4th at 433, and denied petitioner's timely petition for rehearing and rehearing en banc on September 21, 2021. *Hall v. Mays*, 15-5456 (6th Cir. Sept. 21, 2021) Pet. App. 027. Pursuant to this Court's December 9, 2021, Order, this Petition is due on February 18, 2022. This Petition is timely filed. Jurisdiction is invoked pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Eighth and Fourteenth Amendment to the United States Constitution provide in relevant part:

> No state shall deprive any person of life, liberty, or property, without due process of law.

U.S. Const., amend XIV, § 1

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const., amend. VIII

STATEMENT OF THE CASE

A. Procedural History

Jon Hall was convicted and sentenced to death for the 1994 murder of his estranged wife Billie Jo Hall. *State v. Hall*, 8 S.W.3d 593, 595–96 (Tenn. 1999). The Tennessee Supreme Court affirmed his conviction and sentence on direct appeal, and

this Court denied certiorari. *Id.*; *Hall v. Tennessee*, 531 U.S. 837 (2000). He unsuccessfully pursued state post-conviction relief. *Hall v. State*, No. W2003-00669-CCA-R3PD, 2005 WL 22951, at *1 (Tenn. Crim. App. Jan. 5, 2005), *perm. app. denied* (Tenn. June 20, 2005).

In 2005, Mr. Hall filed a petition for a writ of habeas corpus in the Western District of Tennessee. *Hall v. Bell*,[1] 05-01199 (W.D. Tenn. July 14, 2005) (Petition for a Writ of Habeas Corpus R. 1[2]). Subsequently, counsel was appointed and Mr. Hall's pro se petition was amended. *Hall v. Bell*, 05-01199 (W.D. Tenn. Apr. 3, 2006) (Amended Petition R. 15). In 2010, the district court dismissed Mr. Hall's habeas corpus petition, denied a certificate of appealability as to all claims, and denied leave to appeal in forma pauperis. *Hall v. Bell*, 05-01199 (W.D. Tenn. Apr. 14, 2010) (R. 110). App. D. The Sixth Circuit Court of Appeals held Mr. Hall's appeal in abeyance and remanded it to the district court in light of *Martinez v. Ryan*, 566 U.S. 1 (2012). *Hall v. Colson*, 10-5658 (6th Cir. Feb. 4, 2013) (Order ECF 56).[3]

On remand, the district court again denied Mr. Hall relief, denied a certificate of appealability, and held that an appeal would not be taken in good faith. *Hall*, 2015 WL 1464017, at *33. A panel of the Sixth Circuit consolidated Mr. Hall's appeals and

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[1] The Respondent has been replaced numerous times during the pendency of this litigation. For simplicity, this petition lists the Respondent at the time of the relevant pleading.

[2] Throughout this petition Mr. Hall utilizes "R." to refer to the relevant docket entry in his district court case, *Hall v. Carpenter*, 1:05-cv-01199 (W.D. Tenn. 2005).

[3] Throughout this petition Mr. Hall utilizes "ECF" to refer to the relevant docket entry in his Sixth Circuit cases. *See Hall v. Mays*, 15-5436 (6th Cir. Apr. 29, 2015); *Hall v. Colson*, 10-5658 (6th Cir. June 3, 2010).

granted him, as relevant here, a certificate of appealability as to his *Brady* claim. *Hall v. Mays*, 15-5436 (6th Cir. Oct. 26, 2017) (Order ECF 35-2). App. A. As stated above, the Sixth Circuit affirmed the denial of Mr. Hall's writ of habeas corpus on August 3, 2021, and the court declined rehearing en banc. *Hall*, 7 F.4th at 437; *Hall v. Mays*, 15-5436 (6th Cir. Sept. 21, 2021) (Order ECF 64-1). App. C. This petition follows.

B. Confusion in the courts below

This petition concerns widespread disagreement among the courts of appeals regarding the scope of the prosecution's obligation under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Kyles v. Whitley*, 514 U.S. 419 (1995), to learn of favorable evidence known to entities other than the police. In *Kyles*, this Court held that "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." *Id.* at 437. In the absence of further guidance, courts across the country have struggled to develop a definite standard for determining when an entity or agency other than law enforcement is "acting on the government's behalf." A brief recitation of recent cases illustrates the extent of the confusion.

The First Circuit has noted that "courts are divided as to whether evidence in the possession of a medical examiner may be attributed to the prosecution for *Brady* purposes." *Junta v. Thomas*, 615 F.3d 67, 74 n.5 (1st Cir. 2010). A district court in the Second Circuit has lamented the "lack [of] a clearly articulated imputation test from the Court of Appeals." *United States v. Bin Laden*, 397 F.Supp.2d 465, 484 (S.D.

N.Y. 2005). The Fifth Circuit has described this Court's precedent as "uncertain as to whether a mental health professional is encompassed within the *Brady* fold." *Pitonyak v. Stephens*, 732 F.3d 525, 533 (5th Cir. 2013). The Eighth Circuit has held that while *Kyles* explicitly encompasses "the police," it does not necessarily extend to individual police officers. *United States v. Robinson*, 809 F.3d 991, 996 (8th Cir. 2016). The Tenth Circuit has described the determination of who was "acting on the government's behalf" to be an "inquiry which defies broad generalizations." *Tiscareno v. Anderson*, 639 F.3d 1016, 1021 (10th Cir. 2011), *vacated on other grounds*, 421 F. App'x. 842 (10th Cir. 2011). The Tenth Circuit has described the "tension" in being "confronted with two lines of cases"—"one line suggest[ing] that *Brady* is broadly construed to apply to agencies in reasonable proximity to the prosecution" and the other line suggesting the determination hinges on whether the agency is within the executive branch. *United States v. Combs*, 267 F.3d 1167, 1175 (10th Cir. 2001). The Eleventh Circuit has noted that *Kyles* does not "further define what exactly is meant by 'acting on the government's behalf'" and observed there is "no per se rule to determine whether information possessed by one government entity should be imputed to another." *Moon v. Head*, 285 F.3d 1301, 1309 (11th Cir. 2002).

The absence of a definitive articulation more broadly has led to divergent opinions on a narrower issue: whether, under *Brady*, the prosecution has a duty to learn of readily available information in the prison files of inmates called to testify at trial. Both the Seventh and Ninth Circuits have determined that the prosecution has an obligation under *Brady* to turn over evidence bearing on a witness's credibility

that is within the control of corrections officers. *See United States v. Wilson*, 237 F.3d 827, 832 (7th Cir. 2001); *Carriger v. Stewart*, 12 F.3d 463, 480 (9th Cir. 1997) (en banc). The Sixth Circuit, confronting similar facts in Mr. Hall's case, declined to hold that prosecutors have an affirmative duty to obtain inmate records bearing on their witnesses' credibility. *See Hall*, 7 F.4th at 446. Accordingly, there is widespread confusion among the courts of appeals regarding the scope of the rule articulated in *Kyles*, which has led to disparate outcomes in the circuits.

C. The case of Jon Hall

Against that backdrop is the case of Jon Hall. Mr. Hall has never denied responsibility for the death of his wife. His consistent defense is that he did not act with pre-meditation and is therefore not guilty of first-degree murder. Over the objections of his lawyers, Mr. Hall was moved from pretrial detention in a local county jail to Riverbend Maximum Security Institution—a facility over 100 miles from the trial court and the same facility where Mr. Hall now resides on death row. R. 159-1, Motion to Transfer To Madison County Penal Farm, App. Z; R. 159-1, Motion to Have Defendant Transferred To Madison County Penal Farm or Madison County Jail, App. Z; R. 159-2, Motion For Hearing on Transfer of Defendant, App.C.

Mr. Hall was placed in a cell block with Chris Dutton, a career criminal who would later offer crucial testimony against Hall. *See* App. DD. Dutton claimed that Mr. Hall confided in him. At trial, Dutton testified that not only did Hall arrive at his ex-wife's home on the night of the offense with the plan and intent to murder her, but

also that his motive for murdering her was revenge for seeking a divorce and breaking up the family. *Id.*

Although trial counsel was aware that Dutton had a criminal history, trial counsel was unaware that Mr. Dutton suffered from a litany of debilitating mental illnesses, including the fact that he suffered from auditory hallucinations, believed he was possessed by demons, and exhibited acute psychotic thinking. *See* R. 102-13, Problem Oriented Progress Record, App. S; R. 102-10, Handwritten Letter of Chris Dutton, App. A; R. 102-11, Psychiatric Intake Evaluation, App.Q; R. 102-12, Psychological Summary, App.R. Furthermore, Dutton had a documented history of suicidality, substance abuse, and a diagnosis of anti-social personality disorder. R. 102-11, Psychiatric Intake, App.Q; R. 102-14, Mental Health Screening Form, App.T; R. 102-15, Admissions Data, App.U; R. 102-17, Inmate Intake, App.V; R. 102-18, Psychiatric Intake Update, App.W.

Trial counsel was unaware of these facts because this evidence was in the hands of the Tennessee Department of Correction (TDOC) and was never disclosed by the prosecution. It was not until Mr. Hall's federal habeas proceeding that this evidence was revealed; the district court granted limited discovery and Mr. Hall's habeas counsel obtained TDOC's institutional records concerning Dutton's mental health. *See generally* R. 39.

In Mr. Hall's habeas proceeding, he asserted that the prosecution had violated his due process rights by failing to disclose this extensive trove of impeachment evidence. R. 15, App.EE. Mr. Hall established that Dutton and the prosecution

communicated numerous times concerning Dutton's desire to testify against Mr. Hall. *See* R. 15, App.E. Furthermore, Mr. Hall demonstrated numerous contacts between prison officials and Dutton, suggesting prison officials' awareness of Dutton's role in the prosecution. R. 40-1, App.H. Nonetheless, both the district court and the Sixth Circuit denied Mr. Hall's *Brady* claim on the basis that impeachment material as was in the hands of TDOC and therefore could not be imputed to prosecution. *Hall*, 7 F.4th at 445; R. 110, App.D.

This Court has not fully articulated a prosecutor's obligations where agencies other than law enforcement are involved in the investigation and prosecution of offenses. Nor has the Court articulated the contours of what constitutes the "prosecution team" for the purposes of *Brady* analysis.[4] This case presents an ideal vehicle to resolve an important issue of constitutional law and will permit this Court to clarify the obligations of the prosecution in these circumstances for the circuits that employ widely divergent approaches to this question.

If left to stand, the Sixth Circuit's ruling would allow prosecutors to engage in the "dirty business" of calling jailhouse informants without any requirement that the prosecution abide by *Brady*, so long as the exculpatory evidence rests at arm's length in the hands of prison officials. *On Lee v. United States*, 343 U.S. 747, 757 (1952).

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[4] Although this Court has never expressly articulated the "prosecution team" standard, it is well settled in the federal courts. *See, e.g.*, *Avila v. Quarterman*, 560 F.3d 299, 307 (5th Cir. 2009*); United States v. Pelullo*, 399 F.3d 197, 212 (3d Cir. 2005), as amended (Mar. 8, 2005); *United States v. Gil*, 297 F.3d 93, 106 (2d Cir. 2002); *United States v. Morris*, 80 F.3d 1151, 1169 (7th Cir. 1996); *United States v. Meros*, 866 F.2d 1304, 1309 (11th Cir. 1989).

This Court's intervention is needed to settle this important question of federal law and resolve confusion among the circuits. Sup. Ct. R. 10(a)&(c).

REASONS FOR GRANTING CERTIORARI

A. The circuit courts require guidance as to the scope of the prosecutor's *Brady* duty to learn of favorable evidence.

Courts have struggled to delineate the bounds of the prosecutor's duty to learn of evidence favorable to the defense. Some courts, recognizing that "an inaccurate conviction based on government failure to turn over an easily turned rock is essentially as offensive as one based on government non-disclosure," *United States v. Brooks*, 966 F.2d 1500, 1503 (D.C. Cir. 1992), consider whether the prosecutor had ready access to records and should have known those records could contain exculpatory or impeachment evidence. *United States v. Risha*, 445 F.3d 298, 304 (3d Cir. 2006). Other courts—including the Sixth Circuit here—focus on whether the prosecution had actual possession or knowledge of the evidence and whether the relationship in question is analogous to that of the police and the prosecution. *Hall*, 7 F.4th at 444–45

Here, the Sixth Circuit held that this Court has never held that "the relationship between the jailor and the prosecutor is analogous to that between the police and the prosecutor." *Id.* at 445. For the court below it was determinative that the "prosecution never had actual possession or actual knowledge of these records." *Id.* at 444. Even though TDOC "conveyed Dutton's offer of testimony to the prosecutor" and "coordinated his attendance as a prosecution witness at Hall's trial,"

these facts were insufficient to impute TDOC's knowledge to the prosecution. *Id.* It was equally irrelevant to the court that TDOC and the prosecution operated as part of the same sovereign. *Id.* at 445. In short, regardless of the interaction between TDOC and the prosecution here, the court found it insufficient to establish that TDOC was "acting on the government's behalf" for the purposes of *Brady*. *Id.* at 444–45.

The tension that exists in the circuits' caselaw reoccurs in several circumstances that are fairly common in criminal law. Although the courts of appeals encounter these circumstances with some frequency, their resolution of these claims is inconsistent.

1. Information known to prosecutors and police in an overlapping investigation

The tension in the courts of appeals' approach to this question is often on display in cases involving joint state and federal investigations or multi-jurisdictional investigations. The Third, Fifth, and Tenth Circuits have held that such information is imputable to the prosecutor, while the Eleventh Circuit has disagreed.

In *United States v. Risha*, 445 F.3d 298 (3d Cir. 2006), prosecutors presented a witness in a federal proceeding who had obtained favorable treatment for his federal testimony in an unrelated state court proceeding. There, federal prosecutors had no "actual knowledge of [the witness's] expectations or of a pending plea agreement." *Id* at 299. Nonetheless, this fact was not determinative to the court. Instead, it took a functional approach, examining: "(1) whether the party with knowledge of the information is acting on the government's behalf or is under its control; (2) the extent to which state and federal governments are part of a team, are participating in a joint

investigation or are sharing resources; and (3) whether the entity charged with constructive possession has 'ready access' to the evidence." *Id.* at 304 (internal quotation marks omitted). The court found it determinative that state and federal authorities worked in close proximity regarding the case and that joint investigation made access to the impeachment evidence "readily available." *Id.* at 306. The court concluded that "a *Brady* violation may be found despite a prosecutor's ignorance of impeachment evidence. 'This may be especially true when the withheld evidence is under the control of a state instrumentality closely aligned with the prosecution.'" *Id.* (quoting *United States ex rel. Smith v. Fairman*, 769 F.2d 386, 391 (7th Cir.1985)).

In *Smith v. Secretary of New Mexico Dept. of Corrections*, 50 F.3d 801 (10th Cir. 1995), the Tenth Circuit found a *Brady* violation where the prosecutor was unaware that a neighboring county's parallel investigation of the offense had produced exculpatory evidence in what the court described as "a classic situation where the left hand did not know what the right was doing." *Id.* at 806, 832. The court held that a "lack of communication and coordination among arms of the state cannot be, and is not, a defense to the prosecution's failure to disclose favorable, material information to the defendant." *Id.* at 832.

In *United States v. Antone*, 603 F.2d 566 (5th Cir. 1979), the Fifth Circuit considered whether the payment of a testifying witness's attorney fees by state law enforcement authorities was impeachment evidence that could be imputed to the federal prosecutors in the case. *Id.* at 568. The court held that the "extensive cooperation between the investigative agencies convinces us that the knowledge of

the state team that [the witness's] lawyer was paid from state funds must be imputed to the federal team." As a result, the court had "little difficulty in concluding that the state investigators functioned as agents of the federal government under the principles of agency law utilized in Giglio. The state agents were in a real sense members of the prosecutorial team." *Id.* at 570.[5] Accordingly, the Fifth Circuit—like the Third Circuit in *Risha*—employs a functional approach that examines the relationship between the prosecution and other investigating and prosecuting entities to determine if the information should be imputed to the prosecution in the instant offense.

The Eleventh Circuit took a contrary approach in *Moon v. Head*, 285 F.3d 1301 (11th Cir. 2002). In that case, the defendant committed an offense in Georgia and subsequently traveled to Tennessee, where he committed additional offenses and was ultimately apprehended. *Id.* at 1304–06. The investigating Tennessee law enforcement officer was in possession of *Brady* evidence and even testified at the petitioner's trial. *Id.* 1305–06. Nonetheless, the Eleventh Circuit found the knowledge of the Tennessee law enforcement officer was not imputed to the prosecution because Tennessee and Georgia authorities were not involved in a "joint investigation" and

[5] The Supreme Judicial Court of Massachusetts has cited approvingly to *Antone* in *Com. v. Donahue*, 487 N.E.2d 1351, 1356 (Mass. 1986), for the proposition that *Brady* evidence is imputed across sovereigns when close cooperation exists. Over a strongly worded dissent citing *Antone*, the Washington Supreme Court rejected the proposition that a favorable mental health diagnosis by the prosecution's expert could be imputed to the prosecution. *In re Rice*, 828 P.2d 1086, 1089 (Wash. 1992); *id. a*t 1100 (Utter, J. dissenting). The existence of such precedent suggests that confusion extends to state courts of last resort.

there was no evidence that the Tennessee law enforcement official "was acting as an agent of the Georgia prosecutor." *Id.* at 1310.

2. Records from child welfare agencies

The circuits have also taken divergent approaches with respect to whether material in the possession of child welfare agencies constitutes *Brady* material that the prosecution must disclose. This remains true despite this Court's guidance in *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), where this Court held that the prosecutor's "obligation to turn over evidence in its possession" extends to child welfare records even though "the public interest in protecting sensitive information such as that in [such] records is strong." *Id.* at 40.[6]

Despite this guidance, the First Circuit has held that child welfare files are "not the type of evidence covered by *Brady*" because a child welfare agency is "not the prosecuting agency and is independent of both the police department and the prosecutor's office." *Lavallee v. Coplan*, 374 F.3d 41, 44–45 (1st Cir. 2004). The First Circuit attempted to explain away the tension between its holding and *Ritchie* by asserting "that there is some ambiguity about the relationship between *Ritchie* and

[6] This Court expressly recognized in *Ritchie* that evidence held by child protective agencies may constitute *Brady* material. *Ritchie*, 480 U.S. at 57; *accord Love v. Johnson*, 57 F.3d 1305, 1314 (4th Cir. 1995) ("The '*Brady*' right, as recognized and implemented in *Ritchie*, is not limited to information in the actual possession of the prosecutor and certainly extends to any in the possession of state agencies subject to judicial control."); *see also Brooks*, 966 F.2d at 1504 (discussing instances where review under *Ritchie* implicates *Brady*). Accordingly, this Court's existing jurisprudence suggests—at the very least—that the mere fact that a prosecutor does not possess or have knowledge of *Brady* material is not dispositive and that in certain instances is frankly irrelevant.

Brady." *Id.* at 45. This perceived ambiguity is precisely why this Court's clarification is required.

3. Government witnesses' criminal history

The circuits have struggled to determine when the prosecutor is required to learn of its witnesses' criminal history reports. Both the Third and Fifth Circuits have found that the prosecutor must learn of these reports. In *East v. Scott*, 55 F.3d 996 (5th Cir. 1995), the Fifth Circuit held that "the prosecution is deemed to have knowledge of any criminal history information pertaining to its witnesses that would be revealed by a routine check of FBI and state crime databases," because "the prosecution has ready access" to that information and therefore "should bear the burden of obtaining and disclosing the criminal history of its witnesses in the interests of inherent fairness." *Id.* at 1003 (internal quotation marks omitted).

The Third Circuit has taken a similar tack, finding that the prosecutor's failure to run a criminal history search on a witness was a *Brady* violation and "conduct unworthy of the United States Attorney's Office." *United States v. Perdomo*, 929 F.2d

967, 970 (3d Cir. 1991).[7] As the court put it, "non-disclosure is inexcusable where the prosecution has not sought out information readily available to it." *Id.* at 971.[8]

The First Circuit disagrees. In *United States v. Hall*, 434 F.3d 42 (1st Cir. 2006), the court found no *Brady* violation where the federal prosecutor failed to learn the details of its witness's state convictions. *Id.* at 55. The court reasoned that information held by the state court could not be imputed to the federal prosecutor because the defendant failed to demonstrate that the evidence was in the possession of the prosecutor for the purpose of *Brady*. *Id.*

These different approaches to the prosecutor's duty regarding criminal history records is yet another example of how the circuit courts have reached divergent results about what constitutes *Brady* material. The cases above also illustrate a tension in the existing caselaw. While the Third and Fifth Circuits hold that ready

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[7] The Supreme Court of South Carolina expressly adopted the Third Circuit's rational in *State v. Durant*, 844 S.E.2d 49, 54 (S.C. 2020). There, the prosecution conducted a criminal background check utilizing an incorrect spelling of the witness's name. *Id.* at 52. Like in *Perdomo,* the prosecution was never in possession of criminal records maintained by the FBI. Nonetheless, the court did not hesitate to hold such circumstances constituted a *Brady* violation. *Id.* at 55 ("Accordingly, we hold as a matter of law that the State was in possession of [the witness's] criminal background information and failed to accurately disclose it."). The Utah Supreme Court, on the hand, has expressly rejected the reasoning of *Perdomo* as "too broad" and creating a "herculean burden." *State v. Pliego*, 974 P.2d 279, 283 (Utah 1999). These holdings demonstrate that this confusion also pervades the state courts of last resort.

[8] The facts of *Perdomo* are also revealing in that the prosecution was never actually in possession of the witness's criminal history. Instead, the prosecution represented that their main witness against the defendant had no criminal history. *Perdomo*, 929 F.2d at 968–69. The prosecutor neglected, however, to check if the witness had any criminal history in the Virgin Islands—the jurisdiction where the defendant was prosecuted. *Id.* at 970. *Perdomo* demonstrates that there are circumstances where the prosecution does not actually possess the *Brady* evidence but holds an affirmative to seek it out and find it.

access to *Brady* evidence is determinative, the First Circuit has focused its inquiry more narrowly, asking instead whether the prosecution was in the actual possession of disputed evidence.

4. *Brady* evidence in the hands of closely related government agencies and individuals

As the confusion over criminal history records suggests, the Court's guidance is particularly needed to clarify the prosecutor's obligation regarding the witnesses it chooses to call at trial. That confusion is only deepened when the question is what duty the prosecutor has to learn of readily available information in records held by other government agencies or other individuals housed in the same investigating agency.

The Third and Fifth circuits have found that, when the prosecution chooses to call a witness, it has a duty under *Brady* to learn of any impeachment evidence in readily available government records. In *United States v. Thornton*, 1 F.3d 149 (3d Cir. 1993), the Third Circuit found *Brady* applied where the prosecutor did not learn of DEA payments to its witnesses. *Id.* at 158. The court held that "prosecutors have an obligation to make a thorough inquiry of all enforcement agencies that ha[ve] a potential connection with the[ir] witnesses." *Id.*; *see also Risha*, 445 F.3d at 304 (describing *Thornton* as having "rejected a hands-off approach to information about government witnesses").

The Fifth Circuit similarly found the prosecutor is obligated to learn what information is in a witness's government records. In *United States v. Deutsch*, 475 F.2d 55 (5th Cir. 1973), *overruled on other grounds*, *United States v. Henry*, 749 F.2d

203 (5th Cir. 1984), the court found that *Brady* extended to the prosecutor's failure to obtain postal employee witnesses' personnel files. *Id.* at 57. As the court put it, "there is no suggestion in *Brady* that different 'arms' of the government" are severable entities, meaning the prosecutor "cannot compartmentalize the Department of Justice and permit it to . . . use a [Post Office employee] as its principal witness, but deny having access to the Post Office files." *Id.*

The Sixth Circuit has seen things differently when it comes the imputation of evidence to the prosecution when some members of the investigating law enforcement agency possess *Brady* material, while the ones specifically assigned to the case do not. In *Sutton v. Carpenter*, 617 F. App'x 434 (6th Cir. 2015), another Tennessee capital habeas case, the prosecution relied on the testimony of a medical examiner who was under investigation by the Tennessee Bureau of Investigation (TBI) and who was later stripped of his medical license due to malfeasance. *Id. a*t 439–40. The court reasoned that, although the TBI possessed the relevant *Brady* material at the time of trial, the prosecution could not be held responsible for discovering that information because agents other than those specifically assigned to the defendant's case were investigating the medical examiner. *Id.* at 440. Sixth Circuit precedent thus places strict and technical limitations upon the imputation of knowledge for *Brady* purposes.

5. Records in the possession of correctional facilities

The circuits have also reached divergent results regarding whether information in the possession of correctional facilities constitutes *Brady* material. When the Sixth Circuit's ruling in *Hall* is juxtaposed with the holdings of the Seventh

and Ninth Circuits, it is clear that there is circuit split regarding the imputation of *Brady* material in the hands of prison officials.

In *Carriger v. Stewart*, 132 F.3d 463 (9th Cir. 1997), the Ninth Circuit, sitting en banc, considered the *Brady* implications of an inmate-witness's file in the possession of the Department of Corrections. There, a death-sentenced inmate claimed that the state withheld a witness's Department of Corrections file which, if revealed, would have showed that the witness had a long history of lying to police and blaming his crimes on others. The court noted that while the record was unclear as to whether the individual prosecutors in the case actually possessed the witness's file, "actual awareness (or lack thereof)" of the impeachment evidence was not dispositive of the prosecution's disclosure obligations. *Id.* at 479. Instead, the court explained, the *Kyles* command that the prosecution has a "duty to learn of any exculpatory evidence known to others acting on the government's behalf," requires the prosecutor in a case to go beyond that of which he or she is actually aware. *Id.* at 479–80 (citing *Kyles*, 514 U.S. at 438–40). This obligation stems from the "unique position" of the prosecution "to obtain information known to other agents of the government." *Id.* at 480.

In *Carriger*, the Ninth Circuit determined that the state's decision to rely on a witness with an extensive criminal history triggered an obligation "to turn over all information bearing on that witness's credibility." *Id.* Expounding, the court directed that the information to be tuned over "must include the witness's criminal record, including prison records, and any information therein which bears on credibility." *Id.*

In 2011, the Ninth Circuit reaffirmed its position in *Gonzalez v. Wong*, 667 F.3d 965 (9th Cir. 2011). There, Gonzalez was charged with first-degree murder with the special circumstance of killing a sheriff's deputy. The central question at trial was Gonzalez's understanding and intent at the time of the shooting. Although the prosecution presented extensive evidence that Gonzalez knew he was shooting an officer, the prosecution also called as a witness a jailhouse informant who testified that Gonzalez admitted to knowing he was shooting at an officer. *Id.* at 973. Gonzalez was convicted of first-degree murder and was sentenced to death. During his federal habeas proceedings, Gonzalez, like Mr. Hall, was granted limited discovery. The state turned over six psychological reports prepared by prison psychologists on the informant-witness while he had been incarcerated in California prisons between 1972 and 1979. *Id.* at 976.

Although the district court denied Gonzalez's motion for reconsideration of the denial of an evidentiary hearing on his *Brady* claim, the Ninth Circuit granted him a certificate of appealability. With respect to the limited issue of whether the evidence was suppressed by the prosecution, the court stated that although "[t]he psychological reports were in the possession of the prosecutor's office prior to the trial," "[e]ven if they had not been" the prosecutor had "a duty under *Brady* to 'learn of any exculpatory evidence known to others acting on the government's behalf.'" *Id.* at 981–82 (quoting *Carriger*, 132 F.3d at 479–80 (prosecutor violated *Brady* when he did not turn over witness's prison records)).

The Ninth Circuit finds support from the Seventh Circuit in a decision issued several years after *Carriger*. In *United States v. Wilson*, 237 F.3d 827 (7th Cir. 2001), the Seventh Circuit considered whether the government violated its *Brady* obligations by failing to disclose favorable information that pertained to the credibility of a witness. In *Wilson*, Presley Patterson, a former gang member turned government mole who later entered the federal witness protection program, testified as a prosecution witness. *Id.* at 831. Patterson testified that he had not tested positive for drugs while in the witness protection program. *Id.* A month after the jury verdict, the prosecutors received a memo from the Department of Justice Office of Enforcement Operations stating that Patterson had been terminated from the program based on a United States Marshals Service report that Patterson had tested positive for marijuana in three drug tests prior to his court testimony. *Id.* Defendants moved for a new trial based on the government's failure to disclose the impeachment evidence during the trial, and the district court denied their motion. *Id.*

On appeal, the court considered whether knowledge of Patterson's failed drug tests—information that was in the exclusive possession of the United States Marshals Service—could be imputed to the prosecutors. *Id.* at 832. The court agreed with the defendants that such imputation was proper because it was impossible to say in good faith "that the U.S. Marshal's [sic] Service was not 'part of the team' that was participating in the prosecution, even if the role of the Marshal's Service was to

keep the defendants in custody rather than go out on the streets and collect evidence." *Id.*[9]

The Sixth Circuit, however, has taken a more limited view of the scope of *Brady* material when the information is in the exclusive possession of a jailer. *Hall*, 7 F.4th at 445–46. Mr. Hall claimed that the state prosecutor violated *Brady* by withholding impeachment evidence—i.e., the records of Dutton's history of mental illness. The state acknowledged that such evidence was favorable because it weighed on Dutton's credibility but contended it did not suppress the evidence within the meaning of *Brady* and *Kyles* because the evidence was within the exclusive possession of TDOC. In declining to impute TDOC's knowledge to the prosecution, the Sixth Circuit distinguished Mr. Hall's case from both *Gonzalez* and *Carriger*.

Distinguishing *Gonzalez*, the Sixth Circuit noted that the relevant evidence was in the possession of the prosecutor's office prior to trial—a circumstance factually distinct from Mr. Hall's case. *Id.* at 445 (citing *Gonzalez*, 667 F.3d at 981). While correct, that reading ignores the remainder of the paragraph. In the very next sentence, the Ninth Circuit held that even if the records had not been in the possession of the prosecutor's office, thus presumably in the hands of the prison where the psychological reports were prepared, the prosecutor still would have had a duty

[9] The court ultimately rejected Wilson's argument, holding the effect of the withheld evidence would not have affected the outcome of the proceeding. *Wilson*, 237 F.3d at 832–33. Nonetheless, the Seventh Circuit's approach to imputation is contrary of that of the Sixth Circuit. Presumably, on different facts the Seventh Circuit's imputation would have led to relief for the defendant.

to learn of that exculpatory evidence because it was known to an entity acting on the government's behalf. *Gonzalez*, 667 F.3d at 981–82.

With respect to *Carriger*, the Sixth Circuit read into the opinion a limitation not otherwise stated—that the prosecution must only disclose exculpatory evidence about a witness informant in these circumstances if the witness is "crucial to the prosecution's case." *Hall*, 7 F.4th at 446. The court relied on the Ninth Circuit's statement that the witness "was the prosecution's star witness." *Id.* Although the Ninth Circuit did describe the relevant witness as a "star witness," *Carriger*, 132 F.3d at 480, that description was not determinative of the outcome. Reference to the Ninth Circuit's extended discussion about the need to proceed cautiously with informants provides helpful insight. The en banc court was careful to note that the need for *Brady* disclosures bearing on the credibility of government witnesses is particularly acute where the government presents witnesses who have received a benefit from the government in exchange for their testimony. *Id.* at 479. The court cautioned that it had "previously recognized that criminals who are rewarded by the government for their testimony are inherently untrustworthy, and their use triggers an obligation to disclose material information to protect the defendant from being the victim of a perfidious bargain between the state and its witness." *Id.*; *see also United States v. Bernal-Obeso*, 989 F.2d 331, 333–34 (9th Cir. 1993) ("Because the government decides whether and when to use such witnesses, and what, if anything, to give them for their service, the government stands uniquely positioned to guard against perfidy. . . . Accordingly, we expect prosecutors and investigators to take all reasonable measures

to safeguard the system against treachery."). Clearly then, the Ninth Circuit's *Carriger* opinion is not limited to an informant who serves as a "star witness."[10]

After rejecting the cases Mr. Hall cited in support of his contention that TDOC material could be imputed to the prosecution in his case, the Sixth Circuit declined "to break new ground by holding that the prosecutor has an affirmative duty to pursue and obtain psychological records for its witnesses, even inmate witnesses." *Hall*, 7 F.4th at 446.

Accordingly, with respect to *Brady* material in the hands of correctional institutions, the Ninth Circuit's decision in *Carringer* and the Sixth Circuit's decision in *Hall* directly and unambiguously conflict. This is yet another example of how this Court's existing jurisprudence fails to provide sufficient guidance to the lower courts and demonstrates that certiorari is appropriate in this case. Sup. Ct. R. 10(a).

The courts of appeals have utilized widely divergent approaches to determine whether evidence in the hands of entities other than the prosecution should be imputed to the prosecution. Although this question emerges in slightly different issue

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[10] The Sixth Circuit remarked, "Dutton's testimony was not crucial to the prosecution's case in Hall's trial." *Hall*, 7 F.4th at 446. This was an illogical conclusion and inconsistent with the record. Although there was little doubt that Mr. Hall was the perpetrator of an offense, his culpable mental state was very much in question. Counsel expressly testified that their theory of the case was that Mr. Hall did not act with the requisite mens rea. "The primary theory to be -- as --from the best of my recollection this long after was that it was at least arguably a second degree murder case." R. 144-11, App.HH. Mr. Hall presented expert testimony at trial that he was not capable of acting with deliberation. *See* R. 159-5, App. II. Dutton offered direct evidence that Mr. Hall went to his wife's residence with a plan to kill her. This cut to the heart of the defense proof. Thus, even the Sixth Circuit's constrained reading *Carringer* were correct, its interpretation finds no support in that case.

areas (e.g. criminal records, prison records, etc.), the unifying characteristic of these cases is confusion about *Kyles*'s edict that the prosecution search for *Brady* material in the hands of others. The breadth of circumstances where this issue arises is further evidence that this Court's guidance is needed.

B. Mr. Hall's case presents the ideal vehicle to resolve the circuit split and resolve the scope of the prosecution's duties.

Mr. Hall's case presents an ideal vehicle for this Court to further clarify the scope of the prosecution's duty under *Brady* to learn of favorable evidence known to others—and, in particular, the scope of the prosecution's duty to learn of readily available information in the prison files of inmates called to testify at trial. Because Mr. Hall did not receive the *Brady* evidence until federal habeas review, he can establish cause for failing to raise a *Brady* claim previously and would be entitled to de novo review. *See Strickler v. Green*, 527 U.S. 263, 289 (1999). The issue is therefore ripe for a full merits hearing.

As significantly, Mr. Hall's case presents compelling factual circumstances that provide a vehicle to decide this important question of constitutional law. As mentioned above, Mr. Hall was transferred pre-trial from the local county jail to TDOC and held at Riverbend Maximum Security Institution, the same prison where he now resides on death row. While holding a pretrial inmate in general population in a maximum-security institution is unusual in itself, what made Mr. Hall's detention in such a facility even more unusual is that it persisted despite his attorneys' repeated efforts to have him returned to local jails. R. 159-1, App.Z; R. 159-1, App.AA; R. 159-2, App.CC.

Mr. Hall was placed in a cellblock with Dutton, who would later testify as a jailhouse informant against Mr. Hall. In the months leading up to Mr. Hall's placement at Riverbend, Dutton had attempted to hock his services a jailhouse informant to numerous prosecutors. *See, e.g.* R. 30-8, 3/5/96 Letter from Dutton to Sir, App. G.

In one missive, he wrote "I could be of great use within the prison system as a reliable informant." R. 30-8, 3/5/96 Letter from Dutton to Sir, App.G. He dreamed of "a chance to become an informant for the F.B.I.!" *Id.* He reassured prosecutors that they could "just write the attorney general's office in Raleigh, give them my name and the therefore [sic] about the case I testified in." *Id.*

Dutton quickly recognized that Mr. Hall presented an opportunity for him. In his letter to prosecutors, he remarked "I let him feed me information as he felt comfortable, and I gained his trust. I was giving him information and help (supposed), trust comes easy when you give them something to hold against you." R. 30-4, App.F.

When Dutton was called as a witness at trial, he testified that he had extensive criminal history and that much of his life had been spent behind bars. R. 159-4, Trial Transcript Vol. II, App.DD. Dutton also testified that he had initially been incarcerated under maximum-security conditions, but he had since progressed to minimum-restricted conditions. R. 159-4, App. DD. Dutton testified that in exchange for his testimony the prosecutor promised that he would testify favorably before the parole board on Dutton's behalf. R. 159-4, App.DD.

Dutton's testimony proved devastating to Mr. Hall's defense. Mr. Hall's defense team relied on a theory that Mr. Hall lacked the requisite mens rea to be convicted of first-degree murder and that he was intoxicated at the time of the offense. *See* R. 144-11, App.HH. Dutton's testimony eviscerated this defense. Dutton testified that Mr. Hall disconnected the phone lines so that Mr. Hall's wife would not be able to contact the police. R. 159-4, App.DD. More significantly, Dutton provided motive for Mr. Hall's crime. He testified that Mr. Hall "wanted her to suffer as he did, feel the helplessness that he was feeling because she took his world away from him." R. 159-4, App.DD. He closed, saying, "He was going to make her hurt the way she made him hurt, feel as helpless as he felt." R. 159-4, App.DD.

As discussed above, Dutton's significant mental illness was only later disclosed in these federal habeas proceedings. For example, Dutton told prison mental health workers that he was "hearing voices telling him all kind of stuff" and had "been hearing voices since the age of 12." R. 102-13, Problem Oriented Progress Record, App.S. Dutton wrote he believed he "was possessed by a minor demon or a leg[ion] of them" who would speak to him. R. 102-10, Handwritten Letter of Chris Dutton, App.P. Prison psychiatric staff found him to have "acute psychotic thought disorganization" with "delusional content." R. 102-11, Psychiatric Intake Evaluation, App.Q. Dutton divulged "a history of ego-dystonic auditory hallucinations." R. 102-12, Psychological Summary, App.S.

Dutton also had a documented history of suicidality and substance abuse. He unsuccessfully hanged himself in a jail in Cherokee County, North Carolina. R.

102-11, App.Q. Prison mental health documents also show Dutton's suicide attempts in Raleigh North Carolina Central Prison. R. 102-14, Mental Health Screening Form, App.T 8; R. 102-155, Admissions Data, App.U. Dutton's records also revealed a history of substance abuse including extensive abuse of cocaine, LSD, PCP, heroin, marijuana, and alcohol. R. 102-11, Psychiatric Intake, App.Q. Based upon these and other symptoms, prison providers diagnosed Dutton with anti-social personality disorder. R. 102-17, Inmate Intake, App.V; R. 102-18, Psychiatric Intake Update, App. W.

In the initial round of discovery, the district court gave leave to the Petitioner to serve subpoenas on TDOC, which ultimately yielded the impeachment evidence discussed above. R. 39, PageID 358. TDOC's response yielded three types of files that it denominated as follows: Dutton's Central Office File, Dutton's institutional file, and Dutton's medical file. R. 40-1, App.H. No documents were produced from the Internal Affairs division of TDOC.

The documents produced by TDOC, however, included references to Dutton's interaction with Internal Affairs. For example, in a Protective Services Routing Sheet dated November 30, 1995, prison officials informed Dutton that he had been authorized to be released from administrative segregation and reclassified in a less restrictive category. R. 40-32, App.K. Although the additional liberties would seem to be welcome news, Dutton balked and refused to move to a less restrictive unit. *Id.* Dutton stated that "[Internal Affairs] was aware of his concerns." *Id.* Another document produced pursuant to subpoena indicated "that Internal Affairs

recommended that Dutton be reclassified and transferred following an apparently unrelated disciplinary matter." R. 41, Respondent's Response in Opposition to Petitioner's Motion for Leave to Conduct Depositions, App.N, n.2 (referencing R. 40-39, Offender Classification Summary, App.L).

In response to further inquiries from Mr. Hall's habeas counsel seeking Internal Affairs documents, TDOC's legal counsel provided a brief memorandum from Jerry Lester, the Acting Direction of TDOC Internal Affairs. That memorandum represented that Internal Affairs had "exhausted a search of all recording back to January, 1996" and "were unable to find any records related to inmate Chris Dutton." R. 40-2, App.I. TDOC represented that the "Department's central Internal Affairs Division was created on or about January 1996; thus, the Internal Affairs Division's record extend back to January 1996." R. 41, App.N. Based on the documents referencing Internal Affairs involvement and the representations from TDOC, Mr. Hall moved twice for leave to conduct depositions of the relevant Internal Affairs personnel that might have knowledge of interactions with Dutton and who were familiar with record keeping practices. R. 40, 47. Those motions were denied by the district court. R. 45, 52.

TDOC represented that its search for documents relating to Dutton only related back to January 1996, when the department centralized its Internal Affairs Division. R. 41, App.N.[11] Taking that representation at face value, TDOC did not even

[11] Although the record is sparse, it appears that prior to 1996, TDOC's internal affairs was decentralized. *See* R. 41; App. N.

search for documents that pertained to the relevant dates Mr. Hall was held in pre-trial custody at TDOC. The record indicates that as early as September 1994, Dutton was seeking to contact the FBI. R. 102-19, App. X. The record further indicates that Dutton had been transferred to Riverbend Maximum Security Institution by 1995, as documented by records showing he was receiving psychiatric care at the institution at that time. R. 102-27,App. GG; R. 102-18, App.A. Mr. Hall was also imprisoned at Riverbend prior to 1996. *See, e.g.* R. 159-1, App.A (indicating Mr. Hall was at Riverbend as early as May 1995); R. 144-2, App.Y (indicating Mr. Hall was present at Riverbend in November 1995). Thus, TDOC's representation that it searched record back to January 1996 is not definitive of anything and in fact omits the relevant period when Mr. Hall and Dutton were incarcerated together.

The prosecution ordered that Mr. Hall be held pre-trial at a TDOC facility, where he remained over the objections of counsel. R. 159-1, App. Z; R. 159-1, App.AA; R. 159-2, App.CC. Furthermore, in November 1995—the precise window when Dutton and Mr. Hall were incarcerated together—Dutton stated to prison guards that he could not be released from administrative segregation to a less restrictive housing level. R. 40-32, App.K.[12] Mr. Hall had been placed on "safekeeper" status as a pretrial inmate and transferring Dutton from administrative segregation to Unit 4 would have meant he would no longer have access to Mr. Hall. Dutton stated expressly to guards that "[Internal Affairs] was aware" of his situation. R. 40-32, App.K. Dutton's

[12] By February 1996, the prosecution had communicated to the defense its intention to use Dutton's testimony. R. 102-1, App. O.

resistance appears to have worked, as he was still being held in protective custody in March 1996 and TDOC had plans to transfer him to a medium security facility.[13] R. 40-43, App.M. At the very least, this evidence creates a strong inference that TDOC was working in concert with the prosecution to secure Dutton's testimony.[14]

This Court has made it known that the prosecutor has some duty to learn of information not in its immediate possession, including information in the possession of the police. But the circuit courts have struggled to agree on the prosecution's duty beyond the police—or even how this duty applies to the police. That lack of agreement is particularly concerning in the arena of jailhouse informants, given that "[t]his

[13] Dutton's rapid progress from maximum security to minimum restrictive suggests the distinct possibility that he received favorable treatment for his cooperation. Dutton had previously been convicted of an escape that involved assaulting a corrections officer—the initial reason for placing him in maximum security. R. 159-4, App.DD; R. 40-18; App. J. And Dutton was found guilty of possessing a deadly weapon—to wit, a shank—in June 1994, further extending his maximum classification. R. 40-25, App. FF.

[14] One line of this Court's *Brady* jurisprudence relies on agency principles to determine whether evidence should be imputed to the prosecution. *Giglio v. United States*, 405 U.S. 150, 154 (1972) ("[T]he liability of a principal is affected by the knowledge of an agent concerning a matter as to which he acts within his power to bind the principal or upon which it is his duty to give the principal information.") (citing Restatement (Second) of Agency § 272 (Am. L. Inst. 1958)). One potentially helpful way of delineating the prosecution's obligations in these circumstances is to impute evidence when an agency relationship exists. Framed that way, the relevant query is whether the prosecution manifested an intent that TDOC undertake specified actions on behalf of the prosecution. *See In re Nw. Airlines Corp.*, 383 B.R. 283, 292 (Bankr. S.D.N.Y. 2008) ("An agent acts with actual authority when, at the time of taking action that has legal consequences for the principal, the agent reasonably believes, in accordance with the principal's manifestations to the agent, that the principal wishes the agent so to act." (quoting Restatement (Third) of Agency § 2.01 (Am. L. Inst. 2006))), aff'd, No. 08 CV 4742 GBD, 2010 WL 3529239 (S.D.N.Y. Aug. 26, 2010).

Court has long recognized the serious questions of credibility informers pose." *Banks v. Dretke*, 540 U.S. 668, 701 (2004) (internal quotation marks omitted).

Brady "is among the most basic safeguards brigading a criminal defendant's fair trial right." *Connick v. Thompson*, 563 U.S. 51, 105 (2011) (Ginsburg, J., dissenting) This Court has emphasized that Brady extends to evidence bearing on the credibility of government witnesses. *United States v. Bagley*, 473 U.S. 667, 676 (1986); *United States v. Giglio*, 405 U.S. 150, 154–55 (1972). "Vigilance in superintending prosecutors' attention to *Brady*'s requirement is all the more important for this reason: A *Brady* violation, by its nature, causes suppression of evidence beyond the defendant's capacity to ferret out. Because the absence of the withheld evidence may result in the conviction of an innocent defendant, it is unconscionable not to impose reasonable controls impelling prosecutors to bring the information to light." *Thompson*, 563 U.S. at 105–06.

These concerns are particularly acute given the Sixth Circuit's hyper-technical understanding of imputation for the purposes of *Brady* and its deflated view of the prosecution's due process obligations. This case squarely presents an instance where a court of appeals has decided an important federal question, "that has not been, but should be, settled" by this Court. Sup. Ct. R. 10(c). In addition, this petition has catalogued a variety of disparate and inconsistent approaches employed by the courts of appeals with respect to this issue. As such, the Court's review under Sup. Ct. R. 10(a) is appropriate given the circuits' inconsistent approaches to the duty of the prosecution pursuant to *Brady* in these circumstances.

CONCLUSION

This Court should grant this petition for certiorari.

Respectfully submitted,

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CERTIFICATE OF WORD COUNT

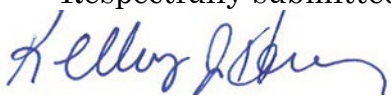
Case name: *Hall v. Mays*
Title: Petition for Writ of Certiorari

Pursuant to Rule 33.1(h) of the Rules of this Court, I certify that the accompanying Petition for Writ of Certiorari, which was prepared using Century Schoolbook 12-point typeface, contains 8,659 words, excluding the parts of the document that are exempted by Rule 33.1(d). This certificate was prepared in reliance on the word-count function of the word-processing system (Microsoft Word) used to prepare the document.

I declare under penalty of perjury that the foregoing is true and correct.

DATED this 18th day of February 2022

Respectfully submitted,



Kelley J. Henry

CERTIFICATE OF SERVICE

Pursuant to Sup. Ct. R. 29.5(a), I certify a copy of the Petition for a Writ of Certiorari was sent via First Class mail to the Supreme Court of the United States and to counsel for the Respondent on February 18, 2022.

Kelley J. Henry