No. 22-186

In the Supreme Court of the United States

TROY MANSFIELD,

Petitioner,

v.

WILLIAMSON COUNTY, TEXAS,

Respondent.

On Petition for Writ of Certiorari to the U.S. Court of Appeals for the Fifth Circuit

Brief of *Amicus Curiae* Professor Colin Miller in Support of Petitioner

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

Amicus is the Professor of Law & Thomas H. Pope Professorship in Trial Advocacy at the University of South Carolina School of Law and teaches criminal law, criminal adjudication, and evidence. *Amicus* has done extensive research and scholarship on the history of the *Brady* v. *Maryland*, 373 U.S. 83 (1963) doctrine.[2]

Amicus has an interest in informing the Court about this history, including explaining how the decision of the United States Court of Appeals for the Fifth Circuit is inconsistent with this Court's opinion in *Wilde* v. *Wyoming*, 362 U.S. 607 (1960), which was cited as support for the *Brady* doctrine and held that the suppression of favorable substantive evidence before a defendant's guilty plea can violate the Due Process Clause.

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[1] Pursuant to Supreme Court Rule 37.2, counsel of record for all parties received timely notice of amicus curiae's intent to file this brief and counsel for both parties consented. Pursuant to Supreme Court Rule 37.6, amicus curiae states that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from amicus curiae and their counsel, made any monetary contribution toward the brief's preparation or submission.

[2] *Amicus* authored *The Right to Evidence of Innocence Before Pleading Guilty*, 53 U.C. Davis L. Rev. 271, 273 (Nov. 2019) *available at* https://bit.ly/3LWa4XA, and, along with other amici, previously authored a similar brief in support of the Petitioner in *Alvarez* v. *City of Brownsville*, No. 18-854.

SUMMARY OF THE ARGUMENT

The history of the *Brady* doctrine begins with this Court's opinion in *Mooney* v. *Holohan*, 294 U.S. 103 (1935), which was the first case to hold that the knowing subornation of perjury can violate the Due Process Clause. 294 U.S. at 112. This Court extended the *Mooney* holding in four pre-*Brady* cases. Two of those cases involved only suborned perjury and one involved suborned perjury and the suppression of substantive evidence of innocence. The fourth case, *Wilde* v. *Wyoming*, 362 U.S. 607 (1960) involved only the suppression of substantive evidence of innocence. In *Wilde*, the State failed to disclose two exculpatory eyewitness statements to a defendant before he pleaded guilty to second degree murder. The *Brady* Court explained that its decision was only an extension of *Mooney* and its progeny, including *Wilde*. 373 U.S. at 86–87. As *Wilde* was the only pre-*Brady* case based principally on the suppression of evidence, it goes to the heart of the *Brady* doctrine. This Court has never repudiated *Wilde*, and courts and litigants continue to rely on it in the *Brady* context. Accordingly, this Court should grant Troy Mansfield's petition for certiorari to clarify that *Wilde*, and the right to disclosure of exculpatory evidence before pleading guilty, remains good law in light of circuit court opinions to the contrary.

ARGUMENT

I. The history of the *Brady* doctrine shows there is a right to disclosure of exculpatory evidence before pleading guilty.

In *Wilde* v. *Wyoming*, this Court held that the pre-plea suppression of favorable substantive evidence can violate the Due Process Clause. 362 U.S. 607 (1960). Three years later, this Court relied on the *Wilde* opinion as primary support for its holding in *Brady* v. *Maryland*, which it explained was merely an extension of *Wilde* and related cases. 373 U.S. 83, 86–87 (1963). The *Wilde* decision was particularly important because it is the only pre-*Brady* case dealing solely with the suppression of evidence. This Court has never repudiated *Wilde* and it remains critical to the foundation of the *Brady* doctrine.

A. In *Wilde*, this Court recognized that the pre-plea suppression of favorable substantive evidence can violate the Due Process Clause.

The defendant in *Wilde* pleaded guilty to second-degree murder and was given a life sentence.[3] He filed a petition for writ of habeas corpus with the Second Judicial District Court of the State of Wyoming and the Wyoming Supreme Court. The petition claimed that the defendant did not have counsel present when he pleaded guilty and that the plea was improperly induced because the "prosecutor wilfully suppressed

[3] *See* Colin Miller, 53 U.C. Davis L. Rev. 271, 273 (Nov. 2019).

the testimony of two eyewitnesses to the alleged crime which would have exonerated the petitioner." *Wilde*, 362 U.S. at 607. In a per curiam opinion, this Court determined that it did "not appear from the record that an adequate hearing on these allegations was held in the District Court, or any hearing of any nature in, or by direction of, the Supreme Court." *Ibid*. Finding that there was nothing in "the record to justify the denial of hearing on these allegations," this Court remanded the case for an evidentiary hearing. *Ibid*.

By remanding, the *Wilde* Court recognized that the pre-plea failure to disclose substantive evidence of innocence can violate the Due Process Clause. In *Pyle* v. *Kansas*, 317 U.S. 213 (1942), this Court similarly remanded a petition for writ of habeas corpus for further proceedings based on allegations of suppressed evidence and suborned perjury. 317 U.S. at 216. Later, in *United States* v. *Bagley*, 473 U.S. 667 (1985), this Court stated that *Pyle* "held that allegations that the prosecutor had deliberately suppressed evidence favorable to the accused and had knowingly used perjured testimony were sufficient to charge a due process violation." 473 U.S. at 679 n.8. This same reasoning means that the *Wilde* Court held that the allegation that the prosecutor had deliberately suppressed favorable substantive evidence from an accused before he pleaded guilty was sufficient to raise a due process violation. *See, e.g.*, *State* v. *Parker*, 384 P.2d 986, 996 (Or. 1963) (Perry, J., dissenting) ("In *Wilde* v. *Wyoming*, the Supreme Court of the United States held that where the prosecutor wilfully suppressed testimony favorable to the defendant,

there was a denial of due process." (internal citation omitted)).

B. This Court's decision in *Wilde* is a cornerstone of the *Brady* doctrine.

This Court decided *Brady* v. *Maryland*, 373 U.S. 83 (1963) three years after *Wilde*. The petitioner in *Brady* claimed that the State had violated his right to due process by failing to disclose that his accomplice had confessed to committing the actual murder by himself. *Id*. at 84–85. This Court held that the suppression of the accomplice's confession violated the Due Process Clause. *Id.* at 86.

This Court did not frame *Brady* as a watershed change in law. It instead emphasized that its decision was merely "an extension of *Mooney* v. *Holohan*, 294 U.S. 103, 112 [(1935)]," which had held that the knowing presentation of perjured testimony can violate the Due Process Clause. 373 U.S. at 86. The *Mooney* Court held this was "inconsistent with the rudimentary demands of justice as is the obtaining of a like result by intimidation." *Mooney v. Holohan*, 294 U.S. 103, 112 (1935). The *Brady* Court noted that *Mooney* was extended on four occasions. *See id.* at 86–87. The first of these was *Pyle* v. *Kansas*, where this Court found that the petitioner "set forth allegations that his imprisonment resulted from perjured testimony, knowingly used by the State authorities to obtain his conviction, and from the deliberate suppression by those same authorities of evidence favorable to him." 317 U.S. 213, 215–216 (1942). The next two decisions involved only suborned perjury. *See*

Alcorta v. *Texas*, 355 U.S. 28, 31 (1957) (finding that the defendant did not receive due process because the prosecutor knowingly suborned perjury from the only eyewitness); *Napue* v. *Illinois*, 360 U.S. 264, 269 (1959) (finding that the State knowingly used false testimony to secure the defendant's conviction). The final decision was *Wilde*, which, as noted, involved the suppression of substantive evidence of innocence before the defendant pleaded guilty to second degree murder. 362 U.S. at 607.

Immediately after citing *Wilde*, the *Brady* Court articulated the test for a *Brady* violation: "We now hold that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87.

The facts of *Wilde* show that it is particularly important to the foundation of the *Brady* doctrine. The *Brady* doctrine extended the *Mooney* test to apply regardless of the intent of the prosecution. *Brady*, 373 U.S. at 87. The *Brady* Court did not, however, claim to be extending the *Mooney* test to a new subject matter: the exclusion of exculpatory evidence. But only two of the cases relied on involved suppressed evidence and only *Wilde* dealt solely with suppressed substantive evidence of innocence, which is the core of the *Brady* doctrine. The *Alcorta* and *Napue* cases concerned perjured testimony. *Alcorta*, 355 U.S. at 31; *Napue*, 360 U.S. at 269. And *Pyle* only partially dealt with suppressed evidence. 317 U.S. at 215–216; *cf. United*

States v. *Bagley*, 473 U.S. 667, 679 n.8 (1985z) ("In fact, the *Brady* rule has its roots in a series of cases dealing with convictions based on the prosecution's knowing use of perjured testimony."). Because *Brady* only extended the existing test to apply regardless of intent, this Court must have already held that the "suppression by the prosecution of evidence favorable to an accused" could be a due process violation. Only *Wilde* and *Pyle* provide that foundational support.

C. This Court's decision in *Ruiz* did not repudiate *Wilde*

This Court has never repudiated *Wilde*. But the decision in *United States* v. *Ruiz*, 536 U.S. 622 (2002) has led to a circuit split over whether a defendant has a right to substantive evidence of innocence before pleading guilty. As explained below, this Court's holding in *Ruiz* is not inconsistent with *Wilde* and did not foreclose a due process right to substantive evidence of innocence before pleading guilty.

The *Ruiz* decision limited this Court's prior decision in *Giglio* v. *United States*, 405 U.S. 150 (1972). The petitioner in *Giglio* claimed that the State's failure to disclose impeachment evidence violated the *Brady* doctrine. 405 U.S. at 150–153. Because the State's case depended almost entirely on this witness's testimony, this Court agreed and extended the *Brady* doctrine to require disclosure of material impeachment evidence for critical prosecution witnesses. *Id.* at 154–155. This was then limited in *Ruiz*. There, the defendant had rejected a "fast track" plea agreement because it required her to "waive the

right to receive impeachment information relating to any informants or other witnesses." 536 U.S. at 625 (cleaned-up). The agreement did, however, specify "that any known information establishing the factual innocence of the defendant has been turned over to the defendant, and it acknowledge[d] the Government's continuing duty to provide such information." *Ibid.* (cleaned-up). The defendant pleaded guilty without the benefit of the agreement. She then unsuccessfully sought the same downward departure to the United States Sentencing Guidelines that she would have received under the plea agreement. *Id.* at 625–626.

The defendant appealed her sentence to the United States Court of Appeals for the Ninth Circuit, arguing that the proposed plea agreement violated her right to material impeachment evidence. *See id.* at 626. The United States Court of Appeals for the Ninth Circuit agreed and vacated the sentence. *Id.* This Court rejected the argument, however, holding that *Giglio* "does not require the Government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant." *Id.* at 633. The *Ruiz* Court rejected the defendant's assertion that a pre-plea right to material impeachment evidence would lead to innocent defendants pleading guilty. *Id.* at 631. In particular, the *Ruiz* Court noted that the plea agreement at issue stated that "the Government will provide 'any information establishing the factual innocence of the defendant' regardless." *Ibid.* This observation suggests that the outcome may have been different if the agreement allowed the Government to withhold substantive evidence. *See, e.g.*, *McCann* v. *Mangialardi*, 337 F.3d 782, 788 (7th Cir. 2003)

(finding that this language makes it "highly likely that the Supreme Court would find a violation of the Due Process Clause if prosecutors or other relevant government actors have knowledge of a criminal defendant's factual innocence but fail to disclose such information to a defendant before he enters into a guilty plea"); Russell D. Covey, *Plea Bargaining Law After Lafler and Frye*, 51 Duq. L. Rev. 595, 604 (2013) (noting that, by using this language, the *Ruiz* Court "expressly declined to consider whether the same analysis applies to substantive evidence of factual innocence").

The *Ruiz* Court also discussed other factors that distinguish impeachment evidence from substantive evidence of innocence. For example, "impeachment information is special in relation to the fairness of a trial, not in respect to whether a plea is voluntary." 536 U.S. at 629. This conclusion implied that substantive evidence of innocence is distinguishable because it does relate to the voluntariness of pleas, rather than only the fairness of trial. *See, e.g.*, *United States* v. *Lovato*, No. 11-02416-JCH 2012, WL 13076317, at *1 n.1 (D.N.M., Oct. 2, 2012) ("The government thus relies on *Ruiz* for the proposition that impeachment evidence is special in relation to the fairness of a trial, and can be distinguished from exculpatory evidence which may be used to support a defendant's factual innocence.") (internal quotation marks omitted).

Impeachment evidence was also distinguished because "[i]t is particularly difficult to characterize impeachment information as critical information of

which the defendant must always be aware prior to pleading guilty given the random way in which such information may, or may not, help a particular defendant." 536 U.S. at 630. This is due to the fact that defendants, and even the prosecutor themselves, do not necessarily know what witnesses will be called to testify, much less be critical, at the time a plea is entered. *See ibid.* ("The degree of help will depend upon the defendant's own independent knowledge of the prosecution's potential case—a matter that the Constitution does not require prosecutors to disclose."). The same is not true for substantive evidence of innocence as both parties can immediately ascertain the critical nature of exculpatory eyewitness testimony, a key witness recanting a prior statement, or DNA evidence linking another to the crime. *See, e.g.*, *Buffey* v. *Ballard*, 782 S.E.2d 204, 221 (W. Va. 2015) (finding a *Brady* violation based on the State's pre-plea suppression of exculpatory DNA evidence).

The differences between impeachment evidence and substantive evidence of innocence highlighted by the *Ruiz* Court show that the decision should not be interpreted to have repudiated *Wilde*. The *Ruiz* Court clearly distinguished the facts from a case like *Wilde*. Because some courts fail to address *Wilde* and interpreted *Ruiz* to hold that there is no pre-plea right to substantive evidence of innocence, this Court should grant certiorari to clarify that *Wilde* remains good law.

D. The *Wilde* decision is still relied on in the *Brady* context.

Courts have cited *Wilde* in the *Brady* context since it was decided. In 1962, the Court of Appeals of Maryland remanded a decision denying post-conviction relief to a petitioner who claimed that the State suppressed material exculpatory evidence. *See Strosnider* v. *Warden of Md. Penitentiary*, 180 A.2d 854, 856–857 (Md. 1962). The court largely based the decision to remand on prior precedent holding that "the suppression by the State of evidence tending to exculpate a defendant is a ground for relief." *Id.* at 856. That prior precedent was two cases: this Court's opinion in *Wilde* and the Court of Appeals' own prior opinion in *Brady* v. *State*, 174 A.2d 167 (Md. 1961), which was later affirmed by this Court. A number of other state courts of last resort also have cited *Wilde* in the *Brady* context. *See State* v. *Gray*, 286 So.2d 644, 647 (La. 1973); *State* v. *Miller*, 151 N.W.2d 157, 167 (Wis. 1967); *State* v. *Parker*, 384 P.2d 986, 996 (Or. 1963) (Perry, J., dissenting).

Four years after this Court decided *Wilde*, the United States Court of Appeals for the Second Circuit relied upon *Wilde* to reverse a robbery conviction based upon the State's suppression of two exculpatory statements by eyewitnesses. *See United States ex rel. Meers* v. *Wilkins*, 326 F.2d 135, 138 (2d Cir. 1964). In granting the defendant relief, the court noted the similarity between the case at hand and *Wilde*, in which an evidentiary hearing was granted based on the petitioner's allegation "'that the prosecutor wilfully suppressed the testimony of two eyewitnesses

to the alleged crime which would have exonerated the petitioner.'" *Ibid.* (quoting *Wilde*, 362 U.S. at 607).

Since then, *Wilde* has been relied on in the *Brady* context by (1) other federal appellate courts, *see, e.g.*, *Christman* v. *Hanrahan*, 500 F.2d 65, 67 n.1 (7th Cir. 1974) (citing *Wilde* in connection with the defendant's claim that a suppressed phone call was *Brady* evidence); (2) federal district courts, *see, e.g., Walker* v. *Bishop*, 295 F. Supp. 767, 774 (E.D. Ark. 1967) (citing *Wilde* for the proposition that the suppression of favorable evidence violates the Due Process Clause); and (3) state appellate courts, *see, e.g., People* v. *Fein*, 263 N.Y.S.2d 629, 638 (N.Y. App. Div. 1965) (citing *Wilde* in connection with the defendant's claim that a suppressed ballistics report was *Brady* evidence).

Just five years ago, the Court of Criminal Appeals of Alabama relied on *Wilde* to refute the State's allegation that granting a defendant relief under the *Brady* doctrine is intended to punish the prosecution. *See State* v. *Martin*, CR-15-0664, 2017 WL 6398318, at *17 (Ala. Crim. App., Dec. 15, 2017), *rev'd on other grounds sub nom. State* v. *Martin (Ex parte State)*, No. 1170407, 2018 WL 4177525 (Ala. Aug. 31, 2018). The Court of Criminal Appeals explained that the purpose of such relief is to protect the due process rights of defendants, not to punish the prosecution, citing to the *Brady* Court's reliance on due process cases like *Wilde*. *See ibid.*

Notably, litigants continue to cite *Wilde* in support of claims that the pre-plea suppression of favorable substantive evidence violates the *Brady* doctrine. *See,*

e.g., Appellants Opening Br., *Combs* v. *State*, No. DA 12-0392, 2012 WL 5024989 (Mont. Oct. 3, 2013) (using *Wilde* to claim a *Brady* violation based on the State's suppression of favorable fingerprint evidence prior to the defendant's nolo contendere plea); Opening Br., *Thomas* v. *Commonwealth*, No. 911850, 1992 WL 12157503 (Va. Feb. 14, 1992) (using *Wilde* to claim a *Brady* violation based on the Commonwealth's suppression of evidence that could have supported an involuntary intoxication defense prior to the defendant's guilty plea). Some states have even cited *Wilde* to argue that the evidence they suppressed was less exculpatory than the evidence in *Wilde*. *See, e.g.*, Reply Br. of Appellant, *Angelone* v. *Dabney*, No. 011069, 2001 WL 34899214, at *4–5 (Va. Oct. 31, 2001) (claiming that the petitioner had not presented the same type of suppressed exculpatory evidence as the petitioner in *Wilde*).

Because courts and litigants continue to rely on *Wilde* in the *Brady* context generally and the pre-plea context specifically, this Court should grant certiorari to clarify that *Wilde* remains good law despite other courts' application of *Ruiz*.

II. The Court Should Correct the Fifth Circuit's Misreading of *Ruiz*

The panel below was foreclosed from recognizing a constitutional right to the disclosure of exculpatory evidence during plea bargaining due to the prior en banc decision in *Alvarez* v. *City of Brownsville*, 904 F.3d 382, 394 (5th Cir. 2018). *Mansfield* v. *Williamson Cnty.*, 30 F.4th 276, 280–81 (5th Cir. 2022) (holding

that it could not reconsider *Alvarez* because "three-judge panels in the Fifth Circuit abide by controlling precedent not overruled by the Supreme Court or an en banc sitting of this Court"). The *Alvarez* decision is directly contrary to this Court's opinion in *Wilde* v. *Wyoming*, 362 U.S. 607 (1960), which held that the pre-plea suppression of favorable substantive evidence can violate the Due Process Clause. The *Ruiz* decision is consistent with *Wilde* and did not repudiate that due process right. As Judge Costa noted in his special concurrence, this Court's reliance on *Wilde* in creating the *Brady* doctrine "rejects carving guilty plea cases out of its protections." *Mansfield*, 30 F.4th at 283 (5th Cir. 2022) (Costa, J., specially concurring). The *Alvarez* decision did not consider *Wilde* and the result was not in line with the historical underpinning of *Brady*. This should be addressed.

Accordingly, this Court should grant certiorari to clarify the distinction between the impeachment evidence in *Ruiz* and the substantive evidence of innocence in *Wilde*, and to confirm that *Wilde*—and its corresponding due process right to evidence of innocence before pleading guilty—remains good law.

CONCLUSION

This Court's opinion in *Brady* was framed as an extension of previous due process cases, including *Wilde*, which involved a pre-plea right to substantive evidence of innocence. While some courts, including the Fifth Circuit, have held that this Court has not established such a right, *Wilde* has never been repudiated. This Court should grant certiorari to clarify that *Wilde* remains good law in light of court opinions finding no pre-plea right to substantive evidence of innocence.

For the foregoing reasons and those stated in the petition for writ of certiorari, the petition should be granted.

Respectfully submitted,

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