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 United States Court Of Appeals For The Fifth Circuit

OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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COUNTERSTATEMENT OF QUESTION PRESENTED

Under *Brady v. Maryland*, a criminal defendant has a constitutional right to receive from the prosecution all material exculpatory evidence in time to be used effectively at trial. 373 U.S. 83 (1963). Should the *Brady* "trial right" be expanded to a plea-bargaining right, requiring the prosecution to provide to a criminal defendant all material exculpatory evidence before the defendant will be allowed to waive his right to trial and enter a plea of guilty?

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INTRODUCTION

In this § 1983 suit, Petitioner seeks to hold Williamson County liable for damages for violating his constitutional right. The theory of municipal liability is that the Williamson County District Attorney adopted a "closed-file" approach to criminal discovery and thereby created an environment where prosecutors could withhold and even misrepresent exculpatory evidence in the prosecution's possession during plea negotiations. The constitutional right allegedly violated is the novel due process right that would arise if this Court were to extend the trial right to obtain material exculpatory evidence created by *Brady v. Maryland* to the plea-bargaining stage.

In Petitioner's view, this Court should create a new rule of constitutional law to provide an additional due process right to criminal defendants. And it should do so in this case so that Petitioner can attempt to leverage that new constitutional right to hold Williamson County liable for allegedly violating this new rule nearly 30 years ago when Petitioner pleaded guilty to a crime he now claims he did not commit.

While both the district court and Fifth Circuit spoke to the importance of the constitutional question posed by Petitioner, the case was resolved on non-constitutional grounds using well-established principles of municipal liability. The Fifth Circuit was explicit that it "need not here reach the issue of whether the prosecutor's actions violated *Brady* and Mansfield's due process rights." *Mansfield v. Williamson*

County, 30 F.4th 276, 280 (5th Cir. 2022). "Even assuming that they did," Petitioner's case for municipal liability is fatally flawed. *Id.*

Petitioner does not here challenge the Fifth Circuit's municipal liability holdings. Those holdings—and other non-constitutional grounds available to the lower courts—provide ample basis for affirming the Fifth Circuit's judgment. No matter how important or interesting the Question Presented may be, its answer is irrelevant to the outcome in this case. For that reason, this Court should deny the Petition.

STATEMENT OF THE CASE

I. Petitioner confesses and pleads guilty.

In the fall of 1992, Petitioner was indicted on two counts of Aggravated Sexual Assault of a Child and one count of Indecency with a Child. ROA.607. He stood accused of placing his finger inside the anus of a four-year-old girl. Under initial police questioning, Petitioner repeatedly confessed and recanted his confessions. ROA.1764 n.5. He would later submit to a polygraph examination in the hopes of proving his innocence. The polygraph results indicated deception. ROA.1764 n.5. Upon learning those results, Petitioner confessed again. ROA.1764 n.5.

Petitioner ultimately chose to plead guilty to the crime of Indecency with a Child in 1993. ROA.605. In his plea agreement, Petitioner "JUDICIALLY

CONFESSE[D] to committing Indecency with a Child . . . exactly as charged within the indictment." ROA.605.

When he chose to plead guilty, Petitioner did not make an *Alford* plea or otherwise maintain his innocence. *See North Carolina v. Alford*, 400 U.S. 25 (1970). The state trial court's judgment reflects that Petitioner "agreed in open court and in writing to waive a jury in the trial of this cause" and pleaded guilty. ROA.609-14. The court found Petitioner was competent to make his plea and was "not influenced in making said plea by any consideration of fear, or by any persuasion prompting a confession of guilt." ROA.609-14. Petitioner was sentenced to 10 years in prison, but the sentence was suspended and Petitioner was instead placed on probation. ROA.609-14.

II. Decades later, Petitioner obtains habeas relief based on prosecutors' failure to disclose the victim's inconsistent statement during plea negotiations.

More than twenty years later, Petitioner filed an application for a writ of habeas corpus in Texas state court. ROA.616. He claimed to be "actually innocent based on newly discovered evidence," and argued his guilty plea was invalid because the State of Texas had failed to disclose *Brady* material prior to his guilty plea. ROA.616. Specifically, Petitioner alleged the State of Texas had failed to disclose to him and his lawyer that during a second, post-indictment interview of

the child victim she made statements inconsistent with her initial accusation against Petitioner. ROA.616, 618-19. In response, the State of Texas agreed its prosecutors had failed to disclose exculpatory evidence and thereby violated Petitioner's due process rights.[1] ROA.618. The State of Texas denied Petitioner was actually innocent. ROA.616.

Without conducting an evidentiary hearing, the state habeas court granted Petitioner partial relief. ROA.617. The court found Petitioner's "due process rights were violated and that his plea was not voluntary." ROA.621. The court expressly declined to reach his claim of actual innocence, noting that the State of Texas still disputed that claim. ROA.616, 621.

III. Petitioner files a § 1983 lawsuit against Williamson County.

In 2018, Petitioner sued Williamson County. ROA.14. He alleged a single cause of action under § 1983, contending he was injured "[a]s a direct and proximate result of the unlawful withholding and

[1] The Petition inaccurately represents that "the parties agree that the prosecutors knowingly and intentionally withheld evidence" from Petitioner. Pet., at 30. To be clear, the State of Texas—not Williamson County—made that agreement in the context of Petitioner's state habeas application. Williamson County was not party to that habeas proceeding, and the State of Texas is not party to this suit. The cited testimony of John Prezas—a representative of the State of Texas through the Williamson County District Attorney's Office—establishes that the alleged failure to disclose evidence was a working assumption that Mr. Prezas "never actually investigated." Pet.App.91a.

suppression of the exculpatory evidence" by Williamson County. ROA.28-30. He identified the Williamson County District Attorney's "closed-file policy" as the official policy responsible for the purported *Brady* violation at the heart of this lawsuit. ROA.28; *Mansfield*, 30 F.4th at 278. "Closed file" referred to the prosecution's case file, which prosecutors did not routinely "open" to defense lawyers. ROA.15. Instead, prosecutors would provide lawyers with copies of discoverable materials in their files (such as lab reports, videotapes, and photographs) and provide oral disclosures of additional information, such as offense reports, and other exculpatory evidence. ROA.1796-99 (testimony of Petitioner's retained expert).

IV. The district court grants summary judgment in favor of Williamson County and the Fifth Circuit affirms.

Following discovery, Williamson County filed two motions for summary judgment on Petitioner's § 1983 claim. ROA.595; ROA.663. The district court granted one of those motions and did not reach the other.[2] ROA.1947.

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[2] Although the district court declined to reach Williamson County's motion for summary judgment raising its municipal liability arguments, the district court did hold that Petitioner "cannot base a § 1983 municipal liability claim on a constitutional right that does not exist." Pet.App.23a.

The Fifth Circuit affirmed. *Mansfield*, 30 F.4th at 281. Assuming that Petitioner's constitutional rights had been violated, the court held that Petitioner "falls short of alleging"—or proving, at the summary judgment stage—"either that the closed-file policy was the moving force behind the due process violation or a 'pattern of injuries' suggesting that the closed-file policy caused prosecutors to lie in plea negotiations." *Id.* at 280. The Court also addressed in dicta Petitioner's request that the Fifth Circuit panel reconsider the *en banc* Fifth Circuit's position "that *Brady* focuses on the integrity of trials and does not reach pre-trial guilty pleas." *Id.* The panel declined, holding to binding Fifth Circuit law. *Id.* at 280-81.

REASONS FOR DENYING CERTIORARI

I. This case is a poor vehicle for deciding whether to extend *Brady* to the plea-bargaining stage.

Constitutional claims brought against municipalities under § 1983 pose two distinct inquiries of "separate character." *Collins v. City of Harker Heights, Tex.*, 503 U.S. 115, 122 (1992). On one hand, there is the constitutional-violation question: were the plaintiff's constitutional rights violated? *Id.* On the other hand, there is the municipal-responsibility question: can the municipality be held liable for the constitutional violation, if one occurred? *Id.*

Notwithstanding the exclusive focus of Petitioner and the *amici*, this is a case about the latter inquiry, not the former. Section 1983 does not permit a municipality to be held liable simply because a municipal employee commits a constitutional tort. *Monell v. Dep't of Soc. Servs. of City of N.Y.*, 436 U.S. 658, 691-92 (1978). Courts are therefore obligated to enforce "rigorous standards of culpability and causation" to prevent a municipality from being held *liable* when its official policy is not *responsible* for the alleged injury. *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 404-05 (1997); *Collins*, 503 U.S. at 120.

The culpability standard requires official municipal action traceable to the municipality's final policymaker. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 127-31 (1988). And it requires plaintiffs to meet a "stringent standard of fault" by establishing that the municipality acted with deliberate indifference, "disregard[ing] a known or obvious consequence" of a chosen policy. *Brown*, 520 U.S. at 410-11. The causation standard requires that the policy at issue be the "moving force of the constitutional violation." *Monell*, 436 U.S. at 694. *See also Brown*, 520 U.S. at 404-05 ("a direct causal link between the municipal action and the deprivation of federal rights"). If these "rigorous" standards are not met, even an admitted constitutional violation cannot result in municipal liability. *Monell*, 436 U.S. at 691-92.

The Question Presented arises solely under the constitutional-violation prong of this analysis. Petitioner largely ignores—and does not now challenge—

the numerous municipal-responsibility holdings that can and did control the outcome of this case. An extension of *Brady* to the plea-bargaining stage would be meaningless to Petitioner's *Monell* claim, which is doomed for multiple independent reasons not challenged in this appeal. Those independent grounds for affirmance make this case an exceptionally poor vehicle for reaching the constitutional question Petitioner poses.

A. The Fifth Circuit affirmed on two independent, non-constitutional grounds without reaching the Question Presented.

This Court has no path to the Question Presented because the Fifth Circuit's opinion resolved Petitioner's single *Monell* claim on two independent, non-constitutional grounds: culpability and causation. *Mansfield*, 30 F.4th at 279-80. The constitutional question was addressed only briefly, in a few sentences of dicta reiterating the settled law in the Fifth Circuit. *Id.* at 280-81. Those non-constitutional grounds for affirming, neither of which Petitioner disputes in the Petition, provide two independent obstacles to reaching the constitutional question Petitioner would have this Court confront.

Petitioner tries to avoid the Fifth Circuit's non-constitutional holdings by fracturing his § 1983 claim into two allegedly distinct "theories." *See* Pet., at 31. But that argument is inconsistent with Petitioner's

complaint, with the law governing *Monell* claims, and with the Fifth Circuit's opinion.

Petitioner alleged a single *Monell* claim against Williamson County. ROA.28. As the Fifth Circuit explained, a *Monell* claim seeks to impose liability on a county based on "official county policy." *Mansfield*, 30 F.4th at 279. "Mansfield's pleadings identified . . . the closed-file policy as the official policy." *Id.*[3] This single alleged policy encompassed both of the "theories" Petitioner attempts to fracture in this appeal: prosecutors allegedly lying about exculpatory evidence rather than disclosing it. *Id.* ("Mansfield argues that the closed-file policy caused the prosecutors to violate his due process rights by lying about evidence they were under court order to disclose, which led to his involuntary guilty plea.").

The Fifth Circuit affirmed judgment in favor of Williamson County on two separate *Monell* grounds, noting that it did not need to "reach the issue of whether the prosecutor's actions violated *Brady*." *Mansfield*, 30 F.4th at 280; *see also id.* ("our issue here is *Monell* liability"). The Fifth Circuit assumed,

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[3] The district court correctly concluded that a closed-file policy is "not inherently unconstitutional," as prosecutors can meet their constitutional disclosure obligations without providing access to their entire case file. ROA.1951 n.4; *United States v. Bagley*, 473 U.S. 667, 675 (1985) ("the prosecutor is not required to deliver his entire file to defense counsel"). Mansfield did not challenge that holding in the Fifth Circuit and does not dispute it in the Petition.

without deciding, a *Brady* violation occurred. *Id.* But even if prosecutors violated *Brady*, Williamson County's alleged official policy was not "the moving force behind the due process violation." *Id.* at 281. That is the causation holding. *Id.* at 280 ("we cannot conclude that the closed-file policy was the moving force that caused the prosecutors to lie"). And even if that policy were causally connected to the *Brady* violation, it is undisputed that Petitioner failed to even *allege*, much less prove at the summary judgment stage, the "pattern of injuries" necessary to establish deliberate indifference. *Id.* That is the culpability holding. *See Brown*, 520 U.S. at 407, 409.

Petitioner challenges neither the culpability holding nor the causation holding. Accordingly, any challenge to those independent grounds for affirming judgment in Williamson County's favor has been waived. *Conn. Ry. & Lighting Co. v. Palmer*, 305 U.S. 493, 496 (1939); *Muehler v. Mena*, 544 U.S. 93, 104 n.1 (2005) (Stevens, J., concurring). The only question "set out in the petition" is the constitutional question. SUP. CT. R. 14(a). For purposes of this appeal, the answer to that question is irrelevant because the Fifth Circuit assumed it was answered in Petitioner's favor and still held for Williamson County on grounds not presented to this Court for review.

Just a few years ago the Fifth Circuit, sitting *en banc*, confronted the same *Brady* question that Petitioner presents to this Court. *Alvarez v. City of Brownsville, Tex.*, 904 F.3d 382, 392 (5th Cir. 2018). As in this case, the Fifth Circuit addressed that constitutional

question only after it had disposed of the case on two non-constitutional *Monell* grounds: culpability and causation. *Id.* at 390-92. Like Petitioner, the unsuccessful *Monell* plaintiff in *Alvarez* sought a writ of certiorari, presenting as the sole question "whether due process requires the government to disclose exculpatory evidence before entering a plea agreement with a criminal defendant." *See* Petition for Writ of Certiorari, *Alvarez*, 904 F.3d 382 (No. 16-40772), 2018 WL 6975659, at *i. As in this case, the Fifth Circuit's independent holdings made the case a poor vehicle for reconsidering the reach of *Brady*. *See* Brief in Opposition, *Alvarez*, 904 F.3d 382 (No. 16-40772), 2019 WL 1989188, at *19 ("the beginning and ending point for certiorari review in this case should be the nonconstitutional issue of municipal responsibility"). This Court denied certiorari. *Alvarez v. City of Brownsville, Tex.*, 139 S. Ct. 2690 (2019).[4] It should do the same here.

Avoiding the constitutional-injury question and resolving the case on non-constitutional municipal liability grounds is consistent with the doctrine of constitutional avoidance. *See Collins*, 503 U.S. at 121. For example, this Court assumed a constitutional violation had occurred in *Oklahoma City v. Tuttle* and held for the city on *Monell* grounds. 471 U.S. 808, 817 (1985).

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[4] Since *Alvarez*, this Court has at least twice denied certiorari in state habeas cases raising the same or substantially similar questions about the extension of the *Brady* due process right to plea bargains. *See Hudak v. Illinois*, 141 S. Ct. 267 (2020); *McClatchy v. Texas*, 142 S. Ct. 119 (2021).

Similarly, in *City of St. Louis v. Praprotnik*, this Court expressly declined to decide whether a constitutional violation had occurred, instead reversing because the challenged action was not shown to be official city policy. 485 U.S. 112, 127-31 (1988). The Fifth Circuit followed this tradition here, and its resolution of the case on unchallenged *Monell* grounds counsels strongly against granting certiorari.

B. The Fifth Circuit could also have affirmed because the closed-file policy was established by an official acting for the State of Texas, not Williamson County.

The parties do not dispute that the closed-file policy providing the basis for Petitioner's *Monell* claim was established by the then-elected District Attorney in Williamson County, Ken Anderson. That undisputed fact is also dispositive of the case and provides yet another non-constitutional basis for affirming the Fifth Circuit's decision. This Court's precedent and recent Fifth Circuit case law clearly establish that when a Texas district attorney sets a prosecutorial policy, he acts for the State of Texas, not the county in which he serves.

The task of determining the status of a dual-hat policymaker is "guided by two principles." *McMillian v. Monroe Cnty., Ala.*, 520 U.S. 781, 785 (1997); *Arnone v. Cnty. of Dallas Cnty., Tex.*, 29 F.4th 262, 266 (5th Cir. 2022). First, the inquiry is narrow, limited to the

"particular area" or "particular issue" relevant to the *Monell* claim. *McMillian*, 520 U.S. at 785. A policymaker may be a state actor when making certain decisions but a county actor when making others. *Id.* Second, the inquiry is "dependent on an analysis of state law." *Id.* The question is how "relevant state law" defines "the actual function of a government official." *Id.*

Applying these two principles to District Attorney Anderson, he acted as a state policymaker (and *not* as a county policymaker) in adopting the closed-file policy. "Relevant Texas law inescapably points that way." *Arnone*, 29 F.4th at 268. "To begin, the Texas Constitution supports that the district attorney acts for the state." *Id.* "Texas caselaw from its highest criminal court agrees." *Id.* at 269. In Texas, "district attorneys aren't just empowered *by* the state. They *are* the state, complete with designation as officers of the judicial branch of government." *Id.* (cleaned up).

When District Attorney Anderson exercised his discretion to set the discovery policy his prosecutors would employ when prosecuting criminal offenses on behalf of the State of Texas, he was exercising state authority and functioning as a state actor. The Fifth Circuit recently reached the same conclusion in a similar case. *Id.* In *Arnone*, the Fifth Circuit held that "district attorneys act for the state" when they set policies concerning "the revocation of probation or deferred adjudication." *Id.* at 269-70. Like the closed-file policy governing criminal discovery, the "polygraph policy" at issue in *Arnone* was "inextricably linked to [the] use

of state power." *Id.* Accordingly, District Attorney Anderson acted for the State of Texas in adopting the closed-file policy, and Williamson County cannot be held responsible for any injury allegedly caused by that policy. *Id.*; *McMillian*, 520 U.S. at 793 (Alabama county sheriffs "represent the State of Alabama, not their counties," when "executing their law enforcement duties"); *Daves v. Dallas Cnty., Tex.*, 22 F.4th 522, 540-41 (5th Cir. 2022) (Texas county and district court judges act on behalf of State of Texas when setting bail policy).

Although neither court below needed to reach this issue in light of their alternative holdings, the argument was presented at both levels. ROA.675; Appellee's Br., *Mansfield v. Williamson County*, 30 F.4th 276 (No. 20-50331), 2020 WL 6833317, at *27. As a matter of law, Williamson County cannot be liable under § 1983 for actions District Attorney Anderson took as a policymaker for the State of Texas. This alternative, non-constitutional basis for decision also makes this matter a poor vehicle for reaching the Question Presented.

C. Even if this Court were to extend *Brady*, Williamson County could not have acted with deliberate indifference given the law at the time the closed-file policy was implemented.

This case is also a poor vehicle for answering the Question Presented because Petitioner seeks a novel

extension of the *Brady* right that cannot retroactively impose liability for a policy adopted decades ago.

Deliberate indifference requires showing that a policymaker chose to enact a policy in the face of a known or obvious risk that the constitutional violation alleged would occur. *Alvarez*, 904 F.3d at 390. But as the Fifth Circuit explained in *Alvarez*, it is legally impossible for a policymaker to act with deliberate indifference to violations of "a constitutional right that a circuit court has expressly held does not exist—*e.g.*, the defendant's right to be presented with *Brady* material before entering a guilty plea." *Alvarez*, 904 F.3d at 391-92.

District Attorney Anderson could not have acted with deliberate indifference to a constitutional right that was not established—much less "clearly established"—at the time his closed-file policy was enacted in the mid-1980s. *See Alvarez*, 904 F.3d at 391-92; *Gonzalez v. Ysleta Indep. Sch. Dist.*, 996 F.2d 745, 759-60 (5th Cir. 1993). Petitioner claims Texas settled the question of *Brady*'s expansion to plea-bargaining with *Ex parte Lewis*, 587 S.W.2d 697 (Tex. Crim. App. 1979). But the Texas Court of Criminal Appeals itself disagrees, calling the question of whether *Brady* "extends to the pretrial stage of prosecution" an "open question" as recently as 2016. *Ex parte Palmberg*, 491 S.W.3d 804, 814 (Tex. Crim. App. 2016). And when the Fifth Circuit analyzed *Lewis*, it concluded that its holding was based on state law, not the United States Constitution. *Matthew v. Johnson*, 201 F.3d 353, 364 (5th Cir. 2000). The Fifth Circuit therefore held that a Texas

state court confronted with the question in 1994, the year after Petitioner pleaded guilty, would not have "felt compelled to decide that a prosecutor's failure to disclose exculpatory information prior to entry of a guilty or nolo contendere plea was a *Brady* violation, or otherwise a violation of the Due Process Clause." *Id.*

Even if this Court were to expand the *Brady* right to plea negotiations as Petitioner requests, Williamson County would still prevail on non-constitutional *Monell* grounds. Criminal defendants expressly take the risk that the law might later change in their favor when they waive their rights as part of their guilty plea. *Brady v. United States*, 397 U.S. 742, 757 (1970). The law protects the state's interest in the finality of judgments by prohibiting such defendants from later invalidating their pleas once the law becomes more favorable. The *Monell* doctrine is at least as protective. *Monell*'s stringent culpability standards do not permit municipalities to be held liable retroactively when new rules of constitutional law render prior policies unsound.

D. Even if this Court were to extend *Brady*, Petitioner's waiver of his *Brady* rights still forecloses his § 1983 claim.

At the time Petitioner chose to plead guilty, he had no federal constitutional right to receive exculpatory evidence during his plea negotiations. But even if he had such a right—or if this Court were to create one—Williamson County still prevails because Petitioner

waived his right to assert a *Brady* violation in subsequent litigation. It is settled law in the Fifth Circuit that "a guilty plea precludes the defendant from asserting a *Brady* violation." *United States v. Conroy*, 567 F.3d 174, 178 (5th Cir. 2009); *Alvarez*, 904 F.3d at 397 (Ho, J., concurring).

"Plea bargains, by their very definition, involve the waiver of a number of fundamental rights." *Id.* at 399 (Ho, J., concurring). Among those rights is "the right to disclosure of exculpatory evidence under *Brady*." *Id.* This Court "has *never* held that *Brady* establishes an unwaivable right at the plea bargaining phase," and in fact "has held precisely the opposite in the context of two different categories of *Brady* material." *Alvarez*, 904 F.3d at 398 (Ho, J., concurring) (citing *United States v. Ruiz*, 536 U.S. 622 (2002)). That idea extends to future rights as well. "Supreme Court precedent is quite explicit that as part of a plea agreement, criminal defendants may waive both rights in existence and those that result from unanticipated later judicial determinations." *United States v. Porter*, 405 F.3d 1136, 1144 (10th Cir. 2005) (citing *Brady v. United States*, 397 U.S. 742, 757 (1970); *United States v. Ruiz*, 536 U.S. 622, 630 (2002)). Petitioner does not challenge this settled law or ask this Court to otherwise modify the law of waiver such that Petitioner could assert a right he previously waived when he agreed to plead guilty.

The only way for Petitioner to now assert the *Brady* rights he waived would be for this Court to make those rights unwaivable at the plea-bargaining stage. Concurring in *Alvarez*, Judge Ho explained the

dangers attendant in "[f]orcing unwaivable 'rights' upon the accused." *Id.* at 401. By making a right to disclosure of evidence unwaivable, this Court would be *eliminating a defendant's right* to place that benefit on the bargaining table. *See id.* "We empower the accused when we allow them to waive their rights." *Id.* Telling a defendant what evidence he must obtain "is to imprison a man in his privileges and call it the Constitution." *See id.* (quoting *Adams v. U.S. ex rel. McCann*, 317 U.S. 269, 280 (1942)).

II. A new constitutional rule expanding *Brady* is not necessary.

Given the ubiquity of plea bargains in the modern criminal justice system, the rule Petitioner proposes would have an impact on a significant number of future criminal prosecutions. It is not necessary to burden both prosecutors and criminal defendants with another layer of constitutional compliance.

Since Petitioner pleaded guilty in 1993, the law has steadily shifted in favor of disclosure of evidence to criminal defendants. Texas provides a good example. At the time Petitioner was prosecuted, there was "no general right of discovery" in a Texas criminal proceeding. *Watkins v. State*, 619 S.W.3d 265, 274 (Tex. Crim. App. 2021). In 2013, Texas "overhaul[ed]" the criminal discovery process through the passage of the "Michael Morton Act." *Id.* at 277 (discussing TEX. CODE CRIM. PROC. Art. 39.14). Texas law now makes "disclosure the rule" by giving the prosecution "a free-standing duty to

disclose" *all* exculpatory, impeaching, and mitigating evidence prior to trial and to formally document those disclosures "before a criminal defendant can plead guilty." *Id.* at 277-78 (citing TEX. CODE CRIM. PROC. Art. 39.14(h), (j)). This state-law "duty to disclose is much broader than the prosecutor's duty to disclose as a matter of due process under *Brady v. Maryland*." *Id.* at 277.

Many other states have made early disclosure of *Brady* material mandatory, setting hard deadlines for such disclosure and imposing continuing duties to disclose. *E.g.*, ALA. R. CRIM. PROC. 16.1 (within 14 days of request); COLO. R. CRIM. PROC. 16 (within 21 days of defendant's first appearance); DEL. SUP. CT. R. CRIM. PROC. 16 (within 20 days of request); FLA. R. CRIM. PROC. 3.220 (within 15 days of request); N.M. R. CRIM. PROC. 5-501 (within 10 days of arraignment). Other states without such deadlines instead use descriptive timeframes, such as "as soon as possible," to mandate timely disclosure. *E.g.*, VT. R. CRIM. PROC. 16 ("as soon as possible"); ARK. R. CRIM. PROC. 17.2 ("as soon as practicable").

Federal criminal practice has trended towards voluntary disclosure as well. In 2006, the Department of Justice implemented training and policies for federal prosecutors requiring them to read *Brady* "expansively," to "err on the side of disclosing exculpatory and impeaching evidence," and to do so "reasonably promptly" after such information is discovered. *See Brief for United States as Amicus Curiae* at 14, *Alvarez v. City of Brownsville, Tex.*, 904 F.3d 382 (5th Cir.

2018) (No. 16-40772) 2017 WL 6453751, at *14 (citing United States Attorneys' Manual § 9-5.001(B)-(D)). And in 2020, Federal Rule of Criminal Procedure 5 was amended to mandate that every federal judge issue both an oral and written order "confirm[ing] the disclosure obligation of the prosecutor under *Brady*" at the "first scheduled court date where both prosecutor and defense counsel are present." FED. R. CRIM. PROC. 5(f)(1). These policies favor disclosure, including voluntary disclosure during plea negotiations, without imposing the substantial burdens that a new constitutional rule would add to the plea-bargaining process. *See* Brief for United States as Amicus Curiae, 2017 WL 6453751, at *16-17. Those burdens would be felt even in cases where the defendant knows he is guilty and desires to admit that guilt. *See id.* And they would undermine the finality of criminal convictions by providing defendants another constitutional avenue to challenge the validity of their convictions when they later regret their decision to admit their guilt. *See id.* These substantial burdens are among the reasons the Department of Justice has opposed efforts to expand *Brady* as Petitioner requests. *Id.* at *12-17.

A new constitutional rule is also unnecessary because numerous other protections exist to reduce the risk that a criminal defendant pleads guilty solely because he does not know about exculpatory evidence in the prosecutor's file. "Defendants advised by competent counsel and protected by other procedural safeguards are presumptively capable of intelligent choice in response to prosecutorial persuasion, and unlikely

to be driven to false self-condemnation." *Bordenkircher v. Hayes*, 434 U.S. 357, 363 (1978). This Court has held that "a counseled plea of guilty is an admission of factual guilt so reliable that, where voluntary and intelligent, it quite validly removes the issue of factual guilt from the case." *Menna v. New York*, 423 U.S. 61, 62 n.2 (1975). In the unlikely scenario that an innocent person chooses to falsely plead guilty, the law provides other avenues for reversing such convictions (*i.e.*, habeas relief) and even compensating the defendant. *E.g.*, TEX. CIV. PRAC. & REM. CODE § 103.001(a).[5] No more is needed.

III. The Fifth Circuit's position in *Alvarez* is correct.

Finally, the Petition should be denied because the *en banc* Fifth Circuit's position on the Question Presented, confirmed years ago in *Alvarez* and merely reiterated in dicta in this case, is correct.

"[I]t is well established that *Brady* is a *trial* right." *Alvarez*, 904 F.3d at 399 (Ho, J., concurring). *Brady* and its progeny in this Court have repeatedly emphasized that the core principle animating the disclosure rule is the defendant's right to a fair trial. *E.g.*, *United States v. Agurs*, 427 U.S. 97, 108 (1976); *United States v.*

[5] Mansfield is unable to take advantage of Texas's compensation program because he was never found to be "actually innocent" of the crime he admitted he committed, nor did the State of Texas aver its belief in his innocence. TEX. CIV. PRAC. & REM. CODE § 103.001(a)(2)(B), (C)(ii).

Bagley, 473 U.S. 667, 675 (1985); *Ruiz*, 536 U.S. at 628. On this point, the Fifth Circuit is aligned with several of its sister courts in recognizing what should be "universally acknowledged." *United States v. Mathur*, 624 F.3d 498, 507 (1st Cir. 2010); *United States v. Moussaoui*, 591 F.3d 263, 285 (4th Cir. 2010); *Friedman v. Rehal*, 618 F.3d 142, 154 (2d Cir. 2010); *Robertson v. Lucas*, 753 F.3d 606, 621 (6th Cir. 2014) (citing *Campbell v. Marshall*, 769 F.2d 314, 318, 323-34 (6th Cir. 1985)). "Extending *Brady* to the plea bargaining phase thus contradicts the established understanding of *Brady* as a trial right." *Alvarez*, 904 F.3d at 399 (Ho, J., concurring).

The constitutional guarantee of a fair trial is one of the rights a defendant chooses to waive when pleading guilty. That waiver, and the elimination of the trial itself, renders *Brady* irrelevant. *See Ruiz*, 536 U.S. at 634 (Thomas, J., concurring) ("The principle supporting *Brady* . . . is not implicated at the plea stage.").

CONCLUSION

For the foregoing reasons, Respondent Williamson County, Texas respectfully requests the Court deny the Petition.

Respectfully submitted,

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