No. _____

IN THE

Supreme Court of the United States

KRISHNA MAHARAJ,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS; WARDEN, SOUTH FLORIDA RECEPTION CENTER; FLORIDA ATTORNEY GENERAL,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Clive A. Stafford Smith
La. State Bar No. 14,444
LITERARY & SCIENTIFIC INST.,
51 East Street,
Bridport, Dorset DT6 3JX UK
+44 7885649246
clive@3dc.org.uk

Benedict P Kuehne
KUEHNE DAVIS LAW, PA
100 SE 2 Street, Suite 3105
Miami, FL 33131-2154
305.789.5989
ben.kuehne@kuehnelaw.com

Donald B. Verrilli, Jr.
Counsel of Record
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001-5369
(202) 220-1100
Donald.Verrilli@mto.com

Counsel for Petitioner

QUESTION PRESENTED

When a court of appeals authorizes adjudication of a claim in a second or successive habeas petition pursuant to 28 U.S.C. 2244(b)(3)(A), is the district court adjudicating the claim jurisdictionally barred from considering any evidence supporting the claim that the court of appeals has not specifically identified in its authorization order, as the court of appeals held in this case, or does the district court have the power to consider all evidence that bears directly on the authorized claim, as the Seventh Circuit has held?

PARTIES TO THE PROCEEDINGS

Petitioner Krishna Maharaj was Plaintiff in the district court and Petitioner/Appellant in the court of appeals.

Respondent Secretary, Florida Department of Corrections was Defendant in the district court and Respondent/Appellee in the court of appeals.

Respondent Warden, South Florida Reception Center was Defendant in the district court and Respondent/Appellee in the court of appeals.

Respondent Florida Attorney General was Defendant in the district court and Respondent/Appellee in the court of appeals.

RELATED PROCEEDINGS

The proceedings directly related to this petition are:

- *Maharaj* v. *Secretary, Florida Department of Corrections*, No. 21-14816 (11th Cir. May 23, 2022)
- *Maharaj* v. *Florida Department of Corrections*, No. 17-cv-21965 (S.D. Fla. Nov. 30, 2020)
- *Maharaj* v. *Secretary, Florida Department of Corrections*, No. 05-1555 (U.S. Oct. 2, 2006)
- *Maharaj* v. *Secretary, Florida Department of Corrections*, No. 04-14669 (11th Cir. Dec. 15, 2005)
- *Maharaj* v. *Moore*, No. 02-22240 (S.D. Fla. Aug. 31, 2004)
- *Maharaj* v. *Secretary for the Department of Corrections*, No. 02-10257 (11th Cir. Sept. 13, 2002)
- *Maharaj* v. *Moore*, No. 01-cv-3053 (S.D. Fla. Dec. 27, 2001)
- *Maharaj* v. *Florida*, No. 00-9614 (U.S. June 25, 2001)
- *Maharaj* v. *State*, No. 91854 (Fla. Nov. 30, 2000)
- *Maharaj* v. *State*, No. 85439 (Fla. Sept. 19, 1996)
- *Maharaj* v. *Florida*, No. 92-5850 (U.S. Jan. 11, 1993)
- *Maharaj* v. *State*, No. 71646 (Fla. Mar. 26, 1992)

- Petitioner anticipates shortly filing an original habeas petition on his free standing claim of innocence.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

TABLE OF AUTHORITIES
(continued)

Page(s)

STATE CASES

FEDERAL STATUTES

TABLE OF AUTHORITIES
(continued)

Page(s)

RULES

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The judgment of the Eleventh Circuit Court of Appeals in *Krishna Maharaj* v. *Secretary, Department of Corrections*, No. 20-14816 (11th Cir. Mar. 17, 2022), is reprinted at Pet App. 1a. The Eleventh Circuit's denial of Petitioner's application for rehearing, on May 13, 2022, is reprinted at Pet App. 33a.

JURISDICTION

The court of appeals issued its decision in this case on March 17, 2022. A petition for rehearing en banc was denied on May 13, 2022. On August 3, 2022, this Court extended the time for filing a petition for certiorari to September 12, 2022. The jurisdiction of this Court is invoked under 28 U.S.C. 1254, and U.S. Constitution art. I, § 9, cl. 2.

RELEVANT STATUTES

28 U.S.C. 2244(b) provides:

> **(b)(1)** A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.
>
> **(2)** A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—
>
> **(A)** the applicant shows that the claim relies on a new rule of constitutional law, made retro-

active to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3)(A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

> **(E)** The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.
>
> **(4)** A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.

INTRODUCTION

Congress preserved the possibility of a second or successive federal habeas corpus petition for the rare cases in which a person serving a criminal sentence can prove a constitutional violation based on newly discovered facts that "establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty" of the crime of conviction. 28 U.S.C. 2244(b)(2)(B)(ii).

This is such a case. Through decades of diligent effort, Petitioner Krishna Maharaj developed evidence establishing that he did not commit the murders for which he was convicted. He also established that the prosecution failed to disclose information about the person who actually committed the murders—a hitman carrying out orders from the head of a Columbian drug cartel to kill the victims because they had skimmed substantial sums from the hundreds of millions of dollars they laundered for the cartel. See *Brady* v. *Maryland*, 373 U.S. 83 (1963).

The court of appeals authorized Maharaj to file a successor habeas petition based on this evidence, find-

ing it to be (if proven) compelling evidence of innocence. 28 U.S.C. 2244(b)(3)(A). But when the court of appeals later reviewed the district court's denial of Maharaj's *Brady* claim, it refused to consider critical evidence establishing both the *Brady* violation and Petitioner's innocence: A CIA informant's testimony that he had told a joint federal/state task force (which included at least one officer from the unit that arrested and prosecuted Maharaj) that the Columbian drug cartel had committed the murders, and that Maharaj had been framed. The court reached that perplexing and manifestly unfair result by construing the scope of the *Brady* claim it had authorized for adjudication under § 2244(b)(3)(A) in an exceedingly narrow way, and holding that the district court adjudicating the claim lacked jurisdiction to consider this critical evidence because it was not expressly encompassed within the scope of the authorization.

That parsimonious approach to § 2244(b)(3)(A) authorization lacks any grounding in the statutory text and is unsound as a matter of judicial administration. A 2244(b)(3)(A) authorization—which is subject to a 30-day time limit and involves only limited briefing and no oral argument—is necessarily and by design a first look, not a definitive merits determination. It should not prohibit a district court adjudicating an authorized claim from considering evidence that bears directly on that claim—particularly where, as here, the habeas petitioner has identified that evidence to the court of appeals at the authorization stage. The Seventh Circuit recognized precisely that in a decision that conflicts with the ruling of the court of appeals in this case. See *Reyes* v. *United States*, 998 F.3d 753, 760 (7th Cir. 2021). In contrast to the Seventh Circuit, the approach of the court of appeals in this case threat-

ens to choke off the avenue for relief that Congress designed § 2244 to ensure. This Court's review of that decision is manifestly warranted.

STATEMENT

1. The Trial.

Petitioner Maharaj was charged in 1986 with two counts of first-degree murder and related offenses concerning the deaths of Derrick and his 23-year old son Duane Moo Young, who were killed in Room 1215 of the Dupont Plaza Hotel in Miami, Florida on October 16, 1986, at around noon. Petitioner was tried before a jury in 1987 and found guilty. He was sentenced to death on one count of murder and to terms of imprisonment on the remaining counts. On appeal, the Florida Supreme Court affirmed. *Maharaj* v. *State*, 597 So. 2d 786 (Fla. 1992) ("*Maharaj II*"), *cert denied*, 506 U.S. 1072 (1993).

Maharaj is a British citizen, born in Trinidad in 1939, who moved to the United Kingdom and became a successful businessman. In the 1970s he invested in property in South Florida. He had been introduced to Derrick Moo Young in London, and accepted Derrick's offer to manage his burgeoning property portfolio. Maharaj eventually discovered that Moo Young had been embezzling from him.

On the third day of Petitioner's trial, the presiding judge was arrested for allegedly taking a bribe from a law enforcement agent pretending to be a drug dealer. The trial was reassigned to a new judge, and proceeded. The prosecution's theory was that Maharaj had murdered the Moo Youngs in a dispute over the embezzlement of more than $400,000. The prosecution portrayed the victims as impoverished businessmen whose tax returns revealed an income of little

more than $20,000 a year, and identified the dispute over the embezzled funds as Petitioner's motive for killing the Moo Youngs. According to the prosecution, Petitioner wanted to force them at gunpoint to sign a check to cover the embezzled funds. The prosecution supported this theory with the testimony of an alleged eyewitness, Neville Butler, who testified that he assisted Petitioner in luring the Moo Youngs to the hotel and witnessed Petitioner shoot them when the plan to recoup the embezzled funds went awry. The prosecution buttressed its case with the following evidence:

- Maharaj's fingerprints were found in Room 1215 of the hotel, but the lead detective, John Buhrmaster, said Maharaj denied ever being in the room.
- Ballistics evidence indicated that the victims were shot with a Smith & Wesson pistol, and a state trooper testified that he had observed such a weapon in the trunk of Maharaj's car some months before the shooting, but again Detective Buhrmaster said Maharaj denied ever owning such a weapon.
- Testimony from Tino Geddes, who stated that Maharaj engaged in three "dry run" attempts to kill Derrick Moo Young, and then asked for help in creating a false alibi.

Mr. Maharaj's counsel put on no evidence in his client's defense at trial. Counsel argued that reasonable doubt existed because the murders could have been committed by a mysterious Colombian named Jaime Vallejo Mejia who was registered in Room 1214, across the hall from the murder scene and the only other occupied suite on the floor. There was blood outside the door of 1214.

In what appeared to be an attempt to preemptively neutralize any "speculation" that Mejia committed the murders, the prosecutor led Detective Buhrmaster through the steps he took to "check out" Mejia (Tr. at 3405-3408, *Maharaj* v. *Jone*s, No. 17-21965 (Dec. 7, 2017), ECF No. 37 ("1987 Tr.")). On cross-examination, (1987 Tr. 3495-3501), Detective Buhrmaster emphasized that he "ran checks" on the Colombian with "any and all agencies" (1987 Tr. 3497-3498) (emphasis supplied):

> Q. You did no investigation to determine what it is this gentleman imports and exports?
>
> A. [by Detective Buhrmaster] No, that's not true. *I stated that we ran checks on him.*
>
> Q. I am sorry, go ahead.
>
> A. *Checks on him throughout any and all agencies on Mr. Mejia as well as his name, business.*

On re-direct, Buhrmaster emphasized that Mejia remained in the hotel for a significant time after the murders (1987 Tr. 3551), thus leading the jury and defense counsel to believe that Buhrmaster did not just "check him out" at the time, but kept tabs on him (1987 Tr. 3554-3555) (emphasis supplied):

> Q. [Prosecutor] What did you do to check out his story?
>
> A. [Detective Buhrmaster] I talked to him. Two other detectives had talked to him. We sat down as far as what information that they solicited from him, what information that I got from him. Mr. Mejia's story never changed one bit. We verified through the Dupont Plaza ex-

> ecutive offices that he did, in fact, have a business there. He had been there for years, *ran various checks on him throughout ourselves as well as other different agencies, and Mr. Mejia came back with absolutely nothing.*

At the very beginning of the closing argument, the prosecutor told the jury (1987 Tr. 3909-3910) (emphasis supplied):

> Mr. Jaime Mejia, simply because he is Colombian and he is in the import/export business must be responsible for the death of Derrick and Duane Moo Young, simply because he lived across the hallway from the suite where the murders took place. When Detective Buhrmaster took the stand, [one] theory of defense focused on Jaime Mejia. Why didn't you go into his suite? Why didn't you conduct firearms test, paraffin on Mr. Mejia? Why did you not take elimination prints from Mr. Mejia?
>
> Because, Detective Buhrmaster told you, that I spoke with Mr. Mejia. He was a Colombian gentleman in his mid 50's, about 5'3", 5'3", 150 pounds. He had worked at the Dupont Plaza. *We checked his story out*. He resided at Dupont Plaza. *He continued long after the murders occurred* to work and live at the Dupont Plaza Hotel.

Thus, the possibility that Mejia might have committed the murders did come up, but defense counsel had no evidence to support it and it was "refuted" by what would later turn out to be the prosecution's erroneous testimony and argument. On the basis of what the jury heard at trial, they convicted Maharaj of the murders. He was sentenced to death for the

murder of Duane and to life imprisonment for the murder of Derrick.

2. Prior Postconviction Proceedings.

Maharaj filed an initial state petition for post-conviction relief in November 1993. The trial court vacated his death sentence, finding it was illegally imposed because the substitute trial judge had solicited the prosecution, *ex parte*, to prepare an order sentencing Maharaj to death before the judicial sentencing hearing even took place. The trial court denied relief as to the convictions, and the Florida Supreme Court affirmed. *Maharaj* v. *State*, 778 So. 2d 944 (Fla. 2000) ("*Maharaj IV*"). Maharaj was resentenced to life in prison in 2002.

Maharaj then brought an action under 28 U.S.C. 2254 challenging his convictions. Although the initial postconviction proceedings did not result in vacatur of Maharaj's convictions, they brought to light considerable evidence suggesting that the Moo Youngs were murdered because they were stealing some of the money they were laundering for a Columbian drug cartel. Some of the evidence came from the files of the prosecution and the police. This evidence included documents, found in a briefcase belonging to Derrick Moo Young, which showed that the Moo Youngs had been offering loans around the Caribbean to the tune of *hundreds of millions of dollars*. Additional evidence was obtained from a lawyer representing the William Penn Life Insurance Company, who had defended against the Moo Young family's attempt to collect on two life insurance policies taken out shortly before the deaths of Derrick and Duane. 2nd Pet. for a Writ of Habeas Corpus by a Prisoner in State Custody ("Habeas Pet.") at 37-38, *Maharaj* v. *Jones*, No. 17-21965

("*Maharaj* v. *Jones*") (S.D. Fla. May 25, 2017), ECF No. 1.

a. *The activities of the Moo Youngs.* The briefcase contained passports for the Moo Youngs, revealing extensive travel across the Caribbean and the United States. It also contained documents showing that they offered loans to various Caribbean governments ranging from $100 million to $5 billion in the name of their front company, *Cargil International*, which had branches in the Bahamas and Panama. And it contained documents evidencing negotiations to purchase a bank in Panama for $600 million. On the basis of this and other evidence, the William Penn Life Insurance Company concluded that the Moo Youngs were likely engaged in money laundering. *Id.* at 32-36.

b. *Facts concerning Room 1215 at the Dupont Plaza Hotel.* The room where the murders occurred had been rented by a person named Eddie Dames. Dames turned out to have close links to F. Nigel Bowe, an attorney who was extradited to the United States and jailed on drug charges. Bowe's Bahamian law office was the registered address of the Moo Youngs' laundering front corporation, *Cargil International (Bahamas)*. Bowe knew Adam Amer Hosein, a Trinidadian who—according to telephone records that had not been disclosed to the defense—had called Room 1215 on the morning of the crime. A witness who worked for Hosein stated under oath that Hosein went to the Dupont Plaza that day with a pistol. *Id*. at 81-84.

c. *Facts relevant to motive.* Analysis of the documents in the briefcase revealed that the Moo Youngs were skimming from the money they were laundering—which would run to millions, and would be a weighty reason to fear for their lives at the hands of the cartel. *Id*. at 35-36.

d. *Fingerprints*. With respect to the fingerprints, Buhrmaster's colleague on the police force testified under oath in a pre-trial deposition (consistent with Maharaj's version of events) that Maharaj said from the start that he had been in Room 1215 for a business meeting set up by Butler to discuss distributing his newspaper, *The Caribbean Times*, in the Bahamas, but Dames never showed up, so he left. *Id*. at 40.

e. *Ballistics*. A note in Buhrmaster's file reflected, contrary to his testimony, that Maharaj said from the beginning that he once had a gun that he bought from police Lt. Bernie Buzzo, but that it was stolen some months before the murders, along with $1,000 in cash. This was corroborated by an independent witness. *Id*. at 40-47.

f. *Tino Geddes and the allegedly false alibi*. Petitioner proved that alibi witnesses were available and ready to testify credibly for Petitioner that he was 40 minutes away from the Dupont Plaza at the time of the murders; they all said Geddes was lying when he said he made up the alibi, and that defense counsel had failed to interview them before trial. *Id*. at 78.

g. *Neville Butler the "eyewitness."* The prosecution had represented to the trial court that Mr. Butler passed his polygraph test. The prosecution files showed he actually failed in significant ways, and that the test had been used to coerce him into changing his testimony—rendering perjurious Butler's six-times repeated insistence that he voluntarily came forward to correct his earlier testimony. In contrast, Mr. Maharaj took and passed a polygraph prior to trial.

While this material seemed to put the evidence adduced against Petitioner at trial in a very different light, the State and Federal courts dismissed Petitioner's challenge to his convictions, albeit the district

court granted a certificate of appealability because reasonable jurists could differ on the *Brady* violation. *Maharaj* v. *Moore*, No. 02-22240 (S.D. Fla. Aug. 31 2004). The court also rejected Maharaj's free-standing innocence claim, ruling that "[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas corpus relief absent an independent constitutional violation occurring in the underlying criminal proceeding." *Maharaj* v. *Moore*, No. 02-22240 (S.D. Fla. Aug. 31, 2004) at 49 ("*Maharaj V*"), quoting *Herrera* v. *Collins,* 506 U.S. 390, 400 (1993). The Eleventh Circuit denied Petitioner's appeal, finding the link to the drug cartel to be speculative. *Maharaj* v. *Secretary, Dep't of Corrections* ("*Maharaj VI*"), 432 F.3d 1292, 1303 (11th Cir. 2005).

3. The present proceedings.

State proceedings. While for some time it seemed that Petitioner had no other legal avenues, his *pro bono* lawyers uncovered *Brady* material that transformed what might have been "speculative" into hard fact. On the basis of that new evidence, Maharaj filed a second petition for post-conviction relief in the state court. Application for Leave to File a Second or Successive Habeas Corpus Petition, *In re Maharaj*, No. 17-10452-F (11th Cir. Jan 27, 2017).

First came the indictment of Jaime Vallejo Mejia for money laundering in the Western District of Oklahoma approximately five weeks prior to Maharaj's trial. Petitioner discovered documentation that there had been a three-year investigation into Mejia running at least from 1983 to 1986 by the joint State/Federal taskforce CENTAC. A senior member of CENTAC was Detective Al Singleton, a close colleague of

Detective Buhrmaster in the local homicide department. Mejia was indicted for money laundering, taking $40 million to Switzerland. The indictment was returned in Oklahoma, so the defense had no way to find it until a source in Columbia led *pro bono* counsel to find it.

Second, Maharaj alleged that the State Department of Business Regulation learned extensive details surrounding the investigation with a simple official request.

Third, Maharaj alleged that the testimony of Baruch Vega, a former CIA informant who was working for CENTAC, was in the constructive possession of the State. *Id*.

The indictment, finally confirming the suspected cartel links, led *pro bono* counsel to conduct an extensive follow-up investigation in the U.S. and in Colombia. A tip-off from a Miami journalist led counsel to Vega, then living in Los Angeles, who later testified without meaningful impeachment that:

- Everything he learned he reported back to his CENTAC handlers, who made reports of what he told them.
- He had been part of the investigation into Mejia, who was a known cartel operative.
- He had met Derrick Moo Young with Mejia, and knew Derrick to be involved in narcotics.
- After the murders Mejia admitted to him that they had to kill the Moo Youngs because they were stealing from Pablo Escobar, stating "we have to kill this bastard SOB for being a crook." 2014 Tr. 275.

- The names of both Tino Geddes and Adam Hosein came up in the narcotics investigation at the time.

Thus, unrebutted evidence established that CENTAC had *documentary* evidence (the "smoking gun") dating back to 1986. The State judge ordered discovery of this (and other) material but, since copies were now held by the federal agencies, the federal government refused to comply with the order.

At the original trial, Detective Buhrmaster swore under oath to the jury that he checked Mejia out with "all agencies." Had he done what he testified that he did, he would have learned that Mejia had been the subject of two different investigations from 1983-1986. Habeas Pet. at 150-158. Buhrmaster had only to pick up the phone to his fellow Miami homicide detective Al Singleton, a founding member of CENTAC.[1] Or he could have logged into NCIC. This was before the age of the internet, and the defense had no such access.

Maharaj's *pro bono* counsel traveled twice to Columbia and developed further evidence stemming from this *Brady* material. "John Brown,"[2] who worked for the cartel as a pilot, testified that in 1986,

---

[1] Special Agent Cuervo testified that Al Singleton was a trusted local homicide detective with whom federal agents would have shared any information they had. Report and Recommendation ("R. & R.") at 17, *Maharaj* v. *Jones* (S.D. Fla. Sept. 11, 2020), ECF No. 127.

[2] "Brown" was not his real name. After he was arrested he became an informant for the U.S. government and was, for a while, in the Witness Protection Program when he testified in fifteen trials for the prosecution, putting many people behind bars with statements that fit the same hearsay exception as did his statements in this case.

shortly after the Moo Young murders, Brown was at the farm of Pablo Escobar, who warned him not to steal, or he would meet the same fate as the victims in this case. Brown also testified that he met Mejia at Escobar's farm, and knew him as a senior member of the cartel.

Maharaj's counsel also identified Jorge Maya (who lived in Medellin). Maya testified to how another conspirator (his brother Luis) admitted his own role in paying the true architect of the murders, Guillermo Zuluaga Villegas (known as *Cuchilla*) for the murders on behalf of Escobar. Also, Jhon Jairo Vásquez-Velásquez (known as *Popeye*), was a notorious assassin for Escobar, who Maharaj's team first interviewed in prison in Colombia. He relayed a number of co-conspirator statements with details about how the Cartel carried out the murder, and he ratified them to former DEA Special Agent Henry Cuervo.

Cuervo testified as an expert[3] on the cartel in Miami where he was an agent, and later agent in charge. He had personally investigated the Maya brothers, and confirmed various aspects of the witnesses' statements.

Michael Flynn, a former Miami police officer, testified to how elements of the police had a corrupt arrangement with the cartel and would assist them with their crimes. He said his friend and partner Officer Pete Romero "hooked up" Petitioner (by which he meant that they framed him).

---

[3] The State trial court "credit[ed] Mr. Cuervo's testimony concerning how Colombian drug cartels operated in south Florida in the 1980s. He presents as a very informed and knowledgeable former law enforcement officer." ROA vol. 27, 5113.

Beyond this, because Tino Geddes (who changed his story shortly before trial from being an alibi witness to testifying that Petitioner sought his assistance in falsifying evidence) had died, witnesses were willing to come forward to testify about his links with a Jamaican narcotics gang with close links to the Colombian cartel (fast boats transported much of the narcotics from Colombia to Jamaica *en route* to the U.S.).

Finally, with respect to the eyewitness Neville Butler (who is now deceased), Petitioner presented six newly-discovered proceedings in which Butler had committed perjury. Another witness testified that Butler himself had been involved in the murders and had participated in making up a false story to tell the police. More broadly, Petitioner presented a complete analysis of Butler's changing statements, illustrating how he had committed perjury numerous times in Petitioner's case, and how his testimony was undermined by the physical evidence.

Despite this evidence, much of which the state court found "probative," the state court denied relief on the ground that it did not "give rise to a reasonable doubt as to Mr. Maharaj's guilt." Pet. App. 16a (quoting state court ruling). That ruling was upheld on appeal. *Maharaj* v. *State*, No. 3D15-321 (Fla. 3d DCA July 31, 2016); see Pet. App. 8a (district court decision).

Federal proceedings. Maharaj then sought leave from the court of appeals to file a successive petition for federal habeas relief. Order at 5, *In re Maharaj*, No. 17-10452-F (11th Cir. Mar. 18, 2017). A panel of the court of appeals granted the application at least with respect to Maharaj's *Brady* claim. *Id*.

While pursuing his state appeals, Petitioner had exercised diligence and developed additional evidence. That evidence included a legal but surreptitious recording of two Cartel operatives (Juan Lopez and an informant named Jhon Henry Millan) discussing in Spanish how the Moo Youngs had been defrauding Escobar, and stating that "people were sent to skin [*pelar*] them."

Maharaj also developed the evidence of *Witness A*, who insisted on anonymity due to death threats after personally visiting Jaime Mejia in Room 1214 of the Dupont Plaza Hotel. It transpired that Escobar himself paid Mejia's bail when he was arrested. *Witness A* and a friend (a government lawyer) went to speak with him. The lawyer was held outside at gunpoint while *Witness A* met with Mejia. Mejia did not dispute that Maharaj was innocent but said that "nobody who was involved in the cartel would take the risk to help someone like that" and that he "was not an exception."[4]

Based on this evidence, the Eleventh Circuit panel granted Maharaj's application to file a successive habeas petition:

> Mr. Maharaj has made a *prima facie* showing that his new evidence, when viewed in light of the evidence as a whole, would demonstrate that he could not have been guilty of the Moo Young murders beyond a reasonable doubt because if a hit man for the cartel committed the murders, Mr. Maharaj did not.

---

[4] *Witness A* made a successful application for asylum in the United States based on the danger he faced from cartel members.

Order at 6, *In re Maharaj*, No. 17-10452-F (11th Cir. Mar. 18, 2017).

However, because the order was expeditiously entered, given the 30-day deadline of 28 U.S.C. 2244, without full briefing or argument, it was not a model of clarity. The court confused significant facts, and concluded that:

> Because … Mr. Maharaj has made a *prima facie* showing that his subclaims 2(c) through (f) satisfy 2244(b)(2)(B), we grant his request for authorization to file a second or successive habeas petition in the district court.

Id. at 2-3 (footnotes omitted). Yet there were no subclaims 2(c) through (f) listed in Maharaj's application.

That did not appear to matter because the district court and all parties accepted that the court of appeals had authorized Maharaj to litigate his *Brady* issue based on the newly discovered evidence. The case was assigned to a magistrate judge. Maharaj asked for expedited discovery into the factual matters that he was unable to obtain through the discovery process in the state proceeding.[5] The request was denied without explanation. The magistrate judge initially ordered (Order, *Maharaj* v. *Jones*, No. 17-21965 (Sept. 13, 2019), ECF No. 105), but then denied (Order, *Maharaj* v. *Jones*, No. 17-21965 (July 20, 2020), ECF No. 124),

---

[5] In state court, the prosecutors intervened and actively encouraged the federal authorities not to comply with the court's discovery order. The Department of Justice did so, apparently relying on the Supremacy Clause interests identified in *United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1961). Maharaj therefore argued that federalism concerns militated that the "smoking gun" evidence should now be turned over.

an evidentiary hearing on the *Brady* issue. The magistrate judge then recommended the denial of all relief. *R. & R.*

In reviewing the magistrate judge's orders, the district court refused to grant even the "smoking gun" discovery Maharaj had requested and refused to hear the additional new evidence (the tape recording and the testimony of *Witness A*) that Maharaj's counsel had developed.

The district court denied relief. The court found the new evidence troubling. Pet. App. 33a ("To be clear, of the litany of habeas petitions before this Court, the facts of this case give the undersigned pause"). But the court ultimately concluded that "pause is insufficient to overcome the highly deferential standard set forth by [the Antiterrorism and Death Penalty Act]." *Id*.

In reaching that result, the district court failed to consider that the state court applied the wrong standard in holding that knowledge of the *Brady* material should not be imputed to the state. Neither the state court nor the district court mentioned Detective Buhrmaster's testimony, and the state's vigorous argument, that he had checked out Mejia with "all agencies," which would necessarily have included CENTAC and therefore encompassed the information Vega had conveyed.

The district court discounted the evidence of Mejia's indictment: "Mejia's federal indictment in Oklahoma—though seeming to be more than a coincidence—is too attenuated to overcome the evidence

at trial and the jury's determination that Maharaj committed the murders." Pet. App. 31a.[6]

But the indictment did not stand alone: it was inextricably linked to the other evidence Maharaj had introduced. The district court therefore had nothing before it to dispel the court of appeals' previous description of the "compelling" testimony "of five additional witnesses whose stories independently corroborate one another's." *Maharaj VIII* at 6. Maharaj appealed, and the Eleventh Circuit affirmed. The court appeared to base its decision, as law of the case, on its earlier opaque and erroneous denomination of Maharaj's *Brady* claim. Both parties had briefed the case to the panel on the assumption that the district court's certificate of appealability meant that the entire *Brady* violation was before the court of appeals. The court of appeals, however, asked for letter briefs on whether its prior remand on "subsections (c)-(f)" meant that certain facts key to the claim were not properly within the district court's jurisdiction to consider. Petitioner's letter brief pointed out at least 21 instances where the State had accepted that the Mejia indictment material and Vega testimony were central to the remand. The State filed a letter brief arguing (without citation to anything in the record mentioning claims "2(c)-(f)" that the district court

[6] It has never been Petitioner's "theory that Mejia conducted the murders on behalf of Pablo Escobar and the Colombian cartel." Pet. App. 15a. Rather, while Mejia was a money man in the conspiracy, Petitioner presented "testimony from Jorge Maya that the Moo Young murders were actually ordered by Pablo Escobar and carried out by Manuel Guillermo Zuluaga Salazar," Pet. App. 15a-16a, otherwise known as *Cuchilla* ("The Blade"). That is not to say he did the murders himself as his *modus operandi* was to send others to do the dirty work.

lacked jurisdiction to consider either the Mejia indictment or the Vega testimony as part of the *Brady* claim—an argument it never pressed in the district court or in its merits briefing to the court of appeals.

Without ever identifying where in Maharaj's application "Claims 2(c)-(f)" could be found, the court of appeals held that the district court lacked jurisdiction to consider the Vega testimony and its bearing on the *Brady* claim:

> Having *sua sponte* considered our jurisdiction over certain of Maharaj's claims, we conclude that we cannot review the merits of Maharaj's Brady claim as it relates to Vega's testimony. The district court did not have jurisdiction to consider arguments outside the scope of our grant of leave to file a successive habeas petition. Because we never granted Maharaj leave to raise a sub-claim based on the testimony of Vega, the district court lacked jurisdiction to consider it at all, much less certify it for appeal.

Pet. App. 4a.

The court of appeals then concluded, perplexingly, that the district court did have jurisdiction to consider the fact of Mejia's indictment but nonetheless rejected Maharaj's *Brady* claim. According to the court, Maharaj had equal access to public records of Mejia's indictment such that disclosure was not required under *Brady*, notwithstanding that Mejia was indicted 1,500 miles away in Oklahoma. Pet. App. 5a. The court of appeals also concluded that the prosecution had no duty to turn over evidence about Mejia because at the time it did not consider him a suspect in the murders of the Moo Youngs, noting that the state was under "no obligation to embark on a fishing

expedition into Mejia across jurisdictional lines." *Id*. In reaching this result, the court made no mention of the trial testimony of Detective Buhrmaster in which he stated that he had in fact checked out Mejia with "all agencies," presumably including CENTAC (which possessed the key *Brady* evidence provided by Vega).

REASONS FOR GRANTING THE PETITION

The proceedings in this case illustrate in stark terms how misapplication of the requirements of 28 U.S.C. 2244(b) can produce precisely the miscarriage of justice that the carefully-defined availability of successor habeas petitions exists to prevent.

The decision of the court of appeals in this case lacks any basis in the text of § 2244(b), is unsound as a matter of judicial administration, and conflicts directly with a ruling of the Seventh Circuit regarding what it means to make out a *prima facie* case sufficient to justify a remand under § 2244(b). In the present case, the court of appeals took an extraordinarily restrictive view of the scope of its § 2244(b) authorization—indeed, one that was based on a manifest error about nature and scope of Maharaj's *Brady* claim. In contrast, the Seventh Circuit, recognizing that "by statutory design, our initial review of such an application must be quick and is unlikely to be deep," authorizes district courts, to conduct a thorough inquiry into claims authorized under § 2244(b)(3)(A) (including allowing for amendment of such claims in the district court when standards for amendment under the Federal Rule of Civil Procedure 15 are otherwise met). *Reyes* v. *United States*, 998 F.3d 753, 760 (7th Cir. 2021).

The issue is important because it determines the jurisdiction of a district court considering a successive

habeas petition. As the facts of this case starkly confirm, the Eleventh Circuit's extraordinarily restrictive understanding of the jurisdictional scope of its authorization orders can preclude full and fair adjudication of authorized claims, even where a petitioner demonstrates by clear and convincing evidence that the facts underlying his claim establish that no reasonable trier of fact could have found him guilty beyond a reasonable doubt.

1. The initial order of the court of appeals purported to authorize adjudication of what it described as "Claims 2(c)–(f)" of Maharaj's habeas petition, which was mystifying because, as explained above, the petition contained no such denomination of his claims. Pet. App. 17a. The order acknowledged that Maharaj would seek to establish his claim based on the testimony of at least five witnesses, which necessarily included Vega, whose testimony was at the heart of Maharaj's application. Pet. App. 17a. Both the district court and the parties understood the court's order as an authorization to adjudicate Maharaj's alleged "[v]iolations of Brady v. Maryland" (Pet. App. 18a), and the district court considered Vega's testimony along with other evidence Petitioner submitted in support of the claim.

Yet on appeal of the district court's merits determination of the *Brady* issue that it had authorized, the court of appeals reached the remarkable conclusion that the district court lacked jurisdiction to consider critical factual evidence that supported Maharaj's claim. Specifically, as detailed above, the court of appeals held that it had not previously authorized consideration of this evidence because it had authorized further proceedings only on "Claims 2(c)–(f)," and tes-

timony from Vega was not encompassed within the authorization. This appears to have been a straightforward error: the authorization made clear that Maharaj would put on the testimony of at least five new witnesses to establish that the Escobar drug cartel committed the murders, and Vega was indisputably one of those witnesses. But even if there had been uncertainty on that score, on a proper understanding of the scope of a district court's authority to adjudicate a claim authorized under § 2244(b)(3)(A), consideration of Vega's testimony would have been well within that authority. The court of appeals nevertheless rendered its judgment on appeal without any consideration of that powerful evidence.

2. The Eleventh Circuit's rigid approach stands in sharp contrast with the approach of the Seventh Circuit, as articulated in *Reyes*.[7] As the Seventh Circuit has recognized, by its very nature the *prima facie* inquiry conducted by a court of appeals at the authorization stage is preliminary:

> By statutory design, our initial review of such an application must be quick and is unlikely to be deep. Rather than conducting a line-by-line review, we look to see if it "contain[s]" something—perhaps just one claim—worth looking into, and we do not revisit our prior decisions. Briefing is limited, and we must review these orders quickly. Though our screening orders authorizing a successive motion may opine on the merits of various issues, neither the parties nor the district

[7] *Reyes* involved a successor application under 28 U.S.C. 2255. But, as the court noted, the standards for authorization of a successive application under that provision incorporate by reference the § 2244 standards applicable to successor applications under § 2254. 998 F.3d at 760; 28 U.S.C. 2255(h).

> court should read too much into pronouncements that are not subject to review and do not conclusively resolve the case.

998 F.3d at 760 (citations omitted). The statute is designed to avoid piecemeal litigation, while seeking to promote judicial economy. *Id*. at 761. Under the Seventh Circuit's approach, once an authorized claim is returned to the district court for adjudication, that court has the power to conduct a full and fair adjudication of the claim, and (at least in cases that do not involve the death penalty) may even entertain motions to amend the claim under the standards of Fed. R. Civ. P. 15 without exceeding its jurisdiction or requiring a further authorization by the court of appeals. See also *In re Stevens*, 956 F.3d 229, 233-234 (4th Cir. 2020) (After an applicant "has made a prima facie showing that his application satisfies § 2244(b)'s requirements," the screening panel "may not plod along any further," and the merits determination is up to the district court notwithstanding the screening panel's thoughts on the case.).

3. Unlike the ruling below, where the court inexplicably divided up a *Brady* claim and declared that the district court lacked jurisdiction to consider critical factual predicates of that claim, the Seventh Circuit approach reflects a correct understanding of the statute. As numerous courts of appeals have acknowledged, the *prima facie* § 2244(b) *s*tandard for authorization of a claim is "simply a sufficient showing of possible merit to warrant a fuller exploration by the district court." *Bennett* v. *United States*, 119 F.3d 468, 469 (7th Cir. 1997); accord *In re Hoffner*, 870 F.3d 301, 307 (3d Cir. 2017) ("Although AEDPA does not define '*prima facie*,' the context of Section 2244(b) confirms that we hold the petitioner to a light burden."); *Moore*

v. *United States*, 871 F.3d 72, 78 (1st Cir. 2017); *In re Lott*, 366 F.3d 431, 434 (6th Cir. 2004). The inquiry is subject to a statutory time limit of 30 days, 28 U.S.C. 2244(b)(3)(D), and is undertaken without full briefing and argument. The point of the initial screening is, as these courts have emphasized, to determine whether the conditions warranting a fuller examination of the claim by the district court are present.[8]

---

[8] The ruling of the court of appeals in this case also illustrates a more fundamental problem regarding the precedential effect of panel rulings resolving applications for certification under § 2244(b). In the Eleventh Circuit, such rulings are considered definitive rulings on the merits, with binding effect on future panels. That is so even though the decisions must be rendered under tight time constraints, without briefing by the other party, without argument, and without the opportunity for the parties to request panel or en banc reconsideration or review by this Court on a petition for certiorari. See *United States* v. *St. Hubert*, 883 F.3d 1319, 1328-1329 (11th Cir. 2018) ("We now hold in this direct appeal that law established in published three-judge orders issued pursuant to 28 U.S.C. 2244(b) … applications for leave … are binding precedent on *all* subsequent panels of this Court, including those reviewing direct appeals and collateral attacks."). That, effectively, is what the panel in the present case did when it held that its prior authorization constituted a definitive and binding ruling on the scope of the district court's jurisdiction to adjudicate the factual basis of Maharaj's *Brady* claim. As Justice Sotomayor has observed, the Eleventh Circuit "is significantly out of step with other courts in how it approaches applications seeking authorization to file second or successive habeas petitions." *St. Hubert* v. *United States*, 140 S. Ct. 1727, 1729 (2020) (Statement of Sotomayor, J., regarding denial of certiorari).

This approach has been a source of great controversy within the Eleventh Circuit. See, e.g., *In re Williams*, 898 F.3d 1098, 1100 (11th Cir. 2018) (Wilson, J., specially concurring); *id.* at 1105 (Martin, J., specially concurring) ("this court has turned a mere screening duty, assigned to federal courts of appeals by 28 U.S.C. § 2244(b)(3), into a rich source of precedent-producing

The Eleventh Circuit's approach is profoundly out of step with these principles. By treating the initial authorization as a precise definition of the factual metes and bounds of a petitioner's claim, the Eleventh Circuit precludes—as a jurisdictional matter—precisely the sort of factual development that is necessary to flesh out the merits of an authorized claim. That approach is inconsistent with the availability of discovery, and of amendment of the claim—both of which are available in appropriate cases. See *Reyes*, 998 F.3d at 760. Even more to the point, it is a recipe for error and injustice, as the present case illustrates. An appellate panel, with limited time and information, is in no position to make an informed judgment about the precise factual scope of an authorized claim, and will be prone to making errors of the kind that marred the decision here.[9]

---

opinions that is depriving inmates of a process that could reveal them to be wrongfully incarcerated."). As this disagreement continued, five judges signed onto a statement adhering to the policy of refusing en banc reconsideration, and accusing their colleagues of "unfounded attacks on the integrity of the Court as an institution." *United States* v. *St. Hubert*, 918 F.3d 1174, 1174 (Mem) (11th Cir. 2019) (Tjoflat, J., concurring in denial of rehearing *en banc*).

[9] More broadly, the § 2244 authorization process continues to be a source of confusion, uncertainty and Circuit conflicts. Some circuits agree with the Eleventh Circuit that certification orders may not be the subject of rehearing petitions. See *Brown-Bey* v. *Ray*, 55 F. App'x 508, 509 (10th Cir. 2003); *In re Levi*, 2006 U.S. App. LEXIS 2659 *1 (D.C. Cir. 2006). Other circuits permit rehearing. See *Triestman* v. *United States*, 124 F.3d 361, 368 (2d Cir. 1997); see also *Thompson* v. *Calderon*, 151 F.3d 918, 926 (9th Cir. 1998) (en banc) (dividing four ways on the question). In a similar vein, some Circuits join the Eleventh Circuit in treating the statute's requirement that certification decisions be made

3. The difference in approaches was potentially outcome determinative in this case. The *Brady* issue is, at a minimum, a close one. Although the district court ruled against Petitioner, the court acknowledged that the new evidence gave it pause (Pet. App. 33a). But in ruling that the prosecution did not have constructive knowledge of the *Brady* material the district court never made the link between Vega's testimony that he provided the key information to CENTAC and Detective Buhrmaster's testimony at trial that he had investigated Mejia through "all agencies." Had Buhrmaster conducted such an investigation, he would certainly have learned what Vega had reported to CENTAC about Mejia. By refusing to consider that evidence, based on its erroneous ruling that the district court lacked jurisdiction to consider it, the court of appeals blinded itself to the most important facts establishing the error of the district court's *Brady* determination as well as Maharaj's innocence.

The Eleventh Circuit's interpretation of its 2017 ruling was not only incomprehensible based on the record, but is an independent violation of the law under this Court's rulings. A *Brady* claim "turns on the cumulative effect of all such evidence," *Kyles* v. *Whitley*, 514 U.S. 419, 421 (1995), and the court of appeals gives no reason why it might have cut the Vega proof out of the whole, despite the State judge

---

within 30 days as binding, see *In re White*, 602 F. App'x 954, 956 n.2 (5th Cir. 2015) (unpublished), while other Circuits treat the requirement as "hortatory." *In re Siggers,* 132 F.3d 333, 336 (6th Cir. 1997); see also *Gray-Bey* v. *United States*, 201 F.3d 866, 871 (7th Cir. 2000) (Easterbrook, J., dissenting) ("We lack authority to depart from an Act of Congress, so I record my disagreement").

finding his testimony the most "interesting", "credible" and "compelling" of all Petitioner's evidence. *State Order Denying Relief*, at 6-7 (Jan. 9, 2015). It is for precisely such reasons that a court of appeals' preliminary authorization pursuant to § 2244(b)(3) should not be treated as a precise delineation of the factual metes and bounds of an authorized claim.[10]

[10] The unresolved issue of a free-standing claim of innocence is another area where the Eleventh Circuit's application of § 2244 prejudiced Petitioner, while stultifying debate in the lower courts. In 2017, the panel found Petitioner had made a *prima facie* case of innocence under *Schlup* v. *Delo*, 513 U.S. 298, 317 (1995) but refused to allow the issue of *Herrera*-innocence to be heard in the lower court. There were five votes in *Herrera* v. *Collins*, 506 U.S. 390 (1993), and seven in *In re Davis*, 557 U.S. 952 (2009), identifying it as an open question. However, the Circuit has ruled that § 2244(b)(2)(B) is *incompatible* with such an issue because it would require a showing of *Schlup* innocence as a gateway to *Herrera* innocence. *In re Davis*, 565 F.3d 810, 823 (11th Cir. 2009). While this is not the contradiction the *Davis* panel suggests, statutory interpretation can hardly define the contours of constitutional rights, and if there is a free standing claim of innocence it cannot be eliminated by statutory construction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Clive A. Stafford Smith
La. State Bar No. 14,444
LITERARY & SCIENTIFIC INST.,
51 East Street,
Bridport, Dorset DT6 3JX UK
+44 7885649246
clive@3dc.org.uk

Benedict P Kuehne
KUEHNE DAVIS LAW, PA
100 SE 2 Street, Suite 3105
Miami, FL 33131-2154
305.789.5989
ben.kuehne@kuehnelaw.com

Donald B. Verrilli, Jr.
Counsel of Record
MUNGER, TOLLES & OLSON LLP
601 Massachusetts Ave. NW
Suite 500E
Washington, DC 20001-5369
(202) 220-1100
Donald.Verrilli@mto.com

Counsel for Petitioner

September 12, 2022

APPENDIX

APPENDICES

APPENDIX A

No. 20-14816

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

KRISHNA MAHARAJ, Petitioner-Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, WARDEN, SOUTH FLORIDA RECEPTION CENTER, FLORIDA ATTORNEY GENERAL, Respondents-Appellees.

Appeal from the United States District Court for the Southern District of Florida

Before JILL PRYOR, LAGOA, and BRASHER, Circuit Judges.

[Filed March 17, 2022]

OPINION OF THE COURT

PER CURIAM:

Krishna Maharaj is a Florida inmate currently serving a life sentence for murder. He appeals the district court's denial of his second or successive federal habeas petition for habeas corpus relief. When Maharaj sought leave to file a second or successive habeas petition, we granted his request as to a *Brady* claim. When he filed his petition, he raised the authorized claim along with several others outside the scope of our grant: an unauthorized *Brady* subclaim and a freestanding actual innocence claim. The district court allowed him to proceed and denied post-conviction relief. Then, the district court issued a certificate of appealability limited to two *Brady*-related issues. On appeal, in addition to litigating the issues in the COA, Maharaj asks us to expand the

scope of the COA to include claims for actual innocence and cumulative error. Upon consideration, we affirm in part the district court's denial of Maharaj's *Brady* claim and vacate and remand in part for the district court to dismiss the unauthorized *Brady* subclaim for lack of jurisdiction. We also deny Maharaj's request to expand the COA to include claims for factual innocence and cumulative error, and we vacate and remand to the district court with instructions to dismiss these claims for lack of jurisdiction.

I.

When Maharaj requested leave to file a second or successive habeas petition, we granted him leave to raise a *Brady* claim based on evidence that Jamie Vallejos Mejia, an alleged cartel associate, was under investigation for money laundering at the time of the murders, and on the following material that allegedly would have derived from that evidence: (i) testimony from a former pilot for a drug cartel, who testified in state court under the pseudonym "John Brown"; (ii) testimony from Jorge Maya, who implicated the cartel in the subject murders; (iii) an affidavit from Jhon Jairo Velasquez Vasquez, also known as "Popeye," who may have implicated the cartel in the murders; and (iv) proffered testimony from an anonymous "Witness A," who would provide evidence of a relevant conversation between two alleged cartel members, Juan Lopez and Jhon Henry Millan. Maharaj sought, but did not receive authorization, to bring a sub-claim based on testimony of a CIA informant, Baruch Vega.

Maharaj filed a second or successive § 2254 petition in the district court and proffered this evidence in support of his theory that the drug cartel committed the murders for which he was convicted. The district court denied relief, concluding that the prosecution

team did not possess information relating to an investigation into Mejia. Because there was no "possessed and suppressed evidence to bootstrap" the other materials to, there was no *Brady* violation. The court nonetheless issued a COA on two issues: whether the Mejia indictment and/or the information from Baruch Vega could be imputed to the prosecution for purposes of establishing possession and suppression by the prosecution under *Brady*; and (2) if so, whether this information would have changed the outcome of the verdict in light of the deference to be afforded under AEDPA. Maharaj appealed.

II.

A.

We are obligated as a threshold matter to inquire into our own subject matter jurisdiction *sua sponte*, including the jurisdiction of the district court in actions we review. *Kirkland v. Midland Mortg. Co.*, 243 F.3d 1277, 1279–80 (11th Cir. 2001); *see also Gonzalez v. Thaler*, 565 U.S. 134, 143 (2012) (holding that a defective COA does not deprive an appellate court of jurisdiction). We review *de novo* whether the district court had jurisdiction over a habeas petition. *Holland v. Sec'y, Fla. Dep't of Corr.*, 941 F.3d 1285, 1287 (11th Cir. 2019).

A state prisoner who wishes to file a second or successive habeas corpus petition must file a motion with the court of appeals requesting an order authorizing the district court to consider such a petition. *See* 28 U.S.C. § 2244(b)(3)(A). If a petitioner does not receive authorization to file a second or successive petition, the district court must dismiss it for lack of jurisdiction. *See Burton v. Stewart*, 549 U.S. 147, 153 (2007); *cf. Ross v. Moore*, 246 F.3d 1299, 1300 (11th Cir. 2001) (vacating the district court's order

granting a COA certifying a constitutional claim after it had dismissed the underlying § 2254 petition as time-barred under the AEDPA); *see also Magwood v. Patterson*, 561 U.S. 320, 338–39 (2010) (noting that a district court should dismiss without prejudice, not deny on the merits, an unauthorized second or successive application challenging the movant's sentence).

Having *sua sponte* considered our jurisdiction over certain of Maharaj's claims, we conclude that we cannot review the merits of Maharaj's *Brady* claim as it relates to Vega's testimony. The district court did not have jurisdiction to consider arguments outside the scope of our grant of leave to file a successive habeas petition. Because we never granted Maharaj leave to raise a sub-claim based on the testimony of Vega, the district court lacked jurisdiction to consider it at all, much less certify it for appeal. Accordingly, it is not properly before us now.

B.

We turn now to the claims that we authorized Maharaj to file. We conclude that Maharaj has not established that the district court erred in finding that the state court did not unreasonably apply *Brady* or make unreasonable findings of fact.

A petitioner is permitted federal habeas relief for a claim adjudicated on the merits in state court if the state court adjudication was "contrary to, or involved an unreasonable application of, clearly established [f]ederal law, as determined by the Supreme Court," or "based on an unreasonable determination of the facts." 28 U.S.C. § 2254(d). A state court's fact finding is presumed correct unless rebutted by clear and convincing evidence. *Id.* § 2254(e)(1). A state prisoner seeking federal habeas relief "must show that the

state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Harrington v. Richter,* 562 U.S. 86, 103 (2011). Even if the federal court concludes that the state court applied federal law incorrectly, relief is appropriate only if that application is also objectively unreasonable. *Bell v. Cone*, 535 U.S. 685, 694 (2002).

To prevail under *Brady*, a petitioner must show that the prosecution suppressed evidence favorable to the defense, either willfully or inadvertently, and that the suppression of the evidence prejudiced the defense. *Rimmer v. Sec'y, Fla. Dep't of Corr.*, 876 F.3d 1039, 1054 (11th Cir. 2017). When the defendant has "equal access" to the evidence disclosure is not required. *Maharaj I*, 432 F.3d at 1315 n.4.

Maharaj's *Brady* claim relies on his assertion that the state should have disclosed evidence that Mejia was being investigated at the time of the murders. But Maharaj cannot establish that the state suppressed this evidence under *Brady* for two reasons. First, Maharaj had "equal access" to public records of the indictment such that disclosure of the indictment itself was not required. *Id.* Second, at the time he was indicted for money laundering in another jurisdiction, the state did not consider Mejia a suspect in the murder investigation. After an evidentiary hearing, the state postconviction court found as a matter of fact that the state lacked actual knowledge or constructive knowledge of the investigation into Mejia. We cannot say that fact-finding was unreasonable. Under our case law, the state was under no obligation to embark on a fishing expedition into Mejia across jurisdictional lines. *See United States v. Naranjo*, 634 F.3d 1198, 1212 (11th Cir. 2011). Because Maharaj cannot

establish suppression under *Brady*, we need not address materiality, including the other materials that Maharaj asserted were derivative of the Mejia material.

C.

In his brief, Maharaj requests that we expand the COA to include separate issues of actual innocence and cumulative error. Although we have not established a strict rule rejecting all improperly formed requests for expansion of the COA, parties generally must make such requests by filing the appropriate motion. *See Dell v. United States*, 710 F.3d 1267, 1272 (11th Cir. 2013). Such a motion must be brought "promptly, well before the opening brief is due," and "[a]rguments in a brief addressing issues not covered in the [COA], . . . will not be considered as a timely application for expansion of the certificate; those issues simply will not be reviewed." *Tompkins v. Moore*, 193 F.3d 1327, 1332 (11th Cir. 1999). A petitioner granted a COA on one issue may not "simply brief other issues as he desires in an attempt to force both the Court and his opponent to address them." *Dell,* 710 F.3d at 1272.

We deny Maharaj's construed motion to expand the COA for two reasons. First, as discussed above, we granted him leave to file a second or successive habeas motion only as to a *Brady* claim, so the district court plainly lacked jurisdiction to consider his proposed claims of actual innocence or cumulative error. *See Burton*, 549 U.S. at 153. Second, Maharaj, who is counseled, waited until briefing to request that we expand the COA, which we have expressly warned against. *See Tompkins*, 193 F.3d at 1332. In exceptional cases, we may *sua sponte* expand the COA to include issues that reasonable jurists would find debatable. *Mays v. United States*, 817 F.3d 728, 733

(11th Cir. 2016). But no such circumstances exist here. In short, even assuming we could do so, we decline to retroactively expand our order granting Maharaj leave to a file a successive petition to include these claims and expand the district court's COA to include them.

III.

Because a portion of the district court's COA falls outside of our authorization to file a second or successive habeas petition, we lack jurisdiction over that sub-claim. As to the portions of the COA over which we have jurisdiction, we affirm the district court's denial of relief. Finally, we will not expand the COA to include claims about actual innocence and cumulative error that plainly fall outside our order granting leave to file a successive petition. Accordingly, we deny Maharaj's construed motion to expand the COA, we affirm in part, and we vacate in part the order granting a COA and remand his case to the district court with instructions to dismiss the remainder of the appeal for lack of jurisdiction, consistent with this opinion.

AFFIRMED IN PART, VACATED IN PART AND REMANDED WITH INSTRUCTIONS TO DISMISS FOR LACK OF JURISDICTION; CONSTRUED MOTION TO EXPAND THE COA DENIED.

APPENDIX B

No. 17-cv-21965

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

KRISHNA MAHARAJ, Petitioner,

v.

JULIE JONES, et al., Respondents.

[Filed November 30, 2020]

ORDER ON REPORT AND RECOMMENDATION

THIS CAUSE is before the Court upon the Report and Recommendation ("R&R") of Magistrate Judge Otazo-Reyes, recommending that Petitioner's § 2254 habeas corpus petition be denied. [ECF No. 127]. Section 636(b)(1) of the Federal Magistrate Act requires a *de novo* review of those parts of the R&R to which an objection is made. 28 U.S.C. § 636(b)(1); *United States v. Raddatz*, 447 U.S. 667, 673 (1980).

Having conducted a *de novo* review of the entire record, including the issues presented in Petitioner's Objections, [ECF No. 128], Magistrate Judge Otazo-Reyes's R&R is affirmed and adopted. The state court's disposition of Petitioner's claims was neither contrary to nor an unreasonable application of clearly established federal law; nor was its decision based on an unreasonable determination of the facts in light of the evidence. The new evidence provided by Petitioner is insufficient to overcome this finding.

I. Background

This case has garnered over thirty years of litigation. The facts of this case have been laid out at length

during the course of those thirty years—at both the state and federal level. At issue in the instant Petition is whether Petitioner's newly discovered evidence—cumulated with the facts raised in his previous habeas claims—is sufficient to warrant relief under the Anti-terrorism and Effective Death Penalty Act of 1996 ("AEDPA").

On October 21, 1987, Petitioner Krishna Maharaj was convicted of two counts of first-degree murder, two counts of kidnaping, and the unlawful possession of a firearm. The convictions arose from the shooting deaths of Derrick and Duane Moo Young, who were found at the Dupont Plaza Hotel in Miami, Florida on October 16, 1986. According to the testimony presented at trial, Maharaj owned and operated the *Caribbean Times*, a newspaper that catered to the West Indian Community. The *Caribbean Echo*, another local newspaper, was owned by Eslee Carberry. Maharaj approached Carberry to pitch a story about how his neighbor Derrick Moo Young had stolen money from him. After providing Carberry documents that purported to corroborate his accusations, Maharaj paid the *Caribbean Echo* a $400 "sponsorship fee" to publish the article.

After the article was published, Derrick Moo Young presented the *Caribbean Echo* with his version of the story, pointing to an ongoing civil lawsuit Moo Young had filed against Maharaj. Subsequently, the *Caribbean Echo* published a series of articles describing Maharaj's alleged involvement in an illegal scam to take millions of dollars out of Trinidad. Maharaj, however, claimed that Moo Young was committing fraud and extortion against him and his family, including the alleged extortion of $160,000 from Maharaj's relatives in Trinidad.

Neville Butler, the State's primary trial witness,

was previously employed by the *Echo* before writing several articles for the *Caribbean Times* under various pennames. Butler testified at trial that Maharaj informed him that Carberry and Moo Young were attempting to extort money from Maharaj's relatives in Trinidad in exchange for suppressing additional unflattering stories. Butler further testified that Maharaj asked him to lure Derrick Moo Young to a meeting in order to (1) extract a confession from Moo Young that he was actually behind the extortion and bribery; (2) require Moo Young to write two checks to repay him for the fraud; and (3) cause Butler to go to a bank with the checks and certify them, after which Maharaj would allow Moo Young to leave.

The meeting was set for October 16, 1986, under the pretext that Moo Young, who was involved in the import/export business, would be meeting with Eddie Dames and Prince Ellis of the Bahamas to discuss the purchase of goods for their catering business. Butler arranged for the meeting to be held in Dames's room at the Dupont Plaza Hotel. Moo Young was never informed that Maharaj would be in attendance.

When Derrick Moo Young arrived at the Dupont, he had unexpectedly brought his twenty-three-year-old son, Duane Moo Young. When the Moo Youngs entered the room, Maharaj emerged from behind the door with a gun in his right hand and a pillow in his left. An argument ensued, and Maharaj shot Derrick Moo Young in the leg. Butler testified that Maharaj then instructed him to tie the Moo Youngs up, but before he could do so, Derrick Moo Young lunged at Maharaj, who again shot the elder Moo Young three or four more times. Maharaj then turned his attention toward Duane Moo Young, who was loosely tied to a chair with a cord from an immersion heater. While Maharaj questioned Duane about the money, Derrick

Moo Young managed to open the door to the hallway and attempted to crawl outside. Maharaj shot Derrick Moo Young again and dragged him back inside the room by his ankles.

Maharaj took Duane Moo Young upstairs for further questioning, attempting to verify what the Moo Youngs had done with the money allegedly extorted from Maharaj's relatives in Trinidad. Soon thereafter, a hotel security guard shouted from outside the room that he noticed blood in the hallway and inquired whether everyone was alright. Maharaj apparently moved toward the door and verified that things were fine. After several minutes, Maharaj poked his head into the hallway and appeared to tell someone that everyone was fine. After Maharaj returned upstairs to question Duane once more, Butler testified that he heard a single gunshot. Maharaj then came downstairs alone and they both left room 1215.

Butler testified that he and Maharaj waited in the car in front of the hotel for three hours for Dames's return. Maharaj promised Butler that, in exchange for his silence, he would provide Butler a job at the *Caribbean Times*, a down payment for Butler's home, and a car. Once Dames arrived, Butler exited the vehicle and left the scene. Later that day, Maharaj contacted Butler and asked to meet at a Denny's restaurant near the Miami Airport to coordinate their stories. Butler testified that before meeting with Maharaj, he met with Dames and Ellis and told them what happened. Dames and Ellis had already given statements to police investigators and encouraged Butler to contact the police. Butler then called the lead investigator, Miami Police Detective John Buhrmaster, and explained what had transpired. Butler and Buhrmaster arrived at the Denny's together, where Maharaj was arrested for the murders.

The State presented other witnesses who testified at trial to Maharaj's motive and prior acts that were consistent with the murders at the Dupont Plaza Hotel. For example, Tino Geddes, a journalist at the *Caribbean Echo*, and Carberry, testified about Maharaj's payment to Carberry to publish unfavorable articles about Derrick Moo Young. Geddes also testified that Maharaj had previously met Geddes at the Dupont Plaza Hotel with a handgun and asked Geddes to lure Carberry and Derrick Moo Young to the hotel. According to Geddes, Maharaj purchased exotic weapons and had attempted to harm Carberry on several occasions.

Additionally, the State presented corroborating physical evidence and testimony from hotel staff as to the blood outside of room 1215, the "Do Not Disturb" sign that was later found with Maharaj's fingerprints on it, and the eleven additional fingerprints found inside the room that matched Maharaj's. The State also presented evidence linking Maharaj to a Smith & Wesson model 39, nine-millimeter pistol—the type of gun a firearms expert testified was used in the Moo Young murders.

The jury found Maharaj guilty on all counts. His convictions were affirmed, and he was denied state post-conviction relief on the guilt phase of his case.[1] Maharaj then petitioned for federal habeas relief and was again denied in both the district court and the Eleventh Circuit Court of Appeals. *See Maharaj, v. Sec'y for Dep't of Corrs.*, 432 F.3d 1292 (11th Cir. 2005).

As relevant to Maharaj's instant successive petition, Judge Huck found in a lengthy and comprehen-

[1] Maharaj's death sentence was overturned and he was subsequently sentenced to life in prison.

sive order that Maharaj's *Brady* claims were insufficient to warrant habeas relief. *See Maharaj v. Moore*, No. 02-22240-HUCK/TURNOFF, ECF No. 54 (S.D. Fla. Aug. 31, 2004). The alleged *Brady* evidence at issue before Judge Huck included: (1) a transcript of Neville Butler's statements during a polygraph examination conducted by the State; (2) the contents of the Moo Youngs' briefcase, including their passports; and (3) information concerning the Moo Youngs' life insurance policies. *Id.* at 17. Though Judge Huck noted that the evidence produced may have afforded Maharaj "perhaps a better developed theory of defense," he nonetheless found that Maharaj did not "provide[] sufficient evidence… to undermine the verdict of the jury." *Id.* at 6. Judge Huck further found that Maharaj could not establish a constitutional violation under *Brady* to form the basis for relief under the AEDPA. *Id.* at 6, 17–25.

This finding was upheld by the Eleventh Circuit. As to the transcript of Butler's polygraph examination, the Eleventh Circuit agreed that the Florida Supreme Court's analysis, under both *Brady* and *Giglio*, was neither contrary to nor an unreasonable application of clearly established federal law. Noting that Butler was thoroughly and vigorously cross-examined about the inconsistencies in his accounts of the murders, and that Maharaj's counsel indeed elicited testimony from Butler that he had lied under oath, the panel found that "even if Maharaj had established that Butler's testimony was false (which he did not), the falsehood was not material." *Maharaj*, 432 F.3d at 1314. As such, the Butler polygraph was insufficient to support a *Brady* claim.

Regarding Maharaj's second piece of evidence—the contents of the Moo Youngs' briefcase—the Eleventh Circuit deemed such evidence insufficient to support

a *Brady* violation for two reasons: (1) "the briefcase and its documents were not suppressed by the State because Petitioner knew of their existence and had the power to compel their return from the Moo Young family by subpoena," and (2) "the information was not material." *Id.* at 1315. Accordingly, the Court found that the Florida Supreme Court's conclusions regarding the briefcase was neither contrary to nor an unreasonable application of clearly established federal law. *Id.*

The Court similarly rejected Maharaj's reliance on the Moo Youngs' life insurance policies as the basis for his *Brady* claims, agreeing with the Florida Supreme Court that the policies were not exculpatory nor would the disclosure of the policies "have put the case in so different a light as to undermine confidence in the verdict." *Id.* at 1316–17. The Court emphasized that Maharaj's arguments that the life insurance policies indicated shady dealings on behalf of the Moo Youngs were "even more speculative than his argument concerning the other contents of the briefcase." *Id.* Viewing the evidence cumulatively, the Eleventh Circuit determined that "there [was] no reasonable probability, had all of the items been disclosed to the defense, the result of the proceedings would have been any different." *Id.* at 1317.

In 2012, Maharaj filed a second motion for post-conviction relief pursuant to Rule 3.850, which was denied at the trial level and affirmed on appeal. *See* ECF No. 38, Ex. 1–9; *Maharaj v. State*, No. 3D15-321 (Fla. 3d DCA July 31, 2016). Maharaj's *Brady* claims were specifically dismissed by the state court judge as unavailing. *See* Order Def.'s Mot. Post-Conviction Relief, No. F86-030610 (Fla. Cir. Ct. Jan. 5, 2015), ECF No. 38-3 ("2012 Rule 3.850 Order").

Maharaj advanced three *Brady* claims. *Id*. First, he

alleged that the State failed to disclose the indictment of Jaime Vallejo Mejia, the man staying in the room across the hall from the murder scene who had alleged ties to the cartel. *Id*. Mejia was indicted for money laundering in the Western District of Oklahoma approximately five weeks prior to Maharaj's trial. *Id*. Second, Maharaj alleged that "DEA special agent Kimberly Abernathy made a statement in a memorandum document with the Department of Business Regulation that Mr. Mejia was arrested on the federal indictment for laundering money on behalf of Colombian drug smugglers." *Id*. Finally, Maharaj alleged that the testimony of Baruch Vega, a former CIA informant, was in the constructive possession of the State and was therefore withheld in violation of *Brady*. *Id*. In all, Maharaj—as he does today—purports that this allegedly withheld evidence supports his innocence based on the theory that Mejia conducted the murders on behalf of Pablo Escobar and the Colombian cartel.

The state court disagreed, holding not only that Maharaj "failed to meet his burden to demonstrate that the State willfully or inadvertently suppressed favorable material evidence," but that even if such evidence had been disclosed, "the jury verdict would have been the same." *Id*.

Before denying relief, the trial court also conducted an evidentiary hearing on Maharaj's claims of newly discovered evidence based upon witness testimony that Escobar and the Colombian cartel were responsible for the murders.

The evidence presented at the hearing included: (1) testimony and documentation from Brenton Ver Ploeg, an attorney representing the life insurance company in a lawsuit filed by the Moo Young family; (2) testimony from Jorge Maya that the Moo Young

murders were actually ordered by Pablo Escobar and carried out by Manuel Guillermo Zuluaga Salazar; (3) a two-minute television interview of Jhon Jairo Velasquez Vasquez conducted by BBC; (4) testimony from Baruch Vega, a former CIA informant, who testified about his relationship with Jaime Vallejo Mejia; (5) testimony from John Brown, a former pilot for the cartel; (6) testimony from Michael Flynn, whose claim that the Miami Police Department framed Maharaj was found to be "one of the most obvious self-serving endeavors [the state court had] seen in ten years on the Circuit Court bench"; (7) testimony from Prince Ellis; (8) testimony from Henry Cuervo, who testified as an expert in investigating Colombian drug cartels in South Florida in the 1980s; and (9) additional miscellaneous evidence related to other witnesses and the Moo Youngs. *Id*.

The state court, having "fully considered all the newly discovered evidence which would be admissible," ultimately found that the new evidence presented at the hearing was insufficient "to give rise to a reasonable doubt as to Mr. Maharaj's guilt." *Id*. The court specifically took issue with the "inherent credibility concerns and admissibility issues surrounding the newly discovered evidence…." *Id*. Accordingly, despite finding certain testimony presented at the hearing probative, the state court denied relief. This decision was upheld on appeal.

Pursuant to the AEDPA, Maharaj sought leave from the Eleventh Circuit to file the instant successive federal habeas petition. *In re Maharaj*, No. 17-10452-F (11th Cir. Mar. 18, 2017), ECF No. 63-1 at 5 ("11th COA Order Permitting Successive Petition"). The Eleventh Circuit panel granted Maharaj's application with respect to certain *Brady* claims. *Id*.

II. Eleventh Circuit Scope of Successive Petition

In his application to the Eleventh Circuit, Maharaj sought permission to raise seven distinct claims in a second or successive petition:

> (1) he is actually innocent; (2) the government suppressed favorable evidence, in violation of *Brady v. Maryland*, 373 U.S. 83 (1963); (3) the government knowingly presented perjured testimony at trial, in violation of *Giglio v. United States*, 405 U.S. 150 (1972); (4) his trial counsel was ineffective; (5) he was intentionally framed by law enforcement officers; (6) his post-conviction counsel was ineffective; and (7) cumulative error in his prosecution violated his fundamental rights.

Id. at 2.[2] The Eleventh Circuit, however, only granted leave as to "Claims 2(c)–(f),"—i.e., Maharaj's *Brady* claims. *Id.* at 2–3 ("Because we conclude that Mr. Maharaj has made a *prima facie* showing that his subclaims 2(c) through (f) satisfy § 2244(b)(2)(B), we grant his request for authorization to file a second or successive habeas petition in the district court.").

In Claims 2(c)–(f), Maharaj "alleges that the State suppressed materials or information from five individuals who could testify that a cartel hit man actually committed the murders." *Id*. at 3. Specifically, the alleged *Brady* evidence includes (1) testimony from John Brown; (2) a statement from Jorge Maya, an "enforcer" for the cartel, that Escobar in fact ordered the

---

[2] The Court noted that although Maharaj indicated in his application that he wished to raise a single claim, his proposed habeas petition actually set forth seven claims. *See* 11th COA Order Permitting Successive Petition, ECF No. 63-1 at 2 n.1.

murders; (3) an affidavit from Jhon Jairo Velasquez Vasquez to the same effect; and (4) testimony from an additional witness insisting on anonymity who portends to provide additional evidence that the cartel carried out the hit and not Maharaj. *Id.* at 4–5.

Accordingly, this Court's review is limited to the foregoing claims—which, as it pertains to Maharaj's Petition, is listed as "Ground One: Violations of Brady v. Maryland." *See* ECF No. 29; *see also In re Hill*, 715 F.3d 284, 296 (11th Cir. 2013). Therefore, as recommended in the R&R, Grounds Two through Four of the Petition will not be addressed for lack of jurisdiction. *See* ECF No. 127 at 5.

With this in mind, the Court must also dispel Petitioner's notion—or insistence, rather— that the Eleventh Circuit's permission to file a second or successive petition constitutes a finding that no reasonable jurist could find Petitioner guilty—i.e., that its permission amounts to a declaration of Petitioner's innocence. This is not so.

For example, the Eleventh Circuit stated:

> Mr. Maharaj has sufficiently alleged a *Brady* violation: he learned in 2014 that Mejia—an individual who resided in close proximity to the murder scene and who apparently was involved with the cartel—was under criminal investigation of the Moo Young murders, a fact that the prosecution or the police knew but did not disclose.

11th COA Order Permitting Successive Petition, ECF No. 63-1 at 5. This statement, however, merely means that Maharaj has made a threshold showing; it is not a finding that a *Brady* violation indeed occurred. The Eleventh Circuit highlighted this point, stating "'[a]s usual nothing about our ruling here binds the district

court, which must decide every aspect of the case fresh, or in the legal vernacular, *de novo*.'" *Id.* at 6 (quoting *In re Chance*, 831 F.3d 335, 1338 (11th Cir. 2016)). This includes—as the Eleventh Circuit clarified—"the merits" of Maharaj's *Brady* claims. *Id.* at 7.

Now that the boundaries of this Court's review are set, the Court will do so.

III. AEDPA Standard

The AEDPA circumscribed a federal court's role in reviewing state prisoner applications "in order to prevent federal habeas 'retrials' and to ensure that state-court convictions are given effect to the extent possible under law." *Bell v. Cone*, 535 U.S. 685, 693 (2002).

In reviewing the decisions of the Florida Supreme Court, the Court is governed by the terms of AEDPA, which provide that the Court may grant a § 2254 writ of habeas corpus only if (1) the state decision was "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States," or (2) the state decision was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(1)–(2).

The phrase "clearly established Federal law," as used in § 2254(d)(1), "encompasses only the holdings of the Supreme Court of the United States." *Maharaj*, 432 F.3d at 1308. A state court decision is ***contrary to*** clearly established federal law if either "(1) the state court applied a rule that contradicts the governing law set forth by Supreme Court case law, or (2) when faced with materially indistinguishable facts, the state court arrived at a result different from that reached in a Supreme Court case." *Putman v. Head*, 268 F.3d 1223, 1241 (11th Cir. 2001) (emphasis

added). An "***unreasonable application"*** of clearly established federal law may occur if the state court "identifies the correct legal rule from Supreme Court case law but unreasonably applies this rule to the facts of the petitioner's case." *Id*. (emphasis added).

Differing slightly from its (d)(1) counterpart, § 2254(d)(2) provides an additional basis for relief where the state court's decision "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d)(2). "A state court's determination of the facts, however, is entitled to substantial deference." *Maharaj*, 432 F.3d at 1309; *see* 28 U.S.C. § 2254(e)(1) (noting that "a determination of a factual issue made by a State court shall be presumed to be correct" and the habeas "applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.").

Indeed, "[w]hen reviewing state criminal convictions on collateral review, federal judges are required to afford state courts due respect by overturning their decisions only when there could be no reasonable dispute that they were wrong." *Woods v. Donald*, 575 U.S. 312, 316 (2015). In sum, "AEDPA erects a formidable barrier to federal habeas relief or prisoners whose claims have been adjudicated in state court." *Burt v. Titlow*, 571 U.S. 12, 1 (2013).

IV. ***Brady*** Standard

As discussed above, Petitioner's claims are limited by the Eleventh Circuit's Order permitting a second or successive petition to the alleged *Brady* violations enunciated in his subclaims 2(c)–(f)—here, "Ground One." [ECF No. 29].

Brady violations are defined as "the suppression by

the prosecution of evidence favorable to an accused…when the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). The duty to disclose, however, is applicable even in the absence of a request by the defendant and includes both exculpatory evidence and impeachment material. *See Strickler v. Greene*, 527 U.S. 263, 280 (1999).

There are four elements required to establish a *Brady* violation: (1) the State possessed evidence favorable[3] to the defense; (2) the defendant did not possess the evidence and could not obtain it with any reasonable diligence; (3) the prosecution suppressed the evidence, either willfully or inadvertently; and (4) a reasonable probability exists that the outcome of the proceeding would have been different had the evidence been disclosed to the defense—i.e., the evidence was "material". *See Moon v. Head*, 285 F.3d 1301, 1308 (11th Cir. 2002).

In sum:

> The question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.

Kyles v. Whitley, 514 U.S. 419, 433–34 (1995) (internal quotation marks and citations omitted).

V. Analysis

[3] Evidence is considered favorable to the accused if it is either exculpatory or because it is impeaching. *See Strickler*, 527 U.S. at 281–82.

With these principles in mind, the Court reviews the merits of Petitioner's *Brady* claims. Today, Maharaj presents new evidence that he alleges establishes both his innocence and the factual predicate for a *Brady* violation when viewed together with the evidence previously rejected. As discussed, the new evidence includes (1) testimony from John Brown; (2) a statement from Jorge Maya, an "enforcer" for the cartel, that Escobar in fact ordered the murders; (3) an affidavit from Jhon Jairo Velasquez Vasquez to the same effect; and (4) testimony from an additional witness insisting on anonymity who portends to provide additional evidence that the cartel carried out the hit and not Maharaj. *See* 11th COA Order Permitting Successive Petition at 4–5. Like its predecessors, the Court notes at the outset that, upon review of the Petition and the evidence set forth therein, were this case to be tried again today, Maharaj would undoubtedly have a stronger theory of defense to present to the jury. This, however, is insufficient to warrant relief under the AEDPA. Maharaj can neither show that this evidence constitutes *Brady* material nor can he establish that, had the evidence been disclosed, the result of his trial would have been different.

A. *Actual Innocence Issue*

"The guilt or innocence determination in state criminal trials is 'a decisive and portentous event.'" *Herrera v. Collins*, 506 U.S. 390, 401 (1993) (quoting *Wainwright v. Sykes*, 433 U.S. 72, 90 (1977)). Accordingly, the Supreme Court has determined that "[c]laims of actual innocence based on newly discovered evidence have never been held to state a ground for federal habeas relief absent an independent constitutional violation occurring in the underlying state criminal proceeding." *Id.* at 400. "This rule is grounded in the principle that federal habeas courts

sit to ensure that individuals are not imprisoned in violation of the Constitution—not to correct errors of fact." *Id*.

As such, despite his contentions to the contrary and despite the capacious amount of allegedly exculpatory evidence presented in the Petition, Maharaj is only entitled to habeas relief if he can establish that a *Brady* violation occurred. The Court finds that he cannot.

B. *The Prosecution Team Did Not Possess or Suppress the Alleged Brady Material*

The state court held that Maharaj "failed to satisfy his burden to demonstrate that the State willfully or inadvertently suppressed" the alleged *Brady* material. *See* 2012 Rule 3.850 Order, ECF No. 38-3 at 3. The state court specifically found that "there is no evidence in this record to even suggest the State had any knowledge of the claimed *Brady* evidence," and likewise "reject[ed] any suggestion that the claimed *Brady* evidence was in the constructive possession of the State." *Id.* This finding is neither contrary to nor an unreasonable application of clearly established federal law. Nor was it an unreasonable determination of the facts in light of the evidence.

There are two pieces of material that could be argued to have been in the possession of the prosecution—the indictment of Jaime Vallejo Mejia that occurred approximately five weeks prior to Maharaj's trial, and testimony from Baruch Vega, who was an informant for the CIA at the time of the murders. The testimony from John Brown, Jorge Maya, Jhon Jairo Velasquez Vasquez, and anonymous Witness "A" could not be construed to be in the prosecution's possession—constructively or otherwise. Like much of

the additional evidence presented in this case, this evidence could bolster Maharaj's materiality argument in that it tends to reinforce his assertion that his trial would have turned out differently. Maharaj may have had significantly more evidence to strengthen his theory of defense that a Colombian man carried out the murders on behalf of the cartel. Nonetheless, without any ***possessed and suppressed evidence*** to bootstrap this testimony to, the testimony is insufficient on its own to assert a *Brady* violation.

"*Brady* and its progeny apply only to evidence possessed by the prosecution team, which includes both investigative and prosecutorial personnel," as well as "anyone over whom [the prosecutor] has authority." *Kelley v. Sec. for Dep't of Corr.*, 377 F.3d 1317, 1354 (11th Cir. 2004); *Moon*, 285 F.3d at 1309. "[T]he prosecution team generally is considered a unitary entity, and favorable information possessed by the police but unknown to the prosecutor is nonetheless subject to the *Brady* test." *Breedlove v. Moore*, 279 F.3d 952, 961 (11th Cir. 2002). The Eleventh Circuit has made clear, however, that "[k]knowledge of information that state investigators obtain is not imputed for *Brady* purposes to federal investigators who conduct a separate investigation when the separate investigative teams do not collaborate extensively." *United States v. Naranjo*, 634 F.3d 1198, 1212 (11th Cir. 2011); *see also Moon*, 285 F.3d at 1310 (holding that knowledge obtained by investigators in one state is not imputed to investigators that conduct a separate investigation in another state).

1. Indictment of Jaime Vallejo Mejia

As previously mentioned, Jaime Vallejo Mejia was a Colombian man staying in the room across from room 1215 in the Dupont Plaza hotel at the time of the

murders. On September 3, 1987—some five weeks before Maharaj's trial and almost a year after the murders—Mejia was indicted in the United States District Court for the Western District of Oklahoma for money laundering. *See* ECF No. 47-3 at 6. It is Maharaj's contention that Mejia was engaged in currency crimes on behalf of the Colombian cartel and was either the murderer himself or was otherwise involved in the double homicide. Maharaj argues that the State knew of or should have been aware of Mejia's federal indictment in Oklahoma, and that the prosecutorial team either willingly failed to disclose this information or failed to conduct a sufficient investigation of Mejia. This theory is the gist of Maharaj's claim.

In support of such claim, Maharaj offers the testimony of Agent Henry Cuervo, who was a retired Drug Enforcement Administration ("DEA") agent working in Miami from about 1986 to 2002. The R&R outlines Agent Cuervo's testimony at length, but in sum, Agent Cuervo opined as an expert that certain characteristics of Mejia, including the fact that he was from Antioquia, Colombia, had recently traveled from Aruba, and claimed to be in insurance sales, all should have raised red flags to the investigative team at the time of the murders. Agent Cuervo also testified that based on the indictment, Mejia was likely being investigated by the DEA as early as 1985 and potentially earlier. Agent Cuervo had also reached out to DEA Agent Kimberly Abernathy, who informed him that the DEA had been investigating Mejia as part of the 1983–84 Operation Greenback in South Florida. In all, Agent Cuervo testified as to the numerous leads that could have—and in his opinion, should have—been pursued.

Maharaj also presented a memorandum from the

Florida Department of Business Regulations, indicating that an agent for the department was able to determine that Mejia—who was then applying for a liquor license—was being looked into by the DEA. This document is also offered to "illustrat[e] how Det[ective] Buhrmaster would have easily found this" information had he performed an adequate investigation. *See* ECF No. 128 at 3.

2. Testimony from Baruch Vega

Baruch Vega worked as an informant for the CIA in South America and the United States, where he was also introduced to the DEA and other government agencies. Vega's testimony is also outlined at length in the R&R but is summarized as follows.

In the mid-1980's, Vega worked with a federal task force known as CENTAC-26, consisting of personnel from Miami and Miami-Dade police, the DEA, and the FBI. Vega testified that he reported to his supervisory agents consistently from 1978 to 2000, and that he was confident he reported what he knew at the time of the murders. Vega acknowledged that he had a friendship with Mejia and knew Mejia to be highly involved in money laundering for various cartels. Vega testified that Mejia used an individual known as "El Chino Mau" to launder money and that Mejia stated to him that the cartel "needed to kill this son of a bitch crook, Chinese crock [sic]" for stealing from Pablo Escobar. Vega asserts that he reported this admission to his handlers who were allegedly conducting a "very advanced" investigation. According to Vega, he knew "El Chino Mau" to be Derrick Moo Young. He also testified, however, that he knew only of the name "El Chino Mau" and that the FBI's posting of pictures on the wall identified "El Chino Mau" to him as Derrick Moo Young. Indeed, though asserting that he had met Moo Young in the past, Vega was unable to identify

him in a picture the night before his deposition.

The state court considered Vega's testimony both "very interesting" and "probative." *See* 2012 Rule 3.850 Order, ECF No. 38-3 at 6–7. Nonetheless, the court found that his testimony was "profoundly weakened by his inability to identify a photograph of Mr. Mejia or Derrick Moo Young," was "fraught with inadmissible hearsay[,] and [was] woefully insufficient to establish a reasonable probability of acquittal on retrial." *Id.* at 7. Accordingly, the materiality of Vega's testimony was considered "questionable." *Id*.

3. Insufficient Evidence to Impute to Prosecutorial Team

The state court's determination that Maharaj did not meet his burden to impute this evidence to the prosecutorial team is not unreasonable.

John Kastrenakes, former Circuit Court Judge in Palm Beach County, Florida, and one of two Assistant State Attorneys assigned to the case, testified that the prosecution was aware of Mejia's presence across from room 1215 at the time of the murders. He knew Mejia had been interviewed by the police and had given a statement. Mejia, however, was not a trial witness, so the prosecution had not focused on him. Kastrenakes further testified that he was never aware of Mejia having been federally indicted a short time prior to Petitioner's trial, as neither the prosecution team nor law enforcement conducted any follow-up investigation of Mejia.

Maharaj's defense counsel testified at the 1997 evidentiary hearing that he was aware that room across the hall from the murder scene was occupied by Mejia, and confirmed that the prosecution had disclosed his name and the available information about him. *See* ECF No. 71-1 at 115. The defense received Mejia's

1986 statement to Detective Buhrmaster and had its own investigator look into Mejia. The State also gave the defense Mejia's overseas address and phone number.

There is no indication of collaboration between the State's prosecution team in Florida and federal investigators in Western Oklahoma. *See Moon*, 285 F.3d at 1310 (holding that knowledge obtained by investigators in one state is not imputed to investigators that conduct a separate investigation in another state). Maharaj cannot establish that the prosecution team in his case knew of Mejia's wrongdoings in another state; what he contends, however, is that the prosecution should have known.

Maharaj specifically asserts that had Detective Buhrmaster actually checked Mejia with "all agencies" as he contended at trial, the indictment, information from the Florida Department of Business Regulations, and Vega's intel to CENTAC-26 would have come up in his investigation. In hindsight and all other things aside, this may have been true.[4] Nonetheless, the prosecution "has no duty to undertake a fishing expedition in other jurisdictions…." *See Meros*, 866 F.2d 1304, 1309. Mr. Kastrenakes explained why the prosecution did not focus its resources on Mejia—namely, he was cooperative and was not being called as a trial witness, and the evidence against Maharaj was overwhelming. Indeed, Maharaj's own private investigation of Mejia was fruitless at the time of trial.

Nor does the record reflect a connection between

---

[4] Though, again, the Court highlights that Mejia was not indicted in Oklahoma until almost a year after the murders took place. This statement should not be construed to agree with Maharaj's contention that this information would have come up in an investigation but merely states that it may have.

CENTAC-26 and the state prosecution. Therefore, even if Vega's testimony that he reported Mejia's admission to his handlers is true, there is no indication that the team prosecuting Maharaj had access to or knowledge of such.

In sum, much of the evidence proffered by Maharaj makes a strong case that the investigation was not up to par. In fact, that is precisely what Agent Cuervo opined. But even if this were true—a contention made doubtful by the overwhelming record evidence implicating Maharaj in the murders—it is insufficient to establish the first and third *Brady* prongs. The prosecution could not have suppressed information it was not aware of.[5]

C. *Cumulative Impact of the Evidence*

Before the Court moves on to the final *Brady* prong of materiality, it must address Maharaj's assertions that both the state court and Magistrate Judge Otazo-Reyes failed to analyze his claims cumulatively. That is, that both decisions fail to include the evidence set forth in Maharaj's 1997 *Brady* claims.

The Supreme Court has made clear that a *Brady* materiality determination must consider the aggregate effect of all the suppressed evidence. *See Kyles*, 514 U.S. at 436, 441. "That does not mean, however, that an individual assessment of each piece of suppressed evidence is somehow inappropriate." *Maharaj*, 432 F.3d at 1310. A court can evaluate the cumulative effect only by first examining each piece of material standing alone. *See Kyles*, 514 U.S. at 436 n.10

[5] At the very least, the Court finds that the state court's determination of this issue was not contrary to or an unreasonable application of clearly established federal law. Nor was it an unreasonable determination of the facts in light of the evidence presented in the State court proceeding. 28 U.S.C. § 2254(d)(1)–(2).

(noting that "[w]e evaluate the tendency and force of the undisclosed evidence item by item; there is no other way. We evaluate its cumulative effect for purposes of materiality separately and at the end of the discussion…."); *see also Kelley*, 377 F.3d at 1335, 1369.

Maharaj's objections to this point are unavailing. Not only does the Court agree with the R&R's determination that the state court analyzed the alleged *Brady* materials in the aggregate, Maharaj's arguments regarding their cumulative effect are misplaced. For example, Maharaj continues to argue that cumulatively, the documents contained within the briefcase paired with this newly discovered evidence demonstrates a clear *Brady* violation. *See* ECF No. 128 at 11–12. This is not so. As found by the Eleventh Circuit, the documents within the briefcase were not *Brady* material at all, in that they were available to Maharaj at the time of trial. *Maharaj*, 432 F.3d at 1314–15. The Eleventh Circuit similarly found that evidence regarding the Moo Youngs' insurance policies was not *Brady* material because it was not exculpatory. *Id.* at 1317–18. Finally, the Eleventh Circuit found that the Florida Supreme Court's finding that Neville Butler's polygraph test was not suppressed was neither contrary to nor an unreasonable application of clearly established law. *Id.* Therefore, even cumulatively, this evidence cannot serve as the basis of a *Brady* violation.

So, while the Court must address the cumulative effect of all of the ***suppressed evidence*** to properly analyze the materiality prong of Maharaj's *Brady* claims, those items found to not constitute *Brady* material—whether it be because the evidence was not suppressed or because it is not exculpatory—are not relevant to the materiality analysis under *Kyles*. *See*

514 U.S. at 436, 441. In short, if an item was not suppressed, it does not matter if it is material in this context. *Brady* requires all four prongs to be met. The Court agrees that, in the aggregate, Maharaj's materiality argument is strengthened by the evidence he has set forth. However, the Court also agrees with the state court's conclusion that the evidence discussed above was not suppressed by the prosecution team. Therefore, even analyzed in the aggregate, Maharaj's evidence is insufficient to assert a *Brady* claim.

D. *Materiality*

The discussion could end here. The Court, however, would be remiss to forego a discussion of the final prong of *Brady*—materiality. Evidence is material where a reasonable probability exists that the outcome of the proceeding would have been different had the evidence been disclosed to the defense. *See Moon*, 285 F.3d at 1308.

As previously stated, had Maharaj had at his disposal at trial the evidence he now contends asserts a Brady claim, he undoubtedly would have had a stronger theory of defense. This does not signify, however, that the outcome of his trial would have been different. Maharaj's Colombian cartel theory was proffered at trial. Mejia's federal indictment in Oklahoma—though seeming to be more than a coincidence—is too attenuated to overcome the evidence at trial and the jury's determination that Maharaj committed the murders. As discussed, there was ample evidence of Maharaj's involvement, including twelve matching fingerprints, a known relationship between Maharaj and the victims, a motive, a link to Maharaj and the murder weapon, and an eyewitness. Mejia's federal indictment may have arguably tied him to the cartel, but it does not necessarily tie him to the murders. And, given the high deference due under the

AEDPA, the state court's determination that the evidence presented does not undermine the jury's verdict should be upheld.

VI. Certificate of Appealability

A Certificate of Appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right," and it must indicate the issue on which the petitioner made such a showing. 28 U.S.C. § 2253(c)(2), (3); *see also* ECF No. 114 at 3. Where the district court has denied a motion to vacate in whole or in part on procedural grounds, a movant must show that reasonable jurists could debate: (1) whether the motion states a valid claim for the denial of a constitutional right, and (2) whether the district court was correct in its procedural ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). A Certificate of Appealability "must specify what constitutional issue jurists of reason would find debatable. Even when a prisoner seeks to appeal a procedural error, the certificate must specify the underlying constitutional issue." *Spencer v. United States*, 773 F.3d 1132, 1138 (11th Cir. 2014) (*en banc*).

The Court finds that reasonable jurists could debate whether Maharaj has set forth a *Brady* claim to warrant habeas relief. Specifically, the Court certifies the following questions:

(1) Whether the Mejia indictment and/or the information from Baruch Vega could be imputed to the prosecution for purposes of establishing possession and suppression by the prosecution under *Brady v. Maryland*, 373 U.S. 83, 87 (1963).

(2) If so, whether this information would have changed the outcome of the verdict in light of the deference to be afforded under the

AEDPA.

VII. Conclusion

To be clear, of the litany of habeas petitions before this Court, the facts of this case give the undersigned pause. Unfortunately, pause is insufficient to overcome the highly deferential standard set forth by the AEDPA. *See Woods*, 575 U.S. at 316. Because Maharaj has failed to overcome this "formidable barrier," his Petition must be denied. *Burt*, 571 U.S. at 1.

Accordingly, after careful consideration, it is hereby:

ORDERED AND ADJUDGED that

1. United States Magistrate Judge Otazo-Reyes's Report and Recommendation, [ECF No. 127], is **AFFIRMED and ADOPTED**.

2. Petitioner's Petition for Habeas Corpus, [ECF No. 29], is **DENIED**. As set forth above, a Certificate of Appealability is **GRANTED** and **SHALL ISSUE**.

3. This case is **CLOSED**, and all pending motions are **DENIED AS MOOT**.

DONE AND ORDERED in Chambers at Miami, Florida, this 30th day of November 2020.

_____

JOSE E. MARTINEZ

UNITED STATES DISTRICT JUDGE

APPENDIX C

No. 20-14816

UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

KRISHNA MAHARAJ, Petitioner-Appellant,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, WARDEN, SOUTH FLORIDA RECEPTION CENTER, FLORIDA ATTORNEY GENERAL, Respondents-Appellees.

Appeal from the United States District Court for the Southern District of Florida

Before JILL PRYOR, LAGOA, and BRASHER, Circuit Judges.

[Filed May 13, 2022]

ON PETITION(S) FOR REHEARING AND PETITION(S) FOR REHEARING EN BANC

PER CURIAM:

The Petition for Rehearing En Banc is DENIED, no judge in regular active service on the Court having requested that the Court be polled on rehearing en banc. (FRAP 35) The Petition for Panel Rehearing is also denied. (FRAP 40)