

No. 22-6852

IN THE

SUPREME COURT OF THE UNITED STATES

MARVIN CHARLES GABRION II,

*Petitioner,*

v.

UNITED STATES OF AMERICA,

*Respondent.*

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

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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## INTRODUCTION

Petitioner Marvin Gabrion submits this Reply in Support of Petition for a Writ of Certiorari to respond to two points in the government's Brief in Opposition.

## ARGUMENT

First, the government argues that regardless of whether Christopher Yates violated applicable rules of legal ethics, Gabrion's death sentence should be upheld. Beyond the fact that Gabrion has explained why Yates's conduct violated Gabrion's Sixth Amendment rights as well as ethics rules, the government's argument that a death sentence should be upheld despite an ethics violation is disturbing.

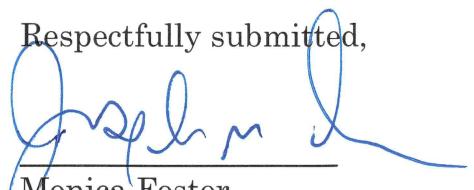
Second, the government argues that Gabrion is not entitled to relief because Yates's conflict did not adversely affect his representation. But because there has never been any discovery or a hearing, the extent of Yates's involvement and its impact remains a mystery. The record, which contains conflicting affidavits from Yates and his client Joseph Lunsford, certainly suggests that Yates's involvement adversely affected Gabrion's representation. As such, failure to grant a hearing was directly contrary to well established Sixth Circuit precedent, *see, e.g., Martin v. United States*, 889 F.3d 827, 832 (6th Cir. 2018), and this Court's precedent, *see, e.g., Machibroda v. United States*, 368 U.S. 487, 495 (1962), and the conclusion that Yates's involvement did not adversely affect Gabrion's representation was premature.

## CONCLUSION

For the reasons stated in the Petition, this Court should grant Gabrion's Petition for a Writ of Certiorari to clarify how attorneys should understand the

definition of representation and the application of conflict-of-interest rules to attorneys in cases where they do not file formal appearances.

Respectfully submitted,



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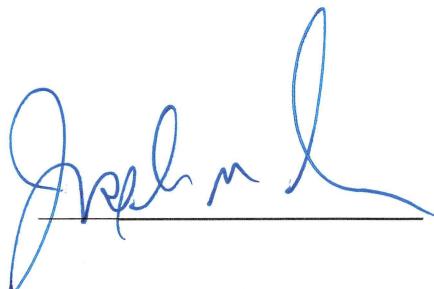
**CERTIFICATE OF SERVICE**

Undersigned counsel certifies that on June 6, 2023, as required by S. Ct. R. 29, the Reply in Support of Petition for a Writ of Certiorari was served by delivery to the United States Post Office to be sent by first-class mail, postage prepaid, to the following:

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A handwritten signature in blue ink, appearing to read "Jennifer L.", is placed over a horizontal line.