No. 22-7374

IN THE SUPREME COURT OF THE UNITED STATES

EARL MCCOY, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly determined that the district court acted within the scope of its discretion in denying petitioner's motion seeking a new criminal trial based on a juror's failure to disclose the juror's prior criminal convictions during jury selection.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-7a) is reported at 58 F.4th 72. An earlier opinion (Pet. App. 9a-88a) is reported at 995 F.3d 32. The opinion of the district court (Pet. App. 89a-153a) is reported at 275 F. Supp. 3d 420.

JURISDICTION

The judgment of the court of appeals was entered on January 23, 2023. The petition for a writ of certiorari was filed on April 24, 2023 (Monday). The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a jury trial in the United States District Court for the Western District of New York, petitioner was convicted of one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and (b)(1); one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; two counts of attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; one count of conspiring to possess heroin and marijuana within intent to distribute, in violation of 21 U.S.C. 841(a)(1) and (b)(1)(D) and 21 U.S.C. 846; four counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(C)(i) and 2; one count of possessing a firearm in furtherance of a drug crime, in violation of 18 U.S.C. 924(c)(1)(A)(i) and 2; and one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Judgment 1-2. The district court sentenced petitioner to 135 years of imprisonment, to be followed by five years of supervised release. Judgment 3-4. The court of appeals reversed one of petitioner's Section 924(c) convictions, affirmed his other convictions, and remanded for resentencing. Pet. App. 9a-88a.

This Court granted his petition for a writ of certiorari, vacated the court of appeals' judgment, and remanded for further consideration in light of United States v. Taylor, 142 S. Ct. 2015 (2022). 142 S. Ct. 2863 (No. 21-6490). On remand, the court of appeals reversed two more of petitioner's Section 924(c)

convictions in light of Taylor, affirmed his convictions on the remaining eight counts, and remanded for resentencing. Pet. App. 1a-7a.

1. Petitioner conspired with others to commit a "series of home invasions in the Rochester, New York area." Pet. App. 15a. Petition was a co-leader of the operation, which "principally targeted persons who were believed to be drug dealers" and who were perceived by the conspirators as unlikely to report the robberies to the police. Id. at 16a; see id. at 16a-17a. Petitioner had members of his crew "place tracking devices on vehicles driven by the persons targeted." Id. at 16a. The crew tracked the victims' cars to their homes and then robbed the homes at gunpoint. Id. at 16a-17a. Some of the homes were unoccupied at the time; others were not. See id. at 18a-22a. In several instances, the conspirators brandished guns at the victims and threatened or beat them. Id. at 19a, 21a. Petitioner also conspired to sell the drugs obtained in the robberies, including heroin. Id. at 15a, 21a.

A grand jury in the Western District of New York returned a superseding indictment charging petitioner with one count of conspiring to commit Hobbs Act robbery, in violation of 18 U.S.C. 1951(a); one count of Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; two counts of attempted Hobbs Act robbery, in violation of 18 U.S.C. 1951(a) and 2; one count of conspiring to possess heroin and marijuana within intent to distribute, in

violation of 21 U.S.C. 841(a)(1) and (b)(1)(D) and 21 U.S.C. 846; four counts of brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2; one count of possessing a firearm in furtherance of a drug crime, in violation of 18 U.S.C. 924(c)(1)(A)(i) and 2; and one count of possessing a firearm following a felony conviction, in violation of 18 U.S.C. 922(g)(1). Third Superseding Indictment 1-8. The case proceeded to trial, and the jury found petitioner guilty on all counts. Pet. App. 27a.

A month later, petitioner moved for a new trial, alleging juror misconduct. Pet. App. 32a. The juror in question -- Juror 3 -- had marked "No" in response to a question on a pre-trial questionnaire mailed to prospective jurors asking whether they had been convicted of a crime punishable by more than one year in prison. Id. at 33a. Juror 3 also "did not respond" during oral voir dire when the district court asked whether any of the prospective jurors had been the defendant in a criminal case. Id. at 94a. But petitioner stated that he had later discovered that Juror 3 "had previously pleaded guilty and been convicted of two felonies, i.e., possession of stolen property in 1988 and burglary in 1989." Id. at 34a. Petitioner maintained that he had first learned of Juror 3's felony convictions after the trial, when defense counsel ran a background check on "a hunch." Id. at 97a (citation omitted).

The district court held a two-day evidentiary hearing on the motion. Pet. App. 34a-35a. On the first day of the hearing, Juror 3 stated that he could not recall the details of some of his prior offenses and that he had been falsely accused in one instance. Id. at 99a-101a. On the second day of the hearing, when presented with written records of his convictions, Juror 3 acknowledged that he had failed to be truthful about his criminal history -- including during his testimony at the first day of the hearing. Id. at 101a. Juror 3 gave several explanations for not disclosing his criminal convictions when asked about them, including that he believed that the prior convictions did not "count[]" because they had occurred approximately 30 years earlier, before he turned 21. Id. at 136a; see id. at 99a (quoting Juror 3's testimony that he "thought that [the questionnaire] meant 21 and over"). Juror 3 also testified that his prior convictions had not "impacted his ability to be fair and impartial," that he was not biased in favor of either party, and that he would have disclosed the convictions had he known that they likely would have led to him being excluded from the jury. Id. at 107a; see 17-3515 Gov't C.A. Br. 22-23.

The district court ultimately denied petitioner's motion for a new trial. Pet. App. 89a-153a. The court explained that, under this Court's decision in McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548 (1984), to "justify granting a new trial based upon incorrect responses by a juror during voir dire," a party must "demonstrate that the juror 'failed to answer honestly

a material question on voir dire'" and then must "also demonstrate that 'a correct response would have provided a valid basis for a challenge for cause.'" Pet. App. 117a-118a (citation omitted). The district court found that petitioner had made neither showing.

The district court first determined that Juror 3's misstatements did not "rise to the level of intentional falsehood necessary to satisfy the first prong of the McDonough test." Pet. App. 141a. Based in part on Juror 3's "facial expressions, demeanor, and intonation" while testifying, the court found that Juror 3 "had problems understanding the questions and expressing himself clearly." Id. at 124a. The court further found that, although Juror 3 "failed to respond truthfully to the juror questionnaire and the [c]ourt's voir dire questions," Juror 3 did not do so in order to "intentionally deceive the court so as to be selected to serve on the jury." Id. at 139a. Instead, the court found, Juror 3's lack of candor "likely originate[d] from the simple fact that, at 47 years old, [he] would prefer to shut out any recollection of his criminal history -- the most recent of which * * * was about 20 years ago, and most of which occurred when he was a teenager." Id. at 140a.

With respect to the second requirement of the McDonough framework, the district court found that petitioner "would not have made a cause challenge" to Juror 3 even if Juror 3 had accurately disclosed his prior criminal convictions. Pet. App. 142a. The court based that finding in large part on the fact that

petitioner had opposed striking a second potential juror, T.P., who had disclosed his own criminal history during jury selection. Ibid. And the court found itself "hard-pressed to credit [petitioner's] newfound aversion to jury service by a convicted felon given [petitioner's] reaction to the disclosure that T.P. was a convicted felon." Ibid.

The district court moreover determined that Juror 3's convictions did not suggest any bias that would have warranted striking him for cause. Pet. App. 143a-152a.* The court found "nothing in the record to suggest that Juror No. 3's criminal past reflected bias" or that the prior convictions "even came into [Juror 3's] thought processes when sitting on this jury." Id. at 151a. The court further found that Juror 3 had not appeared to be eager to serve on the jury and that he would have preferred to avoid jury service if given a choice. See id. at 143a-146a. The court also observed that, during jury selection, petitioner had not evinced any particular concern about the criminal history of potential jurors; had fought against the exclusion of the other potential juror with a disclosed criminal record, T.P.; and had apparently wanted Juror 3 to serve, viewing him as "potentially in

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* The district court noted that Juror 3's criminal history could have triggered the statutory prohibition on jury service by a person convicted of a felony whose civil rights have not been restored, see 28 U.S.C. 1865(b)(5), but the court observed that "it [was] too late for any statute-based challenge to Juror No. 3's service." Pet. App. 115a; see id. at 142a n.26. The court of appeals agreed with that determination, see id. at 46a-49a, and petitioner has not challenged it here.

[petitioner's] corner, not the opposite." Id. at 149a; see id. at 148a-149a.

The district court sentenced petitioner to a total term of imprisonment of 135 years, to be followed by five years of supervised release. Judgment 3-4.

2. The court of appeals reversed one of petitioner's Section 924(c) convictions, affirmed his other convictions, and remanded for resentencing. Pet. App. 9a-88a. With respect to petitioner's claim relating to Juror 3, the court held that the district court had acted within the scope of its discretion in denying petitioner's motion for a new trial. Id. at 49a-51a. The court of appeals explained that the district court had "properly recognized that the initial question to be explored is whether the juror's nondisclosure was deliberate or inadvertent; and it recognized that the ensuing determination as to the existence of bias -- whether actual, or implied as a matter of law, or permissibly inferred -- may well be affected both by whether the nondisclosure was deliberate and, if it was, by the juror's motivation to conceal the truth." Id. at 49a-50a. The court of appeals observed that these "determinations required assessments of the juror's credibility" and that the district court had made those assessments based in part on its first-hand observations of Juror 3. Id. at 50a. And the court of appeals saw "no error of law or clearly erroneous finding of fact, and no other basis for overturning the district court's ruling that the record does not

suggest that Juror No. 3 had any bias against [petitioner] or in favor of the government." Id. at 51a.

This Court granted a petition for a writ of certiorari, vacated the court of appeals' judgment, and remanded for further consideration in light of United States v. Taylor, supra. 142 S. Ct. 2863 (No. 21-6490). In Taylor, this Court determined that attempted Hobbs Act robbery does not constitute a "crime of violence" as defined in Section 924(c)(3)(A) because a conviction for attempted Hobbs Act robbery does not categorically require the government to prove "the use, attempted use, or threatened use of force." 142 S. Ct. at 2024-2025.

On remand, the court of appeals reversed petitioner's two Section 924(c) convictions predicated on attempted Hobbs Act robbery, while adhering to its prior decision to reverse another Section 924(c) conviction, predicated on Hobbs Act conspiracy. Pet. App. 7a; see id. at 1a-7a. The court otherwise affirmed petitioner's convictions and again remanded for resentencing. Id. at 7a. The court specifically declined to "reconsider [its prior] holding pertaining to alleged juror misconduct." Id. at 6a n.1.

ARGUMENT

Petitioner renews (Pet. 14-22) his contention that the district court should have granted his motion for a new trial based on Juror 3's misconduct. Petitioner also contends (Pet. 6-14) that the lower courts misapplied the rule announced in McDonough Power Equipment, Inc. v. Greenwood, 464 U.S. 548 (1984), in a

manner that conflicts with the approach of other circuits. Those contentions do not warrant further review. The decision below is correct and does not conflict with any decision of this Court or another court of appeals. At bottom, petitioner challenges the lower courts' fact-bound determinations in the particular circumstances of his case. The petition for a writ of certiorari should be denied.

1. As a threshold matter, the interlocutory posture of the case "alone furnishe[s] sufficient ground for the denial" of the petition. Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U.S. 251, 258 (1916) ("[E]xcept in extraordinary cases, the writ is not issued until final decree."); see Brotherhood of Locomotive Firemen & Enginemen v. Bangor & Aroostook R.R., 389 U.S. 327, 328 (1967) (per curiam) (a case remanded to district court "is not yet ripe for review by this Court"); see also Virginia Military Inst. v. United States, 508 U.S. 946, 946 (1993) (opinion of Scalia, J., respecting the denial of the petition for writ of certiorari). The court of appeals reversed three of petitioner's convictions, and remanded for resentencing, "including consideration of the First Step Act in the first instance." Pet. App. 7a.

Petitioner may reassert his current contention -- together with any other appropriate contentions that may arise on remand -- in a single certiorari petition after final judgment. See Major League Baseball Players Ass'n v. Garvey, 532 U.S. 504, 508 n.1 (2001) (per curiam). Petitioner provides no sound basis for

departing from the Court's normal practice of denying petitions by parties challenging interlocutory determinations that, like the decision in this case, may be reviewed after final judgment.

2. In any event, the district court acted well within the scope of its discretion in denying petitioner's motion for a new trial based on Juror 3's failure to disclose his criminal convictions. As the court of appeals recognized, the district court "correctly laid out the relevant Sixth Amendment principles," as derived from this Court's decision in McDonough, and correctly applied those principles to the facts of this case. Pet. App. 49a.

a. In McDonough, this Court held that "to obtain a new trial" on the basis of a juror's alleged dishonesty in voir dire, "a party must first demonstrate that [the] juror failed to answer honestly a material question on voir dire, and then further show that a correct response would have provided a valid basis for a challenge for cause." 464 U.S. at 556. The Court observed that a juror's reasons "for concealing information may vary" and that "only those reasons that affect a juror's impartiality can truly be said to affect the fairness of a trial." Ibid. The Court thus declined to adopt any rule of automatic reversal, instead stressing principles of "harmless error," id. at 553, and the ways in which retrying a case imposes significant costs on the public and the judiciary, see id. at 555. And the Court emphasized that "a

litigant is entitled to a fair trial but not a perfect one." Id. at 553 (brackets and citation omitted).

The district court correctly identified and applied McDonough's two-part framework, and the court of appeals reviewed the record and found no error -- let alone any abuse of discretion. See pp. 4-9, supra. With respect to the first McDonough requirement, the district court found that Juror 3 was not "intentionally" deceptive about his criminal history but instead had simply pushed his decades-old convictions out of mind. Pet. App. 141a. As the court of appeals observed, that finding was based in part on the district court's assessment of Juror 3's demeanor, relative lack of sophistication, and overall credibility during the evidentiary hearing. See id. at 49a-50a. And reviewing the record on appeal, the court of appeals perceived "no error of law or clearly erroneous finding of fact." Id. at 51a.

In addition, with respect to the second McDonough requirement, the district court reasonably found that Juror 3's undisclosed criminal convictions would not have justified striking him for cause. Juror 3's prior convictions did not demonstrate any actual bias against petitioner or in favor of the government, and the petition does not claim that they did. Juror 3's prior convictions also did not suggest any "implied" or inferred bias (Pet. 19) for the reasons explained at length by the district court and affirmed by the court of appeals. See Pet. App. 50a, 146a-152a. The decades-old convictions did not, for example, suggest

any undisclosed relationship between Juror 3 and "any of the parties, victims, witnesses, [or] attorneys" in this case. Id. at 147a; cf. Smith v. Phillips, 455 U.S. 209, 222 (1982) (O'Connor, J., concurring) (identifying the "extreme situations" that might justify a finding of implied bias, such as "a revelation that the juror is an actual employee of the prosecuting agency"). Nor did Juror 3's prior convictions support any inference that he was biased in favor of law enforcement or predisposed to "identif[y] with the cooperators in this case." Pet. App. 151a. Among other things, "[t]here [was] no evidence that Juror No. 3 was offered some benefit in exchange for cooperation" in his own prior cases, or that Juror 3 had cooperated with law enforcement or testified against any co-defendants. Ibid.

The district court's findings are underscored by petitioner's own approach to voir dire, which strongly suggested that petitioner would not have sought to strike Juror 3 for cause even if Juror 3 had revealed his prior convictions. Petitioner does not dispute the court's assessment that petitioner "wanted Juror No. 3 * * * on the jury" because petitioner perceived Juror 3 as "potentially in [his] corner." Pet. App. 148a-149a. The court also reasonably relied on petitioner's decision not to seek any voir dire about potential jurors' prior criminal convictions and petitioner's objection to the government's request to strike another prospective juror based on that juror's criminal record. See id. at 45a, 135a-136a, 150a.

b. Petitioner suggests (e.g., Pet. 7) that McDonough does not apply in criminal cases or should be supplemented by additional Sixth Amendment considerations. Although McDonough concerned a civil litigant's due process right to an impartial jury and not a criminal defendant's Sixth Amendment right to an impartial jury, see 464 U.S. at 556, petitioner himself acknowledges that "it has been widely recognized that * * * McDonough can be applied to criminal cases," Pet. 8.

In McDonough, the Court did not place any particular emphasis on the constitutional basis for the litigant's right to be tried by an impartial jury, and the Court relied on a number of precedents involving criminal prosecutions. See, e.g., 464 U.S. at 553 (drawing support from discussion of harmless error in Kotteakos v. United States, 328 U.S. 750, 759 (1946)). And petitioner also never directly explains how his proposed "Sixth Amendment standards" (Pet. 8) would be any different from the inquiry prescribed in McDonough, which addressed a claim on all fours with petitioner's: an effort obtain a new trial based on a juror's failure to give accurate answers during voir dire. See McDonough, 464 U.S. at 555-556.

c. Petitioner's alternative challenge to the lower courts' application of McDonough is likewise misplaced. Petitioner contends that the district court misapplied the first McDonough requirement by looking to whether Juror 3 made false statements in voir dire "with intent to obtain a seat on the jury." Pet. 15;

see id. at 14-18. But petitioner identifies nothing to suggest that the district court imposed -- or the court of appeals countenanced -- an inflexible requirement that McDonough's first requirement may only be satisfied by proof that a juror's dishonesty was "motivated by a desire to sit on the jury." Pet. 17.

The district court instead permissibly weighed Juror 3's lack of any motive to sit on the jury in the court's overall assessment of whether Juror 3's nondisclosures rose "to the level of intentional falsehood necessary to satisfy the first prong of the McDonough test." Pet. App. 141a. As this Court explained in McDonough, a juror's "motives for concealing information may vary," and only some "reasons * * * affect a juror's impartiality" and "can truly be said to affect the fairness of a trial. 464 U.S. at 556.

Accordingly, the lower courts in this case both recognized that the "determination as to the existence of bias -- whether actual, or implied as a matter of law, or permissibly inferred -- may well be affected both by whether the nondisclosure was deliberate and, if it was, by the juror's motivation to conceal the truth." Pet. App. 49a-50a. And after an evidentiary hearing at which Juror 3 testified, the district court found that Juror 3 was not motivated by a desire to sit on the jury -- and, in fact, that Juror 3 would have disclosed his criminal convictions had he been aware that doing so likely would have led to him being

excluded from the jury. Id. at 40a, 139a. Petitioner's criticisms (Pet. 17-18) of the court's specific findings about Juror 3's motivations are unfounded and would not warrant further review in any event.

Petitioner also contends (Pet. 18-22) that the district court misapplied the second requirement of McDonough. But petitioner's criticisms focus on whether Juror 3's dishonesty in voir dire itself sufficed to show a "risk of partiality" or bias. Pet. 19 (citation and emphasis omitted); see Pet. 20-21 (arguing that Juror 3 was "intentionally misleading" and "failed to respond truthfully"). The inquiry prescribed by McDonough is whether "correct response[s]" by Juror 3 -- i.e., the absence of any dishonesty -- would have given rise to a scenario that would have justified a for-cause strike. 464 U.S. at 556 (emphasis added). And petitioner identifies no error in the district court's determination that Juror 3 would not have been struck for cause based on his prior convictions had he given correct responses when asked about them.

3. Petitioner errs in contending (Pet. 6-14) that the Second Circuit's application of McDonough to the facts of this case implicates any conflict of authority in the courts of appeals.

None of the implied-bias decisions on which petitioner relies (Pet. 10-13) demonstrates any such conflict. Several of the precedents cited by petitioner predated this Court's 1984 decision in McDonough and therefore could not establish a conflict of

authority as to the application of current law. See, e.g., United States v. Eubanks, 591 F.2d 513, 517 (9th Cir. 1979) (per curiam); Jackson v. United States, 395 F.2d 615, 617-618 (D.C. Cir. 1968), United States ex rel. DeVita v. McCorkle, 248 F.2d 1, 8 (3rd Cir.) (en banc), cert. denied, 355 U.S. 873 (1957).

In any event, the implied-bias cases on which petitioner relies concern "extreme situations where the relationship between a prospective juror and some aspect of the litigation is such that it is highly unlikely that the average person could remain impartial in his deliberations under the circumstances." Person v. Miller, 854 F.2d 656, 664 (4th Cir. 1988), cert. denied, 489 U.S. 1011 (1989); see, e.g., Hunley v. Godinez, 975 F.2d 316, 319-320 (7th Cir. 1992) (per curiam) ("presumption of bias" where "the jury was burglarized during deliberations and while sequestered" in a manner that was "striking[ly] similar[]" to the burglary charges at issue); Burton v. Johnson, 948 F.2d 1150, 1157-1159 (10th Cir. 1981) (presumed bias where juror's own history of domestic abuse aligned with the defendant's battered woman defense); Eubanks, 591 F.2d at 517 ("presumed" bias where juror's sons "were serving prison terms for heroin-related crimes" and the defendant was charged with conspiring to distribute heroin).

The district court correctly recognized here that Juror 3's dishonesty was not the kind of "extreme situation[]" that warrants a presumption of bias. Pet. App. 146a (citation omitted). And petitioner's factbound contrary assertion (Pet. 11-12) overstates

the similarities between the offense conduct leading to his convictions and Juror 3's decades-old criminal history. Juror 3 was never convicted of home robbery or burglary, or any crimes involving narcotics or firearms. And while petitioner emphasizes that Juror 3, like one of the victims in this case, "had been the victim of a burglary," Pet. 12, the district court found that experience unsupportive of any finding that Juror 3 was biased in favor of burglary victims, because the incident had entirely slipped Juror 3's mind. Pet. App. 128a.

Petitioner's contention that the courts of appeals disagree on the "criteria" for satisfying the McDonough requirements is misplaced. Pet. 14; see Pet. 12-13, 18-19. Even if the courts of appeals were divided on whether dishonesty must be "intentional" (Pet. 13) in order to satisfy McDonough's first requirement, his claim of juror misconduct was not rejected on such a basis. See, e.g., Pet. App. 40a (noting that the district "found that Juror No. 3 had made some intentionally false statements at voir dire"). Similarly, petitioner posits (Pet. 18) a "three-way split amongst the Circuits" concerning whether the second requirement of McDonough can be satisfied if the disqualification of the juror would have been permissible but not mandatory, but by his own account (ibid.), the court of appeals here follows what he identifies as the most permissive approach, in which McDonough can be satisfied if a "reasonable judge * * * would have excused the juror for cause, even if disqualification was not mandatory."

Finally, petitioner asserts (Pet. 11) that the court of appeals' decision here conflicts with its own precedent. But even if that were true, any intra-circuit tension would not warrant this Court's review. See Wisniewski v. United States, 353 U.S. 901, 902 (1957) (per curiam) ("It is primarily the task of a Court of Appeals to reconcile its internal difficulties.").

4. At their core, petitioner's claims simply challenge the factbound disposition of his particular case. Indeed, the decisions below are particularly ill-suited to further review. The assessment of whether a new trial is warranted based on allegations of juror bias is generally "committed to the discretion of the district court," McDonough, 464 U.S. at 556, and the district court's decision here rested in part on credibility judgments that the district court was uniquely positioned to make concerning Juror 3's in-person demeanor.

"A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10; see, e.g., United States v. Johnston, 268 U.S. 220, 227 (1925) (explaining that the Court ordinarily does not "grant * * * certiorari to review evidence and discuss specific facts"). And under what the Court "ha[s] called the 'two-court rule,' the policy has been applied with particular rigor" where, as here, the "district court and court of appeals are in agreement as to what conclusion the record requires." Kyles v. Whitley, 514 U.S. 419,

456-457 (1995) (Scalia, J., dissenting); see Graver Tank & Mfg. Co. v. Linde Air Prods. Co., 336 U.S. 271, 275 (1949). Petitioner provides no sound reason to depart from that policy here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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