No. _____

IN THE

Supreme Court of the United States

IN RE ANTHONY FLOYD WAINWRIGHT,

Petitioner.

PETITION FOR WRIT OF HABEAS CORPUS

THIS IS A CAPITAL CASE
WITH AN EXECUTION SCHEDULED FOR
TUESDAY, JUNE 10, 2025, AT 6:00 P.M.

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CAPITAL CASE
QUESTIONS PRESENTED

Mr. Wainwright's jury and sentencer were provided with highly prejudicial information about his role in the crime for which he is sentenced to die. This testimony came from jailhouse informants who—unbeknownst to the jury, the court, or defense counsel—expected a sentencing benefit in exchange for their testimony against Mr. Wainwright. Because the truth was not disclosed until after Mr. Wainwright's initial federal habeas proceedings had concluded, Eleventh Circuit precedent precludes federal review of his claim that the State violated his due process rights. Without this Court's intervention, the restrictive application of 28 U.S.C. § 2244(b)(2) will perversely reward the State for withholding evidence and cause Mr. Wainwright's claim of constitutional infirmity to be lost.

The questions presented are:

1. Should this Court use its power to grant a writ of habeas corpus to a capital defendant who has no other available forum to raise his compelling due process violation pursuant to *Brady v. Maryland*?

2. Whether, in the wake of this Court's decisions in *Panetti v. Quarterman* and *Banister v. Davis*, *Brady* claims discovered after the conclusion of initial federal habeas proceedings may be treated as second-in-time rather than successive petitions, as numerous panels within the federal circuit courts have advocated?

3. Whether the state court's *Brady* analysis was contrary to and an unreasonable application of this Court's due process jurisprudence because it relieved the State of its obligation to disclose exculpatory evidence and instead placed the onus on Mr. Wainwright to discover it?

4. Whether the state court's requirement that Mr. Wainwright prove a firm deal existed between the State and its jailhouse informant is contrary to or an unreasonable application of this Court's clearly established law as articulated in *United States v. Bagley*, which recognized that the possibility of a reward could be equally or more motivating than a specific sentencing agreement?

5. Whether the state court's materiality analysis contravened the cumulative review required by this Court's longstanding precedent because it failed to consider the impact of the suppressed evidence on Mr. Wainwright's penalty phase outcome?

PARTIES TO THE PROCEEDINGS

Anthony Floyd Wainwright, a death-sentenced Florida prisoner scheduled for execution on June 10, 2025, is the Petitioner in this matter. Mr. Wainwright is in the custody of Ricky D. Dixon, the Secretary for the Florida Department of Corrections.

LIST OF DIRECTLY RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Underlying Criminal Trial:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 1994 CF 150
Judgment Entered: June 12, 1995

Direct Appeal:
Florida Supreme Court (No. 86022)
Anthony Floyd Wainwright v. State of Florida, 704 So. 2d 511 (Fla. 1997)
Judgment Entered: November 13, 1997 (affirming)
Rehearing Denied: January 16, 1998

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 97-8324)
Anthony Floyd Wainwright v. State of Florida, 118 S. Ct. 1814 (1998)
Judgment Entered: May 18, 1998

Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: April 12, 2002 (denying motion for postconviction relief)

Florida Supreme Court (Nos. SC02-1342; SC02-2021)
Anthony Floyd Wainwright v. State of Florida, 896 So. 2d 695 (Fla. 2004)
Judgment Entered: November 24, 2004 (affirming denial of postconviction relief and denying state habeas corpus relief)
Rehearing Denied: March 1, 2005

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 05-5025)
Anthony Floyd Wainwright v. State of Florida, 126 S. Ct. 188 (2005)
Judgment Entered: October 3, 2005

Federal Habeas Proceedings:
District Court for the Middle District of Florida
Wainwright v. Sec'y, Fla. Dep't of Corrs., Case No. 3:05-cv-276-TJC
Judgment Entered: March 10, 2006 (dismissing habeas petition as untimely)
Reconsideration Denied: May 12, 2006

Eleventh Circuit Court of Appeals (No. 06-13453)
Wainwright v. Sec'y, Fla. Dep't of Corrs., 537 F.3d 1282 (11th Cir. 2007)

Judgment Entered: November 13, 2007 (affirming habeas dismissal)
Rehearing Denied: December 26, 2007

First Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: September 20, 2007 (summarily denying)

Florida Supreme Court (No. SC07-2005)
Anthony Floyd Wainwright v. State of Florida, 2 So. 3d 948 (Fla. 2008)
Judgment Entered: November 26, 2008 (affirming)
Rehearing Denied: February 6, 2009

Second Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2009 (dismissing)

Florida Supreme Court (No. SC09-1411)
Anthony Floyd Wainwright v. State of Florida, 43 So. 3d 45 (Fla. 2010)
Judgment Entered: May 6, 2010 (affirming)
Rehearing Denied: August 3, 2010

Third (Amended) Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2012 (denying)

Florida Supreme Court (No. SC11-1669)
Anthony Floyd Wainwright v. State of Florida, 77 So. 3d 648 (Fla. 2011)
Judgment Entered: December 2, 2011 (affirming)

Fourth Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: June 15, 2012 (denying)

Florida Supreme Court (No. SC11-1669)
Anthony Floyd Wainwright v. State of Florida, 77 So. 3d 648 (Fla. 2011)
Judgment Entered: December 2, 2011 (affirming)

Fifth Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2

Judgment Entered: February 6, 2014 (denying)
Judgment Amended: April 24, 2014

Sixth Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgments Entered: June 2, 2015 and September 22, 2015 (denying)

Florida Supreme Court (No. SC15-2280)
Anthony Floyd Wainwright v. State of Florida, 2017 WL 394509 (Fla. Jan. 30, 2017)
Judgment Entered: January 30, 2017

Seventh Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: July 15, 2022 (denying)
Rehearing Denied: August 4, 2022

Florida Supreme Court (No. SC22-1187)
Anthony Floyd Wainwright v. State of Florida, 2022 WL 4282149
Judgment Entered: September 16, 2022 (striking)
Rehearing Denied: January 12, 2023

Related Proceedings Under FRCP 60(b):
District Court for the Northern District of Florida
Wainwright v. Sec'y, Fla. Dep't of Corrs., Case No. 3:05-cv-276-J-TJC
Judgment Entered: January 27, 2020 (denying relief from judgment in part and dismissing in part as unauthorized successive petition)
Reconsideration Denied: August 24, 2020

Eleventh Circuit Court of Appeals
Wainwright v. Sec'y, Fla. Dep't of Corrs. (No. 20-13639)
Judgment Entered: July 18, 2023 (affirming)
Rehearing Denied: October 13, 2023

Petition for Writ of Certiorari Denied:
Supreme Court of the United States (No. 23-6737)
Wainwright v. Dixon, 144 S. Ct. 1363
Judgment Entered: April 15, 2024

Under-Warrant Proceedings

Eighth Successive Postconviction Proceedings:
Circuit Court of Hamilton County, Florida
State of Florida v. Anthony Floyd Wainwright, Case No. 94-150-CF-2
Judgment Entered: May 20, 2025 (denying)

Florida Supreme Court (No. SC25-709)
Anthony Floyd Wainwright v. Sec'y, Fla. Dep't of Corrs., 2025 WL 153495
Judgment Entered: May 29, 2025 (striking state habeas petition)

Florida Supreme Court (No. SC25-708)
Anthony Floyd Wainwright v. State of Florida, 2025 WL 1561151 (Fla. June 3, 2025)
Judgment Entered: June 3, 2025 (affirming)

Petition for Writ of Certiorari:
Supreme Court of the United States (No. 24-7365)
Anthony Floyd Wainwright v. State of Florida
Judgment Pending

42 U.S. § 1983 Proceedings:
District Court for the Middle District of Florida
Wainwright v. DeSantis, et al., Case No. 3:25-cv-607-WWB
Judgment Pending

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PETITION FOR A WRIT OF HABEAS CORPUS

Anthony Floyd Wainwright respectfully petitions for a writ of habeas corpus.

STATEMENT OF JURISDICTION

This Court's jurisdiction is invoked pursuant to its authority under 28 U.S.C. §§ 2241 and 2254 to grant a writ of habeas corpus, as well as pursuant to Rule 20.4 of the Rules of this Court and the All Writs Act, 28 U.S.C.§ 1651(a). *See Felker v. Turpin*, 518 U.S. 651 (1996).

REASONS FOR NOT FILING IN THE LOWER COURTS

Mr. Wainwright has not brought his claim in the United States District Court for the Middle District of Florida because that court is bound by controlling Eleventh Circuit precedent that would preclude it from hearing Mr. Wainwright's claim. The law of the Eleventh Circuit, albeit heavily criticized by panels within the circuit, that claims pursuant to *Brady v. Maryland*, 373 U.S. 83 (1963), after initial habeas proceedings, are second or successive petitions. *See Tompkins v. Sec'y, Dep't of Corrs.*, 557 F.3d 1257 (11th Cir. 2009); *Scott v. United States*, 890 F.3d 1239 (11th Cir. 2018); *Jennings v. Sec'y, Fla. Dep't of Corrs.*, 108 F.4th 1299 (11th Cir. 2024). Thus, under current circuit precedent, the federal district court would have no jurisdiction to consider Mr. Wainwright's claim.

Similarly, Mr. Wainwright cannot make the requisite showing to apply to the Eleventh Circuit for authorization to file a second or successive petition. This is because although Mr. Wainwright alleges a factual predicate for his claim that could not have been discovered previously through the exercise of due diligence and which

greatly undermine the validity of his death sentence, he cannot show that "but for constitutional error, no reasonable factfinder would have found [him] guilty of the underlying offense" as required by 28 U.S.C. § 2244(b)(2)(A). *See also In Re Hill*, 715 F.3d 284 (11th Cir. 2013). This case thus presents an exceptional circumstance in which the relief sought can only be obtained from this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article I, Section 9, Clause 2 of the United States Constitution provides:

> The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

The Fourteenth Amendment provides, in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2244(b), Title 28 of the U.S. Code, enacted as part of the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), provides, in relevant part:

> (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 retroactive 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 the 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)(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 [§ 2244(b)].
>
> * * *
>
> (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.

STATEMENT OF THE CASE

I. Introduction

Anthony Floyd Wainwright will be sixth person executed this year in the state of Florida, and the fourth[1] put to death without ever having his claims heard by a federal court. Since Mr. Wainwright's arrest on April 28, 1994, his proceedings have been marred by critical, systemic failures at virtually every stage and through the signing of his death warrant on May 9, 2025. These failures include, but are not limited to: (1) flawed DNA evidence that was not disclosed to the defense until after opening statements; (2) erroneous jury instructions, and inflammatory and inaccurate closing arguments by both sides; (3) initial federal counsel blowing the AEDPA deadline and foreclosing Mr. Wainwright from any federal review despite his repeated attempts to preserve his claims; (4) court-appointed counsel waiving critical elements of Mr. Wainwright's during warrant proceedings; (5) the Florida Supreme

[1] The other three individuals are James Ford, *Ford v. Sec'y Dep't of Corrs.*, No. 2:06-cv-333, 2009 WL 3028886 (M.D. Fla. Sept. 17, 2009); Edward James, *James v. Sec'y, Fla. Dep't of Corrs.*, 2025 WL 839149 (11th Cir. Feb. 3, 2025); and Jeffrey Hutchinson, *Hutchinson v. Florida*, No. 5:09-cv-261, 2010 WL 3833921 (N.D. Fla. Sept. 28, 2010).

Court's precluding Mr. Wainwright's counsel of choice from filing a petition for writ of habeas corpus. But the final indignity did not come to light until May 13, 2025, when jailhouse informant Robert Murphy *finally* admitted that he and another informant, Dennis Givens, testified against Mr. Wainwright in exchange for sentencing benefits in their own cases. And due to Eleventh Circuit precedent that forecloses second-in-time § 2254 petitions that assert *Brady* claims based on newly discovered evidence, and absent this Court's intervention, the State will have secured a sixth execution in reward for its misconduct.

Section 2244(b)(2) of the Antiterrorism and Effective Death Penalty Act bars review of a "second or successive habeas corpus application" unless it (1) relies on a "new rule of constitutional law" previously unavailable and made retroactive to cases on collateral review or (B) relies on newly discovered evidence that could not have been discovered via due diligence and is sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the applicant guilty. The Eleventh Circuit's restrictive reading of *Panetti v. Quarterman*, 551 U.S. 930, 945-47 (2007), as not being applicable to chronologically second *Brady* claims prevents Mr. Wainwright from obtaining federal review of the State's *Brady* violation. *See Tompkins v. Sec'y, Dep't of Corrs.*, 557 F.3d 1257 (11th Cir. 2009). And at least four other circuits—the Fourth, Fifth, Sixth, and Ninth—have adopted this unnecessarily restrictive interpretation, despite panels within the respective jurisdictions expressing concerns that *Brady* claims and *Ford* claims are not materially distinguishable for purposes of § 2244(b).

Finally, the Eleventh Circuit has declined to recognize actual innocence of the death penalty as sufficient to overcome the judicially-developed bar on second or successive petitions. *See In Re Hill*, 715 F.3d 284, 300-01 (11th Cir. 2013). Thus, because Mr. Wainwright cannot show that, but for the constitutional errors in his case, no juror would have found him guilty of first-degree murder under the felony-murder theory, he is foreclosed from federally litigating a meritorious *Brady* violation. By exercising its original jurisdiction, this Court can both resolve the intra-circuit conflict regarding *Panetti*'s application of chronologically second *Brady* claims, and prevent a fundamentally unfair outcome that rewards disclosing misconduct until after an inmate's first federal habeas petition has been resolved. *See Bernard v. United States*, 141 S. Ct. 504, 506-07 (2020) (Sotomayor, J., dissenting from the denial of certiorari and application for a stay).

II. Procedural History

In 1994, Mr. Wainwright and his co-defendant Richard Hamilton were indicted in Hamilton County for first-degree murder and associated charges. R. 1-2. They were convicted after a joint trial before two separate juries. R. 1473, 1903. After a penalty phase, Mr. Wainwright's jury unanimously recommended an advisory sentence of death, which the trial court imposed. R. 1170-77, 3738-39, 3790. The Florida Supreme Court affirmed. *Wainwright v. State*, 704 So. 2d 511, 513 n.4 (Fla. 1997), *cert. denied, Wainwright v. Florida*, 523 U.S. 1127 (1998).

In 2000, Mr. Wainwright timely filed, and later amended, a motion for postconviction relief. PCR. 3-33. After an evidentiary hearing, the circuit court

denied relief, which the Florida Supreme Court affirmed. *Wainwright v. State*, 896 So. 2d 695 (Fla. 2004) (also denying state habeas relief), cert. denied, *Wainwright v. Florida*, 546 U.S. 878 (2005). Mr. Wainwright's subsequent efforts to raise meritorious issues in state court were summarily rejected.

In 2005, Mr. Wainwright filed a petition for writ of habeas corpus, which the federal district court ultimately dismissed as untimely due to federal counsel filing the petition after the statute of limitations had expired. *Wainwright v. Sec'y, Fla. Dep't of Corrs.*, 537 F.3d 1282 (11th Cir. 2007) (affirming). In 2019, Mr. Wainwright unsuccessfully moved for relief from that judgment under Federal Rule of Civil Procedure 60(b)(6). *Wainwright v. Sec'y, Fla. Dep't of Corrs.*, No. 3:05-cv-00276, ECF No. 60 (M.D. Fla. Jan. 17, 2020). The Eleventh Circuit affirmed, *Wainwright v. Sec'y, Fla. Dep't of Corrs.*, No. 20-13639, 2023 WL 4582786 (11th Cir. July 18, 2023), and this Court denied certiorari review. *Wainwright v. Dixon*, 144 S. Ct. 1363 (2024).

In 2022, Mr. Wainwright filed his seventh successive motion, which was summarily denied. After his counsel declined to appeal, the Florida Supreme Court struck Mr. Wainwright's attempt to do so pro se. Mr. Wainwright then sought substitution of counsel pursuant to *Nelson v. State*, 274 So. 2d 256 (Fla. 4th DCA 1973), which the Florida Supreme Court denied.

On May 9, 2025, Governor Ron DeSantis signed a death warrant for Mr. Wainwright, setting his execution for June 10, 2025, at 6:00PM. On May 14, 2025, Mr. Wainwright filed an eighth successive postconviction motion, which he later amended on May 15, 2025. PCR8. 181-241. He raised three claims, including a *Brady*

violation, based on newly discovered evidence that the State suppressed evidence that at least two jailhouse informants received a sentencing benefit in exchange for testifying against Mr. Wainwright. PCR8. 202-04. The circuit court summarily denied relief on May 20, 2025. PCR8. 441-61. Mr. Wainwright appealed the denial to the Florida Supreme Court[2] and contemporaneously filed a motion for stay of execution on May 23, 2025. The Florida Supreme denied relief on June 3, 2025. *Wainwright v. State*, No. SC25-0708, 2025 WL1561151 (Fla. June 3, 2025).

III. Additional Relevant Facts

A. Robert Allen Murphy was a key witness for the State in obtaining Mr. Wainwright's death sentence

At Mr. Wainwright's 1995 trial, the State presented testimony of jailhouse informant Robert Allen Murphy, who was then serving a twelve-year sentence. R. 2702-04. Murphy met Mr. Wainwright in confinement after Murphy used his "trustee" status to have sex with a female prisoner. R. 2705.

Murphy testified that, while in jail, Mr. Wainwright told him he and Hamilton came to Florida after escaping jail or prison. R. 2708. They abducted a woman at "some kind of store" and "went off into the woods." R. 2708. Mr. Wainwright said he strangled the woman, but she wouldn't die, "kind of like when you hit a puppy in the head and it kind of shakes a little bit[,]" so he shot her in the head twice and then dragged her off and left her. R. 2708.

[2] Mr. Wainwright also filed a state petition for writ of habeas corpus and separate stay motion on May 20, 2025, under separate case number SC25-0709. Both were stricken on May 29, 2025.

Murphy could not initially identify Mr. Wainwright in the courtroom. R. 2705. But after his testimony, the State asked him to "specifically [] direct your attention to [defense] counsel table over there. Do you recognize anybody seated at that table right there?" At that point, Murphy said a man sitting there "does look like Anthony Wainwright, but he didn't have any hair and he didn't have no mustache [when I talked to him]." R. 2710.

On cross-examination, Murphy testified that he had a pending "modification of sentence" to lower his sentence, but he was "not necessarily" hoping to get a sentence reduction. R. 2712-13. On redirect, Murphy said the State did not promise anything in exchange for his testimony. R. 2726.

Before Hamilton's jury[3], the State presented testimony from Dennis Givens, another jailhouse informant who was placed in confinement at the Taylor County Jail with Mr. Wainwright after bringing tobacco in. R. 3375-77. Givens testified that Mr. Wainwright claimed to have been the dominant actor in the murder. R. 3385. He "took a scarf or shirt or something and wrapped it around her neck and tried to strangle her, and that didn't work, so he said he punched her in the back of the head a few times." R. 3384. "I put a bullet in the gun, walked over there and I shot her in the back of the head [twice]. I kicked her to make sure she was dead, and I drug her off in some bushes and threw some bushes over her." R. 3385. Givens said Mr. Wainwright called Hamilton a "pussy" for not killing her. R. 3385. Givens

[3] Mr. Wainwright and Hamilton had a joint trial, but before separate juries. R. 1906-07.

characterized Mr. Wainwright as a "lunatic" who would say things like "it is a good night for a homicide" or "I finally did it[.]" R. 3387, 3392. He said Mr. Wainwright was "evil" and referred to himself as a maniac. R. 3392-93.

B. Murphy's May 13, 2025 affidavit

On May 13, 2025, Murphy admitted for the first time that, contrary to his trial testimony, he expected and received a sentencing benefit in exchange for testifying against Mr. Wainwright. He also disclosed that Givens, likewise, expected a benefit in return for testifying against Mr. Wainwright.

Murphy disclosed that while he was housed with Mr. Wainwright in confinement, Mr. Wainwright "was talking crazy about everything, including his case. What he was saying about his case was not believable to [Murphy], because it was so sensational and seemed more like he was trying to act tough." PCR8. 240. When he informed law enforcement of Mr. Wainwright's purportedly inculpatory statements, Murphy clarified: "I didn't believe it all because it was so crazy. I remember asking them, 'Would you even believe that?'" PCR8. 240. But law enforcement ignored this, and directed him to testify to what Mr. Wainwright told him. Without any prior notice, Murphy was later transported from where he was serving his prison sentence to the county jail, for the State's aim of presenting testimony against Mr. Wainwright. PCR8. 240.

While at the county jail, Murphy and Givens met and "kept discussing the case and our testimony before we gave it." PCR8. 240. Givens "told [Murphy] that he was receiving a benefit in exchange for his testimony against Anthony." PCR8. 240. This

prompted Murphy to seek a benefit before testifying as well. PCR8. 240. Murphy contacted his defense attorney, who spoke with the State about it. PCR8. 240. Murphy's attorney assured him that he would receive a benefit in exchange for testifying. PCR8. 240. Murphy met with the prosecutor in Mr. Wainwright's case prior to testifying:

> [H]e said that he could not make a promise but the way he said it made it clear to me that I would get a benefit if I testified. He repeated that so much that it became annoying, and I found it unusual because everyone knew the elephant in the room. We all knew what was going on and that I would be receiving something in exchange for my testimony.

PCR8. 240-41.

Murphy's hearing regarding a modification of his sentence, which had been scheduled prior to his testimony, was "pushed back" until after his testimony in Mr. Wainwright's case. PCR8. 240. And, just as he had been assured, Murphy's benefit was realized: "At the [modification of sentence] hearing, the judge called the prosecutor on the phone and [] provided information about my testimony. After the phone call, I was given a choice of doing time in prison or a lengthier probation. I chose the probation." PCR8. 241.

C. Brief recitation of additional evidence uncovered after trial

Mr. Wainwright's role in the crimes compared to Hamilton's has been disputed throughout his proceedings. For decades, Mr. Wainwright has specifically disputed the courts' findings that he raped the victim or acted as a trigger person. R. 2626-28.

At Mr. Wainwright's sentencing, the State presented conflicting testimony from FDLE serologist, James Pollock, and analyst Michael DeGuglielamo, on Mr.

Wainwright's role in the sexual assault. Pollock testified that he had analyzed a portion of the rear seat cover from the car in which Mr. Wainwright, Hamilton, and the victim had been driving and concluded that the DNA loci/probes analyzed "all are consistent with semen having come from Anthony Wainwright." R. 3155. DeGuglielamo, who used a different testing method, found that that same sample "matched or was consistent with Ricky Hamilton, but was different from that of Anthony Wainwright." R. 3217. DeGuglielmo then noted that after his testing, he "had given the results to Jim Pollock with FDLE. And [my] results seemed to be not exactly consistent with the results that he had seen from the other side of the sample." R. 3218. Then, DeGuglielmo received an additional cutting and concluded that there was "a mixture of DNA's in the sperm fraction of the sample that are consistent with DNA from Ricky Hamilton and Anthony Wainwright." R. 322

This allowed the State to promote the narrative that DNA evidence linked Mr. Wainwright conclusively to the sexual assault of the victim. And at Mr. Wainwright's sentencing, the trial court noted that he viewed both Mr. Wainwright and Hamilton as equally culpable. R. 3875. But this has since been challenged by DNA expert Candy Zuleger who revealed that the cells Pollock testified were "semen" allegedly belonging to Mr. Wainwright cannot be said to be sperm/semen. MDFla-ECF. 52-4 at 263. Ms. Zuleger wrote: "The sample analyzed by Pollock does not contain any scientific evidence that Mr. Wainwright participated in a sexual assault of the victim." MDFla-ECF. 52-4 at 263.

Critically, Zuleger's findings corroborate another key post-trial development regarding Mr. Wainwright's culpability: Hamilton's signed statement from 2006 in which he admitted that he alone sexually assaulted the victim. Hamilton explained:

> Myself and co-defendant Anthony Wainwright were jointly tried, each having separate juries. Because of this procedure, there was no way to verify [sic] certain facts of the case since both of us didn't testify at trial.
>
> ...The specific fact which needs to be clarified is that my co-defendant, Anthony Wainwright was not involved in any manner of the sexual assault committed upon the victim in this case. I do not feel comfortable with him being convicted with this felony when I was the sole perpetrator, nor do I feel justice is served by allowing this felony to exist against him when it is false.
>
> I have not discussed this affidavit nor its contents with anyone else including Anthony Wainwright. This affidavit was given to him by myself.

MDFla-ECF. 52-1 at 63-64 (emphasis added). Although Hamilton is now deceased, the authenticity of the document has been corroborated by family members familiar with his handwriting.

Critical mental health evidence that has never been substantively reviewed by any court has also been developed since Mr. Wainwright's penalty phase, where trial counsel only presented the testimony of Mr. Wainwright's mother, R. 3666. Throughout Mr. Wainwright's early childhood, his parents sought medical and mental health care for him on several occasions. He suffered from persistent enuresis that would continue until his mid-teen years, MDFla-ECF. 52-3 at 175, which "could relate to sexual abuse trauma history." MDFla-ECF. 52-3 at 241.

By the time Mr. Wainwright was eleven, he had already been referred for learning disability classes and attended mental health sessions to address problems

with short attention span, hyperactivity, and low self-esteem. MDFla-ECF. 186. "[H]e had both learning/cognitive and behavioral problems that impacted his ability to function in educational environments." MDFla-ECF. 52-4 at 240.

That same year, the trajectory of his life was substantially altered when an older man kidnapped, sexually molested, and threatened to kill Mr. Wainwright. "This was a harrowing experience. The attacker had a weapon, and Mr. Wainwright thought the man was going to kill him. Mr. Wainwright was so terrified he urinated on himself and feared for his life." MDFla-ECF. 52-3 at 187. Mr. Wainwright was able to get away, and his family contacted the police who investigated but were never able to make an arrest. *Id.*

After the assault, Mr. Wainwright began to experience dissociative episodes and other symptoms of post-traumatic stress disorder. *Id.* He also began to self-medicate daily with alcohol and marijuana. *Id.* Both of his parents also abused alcohol and drank daily. MDFla-ECF. 52-4 at 242.

Throughout his childhood and adolescence, Mr. Wainwright's "mental health history was remarkable for the complexity of his presentation and the early onset of his problems." MDFla-ECF. 52-4 at 242. The evaluating professionals noted Mr. Wainwright's potential suicidality, "decreased attention span and decreased school performance," continued enuresis, and low self-esteem. MDFla-ECF. 52-3 at 187. But few of them had information about the kidnapping and sexual assault Mr. Wainwright had endured. As a result, they struggled to effectively treat him. MDFla-

ECF. 52-4 at 243. Their struggles were compounded by the reluctance of his parents to engage in family therapy or counseling sessions. MDFla-ECF. 52-3 at 202.

From the age of 15 until the offense at age 23, for all but about one year, Mr. Wainwright was incarcerated in one detention setting or another. This created opportunities for him to be victimized and for his brain development and maturity to be slowed. MDFla-ECF. 52-4 at 249. Records from his "adolescent incarcerations suggest that [Mr. Wainwright] may have been exposed to violence or the threat of violence while incarcerated." MDFla-ECF. 52-4 at 24.

At the time of the offense, "Mr. Wainwright was a psychosocially immature adolescent/young adult who had spent very little time in the community (and thus had impoverished community-living skills), had untreated complex mental illness and unaccommodated disabilities, and was unusually vulnerable to social pressure . . . ." MDFla-ECF. 52-4 at 251.

In February 2025, Mr. Wainwright discovered that his father had been exposed to Agent Orange during his service in the Vietnam War. Due to his father's likely undiagnosed PTSD, Mr. Wainwright had never known of the exposure until after his father died of esophageal cancer, presumably linked to his Agent Orange exposure. PCR8. 221, 227. New medical findings now establish that Mr. Wainwright's cognitive and neurobehavioral impairments are directly attributable to his father's Agent Orange exposure during the Vietnam War. PCR8. 229.

Information on transgenerational effects of Agent Orange exposure is not readily accessible or widely known by the general medical community, let alone the

public. Stringent requirements placed on the Institute of Medicine ("IOM") for accepting reports on veterans and agent orange were vastly limited and did not previously address the neurobehavioral or cognitive effects of transgenerational exposure. PCR8. 232. Only recently have medical studies incorporating these reports been successfully integrated into legal theories, allowing for the conclusion that Mr. Wainwright's many neurobehavioral and cognitive issues linked to exposure to Agent Orange manifested from an early age, including learning disabilities, poor impulse control, and low social functioning. *Id.* These effects—with their cause then unknown—were exacerbated by a lack of appropriate medical treatment and Mr. Wainright's subjection to harsh behavioral modification settings like wilderness camp, training school, and detention, which only magnified his emotional and behavioral instability. *Id.*

REASONS FOR GRANTING THE WRIT

I. Exceptional Circumstances Warrant the Exercise of This Court's Original Habeas Jurisdiction Because Relief Cannot be Obtained Elsewhere

A. Circuit precedent forecloses a second-in-time § 2254 petition in the district court

1. The Eleventh Circuit's restrictive reading of *Panetti*

In *Panetti v. Quarterman*, this Court held that "Congress did not intend the provisions of AEDPA addressing 'second or successive' petitions to govern a filing in the unusual posture presented [t]here: a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is ripe." 551 U.S. 930, 945 (2007) (discussing claims pursuant to *Ford v. Wainwright*, 477 U.S. 399 (1986). In so finding,

this Court acknowledged that typically, a petition filed second-in-time is barred by the AEDPA unless it satisfies the "second or successive' terms of § 2244. However, in analyzing the question of what constitutes a "second or successive" petition, this Court found that "[t]here are, however, exceptions" to the statutory bar. *Panetti*, 551 U.S. at 947. The Court observed that it "has declined to interpret 'second or successive' as referring to all § 2254 applications filed second or successively in time, even when the later filings address a state-court judgment already challenged in a prior § 2254 application." *Id.* at 944 (citing *Slack v. McDaniel*, 529 U.S. 473, 487 (2000)). Rather, the phrase "second or successive" is "not self-defining" and instead takes its full meaning from the Court's habeas case law, including those decisions predating AEDPA. *Panetti*, 551 U.S. at 943-44.

In determining whether a *Ford* claim was a second-in-time exception to the typical successive bar, this Court examined its own precedent and assessed considerations such as the implications of habeas practice; AEDPA's purposes, and whether such a filing would have constituted an abuse of the writ. *Id.* at 943-47. This Court concluded that the "second or successive" statutory bar does not apply to *Ford* claims. As to the implications of habeas practice and purposes of AEDPA, the State's approach of requiring a petitioner to preserve a future *Ford* claim in his first habeas petition would be "far reaching and seemingly perverse." *Id.* at 943 (quoting *Stewart v. Martinez-Villareal*, 523 U.S. 637, 644 (1998)). It would result in a legal scheme wherein "conscientious defense attorneys would be obligated to file unripe (and, in many cases, meritless) *Ford* claims in each and every § 2254 application." *Id.* This

Court found that the empty formality of requiring petitioners to file premature claims does not "conserve judicial resources, 'reduc[e] piecemeal litigation,' or 'streamlin[e] federal habeas proceedings.'" *Id.* at 946 (quoting *Burton v. Stewart*, 549 U.S. 147, 154 (2007)). Nor was AEDPA's finality concern implicated since federal courts would be unable to resolve Ford claims before an imminent execution. *Id.* Likewise, *Ford* claims would not constitute abuse of the writ since the Court had confirmed that they "remain unripe at early stages of the proceedings." *Id.* at 947. Ultimately, this Court opted for the reasonable interpretation of § 2244 that did not "produce these distortions and inefficiencies." *Id.* at 943.

The Eleventh Circuit, however, has taken an overly restrictive view of *Panetti* as it applies to § 2254 petitions filed second-in-time based on previously unavailable *Brady* and *Giglio*[4] claims, which has since been the subject of significant conflict within the circuit. In *Tompkins v. Sec'y, Fla. Dep't of Corrs.*, 557 F.3d 1257, 1259 (11th Cir. 2009), a petitioner with an imminent execution date appealed the federal district court's dismissal of his second-in-time § 2254 petition, which raised claims of *Brady* and *Giglio* violations. Tompkins asserted that in accordance with *Panetti*, his petition was "not really a second or successive one." *Id.* But the Eleventh Circuit foreclosed this argument, stating that in *Panetti*, "the Court was careful to limit its holding to *Ford* claims" which are "different from most other types of habeas claims." *Id.*

The court elaborated, "*Ford*-based incompetency claims, as a general matter, are not ripe until after the time has run to file a first federal habeas petition." *Id.*

[4] *Giglio v. United States*, 405 U.S. 150 (1972).

(citation omitted). Conversely, the court found that because violations of constitutional rights asserted in *Brady* and *Giglio* claims "occur, if at all, at trial or sentencing and are ripe for inclusion in a first petition." *Id*. Thus, the Eleventh Circuit in *Tompkins* distinguished the claims by how it defined "ripeness": "The reason the *Ford* claim was not ripe at the time of the first petition in *Panetti* is not that the evidence of an existing or past fact had not been uncovered at that time. Instead, the reason it was unripe was that no *Ford* claim is ever ripe at the time of the first petition because the facts to be measured or proven—the mental state of the petitioner at the time of the execution—do not and cannot exist when the execution is years away." *Id*.

The Eleventh Circuit's restrictive view of *Panetti* has governed since *Tompkins*, despite heavy criticism from subsequent panels within the circuit. In *Scott v. United States*, the deciding panel determined that under the prior panel precedent rule, it was bound to apply *Tompkins* to hold that "a second-in-time collateral motion based on a newly revealed *Brady* violation is not cognizable if it does not satisfy one of AEDPA's gatekeeping criteria for second-or-successive motions." 890 F.3d 1239, 1243 (11th Cir. 2018). Nevertheless, the *Scott* panel asserted that "*Tompkins* got it wrong," explaining that "*Tompkins*'s rule eliminates the sole fair opportunity for these petitioners to obtain relief." *Id*. According to the panel, precluding the filing of a second-in-time petition based on a previously undiscoverable *Brady* violation is "doubly wrong," as it not only harms the petitioner but also "rewards the government for its unfair prosecution[.]" *Id*. at 1244. In so ruling and urging the Eleventh Circuit

to hear the case en banc, the *Scott* panel expressed its belief that the Constitution and this Court's precedent are at odds with *Tompkins*. *Id*. at 1243.

A similar outcome recently occurred in *Jennings v. Sec'y, Fla. Dep't of Corrs.*, 108 F.4th 1299, 1302 (11th Cir. 2024). There, the petitioner appealed the district court's dismissal of his second-in-time habeas petition as "second or successive" under § 2244(b)(2). Jennings asserted that, under *Panetti*, his second-in-time petition fell under an exception to §2244(b)(2)'s restrictions because the State had actively withheld material favorable evidence throughout his state postconviction proceedings and initial federal review, and thus he could not previously have raised his current *Brady* claims. Noting that it was not writing on a "clean slate," the *Jennings* panel concluded that it was bound by *Tompkins* and therefore the second-in-time petition was second or successive.

In a concurring opinion, two of the three judges on the panel stated that but for the prior precedent panel rule, "I would conclude that a habeas petition alleging an actionable *Brady* violation that the petitioner, in exercising due diligence, could not have been expected to discover in the absence of the government's disclosure, is not a 'second or successive' petition within the meaning of 28 U.S.C. § 2244(b)." *Jennings*, 108 F.4th at 1306 (Pryor, J., joined by Wilson, J., concurring). Judge Pryor reaffirmed her view, as in *Scott*, that *Tompkins* was wrongly decided. *Id*.

Despite these panel decisions, the Eleventh Circuit has repeatedly declined en banc review regarding the *Tompkins* rule, and it remains binding precedent.

2. Circuit precedent conflicts with *Banister*

Subsequent to the Eleventh Circuit's decisions in *Tompkins*, this Court decided *Banister v. Davis*, which settled a circuit split on the issue of whether Rule 59(e) motions in habeas practice should be categorized as second or successive petitions. 590 U.S. 504, 511 (2020). Recalling its own precedent, this Court reiterated that the phrase "second or successive" is a term of art which is not self-defining. *Id*. (citing *Slack*, 529 U.S. at 486, and *Panetti*, 551 U.S. at 943).

In conducting its analysis, this Court in *Banister* unequivocally reaffirmed the factors identified in *Panetti* that must be considered in determining whether a chronologically second petition is "second or successive": the implications for habeas practice when interpreting § 2244; AEDPA's own purpose; and the abuse of the writ doctrine. Based on these factors and looking to both historical precedent and statutory aims, this Court concluded that Rule 59(e) motions are not subject to the statutory bar on successive petitions, are permitted in habeas proceedings, "[a]nd nothing cuts the opposite way." *Id*. at 513.

Banister's analysis confirms that the Eleventh's Circuit's narrow interpretation of *Panetti* is fundamentally flawed. Specifically, *Banister*'s implementation of the *Panetti* test in evaluating a second application outside of the *Ford* context stands at odds with the holding in *Tompkins*, which relied on "a new test not found in *Panetti*," and an erroneous description of the term "ripeness." *Scott*, 890 F.3d at 1256. Further, the Court in *Banister* made clear its concern that state prisoners have "one fair opportunity to seek federal habeas relief[.]" *Banister*, 590

U.S. at 507. That one fair opportunity is not provided by initial § 2254 proceedings wherein the State continues to withhold material favorable evidence.

Again, because the Eleventh Circuit continues to decline opportunities to revisit its holding in *Tompkins*, no corrective action has been possible to bring the circuit in line with *Panetti* and *Banister*.

3. This Court's intervention will resolve intra-circuit conflicts

The Eleventh Circuit is not the only circuit to get the second-in-time analysis wrong. At least four other circuits—the Fourth, Fifth, Sixth, and Ninth—share its overly restrictive approach. *See Storey v. Lumpkin*, 142 S. Ct. 2576, 2578, 2579 (2022) (Sotomayor, J., respecting denial of certiorari) (calling this interpretation, as articulated by the Fifth Circuit, "illogical", "irrational", and "erroneous" and stating, "I trust that other federal courts will pay closer heed to *Panetti* and *Banister* when they confront this important issue."); *see also Evans v. Smith*, 220 F.3d 306, 322-25 (4th Cir. 2000) (holding that *Brady* claims are not exempt from the requirements of § 2244(b)). And, as with the Eleventh Circuit, panels within the jurisdictions with restrictive readings have expressed grave concerns with the resultant binding precedent.

For instance, the Sixth Circuit adopted the same restrictive interpretation in *In re Wogenstahl*, 902 F.3d 621, 626-28 (6th Cir. 2018) (per curiam). *Storey*, 142 S. Ct. at 2579 (Sotomayor, J., respecting denial of certiorari). However, three years later in *In re Jackson*, 12 F.4th 604 (6th Cir. 2021), Judge Moore, while concurring that the circuit's precedent "compels us to conclude that [the] new habeas petition is 'second

or successive[,]'" wrote separately to explain "why I now believe that *Wogenstahl*—an opinion that I joined—was wrongly decided." *Id*. at 611. Specifically referencing the reasoning of the *Scott* panel, Justice Moore concluded that disclosure of previously suppressed information "cannot be materially distinguished from the *Ford* claim addressed in *Panetti*[.]" *Id*. at 612-13. *See also Baugh v. Nagy*, 2022 WL 4589117 at *6 (6th Cir. 2022) ("Although several other circuits have reached the same conclusion that we did in *Wogenstahl*, we likewise are not alone in second-guessing whether such holding was correct.").

Similarly, in *Long v. Hooks*, 972 F.3d 442, 485-88 (4th Cir. 2020), Judge Wynn, joined by Judges Thacker and Harris, concurred in the opinion vacating and remanding the case but wrote separately to "add [their] voice[s] and vote in this en banc proceeding to overturn our decision in *Evans v. Smith*, which held that *Brady* claims may be subjected to the strictures of 'second or successive' petitions." *Id*. at 485. Drawing on *Panetti* and the Eleventh Circuit's opinion in *Scott*, the concurring judges urged that "Our Court, and others, should reconsider this precedent [that second-in-time *Brady* claims are "second or successive"]." *Id*. at 488.

And, *Brown v. Muniz*, 889 F.3d 661, 668-71 (9th Cir. 2018), demonstrates conflict in the Ninth Circuit as well. Although the majority in *Brown* cited its holding in *Gage v. Chappell*, 793 F.3d 1159 (9th Cir. 2015)) in "conclud[ing] that *Brady* claims are subject to AEDPA's second or successive gatekeeping requirements because the 'factual predicate…existed at the time of the first habeas petition[,]" the majority in *Gage* had actually expressed doubt about whether *Brady* claims should be subject to

such limitations. Yet, like the Eleventh Circuit in *Scott*, the panel in *Gage* stated that "as a three-judge panel, we are bound to follow the teaching of *Buenrostro*." *Gage*, 793 F.3d at 1165 (citing *United States v. Buenrostro*, 638 F.3d 720, 724 (9th Cir. 2011). Although the court in *Brown* describe this *Gage* panel's skepticism as dicta, it is clear there remains disagreement in the Circuit about whether second-in-time *Brady* claims are subject to § 2244(b)'s limitations.

This Court should exercise its original jurisdiction to conclusively resolve the ongoing conflict within the circuits regarding *Panetti*'s application *Brady* claims filed second-in-time.

B. Circuit precedent forecloses an application for a successive § 2254 petition

When a petitioner seeks to file a second or successive habeas petition based on new evidence, he must show that:

> (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 of 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.

28 U.S.C. § 2244(b)(2)(B) (emphasis added).

In the Eleventh Circuit, satisfaction of § 2244(b)(2)(B)(ii) is only possible if the petitioner can show "his innocence of the underlying offense of murder." *In re Hill*, 715 F.3d 284, 296 (11th Cir. 2013). Circuit precedent is explicit that innocence of the death penalty does not suffice. *Id*. at 297-98 (collecting cases and stating that "this

Court repeatedly has held that federal law does not authorize the filing of a successive application under § 2244(b)(2)(B) based on a sentencing claim even in death cases.").

Further, the Eleventh Circuit has held that the miscarriage of justice exception in *Sawyer v. Whitley*, 505 U.S. 333 (1992), did not survive AEDPA. In *Sawyer*, a case in which the petitioner's second habeas petition involved a *Brady* claim related to withheld evidence that would have undermined aggravating factors, this Court held that "actual innocence" of facts underlying a petitioner's eligibility for a death sentence could suffice to overcome the bar on successive habeas petitions. *Id*. at 347-48. However, the Eleventh Circuit made clear its view that "post-AEDPA, there is no *Sawyer* exception to the bar on second or successive habeas corpus petitions for claims asserting 'actual innocence of the death penalty.'" *In re Hill*, 715 F.3d at 301. The court in *Hill* explicitly noted that that its decision "does not leave Hill without the ability to petition for a writ of habeas corpus" because "Hill may petition the Supreme Court directly for a writ of habeas corpus under that Court's original jurisdiction." *Id.*, 715 F.3d at 301 n.20 (citing *Felker v. Turpin*, 518 U.S. 651, 661-63 (1996)).

Because Mr. Wainwright cannot show that, but for the constitutional errors in his case, no juror would have found him guilty of first-degree murder under the felony-murder theory, Eleventh Circuit precedent forecloses him from receiving authorization to file a second or successive habeas petition under § 2244(b).

C. Absent this Court's exercise of original jurisdiction, an illogical and fundamentally unfair result will occur

Without this Court's exercise of its original jurisdiction, Mr. Wainwright will be barred from litigating violations of his fundamental constitutional rights, simply

because the State concealed its misconduct beyond the time when he could have raised these violations in an initial § 2254 petition. Such an irrational and unfair outcome is not supported by this Court's caselaw, as a petitioner would be required to bring speculative or non-existent claims of State misconduct in order to protect against a future bar. This would have negative "implications for habeas practice," without furthering AEDPA's goals of comity, finality, and federalism. *Panetti*, 551 U.S. at 943. Further, it would threaten a petitioner—while consequently rewarding the State for its unlawful actions—with "forever losing [his] opportunity for any federal review" of his constitutional claims. *Id*. at 945-46 (citation omitted); *see also Bernard*, 141 S. Ct. at 506-07 (Sotomayor, J., dissenting from the denial of certiorari and application for a stay) (stating that the "illogical rule" utilized by the Fifth Circuit, which is also utilized by the Eleventh Circuit, "perversely rewards the government for keeping exculpatory information secret until after an inmate's first habeas petition has been resolved.").

II. Mr. Wainwright's Right to Due Process Under the Fourteenth Amendment was Violated by the State's Suppression of Favorable Material Evidence Regarding Jailhouse Informant Robert Allen Murphy

At Mr. Wainwright's 1995 trial, the State presented the testimony of jailhouse informant Robert Allen Murphy, who was then serving a twelve-year sentence. R. 2702-04. Murphy testified about statements he claimed Mr. Wainwright had made to him while they were incarcerated at the jail together. This included Mr. Wainwright's statement that, after he and Hamilton kidnapped the victim, they "went off into the woods." R. 2708. According to Murphy, Mr. Wainwright then said he strangled the

woman, but she wouldn't die, "kind of like when you hit a puppy in the head and it kind of shakes a little bit[,]" so he shot her in the head twice and then dragged her off and left her. R. 2708. On cross-examination, Mr. Wainwright's trial counsel attempted to impeach Murphy with a motion for sentence modification that he had pending at the time. R. 2712. However, Murphy denied receiving anything in exchange for his testimony. R. 2713, 2726.

Murphy's 2025 affidavit shows that this assertion was false. While the State was careful not to offer Murphy an explicit deal, it was clear to him that he would receive leniency in his upcoming sentencing modification if he testified against Mr. Wainwright. *See* PCR8. at 240-41 ("[E]veryone knew the elephant in the room. We all knew what was going on and that I would be receiving something in exchange for my testimony."). Murphy stated that he was persuaded to pursue a deal with the State after discussing it with Dennis Givens, a jailhouse informant who testified at the trial of Mr. Wainwright's co-defendant. Yet this promise of an expected benefit was never disclosed to Mr. Wainwright's counsel, either at trial or in the years after, violating *Brady* and its refinement and expansion by this Court in subsequent cases.

Mr. Wainwright raised this *Brady* claim in his under-warrant successive motion for postconviction relief and on appeal to the Florida Supreme Court. The Florida Supreme Court's decision was contrary to and based on an unreasonable application of this Court's clearly established federal law, as well as on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d). This Court should grant habeas relief and issue the writ.

A. The Florida Supreme Court's unreasonable determinations of fact and law.

In a long line of cases, this Court has etched out the contours of the due process violation that occurs when the State resorts to evidentiary gamesmanship in its efforts to prosecute a criminal defendant. *Brady*, 373 U.S. at 87. "Society wins not only when the guilty are convicted but when criminal trials are fair; our system of the administration of justice suffers when any accused is treated unfairly." *Id.* In *Brady*, this Court held that "the suppression by the prosecution of evidence favorable to an accused . . . violates due process where the evidence is material to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." *Id.*

The Court extended this principle to impeachment evidence in *United States v. Bagley*, 473 U.S. 667, 676 (1985). The *Bagley* Court explained that such evidence, "if disclosed and used effectively, [] may make the difference between conviction and acquittal." *Id.*; *cf. Napue v. Illinois*, 360 U.S. 264, 269 (1959) ("The jury's estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant's life or liberty may depend.").

In *Kyles v. Whitley*, this Court clarified that *Brady* materiality must be analyzed cumulatively, "not item by item." *Kyles v. Whitley*, 514 U.S. 419, 437 (1995). Finally, the Court held in *Banks v. Dretke* that the prosecution's disclosure obligation is ongoing: When police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." 540 U.S. 668, 676 (2004). Collectively, this Court's *Brady* line of cases delineates well-

defined obligations on the State, as well as clear analytical parameters for lower courts to follow when considering such claims. The Florida Supreme Court's ruling on Mr. Wainwright's *Brady* claim was contrary to and unreasonably applied this Court's holdings in multiple critical respects, and was based on an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d).

First, the court found that no violation occurred because there was no evidence in Murphy's affidavit that the State ever made a formal or informal deal with him in exchange for his testimony. *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5. But in *Bagley*, this Court clarified that an explicit deal or promise is not required to establish a *Brady* violation. There,

> Defense counsel asked the prosecutor to disclose any inducements that had been made to witnesses, and **the prosecutor failed to disclose that the possibility of a reward had been held out . . . if the information [the witnesses] supplied led to 'the accomplishment of the objective sought to be obtained [by the Government]. This possibility of a reward gave [them] a direct, personal stake in respondent's conviction. The fact that the stake was not guaranteed through a promise or binding contract, but was expressly contingent on the Government's satisfaction with the end result, served only to strengthen any incentive to testify falsely in order to secure a conviction**. . . . While the Government is technically correct that [there was not] a "promise of reward," [it] misleadingly induce[d] defense counsel to believe that [the witnesses] provided [their statements] . . . without any "inducements."

Bagley, 473 U.S. at 683-84 (emphasis added). That is exactly what happened here. At Mr. Wainwright's trial, defense counsel attempted to impeach Murphy's testimony by asking about his pending motion to modify his twelve-year sentence. Murphy admitted that he had a pending motion to modify his sentence. R. 2712. However, he stated that he was "not necessarily" hoping to get a sentence reduction. R. 2713. On

redirect, Murphy testified that the State had not promised him anything in exchange for his testimony. R. 2726.

His 2025 statement now shows that he had actively pursued—and expected to receive—a deal with the State in exchange for testifying against Mr. Wainwright. As in *Bagley*, no "promise or binding contract was made" prior to his testimony, *Bagley*, 473 U.S. at 683-84, but "everyone knew the elephant in the room. We all knew what was going on and that I would be receiving something in exchange for my testimony." PCR8. at 240-41. That expectation came to pass after Murphy testified to the State's satisfaction against Mr. Wainwright. "[T]he judge called the prosecutor on the phone and he provided information about my testimony. After the phone call, I was given a choice of doing time in prison or a lengthier probation. I chose the probation." PCR8. at 241. The Florida Supreme Court's denial of relief on the ground that there was no evidence of an explicit deal was contrary to and unreasonably applied this Court's holding in *Bagley*.

The Florida Supreme Court's finding that "Wainwright failed to exercise reasonable diligence in pursuing" the claim, *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5, is likewise predicated on unreasonable determinations of both fact and law. The court framed the issue as a question of diligence, but this Court has never held that diligence is an element that must be satisfied to establish a *Brady* violation. Even so, Mr. Wainwright *was* diligent—at trial and afterwards—in attempting to uncover this evidence.

At trial, defense counsel asked Murphy about his pending motion for a sentence modification, but Murphy stated that he was "not necessarily" hoping to get a sentence reduction. R. 2713. And on redirect by the State, Murphy reiterated that the State had not promised him anything in exchange for his testimony. R. 2726. Mr. Wainwright made subsequent post-trial efforts to contact Murphy regarding his testimony, to no avail. Thus, Mr. Wainwright was diligent. On the contrary, the State failed to uphold its ongoing *Brady* obligations by disclosing this evidence to Mr. Wainwright, instead continuing to suppress it. But as this Court held in *Banks*, when police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." 540 U.S. at 676. The Florida Supreme Court's shifting of the burden from the State onto Mr. Wainwright was an unreasonable application of *Brady* and *Banks*.

Additionally, the state court's diligence finding rested on an unreasonable factual determination: that Murphy's affidavit did not establish any *Brady* violation because "it was clear from the trial testimony that Murphy had a [pending] motion for modification of sentence . . . . And it was a matter of public record that [he] was released on probation shortly after his testimony." *Wainwright*, 2025 WL 1561151 at *8; App. A1 at 5-6. But this entirely ignores the crux of Mr. Wainwright's *Brady* claim. Until Murphy's affidavit, there was no evidence demonstrating the *nexus* between his testimony in Mr. Wainwright's case and his release to probation shortly thereafter. Murphy's affidavit provided that missing link—one that Mr. Wainwright diligently

attempted to uncover, even after his conviction, but that was continuously suppressed by the State.

The Florida Supreme Court's unreasonable application of this Court's *Brady* precedent did not stop there. The court's materiality analysis unreasonably focused exclusively on the impact of the evidence on the guilt phase, and failed to analyze its impact on Mr. Wainwright's sentence. *Wainwright*, 2025 WL 1561151 at *9; App. A1 at 6. Yet as this Court held in *Brady*, a due process violation occurs "where the evidence is material to guilt **or to punishment**." *Brady*, 373 U.S. at 87 (emphasis added). Murphy's testimony, which detailed inflammatory statements Mr. Wainwright supposedly made regarding his role in the murder, played an outsized role in sentencing Mr. Wainwright to death. For example, the trial court relied on Murphy's testimony to find the 'HAC' and 'CCP' aggravating factors. *See* R. 1173. It also used his testimony to reject a statutory mitigator. R. 1174.[5] The lower court's exclusive focus on the guilt phase did not comport with this Court's instruction that a *Brady* analysis must be conducted with respect to both the conviction and the sentence, and was therefore unreasonable.

[5] As for the guilt phase, the State clearly relied on the jailhouse informant testimony to secure Mr. Wainwright's conviction. *See* R. 3552 (closing argument at guilt phase stating that "the defendant Wainwright by his own lips has convicted himself of all four of these crimes of which he is accused"); R. 3555-57 (detailing Murphy's inculpatory statements not only for the purpose of establishing Mr. Wainwright's guilt but also to convince the jury not to believe any defensive statements attributed to him); R. 3579 (State attempting to bolster Murphy's credibility).

Finally, the Florida Supreme Court failed to conduct the cumulative materiality analysis that this Court mandated in *Kyles*. When such an analysis is properly undertaken, Murphy's affidavit paints the State's case against Mr. Wainwright in an entirely new light. If the jury had been told that Murphy expected to receive a sentencing benefit from the State in exchange for his testimony against Mr. Wainwright, it would have potentially altered how the jury viewed all of the jailhouse informant testimony against Mr. Wainwright, as well as the State's case for death as a whole.[6] *See Kyles*, 514 U.S. at 445 (evidence can be material for impeaching a witness and attacking the "thoroughness and . . . good faith" of the investigation). Yet the Florida Supreme Court did not address this possibility, instead conclusorily stating that "[t]he alleged evidence of Murphy's expectation of a benefit for his testimony would not undermine confidence in the outcome." *Wainwright*, 2025 WL 1561151 at *9; App. A1 at 6. The court's failure to conduct a cumulative materiality analysis was contrary to and unreasonably applied this Court's holding in *Kyles*.

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[6] Murphy's statement also called into question the testimony of jailhouse informant Dennis Givens, who testified at the trial of Mr. Wainwright's co-defendant. Although Mr. Wainwright's jury did not hear Givens's testimony, the same trial judge who was responsible for deciding his sentence presided over both trials and so heard the inflammatory statements Givens testified Mr. Wainwright made to him. Furthermore, evidence of Givens's anticipation of a deal in exchange for inculpating Mr. Wainwright would have further impeached Murphy, who by his own admission was influenced by Givens to seek a deal from the State in exchange for his testimony against Mr. Wainwright. See PCR8. at 240 (Murphy crediting his decision to pursue a deal to Givens' statement that he was receiving one); PCR8. at 240 (Murphy admitting that he and Givens repeatedly discussed their upcoming testimony against Mr. Wainwright). The Florida Supreme Court did not discuss Givens at all in its analysis.

Because of the Florida Supreme Court's multiple unreasonable determinations of fact and law, this Court should conduct de novo review of Mr. Wainwright's *Brady* claim. On de novo review, habeas relief is warranted.

B. The State suppressed material favorable evidence

Under *Brady* and its line of precedent, Mr. Wainwright must show that the State suppressed favorable, material evidence. As noted above, materiality must be considered cumulatively, not in a vacuum. *See Kyles*, 514 U.S. at 437.

First, the information revealed by Murphy was never disclosed to trial or subsequent counsel and therefore was suppressed by the State. When police or prosecutors conceal exculpatory or impeaching material in the State's possession, it is "incumbent on the State to set the record straight." *Banks*, 540 U.S. at 676. With respect to any information only known by investigators, it is imputed to the State. *Kyles*, 514 U.S. at 434.

Second, the suppressed evidence was favorable because it constituted critical impeachment of the State's case against Mr. Wainwright, both as it pertained to the reliability of the jailhouse informant testimony specifically, and to the associated reliability of the State's case for death as a whole. *See Bagley*, 473 U.S. at 676; *Brady*, 373 U.S. at 87 (favorable material evidence can be related "either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."). As for Givens, although he did not testify before Mr. Wainwright's jury, evidence of his anticipation of a deal in exchange for inculpating Mr. Wainwright would have further impeached Murphy, who by his own admission was influenced by Givens to seek a

deal from the State in exchange for his testimony against Mr. Wainwright. *See* PCR8. at 241 (Murphy crediting his decision to pursue a deal to Givens' statement that he was receiving one), *id.* (Murphy admitting that he and Givens repeatedly discussed their upcoming testimony against Mr. Wainwright).

Finally, the suppressed evidence is material because it would have undermined not only the credibility of the jailhouse informant testimony against Mr. Wainwright, but also the reliability of the State's case for death generally. *See Kyles*, 514 U.S. at 445 (evidence can be material for impeaching a witness and attacking the "thoroughness and . . . good faith" of the investigation); *Davis v. Alaska*, 415 U.S. 308 (1974) (when defense counsel is prevented from exposing "facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness," a defendant is denied the right to effective cross-examination).

Under the cumulative materiality analysis required by *Kyles*, the evidence that Murphy and Givens were expecting to receive sentencing leniency from the State in exchange for their testimony against Mr. Wainwright was material. Here, Murphy and Givens provided highly aggravating testimony that played an outsized impact in Mr. Wainwright's sentence. The trial court relied on Murphy's testimony to establish two aggravating factors and to reject a statutory mitigator. *See* R. 1173-74.

Further, the State clearly relied on the jailhouse informant testimony and considered it an important aspect of its case. *See* R. 3552, 3555-57, 3579. If the jury had been informed that the State was dangling the possibility of sentencing leniency

over Murphy's head in exchange for his testimony, it likely would have colored the jury's perception of the State's entire case against Mr. Wainwright. *See Bagley*, 473 U.S. at 676; *Brady*, 373 U.S. at 87 (favorable material evidence can be related "either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution."). The cumulative effect of the suppressed evidence that both Murphy and Givens expected to receive benefits from the State was material to the outcome of Mr. Wainwright's proceedings, at both the guilt and penalty phases. *Kyles*, 514 U.S. at 420. This Court should grant relief.

CONCLUSION

For the foregoing reasons, the Court should grant the original petition for a writ of habeas corpus and accompanying motion for a stay of execution to consider the questions presented by this petition.

Respectfully submitted,

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