No. _____

In The
Supreme Court of the United States

RICHARD J. GRAHAM, WARDEN;
ANTHONY G. BROWN, ATTORNEY GENERAL OF MARYLAND,
Applicants,

v.

JEREMIAH ANTOINE SWEENEY,
Respondent.

APPLICATION TO STAY THE MANDATE OF THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT PENDING THE FILING AND DISPOSITION OF APPLICANTS' FORTHCOMING PETITION FOR A WRIT OF CERTIORARI AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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TO THE HONORABLE JOHN G. ROBERTS, JR., Chief Justice of the Supreme Court of the United States and Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to 28 U.S.C. § 2101(f) and Rules 22 and 23 of the Rules of this Court, Applicants Richard J. Graham, Warden, and Anthony G. Brown, Attorney General of Maryland, through counsel, respectfully request that the Court stay the mandate of the United States Court of Appeals for the Fourth Circuit in *Jeremiah Antoine Sweeney v. Richard J. Graham, Warden*, *et al.*, No. 22-6513, pending the filing and disposition of Applicants' forthcoming petition for a writ of certiorari. Additionally, Applicants respectfully request an immediate administrative stay of the Fourth Circuit's mandate—which is scheduled to be issued on March 15, 2025, Fed. R. App. P. 41(b)—pending the Court's consideration of this application.

INTRODUCTION

In 2011, a Maryland jury convicted Respondent Jeremiah Antoine Sweeney of murder, attempted murder, and related handgun offenses. Sweeney sought postconviction relief in the state courts but was unsuccessful. Sweeney then filed a federal habeas petition under 28 U.S.C. § 2254. The parties presented to the courts below a straightforward dispute regarding whether the state courts reasonably applied *Strickland v. Washington*, 466 U.S. 668 (1984), in denying a single ineffective-assistance claim. The gist of Sweeney's claim was that, when a juror revealed during deliberations that he visited the crime scene during the trial without permission, trial

counsel allegedly was ineffective for not asking to voir dire the entire jury pursuant to *Remmer v. United States*, 347 U.S. 227 (1954), to ascertain whether that juror's misconduct had tainted the other jurors before the court, with the agreement of the parties, struck that juror and proceeded to an eleven-juror verdict. The district court denied the petition, concluding that the state courts' application of *Strickland* was not objectively unreasonable. The district court denied a certificate of appealability, but the Fourth Circuit granted one.

The court of appeals should have reviewed Sweeney's singular claim under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA")—28 U.S.C. § 2254—and concluded that *Remmer* did not clearly establish that Sweeney was entitled to voir dire the entire jury, and consequently, the state courts' denial of Sweeney's *Strickland* claim was not objectively unreasonable. Instead, the panel majority (Judge Roger L. Gregory, joined by a district judge sitting by designation, Judge Terrence W. Boyle), decided, over a dissent by Judge Marvin Quattlebaum, Jr., that Sweeney deserved a new trial—and, to attain that outcome, the majority chose to ignore AEDPA and this Court's precedent. The majority conducted a *de novo* review of the trial record and granted relief based on "confluence" of supposed errors and constitutional violations that Sweeney never raised, in state or federal court. (App., *infra*, 58a). The majority attempted to justify its noncompliance with AEDPA by stating that the "multitude of failures" it perceived in Sweeney's trial "take this case *beyond our traditional habeas review*." (App., *infra*, 32a) (emphasis added).

In dissent, Judge Quattlebaum highlighted the multiple ways the majority "flout[ed]" this Court's precedent: (1) reviewing unraised issues in violation of party-presentation principles; (2) "ignoring AEDPA's exhaustion requirements"; (3) applying an unsound and "unworkably squishy" exception to the exhaustion requirement; (4) failing to cite or apply the AEDPA standard; (5) "misapplying" both of prongs of the *Strickland* analysis; and (6) finding structural error where none exists. (App., *infra*, 60a-109a). He wrote that federal judges are "not free to scour the record for issues that we think are important when the parties never raised them below and then dispense our subjective views of justice," but that was "exactly what the majority [did]" in this case. (App., *infra*, 62a). Judge Quattlebaum concluded that "[t]he moment this decision [was] issued, it [was] untenable under binding Supreme Court precedent." (App., *infra*, 62a) (footnote omitted).

The Fourth Circuit denied Applicants' petition for rehearing en banc. Applicants then asked the Fourth Circuit to stay its mandate pending this Court's decision on Applicants' forthcoming certiorari petition, but the panel, at the direction of Judge Gregory and over Judge Quattlebaum's dissent, denied a stay.

A stay pending certiorari, and an immediate administrative stay while the Court considers the stay request, are warranted. The Fourth Circuit's flagrant refusal to obey well-established federal law is indeed untenable. This Court has admonished the lower courts repeatedly that the constraints on the federal writ imposed by AEDPA are not optional. The Fourth Circuit's disregard of the AEDPA standards to

grant ad-hoc federal habeas relief warrants summary reversal. Applicants intend to present a petition for a writ of certiorari case to this Court seeking that relief. Applicants now ask this Court to stay the Fourth Circuit's judgment—and issue an immediate administrative stay—so that they may seek certiorari review without being compelled to simultaneously prepare for (and perhaps conduct) a retrial that never should have been granted.

OPINIONS BELOW

On April 14, 2022, the District Court denied Sweeney's petition for a writ of habeas corpus. *Sweeney v. Graham*, Civ. No. PWG-19-1289, 2022 WL 1120066 (D. Md. Apr. 14, 2022); (App., *infra*, 1a-13a). On March 13, 2025, a divided panel of the Fourth Circuit reversed and remanded for further proceedings. *Sweeney v. Graham*, No. 22-6513, 2025 WL 800452 (4th Cir. Mar. 13, 2025) (unpublished); (App., *infra*, 14a-112a). On April 8, 2025, the Fourth Circuit denied Applicants' petition for a rehearing en banc. (App., *infra*, 113a). On May 8, 2025, a divided panel of the Fourth Circuit denied Applicants' motion to stay the court's mandate. (App., *infra*, 114a).

STATEMENT OF THE CASE

1. This case arises from a 2010 shooting. In short, "[n]umerous government witnesses testified that Sweeney had been arguing with neighbors about stolen marijuana; he then opened fire, missing his intended targets and instead fatally wounding a bystander from approximately seventy-five yards away[.]" (App., *infra*,

17a). Sweeney was convicted in a Maryland court of murder, attempted murder, and handgun offenses. (App., *infra*, 23a).

The legal disputes in this case centered on the misconduct of a juror, Juror 4. On the evening of the fourth day of trial, after the government rested its case and before deliberations began, Juror 4 visited the crime scene without permission. (App., *infra*, 18a). About an hour into the jury's deliberations the next morning, the court received a note from the jury reporting that Juror 4 had visited the crime scene and that "a couple of witnesses were there," but "[t]here was no interaction." (App., *infra*, 18a-19a).

Juror 4 was brought into the courtroom, and he told the court and parties that he went to the crime scene to "get a visual" but "spoke to no one." (App., *infra*, 19a). The court asked, "Is this in any way going to affect your—" and Juror 4 interjected: "No, sir. Not at all." (App., *infra*, 19a). Trial counsel asked if "any of the other jurors [knew] that [he] went there," and Juror 4 responded: "They do. But they stopped me, too, because they thought that I should stop talking and I present what I just said to you all." (App., *infra*, 19a). Juror 4 assured the court: "I would have no problem with basing my decision, and they would have no problem basing their decision, off of the evidence which was presented in the case." (App., *infra*, 19a). Following that exchange, the judge directed Juror 4 not to "discuss anything that happened during [his] tour of the crime scene," and sent the jury, including Juror 4, to the jury lounge while the parties and the court weighed their options. (App., *infra*, 19a).

Trial counsel consulted Sweeney and presented him with three options: (1) transport all the jurors to the crime scene; (2) strike Juror 4 and proceed with eleven jurors; or (3) request a mistrial. (App., *infra*, 25a). After consulting with counsel, Sweeney ultimately decided to strike Juror 4 and proceed with an eleven-member jury. (App., *infra*, 22a-23a). The court dismissed Juror 4, and the eleven-member jury continued deliberating until reaching a unanimous verdict. (App., *infra*, 23a).

2. After his conviction, Sweeney filed a direct appeal but did not raise any claim relating to the juror misconduct matter. (App., *infra*, 67a).

Sweeney later filed a petition for postconviction relief in state court. He claimed, among other things, that his trial attorney was ineffective under *Strickland* because he chose "to proceed with an eleven[-]member jury without requesting voir dire of the remaining jurors regarding Juror Number 4's independent investigation of the crime scene or failing to request a mistrial," and he failed to object to Juror 4 rejoining the other jurors after informing the court that he had visited the crime scene. (App., *infra*, 24a-25a).

At the state postconviction evidentiary hearing, trial counsel testified that when Juror 4's misconduct came to light, he and Sweeney "contemplated a mistrial," but their "[defense] theory was . . . going very well," and they were concerned that they would be unable to "replicate that scenario again." (App., *infra*, 26a). Counsel and Sweeney believed they "had made a lot of headway in the courtroom" (*id.*), a

perceived advantage that Sweeney would forfeit if a mistrial were declared. Additionally, based on the court's and parties' discussion with Juror 4, trial counsel believed that "the jury was not tainted as to what he said or did." (*Id.*).

The state postconviction court denied Sweeney's petition. (App., *infra*, 27a). Sweeney filed an application for leave to appeal in the Maryland Court of Special Appeals, which the court summarily denied. (*Id.*).

3. Sweeney later filed a counseled § 2254 petition. He alleged once again that trial counsel was ineffective for not seeking to voir dire the entire jury, citing *Remmer* and the Fourth Circuit's decision in *Barnes v. Joyner*, 751 F.3d 229 (4th Cir. 2014). (App., *infra*, 7a-8a).

The district court denied his petition, concluding that "Sweeney failed to bring a claim, either on direct appeal or in his application for postconviction review, that the trial court deprived him of the right to an impartial jury when it did not conduct a proper *Remmer* hearing" (App., *infra*, 8a) (footnote omitted), and with respect to his ineffective-assistance claim, it concluded that the state court's application of the *Strickland* standard was not objectively unreasonable (App., *infra*, 9a-11a).

4. The Fourth Circuit granted Sweeney a certificate of appealability, and a divided panel of the court reversed. (App., *infra*, 14a). Rather than review just the sole *Strickland* claim raised by Sweeney, the majority decided to conduct *de novo* review of the trial record and take cognizance of a purported "combination of extraordinary failures from juror to judge to attorney." (App., *infra*, 32a). Before

turning to the merits of these issues, it first concluded that, pursuant to *Frisbie v. Collins*, 342 U.S. 519 (1952), and to a lesser extent *Granberry v. Greer*, 481 U.S. 129 (1987), the "special circumstances of this case" (*i.e.*, the alleged combination of errors the majority found) obviated the exhaustion requirement and "require[d] prompt federal intervention." (App., *infra*, 29a-32a).

Then, the panel majority held that "the trial court judge neglected his duty to prevent prejudicial occurrences by failing to adequately question Juror No. 4 and failing to inquire at all into the potential impartiality of the other eleven jurors," which "encroached on Sweeney's right to an impartial jury and confrontation right under the Sixth and Fourteenth Amendments"—a claim not raised or exhausted by Sweeney. (App., *infra*, 35a-38a).

Next, it held that the trial judge failed to *sua sponte* conduct a "proper" evidentiary hearing, which "deprived Sweeney of his constitutional rights under the Sixth and Fourteenth Amendments"—another unraised and unexhausted claim. (App., *infra*, 32a-41a).

Then, it held that the trial judge failed to *sua sponte* "take proper steps to mitigate or cure that taint and to more broadly prioritize Sweeney's right to a fair trial"—yet another constitutional violation that Sweeney never raised or exhausted. (App., *infra*, 42a-46a).

Turning lastly to the claim Sweeney actually raised (on page 33 of the majority's 46-page opinion), the panel majority concluded that trial counsel "rendered

inadequate counsel by failing to sufficiently inquire into the prejudice that had potentially infected the jury and then, uninformed, choosing to proceed with an eleven-member jury." (App., *infra*, 46a). In doing so, it decided that the ordinary *Strickland* different-outcome prejudice analysis was not suitable and that the prejudice prong could be, and was, satisfied by demonstration of "a breakdown of the adversarial process." (App., *infra*, 54a).

The majority, once again lumping all of the issues it reviewed together as a singular "confluence of extraordinary failings," concluded that "the myriad issues in Sweeney's trial constitute[d] structural error," which entitled Sweney to a new trial. (App., *infra*, 56a-59a).

Judge Quattlebaum dissented. As noted above, he criticized the majority for "ignor[ing] the required standards of review, flout[ing] Supreme Court precedent . . . and litigat[ing] from the bench." (App., *infra*, 109a). He concluded that the parties had presented "a straightforward AEDPA ineffective assistance of counsel case," and "[f]ollowing established law, the outcome is clear—[the court] must affirm the district court." (App., *infra*, 108a).

Applicants sought a rehearing en banc, but the court denied the petition. (App., *infra*, 113a). No judge requested a poll. (*Id.*).

Applicants then filed a motion to stay the court's mandate, noting Applicants' intent to file a petition for a writ of certiorari and seek summary reversal on the ground that the court of appeals failed to comply with AEDPA. As noted, the panel

majority denied Applicants' motion to stay over Judge Quattlebaum's dissent. (App., *infra*, 114a).

5. On May 12, 2025, Sweeney, through counsel, filed a "Motion for a Conditional Order of Release" in the district court. (App., *infra*, 115a-117a). Even though the Fourth Circuit's mandate had not yet been issued, Sweeney nevertheless asked the district court to issue an "immediate conditional order of release [sic], or in the alternative, . . . a conditional order of release if the State of Maryland has not retried him within 30 days." (App., infra, 117a). That same day, the district court scheduled a teleconference for May 15, 2025. (App., *infra*, 118a). The court directed the parties to be prepared to discuss, among other things, the timeline for Sweeney's retrial and whether "Sweeney should be released pending trial." (*Id.*).

REASONS FOR GRANTING A STAY

"To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must" demonstrate three things: "(1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay." *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* Applicants submit that these factors are satisfied in this case.

I. There is a reasonable probability that the Court will grant certiorari and a fair prospect that the Court will summarily reverse the Fourth Circuit's decision.

The Fourth Circuit failed to properly review Sweeney's sole federal habeas claim in compliance with the AEDPA statute. Instead, it conducted a *de novo* review of the trial record and awarded Sweeney a new trial based largely on unraised and unexhausted issues. The Fourth Circuit's refusal to adhere to the mandatory AEDPA standards is untenable. Accordingly, there is a reasonable probability that this Court will grant certiorari review and a fair prospect that it will summarily reverse.

A. The Fourth Circuit granted relief on unexhausted grounds not raised by Sweeney.

Sweeney raised one claim below and on appeal: whether trial counsel was ineffective for not asking to voir dire the entire jury pursuant to *Remmer* before striking Juror 4 and proceeding to a verdict with an eleven-member jury. The panel majority largely sidelined that claim, *sua sponte* declared that "the errors before us now are the confluence of extraordinary failings from juror, to judge, to attorney," and granted federal habeas relief on the basis that the "combination" of alleged shortcomings at trial amounted to structural error that violated Sweeney's rights under the Sixth and Fourteenth Amendments to an impartial jury and confrontation. (App., *infra*, 32a, 38a, 59a). But that "combination" of issues was *not* before the court, and the majority's grant of federal habeas relief on those grounds anyway violates this Court's precedent on party presentation and AEDPA exhaustion.

1. The panel majority's decision violates principles of party presentation.

This Court has repeatedly warned the lower courts that they should adjudicate the case presented by the parties and should not review claims not raised by the parties. *See Greenlaw v. United States*, 554 U.S. 237, 243 (2008) ("In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present."); *see also Wood v. Milyard*, 566 U.S. 463, 473 (2012) ("For good reason, appellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance . . . That restraint is all the more appropriate when the appellate court itself spots an issue the parties did not air below[.]"); *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring) ("The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one.").

But turning an adversarial proceeding into an inquisitorial one, with an eye toward ferreting out errors upon which to grant habeas relief, is precisely what the panel majority did here. (*See* App., *infra*, 102a-103a) (Quattlebaum, J., dissenting) (asserting that panel majority was "serving as a 'roving advocate' for Sweeney" by "conjur[ing] up questions never squarely presented to them" and *sua sponte* excusing their nonexhaustion (citation and quotation marks omitted)). The panel majority

improperly conducted a *de novo* review of the state-court record; *sua sponte* identified claims that Sweeney never raised; applied a peculiar exception to the AEDPA exhaustion requirement that Sweeney never referenced and Applicants never had a chance to address (*see* Part I.A.2, *infra*); and then ultimately granted relief based on the "confluence" of errors that it found (App., *infra*, 58a-59a); (*see also* App., *infra*, 100a) (Quattlebaum, J., dissenting) ("Try as one might, any hint of this argument" that the majority seized upon to grant relief "is missing from the state and district court proceedings and from the briefs before us. This novel argument is the majority's and the majority's alone. Regrettably, in charting its own path, the majority violates AEDPA's exhaustion requirements and offends party presentation principles.").

This Court has reversed in cases where a court of appeals has strayed drastically from the case presented by the parties. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (reversing because "the appeals panel departed so drastically from the principle of party presentation as to constitute an abuse of discretion"). If certiorari review were granted, there is a fair prospect that the Court would do the same here.

2. The panel majority's decision violates the AEDPA exhaustion requirement.

Congress has decreed that before a federal habeas court may review a claim on the merits, the petitioner ordinarily must exhaust his claim in the state courts. 28 U.S.C. § 2254(b)(1)(A). This Court has prescribed a "rigorously enforced total exhaustion rule," *Rose v. Lundy*, 455 U.S. 509, 518 (1982), which it has described as

a "threshold barrier," *Day v. McDonough*, 547 U.S. 198, 205 (2006). *See Baldwin v. Reese*, 541 U.S. 27, 29 (2004) ("Before seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies, 28 U.S.C. § 2254(b)(1)[.]"); *O'Sullivan v. Boerckel*, 526 U.S. 838, 842 (1999) (same).

Here, the panel majority recognized that Sweeney never squarely presented to the state courts the Sixth Amendment impartial-jury and confrontation issues that the panel addressed *sua sponte*. (App. *infra*, 29a-32a). To skirt the exhaustion requirement, the majority applied a "special circumstances" exception that it derived from this Court's decisions in *Frisbie v. Collins*, 342 U.S. 519 (1952), and to a lesser extent *Granberry v. Greer*, 481 U.S. 129 (1987). Both cases are inapposite.

First, both *Frisbie* and *Granberry* concerned *waiver* of the exhaustion requirement. *See Frisbie*, 342 U.S. at 521 (noting that "the state did not raise the question" of exhaustion in the district court, and so exhaustion was "apparently assumed"); *Granberry*, 481 U.S. at 132 (holding that the exhaustion requirement could be waived if the state failed to raise it in the district court); *see also Gagne v. Fair*, 835 F.2d 6, 10 (1st Cir. 1987) (stating that the *Frisbie* "special circumstances" exception "remains open to interpretation, since the Court treated *Frisbie* as having presented a waiver question"); *Rockwell v. Yukins*, 217 F.3d 421, 425 (6th Cir. 2000) (distinguishing *Frisbie* and *Granberry* because, unlike in those cases, the exhaustion issue was "squarely presented" to the district court). Here, Applicants did not waive

the exhaustion requirement below (expressly or by omission), nor did the Fourth Circuit even suggest otherwise.

Second, neither case is good law following the enactment of AEDPA. *See Banks v. Dretke*, 540 U.S. 668, 705 (2004) (citing *Granberry* as an example of "pre-AEDPA law [holding that] exhaustion and procedural default defenses could be waived based on the State's litigation conduct," but now, AEDPA—specifically, § 2254(b)(3)—"forbids a finding that exhaustion has been waived unless the State expressly waives the requirement"); *see also Lambert v. Blackwell*, 134 F.3d 506, 516 n.20 (3d Cir. 1997) (agreeing that *Frisbie* "did not survive the AEDPA amendments").

Third, the "special circumstances" exception created by *Frisbie* (and mentioned in passing in *Granberry*) should be cabined to the facts of *Frisbie*. There, the Sixth Circuit excused nonexhaustion where police officers were committing forcible interstate kidnappings that "certain United States District Judges in the same district [were] upholding." *Collins v. Frisbie*, 189 F.2d 464, 465, 468 n.1 (6th Cir. 1951), *rev'd*, 342 U.S. 519 (1952). This Court declined to disturb the court of appeals' decision to excuse nonexhaustion, noting that the circumstances were so "peculiar to [that] case" and unlikely to reoccur that "a discussion of them could not give precision to the 'special circumstances' rule." *Frisbie*, 342 U.S. at 521-22. Other circuit courts have cabined *Frisbie* to its facts. *See Lambert*, 134 F.3d at 516 n.20 (agreeing that the *Frisbie* exception "'is so ill-defined that it must be considered *sui generis*'"); *O'Guinn v. Dutton*, 88 F.3d 1409, 1413 (6th Cir. 1996) ("Extending *Granberry* beyond the

'exceptional' or 'unusual' case undermines the law's clear preference for having unexhausted claims decided in state court."). The circumstances of Sweeney's case do not even remotely resemble the "special circumstances" in *Frisbie*. The Fourth Circuit was completely unjustified in extending that exception to circumvent the mandatory exhaustion requirement here.

Fourth, the court of appeals in *Frisbie* concluded (and this Court tacitly agreed) that immediate review was warranted despite nonexhaustion because of the exceptional urgency of the matters involved. *Frisbie*, 189 F.2d at 468 n.1. Here, there is no urgency that warrants application of *Frisbie*. This was a run-of-the-mill Section 2254 case brought by Sweeney approximately *eight years* after his conviction in which he presented a straightforward *Strickland* claim. Again, *Frisbie* has no application here.

Lastly, *Frisbie* says that the determination of whether special circumstances exist to excuse the exhaustion requirement should be "largely left to the trial courts subject to appropriate review by the courts of appeals." *Frisbie*, 342 U.S. at 521. Here, the district court never considered the *Frisbie* exception, because Sweeney never raised it. And for that same reason, Applicants were never given an opportunity to address the *Frisbie* exception before the panel majority *sua sponte* applied it here.

In sum, the panel majority's *sua sponte* application of *Frisbie* to excuse the nonexhaustion of issues that Sweeney never raised is an indefensible circumvention of the AEDPA exhaustion requirement and a serious misapplication of this Court's

precedent. If the Court granted certiorari review, there is at least a fair prospect that the Court will summarily reverse the Fourth Circuit's extension of the *Frisbie* exception to this case.

B. The majority failed to apply the AEDPA standard.

The preceding procedural improprieties in the Fourth Circuit's decision, alone, warrant certiorari review and summary reversal. But the court's decision go "beyond . . . traditional habeas review" (App., *infra*, 32a) and conduct a *de novo* review instead of AEDPA review is equally untenable.

It is well established that a federal habeas corpus "application filed after AEDPA's effective date should be reviewed under AEDPA." *Woodford v. Garceau*, 538 U.S. 202, 207 (2003). AEDPA prohibits a federal court from granting habeas relief unless, among other things, the state-court decision under review: (1) is "contrary to" "clearly established federal law, as determined by the Supreme Court of the United States"; or (2) involves "an unreasonable application of" that law. 28 U.S.C. § 2254(d). Under that standard, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing [Supreme Court holdings] beyond any possibility for fairminded disagreement." *Harrington v. Richter*, 562 U.S. 86, 103 (2011). This Court has been emphatic that federal habeas courts "may not grant habeas relief to a state prisoner with respect to any claim . . . unless" the

petitioner has satisfied that standard. *Greene v. Fisher*, 565 U.S. 34, 35-36 (2011) (citation and quotation marks omitted).

Federal habeas review is not "a substitute for ordinary error correction through appeal." *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (citation and quotation marks omitted). "The role of a federal habeas court is . . . not to apply *de novo* review of factual findings and to substitute its own opinions for the determination made [by the state courts]." *Davis v. Ayala*, 576 U.S. 257, 276 (2015). Rather, "[w]hen reviewing state criminal convictions on collateral review, federal judges are required to afford state courts due respect by overturning their decisions only when there could be no reasonable dispute that they were wrong." *Woods v. Donald*, 575 U.S. 312, 316 (2015). Under § 2254(d), whether the state court's decision was "so obviously wrong as to be beyond any possibility for fairminded disagreement . . . is the only question that matters." *Shinn v. Kayer*, 592 U.S. 111, 124 (2020).

The Court has reiterated these standards of review in a plethora of decisions and has been abundantly clear that AEDPA is not optional. *Shinn v. Ramirez*, 596 U.S. 366, 385 (2022) ("Where Congress has erected a constitutionally valid barrier to habeas relief, a court *cannot* decline to give it effect." (citation and quotation marks omitted)). In *Richter*, the Court declared that to obtain federal habeas relief, "a state prisoner must show that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded

disagreement." 562 U.S. at 103; *see also, e.g.*, *Woods v. Etherton*, 578 U.S. 113, 116 (2016) (same); *Shoop v. Twyford*, 596 U.S. 811, 818 (2022) ("A federal court's power to grant habeas relief is restricted under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA)[.]"). Since *Richter*, the Court has summarily reversed numerous lower courts in per curiam decisions for failing to scrupulously apply AEDPA. *See Dunn v. Reeves*, 594 U.S. 731 (2021); *Mays v. Hines*, 592 U.S. 385 (2021); *Kayer*, 592 U.S. 111; *Shoop v. Hill*, 586 U.S. 45 (2019); *Sexton v. Beaudreaux*, 585 U.S. 961 (2018); *Kernan v. Cuero*, 583 U.S. 1 (2017); *Dunn v. Madison*, 583 U.S. 10 (2017); *Jenkins v. Hutton*, 582 U.S. 280 (2017); *Virginia v. LeBlanc*, 582 U.S. 91 (2017); *Johnson v. Lee*, 578 U.S. 605 (2016); *Kernan v. Hinojosa*, 578 U.S. 412 (2016); *Etherton*, 578 U.S. 113; *White v. Wheeler*, 577 U.S. 73 (2015); *Donald*, 575 U.S. 312; *Glebe v. Frost*, 574 U.S. 21 (2014); *Lopez v. Smith*, 574 U.S. 1 (2014); *Nevada v. Jackson*, 569 U.S. 505 (2013); *Marshall v. Rodgers*, 569 U.S. 58 (2013); *Parker v. Matthews*, 567 U.S. 37 (2012); *Coleman v. Johnson*, 566 U.S. 650 (2012); *Wetzel v. Lambert*, 565 U.S. 520 (2012); *Hardy v. Cross*, 565 U.S. 65 (2011); *Bobby v. Dixon*, 565 U.S. 23 (2011); *Cavazos v. Smith*, 565 U.S. 1 (2011); *Bobby v. Mitts*, 563 U.S. 395 (2011); *Felkner v. Jackson*, 562 U.S. 594 (2011); *Swarthout v. Cooke*, 562 U.S. 216 (2011).

In *Kayer*, for example, the Court condemned the Ninth Circuit for adjudicating the case "in a manner fundamentally inconsistent with AEDPA." 592 U.S. at 119. "Most striking," it found, was that "the panel essentially evaluated the merits *de novo*,

only tacking on a perfunctory statement at the end of its analysis asserting that the state court's decision was unreasonable." *Id.* at 119 (citation and quotation marks omitted).

Here, the panel majority granted federal habeas relief without ever citing the AEDPA standard in its analysis or holding that Sweeney had satisfied it. It failed to even feign compliance with AEDPA by tacking on a "perfunctory statement," *id.*, about the propriety of the state court's decision. Instead, it performed a *de novo* review of the trial record in contravention of this Court's repeated admonishments to adhere to the AEDPA statute.

Had the panel majority applied § 2254(d) as required, it would have been compelled to deny habeas relief. As Judge Quattlebaum explained in dissent: this Court "has not clearly established that a juror's visit to a crime scene constitutes a 'communication, contact, or tampering' sufficient to trigger *Remmer*" (which Sweeney conceded below), nor does *Remmer* "require voir dire of all jurors." (App., *infra*, 80a-81a). Undeterred, the panel majority resorted to circuit precedent that elaborates on *Remmer* to hold that Sweeney would have been entitled to a more expansive *Remmer* hearing had trial counsel asked for one. (App., *infra*, 33a-34a, 39a-41a). But circuit precedent "cannot form the basis for habeas relief under AEDPA." *Parker*, 567 U.S. at 48-49.

In sum, the dissenting judge was correct in stating that "[t]he moment this decision [was] issued, it [was] untenable under binding Supreme Court precedent."

(App., *infra*, 62a). There is a reasonable probability that this Court will grant certiorari review and a fair prospect that it will summarily reverse the Fourth Circuit.

II. The equities weigh in favor of a stay.

Absent a stay, the State will be compelled to prepare for a retrial that never should have been granted in the first place. And Sweeney has wasted no time in demanding his undeserved remedy. He swiftly moved for his immediate release or, in the alternative, an order directing the State to conduct a retrial within *thirty days*. (App., *infra*, 117a). The district court has scheduled a conference for the day the Fourth Circuit's mandate is scheduled to issue to discuss a timeline for Sweeney's retrial and has suggested the possibility of ordering Sweeney's release. (App., *infra*, 118a).

Although the timeline for retrial has not yet been established, there is a substantial possibility that the district court will obligate the State to conduct a retrial in an unreasonably short timeframe or else release Sweeney. The district court recently issued a conditional writ of habeas corpus in another case that afforded the State a paltry sixty days to conduct a retrial, which the State challenged on appeal without success. *See Martin v. Nines*, No. 24-6086, 2025 WL 215521, at *12-13 (4th Cir. Jan. 16, 2025). If a similar order is issued in this case, without a stay, the State will be irreparably harmed. Stay is warranted to permit the State the opportunity to exercise its appellate options without incurring the unnecessary costs and burdens of conducting a retrial.

In addition, if the State retries Sweeney, or a plea agreement is reached, and a new judgment of conviction is entered while this Court considering whether to grant certiorari review, that likely would moot any further appellate proceedings. *See Hill v. Sheets*, 409 Fed. Appx. 821, 824-25 (6th Cir. 2010) (concluding that the state resentencing petitioner mooted respondent's appeal). *Toney v. Miller*, 358 Fed. Appx. 583, 584 (5th Cir. 2009) (concluding that respondent's appeal was mooted when petitioner entered a guilty plea).

On the other hand, Sweeney would not be prejudiced by a stay. Applicants firmly believe that summary reversal is warranted, and if the Court does reverse the Fourth Circuit's decision, any potential prejudice from the stay would be moot. If the Court declines to review the case, however, the impact on Sweeney caused by the brief delay while this Court considers Applicants' certiorari petition would be inconsequential. Sweeney currently is serving a life sentence plus a consecutive thirty years' incarceration. (App., *infra*, 2a). Even if he were retried, it is very likely that he would be convicted again and would continue to serve that same sentence. That is because the evidence of Sweeney's guilt is overwhelming. At trial, the State called multiple eyewitnesses to the shooting, who testified that Sweeney stood in front of his home and started a "loud" argument with another man over allegedly stolen marijuana; during the altercation, Sweeney, armed with a handgun, threated to "kill somebody"; Sweeney dared the other man to "cross the gun line"; and then shortly thereafter, Sweeney fired several shots in the man but missed and killed a bystander.

(App., *infra*, 11a, 17a, 63a-64a) (record citations and quotation marks omitted). The supposed constitutional defect in Sweeney's judgment of conviction—*i.e.*, the mishandling of Juror 4's misconduct—is a problem that would not occur on retrial.

For these reasons, the balance of equities weigh in favor of a stay.

III. An immediate administrative stay is warranted.

As noted, Sweeney and the district court are moving swiftly to schedule a retrial and discuss Sweeney's potential release pending the retrial. It is unclear what the district court will order in its conditional writ, but there is a distinct possibility that it will order Sweeney's release pending a retrial or order that a retrial be scheduled before this Court has had an opportunity to consider this application. Applicants therefore respectfully request that the Court forestall those outcomes by issuing an immediate administrative stay pending the Court's consideration of this application.

CONCLUSION

The Court should issue an immediate administrative stay of the Fourth Circuit's mandate pending the consideration of this application and then issue a stay of the mandate pending disposition of Applicants' forthcoming petition for a writ of certiorari.

Dated: May 14, 2025

Respectfully submitted,

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