No. 25-5097

IN THE
SUPREME COURT OF THE UNITED STATES

MICHAEL BELL,
Petitioner,

v.

RICKY D. DIXON,
SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, ET AL.,
Respondents.

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

BRIEF IN OPPOSITION
EXECUTION SCHEDULED FOR JULY 15, 2025, AT 6:00 P.M.

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

C. SUZANNE BECHARD
Associate Deputy Attorney General
Counsel of Record

JONATHAN S. TANNEN
Senior Assistant Attorney General

CHRISTINA Z. PACHECO
Senior Assistant Attorney General

JOSHUA E. SCHOW
Assistant Attorney General

COUNSEL FOR RESPONDENTS

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607
Telephone: (813) 287-7900
carlasuzanne.bechard@myfloridalegal.com
capapp@myfloridalegal.com

CAPITAL CASE

QUESTION PRESENTED

Whether this Court's holding in *Panetti v. Quarterman* should be extended to *Brady* and *Giglio* claims.

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The opinion from which Petitioner seeks certiorari review is the Eleventh Circuit's order denying Petitioner's emergency petition for initial hearing en banc, which appears as *Bell v. Sec'y, Dep't of Corr., et al.*, No. 25-12359, slip op. (11th Cir. July 14, 2025). The emergency petition sought en banc review of a district court order dismissing Petitioner's unauthorized successive federal habeas petition for lack of jurisdiction, which appears as *Bell v. Sec'y, Fla. Dep't of Corr., et al.*, No. 3:25-cv-774, 2025 WL 1906701 (M.D. Fla. July 10, 2025). The successive habeas petition, in turn, attempted to challenge the Florida Supreme Court's decision in *Bell v. State*, No. SC2025-0891, 2025 WL 1874574 (Fla. July 8, 2025), *cert. petition and motion for stay of execution pending*, *Bell v. Florida*, Nos. 25-5083 & 25A45.

JURISDICTION

Petitioner asserts that this Court's jurisdiction is based upon 28 U.S.C. § 1254. Respondent agrees that this Court has the authority to grant review under that statute but denies that this is an appropriate case for the exercise of this Court's discretionary jurisdiction, as the Eleventh Circuit's discretionary denial of initial hearing en banc does not conflict with any decision by this Court or another United States court of appeals, nor does the Eleventh Circuit's order decide any important or unsettled question of federal law. *See* Sup. Ct. R. 10(a), (c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Respondent accepts Petitioner's statement regarding the constitutional and statutory provisions involved.

STATEMENT OF THE CASE AND PROCEDURAL HISTORY

On the night of December 9, 1993, Michael Bernard Bell murdered Jimmy West and Tamecka Smith with an AK-47 rifle in Jacksonville, Florida. For both killings, Bell was convicted of first-degree murder and sentenced to death in 1995. On June 13, 2025, Governor Ron DeSantis signed Bell's death warrant, and his execution is scheduled for July 15, 2025, at 6:00 p.m.

Respondent rejects, in the strongest possible terms, Bell's assertions in his statement of the case and throughout his certiorari petition that he was convicted based on coerced or false evidence. Bell's claims in that regard have been fully litigated and found meritless twice: first, after an extensive evidentiary hearing on Bell's initial state motion for postconviction relief in April 2002; and again, after another evidentiary hearing in June 2025 following the signing of Bell's death warrant. The facts of Bell's case are accurately described in the decisions of the Florida Supreme Court, which are summarized below.

Facts of the Crimes

In June 1993, Theodore Wright killed Bell's brother, Lamar, in self-defense. Bell swore revenge and, in the months that followed, he repeatedly told friends and relatives that he planned to kill Wright. *Bell*, 2025 WL 1874574, at *1 (citing *Bell v. State*, 699 So. 2d 674, 675 (Fla. 1997)). Bell was a convicted felon and was not legally allowed to possess firearms. *Id.* at *12; *see* Fla. Stat. § 790.23 (1993). To carry out his plan to kill Wright, Bell went to a gun store on December 8, 1993, with his girlfriend Ericka Williams, and had Williams buy him an AK-47 rifle, a 30-round magazine, and 160 bullets. *Bell*, 2025 WL 1874574, at *11.

The night after he procured the rifle, Bell spotted Wright's car, a yellow Plymouth. Bell left the area and quickly returned with two friends—Vanesse "Ned" Pryor and Dale George—and the now-loaded AK-47. *Id.* at *1, *12-13. After a short search, Bell saw the yellow car again in the parking lot of a liquor lounge. Bell did not know that Wright had previously sold the car to Wright's half-brother, Jimmy West. *Id.* Bell and George waited in the parking lot in Bell's car until West came out of the lounge with Tamecka Smith and a second female. Pryor, who drove separately, parked down the street where he could still see Bell's car. *Id.* As West and the two women got into the yellow Plymouth, Bell put on a ski mask, picked up the AK-47, got out of his car, and started shooting. *Id.* at *1, *8, *12-13.

Bell fired twelve shots at point-blank range into West and another four shots into Smith. The second female ducked and escaped injury. After shooting West and Smith, Bell sprayed bullets toward the front of the liquor lounge, where about a dozen people had been waiting to go inside. *Id.* at *1. As Bell was shooting, George moved into the driver's seat of Bell's car. Once Bell had finished, George drove them away from the scene. *Id.* at *1, *13. Pryor, who saw Bell get out of the car with the AK-47 and heard the gunshots, likewise drove away. *Id.* at *12.

After the shooting, George went back to his own car and parted ways with Bell. George went to Williams' apartment, which she shared with George's girlfriend, and told her that "Michael got Theodore." *Id.* at *11, *13. Williams did not believe him, so George drove her to the liquor lounge, where she saw numerous police vehicles. George then took Williams back to her apartment. Shortly thereafter, Bell called

Williams and asked her to bring him some clothes at his aunt's house. George refused to see Bell and went home, while Williams took the clothes to Bell. *Id.*

Bell had previously told his aunt, Paula Goins, about his intent to kill Wright. On the night of the murders, after Bell had parted ways with George, Bell went to Goins' house where he boasted to Goins about how he had gotten revenge on Wright by killing Wright's brother and another girl. *Id.* at *14-16. When Williams arrived, Bell similarly told Williams that "now the score [was] even" between himself and Wright because he had killed Wright's brother as well as "an innocent girl." *Id.* at *11. At Bell's urging, Williams submitted a false police report about three months later claiming that the AK-47 she purchased had been stolen. *Id.*

Convictions and Death Sentences

Bell was ultimately charged in Duval County, Florida, with two counts of first-degree murder. At Bell's March 1995 jury trial, Williams, Pryor, George, and Goins testified about Bell's desire to kill Wright in revenge for his own brother's death, their respective roles in the murders of West and Smith, and Bell's statements afterward admitting to the murders. *Id.* at *1, *11-16. In addition, Henry Edwards, who had known Bell for about six months in December 1993 and was standing outside the liquor lounge on the night of the murders, testified at Bell's trial that he saw Bell put on a ski mask, pick up a rifle, walk toward a car, and start shooting into it. Edwards testified that there was only one gunman. *Id.* at *7. Charles Jones, who had known Bell for about ten years at the time of the murders, further testified that Bell tried to sell him an AK-47 a few days after the murders, and that Bell later

told him that "he killed West because Wright killed his brother" and that Smith was simply "at the wrong place at the wrong time." *Id.* at *9.

Bell did not present any evidence or witnesses during the guilt phase of his trial. In the defense's guilt-phase closing argument, Bell's counsel argued that Bell may have acted in self-defense based on Bell's statement to Goins that he believed West was reaching for a weapon just before he (Bell) started shooting. *Id.* at *1, *15; *see also Bell v. State*, 965 So. 2d 48, 63-64 (Fla. 2007). The jury rejected that claim and found Bell guilty as charged. *Bell*, 2025 WL 1874574, at *1.

At the penalty phase, the State presented testimony from a lounge security guard, John Lipsey, that he and seven or eight other people were in the line of fire and hit the ground when Bell shot West and Smith and sprayed bullets in the parking lot, and that Bell fired four or five bullets into a house next door to the lounge where three children were residing at the time. The State also introduced evidence of Bell's 1990 conviction for armed robbery. *Bell*, 699 So. 2d at 675; *Bell*, 965 So. 2d at 74. For the defense, Bell's mother testified at the penalty phase that she and Bell had received death threats from Wright and West, Bell was gainfully employed and in good mental health at the time of the murders, and she did not believe Bell committed the murders. *Bell*, 699 So. 2d at 675-76.

The jury unanimously recommended death for both murders. *Id.* at 975. The trial court followed the jury's recommendations and sentenced Bell to death on both counts. *Id.* at 976. In its sentencing order, the trial court found that the following aggravating factors applied to the murders: (1) Bell was convicted of a prior violent

felony; (2) Bell knowingly created a great risk of death to many persons; and (3) the killings were cold, calculated, and premeditated. *Id.* at 976 & n.1. The trial court found one mitigating circumstance, which it assigned "marginal" weight: Bell was under an extreme mental or emotional disturbance due to the death of his brother five months before the murders. *Id.* at 976 & n.2, 679.

The Florida Supreme Court affirmed Bell's convictions and death sentences on direct appeal. *Id.* at 679. Bell then filed a petition for writ of certiorari in this Court. Bell's convictions and death sentences became final when this Court denied review on February 23, 1998. *Bell v. Florida*, 522 U.S. 1123 (1998).[1]

Prior Collateral Proceedings

After his convictions and death sentences became final on direct appeal, Bell filed a motion for postconviction relief in state circuit court. The motion was initially summarily denied, but the Florida Supreme Court reversed the summary denial and remanded the case for an evidentiary hearing. *Bell*, 965 So. 2d at 54 (citing *Bell v. State*, 790 So. 2d 1101 (Fla. 2001) (table decision)).

On remand in April 2002, the postconviction court held a three-day evidentiary hearing. *Id.* Among Bell's numerous postconviction claims, Bell asserted that the testimony of multiple trial witnesses was false or coerced. *See id.* at 61 (addressing claim that Williams' testimony was coerced by the lead investigator in Bell's case,

[1] After Bell was convicted of the murders of West and Smith, he pled guilty to three additional counts of second-degree murder for the August 1993 murder of Michael Johnson and the September 1989 murders of Lashawn Cowart and her two-year-old son, Travis Cowart. Bell was sentenced to 25 years in prison on each count. Bell did not appeal or seek collateral relief as to those convictions.

Detective Bolena), 62 (addressing claim that Jones testified against Bell in exchange for special favors while he was in jail), 73 (addressing claim that George and Williams testified falsely against Bell because they were angry over a videotape they had seen of Bell having sex with George's girlfriend). In response, Edwards, Jones, Williams, Pryor, and George all testified at the 2002 evidentiary hearing that their trial testimony was the truth. *Id.*; *Bell*, 2025 WL 1874574, at *7-12.

Additionally, Bell's trial counsel, Richard Nichols, testified at the 2002 hearing in response to Bell's claims of ineffective assistance of counsel. Nichols testified that the evidence against Bell was "essentially overwhelming," and that Bell would not provide any alibi or tell him any information that he could use in Bell's defense. *Bell*, 965 So. 2d at 63. Bell would only tell Nichols that the State would "have to bring it to [him] in the courtroom" and that he "didn't believe the State's witnesses would actually show up to court." *Id.* Nichols explained that Bell seemed "surprised" when the witnesses did appear. *Id.* At that point, the only available trial strategy was to "try[] to expose any defects or deficiencies . . . in the State's case," but "there just weren't any." *Id.* Just before the jury charge conference, Bell told Nichols for the first time that "maybe" he shot the victims in self-defense because he thought West was reaching for a gun. *Id.* at 63-64. As a result, Nichols requested a self-defense jury instruction and unsuccessfully argued that theory in closing. *Id.*

After the evidentiary hearing, the postconviction court denied each of Bell's claims for relief. Bell appealed that decision to the Florida Supreme Court and simultaneously petitioned for a writ of habeas corpus. *Id.* at 54. The Florida Supreme

Court affirmed the postconviction court's denial of relief and denied Bell's habeas petition. *Id.* at 54-79. This Court denied Bell's petition for writ of certiorari from that decision. *Bell v. Florida*, 552 U.S. 1011 (2007).

Bell next filed a petition for writ of habeas corpus under 28 U.S.C. § 2254 in federal district court. The district court denied Bell's petition as untimely. *Bell v. McDonough*, No. 3:07-cv-860, 2009 WL 10698415 (M.D. Fla. Jan. 15, 2009). The Eleventh Circuit affirmed that ruling, and this Court denied Bell's petition for certiorari review. *Bell v. Fla. Att'y Gen.*, 461 F. App'x 843 (11th Cir. 2012), *cert. denied*, 572 U.S. 1118 (2014). Bell later attempted to file a successive § 2254 petition in the district court, but the district court dismissed the successive petition for lack of jurisdiction. *Bell v. Fla. Att'y Gen.*, No. 3:07-cv-860, 2016 WL 11048052 (M.D. Fla. Apr. 5, 2016), *certificate of appealability denied*, No. 16-11791, 2017 WL 11622107 (11th Cir. June 19, 2017), *cert. denied*, 584 U.S. 982 (2018). In 2017, the Eleventh Circuit denied Bell's motion for leave to file an additional successive § 2254 petition. *In re: Michael Bell*, No. 17-14768, slip op. (11th Cir. Nov. 22, 2017).

Since his initial state postconviction proceedings concluded in 2007, Bell has also filed numerous successive motions for postconviction relief in state court, all of which were summarily denied or dismissed. *See Bell v. State*, 91 So. 3d 782 (Fla. 2012) (affirming denial of successive postconviction motion raising claim for relief under *Porter v. McCollum*, 558 U.S. 30 (2009)); *Bell v. State*, No. SC2016-0369, 2016 WL 5888880 (Fla. Oct. 16, 2016) (affirming circuit court order striking Bell's second successive postconviction motion); *Bell v. State*, 235 So. 3d 287 (Fla. 2018) (holding

that *Hurst v. Florida*, 577 U.S. 92 (2016), does not apply to Bell's death sentences), *cert. denied*, 586 U.S. 856 (2018); *Bell v. State*, 284 So. 3d 400 (Fla. 2019) (affirming denial of successive postconviction motion raising claim for relief under *Buck v. Davis*, 580 U.S. 100 (2017)), *cert. denied*, 140 S. Ct. 2579 (2020).

State Proceedings Under Warrant

After Governor DeSantis signed Bell's death warrant on June 13, 2025, Bell filed a new successive postconviction motion in state circuit court raising four claims for relief. However, Bell sought an evidentiary hearing only on his first claim, in which he alleged newly discovered evidence of *Brady*[2] and *Giglio*[3] violations based on alleged misconduct by the police and prosecution. *Bell*, 2025 WL 1874574, at *3-4 & n.5. In support, Bell attached affidavits from Henry Edwards and Charles Jones purporting to recant portions of their trial testimony. *Id.* at *4, *8, *10. The circuit court granted an evidentiary hearing on the claim. *Id.* at *3.

The night before the evidentiary hearing, Bell filed an amended motion raising further newly discovered evidence claims based on additional statements allegedly made by Ericka Williams, Ned Pryor, and Dale George to investigators for Bell's federal counsel after the death warrant was signed. *Id.* at *3, *11. At the hearing, Bell also presented testimony from Paula Goins, which his counsel later argued constituted newly discovered evidence of misconduct. *Id.*

[2] *Brady v. Maryland*, 373 U.S. 83 (1963).

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

The testimony at the evidentiary hearing did not support Bell's allegations. Edwards testified that what was written in the affidavit he signed "wasn't true." *Id.* at *8. Edwards explained that the affidavit was written for him by the investigators for Bell's counsel, that he never read it before he signed it, and that he "simply went along with what the CHU Investigators told him had happened because he did not want [Bell] to be executed." *Id.* at *8-9. Jones admitted that he signed the affidavit but he refused to answer almost all other questions, invoking his privilege against self-incrimination under the Fifth Amendment. *Id.* at *10.

Bell fared no better with Williams, Pryor, and George, who had all refused to sign affidavits. *Id.* Williams testified that she was questioned after the murders by officers who were mean to her and threatened that her children would be taken away. She did not, however, recant her previous testimony. When asked about the specifics of her testimony at trial in 1995 and the postconviction hearing in 2002, Williams said that she did not recall. *Id.* at *11. Pryor and George both denied that they told the investigators for Bell's federal counsel that they were threatened by law enforcement. When asked about the specifics of their prior testimony, Pryor and George both invoked the Fifth Amendment. *Id.* at *12-13.

Goins similarly denied that she was threatened by law enforcement. *Id.* at *16. Goins indicated that Detective Bolena behaved in a hostile or imposing manner while she was being questioned but, with respect to any alleged threats, Goins testified only that she was warned of legal consequences if she did not tell the truth and was told there was a possibility of five years of incarceration if she committed

perjury. *Id.* Regarding her trial testimony, Goins reaffirmed that she heard a conversation between Bell and Williams on the night of the murders where Bell admitted to shooting West and Smith. *Id.* Goins stated that she thought Bell said "we" instead of "I" when he was describing the murders that night, but Goins also testified that "given the passage of time and the current state of her health, the transcript of her trial testimony would be accurate." *Id.*

The circuit court determined that all of Bell's new claims were both untimely under Florida law and meritless based on the testimony presented at the evidentiary hearing. *Id.* at *3-18. Bell appealed to the Florida Supreme Court. Bell also filed a motion in the Florida Supreme Court seeking a stay of execution for the purpose of further factual development in the circuit court. *Id.* at *1, *17.

On July 8, 2025, the Florida Supreme Court issued an opinion affirming the denial of Bell's successive postconviction motion. Initially, the Florida Supreme Court rejected Bell's argument that the circuit court erred in permitting some witnesses to invoke their privilege against self-incrimination at the evidentiary hearing. *Id.* at *4-5. Continuing, the Florida Supreme Court agreed with the circuit court that Bell's *Brady* and *Giglio* claims were untimely and meritless as to all of the witnesses Bell raised in his successive motion and called at the evidentiary hearing. *Id.* at *5-17. It further rejected Bell's arguments that he was entitled to relief based on the "totality of the circumstances," or that the warrant period was unreasonably short. *Id.* Finally, the Florida Supreme Court denied Bell's motion for a stay of execution, stating that because Bell had "failed to establish 'substantial

grounds upon which relief might be granted,' no stay [was] warranted." *Id.* (quoting *Gaskin v. State*, 361 So. 3d 300, 309 (Fla. 2023)). Bell filed a petition for writ of certiorari and motion for stay of execution in this Court, which remain pending as of the filing of this brief. *Bell v. Florida*, Nos. 25-5083 & 25A45.

Post-Warrant Federal Habeas Petition

On July 9, 2025, Bell filed an "emergency" § 2254 petition in federal district court, in which he attempted to re-raise the *Brady* and *Giglio* claims from his post-warrant state postconviction filings. (MDFL Doc. 1).[4] Bell acknowledged that under 28 U.S.C. § 2244(b)(3)(A), a petitioner may not file a second or successive federal habeas petition in the district court without first obtaining authorization from the court of appeals, which Bell had not even attempted to do. Bell further acknowledged the Eleventh Circuit's holding in *Tompkins v. Secretary, Department of Corrections*, 557 F.3d 1257, 1259-60 (11th Cir. 2009), that a second-in-time § 2254 petition raising a *Brady* and *Giglio* claim is "second or successive" for purposes of §2244(b) even if the claim is based on facts that were not previously discoverable. In reaching that decision, the Eleventh Circuit rejected the argument that *Brady* and *Giglio* claims are reviewable without prior authorization under this Court's decision in *Panetti v. Quarterman*, 551 U.S. 930, 943-48 (2007) (holding that competency-to-be-executed claims are not subject to § 2244(b)(3)(A)). *Tompkins*, 557 F.3d at 1260. Bell argued, however, that *Tompkins* was wrongly decided. (MDFL Doc. 1, at 9-14).

[4] In this brief, docket filings in Middle District of Florida case number 3:25-cv-774 will be cited as "MDFL Doc." and docket filings in Eleventh Circuit case number 25-12359 will be cited as "CA11 Doc."

The Secretary of the Florida Department of Corrections moved to dismiss the petition for lack of jurisdiction, pointing out that *Tompkins* was binding precedent, that it was recently reaffirmed in *Jennings v. Secretary, Florida Department of Corrections*, 108 F.4th 1299 (11th Cir. 2024), *cert. denied*, 145 S. Ct. 1472 (2025), and that Bell could have avoided the problem simply by seeking authorization from the Eleventh Circuit to file his petition. (MDFL Doc. 8). Bell filed a reply agreeing that the district court was bound by *Tompkins*. (MDFL Doc. 11).

The district court granted the Secretary's motion and dismissed the petition for lack of jurisdiction. *Bell*, 2025 WL 1906701, at *3-4. Bell appealed that order to the Eleventh Circuit, where he filed an emergency petition for initial hearing en banc, *see* Fed. R. App. P. 40(e), and an emergency motion for stay of execution. (CA11 Docs. 4, 5). The Secretary filed responses in opposition to both filings. (CA11 Docs. 8, 9). Bell filed a reply to the Secretary's responses. (CA11 Doc. 10).

On July 14, 2025, a three-judge panel of the Eleventh Circuit denied Bell's motion for stay of execution without written opinion. (CA11 Doc. 11). Shortly thereafter, the en banc Eleventh Circuit denied Bell's petition for hearing en banc. (CA11 Doc. 12). The second order states in full:

> No judge in regular active service on the Court having requested that the Court be polled on hearing en banc, the Petition for Hearing En Banc is DENIED. See FRAP 40.

(CA11 Doc. 12-1, at 2). Bell now petitions this Court for a writ of certiorari and asks this Court to grant review and overturn *Tompkins*.

REASONS FOR DENYING THE PETITION

I. The Eleventh Circuit's One-Sentence Order Denying Initial En Banc Review Presents No Conflict of Decisions or Important or Unsettled Federal Question to Warrant Review by This Court.

At the outset, the Eleventh Circuit's order presents no question of federal law that warrants review by this Court. The order merely states, in a single sentence, that because no active service member of the Eleventh Circuit requested that the Court be polled on Bell's petition for initial hearing en banc, the petition was denied. In the Eleventh Circuit, such petitions are governed by Federal Rule of Appellate Procedure 40 and Eleventh Circuit Rule 40-6. Rule 40 states, in relevant part, that "[o]n its own or in response to a party's petition, a court may hear an appeal or other proceeding initially en banc. . . . *But initial hearing en banc is not favored and ordinarily will not be ordered*." Fed. R. App. P. 40(e) (emphasis added). To that, the local rules of the Eleventh Circuit add that "[a] petition for en banc consideration, whether upon initial hearing or rehearing, is an extraordinary procedure intended to bring to the attention of the entire court a precedent-setting error of exceptional importance." 11th Cir. R. 40-6. En banc review may be granted only if "a majority of the circuit judges who are in regular active service and who are not disqualified" vote in favor of en banc review. Fed. R. App. P. 40(c). Unless at least one such judge "call[s] for a vote," however, "a vote need not be taken to determine whether the case will be so []heard." *Id.*; *see also* Fed. R. App. P. 40(e) (providing that the provisions of Rule 40(c) apply to a request for initial hearing en banc).

The rules of this Court state that certiorari review will be granted "only for compelling reasons." Sup. Ct. R. 10. When the petitioner seeks review of a decision

made by United States courts of appeals, the court of appeals must typically have entered a decision that: "conflicts with the decision of another United States court of appeals, a state court of last resort, or this Court on an important question of federal law"; "so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power"; or "decided an important question of federal law that has not been, but should be, settled by this Court." *Id.* A petition for writ of certiorari "is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law." *Id.*

The Eleventh Circuit's order satisfies none of the grounds described in this Court's Rule 10. Bell argues that this Court should grant certiorari review and overturn the Eleventh Circuit's decision in *Tompkins*. But that was not the question before the Eleventh Circuit, and the point is not addressed in its one-sentence order. Instead, the question was simply whether the en banc court should review the district court's order without a decision by a three-judge panel. Because no member of the Eleventh Circuit called for a vote on Bell's request for initial en banc review, the request was correctly denied. Fed. R. App. P. 40(e), (c). Moreover, the district court's order simply applied long-established, binding circuit precedent that is consistent with the precedent of other circuits. *See Evans v. Smith*, 220 F.3d 306, 322-23 (4th Cir. 2000); *Blackman v. Davis*, 909 F.3d 772, 778 (5th Cir. 2018); *In re Wogenstahl*, 902 F.3d 621, 627-28 (6th Cir. 2018); *Brown v. Muniz*, 889 F.3d 661, 674 (9th Cir. 2018); *In re Pickard*, 681 F.3d 1201, 1205-07 (10th Cir. 2012); *see also Balter v. United*

States, 858 F. App'x 572, 574 & n.12 (3d Cir. 2021) (noting that every circuit to address the issue has held that *Panetti* is limited to competency-to-be-executed claims, and collecting cases). The district court's ruling was not "precedent-setting error of exceptional importance," 11th Cir. R. 40-6, and the Eleventh Circuit acted well within its authority in denying initial en banc review.

In short, there was no error in the Eleventh Circuit's denial of Bell's petition for initial en banc review, let alone any conflict of decisions or important or unsettled question of federal law. Thus, Bell's certiorari petition must be denied.

II. *Tompkins* Was Correctly Decided.

Even if the Eleventh Circuit had presented this Court with a reviewable issue, certiorari would not be warranted. Under this Court's Rule 10, the only applicable compelling reason for granting certiorari here would be that a United States court of appeals has decided an important federal question in a way that conflicts with relevant decisions of this Court. That has not occurred here because the Eleventh Circuit's opinion in *Tompkins* does not conflict with *Panetti*.

In *Panetti*, this Court recognized an extremely limited exception to the limitations on successive habeas petitions that is applicable only when a petitioner raises an incompetency to be executed claim under *Ford v. Wainwright*, 477 U.S. 399 (1986). *Panetti*, 551 U.S. at 943. This Court held that "the statutory bar on 'second or successive' applications does not apply to a *Ford* claim brought in an application filed when the claim is first ripe." *Id*. at 947. The Court highlighted that a *Ford* claim may not be ripe until the time for filing a federal habeas petition runs, and requiring

petitions to file unripe *Ford* claims to obtain review would "produce troublesome results" and contravene the principles underlying the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). *Id*. at 946.

In *Tompkins,* the Eleventh Circuit appropriately recognized that "the *Panetti* case involved only a *Ford* claim, and the Court was careful to limit its holding to *Ford* claims." 557 F.3d at 1259. "The reason the Court was careful to limit its holding is that a *Ford* claim is different from most other types of habeas claims." *Id*. "Mental competency to be executed is measured at the time of execution, not years before then." *Id*. at 1260. With that understanding, the court declined Tompkins's request to expand this Court's holding in *Panetti* to *Brady* and *Giglio* claims.

Bell now contends that the Eleventh Circuit should have overruled *Tompkins* because it purportedly conflicts with *Panetti*. He is altogether incorrect. Nothing in *Panetti* stands for Bell's proposition that he should be permitted to circumvent AEDPA's gatekeeping requirements under § 2244(b) and file another habeas petition raising *Brady* and *Giglio* claims without first obtaining authorization from the circuit court. The Eleventh Circuit's reading of *Panetti* is entirely consistent with *Panetti* and presents no conflict of decisions.

In addition to not conflicting with *Panetti*, the Eleventh Circuit's opinion in *Tompkins* is also consistent with the limitations imposed by AEDPA. Incarcerated individuals who seek to challenge their imprisonment through a federal habeas petition are generally afforded only one opportunity to do so. *Rivers v. Guerrero*, 145 S. Ct. 1634, 1639 (2025). After the initial chance to bring a federal habeas petition,

"the road gets rockier." *Banister v. Davis*, 590 U.S. 504, 509 (2020). "To file a second or successive application in a district court, a prisoner must first obtain leave from the court of appeals based on a 'prima facie showing' that his petition satisfies the statute's gatekeeping requirements." *Id.* (quoting 28 U.S.C. § 2244(b)(3)(C)). Recently, in *Rivers*, this Court affirmed the "straightforward rule" that the filing of a second habeas petition is successive and triggers the gatekeeping requirements of section 2244(b). *Rivers*, 145 S. Ct. at 1647.

Bell simply cannot show that the Eleventh Circuit's refusal to expand *Panetti* conflicts with this Court's precedent in any way. When considering decisions from this Court, Justice Thomas has explained that courts should "avoid framing [this Court's] precedents at too high a level of generality[.]" *Andrew v. White*, 145 S. Ct. 75, 83 (2025) (Thomas, J., dissenting). Notably, circuit court precedent "cannot 'refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that this Court has not announced.'" *Lopez v. Smith*, 574 U.S. 1, 6-7 (2014) (quoting *Marshall v. Rodgers*, 569 U.S. 58, 64 (2013)). Likewise, if a federal habeas court has to extend the Court's rationale before it can apply the facts at hand "then by definition the rationale was not clearly established." *White v. Woodall*, 572 U.S. 415, 426 (2014) (internal quotations omitted).

In order to accept Bell's argument, one would have to "refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that this Court has not announced.'" *Lopez*, 574 U.S. at 6-7 (quoting *Marshall*, 569 U.S. at 64); *Cf. Harrington v. Richter*, 562 U.S. 86, 101 (2011) ("It is not an unreasonable

application of clearly established Federal law for a state court to decline to apply a specific legal rule that has not been squarely established by this Court.") (cleaned up). Essentially, this Court would have to expand its reading of *Panetti* beyond its original holding in order to find that a conflict exists. And while Bell cites cases in which individual judges have expressed a desire to interpret *Panetti* more broadly beyond just *Ford* claims, that does nothing to show that the Eleventh Circuit's *Tompkins* jurisprudence is in conflict with *Panetti*.

Certiorari review is not warranted here. As this Court has acknowledged, "there are strong reasons to adhere scrupulously to the customary limitations of [the Court's] discretion." *Illinois v. Gates*, 462 U.S. 213, 232 (1983). Indeed, this Court has consistently denied certiorari review in similar cases seeking to expand *Panetti*. *See, e.g.*, *Jennings v. Dixon*, 145 S. Ct. 1472 (2025); *Scott v. United States*, 586 U.S. 1109(2019). This Court should also do so here.

III. This Case is a Poor Vehicle.

Even if this Court were inclined to revisit *Panetti*, this case is an exceptionally poor vehicle to do so. The *Brady*/*Giglio* claim that Bell seeks to raise in his successive habeas position is fatally flawed because the Florida Supreme Court found that the bulk of his claim was time-barred under Florida law, and the remaining portion of his claim was never exhausted in state court.

The denial of the main portion of Bell's underlying *Brady/Giglio* claim—based on Henry Edwards, Charles Jones, Ericka Williams, Ned Pryor, Dale George, and Paula Goins—rests on independent and adequate state law grounds. The state courts

found the *Brady*/*Giglio* claim, which was raised in a successive state court petition, untimely. *Bell*, 2025 WL 1874574, at *4-17. As the state circuit court found, and the Florida Supreme Court agreed, Bell never explained when his counsel learned of the alleged recantations by Edwards and Jones and why that evidence could not have been presented sooner. *Id.* at *7. Moreover, Bell failed to explain why he could not have interviewed Williams, Pryor, George, and Goins sooner given that he had "raised claims of coercion as far back as his 2002 postconviction proceedings." *Id.* at *10-11. Ultimately, the Florida Supreme Court held that Bell failed to plead or establish, despite having been granted an evidentiary hearing on the issue, that his *Brady* and *Giglio* claims could not have been previously discovered with the exercise of due diligence, as required for a successive postconviction claim to be timely under Florida law. *See* Fla. R. Crim. P. 3.851(d)(2)(A); *Bell*, 2025 WL 1874574, at *3, *7, *10-11.

That is fatal for Bell's habeas review. *See Walker v. Martin*, 562 U.S. 307, 315 (2011) ("A federal habeas court will not review a claim rejected by a state court 'if the decision of [the state] court rests on a state law ground that is independent of the federal question and adequate to support the judgment.'"). Federal habeas corpus law is well settled that the failure of a habeas petitioner to adhere to state procedural rules regarding the timely presentation of claims will bar consideration of those claims in a subsequent federal habeas proceeding. *See Wainwright v. Sykes*, 433 U.S. 72 (1977); *Spencer v. Kemp*, 781 F.2d 1458, 1453 (11th Cir. 1986). Because the Florida Supreme Court's judgment affirming the state postconviction court's denial of Bell's

Brady/*Giglio* claim rests on independent and adequate state procedural grounds, federal habeas review of this claim would be barred.

For the same reason, this case would be a poor vehicle to extend *Panetti*. Quite simply, this is not a case where the evidence underlying the *Brady*/*Giglio* claim could not have been discovered and presented previously with due diligence. Bell has made the same allegations of coercion and false testimony for decades, including in his initial postconviction proceedings and initial federal habeas petition. There was simply no reason for Bell's current counsel to have waited until after the death warrant was signed to begin interviewing witnesses. *See Balter*, 858 F. App'x at 575 ("Even if we were to construe *Panetti* broadly to apply to *Brady* claims that could not have been brought in an initial motion, Balter has not shown that *he* could not bring *his* Brady claim in his initial § 2255 motion in 1997.") (original emphasis).

Next Bell's claim relating to witnesses Mark Richardson, Derrick Jones, Gary Browder, and Maurice Williams was not exhausted in state court. "This Court has long held that a state prisoner's federal habeas petition should be dismissed if the prisoner has not exhausted available state remedies as to any of his federal claims." *Coleman v. Thompson*, 501 U.S. 722, 731 (1991). Principles of comity require that state courts be given the first opportunity to address and correct alleged violations of state prisoner's federal rights. *Id.* at 731. "[F]ederal courts generally decline to hear any federal claim that was not presented to the state courts 'consistent with [the State's] own procedural rules.'" *Shinn v. Ramirez*, 596 U.S. 366, 378 (2022) (quoting *Edwards v. Carpenter*, 529 U.S. 446, 453 (2000)).

Bell did not raise these allegations in his successive postconviction motion, nor did he raise them in his appeal to the Florida Supreme Court. Instead, Bell raised them for the first time in a motion filed in the Florida Supreme Court to relinquish jurisdiction back to the postconviction court. (MDFL Doc. 8-1). In its response, the State pointed out that Bell had failed to establish good cause for his failure to first raise the claim in the postconviction court, given that Bell's counsel waited until after postconviction relief was denied by the lower court to make public records requests and interview the witnesses on which the claim was based, *see* Fla. R. Crim. P. 3.851(f)(4), and that, regardless, the claim was untimely and facially meritless. (MDFL Doc. 8-2). The Florida Supreme Court denied the motion to relinquish jurisdiction. *See Bell*, 2025 WL 1874574, at *17. Thus, Bell never properly presented or exhausted this claim within the state postconviction context.

This case is also a poor vehicle for granting certiorari review because it is the day of Bell's scheduled execution. Notably, Bell could have simply sought authorization from the Eleventh Circuit to file a successive habeas petition raising his *Brady*/*Giglio* claim. "[B]efore a petitioner may file a second or successive habeas application in the district court, he must obtain an order from this court authorizing the district court to consider it. Absent such authorization, a district court lacks subject matter jurisdiction to consider a second or successive habeas petition." *Baise v. Limestone CF Warden*, No. 22-13201, 2025 WL 262764, at *2 (11th Cir. Jan. 22, 2025). Pursuant to 28 U.S.C. § 2244(b)(2), Bell had the opportunity to move in the Eleventh Circuit for an order authorizing consideration of his successive section 2254

petition before he filed his petition in the district court. He chose not to. Instead, he filed his successive habeas petition without authorization in the district court, knowing that the district court lacked jurisdiction to consider it. Once the district court determined that it was without jurisdiction under *Tompkins*, Bell sought a stay and hearing en banc from the Eleventh Circuit, despite the admonition of the Federal Rules of Appellate Procedure that "initial hearing en banc is not favored and ordinarily will not be ordered." Fed. R. App. P. 40(e). And now he seeks a stay and certiorari review from this Court.

Had Bell first sought authorization from the Eleventh Circuit under section 2244(b), we would not be here. Presumably, he did not do so because he could not prove that the "factual predicate for the claim could not have been discovered previously through the exercise of due diligence," and that "the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense." 28 U.S.C. § 2244(b)(2)(B)(i)-(ii). Bell should not get to circumvent this gatekeeping requirement, and in doing so, also delay his execution.

IV. Bell is Not Entitled to Federal Habeas Relief on the Merits of His Underlying *Brady*/*Giglio* Claim.

Even if Bell could overcome the procedural obstacles to his successive federal habeas petition, he would still not be entitled to relief. Because Bell's *Brady*/*Giglio* claim was also rejected on the merits by the Florida Supreme Court, Bell can prevail only if he can satisfy AEDPA's stringent standard of review. That is, Bell would have

to establish that the Florida Supreme Court's decision "(1) 'was contrary to, or involved an unreasonable application of, clearly established Federal law,' or (2) 'was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.'" *Wilson v. Sellers*, 584 U.S. 122, 125 (2018) (quoting 28 U.S.C. § 2254(d)). If "the state court [has] applied the correct governing legal principle to the facts of the prisoner's case," relief may be granted only if "its decision involved an unreasonable application of this Court's precedent." *Shinn v. Kayer*, 592 U.S. 111, 118 (2020) (cleaned up). "To meet that standard, a prisoner must show far more than that the state court's decision was 'merely wrong' or 'even clear error.'" *Id.* (quoting *Virginia v. LeBlanc*, 582 U.S. 91, 94 (2017)). Rather, "[t]he prisoner must show that the state court's decision is so obviously wrong that its error lies 'beyond any possibility for fairminded disagreement.'" *Id.* (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). As this Court has noted, "[i]f this standard is difficult to meet, that is because it was meant to be." *Richter*, 562 at 102.

Bell could not establish error even under a standard of de novo review, much less the "difficult" AEDPA standard. Bell's descriptions of the facts in his certiorari petition (and in Judge Rosenbaum's concurrence quoted therein, which uncritically accepts Bell's account) ignores virtually all of the evidence that was presented at his state-court postconviction evidentiary hearings in 2002 and 2025.

To begin with, Bell's claim in his post-warrant postconviction motion of a recantation by Henry Edwards was rebutted by Edwards himself. Edwards, who had testified in 2002 that his trial testimony was the truth in response to similar claims

by Bell, testified in 2025 that the affidavit he signed purporting to recant his trial testimony was false, that it was written for him by the investigators for Bell's federal counsel, and that he signed it only because the investigators told him he had to do so to save Bell's life. *Bell*, 2025 WL 1874574, at *7-9. As to Bell's claim of a recantation by Charles Jones, Jones admitted that he signed the affidavit but otherwise refused to testify. Id. at *9-10. In light of Edwards' testimony, as well as Jones' similar 2002 testimony that his trial testimony was the truth, *id.* at *9, the most likely explanation for Jones' refusal is that he, unlike Edwards, was not willing to admit that he had signed a fraudulent affidavit in an effort to help Bell.

Williams, Pryor, and George refused to sign affidavits at all. *Id.* at *10. And none of those witnesses recanted their trial testimony at the 2025 hearing, but instead invoked their Fifth Amendment rights as to some questions while also stating, in response to other questions, that they did not remember what they had said at Bell's trial more than 30 years earlier. *Id.* at *10-14. Regardless, Bell's claims of pressure on those witnesses to testify by the police and prosecution was neither surprising nor especially probative in light of the fact that all three participated in the murders of West and Smith. Williams bought the gun for Bell, knowing that he was a convicted felon (which was corroborated at trial by the gun store's manager), and later filed a false police report claiming that the gun had been stolen. Pryor and George both went with Bell to the liquor lounge knowing that he planned to kill Wright, George acted as Bell's getaway driver, and neither reported the murders to

law enforcement until months later. *Id.* at *11-14. As the state circuit court concluded in its final order after hearing the witnesses testify:

> None of the testimony brought out at the evidentiary hearing demonstrates the State's actions were of such a threatening nature that they amounted to the prosecutorial misconduct necessary to warrant relief. Further, even if all this suggestion of supposed threats had been presented at trial, [Bell] has failed to connect how the credibility of these witnesses is weakened. [Bell] never makes the connection that the witnesses embellished or fabricated their testimony to avoid these threats. On the contrary, it appears all of them were appropriately aware of how important testifying truthfully was.

Id. at *17.

Bell also ignores the testimony of his aunt, Paula Goins. Goins' only allegation of supposed coercion was that she was warned of legal consequences if she did not testify truthfully. Moreover, Goins admitted that on the night of the murders, she heard a conversation in which Bell admitted to killing West and Smith. And while she asserted that the prosecutor "twisted" her account of what Bell said, "she also stated that given the passage of time and the current state of her health, the transcript of her trial testimony would be accurate." *Id.* at *16. In its recent opinion, the Florida Supreme Court quoted at length from Goins' detailed trial testimony recounting Bell's statement to her before the murders that Wright "need[ed] to be in the morgue like [Bell]'s brother," and Bell's statements to her after the murders boasting about how he had gotten revenge against Wright by killing Wright's brother and another girl. *Id.* at *14-16. Goins' testimony, which was consistent with all of the other evidence, left no doubt that Bell committed the murders.

Bell's further allegations of suppressed evidence and witness coercion are likewise meritless. The notes of a December 16, 1993, interview of trial witness Mark Richardson were not "suppressed." Bell admitted that he received them in response to a public records request he filed on June 30, 2025, and he never explained why he could not have made a similar request years before the death warrant was signed. In any event, the Richardson notes did not, in fact, contradict his trial testimony. (MDFL Doc. 8-2, at 9-11, 15-16). As to the affidavits from Derrick Jones, Gary Browder, and Maurice Williams, Bell likewise failed to explain why those witnesses were not interviewed long ago given that the detective's notes of their statements were previously produced to Bell. Moreover, those individuals did not testify at trial, and their statements were not presented as evidence. (*Id.* at 12-14, 16-17, 19). Bell's allegation regarding Julian George was refuted at the 2002 hearing, where Julian and Dale George both testified, and the postconviction court found Dale George's testimony that he was not coerced to be more credible. (*Id.* at 21).

Both state and federal courts view witness recantations with "extreme suspicion." *In re Davis*, 565 F.3d 810, 825 (11th Cir. 2009) (string cite omitted); *see also In re Dailey*, 949 F.3d 553, 563 (11th Cir. 2020) (noting the inherent suspicion with which courts view alleged witness recantations); *Bell*, 2025 WL 1874574, at *7 ("We have explained that recantations, as a general matter, are highly unreliable as a form of newly discovered evidence."). That suspicion is well justified in this case. Not only did Bell fail to offer any credible recantation evidence in state court below, but virtually all of these trial witnesses testified twice, once at trial and once in post-

conviction. During the prior postconviction hearing, the witnesses confirmed that their trial testimony was truthful. And Bell's trial counsel, Nichols, testified at the 2002 hearing that despite his efforts, Bell would not provide him with an alibi or any other information he could use in Bell's defense. As Nichols explained, the evidence against Bell was overwhelming, and he was unable to find any defects, deficiencies, or inadequacies in the State's case. *Bell*, 965 So. 2d at 63. Nothing Bell has presented in his many years of collateral litigation undermines that assessment.

Bell is a five-time convicted murderer. He has had almost 30 years to litigate his postconviction claims, and every claim and allegation he has raised has been found meritless. The Florida Supreme Court's recent opinion denying Bell's post-warrant postconviction motion is thorough, well-reasoned, and sets out in detail the evidence supporting its and the state circuit court's decisions. That opinion is not contrary to or an unreasonable application of any clearly established federal law, nor is it based on an unreasonable determination of the facts. Bell is not innocent of the murders for which he was sentenced to death, he is not entitled to any relief on his last-minute successive federal habeas petition, and his petition for certiorari does not present any issue that warrants the intervention of this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

JAMES UTHMEIER
ATTORNEY GENERAL OF FLORIDA

/S/ C. SUZANNE BECHARD

C. SUZANNE BECHARD
Associate Deputy Attorney General
Counsel of Record

Office of the Attorney General
3507 E. Frontage Rd., Ste. 200
Tampa, Florida 33607
Telephone: (813) 287-7900
carlasuzanne.bechard@myfloridalegal.com
capapp@myfloridalegal.com

JONATHAN S. TANNEN
Senior Assistant Attorney General

CHRISTINA Z. PACHECO
Senior Assistant Attorney General

JOSHUA E. SCHOW
Assistant Attorney General

COUNSEL FOR RESPONDENT