THIS IS A CAPITAL CASE

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

Samuel Fields, Petitioner,

v.

Laura Plappert,
Warden, Kentucky State Penitentiary, Respondent.

On Petition for Writ of Certiorari
to the Sixth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

This Court has recognized that "[i]n the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Turner v. Louisiana*, 379 U.S. 466, 472-73 (1965). In Sam Fields's federal habeas case, a panel of the Sixth Circuit found (in unison with the Sixth Circuit's prior decisions) that this Court's general rule, as stated in *Turner* and other cases of this Court, qualified as clearly established federal law under 28 U.S.C. § 2254(d)(1) ("AEDPA"). Accordingly, Fields was entitled to a determination of whether the state court's decision in his case—regarding the jury's consideration of physical evidence that did not come from the courtroom—was an unreasonable application of this general rule.

But during en banc review, a majority determined that this Court "abrogated" the prior Sixth Circuit decisions by subsequently interpreting § 2254(d)(1) to exclude general or abstract rules from qualifying as clearly established Supreme Court law. The majority further concluded that the rule was not a holding of *Turner* or any other Supreme Court case for the purposes of AEDPA. As a result, Fields no longer was entitled to a determination of whether the state-court decision unreasonably applied this Court's rule.

This Court subsequently issued *Andrew v. White*, 145 S. Ct. 75, 78 (2025), in which this Court ruled that a similar circuit court decision finding that the general or abstract rule at issue there could not satisfy AEDPA's "clearly established law" requirement was "wrong." The Court ruled that § 2254(d)(1) does not exclude abstract or general principles from qualifying as clearly established law, and when this Court relies on a legal rule or principle to decide a case, that principle is a holding of this Court for purposes of AEDPA. This Court remanded the case to the circuit court for a determination of whether the state-court decision unreasonably applied this Court's general rule.

Less than 30 days after this Court decided *Andrew*, Fields requested the Sixth Circuit to recall its mandate on the ground that *Andrew* created an exceptional circumstance warranting the recall. In a divided decision, the Sixth Circuit denied the motion. This case thus presents the following questions:

> May a subsequent decision of this Court calling into question the correctness and integrity of a circuit court's judgment qualify as an exceptional circumstance justifying a recall of the circuit court's mandate, and if so, did the lower court err in denying the motion to recall?

PARTIES TO THE PROCEEDING

Samuel Fields, an indigent prisoner in the Kentucky State Penitentiary, is the petitioner. Laura Plappert, Warden of the Kentucky State Penitentiary, is the respondent.

RELATED PROCEEDINGS

- *Fields v. Com.*, No. 1997-SC-0424-MR, Supreme Court of Kentucky. Judgment entered Feb. 24, 2000 (opinion on direct appeal vacating conviction and sentence in part because "evidence of [Samuel Fields]'s guilt of murder was not overwhelming[.]") (reported at 12 S.W.3d 275 (Ky. 2000)).

- *Fields v. Com.*, No. 2004-SC-000091-MR, Supreme Court of Kentucky. Judgment entered Oct. 23, 2008 (opinion on direct appeal affirming convictions and sentences) (reported at 274 S.W.3d 375 (Ky. 2008)).

- *Fields v. Com.*, No. 2013-SC-000231-TG, Supreme Court of Kentucky. Judgment entered Dec. 18, 2014 (opinion affirming denial of state post-conviction petition) (available at 2014 WL 7688714 (Ky. Dec. 18, 2014)).

- *Fields v. White*, No. 15-38-ART, U.S. District Court for the Eastern District of Kentucky. Judgment entered Jun. 23, 2016 (opinion denying 28 U.S.C. § 2254 petition for habeas corpus relief) (available at 2016 WL 3574396 (E.D. Ky. June 23, 2016)).

- *Fields v. Jordan*, No. 17-5065, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Dec. 1, 2022 (opinion reversing district court denial of relief and granting conditional habeas relief) (reported at 54 F.4th 871 (6th Cir. 2022)).

- *Fields v. Jordan*, No. 17-5065, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Nov. 3, 2023 (en banc opinion affirming district court denial of habeas relief) (reported at 86 F.4th 218 (6th Cir. 2023)).

- *Fields v. Plappert*, No. 23-6912, Supreme Court of the United States. Judgment entered Jun. 10, 2024 (denying petition for writ of certiorari).

- *Fields v. Plappert*, No. 17-5065, U.S. Court of Appeals for the Sixth Circuit. Judgment entered Apr. 2, 2025 (en banc opinion denying motion to recall mandate).

TABLE OF CONTENTS

INDEX OF APPENDICES

TABLE OF AUTHORITIES

Cases **Page(s)**

Constitutional Provisions

Statutes

Rules

Other

PETITION FOR WRIT OF CERTIORARI

Samuel Fields respectfully petitions for a writ of certiorari to review the final order of the Sixth Circuit Court of Appeals.

OPINION BELOW

The judgment of the Sixth Circuit denying the motion to recall the mandate is unpublished and included in the appendix at 1a-2a.

JURISDICTION

The en banc Sixth Circuit entered judgment on April 2, 2025. App. 1a. This petition is timely under Rule 13.1, and this Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article III, § 1 of the United States Constitution states, in relevant part: "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish." Section 2, cl. 1 of Article III states, in relevant part: "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ."

The Sixth Amendment of the United States Constitution states:

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . , and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment of the United States Constitution states in relevant part, "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."

28 U.S.C. § 2254 states, in relevant part:

> (a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.
> . . .
>
> (d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim--
>
> > (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States[.]

STATEMENT OF THE CASE

The Sixth Amendment and the Due Process Clause guarantee the right to a trial by jury. *Sullivan v. Louisiana*, 508 U.S. 275, 277 (1993). This Court has found that this right includes the requirement "that a jury's verdict [is] based upon the evidence developed at the trial." *Turner*, 379 U.S. at 472 (internal quotation marks omitted). As the *Turner* Court recognized, "[i]n the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of

confrontation, of cross-examination, and of counsel." *Turner*, 379 U.S. at 472-73. In *Parker v. Gladden*, this Court again identified that the evidence against a defendant must come from the courtroom and further recognized the "undeviating rule," as established by the Court's precedent, "that the rights of confrontation and cross-examination are among the fundamental requirements of a constitutionally fair trial." 385 U.S. 363, 364-65 (1966).

It is undisputed that during deliberations in the capital murder case against Sam Fields, the jury—in assessing the Commonwealth's theory of guilt—considered physical evidence not presented at trial. App. 47a. The extrinsic evidence went to the central issue: whether someone other than Fields could have committed the murder of Bess Horton.

Other than being in Ms. Horton's home after her death, no physical evidence linked Fields to Horton's murder. Police found Horton with a knife embedded in her temple and deep slashes to her neck, *Fields v. Com.*, 274 S.W.3d 375, 390 (Ky. 2008), and the Commonwealth's medical examiner testified it was probable the person who severed Horton's carotid artery would have gotten blood on him or herself. App. 51a. Yet none of Horton's blood was on Fields's clothing or body. App. 10a, 51a.[1] Similarly, even though it was undisputed that Fields had been bleeding before entering Horton's home, none of his blood was found on Horton or the murder

[1] Officer Gary Stevens conceded that Fields had not been able to clean up anything and law enforcement did not find any gloves. Trial 2 Tr., R. 30-16 6350. And even though Fields had items from Horton's home in his pants pockets, his pockets did not have any blood on them. Trial 2 Tr., R. 30-14 6146; R. 30-16 6454.

weapon(s). App. 8a, 10a, 51a; *Fields v. Com.*, 12 S.W.3d 275, 279 (Ky. 2000); Trial 2 Tr., R. 30-16 6442-44.

The Commonwealth contended that Horton's murder only could have occurred after Fields was last seen around 1:57 a.m., after Fields next took at least five minutes to walk to Horton's home and circle it at least once, and after Fields then took at least 17 minutes to use a broken-tipped knife to unscrew 17 Phillips screws from a storm window—at least 14 of which were covered with paint. Trial 2 Tr., R. 30-23 7478-79. Furthermore, because law enforcement officers began investigating the area shortly after receiving the dispatch call at 1:57 a.m.—and were on Horton's street near her home shortly after 2:11 a.m. and across the street from Horton's home at 2:23 a.m.—this theory required Fields to have completed all of this without alerting the nearby officers. App. 8a, 10a, 11a; *Fields v. Com.*, 2014 WL 7688714, at *2 (Ky. Dec. 18, 2014); *Fields v. Com.*, 274 S.W.3d 375, 390 (Ky. 2008); Trial 2 Tr., R-30-13 5975, 5978-84.

The heart of the Commonwealth's theory was that, given the timeline of events, "there wasn't any opportunity for anyone else to have done this." App. 49a. However, if someone else removed the storm window before Fields even entered Horton's home, as Fields maintained, then someone else had been in Horton's home before Fields. *Fields*, 274 S.W.3d at 391. Accordingly, there would have been ample opportunity for someone other than Fields to have committed the murder. *Id.*

During deliberations the jury—to prove the Commonwealth's theory—used the broken-tipped knife to unscrew a cabinet door in the jury room. PCR Tr., R. 89-3

13515-16.[2] One juror specifically admitted that "[t]his experiment helped prove that Mr. Fields could have committed the crime." Juror 55 Aff., R. 33-1 8928; *see also* PCR Tr., R. 89-3 13528. She further testified that the experiment "satisfied [her] mind" that it was possible that Fields "could have done that[.]" PCR Tr., R. 89-3 13522.

Although the broken-tipped knife was in evidence, the screws the jurors unscrewed were not part of the case, nor were the cabinet door, cabinet, or hinges. Furthermore, the cabinet screws, which were universal screws, were not the same as the Phillips screws in the storm window. App. 46a, 65a. No evidence at trial established that the screws in the jury room were installed with the same tension and force as the screws in the storm window, or that the cabinet door was fastened to the cabinet in the same manner as the storm window was fastened to the window frame. App. 46a, 65a.

In state post-conviction proceedings, Fields asserted that the jury's consideration of this extrinsic evidence violated his rights to confrontation, due process, and a fair trial as guaranteed by the Fifth, Sixth, and Fourteenth Amendments. *Fields*, 2014 WL 7688714, at *3. The Kentucky Supreme Court recognized that the experiment addressed both the Commonwealth's theory of guilt and Fields's defense. *Id.* at *2-*3. However, the court did not focus on the jury's consideration of the extrinsic evidence and the role of this evidence in the

[2] The purpose of the experiment was for the jurors "to find out for themselves whether the prosecution's story made sense." Mem. Op. & Order, R. 73 13301.

experiment. Instead, the court ignored the extrinsic evidence altogether and simply held that "jurors are free to use their own senses, observations, and experiences to conduct an experiment or reenactment with already admitted evidence." *Id.* at *4. The court determined on this rationale that no constitutional error occurred. *Id.*

The Sixth Circuit granted a certificate of appealability to consider, among other claims, whether "the jury's experiment involving evidence not in the record violated Fields's constitutional rights to confrontation, due process, and a fair trial." *Fields v. Jordan*, No. 17-5065 (6th Cir. Sep. 25, 2019). Under 28 U.S.C. § 2254(d)(1), a petitioner may obtain habeas corpus relief from a state-court judgment if the state court decision rejecting a constitutional claim was contrary to or unreasonable application of clearly established federal law. Fields asserted that this Court has clearly established that a jury's verdict must rest on the evidence developed at trial and the state-court decision was an unreasonable application of that rule.

Prior to the en banc decision in this case, multiple panels of the Sixth Circuit had determined that, for the purposes of § 2254(d)(1) review, this Court has clearly established "the general rule that a 'defendant be afforded the right to confront the evidence and the witnesses against him, and the right to a jury that considers only the evidence presented at trial.'" App. 24a (quoting *Doan v. Brigano*, 237 F.3d 722, 733 n.7 (6th Cir. 2001)) (citing *Moore v. Mitchell*, 708 F.3d 760, 805-06 (6th Cir. 2013), and then citing *Fletcher v. McKee*, 355 F. App'x 935, 937 (6th Cir. 2009)); App. 42a-44a. Under these authorities, this Court's rule requiring that a jury's verdict must rest on the evidence developed at trial satisfies the "first step" of

AEDPA review, and a petitioner relying on this rule therefore is entitled to review of whether the state-court decision was contrary to or any unreasonable application of the rule.

During en banc review of Fields's case, the Sixth Circuit in a divided decision reversed this prior precedent and concluded that this rule no longer satisfies the first step of § 2254(d)(1) review. App. 24a. Although the entire en banc court recognized that a jury's verdict must rest on the evidence developed at the trial, App. 21a, 42a-43a, the majority determined that this Court "abrogated" the Sixth Circuit's prior decisions by subsequently interpreting § 2254(d)(1) to exclude general or abstract rules from qualifying as clearly established law. App. 20a, 24a. The majority further determined the rule cannot satisfy § 2254(d)(1)'s "clearly established" requirement because the rule was not a holding of any of this Court's cases on which Fields relied, including *Turner*. App. 20a-21a. The majority thus concluded that Fields "failed to get past AEDPA's first step" and accordingly declined to conduct § 2254(d)(1) review, including the consideration of whether the state-court decision unreasonably applied the rule. App. 15a.

Five judges dissented. The dissenting judges concluded that this Court has "clearly established that jurors may not consider extrinsic evidence in reaching their verdict" and the Kentucky Supreme Court's decision was an unreasonable application of that rule because the state court "fail[ed] to address the fact that the jury was unconstitutionally exposed to extraneous evidence that Fields had no opportunity to refute." App. 42a, 46a. Given that Fields satisfied § 2254(d)(1)'s

exacting standard, the dissenting judges next conducted de novo review: "a straightforward application of a general principle to the facts of the case." App. 47a. The judges found that the jurors' consideration of extrinsic physical evidence during deliberations violated Fields's rights under the Sixth and Fourteenth Amendments. App. 47a.

In assessing the potential prejudice resulting from this constitutional violation, the dissent first applied AEPDA deference to the Kentucky Supreme Court's decision. App. 47a-48a. During oral argument, the warden conceded that the state court's harmless-error determination was contrary to clearly established federal law, and the dissent agreed. *See* App. at 48a. The dissenting judges next applied the *Brecht* prejudice standard. App. 48a-53a. The dissenting judges concluded that "because the jury experiment was highly prejudicial to Fields and concerned the central issue at trial, and because the other evidence of Fields's guilt was sparse, the jury's consideration of extrinsic evidence had a substantial and injurious effect or influence in determining the jury's verdict." App. 53a (internal quotations omitted). Accordingly, the judges found that Fields was entitled to habeas relief. App. 53a.

Fields petitioned this Court for a writ of certiorari. While Fields's petition was pending, this Court was also considering the petition in *Andrew*. These two cases presented the same questions to this Court: whether a general rule of this Court can be considered a holding for purposes of § 2254(d)(1) and whether § 2254(d)(1) constrains a reviewing court to the specific facts in the case(s)

establishing the rule. *Andrew* was distributed for conference on March 13, 2024. *Andrew v. White*, No. 23-6573. On June 10, 2024, this Court declined to accept review in Fields's case. *Fields v. Plappert*, 144 S. Ct. 2635 (2024). Shortly thereafter, on January 21, 2025, this Court granted certiorari in *Andrew* and issued its opinion in that case. *Andrew*, 145 S. Ct. at 75.

In *Andrew*, the circuit court similarly concluded that "no holding of this Court established a general rule that the erroneous admission of prejudicial evidence could violate due process." *Id.* at 78. This Court ruled "[t]hat was wrong." *Id.* The Court explained that § 2254(d)(1) does not exclude abstract or general principles from qualifying as "clearly established law." *Id.* at 82. Furthermore, "when this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of this Court for purposes of AEDPA." *Id.* at 81.

This Court ruled that because the circuit court erroneously found that the abstract or general rule at issue could not satisfy AEDPA's "clearly established law," it also erroneously refused to conduct § 2254(d)(1) review to assess "whether the [state court] unreasonably applied established . . . principles[.]" *Id.* at 83. The Court thus remanded the case back to the circuit court for it to apply § 2254(d)(1) review to the petitioner's claim. *Id.*

Less than 30 days after this Court decided *Andrew*, Fields moved for the Sixth Circuit to recall its mandate on the ground that *Andrew*, which calls into question the correctness and integrity of the en banc judgment declining to conduct § 2254(d)(1) review, created an exceptional circumstance warranting the recall of

the mandate. Motion to Recall Mandate at 9-19. The motion asserted that *Andrew* shows the Sixth Circuit erroneously interpreted § 2254(d)(1) to find that no relevant clearly established law existed at the time of the state court's adjudication of Fields's extrinsic evidence claim. *Id.* at 1, 12-15. Specifically, the motion asserted, *Andrew* shows the Sixth Circuit erroneously concluded that, for the purposes of § 2254(d)(1) review, this Court has not clearly established that a jury's verdict must rest on the evidence developed at trial. *Id.* at 1-2, 12-15. The motion further asserted that *Andrew* additionally shows that when a circuit court commits such an error and thereby also erroneously precludes § 2254(d)(1) review, reconsideration in the circuit court is warranted. *Id.* at 2, 15 17. The warden responded to the motion, and Fields replied to the warden's response.

On April 2, 2025, the en banc Sixth Circuit denied the motion to recall. App. 1a. Five judges dissented. App. 1a. These judges would have granted the motion to recall. App. 1a.

REASONS FOR GRANTING THE WRIT

This Court should grant review because the en banc majority's determination that this Court has excluded general or abstract rules from qualifying as clearly established law under § 2254(d)(1) directly conflicts with this Court's decision in *Andrew*. *Andrew*, 145 S. Ct. at 81, 82 (holding that § 2254(d)(1) does not exclude abstract or general principles from qualifying as clearly established law and "when this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of this Court for purposes of AEDPA."). Likewise, the majority's

determination that this Court must have considered the precise factual circumstances of the case at issue for a decision of this Court to be a holding for the purposes of § 2254(d)(1) review, directly conflicts with *Andrew*. *Id.* at 82 ("To the extent that the Court of Appeals thought itself constrained by AEDPA to limit [the decision of this Court on which the petitioner relied] to its facts, it was mistaken.").

The majority's attendant refusal to apply the § 2254(d)(1) review *Andrew* requires similarly conflicts with the principles of *Andrew*. *Id.* at 83 (remanding for the circuit court to consider, under § 2254(d)(1), whether the state-court decision unreasonably applied this Court's rule). This refusal also conflicts with this Court's recognition that when the "principles announced" in a subsequent decision of this Court, released shortly after the denial of certiorari in the prior case at issue, shows that the judgment in the prior case "cannot stand[,]" finality interests must yield to the interests of justice. *United States v. Ohio Power Co.*, 353 U.S. 98, 98-99 (1957).

This Court also should grant review because the lower court's deeply divided decision conflicts with the decisions of other federal courts of appeals finding that an intervening decision of this Court calling into question the correctness and integrity of a circuit court's judgment qualifies as an exceptional circumstance warranting the recall of a mandate. The First, Second, Third, Fifth, Ninth, and Eleventh Circuits each have recognized this basis for a recall of a mandate. *See*, *e.g.*, *United States v. Skandier*, 125 F.3d 178, 179 (3d Cir. 1997) (granting motion to recall in wake of recent Supreme Court decision showing that the original judgment was wrong). But in this case, despite *Andrew* undeniably calling into question the

correctness and integrity of the Sixth Circuit's judgment, the en banc majority did not find that *Andrew* qualified as such an exceptional circumstance. App. 1a.

However, five judges of the lower court reached the opposite conclusion. App. 1a. Such an intra-circuit split provides even more reason for this Court to grant review. *See*, *e.g.*, *Calderon v. Thompson*, 523 U.S. 538, 548-49 (1998) (reviewing en banc decision in which four judges dissented on the question of whether a recall of the mandate was justified); *see also Rompilla v. Beard*, 545 U.S. 374, 380 (2005) (reviewing decision in which rehearing en banc was denied 6-5); *United States v. Lara*, 541 U.S. 193, 198 (2004) (reviewing 7-4 en banc decision); *Rinaldi v. United States*, 434 U.S. 22, 25 (1977) (reviewing 7-6 en banc decision); *Oil, Chem. & Atomic Workers Int'l Union, AFL-CIO v. Mobil Oil Corp.*, 426 U.S. 407, 412 (1976) (reviewing 8-6 en banc decision). This Court should grant review and settle the important questions of federal law this case presents.

A. The en banc majority's decision directly conflicts with *Andrew*.

The parties agree that "it is clearly established that jurors must decide a case based on the evidence at trial." Warden's CA6 Br. at 21. Every federal judge who has considered this habeas case, including the entire Sixth Circuit en banc panel, has recognized that a jury's verdict must rest on the evidence developed at the trial. App. 21a (recognizing that the rule requiring a jury's verdict to rest on "the evidence developed at the trial" may well go back centuries); App. 42a ("It is clearly established that jurors may not consider extrinsic evidence in reaching their verdict."); *see also* App. 62a (finding that the Supreme Court has clearly established

that the jury's conclusions must be induced only by evidence and argument in open court and the jury's consideration of extrinsic evidence may violate the Fifth and Sixth Amendments); App. 94a ("It is, of course, true that jurors should decide guilt or innocence based on the evidence presented. The Supreme Court has made that point quite clear.").

Multiple prior opinions of the Sixth Circuit have determined that this Court has clearly established this rule for the purposes of § 2254(d)(1) review. *See*, *e.g,* *Doan*, 237 F.3d 722 at n.7; *Moore*, 708 F.3d at 805-06; *Fletcher*, 355 F. App'x at 937. The Second, Fourth, Fifth, Seventh, Tenth, and Eleventh Circuits similarly have concluded that, under § 2254(d)(1), this Court has squarely established "that a jury's verdict must be based upon the evidence developed at the trial[.]" *Turner*, 379 U.S. at 472 (internal quotation marks omitted). *See*, *e.g.*, *Wood v. Sec'y, Dep't of Corr.*, 793 F. App'x 813, 819 (11th Cir. 2019) ("It is clearly established that juror misconduct, including juror contact with extrinsic evidence, is a basis for habeas relief."); *Owens v. Duncan*, 781 F.3d 360, 365 (7th Cir. 2015) (holding "there's no question that the right to have one's guilt or innocence adjudicated on the basis of evidence introduced at trial satisfies [§ 2254(d)(1)'s] exacting standard."); *Hurst v. Joyner*, 757 F.3d 389, 394 (4th Cir. 2014) (finding under *Turner* that, "[a]t its core," the Sixth Amendment ensures "that the evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right[s]."); *Black v. Workman*, 682 F.3d 880, 906 (10th Cir. 2012) (concluding under § 2254(d)(1) that the Supreme Court "has declared

that a 'verdict must be based upon the evidence developed at the trial.'"); *Oliver v. Quarterman*, 541 F.3d 329, 336 (5th Cir. 2008) (concluding "the Supreme Court has clearly established a constitutional rule forbidding a jury from being exposed to an external influence."); *Loliscio v. Goord*, 263 F.3d 178, 185 (2d Cir. 2001) (determining under § 2254(d)(1) that the Supreme Court has clearly established the rule requiring a verdict to be based on the evidence at trial). Under these authorities, a habeas petitioner—who, like Fields, is asserting that the jury's consideration of extrinsic evidence violated the rule and that the state-court decision was contrary to or an unreasonable application of the rule—is entitled to § 2254(d)(1) review of his claim.

There is no dispute that as part of the deliberations in this case, the jury considered physical evidence not presented at trial. App. 47a. However, rather than following its own prior opinions requiring review of Fields's claim, the en banc majority instead ruled that this Court had "abrogated" the Sixth Circuit's prior opinions finding that this Court had clearly established the rule at issue. App. 24a. The Sixth Circuit's prior rulings were no longer good law, the majority reasoned, because after the court issued these decisions, this Court subsequently found that such a principle is too general and abstract to qualify as clearly established law under § 2254(d)(1). App. 24a. As the en banc majority stated: "we now reject *Doan*'s holding for the reason Judge Batchelder suggested at the panel stage: 'that the Supreme Court has abrogated *Doan* and that we are no longer bound to follow it.'" App. 24a.

The majority further determined the rule cannot satisfy § 2254(d)(1)'s "clearly established" requirement because the rule was not a holding of *Turner* nor any of this Court's other cases on which Fields relied. *Id.* at 236. It was not a holding, the majority opined, because in none of the cases did this Court consider the exact factual scenario this case presents: the jury's consideration of evidence in the jury room that unquestionably was not developed at the trial. App. 20a-21a, 24a. Thus, the majority concluded, Fields "failed to get past AEDPA's first step by identifying 'clearly established' law on this topic." App. 15a. Because of this conclusion, the majority did not conduct § 2254(d)(1) review. App. 15a.

The majority's decision directly conflicts with *Andrew*. In *Andrew*, the circuit court similarly concluded that "no holding of this Court established a general rule that the erroneous admission of prejudicial evidence could violate due process." *Andrew*, 145 S. Ct. at 78. This Court ruled "[t]hat was wrong." *Id.* The Court further ruled "[t]o the extent that the Court of Appeals thought itself constrained by AEDPA to limit [the decision of this Court on which the petitioner relied] to its facts, it was mistaken." *Id.* at 82.

This Court explained that AEDPA does not exclude abstract or general principles from qualifying as "clearly established law." *Id.* at 82. Rather, "general legal principles can constitute clearly established law for purposes of AEDPA so long as they are holdings of this Court." *Id.*

This Court further explained that "when this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of this Court for purposes of

AEDPA." *Id.* at 81. For example, the Court noted, even though the Eighth Amendment principle that a sentence may not be grossly disproportionate to the offense arises out of a "thicket of Eighth Amendment jurisprudence" and lacks "'precise contours[,]'" this general rule nonetheless is "'clearly established' under § 2554(d)(1)[.]" *Id.* at 82 (quoting *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003)). Accordingly, AEDPA does not constrain a reviewing court to the specific facts in the case(s) establishing the rule. *Id.*

This Court's reliance on *Lockyer* shows—contrary to the *Fields* en banc majority opinion—that this Court did *not* abrogate the Sixth Circuit's prior rulings. *Andrew* specifically rejected the notion that this Court's opinions issued after *Doan* (such as *Lopez v. Smith*, 574 U.S. 1 (2014) or *Nevada v. Jackson*, 569 U.S. 505 (2013)) excluded general or abstract rules from qualifying as clearly established law for the purposes of § 2254(d)(1) review. Like the en banc majority in the present case, the two dissenting judges in *Andrew* argued that the rule at issue there framed this Court's precedents at too high a level of generality. *Compare id.* at 83, 88 (Thomas, J., dissenting) with App. 20a. However, the *Andrew* majority rejected this argument and held that under *Lockyer*, so long as the general rule at issue is a holding of the Supreme Court, the general rule constitutes clearly established law. *Andrew*, 145 S. Ct. at 82.

Here, it is beyond question that this Court, particularly in *Turner*, relied on the general rule requiring that the jury consider only the evidence presented at trial. In *Turner*, the petitioner alleged that the continual association throughout the

trial between the jurors and two key witnesses for the prosecution, who also were the deputy sheriffs in charge of the jury throughout the petitioner's trial, violated the petitioner's constitutional rights. *Turner*, 379 U.S. at 470, 473. The *Turner* Court explained that the question presented in the case "goes to the nature of the jury trial which the Fourteenth Amendment commands when trial by jury is what the State has purported to accord." *Id.* at 471. In finding that this association violated the Constitution, the Court applied the following rule: "**In the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom** where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Id.* at 472-73 (emphasis added).

This Court's reliance on this rule in *Turner* shows that it was "indispensable to the decision in [*Turner*]. That means it was a holding of this Court for purposes of AEDPA." *Andrew*, 145 S. Ct. at 81. The Sixth Circuit's conclusion to the contrary was wrong and directly conflicts with *Andrew*. This Court should grant review.

B. The federal courts of appeals are divided on whether a subsequent decision of this Court calling into question the correctness and integrity of a circuit court's judgment qualifies as an exceptional circumstance justifying the recall of the circuit court's mandate.

Under Article III of the United States Constitution and a circuit court's inherent authority, federal courts of appeals have exclusive authority to recall their mandates subject to review for an abuse of discretion. *Calderon*, 523 U.S. at 549; *see also* 16 Charles Alan Wright, Arthur R. Miller, & Edward H. Cooper, Federal Practice and Procedure § 3938 (3d ed. 2024) ("The power of a court of appeals to recall its mandate once issued has long been recognized."). "[O]ne seeking recall of a mandate must demonstrate good cause for that action through a showing of exceptional circumstances. Such 'exceptional circumstances' must be 'sufficient to override the strong public policy that there should be an end to a case in litigation. . . .'" *BellSouth Corp. v. FCC*, 96 F.3d 849, 851-52 (6th Cir. 1996) (quoting *Hines v. Royal Indem. Co.*, 253 F.2d 111, 114 (6th Cir. 1958)).

This Court has "consistently ruled that the interest in finality of litigation must yield where the interests of justice would make unfair the strict application of our [finality] rules." *Ohio Power Co.*, 353 U.S. at 99. Such a situation includes when the "principles announced" in a subsequent decision of this Court, released shortly after the denial of certiorari in a prior case, shows that the judgment in the prior case "cannot stand." *Id.* at 98-99.

The lower court's refusal to apply § 2254(d)(1) review, as *Andrew* requires, conflicts with the principles of both *Andrew* and *Ohio Power*. Moreover, the lower court's decision creates a division among the federal courts of appeals, and within

the Sixth Circuit itself, concerning whether a recent subsequent decision of this Court calling into question the correctness and integrity of the circuit court's judgment qualifies an exceptional circumstance warranting a recall of a mandate.

The First, Second, Third, Fifth, Ninth, and Eleventh Circuits have recognized this basis for a recall of a mandate. *See*, *e.g.*, *In re Union Nacional De Trabajadores*, 527 F.2d 602, 604 (1st Cir. 1975) (recalling mandate when Supreme Court decision showed that the circuit court's decision was demonstrably wrong and created manifest injustice); *Sargent v. Columbia Forest Prods., Inc.*, 75 F.3d 86, 90-91 (2d Cir. 1996) (recalling mandate due to a supervening opinion that called into serious question the correctness of the circuit court's judgment); *Skandier*, 125 F.3d at 179 (granting motion to recall in wake of recent Supreme Court decision showing that the original judgment was wrong); *United States v. Tolliver*, 116 F.3d 120, 123 (5th Cir. 1997) (recognizing that recall of a mandate is necessary "when a subsequent decision by the Supreme Court renders a previous appellate decision demonstrably wrong."); *Zipfel v. Halliburton Co.,* 861 F.2d 565, 567-68 (9th Cir. 1988) (recalling mandate due to a recent Supreme Court decision departing in a pivotal aspect from the circuit court decision); *Judkins v. Beech Aircraft Corp.*, 745 F.2d 1330, 1331-32 (11th Cir. 1984) (recognizing that the court has the power to recall its mandate if a subsequent Supreme Court decision shows that its decision was incorrect). Modification of a prior judgment due to a recent contrary decision of this Court promotes uniformity in judicial decision-making and the equal treatment of similarly situated litigants. *Zipfel*, 861 F.2d at 567.

The Sixth Circuit itself, in a prior unpublished decision, likewise has recognized that "when an intervening Supreme Court case calls into question the 'integrity' of a separate judgment, the circumstance is extraordinary enough to warrant such an extreme remedy." *United States v. Murray*, 2 F. App'x 398, 400 (6th Cir. 2001) (citing *Zipfel,* 861 F.2d at 567). But in the decision below, despite *Andrew* undeniably calling into question the correctness and integrity of the court's judgment, the majority did not find that *Andrew* qualified as an exceptional circumstance. App. 1a. However, five judges concluded that it did. App. 1a.

This split among the federal circuit courts and within the Sixth Circuit itself warrants this Court's intervention. Despite this Court's guidance in cases like *Ohio Power*, the lower courts remain conflicted on whether intervening decisions of this Court can qualify as an exceptional circumstance warranting a recall of a mandate. This Court should grant review and resolve this conflict.

C. The question presented is exceptionally important because the right to a jury that considers only the evidence presented at trial is fundamental.

The legal principle at issue in *Andrew*, whether the Due Process Clause can in certain cases protect against the introduction of unduly prejudicial evidence at a criminal trial, was fundamental to the constitutional concept of jury trials. *Andrew*, 145 S. Ct. at 82 (recognizing that a jury's consideration of unduly prejudicial evidence would render a trial fundamentally unfair). The right to a jury that considers only the evidence presented at trial is likewise fundamental to our judicial system. *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991); *Turner*, 379

U.S. at 472. Indeed, "[t]he requirement that a jury's verdict 'must be based upon the evidence developed at the trial' goes to the fundamental integrity of all that is embraced in the constitutional concept of trial by jury." *Turner*, 379 U.S. at 472. Accordingly, a violation of this right threatens the fundamental integrity of a verdict. *See id.* Recognition of these safeguards is exceptionally important in capital cases. *Mattox v. United States*, 146 U.S. 140, 149 (1892) (recognizing that particularly "in capital cases[,] the jury should pass upon the case free from external causes tending to disturb the exercise of deliberated and unbiased judgment."); *see also Woodson v. North Carolina,* 428 U.S. 280, 305 (1976) (explaining that "death is different" and a heightened standard of due process applies to capital cases).

D. Fields has made a strong showing of actual innocence.

Fields's strong showing of actual innocence underscores the fundamental importance of the question before this Court. The Kentucky Supreme Court specifically found that "evidence of [Fields]'s guilt of murder was not overwhelming[.]" *Fields*, 12 S.W.3d at 281. Likewise, after the guilt phase of Fields's second trial, the trial court recognized: "It would not have totally surprised me if the result had come out different . . . ." Ex Parte Tr., R. 54-1 11221.

These findings are not surprising, because other than being in Ms. Horton's home after her death, no physical evidence linked Fields to Horton's murder. The medical examiner testified it was probable that the perpetrator would have gotten blood on him or herself; yet, none of Horton's blood was on Fields's clothing or body.

App. 10a, 51a. Similarly, even though it was undisputed that Fields had been bleeding before entering Horton's home, none of his blood was found on Horton or the murder weapon(s). App. 8a, 10a, 51a; *Fields*, 12 S.W.3d at 279; R. 30-16, 6442-44. Nor did DNA evidence implicate Fields. App. 10a; *Fields*, 12 S.W.3d at 279.

There was not a pool of Fields's blood under Horton's window, where, according to the Commonwealth's theory, Fields was standing for at least 17 minutes while he removed the storm window to commit Horton's murder. Trial 2 Tr., R. 30-14 6044-45, 6063-64; Com. Exs. 16, 17. Fields's fingerprints were not on the storm window. Trial 2 Tr., R. 30-23 7460. And the Commonwealth's own chemical analysis showed that the white paint on the end of the broken-tipped knife was not the same white paint that was on the screws in the storm window. Trial 2 Tr., R. 30-16 6387-88.

Unlike Fields, Minnie Burton—Horton's ex-employee and former tenant—had both the motive and opportunity to have committed the murder. The relationship between these two women had "turned sour," and Horton was in the process of evicting Burton from the duplex apartment Horton owned, where Burton had been living rent-free. *Fields*, 274 S.W.3d at 390. After these events, Burton had reason to be angry with Horton or to get even with her. *Id.* at 391. And unlike Fields, Burton's whereabouts were unknown for a period of about an hour and 45 minutes prior to Fields entering Horton's home. Trial 2 Tr., R. 30-23 7425-26, 7460, 7469-71.

On top of this evidence, two witnesses testified that Burton confessed to killing Horton. *Fields*, 274 S.W.3d at 401. Burton told one witness, "'I was tired of that Son of a Bitch telling me who I can have in my apartment and who I can't.' [and] 'I killed her, and she can't tell me nothing.'" Trial 2 Tr., R. 30-22 7279.

To be sure, the Commonwealth alleged that Fields made inculpatory statements regarding Horton's death. *Fields*, 274 S.W.3d at 399. But the available evidence undercuts the reliability of these statements. For example, Fields allegedly said that he killed his brother that night. That was untrue. App. 8a, 52a. Similarly, the forensic evidence showed that Fields's alleged "confession" to an EMT to having Horton's blood on him also was untrue. Fields definitely did not have the victim's blood on him. App. 10a, 52a.

Moreover, at the time the statements allegedly occurred, Fields was intoxicated and under the influence of "horse tranquilizers." App. 7a, 52a. Approximately three hours later, medical staff measured his blood alcohol content at 0.14, App. 46a, 52a, which is nearly twice the legal limit for operating a motor vehicle. Once sober, Fields unconditionally denied killing Horton. App. 40a, 52a.

Like the Kentucky Supreme Court and the trial court, six judges of the Sixth Circuit found that the evidence supporting Fields's conviction was weak. App. 51a-53a, 68a-70a.[3] All these findings make a strong showing of Fields's actual innocence.

[3] Judge Bernice Bouie Donald authored the panel opinion applying § 2254(d)(1) review to Fields's claim and granting habeas relief. App. 58a. Judge Donald retired

E. As in *Andrew*, the circuit court's refusal to apply § 2254(d)(1) review was unduly prejudicial.

The question presented is particularly important in cases like this, where the lower court's error precluded appellate review to which the petitioner otherwise was entitled. *See Andrew*, 145 S.Ct. at 83 (remanding because due to the circuit court's determination that no relevant clearly established law existed, the circuit court "never considered whether the state court's application of [the clearly established] law was reasonable."). Here, at the panel stage of his appeal, Fields obtained the § 2254(d)(1) review *Andrew* requires. But because of the en banc court's mistake—concluding that this Court had abrogated the Sixth Circuit's prior rulings when in fact this Court had not—the panel decision was vacated, and Fields subsequently never again received § 2254(d)(1) review of his extrinsic evidence claim.

But for the same error the circuit court in *Andew* committed, the Sixth Circuit (even during en banc review) would have considered whether the state court unreasonably applied the rule at issue. As the en banc majority recognized, "[Fields] is correct that, although circuit decisions cannot create clearly established law, circuit courts must follow their own decisions holding that the Supreme Court has clearly established a principle for AEDPA purposes." App. 24a. The Sixth Circuit's prior decisions uniformly concluded that this Court in *Turner* and other cases has

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from the Court approximately one month before the Court granted the en banc hearing. However, like the five dissenting judges in the en banc case, Judge Donald found that "[t]he evidence of guilt was sparse." App. 68a. Because the en banc majority determined that Fields was not entitled to § 2254(d)(1) review, the majority opinion did not assess whether the jury's consideration of the extrinsic evidence prejudiced Fields. App. 12a-25a.

clearly established, for AEDPA purposes, that a jury's verdict must rest on the evidence developed at trial. App. 24a, 42a-45a. Thus, had the Sixth Circuit not made the same mistake the circuit court in *Andrew* made, the Sixth Circuit's prior opinions would have controlled, and Fields's extrinsic evidence claim would have received § 2254(d)(1) review.[4]

Had Fields's claim received such review, it is likely that Fields would have obtained relief. Although the majority never conducted that review, the dissenting judges did, and each of these judges determined that the Kentucky Supreme Court's decision was an unreasonable application of the rule because the state court "fail[ed] to address the fact that the jury was unconstitutionally exposed to extraneous evidence that Fields had no opportunity to refute." App. 46a. These judges further found that the jurors' consideration of extrinsic physical evidence during deliberations violated Fields's rights under the Sixth and Fourteenth Amendments. App. 46a-47a.

As to the state court's prejudice determination, the warden conceded in oral argument that the state court's harmless-error determination was contrary to clearly established federal law, and the dissent agreed. *See* App. at 48a. The dissenting judges next applied the *Brecht* prejudice standard and concluded that "because the jury experiment was highly prejudicial to Fields and concerned the

[4] Likewise, had Fields's case occurred in the Second, Fourth, Fifth, Seventh, Tenth, or Eleventh Circuits, courts would have applied § 2254(d)(1) to his extrinsic evidence claim. *See*, *e.g.*, *Wood*, 793 F. App'x at 819; *Owens*, 781 F.3d at 365; *Hurst*, 757 F.3d at 394; *Black*, 682 F.3d at 906; *Oliver*, 541 F.3d at 336; *Loliscio*, 263 F.3d at 185.

central issue at trial, and because the other evidence of Fields's guilt was sparse, the jury's consideration of extrinsic evidence had a substantial and injurious effect or influence in determining the jury's verdict." App. 53a (internal quotations omitted). Accordingly, these judges found that Fields was entitled to habeas relief. App. 53a.

Six judges of the Sixth Circuit, after applying § 2254(d)(1) to Fields's extrinsic evidence claim, have determined that the jury's consideration of and reliance on extrinsic evidence to decide this case violated Fields's Sixth and Fourteenth Amendment rights and that habeas relief was warranted. Thus, it is likely that, had the rest of the en banc court reviewed Fields's claim under § 2254(d)(1), a majority of the judges on the en banc court likewise would have granted habeas relief.

F. The lower court's own actions demonstrate that "getting it right," not finality, should be the principal concern.

If finality were the lower court's paramount concern, then the court never would have reviewed this case en banc. En banc review categorically is a disfavored procedure. 6th Cir. I.O.P. 35(a). Nonetheless, a majority of the court determined that rather than letting the panel opinion stand in unison with its prior precedent, assembling the full judicial resources of the en banc court to reconsider whether the panel opinion complied with § 2254(d)(1) was more important than the finality of the panel decision.

The court's rejection of the finality of the panel opinion demonstrates that finality has never been the lodestar guiding the resolution of this case. Rather, the correctness of the court's analysis has been—and should continue to be—that court

and this Court's primary concern. *Andrew* unquestionably shows that the en banc majority improperly concluded that § 2254(d)(1) precluded review of Fields's claim. The majority's own recognition that compliance with § 2254(d)(1) is more important than the finality of an appellate opinion of that court, in conjunction with Fields's strong showing of actual innocence, provides even further proof that in this case, any remaining "interest of finality of litigation must yield [to the] interests of justice . . . ." *Ohio Power Co.*, 353 U.S. at 99.

CONCLUSION

For the foregoing reasons, this Court should grant the petition for writ of certiorari.

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