

No. 18-7449

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In the  
**Supreme Court of the United States**

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JOEL DARNELL PATTON,  
*PETITIONER,*

v.

UNITED STATES OF AMERICA,  
*RESPONDENT,*

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**On Petition for a Writ of Certiorari  
to the United States Court of Appeals  
for the Fifth Circuit**

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PETITION FOR REHEARING

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## PETITION FOR REHEARING

Petitioner Joel Darnell Patton respectfully asks this Court to reconsider its order denying his petition for a writ of certiorari pursuant to S. Ct. R. 44.2. On the same day the Court denied Mr. Patton’s petition, it granted the petition for certiorari in *Banister v. Davis*, No. 18-6943, “limited to the following question: Whether and under what circumstances a timely Rule 59(e) motion should be recharacterized as a second or successive habeas petition under *Gonzalez v. Crosby*, 545 U.S. 524 (2005).” This Court’s resolution of *Banister* will likely be outcome-determinative here. If this Court holds that a Court of Appeals cannot re-characterize a timely Rule 59(e) motion over the prisoner’s objection, then that will mean the Fifth Circuit was wrong to do so in Mr. Patton’s case. Alternatively, the Court might clarify the “circumstnaces” under which re-characterization is permissible. In either case, the Court should grant Mr. Patton’s petition, vacate the Fifth Circuit’s judgment, and remand for further consideration in light of *Banister*.

This case satisfies the standard articulate in Supreme Court Rule 44.2 because the grant of certiorari in *Banister* is an “intervening circumstance[ ] of a substantial or controlling effect.” Neither Petitioner nor Respondent discussed the *Banister* case. Petitioner’s counsel was not aware of its existence until a few days before the order denying certiorari here. Petitioner would have sought a “hold” for the decision in *Banister* if that case had been set for argument before Petitioner filed his Reply Brief.

As explained in the Reply, it would be premature and inappropriate for this Court to rule—in the first instance—on Respondent’s alternative arguments in defense of the outcome below. The Fifth Circuit dismissed Petitioner’s appeal without

the benefit of the forthcoming decision in *Banister*. If—as seems likely—*Banister* overrules the decision below, then the Fifth Circuit could address any remaining arguments with the benefit of full briefing. But if this Court denies this motion, then Mr. Patton will likely be forever foreclosed from pursuing his claim.

Finally, it is possible that some intervening event might result in the dismissal of *Banister* without a final ruling on the merits. If the Court re-opens this case and holds Mr. Patton’s petition, then this case will be available as a “fallback.” Those intervening events are rare but not unheard of.

The balance of equities thus favors rehearing. It is an accident of timing that *Banister* and this case arose around the same time. Mr. Patton would have asked the Court to hold his petition if *Banister* had been granted any earlier.

## CONCLUSION

Petitioner respectfully asks that this Court grant rehearing, vacate the order denying certiorari, and hold this petition pending the resolution of *Banister*. Alternatively, he asks that the Court hold *this rehearing petition* pending the outcome in *Banister*.

Respectfully submitted,

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JULY 2, 2019

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**Certification of Counsel**

This petition for rehearing is restricted to the grounds specified in Supreme Court Rule 44.2. It is presented in good faith and not for delay.

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J. MATTHEW WRIGHT  
Counsel of Record for Joel Darnell Patton

July 2, 2019