

Nos. 21-511

In the Supreme Court of the United States

TIM SHOOP, WARDEN

Petitioner

v.

RAYMOND TWYFORD

Respondent

ON WRIT OF CERTIORARI TO THE
U.S. COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONSE IN OPPOSITION TO MOTION FOR DIVIDED ARGUMENT

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The Warden opposes the United States' motion for divided argument to the extent it proposes requiring the Warden to cede five minutes of argument time. The United States' participation will not aid the Court in resolving the one issue on which the Warden and the United States agree. And its position is at odds with the Warden's in all other respects.

Begin with the one area of agreement. The Warden and the United States agree that the Sixth Circuit erred when it held that transportation orders are "necessary and appropriate," for purposes of the All Writs Act, 28 U.S.C. §1651(a), whenever they allow for the development of evidence that "plausibly relates" to a habeas petitioner's claim, *see* Pet.App.15a–16a. Indeed, the United States' arguments are indistinguishable from the Warden's. *Compare* Warden Br.39–50 *with* U.S. Br.25–30. But counsel for the Warden can adequately address that issue. So the United States' presence at argument will not aid the Court in resolving the one matter on which the United States and the Warden concur.

On every other issue, the Warden and the United States are at odds. First, while the Warden argues that courts cannot, under the All Writs Act, issue transportation orders to facilitate out-of-court evidentiary development, Warden Br.18–38, the United States argues otherwise. U.S. Br.9–25. Second, although the United States agrees with the Warden that the Sixth Circuit erred by adopting a "plausibly relates" standard, *see* U.S. Br.25–30, it asks the Court to vacate and remand instead of reversing. The Warden has asked for reversal. Warden Br.51. And for reasons the Warden will address in his reply brief, reversal is the only appropriate remedy.

Because the United States' presence will not assist the Court in resolving the one issue on which the Warden and the United States are aligned, and because the United States is adverse to the Warden in all other respects, the Warden urges this Court to deny the United States' motion for divided argument.

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