No. __-____

In the Supreme Court of the United States

TROY MANSFIELD,

Petitioner,

v.

WILLIAMSON COUNTY,

Respondent.

On Petition for Writ of Certiorari to the
U.S. Court of Appeals for the Fifth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Williamson County prosecutors knew Troy Mansfield was innocent of the heinous crime he was accused of—they had clear exculpatory evidence directly from the victim. Despite this Court's holding in *Brady v. Maryland* that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment," they withheld it for months. 373 U.S. 83, 87 (1963). And then, just a few days before trial, prosecutors offered Mansfield what the court below called "a Hobson's choice": face 99 years to life in prison or serve less than 6 months for a crime he did not commit. Mansfield took the deal.

When the truth emerged, a judge vacated Mansfield's conviction on due process grounds. Mansfield sued under 42 U.S.C. § 1983, but the district court held that his *Brady* claim was foreclosed by circuit precedent declining to apply *Brady* to plea bargaining. The Fifth Circuit affirmed, further entrenching a well-defined split of authority among the circuits and state high courts. In separate concurrences, Judges Higginbotham and Costa recognized the "acknowledged circuit split," argued that the Fifth Circuit was on the wrong side, and called on this Court to address the split, which—given the prevalence of pleas and the "untenable" disparity between the rights of defendants based purely on geographic happenstance—"begs for resolution."

The question presented is:

Whether the due process right recognized in *Brady* requires the disclosure of exculpatory evidence (or at the very least, evidence of factual innocence) during pretrial plea negotiations.

PARTIES TO THE PROCEEDINGS

Petitioner Troy Mansfield is a natural person.

Respondent Williamson County is a political subdivision in Texas.

STATEMENT OF RELATED PROCEEDINGS

This case arises from and relates to the following proceedings in the United States Court of Appeals for the Fifth Circuit, the United States District Court for the Western District of Texas, and the District Court for Williamson County, Texas, 277th Judicial District:

- *State v. Mansfield*, No. 92-435-K277 (277th Jud. Dist., Williamson Cnty.), judgment entered Nov. 1, 1993
- *Ex parte Mansfield*, No. 92-435-K277A (277th Jud. Dist., Williamson Cnty.), application granted Jan. 22, 2016
- *Mansfield v. Williamson County*, No. 1:18-cv-00049-ML (W.D. Tex.), judgment entered Mar. 18, 2020
- *Mansfield v. Williamson County*, No. 20-50331 (5th Cir.), judgment entered Mar. 31, 2022

There are no other proceedings in state or federal trial or appellate courts directly related to this case under this Court's Rule 14.1(b)(iii).

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This petition seeks resolution of a critical issue that has divided courts around the country: whether the due process right to exculpatory evidence recognized in *Brady* applies to pretrial plea negotiations.

The court of appeals' decision below further entrenches a well-defined split of authority. Five circuit courts and five state courts of last resort have all held that *Brady* applies to exculpatory evidence at the plea-bargaining stage. Four circuit courts, however, have declined to recognize a constitutional entitlement to exculpatory *Brady* material at the plea-bargaining stage. One of those, the Fifth Circuit, has now gone so far as to hold that there is no right to *Brady* material even when prosecutors are fully aware of exculpatory evidence establishing a defendant's innocence and affirmatively lie to conceal that evidence during plea negotiations. Pet.App.8a.

Bound by precedent to reach this conclusion, Judges Higginbotham and Costa each wrote separately to criticize this minority position and call on this Court to resolve the split. Concurring in his own decision below, Judge Higginbotham explained that because 97% of federal convictions arise from guilty pleas, his circuit's limit on *Brady* is a "signal flaw in the jurisprudence of plea bargaining." Pet.App.11a–12a. At a minimum, Judge Higginbotham asked for a definitive resolution of "the acknowledged circuit split" because "the want of certitude shadows the federal criminal dockets across the country." Pet.App.12a–13a.

Judge Costa also argued that the Fifth Circuit is on the wrong side of the circuit split. In his view, requiring disclosure of exculpatory evidence before a plea is "consistent with *Brady*" and its lineage and "retains

Brady's vitality" in a "system of pleas rather than trials." Pet.App.14a–15a. He emphasized that resolution is needed because it is "not tenable" to deny defendants in some jurisdictions the right to exculpatory evidence before they are deprived of their liberty while affording that right in others. Pet.App.15a.

The Court should accept the judges' invitation, grant a writ of certiorari, and finally bring uniformity to this important constitutional question.

OPINIONS BELOW

The Fifth Circuit's decision (Pet.App.1a–15a) is reported at 30 F.4th 276. The magistrate judge's ruling granting Williamson County's motion for summary judgment (Pet.App.16a–35a) is not reported but is available at 2020 WL 13146202.

JURISDICTION

On March 31, 2022, the Fifth Circuit affirmed and entered judgment. Pet.App.36a, 38a. Mansfield did not seek rehearing given recent en banc precedent. *See Alvarez v. City of Brownsville*, 904 F.3d 382, 392 (5th Cir. 2018) (en banc). On June 10, 2022, he timely applied for an extension of time to file this petition. No. 21A827. Justice Alito granted the application, extending the time to file until August 26, 2022. *Id.*; S. Ct. R. 13.5; *see* 28 U.S.C. § 2101(c).

The district court had jurisdiction under 28 U.S.C. §§ 1331 and 1343. The Fifth Circuit had jurisdiction under 28 U.S.C. § 1291. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

This case implicates the Due Process Clause of the Fourteenth Amendment, which prevents States from

"depriv[ing] any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1.

INTRODUCTION

Williamson County prosecutors hid exculpatory evidence in their own file and lied to conceal it—all in accordance with an official policy of the DA's office designed to coerce defendants to plead guilty. Faced with a risk of spending the rest of his life in prison, Mansfield accepted an unusually lenient plea offer all but guaranteed to induce him to plead guilty to a heinous crime he did not commit: indecency with a child. Pet.App.49a–50a. Mansfield served 120 days, but the crushing stigma of his false label as a convicted child sex offender plagued him and his family for much longer. *See* Pet.App.57a–59a. When, after 23 years, the truth emerged, a Texas judge vacated the judgment, finding that Mansfield's "due process rights were violated in a manner that rendered his plea involuntary." Pet.App.69a.

Texas's court of last resort for criminal appeals has long recognized that a defendant's right to exculpatory evidence "extends to guilty pleas as well as to contested cases." *Ex parte Lewis*, 587 S.W.2d 697, 700 (Tex. Crim. App. 1979). But the federal jurisdiction where Texas lies, the Fifth Circuit, does not. *See* Pet.App.8a–9a; *Alvarez*, 904 F.3d at 392. Three other circuits—the First, Second, and Fourth—agree with the Fifth that the due process right guaranteed in *Brady* does not apply until trial. But five others—the Sixth, Seventh, Eighth, Ninth, and Tenth (plus four state high courts besides Texas)—have recognized that *Brady* applies to plea bargaining as well.

This split creates significant uncertainty given that nearly 49 out of 50 federal criminal cases prosecuted

to conclusion end in pleas rather than trials. The split has also given rise to absurd geographic disparities. For example, as in this case, the amount of process a defendant is due—and possibly the outcome of his case—varies depending on whether he is charged by state or federal authorities in Texas, or whether he is charged with the same federal crime on the other side of the Red River in neighboring Oklahoma.

Even as they affirmed the dismissal of Mansfield's *Brady* claim on the ground that Fifth Circuit precedent foreclosed applying *Brady* to plea-bargaining, Judges Higginbotham and Costa wrote concurrences calling on this Court to "definitively resolve the acknowledged circuit split" by "bring[ing] exculpatory evidence within the reach of *Brady*." Pet.App.12a. For Judge Costa, the importance of the question presented "is not debatable" because "affording defendants in many jurisdictions" but not others "a constitutional right to exculpatory evidence" during plea bargaining "is not tenable"—especially, in Judge Higginbotham's words, in a "system in which almost everyone pleads guilty." Pet.App.14a–15a.

"The split on this issue begs for resolution." Pet.App.15a (Costa, J.). The Court should do so here.

STATEMENT OF THE CASE

In *Brady v. Maryland*, this Court held that "suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment." 373 U.S. 83, 87 (1963). Based on the requirements of the Due Process Clause, the rule announced in *Brady* is rooted in the basic principle that a "contrivance by a state to procure the conviction and imprisonment of a defendant" through falsity and deception is "inconsistent with the rudimentary demands of justice."

Mooney v. Holohan, 294 U.S. 103, 112 (1935) (per curiam); *see also United States v. Bagley*, 473 U.S. 667, 675 (1985) (purpose of *Brady* rule is "to ensure that a miscarriage of justice does not occur").

Here, prosecutors had evidence that they knew demonstrated Mansfield's innocence. Yet they concealed the undisputedly-exculpatory evidence to coerce a guilty plea from an innocent defendant. Mansfield seeks redress under § 1983, but has thus far been denied justice.

A. Prosecutors hide exculpatory evidence from Mansfield and coerce him into pleading guilty.

In 1992, Mansfield was indicted in Williamson County for "one of the most heinous crimes—sexual misconduct with a child." Pet.App.13a (Costa, J.); *see also* Pet.App.16a–17a. Right away, a prosecutor saw problems with the case, noting in the case file that the "[c]hild's version to me differs from [the] version to police (greatly differs)." Pet.App.42a.

Months later, an interview with the alleged victim and her mother only increased these doubts. After "[s]pen[ding] 2 hours [with] this witness," the prosecutor noted that it "will be nigh impossible to sponsor her in court." *Id.* "She told me she does not remember what happened! . . . At one point, told me nothing happened, then says little boy"—another 4-year-old child—"might have done it." *Id.* Given this information, and the victim's mother's desire that she "not have to go through it," the prosecutor concluded that she "cannot testify." *Id.*

Just a day earlier, the District Attorney's office had been ordered by the state criminal court to disclose any exculpatory evidence to Mansfield. Pet.App.40a–41a.

But they did not. Pet.App.44a. In violation of the order, they withheld the information they had learned during the interview. Pet.App.44a; Pet.App.94a (deposition of ADA John Prezas on behalf of Williamson County DA's office).

As trial approached, the prosecutors knew they had no complaining witness and were in a bind. The Williamson County DA's office "didn't lose cases," and the prosecutors who worked there internalized the maxim that "you don't try a case you can lose." Pet.App.82a (deposition of current Williamson County DA Shawn Dick). At the same time, dismissing indictments was all but forbidden. Pet.App.89a (Dick).

The prosecutors' solution was to make Mansfield an offer he couldn't refuse. Although the charges he faced carried a possible sentence of life imprisonment, Mansfield was offered a plea bargain of only 120 days in county jail, which could be completed on weekend work release. Pet.App. 46a–47a, 62a. This was an "unusually light" punishment recommendation given the crime alleged. Pet.App.3a.

The terms of the plea deal thus presented Mansfield with a "Hobson's choice." *Id.* He could plead guilty to a crime he did not commit and serve (relatively little) time and register as a sex offender. Pet.App.57a–58a, 61a–62a. Or he could face trial in Williamson County—where, that year, prosecutors neither dropped any felony charges nor lost any trials.[1]

To further ensure that Mansfield would take the deal, prosecutors lied about the strength of their evidence. *See* Pet.App.93a (Prezas),101a–03a (deposition

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[1] Texas Office of Court Administration, *Reported Criminal Activity by County – District Courts, Williamson County* (Jan. 1, 1992–Sept. 30, 1993), bit.ly/3CythMm.

of Mansfield's former defense attorney Stephen Cihal). Contrary to what they had observed during the interview, they told Mansfield the alleged victim was a "strong witness," a "good witness," and still "very adamant that Mr. Mansfield did this to her." Pet.App.97a, 101a (Cihal). They also said—again in contrast to the interview—that the victim's "mother wanted Mr. Mansfield prosecuted." Pet.App.97a. And they claimed to be ready to adduce at trial other (nonexistent) inculpatory evidence, such as a videotaped statement, physical evidence, and an expert witness, that would "put [Mansfield] under the jail." Pet.App.105a (Cihal), 109a (deposition of Troy Mansfield).

Prosecutors threatened to withdraw the offer if Mansfield did not accept before the September 1993 trial setting. Pet.App.104a (Cihal). This was another apparent lie, as the prosecutor had previously suggested that, since they couldn't put the victim on the stand, this case "be disposed of w/out trial." Pet.App.42a. But Mansfield did not know this—even though he was entitled to—and he took the deal. Pet.App.46a–47a.

B. Williamson County's "closed file" policy institutionalizes the constitutional violation.

This conduct was standard procedure for the Williamson County DA's office. For decades, then-District Attorney Ken Anderson (who later gained notoriety as "the only prosecutor—past or present—who has ever spent time in jail for misconduct that led to a wrongful conviction" in the high-profile *Morton* murder case[2]

[2] Daniele Selby, *Only One Prosecutor Has Ever Been Jailed for Misconduct Leading to a Wrongful Conviction*, Innocence Project (Nov. 11, 2020), bit.ly/3wvygtd.

had enforced a so-called "closed file" policy. The policy prevented defendants from reviewing material in the prosecution's files—including inculpatory evidence, *Brady* evidence, or evidence a court ordered disclosed—before trial. Pet.App.4a; Pet.App.88a–90a (Dick). And when prosecutors did disclose *Brady* evidence, they would orally (and selectively) paraphrase it rather than show it to defense counsel. Pet.App.74a, 80a (deposition of former DA Ken Anderson).

The purposes of the closed-file policy were both philosophical and tactical. For Anderson, the presumption of innocence "sound[ed] great in the abstract," but in reality "overbalanced the system in the other direction," allowing guilty defendants to "walk[]." Pet.App.78a (Anderson). As he explained to a Court of Inquiry, Anderson simply "d[id] not believe in the release of [exculpatory *Brady*] evidence if it may result in freeing an individual that he believes is guilty."[3] In accordance with the policy, he directed prosecutors to withhold *Brady* evidence from defendants and "see what you can get" them to plead guilty to. Pet.App.88a–89a (Dick). Anderson also encouraged prosecutors to delay as long as possible before providing any exculpatory evidence, "[b]ecause the more time [defense attorneys] have to work with it, the more time they would have to massage what they were going to say." Pet.App.79a (Anderson).

Current District Attorney Shawn Dick also explained that Anderson's "closed file" policy was designed to force defendants—even those who, like

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[3] *In re Anderson*, No. 12-0420, slip. op. at 12 (26th Jud. Dist., Williamson Cnty., Tex. Apr. 19, 2013) (findings of fact and conclusions of law), bit.ly/3KkF5nd.

Mansfield, were innocent—to weigh the possibility of relative freedom if they pled guilty against the risk of years in prison if convicted at trial. Pet.App.86a–87a.

C. Mansfield learns what happened, and his conviction is vacated.

Meanwhile, for more than two decades, Mansfield—all the while having to endure the uniquely pernicious label of child sex offender—had no idea that he had been a victim of decisions made under this policy. *See* Pet.App.49a–56a. It was not until after revelations about Anderson's "unethical" policies and practices came to light in the unrelated *Morton* case that new counsel for Mansfield requested access to his case file and discovered the exculpatory evidence that had been hidden from him. Pet.App.63a–65a; Pet.App.92a (Prezas); *see* Pet.App.4a.

Relying on the prosecutor's notes, Mansfield applied for a writ of habeas corpus in Texas state court. Pet.App.63a–67a. He argued that "the State violated his due process rights by failing to disclose exculpatory evidence"—the State did not disagree—and that his plea "was involuntary because had the State disclosed the information contained in the prosecutor's notes, he would not have accepted the plea bargain." Pet.App.64a–65a, 67a.

In a 2016 order, the court agreed with the parties that the victim's statements in the interview notes "constitute the type of information that *Brady* v. *Maryland*[] and its progeny requires the State to disclose," and it concluded that failing to disclose them "violated [Mansfield]'s due process rights." Pet.App.67a. It also found that, because "the undisclosed information regarding the alleged victim [had] a 'direct nexus' to [Mansfield]'s plea," the prosecutors' failure to turn it over "render[ed] [his] plea involuntary." Pet.App.69a.

The court granted Mansfield's application on both grounds. Pet.App.70a.

By this time, Anderson was long gone. *See* Brandi Grissom, *Judge Ken Anderson Resigns Amid Ethics Lawsuit*, Tex. Tribune (Sept. 3, 2013, 3:00 PM), bit.ly/3R9bNtH (Anderson appointed to bench in 2002 but resigned following ethics investigation over *Morton* case). The current Williamson County District Attorney's Office declined to re-prosecute Mansfield and agreed that, but for the prosecutors' improper conduct in 1993, the case should have been dismissed. Pet.App. 85a–86a (Dick).

D. Mansfield's *Brady* claim is foreclosed by controlling circuit precedent.

Two years later, Mansfield sued Williamson County in the Western District of Texas under 42 U.S.C. § 1983. The complaint alleged that county prosecutors had, pursuant to the closed-file policy, coerced Mansfield's plea in violation of his due process rights in two different ways: (i) "[f]ailing to disclose exculpatory evidence" under *Brady*, and (ii) affirmatively lying about evidence against him. Pet.App.19a–20a, 28a–29a.

During discovery, Mansfield elicited admissions from Williamson County's designees that:

- prosecutors' failure to disclose the exculpatory interview notes "was a *Brady* violation" (Pet. App.91a);
- prosecutors violated the criminal court's order to disclose exculpatory evidence (Pet.App.94a);
- Mansfield's plea was "not voluntary," and therefore "legally invalid," "because he did not have the information that he needed for it to be a voluntary plea" (Pet.App.93a);

- Mansfield's due process rights were violated (Pet.App.91a); *accord* Pet.App.88aa (Dick, in his personal capacity); and
- Mansfield suffered an "unfair and inappropriate outcome" (Pet.App.91a).

And yet, despite this and other evidence, the magistrate judge (to whose jurisdiction the parties had consented, Pet.App.38a) granted the County's motion for summary judgment. Pet.App.16a.

The magistrate judge considered both theories on which Mansfield had alleged a due process violation—(1) prosecutors' failure to turn over exculpatory evidence as required by *Brady*, and (2) their lies about the strength of their case—and rejected them. Pet.App. 22a–34a. As to the *Brady* claim—the only one Mansfield challenges here—the magistrate judge held that the Fifth Circuit's en banc decision in *Alvarez v. City of Brownsville* foreclosed applying *Brady* to plea negotiations, so there was no constitutional violation. Pet.App.22a–29a (citing 904 F.3d 382 (5th Cir. 2018)); Pet.App.33a–34a. The magistrate judge rejected Mansfield's alternative "lying" theory as well and entered summary judgment for Williamson County. Pet.App.34a–35a.

A Fifth Circuit panel affirmed in a published opinion. Pet.App.2a. Writing for the panel, Judge Higginbotham affirmed the dismissal of the lying theory on causation grounds. He then turned to Mansfield's separate argument that prosecutors violated *Brady* by withholding exculpatory evidence. Pet.App.8a. Bound by *Alvarez* and earlier circuit precedent holding that "there is no constitutional right to exculpatory evidence during plea bargaining," the panel concluded that Mansfield's *Brady* claim was "foreclosed."

Pet.App.8a. The panel "note[d] the severity of [Mansfield's] allegations," but held that they could not support a § 1983 claim. Pet.App.9a.

Judges Higginbotham concurred in his own opinion, and Judge Costa added a special concurrence. Pet. App.10a–15a. Both judges underscored the importance of applying *Brady* to pretrial plea negotiations and the need for this Court's intervention.

REASONS FOR GRANTING THE PETITION

This case presents a clear circuit split on an important and recurring question: whether *Brady* requires prosecutors to disclose exculpatory evidence before a guilty plea.

In their respective concurrences, Judges Higginbotham and Costa both called for this Court to resolve this "acknowledged circuit split." Pet.App.12a (Higginbotham, J., concurring); *accord* Pet.App.15a (Costa, J., concurring) (split "begs for resolution"). Five federal courts of appeals (for the Sixth, Seventh, Eighth, Ninth, and Tenth Circuits) and five state high courts (in Texas, Utah, South Carolina, Nevada, and West Virginia) have recognized that due process demands such disclosure. Four others have held that it does not—including the Fifth Circuit, which, in reaffirming its position here, went to a startling extreme: not only may the government suppress evidence of factual innocence, it may lie to conceal the evidence and coerce a plea. *See* S. Ct. R. 10(a)–(b).

As this split has deepened, the incidence of resolution-by-plea has increased to alarming levels. By 2011, the rate at which federal criminal cases prosecuted to conclusion were resolved by guilty plea "had risen to 97 percent." Michael Nasser Petegorsky, *Plea Bargaining in the Dark: The Duty to Disclose Exculpatory Brady Evidence During Plea Bargaining*, 81 Fordham

L. Rev. 3599, 3611 (2013). As Judge Higginbotham—and many other judges and scholars, including now-Third Circuit Judge Bibas—recognized, "we cannot look away from uncertainties within the processing of ninety-seven percent of the federal criminal docket." Pet.App.11a–12a (citing Stephanos Bibas, *Designing Plea Bargaining from the Ground Up: Accuracy and Fairness Without Trials as Backstops*, 57 Wm. & Mary L. Rev. 1055 (2016); Stephanos Bibas, *Regulating the Plea-Bargaining Market: From Caveat Emptor to Consumer Protection*, 99 Calif. L. Rev. 1117 (2011); *Stephanos Bibas*, *Plea Bargaining Outside the Shadow of Trial*, 117 Harv. L. Rev. 2464 (2004)).

The need for certainty is especially pressing in the Fifth Circuit, where more than one in four federal criminal cases originates.[4] The geographic and jurisdictional disparities this split creates are untenable. If Mansfield, for example, had lived in neighboring Oklahoma rather than Texas and had been subject to Tenth Circuit law (which requires disclosure) instead of Fifth Circuit law (which does not), the outcome of his case would have been entirely different. And if Mansfield had pled guilty in federal court in Texas, his conviction would not have been overturned despite discovering that the prosecutors withheld evidence of his innocence. Or—as is the case here—even though a Texas state court applying its controlling precedent found that the prosecution violated Mansfield's federal due process rights, the federal court in Texas was foreclosed from doing so under Fifth Circuit law for exactly

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[4] United States Courts, Table D-3: U.S. District Courts—Criminal Defendants Filed, by Offense and District—During the 12-Month Period Ending December 31, 2021 (2022), bit.ly/3PQoRDi (Fifth Circuit accounted for 18,927 of 71,910 federal defendants).

the same conduct. Such arbitrariness is inconsistent with the concept of justice and needs to be reconciled. After four decades of uncertainty, this case presents an opportunity for this Court to put the issue to rest and resolve the circuit split on this important question.

I. Fourteen circuits and state high courts have split on whether *Brady* applies pre-plea.

A total of 14 circuits and state high courts have split over whether *Brady* applies during plea bargaining as well as trial. Five circuits and five state high courts have held or otherwise recognized that it does. *See, e.g.*, *Smith v. Baldwin*, 510 F.3d 1127, 1148 (9th Cir. 2007); *United States v. Ohiri*, 133 F. App'x 555, 562 (10th Cir. 2005); *McCann v. Mangialardi*, 337 F.3d 782, 788 (7th Cir. 2003); *White v. United States*, 858 F.2d 416, 423 (8th Cir. 1988); *Campbell v. Marshall*, 769 F.2d 314, 324 (6th Cir. 1985); *Buffey v. Ballard*, 782 S.E.2d 204, 218 (W. Va. 2015); *State v. Huebler*, 275 P.3d 91, 96–97 (Nev. 2012); *Hyman v. State*, 723 S.E.2d 375, 380 (S.C. 2012); *Medel v. State*, 184 P.3d 1226, 1235 (Utah 2008); *Lewis*, 587 S.W.2d at 700–01.

Other circuit courts have rejected or expressed serious doubts that a defendant has a right to *Brady* material before pleading guilty. *See, e.g.*, *United States v. Mathur*, 624 F.3d 498, 506–07 (1st Cir. 2010); *Friedman v. Rehal*, 618 F.3d 142, 154 (2d Cir. 2010); *United States v. Moussaoui*, 591 F.3d 263, 285 (4th Cir. 2010). The Fifth Circuit has long shared that view. *See, e.g.*, *Alvarez*, 904 F.3d at 392; *United States v. Conroy*, 567 F.3d 174, 178 (5th Cir. 2009); *Matthew v. Johnson*, 201 F.3d 353, 361–62 (5th Cir. 2000). Indeed, it has declined to require disclosure of *Brady* material during plea bargaining even when prosecutors affirmatively lie to conceal exculpatory evidence. *See* Pet.App.7a–8a.

A. The Fifth Circuit splits from 10 other circuits and state courts that applied *Brady* to plea bargaining.

It was not always this way. For more than two decades after *Brady* was decided, no federal appellate court or state high court had occasion to consider how the right recognized there applied outside the context of trial. When the issue began to recur in the 1980s, three circuits (and, earlier, a state court of last resort) held that the government must disclose exculpatory information pre-plea, and another circuit had recognized that possibility. It was not until 2000 that the Fifth Circuit broke this streak.

1. The issue first arose in a federal appellate decision in 1985 in the Sixth Circuit, when the court considered whether the prosecution's "prior withholding of [] *Brady* information"—a gun found in the murder victim's pocket—"so taint[ed] the plea-taking as to render the guilty plea involuntary or unintelligent." *Campbell v. Marshall*, 769 F.2d 314, 315 (6th Cir. 1985). Because "knowledge of the gun's presence was important" but not "controlling in the decision whether to plead," the court found no due process violation. *Id.* at 324. Still, *Campbell* marked the first time a federal appellate court recognized the possibility that a *Brady* violation, which renders "unavailable" information that would "aid in [a defendant's] evaluation of the possibilities of success on trial," might rise to the level of a constitutional violation. *Id.*

Three years later, the Eighth Circuit adopted this position in *White v. United States*, 858 F.2d 416 (8th Cir. 1988). The court echoed the Sixth Circuit's reasoning that the prosecution's suppression of exculpatory evidence that would otherwise be available "to aid [the defendant] in evaluating the chance for success at

trial" is an available (if not guaranteed) path by which to challenge a guilty plea as unknowing or involuntary. *Id.* at 422. The Eighth Circuit concluded that, while the plea at issue did not meet that standard, nothing "preclude[d] a collateral attack upon a guilty plea based on a claimed *Brady* violation." *Id.*; *accord Nguyen v. United States*, 114 F.3d 699, 705 (8th Cir. 1997) (citing *White*, 858 F.2d at 422).

The Tenth Circuit reached the same conclusion in *United States v. Wright*, 43 F.3d 491 (10th Cir. 1994). As in *Campbell*, the evidence at issue in *Wright* turned out not to be material, and there was no *Brady* violation. *Id.* at 497. But this did not prevent the Court from repeating *Brady*'s admonishment that because a guilty plea represents "the defendant's consent that judgment of conviction may be entered without a trial," waiver of the trial right must be a voluntary and "knowing, intelligent act[] done with sufficient awareness of the relevant circumstances and likely consequences." *Brady*, 397 U.S. at 495. Given the "importance to the integrity of our criminal justice system that guilty pleas be knowing and intelligent," the court held that, "under certain limited circumstances, the prosecution's violation of *Brady* can render a defendant's plea involuntary." *Wright*, 43 F.3d at 496 (citing, inter alia, *White*, 858 F.2d at 422).

The Ninth Circuit held even more squarely that "a defendant challenging the voluntariness of a guilty plea may assert a *Brady* claim." *Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir. 1995). Although there again happened to be no *Brady* violation—the prosecutors were not aware of the connection between the exculpatory evidence and the defendants' case, and it was not material anyway—the court acknowledged the possibility that a violation could occur during plea-bargaining. *See id.* Because "a defendant's decision

whether or not to plead guilty is often heavily influenced by his appraisal of the prosecution's case," a waiver of the trial right cannot be "'intelligent and voluntary' if entered without knowledge of material information withheld by the prosecution." *Id.* (quotation marks omitted). If *Brady* could not be invoked "after a guilty plea," "prosecutors may be tempted to deliberately withhold exculpatory information as part of an attempt to elicit guilty pleas." *Id.*

The Second Circuit focused on this alternate rationale—preventing prosecutorial mischief—in *United States v. Avellino*, 136 F.3d 249 (2d Cir. 1998). Again, the court recognized that "[t]he government's [*Brady*] obligation . . . is pertinent not only to an accused's preparation for trial but also to his determination of whether or not to plead guilty"—not only because "[t]he defendant is entitled to make that decision with full awareness of favorable material evidence," but because the plea "resulted from impermissible conduct by state agents." *Id.* at 255 (quoting *Brady*, 397 U.S. at 757); *see also Miller v. Angliker*, 848 F.2d 1312, 1320 (2d Cir. 1988) (*Brady* can apply pre-guilty plea).

Soon after, the South Carolina Supreme Court adopted the Second Circuit's rationale in becoming the first state high court to hold that a defendant "may challenge the voluntary nature of his guilty plea . . . by asserting an alleged *Brady* violation." *Gibson v.* State, 514 S.E.2d 320, 523–24 (S.C. 1999) (citing *Avellino*, 136 F.3d at 255). Technically speaking, however, it was not the first state *court of last resort* to reach this conclusion; the Texas Court of Criminal Appeals—that state's court of last resort for criminal cases—had long recognized that *Brady*'s protection against "the nondisclosure of favorable information . . . extends to guilty pleas as well as to contested cases." *Ex parte Lewis*, 587 S.W.2d 697, 700 (Tex. Crim. App. 1979).

2. In *Matthew v. Johnson*, however, the Fifth Circuit split from these courts, expressly rejecting the application of *Brady* to plea bargaining. 201 F.3d 353, 364 (5th Cir. 2000). Rejecting some cases discussed above and overreading others, it reasoned that "a *Brady* violation is defined in terms of the potential effects of undisclosed information on a judge's or jury's assessment of guilt," and therefore cannot apply to "an individual waiving his right to trial." *Id.* at 362 (declining to adopt Second Circuit's rule in *Miller* and pointing out that there had been no *Brady* violations in *Campbell* and *White*); *accord Conroy*, 567 F.3d at 178.

B. The split persists—and deepens—post-*Ruiz*.

In 2002, this Court held in *Ruiz v. United States*, 536 U.S. 622 (2002), that *Brady* does not require prosecutors to disclose *impeachment* evidence before entering into a plea agreement. But because *Ruiz* did not address whether *Brady* requires disclosure of *substantive* exculpatory evidence, it did not resolve the then-burgeoning split of authority. If anything, the split deepened after *Ruiz*. *See* Petegorsky, 81 Fordham L. Rev. at 3614 (surveying split before and after *Ruiz*).

1. The defendant in *Ruiz* challenged the validity of a plea agreement purporting to waive her right to obtain "impeachment information relating to any informants or other witnesses." 536 U.S. at 625. The agreement, however, required the government to disclose "any evidence establishing the factual innocence of the defendant." *Id.* at 630.

Although the question originally presented to this Court in *Ruiz* was whether *Brady* required the government to disclose "exculpatory information" generally, "*including* impeachment material" (Petition for Writ of Certiorari at i, *Ruiz* (No. 01-595) (emphasis added)),

this Court narrowed the issue to whether *impeachment* evidence—not substantive exculpatory evidence—must be disclosed before a defendant pleads guilty. *See Ruiz*, 536 U.S. at 629, 631.

This Court held that defendants have no due process right to impeachment evidence during plea bargaining. *Id.* at 625. Distinguishing between substantive and impeachment evidence, the Court reasoned that impeachment evidence is "special" in that it is linked to a specific witness and will therefore only be of strategic value if the defendant can somehow predict whether the witness will be called. *See id.* at 629–30. For this reason, impeachment evidence will only rarely be "critical information" for a defendant deciding whether to plead guilty. *Id.* at 630. And "[p]remature disclosure of Government witness information" is not without cost, as it could disrupt the investigatory process or pose an unnecessary risk to potential witnesses. *Id.* at 631–32.

2. With its focus on impeachment evidence, *Ruiz* did not address, let alone resolve, the question of what *exculpatory* evidence *Brady* requires prosecutors to disclose. *See id.* at 633–34 (Thomas, J., concurring in the judgment) (declining to join majority opinion "[t]o the extent that the Court is implicitly drawing a line based on a flawed characterization about the usefulness of certain types of information"). Accordingly, it did not resolve the circuit split, which has since deepened: most courts that had already addressed the issue reaffirmed their positions, one appears to have backtracked, and other circuits and state high courts have entered the fray on either side of the split.

a. The Ninth Circuit has subsequently applied its pre-*Ruiz* approach interpreting *Brady* to require pre-plea disclosures. *See, e.g.*, *Smith v. Baldwin*, 510 F.3d 1127, 1148 (9th Cir. 2007) (analyzing *Brady* claim

challenging plea). The Tenth Circuit has gone even further, moving from the cagier approach it took in *Wright* (based on the Sixth and Eighth Circuit decisions *Campbell* and *White*) to an express recognition that *Brady* conferred a right to exculpatory information during plea bargaining. *United States v. Ohiri*, 133 F. App'x 555, 562 (10th Cir. 2005) (distinguishing *Ruiz*); *accord United States v. Dahl*, 597 F. App'x 489, 490 (10th Cir. 2015) (reaffirming *Wright* despite *Ruiz*). Confirming that *Ruiz* changed little in these circuits—if anything, these courts have applied *Brady* even more broadly in the plea context—district courts in those jurisdictions have generally applied their circuits' pre-*Ruiz* precedents. *See, e.g.*, *Hastings v. Ortiz*, 2006 WL 1517722, at *5–7 (D. Colo. May 26, 2006) (applying *Wright*, 43 F.3d at 495–96); *Robinson v. Yates*, 2015 WL 13236949, at *9 (C.D. Cal. Mar. 31, 2015) (applying *Sanchez*, 50 F.3d at 1454).

The Seventh Circuit is in accord, distinguishing *Ruiz* and concluding in strong dicta that "it is highly likely that the Supreme Court would find a violation of the Due Process Clause if prosecutors . . . have knowledge of a criminal defendant's factual innocence but fail to disclose such information to a defendant before he enters into a guilty plea." *McCann v. Mangialardi*, 337 F.3d 782, 787–88 (7th Cir. 2003).

b. State high courts have also continued to apply *Brady* beyond the context of trial. *See, e.g.*, *Hyman v. State*, 723 S.E.2d 375, 380 (S.C. 2012) (reaffirming *Gibson*, 514 S.E.2d at 324, without addressing *Ruiz*). Several others have held that *Brady* requires the government to disclose exculpatory evidence to a defendant before entering into a plea agreement. The Nevada Supreme Court held that *Brady* requires the State, which occupies a "special role . . . in the search for truth," "to disclose material exculpatory evidence

within its possession to the defense before the entry of a guilty plea." *State v. Huebler*, 275 P.3d 93, 98 (Nev. 2012) (distinguishing *Ruiz* on basis of impeachment v. exculpatory evidence). West Virginia's Supreme Court of Appeals has likewise held that "a defendant is constitutionally entitled to exculpatory evidence during the plea negotiation stage." *Buffey v. Ballard*, 782 S.E.2d 204, 216 (W. Va. 2015) (citing *Huebler*, 275 P.3d at 97–98, *Matthew*, 201 F.3d at 361, and *Ohiri*, 133 F. App'x at 562). In Utah, too, the Supreme Court held that the prosecution's failure to disclose "material exculpatory evidence" renders a guilty plea involuntary. *Medel v. State*, 184 P.3d 1226, 1235 (Utah 2008) (*Ruiz* does not stand for the rule that, "as long as there is a plea bargain on the table," "the prosecutor may hide" and the "defendant must seek" exculpatory evidence).

c. Other courts' post-*Ruiz* positions are less friendly to *Brady*. The Sixth Circuit, where the early *Campbell* decision is still technically good law, declined to revisit the *Brady* issue in 2014, saying only that there was "disagreement among [its] sister circuits." *Robertson v. Lucas*, 753 F.3d 606, 621 (6th Cir. 2014). The Second Circuit has questioned the continuing vitality of *Avellino* after *Ruiz*, observing that this "Court has consistently treated exculpatory and impeachment evidence in the same way for the purpose of defining the obligation of a prosecutor to provide *Brady* material prior to trial." *See Friedman v. Rehal*, 618 F.3d 142, 154 (2d Cir. 2010).

d. The First and Fourth Circuits, weighing in for the first time, have adopted the position that *Brady* "is a *trial* right." *United States v. Moussaoui*, 591 F.3d 263, 285 (4th Cir. 2010). Citing *Ruiz* for the proposition that *Brady* is aimed at "evidence [that] is material to either guilt or punishment, and exists to preserve

the fairness of a trial verdict," the Fourth Circuit reasoned that, "[w]hen a defendant pleads guilty, those concerns are almost completely eliminated." *Id.* (citing *Matthew*, 201 F.3d at 361). The First Circuit declined to apply *Brady* to "pretrial plea negotiations" for the same reasons, explaining that because "[t]he animating principle of *Brady* is the 'avoidance of an unfair trial,'" it follows that "the right memorialized in *Brady* is a trial right." *United States v. Mathur*, 624 F.3d 498, 506–07 (1st Cir. 2010) (quoting *Brady*, 373 U.S. at 87, and citing *Moussaoui*).

This approach tracks that of the Fifth Circuit, which has repeatedly reaffirmed its holding in *Matthew* that *Brady* does not apply to plea bargaining. *See Conroy*, 567 F.3d at 178–79; *Alvarez*, 904 F.3d at 392. In *Conroy*, the court read *Ruiz* to make no distinction between impeachment evidence and exculpatory evidence. 567 F.3d at 179 (holding that *Ruiz* did not abrogate *Matthew*). And in *Alvarez*, the Fifth Circuit sitting en banc confirmed that it recognized "no constitutional right to exculpatory evidence during plea bargaining." Pet.App.10a; *Alvarez*, 904 F.3d at 392.

The Fifth Circuit has strengthened its hard line in this case. In *Alvarez*, "there was no indication the prosecutors ever possessed or knew of exculpatory evidence, as the police never presented it to them." Pet.App.10a–11a (Higginbotham, J., concurring). But here, prosecutors, "fully aware of their obligation to disclose" the undisputedly-exculpatory information (as their notes reveal), "directly frustrated the protection *Brady* affords defendants" by affirmatively lying to conceal it "to secure a plea and avoid disclosure at trial." Pet.App.11a.

C. The Fifth Circuit's minority position is wrong.

In his concurrence, Judge Costa explained why the Fifth Circuit is on the wrong side of the circuit split: "[r]equiring disclosure of exculpatory evidence before a plea is consistent with *Brady*'s rationale, reflects that the Due Process Clause is not limited to trials (unlike many Sixth Amendment rights), and retains *Brady*'s vitality in a criminal justice system in which almost everyone pleads guilty." Pet.App.14a.

1. This discussion built upon his dissent in *Alvarez*, where he emphasized that "[t]he origins of the *Brady* right" support the "view that it requires pre-plea disclosure of exculpatory evidence." *Alvarez*, 904 F.3d at 407 (Costa, J., dissenting). Although *Brady* is often characterized as "relat[ing] to 'innocence or guilt,'" it arose in the context of *sentencing*, which "does not concern the defendant's guilt or innocence." *Id.* (quoting *Lafler v. Cooper*, 566 U.S. 156, 165 (2012)). And in any event, "[b]ecause a plea hearing is all about a defendant's guilt or innocence, it more strongly implicates *Brady*'s 'overriding concern with the justice of the finding of guilt.'" *Id.* (quoting *Bagley*, 473 U.S. at 678).

Judge Costa also pointed out that *Brady* "relied on earlier Supreme Court cases recognizing a due process violation when the government knowingly used false testimony to secure a conviction." *Id.* (citing, e.g., *Mooney*, 294 U.S. at 112). These earlier precedents make clear that the due process inquiry is concerned with the foundation for and the prosecutor's role in obtaining a conviction. *See Mooney*, 294 U.S. at 112 ("[A] contrivance by a state to procure the conviction and imprisonment of a defendant is as inconsistent with the rudimentary demands of justice."). And the key

question at any plea hearing is whether there is a "factual basis . . . to support the conviction." *Alvarez*, 904 F.3d at 407 (Costa, J., dissenting).

2. Judge Costa also found persuasive the argument that *Wilde v. Wyoming*, 362 U.S. 607 (1960) (per curiam), another case cited in *Brady*, supports applying the right to exculpatory evidence to plea bargaining. Pet.App.114a (Costa, J., concurring). In *Wilde*, as here, prosecutors suppressed exculpatory evidence before the defendant pled guilty. 362 U.S. at 607. This Court remanded for a hearing on whether the evidence would have exonerated the petitioner—a ruling that presupposes a federal constitutional right to such evidence at the plea stage. Pet.App.114a; *see also* Colin Miller, *The Right to Evidence of Innocence Before Pleading Guilty*, 53 U.C. Davis L. Rev. 271, 273, 299–315 (2019) (*Wilde* recognized a "right to evidence of innocence before pleading guilty"). *Brady* "confirmed this" when it "cited *Wilde* immediately before pronouncing that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment.'" Pet.App.14a (citing *Brady*, 373 U.S. at 87). "*Brady*'s lineage thus further rejects carving guilty plea cases out of its protections" (*id.*)—and because the Fifth Circuit's position runs counter to this Court's case law, provides an independent basis for certiorari. *See* S. Ct. R. 10(c).

* * *

For four decades, federal courts of appeals and state courts of last resort have been pondering whether *Brady* demands disclosure before trial. Twenty years ago, the *Ruiz* Court answered the question for impeachment evidence—but not substantive exculpatory evidence. Indeed, *Ruiz* seems to have only increased

the confusion among the courts: many have retrenched, some have questioned their precedents, some have avoided doing so, and other courts have chosen sides for the first time. This split has percolated for long enough to make clear that it will not resolve itself without this Court's intervention. It should do so now, and clarify that the right recognized in *Brady* is not limited to trial—it requires disclosure of (at a minimum) evidence of factual innocence during pretrial plea negotiations as well.

II. The question presented is exceptionally important.

"[I]n a world where most cases end in plea agreements" (*United States v. Taylor*, 142 S. Ct. 2015, 2024 (2022)), there can be no separating of the fairness of the criminal justice system from the fairness of the plea-bargaining process that forms its foundation. A just system demands a just approach to plea bargaining. Pre-plea disclosure of exculpatory *Brady* material reflects the reality that "the negotiation of a plea bargain, rather than the unfolding of a trial, is almost always the critical point for a defendant." *Missouri v. Frye*, 566 U.S. 134, 144 (2012).

A. This Court has recognized the outsize role plea bargaining plays in the modern criminal justice system.

1. A decade ago, this Court acknowledged plea bargaining's importance in the modern criminal justice system in a set of seminal cases defining the scope of the Sixth Amendment right to effective assistance of counsel during plea bargaining: *Missouri v. Frye* and *Lafler v. Cooper*. In *Frye*, which addressed defense counsel's duty to communicate formal plea offers to their clients, the Court noted the prevalence of plea

bargaining: "[n]inety-seven percent of federal convictions and ninety-four percent of state convictions are the result of guilty pleas." *See* 566 U.S. at 143–45.

And in *Frye*'s companion case, *Lafler*, this Court's reasoning again rested in part on the prevalence of plea-bargaining, this time in the context of the proper remedy for ineffective assistance during plea bargaining. 566 U.S. at 169–70. The Court rejected the argument that "[a] fair trial wipes clean any deficient performance by defense counsel during plea bargaining" because, in nearly all cases, there is no trial. *See id.* In holding that "the right to adequate assistance of counsel cannot be defined or enforced without taking account of the central role plea bargaining plays in securing convictions and determining sentences," this Court did not hide from the "reality that criminal justice today is for the most part a system of pleas, not a system of trials." *Id.* at 170.

2. Indeed, ten years on, pleas play an even more outsized role in our criminal justice system. In Texas, for example, more than 95% of criminal convictions arise from a guilty plea.[5] Federal figures tilt even further in that same direction: last year, a whopping 98.3% of federal convictions resulted from a guilty plea.[6]

Now, more than ever, plea bargaining "is not some adjunct to the criminal justice system; it is the crimi-

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[5] *See, e.g.*, Texas Office of Court Administration, *Annual Statistical Report for the Texas Judiciary* 59 (2021), bit.ly/3R9eE5T.

[6] *See, e.g.*, United States Sentencing Commission, *2021 Annual Report and Sourcebook of Federal Sentencing Statistics* 56, bit.ly/3pIPZJQ.

nal justice system." *Frye*, 566 U.S. at 144 (quoting Robert E. Scott & William J. Stuntz, *Plea Bargaining as a Contract*, 101 Yale L. J. 1909, 1912 (1992)).

B. Mandatory pre-plea disclosure of *Brady* material promotes fairness in plea bargaining.

In a run-of-the-mill criminal case, prosecutors hold all the cards. Their plea-bargaining leverage is considerable; among other things, they "draft[] the plea agreement, usually dictate[] the factual basis for the plea and often pronounce[] de facto office plea policies." American College of Trial Lawyers, *Proposed Codification of Disclosure of Favorable Information Under Federal Rules of Criminal Procedure 11 and 16*, 41 Am. Crim. L. Rev. 93, 109 (2004). The substantive criminal law and the law of sentencing are akin to "items on a menu from which [she] may order as she wishes." William J. Stuntz, *Plea Bargaining & Criminal Law's Disappearing Shadow*, 117 Harv. L. Rev. 2548, 2549 (2004). Unsurprisingly, the average criminal defendant suffers from a serious information deficit.

The information deficit presents a problem for the larger criminal justice system: a plea entered without knowledge of material exculpatory evidence cannot be knowing and voluntary. *See* Kevin C. McMunigal, *Disclosure and Accuracy in the Guilty Plea Process*, 40 Hastings L.J. 957, 964 (1989). "To bargain intelligently," a defendant "must first estimate the strength of the prosecution's case to forecast the likelihood of conviction and sentence." Bibas, 57 Wm. & Mary L. Rev. at 1072. A defendant deprived of *Brady* material cannot gauge the strength of the prosecution's case and therefore cannot bargain intelligently. Instead, he must "bargain blindfolded." *Id.* at 1074.

The information deficit—and with it, this fundamental lack of fairness at the heart of our criminal justice system—will not correct itself. "[T]ailored regulation" of plea bargaining is required. *See* Bibas, 99 Calif. L. Rev. at 1138. The regulatory solution to the information-deficit problem is mandatory pre-plea disclosure of *Brady* material, which would "level[] the playing field between the prosecutor and the defendant . . . by forcing disclosure of exculpatory evidence" and preventing a prosecutor from "bluff[ing] her way to a conviction by misrepresenting the strength of the government's case." Petegorsky, 81 Fordham L. Rev. at 3613. That is, it would prevent exactly the sort of unethical prosecutorial gambit that marred more than two decades of Mansfield's life.

C. The status quo invites arbitrariness.

The status quo invites arbitrary administration of criminal justice. If the split on the right to pre-plea *Brady* material persists, similarly situated defendants will continue to have different due-process rights depending on which jurisdiction they happen to be prosecuted in. *See Alvarez*, 904 F.3d at 406 (Costa, J., dissenting). The tension between the laws of Texas, the Fifth Circuit, and the Tenth Circuit is not unusual. A similar scenario could unfold when a defendant's rights—and possibly his fate—turn on whether he is charged under West Virginia state law (which applies *Brady* to plea bargaining), federal law in the Fourth Circuit (which does not), or in the neighboring Sixth Circuit (which recognized the right early on but has hedged post-*Ruiz*). Or in South Carolina, where state law (which recognizes *Brady* at plea bargaining) conflicts with the law of the Fourth Circuit (which does not). Such geographic disparities are "not tenable" (Pet.App.15a (Costa, J.)), and this Court has granted

certiorari to resolve similar problems. *See, e.g.*, *Concepcion v. United States*, 142 S. Ct. 2389, 2398 (2022) (resolving split where the petitioner had sought certiorari on the ground that sentences "var[ied] by decades" due to "geographic happenstances"); *Borden v. United States*, 141 S. Ct. 1817, 1823 (2021) (similar).

The arbitrariness that the split on this issue invites is all the more pressing because it involves plea bargaining, which is ubiquitous today. Court should not "look away from uncertainties within the processing of ninety-seven percent of the federal criminal docket." Pet.App.11a–12a (Higginbotham, J.). Unless and until "this signal flaw in the jurisprudence of plea bargaining" is resolved, "the want of certitude" will continue to "shadow[] the federal criminal dockets across the country." Pet.App.12a–13a.

In our system of pleas rather than trials, the importance of a pre-plea *Brady* right is "not debatable." Pet.App.15a (Costa, J.). "The split on this issue begs for resolution." *Id.*

III. This case is an ideal vehicle for addressing this important question and resolving the split.

This case is an ideal vehicle for considering the question presented and resolving the split Judges Higginbotham and Costa identified.

1. The question presented was pressed and ruled on at each stage of this case. Mansfield argued before the trial court that the failure to disclose the exculpatory evidence before plea negotiations was one ground to find a due process violation. Pet.App.21a. Despite finding "the prosecutors' actions in this case disgraceful," the trial court held that Mansfield's *Brady* claim was foreclosed by the Fifth Circuit's decision in *Alvarez*,

holding that the right to exculpatory evidence recognized in *Brady* did not apply to plea bargaining. Pet.App.33a–34a. The court added: "To the extent Mansfield wants to argue *Alvarez* was wrongly decided or wrongly applied Supreme Court precedent, those arguments are better made to the appellate courts." Pet.App.26a. Mansfield did so before the Fifth Circuit, which squarely held that his *Brady* claim was "foreclosed" because, under circuit precedent, *Brady* "does not reach pre-trial guilty pleas." Pet.App.8a.

2. The record cleanly frames the question presented and allows the Court to decide the issue as narrowly or broadly as it deems appropriate.

The parties agree that the prosecutors knowingly and intentionally withheld evidence and that the evidence at issue is both exculpatory and material. Pet.App.91a–93a (Prezas); Pet.App.98a–99a, 106a (Cihal). Prosecutors obtained statements directly from the victim confirming that Mansfield did not commit the crime alleged. Pet.App.42a. Shortly after he was indicted, Mansfield moved for an order requiring disclosure of exculpatory evidence, and the court later granted the motion. Pet.App.40a–41a. The next day, prosecutors interviewed the victim, who told them "nothing happened" with Mansfield. Pet.App.42a. Notes from the interview confirm that the victim did "not remember what happened" and "cannot testify." *Id.* Rather than comply with the disclosure order, the prosecutors withheld this exculpatory evidence. And they have since confirmed that, had their *Brady* obligations been fulfilled, the outcome of Mansfield's case would have been different. *See* Pet.App.85a–87a (Dick); *see also* Pet.App.106a (Cihal).

This case also does not involve a "fast-track plea" entered early in the case while this matter was still being investigated—the plea agreement here was entered at

the eleventh hour. Four days before trial, the parties engaged in pretrial plea discussions without prosecutors disclosing the exculpatory evidence. Pet.App.2a–3a. Mansfield was offered less than 6 months in jail plus probation when he faced 99 years to life in prison. Pet.App.3a. Because the offer was revocable within days of the start of trial, he took the deal. *Id.*

3. The Fifth Circuit's rejection on causation grounds of Mansfield's other, non-*Brady* theory—that the prosecutors' lies about the strength of their case rendered his plea involuntary—does not impair review of the question presented, as the lying theory is separate and distinct from the *Brady* theory.

The Fifth Circuit analyzed causation only in the context of the prosecutors' affirmative lies, not the *Brady* claim, which challenges their *passive* failure to turn over exculpatory evidence. *See* Pet.App.5a–7a. Neither the Fifth Circuit nor the district court reached the causation issue as to the *Brady* claim, which they had concluded was foreclosed by *Alvarez*. Pet.App.8a; Pet.App.34a. Should Mansfield prevail in this Court on the *Brady* issue, other issues such as causation and *Monell* liability—if they could be disputed at all—would be decided in the first instance on remand.

4. As detailed above, the Fifth Circuit's decision further entrenched a well-defined split among nine federal courts of appeals and five state courts of last resort. *See supra* Part I. While uniformity among federal courts is important, this Court also routinely grants certiorari when state and federal courts have expressed conflicting views. *See, e.g.*, *Turner v. Rogers*, 564 U.S. 431, 438 (2011); *Jones v. Flowers*, 547 U.S. 220, 225 (2006); *Martinez v. Court of Appeal*, 528 U.S. 152, 155 (2000). These conflicts are of particular concern when, as here, a state's controlling precedent conflicts with the court of appeals whose circuit includes

that state—and the governing law will depend on whether a matter happens to be brought in federal or state court. *See, e.g.*, *Johnson v. California*, 545 U.S. 162, 164 (2005); *Madsen v. Women's Health Ctr., Inc.*, 512 U.S. 753, 761–62 (1994). As Judge Costa explained, the geographic and jurisdictional disparity in the *Brady* rights afforded defendants because of the split is simply "not tenable." Pet.App.15a; *see supra* Part II.C.

5. Finally, this issue has received extensive analysis in the lower courts, making further percolation unnecessary. Over the course of more than 40 years, 14 circuits and state courts of last resort have weighed in—not counting the state intermediate appellate courts that have laid down precedent and the federal district courts that have considered the issue. In the Fifth Circuit alone, this issue has now been addressed in four separate cases, including 10 separate written opinions in *Alvarez* and this case. There is no reason to wait any longer before resolving this important and recurring question. The relevant considerations and competing views are all on the table, and all that remains is for this Court to provide a definitive answer.

* * *

In an age in which the criminal trial has all but vanished, the split of authority between the courts that recognize a pretrial right to *Brady* evidence and those that do not is more pressing than ever. This Court should take this chance to resolve it.

CONCLUSION

The Court should grant the petition.

Respectfully submitted.

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