

No. 23-5109

In the Supreme Court of the United States

CARL LINDSEY,

Petitioner,

v.

CHARLOTTE JENKINS, Warden

Respondent.

*ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT*

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTIONS PRESENTED

Twenty-five years ago, an Ohio jury convicted Carl Lindsey of aggravated murder. An Ohio court sentenced him to death. The State’s case against Lindsey rested on several pieces of physical evidence, along with the testimony of multiple witnesses. The State promised one of those witnesses, Kathy Kerr, testimonial immunity should she testify at Lindsey’s trial. In this federal habeas case, Lindsey claims that the prosecution’s alleged failure to disclose this immunity promise violated *Brady v. Maryland*, 373 U.S. 83 (1963).

During the seventeen years that this case remained pending in the District Court, Lindsey amended his habeas petition three times. Eventually, in late 2020, the District Court rejected all of Lindsey’s habeas claims, including his *Brady* claim. Soon thereafter, Lindsey requested leave to file a fourth amended petition. The District Court denied that request. This Court later denied Lindsey’s request for a certificate of appealability under 28 U.S.C. §2253(c).

Against this backdrop, Lindsey’s petition presents two questions:

1. Did the Sixth Circuit properly apply §2253(c) when it denied Lindsey a certificate of appealability as to his *Brady* claim?
2. Did the Sixth Circuit apply the proper standard when it considered the District Court’s ruling denying Lindsey leave to file a fourth amended petition?

LIST OF PARTIES

The Petitioner is Carl Lindsey, an inmate at the Chillicothe Correctional Institution.

The Respondent is Tim Shoop, the Warden of the Chillicothe Correctional Institution, who is automatically substituted for the former Warden. *See* Sup. Ct. R. 35.3.

LIST OF DIRECTLY RELATED PROCEEDINGS

The petition's list of directly related proceedings omits the following cases:

1. *State v. Lindsey*, No. 2003-0635, 99 Ohio St. 3d 1453 (discretionary review declined on July 2, 2003).
2. *State v. Lindsey*, No. 2004-1657, 104 Ohio St. 3d 1460 (discretionary review declined on January 26, 2005).
3. *State v. Lindsey*, No. CA2022-08-006, 2023 WL 3807844 (Ohio Ct. App. 12th Dist.) (remanding for further post-conviction proceedings on June 5, 2023).
4. *State v. Lindsey*, Nos. 97-2015 & 97-2064 (Ohio Ct. Comm. Pls. Brown Cnty.) (sentence entered September 16, 1997; post-conviction proceedings ongoing).

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED.....	i
LIST OF PARTIES	ii
LIST OF DIRECTLY RELATED PROCEEDINGS.....	iii
TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES	v
INTRODUCTION	1
JURISDICTION.....	1
STATEMENT.....	2
REASONS FOR DENYING THE WRIT.....	9
I. The Sixth Circuit correctly applied this Court’s precedent when it denied Lindsey a certificate of appealability as to his <i>Brady</i> claim.	10
II. Under any conceivable standard, Lindsey did not justify amending his petition for a fourth time, over seventeen years into his habeas case.	15
CONCLUSION.....	25

TABLE OF AUTHORITIES

Cases	Page(s)
<i>Ahmed v. Dragovich</i> , 297 F.3d 201 (3d Cir. 2002)	22
<i>Ash v. Anderson Merchandisers LLC</i> , 577 U.S. 1063 (2016)	23
<i>Ayestas v. Davis</i> , 138 S. Ct. 1080 (2018)	2
<i>Banister v. Davis</i> , 140 S. Ct. 1698 (2020)	16, 19, 20
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	1, 6, 7, 8, 10, 11, 12, 13, 14, 15
<i>Brown v. Davenport</i> , 142 S. Ct. 1510 (2022)	19
<i>Burtch v. Milberg Factors, Inc.</i> , 662 F.3d 212 (3rd Cir. 2011)	22
<i>Carpenters Pension Fund of Ill. v. MiMedx Grp., Inc.</i> , 73 F.4th 1220 (11th Cir. 2023)	21, 22
<i>Chinn v. Shoop</i> , 143 S. Ct. 28 (2022)	12, 13
<i>Chinn v. Warden</i> , 24 F.4th 1096 (6th Cir. 2022)	12
<i>City of Miami Fire Fighters’ & Police Officers’ Ret. Trust v. CVS Health Corp.</i> , 46 F.4th 22 (1st Cir. 2022)	21, 22
<i>Dussouy v. Gulf Coast Inv. Corp.</i> , 660 F.2d 594 (5th Cir. 1981)	23
<i>Firestone v. Firestone</i> , 76 F.3d 1205 (D.C. Cir. 1996)	21
<i>Foman v. Davis</i> , 371 U.S. 178 (1962)	17, 18, 19, 24

<i>Gamache v. California</i> , 562 U.S. 1083 (2010)	16
<i>Garrett v. Wexford Health</i> , 938 F.3d 69 (3d Cir. 2019)	22
<i>Harrington v. Richter</i> , 562 U.S. 86 (2011)	18
<i>Henry v. Castle Med. Ctr.</i> , 142 S. Ct. 67 (2021)	23
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)	11, 13
<i>Laber v. Harvey</i> , 438 F.3d 404 (4th Cir. 2006) (<i>en banc</i>)	21, 22, 23
<i>Leisure Caviar, LLC v. United States Fish & Wildlife Serv.</i> , 616 F.3d 612 (6th Cir. 2010)	16, 21, 22
<i>Lindauer v. Rogers</i> , 91 F.3d 1355 (9th Cir. 1996)	22
<i>Metzler Inv. GmbH v. Chipotle Mexican Grill, Inc.</i> , 970 F.3d 133 (2d Cir. 2020)	21, 22, 24
<i>Middleton v. Complete Nutrition Franchising, LLC</i> , 141 S. Ct. 1375 (2021)	23
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003)	10, 11, 13
<i>Moran v. Calumet City</i> , 54 F.4th 483 (7th Cir. 2022)	24
<i>Navajo Nation v. Dep’t of the Interior</i> , 876 F.3d 1144 (9th Cir. 2017)	21
<i>O’Brien v. Village of Lincolnshire</i> , 955 F.3d 616 (7th Cir. 2020)	21
<i>Rosenzweig v. Azurix Corp.</i> , 332 F.3d 854 (5th Cir. 2003)	21, 22
<i>Shinn v. Ramirez</i> , 142 S. Ct. 1718 (2022)	9, 24

<i>State v. Keene</i> , 81 Ohio St. 3d 646 (1998)	14
<i>State v. Lindsey</i> , 87 Ohio St. 3d 479 (2000)	2, 3, 4, 5, 11, 12, 14
<i>State v. Lindsey</i> , 99 Ohio St. 3d 1453 (2003)	5
<i>State v. Lindsey</i> , No. CA2022-08-006, 2023 WL 3807844 (Ohio Ct. App. June 5, 2023)	6
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999)	10
<i>In re SuperValu, Inc.</i> , 925 F.3d 955 (8th Cir. 2019)	21
<i>Tool Box, Inc. v. Ogden City Corp.</i> , 419 F.3d 1084 (10th Cir. 2005)	21
<i>Union Planters Nat’l Leasing, Inc. v. Woods</i> , 687 F.2d 117 (5th Cir. 1982)	23
<i>Vielma v. Eureka Co.</i> , 218 F.3d 458 (5th Cir. 2000)	23
<i>Wolffington v. Reconstructive Orthopaedic Assocs. II PC</i> , 935 F.3d 187 (3d Cir. 2019)	21, 22
Statutes and Rules	
28 U.S.C. §2244	20
28 U.S.C. §2253	8, 10
Fed. R. Civ. P. 15	16
Sup. Ct. R. 10	10, 11
Other Authorities	
Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure §1489 (3d ed.)	21

INTRODUCTION

Carl Lindsey's petition presents two questions for this Court's review. Neither warrants this Court's sustained attention.

The first asks whether the Sixth Circuit erred when it denied Lindsey a certificate of appealability, which would have allowed him to appeal the District Court's rejection of his claim under *Brady v. Maryland*, 373 U.S. 83 (1963). This question presents the factbound issue of how long-settled legal standards apply to a particular case. Said another way, Lindsey seeks error correction. That request does not justify granting certiorari, especially since the Sixth Circuit did not err.

The second question asks what standard applies when a litigant seeks to amend pleadings after a district court enters judgment. The Sixth Circuit held that, in this post-judgment context, the litigant must offer a compelling justification for the belated amendment. The Sixth Circuit's approach is consistent with this Court's precedent and caselaw from other circuits, notwithstanding Lindsey's contrary suggestions. But in any event, the request to amend in this case was unjustified under any conceivable standard. Specifically, Lindsey requested leave to file a fourth amended petition, over seventeen years into his habeas case, after the parties had briefed and the District Court had rejected all of Lindsey's claims on the merits. No conceivably applicable standard would justify reversing the District Court's decision to reject that belated request to amend.

JURISDICTION

The District Court denied Lindsey habeas relief on December 30, 2020. Pet.App.A-89. It denied Lindsey's motion for relief from judgment, and his request

to amend his habeas petition, on July 20, 2021. Pet.App.A-113. Lindsey appealed, and the Sixth Circuit denied Lindsey’s application for a certificate of appealability on September 8, 2022. Pet.App.A-33. The Sixth Circuit then denied Lindsey’s request for *en banc* review on February 13, 2023. Pet.App.A-1. After receiving an extension from this Court, Lindsey filed his current petition for certiorari on July 12, 2023. This Court has jurisdiction to review the denial of a certificate of appealability. *Ayestas v. Davis*, 138 S. Ct. 1080, 1088 n.1 (2018).

STATEMENT

1. Over twenty-five years ago, in the middle of a winter night, Carl Lindsey and a group of conspirators met to discuss a murder. *State v. Lindsey*, 87 Ohio St. 3d 479, 479 (2000), *cert. denied*, 531 U.S. 838 (2000). They met at “Slammers Bar” in Mount Orab, Ohio. *Id.* The group included Lindsey, Kathy Kerr, Kenny Swinford, and Joy Hoop, the bar’s owner. *Id.* Joy Hoop expressed a desire to have her husband, “Whitey” Hoop, killed. *Id.* That topic understandably piqued Lindsey’s interest, as he was romantically involved with Joy Hoop. *Id.* at 481.

Lindsey volunteered to murder Whitey. Pet.App.A-65. We know this from multiple witnesses. One of the bar’s patrons—A.J. Cox—listened to the group’s conversation. He heard Lindsey say, “I’ll take care of it,” in reference to Whitey’s murder. Pet.App.A-56. Kerr, one of the members of Lindsey’s group, similarly heard Lindsey say that “he would do [Whitey] in.” *Lindsey*, 87 Ohio St. 3d at 481. Swinford, another member of the group—who knew Kerr and Hoop, but not Lindsey—thought everyone was just blowing off steam. Trial Tr., R.153-5, PageID#11863–64. But Swinford remembered that the conversation concerned the individual whom he did not know

“killing Whitey.” *Id.*, PageID#11863. The group plotted, Swinford explained, to “make it look like a robbery.” *Id.*

The matter soon transitioned from talk to action. By Cox’s account, Hoop told the group that Whitey was on his way to the bar and that she wanted “it taken care of tonight.” Trial Tr., R.153-4, PageID#11842. Hoop then asked Lindsey whether he had “a piece.” *Id.* Both Kerr and Cox had seen Hoop with a gun at different points that night. *Lindsey*, 87 Ohio St. 3d at 481; Pet.App.A-56. After Hoop declared that she wanted the murder carried out that night, Cox saw Hoop lay a knife on the bar and pass another object to Lindsey. *Lindsey*, 87 Ohio St. 3d at 481. He then heard Hoop tell Lindsey, “If that ain’t good enough, this right here should take care of it.” *Id.* Cox never saw “what ‘this’ was,” but he “heard a sound like a heavy, metallic object.” *Id.* Kerr, from her angle, saw Hoop give a gun to Lindsey. *Id.* After receiving the gun, Lindsey left the bar. *Id.* at 479.

Kerr left the bar shortly after Lindsey. *Id.* At that point, she heard a “banging noise.” *Id.* Kerr saw Whitey on the ground covered in blood and Lindsey standing nearby. *Id.* Kerr immediately left for her nearby trailer home. *Id.* Lindsey followed Kerr in his pickup truck, and Kerr allowed him into her trailer to take a shower. *Id.* Investigators would later deduce that Whitey had been shot twice, “once in the face” while inside Lindsey’s pickup truck, and “again in the forehead” in the Slammers Bar parking lot. *Id.*

Near the time of these events, a deputy sheriff—Buddy Moore—patrolled the area near Slammers Bar. *Id.* During his patrol, Moore noticed Lindsey’s pickup truck

in the bar's parking lot. *Id.* Moore thought things looked a bit suspicious, so he followed the truck until it reached Kerr's trailer. *Id.* Within a few minutes, Moore received a dispatch about a shooting at Slammers Bar. *Id.* He went back to the bar and found Whitey dead in the parking lot. *Id.* at 480.

It did not take long for Moore to put two and two together. Soon after finding Whitey's body, Moore returned to Kerr's trailer. *Id.* Kerr let him inside. Moore immediately discovered Lindsey "in the bathroom, soaking his clothes in a tub full of red-tinted water." *Id.* A box of .22 caliber ammunition sat nearby. *Id.* And a search of the premises revealed a bloodstained .22 caliber pistol, along with Whitey's wallet. *Id.* Notably, Whitey "habitually carried" \$1,000 on his person. *Id.* But on the night of his murder, Whitey's wallet was empty. *Id.* Lindsey, however, had over \$1,200 in his wallet, even though he had been out of work for months. *Id.* Police later found Lindsey's pickup truck (also covered in blood) near Kerr's trailer. *See id*; Pet.App.A-56.

2. The State charged Lindsey with several crimes, including two counts of aggravated murder with death specifications. *Lindsey*, 87 Ohio St. 3d at 480. (In a separate case, the State charged Hoop with complicity in the aggravated murder. Pet.App.A-37.)

The State presented a variety of evidence against Lindsey. It called several witnesses to testify, including Kerr, Cox, Swinford, and Moore. It also presented considerable physical and forensic evidence. For example, lab testing showed that bloodstains from Lindsey's "jacket, jeans, boot, truck console, steering-wheel cover,

driver's seat, driver's-side door, and door handle" were all "consistent with Whitey's blood." *Lindsey*, 87 Ohio St. 3d at 480. So too was a bloodstain on the .22 caliber pistol that police recovered at Kerr's trailer. *Id.* Testing further revealed gunshot residue on Lindsey's hands. Pet.App.A-56; Trail Tr., R.153-4, PageID#11539. Hoop's and Kerr's hands showed no signs of gunshot residue. Trail Tr., R.153-4, PageID#11539–40. Finally, a ballistic expert testified that shell casings found at the crime scene matched the pistol and bullets found at Kerr's trailer. *Id.*, PageID#11518–21.

As will prove important, Lindsey's counsel subjected Kerr to a lengthy cross-examination at trial, calling Kerr's credibility into question. Pet.App.A-54–A-55. Of particular note, the defense made sure that the jury knew about Kerr's "history of making conflicting and untruthful statements" to law enforcement and a grand jury. *Id.* Additionally, "[t]he defense presented Kerr as a potential suspect," and argued that the police did not do enough to exclude her as the murderer. Pet.8–9.

The jury found Lindsey guilty nonetheless. *Lindsey*, 87 Ohio St. 3d at 480. After a penalty phase, the jury recommended death and the trial court accepted that recommendation. *Id.* Lindsey challenged his convictions and sentence in state courts, through direct appeal and by seeking post-conviction relief. Those challenges failed. *See, e.g., id.* at 492; *State v. Lindsey*, 99 Ohio St. 3d 1453 (2003).

3. Lindsey proceeded to federal court, filing a habeas petition in 2003. Over the years, the District Court allowed Lindsey to amend his petition several times. *See* Pet.App.A-38, A-88. For example, in April 2015—almost a dozen years into the

federal habeas case—Lindsey filed a third amended petition, adding several claims challenging Ohio’s execution protocol. Pet.App.A-88.

In total, Lindsey’s various petitions alleged twenty claims. See Pet.App.A-38, A-89. Most relevant here, Lindsey claimed that the State violated its obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). *Brady* requires that the prosecution disclose any evidence that is favorable to the defense and material to guilt or punishment. *Id.* at 87. According to Lindsey, the prosecution failed to disclose that it promised Kathy Kerr testimonial immunity before she took the stand in Lindsey’s case. Pet.App.A-7. Lindsey could have used this information, the argument went, to further impeach Kerr.

Lindsey’s federal habeas claims were ripe for decision by the summer of 2018, if not earlier. See Order, R.151, PageID#2421. But in July 2020, Lindsey filed another petition for post-conviction relief in state court. *State v. Lindsey*, No. CA2022-08-006, 2023 WL 3807844 at *1 (Ohio Ct. App. June 5, 2023). There, Lindsey argued that he obtained new evidence that he suffers from fetal-alcohol-syndrome disorder. *Id.* This meant, in Lindsey’s view, that his trial counsel was ineffective for failing to investigate his condition. *Id.* Lindsey further argued that his alleged condition made his death sentence unconstitutional. *Id.* Finally, Lindsey argued that his former counsel was ineffective for failing to communicate information about plea offers. *Id.* Though pursuing these new claims in state court, Lindsey took no corresponding action to stay his federal habeas case while he exhausted these claims. See Pet.A-14. Indeed, Lindsey did not even notify the District Court of the state proceedings. *Id.*

At the end of 2020, over seventeen years after Lindsey’s initial petition, the District Court rejected all of Lindsey’s habeas claims. Pet.App.A-35. The District Court reviewed Lindsey’s *Brady* claim *de novo*, with no deference to earlier state-court decisions. Pet.App.A-51. And it assumed, in Lindsey’s favor, that the State did not disclose its offer of testimonial immunity to Kerr. Pet.App.A-54. Even so, Lindsey’s *Brady* claim failed because this information was not material within the meaning of *Brady*. *Id.* Undisclosed evidence is material for *Brady* purposes if “there is a reasonably probability that the result of the proceeding would have been different had the evidence been disclosed.” Pet.App.A-51. There was no such possibility here, the District Court explained, because of the “other evidence” of Lindsey’s guilt. Pet.App.A-56. This “other evidence” included a large amount of physical evidence implicating Lindsey. *Id.* During trial, moreover, Lindsey had made repeated attacks on Kerr’s credibility. Thus, it was highly *improbable* that additional “impeachment evidence would have so altered the jury’s assessment of Kerr’s credibility” as to change the outcome of proceedings. Pet.App.A-55. For these reasons, Lindsey’s *Brady* claim failed.

In January 2021, Lindsey moved the District Court to alter or amend its judgment under Federal Rule of Civil Procedure 59. Pet.10. He simultaneously sought leave under Federal Rule of Civil Procedure 15 to file a fourth amended petition. Specifically, Lindsey wanted to add new claims—consistent with the claims he raised several months earlier in state court—about fetal-alcohol-syndrome disorder and ineffective assistance of trial counsel. *Id.* The District Court denied Lindsey’s requests.

Pet.App.A-113. It stressed that Lindsey had years to investigate and raise these claims in a timely fashion. Pet.App.A-108–09, A-112.

4. Lindsey appealed. Because the District Court denied habeas relief, Lindsey needed a certificate of appealability to proceed with an appeal. 28 U.S.C. §2253(c). A panel of the Sixth Circuit denied Lindsey’s request for a certificate of appealability in an order issued in September 2022. Pet.App.A-18. (The panel later issued an amended order, adjusting two sentences of its ruling. *Compare* Pet.App.A-7–8; *with* Pet.App.A-20–22.)

Relying on this Court’s precedent, the Sixth Circuit set forth the standards governing applications for certificates of appealability. When a district court denies a habeas claim on the merits, “the applicant must show that ‘jurists of reason could disagree with the district court’s resolution’” or “‘that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.’” Pet.App.A-20 (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)). For appeals of procedural rulings, the applicant must show that “jurists of reason could find debatable (a) whether the petition states a valid claim of the denial of a constitutional right and (b) whether the district court was correct in its procedural ruling.” *Id.* (citing *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

Applying those standards, the Sixth Circuit concluded that Lindsey was not entitled to a certificate of appealability. With respect to Lindsey’s *Brady* claim, the Sixth Circuit explained that all reasonable jurists would agree that the allegedly undisclosed evidence was immaterial. Pet.App.A-7. After all, the “evidence of Lindsey’s

guilt was overwhelming” and much of the State’s case “was established without Kerr’s testimony.” Pet.App.A-7–8. For instance, the police discovered Lindsey covered in Whitey’s blood shortly after the crime, and forensic testing revealed “that Lindsey had recently discharged a firearm.” *Id.*

The Sixth Circuit also concluded that all reasonable jurists would uphold the District Court’s procedural ruling, which denied Lindsey a fourth chance to amend his habeas petition. Pet.App.A-14. The Sixth Circuit explained that, because Lindsey sought leave to amend his petition after the District Court had already rejected his claims, Lindsey needed to offer a more compelling justification than a litigant seeking leave to amend before judgment. Pet.App.A-12–A-13. Lindsey failed to offer any such justification. The Sixth Circuit stressed that Lindsey could have sought to stay federal proceedings while he exhausted claims in state court. Pet.App.A-14. Regardless, Lindsey and his attorneys waited far too long in investigating and raising new claims in a case that had been pending for seventeen years. Pet.App.A14–16.

5. The Sixth Circuit denied Lindsey’s request for *en banc* review with no noted dissents. Pet.App.A-1. After receiving an extension from this Court, Lindsey timely filed the current petition for a writ of certiorari.

REASONS FOR DENYING THE WRIT

Because of “the essential need to promote the finality of state convictions,” federal courts should “*never* needlessly prolong a habeas case.” *Shinn v. Ramirez*, 142 S. Ct. 1718, 1739 (2022) (quotation marks omitted). That principle should end this matter. Lindsey argues that this case presents two questions worthy of this Court’s

attention. He is wrong on both fronts. The Warden now explains why, taking Lindsey's questions in order.

I. The Sixth Circuit correctly applied this Court's precedent when it denied Lindsey a certificate of appealability as to his *Brady* claim.

A. The first question presented asks whether the Sixth Circuit properly applied the certificate-of-appealability standards set forth in 28 U.S.C. §2253 to Lindsey's *Brady* claim. Lindsey does not argue that the Sixth Circuit's decision conflicts with a decision of another circuit. Lindsey instead requests factbound error correction. This case-specific request does not warrant this Court's intervention. Regardless, the Sixth Circuit properly denied Lindsey leave to proceed with an appeal.

"A petition for a writ of certiorari is rarely granted when the asserted error consists of ... misapplication of a properly stated rule of law." Sup. Ct. R. 10. The "properly stated" law in this case involves two fully developed areas of law. *First*, a petitioner must obtain a certificate of appealability to appeal a denial of habeas relief. §2253(c). To justify a certificate, the petitioner must make "a substantial showing of the denial of a constitutional right." *Id.* When a district court rejects a claim on its merits, the petitioner must show "that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). *Second*, under *Brady*, prosecutors must disclose evidence that is favorable to a defendant and material to the case. 373 U.S. at 87. Favorable evidence includes impeachment evidence. *Strickler v. Greene*, 527 U.S. 263, 281–82 (1999). And evidence is material for *Brady* purposes "if there is a

reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Kyles v. Whitley*, 514 U.S. 419, 433 (1995) (quotation omitted).

With the above standards in mind, turn to the Sixth Circuit’s analysis. Quoting *Miller-El* and *Kyles*, the panel identified the proper legal standards for assessing certificates of appealability and materiality under *Brady*. Pet.App.A-7. The panel then applied those standards and reached a conclusion as to what “[j]urists of reason” would think about the materiality of the evidence in question. Pet.App.A-8; accord *Miller-El*, 537 U.S. at 327. Lindsey thinks that conclusion was wrong on his case’s facts. See Pet.14–15. In short, he argues “misapplication of a properly stated rule of law,” which is the type of argument this Court “rarely” considers. See Sup. Ct. R. 10.

In any event, the Sixth Circuit correctly applied the governing standards. Under the facts of Lindsey’s case, no reasonable jurist would conclude that the State’s promise of testimonial immunity was material under *Brady*. Much of the State’s evidence had nothing to do with Kerr’s testimony. The police caught Lindsey covered in Whitey’s blood shortly after the crime, with Whitey’s wallet and the murder weapon nearby. *Lindsey*, 87 Ohio St. 3d at 480. Lindsey’s truck was also covered in Whitey’s blood. *Id.* And Lindsey’s hands tested positive for gunshot residue. Pet.App.A-56. The hands of others involved—Kerr and Hoop—did not. Trail Tr., R.153-4, PageID#11539–40. Beyond all that, an independent witness (A.J. Cox) corroborated key aspects of Kerr’s testimony. Like Kerr, Cox heard Lindsey promise to kill Whitey. Pet.App.A-56. Cox then observed (and heard) Hoop giving Lindsey

something that seemed to be a heavy, metallic object, which Hoop said was to “take care” of Whitey. *Lindsey*, 87 Ohio St. 3d at 481. Finally, even taken on its own, the undisclosed evidence about Kerr does not have the value Lindsey suggests. The State promised Kerr only testimonial immunity, not full immunity from prosecution. *Accord* Pet.App.A-55. And Lindsey’s defense at trial already focused on Kerr’s credibility in various ways. *See* Pet.App.A-54–55. Putting all of this together, there is no reason to think that this addition to Lindsey’s defense would have changed the outcome of Lindsey’s trial. Nor is there any reason to think that this minor detail about *Kerr*’s testimony would have changed the assessment of *Lindsey*’s culpability at the penalty phase after a guilty verdict.

B. Lindsey tries to make his first question more enticing, but his efforts fall flat. For example, Lindsey compares this case to *Chinn v. Shoop*, 143 S. Ct. 28 (2022). In that case, the prosecution suppressed evidence about a state witness’s intellectual disability. In a published decision, the Sixth Circuit applied AEDPA deference and upheld the state courts’ rejection of *Brady* claims. *Chinn v. Warden*, 24 F.4th 1096, 1102–06 (6th Cir. 2022). This Court denied a petition for certiorari. *Chinn*, 143 S. Ct. 28. But Justices Jackson and Sotomayor would have granted the petition. They were concerned by the Sixth Circuit’s comparing *Brady*’s “reasonable probability” standard to a more-likely-than-not standard. *Id.* at 28 (Jackson, J., joined by Sotomayor, J., dissenting from the denial of certiorari).

It is difficult to understand how this is supposed to help Lindsey. The panel’s unpublished decision in this case did not rely upon a comparison between “reasonable

probability” and a more-likely-than-not standard. *See* Pet.App.A-7–8. This case is therefore a worse candidate for addressing that issue than *Chinn*, which this Court recently refused to hear. Perhaps recognizing as much, Lindsey says that the panel’s reference to the “overwhelming” evidence of guilt signals that the court applied the wrong standard. Pet.11. This argument makes little sense. A reasonable-probability analysis requires a court to consider the likelihood that the result of trial “would have been different” with the undisclosed evidence. *Kyles*, 514 U.S. at 433 (quotation omitted). Such an analysis inherently requires a court to consider the strength of the evidence the State presented at trial: the stronger the State’s overall case, the less likely the result “would have been different” with the undisclosed information. *See id.*

Lindsey also makes much of the fact that the Sixth Circuit revised its order. *See* Pet.App.A-18–19. Recall that, after initially denying Lindsey a certificate of appealability, the Sixth Circuit issued a slightly amended order. *See above* 8. As Lindsey stresses, the court revised its order to say that “[j]urists of reason would not disagree with the district court’s resolution” of the *Brady* claim, Pet.App.A-8, instead of saying that the *Brady* claim was “without merit,” Pet.App.A-22. This is hardly the Freudian slip that Lindsey makes it out to be. The Sixth Circuit’s amended order better parrots the certificate-of-appealability standard, but the two statements amount to the same thing. The certificate-of-appealability inquiry, by its very nature, requires “a general assessment of the merits.” *Miller-El*, 537 U.S. at 336. And

“[j]urists of reason,” Pet.App.A-8, do not encourage claims that are “without merit,” Pet.App.A-22.

Lindsey’s arguments for case-specific error are also unconvincing. He suggests that this was a close case and that Kerr’s promised immunity may well have made the difference as to guilt or punishment. *See* Pet.13–15. To paint this picture, Lindsey ignores much of the State’s evidence. For example, the petition contains only a passing reference to the fact that testing revealed gunshot residue on Lindsey’s hands. Pet.8. And any reader curious about the State’s bloodstain evidence, *see Lindsey*, 87 Ohio St. at 480, will be disappointed upon finishing the petition. That Lindsey cannot confidently engage with the State’s *entire* case is quite telling.

Lindsey also floats the theory that Hoop fired the second gunshot into Whitey’s forehead—though he struggles to connect this theory to a *Brady* claim about Kerr’s testimony. *See* Pet.14. By way of background, at Hoop’s complicity trial, Thomas Merriman (a drug addict and Lindsey’s longtime friend) said that Hoop (a person Merriman could not even identify in court) told him she fired the second shot. Pet.App.A-59. Lindsey argues that, if Hoop fired the second shot, the State’s case against Lindsey as the principal offender was weak. This argument falls apart on the closest of inspections. Under Ohio law, there can be more than principal offender in an aggravated murder. *State v. Keene*, 81 Ohio St. 3d 646, 655 (1998). But even if Lindsey’s theory were legally viable, it does not match the physical evidence. It was Lindsey—not Hoop—who police found shortly after the crime covered in Whitey’s blood, near the murder weapon, and with gunshot residue on his hands. *See Lindsey*,

87 Ohio St. 3d at 480; Pet.App.A-56. Hoop's hands, by contrast, were free of gunshot residue. Trail Tr., R.153-4, PageID#11539–40.

One final point before moving on. Lindsey alternatively argues that the Court should hold this case if it grants pending petitions in *Glossip v. Oklahoma*, Nos. 22-6500 & 22-7466, or *Johnson v. Alabama*, No. 22-7337. Those petitions also involve *Brady* claims. But Lindsey fails to develop any specific explanation for why review in one of those cases—assuming a grant—is likely to matter here. See Pet.17. The Court should therefore deny Lindsey's request for a hold, even if it accepts one of the identified petitions.

II. Under any conceivable standard, Lindsey did not justify amending his petition for a fourth time, over seventeen years into his habeas case.

A. Lindsey's second question presented concerns the standard that governs a party's request to amend pleadings after a district court enters judgment. Recall that, after the District Court rejected all of Lindsey's claims on the merits, Lindsey moved to amend his petition to add new claims. Pet.App.A-12. The District Court denied that request. And the Sixth Circuit refused Lindsey a certificate of appealability. It explained that, because Lindsey moved to amend after judgment, Lindsey needed to offer a more compelling justification for amendment than would be required pre-judgment. Pet.App.A-13. Lindsey argues that the Sixth Circuit's standard for post-judgment amendments was too stringent. He further argues that the Sixth Circuit's standard conflicts with this Court's precedent and cases from other circuits. See Pet.19–23.

Lindsey is wrong. But before explaining why, it is worth unpacking a vehicle flaw in Lindsey’s case. Typically, this Court will not review a question if answering the question is unnecessary to a case’s outcome. *See Gamache v. California*, 562 U.S. 1083, 1084–85 (2010) (Sotomayor, J., respecting the denial of the petition for writ of certiorari). It thus makes sense to consider, as a preliminary matter, whether Lindsey second question presented even matters to the outcome of *his* case. It does not: Lindsey’s request to file a fourth amended petition in a seventeen-year-old habeas case was unjustified under any conceivable standard.

Two procedural rules set the stage for this analysis. *First*, under Federal Rule of Civil Procedure 59(e), a party may move to alter or amend a district court’s judgment within twenty-eight days of the judgment. Rule 59(e) performs a “corrective function,” allowing a court to “rectify its own mistakes” without the complication of an appeal. *Banister v. Davis*, 140 S. Ct. 1698, 1703 (2020) (quotation omitted). The rule, however, is not a vehicle for raising “new arguments or evidence that the moving party could have raised before the decision issued.” *Id.* Instead, the traditional justifications for altering a judgment are “(1) a clear error of law; (2) newly discovered evidence; (3) an intervening change in controlling law; or (4) a need to prevent manifest injustice.” *Leisure Caviar, LLC v. United States Fish & Wildlife Serv.*, 616 F.3d 612, 615 (6th Cir. 2010) (quotation omitted).

Second, Federal Rule of Civil Procedure 15(a) allows a party to move to amend its pleadings. A district court “should freely give leave” to amend “when justice so requires.” Fed. R. Civ. P. 15(a)(2). Determining “when justice so requires” is a multi-

factor, context-dependent inquiry. A court should consider a moving party's "repeated failure to cure deficiencies by amendments previously allowed," any "undue delay" on the movant's part, whether the opposing party will suffer "undue prejudice" from amendment, and the "futility of amendment." *Foman v. Davis*, 371 U.S. 178, 182 (1962). The decision whether to grant or deny leave is "within the discretion of the District Court" so long as there is some "apparent or declared ... justifying reason" for the decision. *Id.*

Turning to this case, Lindsey's request to amend was unjustified under any potentially applicable standard. Assume, for the sake of argument, that Lindsey's motion required a traditional Rule 15(a) analysis, with no application of Rule 59(e). Applying *Foman*'s list of factors, the District Court's only reasonable option was to deny the motion.

Begin with Lindsey's "repeated failure to cure deficiencies by amendments previously allowed." *Foman*, 371 U.S. at 182. By the time of the relevant motion, Lindsey's petition was already "in its third amended version." Pet.App.A-12. In other words, Lindsey already received four tries to get his petition right. This amendment history alone constituted a "justifying reason" for denying Lindsey another attempt. *See Foman*, 371 U.S. at 182.

Lindsey's "undue delay" in seeking to amend his petition provided another reason to deny him leave. *See id.* Lindsey sought to file a fourth amended petition in January 2021, when his case was more than seventeen years old. Before then, Lindsey and his attorneys had many years to investigate and raise any habeas claims he

wished to pursue in federal court. Take, for instance, Lindsey’s claims concerning fetal-alcohol-syndrome disorder. Evidence indicating that Lindsey might have a disorder was available to Lindsey and his attorneys in the late 1990s. Pet.App.A-15–16. Lindsey, moreover, has been represented by the Office of the Federal Public Defender since 2015. Pet.App.A-16. Thus, even if Lindsey’s previous attorneys were all ineffective, he and his current attorneys delayed for several years in investigating and presenting these “new” claims. Relatedly, Lindsey delayed in bringing relevant state-court proceedings to the District Court’s attention. As the Sixth Circuit emphasized, Lindsey did nothing to try to stay federal proceedings after filing a new petition for state-post-conviction relief in July 2020. *See* Pet.App.A-14.

Allowing Lindsey another chance to amend his petition also would have caused “undue prejudice.” *See Foman*, 371 U.S. at 182. This case involves federal habeas review of a state conviction. Such review “frustrates both the States’ sovereign power to punish offenders and their good-faith attempts to honor constitutional rights.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (quotation marks omitted). “It disturbs the State’s significant interest in repose for concluded litigation, denies society the right to punish some admitted offenders, and intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority.” *Id.* (quotation marks omitted). From these principles it follows that prolonging a seventeen-year-old habeas case, by allowing a *fourth* amended petition, would have caused significant harm to the State. And that prejudice does not even account for the harm that delay would inflict on the family and friends of Lindsey’s victim.

On top of everything else, any amendment would have been futile. *See Foman*, 371 U.S. at 182. No one is entitled to habeas relief. *See Brown v. Davenport*, 142 S. Ct. 1510, 1523 (2022) (citing 28 U.S.C. §2241). A petitioner must convince a federal court that “law and justice require” such relief. *Id.* (quoting 28 U.S.C. §2243). Factual guilt is “[f]oremost among” the considerations that dictate what law and justice require. *Id.* at 1523. For reasons already discussed, Lindsey has no legitimate claim of factual innocence. *See above* 11–12.

Combining all this, the District Court correctly denied Lindsey leave to amend, even assuming his motion should have been governed by a traditional Rule 15(a) analysis, rather than by the arguably-more-demanding Rule 59 analysis. Thus, under any potential standard, no reasonable jurist would conclude that the District Court abused its discretion. That makes this case a poor vehicle for offering any further guidance about how Rule 59(e) and Rule 15(a) interact.

B. Even assuming otherwise, Lindsey’s arguments for further review are unpersuasive. Lindsey begins with an argument about this Court’s precedent. Pet.19. Recall that the Sixth Circuit characterized Lindsey’s motion to amend as a post-judgment motion. Pet.App.A-12–13. In Lindsey’s view, this characterization conflicts with the Court’s decision in *Banister*, 140 S. Ct. 1698. Lindsey is mistaken.

Banister addressed a different issue. Specifically, *Banister* presented the question whether a Rule 59(e) motion seeking to alter a habeas judgment is the equivalent of a second or successive habeas petition. *Banister*, 140 S. Ct. at 1702. That answer mattered because AEDPA generally bars habeas petitioners from filing second or

successive petitions in federal court. *See* 28 U.S.C. §2244(b). The Court held that Rule 59(e) motions are *not* second or successive habeas petitions. *Banister*, 140 S. Ct. at 1702. The Court reasoned that nothing in AEDPA’s language, history, or purpose eliminated a trial court’s traditional ability to revise its judgment before appeal. *Id.* at 1707–09. *Banister*, however, said nothing about the separate question of what standard applies to motions for leave to amend pleadings filed after judgment but in conjunction with a Rule 59(e) motion. It follows that the Sixth Circuit’s approach to that separate question does not conflict with *Banister*.

Lindsey’s contrary argument relies on a non-sequitur. *See* Pet.19. As Lindsey stresses, *Banister* said that when a petitioner “timely submits a Rule 59(e) motion, there is no longer a final judgment to appeal from.” 140 S. Ct. at 1703. That means, according to Lindsey, that after “a Rule 59 motion is filed, a case in a pre-judgment posture, such that Rule 15 alone should apply to a motion to amend.” Pet.19. That is an unfounded leap in logic. It is certainly true, as *Banister* noted, that with no “final judgment,” any appeal is premature while a Rule 59(e) motion is pending. But it does not follow that a pending Rule 59(e) motion erases the previously entered judgment. A Rule 59(e) motion has that effect only if it is granted; and most Rule 59(e) motions are denied. Thus, while a Rule 59(e) might prevent a judgment from becoming final, it does not return a case to a pre-judgment posture. *Banister* said nothing to the contrary, so it offers Lindsey no assistance.

C. Lindsey next alleges that his second question implicates a circuit split. *See* Pet. 20–22. The alleged conflict concerns how to proceed when a party seeks leave to

amend pleadings after judgment but before the party’s Rule 59(e) window has expired. Lindsey concedes that most circuits, including the Sixth Circuit, require the moving party to satisfy Rule 59(e)—and not just Rule 15(a)—in this scenario. Pet.21. But he claims that the Third, Fourth, Fifth, and Eleventh Circuits apply “Rule 15’s liberal amendment standard to motions to amend filed after judgment.” Pet.20.

Lindsey greatly overstates any discord among the circuits. To begin, the circuits all agree that a party seeking to amend pleadings after a judgment must receive relief from the judgment before any amendment takes place. *See, e.g., City of Miami Fire Fighters’ & Police Officers’ Ret. Trust v. CVS Health Corp.*, 46 F.4th 22, 36 (1st Cir. 2022); *Metzler Inv. GmbH v. Chipotle Mexican Grill, Inc.*, 970 F.3d 133, 142 (2d Cir. 2020); *Wolffington v. Reconstructive Orthopaedic Assocs. II PC*, 935 F.3d 187, 210 (3d Cir. 2019); *Laber v. Harvey*, 438 F.3d 404, 427 (4th Cir. 2006) (*en banc*); *Rosenzweig v. Azurix Corp.*, 332 F.3d 854, 864 (5th Cir. 2003); *Leisure Caviar, LLC*, 616 F.3d at 616; *O’Brien v. Village of Lincolnshire*, 955 F.3d 616, 629 (7th Cir. 2020); *In re SuperValu, Inc.*, 925 F.3d 955, 962 (8th Cir. 2019); *Navajo Nation v. Dep’t of the Interior*, 876 F.3d 1144, 1173 (9th Cir. 2017); *Tool Box, Inc. v. Ogden City Corp.*, 419 F.3d 1084, 1087 (10th Cir. 2005); *Carpenters Pension Fund of Ill. v. MiMedx Grp., Inc.*, 73 F.4th 1220, 1250 (11th Cir. 2023); *Firestone v. Firestone*, 76 F.3d 1205, 1209 (D.C. Cir. 1996); *see also* 6 Charles A. Wright & Arthur R. Miller, *Federal Practice and Procedure* §1489 (3d ed.). Consider, for example, the Third and Fourth Circuits, both of which Lindsey identifies as being more forgiving to movants. *See* Pet.20. In the Third Circuit, a “complaint cannot be amended while the judgment stands.”

Wolfigton, 935 F.3d at 210 (quotation omitted). The same is true in the Fourth Circuit: a district court may not grant “a post-judgment motion to amend ... unless the judgment is vacated.” *Laber*, 438 F.3d at 427. Thus, no circuit is actually applying “Rule 15’s liberal amendment standard” in isolation. Pet.20.

To be sure, the circuits have described the interaction between Rule 59(e) and Rule 15(a) in different ways. Some circuits proceed step by step, determining first whether relief from judgment is justified and then, if necessary, entertaining a request for leave to amend. *E.g.*, *City of Miami Fire Fighters’*, 46 F.4th at 36; *Metzler Inv.*, 970 F.3d at 142; *Lindauer v. Rogers*, 91 F.3d 1355, 1357 (9th Cir. 1996); *see also Carpenters Pension Fund of Ill.*, 73 F.4th at 1250 (clarifying the Eleventh Circuit’s approach). So, in these circuits, parties seeking leave to amend after judgment would need to point to something—such as newly discovered evidence or avoidance of a manifest injustice—that justifies relief from judgment. *See Leisure Caviar, LLC*, 616 F.3d at 615.

Other circuits tackle the two procedural rules “together,” using *Foman*’s list of amendment factors as guideposts. *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 231 (3rd Cir. 2011); *see also Laber*, 438 F.3d at 427; *Rosenzweig*, 332 F.3d at 864. But these circuits—namely, the Third, Fourth, and Fifth—still acknowledge that amendments to pleadings are harder to justify after a district court enters judgment. For example, the Third Circuit recognizes that the “liberality” of the typical amendment standard “no longer” applies “once judgment has been entered.” *Ahmed v. Dragovich*, 297 F.3d 201, 207–08 (3d Cir. 2002); *see also Garrett v. Wexford Health*, 938 F.3d 69,

86 (3d Cir. 2019). In a similar vein, the Fourth Circuit has explained “that the further the case progressed before judgment was entered, the more likely it is that” amendment will be unjustified and harmful to the opposing party. *Laber*, 438 F.3d at 427. It thus takes “unusual circumstances” in the Fourth Circuit to justify a post-judgment amendment in a long-pending case. *See id.* at 428. Finally, the Fifth Circuit has acknowledged that a district court’s discretion to allow amended pleadings “narrows considerably after entry of judgment.” *Vielma v. Eureka Co.*, 218 F.3d 458, 468 (5th Cir. 2000); *see also Union Planters Nat’l Leasing, Inc. v. Woods*, 687 F.2d 117, 121 (5th Cir. 1982); *Dussouy v. Gulf Coast Inv. Corp.*, 660 F.2d 594, 598 n.2 (5th Cir. 1981). The takeaway is simple: parties in these circuits—much like parties in other circuits—need to offer more justification to amend pleadings after judgment.

All told, there is little if any real distance between the circuits. The circuits might describe how they are proceeding in different ways, but they end up at the same commonsense conclusion: it is more difficult for a party to justify amendments to pleadings after the entry of judgment, especially when a case has progressed to later stages. Unsurprisingly, therefore, this Court has repeatedly declined review of this supposed conflict. *See, e.g., Henry v. Castle Med. Ctr.*, 142 S. Ct. 67 (2021); *Middleton v. Complete Nutrition Franchising, LLC*, 141 S. Ct. 1375 (2021); *Ash v. Anderson Merchandisers LLC*, 577 U.S. 1063 (2016).

Even if the Court remains intrigued, it should wait for a different case. As discussed above, Lindsey’s request to amend his petition a fourth time, seventeen years into his case, was unjustified under any conceivable standard. Beyond that, a

federal habeas case is not the normal setting where this tug-of-war between Rule 59(e) and Rule 15(a) arises. Rather, as Lindsey’s own petition shows, this issue typically springs from ordinary civil litigation. *See* Pet.20–21 (collecting cases). And the closest calls tend to arise when a plaintiff’s complaint is dismissed on the initial pleadings without any chance to replead. *See Metzler Inv.*, 970 F.3d at 146; *Moran v. Calumet City*, 54 F.4th 483, 500 n.10 (7th Cir. 2022). A habeas case would therefore be a poor vehicle for offering guidance about when, in the ordinary course, a district court should permit a post-judgment amendment. After all, the State’s interest in avoiding “needlessly prolong[ed]” habeas litigation, *Shinn*, 142 S. Ct. at 1739, is far stronger than the finality interest of the average civil litigant.

D. Lindsey’s final argument for review fares no better than the rest. Lindsey claims that the Sixth Circuit rejected his amended petition “solely based on delay.” Pet.22. Lindsey then stresses cases from other circuits, which say that delay alone is not “normally” a sufficient reason to deny leave to amend. Pet.23 (quotation omitted).

This argument warrants little discussion because the Sixth Circuit ruling did not rest on delay alone. *Contra* Pet.22–23. Three points confirm as much. *First*, denying leave to amend is proper when a moving party has repeatedly failed “to cure deficiencies by amendments previously allowed.” *Foman*, 371 U.S. at 182. Here, the Sixth Circuit recognized that Lindsey already had three previous chances to amend his petition. Pet.App.A-12. *Second*, denying leave to amend is proper when the moving party’s actions reveal “*undue* delay.” *Foman*, 371 U.S. at 182 (emphasis added). Here, the Sixth Circuit offered a detailed explanation for why Lindsey and his

attorneys unduly delayed in investigating and raising new claims. Pet.App.A-14–16. *Third*, the Sixth Circuit was of course aware that this case was a longstanding federal habeas case. Thus, although the Sixth Circuit did not expressly discuss prejudice, its decision is justified by the harm the State would suffer were Lindsey allowed to file a fourth amended petition in a seventeen-year-old habeas case. Thus, Lindsey oversimplifies when he describes the Sixth Circuit’s ruling as being “solely based on delay.” Pet.22.

CONCLUSION

This Court should deny Lindsey’s petition for a writ of certiorari.

Respectfully submitted,

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