THIS IS A CAPITAL CASE

No. 23-6912

IN THE
SUPREME COURT OF THE UNITED STATES

Samuel Fields, Petitioner,

v.

Laura Plappert,
Warden, Kentucky State Penitentiary, Respondent.

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

PETITION FOR REHEARING

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PETITION FOR REHEARING

Petitioner Samuel Fields, through undersigned counsel, respectfully petitions under Rule 44.2 for rehearing of the Court's order denying certiorari in this case. Mr. Fields requests that this Court grant the petition, vacate the judgment of the Sixth Circuit, and remand so that the lower court may take appropriate action in light of this Court's decision in *Andrew v. White*, 145 S. Ct. 75 (2025). Undersigned counsel certifies that this petition for rehearing is restricted to the grounds specified in Rule 44.2 and is presented in good faith and not for delay.

INTRODUCTION

This Court has recognized that "[i]n the constitutional sense, trial by jury in a criminal case necessarily implies at the very least that the 'evidence developed' against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel." *Turner v. Louisiana*, 379 U.S. 466, 472-73 (1965). It is undisputed that during deliberations in the capital murder case against Sam Fields, the jury—to test the Commonwealth's theory of guilt—considered physical evidence not presented at trial. Pet. App. 45a. The extrinsic evidence went to the central issue: whether someone other than Fields could have committed the murder of Bess Horton.

In Fields's federal habeas case, a panel of the Sixth Circuit found (in unison with the Sixth Circuit's prior decisions) that this Court's general rule, as stated in *Turner* and other cases of this Court, qualified as clearly established federal law

under 28 U.S.C. § 2254(d)(1) ("AEDPA"). Pet. App. 60a-61a (panel opinion); Pet. App. 22a (majority opinion recognizing prior Sixth Circuit cases, including *Doan v. Brigano*, 237 F.3d 722, 733 n.7 (6th Cir. 2001); *Moore v. Mitchell*, 708 F.3d 760, 805-06 (6th Cir. 2013); and *Fletcher v. McKee*, 355 F. App'x 935, 937 (6th Cir. 2009)). Accordingly, Fields was entitled to a determination of whether the state court's decision regarding the jury's consideration of the physical evidence that did not come from the courtroom was an unreasonable application of this general rule.[1] Pet. App. 60a-63a.

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[1] The Second, Fourth, Fifth, Seventh, Tenth, and Eleventh Circuits similarly have concluded that, under § 2254(d)(1), this Court has squarely established "that a jury's verdict must be based upon the evidence developed at the trial[.]" *Turner*, 379 U.S. at 472 (internal quotation marks omitted). *See, e.g., Wood v. Sec'y, Dep't of Corr.*, 793 F. App'x 813, 819 (11th Cir. 2019) ("It is clearly established that juror misconduct, including juror contact with extrinsic evidence, is a basis for habeas relief."); *Owens v. Duncan*, 781 F.3d 360, 365 (7th Cir. 2015) (holding "there's no question that the right to have one's guilt or innocence adjudicated on the basis of evidence introduced at trial satisfies [§ 2254(d)(1)'s] exacting standard."); *Hurst v. Joyner*, 757 F.3d 389, 394 (4th Cir. 2014) (finding under *Turner* that, "[a]t its core," the Sixth Amendment ensures "that the evidence developed against a defendant shall come from the witness stand in a public courtroom where there is full judicial protection of the defendant's right[s]."); *Black v. Workman*, 682 F.3d 880, 906 (10th Cir. 2012) (concluding under § 2254(d)(1) that the Supreme Court "has declared that a 'verdict must be based upon the evidence developed at the trial.'"); *Oliver v. Quarterman*, 541 F.3d 329, 336 (5th Cir. 2008) (concluding "the Supreme Court has clearly established a constitutional rule forbidding a jury from being exposed to an external influence."); *Loliscio v. Goord*, 263 F.3d 178, 185 (2d Cir. 2001) (determining under § 2254(d)(1) that the Supreme Court has clearly established the rule requiring a verdict to be based on the evidence at trial). In each of these circuits, the general rule of *Turner* is a holding for the purposes of AEDPA review, and a habeas petitioner relying on that rule is entitled to a determination of whether the state-court decision was contrary to or an unreasonable application of the rule.

But during en banc review of Fields's case, the Sixth Circuit in a deeply divided decision reversed its prior precedent and concluded that the rule no longer satisfies the first step of § 2254(d)(1) review. Pet. App. 22a. Although the entire en banc court recognized that a jury's verdict must rest on the evidence developed at the trial, Pet. App. 19a, 40a, the majority determined that this Court "abrogated" the Sixth Circuit's prior decisions by subsequently interpreting § 2254(d)(1) to exclude general or abstract rules from qualifying as clearly established law. Pet. App. 22a. The majority further determined the rule cannot satisfy § 2254(d)(1)'s "clearly established" requirement because the rule was not a holding of any of this Court's cases on which Fields relied, including *Turner*, because in none of those cases did this Court consider the exact factual scenario this case presents: the jury's consideration of evidence in the jury room that unquestionably was not developed at the trial. Pet. App. 17a-19a. The majority thus concluded that Fields "failed to get past AEDPA's first step" and accordingly declined to conduct § 2254(d)(1) review, including the consideration of whether the state-court decision unreasonably applied the rule. Pet. App. 13a.

Fields sought review in this Court. While Fields's petition was pending, this Court was also considering the petition in *Andrew*, in which the circuit court likewise concluded that the general rule the petitioner relied on could not satisfy the first step of § 2254(d)(1) review. *Andrew*, 145 S. Ct. at 78. These two cases presented the same questions to this Court: whether a general rule of this Court can be considered a holding for purposes of § 2254(d)(1) and whether § 2254(d)(1)

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

In *Andrew*, this Court ruled that the circuit court's decision finding that the general or abstract rule at issue there could not satisfy AEDPA's "clearly established law" requirement was "wrong." *Id.* at 78. The Court ruled that § 2254(d)(1) does not exclude abstract or general principles from qualifying as clearly established law, and when this Court relies on a legal rule or principle to decide a case, that principle is a holding of this Court for purposes of AEDPA. *Id.* at 81-82. The Court remanded the case to the circuit court for a determination of whether the state-court decision unreasonably applied this Court's general rule. *Id.* at 83.

Andrew conclusively answered the questions presented in Fields, and the lower court's judgment directly conflicts with *Andrew*. Thus, the lower court's judgment cannot stand, and this Court should grant appropriate relief.

GROUNDS FOR REHEARING

Petitions for rehearing of an order denying certiorari generally are granted when a petitioner demonstrates "intervening circumstances of a substantial or controlling effect[.]" R. 44.2; *United States v. Ohio Power Co.*, 353 U.S. 98, 99 (1957) (finding that this Court has "consistently ruled that the interest in finality of

litigation must yield where the interests of justice would make unfair the strict application of [the Court's] rules."). These circumstances include when the "principles announced" in a subsequent decision of this Court, released shortly after the denial of certiorari in a prior case, shows that the judgment in the prior case "cannot stand." *Ohio Power Co.*, 353 U.S. at 98-99. Such intervening circumstances are manifestly present here.

In Fields's petition for certiorari, Fields presented the question of whether a general rule of this Court can satisfy the first step of § 2254(d)(1) review even though this Court has never applied the precise facts present in Fields's case to the rule. In other words, Fields's case asked this Court to decide whether a general rule of this Court can be considered a holding for purposes of § 2254(d)(1) and whether § 2254(d)(1) constrains a reviewing court to the specific facts in the case(s) establishing the rule.

This Court declined review of Fields's case, but shortly thereafter, in *Andrew*, this Court answered the questions Fields's case presented. These answers unequivocally show that the Sixth Circuit's judgment cannot stand. Under *Andrew*, the lower court's conclusion that Fields could not satisfy the first step of § 2254(d)(1) unquestionably was wrong. *Andrew*, 145 S. Ct. at 82 (finding that § 2254(d)(1) does not exclude abstract or general principles from qualifying as "clearly established law" and "[t]o the extent that the Court of Appeals thought itself constrained by AEDPA to limit [the decision of this Court on which the petitioner relied] to its facts, it was mistaken."). *Andrew* further shows that when a lower court commits

such an error and therefore precludes appellate review to which the petitioner otherwise was entitled, a remand to the lower court is appropriate. *See id.* at 83 (remanding because due to the circuit court's determination that no relevant clearly established law existed, the circuit court "never considered whether the state court's application of [the clearly established] law was reasonable.").

Fields is aware that this is an exceptional request, but the circumstances of this case are genuinely exceptional themselves and make the exercise of the available procedure of rehearing appropriate. To the extent that this Court wishes to consider the potential hardships present in this case, the balance of hardships decidedly weighs in Fields's favor. Granting the rehearing petition will cause no cognizable prejudice to the warden. On the other hand, denying the petition unquestionably will prejudice Fields, because the denial will perpetuate the preclusion of appellate review of a fundamental issue to which Fields otherwise would have been entitled but for the lower court's error. *See id.*[2]

A. Fields's petition for certiorari presented the same questions this Court resolved in *Andrew*.

At issue in *Andrew* was whether AEDPA excludes abstract or general principles from qualifying as "clearly established law." *Id.* at 82. A second and

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[2] The findings of the six judges of Sixth Circuit who reviewed Fields's claim under § 2254(d)(1) underscore this prejudice. Although the majority of the court below did not conduct § 2254(d)(1) review due to its determination that Fields could not satisfy the first step of that review, the six judges who did conduct this review determined that the jury's reliance on extrinsic evidence to decide this case violated Fields's Sixth and Fourteenth Amendment rights. Pet. App. 43a-45a, 62a-63a. These judges further determined that habeas relief was warranted. Pet. App. 46a-51a, 64a-68a.

related issue was whether AEDPA constrains a reviewing court to the specific facts in the case(s) establishing the rule. *Id.*

As Fields's petition shows, both these questions are present in Fields's case. Like the circuit court in *Andrew*, the court below concluded that Fields could not satisfy the first step of § 2254(d)(1) because he relied on a general rule of this Court and this Court had never applied the precise facts of Fields's case to the rule. Pet. App. 13a, 17a-19a, 22a. In fact, in Fields's case, there is not even any dispute about whether this Court has clearly established the rule at issue. Rather, the dispute is about whether AEDPA permits such a rule to be considered a holding for the purposes of § 2254(d)(1) review.

After all, the warden agrees that "it is clearly established that jurors must decide a case based on the evidence at trial." Warden's CA6 Br. at 21. Likewise, every federal judge who has considered this habeas case, including the entire Sixth Circuit en banc panel, has recognized that a jury's verdict must rest on the evidence developed at the trial. Pet. App. 19a (recognizing that the rule requiring a jury's verdict to rest on "the evidence developed at the trial" may well go back centuries); Pet. App. 40a ("It is clearly established that jurors may not consider extrinsic evidence in reaching their verdict."); *see also* Pet. App. 60a-62a (finding that the Supreme Court has clearly established that the jury's conclusions must be induced only by evidence and argument in open court and the jury's consideration of extrinsic evidence may violate the Fifth and Sixth Amendments); Pet. App. 92a ("It is, of course, true that jurors should decide guilt or innocence based on the evidence

presented. The Supreme Court has made that point quite clear."). It is also undisputed that during deliberations, the jury—in assessing the Commonwealth's theory of guilt—considered physical evidence not presented at trial. Pet. App. 45a.

Thus, the issue in *Fields* is not whether this Court has established the general rule in question. Everyone agrees that this Court has established that rule. Rather, as in *Andrew*, the disputed issues are whether the rule is too general to qualify as a holding for the purposes of AEDPA and whether AEDPA constrains a reviewing court to the specific facts in the case(s) establishing the rule. Fields's petition squarely presented these questions to the Court.

B. Under *Andrew*, the lower court's judgment cannot stand.

Andrew shows that, contrary to the lower court's conclusion, this Court has never abrogated the Sixth Circuit's prior rulings permitting general legal principles to qualify as clearly established law for the purpose of § 2254(d)(1) review. *Andrew* specifically rejected the notion that this Court's opinions issued after *Doan* (such as *Lopez v. Smith*, 574 U.S. 1 (2014) or *Nevada v. Jackson*, 569 U.S. 505 (2013)) excluded general or abstract rules from qualifying as clearly established law for the purposes of § 2254(d)(1) review. Like the en banc majority in the present case, the two dissenting judges in *Andrew* argued that the rule at issue there framed this Court's precedents at too high a level of generality. *Compare Andrew*, 145 S. Ct. at 83, 88 (Thomas, J., dissenting) with Pet. App. 18a, 22a. However, the *Andrew* majority rejected this argument and held that so long as the general rule at issue is

a holding of the Supreme Court, the general rule constitutes clearly established law. *Andrew*, 145 S. Ct. at 82.

Andrew also shows that the lower court erroneously concluded that the general rule could not be a holding for the purposes of § 2254(d)(1) review because this Court has not applied the rule to the specific facts present in Fields's case. As this Court explained, "[t]o the extent that the Court of Appeals thought itself constrained by AEDPA to limit [the decision of this Court on which the petitioner relied] to its facts, it was mistaken." *Id.* Rather, "when this Court relies on a legal rule or principle to decide a case, that principle is a 'holding' of this Court for purposes of AEDPA." *Id.* at 81. For example, the Court noted, even though the Eighth Amendment principle that a sentence may not be grossly disproportionate to the offense arises out of a "thicket of Eighth Amendment jurisprudence" and lacks "'precise contours[,]'" this general rule nonetheless is "'clearly established' under § 2554(d)(1)[.]" *Id.* at 82 (quoting *Lockyer v. Andrade*, 538 U.S. 63, 72 (2003)). Accordingly, AEDPA does not constrain a reviewing court to the specific facts in the case(s) establishing the rule. *Id.*

Andrew further establishes that it is beyond question that this Court, particularly in *Turner*, relied on the general rule requiring that the jury consider only the evidence presented at trial. In *Turner*, the petitioner alleged that the continual association throughout the trial between the jurors and two key witnesses for the prosecution, who also were the deputy sheriffs in charge of the jury throughout the petitioner's trial, violated the petitioner's constitutional

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

This Court's reliance on this rule in *Turner* shows that it was "indispensable to the decision in [*Turner*]. That means it was a holding of this Court for purposes of AEDPA." *Andrew*, 145 S. Ct. at 81. Under *Andrew*, the lower court's conclusion to the contrary unquestionably was wrong. And as in *Andrew*, this error impermissibly precluded the § 2254(d)(1) review to which Fields was entitled: whether the state court decision was an unreasonable application of this rule. *See id.* at 83. Thus, under *Andrew*, the lower court judgment cannot stand.

Both *Andrew* and *Fields* were pending before this Court at the same time, and both cases presented the same questions this Court ultimately decided in *Andrew*. The interests of justice recognize that common claims should not be treated differently merely because of a quirk of time. *See, e.g., Gondeck v. Pan. Am. Airways, Inc.*, 382 U.S. 25, 26-27 (1965) (finding that the interests of justice required granting a second and out-of-time petition for rehearing filed more than

three years after the denial of certiorari when a new decision of this Court showed that the circuit court's ruling was wrong and the petitioner stood alone in not receiving the benefit of the new ruling); *Ohio Power Co.*, 353 U.S. at 98-99 (finding that the interests of justice required granting a petition for rehearing continued from the previous term when the Court's new rulings in two other cases, issued approximately eight months after the denial of certiorari, showed that the judgment below could not stand); *see also Hawkins v. United States*, 543 U.S. 1097 (2005) (vacating denial of certiorari, granting petition for rehearing, and remanding to the circuit court for further consideration in light of new decision of the Court issued six months after the denial of certiorari). Had this Court decided Fields's case concurrently with *Andrew*, Fields at minimum would have received the same relief: remand to the lower court for consideration of whether the state court's application of the rule was reasonable. The balance of equities weighs decisively in Fields's favor, and this Court should grant appropriate relief.

CONCLUSION

For the reasons presented above and in the petition for certiorari, this Court should grant the petition for writ of certiorari, vacate the lower court's judgment, and remand for an appropriate disposition in light of *Andrew*.

Respectfully submitted,

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PROOF OF SERVICE

Daniel E. Kirsch, counsel for petitioner and a member of the Bar of the United States Supreme Court, hereby certifies pursuant to Rule 29.5(b) of the Supreme Court Rules that, on August 6, 2025, he deposited with FedEx in Kansas City, Missouri, for overnight delivery, the original and 10 copies of the Petition for Rehearing, addressed to Mr. Scott S. Harris, Clerk, United States Supreme Court, 1 First Street N.E., Washington, DC 20543, and that he forwarded one copy of the motion with FedEx standard delivery to Mr. Matthew F. Kuhn, Solicitor General, Office of the Kentucky Attorney General, 700 Capital Avenue, Suite 118, Frankfort,

Kentucky 40601. These documents were also electronically served on opposing counsel at: Matt.Kuhn@ky.gov.

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