No. 23 - 7206

IN THE
SUPREME COURT OF THE UNITED STATES

DAVID EUGENE MATTHEWS

Petitioner

v.

LAURA PLAPPERT, INTERIM WARDEN

Respondent

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

Reply to Brief in Opposition to Petition for a Writ of Certiorari

CAPITAL CASE

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Reply

Devoting nearly half her BIO to incorrect factual assertions irrelevant to the Sixth Circuit's decision and to the questions presented, the Warden obfuscates the straight-forward questions presented.[1] It is clear that the Sixth Circuit applied its own newly developed standard for determining whether a petition is successive, which differs from this Court's long-standing abuse-of-the-writ doctrine and discussion of that in *Banister v. Davis*, 590 U.S. 504 (2020). The Warden does not dispute that the Sixth Circuit utilized the new standard it adopted months earlier in *In re Hill*, 81 F.4th 560, 569 (6th Cir. 2023)).

Rather, the Warden asserts the abuse-of-the-writ doctrine is not the exclusive means to determine whether a petition is successive, and thus courts can create and apply their own standards, even if doing so leads to a different result than would occur under the abuse-of-the-writ doctrine. BIO at i (framing the question presented as "[w]hether the abuse-of-the-writ doctrine is the exclusive threshold inquiry to determine if a habeas petition is second or successive") & 8 (*Banister* "did not endorse the abuse-of-the-writ doctrine as the exclusive, threshold inquiry with regard to

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[1] For example, the Warden asserts that the underlying legal issue within Matthews' habeas petition was rejected in a prior petition, and the district court granted discovery under the mistaken belief that Dr. Chutkow wrote his letter before the penalty phase. The district court did not agree with the Warden on any of this and did not find the second petition successive for that reason. Nor did the Sixth Circuit, which had shortly beforehand created its own rule that only three types of petitions are not successive. Being none of those, the court held Matthews' petition was successive. As such, everything the Warden says before her reasons to deny the petition is irrelevant and should not deter the Court from granting certiorari to resolve the important issue the Sixth Circuit raised by applying its newly concocted and incorrect standard as the basis to deny relief.

whether a petition is second or successive."). By so arguing, the Warden heightened the basis for certiorari. After all, this Court has routinely reversed the Sixth Circuit when it has disregarded this Court's more general standard in the AEDPA context, in favor of a standard the Sixth Circuit concocted. *See, e.g.*, *Parker v. Matthews*, 567 U.S. 37 (2012). That is exactly what the Sixth Circuit did here and within *Hill* on a matter that occurs often. The Court should therefore again reverse the Sixth Circuit for its failure to follow this Court's AEDPA precedent.

Whether the Sixth Circuit's decision, and thus its circuit precedent, conflicts with this Court's decades of precedent that the abuse-of-the-writ doctrine is how to determine whether a Petition is successive, is an important question underscored by the Warden's BIO. The Warden's BIO arguments also create an important additional issue: whether a federal court has free reign to adopt a different and narrower means to determine whether a petition is successive, thereby circumventing this Court's rulings and doctrines. That matter has large-scale significance that cuts to the heart of this Court's authority over lower federal courts, and the continued validity of the doctrine that this Court, and only this Court, can overrule, or otherwise abrogate, its own precedent. *Roper v. Simmons*, 543 U.S. 551, 594 (2005); *Agostini v. Felton*, 521 U.S. 203, 207 (1997). The Warden's argument, and the Sixth Circuit's ruling, undermines that, making it imperative that this Court grant certiorari.

Without this Court's intervention, the Sixth Circuit will continue to apply a standard that vastly differs from the abuse-of-the-writ doctrine; openly flaunting the Court's governing rulings in the habeas context—again. This time, it is as to how to

determine whether a Petition is successive instead of when relief is available under 28 U.S.C.§2254(d). This is not a one-time-deal. In just a matter of a few months, the Sixth Circuit concocted out of thin air its different (or replacement) doctrine, and then promptly applied it to this case and a subsequent case. *See In re Gutierrez*, 2024 WL 3333932 (6th Cir.) (Petition for Writ of Certiorari pending for Sept. 30th conference, No. 24-5). Without intervention, the Sixth Circuit will continue to reject this Court's abuse-of-the-writ doctrine, which properly served the function of limiting habeas petitions without unnecessary delay, while avoiding a situation in which every claim (even frivolous ones) would need to be raised to preserve the issue in case the law later changes to make the claim viable. Allowing the Sixth Circuit precedent to stand not only undermines this Court's authority—as explained within the Petition—it also undermines the AEDPA's purpose and creates additional delay.

Until the Sixth Circuit's ruling in *Hill* and in this case, the abuse-of-the-writ doctrine had been consistently applied throughout the circuit courts of appeals, without any question (or doubt) as to its continued applicability, outside of the Fifth Circuit's ruling in *Banister*. There, this Court made clear that the Fifth Circuit was wrong: §2244(b) addressed how to handle a Petition that has already been determined to be successive, not how to determine whether a Petition is successive; thus, §2244(b) "did not redefine what qualifies as a successive petition." *Banister*, 590 U.S. at 515. Nor was it intended to, because the "AEDPA offers no such indication that Congress meant to change the historical practice" of how a court determines whether a Petition is successive. *Id.* Thus, it remains that whether a Petition is successive or not comes

down to "whether a type of later-in-time filing would have 'constituted an abuse of the writ, as that concept is explained in [this Court's] pre-AEDPA cases.'" *Id.* at 512 (quoting *Panetti v. Quarterman*, 551 U.S. 930, 947 (2007)). Despite *Banister*, the Sixth Circuit abandoned this doctrine and redefined what qualifies as a successive (or not successive) Petition.

Shockingly, without any detailed explanation or supporting law, the Warden now argues the Sixth Circuit was permitted to do so because, according to the Warden, the abuse-of-the-writ doctrine has become only guidance, leaving the Sixth Circuit free to do whatever it wants as to a standard for determining whether a Petition is successive. The Warden cannot be correct, but, at this stage, this Court need not decide whether Matthews or the Warden are correct.

What matters now is the parties agree the Sixth Circuit abandoned the abuse-of-the-writ doctrine, and the Warden argues that is acceptable. That should be news to most courts, including this one, who has always considered the abuse-of-the-writ doctrine to be the exclusive, binding means to address the matter. If this Court does not address whether what the Sixth Circuit did was unacceptable, and whether it is incompatible with *Banister*, the Court's long-standing abuse-of the-writ doctrine caselaw will be open to interpretation and revision by every circuit.

Failing to grant certiorari to resolve this would lead to additional litigation, undermining the AEDPA's purpose of streamlining litigation. It would also create further havoc and confusion as courts and litigators deal with both the Sixth Circuit's newly concocted legal standard and the Warden's novel concept that each federal

court of appeals has free reign to adopt a different standard for determining whether a Petition is successive or not. That would create the untenable situation whereby whether a Petition can be litigated could turn entirely on which circuit court of appeals has jurisdiction, with some circuits applying a more lenient standard than the consistent and easily workable abuse-of-the-writ doctrine that has been in use for many decades. All of this will inevitably lead to habeas litigation lasting longer than it would if the abuse-of-the-writ doctrine remains the exclusive means to determine whether a habeas petition is successive. The Court should not accept the Warden's position and should not allow the Sixth Circuit's newly developed precedent to stand. Certiorari should be granted.

Respectfully submitted,

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