No. 24-6420
(Capital Case)

IN THE

Supreme Court of the United States

STEPHEN C. STANKO, Applicant/Petitioner

v.

BRYAN STIRLING, Director, South Carolina Department of Corrections, and Lydell Chestnut, Deputy Warden Broad River Correctional Institution, Respondents

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Pursuant to Rule 15.6, Applicant/Petitioner Mr. Stanko, hereby replies to Respondents' Brief in Opposition ("Opp.") to Mr. Stanko's Petition for Writ of Certiorari ("Pet'n").

Respondents reproduce the Fourth Circuit's mischaracterization of the 18 U.S.C § 3599(f) issue as one that is a matter of "the district court's denial of Mr. Stanko's Rule 59(e) motion," which "arose from the district court's earlier grant of his request for funding for brain imaging and expert analysis under § 3599(f)." *Stanko v. Stirling*, 109 F.4th 681, 699 (4th Cir. 2024). This mischaracterization appears to stem from Stanko's broad issue in his COA that the district court erroneously denied the motion to alter or amend the judgment. Opp. at 15 (citing COA4 49, Issue 2). Regardless of the source of the confusion, this conflation of the § 3599(f) issue with disposition of the Rule 59(e) motion led to application of an inapposite test and ignores authority cited in the Petition firmly establish that a COA is not required because this issue on appeal did not relate closely to the merits of the underlying petition for habeas corpus.

Respondents similarly fail to engage meaningfully with the facts and arguments related to the egregious actual self-interest conflict of trial counsel William Diggs. On the merits, Respondents argue that there is no clearly established federal law that actual conflicts of interest that adversely affect the representation are "unwaivable." Opp. at 22. They ignore clearly established law that there are only two elements in actual conflict cases: actual conflict and adverse effect on the

representation. Pet'n at 36–40. Respondents also fail to engage in the Petition arguments that even if an actual conflict which adversely affects the representation is waivable, it was not waived in this case in which Mr. Stanko, a defendant with a history of brain damage and illness, was never properly advised on the consequences of waiver. Opp. at 24; Pet'n at 40–41.

I. RESPONDENTS DEFEND THE FOURTH CIRCUIT'S MISCHARACTERIZATION OF MR. STANKO'S § 3599(F) DUE PROCESS ISSUE, ENDORSING MISAPPLICATION OF INAPPOSITE LAW TO DETERMINE WHETHER A COA IS REQUIRED.

The Court of Appeals' boiled down characterization was that it "denied a [COA] on this [Rule 59] issue, but Stanko insists he does not need one to go forward." *Stanko*, 109 F.4th. at 699–700. The court below does not specify this denial pursuant to 28 U.S.C. § 2253(c)(1) and elides any discussion of the controlling case of this Court on the question of whether a COA is needed, *Ayestas v. Davis*, 584 U.S. 28 (2018), despite that opinion's refinement of the establishment in *Harbison v. Bell* that a COA is not required for issues that do not comprise "the final order in a habeas corpus proceeding." 556 U.S. 180, 182 (2009). Respondents seem to identify the element of the COA application most likely in question (*supra*), wherein Stanko enumerated the district court's broad "[f]ailing to correct its own errors" in "denying Mr. Stanko's Rule 59(e) motion." Opp. at 15. That facet of the COA application, however, in no way cast the deprivation of the § 3599(f) specialist services as a merits issue—which it plainly is not—and thereby one necessitating the granting of a COA in relation to a merits determination of the district court. *Harbison*, 556 U.S. at 183 (cited in *Stanko*, 109 F.4th at 700).

While Respondents now invoke the Fourth Circuit's phrasing of the COA status, *id.* (quoting *Stanko*, 109 F.4th at 700 ("Stanko insists he does not need one to go forward.")), their current position departs from Respondents' understanding of the § 3599(f) question manifested throughout the merits briefing in the Court of Appeals, wherein they never argued that Stanko had insisted, let alone that he needed to insist, that the § 3599(f) deprivation was tied to the district court's failure to grant the Rule 59(e) motion. Rather, Stanko directly argued, in "Issue 1" of his merits brief (as one of two "Global Issues") that the district court's denial of his petition deprived him of the entitlement to particular specialist services that the lower courts "had already deemed 'reasonably necessary' under the standard governing 18 U.S.C. § 3599(f)."

Put simply, the issue on appeal is that the district court erred when it granted summary judgment without affording Stanko the opportunity to use previously authorized specialist services.[1] The Fourth Circuit's mischaracterization of this issue as one involving the Rule 59(e) motion led to misapplication of an inapposite test (whether the Rule 59(e) motion was "denied" or "dismissed") as a substitute for relying on firmly established precedent that disputes involving § 3599(f) funding are not sufficiently related to the underlying habeas petition as to require a COA pursuant to § 2253(c).

[1] Respondents falsely claim "Stanko had failed to provide the district court with any explanation for the delay in obtaining high resolution medical scans. Opp. at 14–15. In fact, the District Court was privy to *ex parte* filings and ultimately granted the transport order for the imaging to be conducted on March 3, 2024, just three weeks before it granted summary judgment. Pet'n at 35–36.

The Fourth Circuit's analysis of the § 3599(f) deprivation and § 2253(c) suffers from two points of confusion that Respondents' arguments only compound.

A. A Timely Filed Rule 59(e) Motion Cannot Be Construed as an Improper Second or Successive Habeas Petition.

First, the Court of Appeals confuses the function of Rule 59 in relation to habeas corpus. As this Court has recently explained, Rule 59(e) affords a district court the means to "'reconsider the grant or denial of habeas corpus relief' in the same way it could review any other decision." *Banister v. Davis*, 590 U.S. 504, 513 (2020) (quoting *Browder v. Director, Dept. of Corrections of Ill.*, 434 U.S. 257, 270 (1978)). *Browder* has long provided that a motion to alter or amend under Rule 59(e) "'suspend[ed] the finality' of any judgment, including one in habeas—thus enabling a district court to address the matter again." *Banister*, 590 U.S. at 513 (quoting *Browder*, 434 U.S. at 270). This straight-forward understanding of Rule 59's workings further clarifies the distinction between reconsideration motions under that rule and motions to reopen pursuant to . Civ. P. 60(b). As *Banister* put it amid a determination of whether Rule 59 functioned in habeas corpus as a second or successive application generally proscribed by 28 U.S.C. § 2244(b), "Rule 60(b) differs from Rule 59(e) in just about every way that matters to the inquiry here." 590 U.S. at 518. Justice Kagan, writing for the Court explained:

> Rule 59(e) derives from a common-law court's plenary power to revise its judgment during a single term of court, before anyone could appeal. By contrast, Rule 60(b) codifies various writs used to seek relief from a judgment at any time after the term's expiration—even after an appeal had (long since) concluded. Those mechanisms did not (as the term rule did) aid the trial court to get its decision right in the first instance;

> rather, they served to collaterally attack its already completed judgment.

Banister, 590 U.S. at 518–19 (citations omitted). Further per *Banister*, any "ruling on the Rule 59(e) motion merges with the prior determination, so that the reviewing courts takes up only one judgment." 590 U.S. at 509 (quoted in *MSP Recovery Claims, Series LLC v. Lundbeck LLC*, 130 F.4th 91, 112 (4th Cir. 2025)).

The Fourth Circuit's approach in *Stanko*, as Respondents have recapitulated it, fails to absorb *Banister*'s articulation of the relationship between the distinct Rule 59(e) and Rule 60(b) procedures, instead grafting a Rule 60(b) analysis from *Reid v. Angelone*, 369 F.3d 363 (4th Cir. 2004), and *United States v. McRae*, 793 F.3d 392, 399 (4th Cir. 2015),[2] onto its review of the district court's final judgment denying the § 2254 action simply because Stanko took the routine step of moving for reconsideration pursuant to Rule 59(e). Opp. at 16. That reconsideration motion simply could not transform the § 3599(f) issue into a merits decision needing a COA grant for consideration. Yet the Court of Appeals shifted the framework for any contemplation of the specialist funding deprivation to the decision on the Rule 59(e)

[2] In *McRae*, after summary judgment denying his habeas petition, and denial of a timely filed "petition for rehearing and rehearing en banc, and a writ for certiorari," the petitioner filed a Rule 60(b) motion. *McRae* 793 F.3d at 396. To determine whether disposition of the Rule 60(b) motion was subject to the COA requirement in § 2253, the Fourth Circuit noted that whether it was denied or dismissed may be helpful because "[w]hile a *denial* of a Rule 60(b) motion may be sufficiently connected to the merits of the underlying habeas proceeding, a *dismissal* is not."). *Id.* at 399. Here, by contrast, the Fourth Circuit applies that rule to the disposition of Stanko's Rule 59(e) motion, not a subsequently filed Rule 60(b) motion.

Further, even if a Rule 60(b) motion were at issue in this case, the mere fact of a denial would not be dispositive. *McRae* only holds that dismissal means it could not possibly be sufficiently connected to require a COA, but a denial means it may or may not be. Respondents incorrectly reason that denial automatically means disposition was sufficiently related to the underlying merits without further analysis. Opp. at 16.

motion rather than the denial of the habeas corpus petition and, in the process, folded into its analysis the inapposite Rule 60(b) precedents noted above. This approach not only utterly misunderstands the distinction between Rule 59 and Rule 60, it split away that Court of Appeals from the other circuits that have spoken to the relationship of Rule 59(e) and § 2254(c). Pet'n at 32-33.

B. Conflation of the § 3599(f) Issue with Rule 59(e) Confuses the Timeline, Inaccurately Imputing the District Court's Reliance on *Shinn v. Ramirez* to its Pre-dating Denial of Stanko's Opportunity to Use Authorized Specialist Services.

Second, the Court of Appeals muddled the timeline governing the § 3599(f) analysis. As set forth in the Petition, the district court's § 3599(f) deprivation occurred well before this Court decided *Shinn v. Ramirez*, 596 U.S. 366 (2022). Pet'n at 34–35. Respondents bolster the Court of Appeals' analysis wrongly situated within the district court's Rule 59(e) posture, defending the court's reconsideration decision on the basis that *Shinn* would render inadmissible any new evidence to emerge from the § 3599(f) specialist services. Opp. at 16–17. That argument cannot justify the initial decision to deny Stanko's habeas petition. More critically, the admissibility of evidence developed via § 3599(f) raises a separate question from the entitlement to the requisite resources for development in the first place. While *Shinn* extended *Cullen v. Pinholster*, 563 U.S. 170 (2011), in relation to 28 U.S.C. § 2254(e)(2), it could not have impaired the statutory entitlements under § 3599(f). Pet'n at 34. Respondents conclusorily assert that stay and abeyance of district court proceedings would not have been available to Stanko. Opp. at 17–18. That speculation is

unhelpful, as Respondents overstate the impact of this post-judgment authority on foreclosing review. Pet'n at 31, 36 n.13.[3]

II. RESPONDENTS FAIL TO ENGAGE MEANINGFULLY WITH THE EGREGIOUS FACTS AND LAW APPLICABLE TO DIGGS'S ACTUAL CONFLICT WHICH ADVERSELY AFFECTED THE REPRESENTATION AND RELEVANT CIRCUMSTANCES OF STANKO'S ALLEGED WAIVER.

As an initial matter, Respondents reargue the procedural bar theory accepted by the state supreme court that the conflict issue was not preserved because either Diggs failed to object to his own self-interest conflict or Stanko failed to act pro se to object to the conflict despite his known brain anomalies. Opp. at 18. This theory is so outlandish neither the district nor circuit court credited it. *Cuyler v. Sullivan*, 446 U.S. 335, 350 (1980) (an actual conflict which adversely affected the representation even when the defendant "raised no objection at trial").

On the merits, Respondents fail to address the Petition arguments showing that "actual conflict and adverse effect" are the clearly established test for reversible Sixth Amendment violation and that attorney self-interest conflicts have been found to be per se unwaivable. Pet'n at 36–37. Instead, they rely on a theory that Stanko waived the conflict, without addressing the lack of sufficient evidence of knowing, voluntary, and intelligent waiver. Opp. at 19–22.

[3] Similarly, Respondents, like the Fourth Circuit, rely on *Shoop v. Twyford*, 596 U.S. 811, 820 (2022), (Opp. at 17), without Stanko's arguments showing it is inapposite to the question at issue—*viz.*, the propriety of depriving Stanko of completing the authorized specialist services which is likely to generate evidence admissible in the first instance in available state court proceedings, including clemency. Pet'n at 34–35 (citing, inter alia, *Harbison*, 566 U.S. at 183–87.

A. Clearly Established Law Has Held that An Actual Self-Interest Conflict Which Adversely Affects the Representation Requires Reversal.

The Respondents ignore clearly established law in *Holloway v. Arkansas*, 435 U.S. 475 (1978),[4] and *Cuyler v. Sullivan*, 446 U.S. 335 (1980). This Court recently clarified that "clearly established federal law" is any holding of this Court, even when it is applied to very different case facts. *Andrew v. White*, 145 S. Ct. 75, 81–83 (2025). Instead of applying *Holloway* and *Cuyler*, Respondents rely on inapposite precedent to bolster a position contrary to the one the State adopted in characterizing Diggs's conflict as "non-waivable." App.172. These authorities are misdirected and rely on cases of "potential conflicts" or even the "appearance of impropriety" rather than actual conflicts which adversely affect the representation.[5]

For example, Respondents endorse the Fourth Circuit's reliance on *Montejo v. Louisiana*, 556 U.S. 778, 786 (2009) (Opp. at 22 n.4), which is a case modifying the rule from *Michigan v. Jackson*, 475 U.S. 625 (1986) (holding that a defendant who asserts the right to counsel at arraignment may not be questioned by police without counsel present regardless of subsequent waiver of the right to have counsel present),

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[4] The Respondents repeatedly rely on a distortion of *Holloway*, saying that the Court "recognize[d] conflict may be waived." Opp. at 23, 24. They rely on footnote 5 of the opinion which states "a defendant may waive his right to the assistance of an attorney *unhindered by a conflict of interests*." *Holloway*, 435 U.S. at 483 n.5 (emphasis added). Those were not the circumstances in *Holloway, id.*, nor in this case, where Diggs's actual conflict is undisputed.

They fail to mention *Cuyler* at all. *See* Opp. at ii.

[5] This Court has recognized that because the potential for conflict "inheres in almost every instance of multiple representation," the trial court has a duty to provide the opportunity to inquire into whether such "potential conflicts impermissibly imperil [the defendant's] right to a fair trial. Cuyler, 446 U.S. at 348, But an "actual conflict of interest means "precisely a conflict that affected counsel's performance—as opposed to a mere theoretical division of loyalties." *Mickens v. Taylor*, 535 U.S. 162, 171 (2002). Here, it is uncontroverted that Diggs's conflict of interest was actual.

by concluding that in states where arraignment counsel is appointed passively (that is, with no affirmative assertion by the defendant), the defendant may waive the presence of counsel at subsequent police interrogation. Significantly, *Montejo* does not involve an actual or even potential conflict of interest. The Fourth Circuit claims the *Montejo* holding is "analogous" without spelling out how a question ultimately about admissibility of a confession or waiver of counsel "unhindered by conflicts" (*supra* note 4) addresses the rule that reversal is required when there is an actual conflict that adversely affected the representation.

Respondents also cite *Wheat v. United States*, 486 U.S. 153, 162–63 (1988). Opp. at 22. But *Wheat* held that a court may refuse to accept waiver of potentially conflicted counsel and affirmed denial of the defendant's motion to substitute counsel of his choice (who was representing a co-defendant who entered a guilty plea at arraignment but was then still free to withdraw the plea). Respondents fail to say how this authority is relevant at all. This Court's holding was predicated on the observation that the right to choose counsel is limited, and although representation of co-defendants is "'not per se violative of constitutional guarantees of effective assistance of counsel,'" courts should strive to avoid such "possible conflicts of interest." *Wheat*, 486 U.S. at 160. Contrary to Respondents' position here, *Wheat* rejected that there is a "flat rule . . . in favor of counsel of choice," which says "the provisions of waivers by all affected defendants cures any problems created by the multiple representation." *Id.*

Respondents also ignore the important difference between an attorney self-interest conflict and potential conflicts arising from simultaneous representation of co-defendants. The Petition cites authorities showing a sharp demarcation: self-interest conflicts are actual while simultaneous representation of co-defendants are potential conflicts which may, at least in some circumstances, be waived. Pet'n at 37–38 (citing, inter alia, *United States v. Schwarz*, 283 F.3d 76, 96 (2d Cir. 2002)). Respondents fail to address this authority at all.

B. Rehearsal of the Trial Court Waiver Proceedings Do Not Address Stanko's Known Brain Damage or Show He Was Properly Advised.

Assuming the actual self-interest conflict was waivable—contrary to the State's position pre-trial, an emphatic view that the Fourth Circuit neglected to acknowledge—Respondents chiefly rely on the hearings in the trial court discussing the undisputed conflict of interest and conclude that Stanko's assertions that he wanted to keep Diggs on was a knowing, intelligent, and voluntary waiver of the conflict. Opp. at 19–20.

These proceedings fail to acknowledge at all that Stanko was by then known to have a highly anomalous brain which may have impaired his ability to waive the conflict. The proceedings Respondents rely on should have raised red flags on this point. Stanko said, for example, that he was satisfied with Diggs's representation in the Georgetown County case (Opp. at 19),[6] but he also raised ineffective assistance of counsel claims related to it and later vacillated on persisting with such claims. He

[6] The District Court found it significant that at this hearing, Diggs was not in the courtroom, as if a defendant's right to the effective assistance of counsel can be healed by treating the defendant as pro se by carrying on critical proceedings without the assistance of counsel at all.

also told the Horry County court he expected Diggs would learn from his mistakes and substantively change the representation (App.125), but Diggs assured the court he would not, informing them that he intended to rely on the same specialists and would not seek funds to conduct mitigation investigation in this case (App.113–114).[7]

Neither Diggs nor the court nor any conflict-free counsel advised Stanko as to the consequences of waiver: explaining Diggs's personal reputational interest in doubling down on his untenable NGRI defense which entailed presenting Stanko to the jury as a psychopathic monster, that such an approach depended on Diggs's overruled motions challenging the constitutionality of the statute prohibiting this type of defense, or that this defense was far outside the professional norms of capital defense representation. At bottom, the hearings, discussed in greater detail in the Petition (at 16–20), merely elicited that Stanko liked Diggs.

Respondents' recitation of discussions of the conflict by different judges fails to show how waiver of an actual conflict of interest based on the attorney's own self-interest that adversely affected the representation was knowing, voluntary, and intelligent.

III. CONCLUSION

For the foregoing reasons, Applicant/Petitioner Mr. Stanko, through undersigned counsel, respectfully requests that this Court grant the petition for writ

[7] The State also noted that Diggs "intends to offer a similar defense and similar mitigation utilizing the same experts from the companion case" in its motion challenging the "non-waivable conflict." App.172–173.

of certiorari and either call for briefing and oral argument or summarily reverse the opinion and remand for further proceedings.

Respectfully submitted,

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