No. 24-6426

IN THE

SUPREME COURT OF THE UNITED STATES

CARLIN U. POWELL – PETITIONER

VS.

JAY FORSHEY, WARDEN – RESPONDENT(S)

ON PETITION FOR WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

"PETITION FOR REHEARING" Rule 34.1 (a)(e).

Carlin U. Powell #751336A
Noble Correctional Institution
15708 McConnelsville Road
Caldwell, Ohio 43724
PROSE

OHIO ATTORNEY GENERAL
Criminal Justice Section
Section Code 423000
30 E. Broad St. 23rd Fl.
Columbus Ohio, 43215

QUESTION(S) PRESENTED I.

GROUND ONE: It is unconstitutional to allow state witnesses to commit perjury, through the subornation of perjury, as well as the prosecutorial misconduct in tampering with evidence.

GROUND TWO: Trial counsel provides ineffective assistance of counsel when he failed to investigate evidence in the case being brought against his client.

GROUND FOUR: State of Ohio is in violation of "Treaty" pursuant the "Interstate Agreement on Detainers Act," O.R.C.2963.30. (IADA). Article III. (a), and IV. (c), V. (f). Article 1, 10, U.S. Constitution. Violation of VI, and IVX Amendments of U.S. Constitution. And USCS. Const. Art. VI. Cl. 2.

LIST OF PARTIES

"Cuyahoga County Prosecutors Office Officers: "Edward Fadel," "Mary Frey," and "Nichole DiSanto.

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RELATED CASES III.

Powell v. Ohio, 2017 U.S. Dist. LEXIS 60810, 2017 WL 1422846 (N.D. Ohio, Apr. 21, 2017)

State v. Powell, 2020-Ohio-3887, 2020 Ohio App. LEXIS 2796, 2020 WL 4370195 (Ohio Ct. App...

State v. Powell, 2021-Ohio-2440, 2021 Ohio App. LEXIS 2399, 2021 WL 3015308 (Ohio Ct. App., Cuyahoga County, July 15, 2021)

No. 24-6426 **IV.**

IN THE

SUPREME COURT OF THE UNITED STATES

CARLIN U. POWELL – PETITIONER

VS.

JAY FORSHEY, WARDEN – RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached "Petition for Rehearing" Rule 34.1 (a) (e) without prepayment of costs and proceed *in forma pauperis.* Petitioner has previously been granted leave to proceed in forma pauperis in the following court(s):"

"U.S. District Court Northern Division" Case No. 1:21-CV-01591-JGC

"U. S. Court of Appeals for the Sixth Circuit" Case No. 24-3460

X Carl Powell

Carlin U. Powell #751336A
Noble Correctional Institution
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TABLE OF AUTHORITIES CITED V.

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STATUES AND RULES VI

IN THE

SUPREME COURT OF THE UNITED STATES

"PETITION FOR REHEARING" Rule 34.1(a)(e).

Petitioner respectfully prays that a rehearing of issues to review the judgement below.

OPINIONS BELOW

For cases from Federal Courts, the opinion of the United States District Court, is reported at "*Powell v. Forshey*, 2024 U.S. Dist. LEXIS 83029.

JURUSDICTION

For cases from Federal Courts, the date on which the United States Court of Appeals for the Sixth Circuit decided my case was November 18, 2024.

The jurisdiction of this court is invoked under 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOVLED

U.S. Const., amend. V, § 1.

U.S. Const., amend. VI, § 1.

U.S. Const., amend. IVX, § 1.

WHY THIS CASE IS ONE OF GREAT GENERAL INTEREST

INVOLVING A SUBSTANTIAL CONSTITUTIONAL QUESTION

The known use of perjured testimony, withholding, suppressing, and the tampering of evidence, done to attain a conviction is a violation of the "United States Constitution." This such conduct clearly prevents petitioner's constitutional right to present a complete defense, and as well as allow rulings and orders clearly contradictive of the "United States Supreme Court" precedence, to be journalized as law. The interest in finality of litigation must yield where the interests of justice would make unfair the strict application of the rules of the "United States Supreme Court."

I. STATEMENT OF CASE AND FACTS

In current case at bar, "Cuyahoga County Prosecutors" "Edward Fadel," and "Mary Frey." knowingly used perjured testimony, to obtain this conviction, through subornation of perjury of "States" three witnesses. See PageID#:1397 (14-25 of Tr.548), PageID#:1488 (3-20 of Tr.639) See PageID#:1766 (14-25 of Tr.909), and, PageID#:1795 (1-8 of Tr.938). These "Cuyahoga County Prosecutors," then suppressed critical evidence favorable to petitioner, pursuant *"Brady."* Moreover, a state courts decision is **'contrary to'.... clearly established law if it applies a rule that contradicts the governing law set forth in [Supreme Court] cases' or if it 'confronts a set of facts that are materially indistinguishable from a decision of the [Supreme] court, and nevertheless arrives at a result different from [this] precedence**. *'''Mitchell v. Esparza*, 540 U.S. 12, 15-16, 124 S. Ct. 7, 157 L. Ed. 2d 263 (2003) (per curiam) (quoting *Williams,* 529 U.S. at 405-06); see also *Early v. Packer*, 537 U.S. 3, 8, 123 S. Ct. 362, 154 L.Ed. 2d 263 (2002); *Bell*, 535 U.S. at 694. The actual facts presented in current case are materially indistinguishable from a

decision of the "United States [Supreme] Court." In current case same as in "*Pyle v. Kansas*" allegations have not been refuted nor denied, and pursuant precedence it clearly states that;

"Petitioner's allegations were sufficient to charge a deprivation of rights guaranteed by the Constitution and, ***if proven, would entitle petitioner to release from custody.*** *"*

See. *Pyle v. Kansas,* 317 U.S. 213, 216, 63 S. Ct. 177, 87 L. Ed. 214 (1942). In case at bar all allegations made have also been proven.

REASONS FOR GRANTING THE WRIT

Petitioner "Carlin U. Powell" filed a State post-conviction motion for new trial, asserting (among other claims not relevant here) that prosecution revealed knowledge of suppressed evidence in the presence of the jury, depriving him of a fair trial. Powell based this claim on States suppression of several visual material discovery interviews, held of "Cuyahoga County Prosecutors Office" "Head Investigator Nichole DiSanto" and alleged victim by the name of "D.E." See PageID#:1766 (14-25 of Tr.909), and, PageID#:1795 (1-8 of Tr.938). Prosecution suppressed this evidence from the defense yet gave this evidence to a third party whom broadcasted this evidence throughout the "United States" one year prior to the trial of this case. Unknown to the petitioner and defense of this case. See PageID#:1796 (1-5 of Tr.939). See PageID#:603, PageID#:601-602, PageID#:605.

"Cuyahoga County Prosecutors," has clearly contrived this conviction through the pretense of a trial which in truth was used as a means of depriving "Mr. Powell," of liberty through a deliberate deception of court and jury by the presentation of testimony known to be perjured. Prosecutors then revealed suppressed discovery evidence to jurors, who then intended to look up this evidence

on the internet themselves during trial. See "PageID#:1221, (12-15 of Tr.376)." Latching onto this statement and facts. The concept of "[f]raud upon the court should… embrace only that species of fraud which does or attempts to subvert the integrity of the court itself, or **is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication**. See "*Demjanjuk v. Petrovsky,*" 10 F. 3d 338, 352 (6th Cir. 1992) (internal quotation omitted); *"Workman v. Bell,"* 227 F. 3d 331, 336 (6th Cir.200); *"Oxford Clothes xx, Inc. v. Expeditors Int'l of Wash., Inc.,"* 127 F. 3d 574, 578 (7th Cir. 1997); "*Serzysko v. Chase Manhattan Bank,"* 461 F. 2d 699, 702 (2nd Cir. 1972). See *"Wyle v. R.J. Reynolds Indus., Inc.,"* 709 F. 2d 585, 589 (9th Cir. 1983) ("courts have inherent power to dismiss an action when a party has **willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice**"); *"Eppes v. Snowden,"* 656 F. Supp. 1267, 1279 [*1120] (E.D.Ky. 1986) (where fraud committed, court has "inherent power [to dismiss]…to protect the integrity of its proceedings"); "*United States v.Moss-American Inc.,*" 78 F. R.D.. 214, 216 (E.D. Wis. 1978) (similar); see also "*C.B.H. Resources, Inc. v. Mars Forging Co.,"* 98 F.R.D. 574, 569 (W.D.Pa.1983) (dismissing under Fed. R. Civ. P. 41(b) where party's fraudulent scheme, including use of a bogus subpoena, was "totally at odds with…the notions of fairness central to our system of litigation'). In appropriate cases such as case at bar, the principles of comity and finality that inform the concepts of cause and prejudice must yield to the imperative of correcting a fundamentally unjust incarceration. See "*House v. Bell,* 547 U.S. 518, 521, 126 S. Ct. 2064, 2068, 165 L. Ed. 2d 1, 1, 2006 U.S. LEXIS 4675, *1, 74 U.S.L.W. 4291, 23 A.L.R. Fed. 2d 633, 19 Fla. L. Weekly Fed. S. 229 (U.S. June 12, 2006)."

This special duty of an attorney to prevent and disclose frauds upon the court derives from the recognition that **perjury is as much a crime** as tampering with witnesses or jurors by way of

promises, and threats, which undermines the administration of justice. See 1W. Burdick, Law of Crimes 293, 300, 318-336 (1946). An attorney who knowingly and willingly aids false testimony by allowing his witness to give perjurious responses to a defense council during cross-examination of trial is subornation of perjury. See "*Giles v. Maryland,*" 386 U.S. 66. Upon ascertaining that material evidence is false, the **lawyer should seek to persuade the client that the evidence should not be offered or, if it has been offered, that its false character should immediately be disclosed**, "Model Rules of professional Conduct, rule 3.3, Comment (1983) (emphasis added). The essence of the brief amicus of the "American Bar Association" reviewing practices long accepted by ethical lawyers is that **under no circumstances may a lawyer either advocate or passively tolerate a client's giving false testimony**. This of course is consistent with the governance of trial conduct in what we have long called "a search for truth." The suggestion sometimes made that "a lawyer must believe his client, not judge him," **in no sense means a lawyer can honorably be a party to or in any way give aid to presenting known perjury**. Whatever the scope of constitutional right to testify, it is elementary that such right does not extend to testifying falsely. Having voluntarily taken the stand, "Investigator Nichole DiSanto," was under an obligation to speak truthfully. U.S. Supreme Court" precedence makes it crystal clear that there is no right whatever—constitutional or otherwise—for a witness to use false evidence. See Also *'United States v. Havens,* 446 U.S. 620, 626-627 (1980).

Petitioner has raised each error claimed through, State Court, District Court, as well as Ohio Supreme Court in exhaustion of all State remedies. See PageID#:597, PageID#:2150, PageID#:707, PageID#:777, PageID#569, and PageID#:589. Although the procedural history of this case is complicated, the Sixth Circuit's errors were not. The panel majority's reasons for not ordering an evidentiary hearing on "Mr. Powell's, arguments of having a judicially prejudiced

bias-unfair trial, due to prosecutions suppression of evidence favorable to him are indefensible. "Cuyahoga County Prosecutors" intentionally, willingly, and cunningly introduced jurors to fabricated evidence. "United States Supreme Court" have explained that "'clearly [***11] established Federal law,'" for purposes of §2254(d) (1), "refers to the holdings, as opposed to the dicta, of this Court's decisions as of the time of the relevant state-court decision." *Williams v. Taylor*, 529 U. S. 362, 412, 120 S. Ct. 1495, 146 L. Ed. 2d 389 (2000). When assessing a state-court decision under §2254(d), federal habeas courts may not rely either on lower court precedents, see, e.g., *Parker v. Matthews,* 567 U. S. 37, 48-49, 132 S. Ct. 2148, 183 L. Ed. 2d 32 (2012) (per curiam), or on decisions of this Court that postdate the relevant state-court adjudication. See, e.g., *Shoop v. Hill,* 586 U. S. 139 S. Ct. 504, 202 L. Ed. 2d 461 (2019) (per curiam). Nor may a federal habeas court extend the rationales of this Court's precedents. "*White v. Woodall*, 572 U. S. 415, 426, 134 S. Ct. 1697, 188 L. Ed. 2d 698 (2014). The bottom line: Where §2254(d) governs, habeas relief can issue only if the relevant state-court decision—judged solely by the four corners of this Court's holdings— "was so lacking in justification that **there was an error well understood and comprehended in existing law beyond any possibility for fair-minded disagreement**." *Harrington v. Richter*, 562 U. S. 86, 103, 131 S. Ct. 770, 178 L. Ed. 2d 624 (2011).

In current case "a fair-minded jurist could easily conclude" that "Mr. Powell's" allegations did require a hearing on "Mr. Powell's" suppression of relevant evidence claims, being current case, is also contrary to'.... clearly established "United States Supreme Court" precedence almost identically. See *Pyle v. Kansas,* 317 U.S. 213, 216, 63 S. Ct. 177, 87 L. Ed. 214 (1942). By denying certiorari, the Court once again permits the nullification of its jurisprudence. Court's refusal to correct a flagrant misapplication of AEDPA by the Sixth Circuit, is unconstitutional. See "*Shoop v. Cassano*," 596 U. S. 142 S. Ct. 2051, 213 L. Ed. 2d 1073 (2022) (opinion dissenting from denial

of certiorari). Today, the Court denies review of a case just as flagrant, if not more so contrary to'.... clearly established Supreme Court precedence, that it's unbelievable. As the highest court of the "United States" this court should never shirk their responsibility to correct classic AEDPA abuses, especially when a lower court brazenly commits errors for which the "United States Supreme Court" has repeatedly reversed. *Pennsylvania ex rel. Herman v. Claudy*, 350 U.S. 116, *Smith v. O'Grady,* 312 U.S. 329. *Cochran v. Kansas,* 316 U.S. 255, 258. *Waley v. Johnston*, 316 U.S. 101,104, 86 L. Ed. 1302, 62 S. Ct. 964 (1942). *Alcorta v. Texas,* 355 U.S. 28, 78 S. Ct. 103, 2 L. Ed. 2d 9, 1957 U.S. LEXIS 188. *Brady v. Maryland*, 373 U.S. 83, 86-88, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963)). *Moore v. Illinois*, 408 U.S. 786, 799 (1972).

That being said, while I disagree with the Court's newfound tolerance for recidivism, primary responsibility for the Sixth Circuit's errors rests with the Sixth Circuit. That court's record of "plain and repetitive" AEDPA error, *Parker,* 567 U. S., at 49, 132 S. Ct. 2148, 183 L. Ed. 2d 32, is an insult to Congress and a disservice to the people of, Ohio, Michigan, Kentucky, and Tennessee. Federal habeas review imposes "profound societal costs," "frustrat[ing] both the States' sovereign power to punish offenders and their good-faith attempts to honor constitutional rights." *Calderon v. Thompson*, 523 U. S. 538, 554, 555-556, 118 S. Ct. 1489, 140 L. Ed. 2d 728 (1998) (internal quotation marks omitted). It also "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." *Richter,* 562 U. S., at 103, 131 S. Ct. 770, 178 L. Ed. 2d 624 (internal quotation marks omitted). These problems are serious enough even when courts carefully observe the limits that Congress and this Court have laid down. When a lower court wields its habeas jurisdiction in overt defiance of those limits, the affront to federalism and the rule of law becomes intolerable. **The Sixth Circuit must**

do better, with or without this Court's help. Unfortunately, the Sixth Circuit's habeas jurisprudence suggests that certain circuit judges' "taste for disregarding AEDPA," *Rapelje v. Blackston*, 577 U. S. 1019, 1021, 136 S. Ct. 388, 193 L. Ed. 2d 449 (2015) (Scalia, J., dissenting from denial of certiorari), has found its natural complement in other **judges' distaste for correcting errors** en banc, [*45] no matter how blatant, repetitive, or corrosive of circuit law. See, e.g., *Issa v. Bradshaw*, 910 F. 3d 872 (CA6 2018) (denying rehearing en banc); *Mitts v. Bagley*, 626 F. 3d 366 (CA6 2010) (same). Of course, reluctance in deploying en banc review is understandable. But only to a point. The Sixth Circuit's habeas problems are well past that point—as evidenced by the depressing regularity with which petitions like this one reach the "Unite States Supreme Court."

The inherent powers of the "United States Supreme Court" have always been exercised most sparingly, and with a sharp eye to the principle that litigation must at some definite point be brought to an end, but yet that ruling or order defining such endings should always end in a standing of assurance that the '**United States Constitutional rights to all citizens of the United States was upheld and not clearly violated**, especially when its being violated intentionally in cases clearly, contrary of "United States Supreme Court" precedence. See'" *Kyles*, supra, at 434, 115 S. Ct. 1555, 131 L. Ed. 2d 490 (quoting *Bagley*, supra, at 678, 105 S. Ct. 3375, 87 L. Ed. 2d 481).

This case represents a failure on the part of each of those responsible for a fair trial: the trial judge, the prosecutor, and the defense attorney. The judge, who did nothing to prevent the prosecutor from crossing the line in embrace in argument of divestitive facts, and chose not to intervene when counsel ignored their duties to their respective clients; the prosecutor, who undertook improper methods calculated to produce a wrongful conviction; and the defense

attorney, who sat idle while the prosecutor disparaged his client. Unfortunately, this tripartite failure is too **often overlooked** by the appellate courts at the expense of the **liberty,** and **dignity**, of **individual defendants**. The practices on display in this case have become so widely used that the participants, who are presumed to be competent as counsel, largely consider the practices tolerable. To prevent this pattern of misconduct, and ensure protection of the rights of the accused, all participants must recognize that the common is not acceptable. **The Bench and the Bar bear the responsibility for taking action against these threats to the administration of justice**. See *"Stermer v. Warren*, 360 F. Supp. 3d 639, 2018 U.S. Dist. LEXIS 215565, 2018 WL 6696720 (E.D. Mich., Dec. 20, 2018)."

Pursuant "Supremacy Clause," and Supreme Law. "Petitioner "Carlin U. Powell," was brought from "North Carolina," to the jurisdiction of "Cuyahoga County" pursuant "Article III (a)" of the "Interstate Agreement on Detainers Act." (IADA). "RC. 2963.30," on 5/26/2016. "Mr. Powell" then filed for Speedy trial pursuant Article IV (c), of the (IADA), on 7/21/2016. After trial of 1/22/2018. Petitioner was then sentenced to 10- year's 6-months, on "May 11th 2018. "Carlin U. Powell" was transferred to the "Lorain Correctional Institution" on "May 17th of 2018." not only has state violated agreement pursuant the (IADA). Mr. Powell is still incarcerated in violation of Article V.(f),(g), and IX, of the (IADA). "ORC. Ann. 2963.30." Being denied 576-days of jail-time credit served. Yet, pursuant Article IX, of the (IADA), and **Supreme Law**, pursuant, "USCS. Const. Art. VI. Cl. 2. It sates quote:

"This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; ***and all Treaties made****, or which shall be made, under the Authority of the United States,* ***shall be the supreme Law of the Land****; and the* ***Judges in every State shall be bound thereby****, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."*

CONCLUSION

All arguments alleged in writ of certiorari are supported by trial transcription evidence in law, truth and facts. Allowing the continuation of such unconstitutional judicial rulings in clear violation of the "United States Constitution" as well as finalizing orders and decisions contrary to "United States Supreme Court precedence", disgraces the historical jurisprudence structuring, built over decades of legal proceedings to none. The ignoring of true legal truths and facts only allows these "State Court Officers," as well as "Appellate District Court Officers" to continue to think comfortably that no-matter how they rule, nor how they process their procedural proceedings. They shall be justified because **they are above the law**. If the United States Supreme Court, continue to allow, and refuse to defend and uphold its citizens "Constitutional Rights," that are clearly being denied their "Constitutional Rights" judicially. Then who will? Who can we turn?

Therefore, Petitioner "Carlin U. Powell," calls for an exercise of the "United States Supreme Court," Supervisory Power, humbly in search for justice. In pray that the rehearing of writ of certiorari be granted, and writ of certiorari be granted as the law so requires.

Sincerely,

x Carlin Powell

CARLIN U. POWELL #751336A
Noble Correctional Institution
15708 McConnelsville Road
Caldwell, Ohio 43724

CERTIFICATE OF SERVICE

I "Carlin U. Powell,' certify that a copy of, Request of Rehearing Rule 34.1 (a)(e) Was mailed July, 10 2025, to the following by way of 1st Class Mail;

Clerk of the,

UNITED STATES SUPREME COURT

1 1ST St. NE –

Washington, D.C. 20543-0001.

Respectfully submitted,

X Carlin Powell

CARLIN U. POWELL #751336A

Noble Correctional Institution

15708 McConnelsville Road

Caldwell, Ohio 43724

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VS.

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CERTIFICATE/AFFIDAVIT

Petitioner Carlin U. Powell states that the petition for rehearing is presented in good faith, and not for delay.

Respectfully Submitted,

X Carlin Powell

CARLIN U. POWELL #751336A

NOTARY AKNOWLEDGEMENT

Sworn to and subscribed in my presence this 10, day of July, 2025.

X

NOTARY PUBLIC

My commission expires; 4/4/2029.

DIANE MOZENA
Notary Public, State of Ohio
Commission #: 2019-RE-778338
My Commission Expires 04/04/2029

No. 24-6426

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CERTIFICATE/AFFIDAVIT

Petitioner Carlin U. Powell states that the grounds are limited to intervening circumstances of substantial or controlling effect or to other substantial grounds not previously presented.

Respectfully Submitted,

x Carlin Powell

CARLIN U. POWELL #751336A

NOTARY AKNOWLEDGEMENT

Sworn to and subscribed in my presence this 10, day of July, 2025.

x _____

NOTARY PUBLIC

My commission expires; 4/14/2029.

DIANE MOZENA
Notary Public, State of Ohio
Commission #: 2019-RE-778338
My Commission Expires 04/04/2029