No. 25-1

In the Supreme Court of the United States

JAMES SKINNER,

Petitioner,

v.

LOUISIANA,

Respondent.

On Petition for a Writ of Certiorari to the Louisiana 21st Judicial District Court

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Matthew P. Cavedon
Counsel of Record
Laura A. Bondank
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(706) 309-2859
mcavedon@cato.org

July 31, 2025

QUESTION PRESENTED

Did Louisiana courts err in refusing to apply *Wearry* to Mr. Skinner's *Brady* claims?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Other Authorities

INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999 and focuses in particular on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement officers.

This case concerns Cato because the decision below makes it harder to hold prosecutors accountable for misconduct and threatens to erode the constitutional right to a fair trial enshrined in the Due Process Clause of the Fourteenth Amendment.

---

[1] Rule 37 statement: All parties were timely notified before the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

In 2016, this Court vacated the conviction and death sentence of Michael Wearry, finding that the prosecution's failure to disclose material evidence in accordance with *Brady v. Maryland* violated Wearry's due process rights. *Wearry v. Cain*, 577 U.S. 385, 386 (2016). Following Wearry's success, his co-defendant James Skinner sought postconviction relief, arguing that the *Brady* violations at issue in *Wearry* likewise tainted his trial. But in a two-page opinion, the Louisiana district court denied Skinner's request, finding—without elaboration—that *Wearry* was "distinguishable enough." Pet. App'x at 3a.

In recent years, "*Brady* violations have reached epidemic proportions." *United States v. Olsen*, 737 F.3d 625, 631 (9th Cir. 2013) (Kozinski, C.J., dissenting from denial of reh'g en banc). Prosecutors face almost no consequences for withholding exculpatory evidence—even when they do so in bad faith. This crisis of accountability, coupled with the desire to obtain high conviction rates, encourages noncompliance with *Brady* and results in wrongful convictions.

Robust enforcement of *Brady* is all the more necessary considering the prevalence of plea bargaining. Although the jury trial is foundational to our criminal justice system, more than 97% of convictions come from guilty pleas. Federal and state appellate courts are conflicted over how *Brady* applies to plea bargaining, meaning many defendants are foreclosed from raising *Brady* claims simply by virtue of having pleaded guilty. But even when courts require pre-plea evidentiary disclosures, prosecutors rely on other mechanisms—like appeal waivers—to ensure

defendants cannot later challenge their convictions based on a *Brady* violation.

This scrutiny-free zone will only expand if *Brady* is not rigorously upheld in the trial context. If defendants lack confidence that any trial they receive will not in fact be fair, due to the government hiding exculpatory evidence, they will be even more likely to plead guilty. Reversing the decision below will not only afford Skinner a fair trial, it will reinforce that *Brady* compliance is essential to the integrity of the criminal justice system.

ARGUMENT

I. ALLOWING *BRADY* VIOLATIONS TO GO UNCHECKED ERODES DUE PROCESS AND EXACERBATES THE PROSECUTORIAL ACCOUNTABILITY CRISIS.

Reflecting the Constitution's overriding concern "that 'justice shall be done' in all criminal prosecutions," *Cone v. Bell*, 556 U.S. 449, 451 (2009) (citation omitted), *Brady* was designed to prevent prosecutors from withholding exculpatory evidence. Despite this Court's clear instructions, *Brady* violations remain lamentably common. There is little to no accountability for prosecutors who violate *Brady*, and the adversarial nature of our criminal justice system does little to encourage compliance. Without judicial intervention, prosecutors will continue to deprive defendants of the due process protections guaranteed by the Constitution.

A. Deliberate *Brady* violations by prosecutors are contributing to wrongful convictions.

Brady violations are among the "most common and most serious types of prosecutorial misconduct, and frequently contribute to wrongful convictions that come to light." Brandon L. Garrett et al., *The Brady Database*, 114 J. CRIM. L. & CRIMINOLOGY 185, 186 (2024). According to the National Registry of Exonerations, the government concealed evidence in "27% to 48% of exonerations for every category of non-homicidal crime" and "61% of all" exonerations in murder cases between 1989 and 2020. Samuel R. Gross et al., *Government Misconduct and Convicting the Innocent: The Role of Prosecutors, Police and Other Law Enforcement*, NAT'L REGISTRY OF EXONERATIONS 32 (Sept. 1, 2020).[2] In the majority of those cases, it was prosecutors—not law enforcement—who were responsible for violating *Brady*. *Id.* at 82; *see also* Garrett et al., *supra*, at 209 (finding prosecutors knew of *Brady* violations 64% of the time in a study of 200 cases).

No one answer explains why *Brady* violations occur with such frequency, but we *do* have reason to believe most violations are intentional. Professor Jennifer McAward recently conducted the largest empirical study of *Brady* violations, analyzing 386 state and federal cases involving adjudicated *Brady* claims over an 18-year period. Jennifer Mason McAward, *Understanding* Brady *Violations*, 78 VAND. L. REV. 875, 879

[2] Available at https://tinyurl.com/4sx52nc2.

(2025).[3] State prosecutors intentionally withheld exculpatory evidence in "two of every three cases—66% of the time." *Id.* at 927.

These troubling figures almost certainly understate the true scale of *Brady* violations. That's because *Brady* violations, by their nature, are difficult to detect: Defendants must show that prosecutors withheld material evidence, definitionally requiring defendants to discover that which has been concealed from them. Moreover, *Brady* violations are almost always based on evidence outside of the trial record and "[b]ecause direct appeals offer no opportunity to introduce such evidence, appellate courts cannot make the materiality determination necessary to adjudicate a *Brady* claim on direct review." Anna VanCleave, Brady *and the Juvenile Courts*, 38 N.Y.U. REV. L. & SOC. CHANGE 551, 556 (2014). The onus is thus on convicted defendants to raise *Brady* violations through post-conviction proceedings, where there is no right to counsel and "it is a challenge to even learn that certain evidence was never disclosed." Jenia I. Turner & Allison D. Redlich, *Two Models of Pre-Plea Discovery in Criminal Cases: An Empirical Comparison*, 73 WASH. & LEE L. REV. 285, 299 (2016).

Even when a defendant is able to successfully raise a *Brady* claim, it is not uncommon for it to happen years—or even decades—after his conviction. Garrett et al., *supra*, at 215 ("The mean time from conviction to a successful *Brady* claim in our sample was 10 years."); McAward, *supra*, at 935 ("[D]efendants spent

[3] This study looked at cases decided over an 18-year span (2004–2022) but covered convictions entered over a 51-year span (1969–2020). *Id.*

an average of 10.4 years in prison after their convictions and up to the time of the final resolution of their claims."). While some defendants are lucky enough to have their claims resolved in pretrial and post-trial motions and on direct review, "[r]oughly two-thirds of successful *Brady* adjudications in state criminal cases are rendered in state postconviction relief (36%) and federal habeas relief (28%)." McAward, *supra*, at 938. "Those who won on *Brady* during state postconviction relief spent, on average, 13.9 years in prison," while "[t]hose who received federal habeas relief spent, on average, 17.2 years in prison." *Id.* Comparing these numbers to the average exoneree, "who spends 9.1 years in prison before exoneration," *id.* at 881, further underscores "the unique harm of extended incarceration that flows from the suppression of evidence." *Id.* at 938.

While innocent defendants endure the most direct and severe consequences, wrongful convictions also impose broader societal costs. When an innocent person is convicted of a crime, not only is justice not served, the real criminal remains at large. "The real perpetrators were identified in nearly half" of DNA exoneration cases between 1989 and 2014. Emily West & Vanessa Meterko, *Innocence Project: DNA Exonerations, 1989–2014: Review of Data and Findings from the First 25 Years*, 79 ALB. L. REV. 717, 730 (2016). "[M]any of these real perpetrators went on to commit additional violent crimes, leaving more victims and their families to suffer avoidable crimes." *Id.* at 731. And these known additional crimes represent only "a fraction of all subsequent criminal activity, as the real perpetrators have not been identified in half of these DNA exoneration cases and without a name, we cannot know about their criminal activity." *Id.*

Brady violations occur "irrespective of the good faith or bad faith of the prosecution." *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Nonetheless, in "state homicide cases (which . . . give rise to almost half of *Brady* violations), we see the highest rates of intentional misconduct of any category of crime, particularly by prosecutors"—with bad faith present "74% of the time." McAward, *supra*, at 928. Recognizing that most *Brady* violations arise from prosecutorial bad faith underscores the gravity and systemic nature of these constitutional infringements. When prosecutors "behave[] with such casual disregard for [their] constitutional obligations and the rights of the accused, it erodes the public's trust in our justice system, and chips away at the foundational premises of the rule of law." *Olsen*, 737 F.3d at 632 (Kozinski, C.J., dissenting from denial of reh'g en banc). "When such transgressions are acknowledged yet forgiven by the courts, [they] endorse and invite their repetition." *Id.* The pervasive and ongoing pattern of *Brady* violations nationwide underscores the urgent need for courts to apply the doctrine faithfully.

B. The adversarial nature of our justice system and lack of accountability for prosecutors encourages noncompliance with *Brady*.

Despite violating *Brady* being "one of the most common forms—if not the most common form—of prosecutorial misconduct . . . discipline is rarely imposed." Margaret Z. Johns, *Reconsidering Absolute Prosecutorial Immunity*, 2005 B.Y.U. L. REV. 53, 146 (2005). On paper, civil, criminal, and professional penalties exist that "could incentivize compliance with *Brady*," but in practice "these penalties are so infrequent" that they

fail to "provide any meaningful chance of sanction or relief." McAward, *supra*, at 895.

Under this Court's precedent, prosecutors enjoy "absolute immunity" from civil liability under 42 U.S.C. § 1983 for actions taken within the scope of their prosecutorial duties. *See Imbler v. Pachtman*, 424 U.S. 409, 428–29 (1976). Absolute immunity shields even "malicious or dishonest action [that] deprives [a wrongly convicted person] of liberty." *Id.* at 427. Moreover, when prosecutors are engaging in non-prosecutorial functions, such as providing advice to the police or conducting investigations, they are still protected from suit under the doctrine of qualified immunity, which protects "all but the plainly incompetent or those who knowingly violate the law." *Burns v. Reed*, 500 U.S. 478, 495 (1991) (citation omitted).

In foreclosing civil redress, this Court assumed prosecutors would be deterred by criminal penalties or professional disciplinary scrutiny. *See Imbler*, 424 U.S. at 429. But in reality, it is exceptionally rare for prosecutors "to face [any] meaningful consequences stemming from a *Brady* violation." McAward, *supra*, at 896. Although both federal and state law authorize criminal penalties for prosecutorial misconduct, "only two prosecutors have ever been convicted for misconduct, and only seven have ever been charged." *Id.* Similarly, while "[s]tate bar associations and even criminal courts themselves have the power to sanction prosecutors," "[d]isbarment or other professional sanctions . . . are infrequent at best." *Id.* "Academics have advocated for judges to be more aggressive in referring prosecutors to the Bar and have called on judges to openly state in judicial opinions that they are doing so." Garrett et al., *supra*, at 233. But a review of over 800

Brady claims revealed that judges almost never do this—finding only one instance of that happening. *Id.*

The absence of any accountability *whatsoever* for withholding evidence is further underscored by strong institutional incentives. Prosecutors are often under immense pressure to obtain high conviction rates. *See* Sonja B. Starr, *Sentence Reduction as a Remedy for Prosecutorial Misconduct*, 97 GEO. L.J. 1509, 1531 n.137 (2009) ("Conviction rates are probably the most basic measurement of prosecutorial performance."); Richard T. Boylan, *What Do Prosecutors Maximize? Evidence from the Careers of U.S. Attorneys*, 7 AM. L. & ECON. REV. 379, 389–91 (2005) (explaining that the length of prison sentences obtained by federal prosecutors enhanced their subsequent career outcomes); Stephanos Bibas, *Plea Bargaining Outside the Shadow of Trial*, 117 HARV. L. REV. 2463, 2472 (2004) (discussing how political ambitions motivate prosecutors); Daniel S. Medwed, *The Zeal Deal: Prosecutorial Resistance to Post-Conviction Claims of Innocence*, 84 B.U. L. REV. 125, 156 (2004) ("[C]andidates for chief prosecutor and former prosecutors seeking other public offices typically depend upon their conviction rates and track records in high-profile cases . . . ."). Especially in close cases, those structural incentives may lead prosecutors to err on the side of withholding, rather than disclosing, potentially relevant evidence. *See* Kenneth Bresler, "*I Never Lost a Trial": When Prosecutors Keep Score of Criminal Convictions*, 9 GEO. J. LEGAL ETHICS 537, 543 (1996) ("A prosecutor protective of a 'win-loss' record has an incentive to cut constitutional and ethical corners to secure a guilty verdict in a weak case—to win at all costs.").

Brady is supposed to act as a critical safeguard for criminal defendants' right to a fair trial. *See Connick v. Thompson*, 563 U.S. 51, 105 (2011) (Ginsburg, J., dissenting) (describing *Brady* as "among the most basic safeguards brigading a criminal defendant's fair trial right"). Yet the continued absence of meaningful consequences for *Brady* violations has made it easy for prosecutors to withhold exculpatory evidence. When coupled with institutional incentives that prioritize convictions over fairness, the risk of constitutional violations and wrongful convictions increases significantly.

"The lack of certainty (or, perhaps more accurately, the certainty that punishment will not occur)" gravely undermines deterrents against future constitutional violations. Bidish Sarma, *Using Deterrence Theory to Promote Prosecutorial Accountability*, 21 LEWIS & CLARK L. REV. 573, 619 (2017). But consistent "[j]udicial review of *Brady* violations . . . sends a message to prosecutors—particularly state prosecutors—about the importance of complying with [*Brady*]." McAward, *supra*, at 879; *see also* Sarma, *supra*, at 622–25. By reversing the decision below, this Court would reaffirm that compliance with *Brady* is a constitutional imperative, not a discretionary practice, and reinforce the safeguards needed to guarantee due process.

II. ROBUST *BRADY* ENFORCEMENT IS ESPECIALLY CRUCIAL IN LIGHT OF THE INCREASING PREVALENCE OF PLEA BARGAINING.

The criminal jury trial—the bedrock on which our criminal justice system is founded—is dwindling to the point of a practical nullity. Plea bargaining, though essentially unknown to the Founders, has reduced the

country's robust "system of trials" into a "system of pleas." *Lafler v. Cooper*, 566 U.S. 156, 170 (2012); *see also* George Fisher, *Plea Bargaining's Triumph*, 109 YALE L.J. 857, 859 (2000). Today, the erosion of the jury trial is nearly complete, with plea bargains comprising all but a tiny fraction of convictions. *See* U.S. SENT'G COMM'N, ANNUAL REPORT (2024) (reporting that 97% of federal criminal cases in 2024 were adjudicated by plea).[4]

Despite the system's reliance on plea bargaining, the law regarding the prosecutor's duty to disclose evidence during this stage of the judicial process remains unsettled. When a defendant pleads guilty and subsequently discovers a *Brady* violation, "her ability to bring a claim depends on where she lives and the type of evidence that was suppressed." McAward, *supra*, at 885. In *United States v. Ruiz*, this Court held that defendants are not entitled to receive impeachment evidence prior to entering a guilty plea. 536 U.S. 622, 630 (2002). But the *Ruiz* Court left open the broader question of whether defendants must receive any exculpatory evidence during the plea-bargaining process. *See generally id.*

In the years since, lower courts have split on the issue of *Brady*'s application to plea bargaining. The Fifth Circuit, for instance, has found that there is "no constitutional right to *Brady* material prior to a guilty plea." *Alvarez v. City of Brownsville*, 904 F.3d 382, 392 (5th Cir. 2018) (en banc). The Tenth Circuit, on the other hand, has determined that *Brady* requires the disclosure of material exculpatory evidence "'under certain limited circumstances.'" *United States v. Dahl*,

[4] Available at https://tinyurl.com/4x6zd9zx.

597 Fed. App'x 489, 490 (10th Cir. 2015) (op. of Tymkovich, J.) (quoting *United States v. Wright*, 43 F.3d 491, 496 (10th Cir. 1994)). While other circuits have yet to rule on what evidence must be disclosed prior to the entry of a guilty plea, some have expressed skepticism about *Brady*'s application to plea bargaining. *See United States v. Mathur*, 624 F.3d 498, 507 (1st Cir. 2010) ("[T]he right memorialized in *Brady* is a trial right."); *accord Friedman v. Rehal*, 618 F.3d 142, 154 (2d Cir. 2010); *see also United States v. Moussaoui*, 591 F.3d 263, 286 (4th Cir. 2010) (discussing the circuit split).

But even in jurisdictions requiring pre-plea disclosures, a defendant may still be barred from raising a *Brady* claim if he subsequently discovers withheld evidence. This is because prosecutors typically require that defendants waive their right to appellate review and collateral attack as part of a plea deal. A 2014 study of federal plea agreements found that "the majority of [standard district court plea] agreements preclude all appellate and habeas petitions"—"even in cases where the prosecutor violates a statutory or constitutional prohibition" like *Brady* disclosure. Susan R. Klein et al., *Waiving the Criminal Justice System: An Empirical and Constitutional Analysis*, 52 AM. CRIM. L. REV. 73, 87 (2014). In fact, some waivers preclude defendants from challenging their convictions based on *any* error, including errors that occur after they enter into their plea agreements and errors that result in the conviction of innocent defendants. *Id.* at 100.

Despite knowing that a guilty plea may foreclose the right to assert a future *Brady* claim, many defendants still plead guilty—often as a result of

overwhelming prosecutorial pressure. Prosecutors have a wide array of tools at their disposal to pressure defendants into pleading guilty, including: threatening increased penalties for defendants hoping to go to trial (commonly known as the "trial penalty");[5] threatening to add charges in an effort to increase a potential sentence;[6] the financial, logistical, and psychological burdens of pretrial detention;[7] threatening to use uncharged or acquitted conduct to enhance a potential sentence;[8] and threatening to prosecute family members.[9] So, for many defendants, the risks of going to trial are enough to make them plead guilty—even if doing so means forfeiting their right to obtain exculpatory evidence that could prove their innocence. *See* Jed S. Rakoff, *Why Innocent People Plead Guilty*, THE N.Y. REV. BOOKS (Nov. 20, 2014).[10]

But not all defendants succumb to the pressure to plead guilty. For some, the belief that the prosecution will fulfill its obligation to disclose exculpatory evidence is the only thing that empowers them to resist. If defendants cannot trust that *Brady* will be honored,

---

[5] *See generally* NAT'L ASS'N CRIM. DEF. LAWS., THE TRIAL PENALTY: THE SIXTH AMENDMENT RIGHT TO TRIAL ON THE VERGE OF EXTINCTION AND HOW TO SAVE IT 5 (2018), https://tinyurl.com/2whc2yrn.

[6] *Id.* at 50.

[7] *See* Russel M. Gold, *Paying for Pretrial Detention*, 98 N.C. L. REV. 1255, 1269 (2020).

[8] *See* WILLIAM R. KELLY & ROBERT PITMAN, CONFRONTING UNDERGROUND JUSTICE: REINVENTING PLEA BARGAINING FOR EFFECTIVE CRIMINAL JUSTICE REFORM 75 (2018).

[9] *Id.*

[10] Available at https://tinyurl.com/2fds2urm.

the overwhelmingly coercive nature of plea bargaining becomes virtually inescapable and leaves defendants with little choice but to forgo trial to avoid harsher punishment. *See The Trial Penalty*, NAT'L ASS'N CRIM. DEF. LAWS. ("The trial penalty [is] the massive difference between the sentence criminal defendants typically receives [sic] after a plea bargain and the much higher sentence defendants typically receive if they are convicted at trial . . . .").[11]

A substantial number of plea agreements are tinged with coercion and entered into by defendants with little-to-no knowledge of the government's case against them. Many such defendants may, in fact, be innocent. *See Why Do Innocent People Plead Guilty to Crimes They Didn't Commit?*, INNOCENCE PROJECT ("18% of known exonerees pleaded guilty to crimes they did not commit.").[12] Without a robust and vigorously enforced *Brady* doctrine, the value of jury trials will be further diminished. At a minimum, this Court must ensure that defendants—like Skinner—who choose to go to trial receive a fair proceeding that fully comports with due process.

CONCLUSION

For these reasons and those described by the Petitioner, this Court should grant the petition.

---

[11] Available at https://tinyurl.com/368vf9ap (last visited July 25, 2025).

[12] Available at https://tinyurl.com/ys676hpf (last visited July 22, 2025).

Respectfully submitted,

Matthew P. Cavedon
Counsel of Record
Laura A. Bondank
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(706) 309-2859
mcavedon@cato.org

July 31, 2025