

IN THE
Supreme Court of the United States

RICHARD VASQUEZ

Petitioner,

v.

ERIC GUERRERO, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL
JUSTICE, CORRECTIONAL INSTITUTIONS DIVISION,

Respondent.

*On Petition for Writ of Certiorari to the United States
Court of Appeals for the Fifth Circuit*

**MOTION TO DEFER PETITION FOR WRIT OF CERTIORARI
CAPITAL CASE – NO EXECUTION DATE**

Petitioner Richard Vasquez moves to defer consideration of his pending Petition for Writ of Certiorari. He respectfully shows as follows:

PROCEDURAL BACKGROUND

1. On June 23, 2023, the United States Court of Appeals for the Fifth Circuit granted Vasquez authorization to file a successive petition raising an ineffective-assistance claim and certain “gateway” claims bearing on “innocence.” The Fifth Circuit denied Vasquez authorization to assert *Brady* and *Napue/Giglio* claims. App.81-84.

2. On June 30, 2023, Vasquez filed the successive petition authorized by the Fifth Circuit. *Vasquez v. Guerrero*, No. 23-cv-168 (S.D. Tex.), ECF No. 1.

3. On February 11, 2025, the district court granted the State of Texas's motion to dismiss the petition. App.22-80.

4. On March 4, 2025, Vasquez filed a timely notice of appeal. *Vasquez v. Guerrero*, No. 23-cv-168 (S.D. Tex.), ECF No. 49.

5. On December 4, 2025, the Fifth Circuit affirmed the dismissal. App.1-22.

6. On April 12, 2026, Vasquez filed a timely Petition for Writ of Certiorari. He raised in Question No. 3 whether his *Brady* and *Napue/Giglio* claims are properly considered "successive" or whether they instead should been allowed to proceed without satisfaction of the procedural and substantive requirements of 28 U.S.C. § 2244(b).

7. On July 6, 2026, the State filed its Brief in Opposition. It urged in part that there are jurisdictional/vehicle impediments to review of Question No. 3 created by Vasquez's failure to have filed his *Brady* and *Napue/Giglio* claims directly in the district court without first obtaining the advance authorization from the Fifth Circuit required for claims that truly are successive. Opp.29-31.

8. While Vasquez disagrees that a jurisdictional/vehicle problem exists, he anticipated that the State might make this argument. To head it off, Vasquez, on March 20, 2026, did exactly what the State suggests is required: he filed directly in the district court a new habeas petition raising his *Brady* and *Napue/Giglio* claims. He did so without advance authority from the Fifth Circuit and with the understanding that, under the existing Fifth Circuit precedent that he ultimately seeks to challenge in this Court, his

petition would be dismissed. *See Vasquez v. Guerrero*, No. 26-cv-00088 (S.D.Tex.), ECF No. 1.

9. On May 4, 2026, as anticipated, the district court dismissed Vasquez's *Brady* and *Napue/Giglio* petition without prejudice. The district court also denied Vasquez a certificate of appealability. *Id.*, ECF No. 8.

10. On May 28, 2026, Vasquez filed a timely notice of appeal. *Id.*, ECF No.10.

11. On July 27, 2026, Vasquez filed an application for a certificate of appealability in the Fifth Circuit. *Vasquez v. Guerrero*, Case No. 26-70008 (5th Cir. Jul. 27, 2026), ECF No. 26. That application remains pending, but an order is expected imminently.

FACTUAL BACKGROUND

12. Vasquez's Petition for Certiorari and his underlying habeas application focus on the introduction at his trial of evidence, critical to *mens rea*, that Miranda Lopez had a massive amount of cocaine in her blood. The trial witnesses who provided that evidence (Dr. Backer, a toxicologist, and Dr. White, the medical examiner) have recently recanted their testimony and have acknowledged that the toxicological report on Miranda's blood reflects conflicting results and is thus totally unreliable. ROA.1750-52; 1793-95.

13. These recantations and the facts that led to them give rise to a *Strickland* claim based on the failure of Vasquez's trial counsel to investigate and challenge the defective toxicological report. They also give rise to a *Brady* claim based on the State's failure to disclose before trial its knowledge that the toxicological report was defective/unreliable. Finally, these facts support a *Napue/Giglio* claim based on the State's knowledge of the defect in the toxicological report when it introduced testimony

that cocaine in Miranda's blood had been established to a "reasonable degree of scientific certainty." ROA.1744.

14. Vasquez bases his *Brady* and *Napue/Giglio* claims on documents that the State suppressed and did not disclose to Vasquez's counsel until more than 20 years after his conviction. ROA.6200-16. One of those documents confirms that the State initially intended to introduce the defective toxicological report as a stand-alone trial exhibit but reversed course after interviewing one of the toxicologists. ROA.6207-13. Instead of introducing the report as its own exhibit, the State had witnesses testify to the cocaine results without showing them the toxicological report itself—a move that appears to have been calculated to obscure the report's fatal flaw. ROA.1335-72; 1729-49.¹

15. The other document underlying the *Brady* and *Napue/Giglio* claims consists of notes from a prosecutor's pre-trial interview of Donna Trautman, a senior toxicologist who co-signed the toxicological report. ROA.6214-16. Under the only plausible reading of those notes, the State learned from Trautman, *before* Vasquez's trial, of the defect in the toxicological report. This follows because the notes reflect that Trautman explained to the State that there are two steps to identifying drugs in a blood sample: (a) step one: an initial screening for "drugs of abuse," which comes back either "positive" or "negative" and (b) step two: a GC/MS analysis, performed if and only if step one is "positive," which will identify the type and quantity of drug that triggered the initial screen's positive result. ROA.6214-16.

¹ The report did make its way into evidence as an attachment to a different document, but it was never displayed to the jury or shown to any trial witness.

16. In other words, as Trautman explained to the State before trial, a toxicological report that reflects positive findings from a GC/MS instrument (step two) would necessarily have to be positive for drugs of abuse (step one). A negative step-one result would irreconcilably conflict with a positive step-two result. ROA.6214-16.

17. With this information conveyed by Trautman, the State knew, before trial, that there was a fatal flaw in the report on Miranda's blood. That report contains a *negative* finding from an initial screen for drugs of abuse and *positive* findings from a GC/MS analysis. App.93. Both cannot be accurate.

18. The State, moreover, has previously conceded that Vasquez accurately interprets the notes of the Trautman interview. That concession came in response to Vasquez's motion in the Fifth Circuit for authorization to file a successive application. In opposing Vasquez's motion, the State read the interview notes exactly as Vasquez reads them: to reflect Trautman having explained to the prosecutors that a positive GC/MS result cannot be squared with a negative result from a drugs-of-abuse screen. The point of the concession was to show that, since the prosecutors learned of this inconsistency before trial, Vasquez or his lawyers should also have discovered it before trial. *See In re Vasquez*, Case No. 23-40079, ECF 25 at pp. 21-22 & 31-32 (5th Cir. Mar. 27, 2013).

19. By making this argument in 2023, the State effectively admitted that, at Vasquez's trial, the State committed a *Brady* violation (by failing to disclose the inconsistency in the report) and a *Napue/Giglio* violation (by knowingly sponsoring false testimony that there was reliable evidence of cocaine in Miranda's system).

20. Now, in its 2026 Brief in Opposition, the State tries to walk back its concession. It says now that there could not have been a *Napue/Giglio* violation because Vasquez has not ruled out the possibility that, as between the negative result for drugs of abuse and the positive GC/MS result, the GC/MS result may be the accurate one. Opp.33-34.

21. Further, the State says now that there could not have been a *Brady* violation because the information the prosecutors learned from the Trautman interview mirrors Dr. Backer's testimony and was thus available to Vasquez at trial. Opp.33. According to the State, since Vasquez knew what the State knew, "there was no suppression and, ergo, no *Brady* violation." *Id.*

22. Neither of these attempts to walk back prior concessions holds water. The validity of Vasquez's *Napue/Giglio* claim does *not* turn on proof that the positive result was wrong or that the negative result was correct. Either way, the State's evidence that Dr. Backer's lab performed an analysis that was reliable to a "reasonable degree of scientific certainty" was just plain false. ROA.1744. No amount of speculating about whether the error lay in the negative result or the positive result can change that fact.

23. And, for two reasons, Dr. Backer's trial testimony does not somehow erase the *Brady* violation previously conceded by the State. First, Dr. Backer's testimony is hardly as clear as the State now suggests. The district court charitably characterized it as "perhaps somewhat unclear." App.74. In truth, without the understanding that the prosecutors gained from the pre-trial interview of Trautman, Dr. Backer's testimony can reasonably be interpreted to confirm—falsely—that his lab performed the GC/MS test

only after—and because—the screen for drugs of abuse was positive. ROA.1732-33. From the Trautman interview, the State knew that Dr. Backer left the jury with this false understanding and should have disclosed as much to Vasquez.

24. Second, the fact that a defendant should have himself been able to figure out the exculpatory information suppressed by the State is no defense to a *Brady* claim. *See, e.g., United States v. Tavera*, 719 F.3d. 705, 712 (6th Cir. 2013). Nor is it any defense that a defendant was generally on notice of facts related to or perhaps suggestive of the exculpatory evidence withheld by the prosecutors. *See, e.g., United States v. Howell*, 231 F.3d 615, 625 (9th Cir. 2000). When prosecutors withhold specific information indicating that key evidence is false or unreliable, they violate *Brady*; that’s true even if the defendant already had reason at some level to suspect that the evidence could be faulty. *See, e.g., Banks v. Dretke*, 540 U.S. 668, 695 (2004); *Dennis v. Sec’y, Pa. Dep’t of Corr.*, 834 F.3d 263, 290-91 (3d Cir. 2016).

ARGUMENT FOR DEFERRAL

25. Under existing Fifth Circuit precedent, Vasquez’s *Brady* and *Napue/Giglio* claims are considered “successive” and thus subject to the advance-authorization provisions of 28 U.S.C. § 2244(b). *See, e.g., Will v. Davis*, 970 F.3d 536, 540 (5th Cir. 2020).

26. There exists a compelling argument that, on this, the Fifth Circuit is wrong and that its existing precedent is “illogical.” Justice Sotomayor is of that view. *See Story v. Lumpkin*, 142 S. Ct. 2576, 2677-78 (2022) (statement respecting the denial of certiorari); *Bernard v. United States*, 141 S.Ct. 504, 506-07 (2020) (dissenting from the denial of certiorari). So too are a number of circuit-court panels that have questioned prior opinions

following the Fifth Circuit approach. *See, e.g., Baugh v. Nagy*, 2022 WL 4589117 at *6 (6th Cir. Sep. 20, 2022); *Scott v. United States*, 890 F.3d 1239, 1247-58 (11th Cir. 2018); *Gage v. Chappell*, 793 F.3d 1159, 1165 (9th Cir. 2015).

27. Nevertheless, under the rule orderliness, it is virtually guaranteed that the Fifth Circuit panel assigned to Vasquez’s pending appeal in Case No. 26-70008 will follow existing precedent and will either deny Vasquez a certificate of appealability or will summarily affirm the dismissal of the *Brady* and *Napue/Giglio* petition that Vasquez filed without advance authorization. When that happens, Vasquez will file a petition for a writ of certiorari and move that it be consolidated with this case.

28. Through this process, any jurisdictional or vehicle problem that might otherwise counsel against review of Vasquez’s *Brady* and *Napue/Giglio* claims will be eliminated.

29. In light of the foregoing, Vasquez moves the Court to defer his pending petition for certiorari until a new petition can be filed following the Fifth Circuit’s disposition of Cause No. 26-70008.

30. This deferral will serve the interests of justice by removing any suggestion that a jurisdictional or vehicle impediment precludes review of a recurring and important issue.

31. The requested deferral will not prejudice the State, nor unduly prolong these proceedings, in part because Vasquez hereby commits to file his Petition for Writ of Certiorari from the Fifth Circuit’s anticipated action soon after the Fifth Circuit rules, well before the deadline to do so.

CONCLUSION

For the reasons set forth above, Vasquez respectfully requests that consideration of his pending Petition be deferred pending action by the Fifth Circuit.

Dated: August 14, 2026

Respectfully submitted,

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