

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 a Writ of Certiorari to the United States  
Court of Appeals for the Fifth Circuit

---

**RESPONDENT'S RESPONSE IN OPPOSITION TO MOTION TO  
DEFER PETITION FOR A WRIT OF CERTIORARI**

---

KEN PAXTON  
Attorney General of Texas

TOMEE M. HEINING  
Chief, Criminal Appeals Division

BRENT WEBSTER  
First Assistant Attorney General

GWENDOLYN VINDELL  
Assistant Attorney General  
Criminal Appeals Division  
*Counsel of Record*

JOSH RENO  
Deputy Attorney General  
for Criminal Justice

P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548  
(512) 936-1400  
*Gwendolyn.vindell2@oag.texas.gov*

---

*Counsel for Respondent*

## RESPONSE IN OPPOSITION

Petitioner Richard Vasquez’s petition for writ of certiorari from the Fifth Circuit’s decision affirming the dismissal of an authorized but successive ineffective-assistance-of-trial-counsel (IATC) claim is currently pending before this Court. Three days after Vasquez filed his reply brief,<sup>1</sup> Vasquez moved the Court to defer consideration of his petition pending the Fifth Circuit’s decision on a separate, *third* federal habeas petition. Mot. Defer Pet. Writ Cert. (filed Aug. 14, 2026) (Mot.). In that third, successive petition, Vasquez raised claims under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959), that he was denied authorization to file three years ago. *Compare In re Vasquez*, No. 23-40079, slip op. 2, 4 (5th Cir. June 23, 2023) (denying authorization on *Brady/Napue* claims), ECF No. 98, *with* Appl. Certificate of Appealability (COA) 2, *Vasquez v. Guerrero*, No. 26-70008 (5th Cir. July 27, 2026) (appealing dismissal of *Brady/Napue* claims), ECF No. 25. These claims are the subject of Vasquez’s second question presented in these proceedings, asking whether allegedly newly discovered *Brady/Napue* claims are “second

---

<sup>1</sup> Respondent filed his brief in opposition on July 6, 2026, and Vasquez did not file his reply brief within the two-week waiting period. *See* Sup. Ct. R. 15.5. Instead, on July 22, 2026, the Court distributed the petition for consideration at the September 28, 2026 conference. Vasquez filed his reply brief nearly three weeks after the Court scheduled the distribution, and he waited another three days after that to ask this Court to defer consideration of his petition. Meanwhile, the Fifth Circuit proceedings upon which this deferral request is predicated have been pending since June 5, 2026.

or successive” within the meaning of 28 U.S.C. § 2244(b). *See* Resp’t Br. in Opp’n (BIO) at Questions Presented (QP). This question is not worthy of certiorari review because, *inter alia*, it suffers jurisdictional and vehicle defects. BIO at 29–31.

Vasquez nonetheless believes he has manufactured a vehicle and jurisdictional cure: he asks this Court to hold his current petition until the Fifth Circuit decides his appeal of the third habeas petition so that he can seek certiorari review from that decision, move to consolidate that future certiorari petition with this one, and present a clean vehicle for this Court’s review. Mot.7–8. But certiorari review of his IATC claim is ripe for review: briefing is completed, and both lower courts squarely addressed the issues raised. Thus, Vasquez, in effect, asks this Court to indefinitely stay certiorari review of claims that are ripe for review while he attempts to cure self-created vehicle and jurisdictional problems for claims that are not. Respondent opposes Vasquez’s dilatory and abusive litigation tactics, and his motion to hold his certiorari proceedings should be denied.

## **ARGUMENT**

This Court should not defer consideration of Vasquez’s petition for several reasons.

*First*, in his petition for writ of certiorari, Vasquez raises three questions presented. The first is the only one which relates directly to the Fifth Circuit’s

opinion below as it expressly asks this Court to review the lower court's dismissal of his authorized IATC claim. *See* BIO at QP1. This question is properly before the Court, the record has been developed, and the parties have fully briefed it. This question—the *only* one properly before the Court—is thus ready for this Court's review.

Conversely, Vasquez's remaining two questions presented have nothing to do with the merits of the Fifth Circuit's second-gateway decision. The second QP raises claims that were not before the district court or Fifth Circuit in this proceeding. *See* BIO at QP 2. And the third QP involves Vasquez's attempt to substitute the party-respondent in his habeas case with one he thinks would pave the way to relief for him. *See id.* at QP 3. Both questions suffer severe vehicle problems, *see* BIO 29–31, 34–35, and Vasquez's motion to defer is entirely irrelevant to the latter. Both are nevertheless fully briefed and addressable on the record (or lack thereof) before the Court.

All three questions are thus ripe for this Court's review: the judgment under review here is final, briefing is complete, and Vasquez offers no reason the Court should defer consideration of *this* petition.

*Second*, Vasquez cites no authority that a second-in-time proceeding can retroactively cure a vehicle or jurisdictional problem in an earlier appeal. Vasquez did not raise his unauthorized *Brady/Napue* claims, or his second QP, in the lower court second-gateway decisions that are the subject of this

certiorari petition. *See* BIO 29–31. Vasquez cannot cure his forfeiture in a separate, future proceeding. Rather, if the Fifth Circuit denies Vasquez a COA based on its prior precedent that *Brady/Napue* claims are subject to § 2244(b), *see* Mot.8, then Vasquez is free to seek certiorari review of that decision at that point—he will have properly pressed, and the Fifth Circuit will have passed upon, his question presented in *that* cause number, so it will not be forfeited, though it may still suffer other jurisdictional or vehicle defects. *See infra*. But that doesn’t mean his forfeiture in *this* proceeding is cured; it simply means he can seek certiorari review in the future with potentially fewer encumbrances.

In other words, any future certiorari review of a hypothetical decision from the Fifth Circuit should stand on its own merit. It is entirely unnecessary to hold this petition when it can be disposed of without prejudice to that future certiorari review. Vasquez’s request is pointless.

*Third*, Vasquez’s suggestion that the Fifth Circuit’s decision *will* cure any deficiencies is purely speculative. *Cf. Boumediene v. Bush*, 550 U.S. 1301, 1301 (2007) (“*possible* [lower] court action” is not sufficient to justify suspension of order denying certiorari under Supreme Court Rule 16.3). Vasquez must contend with the fact that he still only filed his third habeas petition after the Fifth Circuit denied him authorization to proceed with those claims. Thus, the Fifth Circuit may consider his appeal—like his instant petition for writ of certiorari—to be an impermissible end run of the statutory

ban on authorization denial appeals. *See* BIO 31; § 2244(b)(3)(E). And even if it does not kick the appeal on those jurisdictional grounds, law of the case—the denial of authorization—may bar his current appeal. *Cf. Gibbs v. Thaler*, 459 F. App’x 336, 337 (5th Cir. 2012).

Or given that Vasquez had three prior opportunities to argue to the Fifth Circuit that *Brady/Napue* claims should not be subject to § 2244(b), *see* BIO 9–12—but instead he sought authorization without ever arguing such, *see id.* at 30–31—the Fifth Circuit may also consider the argument waived. *See Ward v. Santa Fe Indep. School Dist.*, 393 F.3d 599, 607–08 (5th Cir. 2004). Indeed, the cases upon which Vasquez relies for his “compelling argument that” the Fifth Circuit’s precedent is wrong, *see* Mot.7, preceded both his Rule 60(b) appeal and his request for authorization by months to years. *Compare Story v. Lumpkin*, 142 S. Ct. 2576, 2677–78 (2022) (Sotomayor, J., statement respecting the denial of certiorari) (opinion issued June 30, 2022), *and Bernard v. United States*, 141 S. Ct. 504, 506–07 (2020) (Sotomayor, J., statement dissenting from the denial of certiorari) (opinion issued December 10, 2020), *with Vasquez v. Lumpkin*, No. 22-70009, 2023 WL 2238995, at \*1–2 (5th Cir. Feb. 24, 2023) (motion for COA filed November 10, 2022), *and In re Vasquez*, No. 23-40079, slip op. 1 (5th Cir. June 23, 2023) (motion for authorization filed February 8, 2023). He had every opportunity to challenge the Fifth Circuit’s precedent in either of those proceedings or to simply raise the claims in the district court in

*this* proceeding regardless of authorization denial. Instead, he waited to raise these arguments for the first time in his certiorari petition and then tried to preemptively cure his failure to raise it sooner.

Two consequences flow from these possible Fifth Circuit outcomes: 1) his concurrent Fifth Circuit appeal may not cure the jurisdictional defect affecting his second QP at all; and 2) the Fifth Circuit may still not address the merits of his argument, and if it relies on other procedural mechanisms to deny him a COA, any future certiorari petition from that decision will still suffer vehicle problems. This makes entirely speculative Vasquez’s suggestion that the parallel appeal will “eliminate[]” “any jurisdictional or vehicle problem that might otherwise counsel against review of Vasquez’s *Brady* and *Napue*[] claims” in this proceeding. Mot.8. This Court should not defer this petition to await developments that may never materialize.

*Fourth*, the Court should also not defer the petition to await developments that have no reasonable expectation of occurring in a timely fashion. Vasquez noticed his appeal of the district court’s dismissal of his third petition on June 4, 2026. Not. Filing of Appeal, *Vasquez v. Guerrero*, No. 2:26-CV-00088, 2026 WL 1712267 (S.D. Tex. May 4, 2026), ECF No. 12. Vasquez filed his motion for a COA in the Fifth Circuit the next day, but he did so before the Fifth Circuit entered a briefing notice, and he cited the electronic record on appeal in a prior case. See Ltr. 2–3, *Vasquez v. Guerrero*, No. 26-70008 (5th Cir.

June 5, 2026), ECF No. 17. The Fifth Circuit thus noticed Vasquez that it was taking no action on his motion for COA and gave him until July 15, 2026, to refile. *Id.* Vasquez, inadvertently missing the Fifth Circuit’s postscript, did not refile his motion for COA by that date, instead filing it on July 27, 2026, after obtaining leave. *See* Pet’r’s Unopposed Mot. Leave File Out of Time Appl. COA, *Vasquez v. Guerrero*, No. 26-70008 (5th Cir. June 5, 2026), ECF No. 19. At the time of this filing, Respondent’s opposition to Vasquez’s COA request is not even due yet and will not be due until several days after this response. And the Fifth Circuit is under no deadline to rule on his appeal. Given this, Vasquez’s request for a stay is essentially indefinite. The Court should not defer this petition indefinitely for speculative results.

*Fifth*, Vasquez’s abusive and vexatious litigation tactics counsel against deferral. In an analogous context, this Court has recognized that staying federal habeas proceedings “frustrates [the Antiterrorism and Effective Death Penalty Act (AEDPA)]’s objective of encouraging finality by allowing a petitioner to delay the resolution of the federal proceedings.” *Rhines v. Weber*, 544 U.S. 269, 277 (2005). Indeed, this Court has also recognized that “capital petitioners might deliberately engage in dilatory tactics to prolong their incarceration and avoid execution of the sentence of death.” *Id.* at 277–78. That is precisely what’s happened here:



Vasquez sought and was denied authorization to raise his *Brady/Napue* claims in 2023. Only after losing the *authorized* IATC claim in the district court and Fifth Circuit has he now sought to revive those long-denied *Brady/Napue* claims. And he *chose* to do it for the first time in this Court, when no court has considered them since 2023, and no court had ever heard his argument that such claims should not be considered “second or successive.” In other words, he didn’t have to include these forfeited, jurisdictionally barred claims in his petition, but he chose to anyway.

Worse, he was fully aware that raising these claims in this petition would create issues. On March 16, 2026, he asked this Court for a sixty-day extension of time to file his certiorari petition. *Four days later*, Vasquez filed his third habeas petition in federal district court.<sup>2</sup> *See* Pet. Writ Habeas Corpus 1, *Vasquez v. Guerrero*, No. 2:26-CV-00088, 2026 WL 1712267 (S.D. Tex. May 4, 2026), ECF No. 1 (filed March 20, 2026). He expressly justified his filing as a

---

<sup>2</sup> In his motion and his reply, Vasquez seems to insinuate that he filed his habeas petition at essentially Respondent’s invitation or suggestion. *See* Mot.2 (“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[.]”); *see also* Reply 10 (arguing the Director’s lack-of-preservation argument is irrelevant because he “has since done exactly [what the Director suggested] and has a pending appeal . . . that will soon be ripe for consolidation with this case”). This is plainly not the case—Vasquez filed the third habeas petition several months before the Respondent said anything about his improperly raised claims in this Court. And Vasquez mischaracterizes the Director’s argument: the Director offered *several* ways Vasquez could have tried to preserve his claims, *see* BIO 30 & n.8, and has never suggested that the path he has chosen would *now* be a cure for his forfeiture in this case.

“protective measure, in case any court should conclude that he has not so far adequately raised and preserved his position that such claims are not successive and do not require pre-authorization under” § 2244. *Id.* at 2. He noted he “intend[ed] to raise the issue” “in his anticipated petition for certiorari.” *Id.* And he did—a month later when he filed on April 29, 2026. The district court then, at Vasquez’s request to “provide [him] the cleanest avenue for appellate review,” *id.* at 4 n.1, dismissed his third petition instead of transferring it to the Fifth Circuit for authorization. *See* Mem. & Order 7–9, *Vasquez v. Guerrero*, No. 2:26-CV-00088, 2026 WL 1712267 (S.D. Tex. May 4, 2026), ECF No. 8. The appeal from this decision is the proceeding upon which Vasquez’s deferral request hinges.

The timeline proves Vasquez orchestrated this delay. He asked this Court to extend his time to file a certiorari petition—time which he used to flout the Fifth Circuit’s authorization decision by filing an unauthorized third federal habeas petition. He is now attempting to parlay an appeal from the district court’s dismissal into a delay of these certiorari proceedings when he included issues that he at least implicitly admitted were unripe. As this Court has acknowledged when discussing pre-AEDPA abuse-of-the-writ doctrine, “Perpetual disrespect for the finality of convictions disparages the entire criminal justice system.” *McCleskey v. Zant*, 499 U.S. 467, 492 (1991). Vasquez’s abusive, piecemeal litigation tactics should not be condoned, and

this Court should not defer consideration of his certiorari petition pending the Fifth Circuit's decision.

## CONCLUSION

The Motion to Defer the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

KEN PAXTON  
Attorney General of Texas

BRENT WEBSTER  
First Assistant Attorney General

JOSH RENO  
Deputy Attorney General  
for Criminal Justice

TOMEE M. HEINING  
Chief, Criminal Appeals Division

s/ Gwendolyn Vindell  
GWENDOLYN VINDELL  
Assistant Attorney General  
Criminal Appeals Division

P.O. Box 12548, Capitol Station  
Austin, Texas 78711  
Tel: (512) 936-1800  
Fax: (512) 320-8132  
E-mail: Gwendolyn.vindell2@oag.texas.gov

*Counsel for Respondent*