No. 25-244

IN THE

Supreme Court of the United States

DEMETRIC SIMON,

Petitioner,

v.

KEITH GLADSTONE, *ET. AL.,*

Respondent.

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

SUPPLEMENTAL BRIEF (ON PETITION FOR REHEARING)

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TABLE OF CONTENTS

TABLE OF CITATIONS

Federal Cases

Constitutional Provisions, **Statutes, and Rules**

Other Authorities

SUPPLEMENTAL BRIEF UNDER SUPREME COURT RULE 15.8, IN SUPPORT OF REHEARING PETITION FOR WRIT OF CERTIORARI, INCLUDING CALL FOR RESPONSE (CFR).

This Supplemental Brief, focuses on two (2) matters available or discernible only after this Court denied the Petition for Writ of Certiorari on October 20, 2025. This denial was done without even a Call for Response (CFR) to Respondents, despite an apparent Circuit Split in the Second Circuit and Fifth Circuits from other Published 2025 decisions, with the Second Circuit getting a CFR. Both matters also were after the Petition for Rehearing, was timely filed on November 14, 2025, and thus appropriate for this Supplemental Brief.[1]

Additionally, this Supplemental Brief updates with this Court's recent decision in *Clark v. Sweeney*, 223 L.Ed.2d 157 (Dec. Nov. 24, 2025)(*per curiam*), *reversing and remanding, Sweeney v. Graham*, 2025 U.S. App. LEXIS 5901, 2025 WL 800452 (4th Cir. Mar. 13, 2025). *Jenkins'* unanimous summary

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[1] Though an electronic copy was filed that same day by Counsel, which included the Certificate of Counsel on Rehearing jn Supreme Court Rule 44, unfortunately, the printed copies filed with this Court and mailed to Respondents' Counsels did not include the Certificate. That appears to have been acknowledged as an unfortunate printing error, remedied shortly with the subsequent identical copy, after it was discovered.

reversal decision out of the Fourth Circuit, neatly ties in with Question Presented Three in the Petition,[2] which also requested summary reversal.

On the legal and factual issues following *Sweeney* Simon's Petition is appropriate for "Rehearing" as it was: (1) similarly confirmable through a review of the Appendices alone,[3] (2) also

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[2] "[Question Presented] 3. Whether Summary Reversal should be issued on whether the 660-Page Steptoe Taskforce Report on the Gun Trace Task Force (GTTF), admissible under both public record and judicial notice, published two months prior to Petitioner's suit being filed, incorporated specifically into the Complaint with page number citations, linked to in other Reported Fourth Circuit cases like *United States v. Paylor*, 88 F.4th 553, 563 n.2 (4th Cir. 2023), and discussing throughout the Report, Respondents' continuing pattern of similar corruption for many years, and as Inspector Bromwich explained based on other public and sealed records, over 200 interviews with public officials and police personnel, explaining the extraordinary fraudulent, perjurious, and unconstitutional lengths both generally and specifically involving Petitioner, but which the trial Court noted she would "not consider" this Report attachment as 'way too long[…].' "

[3] Simon Petition, pg. iii (Question Presented); pg 43-45 (on QP 3); 6a (in single paragraph, Fourth Circuit discussing and dismissing exhibits and hyperlinks

involves a "party presentation principle violation" as detailed specifically when the problem was first discovered in the Petition for Panel Rehearing and/or Rehearing *En Banc* filed on or about 3-20-2025 (4th Cir. ECF 60), and (3) should be equally applied to *Simon's* case, when the Fourth Circuit actually and *sua sponte* ruled upon issues the trial judge disclaimed were the basis for its ruling, thus *no party argued them* in the Fourth Circuit.

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argument consideration under *FRCP 8*, not FRCP 12 which was explicitly on the FRCP 12(b)(6) grounds (24a-26a). The Fourth Circuit, also did not distinguish *inter alia,* from *United States v. Paylor,* 88 F.4th 553 (4th Cir. 2023), which specifically allowed the same hyperlinks to the comprehensive GTTF Task Force Report (requested by Baltimore City and the Baltimore Federal Court's overseeing Civil Rights violations*)*; 23a-26a (specifically footnote 10, noting the Court was definitely *not dismissing* the case under FRCP 8, so as to preclude "leave to amend"); 48a-54a (Portions of First Amended Complaint, noting the "incorporated" GTTF Task Force Report, but also including numerous specific pages discussing Simon's case, Respondent Officers (including Gladstone who is discussed throughout the 660-Page report nearly 500 times on the significant criminal actions and patterns undertaken by him, some that were in the Criminal Plea for Civil Rights violations specifically against Petitioner Demetric Simon. All of which the District Court Judge Rubin, specified was "not consider[ed]" by the Court.

Yet, the Fourth Circuit, about *fourteen months after oral arguments* in *Simon,* now suddenly relied upon Rule 8 as a basis of decision, when the District Court specified its ruling was solely based on FRCP 12, and no party addressed, or was ever asked to address, Rule 8, since that was inapposite to this case, as the trial court specified. *See,* Footnote 2, *supra.*

C*lark v. Sweeney,* involves similar judicial *sua sponte* actions, done by other Fourth Circuit court, and thus this Court's recent *per curiam* on the Fourth Circuit issuing decisions that weren't appropriately presented, is the same, for all intents and purposes, as that of *Simon,* with the possible exception *Simon* was a civil rights case, and *Sweeney,* was on a criminal post-conviction determination. This Court's grant of a Summary Reversal, should help reduce the use of non-presented and *sua sponte* arguments, decided at the first time at the decision level, and without even any requests for the parties to address, the unargued legal argument.

I. THIS COURT SHOULD GRANT REHEARING ON QUESTION PRESENTED III, WHICH EXPLICITLY REQUESTED "SUMMARY REVERSAL" ON AN IMPORTANT LEGAL AND FACTUAL ISSUE, ASCERTAINABLE AND CONFIRMABLE EVEN FROM THE APPENDICES, CONFIRMING THE

FOURTH CIRCUIT'S *SUA SPONTE* RELIANCE ON A NEVER PRESENTED OR ARGUED POSITION, JUSTIFIES SUMMARY REVERSAL LIKE *CLARK V. SWEENEY.*

The first issue is both important for the case itself, and as general deterrence in all Circuit Court of Appeal civil cases. In the *Clark v. Sweeney*, 223 L.Ed.2d 157 (Dec. Nov. 24, 2025)(*per curiam*) case originating from the Fourth Circuit, this Court addressed how in a post-conviction context in a Maryland Federal Case, the Fourth Circuit Court of Appeals violated basic rules of "party presentation." *See, Sweeney* at 158 *(*quoting *United States* v. *Sineneng-Smith*, 590 U. S. 371, 375 (2020).)"[4]

[4] This Court has noted previous difficulties, on occasional creative use in some Fourth Circuit cases, not being published, especially with a Question of First Impression involved, and regardless of qualifying for the 10% of appeal cases with oral arguments in the Circuit, yet were instead, unpublished, to explicitly avoid more detailed review *See Plumley v. Austin,* 574 U.S. 1127, 1131-32 (2015)(J. Thomas and Scalia) ("True enough, the decision below is unpublished and therefore lacks precedential force in the Fourth Circuit. […] But that in itself is yet another disturbing aspect of the Fourth Circuit's decision, and yet another reason to grant review. The Court of Appeals had full

In Sweeney, this Court reversed the Unpublished opinion of the Fourth Circuit. This Court held:

> "In our adversarial system of adjudication, we follow the principle of party presentation." *United States* v. *Sineneng-Smith*, 590 U. S. 371, 375 […] (2020). […]

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briefing and argument on Austin's claim of judicial vindictiveness. It analyzed the claim in a 39-page opinion written over a dissent. By any standard—and certainly by the Fourth Circuit's own—this decision should have been published. The Fourth Circuit's Local Rule 36(a) provides that opinions will be published only if they satisfy one or more of five standards of publication. The opinion in this case met at least three of them: it "establishe[d] . . . a rule of law within th[at] Circuit," "involve[d] a legal issue of continuing public interest," and "create[d] a conflict with a decision in another circuit." Rules 36(a)(i), (ii), (v) (2015). It is hard to imagine a reason that the Court of Appeals would not have published this opinion except to avoid creating binding law for the Circuit."; *Smith v. United States*, 502 U.S. 1017, 1018 (1991) (J. Blackmun, O'Conner, Souter, and Stevens, dissenting from denial of Summary Reversal on Fourth Circuit case using wrong standards).

> The Fourth Circuit transgressed the party-presentation principle by granting relief on a claim that *Sweeney never asserted and that the State never had the chance to address. S*weeney asserted "one, and only one," claim in his federal habeas petition: that his counsel was ineffective for failing to investigate whether other jurors had been prejudiced by Juror 4's crime-scene visit. App. to Pet. for Cert. 53a (Quattlebaum, J., dissenting). Instead of ruling on that claim, the Fourth Circuit devised a new one, based on a "combination of extraordinary failures from juror to judge to attorney." *Id*., at 22a. The Fourth Circuit's "radical transformation" of Sweeney's simple ineffective-assistance claim "departed so drastically from the principle of party presentation as to constitute an abuse of discretion." *Sinenenng-Smith*, 590 U. S., at 380, 375 […] We accordingly reverse the judgment of the Fourth Circuit and remand the case for further proceeding."

Clark v. Sweeney, 223 L.Ed.2d 157, 159-60 (U.S. 2025))(*per curiam*), *reversing and remanding, Sweeney v. Clark,* 2025 U.S. App. LEXIS 5901, 2025 WL 800452 (4th Cir. 2025).

This was argued in the Certiorari Petition, consistent with the first opportunity to address the Fourth Circuit's *sua sponte* determination, in the Petition for Panel Rehearing and/or Rehearing *En Banc.*.

> "However, reviewing the one paragraph, finds it to lack any sourcing, factually or legally. This Court addresses at *Slip. Op.* at 7, through the lens of FRCP (8), but Judge Rubin, explicitly stated she was not ruling under that Rule, but examining and dismissing the case solely based on FRCP 12. *See, supra,* Memorandum, pg. 9, ftnt. 10 (J.A. 696). The parties argued the actual basis given by the trial judge. This Court, respectfully has no jurisdiction, to be *sua sponte* addressing arguments, that weren't the basis upon which the Court decided, weren't argued to this Court, and no opportunity was even given, to address the issue, if this Court was legally permitted to request Supplemental Briefing. This

Court, instead, appears to have conflated and interchanged, two different Rules.

[…]

Except, this Court's relatively short opinion in *Nemphos* [*v. Nestle Waters N. Am., Inc.,* 775 F.3d 616, 628 (4th Cir. 2015)] involving products liability, was dismissed for having a "bare bones" complaint which *lacked* nearly any specificity, and so is both legally and factually *inapposite* here. Regardless, the case does not hold Rule 8 is under an abuse of discretion standard. An actual review, finds *Nemphos* stating, "[w]e are therefore compelled to find that the district court did not abuse its discretion in dismissing Nemphos's third amended complaint with prejudice and denying her a fourth bite at the apple." *Id,* at 628. *Nemphos* had little to nothing to do with the standards of review applicable to this case, not only for Rule 8 (which wasn't the basis for dismissal), but Appellant's consistent and highly meritorious argument, which Appellant contends was adopted by this

> Court in *Paylor* on the admissible nature of the 660-page Document Federal Judge Rubin refused to consider or review, and regardless, on the subject of supporting caselaw on "incorporated" [5]documents in this Circuit and others, the trial Judge erred in the dismissal of FRCP 12, since multiple Courts hold as such."

Petitioner Demetric Simon's] Petition for Panel Rehearing and/or Rehearing *En Banc*, filed 3-20-2025 (4th Cir. ECF 60),

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[5] Cases argued to the Fourth Circuit for these principles, in Briefing and Supplements include (1) *E.I. du Pont de Nemours & Co. v. Kolon Indus., Inc.*, 637 F.3d 435, 448 (4th Cir. 2011) ("In deciding whether a complaint will survive a motion to dismiss, a court evaluates the complaint in its entirety, as well as documents attached or incorporated into the complaint."); (2) *Goines v. Valley Cmty. Servs. Bd.*, 822 F.3d 159, 164 (4th Cir. 2016)("While a 12(b)(6) motion focuses on the allegations of the complaint, it is well established that a document attached to a motion to dismiss may be considered when evaluating a motion to dismiss if the document was "integral to the complaint and authentic."); *and* (3)*United States ex rel. Wheeler v. Acadia Healthcare Co.*, 127 F.4th 472, 483 (4th Cir. 2025).

II. QUESTION PRESENTED TWO, IS WELL PRESENTED AS A CIRCUIT SPLIT, WITH THE SECOND CIRCUIT'S *EMIGRANT* CASE PENDING BEFORE THIS COURT, AND FIFTH CIRCUIT'S RECENT PUBLISHED OPINION IN *JENKINS V. TAHMAHKERA*, 151 F.4TH 739 (5TH CIR., DEC. AUG. 19, 2025), ON THE SAME ISSUE(S) AS PETITION OF SIMON, JUSTIFYING CERTIORARI OR AT A MINIMUM A CALL FOR RESPONSE(CFR).

Saint-Jean v. Emigrant Mortg. Co., 129 F.4th 124 (2d Cir. 2025), *Certiorari Filed,* No. 25-229 (Aug. 25, 2025), *Call for Response Requested* (Sept. 15, 2025) remains pending in Case No. 25-229, with a Certiorari Conference scheduled for January 9, 2026. The other 2025 case constitutes a Circuit Split, with *Emigrant, supra,* of *Jenkins v. Tahmahkera,* 151 F.4th 739 (5th Cir., Dec. Aug. 19, 2025). *Tahmahkera's* Published Opinion with Dissent, discussed how Texas municipality's concerted and long-term efforts to preclude all liability via a Statute of Limitation defense.

Tahmahkera was dismissed under Statute of Limitations despite the well-plead concealment of the existence of a wrongful death case in custody. the §1983 suit filed. As the Dissenting Judge Higginson noted "When we review dismissals under Rule 12, we take the plaintiff's well-pleaded

allegations at face value. I therefore start by recounting what the plaintiff in this case, Robert Miller's widow Shanelle Jenkins, has alleged about her repeatedly obstructed attempts to learn what happened to her husband. […] "Jenkins tells us that her husband was in the custody of the Tarrant County Jail when he died in August 2019. It is now apparent that he suffocated to death because he was repeatedly pepper-sprayed while he was in restraints, then abandoned on a jail cell floor as he struggled to breathe. But that is not what was conveyed to Jenkins. Instead, the government misstated the cause of death and disseminated a false autopsy report." *Tahmahkera,* at 752. It appears, however, that the potential Petitioners in *Tahmahkera* have not sought timely review with this Court, which would have required at least a request for Extension of Time, by on or about November 18, 2025. Thus, while *Tahmahkera* confirms the Circuit Split, the failure by the parties in that case to seek Certiorari, further justifies that *Simon's* case which argued the same legal issue in Question Presented One, is a proper vehicle which justifies a "Call for Response" to be issued.

A Split exists amongst Circuits on the topic. Simon's case, on top of being interesting for being a victim of corrupt Baltimore police officers who concealed their crimes for years, were actually *criminally* found guilty for their conspiracy of violating Petitioner Simon's Civil Rights, with three officers never even known to exist before the criminal charges, have unfairly and extraordinarily not been held civilly responsible solely on Statute of

Limitations grounds, without discovery being permitted. For all intents and purposes, this is the same legal issue as *Takmahkera's* published opinion,. *Simon* compares and contrasts favorably with the Second Circuit's more relaxed determinations on equitable tolling, equitable estoppel, and fraudulent concealment, in *Emigrant Mort. Co. v. Saint Jean,* No. 25-229, whose Question Presented One focuses upon the same legal issue as that of *Simon* and *Tahmahkera. Emigrant's* different outcome in favor of Plaintiffs/Respondents, as confirmed with *Emigrant's* Certiorari Petition and the previously discussed Amici of the Bank Policy Institute, which called the Second Circuit's standards on equitable tolling and fraudulent concealment Certworthy because Courts should *never* consider "fairness" and claimed that the doctrine as applied, created a "limitless standard" justifying this Court's Certiorari review.

CONCLUSION

For the foregoing reasons, and the Petition for Rehearing, Petitioner Demetric Simon respectfully requests the Supreme Court of the United States grant review of this matter. Should this Court grant Certiorari in *Emigrant Mortgage Co. et. al.,* v. *Saint-Jean,* No. 25-229, it is respectfully requested that this Court grant Certiorari for *Simon v. Gladstone et. al.,* as well, or in the alternative, ***HOLD*** *Simon* for a disposition on the merits in *Emigrant.*

Alternatively, it is requested this Court consider the foregoing Petition as appropriate for this Court's consideration on Summary Reversal, based on the

straightforward arguments presented in the claims for relief, in Question Presented #3, consistent with materials reproduced in the Appendix to the Certiorari Petition, (46a-61a), and this Court's recent *Sweeney* summary reversal case, holding the Fourth Circuit to task for *sua sponte* deciding matters, that violated "party-presentation" principles.

Alternatively, this Court should at the very least, ensure the interesting and important legal issues are properly addressed and considered in due course with a "Call for Response" to the Respondents represented by the Baltimore City Solicitor's office, from the three Questions Presented originally argued to this Court. Petitioner has demonstrated a: (1) Circuit Split exists on Question Presented One, (2) a Circuit Split and an important ethical issue rarely discovered or presented this Court, but is being used on the need for disclosures since no Federal Rule has been exacted on the use by some Defendants of secret settlement agreements between collusive parties to obtain favorable precedent sometimes referred to in modern times as "high-low appellate agreements")(*App. F (62a)) and (3) almost identical procedural missteps by the Fourth Circuit of a *sua sponte* decision that the trial Court disclaimed was a basis of their ruling, but this didn't stop the Fourth Circuit deciding on that basis, that *neither party* argued to the Fourth Circuit previously, as this Court rightly criticized this "party presentation" requirement be enforced, in this Court's November

24, 2025 in *Clark v. Sweeney,* 223 L.Ed.2d 157 (U.S. 2025)(*per curiam*).[6]

Respectfully Submitted,

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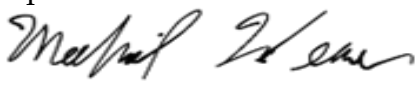
[6] Relevant decisions of this Court on Rehearing being granted, at least in part, include (1) *Wright v. Westbrooks,* 578 U.S. 1021 (2016)(Ordering Respondent to File a Response to Petition for Rehearing); (2) *Forgett v. United States,* 390 U.S. 203 (1965)(Granting Rehearing, vacating decision based on recent Supreme Court decision); (3) *Md. ex rel. Levin v. United States,* 382 U.S. 159 (1965)(granting Rehearing and remanding for further proceedings); (4) *Oklahoma v. United States,* 145 S.Ct. 2836 (Dec. June 30, 2025) (Granting Rehearing, remanded based on recent Supreme Court decision).

CERTIFICATE OF COUNSEL

I hereby certify that this Supplemental Brief to the Petition for Rehearing is presented in good faith, and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44.2.



Michael Wein, Esquire