

No.

IN THE
Supreme Court of the United States

TERENCE CLARK, DIRECTOR, *et al.*,
Petitioners,

v.

JEREMIAH ANTOINE SWEENEY,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Antiterrorism and Effective Death Penalty Act (AEDPA) prohibits federal courts from granting habeas relief on any claim alleged by a habeas petitioner who challenges a state-court conviction unless (1) the state courts have first been afforded a full and fair opportunity to adjudicate the claim; and (2) the state courts’ rejection of the claim is contrary to, or an unreasonable application of, federal law as determined by the holdings of this Court. In this case, a divided panel of the United States Court of Appeals for the Fourth Circuit declared that a series of largely unexhausted and unraised errors it perceived in respondent Jeremiah Antoine Sweeney’s trial “t[ook] this case beyond . . . traditional habeas review” and required relief. App. 22a. The questions presented, which warrant summary reversal, are as follows:

1. Did the Fourth Circuit violate the party-presentation principle by granting federal habeas relief based on putative errors in the state trial proceedings that Mr. Sweeney never alleged?

2. Did the Fourth Circuit improperly circumvent AEDPA’s exhaustion requirement by applying a “special circumstances” exception derived from *Frisbie v. Collins*, 342 U.S. 519 (1952), and *Granberry v. Greer*, 481 U.S. 129 (1987), that AEDPA eliminated and that has no applicability beyond the unique circumstances of those cases, as other courts of appeals have concluded?

3. Did the Fourth Circuit flout the AEDPA merits standard by granting federal habeas relief in the absence of clearly established federal law as determined by the holdings of this Court?

PARTIES TO THE PROCEEDING

Petitioners are Terence Clark, Director of the Prince George's County Department of Corrections,* and Anthony G. Brown, Attorney General of Maryland. Respondent is Jeremiah Antoine Sweeney, an inmate in Director Clark's custody.

* In the proceedings in the Fourth Circuit, Richard J. Graham, Jr., Warden of the Western Correctional Institution, was listed as respondent Sweeney's custodian. On or about June 20, 2025, by order of the Circuit Court for Prince George's County, Maryland, Mr. Sweeney was transferred to the Prince George's County Detention Center, and thus, Director Clark is now his custodian.

RELATED PROCEEDINGS

Circuit Court for Prince George’s County, Maryland:

State v. Sweeney, No. CT100597X (judgment of conviction entered Sept. 16, 2011)

Court of Special Appeals of Maryland:

Sweeney v. State, No. 1941, Sept. Term, 2011 (opinion issued on direct appeal Oct. 8, 2013; mandate issued Nov. 8, 2013)

Court of Appeals of Maryland:

Sweeney v. State, Pet. No. 503, Sept. Term, 2013 (cert. denied on direct appeal Jan. 27, 2014)

Circuit Court for Prince George’s County, Maryland:

State v. Sweeney, No. CT100597X (state petition for postconviction relief denied Aug. 11, 2017)

Court of Special Appeals of Maryland:

Sweeney v. State, ALA No. 1512, Sept. Term, 2017 (opinion summarily denying leave to appeal issued Apr. 3, 2018; mandate issued May 3, 2018)

United States District Court (D. Md.):

Sweeney v. Graham, et al., No. 19-cv-01289 (Apr. 14, 2022)

United States Court of Appeals (4th Cir.):

Sweeney v. Graham, et al., No. 22-6513 (judgment entered Mar. 13, 2025; rehearing en banc denied Apr. 8, 2025; motion to stay mandate denied May 8, 2025)

RELATED PROCEEDINGS—Continued

Supreme Court of the United States:

Graham, et al. v. Sweeney, No. 24A1099
(application to stay the Fourth Circuit’s mandate
denied May 23, 2025)

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Petitioners, Terence Clark, Director of the Prince George’s County Department of Corrections, and Anthony G. Brown, Attorney General of Maryland, respectfully ask the Court to issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The opinion of the Fourth Circuit, App. 1a-108a, is unpublished but available at 2025 WL 800452. The court’s order denying rehearing en banc, App. 175a, is unpublished. The opinion of the district court denying the federal habeas petition, App. 109a-124a, is unpublished but available at 2022 WL 1120066.

The opinion of the Court of Special Appeals of Maryland affirming the judgment of conviction on direct appeal, App. 152a-174a, is unreported. The order of the Court of Appeals of Maryland¹ denying certiorari review on direct appeal is reported at 436 Md. 503 (2014) (table). The opinions of the state postconviction court denying relief, App. 136-151a, and the Court of Special Appeals of Maryland denying leave to appeal, App. 134a-135a, are unreported.

¹ In 2022, an amendment to the state constitution changed the name of the Court of Appeals of Maryland to the “Supreme Court of Maryland” and changed the name of the Court of Special Appeals of Maryland to the “Appellate Court of Maryland.”

JURISDICTION

The Fourth Circuit entered its judgment on March 13, 2025, and it denied petitioners' timely petition for rehearing en banc on April 8, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to . . . an impartial jury of the State and district wherein the crime shall have been committed . . . [and] to be confronted with the witnesses against him"

Section 2254 of Title 28 of the United States Code, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), provides in relevant part:

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State; or

(B)(i) there is an absence of available State corrective process; or

(ii) circumstances exist that render such process ineffective to protect the rights of the applicant.

* * *

(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.

* * *

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

In 2011, a Maryland jury convicted Mr. Sweeney of murder, attempted murder, and related handgun offenses. Mr. Sweeney sought postconviction relief in the state courts but was unsuccessful. He then filed a federal habeas petition under 28 U.S.C. § 2254. The parties presented to the courts below a straightforward dispute regarding whether the state courts reasonably applied *Strickland v. Washington*, 466 U.S. 668 (1984), in denying a single ineffective-assistance claim. That claim related to the propriety of his attorney's response to a juror's revelation during deliberations that he had visited the crime scene during the trial without permission. Mr. Sweeney argued that his attorney should have asked to voir dire the entire jury under *Remmer v. United States*, 347 U.S. 227 (1954), to ascertain whether that juror's misconduct had tainted the other jurors, before the court, with the parties' agreement, struck that juror and continued deliberations with an eleven-member jury. The district court denied the habeas petition, concluding that the state courts' application of *Strickland* was not objectively unreasonable. The district court declined to issue a certificate of appealability, but the Fourth Circuit granted one.

The Fourth Circuit should have reviewed Mr. Sweeney's claim under AEDPA and concluded that *Remmer* did not clearly establish that Mr. Sweeney was entitled to voir dire the entire jury, and consequently, that the state courts' denial of Mr. Sweeney's *Strickland* claim was not objectively unreasonable. Instead, the panel majority decided that Mr. Sweeney deserved a new trial. And it reached that conclusion only by ignoring AEDPA and

this Court’s precedent. Judge Gregory, writing for the majority, reviewed the trial record *de novo* and granted relief based on a “confluence” of supposed errors and constitutional violations that Mr. Sweeney had never raised in state or federal court. App. 22a, 25a, 51a-52a. In lieu of applying the well-established AEDPA exhaustion requirement, the majority relied upon a “special circumstances” exception derived from *Frisbie v. Collins*, 342 U.S. 519 (1952), and *Granberry v. Greer*, 481 U.S. 129 (1987). And as to the lone claim that Mr. Sweeney had raised and exhausted, the majority refused to review it through AEDPA’s lens, never citing AEDPA or its standard of review for any substantive purpose. The majority attempted to justify its noncompliance with AEDPA, this Court’s precedent, and prevailing legal norms by declaring that the “multitude of failures” it perceived in Mr. Sweeney’s trial “take this case beyond our traditional habeas review.” App. 22a.

In dissent, Judge Quattlebaum highlighted numerous ways the panel majority “flout[ed]” this Court’s precedent, App. 108a, concluding that “[t]he moment this decision [was] issued, it [was] untenable under binding Supreme Court precedent.” App. 55a (citation and footnote omitted).

The Fourth Circuit’s refusal to obey well-established federal law to grant *ad hoc* federal habeas relief is indeed untenable. “[T]raditional habeas review” is what Congress has prescribed, and this Court has admonished lower courts repeatedly that AEDPA’s constraints are not optional. The Fourth Circuit’s disregard of those constraints in service of its extraordinary intervention warrants summary reversal.

STATEMENT

The Shooting

This case arises out of a fatal shooting. The State established at trial through the testimony of sixteen witnesses—including “[m]ultiple eyewitnesses”—that Mr. Sweeney started a loud and public argument with “neighbors” over allegedly stolen drugs and that, when the victims attempted to leave, Mr. Sweeney “opened fire, missing his intended targets and instead fatally wounding a bystander from approximately seventy-five yards away, across a street.” App. 4a, 82a.

This event occurred on the night of April 10, 2010, in Landover, Maryland. App. 56a. Mr. Sweeney accused Eric McDonald—who was with a group of friends—of stealing marijuana, and an argument ensued. App. 56a. At one point, Mr. Sweeney retrieved a “gun clip” from his home, returned outside, “and announced: ‘I got my piece,’ referring to a firearm.” App. 111a. Mr. Sweeney and Mr. McDonald then exchanged “threats” for approximately thirty minutes. App. 111a. Among other things, Mr. Sweeney declared: “I’m going to kill somebody.” App. 111a.

David Walls, who lived nearby, asked Mr. Sweeney to leave. App. 154a. Mr. Sweeney “then turned to walk up the street, inserting the clip into his gun as he did so.” App. 154a. As Mr. Sweeney “reached the area in front of his house, he dared McDonald to ‘cross the gun line.’” App. 154a.

Mr. Walls eventually convinced his group of friends to go inside. App. 154a. As they began to “make their way toward Walls’s house, [Mr. Sweeney]

fired his gun once into the air, and [he] then fired approximately five or six times in the direction of McDonald and the other young men.” App. 154a. A bystander, Robert Anderson, was “struck by a bullet in the back of the head” and killed. App. 154a-155a. Mr. Sweeney “then paced around the area in front of his house before getting into his red Cadillac and driving away.” App. 155a.

Several cartridge casings were found at the crime scene “in the street near a parked car.” App. 155a. The police searched “the area surrounding where the victim was found” but did not find any casings. App. 159a. The police also observed “marks of ‘bullet strikes’” on a car “between where the shell casings were collected and where the victim was found” that “appeared to have been caused by gunfire which originated from where the casings were found.” App. 159a.

The gun that was used to kill Mr. Anderson was never recovered. App. 5a. The police did recover two firearms—one from Mr. Walls, and one from Mr. Sweeney’s residence—but a firearms examiner concluded that neither was used to fire the cartridge cases from the crime scene. App. 5a.

The police also found a cigarette butt near the fired cartridge casings. App. 155a. A forensic chemist tested the cigarette butt, which “yielded a complete DNA profile” that was “consistent with the known DNA profile of [Mr. Sweeney].” App. 161a (internal quotation marks omitted).

Mr. Sweeney’s position in relation to that of Mr. Anderson at the time of the shooting “and the angle of the decedent’s bullet wound” became central to Mr. Sweeney’s trial defense. App. 2a, 5a. Trial

defense counsel elicited testimony that, in his view, demonstrated that Mr. Anderson's "bullet wound . . . was not consistent with the angle where Sweeney was in relation to the decedent; rather, it was consistent with the position of another individual at the scene, David Walls." App. 5a. Witnesses said that "they had seen Walls with a gun" that night, but "they testified that Walls did not shoot the decedent." App. 5a.

Juror 4's Misconduct During the Trial

The legal disputes in this case centered on the misconduct of Juror 4. On the evening of the fourth day of trial, after the State rested its case but before deliberations began, Juror 4 visited the crime scene without permission. App. 5a. About an hour into the jury's deliberations the next morning, the court received a note from the jury, reporting that Juror 4 had visited the crime scene and that "a couple of witnesses were there," but "[t]here was no interaction." App. 6a (footnote omitted).

Juror 4 was brought to the courtroom, and he told the court and parties that he went to the crime scene to "get a visual" but "spoke to no one." App. 6a. The court asked, "Is this in any way going to affect your—" and Juror 4 interjected, "No, sir. Not at all." App. 7a. Trial defense counsel asked if "any of the other jurors [knew] that [he] went there," and Juror 4 responded: "They do. But they stopped me, too, because they thought that I should stop talking and I present what I just said to you all." App. 7a. Juror 4 assured the court: "I would have no problem with basing my decision, and they would have no problem basing their decision, off of the evidence which was presented in the case." App. 7a-8a. Following that exchange, the judge directed Juror 4 not to "discuss anything that

happened during [his] tour of the crime scene,” and sent the jury, including Juror 4, to the jury lounge while the parties and the court weighed their options. App. 10a.

Defense counsel consulted Mr. Sweeney and presented him with three options: (1) transport all the jurors to the crime scene; (2) strike Juror 4 and proceed with eleven jurors; or (3) request a mistrial. App. 12a, 15a. Mr. Sweeney’s preference was to take all the jurors to the crime scene to see it for themselves, but the court determined this option was not feasible. App. 10a, 60a. That left Mr. Sweeney with a choice of proceeding with eleven jurors or requesting a mistrial. After consulting with counsel, Mr. Sweeney decided to strike Juror 4 and proceed with an eleven-member jury. App. 60a. The court dismissed Juror 4, and the eleven-member jury continued deliberating until reaching a unanimous verdict. App. 61a. The eleven-member jury convicted Mr. Sweeney of murder, attempted murder, and handgun offenses. App. 13a. “He was sentenced to two consecutive terms of life imprisonment plus thirty years.” App. 13a.

Mr. Sweeney’s conviction was affirmed on direct appeal. App. 61a. He did not raise any issue on direct appeal related to Juror 4’s misconduct. App. 61a.

State Postconviction Proceedings

Mr. Sweeney later filed a petition for post-conviction relief in state court. He claimed, among other things, that his trial attorney was ineffective under *Strickland* because he chose “to proceed with an eleven[-]member jury without requesting *voir dire* of the remaining jurors regarding Juror Number 4’s

independent investigation of the crime scene or failing to request a mistrial,” and he “fail[ed] to object to Juror No. 4 being allowed back into the deliberation room after advising the court he had visited the crime scene.” App. 13a-14a. In support of these arguments, Mr. Sweeney cited *Nash v. State*, 439 Md. 53 (2014), which cited *Remmer* and held that “[w]hen a party moves for a mistrial based upon [mis]conduct of jurors” so gross as to “raise a presumption of prejudice,” Maryland law requires trial judges “to conduct *voir dire sua sponte*, prior to ruling on the motion.” *Nash*, 439 Md. at 69; App. 62a.

At the state postconviction hearing, trial defense counsel testified that when Juror 4’s misconduct came to light, he and Mr. Sweeney “contemplated a mistrial,” but their “[defense] theory was . . . going very well,” and they were concerned that they would be unable to “replicate that scenario again.” App. 15a. That is, Mr. Sweeney and his attorney believed they “had made a lot of headway in the courtroom,” App. 16a, a perceived advantage that they would forfeit if a mistrial were declared. Additionally, based on the court’s and parties’ discussion with Juror 4, trial defense counsel believed that “the jury was not tainted as to what he said or did.” App. 16a. Accordingly, Mr. Sweeney decided to forgo a mistrial and continue deliberations with an eleven-member jury. App. 12a, 15a-16a.

The state postconviction court denied Mr. Sweeney’s petition for two reasons: first, because *Nash* applies when a mistrial is requested and Mr. Sweeney had chosen not to request one; and second, because he “failed to produce evidence that Trial Counsel included the option to *voir dire sua sponte* the

remaining eleven jurors.” App. 148a. The court also found that the “[d]efense essentially waived the issue to *voir dire sua sponte* the remaining eleven jurors when [defense counsel] conferred with his client on how to proceed and did so with the eleven jurors.” App. 148a.

Mr. Sweeney filed an application for leave to appeal, but the Maryland intermediate appellate court summarily denied the application, App. 134a-135a.

Federal Habeas Proceedings

In 2019, Mr. Sweeney filed a petition for a writ of habeas corpus under 28 U.S.C. § 2254 in the United States District Court for the District of Maryland. App. 65a. He alleged once again that his trial attorney was ineffective for not seeking to *voir dire* the entire jury before agreeing to strike Juror 4 and continuing with the remaining eleven jurors. In support of his claim, he cited *Remmer* and the Fourth Circuit’s decision in *Barnes v. Joyner*, 751 F.3d 229 (2014). App. 65a-66a. He did not present Sixth Amendment impartial-jury or Confrontation Clause claims.

The district court denied the petition. It observed that Mr. Sweeney “failed to bring a claim, either on direct appeal or in his application for postconviction review, that the trial court deprived him of the right to an impartial jury when it did not conduct a proper *Remmer* hearing.” App. 118a (footnotes omitted). And as to Mr. Sweeney’s ineffective-assistance claim—the sole claim that was “properly before the [c]ourt”—the district court concluded that the state court’s application of the *Strickland* standard was not objectively unreasonable. App. 119a-123a.

A divided panel of the Fourth Circuit reversed. The panel majority cited not just the ineffective-assistance claim Mr. Sweeney had raised but a purported “combination of extraordinary failures from juror to judge to attorney.” App. 22a. The panel majority first had to confront Mr. Sweeney’s failure to raise or exhaust that “combination” of errors. It did so by citing this Court’s decisions in *Frisbie* and *Granberry* and concluding that the “special circumstances” of Mr. Sweeney’s case (*i.e.*, the combination of errors framed by the court) obviated the exhaustion requirement and “require[d] prompt federal intervention.” App. 19a-22a.

Then, turning to the merits of the issues it had identified *sua sponte*, the panel majority held that “the trial court judge neglected his duty to prevent prejudicial occurrences by failing to adequately question Juror No. 4 and failing to inquire at all into the potential impartiality of the other eleven jurors,” which “encroached on Sweeney’s right to an impartial jury and confrontation right under the Sixth and Fourteenth Amendments” (a claim not raised or exhausted by Mr. Sweeney). App. 25a-29a.

Next, the panel majority held that the trial judge failed to conduct a “proper” evidentiary hearing *sua sponte*, which “deprived Sweeney of his constitutional rights under the Sixth and Fourteenth Amendments” (another unraised and unexhausted claim). App. 29a-32a.

Then, it held that the trial judge failed to *sua sponte* “take proper steps to mitigate or cure that taint and to more broadly prioritize Sweeney’s right to a fair trial”—which it viewed as another

constitutional violation (also an unraised and unexhausted claim). App. 32a-37a.

Turning to the sole claim that Mr. Sweeney *did* raise, the panel majority concluded that trial counsel “rendered inadequate counsel by failing to sufficiently inquire into the prejudice that had potentially infected the jury and then, uninformed, choosing to proceed with an eleven-member jury.” App. 37a-46a. In doing so, the panel majority decided that the ordinary *Strickland* prejudice standard was not suitable and that the prejudice prong could instead be satisfied by “a breakdown of the adversarial process.” App. 45a-46a.

Finally, the majority characterized these perceived deficiencies in the aggregate, as a “confluence of extraordinary failings.” App. 50a. It concluded that “the myriad issues in Sweeney’s trial constitute[d] structural error,” which entitled him to a new trial. App. 50a-52a.

Judge Quattlebaum dissented. He criticized the panel majority for “flout[ing]” this Court’s precedent by (1) reviewing unraised issues in violation of the party-presentation principle; (2) “ignoring AEDPA’s exhaustion requirements”; (3) applying an unsound and “unworkably squishy” exception to the exhaustion requirement; (4) failing to cite or apply the AEDPA merits standard; (5) “misapplying” both prongs of the *Strickland* analysis; and (6) finding structural error where none existed. App. 53-54a, 87a, 102a, 104a-105a. Judge Quattlebaum concluded that “[t]his is a straightforward AEDPA ineffective assistance of counsel case,” and that “[f]ollowing established law, the outcome is clear—we must affirm the district court.” App. 107a.

Petitioners timely filed a petition for rehearing en banc. On April 8, 2025, the court of appeals denied the petition. App. 175a.

On April 14, 2025, petitioners moved the Fourth Circuit to stay the issuance of its mandate pending the filing of this petition. On May 8, 2025, the panel majority, again over Judge Quattlebaum's dissent, denied the motion. App. 131a.

On May 14, 2025, petitioners asked this Court to stay the Fourth Circuit's mandate. In support, they cited the district court's signaled intent to promptly issue a conditional writ of habeas corpus unless this Court granted a stay and petitioners' concern that the district court would require a retrial on an untenable timeframe. On May 23, 2025, this Court denied petitioners' application.

Petitioners' concerns soon were borne out. On June 2, 2025, the district court issued a conditional writ requiring that Mr. Sweeney be retried within seventy days or else released. App. 127a-130a.

REASONS FOR GRANTING THE PETITION

Mr. Sweeney raised only one claim below: whether trial counsel was ineffective for not asking to voir dire the entire jury under *Remmer* before striking Juror 4 and proceeding to a verdict with an eleven-member jury. The panel majority largely sidelined that claim; declared sua sponte that "the errors before us now are the confluence of extraordinary failings from juror, to judge, to attorney"; asserted that "prompt federal intervention" was necessary even though the claims it identified were unexhausted; and granted federal habeas relief on the ground that the "combination" of supposed shortcomings at trial

amounted to structural error that violated Mr. Sweeney’s rights under the Sixth and Fourteenth Amendments to an impartial jury and confrontation. App. 22a, 29a, 50a-51a. But that “combination” of issues was not properly before the Fourth Circuit, and the majority’s decision to grant federal habeas relief on those grounds anyway violates this Court’s precedent on party presentation, AEDPA exhaustion, and AEDPA merits review. Because the Fourth Circuit departed so drastically from well-established federal habeas law, its decision should be summarily reversed.²

I. The Fourth Circuit Violated the Party-Presentation Principle by Granting Habeas Relief Based on Putative Errors That Mr. Sweeney Never Raised.

This Court has repeatedly warned lower courts that they should adjudicate the case presented by the parties and should not review issues the parties did

² That the Fourth Circuit’s opinion in this case was unpublished does not weigh against review. As the dissent below noted, “deviating from requirements imposed by Congress, [and this] Court . . . is problematic, even in an unpublished opinion.” App. 55a (Quattlebaum, J., dissenting). Indeed, the Fourth Circuit should not be permitted to insulate serious errors from review by refraining from publication. *See C.I.R. v. McCoy*, 484 U.S. 3, 7 (1987) (“[T]he fact that the Court of Appeals’ order under challenge here is unpublished carries no weight in our decision to review the case.”); *Smith v. United States*, 502 U.S. 1017, 1020 n.* (1991) (Blackmun, J., dissenting from the denial of certiorari) (“Nonpublication cannot be used as a convenient means to prevent review. An unpublished opinion may have a lingering effect in the Circuit and surely is as important to the parties concerned as is a published opinion.”).

not raise. See *Wood v. Milyard*, 566 U.S. 463, 473 (2012) (“For good reason, appellate courts ordinarily abstain from entertaining issues that have not been raised and preserved in the court of first instance. That restraint is all the more appropriate when the appellate court itself spots an issue the parties did not air below”) (internal citation omitted); *Greenlaw v. United States*, 554 U.S. 237, 243 (2008) (“In our adversary system, in both civil and criminal cases, in the first instance and on appeal, we follow the principle of party presentation. That is, we rely on the parties to frame the issues for decision and assign to courts the role of neutral arbiter of matters the parties present.”); see also *United States v. Burke*, 504 U.S. 229, 246 (1992) (Scalia, J., concurring) (“The rule that points not argued will not be considered is more than just a prudential rule of convenience; its observance, at least in the vast majority of cases, distinguishes our adversary system of justice from the inquisitorial one.”).

But turning an adversarial proceeding into an inquisitorial one, with an eye toward ferreting out errors upon which to grant habeas relief, is precisely what the panel majority did here. See App. 100a-102a (Quattlebaum, J., dissenting) (criticizing the panel majority for “serving as a ‘roving advocate’ for Sweeney” by “conjur[ing] up questions never squarely presented to them” and sua sponte excusing their nonexhaustion (citation and quotation marks omitted)). The panel majority improperly identified claims that Mr. Sweeney never raised or exhausted in the state courts, *i.e.*, that Juror 4’s misconduct and the trial court’s supposed inadequate response violated Mr. Sweeney’s rights to an impartial jury and confrontation. It then justified its extraordinary inter-

vention under a supposed exception to the AEDPA exhaustion requirement—which Mr. Sweeney never referenced, and petitioners never had a chance to address—and ultimately granted relief based on the combination of errors that it discerned for itself. *See* App. 98a (Quattlebaum, J., dissenting) (observing that “any hint of [the] argument” that the majority used to grant relief “is missing from the state and district court proceedings and from the briefs before [the court of appeals],” and lamenting that “in charting its own path, the majority violates AEDPA’s exhaustion requirements and offends party presentation principles”).

This Court has reversed in cases where a court of appeals has strayed dramatically from the case presented by the parties. *See United States v. Sineneng-Smith*, 590 U.S. 371, 375 (2020) (reversing because “the appeals panel departed so drastically from the principle of party presentation as to constitute an abuse of discretion”). Here, too, the Fourth Circuit’s failure to confine its review to the issues raised by the parties was an abuse of discretion that warrants summary reversal.

II. The Fourth Circuit Circumvented AEDPA’s Exhaustion Requirement by Invoking a “Special Circumstances” Exception That AEDPA Superseded and That Would Not Apply Even on Its Own Terms.

Congress has strictly limited federal habeas review of state-court convictions. Among other things, before a federal habeas court may review a claim on the merits, the petitioner ordinarily must fully exhaust his claim in the state courts. 28 U.S.C. § 2254(b)(1)(A); *see also O’Sullivan v. Boerckel*, 526

U.S. 838, 845 (1999) (explaining that the “exhaustion doctrine” was intended to “give the state courts a full and fair opportunity to resolve federal constitutional claims before those claims are presented to the federal courts,” and thus, “state prisoners must give the state courts one full opportunity to resolve any constitutional issues by invoking one complete round of the State’s established appellate review process.”). This Court has described the exhaustion rule as a “threshold barrier,” *Day v. McDonough*, 547 U.S. 198, 205 (2006), that should be “rigorously enforced.” *Duncan v. Walker*, 533 U.S. 167, 179 (2001) (quoting *Rose v. Lundy*, 455 U.S. 509, 518 (1982)); *see also Baldwin v. Reese*, 541 U.S. 27, 29 (2004) (emphasizing that “[b]efore seeking a federal writ of habeas corpus, a state prisoner must exhaust available state remedies”).

Here, the panel majority recognized that Mr. Sweeney never presented to the state courts the Sixth Amendment impartial-jury and confrontation issues that the panel addressed sua sponte. App. 19a-22a. But to sidestep the exhaustion requirement, the majority relied on this Court’s decisions in *Frisbie* and *Granberry* and declared that this case’s supposed “special circumstances” excused the failure to exhaust. App. 19a-22a. The Fourth Circuit erred in so concluding because (1) *Frisbie* and *Granberry* did not survive the enactment of AEDPA, whose mandatory exhaustion requirement forecloses any “special circumstances” exception; and (2) even on their own terms, those decisions would not apply here.

In *Frisbie*, decided more than four decades before the enactment of AEDPA, a federal habeas petitioner claimed that police officers had forcibly kidnapped

him in Illinois, brought him to Michigan, and “illegally imprisoned” him. *Collins v. Frisbie*, 189 F.2d 464, 465, 468 n.1 (6th Cir. 1951), *rev’d*, 342 U.S. 519 (1952). The Sixth Circuit excused the petitioner’s failure to exhaust that claim in state court because, in its view, “exceptional circumstances . . . require[d] prompt federal intervention.” *Id.* at 468 n.1. Specifically, the Sixth Circuit explained that “certain United States District Judges in the same district [were] upholding the action of state officers in forcibly abducting and kidnaping [sic] from other states,” and the district court judge presiding in the *Frisbie* case had “ignored” circuit precedent. *Id.*

Reviewing the Sixth Circuit’s decision, this Court stated that the “general rule” of exhaustion “is not rigid and inflexible; district courts may deviate from it and grant relief in special circumstances.” *Frisbie*, 342 U.S. at 521. It added that “[w]hether such circumstances exist calls for a factual appraisal by the court in each special situation.” *Id.* Addressing the special circumstances that the Sixth Circuit found, the Court concluded that they were “peculiar to [the] case, may never come up again, and a discussion of them could not give precision to the ‘special circumstances’ rule,” and so “[i]t would serve no useful purpose to review those special circumstances in detail.” *Id.* at 521-22. Instead, the Court merely accepted the Sixth Circuit’s findings as “sound arguments” for a “prompt decision of the issues raised.” *Id.* at 522.

The Fourth Circuit in this case relied upon *Granberry*—another pre-AEDPA case—for the proposition that federal courts may “determine whether the interests of justice would be better

served’ by addressing underlying issues” and excuse nonexhaustion sua sponte. App. 19a (quoting *Granberry*, 481 U.S. at 136). But this Court in *Granberry* was not granting lower courts free license to excuse nonexhaustion at their discretion, as the panel majority suggested. Rather, the Court noted that “there are exceptional cases in which the State fails, whether inadvertently or otherwise, to raise an arguably meritorious nonexhaustion defense. The *State’s omission* in such a case makes it appropriate for the court of appeals to take a fresh look at the issue.” *Granberry*, 481 U.S. at 134 (emphasis added). Citing *Frisbie*, among other cases, the Court added that if “it is evident that a miscarriage of justice has occurred, it may also be appropriate for the court of appeals to hold that *the nonexhaustion defense has been waived* in order to avoid unnecessary delay in granting relief that is plainly warranted.” *Id.* at 135 (emphasis added). It held that a federal “appellate court is not required to dismiss for nonexhaustion *notwithstanding the State’s failure to raise it*, and the court is not obligated to regard the State’s *omission as an absolute waiver* of the claim.” *Id.* at 133 (emphasis added).

The Fourth Circuit’s reliance on *Frisbie* and *Granberry* cannot be squared with AEDPA or subsequent decisions considering the impact of the statute’s exhaustion requirement. AEDPA provides, categorically, that a petition “*shall not be granted* unless it appears that . . . the applicant has exhausted the remedies available in the courts of the State.” 28 U.S.C. § 2254(b)(1)(A) (emphasis added). It excuses nonexhaustion only where “there is an absence of available State corrective process” or “circumstances exist that render such process ineffective to protect

the rights of the applicant.” *Id.* § 2254(b)(1)(B)(i), (ii). There is no exception for other, unenumerated “special circumstances.” *See Lambert v. Blackwell*, 134 F.3d 506, 516 n.20 (3d Cir. 1997) (concluding that “the so-called ‘special circumstances’ exception of *Frisbie v. Collins* . . . did not survive the AEDPA amendments to the federal habeas corpus statute”).

As for *Granberry*, this Court in *Banks v. Dretke*, 540 U.S. 668 (2004), cited that decision as an example of “pre-AEDPA law” holding that “exhaustion and procedural default defenses could be waived based on the State’s litigation conduct.” *Id.* at 705. It then emphasized that now, AEDPA—specifically, § 2254(b)(3)—“forbids a finding that exhaustion has been waived unless the State expressly waives the requirement.” *Id.* at 705. *But see Sanchez v. Roden*, 753 F.3d 279, 293 n.8 (1st Cir. 2014) (applying *Granberry* post-AEDPA without acknowledging or addressing the question of its post-AEDPA validity).

But even if *Frisbie* and *Granberry* were still good law post-AEDPA, the cases would not apply here. First, both *Frisbie* and *Granberry* involved a party’s waiver of the exhaustion requirement. *See Frisbie*, 342 U.S. at 521 (noting that “the state did not raise the question” of exhaustion in the district court, and so exhaustion was “apparently assumed”); *Granberry*, 481 U.S. at 132 (stating that the exhaustion requirement could be waived if the state failed to raise it in the district court); *see also Gagne v. Fair*, 835 F.2d 6, 10 (1st Cir. 1987) (stating, prior to AEDPA, that the *Frisbie* “special circumstances” exception “remains open to interpretation, since the Court treated *Frisbie* as having presented a waiver question”). Here,

petitioners did not waive the exhaustion requirement below, either expressly or by omission.

Second, *Frisbie* made clear that the exception it created (and that *Granberry* later mentioned) was exceedingly narrow. The Court stated that the circumstances at issue were so “peculiar to [that] case” and unlikely to reoccur that “a discussion of them could not give precision to the ‘special circumstances’ rule.” *Frisbie*, 342 U.S. at 521-22. Indeed, the Third and Sixth Circuits have concluded that the exception has little or no applicability beyond the peculiar circumstances of *Frisbie*. *Lambert*, 134 F.3d at 516 n.20 (agreeing that the *Frisbie* exception “is so ill-defined that it must be considered *sui generis*”); *O’Guinn v. Dutton*, 88 F.3d 1409, 1413 (6th Cir. 1996) (“Extending *Granberry* beyond the ‘exceptional’ or ‘unusual’ case undermines the law’s clear preference for having unexhausted claims decided in state court.”). The circumstances of this case do not even remotely resemble the “special circumstances” in *Frisbie*, which concerned the interstate abduction of prisoners by state officials.

Third, the court of appeals in *Frisbie* concluded, and this Court apparently agreed, that immediate review was warranted despite nonexhaustion because of the exceptional urgency of the matters involved, *i.e.*, interstate kidnappings by police that district court judges were upholding. *Frisbie*, 189 F.2d at 468 n.1; *Frisbie*, 342 U.S. at 521-22. Here, no urgency warranted hasty federal intervention. Rather, this was a run-of-the-mill § 2254 case, presenting a straightforward *Strickland* claim, brought approximately eight years after Mr. Sweeney’s conviction.

Finally, this Court said in *Frisbie* that the determination whether “special circumstances” exist should be “largely left to the trial courts subject to appropriate review by the courts of appeals.” *Frisbie*, 342 U.S. at 521. Here, the district court never considered the *Frisbie* exception, nor did petitioners have an opportunity to address it, because Mr. Sweeney never raised it.

In sum, the panel majority’s sua sponte reliance on *Frisbie* and *Granberry* to excuse nonexhaustion is a serious misapplication of this Court’s precedent and conflicts with the decisions of other circuits. The Court should grant this petition and summarily reject the court of appeals’ misuse of pre-AEDPA precedent to circumvent the AEDPA exhaustion requirement.

III. The Fourth Circuit Flouted the AEDPA Merits Standard by Granting Federal Habeas Relief in the Absence of Clearly Established Federal Law, as Determined by This Court.

The foregoing procedural improprieties in the Fourth Circuit’s decision are enough to warrant certiorari review and summary reversal. But the Fourth Circuit’s refusal to conduct a proper AEDPA merits review of the sole claim that Mr. Sweeney did raise is equally untenable.

“A federal court’s power to grant habeas relief is restricted under the Antiterrorism and Effective Death Penalty Act of 1996” *Shoop v. Twyford*, 596 U.S. 811, 818 (2022). AEDPA prohibits a federal court from granting habeas relief unless, among other things, the state-court decision under review (1) is “contrary to” “clearly established federal law, as

determined by the Supreme Court of the United States”; or (2) involves “an unreasonable application of” that law. 28 U.S.C. § 2254(d). Under that standard, “a state prisoner must show that the state court’s ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing [holdings of this Court] beyond any possibility for fairminded disagreement.” *Harrington v. Richter*, 562 U.S. 86, 103 (2011). This Court has been emphatic that federal habeas courts “may not grant habeas relief to a state prisoner with respect to any claim . . . unless” the petitioner has satisfied that standard. *Greene v. Fisher*, 565 U.S. 34, 35-36 (2011) (citation and quotation marks omitted).

Federal habeas review is not, therefore, “a substitute for ordinary error correction through appeal.” *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (citation and quotation marks omitted). “The role of a federal habeas court is . . . not to apply *de novo* review of factual findings and to substitute its own opinions for the determination made [by the state courts].” *Davis v. Ayala*, 576 U.S. 257, 276 (2015). Rather, “[w]hen reviewing state criminal convictions on collateral review, federal judges are required to afford state courts due respect by overturning their decisions only when there could be no reasonable dispute that they were wrong.” *Woods v. Donald*, 575 U.S. 312, 316 (2015). Thus, under § 2254(d), whether the state court’s decision was “so obviously wrong as to be beyond any possibility for fairminded disagreement . . . is the only question that matters.” *Shinn v. Kayer*, 592 U.S. 111, 124 (2020) (citation and quotation marks omitted).

The Court has frequently reiterated these principles and has made clear that compliance with AEDPA is not optional. *Ramirez*, 596 U.S. at 385 (“Where Congress has erected a constitutionally valid barrier to habeas relief, a court *cannot* decline to give it effect.” (citation and quotation marks omitted)). Since its 2011 decision in *Richter*, the Court has summarily reversed numerous lower courts in per curiam decisions for flouting the AEDPA standards. See *Dunn v. Reeves*, 594 U.S. 731 (2021); *Mays v. Hines*, 592 U.S. 385 (2021); *Kayer*, 592 U.S. 111; *Shoop v. Hill*, 586 U.S. 45 (2019); *Sexton v. Beaudreaux*, 585 U.S. 961 (2018); *Kernan v. Cuero*, 583 U.S. 1 (2017); *Dunn v. Madison*, 583 U.S. 10 (2017); *Jenkins v. Hutton*, 582 U.S. 280 (2017); *Virginia v. LeBlanc*, 582 U.S. 91 (2017); *Johnson v. Lee*, 578 U.S. 605 (2016); *Kernan v. Hinojosa*, 578 U.S. 412 (2016); *Woods v. Etherton*, 578 U.S. 113 (2016); *White v. Wheeler*, 577 U.S. 73 (2015); *Donald*, 575 U.S. 312; *Glebe v. Frost*, 574 U.S. 21 (2014); *Lopez v. Smith*, 574 U.S. 1 (2014); *Nevada v. Jackson*, 569 U.S. 505 (2013); *Marshall v. Rodgers*, 569 U.S. 58 (2013); *Parker v. Matthews*, 567 U.S. 37 (2012); *Coleman v. Johnson*, 566 U.S. 650 (2012); *Wetzel v. Lambert*, 565 U.S. 520 (2012); *Hardy v. Cross*, 565 U.S. 65 (2011); *Bobby v. Dixon*, 565 U.S. 23 (2011); *Cavazos v. Smith*, 565 U.S. 1 (2011); *Bobby v. Mitts*, 563 U.S. 395 (2011); *Felkner v. Jackson*, 562 U.S. 594 (2011); *Swarthout v. Cooke*, 562 U.S. 216 (2011).

The same relief is warranted here. In *Kayer*, the Court chided the Ninth Circuit for adjudicating the case “in a manner fundamentally inconsistent with AEDPA.” 592 U.S. at 119. “Most striking,” it found, was that “the panel essentially evaluated the merits *de novo*, only tacking on a perfunctory statement at

the end of its analysis asserting that the state court’s decision was unreasonable.” *Id.* (citation and quotation marks omitted). Here, the panel majority granted federal habeas relief without ever citing the AEDPA merits standard in its analysis or holding that Mr. Sweeney had satisfied it. It failed to even feign compliance with AEDPA by “tacking on a perfunctory statement,” *id.*, about the propriety of the state court’s decision. Instead, it reviewed the trial record de novo, in contravention of this Court’s repeated admonishments to adhere to AEDPA.

Had the panel majority applied § 2254(d) as required, it would have been compelled to deny habeas relief. Mr. Sweeney argued below that when Juror 4 revealed that he had visited the crime scene without authorization, *Remmer* entitled him to a hearing in which he could *voir dire* the entire jury, and his trial attorney was ineffective under *Strickland* for failing to invoke his supposed right to such an expansive *Remmer* hearing. *See* App. 67a (Quattlebaum, J., dissenting) (“[Mr. Sweeney’s] overriding argument is that his trial counsel rendered deficient performance when he did not request a *Remmer* hearing to voir dire the remaining eleven jurors about any information Juror Number 4 might have passed on about his crime scene visit.”). As Judge Quattlebaum explained in dissent, this Court “has not clearly established that a juror’s visit to a crime scene constitutes a ‘communication, contact, or tampering’ sufficient to trigger *Remmer*” (a point that Mr. Sweeney conceded below), nor does *Remmer* “require voir dire of all jurors.” App 76a-77a.

As to the first point, *Remmer* held only that “[i]n a criminal case, any private *communication, contact,*

or *tampering* directly or indirectly, with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial” and requires “a hearing to determine whether the incident complained of was harmful to the petitioner.” 347 U.S. at 229-30 (emphasis added). The external influence in that case came in the form of communication between one of the jurors and a third party, who suggested to the juror that he could profit by returning a defense verdict. *Id.* at 228. The Court’s holding in *Remmer* did not clearly establish that a juror’s own misconduct, in the absence of any contact or direct influence from third parties, warrants the same presumption of prejudice and extensive judicial inquiry. Thus, the Fourth Circuit’s conclusion that Mr. Sweeney was entitled to an expansive hearing to further explore the misconduct of Juror 4, who visited the crime scene on his own accord to view its topography, “spoke to no one,” and had “no interaction,” App. 6a-7a, is not clearly dictated by any holding of this Court.

As to the second point, even if Mr. Sweeney were entitled to such a hearing, the Court’s holding in *Remmer* does not clearly establish that a party is entitled to voir dire the entire jury to ascertain the extent of the potential taint. All the Court said in *Remmer* was that when the presumption of prejudice is triggered, the trial court should “hold a hearing to determine whether the incident complained of was harmful to the petitioner,” and “the burden rests heavily upon the Government to establish, after notice to and hearing of the defendant, that such contact with the juror was harmless to the

defendant.” 347 U.S. at 229-30.³ Thus, no holding of this Court compelled the state trial court to voir dire the entire jury after learning of Juror 4’s misconduct, so AEDPA prohibited the Fourth Circuit from granting federal habeas relief.

Contrary to the panel majority’s reasoning, App. 23a-25a, 30a-32a, the requirements of *circuit* precedent are of no moment. Some circuits “have extended the *Remmer* presumption to claims alleging juror exposure to extraneous information,” regardless of whether that exposure involves a third party. *Tunstall v. Hopkins*, 306 F.3d 601, 610 (8th Cir. 2002) (citing *Mayhue v. St. Francis Hosp. of Wichita, Inc.*, 969 F.2d 919, 922 (10th Cir. 1992); *United States v. Perkins*, 748 F.2d 1519, 1533-34 (11th Cir. 1984); *United States v. Hillard*, 701 F.2d 1052, 1064 (2d Cir. 1983); and *United States v. Bassler*, 651 F.2d 600, 603 (8th Cir. 1981)). Others have hewed closely to this

³ The Court reiterated that holding when the *Remmer* case returned to this Court following the hearing on remand that it had ordered. *Remmer v. United States*, 350 U.S. 377, 378 (1956) (noting that the Court had remanded to the district court “with directions to hold a hearing . . . to determine from the facts whether or not communication with the juror by the outsider and the events that followed were prejudicial and, therefore, harmful to the petitioner”). On remand, the district court apparently had assessed the potentially prejudicial impact of the subsequent *investigation* into the jury tampering matter, not the tampering itself. *Id.* at 378-78. When the case returned to this Court, the Court clarified that its “intention” was that the “entire picture should be explored[,] and the incident complained of and to be examined included [the third party’s] communication with the juror and the impact thereof upon him . . .” *Id.* at 379. The Court, however, never held, or suggested, that the trial court must voir dire the entire jury when juror misconduct comes to light.

Court's analysis and holding and have "confined the application of *Remmer* to cases alleging third-party contact with jurors." *Id.* at 611 (citing *United States v. Lloyd*, 269 F.3d 228, 238 (3d Cir. 2001)); *United States v. Williams-Davis*, 90 F.3d 490, 501-02 (D.C. Cir. 1996); and *United States v. Boylan*, 898 F.2d 230, 260-61 (1st Cir. 1990)). The Fourth Circuit is among those that have extended *Remmer* to encompass the exposure of the jury to "extraneous prejudicial information" that does not involve a third party. *Barnes*, 751 F.3d at 245.

Nevertheless, circuit precedent "cannot form the basis for habeas relief under AEDPA," *Matthews*, 567 U.S. at 48-49, even if such precedent is a logical extension of this Court's precedents. *See Rodgers*, 569 U.S. at 64 (rejecting "the mistaken belief that circuit precedent may be used to refine or sharpen a general principle of Supreme Court jurisprudence into a specific legal rule that this Court has not announced"). When a federal habeas petitioner's claim depends on a "logical next step" in the law, *White v. Woodall*, 572 U.S. 415, 427 (2014), only this Court may take that step, and it must have already done so by the time of the state-court decision at issue: "AEDPA's carefully constructed framework would be undermined if habeas courts introduced rules not clearly established under the guise of extensions to existing law," *id.* at 426 (citation and quotation marks omitted).

Mr. Sweeney also failed to demonstrate that his attorney was ineffective under state law. As the state postconviction court recognized, under *Nash*, an obligation to voir dire the entire jury is triggered only by a request for a mistrial. 439 Md. at 69. But here,

as defense counsel explained, he and Mr. Sweeney considered and strategically rejected seeking a mistrial. App. 78a-80a. Thus, the state postconviction court properly determined that Mr. Sweeney was not entitled to voir dire the entire jury under state law, a conclusion that cannot be challenged in the federal courts. See *Estelle v. McGuire*, 502 U.S. 62, 67-68 (1991) (“[I]t is not the province of a federal habeas court to reexamine state-court determinations on state-law questions.”).

In sum, because neither clearly established federal law nor state law required the state trial court to hold a more extensive hearing or entitled Mr. Sweeney to voir dire the entire jury under the circumstances, the state postconviction court was not objectively unreasonable in determining that trial defense counsel was not ineffective in his handling of the juror misconduct matter.

* * * * *

Compounding its serious misapplications of AEDPA, the panel majority also was wrong in its overarching conclusion that Mr. Sweeney received an unfair trial. Mr. Sweeney has not demonstrated, and cannot demonstrate on this record, that he was prejudiced by Juror 4’s misconduct or his attorney’s handling of the matter because he failed to establish that Juror 4 ever revealed any information to the other jurors that could have affected the verdicts. To the contrary, Juror 4 told the trial court that when he revealed to the other jurors that he had visited the crime scene to get “a visual” but “spoke to no one,” the other jurors “stopped [him]” and told him to “stop talking . . . and present what [he] just said” to the court and parties. App. 7a. Thus, the record affirma-

tively indicates that Mr. Sweeney was not prejudiced by Juror 4's misconduct or his attorney's inaction. To the contrary, the record shows that Mr. Sweeney and his counsel made a considered and reasonable choice to have the court strike Juror 4 and proceed with an eleven-member jury rather than seek a mistrial, and the district court properly denied habeas relief on that basis. Moreover, the evidence of Mr. Sweeney's guilt presented at trial was overwhelming. The State produced testimony from multiple eyewitnesses establishing that Mr. Sweeney was the shooter, and the forensic evidence—*i.e.*, the cartridge cases, the cigarette butt with Mr. Sweeney's DNA on it, and the bullet strikes on the car between the casings and the victim—corroborated the eyewitness' accounts. This case falls far short of the “extreme malfunction[] in the state criminal justice system[]” that would justify the sort of extraordinary federal intervention that occurred here. *Richter*, 562 U.S. at 102-03 (citation and quotation marks omitted).

As for the court of appeals, the dissenting judge was correct in stating that “[t]he moment this decision [was] issued, it [was] untenable under binding Supreme Court precedent.” App. 55a (citation and footnote omitted). The panel majority was obligated to affirm the district court's denial of federal habeas relief because the state court's decision was not an unreasonable application of *Strickland* or *Remmer*. The panel majority's decision instead to go “beyond . . . traditional habeas review,” App. 22a, warrants summary reversal.

CONCLUSION

The petition for a writ of certiorari should be granted and the judgment of the court of appeals summarily reversed.

Respectfully submitted,

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