25-5531

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

In Re OMAR RASHAD POUNCY,

Petitioner.

ON PETITION FOR A WRIT OF MANDAMUS TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT CASE NOS. 21-1811 & 21-2759

PETITION FOR WRIT OF MANDAMUS

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QUESTION PRESENTED

Petitioner Omar Rashad Pouncy filed a timely petition for panel rehearing in the United States Court of Appeals for the Sixth Circuit after a panel erroneously reversed for the *second* time the habeas grant awarded to him by the United States District Court for the Eastern District of Michigan. Petitioner asserted that rehearing was necessary because the Sixth Circuit's decision: (1) is plagued with a variety of serious legal (and ostensible factual) errors; (2) crashes with (and completely disregards, like literally fails to acknowledge the existence of) controlling Supreme Court precedents; (3) creates multiple conflicts with the weight of authority from other Circuits; and (4) arouses various exceptionally important questions.

The panel appreciated the merits to some of Petitioner's contentions, as evidenced by the panel's decision to not only issue an amended opinion correcting *some* of the factual errors contained in the original opinion, but the panel also directed Petitioner to file a memorandum of law in support of the original petition which he did. But without ever fulfilling its obligation to decide the merits of the petition for panel rehearing as this Court requires panels to do, the panel brought the litigation in the Sixth Circuit to a conclusion by issuing a mandate. This has left the petition for panel rehearing (and its supplement) undecided. Currently there is no judgment for Petitioner to challenge in this Court via a petition for a writ of *certiorari*.

This petition presents the following question:

1. Should a writ of mandamus issue directing the Sixth Circuit to fulfill its obligation as observed in *Missouri v. Jenkins,* 495 U.S. 33, 46 n. 14 (1990) to fully and fairly decide the merits of the timely filed petition for panel rehearing (and its supplement)?

PARTIES TO THE PROCEEDING

The Petitioner is Omar Rashad Pouncy.

The Respondent is Carmen D. Palmer, Warden.

STATEMENT OF RELATED PROCEEDINGS

People v Pouncy, 2008 WL 9869818 (Mich. Ct. App. Mar. 25, 2007)

People v. Pouncy, 753 N.W.2d 187 (Mich. 2008)

People v. Pouncy, No. 17154 (Mich. 7th Cir. Ct. Nov. 4, 2010)

People v. Pouncy, No. 306257 (Mich. Ct. App. July 13, 2012)

People v. Pouncy, 830 N.W.2d 387 (Mich. 2013)

Pouncy v. Michigan, 571 U.S. 1208 (2014)

Pouncy v. Palmer, 165 F. Supp. 3d 615 (E.D. Mich. 2016)

Pouncy v. Palmer, 846 F.3d 144 (6th Cir. 2017)

Pouncy v. Palmer, 138 S.Ct. 637 (2018)

Pouncy v. Palmer, 993 F.3d 461 (6th Cir. 2021)

Pouncy v. Macauley, 546 F. Supp. 3d 565 (E.D. Mich. 2021)

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The May 8, 2025, amended opinion of the Sixth Circuit Court of Appeals is unpublished, and included as Exhibit M.

JURISDICTION

This Court has jurisdiction pursuant to the All Writs Act. *See* 28 U.S.C. □1651.

STATUTORY PROVISIONS INVOLVED

The All Writs Act 28 U.S.C. □ 1651(a), provides: □The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.□

INTRODUCTION

Petitioner and the State agree on several things and one of them is□ in the State□s words:

> □This is ***not the typical habeas matter*** that comes before this Court by any means.□

(*See* Motion, Document 108 (Case # 21-2759), Page 3) (emphasis added).

This is a cross-appeal resulting from the United States Court of Appeals for the Sixth Circuit erroneously reversing (*twice* now) the United States District Court for the Eastern District of Michigan's ***second habeas grant.***[1] Petitioner is here seeking mandamus relief because he simply desires the Sixth Circuit to address (and hopefully correct) the various errors which plagues its amended opinion by deciding Petitioner's timely filed petition for panel rehearing,[2] before Petitioner returns to this Court seeking *certiorari* again.[3] The problem is: Despite Petitioner's timely filed petition for panel rehearing (and a Sixth Circuit-

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[1] *See Pouncy v. Palmer,* 165 F. Supp. 3d 615 (E.D. Mich. 2016) *rev'd and remanded,* 846 F.3d 144 (6th Cir. 2017); *Pouncy v. Macauley,* 546 F. Supp. 3d 565 (E.D. Mich. 2021), *rev'd and remanded* sub nom. by *Pouncy v. Palmer,* Case #'s 21-1811/21-2759, (6th Cir. May 8, 2025).

[2] Petitioner filed a timely petition for panel rehearing. (*See* Petition for Panel Rehearing, Document 116 (Case # 21-1811)).

[3] After the Sixth Circuit reversed the District Court's first habeas grant related to the *Faretta* violation, Petitioner filed an interlocutory petition for a writ of certiorari. This Court ordered the State to file a response. The State responded primarily asserting that the case was then in an interlocutory posture and therefore certiorari should not be granted. This Court subsequently declined to grant certiorari. *See Pouncy v. Palmer,* 138 S.Ct. 637 (2018). Although the interlocutory certiorari petition was denied related to the *Faretta* claim this Court's precedents allows Petitioner to re-raise that claim in a future certiorari petition. *See, e.g., Mercer v. Theriot,* 377 U.S. 152, 153-154 (1964).

requested supplement[4]) the Sixth Circuit (without deciding the petition for panel rehearing) issued a premature mandate, bringing the litigation in the Sixth Circuit to a close. (*See* Mandate, Document 133 (Case # 21-1811)).

This is preventing Petitioner from having this Court review the Sixth Circuit's judgment. This Court has made it clear that "while [a] petition for rehearing is pending, . . . there is no 'judgment' to be reviewed." *Hibbs v. Winn,* 542 U.S. 88, 98 (2004) (quoting *Missouri v. Jenkins,* 495 U.S. 33, 46 (1990)).

The petition for panel rehearing pointed out that:

- The panel erroneously states governing standards;
- The panel ignores Supreme Court precedent;
- The panel violates the party presentation principle;
- The panel ignores undecided constitutional claims;
- The panel decision is laced with false facts;
- The case was decided without full adversarial process;

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[4] Initially the Sixth Circuit issued its opinion on April 2, 2025. (*See* Opinion, Document 111 (Case # 21-1811)).

- The panel failed to decide all *Faretta* subclaims and denied Petitioner of right to receive District Court decision ultimately resulting in a Suspension Clause violation;

- The panel completely ignored *Cole v. Georgia* controlling public trial precedent;

- The panel completely ignored *Glossip v. Oklahoma* controlling perjury precedent.

(*See* Petition for Panel Rehearing, Document 116 (Case # 21-1811)).

Agreeing that some of Petitioner's complaints had merit the Sixth Circuit issued an amended opinion (*see* Amended Opinion, Document 120 (Case # 21-1811)), and thereafter gave Petitioner an opportunity to supplement the original petition. (*See* Ruling Letter, Document 121 (Case # 21-1811)). Petitioner's memorandum of law supplementing the original petition expressly declared that he continued to seek rehearing based on the above factual and legal errors but also presented the following additional contentions as to why panel rehearing is warranted:

- The panel violated Petitioner's right to the presumption of innocence;

- The amended panel opinion is laced with additional false facts;

- The panel violated the last reasoned decision rule;

- The panel neglects to address various issues;

- The panel overlooked constitution requires accurate advice;
- Singular deference not afforded to District Court's credibility determinations.

(*See* Supplemental Memorandum of Law, Document 126 (Case # 21-1811)).

The panel's refusal to decide the merits of the petition for panel rehearing compels Petitioner to have to seek mandamus relief from this Court. Mandamus is necessary to compel the Sixth Circuit to fulfill its obligation to decide the merits of the timely filed petition for panel rehearing. To be sure, this Court in *Jenkins* made it clear that a panel has the obligation to consider arguments in support of a timely filed petition for rehearing:

> "A petition for rehearing is designed to bring to the panel's attention points of law or fact that it may have overlooked. Fed. Rule. App. Proc. 40(a). ***The panel is required to consider the contentions in the petition for rehearing, if only to reject them.***"

Jenkins, 495 U.S. at 46 n. 14 (emphasis added).

BASIS FOR FIRST HABEAS GRANT

The first habeas grant stemmed from a violation of *Faretta v. California,* 422 U.S. 806 (1975),[5] as a result of Petitioner being forced to unknowingly, unintelligently, and involuntarily represent himself as an eighteen (18) year old□ yes, virtually a child.[6] United States District Court Judge Matthew F. Leitman, exclaimed on-the-record below, that the state trial court judge □***steamrolled an 18 year old***□

> □[T]o put it politely, ***it looked like in some respects Judge Hayman steamrolled an 18 year old*** with respect to this waiver question. □ I have a hard time finding some place in the record where he paused to make sure Mr. Pouncy understood [the] dangers [of proceeding *pro se*].□

(*See* R.73, Oral Argument Transcript, Pg. ID 6704) (emphasis added).

BASIS FOR SECOND HABEAS GRANT

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[5] In granting the first writ, the District Court concluded: □In this case, Petitioner Omar Rashad Pouncy (□Pouncy□) waived his right to counsel and represented himself at his criminal trial, but he did not make a free □choice□to do so. He chose to represent himself only because his attorney was admittedly and obviously unprepared for trial. □ Pouncy□s waiver of counsel thus clearly failed to comply with *Faretta.*□*Pouncy,* 165 F. Supp. 3d at 617.

[6] Judge Clay, in disagreement with the majority, declared that □***no fair-minded jurist could reach the conclusion that Pouncy was voluntarily choosing to represent himself.***□*Pouncy,* 846 F.3d at 167 Clay, J., dissenting) (emphasis added).

The second habeas grant stemmed from a violation of *Lafler v. Cooper,* 566 U.S. 156 (2012),[7] where Petitioner lost out on a favorable plea-offer when his counsel grossly ***miscalculated the sentencing guidelines applicable to Pouncy's case[,]*** and ***the erroneous calculation*** had Petitioner under the false impression ***that he was subject to a guidelines range of 135 to 337 months in prison, when in reality Pouncy's guidelines range would have been 225 to 562 months in prison.*** *Pouncy,* 846 F.3d 144, 151 (6th Cir. 2017) (emphasis added).

Although this Court has made it clear that the Constitution, *i.e.,* the Sixth Amendment, requires counsel to provide criminal defendants accurate advice,[8] the Sixth Circuit contravened this Court's clearly

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[7] In granting the second writ of habeas corpus, the District Court ruled: "The Court concludes that Pouncy is entitled to relief on his claim that his attorney was ineffective in connection with the plea-bargaining process. As described in detail below, counsel erroneously and unreasonably advised Pouncy about the possible minimum sentence that he (Pouncy) faced if convicted at trial. That deficient performance by counsel derailed the plea-bargaining process." *Pouncy,* 546 F. Supp. 3d at 595.

[8] The Sixth Circuit's position conflicts with, as observed by Justice Scalia, "the [Supreme] Court's conclusion that the Sixth Amendment requires counsel to provide accurate advice[.]" *Padilla v. Kentucky,* 559 U.S. 356, 388 (2010) (Scalia, J., dissenting). This Court in *Padilla,*

established precedent and concluded that grossly inaccurate advice from counsel satisfies the Constitution, which conflicts with various other Circuits.[9]

STATEMENT OF THE CASE

In 2005, at the age of 18 years old (virtually a child[10]) Petitioner faced a slew of charges in the State of Michigan related to two separate

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observed and embraced the "Solicitor General['s position] that *Strickland* applies " to the extent that [a defendant] has alleged affirmative misadvice[,]" and that "counsel is required to provide accurate advice if [counsel] chooses to discuss[] [certain] matters." *See id.* at 369.

[9] *See, e.g., Fooks v. Superintendent, Smithfield SCI,* 96 F.4th 595, 598 (3d Cir. 2024) ("The Supreme Court has clearly established that a lawyer's incorrect advice can violate *Strickland* when it affects "the outcome of the plea process."); *United States v. Castro-Taveras,* 841 F.3d 34, 50 n. 13 (1st Cir. 2016); *United States v. Gordon,* 156 F.3d 376, 380 (2d Cir. 1998); *Strader v. Garrison,* 611 F.2d 61, 65 (4th Cir. 1979); *United States v. Herrera,* 412 F.3d 577, 580 (5th Cir. 2005); *Moore v. Bryant,* 348 F.3d 238, 242 (7th Cir. 2003); *Hill v. Lockhart,* 894 F.2d 1009, 1010 (8th Cir. 1990) (*en banc*); *Nunes v. Mueller,* 350 F.3d 1045, 1054 (9th Cir. 2003); *United States v. Kearn,* 90 F.4th 1301, 1308 (10th Cir. 2024). *But see Riolo v. United States,* 38 F.4th 956, 973 (11th Cir. 2022) (counsel's "miscalculation of [defendant's] guideline range did not amount to deficient performance.") (cleaned up).

[10] In Michigan 18-year-old defendants are recognized as children. *See, e.g., People v. Parks,* 987 N.W.2d 161, 178 (Mich. 2022) (citing *Miller v. Alabama,* 567 U,S, 460, 471-479 (2012)) ("the logic articulated in *Miller* about why children are different from adults for purposes of sentencing applies in equal force to 18-year-olds.").

carjackings. *See Pouncy,* 846 F.3d at 148. Trial began in 2006, after the State secured the cooperation from co-defendant Wayne Demetrius Grimes Jr. (□Grimes□), who the prosecution touted as its □best evidence□ (*see* R. 8-11, Trial Transcript, Pg. ID 1356-1357), and went out of its way to personally (but falsely) vouch for as an □honest□and □straightforward□ witness. (*See* R. 8-15, Trial Transcript, Pg. ID 1861). But before trial started Petitioner□s court appointed attorney □expressed some concern about his own preparedness for trial[.]□*See Pouncy,* 846 F.3d at 148. *See also id.* at 149 (□Since I have no details to say whether I□m ready for trial or not is problematic-□).

After hearing his attorney indicate that he was not ready for trial, Petitioner began to explain to the trial court that neither was he (Petitioner) ready for trial because he and his attorney weren□t □on the same page to be honest.□*See ibid.* Petitioner informed the trial court that □[t]he longest [he and his attorney] ever talked was□the morning of trial and □that was [for] probably like ten, fifteen minutes[.]□*See ibid.* Since he had not been able to have meaningful discussions with his attorney, Petitioner asked the trial court judge for □[new] counsel and ***a better***

understanding[.] *See ibid.* (emphasis added). The trial court denied Petitioner's request for new counsel. *See id.* at 150.

With Petitioner's request for new counsel denied, the trial court moved on to asking "what are the guidelines on the[] offenses, assuming that [Petitioner] were convicted of [all] of the offenses that are in the information, what would the guidelines be?" (*See* R. 8-7, Trial Transcript, Pg. ID 474). Petitioner's counsel stated on-the-record that the sentencing exposure would be 135 to 337 months. (*See id.* at Pg. ID 475).[11] The trial court then asked whether there was a plea-bargain on the table and, if so, what would be the plea-based sentencing exposure. (*See id.* at Pg. ID 476). There was an offer, which carried a sentencing guidelines range of 135 to 225 months (*see ibid.*), plus a consecutive two year sentence. (*See id.* at Pg. ID 477).

When the trial court compared the grossly misrepresented trial-based sentencing exposure stated by counsel (135 to 337 months) to the plea-based sentencing exposure (135 to 225 months) the trial court said

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[11] As the Sixth Circuit observed, counsel grossly "***miscalculated the sentencing guidelines applicable to Pouncy's case.***" *Pouncy v. Palmer,* 846 F.3d 144, 151 (6th Cir. 2017) (emphasis added).

that it could □see why [Petitioner] might want to go to trial. There□s not much difference in terms of the guidelines between the offer and the original charges it sounds like to me.□(*See ibid).* The trial court repeated its observation that □there□s really not much difference in the guidelines here at all□ (*see ibid)* and then asked Petitioner whether he wanted to accept the plea offer. (*See ibid)* Grossly misinformed Petitioner declined the plea-offer and proceeded to trial. (*See ibid.*).[12]

The next step was jury selection. However, before commencing jury selection, the trial court arbitrarily expelled the press and the public from the courtroom, without rhyme or reason. (*See* R. 8-7, Trial Transcript, Pg. ID 478). In secrecy, the trial court proceeded to hear argument and grant the relief requested on two prosecution motions. (*See id.* at Pg. ID 478-484, 484-489). The secrecy carried over to the jury selection stage of the case, as it began and ended with the press and public excluded. (*See id.* at Pg. ID 490).

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[12] As the Sixth Circuit observed, □the erroneous calculation□ had Petitioner under the false impression □that he was subject to a guidelines range of 135 to 337 months in prison, when in reality Pouncy□s guidelines range would have been 225 to 562 months in prison.□*Pouncy,* 846 F.3d at 151

Opening statements were next. □[T]he prosecutor delivered an opening statement.□*Pouncy,* 846 F.3d at 152. But before the defense was set to go, Petitioner indicated that he wanted to present his own opening statement, rather than have the lawyer who admitted to being unprepared do it. *See ibid.* However, really not desirous to represent himself, Petitioner backed away from presenting his own opening statement and renewed his request for another attorney. *See ibid.* The trial court again denied the request for the appointment of new counsel, but this time told Petitioner that he could hire his own attorney. *See ibid.* Petitioner accepted the offer to retain counsel, but the trial court reneged, in its next breath, saying □it□s late for that.□*Ibid.*

The trial court told Petitioner that the only option he had was to be represented by the lawyer who the Sixth Circuit acknowledges □expressed some concern about his own preparedness for trial□ *see Pouncy,* 846 F.3d at 148, or to proceed *pro se. See id.* at 153. Petitioner really did not want to represent himself, so he allowed his counsel to □proceed[] to give a brief opening statement[.]□ *See ibid.* But after witnessing the opening statement, Petitioner could not take it anymore. He capitulated and involuntarily gave in to self-representation. An

ostensibly defective colloquy occurred before Petitioner was allowed to discharge counsel and embark upon self-representation:

> THE COURT: Okay Mr. Pouncy would you stand sir? Is that your desire at this time? Please remain standing sir. Mr. Pouncy you understand you have the right to an attorney and you have the right to Court appointed counsel if you can't afford one, do you understand that?
>
> MR. POUNCY: I don't have an attorney right now.
>
> THE COURT: Sir I'm just asking you do you understand your rights sir?
>
> MR. POUNCY: Oh yes I do understand.
>
> THE COURT: You understand that if you represent yourself that I will have to treat you like any other lawyer and if you don't comply with the Court rules I'm gonna have to call you on it you understand that?
>
> MR. POUNCY: Yes sir.
>
> THE COURT: And you understand that Mr. Breczinski will be here just simply to advise you from this trial forth and if you stand up and start representing yourself you're not gonna be able to change horses in the middle of the stream. You're gonna be representing yourself from beginning to end sir. Is that what you really want to do?
>
> MR. POUNCY: Yes, Yes.
>
> THE COURT: Mr. Pouncy I'm gonna tell you that in my opinion you have no business representing yourself, none whatsoever.

MR. POUNCY: The fact that they found the (inaudible) shoe-

THE COURT: Sir I just, sir I just want you to understand that uh-

MR. POUNCY: All right I□m ready to go then.

THE COURT: All right then Mr. Breczinski have a seat and Mr. Pouncy have a seat sir.

MR POUNCY: (inaudible).

THE COURT: Yes sir. And everyone stand. Trish bring the jury back in.

(At 3:20 p.m., Jury enters room)□

(*See* R. 8-7, Trial Transcript, Pg. ID 688-690).

Not one time did the trial court judge advise Petitioner of and ensure that he understood (although Petitioner begged for □a better understanding□*see Pouncy,* 846 F.3d at 149) that he faced: (1) four counts of carjacking, four counts of armed robbery, and three weapon offenses; (2) a mandatory minimum sentence of anywhere between 225 to 562 months in prison; and (3) a maximum sentence of life in prison on eight (8) of the offenses. Additionally, the above proves that the trial court neglected to; (1) advise Petitioner of the judicially recognized danger and disadvantage that self-representation usually results in a conviction; (2)

ask Petitioner whether his decision was voluntarily made; and (3) clearly determine the propriety (or lack thereof) of the waiver of counsel and place such determination on the record. Despite these glaring deficiencies, the trial court allowed an 18-year-old to represent himself.

Prosecution relies on and fails to correct known perjury while Petitioner was *pro se*. Already, at a grave disadvantage, where Petitioner was forced to proceed virtually as a child as his own attorney (up against the Genesee County Prosecutor's Office ("GCPO")), the prosecution interjected additional unfairness into the proceedings. The prosecution not only elicited known false testimony from the officer-in-charge James Gagliardi ("Gagliardi"), but the prosecution allowed known perjury from its star witness Grimes to go uncorrected.

Prior to the perpetrator meeting the complainants and/or witnesses in-person to execute the carjackings, the perpetrator would place a phone call to schedule a test drive of the vehicles. (*See* R. 8-7, Trial Transcript, Pg. ID 685, 732; R. 8-8, Trial Transcript, Pg. ID 836, 854 910; R. 8-10, Trial Transcript, Pg. ID 1091, 1096; R. 8-11, Trial Transcript, Pg. ID 1235). Realizing the perpetrator could be identified by tracing the phone calls, the prosecution obtained the complaints' phone records. (*See* R. 203-

6, Police Report, Pg. ID 1005). The prosecution also subpoenaed phone records from Verizon. (*See* R. 8-5, Verizon Subpoena, Pg. ID 357).

After conducting its investigation (and without turning the phone records over to the defense[13]) the prosecutor came into court and misled the trial court and Petitioner by falsely claiming that the phone calls were untraceable. (*See* R. 8-7, Trial Transcript, Pg. ID 489). Contrary to the prosecutor's false representation, the phone calls were indeed traceable to an 810-836-5074 phone number (*see* R. 9-3, Phone Records, Pg. ID 5149-5156), which was subscribed to someone other than Petitioner; to wit: a man named Quillie Strong. (*See id.* at Pg. ID 5147).[14]

In furtherance of the suppression of the exculpatory phone records, the prosecutor called Gagliardi to falsely testify. Consistent with the prosecutor's false representation:

> "[D]uring trial, the prosecutor elicited testimony to this same effect from Detective Gagliardi. He testified

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[13] The State conceded at oral argument in District Court that "***the prosecution, ha[d] them and the records were not turned over to the defense.***" (*See* R. 73, Oral Argument Transcript, Pg. ID 6787-6788) (emphasis added).

[14] The District Court concluded that "Pouncy has demonstrated that the prosecution suppressed exculpatory evidence." *Pouncy v. Macauley,* 546 F. Supp. 3d 565, 616 (E.D. Mich. 2021).

> that the calls from the perpetrator went back to a type of calling card that there is no information recorded to that. The detective added that there was no way to say that the phone calls came from this person or that person or to trace any of those calls to any particular cell phone.

See Pouncy, 546 F. Supp. 3d at 613.[15]

Gagliardi's known false testimony went uncorrected, just like Grimes' perjury went unexposed. At trial, Petitioner aimed to discredit Grimes by ultimately proving that he was a liar. In his effort to accomplish this mission, Petitioner confronted Grimes with various conflicts and inconsistencies between Grimes' multiple statements to Gagliardi. (*See* R. 8-10, Trial Transcript, Pg. ID 1117-1119; R. 8-11, Trial Transcript, Pg. ID 1140-51, 1174). To shield the attack upon the veracity of his testimony, Grimes said that he was completely inexperienced with dealing with the police so he only told Gagliardi 'half of what happened' because Grimes' arrest in the case *sub judice,* was '***the first time [he***

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[15] The District Court observed that '[t]he transcripts of the state court proceedings clearly indicate that ***the prosecution twice erroneously represented 'once to the state trial court and Pouncy and once to the jury 'that the Verizon records could not be used to trace the calls placed by the perpetrators.'*** *Pouncy,* 546 F. Supp. 3d at 615 (emphasis added).

had] got[ten] arrested and he was scared. (*See* R. 8-11, Trial Transcript, Pg. ID 1151) (emphasis added). This was a flat out lie. City of Clio, MI arrest records show that Grimes was arrested and processed on May 14, 2005, for a felony gun offense. (*See* R.9-4, Police Report, Pg. ID 5307-5312). More importantly, the prosecution knew this was false for at least three (3) reasons (not including the fact that it was the GCPO who prosecuted Grimes related to the prior arrest).

First, in the process of Grimes being arrested in this case, Gagliardi ran Grimes name through LEIN, (*see* R.203-6, Police Report, Pg. ID 10060-10061), and the trial court specifically instructed the prosecutor to obtain Grimes arrest and conviction record. (*See* R. 8-11 Trial Transcript, Pg. ID 1289-1290). But more importantly as the Sixth Circuit observed based on a transcript of a pretrial interview between Grimes, the prosecutor, and Gagliardi (*see* R. 9-4, Interview Transcript, Pg. ID 5283-5284):

> Grimes told the prosecutor in an earlier interview that he was arrested in May 2005 for carrying a concealed weapon[.]

See Pouncy, Case # 21-1811/21-2759, Slip Op. at *30 (6th Cir. May 8, 2025).

As the panel observed, Grimes clearly lied to the jury, *i.e.*, committed perjury.[16] The problem is: Despite being aware that Grimes testified falsely, the prosecutor not only failed to expose his perjury, but the prosecutor forged forward and sponsored the perjury by endorsing Grimes as its □best evidence□(*see* R. 8-11, Trial Transcript, Pg. ID 1356-1357), and personally (but falsely) vouching for Grimes as an □honest□and □straightforward□witness. (*See* R.8-15, Trial Transcript, Pg. ID 1861).

Petitioner was convicted on all charges (*see* R. 8-15, Trial Transcript, Pg. ID 1892-1893), and sentenced to a total of 586 to 800 months in prison. (*See* R. 8-16, Sentencing Transcript, Pg. ID 1983-85). After exhausting his state court remedies, Petitioner turned to the federal judiciary for review and relief by filing a habeas petition, pursuant to 28 U.S.C. □2254, asserting fourteen (14) claims (with various subclaims included therein). (*See* R. 1, Petition).

The District Court proceeded to grant Petitioner habeas relief on a *portion* of his *Faretta* claim. *See Pouncy,* 165 F. Supp. 3d at 617. The State

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[16] *See Pouncy,* Case # 21-1811/21-2759, Slip Op. at *29 (6th Cir. May 8, 2025) (□On cross-examination, Grimes explained that he lied initially because he had never been arrested and was scared. ***That explanation itself was not true.*** He had been arrested once before in Clio, Michigan.□) (emphasis added).

appealed to the Sixth Circuit who in a split decision reversed the habeas grant but remanded for a resolution of the rest of Petitioner's claims. *See Pouncy v. Palmer,* 846 F.3d 144 (6th Cir. 2017). After protracted litigation the District Court granted Petitioner habeas relief on his *Lafler* claim, denied relief on Petitioner's other claims, but granted certificates of appealability on the claims Petitioner did not succeed on. *See Pouncy v. Macauley,* 546 F. Supp. 3d 565 (E.D. Mich. 2021).

The State appealed again (and Petitioner cross-appealed). The Sixth Circuit proceeded to reverse the District Court's habeas grant again. *See Pouncy v. Palmer,* Case #'s 21-1811/21-2759, (6th Cir. May 8, 2025). But this time the case was decided without full briefing and oral argument, which is abnormal. *Cf. Wearry v. Cain,* 577 U.S. 385, 397 (2016) (Alito, J., dissenting) ("For good reason, we generally do not decide cases without allowing the parties to file briefs and present argument.").[17] Although both parties repeatedly expressed the ***necessity***

[17] Petitioner's research (although limited) has not yielded a single case where the Sixth Circuit has reversed a District Court's *second* habeas grant without oral argument and full briefing, and then issued an unpublished *per curiam* opinion disposing of the case.

for oral argument[18] and Petitioner's then-appellate counsel asked for the opportunity to file a Fourth Brief[19], the Sixth Circuit proceeded to judgment without the benefit of "full, adversarial briefing." *Czyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973, 988 (2017) (Thomas, J. dissenting). Before deciding this case the Sixth Circuit should have ensured that a Fourth Brief replying to the State's Third Brief was filed and

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[18] *See* First Brief, Document 38 (Case # 21-1811), Page10 ("The State requests oral argument pursuant to Fed. R. App. P. 34(a). Argument will aid the Court in its decision-making process, as this case contains legal arguments and facts that are significant."); *See* Second Brief, Document 106 (Case # 21-2759), Page 14) ("Petitioner requests oral argument pursuant to Federal Rule of Appellate Procedure 34(a), and Local Rule 34(a). " Because of the importance of this case legally and practically" given that Petitioner's liberty on the line" Petitioner respectfully requests oral argument."); *See* Third Brief, Document 93 (Case # 21-1811), Page 14 ("The Warden again requests oral argument pursuant to Fed. R. App. P. 34(a). Argument will aid this Court in its decision-making process, as this Third Brief contains legal arguments and facts that are significant.").

[19] While the Sixth Circuit issued a briefing schedule providing for Petitioner's then-appellate counsel to file a Fourth Brief in this cross-appeal, on the date the Fourth Brief was due Petitioner's appellate counsel filed a motion to withdraw as counsel but requested to file a Forth Brief as *amicus curiae*. (*See* Motion, Document 101 (Case # 21-1811), Page 3) (noting that the "undersigned counsel are willing and able to file a supplemental Fourth Brief as *amicus*.").

considered.[20] *See also City & Cnty of San Francisco, Calif. v. Sheehan,* 575 U.S. 600, 610 (2015) (declining to decide issue without □adversarial briefing□).

One of the main features of Petitioner□s quest to have the Sixth Circuit rehear the case surrounds its complete failure to observe and apply this Court□s recently released and on-point decision from *Glossip.* Petitioner posed the following question to the Sixth Circuit: □**Does the Supreme Court□s recent decision in *Glossip v. Oklahoma,* 145 S.Ct. 612 (2025) require this Court to revisit its prosecutorial reliance on/failure to correct perjury line of cases?**□

The Sixth Circuit□s answer to this question was to simply rely on bad caselaw from the Sixth Circuit, and ignore *Glossip*□s existence□ not

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[20] After realizing that his appellate counsel would be withdrawing, Petitioner prepared and presented a Fourth Brief *in propria persona* (*see Pro se* Fourth Brief, Document 102 (Case # 21-1811))□ but the panel made it clear that it was ***not*** considering Petitioner□s *pro se* brief, but was only considering □***the briefing provided by the lawyers[.]***□*See Pouncy,* Case # 21-1811/21-2759, Slip Op. at *8 (6th Cir. May 8, 2025) (emphasis added).

once, or twice,[21] or thrice,[22] but four times now.[23] While this case was pending before the Sixth Circuit, this Court handed down *Glossip*□ which is not only on-point, but also game-changing in the favor of Petitioner. *Glossip* not only directly undermines the Sixth Circuit's resolution of Petitioner's perjury related claims based on *Napue v. Illinois,* 360 U.S. 264 (1959), but *Glossip* proves that Sixth Circuit caselaw requiring the

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[21] This Court has repeatedly GVR'd Circuits for ignoring this Court's recently released decisions. *See, e.g., Webster v. Cooper,* 558 U.S. 1039 (2009); *Lawrence v. Chater,* 516 U.S. 163 (1996); *Robinson v. Story,* 469 U.S. 1081 (1984); *Grier v. United States,* 419 U.S. 989 (1974).

[22] Petitioner even filed a motion asking the Sixth Circuit to vacate and remand to the District Court for reconsideration of Petitioner's *Napue* claim in light of *Glossip*. (*See* Motion, Document 125 (Case No. 21-1811)). However, the Sixth Circuit still failed to take the opportunity to take heed to the teachings of *Glossip*. (*See* Order, Document 131 (Case No. 21-1811)).

[23] On May 19, 2025, another panel of the Sixth Circuit issued an opinion deciding a *Napue* claim. *See Widmer v. Okereke,* # 24-3054 (6th Cir. May 19, 2025). However□ as the Sixth Circuit erroneously did in the case *sub judice*□ the Sixth Circuit in *Widmer* completely failed to observe *Glossip*. Rather than observe and honor *Glossip*'s on-point holdings related to witness perjury claims□ as the Sixth Circuit must do□ the Sixth Circuit continues to rely on now-bad circuit caselaw like Coe *v. Bell,* 161 F.3d 320 (6th Cir. 1998)*;* and *McNeill v. Bagley,* 10 F.4th 588 (6th Cir. 2021), which□ ***contrary*** to *Glossip*□ requires the petitioner to prove □materiality.□*Coe,* 161 F.3d at 343 (□In order to establish prosecutorial misconduct or denial of due process, the defendants must show □ (2) the statement was material□); *McNeill,* 10 F.4th at 604 (same).

petitioner, *i.e.,* who the perjury was used against, to prove materiality is wrong.[24] Due to *Glossip*'s direct impact upon the case *sub judice,* the Sixth Circuit should have revisited its prior *Napue*-based caselaw.

Glossip significantly and in various regards undermines the Sixth Circuit's decision in the case *sub judice.* While the Sixth Circuit in the case *sub judice* acknowledges that Grimes lied while under oath, *i.e.,* commited perjury, about his prior arrest history.[25] The Sixth Circuit concluded erroneously in violation of *Glossip* that the prosecution did not have the required knowledge of Grimes' perjury to be obligated to expose him as a liar, although "***Grimes told the prosecutor in an***

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[24] It appears that in 1986 the Sixth Circuit took the wrong turn by relying on a Fifth Circuit case, and started requiring the defendant/petitioner, *i.e.,* "the moving party" to prove materiality for *Napue* violations. *See United States v. O'Dell,* 805 F.2d 637, 641-642 (6th Cir. 1986) (quoting *United States v. Chagra,* 735 F.2d 870, 874 (5th Cir. 1984)). Immediately upon the issuance of *Glossip,* the Sixth Circuit should have acknowledged *Glossip* and ceased that requirement. But the Sixth Circuit perpetuated it in the case *sub judice.* It must be highlighted that right after *Glossip*'s issuance, the Fifth Circuit immediately acknowledged and applied *Glossip. See Helberg v. Guerrero,* # 21-70010 (5th Cir. Mar. 7, 2025). So did the Ninth Circuit, *see Weissman v. Clark,* # 23-4407 (9th Cir. Apr. 23, 2025), and the Eleventh Circuit, *see Whitton v. Fla. Dep't of Corr.,* # 23-10786 (11th Cir. May 6, 2025).

[25] *See Pouncy,* Case # 21-1811/21-2759, Slip Op. at *29 (6th Cir. May 8, 2025).

earlier interview that he was arrested in May 2005 for carrying a concealed weapon[.] *See Pouncy,* Case # 21-1811/21-2759, Slip Op. at *30 (6th Cir. May 8, 2025) (emphasis added). The Sixth Circuit in the case *sub judice* erroneously concluded in violation of *Glossip* that:

> We cannot say that learning of this fact is enough to ascribe real notice to the prosecutor during the trial.

See Pouncy, Case # 21-1811/21-2759, Slip Op. at *30 (6th Cir. May 8, 2025).

In *Glossip,* this Court expressly relied on the fact that the prosecution witness mentioned to the prosecutor during a pretrial interview that he took lithium and had been seen by a jail psychiatrist after the crimes to conclude that the prosecution knew about the perjury. *See Glossip,* 145 S.Ct. at 627. Had the Sixth Circuit even acknowledged *Glossip*s existence the analysis and resolution of Petitioners claim would have been different.

Glossip proves Petitioners position that when a star witness (like Grimes)[26] informs a prosecutor of information during a pretrial

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[26] Throughout the trial the prosecution touted Grimes as its best evidence (*see* R. 8-11, Trial Transcript, Pg. ID 1356-1357), and went out of its way to personally (but falsely) vouch for Grimes testimony as

discussion (like Grimes did) and then contradicts that information at trial (like Grimes did), this is indeed enough to put the prosecution on notice of perjury and mandates that the witness's perjury be exposed and corrected. *See Glossip,* 145 S.Ct. at 627 ("In addition, Smothermon's notes show that she had a pretrial conversation with Sneed at which he mentioned 'lithium' and 'Dr. Trumpet.'" Sneed plainly discussed these matters with the prosecution"). *Glossip* also emphasizes that in assessing materiality the burden is ***not upon Petitioner,*** but on the State who benefitted from the perjury to carry the onus of proving that the error was harmless beyond a reasonable doubt. *See ibid.* ("In effect, this materiality standard requires 'the beneficiary of [the] constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.'") (cleaned up).

Additionally, *Glossip* proves that the exposure of Grimes's perjury is material because it would have revealed to the jury that the prosecution's star witness was willing to lie to them (the jury) under oath. *See id.* at 628 ("Had the prosecutor corrected Sneed on the stand, his credibility

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'honest' and 'straightforward.' (*See* R.8-15, Trial Transcript, Pg. ID 1861).

plainly would have suffered. That correction would have revealed to the jury not just that Sneed was untrustworthy □ but also that Sneed was willing to lie to them under oath.□). *Glossip* fortifies Petitioner□s stance that the exposure of perjury on the behalf of a prosecution□s star witness □***would be significant in any case[.]***□*Ibid.* And *Glossip* reinforces the fact that the panel in the case *sub judice,* committed error by focusing on the subject matter of the lie Grimes□told under oath when assessing materiality, rather than focusing on the damaging impact the revelation of his willingness to lie under oath (about any matter) would have had on the jury□s belief in anything he said. *Ibid.* (□Even if Sneed□s bipolar disorder were wholly irrelevant, as *amicus* argues, ***his willingness to lie about it to the jury was not. □A lie is a lie, no matter what its subject.***□□).

Furthermore, *Glossip* proves that the Sixth Circuit in the case *sub judice,* erred by refusing to find the perjurious testimony material simply because the jury was already aware of Grimes□inconsistent testimony of other points and because he was so-called impeached on other points. In *Glossip,* this Court found the failure to expose the perjury material although □the jury already knew [Sneed] lied to the police[.]□*See Glossip,*

145 S.Ct. at 628. But in the case *sub judice,* the Sixth Circuit contravened *Glossip* and found the perjury to be immaterial on the grounds that the jury was aware that Grimes had already given other, far more significant, inconsistent testimony[.] *See Pouncy,* Case # 21-1811/21-2759, Slip Op. at *30 (6th Cir. May 8, 2025).[27] *Glossip* and other Supreme Court cases prove that the Sixth Circuit erred because the fact that a witness may have been impeached on other bases does not immunize perjury from being deemed material. To borrow from *Glossip,* the Sixth Circuit in the case *sub judice:*

> [A]ppears to assume the jury would have believed [Grimes] no matter what. Such an assumption has no place in a materiality analysis, which asks what a reasonable decisionmaker would have done with the new evidence. *See Wearry v. Cain,* 577 U.S. 385, 393-394, 136 S.Ct. 1002, 194 L. Ed. 2d 78 (2016) (*per curiam*) (rejecting argument that evidence was immaterial because witness's credibility was "already impugned"); cf. *Strickland v. Washington,* 466 U.S. 668, 695, 104 S.Ct. 2052, 80 L. Ed. 2d 674 (1984).

See Glossip, 145 S.Ct. at 629.

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[27] When Petitioner was in the course of attacking Grimes for his inconsistencies, Grime interjected the lie to defeat Petitioner's efforts of impeachment. Recall, Grimes lied and said that he only gave inconsistent statements and half truths because he was scared as this being the first time he interacted with the cops since this was his so-called first time being arrested.

Another highly relevant teaching of *Glossip* that the Sixth Circuit violated is the fact that in assessing materiality the reviewing court must have considered the prejudice resulting from the other prosecutorial violations (even stemming from claims not presented for relief):

> □Because prejudice analysis requires a □cumulative evaluation□of all the evidence, ***whether or not that evidence is before the court in the form of an independent claim for relief***, these documents reinforce our conclusion that the *Napue* error prejudiced the defense.□

See Glossip, 145 S.Ct. at 629 (quoting *Kyles v. Whitley,* 514 U.S. 419, 441 (1995)) (emphasis added).

This aspect of *Glossip* is pivotal in the case *sub judice* because, there□s not only the issue of the GCPO failing to correct Grimes□known false testimony, but there is also the separate issues of:

- □ The GCPO suppressing exculpatory cell phone records;[28]
- □ The GCPO lying to the trial court, Petitioner, and calling Gagliardi to falsely testify to the jury in furtherance of the suppression of the exculpatory cell phone records;[29] and

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[28] Recall, the District Court already concluded that □Pouncy has demonstrated that the prosecution suppressed exculpatory evidence.□ *Pouncy,* 546 F. Supp. 3d at 616.

[29] Again recall, the District Court has already observed that □[t]he transcripts of the state court proceedings clearly indicate that ***the prosecution twice erroneously represented □once to the state trial***

- The GCPO suppressing exculpatory lineup records from Willie Joyce where he identified someone other than Petitioner.[30]

With the cumulative effect of all of these violations there is no way to confidently conclude that Petitioner's trial was fair.[31] A jury faced with

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court and Pouncy and once to the jury "that the Verizon records could not be used to trace the calls placed by the perpetrators." *Pouncy,* 546 F. Supp. 3d at 615 (emphasis added).

[30] The District Court also appreciated Petitioner's claim related to the GCPO's "suppression of evidence that witness Willie Joyce identified someone other than Pouncy as the perpetrator during an interview with police prior to trial." *Pouncy,* 546 F. Supp. 3d at 624. The unrebutted record shows that "Joyce " identified someone other than Pouncy in a photographic lineup and that Detective Gagliardi told him that he was not needed as a trial witness." *Id.* at 626 (citing R. 190, Evid. Hrg Tr., Pg. ID 9827-9829, 9834).

[31] It appears that prosecutors (state and federal) within the Sixth Circuit are never held accountable for either failing to correct or for relying on perjury. Despite exhaustive research, Petitioner hasn't found a single case where relief was granted due to a *Napue* violation in the Sixth Circuit. It certainly appears that the GCPO has immunity from its *Napue* violations. The GCPO's *Napue* violation was excused in *McMullan v. Booker,* 761 F.3d 662, 676 (6th Cir. 2014) ("The conduct of the Genesee County Prosecutor Office's appears troubling. It is one matter to withhold impeachment evidence, albeit evidence that is not "material" within the meaning of *Bagley.* " And it is " another matter entirely for a prosecutor to perjure himself before a judicial tribunal."). And then the GCPO's *Napue* violation was swept under the rug again in *Rosencrantz v. Lafler,* 568 F.3d 577, 583 (6th Cir. 2009) ("finding that the [GCPO's] potentially violated Rosencrantz's due process rights by knowingly countenancing Lasky's false denial of pretrial meetings."). This Court

proof that the phone calls from the perpetrator to the complainants were traced back to a phone registered to someone other than Petitioner would certainly be stricken with reasonable doubt.[32] Any reasonable juror could have completely distrusted the prosecution's entire case had the jury known that Gagliardi (the officer-in-charge) testified falsely in furtherance of the suppression of the exculpatory cell phone records.[33] At least one juror could have harbored reasonable doubt about Petitioner's involvement had the jury heard Joyce declare that he encountered the perpetrator at the scene of the crime and that it was not Petitioner.[34] And

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should rehear *en banc* the case *sub judice* to ensure that the GCPO doesn't get the impression it has blanket immunity from its *Napue* violations.

[32] It has been observed in *United States v. Gardner,* that "cell phone records are material[,]" 507 F.3d 399, 405 (6th Cir. 2007).

[33] This Court has already deemed evidence material that tends to show "that the lead police detective who testified was either less than wholly candid of less than fully informed[.]" *Kyles v. Whitley,* 514 U.S. 419, 453 (1995); *Id.* at 454 ("confidence that the verdict would have been unaffected cannot survive when suppressed evidence would have entitled a jury to find ... that the principle police witness was insufficiently informed or candid").

[34] A witness' non-identification of the accused is always material. *Hart v. Mannina,* 798 F.3d 578, 588 n. 1 (7th Cir. 2015); *Kyles,* 514 U.S. at 441; *Castleberry v. Brigano, 349* F.3d 286, 295 (6th Cir. 2003).

had the jury learned that the prosecution's "best evidence" Grimes was willing to lie under oath about something as basic as his arrest his, there's a significant probability that at least one jury would have found it hard to believe Grimes could testify truthfully regarding more significant issues such as whether or not it was Petitioner who was involved with him (Grimes).[35]

REASONS FOR GRANTING THE PETITION

Petitioner respectfully petitions for a writ of mandamus to the United States Court of Appeals for the Sixth Circuit, requesting that the Sixth Circuit be directed to fully and fairly decide the merits of Petitioner's timely filed petition for panel rehearing (and the Sixth Circuit-requested supplement).

Federal courts may "issue all writs necessary or appropriate in the aid of their respective jurisdictions and agreeable to the usages and

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[35] The Sixth Circuit failed to take heed to this Court's command that the exposure of perjury on the behalf of a prosecution's star witness "***would be significant in any case[.]***" *See id.* at 628 ("Had the prosecutor corrected Sneed on the stand, his credibility plainly would have suffered. That correction would have revealed to the jury not just that Sneed was untrustworthy – but also that Sneed was willing to lie to them under oath.") (emphasis added).

principles of law.□ 28 U.S.C. □ 1651(a). This Court has held that mandamus is warranted when:

> □(1) [N]o other adequate means [exist] to attain the relief he desires, (2) the party□s □right to issuance of the writ is clear and indisputable, and (3) the writ is appropriate under the circumstances.□

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010) (*per curiam*) (cleaned up).

This case meets the criteria for granting mandamus.

I.

Aside from mandamus□ there is no other means for Petitioner to have the Sixth Circuit fulfill its obligation to decide the merits of the timely filed petition for panel rehearing.

Petitioner understands □that a proceeding is □ over [once] the court has issued its mandate.□*Bell v. Thompson,* 545 U.S. 794, 825 (2005) (Breyer, J., dissenting). With this understanding, Petitioner believes that his only available course is to seek mandamus relief from this Court. With the Sixth Circuit proceedings officially brought to an end (albeit prematurely) by the issuance of the mandate, only this Court can order

the Sixth Circuit to proceed to fully and fairly decide the merits of the petition for panel rehearing.[36]

II.

This Court's decision in *Jenkins* makes it clear and indisputable that Petitioner has a right to petition for panel rehearing and that the panel must decide the merits of such petition.

It bears repeating that this Court has made it clear that a party has a right to seek panel rehearing and thereby "bring to the panel's attention points of law or fact that it may have overlooked." *Jenkins,* 495 U.S. at 46 n. 14 (citing Fed. R. App. Proc. 40(a)). Petitioner has done this, however, to no avail. This Court has also made it clear and indisputable that "[t]he panel is required to consider the contentions in the petition

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[36] The panel blocked Petitioner's ability to seek *en banc* review. After Petitioner filed his petition for panel rehearing, he asked for an extension of time to file a petition for rehearing *en banc.* (*See* Motion, Document 118 (Case # 21-1811)). The Sixth Circuit denied that request. (*See* Ruling Letter, Document 121 (Case # 21-1811)). While the Sixth Circuit gave Petitioner (proceeding *pro se*) until May 22, 2025 to file *both* a memorandum of law supplementing the original petition and a new petition for panel rehearing and/or rehearing *en banc* (*see ibid.*)" the panel refused to accept Petitioner's petition for rehearing *en banc* as being oversized. (*See* Order, Document 124 (Case # 21-1811)). And when Petitioner asked to be afforded a time extension to be able to file a reduced-in-size petition for rehearing *en banc,* (*see* Motion, Document 129 (Case # 21-1811))" the panel denied that request too. (*See* Order, Document 132 (Case # 21-1811)) This leaves mandamus Petitioner's only option.

for rehearing, if only to reject them. *See ibid.* Despite this Court's precedents, the Sixth Circuit has ended the litigation with the petition for panel rehearing undecided. It is therefore clear and indisputable that Petitioner has a right to have the merits of his petition for panel rehearing fully and fairly decided.

III.

The Sixth Circuit's failure to decide the pending petition for panel rehearing interferes with Petitioner's ability to seek *certiorari* from this Court, thus making it appropriate to issue the writ of mandamus.

Petitioner understands that the unresolved nature of his petition for panel rehearing is preventing him from seeking *certiorari* from this Court because the unresolved pleading suspends the finality of the Sixth Circuit's judgment following the issuance of the amended opinion. *See Jenkins,* 495 U.S. at 46 ("A timely petition for rehearing . . . operates to suspend the finality of the . . . court's judgment, pending the court's further determination whether the judgment should be modified so as to alter its adjudication of the rights of the parties.") (quoting *Department of Banking of Neb. v. Pink,* 317 U.S. 264, 266 (1942) (*per curiam*) (alterations in original)). Petitioner thus understands this to mean that there isn't even a judgment in place associated with the Sixth Circuit's

amended opinion that will allow Petitioner to come to this Court seeking *certiorari*. *See Hibbs,* 542 U.S. 98 (□In other words, □while [a] petition for rehearing is pending,□□ □***there is no □judgment□to be reviewed.***□) (quoting *Jenkins,* 495 U.S., at 46 (emphasis added).

These circumstances makes it appropriate to issue the writ of mandamus to compel the Sixth Circuit to fully and fairly decide the merits of the petition for panel rehearing (and the related supplement). *See, e.g., Will v. United States,* 389 U.S. 90, 95 (1967) (mandamus □has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so.□). Hopefully the resolution of the petition for panel rehearing obviates the need for Petitioner to have to seek *certiorari* but if the need is still present, the Sixth Circuit should not be allowed to interfere with Petitioner taking that course by suspending the finality of the judgment *ad infinitum* by leaving the petition for panel rehearing unresolved indefinitely.

Mandamus relief is warranted.

CONCLUSION

The petition for a writ of mandamus should be granted.

Respectfully submitted,

/s/ *Omar Rashad Pouncy*

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