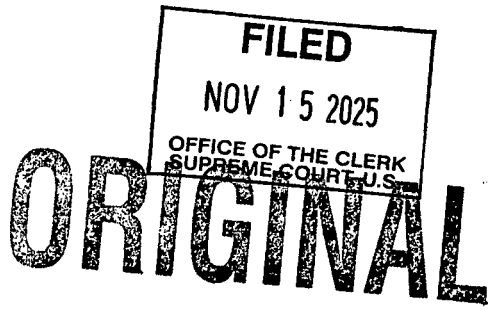
25-6402

IN THE SUPREME COURT OF THE UNITED STATES

ANWAR MITHAVAYANI, *
Petitioner *
*
vs. *
*
UNITED STATES OF AMERICA, *
Respondent *
*




On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Sixth Circuit
Case No. 25-5135

# AMENDED PETITION FOR A WRIT OF CERTIORARI
(Pro Se Submission)

Petitioner Anwar Mithavayani respectfully petitions for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in Mithavayani vs. United States, No. 25 5135 (6th Cir. Sept. 29, 2025).

Respectfully Submitted By,

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Pro Se Appellant

## QUESTIONS PRESENTED

1. Whether the lower courts provided sufficient and adequate process to test the legality of Petitioner's Detention under 28 U.S.C. § 2255 and due process jurisprudence, as applied.
2. Whether a court of appeals erred by treating a petitioner's claim of ineffective assistance of counsel as independent from, rather than as potential "cause" for, the procedural default of an underlying prosecutorial misconduct claim, thereby creating an unnavigable procedural bar for meritorious constitutional claims under 28 U.S.C. § 2255.
3. Whether the government's knowing use of perjured testimony from a key witness operating under a concealed identity compounded by its failure to correct additional material falsehoods from other witnesses constitutes a structural defect that undermines the fundamental fairness of the trial, and if so, whether a court of appeals may deny a certificate of appealability on procedural grounds without first assessing the profound nature of that underlying violation.
4. Whether the Sixth Circuit misapplied the standard for a certificate of appealability under Slack vs. McDaniel by finding it was not "debatable among jurists of reason" that a petitioner made a substantial showing of the denial of a constitutional right, where significant post-conviction evidence confirmed the government's reliance on false testimony and trial counsel's failure to challenge it.

## PARTIES TO THE PROCEEDING

Petitioner is Anwar Mithavayani, the petitioner-appellant below.

Respondent is the United States of America, the respondent-appellee below.

All parties to the proceeding in the courts below are listed above.

## CORPORATE DISCLOSURE STATEMENT

Petitioner is an individual and makes no corporate disclosure statement pursuant to Supreme Court Rule 29.6.

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(Dated: July 6, 2023)

Appendix I 2255 Motion to Vacate with Attached Memorandum of Law

(Dated: March 19, 2022)

## OPINIONS BELOW

The order of the United States Court of Appeals for the Sixth Circuit denying Petitioner's motion for a certificate of appealability (App. A) is unpublished but available as Mithavayani vs. United States, No. 25-5135, 2025 U.S. App. LEXIS _____ (6th Cir. September 29, 2025). The order of the United States District Court for the Eastern District of Kentucky denying Petitioner's motion to vacate, set aside, or correct his sentence under 28 U.S.C. § 2255 (App. B) is unpublished.

## JURISDICTION

The Sixth Circuit entered its order denying a certificate of appealability on September 29, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STAUTORY PROVISIONS INVOLVED

U.S. Constitution, Amendment V

No person shall be deprived of life, liberty, or property, without due process of law.

U.S. Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to have the Assistance of Counsel for his defense.

28 U.S.C. § 2253. Appeal

(c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from

(B) The final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2255. Federal custody; remedies on motion attacking sentence

a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States may move the court which imposed the sentence to vacate, set aside or correct the sentence.

Supreme Court Rule 10(a)

The decision by a Court of Appeals has sanctioned such a departure by a lower court as to call for an exercise of this courts supervisory power.

American Jurisprudence, 2d Ed., Vol. 27A, 2008

Equitable Principles

## STATEMENT OF THE CASE

A criminal trial is not a search for truth if the government is permitted to build its case on a foundation of knowing falsehoods. This case presents a profound breakdown of the adversarial process, where the Government secured a conviction by knowingly presenting its central witness under a concealed identity and allowing other witnesses to perjure themselves on material facts. These due process violations went unaddressed due to the cascading failures of trial and appellate counsel. The Sixth Circuit's refusal to issue a certificate of appealability (COA) to review these grave errors rests on a rigid application of procedural default that insulates egregious constitutional violations from federal judicial review.

### 1. Factual Background and Trial

Petitioner Anwar Mithavayani was an investor in the Tennessee Pain Institute (TPI). He was indicted on federal drug and money-laundering charges related to TPI's operations. The Government's case depended on convincing the jury that Petitioner was not merely a passive investor but a culpable manager of a "pill mill" conspiracy.

The chief architect of this narrative was Jenna Crawley. As post-conviction evidence confirms, Crawley approached Petitioner using the alias "Samantha Manning." (App. D, Tyndale Aff.). As "Manning," she was a primary founder of TPI, persuading petitioner to invest, drafting the clinic's operational policies, and hiring key staff, including government witnesses Amanda Boyd and Julie Hankins. (App. D, Tyndale Alf.; App. E, Hadley Emails). At trial, however, the Government presented Crawley not as a founder, but as a subordinate figure. Critically, the Government knowingly allowed her to testify falsely that she did not recall using the name "Samantha Manning" and failed its constitutional duty to correct this demonstrable falsehood.

This foundational deceit poisoned the entire trial. The prosecution knowingly presented, and failed to correct, perjured testimony from other witnesses whose credibility was essential to securing Petitioner's conviction. For example, witness Julie Hankins testified falsely that Petitioner was present at the hiring of a physician, Dr. Rodenberg, on August 15, 2012. (App. C, Pet. COA Mot.). The prosecution possessed irrefutable documentary evidence Petitioner's passport proving he was in the United Kingdom on that date. (Id.). Similarly, witness Amanda Boyd testified falsely about Petitioner's deep involvement in daily operations, a claim directly contradicted by phone records available to the parties. (Id.).

Despite the availability of evidence to dismantle this false narrative, Petitioner's trial counsel failed to act. Counsel did not effectively cross-examine Crawley about her alias or Hankins about the geographically impossible meeting. Counsel also made the strategic determination not to call key exculpatory witnesses, such as attorney Edward Hadley, whose testimony could have established an advice-of-counsel defense.

After a month-long trial built on this tainted evidence, a jury convicted Petitioner of conspiracy to distribute controlled substances and money-laundering charges. The district court sentenced him to 300 months of imprisonment. His conviction was affirmed on direct appeal, where appellate counsel raised only sufficiency-of-the-evidence and jury-instruction claims, leaving the pervasive prosecutorial misconduct and the manifest failures of trial counsel entirely unchallenged. United States vs. Gowder.

## 2. Post-Conviction Proceedings

Petitioner timely filed a motion to vacate his sentence under 28 U.S.C. § 2255, asserting claims of prosecutorial misconduct and ineffective assistance of counsel (IAC). In support, he presented compelling new evidence, including a sworn affidavit from his co-defendant, Pete Tyndale. Tyndale's affidavit confirmed that Jenna Crawley exclusively used the name "Samantha Manning" in her dealings with Petitioner, that she was a principal founder of TPI, and that Petitioner would never have associated with her had he known of her prior arrest related to another pain clinic. (App. D)

He further argued that his Sixth Amendment right to counsel was violated by his trial counsel's failures to investigate and confront this false testimony, call exculpatory witnesses, and timely move for severance. He asserted that his appellate counsel was likewise ineffective for failing to raise the clear and meritorious prosecutorial misconduct claims on direct appeal.

A magistrate judge recommended denying the § 2255 motion, and the district court adopted the recommendation. The court concluded that Petitioner's prosecutorial misconduct claims were procedurally defaulted because they were not raised on direct appeal and that Petitioner had not shown cause and prejudice to excuse the default. It analyzed the IAC claims separately under the two-prong test of Strickland vs. Washington, 466 U.S. 668 (1984), and found them to be without merit, deferring to counsel's decisions as reasonable trial strategy. The district court denied a COA.

### 3. The Sixth Circuit's Decision

Petitioner, proceeding pro se, sought a COA from the Sixth Circuit. The court denied the motion in a brief, unpublished order. Not so brief, contained substantive opinions.

Regarding the prosecutorial misconduct claims, the Sixth Circuit held that Petitioner had "failed to show that this outcome-determinative issue [of procedural default] is reasonably debatable." (App. A, at 2). The court reasoned that Petitioner did not sufficiently "address the district court's procedural-default ruling in his motion," and therefore could not succeed because "a claim does not merit a certificate unless every independent reason to deny the claim is reasonably debatable." (Id. (quoting Moody vs. United States, 958 F.3d 485, 488 (6th Cir. 2020))). In reaching this conclusion, the court failed to recognize that Petitioner's IAC claim which it analyzed in a separate section was the very "cause" that could excuse the procedural default.

The court then addressed the properly raised IAC claims, agreeing with the district court that counsel's decisions were "reasonable judgment call[s]" and thus "sound trial strategy." (App. A, at 3). The Sixth Circuit did not address the cumulative effect of the alleged errors or the fundamental unfairness created by the Government's deception. By treating the procedural default of the misconduct claim as an insurmountable and independent barrier, the Sixth Circuit sidestepped the critical question of whether counsel's failure to raise that very claim constituted cause to excuse the default.

## REASONS FOR GRANTING THE PETITION

The Sixth Circuit's denial of a certificate of appealability rests on a flawed and formalistic application of the procedural default doctrine that ignores the substantive link between Petitioner's claims of prosecutorial misconduct and ineffective assistance of counsel. The court created a classic "catch-22": it deemed the misconduct claim defaulted because it was not raised on appeal, while simultaneously refusing to consider whether the ineffectiveness of appellate counsel a separately pleaded claim constituted the necessary "cause" to excuse that very default. This approach not only contravenes this Court's jurisprudence on procedural default but also shields grave constitutional violations from federal review.

A COA should issue when "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." Miller-El vs. Cockrell, 537 U.S. 322, 327 (2003). Where a claim is denied on procedural grounds, a petitioner must show it is debatable "whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack vs. McDaniel, 529 U.S. 473, 484 (2000) (emphasis added).

Petitioner clears this bar. The post-conviction record demonstrates that the Government knowingly used false testimony from its central witness, who operated under an alias, and failed to correct additional falsehoods from other key witnesses. Trial and appellate counsel's failure to expose this misconduct is the essence of Petitioner's IAC claim and the "cause" for any procedural default. The Sixth Circuit's failure to recognize the debatable nature of this

interconnected analysis presents an important question of federal law that warrants this Court's review to ensure the integrity of federal habeas proceedings.

1. **The District Court and Sixth Circuit Court of Appeals, through the misapplication of law and over-application of Judicial Doctrine, as applied in this case, have placed the constitutional Writ of Habeas Corpus and Statutorily Equivalent 28 U.S.C. § 2255 out of reach to the Petitioner.**

i. Habeas Corpus... "a Writ antecedent to statute... throwing its roots deep into the genius of our common law", Williams vs. Kaiser, 323 U.S. 471, 484. n.2 (1945), appeared in English law several centuries ago, became "an integral part of our common-law heritage" by the time the colonies achieved independence, Preiser vs. Rodriguez, 411 U.S. 475, 485 (1973). Receiving explicit recognition in the constitution, thus, helping "to guarantee the integrity of the criminal process by assuring trials are fundamentally fair". [1] A tool that "has been for centuries esteemed the best and only sufficient defense of personal freedom". [2] The historical depth and criticality of its purpose animates its practice. "The very nature of the Writ demands that it be administered with the initiative and flexibility essential to ensure that miscarriages of justice within its reach are surfaced and corrected". [3] That formalities and doctrine "yield to the imperative of correcting fundamentally unjust incarceration". [4] The Habeas Corpus has always been and remains today, the ultimate form for the discovery of injustice and the lever to correct it. By their inflexible, formulaic reproach of Mr. Mithavayani's claims of constitutional error, the

[1] O'Niel vs. Mcaninch, 513 U.S. 432, 442 (1995)
[2] Lonchar vs. Thomas, 517 U.S. 314, 324 (1996)
[3] Harrison vs. Nelson, 394 U.S. 286, 291 (1969)
[4] Engle vs. Isacc, 456 U.S. 107, 135 (1982)

district court and appellate court below have employed every opportunity to find fault worthy of dismissing them. This appears a diametrically positioned construct from this ancient tool within the jurisdiction and power of the courts to seek truth and justice embodied within it.

Instead of enjoying the "initiative and flexibility" essential to ensure that miscarriages of justice are surfaced and corrected, Mr. Mithavayani has suffered an unnavigable labyrinth of mirrors and trap doors.

"[A] District Court, confronted by a petition for Habeas Corpus which established a prima Facie case for relief, could use or authorize the use of suitable discovery procedures, including interrogatories reasonably fashioned to eliciting facts necessary to help the court to 'dispose of the matter as law and justice require'" Harrison vs. Nelson, 394 U.S. 286 (1969). Indeed, sometimes the determination whether to hold a federal evidentiary hearing on the merits of the petition requires a preliminary hearing to assess whether the petitioner is entitled to a hearing on the merits. Townsend vs. Sain, 372 U.S. 293, 312-318 (1963); Price vs. Johnson, 334 U.S. at 291.

The district court is empowered with almost unlimited civil means to delve into the adversarial division in order to extract the very truth necessary to avoid dis-liberating injustice.

In properly, fully and fairly considering the pleadings from Mr. Mithavayani, it is important to also heed the courts admonission; "[w]e have insisted that pleadings prepared by prisoners who do not have access to counsel be liberally construed". McNeil vs. United States, 508 U.S. 106, 113 (1993).

Without the courts initiative and liberally construing of inartful pro se pleadings, the very imperative which Habeas Corpus seeks to assure, as in this case are lost. [5] [6]

ii. The court has treated the Writ as "governed by equitable principles." Fay vs. Noia, 372 U.S. at 438; McQuiggin vs. Perkins, 509 U.S. 383, 397 (2013). And "equity regards substance and intent rather than form... [ ] it is the very nature of equity to look beyond form to the substance..." "[A] court of equity goes to the root of the matter and is not deterred by form. In applying the maxim, technicalities will be disregarded, especially to prevent strict rules from creating an injustice". American Jurisprudence 2d Ed., Vol 27A, at 628, 2008.

Principles of equity did not prevail here. The district court disregarded every opportunity within its disposal to get to the root of the matter by declining to hold a preliminary or evidentiary hearing, the court relied upon deficient record to deny the motion as to every claim and then conclude that no argument was worthy of Appellate review. Likewise, the Sixth Circuit Court of Appeals disregarded equity and the record, specifically the objections to report and recommendations filed by Qualified counsel (App. H) when construing the MOTION FOR THE CERTIFICATE OF APPEALABILITY before them.

The root of the matter in the movant's motion was to address the effect that alleged prosecutorial misconduct and the ineffective assistance of trial counsel had on the movant's constitutional rights at trial. The courts below allowed strict interpretation of the movant's Pro Se

[5] "Federal rules of civil procedure do not require a claim to set out its detail the facts upon which he based his claim. To the contrary, all the rules require is 'a short and plain statement of the claim'." 'That will give the defendant fair notice of what the Plaintiffs claim is and the grounds upon which it rests." Rule 8(a)(2), Walker vs. Jastremski, 430 F.3d 500 (2nd Cir2005).

[6] "The federal rules reject the approach that pleading is a game of skill and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits". C.F. Maty vs. Grasselli Chemical Co., 303 U.S. 197 (1938).

pleading's and the strict application of rules and doctrine to create an injustice that they were empowered and obliged to prevent.

iii. The election by the magistrate judge to forego an evidentiary hearing is another unnecessarily limiting maneuver inconsistent with the animating purpose of discovering and correcting fundamental unfairness in the criminal trial process and avoiding unjust outcomes.

Despite repeated objections to the denial of any preliminary or evidentiary hearing (Appendix H), the trial court fails to undertake any de novo review or offer substantive opinions to support that denial.

In Townsend vs. Sain, the court held that the federal judiciary must resolve any factual dispute material to a claim appropriately raised by a Habeas Corpus petition and that resolution of factual disputes requires an evidentiary hearing in **most cases**. 372 U.S. at 313-319. That court had reversed a district court's dismissal of a Habeas Corpus petition for improperly refusing to hold an evidentiary hearing. Chief Justice Waren had identified a strong federal policy favoring hearings. The need for an evidentiary hearing is not limited to factual disputes, but arise out of procedural defenses, harmless error, prerequisites and the like. A hearing can aid by limiting the questions to be resolved, identifying areas of agreement and exploring evidentiary problems and their solutions. "Where there is a factual dispute, the Habeas Court must hold an evidentiary hearing to determine the truth of the petitioner's claim." Martin vs. United States, 889 F.3d 827, 832 (6th Cir 2018). The burden "for establishing an entitlement to an evidentiary hearing is relatively light..." citing Turner vs. United States, 183 F3d 474, 477 (6th Cir. 1999). Because Martin has presented allegations that support his ineffective assistance claim, he is entitled to an evidentiary hearing unless the allegations cannot be accepted as true because they are contradicted by the record or are inherently incredible. Id. at 832. Also See Clark vs. Warden,

934 F.3d 483, 494 (6th Cir 2019). Where the record is inadequate to resolve an understanding between an attorney or a "Self Serving" affidavit raises credibility concerns, an evidentiary hearing is the proper forum to determine facts necessary for resolving them. Pola, 778 F.3d at 585 (6th Cir 2015).

Failure of the district court to address the denial of an evidentiary hearing undercuts the presumption that sufficient consideration was given to the facts on which a determination on the merits was laid. Sixth Circuit precedent makes it evident that the District Court denied an evidentiary hearing in error.

iv. In review of the facts and merits of Mr. Mithavayani's § 2255 motion it seems evident that its review has been infected by trial bias. However, "[s]ince the judiciary act of February 5, 1967..., Congress has expressed vested plenary power in Federal Courts 'for taking testimony and trying the facts anew in Habeas hearings'" Wingo vs. Wedding, 418 U.S. at 468. Thus, to what degree should a conviction color the evidentiary record on Habeas review?

The trial court in its analysis catalogues a host of connections between Mr. Mithavayani and the pain clinic (TPI) of which he had invested and had participated in certain administrative functions. However all of these functions are consistent with legitimate business operations of a legitimate pain clinic, for which movant has maintained was his sole intent and the aforementioned supports. (Appendix B, at 3). The motion is aimed squarely at evidence and practices used at trial to infer or prove that Mr. Mithavayani had the specific intent, knowledge or actions necessary for the government to sustain its burden as to the offenses of conviction he challenged in the § 2255 motion at issue.

As the movant's counts of conviction which allege money laundering in violation of 18 U.S.C. § 1950(h) and 18 U.S.C. § 1957 are predicated on his guilt as to a conspiracy to distribute schedule II controlled substances in violation of 21 U.S.C. § 846, and § 846 requires sufficient proof that movant had conspired or agreed to commit a drug trafficking crime, it is to that element of agreement for which the motion seeks to challenge.

The instructions provided to the jury as to the drug offense were quite detailed (CR.D.400, at 11), however what Mr. Mithavayani must demonstrate within his motion is constitutional error that fundamentally deprives him of a fair trial. Where, as to a drug trafficking conspiracy the government must prove beyond a reasonable doubt, (1) an agreement to violate the drug laws and, (2) that the defendant knowingly joined the conspiracy and voluntarily participated. See United States vs. Sadler, 750 F.3d 585, 593 (6th Cir 2014).

Yet, nothing in the district court order denying Mr. Mithavayanis's § 2255 motion even addresses evidence supporting such agreement or voluntary participation in it by Mr. Mithavayani.

v. The movant's ten claims of ineffective assistance of counsel were weighed against an affidavit where trial counsel describes each alleged instance as "Trial Strategy". The district court reviews these claims adopting the "Trial Strategy" explanations without giving any indication that the objections prepared by counsel (Appendix H) had even been considered.

At an evidentiary hearing the court could have learned critical details regarding trial Counsels investigations and preparations for cross-examination of government witnesses and decision to call or not to call defense witnesses. For example, that trial counsel had not even

bothered to pursue interviews or conduct investigations for the very witnesses that counsel would claim in his affidavit would be "negligible... fraught with risk... damaging hearsay". (Appendix B at 11). "The Sixth circuit consistently had held that trial counsel performs deficiently when he or she either presents or chooses not to present witness testimony based on inadequate investigation and preparation". Combs vs. Coyle, 205 F.3d 269, 288 (6th Cir 2000); also See Wiggins, 539 U.S. at 534; Williams vs. Taylor, 529 U.S. 362, 395 (2000). For this reason the trial counsels performance in Mr. Mithavayani's case was "Deficient" by failing to provide an evidentiary hearing and get to the underlying basis of counsels investigations and preparations, it would be unreasonable to conclude that trial counsel's performance was justified or sound "Trial Strategy" afforded the presumption of "Within Professional Standards".

vi. In order to have the findings of the district court elevated for review by an appellate, three judge panel, the movant must receive a certificate of appealability by the district court or alternatively by the court of appeals in the circuit which the district court resides. The Sixth Circuit court of appeals recognizes this seemingly reasonable barrier as follows:

> To obtain a certificate of appealablity, a petitioner must make "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district courts resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further". Miller-El vs. Cockrell, 537 U.S. 322, 327 (2003).

And where the district court dismisses a claim on procedural grounds:

> A certificate of appealability should issue if the petitioner "shows" at least, that jurists of reason would find it debatable whether the petition stated a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling. Slack vs. McDaniel, 529 U.S. 473, 484 (2000).

The district court order (Appendix B, 5) addresses the magistrate judge's finding that the multiple claims of procedural misconduct cannot be raised on the instant § 2255 motion due to movant's failure to raise them on direct appeal. Notwithstanding the matter of ineffective assistance of appellate counsel for potentially failing to raise a cognizable claim; Just like with an ineffective assistance of counsel claim, the evidence of what a prosecutor did or did not know or do and when are not clearly within the record and would lend itself readily to collateral proceedings where testimonial examination of witnesses are to be taken and facts adduced.

Mr. Mithavayani, additionally, had alleged violations of *brady, giglio* and *jenks.* Specifically, for withholding material relative to innocence; material evidence of Ms. Crawley's prior criminal conduct (Appendix I, 19 n 43); Prosecutorial decisions to disguise conflicting witness testimony, known to be false (Appendix I, 8 n 24); withholding credit card statements demonstrating Ms. Crawley's late involvement in (TPI) business activities, contrary to her testimony (Appendix I, 11 n 28); questioning the prosecutors knowledge of defendants's travel which places him outside of the United States when a prosecution witness falsely claims he was in the United States meeting a Dr. Rodenberg (Appendix I, 12 n 30). Counsel preparing objections to the report and recommendations (Appendix H, 11), "Giglio claims are akin to Brady claims, which often cannot be raised on direct appeal". See United States vs. Caro, 733 F.3d App'x 651, 673 (4th Cir 2018). Counsel devotes more than seven pages with argument against procedural-Default. (Appendix H, 6-14)

The District Court correctly announces that "[t]he procedural default rule is neither a statute nor a constitutional requirement, but it is a doctrine adhered to by courts to conserve judicial resources and to respect the law's important interest in the finality of judgements". Massaro vs. United States, 123 S. Ct. 1090, 1093 (2003). (Appendix B, 6). Presumably

demonstrating a preference of efficiency and finality over guaranteeing the integrity of the criminal process.

These claims were not defaulted because although "a ground of error is usually 'available' on direct appeal when its merits can be reviewed without further development" DiPietro vs. United States, 251 F. App'x 606, 607-608 (11th Cir. 2007) (Appendix B, 6), further development was necessary to present and prevail on each merit and for the court to then properly consider the expanded record.

On Appeal, (Motion for Certificate of Appealability) the court concluded the claims were defaulted and that appellant failed to address the procedural default ruling and thus "Failed to show that the outcome – determinative issue is reasonably available. (Appendix A, 2). However as the court is empowered to construe Pro Se pleadings liberally and the record is available for which to conclude otherwise, this was another lost opportunity to correct the erroneous ruling by the district court.

In fact, Mr. Mithavayani had hired counsel to address the magistrate's R&R who had completely and thoroughly provided the district court with sufficient grounds to satisfy the standard for which the court of appeals sought to issue a certificate of appealablity with numerous constitutional grounds upon which reasonable jurist do, in fact, debate. (Appendix H).

The substance and intent of the movants motion for the certificate of appealability are clear, to proceed on appeal and to argue the merits in the action. The record on those claims is clear, and specifically, the justification as to the need for evidentiary hearing and the debatability of the substantive claims were handsomely laid out in the objections presented by counsel. (Appendix H).

vii. It is necessarily the ancient antecedent Writ for which Congress had intended § 2255 to match in every form, sparing venue. A vaulted mechanism to assure the integrity of a fundamental and fair trial process. A practice of judicial initiative and flexibility, where formalities and doctrine yield to correcting unjust outcomes which threaten the liberty of everyone.

In this instance the initiative to gather and weigh all available facts was short circuited by doctrinal efficiencies. Despite a record sufficient to warrant an evidentiary hearing, the movants collective claims were summarily disposed of largely due to the courts confusion that evidence of legitimate business dealings could somehow substitute for evidence of illicit criminal dealings; on a flimsy suggestion that half the movants claims could have and should have been argued on direct appeal; and the other half add up to no more than "Trail Strategy" and beyond review of the courts.

Here, form has suffocated function, an outcome found repeatedly abhorrent to Habeas Corpus jurisprudence. An insufferable weight upon this hallowed right of redress. Where our constitution does not permit the explicit suspension of the Writ of Habeas Corpus, the constitution would no more permit its suspension through the narrow statutory interpretation and judicial doctrine employed here to that effect.

## 2. The Sixth Circuit's Flawed Application of Procedural Default Creates a Circuit Split on a Critical Issue of Habeas Jurisprudence and Erects an Unjust Barrier to Federal Review.

This Court has long held that while a petitioner's failure to raise a claim on direct appeal results in procedural default, that default may be excused upon a showing of "cause" and "actual prejudice." Wainwright vs. Sykes, 433 U.S. 72 (1977). Constitutionally ineffective assistance of counsel is the paradigm of such cause.

The Sixth Circuit's decision contravenes this established framework. It denied a COA on Petitioner's prosecutorial misconduct claim by finding the procedural default issue was not "reasonably debatable." (App. A, at 2). The court's reasoning that Petitioner's briefing did not explicitly re-litigate cause and prejudice misses the forest for the trees. Petitioner's entire § 2255 proceeding was predicated on the argument that his trial and appellate counsel were constitutionally ineffective precisely because they failed to challenge the Government's pervasive misconduct. The IAC claim is the argument for cause.

By treating these inextricably linked claims as existing in separate analytical silos, the Sixth Circuit created an impossible procedural bind. To challenge the default of his misconduct claim, Petitioner had to establish that his counsel was ineffective. Yet under the court's logic, he could not obtain review of that misconduct without first overcoming a default for which counsel's ineffectiveness was the only plausible excuse. This circular reasoning creates an unconstitutional barrier to relief, a result in deep tension with this Court's decision in Massaro vs. United States,

538 U.S. 500 (2003). Massaro recognized the inherent difficulties of raising IAC claims on direct appeal and affirmed that § 2255 is the proper vehicle for developing the record necessary to prove them and, by extension, to establish them as cause for a default. See also Martinez vs. Ryan, 566 U.S. 1 (2012).

The Sixth Circuit's reliance on Moody vs. United States, 958 F.3d 485 (6th Cir. 2020), is misplaced. While Moody states that "every independent reason to deny the claim" must be debatable, it cannot mean that a court may manufacture an "independent reason" by artificially severing an IAC claim from the very default it is alleged to have caused. The debate ability of the procedural ruling here hinges entirely on the substantiality of the IAC claim. Other circuits have correctly recognized this linkage, often analyzing the merits of the IAC claim first to determine if it can serve as cause to reach a defaulted claim.

At a minimum, jurists of reason would find it debatable whether Petitioner established cause. His appellate counsel ignored a trial record replete with instances of perjured testimony and clear misconduct, instead raising only boilerplate claims on appeal. This failure to challenge the Government's knowing use of a witness operating under a false identity, or its failure to correct other outcome-determinative falsehoods, is a quintessential example of deficient performance under Strickland. The resulting prejudice is self-evident: the jury's perception of Petitioner's knowledge and intent was irrevocably shaped by a false narrative that went entirely unchallenged.

The Sixth Circuit's approach, if allowed to stand, would effectively foreclose federal review for the most serious constitutional violations those that are not challenged at trial or on appeal for the very reason that counsel was ineffective. This Court should grant certiorari to resolve the circuit split on this important issue of federal habeas procedure and clarify that courts cannot use procedural default to evade review of a substantial IAC claim that is presented as cause.

### 3. The Government's Pervasive Misconduct Corrupted the Trial's Integrity, Presenting a Structural Error that Warrants This Court's Review

The Sixth Circuit's decision also erred by failing to appreciate the profound gravity of the underlying constitutional claim. The prosecutorial misconduct alleged here was not a mere trial error amenable to harmlessness review; it was a structural defect that "affect[ed] the framework within which the trial proceeds," rendering the verdict fundamentally unreliable. Arizona vs. Fulminante, 499 U.S. 279,310 (1991).

A bedrock principle of the Due Process Clause is that a conviction obtained through the knowing use of false testimony is "inconsistent with the rudimentary demands of justice." Napue vs. Illinois, 360 U.S. 264,269 (1959). This non-negotiable duty requires the government not only to refrain from eliciting false testimony but also to affirmatively correct it whenever and wherever it appears. Id.

The Government's case against Petitioner was built on a foundation of calculated deceit. Its star witness, Jenna Crawley, was presented to the jury under her true name, while the Government knew she had operated for months under the alias "Samantha Manning" while masterminding the very conspiracy she was testifying about.. Her concealed identity was critically material to her credibility, her role in the offense, and the extent of Petitioner's knowledge. By permitting Crawley to lie about her alias and failing to correct the record, the prosecution presented a profoundly distorted picture of the facts, deceiving not only the jury but the court itself.

This foundational corruption was compounded by the Government's failure to correct the perjured testimony of Julie Hankins and Amanda Boyd. Hankins's testimony placing Petitioner at a key meeting a meeting the Government could prove he did not attend was devastating character evidence. Boyd's testimony about Petitioner's daily involvement was critical to elevating his role beyond that of a passive investor. In both instances, the Government possessed exculpatory evidence and had an absolute duty under Brady vs. Maryland, 373 U.S. 83 (1963), Giglio vs. United States, 405 U.S. 150 (1972), and Napue to ensure the truth was presented. It utterly failed that duty.

This pattern of misconduct is precisely the type of constitutional violation that reasonable jurists would find "debatable." Post-trial affidavits from Pete Tyndale and Thomas Rodenberg confirm Crawley's deception. (App. D, Tyndale Aff.; App. F, Rodenberg Aff.). The prosecutor's own possession of Petitioner's travel records confirms Hankins's testimony was perjured. The cumulative effect of these uncorrected falsehoods destroyed any semblance of a fair trial. A

conviction obtained by the knowing use of false testimony must be set aside "if there is any reasonable likelihood that the false testimony could have affected the judgment of the jury." Giglio, 405 U.S. at 154 (quoting Napue, 360 U.S. at 271). That standard is not merely met here; it is overwhelmingly surpassed.

The Sixth Circuit's summary dismissal of this claim on procedural grounds, without grappling with the structural nature of the alleged misconduct, is contrary to this Court's entire body of due process jurisprudence. This Court should grant the petition to reaffirm that claims of pervasive, intentional prosecutorial deception infect the very structure of a trial and are not to be insulated from federal review by procedural technicalities.

### 4. This Case Presents a Vital Opportunity to Clarify the Certificate of Appealability Standard Where Substantial Post-Trial Evidence Renders Constitutional Claims Indisputably "Debatable".

The standard for a COA is not a determination of the merits. It is a threshold inquiry into the debate ability of the petitioner's constitutional claims. A petitioner need only demonstrate that "jurists of reason could disagree with the district court's resolution" or that "the issues presented are adequate to deserve encouragement to proceed further." Miller-El, 537 U.S. at 327. The COA process is designed to filter out frivolous appeals, not to slam the courthouse door on substantial claims that have been denied on procedural grounds. See Slack, 529 U.S. at 483-84.

The Sixth Circuit's order misapplies this standard by failing to give proper weight to the powerful evidence Petitioner presented in his § 2255 motion evidence that was never before the jury. The sworn affidavits of Pete Tyndale and Thomas Rodenberg, coupled with the emails from attorney Edward Hadley, constitute a "substantial showing" that Petitioner's due process rights were violated. Tyndale's affidavit provides a first-hand account of Crawley's central, deceptive role as "Samantha Manning." (App. D). Rodenberg's affidavit corroborates it. {App. F). This evidence does not merely impeach; it demolishes Crawley's trial testimony and exposes the Government's knowing failure to correct it.

At the COA stage, a court's role "is not to rule on the ultimate merit of the constitutional claim but to determine whether the district court's resolution of the constitutional claim was debatable or wrong." Slack, 529 U.S. at 484. Here, the district court's conclusion that trial counsel's decisions were "sound trial strategy" is highly debatable in light of this new evidence. Could a reasonable attorney, aware that the government's key witness was the conspiracy's founder and operated under an alias, fail to conduct a vigorous cross-examination on that very point? Could a reasonable attorney fail to call witnesses who could expose the government's false narrative? Reasonable jurists could, and should, disagree on these points.

Likewise, the debate ability of the district court's procedural ruling on the misconduct claim is self-evident. As argued above, whether appellate counsel's failure to raise such a fundamental due process issue constitutes "cause" is a question that at least "deserve[s] encouragement to proceed further." Miller-El, 537 U.S. at 327.

By affirming the denial of a COA, the Sixth Circuit has ensured that a compelling record of constitutional violations will never be fully aired. This case presents an important opportunity for the Court to clarify the scope of the COA inquiry and to reinforce that when a petitioner presents significant evidence that his trial was fundamentally unfair, federal courts have a duty to allow the appeal to proceed.

## CONCLUSION

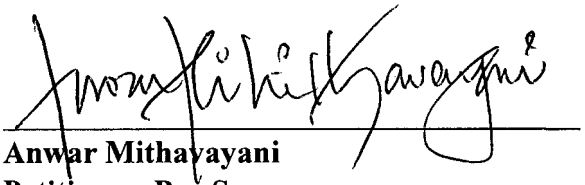
For the foregoing reasons, the petition for a writ of certiorari should be "GRANTED". The Sixth Circuit's decision:

1. Has effectively placed Habeas provision out of Petitioner's reach;
2. Misapplies the procedural default doctrine by refusing to treat ineffective assistance of counsel as "cause";
3. Erroneously treats the government's knowing use of perjured testimony as a mere trial error rather than a structural defect; and
4. Misapplies the COA standard articulated in "Slack" and "Miller El".

The issues presented are of great importance to the integrity of Federal Habeas Corpus jurisprudence and to the constitutional guarantee of a fair trial.

The promise of due process is an empty one if the government can secure a conviction through knowing deception and then shield that misconduct from review through procedural default caused by the very counsel who should have challenged it. The decision by the Sixth Circuit Court of Appeals has sanctioned such a departure by the district court as to call for an exercise of this court's supervisory power, certiorari should be granted.

**Respectfully Submitted,**



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