

No. 25 - _____

IN THE
Supreme Court of the United States

CHADWICK DOTSON,
Petitioner,

v.

JUSTIN MICHAEL WOLFE,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the “new” evidence required to make an actual-innocence claim under *Schlup v. Delo*, 513 U.S. 298 (1995), includes only newly discovered evidence that was not available at the time of trial or broadly includes all evidence that was not presented to the factfinder during trial.

PARTIES TO THE PROCEEDING

Petitioner is Chadwick Dotson, Director of the Virginia Department of Corrections, whose predecessor was the respondent in the district court and who was the appellee in the court of appeals.

Respondent Justin Michael Wolfe, who is serving a sentence for murder in a Virginia prison, was the petitioner in the district court and appellant in the court of appeals.

RELATED PROCEEDINGS

Wolfe v. Dotson, No. 24-6840 (4th Cir.) (judgment entered July 7, 2025).

Wolfe v. Clarke, No. 1:22-cv-00700 (E.D. Va.) (order dismissing the petition for writ of habeas corpus entered on March 28, 2024; order on motion to reconsider entered on August 8, 2024).

Commonwealth v. Wolfe, Nos. CR05050490-01, CR05050703-01, & CR12003736-00 (Prince William Cir. Ct.) (entry of judgment in accordance with guilty plea on July 20, 2016).

Wolfe v. Commonwealth, No. 2081-16-4 (Va. Ct. App.) (petition denied on May 10, 2017; petition for appeal denied after remand on Sept. 20, 2019; petition denied by three-judge panel on Dec. 9, 2019).

Wolfe v. Commonwealth, No. 170780 (Va.) (petition for appeal refused Feb. 5, 2018); No. 200205 (petition for appeal refused after remand on Sept. 3, 2020).

Wolfe v. Virginia, No. 18-227 (U.S.) (petition for writ of certiorari granted, judgment vacated, and case remanded Jan. 7, 2019); No. 20-1056 (petition for writ of certiorari denied June 21, 2021).

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OPINIONS BELOW

The opinion of the court of appeals (App. 1a–48a) is reported at 144 F.4th 218. The district court’s opinion dismissing Respondent Justin Michael Wolfe’s habeas corpus petition is unpublished but reproduced at App. 57a–76a. The district court’s opinion granting in part and denying in part the motion to reconsider is unpublished but reproduced at App. 49a–56a.

JURISDICTIONAL STATEMENT

The court of appeals entered its judgment on July 7, 2025. On October 1, 2025, the Chief Justice extended the time for filing a petition for a writ of certiorari to December 4, 2025. See No. 25A368. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISION

28 U.S.C. § 2244(d)(1)(A): A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from . . . the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review.

INTRODUCTION

Justin Wolfe hired someone to murder a drug supplier to whom he was heavily indebted, confessed to his crimes, pleaded guilty to first-degree murder, and was sentenced for that premeditated murder nearly a decade ago. He then procedurally defaulted claims challenging his guilty plea and failed to file a federal habeas corpus petition within the statute of limitations. But now the Fourth Circuit has ordered the district court to allow his claims to proceed based on a supposed showing of “actual innocence”—in other words, a showing that Wolfe is innocent of the crime to which he confessed and pleaded guilty.

That erroneous decision exacerbates a circuit split on a question of critical importance to the States. In *Schlup v. Delo*, 513 U.S. 298 (1995), this Court held that a prisoner may pursue constitutional claims on the merits notwithstanding the existence of a procedural bar to relief if he can provide “new reliable evidence” of his actual innocence. *Id.* at 324. Since then, the circuits have deeply divided on “whether the ‘new’ evidence required under *Schlup* includes only newly discovered evidence that was not available at the time of trial, or broadly encompasses all evidence that was not presented to the fact-finder during trial, *i.e.*, newly presented evidence.” *Cleveland v. Bradshaw*, 693 F.3d 626, 633 (6th Cir. 2012); see also *Fontenot v. Crow*, 4 F.4th 982, 1032 (10th Cir. 2021) (joining the Second, Sixth, Seventh, and Ninth Circuits on one side of the split, while describing the Third, Fifth, and Eighth Circuits as being on the other

side). This Court's intervention is needed to resolve the intractable split between the Courts of Appeals.

This question of federal law is crucially important. Allowing habeas petitioners to cure default simply by showing newly presented evidence allows litigants to sandbag during trials and direct appeals, transforming these state court proceedings into “merely a ‘tryout on the road’ to federal habeas relief.” *Shinn v. Ramirez*, 596 U.S. 366, 377 (2022) (quoting *Wainwright v. Sykes*, 433 U.S. 72, 90 (1977)). This result flies in the face of this Court's instruction in *Schlup* that “new” evidence of actual innocence is “obviously unavailable in the vast majority of cases,” and thus “claims of actual innocence” should be “rarely successful.” 513 U.S. at 324. Only a “newly discovered” standard balances the important state interest in finality of state convictions against the individual's interest in ensuring justice in the most extraordinary of cases, allowing newly discovered “exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence” to act as a gateway to a defaulted claim. *Ibid.*

The Fourth Circuit's ruling was also incorrect, joining the wrong side of the circuit split. This result is exacerbated by the fact that Wolfe both confessed to and pleaded guilty to the very crime he now claims he is actually innocent of. As one judge succinctly stated, “there is an inherent paradox in the notion that someone who has stood in open court and declared, ‘I am guilty,’ may turn around years later and claim that he deserves to pass through the actual innocence

gateway.” *Weeks v. Bowersox*, 119 F.3d 1342, 1355 (8th Cir. 1997) (en banc) (Loken, J., concurring). Without correction, any prisoner—even one who pleaded guilty—can attempt to reopen his judgment by merely highlighting some previously unrepresented piece of evidence—no matter how old or stale it is.

This Court should grant the petition.

STATEMENT OF THE CASE

A. Legal background

Congress enacted the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) “to reduce delays in the execution of state and federal criminal sentences” and to “further the principles of comity, finality, and federalism.” *Woodford v. Garceau*, 538 U.S. 202, 206 (2003) (quotation marks omitted). To accomplish these purposes, AEDPA ensures that “the availability of habeas relief is narrowly circumscribed.” *Shinn*, 596 U.S. at 375. This is because federal habeas review “overrides the States’ core power to enforce criminal law,” *id.* at 376, and “intrudes on state sovereignty to a degree matched by few exercises of federal judicial authority,” *Harrington v. Richter*, 562 U.S. 86, 103 (2011) (quotation marks omitted). The stringent rules governing habeas petitions reflect an understanding of the “special costs” that federal habeas relief imposes “on our federal system,” including that habeas relief undermines a State’s investment in a criminal trial and interferes with the State’s “interest

in punishing the guilty.” *Shinn*, 596 U.S. at 376–77 (quotation marks omitted). Habeas procedures thus demonstrate “respect [for] our system of dual sovereignty.” *Id.* at 375.

Accordingly, this Court repeatedly has affirmed the importance of federal courts’ “enduring respect for the State’s interest in the finality of convictions that have survived direct review within the state court system.” *Calderon v. Thompson*, 523 U.S. 538, 555 (1998) (cleaned up) (citation omitted). In addition to being “essential to both the retributive and the deterrent functions of criminal law,” finality “enhances the quality of judging,” and serves “to preserve the federal balance.” *Ibid.* Overturning state criminal decisions on federal habeas review undermines “both the States’ sovereign power to punish offenders and their good-faith attempts to honor constitutional rights[.]” *Murray v. Carrier*, 477 U.S. 478, 487 (1986) (cleaned up) (citation omitted).

The writ of habeas corpus is thus an “extraordinary remedy” that guards only against “extreme malfunctions in the state criminal justice systems.” *Harrington*, 562 U.S. at 102. “To ensure that federal habeas corpus retains its narrow role, AEDPA imposes several limits on habeas relief.” *Shinn*, 596 U.S. at 377. One of these limits is AEDPA’s strict one-year time limit for filing a federal habeas petition. 28 U.S.C. § 2244(d)(1)(A). This statute of limitations “promotes exhaustion of claims and respects state-court processes.” *Rivers v. Guerrero*, 605 U.S. 443, 455 (2025).

A similar limitation on habeas relief is the doctrine of procedural default. A federal court “generally may consider a state prisoner’s federal [habeas] claim only if he has first presented that claim to the state court in accordance with state procedures.” *Shinn*, 596 U.S. at 371. “When the prisoner has failed to do so, and the state court would dismiss the claim on that basis, the claim is ‘procedurally defaulted.’” *Ibid.* The procedural default rule “protects against ‘the significant harm to the States that results from the failure of federal courts to respect’ state procedural rules.” *Id.* at 378–79 (quotation marks omitted). In fact, “it would be unseemly in our dual system of government for a federal district court to upset a state court conviction without” giving the state courts an opportunity “to correct a constitutional violation.” *Id.* at 379 (quotation marks omitted).

When a habeas petitioner cannot “excuse his failure” related to the statute of limitations or procedural default, he “may obtain review of his constitutional claims only if he falls within the ‘narrow class of cases implicating a fundamental miscarriage of justice.’” *Schlup*, 513 U.S. at 314–15 (quotation marks omitted). This “miscarriage of justice exception” applies to a “severely confined category: cases in which new evidence shows ‘it is more likely than not that no reasonable juror would have convicted’” the petitioner. *McQuiggin v. Perkins*, 569 U.S. 383, 394–95 (2013) (quoting *Schlup*, 513 U.S. at 329). Relevant here, “a credible showing of actual innocence may allow a prisoner to pursue his

constitutional claims . . . on the merits notwithstanding the existence of a procedural bar to relief.” *Id.* at 392. A “credible” showing of actual innocence requires “new reliable evidence—whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence—that was not presented at trial.” *Schlup*, 513 U.S. at 324. Because such evidence is “obviously unavailable in the vast majority of cases, claims of actual innocence are rarely successful.” *Ibid.*

B. Factual and procedural background

In 2001, Justin Wolfe was a prolific drug dealer in Northern Virginia. After initially selling ecstasy, he eventually settled on selling marijuana to high school students, earning him hundreds of thousands of dollars. [CA.JA536, 1247].¹ Still, Wolfe was heavily in debt to Daniel Petrole, from whom Wolfe had been buying his marijuana for resale. [CA.JA1417–18]. So Wolfe decided to enlist help to rob and murder Petrole. [CA.JA1418–19].

Wolfe’s friend Owen Barber, a fellow drug dealer, owed Wolfe a drug-related debt, but Wolfe decided to forgive that debt and give Barber an additional \$10,000 in exchange for Barber carrying out the robbery and the murder. [CA.JA1418–19, 1340]. Wolfe believed that Petrole would not recognize

¹ References to CA.JA__ are to pages in the Joint Appendix, *Wolfe v. Dotson*, No. 24-6840 (4th Cir. Oct. 7, 2024).

Barber, allowing the latter to follow Petrole to his house without raising suspicions. [CA.JA1419]. Wolfe and Barber agreed that Wolfe would keep Barber informed about Petrole's whereabouts, Barber would stalk and murder Petrole, and then Wolfe and Barber would split Petrole's drugs and cash. *Ibid.*

This agreement in place, Wolfe arranged for Petrole to bring the drugs to another friend's home for a drug deal, and Wolfe then told Barber where he would find Petrole. [CA.JA1419]. On the night of the murder, Wolfe called Barber with an update on Petrole's location. [CA.JA1420]. Barber then drove to the site of the drug deal. [CA.JA1420]. After the deal was completed, Wolfe and Barber spoke on the phone while Barber followed Petrole home. [CA.JA1404–05, 1420].

When Petrole arrived at his apartment complex, Barber shot Petrole nine times while he sat in his vehicle, killing him. [CA.JA1400–01, 1405]. Barber then met Wolfe at a nightclub, where they "ordered a round of drinks" to celebrate the "rack of money" that they had both just made from Petrole's murder. [CA.JA1249, 1420]. The next day, Wolfe and Barber bought new clothes and celebrated Wolfe's birthday by purchasing expensive bottles of champagne at a Washington, D.C. nightclub. [CA.JA1406–07, 1249].

Soon, however, Wolfe became concerned that the police suspected his involvement in Petrole's murder, and he fled to Florida. [CA.JA188–89, 1249]. Barber went on the run himself, first flushing marijuana

down his toilet and then fleeing to California. [CA.JA1409–10]. Barber’s girlfriend met him there, and Barber told her that he and Wolfe had been planning to kill Petrole for at least a week before they murdered him. [CA.JA1409].

Wolfe and Barber were both arrested and charged in connection with Petrole’s murder. Cellphone records confirmed the multiple phone calls between the men that night. [CA.JA1404]. Police found the gun that Barber had used and a pair of gloves containing Barber’s DNA that Barber had tossed out of the car window as he fled the scene. [CA.JA1405]. They also found marijuana in Barber’s toilet. [CA.JA1413]. And they located an “owe sheet” in Petrole’s wallet showing that “JW” owed him \$66,325. [CA.JA1400].

Barber’s girlfriend told police officers that Barber had admitted his and Wolfe’s roles in the murder: Barber had told her that Wolfe was to pay him \$10,000, forgive Barber a \$3,000 drug debt, and give him marijuana, all in exchange for killing Petrole. [CA.JA1409–10]. Police officers also found a letter that Barber’s girlfriend had written to Wolfe, but had not sent, in which she planned to ask Wolfe for the money that Wolfe now owed Barber in accordance with that deal. [CA.JA1409].

Officers charged Wolfe with capital murder, murder for hire, and other crimes. *Wolfe v. Commonwealth*, 265 Va. 193, 198 (2003). Barber agreed to testify against Wolfe in exchange for not facing a capital-murder charge. [CA.JA1863–64].

Barber testified at Wolfe's trial that Wolfe had agreed to pay him to kill Petrole. [CA.JA1916–17]. The jury also heard testimony from J.R. Martin, a mutual friend of Wolfe and Barber, that corroborated Barber's description of events. Martin testified that he saw Barber and Wolfe speak privately later the night of the murder, whereupon Wolfe told Martin that he was about to "ma[k]e a lot of money." [CA.JA1249]. Martin also testified, and Wolfe himself corroborated, that Martin told Wolfe soon after the murder "I know what happened," at which point Wolfe gave him a discount on a drug purchase and forgave a drug debt. [CA.JA1250, 2151]. Finally, Wolfe confirmed on the stand that he had been the last person to speak to Barber immediately before the murder and the first person to speak to Barber immediately after, admitted that he had spoken to friends about robbing a drug dealer, and answered in the negative when asked whether Barber had anything against Wolfe that would have influenced his testimony. [CA.JA1250]. The jury heard all the evidence, convicted Wolfe, and sentenced him to death. [CA.JA59].

In the years since, Barber has oscillated on this version of events. In 2005, for example, Barber recanted part of his testimony and contended instead that the murder was a robbery gone wrong and that Wolfe had not hired him to kill Petrole. [CA.JA571, 579–90, 592, 594, 596]. The next year, Barber recanted this recantation, [CA.JA571], and a few years after that, Barber wrote a letter to Wolfe's habeas counsel stating that Barber did not know why

counsel “insist[ed]” on “bothering” him and that he had “nothing to say that could possibly help [Wolfe] in any way, shape, or form,” [CA.JA620]. Later that year, however, Barber testified for Wolfe in a habeas proceeding and said that Wolfe had not been involved in the murder. [CA.JA624]. Still, Barber admitted on the stand that he had implicated Wolfe in a statement mere weeks before the hearing. [CA.JA662].

Based in part on Barber’s latest testimony, a divided Fourth Circuit affirmed an award of habeas relief to Wolfe. See *Wolfe v. Clarke*, 691 F.3d 410, 426 (4th Cir. 2012). The Fourth Circuit accepted the district court’s finding that the prosecution had withheld a police report indicating that an officer had advised Barber that he could avoid the death penalty by implicating Wolfe. *Id.* at 415, 417; see *Wolfe v. Clarke*, 819 F. Supp. 2d 538, 554 (E.D. Va. 2011). Based on this report, the Fourth Circuit held that Wolfe must be released or retried. *Wolfe*, 691 F.3d at 416–17.

Thereafter, in September 2012, the original prosecution and investigation team recused themselves from Wolfe’s retrial after they interviewed Barber and suggested that they would charge him with capital murder if he changed his prior testimony that implicated Wolfe in the murder. [CA.JA691–771]. The state trial court then appointed a special prosecutor to handle the case and decide whether to retry Wolfe for his crimes. [CA.JA334, 1300, 2153].

The special prosecutor reviewed the evidence and ultimately filed six charges against Wolfe related to the incidents surrounding the death of Petrole, including capital murder. [CA.JA1831, 1856]. At a pre-trial hearing in Wolfe’s retrial proceeding, Barber exercised his Fifth Amendment right not to testify.² [CA.JA876–79]. Instead, Wolfe obtained a recording of the original prosecution and investigation team’s September 2012 interview of Barber and sought—in both federal and state court—to block the Commonwealth’s retrial. [CA.JA90–106, 1830–38, 1103–18]. Wolfe’s efforts ultimately were unsuccessful. See *Wolfe v. Clarke*, 718 F.3d 277, 279 (4th Cir. 2013); [CA.JA1680].

Wolfe pleaded guilty to first-degree murder, use or display of a firearm in the commission of a felony, and conspiracy to dispense marijuana. [CA.JA381–82, 1289]. As part of the Commonwealth’s proffer, the special prosecutor informed the court of Barber’s prior recantations. [CA.JA1406–08]; [CA.JA1290]. The trial court conducted a careful colloquy with Wolfe and his counsel, in which Wolfe’s counsel entered into evidence—and read into the record—Wolfe’s handwritten confession. [CA.JA1416–21, 1826–29].

Wolfe confessed that he and Barber together had planned Petrole’s murder. [CA.JA1418–19]. Wolfe admitted that he had been heavily in debt to Petrole

² The prosecution stated at another pretrial hearing that it would give Barber “use and derivative use immunity” if he testified truthfully for Wolfe. [CA.JA1338–39].

at the time, that he learned Petrole would receive a large marijuana shipment, and that he and Barber had then agreed to rob and murder Petrole. [CA.JA1417–19]. Wolfe admitted that in exchange for the crime he had agreed to forgive a debt that Barber owed him. [CA.JA1418–19]. In the confession letter, Wolfe told Petrole’s family:

Maybe it seems easy for me to say I’m sorry, but it’s actually the hardest thing I’ve had to do because it means I have to admit what I did which contradicts what I said at trial and the position that I have taken for all these years of appeals and I am very afraid that it will let the people I love down. . . . I do not deserve your forgiveness but I want you to know the truth and that is why I am writing this. I am sorry for what I did to your son.

[CA.JA1420–21]. Wolfe received an active sentence of 41 years’ imprisonment. The Commonwealth dropped the remaining charges, including the charge for capital murder. [CA.JA1426].

Even though Wolfe confessed and pleaded guilty, he still appealed, arguing that his plea had been involuntary. And even though it was the *special* prosecutor who had decided to retry Wolfe, Wolfe alleged that the prosecution was vindictive because the *original* prosecution and investigation team had committed misconduct that deprived him of Barber’s testimony. [CA.JA1499–1521, 1683]. He exhausted

his direct appeals in state court in 2020, and this Court denied certiorari in June 2021. [CA.JA1683, 1689–90, 1736, 1822–23].

In June 2022, after the AEDPA statute of limitations had expired, Wolfe filed a habeas petition in federal court again alleging prosecutorial misconduct and vindictive prosecution. [CA.JA7]. The district court had jurisdiction over Wolfe’s petition pursuant to 28 U.S.C. § 2254(a). The Respondent, the director of the Virginia Department of Corrections, moved to dismiss, arguing that the limitations period had expired and that Wolfe’s claims were procedurally barred. See [CA.JA1243–88].

Wolfe then obtained yet another affidavit from Barber, this one stating again that Wolfe had not been involved in the murder. [CA.JA570–77]. Barber said that he had invoked the Fifth Amendment at Wolfe’s pre-trial hearing because of pressure from the original prosecution and investigation team that had interviewed him before the special prosecutor took over. *Ibid.* Wolfe amended his petition, seeking to use the *Schlup* actual-innocence gateway to overcome both his procedural default and his failure to file within the statute of limitations. [CA.JA47–84].

The district court rejected Wolfe’s attempt to use the actual-innocence gateway and dismissed Wolfe’s habeas petition as time-barred. App. 72a, 74a–75a. The district court held that Barber’s latest affidavit was not new reliable evidence as required under *Schlup*. App. 74a. First, the contents were not new

because Wolfe knew “the contents of Barber’s potential exculpatory testimony” at the time Wolfe pleaded guilty, and Wolfe knew that whether Barber would testify for him was “speculative.” App. 74a. And second, the court concluded that “it cannot be the case that after a witness has already told two sides of the same story, each time he vacillates between them there is ‘new’ evidence that warrants full evaluation of a petitioner’s actual innocence to overcome an otherwise defaulted petition.” App. 55a (order on motion to reconsider).

The Fourth Circuit reversed. App. 1a–48a. The Fourth Circuit observed that there is a “circuit split” on the question whether “new” evidence under *Schlup* must be evidence that was unavailable at trial, or whether new evidence instead includes any evidence simply not introduced at trial even if it was available. App. 37a. The Fourth Circuit held that *Schlup* requires only the latter. App. 37a. Applying that rule, the Fourth Circuit held that Barber’s affidavit “upset th[e] status quo” and “converted Barber from an unavailable witness” to a witness “willing to provide a contemporaneous” exculpatory declaration. App. 38a. The Fourth Circuit then discounted Wolfe’s guilty plea as involuntary, did not address Wolfe’s handwritten confession, and remanded the case to the district court to consider Wolfe’s substantive claims. App. 46a–48a.

This petition for a writ of certiorari followed.

REASONS FOR GRANTING THE PETITION

I. The Courts of Appeals are divided on the question presented

Numerous Courts of Appeals have acknowledged the “circuit split” that has occurred in the wake of the “*Schlup* Court” declining to “precisely define” what it meant by “new reliable evidence.” *Fontenot*, 4 F.4th at 1032. Thirty years ago, this Court held in *Schlup* that a petitioner attempting to invoke the actual-innocence gateway must present “new reliable evidence . . . that was not presented at trial.” 513 U.S. at 324. Since then, Courts of Appeals have wrestled with “whether the ‘new’ evidence required under *Schlup* includes only newly discovered evidence that was not available at the time of trial, or broadly encompasses all evidence that was not presented to the fact-finder during trial, *i.e.*, newly presented evidence.” *Cleveland*, 693 F.3d at 633; see also *Reeves v. Fayette SCI*, 897 F.3d 154, 161 (3d Cir. 2018) (“[C]ircuit courts are split on whether the evidence must be newly discovered or whether it is sufficient that the evidence was not presented to the fact-finder at trial.”). The decision below widens a circuit split on this critical question.

Three decades of consideration has created no consensus; rather, an entrenched split has only continued to grow. Almost every circuit has now weighed in on how the *Schlup* decision defines “new evidence.” Three Circuits—the Third, Fifth, and Eighth Circuits—have held that evidence must be

newly discovered to qualify as new evidence under *Schlup*. See 18–21, *infra*. Six Circuits—the Second, Sixth, Seventh, Ninth, Tenth, and now the Fourth Circuit—have held instead that evidence is “new” as long as it was never presented at trial, even when the accused had access to that evidence at the time of trial. See 21–27, *infra*. The D.C. Circuit has joined the former group in an unpublished order, see 20, *infra*, and the Eleventh Circuit has recognized the split but declined to take a position. See, e.g., *Stimpson v. Warden*, No. 22-10190, 2025 WL 484049, at *3–4 (11th Cir. Feb. 13, 2025); *Green v. Secretary, Dep’t of Corrs.*, 28 F.4th 1089, 1151 n.132 (11th Cir. 2022). Very little percolation remains.

This split means that prisoners and state governments face a vastly different standard depending on where they are located. In some courts, when a prisoner claims that he is innocent but has defaulted his claim, the court nonetheless will hear the merits as long as his “new evidence” was not presented at his trial, even if it was available to him at the time of that trial, and even if he elected not to present the evidence for strategic reasons. But in other courts, that exact—and common—scenario would preclude the petitioner’s claim. These alternative outcomes on an important question of federal law require this Court’s intervention. S. Ct. R. 10. This Court’s intervention is necessary to establish the appropriate scope of this exception and support the finality of convictions.

A. Three Courts of Appeals have issued published opinions applying the “newly discovered” standard

Three federal Courts of Appeals—the Third, Fifth, and Eighth Circuits—have issued published opinions holding that evidence must be newly discovered to qualify as new evidence under *Schlup*.

In *Sistrunk v. Rozum*, 674 F.3d 181 (3d Cir. 2012), the Third Circuit explained that “evidence that is previously known, but only newly available does not constitute newly discovered evidence.” *Id.* at 189 (quotation marks omitted). In that case, the court held that a new letter from the petitioner’s cousin recanting prior testimony and purporting to clear the petitioner of murder was not new evidence, because the petitioner had long known “the vital facts underlying” the letter—the name of the killer and the fact that his cousin had perjured himself. *Id.* at 189–90. The Third Circuit applied the same definition of “new evidence” to the petitioner’s attempt to toll the statute of limitations on the basis of actual innocence as to his claim that evidence was newly discovered under 28 U.S.C. § 2244(d)(1)(D), which provides that the limitations provision for a habeas claim begins to run when “the factual predicate of the claim or claims presented could have been discovered through the

exercise of due diligence.” *Sistrunk*, 674 F.3d at 188–89, 191 (quoting 28 U.S.C. § 2244(d)(1)(D)).³

The Fifth Circuit, although “nominally declining to weigh in” on the debate, “also appears to endorse this ‘newly discovered’ view.” *Fontenot*, 4 F.4th at 1032 (citing *Hancock v. Davis*, 906 F.3d 387 (5th Cir. 2018)). In *Hancock*, the Fifth Circuit recognized that “there is a circuit split” on this question, then held that evidence is not new “if it was always within the reach of petitioner’s personal knowledge or reasonable investigation.” 906 F.3d at 389–90 (cleaned up) (“[T]hough we have not decided what affirmatively constitutes ‘new’ evidence, we have explained what does not.”); see also *Moore v. Quarterman*, 534 F.3d 454, 465 (5th Cir. 2008). In that case, the court held that four affidavits initially obtained by law enforcement shortly after a murder were not new evidence, because the petitioner had not shown that the affidavits were unavailable to him at trial. *Hancock*, 906 F.3d at 388, 390. Thus, although the affidavits allegedly contradicted the physical descriptions of the shooter in the affiants’ trial testimony and were never introduced, they

³ The Third Circuit recognizes a narrow exception to this rule: “when a petitioner asserts ineffective assistance of counsel based on counsel’s failure to discover or present to the fact-finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constitutes new evidence.” *Reeves*, 897 F.3d at 164.

nonetheless were not “new evidence” under *Schlup*. *Id.* at 388.

The Eighth Circuit also has recognized that “the circuits have disagreed upon what the Supreme Court meant by the ‘new’ part of ‘new reliable evidence,’” and joined those holding that “evidence is ‘new’ only if it was not available at the time of trial through the exercise of due diligence.” *Kidd v. Norman*, 651 F.3d 947, 952 (8th Cir. 2011); see also *Amrine v. Bowersox*, 238 F.3d 1023, 1030 (8th Cir. 2001). In *Kidd*, the petitioner challenged his conviction based on a variety of evidence that was not introduced in his trial, including evidence known to the police at the time and other “evidence which could have been discovered and presented by his original trial counsel.” 651 F.3d at 951. The Eighth Circuit held that the *Schlup* standard required him to come “forward not only with new reliable evidence which was not presented at trial, but to come forward with new reliable evidence which was not available at trial through the exercise of due diligence,” *id.* at 953, thus joining this side of the acknowledged circuit split, *id.* at 952–53.⁴

⁴ Further, the District of Columbia Circuit has ruled the same way in an unpublished case, holding that two affidavits gathered years after trial were not “new evidence” under *Schlup* because the petitioner “could have gathered affidavits supporting his alibi defense following his 1995 arrest or 1996 conviction.” *Adams v. Middlebrooks*, 640 Fed. Appx. 1, 4 (D.C. Cir. 2016).

In short, consistent with the requirement that actual-innocence claims meritorious enough to trigger the *Schlup* gateway are both “rare” and “extraordinary,” *Schlup*, 513 U.S. at 321, the Third, Fifth, and Eighth Circuits have issued binding precedent requiring petitioners to present newly discovered evidence to support such a claim.

B. Six Circuits instead apply the “newly presented” standard

In contrast, six federal Courts of Appeals have issued binding decisions defining “new evidence” as any evidence that is newly presented—that is, evidence not presented at trial regardless of whether it was available for use at trial. Specifically, the Second, Fourth, Sixth, Seventh, Ninth, and Tenth Circuits have held that evidence is “new” if it was never presented at trial.

The Second Circuit, considering evidence that might have been considered “new” under either standard, nevertheless defined “new evidence” under *Schlup* as “evidence not heard by the jury.” *Rivas v. Fischer*, 687 F.3d 514, 543 (2d Cir. 2012). The court reached this conclusion while determining whether to accept a post-trial affidavit of a forensic pathologist as “new evidence” under *Schlup*, holding that this evidence qualified because the jury had not seen it. *Id.* at 543–44. And since that ruling, other federal Courts of Appeals have recognized the Second Circuit as having taken a side in the circuit split as a result. See *Fontenot*, 4 F.4th at 1032.

In the decision below, the Fourth Circuit recognized the “circuit split” on this question and decided to “join [its] sister circuits who have held that new evidence includes evidence that is newly presented.” App. 37a. The court held that “the *Schlup* standard is broad, encompassing both evidence that became available only after trial and evidence unavailable or excluded at trial.” App. 37a (quotation marks omitted). The court thus held below that evidence of Barber’s recantation is new, even though the substance of Barber’s statement already was in the record at the time of Wolfe’s guilty plea. App. 38a–41a; *cf. Sistrunk*, 674 F.3d at 189 (rejecting the same claim where petitioner similarly had long known the vital facts contained in the new writing).

The Sixth Circuit also has long applied the newly presented standard. See *Souter v. Jones*, 395 F.3d 577, 594 n.9 (6th Cir. 2005); *Hubbard v. Rewerts*, 98 F.4th 736, 743 (6th Cir. 2024) (“[T]his court has held that evidence is ‘new’ for the purposes of the actual-innocence inquiry so long as it was not presented at trial.”). In *Souter*, the court held that photographs of a murder victim’s bloody clothes were new evidence, even if they were available at trial, because the record did not show that the photographs had ever in fact been presented to the jury. 395 F.3d at 595 n.9. The Sixth Circuit held that the petitioner thus had “demonstrated a credible claim of actual innocence,” and it remanded for the district court to consider the merits of his constitutional claims. *Id.* at 602.

The Seventh Circuit likewise applies the newly presented standard. See *Gomez v. Jaimet*, 350 F.3d 673, 679 (7th Cir. 2003); see also *Patterson v. Adkins*, 124 F.4th 1035, 1046 (7th Cir. 2025) (“[The petitioner] can succeed under [the *Schlup*] standard only if he produces reliable evidence that was not presented at trial.” (cleaned up)). In *Gomez*, the petitioner sought retrial based on statements that his co-defendants and that he himself made—all evidence of which he was aware, but that he did not introduce at trial. 350 F.3d at 679. The court concluded that this evidence was “new,” because “[a]ll *Schlup* requires is that the new evidence is reliable and that it was not presented at trial.” *Ibid.* The court expressed particular concern that “a requirement that new evidence be unknown to the defense at the time of trial would operate as a roadblock to the actual innocence gateway,” especially when the underlying claim is one of ineffective assistance of counsel based on counsel’s failure to present evidence. *Id.* at 679–80. Thus, the Seventh Circuit considered the defendant’s own statements that were never offered at trial as new evidence sufficient for the purposes of *Schlup*.

The Ninth Circuit has expressed skepticism that the newly presented standard is correct, but it nevertheless continues to apply that standard given its earlier precedents. See *Griffin v. Johnson*, 350 F.3d 956, 962–63 (9th Cir. 2003) (citing *Majoy v. Roe*, 296 F.3d 770 (9th Cir. 2002), and *Sistrunk v. Armenakis*, 292 F.3d 669 (9th Cir. 2002) (en banc)); see also *Gable v. Williams*, 49 F.4th 1315, 1322 (9th Cir. 2022)

(“‘New’ evidence under *Schlup* does not actually have to be newly discovered.”). In *Griffin*, the court held that the evidence on which petitioner relied, which included hospital records to which he had access but which he had declined to introduce at trial, was “new” evidence. 350 F.3d at 962–63. The court recognized that Justice O’Connor’s concurrence in *Schlup* “clearly employs the term ‘newly discovered’” and “could constitute *Schlup*’s holding” because Justice O’Connor formed part of the five-Justice majority. *Id.* at 962. But based on its own circuit precedents, the Ninth Circuit instead applied the “newly presented” standard. *Id.* at 963. Accordingly, even though the petitioner had pleaded guilty and the medical records in question “were allegedly in [his] possession before trial,” the court held that they constituted new evidence of actual innocence under *Schlup* because “he never offered this evidence prior to accepting the plea bargain.” *Ibid.*

The Tenth Circuit also has recognized the “circuit split” on whether *Schlup*’s new evidence standard requires “newly discovered” evidence or merely “newly presented” evidence, and it expressly joined the “newly presented” side of that split. *Fontenot*, 4 F.4th at 1032 (describing the Second, Sixth, Seventh, and Ninth Circuits on one side of the split, and the Third, Fifth, and Eighth Circuits on the other side). The court observed that the *Fontenot* case required it to “pick a side” of the split, and that it chose “newly presented” for two reasons: first, it believed that the actual-innocence gateway “works to remove

procedural obstacles to habeas relief in a manner that does not depend on satisfying requirements for standard equitable exceptions to those obstacles,” and second, because “adding diligence to the new evidence requirement does nothing to further its purpose,” which the court understood as being “to lend ‘credibility’ to the claim of innocence by showing it is not based solely on evidence a jury has already found sufficient to convict the petitioner.” *Id.* at 1032–33.

Six federal Courts of Appeals have thus issued binding decisions holding that *Schlup* requires only that the new evidence be newly presented, in contrast to the three federal Courts of Appeals that have held that *Schlup* requires evidence to be newly discovered. This broad set of “decision[s] in conflict” is precisely the type of split that can be settled only by this Court’s intervention. Rule 10(a). This Court should grant the petition for this reason alone.

But even further, another wrinkle has arisen among courts applying the “newly presented” standard that highlights the need for this Court’s clarification. Some of the courts on this side of the split disagree on how to apply the “newly presented” standard when, as here, the petitioner pleaded guilty. Indeed, judges have observed that “there is an inherent paradox in the notion that someone who has stood in open court and declared, ‘I am guilty,’ may turn around years later and claim that he deserves to pass through the actual innocence gateway,” *Weeks*, 119 F.3d at 1355 (Loken, J., concurring), and that there are no “clear guidelines as to the pleadings or

preliminary showing necessary to trigger an actual-innocence inquiry in a guilty plea conviction case,” *United States v. Torres*, 163 F.3d 909, 914 (5th Cir. 1999) (Dennis, J., concurring).

Given this paradox, it is unsurprising that the courts on the “newly presented” side of the circuit split disagree about how to apply that standard to guilty pleas. For example, the Tenth Circuit has stated that the gateway actual-innocence “standard is even more demanding for a habeas applicant who, like [the petitioner], pleads guilty to the crimes for which he stands convicted.” *Slinkard v. McCollum*, 675 Fed. Appx. 851, 855 n.3 (10th Cir. 2017); see also *Blanc v. United States*, No. 17-12394-A, 2017 WL 11812993, at *2, *4 (11th Cir. July 12, 2017) (unpublished order) (suggesting that it is impossible for someone to show factual innocence after pleading guilty and offering “a sworn admission to a factual proffer” that establishes the elements of the offense). But the Ninth Circuit concluded instead that evidence in the defendant’s possession at the time of a guilty plea was new because the defendant never presented it in court. *Griffin*, 350 F.3d at 963. Given the inherent tension between actual-innocence claims and the finality generally accorded to guilty pleas, it is little wonder that the Courts of Appeals on the newly presented side of the split have struggled with how to apply *Schlup* in the guilty-plea context.

Put simply, the Courts of Appeals are deeply divided on how to apply *Schlup*. They openly recognize a circuit split on the question whether evidence must

be newly discovered or merely newly presented. And the courts' confusion at *Schlup*'s application is further highlighted by the additional disagreement on how to apply the latter standard to guilty pleas. This Court should settle the open split and provide clarity on the proper meaning of "new evidence" within the *Schlup* actual-innocence gateway.

II. The question presented is important and recurring

This acknowledged conflict among the Courts of Appeals also concerns an "important matter." Sup. Ct. R. 10(a). Federal habeas review itself implicates sensitive questions of federalism, intruding as it does on "the States' powerful and legitimate interest in punishing the guilty," *Brown v. Davenport*, 596 U.S. 118, 132 (2022) (quotation marks omitted), as well as "systemic interests in finality, comity, and conservation of judicial resources," *Schlup*, 513 U.S. at 322. The "[s]erial relitigation of final convictions undermines the finality that is essential to both the retributive and deterrent functions of criminal law." *Shinn*, 596 U.S. at 391 (quoting *Calderon*, 523 U.S. at 555). Indeed, the finality of state convictions is an "important value[]," *Stutson v. United States*, 516 U.S. 193, 197 (1996), that serves "goals important to our system of criminal justice and to federalism," *Kuhlmann v. Wilson*, 477 U.S. 436, 453 n.16 (1986).

Nowhere is this finality more important than in the context of guilty pleas. See *Bousley v. United States*, 523 U.S. 614, 621 (1998) ("[T]he concern with

finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas.” (quotation marks omitted). Indeed, “[e]very inroad on the concept of finality undermines confidence in the integrity of” judicial procedures, and “by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice.” *United States v. Timmreck*, 441 U.S. 780, 784 (1979) (quotation marks omitted). This consequence “is greatest” in the context of guilty pleas “because the vast majority of criminal convictions result from such pleas.” *Ibid.*

This Court has “unequivocally recognized the State’s legitimate interest in encouraging the entry of guilty pleas and in facilitating plea bargaining, a process mutually beneficial to both the defendant and the State.” *Corbitt v. New Jersey*, 439 U.S. 212, 222 (1978). But a rule permitting petitioners to circumvent their guilty pleas using evidence they possessed at the time of the plea jeopardizes the plea-bargaining system, with all its attendant benefits for both States and defendants. See *Premo v. Moore*, 562 U.S. 115, 132 (2011) (“The plea process brings to the criminal justice system a stability and a certainty that must not be undermined by the prospect of collateral challenges in cases not only where witnesses and evidence have disappeared, but also in cases where witnesses and evidence were not presented in the first place.”).

And because “[s]olemn declarations in open court carry a strong presumption of verity,” *Blackledge v.*

Allison, 431 U.S. 63, 74 (1977), “the States’ powerful and legitimate interest in punishing the guilty,” *Davenport*, 596 U.S. at 132, reaches its zenith when the defendant has publicly confessed his guilt in open court. See *Samia v. United States*, 599 U.S. 635, 655 (2023) (“[C]onfessions are essential to society’s compelling interest in finding, convicting, and punishing those who violate the law.” (quotation marks omitted)).

As this Court noted in *Schlup*, these strong governmental interests are in tension with the “individual interest in doing justice in the extraordinary case.” *Schlup*, 513 U.S. at 322 (quotation marks omitted). Nowhere is this tension more pronounced than in the federal actual-innocence inquiry, which if successful, overcomes failure to comply with the very state rules that serve the interests of finality, comity, and conservation of resources. Cases like this one thus simultaneously implicate substantial state interests and substantial individual interests.

Moreover, the question regarding the proper actual-innocence standard is frequently recurring. In 2024, inmates filed over 13,000 habeas petitions in federal district courts.⁵ Because assertions of actual

⁵ U.S. Courts, *Statistical Tables for the Federal Judiciary – December 2024*, Table C-2, U.S. District Courts—Civil Cases Commenced, by Basis of Jurisdiction and Nature of Suit, During the 12-Month Periods Ending December 31, 2023 and 2024 (Dec. 31, 2024), <https://tinyurl.com/mr426zsv>.

innocence provide a path around both procedural default and the statute of limitations, such arguments often form part of a habeas claim. Indeed, that nearly every Court of Appeals has wrestled with how to define “new evidence” under the *Schlup* actual-innocence gateway demonstrates how regularly this problem arises—in fact, some circuits have addressed it multiple times. See, e.g., *Griffin*, 350 F.3d at 962 (“We might be compelled to speculate further had our court not already stated that actual innocence claims require only ‘newly presented’ evidence.”). And the sheer prevalence of guilty pleas ensures that the question of how to handle actual-innocence claims in that context will continue to arise.⁶

The question presented is important and recurring, and it implicates deep and conflicting interests. Yet in thirty years of considering *Schlup*, the Courts of Appeals have reached widely differing answers to that question. This Court should resolve that conflict.

III. The Fourth Circuit is incorrect

This Court also should grant review because the ruling below was incorrect and falls on the wrong side of the acknowledged circuit split. See 22, *supra*. In erroneously holding that Wolfe demonstrated his

⁶ Last year in federal court alone, 69,405 defendants were convicted of crimes; of those, 67,902 pleaded guilty. See U.S. Courts, *U.S. District Courts — Judicial Business 2024*, Criminal Filings, <https://tinyurl.com/33ews8fp> (last accessed Dec. 3, 2025).

actual innocence using evidence that was not newly discovered, the Fourth Circuit applied the wrong definition of new evidence under *Schlup*. This case thus presents an ideal opportunity for the Court to resolve this split.

The decision below erred by holding that an actual-innocence showing requires only newly presented evidence, regardless of whether that evidence was available or discoverable at earlier stages of the case. To protect the important interest in finality and give appropriate effect to state-court judgments, this Court should grant the petition and instead hold that *Schlup* requires habeas petitioners to present newly discovered evidence of innocence—that is, evidence that was previously unavailable and not discoverable—to establish actual innocence.

The “newly discovered” standard comports with the nature of habeas relief. A state jury trial is not “merely a ‘tryout on the road’ to federal habeas relief.” *Shinn*, 596 U.S. at 377 (quotation marks omitted). Rather, the state “trial is the paramount event for determining the guilt or innocence of the defendant,” and “[f]ederal courts are not forums in which to relitigate state trials.” *Herrera v. Collins*, 506 U.S. 390, 401, 416 (1993) (quotation marks omitted). This Court has an “overarching responsibility to ensure that state-court judgments are accorded the finality and respect necessary to preserve the integrity of legal proceedings within our system of federalism.” *Shinn*, 596 U.S. at 387 (quotation marks omitted). The “newly discovered” standard, rather than the Fourth

Circuit’s “newly presented” one, aligns with that interest.

It would be contrary to these principles to permit defendants to make a tactical choice to refrain from presenting certain evidence—including based on a desire to avoid impeachment, rebuttal, or the presentation of conflicting accounts—only to rely on that same evidence in a later actual-innocence argument to overcome state procedural bars. Yet that is exactly what the “newly presented” standard allows: petitioners can simply fail to follow up on leads during their trial preparation—or even be aware of evidence and make a strategic choice not to introduce it—and then rely on that evidence years later to seek retrial or release.

The “newly discovered” standard also better comports with *Schlup*. Indeed, Justice O’Connor, whose concurrence was necessary to create the *Schlup* majority, understood *Schlup* to require “newly discovered evidence.” 513 U.S. at 332 (O’Connor, J., concurring); see also *Griffin*, 350 F.3d at 962 (observing that, under *Marks v. United States*, 430 U.S. 188, 193 (1977), Justice O’Connor’s “opinion could constitute *Schlup*’s holding”). And the *Schlup* majority opinion counseled that new reliable “evidence is obviously unavailable in the vast majority of cases,” that “claims of actual innocence are rarely successful,” and that the exception is for “the extraordinary case.” 513 U.S. at 324. That understanding would not comport with the “newly presented” standard, under which petitioners

routinely rely on available evidence they failed or declined to enter at trial—hardly extraordinary cases. Besides, the “newly presented” standard allows for evidence that is not new at all. It allows petitioners to rely on long-existing evidence, and frequently evidence that petitioners knew about and simply chose not to use at trial. The “newly discovered” standard requires evidence that actually is new for the petitioner to reach *Schlup*’s actual-innocence gateway.

Moreover, the “newly presented” standard comparatively undermines one of the core purposes of the actual innocence exception: avoiding a “miscarriage of justice.” *Schlup*, 513 U.S. at 324. Justice does not favor allowing petitioners to sleep on their rights and avoid raising evidence until witnesses have died, memories have faded, and the State’s evidence is too stale for a retrial. In contrast, the “newly discovered” standard helps ensure credibility and accuracy, important components of safeguarding justice: when a defendant knows of evidence and fails to present it, that suggests that there was a reason not to present it.

The newly presented rule additionally rewards defendants for “sandba[gg]ing] state courts,” *Shinn*, 596 U.S. at 391, by allowing them to choose one evidentiary strategy at trial and reserve another for later habeas relief. This perverse incentive is especially apparent in the context of guilty pleas, as here, when defendants have no incentive to put any exculpatory evidence in the initial record. Under some

articulations of the “newly presented” side of the circuit split, the Ninth Circuit’s for example, any evidence the defendant actually possessed and could have presented at trial—but did not due to the guilty plea—is categorized as “new” if the defendant later seeks to overcome his guilty plea through habeas. See *Griffin*, 350 F.3d at 963. But “[i]t is well settled that a voluntary and intelligent plea of guilty made by an accused person, who has been advised by competent counsel, may not be collaterally attacked.” *Bousley*, 523 U.S. at 621 (quotation marks omitted). Thus “a potential incongruity” is inherent “between the purpose of the actual innocence gateway announced in *Schlup* and its application to cases involving guilty (or no contest) pleas” under the newly presented rule. *Smith v. Baldwin*, 510 F.3d 1127, 1140 n.9 (9th Cir. 2007) (en banc).

Nor are the arguments in favor of the “newly presented” rule persuasive. The Tenth Circuit concluded that ensuring diligence does not further the purpose of the actual-innocence exception. *Fontenot*, 4 F.4th at 1032–33. But that conclusion is incorrect: discouraging gamesmanship and eliminating the “newly presented” standard’s perverse incentives help ensure accuracy in exonerations to advance justice, to say nothing of alleviating the resource constraints on States and courts that result in further delay in releasing prisoners who are in fact actually innocent. Likewise, the Seventh Circuit’s concern that petitioners with ineffective-assistance-of-counsel claims would face a roadblock under the “newly

discovered” standard, *Gomez*, 350 F.3d at 679–80, was easily addressed by the Third Circuit when it provided a caveat to its “newly discovered” rule: “when a petitioner asserts ineffective assistance of counsel based on counsel’s failure to discover or present to the fact-finder the very exculpatory evidence that demonstrates his actual innocence, such evidence constitutes new evidence,” *Reeves*, 897 F.3d at 164. In sum, the problems with the “newly presented” standard outweigh the arguments in its favor.

The Fourth Circuit’s holding here demonstrates these problems. The Fourth Circuit held that Barber’s declaration was new evidence even though Wolfe had known of its contents for years. App. 38a–41a. In so doing, the court reopened a years-old murder conviction while renouncing its earlier holding that whether Barber would testify was “speculative,” concluding instead that to accept that holding “would be dissonant with the ‘broad definition of “new” evidence’ contemplated by the *Schlup* standard.” App. 41a (quoting *Royal v. Taylor*, 188 F.3d 239, 244 (4th Cir. 1999)); see *Wolfe v. Clarke*, 718 F.3d 277, 289 (4th Cir. 2013). The problems with this conclusion are apparent. First, all the information in Barber’s declaration was known to Wolfe or otherwise discoverable during his re-trial, yet the court permitted its use to attack Wolfe’s conviction. Second, Barber’s decades-long vacillation on whether to testify reveals the unreliability of the newly presented standard, as well as its vulnerability to gamesmanship depending on the stated preferences of

any particular witness at any given time. This unreliability, in turn, substantially harms the interests of States and of the families of murder victims, when a killer might wait years for more favorable circumstances under which to challenge his conviction based on the changed preferences of a former co-conspirator.

And these problems are even more troubling where, as here, the petitioner has confessed in detail to the crime. It is bad enough that the court below held that Wolfe had shown evidence of his “actual innocence,” App. 48a, without appropriately weighing Wolfe’s guilty plea.⁷ *Ibid.* But the court *ignored* that Wolfe confessed that he and Barber planned to murder Petrole and that he forgave Barber’s drug debt in exchange for Barber carrying out the robbery and murder. See [CA.JA1418–19]. In short, the court believed Wolfe’s position that he could prove in court

⁷ The Fourth Circuit ostensibly considered Wolfe’s guilty plea but quickly discounted it, instead accepting at face value Wolfe’s argument that his plea was involuntary. App. 46a–47a. That same guilty plea, which he described as “actually the hardest thing I’ve had to do because it means I have to admit what I did” and that he was giving because he “want[ed] [the family] to know the truth,” [CA.JA1420–21], was delivered while he possessed a recording of the meeting between the investigators and Barber that forms the basis of his due process claim. See [CA.JA332]. Wolfe chose to plead guilty anyway. Notably, Wolfe did not challenge the voluntariness of the handwritten confession that *he* offered in court, nor did the Fourth Circuit address that confession. This confession, standing alone, undercuts the Fourth Circuit’s finding that no reasonable juror would have voted to convict Wolfe based on all the available evidence.

that he is innocent, despite Wolfe’s own sworn statement in court that he is not innocent.

The “newly discovered” standard best serves the purposes of habeas relief. This Court should grant this petition for a writ of certiorari to settle the acknowledged circuit split, provide clarity to federal courts on this open question, and correct the Fourth Circuit’s error.

IV. This case is an ideal vehicle for resolving the question presented

This case presents the Court with an ideal vehicle for resolving the question presented. Wolfe’s ability to demonstrate actual innocence—and to reach the merits of his constitutional claim—turns directly on whether he has presented new evidence. App. 36a–37a (“The heart of their dispute is whether the ‘new’ evidence required under *Schlup* includes only newly discovered evidence that was not available at the time of trial, or broadly encompasses all evidence that was not presented to the fact-finder during trial, *i.e.*, newly presented evidence.” (quotation marks omitted)). That question is the subject of a circuit split, and it is one that the Fourth Circuit below decided incorrectly.

The circuit split presented here is outcome-determinative. If this Court were to apply the “newly discovered” standard rather than the “newly presented” one adopted below, Wolfe would have no new evidence with which to try to reach the threshold, and procedural default and the statute of limitations

would defeat his entire claim. Under the “newly presented” standard, however, Wolfe would receive a second bite at the apple and could once again challenge his conviction. This would be so even though he has long known about, and made decisions around, his co-conspirator Barber’s shifting testimony and affirmatively presented his own impassioned confession and apology in pleading guilty, making him an even worse candidate to argue that he instead is actually innocent.

Finally, this split is ingrained and mature. The Courts of Appeals have been wrestling with *Schlup* for thirty years. Nine federal Courts of Appeals have taken published sides on this split, the Courts of Appeals openly acknowledge that the split exists, and the decades-old divide is intractable. The question presented warrants this Court’s review.

CONCLUSION

This Court should grant the petition.

December 4, 2025

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