No. 25-6909

In the Supreme Court of the United States

MALIK ALLAH-U-AKBAR fka ODRAYE G. JONES,

Petitioner,

v.

HAROLD MAY, Warden,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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CAPITAL CASE – NO EXECUTION DATE SET

QUESTION PRESENTED

Sixth Circuit precedent currently permits federal habeas courts to sanction States for failing to timely comply with writs of habeas corpus by prohibiting the retrial, or resentencing, of successful habeas petitioners. Malik Allah-U-Akbar challenges the Sixth Circuit's application of that precedent to the facts this case. But the Court cannot address his Question Presented without first addressing a threshold question: whether Sixth Circuit precedent is correct in the first place. The Questions Presented in this case are therefore twofold:

1. Do federal courts retain jurisdiction over a habeas case—including jurisdiction to impose sanctions or prohibitions on retrial or resentencing—even after a State has complied fully with a federal court's writ and the petitioner is no longer in custody pursuant to a state-court judgment, as the Sixth Circuit's precedent permits?

2. Did the Sixth Circuit correctly apply its precedent when it held that Akbar's state-court resentencing could proceeded?

LIST OF PARTIES

The Petitioner is Malik Allah-U-Akbar, formerly known as Odraye Jones, an inmate at the Ashtabula County jail.

The Respondent is Harold May, the current Warden of the Mansfield Correctional Institution. Akbar was incarcerated at the Mansfield Correctional Institution at the time he filed his original petition for a writ of habeas corpus. Akbar is no longer in May's custody, however, or in the custody of the Ohio Department of Rehabilitation and Correction. He was transferred from the Mansfield Correction Institution to the Ohio State Penitentiary before being released from the Ohio Department of Rehabilitation and Correction's custody in 2024. To the extent that May is considered an appropriate respondent in this case, he is automatically substituted for the former Warden. *See* Fed. R. App. P. 43(c)(2); Sup. Ct. R. 35.3.

LIST OF DIRECTLY RELATED PROCEEDINGS

Petitioner's list of related proceedings does not comply with Sup. Ct..R. 14.1(b)(iii) because it is incomplete. Akbar omitted the following related proceedings from his non-compliant petition:

State v. Jones, No. 97-CR-221 (Court of Common Pleas, Ashtabula County) (judgment entered June 9, 1998; multiple additional judgment entries)

State v. Jones, No. 2026-A-0016 (Ohio Ct. App., Eleventh Dist.) (judgment entered April, 22, 2026)

State ex rel. Allah-U-Akbar v. Schroeder, No. 2024-A-0076 (Ohio Ct. App., Eleventh Dist.) (judgment entered Dec. 31, 2024)

State v. Allah-U-Akbar, No. 2024-A-0056 (Ohio Ct. App., Eleventh Dist.) (judgment entered Dec. 31, 2024)

State v. Allah-U-Akbar, No. 2024-A-0028 (Ohio Ct. App., Eleventh Dist.) (judgment entered Dec. 31, 2024)

State v. Jones, No. 2021-A-0012 (Ohio Ct. App., Eleventh Dist.) (judgment entered May 17, 2021)

State v. Jones, No. 2017-A-0057 (Ohio Ct. App., Eleventh Dist.) (judgment entered Nov. 27, 2017)

State v. Jones, 2001-A-0072 (Ohio Ct. App., Eleventh Dist.) (judgment entered Dec. 16, 2002)

State v. Jones, No. 2000-A-0083 (Ohio Ct. App., Eleventh Dist.) (judgment entered April 29, 2002)

State v. Jones, No. 1998-1483 (Ohio Supreme Court) (judgment entered April 18, 2001; additional judgments entered on: Sept. 26, 2001; Jan. 25, 2006; July 24, 2013; March 25, 2015; July 23, 2024)

State v. Jones, No. 2002-0988 (Ohio Supreme Court) (judgment entered Sept. 11, 2002)

State v. Jones, No. 2003-0205 (Ohio Supreme Court) (judgment entered April 23, 2003)

Malik Allah-U-Akbar v. State of Ohio, No. 2014-0294 (Ohio Supreme Court) (judgment entered March 11, 2014)

State v. Jones (In re Schroeder), No. 23-AP-061 (Ohio Supreme Court) (July 7, 2023)

State v. Jones, No. 2025-0215 (Ohio Supreme Court) (judgment entered April 15, 2025)

State v. Jones, No. 2025-0448 (Ohio Supreme Court) (judgment entered June 26, 2025)

State v. Jones, No. 2025-0449 (Ohio Supreme Court) (judgment entered June 26, 2025)

State ex rel. Allah-U-Akbar v. Schroeder, No. 2025-0217 (Ohio Supreme Court) (judgment entered Nov. 5, 2025)

State ex rel. Malik Allah-U-Akbar v. William R. Neimi, Ashtabula County Sheriff, No. 2025-1252 (Ohio Supreme Court) (judgment entered Dec. 9, 2025)

Jones v. Ohio, No. 01-6232 (United States Supreme Court) (judgment entered Oct. 29, 2001)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes and Constitutional Provisions

Other Authorities

INTRODUCTION

Malik Allah-U-Akbar killed a police officer. He received a capital sentence for the murder he committed. But, because there were constitutional errors in his original sentencing, the Sixth Circuit ordered that Akbar's sentence be vacated if he was not resentenced within 180 days of the Court's order. *Jones v. Bradshaw*, 46 F.4th 459, 464–65 (6th Cir. 2022). Easier said than done: Akbar repeatedly delayed his resentencing proceedings, and while the Sixth Circuit extended the resentencing deadline once, it refused to do so a second time. Pet.App.D-8–D-9. Because Akbar had not been resentenced within the time that the Sixth Circuit required, a district court issued an unconditional writ ordering Akbar's sentence to be vacated and the Warden to release him within five business days. Pet.App.D-22.

Both things eventually occurred. The Warden released Akbar as the unconditional writ required him to do. Pet.App.A-4. It took longer for Akbar's sentence to be vacated. The local prosecutor was a little over two weeks late in filing a motion to formally vacate Akbar sentence, and the trial court did not act on that motion until approximately two months later. *See id.*

Akbar believes that the delay entitles him to walk free. As a sanction for the tardy compliance with the district court's unconditional writ, he asked both the district court and the Sixth Circuit to prevent his resentencing from moving forward or, at a minimum, remove death as a sentencing option. Both refused. Applying Sixth Circuit precedent, both the district court and the Sixth Circuit held that Akbar was not entitled to an order prohibiting his resentencing.

This case is, as Akbar sees it, about the Sixth Circuit's application of its precedent and whether, under the circuit's precedent, the tardiness in fully complying with the writ entitled him to a bar on resentencing or, at least, on reimposition of the death penalty. That question by itself is unremarkable and unworthy of this Court's review. But should the Court be inclined to answer this question, it has to answer a threshold question: Is this case moot? That depends on the answer to another, more significant question: whether, as was the case here, federal courts retain jurisdiction over a habeas case to do such things like bar resentencing even after a State has complied fully with a federal court's writ and after a petitioner is no longer in custody pursuant to a state-court judgment. The correct answer is "no." This Court (just like the courts below) does not have jurisdiction because there is no further relief it can provide Akbar now that the writ has been fully satisfied. The Sixth Circuit, however, says, "yes." It allows federal courts in that circuit to stretch their habeas jurisdiction well past the limits on available habeas relief.

The Sixth Circuit's outlier position is a novel interpretation of federal authority. *Cf. Wilson v. Sec'y Pa. Dep't of Corr.*, 782 F.3d 110, 116–17 (3d Cir. 2015) (finding no exhaustion and declining to follow Sixth Circuit precedent). Even Akbar appears to recognize that the Sixth Circuit's jurisdictional holding is novel. The Sixth Circuit's "post-writ jurisprudence," he writes, "is the most developed of any Circuit and shows no signs of slowing." Pet.19. Put another way, the Sixth Circuit is out at sea and rowing further by the day. There is no question that Akbar's petition fails to present a question that warrants the Court's review. The only relevant question is whether the Court should add an additional Question Presented for the purpose of hauling the Sixth Circuit back to shore.

JURISDICTION

The Court lacks jurisdiction over this case. As discussed in greater detail below, this case is moot because Akbar has been released from the Warden's custody and Akbar's unconstitutional sentence has been vacated. There is therefore no "case or controversy," and the Court lacks Article III jurisdiction.

To the extent that jurisdiction may be proper under §2254 thus keeping the case or controversy live, the Court has jurisdiction under 28 U.S.C. §1254(1).

STATEMENT

I. Malik Allah-U-Akbar was sentenced to death for the murder of a police officer, and Ohio courts affirmed both his conviction and his sentence.

Malik Allah-U-Akbar, formerly known as Odraye Jones, killed a police officer. *State v. Jones*, 91 Ohio St. 3d 335, 335–37 (2001). Akbar had outstanding felony warrants for his role in a robbery. *Id.* at 335. But he had no intention of serving time. Akbar told his cousin that he "was going to shoot at the police if they ever tried to arrest him." *Id.* He carried through on his threat.

Officer William D. Glover, Jr. responded to a dispatch call advising officers that Akbar had been sighted. *Id.* He approached Akbar and told him that he didn't want any problems and that he was just doing his job. *Id.* Rather than cooperate, Akbar fled. *Id.* As he was running away, Akbar "pulled a .38 caliber revolver from his pocket, and began firing shots at Officer Glover." *Id.* Akbar briefly paused his attempt to get away and approached Officer Glover, firing more shots. *Id.* at 336. He began to flee again before reconsidering, returning to where Officer Glover lay on the ground, and forcefully kicked Glover in the chest. *Id.* Finally satisfied, Akbar left the scene. *Id.*

Officer Glover died of his injuries. *Id.* at 337. He had sustained gunshot wounds to the top of his head, below his right eye, and his right shoulder. *Id.* at 336. Akbar's kick left a bruise so large that it was visible to the paramedics that treated him at the scene. *Id.*

A jury found Akbar guilty of aggravated murder with prior calculation and design. *Id.* at 337. The charge carried three death penalty specifications, two of which merged. *Id.* The jury found him guilty of those as well. *See id.* The jury recommended that Akbar be sentenced to death and the trial court imposed the recommended sentence. *Id.* Akbar appealed and the Ohio Supreme Court affirmed his conviction and sentence. *Id.*

II. The Sixth Circuit determined that Akbar's sentencing was constitutionally flawed, partially granted Akbar's petition for a writ of habeas corpus, and ordered the State to resentence or release him.

Akbar filed a petition for a writ of habeas corpus in the Northern District of Ohio. Among other things, he asserted that he received ineffective assistance of counsel because his attorneys inadequately prepared his defense experts. *See Jones v. Bradshaw*, 489 F.Supp.2d 786, 839–40 (N.D. Ohio 2007). The district court denied Akbar's petition. *Id.* at 792. It granted him a certificate of appealability on five of his claims. *See id.* at 852.

After a complex course of litigation, Akbar eventually appealed to the Sixth Circuit. After argument, the Sixth Circuit issued a new certificate of appealability on Akbar's ineffective assistance claim related to the failure to properly prepare the defense experts for sentencing. *Jones v. Bradshaw*, 46 F.4th 459, 464 (6th Cir. 2022). The Sixth Circuit ultimately granted relief on that basis. It held that Akbar had not defaulted his claim, that AEPDA's deferential standard of review did not apply, and, after reviewing Akbar's claim *de novo*, that Akbar was entitled to a new sentencing hearing. *Id.* The Sixth Circuit issued a conditional writ instructing the district court to "issue a writ of habeas corpus vacating [Akbar]'s death sentence unless the State of Ohio conducts a new penalty phase proceeding within 180 days of remand." *Id.* at 464–65.

III. Akbar and the Sixth Circuit prevented the Warden, local prosecutor, and state court from together complying in full with the conditional writ of habeas corpus.

The local prosecutor attempted to comply with the Sixth Circuit's conditional order. Only twelve days after the Sixth Circuit issued its mandate, the prosecutor filed a motion in state court in which the prosecutor sought to set a date for resentencing. Pet.App.D-3.

Akbar did not display the same urgency. He took several steps that prevented that resentencing from occurring by May 16, 2023, which was 180 days after the Sixth Circuit issued its mandate. Shortly after the mandate issued, Akbar filed a *pro se* pleading in which he expressed a desire to represent himself. Pet.App.D-4. His counsel filed a similar pleading not long after that. *Id.* Approximately three weeks later, his counsel filed a more specific motion addressing Akbar's competency to stand trial and asking the state court to determine Akbar's competency to represent himself. *Id.* Akbar was disruptive at a subsequent status conference, which prompted defense counsel to orally move for an evaluation of Akbar's competency. Pet.App.D-4–D-5.

Although the state court could not rule on Akbar's *pro se* motion until his competency was addressed, Akbar did not cooperate in that evaluation. His counsel requested both an evidentiary hearing and a second opinion. Pet.App.D-5. Akbar refused to cooperate with his counsel's chosen expert, and with a subsequent expert. *Id.* It was not until August 31, 2023 that the state court received the final report regarding Akbar's competency. *Id.*

Despite the fact that he was primarily responsible for delaying the resentencing process, Akbar never asked the Sixth Circuit to extend its conditional writ deadline. After some disagreement about which party was responsible for seeking additional time for resentencing, Akbar filed a motion in district court asking for a 270-day extension of the conditional writ deadline. Pet.App.D-8. The district court denied the motion on the ground that it did not have the authority to modify the Sixth Circuit's mandated deadline. *Id.*

Approximately a month before the conditional writ's deadline expired, the Warden filed a motion with the Sixth Circuit asking the Sixth Circuit to hold that the terms of the conditional writ had been satisfied when the prosecutor initiated resentencing proceedings or, in the alternative, that the state trial court had the authority to grant necessary continuances. *Id.* Akbar opposed the Warden's motion—despite the fact that it was originally his state-court motions that prompted the need for additional time. *See id.*

The Sixth Circuit denied the Warden's motion. It held that because the state trial court had not formally vacated Akbar's sentence, the State "had not yet satisfied the [writ's] imposed obligation or demonstrated substantial compliance." *See id.* (quotation omitted). It further noted that the Warden's motion was premature, because the resentencing deadline had not yet passed, and it stated a "preference" for the Warden to request an extension of time, but indicated that he had not sought such relief. *Id.* The Warden moved for a 190-day extension the following day, and the Sixth Circuit granted the motion. Pet.App.D-8–D-9. It extended the resentencing deadline until November 22, 2023. Pet.App.D-8. Akbar filed a motion for reconsideration of the Sixth Circuit's order, which the Sixth Circuit denied. *See* Sixth Circuit Order Denying Motion for Reconsideration, Doc.348-2.

Although the state court scheduled a resentencing hearing to occur approximately one month before the conditional writ's deadline expired, Akbar again made it impossible for resentencing to occur in a timely fashion. He continued to insist on representing himself and, at a status conference held a little over two weeks before resentencing was scheduled to occur, the parties agreed that resentencing could not realistically occur as scheduled. Pet.App.D-9.

Despite that agreement, Akbar opposed the Warden's efforts to obtain an extension of time from the Sixth Circuit. The Warden filed a motion with the Sixth Circuit seeking an additional 248 days in which to resentence Akbar. *Id.* Akbar opposed the Warden's motion and the Sixth Circuit denied the motion without explanation. *Id.* The conditional writ's deadline expired on November 22, 2023. *Id.*

IV. The district court denied Akbar's request that the state court be prohibited from resentencing him.

After the conditional writ deadline had passed, Akbar filed a motion in the district court in which he made two requests for relief. He asked the district court to issue an unconditional writ of habeas corpus. Pet.App.D-9–D-10. He also asked the court to entirely prohibit his resentencing or, at a minimum, prohibit the imposition of a new capital sentence. *Id.* The Warden did not oppose the issuance of an unconditional writ, but did oppose any restrictions on the state court's ability to resentence Akbar. *See* Pet.App.D-10.

The district court agreed with the Warden. It issued an unconditional writ in which it ordered that Akbar's death sentence be vacated and that Akbar be released from the Warden's custody. Pet.App.D-11–D-12. It declined to prohibit the local prosecutor from pursuing a new penalty-phase trial or from seeking the death penalty. Pet.App.D-22.

The following business day, the local prosecutor asked the state trial court to issue an arrest warrant on Akbar's original indictment. Pet.App.B-2. The Warden released Akbar from his custody on March 5, 2024. *Id.* The Ashtabula County Sheriff then rearrested Akbar and placed him in the Ashtabula County Jail. *Id.* That is where he remains. But while the Warden released Akbar, neither "the Warden, the prosecution, [Akbar]'s counsel, [n]or the trial court" took any immediate action to satisfy the portion of the district court's order that required that Akbar's conviction be vacated within five days. Pet.App.B-3. That was in part because of Akbar's own actions.

Akbar continued to file motions that interfered with his timely resentencing. On March 4, 2024, just two business days after the district court issued its unconditional writ, Akbar filed an appeal in state court in which he challenged some of the trial court's pretrial decisions. *Id.* In response, the state court issued a judgment entry in which it indicated that Akbar's appeal had divested the court of jurisdiction, except to take action in aid of the appeal. *Id.* It noted that Akbar's appeal was the third time that Akbar had divested the court of jurisdiction and had delayed his resentencing. *Id.* Despite the fact that the trial court had indicated that it lacked jurisdiction over Akbar's resentencing, the local prosecutor filed a motion on March 22, 2024 (seventeen days after the unconditional writ's deadline) in which it asked the state court to vacate Akbar's sentence. Pet.App.B-3–B-4. The state court granted the motion on May 29, 2024, after Akbar's state-court appeal was denied and the trial court regained jurisdiction. Pet.App.B-4.

Citing noncompliance with the district court's unconditional writ, Akbar filed a Rule 60(b) motion in federal court, in which he asked the district court to reopen its unconditional writ decision, order his unconditional release from any form of confinement, and bar the local prosecutor from conducting further resentencing proceedings in state court. Pet.App.B-4.

The district court denied Akbar's motion. It held that, although the parties had failed to "ensure that the trial court entered the proper order vacating [Akbar]'s sentence within the prescribed time period," the Warden and the local prosecutor took "clear actions signifying a vacatur." Pet.App.B-9 (quotation omitted, deletion accepted). It noted that the failure to formally vacate Akbar's sentence was attributable to attorney error and the timing of Akbar's most recent state-court appeal. Pet.App.B-9–B-10. The district court held that Akbar therefore failed to demonstrate the type of "extraordinary circumstances" that Sixth Circuit precedent currently requires before a federal habeas court may purport to bar a habeas petitioner's retrial. *See id.*

V. The Sixth Circuit ultimately affirmed the district court's decision, but only after relying on its precedent to reject the Warden's challenge to its jurisdiction.

Akbar appealed and the Sixth Circuit ultimately affirmed. *See* Pet.App.A-2 and A-18 n.1 (Griffin, J., concurring in part and dissenting in part). Although Sixth Circuit precedent currently allows habeas courts to bar retrial in "extraordinary circumstances," the Sixth Circuit held that no such circumstances exist in this case. Pet.App.A-14–A-15. It held that there was no "bad faith or wrongdoing on the part of the state, and Allah-U-Akbar is not … prejudiced from undergoing a fair sentencing proceeding." Pet.App.A-16; *see also* Pet.App.A-17 (finding "no bad faith or 'inexcusable neglect'" sufficient to support Akbar's Rule 60(b) motion).

Before it reached the merits of Akbar's appeal, however, a majority of the Sixth Circuit rejected the Warden's argument that the federal courts lost jurisdiction after the Warden had released Akbar from custody and the state trial court had vacated Akbar's conviction. The Warden had argued that the Sixth Circuit lacked jurisdiction because 28 U.S.C. §2254 gives federal habeas courts jurisdiction over only those inmates who are "in custody pursuant to the judgment of a State court." Because Akbar's sentence had been vacated, the Warden asserted, he was no longer in custody pursuant to a state judgment; he was instead in custody pursuant to an arrest warrant for his original indictment.

The Sixth Circuit majority disagreed. Relying on Sixth Circuit precedent, it held that federal appellate courts "retain[] jurisdiction to review a district court's decision to convert a conditional writ to an unconditional writ despite the state's subsequent compliance" with that writ. Pet.App.A-6 (citing *Mason v. Mitchell*, 729 F.3d 545, 549–50 (6th Cir. 2013)). It held that even when a State has complied with a writ of habeas corpus, federal courts retain jurisdiction to impose sanctions—including by prohibiting retrial or resentencing—if they believe that the State did not timely comply. *See* Pet.App.A-7. It similarly relied on precedent to hold that a district court retains jurisdiction to impose sanctions under Rule 60(b). *See* Pet.App.A7–14.

Judge Griffin dissented from the majority's jurisdictional holdings. Pet.App.A-18–A-25. He emphasized the fact that 28 U.S.C. §2241 states in relevant part that the "writ of habeas corpus shall not extend to a prisoner unless," he is "in custody in violation of the Constitution or laws or treaties of the United States." Pet.App.A-18 (Griffin, J., dissenting) (quoting §2241(c)(3)). And once a "unconstitutional judgment is gone," he wrote "so too is federal jurisdiction." Pet.App.A-19 (Griffin, J., dissenting) (quotation omitted). Because Akbar was no longer in custody pursuant to an unconstitutional judgment, Judge Griffin would have held that federal courts lack jurisdiction over his habeas petition. Pet.App.A-20–A-21.

Akbar has now filed a petition for a writ of *certiorari* in which he challenges the Sixth Circuit's refusal to prohibit his resentencing. *See* Pet.i.

REASONS FOR DENYING THE WRIT

The questions that Akbar presents in his petition for a writ of *certiorari* are meritless; even under current Sixth Circuit precedent, there is no basis to prohibit his resentencing. If this Court disagrees and chooses to answer the questions presented in Akbar's petition, it must first "assure" itself of Article III jurisdiction before proceeding to the merits of the case. *See Dep't of Educ. v. Brown*, 600 U.S. 551, 560 (2023). To do so, however, this Court must answer a more significant question implicated in this case: whether federal courts retain jurisdiction over a habeas case, even after a State has complied fully with a federal court's writ and a petitioner is no longer in custody pursuant to a state-court judgment. The Sixth Circuit alone has held that the answer is "yes." But if the answer to that question is "no"—and it is—then the Court should say so and dismiss Akbar's petition as moot.

I. The Court, like the Sixth Circuit before it, lacks jurisdiction over Akbar's habeas claims.

Akbar's habeas petition became moot after the Warden released Akbar from custody and the state court vacated his unconstitutional sentence. Recall again the sequence of events. The federal district court issued an unconditional writ of habeas corpus that required 1) that the Warden release Akbar from custody and 2) that the sentence that the Sixth Circuit had determined was unconstitutionally imposed be vacated. Pet.App.D-22. Both occurred. As of May 29, 2024, Akbar's sentence had been vacated, and he was no longer in the Warden's custody. That should have ended this case; both events occurred approximately two months before the district court denied Akbar's Rule 60(b) motion, *see* Pet.App.B-1—and almost an entire year before the Sixth Circuit held oral argument, *see* Pet.App.A-1 (noting argument date of April 17, 2025). Because there was no further relief that federal courts could award Akbar, his habeas petition became moot.

A. Federal courts lack jurisdiction over a habeas petitioner's claims after a State has complied with a writ of habeas corpus and released the petitioner from its custody.

Begin with the basics: Article III, §2 of the United States Constitution, limits federal courts' jurisdiction to cases and controversies. *Acheson Hotels, LLC v. Laufer*, 601 U.S. 1, 14 (2023); U.S. Const. art. III, §2. Reflecting that case-or-controversy requirement, "a case [becomes] moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." *Powell v. McCormack*, 395 U.S. 486, 496 (1969). When "a case becomes moot, the existence of a case or controversy is at an end, and there is therefore no basis for the exercise of judicial power." *Acheson Hotels,* 601 U.S. at 14–15 (Jackson, J., concurring in judgment) (quotation omitted).

Turn to subject-matter jurisdiction under AEDPA. Relevant here, federal courts have the authority to entertain a writ of habeas corpus only when a habeas petitioner is "in custody pursuant to the judgment of a State court," and "only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. §2254(a); *see id.* §2241(c)(3). The power to *grant* a habeas petition is similarly limited. Congress has instructed that an " application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court" shall be granted only in a limited number of circumstances. *Id.* §2254(b).

The Court's precedent confirms what AEDPA's text already makes clear: custody under a state-court judgment is required for federal-court jurisdiction to attach. The Court has held that the "requirement of custody pursuant to a state-court judgment distinguishes §2254 from other statutory provisions authorizing relief from constitutional violations." *Magwood v. Patterson*, 561 U.S. 320, 333 (2010) (emphasis deleted). That requirement is also consistent with the traditional scope of courts' habeas power. At common law, a writ of habeas corpus "authorized a single form of relief: the prisoner's immediate release from custody." *Wilkinson v. Dotson*, 544 U.S. 74, 85 (2005) (Scalia, J., concurring). And while AEDPA broadened the relief available to "permit relief short of release," *see id.*, the Court has held that it does not constitute a "general grant of supervisory authority over state trial courts," *Jennings v. Stephens*, 574 U.S. 271, 278 (2015). AEDPA did not, in other words, change the fact that federal habeas courts have jurisdiction only over a petitioner in custody pursuant to a state-court judgment. Its entire structure, from its jurisdictional requirements to its exhaustion requirements, are designed to make clear that federal courts *do not* have authority under that statute "to maintain a continuing supervision over a retrial conducted pursuant to a conditional writ granted by the habeas court." *See Pitchess v. Davis*, 421 U.S. 482, 490 (1975) (*per curiam*).

Putting that together, habeas petitioners must be *in custody* pursuant to a *judgment* to invoke federal courts' habeas jurisdiction. *See Maleng v. Cook*, 490 U.S. 488, 490 (1989) (*per curiam*); *see also Alaska v. Wright*, 593 U.S. 152, 154 (2021) (*per curiam*). So when a prisoner's state-court judgment is vacated and the State relinquishes custody of the prisoner, no case or controversy exists and the case becomes moot. That is why habeas petitioners who have served their sentence cannot show such an injury unless they are able to demonstrate "some concrete and continuing injury *other* than the now-ended incarceration or parole." *Spencer v. Kemna*, 523 U.S. 1, 7 (1998).

B. The Sixth Circuit stands apart from its sister circuits in allowing federal habeas courts to exercise continuing jurisdiction over cases that have become moot.

Though habeas cases in other circuits become moot when a State complies with a writ and releases a habeas petitioner from custody under a vacated state-court judgment (as was the case here), *see* below 20–22, that is not so in the Sixth Circuit. The Sixth Circuit's persistent and pernicious law grants federal habeas courts supervising authority over state-court proceedings, even after the State has fully complied with a writ of habeas corpus. That authority includes the power to sanction States even *after* they have fully complied with a writ of habeas corpus. This grant of authority to exercise continuing jurisdiction permits federal habeas courts in the Sixth Circuit to keep cases alive well past their expiration date. That is wrong as a matter of AEDPA's text and this Court's precedent.

1. The Sixth Circuit majority below relied on a set of four cases that it concluded supported its exercise of jurisdiction. *See* Pet.App.A-9 (citing *Satterlee v. Wolfenbarger*, 453 F.3d 362 (6th Cir. 2006)); Pet.App.A-6, A-9 (citing *Girts v. Yanai*, 600 F.3d 576 (6th Cir. 2010)); Pet.App.A-7–A-10 (citing *D'Ambrosio v. Bagley*, 656 F.3d 379 (6th Cir. 2011); and Pet.App.A-6–A-7 (citing *Mason v. Mitchell*, 729 F.3d 545 (6th Cir. 2013)). Like the children's game of telephone, these cases built on each other, each one begetting a new and more significant departure from the limits imposed by Article III, AEDPA's text, and this Court's precedent.

In the beginning was *Satterlee*. The district court in that case had granted a conditional writ in which it ordered Michigan to reinstate a plea offer that was never communicated to a habeas petitioner. *See Satterlee*, 453 F.3d at 363–64. When the State did not do so, the district court ordered the petitioner's immediate release and the expungement of his conviction. *Id.* at 364. The Sixth Circuit held that the district court's order was a valid exercise of its habeas power. *Id.* at 368–70. In a single sentence of analysis, *Satterlee* also determined that federal courts may bar reprosecution of a successful habeas petitioner in "extraordinary circumstances." *See id.* at 370. It remanded because it was not clear whether the district court had intended to prevent Michigan from retrying the petitioner. *Id.*

Satterlee begat *Girts*. In that decision, *Satterlee*'s single sentence of analysis grew to an entire section. *See Girts*, 600 F.3d at 582–86. The Sixth Circuit reaffirmed its conclusion in *Satterlee* that a federal court may prohibit a State from retrying a habeas petitioner in "extraordinary circumstances," such as when a state "abusively fails to act within the prescribed time period." *Id.* at 583 (quoting *Satterlee*, 453 F.3d at 370). But *Girts* at least appeared to recognize new limits on the broad authority that *Satterlee* purported to find. It noted that the treatise that *Satterlee* looked to for support indicated that "[f]ederal courts usually permit rearrest and retrial after the time period specified in [a] conditional release order has elapsed and the prisoner has been released." *Girts*, 600 F.3d at 585 (quoting 2 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* § 33.3, at 1686 (5th ed. 2005), additional citation omitted)); *see also Satterlee*, 453 F.3d at 369 (quoting 2 Hertz & Liebman, §33.3).

Girts also drew a distinction between a prohibition on retrial that a federal court imposes as part of its initial grant of a writ of habeas corpus, and an order that purports to bar retrial after an "improperly obtained conviction" has been vacated. *Girts*, 600 F.3d at 580. Federal courts possess the power to issue the first type of order, *Girts* held, but not the second. *See id.* at 581–82. The Sixth Circuit made clear that it *was not* holding that "a district court can materially amend its judgment after the state has released a petitioner," and it acknowledged *this* Court's precedent holding that habeas courts do not maintain continuing authority "over a retrial conducted pursuant to a conditional writ." *Id.* at 582 (quoting *Pitchess*, 421 U.S. at 490). It reaffirmed that a federal court "does not have jurisdiction to consider circumstances that unfold after the state complies with the writ." *Id.*

Girts begat *D'Ambrosio*. And in *D'Ambrosio*, the limits on federal court authority that *Girts* recognized evaporated. Despite the fact that the limited power to bar retrial that *Girts* recognized applied only to an initial grant of habeas relief, *see Girts*, 600 F.3d at 581–82, *D'Ambrosio* acknowledged that the "district court did not bar D'Ambrosio's reprosecution when it initially granted [an] unconditional writ of habeas corpus," *D'Ambrosio*, 656 F.3d at 388. The Sixth Circuit in that case affirmed a district court order that prohibited the State from retrying a successful habeas petitioner based on events that occurred *after* the district court had issued an unconditional writ of habeas corpus. *See D'Ambrosio*, 656 F.3d at 383 (quoting *D'Ambrosio v. Bagley*, 688 F.Supp.2d 709, 727–28 (N.D. Ohio 2010) as prohibiting retrial based on the State's conduct ahead of retrial).

The *D'Ambrosio* majority justified the federal habeas courts' exercise of jurisdiction by reasoning that the state courts had not vacated the unconstitutional conviction. Despite everything that the State had done to comply with the writ in that case, there was no docket entry vacating that conviction. *See D'Ambrosio*, 656 F.3d at 388. According to the *D'Ambrosio* majority that was all that mattered because "[w]hat vacates a conviction is an entry in the court docket." *Id.* The majority wrote that Rule 60(b) gave the district court the power to act even if it "was acting after the unconstitutional conviction was dispensed with." *Id.* Rule 60(b), the *D'Ambrosio* majority concluded, gives a federal habeas court "continuing jurisdiction over its grant of an unconditional writ of habeas corpus pursuant to a Rule 60(b) motion as long as it had jurisdiction to grant the unconditional writ in the first place." *Id.* at 388.

Judge Boggs dissented in *D'Ambrosio*. He disagreed with the majority's conclusion that the State had failed to vacate D'Ambrosio's sentence, and emphasized that the federal courts lost jurisdiction over D'Ambrosio's case after "the state of Ohio vacated D'Ambrosio's unconstitutional conviction and released him from any confinement pursuant to that conviction." *Id.* at 391 (Boggs, J., dissenting). Judge Boggs also wrote that the *D'Ambrosio* majority ignored this Court's decision in *Pitchess*, 421 U.S. at 486–87, when it relied on Rule 60(b) as a basis for asserting supervisory authority over the state-court proceedings. *See* 656 F.3d at 393–95. *Pitchess*, recall, held that federal courts may not exercise "continuing supervision over a retrial conducted pursuant to a conditional writ granted by the habeas court." *Pitchess*, 421 U.S. at 490. Judge Boggs would have held that the district court's order "blatantly" violated *Pitchess*, *D'Ambrosio*, 656 F.3d at 396, and wrote that it was "particularly troubling," that the majority in *D'Ambrosio*, "permit[ed] federal courts to order habeas relief not only based on the conditions leading to an underlying conviction, but also based on the conditions of an ongoing state criminal proceeding," *id.* at 397.

D'Ambrosio begat *Mason*. *Mason* expanded *D'Ambrosio*'s broad view of federal habeas jurisdiction even further. *D'Ambrosio* was based on the belief (even if that belief was incorrect) that the State had not vacated a habeas petitioner's conviction at the time the district court issued its order barring retrial. *D'Ambrosio*, 656 F.3d at 388. *Mason* abandoned even that pretense. *See* Pet.App.A-22 (Griffin, J., dissenting) (writing that "*D'Ambrosio* did not support *Mason*'s novel expansion of federal jurisdiction over habeas petitions"). Unlike *D'Ambrosio*, there was no doubt in *Mason* that the State had vacated the petitioner's unconstitutional sentence and released him from the custody that the sentence authorized. *See Mason*, 729 F.3d at 549. The Sixth Circuit held that that did not matter. It concluded that even when a State has complied with a conditional writ and vacated a petitioner's conviction or sentence, federal habeas courts still have supervisory jurisdiction to decide, "in conjunction with a determination of whether [a] state complied with a conditional writ … whether to bar reprosecution." *Mason*, 729 F.3d at 550 (citing *D'Ambrosio*, 656 F.3d at 389–90).

With that the transformation of Sixth Circuit precedent was complete. What began in *Satterlee* as a limited (and cursory) statement about the power of federal courts to bar the retrial of a successful habeas petitioner had metastasized into a broad power of supervisory authority like the one that this Court held in *Pitchess* that federal habeas courts do not possess. *See Pitchess*, 421 U.S. at 490.

That malignant precedent continues to infect the Sixth Circuit's habeas jurisprudence. The decision below in this case is just the latest example. It reaffirmed *Mason*, further entrenching the Sixth Circuit's aberrant jurisdictional precedent. *See* Pet.App.A-6–A-7. And the doctrine, as it stands today, inflates federal-court jurisdiction beyond Article III's case-or-controversy limits. Ordinarily, when the State has complied fully with a writ by vacating a habeas petitioner's sentence and releasing him from State custody, the case becomes moot because federal habeas courts generally cannot grant any more relief. Not so in the Sixth Circuit, where federal courts are permitted to meddle without limit in subsequent state-court proceedings. *See Smith v. Davis*, Nos. 25-3381/3383, 2025 WL 1826652, *13 (6th Cir. July 2, 2025) (Thapar, J., dissenting) (criticizing panel majority applying *Mason* as "misunderstand[ing] the limited nature of the extraordinary writ of habeas corpus").

2. Unsurprisingly, the Sixth Circuit largely stands alone. Unlike the Sixth Circuit, other federal circuits have held that federal courts lack the authority to prohibit the retrial of a habeas petitioner based on events that occur after a grant of habeas relief. The Third Circuit, for example, has held that federal habeas courts cannot entertain in the first instance claims about a delayed retrial. *See Wilson v. Sec'y, Pa. Dept. of Corr.*, 782 F.3d 110, 116–17 (3d Cir. 2015). Such claims, it has held, are new claims that need to be first exhausted in state court. *See id.* The Third Circuit declined to follow *D'Ambrosio* because it was "unpersuaded by that opinion" and because "the reasons underlying Judge Bogg's dissent" aligned with its own interpretation of federal courts' habeas authority. *Id.* at 117–18.

The Fourth Circuit has held that federal habeas courts should not bar retrial when a constitutional violation can be remedied by a new trial. *See Wolfe v. Clarke*, 718 F.3d 277, 290–91 (4th Cir. 2013). In doing so, it rejected the reasoning of *D'Ambrosio*'s ancestor, *Satterlee*. *See id.* Only the dissent in that case would have followed the Sixth Circuit's approach to determining when a federal court may bar the retrial of a successful habeas petitioner. *See id.* at 299 n.3 (Thacker, J., concurring in part and dissenting in part).

The Fifth Circuit has also rejected *D'Ambrosio*'s logic, even if not the Sixth Circuit's decision in that case itself; it declined to follow the Northern District of Ohio decision that the Sixth Circuit ultimately affirmed. *Woodfox v. Cain*, 805 F.3d 639, 647 (5th Cir. 2015). It reversed a district court order that barred the reprosecution of a successful habeas petitioner, reasoning that the justifications that the district court offered did not justify such relief. *Id.* at 646–49. The district court based its decision on several, forward-looking factors that, in its opinion, called into question the ability of the petitioner to receive a fair trial. *See id.* at 643–44. The Fifth Circuit held that the district court had exceeded its authority. Noting that "[f]ederal courts have a limited role," it held that they "generally should not preclude state courts from remedying constitutional errors in the first instance." *Id.* at 649. To the extent that the district court in *D'Ambrosio* had done otherwise, it rejected that court's approach. *D'Ambrosio*, the Fifth Circuit held, was "not binding" and did not "touch[] on why it was appropriate to deprive state courts of the opportunity to address alleged constitutional errors in the first instance." *Id.* at 647.

To be sure, some federal courts have held that the habeas power includes the power to prevent a State from retrying a successful habeas petitioner. For example, even as the Fifth Circuit rejected the Sixth Circuit's *D'Ambrosio* decision, it noted that federal habeas courts *could* bar retrial in a limited number of cases where a "constitutional violation that cannot be remedied by another trial." *Woodfox*, 805 F.3d at 645. But even courts that have adopted a broad view of the power to dispose of habeas matters "as law and justice require," *see* 28 U.S.C. §2243, have held that for "a federal court to exercise its habeas corpus power to stop a state criminal proceeding," the constitutional violation in question must generally "be such that it cannot be remedied by another trial." *See Capps v. Sullivan*, 13 F.3d 350, 352–53 (10th Cir. 1993). And, contrary to the Sixth Circuit's approach to habeas jurisdiction, they have held that "for [a] district court to have jurisdiction," a habeas petitioner "must be in custody." *Id.* at 353 (citations omitted).

C. Akbar's habeas claims became moot once the terms of the unconditional writ had been satisfied.

Although this case became moot when Akbar was released from custody and his sentence was vacated, the Sixth Circuit applied its now, well-established precedent, which holds that federal courts have jurisdiction to oversee federal habeas proceedings and to sanction States even after they have fully complied with a conditional or unconditional writ of habeas corpus. It was wrong here, just as it was wrong in the past. *See, e.g., Mason*, 729 F.3d 549–50; *see also Smith*, 2025 WL 1826652, *13 (Thapar, J., dissenting).

Akbar likely does not realize it, but he inadvertently admits that the Sixth Circuit has gone astray. He argues in his petition for a writ of *certiorari* that the Sixth Circuit's "post-writ jurisprudence is the most developed of any Circuit and shows no signs of slowing." See Pet.19. Akbar is right about the Sixth Circuit's jurisprudence. But he is wrong about why it is significant. His argument that the Sixth Circuit's "post-writ jurisprudence is the most developed" is just another way of saying that, unlike other circuits, the Sixth Circuit has wandered far beyond where AEDPA and this Court's precedent permit it to go. And the fact that the Sixth Circuit "shows no signs of slowing" confirms that, rather than correcting course, the Sixth Circuit seems intent on venturing even further afield. Akbar's argument about the "develop[ment]" of Sixth Circuit precedent therefore does not support his petition for a writ of certiorari—at least not with respect to his Question Presented. At most, it shows that, if the Court were to grant review in this case, it would need to resolve this split of authority by adding a Question Presented, like the additional question that the Warden presents, that addresses federal habeas courts' jurisdiction. *See above* at i.

All said, if this Court views Akbar's Questions Presented as worthy of answering—which, for the reasons articulated next, they are not—it should also take up this antecedent question which defines this Court and the lower court's jurisdiction. But if the Court decides that Sixth Circuit precedent is wrong, then this case became moot long before the Sixth Circuit issued its decision. If that is the case, then the Court should say so—even if it otherwise denies Akbar's Petition.

II. Akbar does not present any compelling reason why the Court should review the Sixth Circuit's application of its precedent to the facts of this case.

While the jurisdictional question that this case presents is significant, the Question Presented in Akbar's petition for a writ of *certiorari* is not. His Petition assumes that Sixth Circuit precedent is correct and that federal courts have the power to grant the relief he seeks. Akbar asks the Court to determine whether the Sixth Circuit correctly *applied* that precedent. But if that is the only question before the Court, then it is one that is easily dismissed. Assuming for the sake of argument that Sixth Circuit precedent is correct and that a federal court may prohibit the reprosecution (or in this case, the resentencing) of a habeas petitioner after a State has complied fully with a writ, the Sixth Circuit properly declined to do so here.

Under Sixth Circuit precedent at least, a federal court can prevent a State from retrying a successful habeas petitioner when there are "extraordinary circumstances" that justify such relief. *See* above 15–22 (critiquing that precedent). That precedent is of little help to Akbar here, however. That is because there is no need to retry

Akbar. He has a valid conviction; the only portion of his original judgment that the courts below found constitutionally problematic was his *sentence*. *See* Pet.App.A-1; *see also Jones*, 46 F.4th at 464. And Akbar has cited no precedent, Sixth Circuit or otherwise, for the principle that federal courts have the power to prohibit *resentencing* someone whose conviction remains undisturbed.

This Court's precedent has long established just the opposite. The Court has held that courts should not "turn loose upon society persons who have been justly convicted of criminal offences, but, where the punishment imposed, in the mode, extent, or place of its execution, has exceeded the law." *In re Bonner*, 151 U.S. 242, 260 (1894). It would be a "monstrous doctrine," the Court has noted if "a prisoner, whose guilt is established by a regular verdict, is to escape punishment altogether because the court committed an error in passing the sentence." *Id.* (quotation omitted). That monstrous doctrine is what Akbar seeks, however.

Putting aside the fact that Akbar has cited no legal authority for his requested relief, there would be no factual support for granting that relief even if he had. Akbar asserts that he must be released from jail and the resentencing proceedings abandoned because the local prosecutor did not file a motion to vacate his sentence, and the state court did not rule on that motion, within the five days called for by the district court's unconditional writ of habeas corpus. *See* Pet.8. His argument ignores the fact that the original delays in resentencing, which led to the unconditional order that forms the basis for Akbar's complaint, are primarily of his own making. It was his request to represent himself that delayed his original resentencing. *See*

Pet.App.D-4–D-9. And it was his continued insistence on doing so that delayed his second. *See* Pet.App.D-9.

Akbar is also wrong when he contends that post-writ events warrant the relief he seeks. Neither the Warden nor the local prosecutor unreasonably delayed in complying with the district court's unconditional writ. The Warden released Akbar from his custody within the time period the writ established *See* Pet.App.B-2. And while the motion to vacate Akbar's conviction was not timely, the local prosecutor filed that motion only seventeen days late. *See* Pet.App.B-2–B-4. It is true that the state court did not *grant* that motion for several more weeks, *see id.*, but its decision was delayed in part by the fact that Akbar filed a state-court appeal shortly after the district court issued the unconditional writ, *see id.* The state court believed that Akbar's appeal divested it of jurisdiction to rule on the local prosecutor's motion to vacate. *See id.*

Even if Akbar had not appealed, the speed at which the state court acted was not within the control of either the Warden or the local prosecutor. The decision below did not accurately present the facts when it indicated that the state actors did not "take accountability to ensure compliance" with the unconditional writ and that those actors were solely responsible for the time it took to fully comply with that writ. *See* Pet.App.A-16–A-17 (citing Akbar's brief for the statement that "more could have been done to ensure the unconditional writ was fully complied with in a timely manner"). Little more could have been done to hurry the state court along. Akbar's repetition of those inaccurate criticisms does nothing to help his case for this Court's review.

None of Akbar's remaining arguments do either. Akbar asserts, for example, that the local prosecutor intends to introduce unconstitutional evidence at his resentencing hearing. *See* Pet.16–17. But federal courts do not have jurisdiction "to maintain a continuing supervision over a retrial conducted pursuant to a conditional writ granted by the habeas court." *Pitchess*, 421 U.S. at 490. Any complaints that Akbar may have about his resentencing must begin in state, not federal, court.

Akbar also makes a half-hearted attempt at identifying a circuit split. No such split exists. Akbar's argument to the contrary rests on a misunderstanding about what the federal courts ordered below. The district court in this case granted an unconditional writ, but declined to prevent the State from resentencing Akbar. *See* Pet.App.D-12; Pet.App.B-1–B-2. The Sixth Circuit affirmed and, in doing so, concluded that, although they did not do so timely, the Warden and the local prosecutor had eventually complied with the district court's unconditional writ. Pet.App.A-2. Akbar disagrees. He argues that a writ ordering a petitioner's "unconditional release … should have resulted in []Akbar's *physical* release." Pet.14 (emphasis added). But it is well-settled that "federal courts usually permit rearrest and retrial after the time period specified in [a] conditional release order has elapsed and the prisoner has been released." 2 Randy Hertz & James S. Liebman, *Federal Habeas Corpus Practice and Procedure* § 33.3, at 1910 (6th ed. 2011). None of the out-of-circuit cases that Akbar cites hold otherwise. *See* Pet.12–13. If any conflict exists, it is between the Sixth Circuit's creation of a broad power to bar the further prosecution of a habeas petitioner and the more "rigid approach" taken by other circuits, who allow such orders only in the narrowest of cases. *See* Pet.19 (quotation omitted).

CONCLUSION

This Court should deny the petition for *certiorari* or, at a minimum, add an additional Question Presented addressing federal habeas courts' jurisdiction.

Respectfully submitted,

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