No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

MAURICE NATHANIEL BUNKLEY,

Petitioner,

v.

JAMES CORRIGAN, Warden,
Chippewa County Correctional Facility,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit

PETITION FOR A WRIT OF CERTIORARI

Submitted by:

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QUESTION PRESENTED

I. Under 28 U.S.C. § 2244(b), a "second or successive" application for habeas relief under 28 U.S.C. § 2254 is subject to a heightened gatekeeping requirement. In *Panetti v. Quarterman*, 551 U.S. 930 (2007), this Court declined to interpret "second or successive" as referring to all § 2254 applications filed second or successively in time, even when the later filings address a state-court judgment already challenged in a prior § 2254 application. This case presents the following question of first impression: whether a *Brady* claim discovered after the filing of an initial habeas petition should be subject to the heightened 'second or successive' gatekeeping requirements under § 2244(b)?

This question has resulted in a circuit split with the Second, Fourth, Fifth, Sixth, Eighth, and Ninth Circuits adopting the majority rule that a recently uncovered *Brady* claim is still subject to the heightened requirements of § 2244(b) where the petitioner previously sought habeas relief. By contrast, the Tenth Circuit follows a more permissive minority approach that considers several factors in determining whether to subject a recently discovered *Brady* claim as 'second or successive' under the statue. Apart from the circuit split, there is also robust disagreement within the circuits as to whether the majority rule is consistent with this Court's decision in *Panetti*.

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Petitioner Maurice Bunkley petitions this Court for a Writ of Certiorari to review the decision of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The United States District Court for the Western District of Michigan entered its Order of transfer to the Sixth Circuit Court of Appeals on June 23, 2025. The district court's Order is attached as Appendix **Exhibit B**.

The Court of Appeals for the Sixth Circuit resolved this case in an unpublished Order issued on December 19, 2025, denying Petitioner's Motion to Remand this matter to the district court, and further denied Petitioner authorization to file a second or successive § 2254 petition. The Sixth Circuit's unpublished Order is attached to this Petition as Appendix **Exhibit A**.

JURISDICTION

The Sixth Circuit issued its unpublished Order in this matter on December 19, 2025. This Petition is filed within 90 days of that date, as required by Supreme Court Rule 13. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

STATEMENT OF THE CASE

Petitioner Maurice Bunkley was convicted by jury for the July 16, 1983, shooting death of Venzon Knox near Chalfonte and Forrer Streets in the City of Detroit, Michigan. At approximately 4:55 a.m. on the night of the murder, Bunkley had reported that he had been robbed and carjacked by three individuals: one was described as a black male, 5'4" 130-140 lbs., "med complex" wearing a red & blue track suit and white gym shoes, the second was described as a black male, 20-21, 6'0", 130-140 lbs., "d[ar]k complex, beard, gerri curls, and the third was described as a black male, 21, 6'2" 150-160" (RE 1-2, Page ID # 118, Exhibit O, Bunkley #00014). Bunkley had a 1971 grey Pontiac Grand Prix (RE 1-1, Page ID # 56, Exhibit G attached to Bunkley's *pro se* Motion for Relief from Judgment).

Unbeknownst to Bunkley, his vehicle had been found near the scene of the shooting shortly after 3:30 a.m. that night. Forensic examiners were able to lift fingerprints from Bunkley's vehicle found near the murder scene, and it was stipulated at trial that those fingerprints did not match Bunkley (though there was never any discovery documents or lab reports about whose fingerprints were found on Bunkley's vehicle after it was seized from the scene of the shooting).

On the day following the murder, Sgt. Elwood Gunderson of the Detroit Police Department contacted Bunkley, told him that his vehicle was found, and told Bunkley that he could come down to the police station to pick it up. Once there, Sgt. Gunderson asked to interview Bunkley, to which he agreed. At the conclusion of Gunderson's interview, he arrested Bunkley for Knox's murder. According to

Gunderson, he just "felt" that Bunkley was the killer. Motion Hearing Trans Oct 14, 1983, pg 8 and pg 15-16 ("In my mind I felt he was a killer and because of the cock and bull story he came up with [about his car being stolen] I felt he was trying to perpetuate the scam by coming in and asking for the release of [his] car."

The Michigan Court of Appeals summarized the basic facts underlying Bunkley's conviction as follows:

> Defendant was charged with first-degree murder, MCL § 750.316; MSA 28.548 and felony firearm, MCL § 750.227b; MSA 28.323(2). He was convicted after a jury trial. Defendant was sentenced to life imprisonment and two years imprisonment on the respective charges. Defendant appeals to this Court as of right.
>
> Defendant was charged with the murder of Venzon Knox. The crime occurred in a residential neighborhood of the City of Detroit at about 4:00am on July 16, 1983. The victim had left a party at about 3:30am. Shortly before leaving Knox had an argument with the defendant. Defendant got in his car and drove away. Knox and two friends got on their bicycles to ride home. As Knox came to an intersection, the defendant and an unidentified male emerged from some bushes and opened fire. The victim died as a result of a bullet wound to the head. No one else was injured. Defendant's car was found next to the bushes. The defendant was identified by two witnesses as the person who argued with Knox at the party and as one of the two gunmen.

People v Bunkley, unpublished *per curiam* Opinion of the Court of Appeals issued April 18, 1985 (Docket No. 76217). The Michigan Supreme Court denied leave to appeal. *People v Bunkley*, No. 76451 (Mich. Nov. 25, 1985).

In 1998, Petitioner filed in the federal district court his first Petition for Habeas Relief pursuant to 28 U.S.C. § 2254. The district court denied the petition

and declined to issue a certificate of appealability. *Bunkley v. Elo*, No. 98-cv-40338-FL, 1999 U.S. Dist. LEXIS 23487 (E.D. Mich. 1999). The Sixth Circuit also denied Petitioner a certificate of appealability. *Bunkley v. Elo*, No. 99-2143 (6th Cir. 2000). Subsequently, the Sixth Circuit twice more denied Petitioner authorization to file a second or successive habeas petition under § 2254.

Newly Discovered Evidence Presented to the State Court

On May 26, 2021, Petitioner filed with the state trial court a successive *pro se* Motion for Relief from Judgment claiming that the prosecution withheld material exculpatory evidence in violation of the Due Process clause of the Fourteenth Amendment. Bunkley's *Brady* claim was based on documents that he obtained through a 2008 Freedom of Information Act ("FOIA") request to the Wayne County Prosecutor's Office.

Specifically, Bunkley obtained documents from his 2008 FOIA request showing that the officers requested comparison of prints taken from Bunkley's car against two suspects (Anthony Woodward and Michael Byers), as well as a written statement taken from Terrence Wiggins made at a photo lineup, during which Wiggins said he did not recognize Bunkley, but that he did recognize Michael Byers as #3 in the lineup as someone with whom he went to Henry Ford High School and who, "was out there that night" at the scene of the crime. See Bunkley's *pro se* Motion for Relief from Judgment, pg 22, and RE 1-1, Page ID # 35-38, Bunkley Affidavit dated 2019, ¶ 1.

The undersigned counsel later appeared on Bunkley's behalf and the parties stipulated to allow Bunkley, through counsel, to file a Supplemental Brief in Support

of Bunkley's *pro se* Motion for Relief from Judgment (RE 1-2, Page ID # 95-97, Exhibit J4, Stipulated Order dated August 21, 2023). On October 5, 2023, Bunkley, through his undersigned counsel, filed a Supplemental Brief that focused on additional *Brady* claims that were recently uncovered by counsel and were not raised by Bunkley in his *pro se* Motion for Relief from Judgment.

In particular, Petitioner's undersigned counsel obtained from the City of Detroit through a more recent FOIA request additional *Brady* material that disclosed yet additional heretofore unknown suspects in the murder investigation (RE 1-2, Page ID #98-100, Exhibit K, FOIA request dated May 4, 2023). Specifically, the undersigned counsel received 166 pages of documents from the City of Detroit (RE 1-2, Page ID # 101-103, Exhibit L, FOIA response from DPD dated May 19, 2023) which included an Order revealing that only 57 pages of documents (out of the 166 pages) were produced to Bunkley's trial counsel on August 4, 1983 (RE 1-2, Page ID # 104-106, Exhibit M, Bunkley #0084-85, Order).[2] Within the 166 pages of documents recently produced by the City of Detroit were several pages of handwritten notes disclosing the names of additional suspects known to the investigating officers but whose identities had never before been disclosed to the defense (RE 1-2, Page ID #107-108, Exhibit N, Bunkley Affidavit dated August 21, 2023)(RE 1-2, Page ID #109-142, Exhibit O, Bunkley #0000066-81).

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2 The undersigned counsel's office placed Bates numbers on the 166 pages of documents received from DPD in response to his FOIA request, and for ease of reference included bates numbering "Bunkley000001-166".

On December 20, 2023, the prosecution filed its Response opposing Bunkley's Motion for Relief from Judgment asserting that Bunkley's newly discovered *Brady* evidence would not have made a different result probable on retrial.

On March 5, 2024, the trial court issued its Opinion and Order Denying Bunkley's Motion for Relief from Judgment. Ultimately, the trial court found that Bunkley was not entitled to relief under state law because, "[n]othing in the alleged newly discovered documents sheds doubt on the fact that two witnesses identified Bunkley as one of the shooters or that Bunkley argued with the victim before the victim was shot." (Opinion denying Motion for Relief from Judgment, RE 1-4, Page ID #204).

On April 2, 2024, Petitioner filed with the Michigan Court of Appeals a Delayed Application for Leave to Appeal from the trial court's Opinion denying his Motion for Relief from Judgment. On August 22, 2024, a Panel of the Michigan Court of Appeals denied Petitioner's Application for Leave to Appeal in a single sentence Order. RE 1-5, Page ID #208 ("The delayed application for leave to appeal is DENIED because defendant has failed to establish that the trial court erred in denying the successive motion for relief from judgment. MCR 6.502(G)). Judge Young wrote separately, "to note my concern with the documents uncovered and seemingly withheld from the defense and question whether investigation would uncover something to indicate a different result would be probable on retrial." RE 1-5, Page ID # 208, Order (J. Young, concurring).

On October 8, 2024, Petitioner filed with the Michigan Supreme Court an

Application for Leave to Appeal, which the Michigan Supreme Court denied in an Order dated January 31, 2025. RE 1-5, Page ID # 208 ("On order of the Court, the application for leave to appeal the August 22, 2024 order of the Court of Appeals is considered, and it is DENIED, because defendant has failed to meet the burden of establishing entitlement to relief under MCR 6.508(D)).

Following the Michigan Supreme Court's denial of Bunkley's Application for Leave to Appeal, Bunkley, through counsel, filed in the United States District Court for the Western District of Michigan his instant habeas petition (Petition for Habeas Relief, RE 1, Page ID # 1-32). In his Petition, Petitioner noted that while the Petition was second-in-time, it was not a 'second or successive' petition within the meaning of 28 U.S.C. § 2244(b) because his recently uncovered *Brady* claims were not discovered and thus not ripe at the time of his first/prior habeas petition(s).

On June 23, 2025, the district court entered an Order of Transfer to Sixth Circuit Court of Appeals after finding that, "the instant petition is plainly second or successive within the meaning of § 2244(b)." Order of Transfer, RE 5, Page ID # 220. Petitioner then filed with the Sixth Circuit a motion to remand his petition back to the district court arguing that his petition was not a "second or successive" within the meaning of the 28 U.S.C. § 2244(b)(1).[3]

On December 19, 2025, the Sixth Circuit issued its unpublished order denying Bunkley's Motion to Remand his habeas petition to the district court. In its Order,

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3 Petitioner also sought, in the alternative, permission to file a second/successive petition which is not relevant to the question presented herein.

the Sixth Circuit concluded that Bunkley's *Brady* claims became:

> ripe when the alleged violation occurs, even if the petitioner is unaware of the Brady violation at the time he file[d] his initial [i.e., prior] habeas petition, *In re Wogenstahl*, 902 F.3d 621, 627-28 (6th Cir. 2018)(order). Because Bunkley's proposed *Brady* claim is based on predicate facts that occurred before his 1983 trial – the State's alleged withholding of exculpatory evidence – and Bunkley did not raise the claim in his previous §2254 petition challenging the same judgment, his current habeas petition is properly categorized as second or successive. *See id.; see also In re Hill*, 81 F.4th 560, 571 (6th Cir. 2023)(*en banc*). He therefore must satisfy the 28 U.S.C. § 2244(b) gatekeeping requirements that apply to second or successive habeas corpus petitions.

Petitioner now files his instant Petition for a Writ of Certiorari from the Sixth Circuit's Order finding that his instant habeas petition is barred as second or successive petition within the meaning of § 2244(b).

REASONS TO GRANT THE WRIT

The question presented herein asks whether a recently discovered *Brady* claim is subject to "second or successive" heightened gatekeeping requirements of § 2244(b), where the petitioner previously filed a federal habeas petition without knowledge or discovery of the recently uncovered *Brady* claim. The answer to this question is not so straightforward as one may think. To the contrary, determining whether a second-in-time filed petition constitutes a "second or successive" petition within the meaning of § 2244 has divided the circuit courts, and has caused robust disagreement within the circuit courts. This division and split of authority amongst the circuit courts creates dramatically different outcomes for similarly situated defendants across jurisdictions.

The most relevant authority addressing the issue of whether a second-in-time filed habeas petition constitutes a 'second or successive' under § 2244(b) comes most recently from this Court's decision in *Panetti v. Quarterman*, 551 U.S. 930, 944 (2007). There, the Supreme Court declined to interpret, "second or successive as referring to all § 2254 applications filed second or successively in time, even when the later filings address a state-court judgment already challenged in a prior § 2254 application."

Panetti involved a death row inmate who had previously filed a federal habeas petition under § 2254, which petition was rejected by the district court and affirmed by the Fifth Circuit. Years later after the state trial court set an execution date, Panetti raised, for the first time in the state courts, a claim that he was incompetent to be executed. The state courts denied Panetti relief and he filed another federal habeas petition that was ultimately denied and affirmed by the circuit court. This Court then granted certiorari.

Before reaching the merits of Panetti's *Ford*-based incompetency claim, the Supreme Court considered its jurisdiction given that Panetti's habeas petition was a second or successively filed petition. In finding that Panetti's second-in-time petition was not a 'second or successive' petition within the meaning of § 2244(b), the Court focused on "the implications for habeas practice." Ultimately, this Court concluded that, "Congress did not intend the provisions of AEDPA addressing 'second or successive' petitions to govern a filing in the unusual posture presented here: a § 2254 application raising a *Ford*-based incompetency claim filed as soon as that claim is

ripe." *Panetti's* use of the term "ripe" has led to divergent and conflicting views both among, and within, the circuit courts.

In this case, the Sixth Circuit applied what may be called the majority rule: that a *Brady* claim discovered after the filing of a prior or initial habeas petition is still subject to AEDPA's heighted gatekeeping requirements for 'second or successive' petitions. See 28 U.S.C. § 2244(b). Under this approach, the circuit courts have interpreted "ripe" in the context of a *Brady* claim as occurring at the time of the suppression (not its discovery). In this case, Bunkley did not discover the suppressed *Brady* evidence until nearly forty-years after his trial and conviction.

Despite the fact that Bunkley only recently discovered the factual predicate of his *Brady* claim that forms the basis of the instant habeas petition, the Sixth Circuit concluded that: "[b]ecause Bunkley's proposed *Brady* claim is based on predicate facts that occurred before his 1983 trial – the State's alleged withholding of exculpatory evidence – and Bunkley did not raise the claim in his previous § 2254 petition challenging the same judgment, his current habeas petition is properly categorized as second or successive." *See also In re Wogenstahl*, 902 F.3d 621 (6th Cir. 2018)(adopting this rule); *see also In re Hill*, 81 F.4th 560, 571 (6th Cir. 2023)(*en banc*)(reiterating and adopting this rule by the *en banc* court). After concluding that Bunkley's petition was a second or successive under § 2244, the Sixth Circuit denied his Motion to Remand the case to the district court and applied the heightened gatekeeping requirements of § 2244(b)(2) and denied Bunkley permission to proceed

on the instant petition.[4]

Apart from the Sixth Circuit, the Second, Fourth, Fifth, Eighth, Ninth, and Eleventh Circuits follow the restrictive rule adopted by the Sixth Circuit. *Quezada v. Smith*, 624 F.3d 514 (2d Cir 2010); *Evans v. Smith*, 220 F.3d 306 (4th Cir. 2000); *Johnson v. Dretke*, 442 F.3d 901 (5th Cir. 2006); *In re Davila*, 888 F.3d 179 (5th Cir. 2018); *In re Cantu*, 94 F.4th 462 (5th Cir. 2024); *Crawford v. Minnesota*, 698 F.3d 1086 (8th Cir. 2012); *Brown v. Muniz*, 889 F.3d 661 (9th Cir. 2018)("We conclude that a factual predicate accrues at the time the constitutional claim ripens – i.e., when the constitutional violation occurs. *See Panetti*, 551 U.S. at 945, 127 S. Ct. 2842[.]"); and *Tompkins v. Sec'y, Dep't of Corr.*, 557 F.3d 1257 (11th Cir. 2009).

In contrast to the restrictive majority rule, the Tenth Circuit follows a more lenient and permissive approach that considers several factors including: (1) whether the first/initial petition remains pending; (2) whether closely related claims were already raised; (3) whether willful prosecutorial misconduct occurred; (4) whether the prosecutor actively concealed violations; (5) whether the petition arises in the death penalty context; (6) whether arbitrary results would exist as between co-defendants; and, (7) whether allowing the petition to proceed not as a "second or successive" is consistent with AEDPA's purposes. *Douglas v. Workman*, 560 F.3d 1156 (2009).

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4 Bunkley does not challenge the Sixth Circuit's denial of permission to proceed on his petition under the 'second or successive' standard of § 2244(b). Rather, Bunkley challenges the Sixth Circuit's conclusion that his instant habeas petition was a 'second or successive' petition in the first instance.

Subsequent Tenth Circuit cases, however, have applied the more restrictive approach similar to the majority rule. *Case v. Hatch*, 731 F.3d 1015 (10th Cir. 2013)(applying the more restrictive gatekeeping requirements of § 2244 to *Brady* claims) and *In re Pickard*, 681 F.3d 1201 (10th Cir. 2012)(holding that *Brady* and *Giglio* claims based on FOIA-obtained information were "certainly second or successive claims.").

Apart from this circuit split, there is also robust disagreement within the circuits with several jurists calling the majority rule adopted by their circuits as incompatible with the letter and spirit of federal habeas practice.

In the Sixth Circuit, one jurist who served on the *Wogenstahl* panel that adopted that circuit's restrictive rule later expressed regret for doing so. "I agree that *In re Wogenstahl* [] compels us to conclude that [petitioner's] new habeas petition is 'second or successive' within the meaning of [AEDPA], 28 U.S.C. § 2244(b)(2), and thus that we must deny his motion to remand. [] I write separately, however, to explain why I now believe that *Wogenstahl* – an opinion that I joined – was wrongly decided. In the absence of *Wogenstahl,* I would conclude that [petitioner's] new petition is not second or successive and would thus grant the motion to remand." *See In re Jackson*, 12 F.4th 604, 611 (6th Cir. 2021)(Moore, J., circuit judge, concurring).

In explaining her disagreement with the circuit's precedent adopted in *Wogenstahl*, Circuit Judge Moore relied on *Panetti* and reasoned that:

> Upon consideration of Jackson's arguments, I believe that his claims cannot be materially distinguished from the *Ford* claim addressed in *Panetti*. There are three considerations that informed the Court's holding in

> *Panetti*: (1) the implications for habeas practice of treating Jackson's habeas petition as second or successive; (2) AEDPA's purposes; and (3) the abuse-of-the-writ doctrine. *See Panetti*, 551 U.S. at 942-48, 127 S. Ct. 2842.

In re Jackson, 12 F.4th at 612-13 (Moore, J. concurring). Judge Moore went on to analyze how each of the considerations underlying *Panetti* weighed in favor of finding that Jackson's petition should not be deemed a 'second or successive' under § 2244(b):

> First, the 'implications for habeas practice' favor treating petitions raising previously unavailable *Brady*-type claims like Jackson's as second in time but not second or successive. See *Panetti*, 551 U.S. at 943. In *Panetti*, the Court explained that subjecting previously unraised *Ford* claims to § 2244(b)'s gatekeeping requirements was unwarranted in part because it would have 'seemingly perverse' implications for habeas practice. *Id.* In order to preserve their ability to raise a *Ford* claim in the future, 'conscientious defense attorneys would be obliged to file unripe (and, in may cases, meritless) *Ford* claims in each and every § 2254 application. This counterintuitive approach would add to the burden imposed on courts, applicants, and the States, with no clear advantage to any.' *Id.* The same is true of *Brady*-type claims. Applying § 2244(b) to such claims incentivises petitioners to raise them in their first petition (and every petition thereafter), even if those claims were completely meritless because the petitioner lacked any indication of suppressed evidence or (in the case of a *Napue* claim) false testimony. Otherwise, the petitioner would risk losing any later-discovered *Brady*-type claim to the heightened requirements for second-or-successive petitions under § 2244(b). AEDPA does not require such a burdensome exercise that benefits none of the parties or institutions involved. *See Panetti*, 551 U.S. at 943, 127 S. Ct. 2842.
>
> Indeed, subjecting *Brady* and *Napue* claims to § 2244(b) implicates further 'perverse' incentives well beyond those considered by the Court in *Panetti*. '[T]o subject *Brady* claims to the heightened standard of § 2244(b)(2) is to reward investigators or prosecutors who engage in the unconstitutional suppression of evidence with a 'win' – that

> is, the continued incarceration of a person whose trial was fundamentally unfair (and unconstitutional).' *Long*, 972 F.3d at 486 (Wynn, J., concurring). In other words, subjecting *Brady* and *Brady*-type claims to § 2244(b) rewards the culpable state actors for their misconduct with a heightened gatekeeping requirement that could prevent the petitioner from challenging that misconduct at all. Congress could not have intended to create such a perverse incentive structure with AEDPA. Accordingly, if anything, the 'implications for habeas practice' provide an even stronger basis for concluding that previously unavailable *Brady*-type claims like Jackson's should not be treated as second or successive. *See Panetti*, 551 U.S. at 946, 127 S. Ct. 2842 (explaining that the Court avoids interpretations of AEDPA that 'produce troublesome results,' 'create procedural anomalies,' and 'close the doors to a class of habeas petitioners seeking review without any clear indication that such was Congress' intent.'). *In re Jackson*, 12 F.4th at 613-14.

Judge Moore further highlighted how subjecting previously unavailable *Brady*-type claims to § 2244(b)'s gatekeeping requirements would not further AEDPA's purposes of comity, finality, and federalism:

> Respect for states and state courts cautions against an approach – like the one in *Wogenstahl* – that incentivizes the filing of meritless collateral claims in order to protect against the possibility of raising a claim later. *See Panetti*, 551 U.S. at 946-47, 127 S. Ct. 2842; *see also Strickler v. Greene*, 527 U.S. 263, 286, 119 S. Ct. 1936, 144 L.Ed.2d 286 (1999)("Proper respect for state procedures counsels against a requirement that all possible claims be raised in state collateral proceedings, even when no known facts support them.").

In re Jackson, 12 F.4th at 614. Judge Moore further reasoned that, "treating petitions raising previously unavailable *Brady*-type claims as second in time but not second or successive aligns with the historical abuse-of-the-writ doctrine:

> The abuse-of-the-writ doctrine generally prohibits a petitioner from raising a claim that could have been raised in an earlier petition was not 'either due to deliberate abandonment or inexcusable neglect.' [citation omitted]. And under the abuse-of-the-writ doctrine the prosecution's suppression of material evidence will excuse the failure to raise earlier a *Brady* claim pre-disclosure. *See Strickler*, 527 U.S. at 286, 119 S. Ct. 1936. Thus, the abuse-of-the-writ doctrine supports withholding from the definition of 'second or successive' those petitions raising previously unavailable *Brady*-type claims. [citation omitted].

In re Jackson, 12 F.4th at 614. Other circuit judges have shared similar criticisms regarding the adoption of such a rule subjecting previously unknown *Brady* claims to the 'second or successive' requirements of § 2244(b).

Within the Eleventh Circuit, there is also strong disagreement about that circuit's adopting of such a restrictive rule subjecting *Brady* claims to the 'second or successive' standard under § 2244(b). In *Scott v. United States*, 890 F.3d 1239 (11th Cir. 2018), a unanimous panel of the Eleventh Circuit felt bound by the circuit's prior decision in *Tompkins* which adopted the restrictive majority rule, but did so with hesitation. "Though we have great respect for our colleagues, we think *Tompkins* got it wrong: *Tompkins's* rule eliminates the sole fair opportunity for these petitioners to obtain relief. *Id.* at 1243.

In questioning the validity of that circuit's prior precedent, the *Scott* Court went so far as to characterize the circuit's interpretation of 'second or successive' to include recently discovered *Brady* claims as a violation of the Suspension Clause. *Id.* ("In our view, Supreme Court precedent, the nature of the right at stake here (the right to a fundamentally fair trial), and the Suspension Clause of the U.S.

Constitution, Art I, § 9, cl. 2, do not allow this. Instead, they require the conclusion that a second-in-time collateral claim based on a newly revealed actionable *Brady* violation is not second-or-successive for purposes of AEDPA. Consequently, such a claim is cognizable, regardless of whether it meets AEDPA's second-or-successive gatekeeping criteria.").

The Fourth Circuit has similarly questioned its prior adoption of such a restrictive rule holding that *Brady* claims are subject to the stringent gatekeeping requirements of § 2244(b). For example, in *Long v. Hooks*, 972 F.3d 442 (2020)(*en banc*), the Fourth Circuit acting *en banc* applied its prior precedent and held that the petitioner's *Brady* claim was a 'second or successive' petition, though the court authorized the petition to proceed under the heightened standard set by § 2244(b)(2). In a concurring opinion, several members of the court expressed frustration over the circuit's prior precedent and called for overruling same:

> Before closing, I add my voice and vote in this *en banc* proceeding to overturn our decision in *Evans v. Smith*, which held that *Brady* claims may be subjected to the strictures of 'second or successive' petitions. 220 F.3d 306, 309 (4th Cir. 2000). In my view it is an extraordinary fact that [petitioner] is subjected to the § 2244(b)(2) gateway at all. That statute requires a habeas petitioner filing a 'second or successive habeas corpus application' to meet the exacting standards of this gateway. 28 U.S.C. § 2244(b)(2). []
>
> On *en banc* review, however, we may reconsider our circuit precedent, and we ought to do so here. After all, [t]he [Supreme] Court has declined to interpret 'second or successive' as referring to all § 2254 applications filed second or successively in time.' *Panetti v. Quarterman*, 551 U.S. 930, 944 (2007). Rather, there are 'exceptions.' *Id.* at 947.

> *Panetti* elaborated on one such exception (related to mental competency for execution), but left the door open to others. Notably, the Court held that § 2244 should not be interpreted in a manner "that would 'produce troublesome results,' 'create procedural anomalies,' and 'close our doors to a class of habeas petitioners seeking review without any clear indication that such was Congress'[s] intent.'" *Id.* at 946 (quoting *Castro v. United States*, 540 U.S. 375, 380-81 (2003). []
>
> *Brady* claims, as a category, represent a good candidate for exclusion from the 'second or successive' requirements. After all, such claims relate to suppression of material, favorable evidence by the state. In other words, to subject *Brady* claims to the heightened standard of § 2244(b)(2) is to reward investigators or prosecutors who engage in the unconstitutional suppression of evidence with a 'win' – that is, the continued incarceration of a person whose trial was fundamentally unfair (and unconstitutional). For that reason, some courts have hesitated to sanction a rule as broad as the one we adopted in *Evans*.

Long, 972 F.3d at 485-86 (Wynn, circuit judge, concurring).

As these cases demonstrate, the circuit courts have taken widely differing interpretations of *Panetti*. The majority rule adopted by the circuit courts has been roundly criticized, and for good reason. Subjecting a recently uncovered *Brady* claim to the heightened gatekeeping requirements of § 2244(b) works a manifest injustice resulting in the denial of habeas relief to most all petitioners who previously sought habeas relief. Recent decisions like *In re Hill*, 81 F.4th 560 (6th Cir. 2023)(*en banc*) and *In re Cantu*, 94 F.4th 462 (5th Cir. 2024) show circuit courts continuing to entrench their positions rather than converging toward a more reasonable consensus.

This circuit split creates a troubling disparity where identical *Brady* violations receive vastly different treatment depending on the jurisdiction thus undermining

the uniform application of constitutional protections that federal habeas corpus is designed to provide. The disagreement not only between the circuits, but also within the circuits, thus requires this Court's plenary consideration.

Because Petitioner's instant second-in-time habeas petition should not be deemed a 'second or successive' petition within the meaning of the statute, the district court erred in transferring the petition to the Sixth Circuit, and the Sixth Circuit erred by denying Petitioner's Motion to Remand the matter back to the district court for a determination on the merits.

Accordingly, this Court should grant certiorari pursuant to Supreme Court Rule 10(a), which provides for review on certiorari if, "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter." Additionally, this Court should grant certiorari pursuant to Supreme Court Rule 10(c), which provides for review if, "a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court[.]" Given the exceptional importance of the legal question presented herein, this Court should grant certiorari.

CONCLUSION

Based on the foregoing, this Court should grant Petitioner's Writ of Certiorari and hear the merits of the questions presented herein. Alternatively, this Court should grant the petition, vacate the judgment of the lower court, and remand this matter to the district court to be adjudicated.

Respectfully submitted,

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Date: January 22, 2026