

No.

IN THE
SUPREME COURT OF THE UNITED STATES

MANUEL YEPIZ, RAFAEL YEPIZ, JOSE LUIS MEJIA,
SERGIO MEJIA, ERNESTO OROZCO MENDEZ, GILBERTO CARRASCO
FRANCISCO ZAMBRANO, JESUS CONTRERAS, MARIANO MEZA,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent

On Petition for Writ of Certiorari to the
Ninth Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether certiorari should be granted to resolve a split in the circuits as to whether bad faith suppression of exculpatory impeachment evidence by the government is relevant to the materiality analysis of *Brady v. Maryland*, 373 U.S. 83 (1963 (*Brady*)?

2. Whether certiorari should be granted to resolve a split in the circuits as to whether the district court must hold an evidentiary hearing after the appellate court has remanded for fact finding on *Brady* violations or whether the district court may resolve credibility issues based solely on a hearsay declaration from the prosecutor?

PARTIES TO THE PROCEEDING

Pursuant to this Court's Rule 14 the parties to the proceeding are: Manuel Yepiz, Rafael Yepiz, Jose Luis Mejia, Sergio Mejia, Ernesto Orozco Mendez, Gilberto Carrasco, Francisco Zambrano, Jesus Contreras, and Mariano Meza. Petitioners were the defendants in the district court and the appellants below.

Respondent United States of America was the plaintiff in the district court and the appellee below.

RELATED PROCEEDINGS

United States District Court

United States v. Yepiz, et al., 05-CR-578-JFW (C. D. Cal.)

Ninth Circuit Court of Appeals

United States v. Jose Luis Mejia, 24-1684

United States v. Ernesto Orozco Mendez, 24-1685

United States v. Gilberto Carrasco, 24-1687

United States v. Manuel Yepiz, 24-1688

United States v. Francisco Zambrano, 24-1690

United States v. Rafael Yepiz, 24-1691

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PETITION FOR WRIT OF CERTIORARI

Petitioners Manuel Yepiz, Rafael Yepiz, Jose Luis Mejia, Sergio Mejia, Ernesto Orozco Mendez, Gilberto Carrasco, Francisco Zambrano, Jesus Contreras, Mariano Meza respectfully pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Ninth Circuit filed on December 30, 2025. The opinion is unpublished.

OPINION BELOW

On December 30, 2025, the Ninth Circuit Court of Appeals issued an unpublished memorandum decision affirming the district court's denial of

relief on remand for fact finding under *Brady v. Maryland*, 373 U.S. 83, 87 (1963) (*Brady*). (Appendix B.) On March 10, 2026, the court denied the petition for rehearing. (Appendix A.)

JURISDICTION

On March 10, 2026, the court denied the petition for rehearing. (Appendix A.) Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1). This petition is due for filing on June 8, 2026. Supreme Court Rules 13(3) and 30(1). Jurisdiction existed in the District Court pursuant to 18 U.S.C. §3231 and in the Ninth Circuit Court of Appeals under 28 U.S.C. §1291.

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment (pertinent part)

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

Sixth Amendment (pertinent part)

“In all criminal prosecutions, the accused shall enjoy the right to ...be confronted with the witnesses against him.”

STATEMENT OF THE CASE

Procedural History

The petitioners were alleged to be members or associates of the Vineland Boys street gang and were convicted by a jury of various charges

related to racketeering (RICO) and drug trafficking. (18 U.S.C. § 1962; 21 U.S.C. § 841.) The government emphasized the petitioners relationship with the Mexican Mafia prison gang. Sentences ranged from 180 months to life.

On direct appeal, on December 20, 2016, the Court of Appeals issued a published opinion in a joint appeal. *United States v. Yepiz, et al.*, 844 F.3d 1070 (9th Cir. 2016). The majority opinion, written by the Honorable John Noonan, vacated Manuel Yepiz's conviction for failure to timely address his request to replace retained counsel with appointed counsel. (Appendix F at 95.) The Honorable Jacqueline H. Nguyen dissented from this reversal. (*Id.* at 95-108.) The unanimous panel did, however, remand the case as to the remaining defendants for fact finding as to whether there were *Brady* violations concerning an informant witness, Victor Bulgarian (true name Bugarin). (Appendix F at 87.) On that same date, the court issued a memorandum opinion denying the remaining claims. (Appendix E.)

After Judge Noonan passed away, he was replaced by the Honorable M. Margaret McKeown. (Appendix E at 40.) On November 20, 2017, the Court of Appeals withdrew the published opinion and replaced it with a memorandum decision. (Appendix E.) The memorandum decision affirmed Manuel Yepiz's conviction but remanded the case as to all defendants for fact finding on the *Brady* claim. (Appendix E at 71.) The

various petitions for rehearing and rehearing en banc were denied. The Honorable Stephen Reinhardt concurred in the remand but dissented in the decision not to reverse Manuel Yepiz's conviction. (Appendix E at 72.)

Petitioners jointly filed a petition for writ of certiorari which was denied on March 26, 2018. (Case No. 17-7868, Appendix D.)

On remand, on March 18, 2024, the district court denied the petitioner's *Brady* claims without holding an evidentiary hearing. The court found the government had suppressed exculpatory evidence, but concluded it was not material. (Appendix C.)

Back on appeal, the Ninth Circuit affirmed the district court. It agreed that the government had improperly suppressed exculpatory evidence but held it was not material. (Appendix B.) The petition for rehearing was denied on March 10, 2026. (Appendix A.)

The *Brady* Remand

The Ninth Circuit remanded the case to the district court for fact-finding to ascertain whether a critical testifying informant at petitioners' joint 2006 trial had received undisclosed benefits – and if so, whether *Brady* and *Giglio*¹ were violated as to each count of conviction. (Appendix E.) The informant, Victor Bugarin, testified in the later trial of codefendant Horacio

¹ *Giglio v. United States*, 405 U.S. 150 (1972).

Yepiz that he had received substantially more money as an informant than he admitted at petitioners' trial.

After several years of discovery, the government produced police reports revealing for the first time that before Bugarin testified against petitioners: (1) he worked as a paid police informant for multiple agencies; (2) his motivation for cooperating was financial; (3) his income increased dramatically soon after his testimony; (4) law enforcement officers had expressed concerns about his credibility; and, (5) an agency intake form said he had a history of using dangerous drugs. This impeachment material was withheld from the defense at the trial.

Although the lead prosecutor at trial described the informant as "crucial" to the government's case, the district court found that the suppressed impeachment evidence was insufficient to undermine confidence in the jury's verdict and thus not material. The district court failed to acknowledge that the withheld evidence was qualitatively different from the impeachment evidence available at the trial. The court also failed to acknowledge that Bugarin's testimony was a focal point of both the government's and defense's closing arguments.

On remand, none of the relevant witnesses, including Bugarin, would speak with the defense investigator. Nonetheless, the district court

declined to conduct an evidentiary hearing, relying instead on a hearsay declaration from the prosecutor. None of the law enforcement officers and agents who dealt with Bugarin provided declarations.

Back on appeal, the Ninth Circuit agreed with the district court that “the government improperly suppressed impeachment evidence” about Bugarin. The government was required to disclose such evidence even if it did not believe it and/or it thought the evidence was “undercut” by other evidence. (Appendix B at 5-6.) The Court stated the suppressed evidence was: (1) Bugarin was willing to trade information for favorable consideration in his brother’s sentencing as it shows he would work for the government in exchange for benefits; (2) Bugarin had a history of drug use; (3) he had been paid money by law enforcement;² and (4) he was criticized by law enforcement for his lack of candor. (Appendix B at 13.)

Even though there was no evidentiary hearing, the Ninth Circuit found that the government’s suppression of impeachment evidence was not done in bad faith. (Appendix B at 15, n.2.)

² Because there was no evidentiary hearing, it is unknown exactly how much money Bugarin earned as a paid informant. It cannot be overemphasized that he testified at Horacio Yepiz’s separate trial that he may have received hundreds of thousands of dollars. (AOB at 83.)

The Ninth Circuit further found that the suppressed evidence was “cumulative of the substantial impeachment evidence introduced at trial.” (Appendix B at 13.) The Ninth Circuit found that Bugarin was already impeached at trial because he received immunity; he received \$5,000 in relocation money; he received a more lenient sentence in exchange for his cooperation; he had been a drug dealer for years; and, he “sought to help the Mexican Mafia murder a leader of the Vineland Boys (VBS) gang.” (Appendix B at 14.)

Petitioners sought rehearing, pointing out that the panel omitted other critical impeachment evidence that was suppressed about Bugarin. The Ninth Circuit failed to acknowledge that police reports belatedly provided by the government showed Bugarin was a longtime paid police informant for multiple law enforcement agencies. (Appellants’ Opening Brief “AOB” at 28-31.) Significantly, the Ninth Circuit failed to acknowledge that police reports emphasized Bugarin’s “informant motivation” was “payment.” (AOB at 28, citing 21-ER-4776-77.)

The Ninth Circuit also mischaracterized the record when it said that Bugarin’s credibility was impeached at trial by evidence that he “sought to help the Mexican Mafia murder a leader of the Vineland Boys (VBS) gang.” (Appendix B at 14.) Specifically, Bugarin testified that he was so upset by

gang member Eugenio Cruz's death that he considered murdering whoever had killed Cruz, but he eventually decided against violence and wanted nothing more to do with the gang. (See 10-ER-2274-2279.) Bugarin's testimony about his first reaction to the murder of Cruz, which he subsequently abandoned, served to humanize him and make him more sympathetic to the jury. He portrayed himself as someone who, in a state of grief, thought about, but ultimately rejected violence, choosing instead to walk away from a life of crime.

Bugarin stressed that he ultimately distanced himself from anything to do with violence. (AOB at 14, citing 10-ER-2274-75.) He was so upset after Cruz was murdered that he resolved not to have anything further to do with gangs. "I just didn't want nothing to do with them." (AOB at 14, citing 10-ER-2279.)

The Ninth Circuit overlooked that Bugarin testified his motive in coming forward was out of disillusionment and disgust with the Vineland Boys for what happened to Cruz. He portrayed himself as turning his life around after the murder. The jury was given the false impression that Bugarin was motivated by his conscience.

Had the government disclosed that Bugarin was a longtime paid police informant who was *motivated by money* the jury would not have

believed his testimony about the Vineland Boys' involvement in the murder of Eugenio Cruz. As it was, the government allowed Bugarin to portray himself falsely as some kind of concerned citizen. "[T]he exposure of a witness' *motivation* in testifying is a proper and important function of the constitutionally protected right of cross-examination." *Davis v. Alaska*, 415 U.S. 308, 316 (1974) (emphasis added).

The Ninth Circuit also overlooked the fact that Bugarin's career as a highly paid police informant took off after the defendants-appellants were convicted. Bugarin testified in a later San Diego federal trial that he earned so much money as an informant for multiple law enforcement agencies that he was able to support his family and buy a Cadillac Escalade and a Harley Davison motorcycle. (AOB at 84, citing 2-ER-120, 151-233; 21-ER-4592-94.)

Petitioners argued on rehearing that had the government not suppressed critical impeachment evidence about Bugarin the jury would not have believed anything he said. Even if there were some evidence that impeached Bugarin at the trial, this provided only "opportunities for chipping away on cross-examination but not the assault that was warranted." *Kyles v. Whitley*, 514 U.S. 419, 443 n. 14 (1995).

The Ninth Circuit also failed to discuss any witness that Bugarin's testimony would have been cumulative of. There were only two witnesses who testified about the Vineland Boys connection to the Mexican Mafia, and neither gave testimony duplicative of Bugarin.

Anthony Ascencio did testify about the Vineland Boys, having been a member, but he did not have any direct contact with the Mexican Mafia. (AOB at 61-62, citing 1-ER-15; 11-ER-2437-2583; 12-ER-2586-66.) Bugarin, on the other hand, purported to give an insider's account about the dealings between the Vineland Boys and the Mexican Mafia. (AOB at 62, citing 10-ER-2220-2298; 11-ER-2317-2393.)

Government expert Daniel Evinella, an agent with the California Department of Corrections, testified in general about the Mexican Mafia and gave his opinion as to the meaning of coded letters. But Evinella admitted he had not conducted any investigation into the Vineland Boys and was not an expert on that subject. (AOB at 62, citing 12-ER-2806.)

The Ninth Circuit incorrectly concluded that Bugarin's testimony was not "central" to the government's case and was "cumulative" to testimony given by other witnesses. Without Bugarin, the government would not have been able to tie any of the petitioners to either the Vineland Boys or the Mexican Mafia, which was critical to the RICO charges. Bugarin's testimony

was also important to the numerous drug charges, given his testimony about drug dealing and collecting taxes.

Simply put, Bugarin was the “make or break” witness for the government. *Maxwell v. Roe*, 628 F.3d 486, 508 (9th Cir. 2010).

REASONS FOR GRANTING THE WRIT

I. INTRODUCTION

This petition provides an opportunity to resolve two circuit splits on questions of substantial importance to *Brady* jurisprudence and the fair administration of criminal justice: first, whether evidence of prosecutorial bad faith may be considered as part of the *Brady* materiality inquiry; and, second, whether a district court must hold an evidentiary hearing to resolve disputed facts which are critical to the *Brady* analysis. The circuits have fractured on both questions.

As to the first question, some circuits allow courts to consider the government’s knowing concealment as evidence bearing on materiality, while others treat materiality as a purely objective inquiry from which the government’s intent is excluded entirely. Lower courts have also splintered on when an evidentiary hearing is required in the *Brady* context, whether in the habeas context of 28 U.S.C. § 2255 or a motion for new trial pursuant to Fed. R. Crim. P. 33.

As noted above, the Ninth Circuit remanded this case for factfinding under *Brady v. Maryland*, 373 U.S. 83 (1963), to determine whether the government suppressed favorable impeachment evidence regarding its key cooperating witness, Victor Bugarin. (Appendix E at 51.). After a lengthy remand process, the district court resolved the *Brady* factfinding on a paper record—principally a hearsay declaration by an Assistant United States Attorney—without ever hearing from Bugarin, the agents who recorded the disputed statements, the trial prosecutors, or any other percipient witness. (Appendix C.)

The Ninth Circuit affirmed. (Appendix B.) It did find that the government suppressed favorable impeachment evidence concerning Bugarin. (Appendix B at 12-13.) Nonetheless, the appellate court concluded that petitioners could not satisfy Brady’s materiality requirement. (Appendix B at 16.) The Ninth Circuit dismissed significant evidence of government bad faith in a brief footnote as falling short of a separate, heightened “deliberate and strategic decision to conceal” standard. (Appendix B at 15, n.2.) It goes without saying, that without an evidentiary hearing at which the trial prosecutors would be required to testify, a court cannot decide there was no bad faith in the suppression of numerous items of impeachment evidence.

In another footnote, the Ninth Circuit declared that the 28 U.S.C. § 2255 statutory presumption requiring an evidentiary hearing “unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief,” did not apply because petitioners had not filed a § 2255 motion and had instead pursued their *Brady* claim on direct appeal. (Appendix B at 15.)

This Court should grant certiorari to bring nationwide coherence to the standard for materiality and the procedures required for factfinding in the *Brady* context.

II. CERTIORARI SHOULD BE GRANTED ON THE QUESTION OF WHETHER PROSECUTORIAL BAD FAITH IN SUPPRESSING EXCULPATORY EVIDENCE IS RELEVANT TO DETERMINING *BRADY* MATERIALITY

A. The Circuit Courts are Divided

The three-element *Brady* test requires a defendant to establish that: (1) the evidence at issue was favorable, either because it was exculpatory or impeaching; (2) the evidence was suppressed by the government, either willfully or inadvertently; and (3) the evidence was material – that is, “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been

different.” *Strickler v. Greene*, 527 U.S. 263, 280-82 (1999). A “reasonable probability” is one that is sufficient to “undermine confidence in the verdict.” *Id.* at 290; *Kyles v. Whitley*, 514 U.S. 419, 435 (1995).

The second *Brady* element – suppression – expressly encompasses both willful and inadvertent concealment. That is, the government’s suppression of material favorable evidence violates due process “irrespective of the good faith or bad faith of the prosecution.” *Brady*, 373 U.S. at 87; *see also United States v. Agurs*, 427 U.S. 97, 110 (1976) (“Nor do we believe the constitutional obligation [to disclose favorable evidence] is measured by the moral culpability, or the willfulness, of the prosecutor If the suppression of evidence results in constitutional error, it is because of the character of the evidence, not the character of the prosecutor.”) All federal circuit courts apply this baseline standard: prosecutorial bad faith alone does not establish *Brady* materiality, and conversely, good faith does not excuse a *Brady* violation.

But some circuits consider prosecutorial bad faith in assessing materiality, while others ban inquiry into subjective intent. The result is inconsistency: the degree of the government’s culpability can determine the outcome of a *Brady* claim in some courts but not others.

B. Four Circuits Recognize Bad Faith as Relevant to *Brady* Materiality

The Third, Seventh, Ninth, and Tenth Circuits hold, to varying degrees, that bad faith may serve as a probative evidentiary factor for courts to consider in determining materiality.

Third Circuit. The Third Circuit explicitly holds that courts should consider bad faith in determining materiality:

We agree that the existence of bad faith on the part of the prosecution is a factor for the court to consider in weighing the materiality of the withheld evidence. The District Court erred to the extent that it undertook its *Brady* materiality inquiry without evaluating and incorporating the government's alleged bad faith.

United States v. Mitchell, 365 F.3d 215, 255 (3d Cir. 2004). The court's analysis, however, found that even if there were bad faith, it did "not appreciably alter" the analysis "because intentional withholding in these circumstances is consistent not only with a guilty mind but also with a concern on the government's part that the [evidence] would be misunderstood." *Id.* at 257.

Seventh Circuit. The Seventh Circuit holds that "in cases where the materiality of the evidence has not been conclusively determined, we will look to the bad faith of the government, if it exists, to assist our judgment."

United States v. Jackson, 780 F.2d 1305, 1311 n. 4 (1986). In *Jackson*, the Court defended its “plain common sense” process in this way:

The fact that the government seeks in bad faith to suppress certain evidence indicates that such evidence may indeed be material. We are doubtful that any prosecutor would in bad faith act to suppress evidence unless he or she believed it could affect the outcome of the trial. In short, the existence of bad faith is merely a factor a court may consider in making its materiality determination.

Because the question of materiality in *Jackson* was not a close one, the court declined to address bad faith. *Id.*

Ninth Circuit. The Ninth Circuit has noted that the prosecutor’s furtive conduct in hiding favorable evidence underscores its importance in the materiality analysis because “the prosecutor, more than neutral jurists, can better perceive the weakness of the state’s case.” *Silva v. Brown*, 416 F.3d 980, 990 (9th Cir. 2005), quoting *Singh v. Prunty*, 142 F.3d 1157, 1163 (9th Cir. 1998). In *Silva*, the court held that the “State’s deliberate and strategic decision to make the deal and not disclose it suggests the weakness of its post hoc claims that the evidence was irrelevant.” *Id.* It was this heightened standard that the court cited in the instant case – a “deliberate and strategic decision” on the part of the prosecutor, which it found was not met.

Tenth Circuit. The Tenth Circuit agrees with the Seventh Circuit's position: "although the good faith or bad faith of the prosecutor is irrelevant if the evidence is material, the good faith or bad faith of the prosecutor may well bear on the materiality determination."

Talamante v. Romero, 620 F.2d 784, 788 (10th Cir. 1980), overruled on other grounds, citing *United States v. Disston*, 582 F.2d 1108, 1112 (7th Cir. 1978).

C. Six Circuits Utilize the "Strict Irrelevance" Approach

The First, Second, Fourth, Fifth, Sixth, and Eighth Circuits hold that prosecutorial bad faith is irrelevant to the *Brady* materiality determination. See, e.g., *United States v. Celestin*, 612 F.3d 14 (1st Cir. 2010); *United States v. Aviles-Colon*, 536 F.3d 1 (1st Cir. 2008); *Leka v. Portuondo*, 257 F.3d 89, 103 (2d Cir. 2001); *Johnson v. Dretke*, 394 F.3d 332, 336 (5th Cir. 2004); *Villasana v. Wilhoit*, 368 F.3d 976, 978 (8th Cir. 2004).

Fourth Circuit. The Fourth Circuit states the strict irrelevance rule in the clearest terms among all the circuits: "even when the prosecutor's actions in suppressing exculpatory evidence are in flagrant bad faith, if the issue is not material, no *Brady* violation has occurred." *Spicer v. Roxbury Correctional Institute*, 194 F.3d 547, 559 (4th Cir. 1999), citing *Brown v. French*, 147 F.3d 307, 312-13 (4th Cir. 1998). "Conversely, where, as here, the prosecution has acted in good faith but simply misunderstood the scope of its

Brady obligation, constitutional error has occurred if the exculpatory evidence at issue is material.” *Id.*

Sixth Circuit. The Sixth Circuit likewise treats bad faith as irrelevant to materiality. Even in a case where the record suggested egregious prosecutorial misconduct, the court held unequivocally that prosecutorial bad faith does not affect the *Brady* analysis. *Jefferson v. United States*, 730 F.3d 537, 554 (2013). The court has written that “the critical lesson of [*Augurs* and *Brady*] is that the constitutional violation arose because of the nature of the evidence, not the state of mind of the state actor.” *Moldowan v. City of Warren*, 578 F.3d 351, 384 (2009).

D. The Materiality Question Is Important and Recurring

The question of whether prosecutorial bad faith is relevant to *Brady* materiality is of recurring importance to the administration of criminal justice. Every year, courts across the country grapple with the question of whether suppressed evidence satisfies the materiality standard. In many of those cases, evidence of prosecutorial intent is in the record. Under the current regime, the extent to which government misconduct affects the answer depends on where the defendant was prosecuted.

The stakes are high. The defendant must demonstrate a “reasonable probability” of a different result, a demanding standard which often results in

the situation where a court finds the prosecution wrongfully withheld evidence but there is no remedy:

The “favorable but not material” category of *Brady* cases has long been the subject of concern. As Justice Thurgood Marshall explained early in the standard’s development, the materiality standard “invites a prosecutor, whose interests are conflicting, to gamble, to play the odds, and to take a chance that evidence will later turn out not to have been potentially dispositive.” In such cases, we know that the prosecution failed to turn over a piece of evidence that could have helped the defendant at trial. Thus, the main point of the *Brady* doctrine – to put the defendant on equal footing with the prosecution – has been defeated. Yet appellate courts – through an ex-post analysis and without being in the courtroom or observing the witnesses – may conclude that the outcome would not have changed had the evidence been properly disclosed before trial. Accordingly, Justice Marshall and other critics offer a dark picture of how the materiality prong can undermine justice.

Garret and Gershowitz, *The Brady Materiality Standard*, 78 Stan.L.Rev. 303, 306 (2026) (citations omitted) (conducting analysis of 100 state and federal rulings in which favorable evidence was not disclosed to the defense but where courts concluded it was not material).

Moreover, the availability of bad faith evidence as a factor in the materiality inquiry has important systemic effects. Where courts may consider bad faith, prosecutors have a powerful incentive to comply fully with their *Brady* obligations: they know that evidence of deliberate suppression

will be held against them. Where courts exclude bad faith from materiality, that deterrent effect is diluted:

This [*Brady*] materiality test is more demanding than the typical harmless error rule. Still, commentators have focused on the demands of the materiality test as one of the many reasons why the *Brady* rule inadequately remedies, much less deters, prosecutorial misconduct. More broadly, commentators have described how difficult the *Brady* rule is to administer even when violations come to light, because of the potential ambiguities in the materiality standard. After all, the Court has given no clear guidance on how to apply the standard. And *Brady* is an awkward after-the-fact guide to prosecutors. As John G. Douglass pointed out, “It seems curious, to say the least, that a prosecutor has a constitutional obligation before trial to disclose a category of information that cannot be defined until after trial.” As a result, scholars have argued that Brady’s materiality standard should be reconsidered.

Id. at 305-306, citing e.g. John G. Douglas, *Fatal Attraction? The Uneasy Courtship of Brady and Plea Bargaining*, 50 Emory L.J. 437, 471 (2001).

This case illustrates the dangers in failing to appropriately consider bad faith. The Ninth Circuit found that Petitioners established the first two *Brady* prongs: multiple pieces of evidence were favorable to the defense and the government suppressed them. The only contested issue was materiality. On that question, even without an evidentiary hearing, Petitioners presented substantial evidence of bad faith:

- The government elected not to turn over palpably exculpatory material – for example, police reports which said Bugarin, the

cooperating witness, used cocaine and methamphetamine, his motivation to cooperate was “payment,” and an officer who testified against petitioners had concerns that Bugarin was not forthcoming.

- The government completely redacted Bugain’s name from the discovery produced to defense counsel, hid the unredacted reports in books which were only available upon request; even in these, Bugarin’s name was incorrect. He testified under the incorrect name.
- The government turned over the wrong rap sheet until the eve of Bugarin’s testimony, omitting that he was a paid informant who had received relocation funds.
- At trial, the government elicited testimony that Bugarin’s cooperation had ended, misleadingly eliding his work on multiple cases as a paid informant (in the past and as it turned out would continue).

Nonetheless, the Ninth Circuit did not analyze the role of prosecutorial misconduct, holding only that Petitioners had not shown these were “deliberate and strategic decision[s]” to conceal evidence. (Appendix B at

15, n.2.) Despite the prosecution’s own assessment that the witness was “crucial” to its case, the Ninth Circuit found his testimony was not material.

Whether the Ninth Circuit correctly applied the materiality analysis, including its evaluation of bad faith, is an important federal question which would provide much needed consistency in the courts below.

E. The Ninth Circuit’s Materiality Determination in the Decision Below is Wrong.

The Ninth Circuit's materiality analysis is inconsistent with both the constitutional foundations of *Brady* and this Court's precedents recognizing that prosecutorial misconduct occupies a distinct place in constitutional criminal procedure.

Brady's constitutional underpinning is the Due Process Clause of the Fifth Amendment. At its core, *Brady* recognizes that a criminal trial is fundamentally unfair when the government suppresses evidence that the accused needs to mount an effective defense. *Brady*, 373 U.S. at 87. The degree of unfairness—and therefore the threshold at which due process relief is required—cannot reasonably be assessed without reference to whether the unfairness was the product of deliberate government action or mere inadvertence.

This Court has long stressed the relevance of governmental intent to the constitutional analysis. For example, in *Glossip v. Oklahoma*, 604 U.S. 226 (2025), this Court confirmed that the standard for materiality required to establish a *Napue* violation is meaningfully distinct from that required to establish a *Brady* violation. A *Napue* violation occurs when the prosecution knowingly uses or fails to correct false testimony. *Napue v. Illinois*, 360 U.S. 264 (1959). It requires only that the false testimony had “any reasonable likelihood” of affecting the jury, or, stated another way, requires the prosecution to prove beyond a reasonable doubt that the error did not contribute to the verdict.

Although both the *Napue* and *Brady* doctrines are rooted in the Due Process Clause, the *Napue* materiality standard considers the role of prosecutorial misconduct, which results in the “corruption of the truth-seeking function of the trial process.” *Agurs*, 427 U.S. at 105. The heightened requirement is appropriate because the government has deliberately tainted the adversarial process by introducing false testimony. *Id.*

The circuits which give no weight to bad faith, or require high showings of bad faith, ignore this structural logic. By treating bad faith suppression and inadvertent suppression as identical for purposes of materiality, these circuits decouple the materiality inquiry from its

constitutional moorings. Due process does not require defendants to make identical showings regardless of whether their constitutional rights were violated through negligence or through the government's deliberate choice to deny them access to favorable evidence.

Such an approach also has troubling systemic implications. Under a regime in which bad faith is excluded from materiality, a prosecutor who conceals favorable evidence knows that, even if the suppression is eventually discovered, *Brady* relief will be unavailable so long as a reviewing court finds the cumulative evidence at trial sufficient to support the verdict. The government thus is able to profit from its intentional misconduct.

This Court has consistently resisted interpretations of constitutional guarantees that would incentivize governmental misconduct. The *Brady* doctrine in particular was designed to ensure "that justice is done." *Brady*, 373 U.S. at 87 (citation omitted). A rule that allows the government to escape materiality consequences for its own deliberate suppression is in tension with that foundational purpose.

III. CERTIORARI SHOULD BE GRANTED ON THE QUESTION OF WHEN AN EVIDENTIARY HEARING IS REQUIRED TO RESOLVE DISPUTED AND MATERIAL *BRADY* FACTS

This case also presents an important and recurring question of federal law on which this Court’s guidance is overdue: when must a district court hold an evidentiary hearing to resolve disputed material facts in a *Brady* claim.

A. The Question Presented Is An Exceptionally Important Question of Federal Law.

The Ninth Circuit remanded this case for *Brady* factfinding to determine whether the government had suppressed evidence of benefits given to Bugarin. (Appendix E at 51.) As note above, the district court denied the petitioners’ motion for an evidentiary hearing and resolved the *Brady* factfinding on a paper record—principally a hearsay declaration by an Assistant United States Attorney—without ever hearing from Bugarin, the agents who worked with him, the trial prosecutors, or any other percipient witness. The Ninth Circuit affirmed.

The government acknowledged that the procedural vehicle made little practical difference, and the district court itself cited and applied 28 U.S.C. § 2255 cases in ruling on petitioners’ motion for an evidentiary

hearing. Nonetheless, the panel below held that the § 2255 presumption in favor of evidentiary hearings did not apply because the *Brady* issue had been raised on direct appeal. (Appendix B at 15, n.3 quoting *United States v. Rodriguez*, 49 F.4th 1205, 1213 (9th Cir. 2022) (quoting § 2255(b).)

That ruling cannot be squared with this Court's repeated insistence that post-conviction claims requiring credibility determinations be resolved through actual factfinding. As this Court explained:

[B]efore dismissing facially adequate allegations short of an evidentiary hearing, ordinarily a district judge should seek as a minimum to obtain affidavits from all persons likely to have firsthand knowledge When the issue is one of credibility, resolution on the basis of affidavits can rarely be conclusive, but that is not to say they may not be helpful.

Blackledge v. Allison, 431 U.S. 63, 82 n.25 (1977) (cleaned up). Where the determination of the *Brady* claim depends on competing accounts – affidavits from prosecutors, law enforcement reports which agents claim are incorrect, and witnesses who refuse to talk to defense investigators – the district court cannot meaningfully resolve the disputed facts on a paper-record alone. The only way to test the disputed accounts is by live testimony, under oath, subject to cross-examination.

B. The Question Recurs Across Federal Post-conviction Practice and Has Divided the Lower Courts

The boundary between cases that can be resolved on a paper record and those that require live testimony is among the most frequently litigated questions in federal criminal post-conviction practice. The federal courts confront it, *inter alia*, in § 2255 proceedings, in motions for a new trial under Fed. R. Crim. P. 33 (the vehicle the Ninth Circuit invoked here, although it was not the one used in the district court), and on motions to suppress evidence. The lower courts have splintered, in overlapping ways, on the threshold that triggers an evidentiary hearing in each setting.

The most directly analogous split concerns how the federal courts handle post-conviction claims supported by conflicting affidavits. The Sixth, Eighth, and (in its own settled precedent) Ninth Circuits hold that an evidentiary hearing is generally required in the § 2255 context. *See e.g. Pola v. United States*, 778 F.3d 525, 533-535 (6th Cir. 2015) (district court erred in deciding § 2255 case based on two affidavits, failing to hold evidentiary hearing to make credibility determination); *Thomas v. United States*, 737 F.3d 1202, 1206 (8th Cir. 2013) (in § 2255 petition, “[t]he district court is not permitted to make a credibility determination on the affidavits alone; thus if the decision turns on credibility, the district court must conduct a hearing);

United States v. Chacon-Palomares, 208 F.3d 1157, 1160 (9th Cir. 2000) (district court erred in denying § 2255 motion without having held an evidentiary hearing where there were affidavits from both sides).

By contrast, the First Circuit permits denial on a paper record more readily. *Ouellette v. United States*, 862 F.2d 371, 377-78 (1st Cir. 1988) (affirming district court's decision not to hold evidentiary hearing). The decision below complicates the picture further: it leaves the rule articulated in cases like *Chacon-Palomares* on the books in name only, by reserving the protective standard to filings expressly labeled § 2255 motions while declining to apply it to materially identical proceedings.

In the Rule 33 context, where the rule itself is silent as to the requirement of an evidentiary hearing, the First Circuit has noted that “[t]he precise standard to be met to warrant a post-trial evidentiary hearing on an alleged *Brady* violation has not been decided,” though it is “certainly more than a mere ‘colorable claim.’” *United States v. Colon-Munoz*, 318 F.3d 348, 360 n. 6 (1st Cir. 2003). The court will affirm denial of a hearing where the disputed issue “is conclusively refuted ... by the files and records of the case.” *United States v. Peake*, 874 F.3d 65, 72 (1st Cir. 2017).

The Third Circuit has a more defendant-protective formulation: “[w]here the submission of written affidavits raises genuine issues of material

fact and where, as here, the *Brady* claims involving [the witness] are neither frivolous nor palpably incredible, an evidentiary hearing should be conducted.” *United States v. Dansker*, 565 F.2d 1262, 1264 (3d Cir. 1977). And though the Ninth Circuit’s abuse of discretion standard has resulted in the type of affirmance that happened in this case, it has shown some flexibility. *See, e.g., United States v. Hanna*, 55 F.3d 1456, 1461 (9th Cir. 1995) (“resolution of this matter is best served by the light of a hearing, not the darkness of an assumption.”); *United States v. Mazarella*, 784 F.3d 532, 541-42 (9th Cir. 2015) (remanding for evidentiary hearing on two issues).

The Fifth, Eighth, and Eleventh Circuits, however, have treated the hearing as strongly discretionary in the Rule 33 context. *See, e.g., United States v. Hamilton*, 559 F.2d 1370, 1373 (5th Cir. 1977) (“a motion for new trial may ordinarily be decided upon affidavits without an evidentiary hearing”); *United States v. Cardarella*, 588 F.2d 1204, 1205-1206 (8th Cir. 1978) (no evidentiary hearing required); *United States v. Slocum*, 708 F.2d 587, 600 (11th Cir. 1996) (the decision not to hold a hearing “is within the trial court’s sound discretion, subject to review only for an abuse of that discretion).

Adjacent splits compound the problem. In the related *Strickland v. Washington*, 466 U.S. 668 (1984) context, the Third Circuit requires a

hearing on any IAC claim that does not “conclusively fail” either *Strickland* prong. *United States v. Haisten*, 50 F.4th 368, 374 (3d. Cir. 2022). The Fifth Circuit is markedly more deferential. *Wilcher v. Hargett*, 978 F.2d 872, 877 (5th Cir. 1992).

Each of these settings is animated by the same underlying question that pervades the decision below: when must contested credibility be resolved by live testimony rather than by competing affidavits?

C. The Decision Below Is Wrong

In 2017, the Ninth Circuit ordered the district court to engage in “the necessary factfinding to ascertain whether [Bugarin] received benefits that were undisclosed to defendants at the time of trial.” (Appendix E at 51.) As the government acknowledged, that is the substantive equivalent of a § 2255 hearing. In 2025, the Ninth Circuit’s footnote dismissal of the § 2255 hearing presumption—on the sole ground that petitioners had not “file[d] a § 2255 motion,” (Appendix B at 15) elevates form over substance, creating a procedural anomaly where *Brady* determinations receive greater process if they are discovered later.

Petitioners identified specific factual disputes that turned on whose account the court believed: (a) whether and when Bugarin received undisclosed monetary benefits in connection with this case; (b) whether the

form documenting Bugarin's substance abuse was, as the government claimed, a "clerical error," or whether it accurately recorded a Brady-material admission; (c) whether Bugarin expected future cooperator work at the time of his 2006 testimony; and (d) whether the government's subsequent records were reconcilable with Bugarin's 2009 testimony.

The district court resolved each of those questions against petitioners on the basis of a single hearsay declaration from the prosecutor without hearing from Bugarin, the testifying agents, the trial prosecutors, or any percipient witness. That is exactly the situation *Blackledge* forbade. 431 U.S. at 82 n.25;

The Ninth Circuit relied on *Morgan v. Gonzales*, 495 F.3d 1084, 1091 (9th Cir. 2007), for the proposition that an evidentiary hearing is unwarranted where the request rests on speculation. (Appendix B at 16.) Petitioners did not speculate. They identified record-supported, concrete factual disputes—including a documented written statement about Bugarin's drug use, government records reflecting payments to him, and a pattern of cooperator activity before and after his testimony from which an expectation of future benefits could be inferred. The Ninth Circuit's own 2017, remand confirmed that the record sufficed to require factfinding; the only remaining

question was whether that factfinding could be conducted on paper alone. It could not.

The district court, for example, accepted the government's representation that the law enforcement form recording Bugarin's drug use was a mistake solely on the basis of the government's hearsay declaration. (Appendix C at 28.) Neither the agent who wrote the form nor Bugarin himself testified or even provided a declaration under penalty of perjury. Treating the government's hearsay declaration as sufficient to defeat a *Brady* claim is precisely the type of procedural shortcut *Blackledge* warned against.

The Ninth Circuit's materiality holding presupposed the answer to the very question an evidentiary hearing would have resolved. The court held that even "assuming an evidentiary hearing could have produced evidence" of additional impeachment value, the resulting evidence would fall "well short of satisfying *Brady*'s materiality threshold." (Appendix B at 16.) But materiality cannot be assessed in a vacuum. The premise of *Brady*—and of the cases that have refined it, see *United States v. Bagley*, 473 U.S. 667, 682 (1985), is that suppressed evidence is evaluated against the backdrop of what was actually withheld. A reviewing court cannot reliably perform that evaluation without first knowing, through a hearing, the true nature of the suppressed evidence.

This Court should grant certiorari to ensure that *Brady* claims supported by genuine credibility disputes result in actual factfinding after an evidentiary hearing, regardless of the procedural label affixed to the proceeding.

CONCLUSION

For the reasons expressed above, Petitioners respectfully request that a writ of certiorari issue to review the judgment of the Ninth Circuit Court of Appeals.

Date: June 3, 2026 Respectfully submitted,

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