No. _______

IN THE
SUPREME COURT OF THE UNITED STATES

RESHOD JAMAR EVERETT,

***Petitioner*,**

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals
for the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Jeffrey M. Brandt, Esq.
ROBINSON & BRANDT, P.S.C.
629 Main Street
Suite B
Covington, KY 41011
(859) 581-7777 voice
(859) 581-5777 facsimile
Counsel of Record for Petitioner

22 June 2026

QUESTIONS PRESENTED FOR REVIEW

The Constitution provides for our citizens' right against unreasonable searches and seizures. U.S. CONST., amend IV. An affidavit sworn to a magistrate that shows probable cause to believe evidence of a crime will be found in a sufficiently-identified place leads to a lawful warrant to search. But when an officer makes a statement in the affidavit that is false or misleading and made with a reckless disregard for the truth, the probable cause calculation should be made after striking the false or misleading statement. If after striking that statement, an affidavit fails to establish probable cause, and if no reasonable officer could rely in the warrant in good faith, the evidence obtained must be suppressed.

Procedurally, a citizen is required to move in the district court for a hearing on whether the affidavit seeking a warrant contains a false or misleading statement, and any denial of that request should be raised on direct appeal to the circuit court. In the event that a citizen's counsel unreasonably fails to identify and raise an argument that the Fourth Amendment right against search and seizure has been violated, the Sixth Amendment right to the effective assistance of counsel and 28 U.S.C. § 2255 allow the citizen to petition the district court for redress. On a showing that an objectively reasonable attorney would have filed the motion to suppress and request for a *Franks* hearing, and on a showing that a reasonable probability exists that such a motion would have led to a different result in the case, relief for the citizen is appropriate. The Court has held that a district court's debatable ruling on an ineffective assistance of counsel claim should be certified for appeal if the petitioner makes a substantial showing that constitutional right has been violated. The appellant need not show full entitlement to relief.

In this case, Petitioner filed a § 2255 motion as a pro se prisoner litigant. All claims involved the substantial question of whether the Petitioner was denied the right to the effective assistance when counsel failed to request a *Franks* hearing. Although oftentimes inartfully presenting the claims, Petitioner clearly set forth that an officer made a claim in an affidavit that was not true; in three other instances, officers stated under oath or on body cam to other officers showed the exact opposite of the statement. The statement was material to the finding of probable cause. And yet the district court failed to liberally construe the filing, re-worded Petitioner's argument, ignored portions of the argument, recreated a greatly oversimplified argument, and denied it.

Petitioner appealed. Although the district court's decisions were debatable, and while Petitioner made a showing of a substantial denial of his constitutional rights, the Fourth Circuit summarily denied certificate of appealability.

The question for the Court is whether a circuit court errs as a matter of law and fact, and ignores this Court's precedent, in failing to certify issues for appeal from a denied § 2255 motion, when the district court failed to liberally construe the filing, the district court's ruling was debatable, and the ruling resulted in the substantive denial of the Petitioner's constitutional rights to effective assistance and against unreasonable searches and seizures.

PARTIES TO THE PROCEEDINGS

All parties to the proceeding in the Fourth Circuit—the court whose judgment is sought to be reviewed—are as follows:

Petitioner Reshod Jamar Everett, aka Kool, aka Kool Aid

The United States of America

PROCEEDINGS IN THE LOWER COURTS

The U.S. District Court for the Eastern District of North Carolina:

Everett v. United States, No. 5:24-cv-00619, district court memorandum order denying motion under 28 U.S.C. § 2255 and denying certificate of appealability on October 2, 2025

Everett v. United States, No. 5:24-cv-00619, district court judgment order denying motion under 28 U.S.C. § 2255 on October 2, 2025)

The U.S. Court of Appeals for the Fourth Circuit:

Everett v. United States, No. 25-6911, Fourth Circuit unpublished per curiam opinion denying request for certificate of appealability on March 17, 2026

Everett v. United States, No. 25-6911, Fourth Circuit judgment on Mar. 17, 2026

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PETITION FOR WRIT OF CERTIORARI

Petitioner Reshod Jamar Everett respectfully petitions the Court to grant a writ of certiorari to the U.S. Court of Appeals for the Fourth Circuit.

JUDGMENT FOR WHICH REVIEW IS SOUGHT

The district court entered a final appealable judgment order, denying Petitioner's motion for relief under 28 U.S.C. § 2255. *Everett v. United States*, No. 5:24-cv-00619 (E.D. N.C. Oct. 2, 2025). Appendix at 4a, 18a. The district court declined to certify an issue for appeal. Appendix at 17a. The U.S. Court of Appeals for the Fourth Circuit also declined to certify an issue for appeal. *Everett v. United States*, No. 25-6911, (4th Cir. Mar. 17, 2026). Appendix at 1a, 3a.

STATEMENT OF THE BASIS FOR JURISDICTION

The district court had jurisdiction, as Petitioner timely filed his motion within a year the date that his conviction became final. 28 U.S.C. § 2255(f)(1); *Clay v. United States*, 537 U.S. 522, 525 (2003).

The Fourth Circuit had jurisdiction under 28 U.S.C. § 1291, 18 U.S.C. § 3742(a), and 28 U.S.C. § 2253, as the district court entered a final judgment, Petitioner timely appealed from that opinion and judgment, and the court of appeals had jurisdiction to determine whether it would certify the matter for appeal. The date of the U.S. Court of Appeals for the Fourth Circuit's judgment to be reviewed was entered on March 17, 2026.

This Court has jurisdiction under 28 U.S.C. § 1254(1), as the Fourth Circuit has rendered a final decision from Petitioner's appeal and because he is filing this petition within 90 days of that ruling. Appendix at 1a; see Sup. Ct. R. 13.1, 13.3, 29.2.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THIS CASE

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST., amend. IV.

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

U.S. CONST., amend. VI.

> (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> * * *
> the final order in a proceeding under section 2255.
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

28 U.S.C. § 2253(c).

STATEMENT OF THE CASE

This case presents questions regarding whether the lower courts are following the precedent of this Court and the protections of the Constitution so that, in cases where a criminal defense attorney fails to provide effective assistance to identify and raise a Fourth Amendment issue, the limited safety net provided by 28 U.S.C. § 2255 works as it should. Matters are complicated when an incarcerated person is indigent and unable to hire an attorney to address and rectify the errors of earlier counsel. In these instances, the prisoner files pro se, more often than not failing to articulate the claims as well as counsel would do. In such cases, the Court has made clear that, while courts are not required to advocate for the indigent prisoners, the district courts are required to construe the arguments liberally in a way that favors finding that a potentially valid claim is presented. This does not mean the court is directed to find merit. It is simply an instruction that the district court read the pleading with an understanding that a valid claim may exist behind the words the prisoner has used to express his circumstances.

Officers knew the following about a home on Ronald Reagan Drive:

- a resident of an apartment that had been searched claimed that Petitioner was his supplier and that Petitioner was trafficking drugs out of an apartment at Addison Ridge in Fayetteville, North Carolina;
- Petitioner signed a lease for Unit 5 at Addison Ridge with Alvin Davis named as an authorized occupant;
- when officers pulled Davis over in a traffic stop for a window tint violation, officers found marijuana, cocaine, a digital scale, and a loaded firearm, and magazines;
- a drug-detecting canine alerted to the presence of drugs at the door of Unit 5 of Addison Ridge Unit 5, leading officers to seek and obtain a warrant for that location;
- in Unit 5 officers found several vacuum-sealed bags of marijuana, a duffel bag with plastic bags matching those seized from Davis' Cadillac sedan, plastic tubs containing marijuana residue, 346 grams of cocaine, and a safe containing several pound bags of marijuana, more than $5,500 in cash, and a loaded handgun;

- also in that unit, found and seized a receipt from a local car business with Petitioner's name and an address listed at a home on Ronald Reagan Drive in Fayetteville;
- Fayetteville Public Works Commission noted that the Ronald Reagan Drive was listed as Petitioner's residence;

With this information, and despite seeking a warrant for the search of the apartment, officers did <u>not</u> seek a warrant to search the Ronald Reagan Drive address. Instead, they sought a warrant for Petitioner's arrest.[1] The affidavit submitted for that arrest is the subject of this petition for writ of certiorari.

Officer Cook swore to the facts seeking to establish probable cause justifying Petitioner's arrest. Doc.300-4 p.2. Cook swore under oath that, when Davis was questioned following the traffic stop, "Davis was asked if there was any narcotics at his residence. Davis advised if there was it belonged to his roommate."[2] Although Cook did not allege that Davis named this roommate, Cook's affidavit was reporting that the roommate was necessarily Petitioner and not any other potential roommate. This affidavit did not claim that Petitioner lived at the residence, that Petitioner visited the residence, that Petitioner signed a lease for this residence, or establish any connection between the claim that Cook blamed his "roommate" and a reason to believe Petitioner was the roommate. The only place where Petitioner's name is shown is in the heading

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[1] The officers technically sought an obtained three arrest warrants. But each was based on the same facts, same affidavit, and was repeated simply to list three different crimes for which Petitioner was alleged to have committed.

[2] This is the affidavit Petitioner asked his counsel to seek a *Franks* hearing concerning and the subject of this petition, as counsel was ineffective in failing to seek that *Franks* hearing.

of the document showing that Petitioner was the defendant and the person Cook sought to arrest. The heading of the affidavit reported Petitioner's address to be the same place that had been searched. But nothing in the affidavit established why Cook or any other officer believed this to be Petitioner's address.

With the arrest warrant based on insufficient and false information in hand, officers survielled the residence on Ronald Reagan Drive. After a number of hours of watching and claiming that additional relevant information had been obtained, the officers elected not to seek a search warrant but to instead, knock on the door with the arrest warrant. Petitioner answered the door and was arrested.[3] Officers conducted a protective sweep and then sought and obtained a warrant. Petitioner was charged in part based on what was found in this home.

In August 2021, a federal grand jury in the Eastern District of North Carolina returned an eight-count superseding indictment against Petitioner and Davis including a charge of conspiracy to distribute marijuana, THC, and powder cocaine, and two charges of possessing a firearm in furtherance of a drug trafficking crime in violation of 18 U.S.C. § 924(c)(1)(A).

Trial counsel for Petitioner moved to suppress evidence seized from 1080 Ronald Reagan Drive. Although the motion was worded broadly, argument and a hearing narrowed the claim down to one that Petitioner's Fourth Amendment rights were violated because no warrant exception allowed the officers to enter the home before backing out and seeking a search warrant.

[3] Controversy arose over where this arrest occurred. The detectives claimed they were already inside the home, in a front foyer, when arresting Petitioner. But Petitioner asserted that he had fully stepped outside. Counsel for Petitioner sought to suppress evidence based on an argument that the protective sweep that followed was not justified. This motion was denied and appealed. This petition is not raising that claim, as trial counsel raised it, appellate counsel briefed it, and it was not a subject of Petitioner's § 2255 motion.

At the suppression hearing, Officer Neil Budden testified. He was asked by the government whether Davis made statements referring to a roommate. Budden could not recall. Doc.106 p.7. This created a conflict with what Officer Cook had said in his affidavit. But Petitioner's counsel did not point this out. The judge ruled that the arrest warrant was valid and based on probable cause, *id*. at p.70, thus, that the officers could enter the Ronald Reagan residence, and that a protective sweep was justified as the officers had a reasonable belief that someone could be in the home posing a danger and that only a cursory sweep, not a search, was conducted. *Id*. at pp. 70-72.

The matter proceed to jury trial. At this trial, the government called Officer Budden to testify. On cross-examination, he testified that, when Davis was questioned, he never said the contraband belonged to Petitioner . Doc.208 p.73. In fact, Petitioner's name did not even come up. *Id*. Budden testified that, based on his recollection, at no time did Davis assert that Petitioner was his roommate. *Id*. And, thus, if the word roommate had been used, it was not associated with being Petitioner. This testimony once again created a direct conflict with Officer Cook's claim that Davis had claimed any contraband belonged to a roommate and/or Petitioner.

The jury could not reach a verdict, and the district court declared a mistrial. Despite Budden's testimony continuing to show that Cook's sworn statement that Davis blamed any contraband on an unnamed "roommate" was false, Petitioner's counsel did not renew any suppression motion or, more importantly, seek a *Franks* hearing.

At the second jury trial, Officer Harding testified for the government. On cross-examination, he confirmed that he asked Davis a series of questions when Davis was arrested following the traffic stop. Harding testified that Davis was <u>not asked</u> whether Petitioner was living in the apartment. Doc.282 p.122. Harding testified that Davis was asked whether he had drugs at his apartment, and Davis responded, "I don't know what my roommate has." *Id*. This testimony not establish what Cook had claimed—that the roommate was Petitioner or that Davis had claimed that any contraband was the roommates. This testimony provided further evidence that officers would swear under oath that Cook's claim that Davis had blamed his roommate was false. But counsel did not use this additional testimony to seek a *Franks* hearing.

After a four-day trial in May 2022, the jury returned verdicts finding Petitioner guilty on all charged offenses. The advisory guidelines calculation imprisonment was 360 months to life. But the district court imposed a sentence of 480 months in prison, plus five years of supervised release.

Indigent and therefore unable to afford counsel, Petitioner filed his own § 2255 motion, doing so timely. Relevant here, his motion had two main themes of how he was denied his constitutional rights. First, he noted that his counsel had been ineffective for failing to request a *Franks* hearing to challenge the arrest warrants (and the evidence that followed from the arrest and subsequent searches) on the grounds that an allegation in the affidavit submitted in support was false and that was material to whether probable cause existed. That statement was a claim that the co-defendant had denied knowing about the contraband found in a residence and asserted that any such contraband belonged to Petitioner. To show that the statement was false or at least misleading, Petitioner pointed to three other officer statements establishing that the co-defendant had not blamed Petitioner and, in fact, in one of those statements, had expressly rejected the idea that the contraband was Petitioner's. Second, Petitioner attempted to claim that counsel was ineffective in failing to object to prosecutorial misconduct. He erred in wording those claims as direct-appeal-type challenges to the misconduct rather than couching the errors in terms of ineffective assistance.

Working backward, the district court responded by failing to interpret Petitioner's arguments referencing "prosecutorial misconduct" liberally in favor of potential claims. The district court correctly noted that Petitioner had "failed to raise these claims on direct appeal," Doc.337 p. 13, but somehow missed the easy transition from that to the idea that appellate counsel erred in failing to do so, since Petitioner was represented on appeal and because counsel speaks for a defendant on appeal. The district court correctly noted that § 2255 "generally cannot be used to raise claims not brought on direct appeal," but did not make the easy pivot from that construct to the daily-used understanding that § 2255 can be used to argue what counsel should have raised on direct appeal. Rather than liberally interpreting Petitioner's arguments, the district court appeared to be picking on Petitioner and taking advantage of his pro se status by not making these easy connections and findings.

Responding to the arguments that counsel had been ineffective in failing to seek a *Franks* hearing as to the arrest and search warrants, the district court completely re-wrote Petitioner's argument, significantly limiting it while making a path toward easy denial. The district court found that Petitioner had not plausibly alleged that Officer Cook made a false statement in his affidavit. But to reach that conclusion, the district court greatly oversimplified Petitioner's argument as being on based on "differences between the July 17, 2018 arrest warrant information forms and the July 20, 2018 search warrant affidavit." That was not Petitioner's argument. But the district court denied relief on the simplified arguments Petitioner had not raised. Appendix at 4a.

In a decision that reported that it looked into the issues but did not show any reasoning to reach the conclusion, the Fourth Circuit denied COA. Appendix at 2a.

Petitioner remains incarcerated at U.S.P. Edgefield in South Carolina under a term of incarceration of 480 months plus five years of supervised release.

Petitioner now timely presents this petition for writ of certiorari, asking the Court to accept jurisdiction, address the lowers courts' failure to adhere to this Court's precedent, and either grant the petition and set the matter for full briefing, or strike the Fourth Circuit decision and remand with instructions that the Fourth Circuit grant certificate of appealability on Petitioner's valid § 2255 claims.

REASONS FOR GRANTING THE PETITION

The Constitution provides for our citizens' right against unreasonable searches and seizures. U.S. CONST., amend IV. An affidavit sworn to a magistrate that shows probable cause to believe evidence of a crime will be found in a sufficiently-identified place leads to a lawful warrant to search. But when an officer makes a statement in the affidavit that is false or misleading and made with a reckless disregard for the truth, the probable cause calculation should be made after striking the false or misleading statement. *Franks v. Delaware*, 438 U.S. 154, 98 S. Ct. 2674 (1978). If after striking that statement, an affidavit fails to establish probable cause, and if no reasonable officer could rely in the warrant in good faith, the evidence obtained must be suppressed. *United States v. Leon*, 468 U.S. 897, 104 S. Ct. 3405 (1983).

Procedurally, a citizen is required to move in the district court for a hearing on whether the affidavit seeking a warrant contains a false or misleading statement, and any denial of that request should be raised on direct appeal to the circuit court. *United States v. Olano*, 507 U.S.

725, 113 S. Ct. 1770 (1993). In the event that a citizen's counsel unreasonably fails to identify and raise an argument that the Fourth Amendment right against search and seizure has been violated, the Sixth Amendment right to the effective assistance of counsel and 28 U.S.C. § 2255 allow the citizen to petition the district court for redress. On a showing that an objectively reasonable attorney would have filed the motion to suppress and request for a *Franks* hearing, and on a showing that a reasonable probability exists that such a motion would have led to a different result in the case, relief for the citizen is appropriate. *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052 (1984). The Court has held that a district court's debatable ruling on an ineffective assistance of counsel claim should be certified for appeal if the petitioner makes a substantial showing that constitutional right has been violated. *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S. Ct. 1595 (2000); *Miller-El v. Cockrell*, 537 U.S. 322, 336, 123 S. Ct. 1029 (2003). The appellant need not show full entitlement to relief. *Buck v. Davis*, 580 U.S. 100, 118, 137 S. Ct. 759 (2017).

In this case, Petitioner filed a § 2255 motion as a pro se prisoner litigant. All claims involved the substantial question of whether the Petitioner was right to the effective assistance of counsel in failing to request a *Franks* hearing. Although oftentimes inartfully presenting the claims, Petitioner clearly set forth that an officer made a claim in an affidavit that was not true; in three other instances, officers stated under oath or on body cam to other officers showed the exact opposite of the statement. The statement was material to the finding of probable cause. And yet the district court failed to liberally construe the filing, re-worded Petitioner's argument, ignored portions of the argument, created a simpler argument, and denied it.

Petitioner appealed. Although the district court's decisions were debatable, and while Petitioner made a showing of a substantial denial of his constitutional rights, the Fourth Circuit summarily denied certificate of appealability.

The Court should grant this petition and accept jurisdiction to make clear that a circuit court errs as a matter of law and fact, and ignores this Court's precedent, in failing to certify issues for appeal from a denied pro se prisoner litigant's § 2255 motion, when a district court failed to liberally construe the filing, the district court's ruling was debatable, and the ruling results in the substantive denial of the prisoner's constitutional rights to effective assistance and against unreasonable searches and seizures. See Sup. Ct. R. 10(c).

I. The Court should Grant Certiorari, as the Fourth Circuit Erred as a Matter of Law and Fact in Failing to Find that the District Court's Denial of Petitioner's Motion under 28 U.S.C. § 2255 was Debatable and Substantively Denied Petitioner the Constitutional Right to Effective Assistance, Leading to Denials of His Fourth Amendment Rights.

A. The Fourth Circuit Erred as a Matter of Law and Fact in Failing to Certify Issues for Appeal, as the District Court's Denial of Petitioner's § 2255 Motion Re-wrote Petitioner's Arguments, Ignored Portions of Petitioner's Arguments, and Denied Simplistic Arguments Petitioner had Not Presented.

The district court made several errors to reach the conclusion that Petitioner had not presented any valid claim. Petitioner addresses each individually.

1. Primarily as a result of re-characterizing Petitioner's pro se argument and ignoring facts in the record Petitioner cited in support of his true argument, the district court erred in finding that Petitioner failed "to plausibly allege that Officer Cook's July 17, 2028 statement in the arrest warrant information forms was false or misleading."

The district court denied relief on a finding that Petitioner failed "to plausibly allege that Officer Cook's July 17, 2028 statement in the arrest warrant information forms was false or misleading." Doc.337 p.9. The grounds for this conclusion were: "The differences between the July 17, 2018 arrest warrant information forms and the July 20, 2018 search warrant affidavit do not evince objective falsity." *Id*. That statement may be true. <u>But that was not Petitioner's argument.</u>

Contrary to the district court's claimed restatement of the argument, Petitioner did not simply note differences between two sworn affidavits. Petitioner pointed out that of the multiple times the officers, under oath and in trustworthy settings (body cam footage), reported on what Davis said when asked about drugs, only <u>one</u> of these times did anyone claim that Davis stated that any drugs found belonged to Petitioner—Cook's July 17, statement in the information forms used for the three arrest warrants. All other times that officers made statements on what Davis said when asked about drugs, again, under oath and in trustworthy settings, the officers reported that Davis' statement did not blame Petitioner.

The district court's ruling completely re-wrote Petitioner's argument, ignored the true argument, including the three times officers denied that Davis blamed. The statement that Petitioner failed to plausibly allege that the statement was "false or misleading" is simply untrue.

2. Primarily as a result of re-characterizing Petitioner's pro se argument and ignoring facts in the record Petitioner cited in support of his true argument, the district court erred in finding that Petitioner failed "to plausibly allege scienter."

To deny relief, the district court held, "[Petitioner] fails to plausibly allege scienter." Doc.337 p.9. Again, however, this is based on a re-writing of Petitioner's claim. He did not claim that the falsity of the statement was based on comparing two affidavits. The three times officers described Davis as not blaming Petitioner ((a) "not to my knowledge" was there any contraband;

(b) “no,” Davis did not claim contraband belonged to Petitioner; and (c) “I don’t know what my roommate has.”), including one of those times being Cook himself (“not to my knowledge”), showed that Cook knew or should have known that what he was claiming under oath in the July 17, 2018 affidavit was false. The statement that Petitioner failed to plausibly allege scienter is simply untrue.

3. By ignoring facts in the record Petitioner cited in support of his true argument, the district court erred in finding that Petitioner failed “to plausibly allege[] that the challenged statement about Davis was material to the magistrate’s probable cause determination.”

To deny relief, the district court held, “[Petitioner] fails to plausibly alleged that the challenged statement about Davis was material to the magistrate’s probable cause determination.” Doc.337 p.10. This is also untrue. The affidavit does not support probable cause without an allegation that Davis directly blamed Petitioner for possessing any found contraband. If it was not relevant, why would Cook make this assertion?

The district court’s reasoning was based on (1) Petitioner had signed a lease for that residence and (2) the affidavit “listing” that location “as [Petitioner’s] address” and listing contraband found there. But those two factors are really just one—that Petitioner signed a lease for a place where law enforcement found contraband. Signing the lease is not evidence of being at the residence.

Even if the affidavit had alleged that Petitioner visited the home, this would have been insufficient. See, e.g., *Ybarra v. Illinois*, 444 U.S. 85, 90-92, 62 L. Ed. 2d 238, 100 S. Ct. 338 (1979) (holding that police lacked probable cause to search defendant who was merely present in tavern in which bartender was selling heroin). “[A] suspect’s mere presence or arrest at a residence is too insignificant a connection with that residence to establish that relationship necessary to a finding of probable cause." *United States v. Savoca*, 761 F.2d 292, 297 (6th Cir. 1985) (quoting *United States v. Flores*, 679 F.2d 173, 175 (9th Cir. 1982)).

In *United States v. Reinholz*, 245 F.3d 765 (8th Cir. 2001), the Eighth Circuit held that the police did not have probable cause to arrest a suspect merely because they had been reliably informed that the suspect had legally purchased iodine, even though a trash search outside the suspect's home revealed drug paraphernalia. *Id*. at 776. The court reasoned that the police did not have probable cause because the suspect did not have a drug record, police did not observe him engage in any illegal activity, there was no corroborating police investigation, and surveillance failed to reveal any criminal activity connected to the suspect's house. *Id*. See also *United States v. Springfield*, 196 F.3d 1180, 1183 (10th Cir. 1999) ("'nearness to the place of the arrest of a co-conspirator or to the place of illegal activity' is not sufficient to establish probable cause") (quoting *United States v. Vazquez-Pulido*, 155 F.3d 1213, 1216 (10th Cir. 1998)); *United States v. Dozal*, 173 F.3d 787, 792 (10th Cir. 1999) (citing *United States v. Hansen*, 652 F.2d 1374, 1388 (10th Cir. 1981) (holding that merely traveling with drug dealers does not create probable cause for arrest)).

In *United States v. Anderson*, 981 F.2d 1560, 1566 (10th Cir. 1992), the defendant was observed at a home that contained marijuana, parked his car in the same parking lot as a rental truck also seen at the home with drugs, and drove carefully while he was being followed by police. *Id*. 1562-63. The Tenth Circuit held this information did not establish probable cause for arrest, stating "although [the defendant] showed some association with the [suspicious] residence, he did not otherwise take actions that would warrant believing he had committed or was committing a crime." *Id*. at 1566.

More importantly, the argument above assumed that Cook's affidavit established that Petitioner had signed a lease or showed the magistrate that there were grounds for believeing this was Petitioner's residence. But nothing in Cook's affidavit established that Petitioner had signed a lease for that residence. Nothing established why there was probable cause to believe Petitioner lived at the address and, thus, why Cook listed the address at the top. Nothing established that Petitioner was the "roommate." The district court's reasoning was not based on the four corners of the document but on other evidence that the magistrate who signed the warrant had not known about and could not have used to find probable cause.[4]

"Probable cause to arrest does not require facts sufficient to establish guilt, but it does require more than mere suspicion." *Vazquez-Pulido*, 155 F.3d at 1216.

Taking away the false claim that Davis named a roommate as being responsible for any contraband, and taking away any suggestion that Petitioner was a roommate, because that had not been established, this affidavit failed to show probable cause for Petitioner's arrest.

4. Primarily as a result of re-characterizing Petitioner's pro se argument and ignoring facts in the record Petitioner cited in support of his true argument, the district court erred in finding that Petitioner failed "to plausibly allege prejudice."

The district court held, "[Petitioner] fails to plausibly allege prejudice." To reach that conclusion, the district court first cited its earlier finding that Petitioner failed to show that

[4] "When determining whether an affidavit establishes probable cause, we look only to the four corners of the affidavit; information known to the officer but not conveyed to the magistrate is irrelevant." *United States v. Brooks*, 594 F.3d 488, 492 (6th Cir. 2010); *United States v. Pinson*, 321 F.3d 558, 565 (6th Cir. 2003).

Officer Cook's statement was false. As noted above, this in turn was based on the district court's own error in re-writing Petitioner's argument. The proof of falsity did not come from comparing two affidavits. There were two instances of officers saying under oath that Davis' response did not blame Petitioner, including one in which Davis expressly denied that the contraband was Petitioner's. There was one instance of an officer stating on body cam footage to other officers that Davis had not said anything helpful as an admission of guilt or naming Petitioner. And yet on July 17, 2018, Cook claimed something very different that allowed the officers to do something that no other fact cited had done or would do in the case—claim that Davis blamed Petitioner and therefore tied Petitioner to the contraband found at the residence.

The district court next pointed to the Fourth Circuit's decision to conclude that Petitioner had not shown prejudice. "As the Fourth Circuit noted on direct review, the government presented overwhelming evidence of [Petitioner's] guilt at trial." Doc.337 p.11. But the Fourth Circuit saw all the evidence presented because trial counsel had failed to request a *Franks* hearing and no evidence had been suppressed. It was not difficult to understand the argument Petitioner was making. He was saying that, had his counsel asked for a *Franks* hearing, based on three sworn and otherwise reliable officer statements denying that Davis blamed Petitioner for possessing the contraband, a reasonable probability exists that this statement would have been removed. Had the statement been removed, Petitioner was arguing, the remainder of the arrest warrants would not have supported a probable cause finding that Petitioner had any connection to the contraband (the only remaining fact, in the district court's eyes, was that Petitioner signed the lease), and thus the arrest and evidence subsequently obtained would have been suppressed. The *Leon* good faith exception would not have applied because Officer Cook knew there was reason not to believe the validity of the arrest warrants or the warrants that followed because he, Cook, had inserted this false claim that Davis blamed any contraband found as Petitioner's. It was completely inaccurate that Petitioner had not "even plausibly alleged prejudice."

5. The district court erred in holding that Petitioner's counsel was not ineffective for failing to make a motion for a *Franks* hearing post-trial on the grounds that the "motion would have been untimely and futile."

The district court held as a matter of law that Petitioner's counsel was not ineffective for failing to make a motion for a *Franks* hearing post-trial because that the "motion would have been untimely and futile." Doc. 337 p.11. But that decision once again ignored facts and ignored what Petitioner had argued and showed.

The district court was correct that Federal Rule of Criminal Procedure 12 required Petitioner to file evidentiary motions pre-trial "if the basis for the motion is then reasonably available and the motion can be determined without a trial on the merits." 12(b)(3)(C). Correct. But here again the district court ignored Petitioner's argument and re-wrote it. The district court repeatedly insisted that Petitioner's argument was that falsity of Cook's claim that Davis had blamed Petitioner was shown in comparing two affidavits. That was not the case. Two of the times Petitioner was citing as showing an officer clearly stating under oath that Davis had not blamed Petitioner came <u>during trial</u>. As the district court seemed not to understand, Rule 12(b)(3)(C) did not apply because the chronologically-last element or elements of the *Franks* motion Petitioner noted that his counsel was ineffective for failing to file was not reasonably available before trial. It was not true that the motion would have been untimely. Only as the record continued to show reasons to question Cook's honesty and motivation in attributing to Davis a statement he never made, was the full *Franks* argument established.

B. The Fourth Circuit Erred as a Matter of Law and Fact in Failing to Certify Issues for Appeal, as the District Court Failed to Construe the Pro Se Prisoner Litigant's § 2255 Motion as Presenting Viable Claims.

It's not difficult to see the argument being made. That trial counsel were ineffective for failing to object to prosecutorial misconduct and that appellate counsel was ineffective for failing to raise those issues on direct appeal. The district court appeared to be willing to liberally construe. But why never acknowledge that Petitioner was filing a § 2255 motion, in which ineffective assistance of counsel claims are appropriate and, indeed, where Petitioner had presented such claims? Instead, the district court noted that Petitioner had to show cause and prejudice without noting the obvious: Cause is counsel's failure to present the objection and/or make the argument. The district court correctly noted that Petitioner had "failed to raise these claims on direct appeal," Doc.337 p. 13 but somehow missed the easy transition from that to the idea that appellate counsel erred in failing to do so, since Petitioner was represented on appeal and because counsel speaks for a defendant on appeal. The district court correctly noted that § 2255 "generally cannot be used to raise claims not brought on direct appeal," but did not make the easy pivot from that construct to the daily-used understanding that § 2255 can be used to argue what counsel should have raised on direct appeal. Rather than liberally interpreting Petitioner's arguments, the district court appeared to be picking on Petitioner and taking advantage of his pro se status by not making these easy connections and findings. It is all right there. Cause is the ineffective assistance of Petitioner's former counsel.

Prejudice is shown from how the claim, if made, would have led to a different result of the case. The district court jumped to its own prejudice analysis of sorts, seemingly demonstrating that it understood (without expressly acknowledging in writing) that Petitioner might have intended an ineffective assistance of counsel claim which would include the element of alleging prejudice. It was not difficult to understand that the claim Petitioner was presenting was that his trial and appellate counsel were ineffective for failing to object to, and appeal, the government's conduct in knowingly allowing the case to proceed with Officer Cook's statement in the July 17, 2018 affidavits conflicting with three other statements of officers, including one in direct conflict—the officer expressly stating that Davis denied that the contraband was Petitioner's.

Liberally construing Petitioner's claims—as the district court was required to do—it was not true that Petitioner had failed to "plausibly allege[] * * * cause and prejudice." *Id*.

CONCLUSION

Petitioner asks the Court to grant this petition to address and resolve the Fourth Circuit's misapplication of this Court's precedent in *Slack*, *Miller-El*, and *Buck*, as the district court's denial of Petitioner's § 2255 motion was incorrect as a matter of law and fact. The district court ignored Petitioner's argument, parts of the record, re-wrote Petitioner's argument into one that could be easily defeated. In these ways, Petitioner's substantial constitutional rights have been violated. Petitioner asks the Court to order full briefing or to vacate the Fourth Circuit order declining to issue certificates of appealability and instructing the Fourth Circuit to grant certificates on all Petitioner's claims that should have been liberally interpreted as presenting valid claims of ineffective assistance of trial and appellate counsel.

Respectfully submitted,

ROBINSON & BRANDT, P.S.C.

Dated: 22 June 2026

/s/ Jeffrey M. Brandt
Jeffrey M. Brandt, Esq.
629 Main Street
Suite B
Covington, KY 41011
(859) 581-7777 voice
(859) 581-5777 facsimile
Counsel of Record for Petitioner

CERTIFICATE OF SERVICE

I certify that a true and accurate copy of the foregoing corrected petition for writ of certiorari, motion for leave to proceed in forma pauperis, and the following appendix were served, by U.S. Priority Mail on the date reported and signed below, upon Assistant U.S. Attorney Scott A. Lemmon scott.lemmon@usdoj.gov; and the Solicitor General's Office, Room 5614, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530-0001.

Dated: 22 June 2026

/s/ Jeffrey M. Brandt
Jeffrey M. Brandt