

No. _____

In the Supreme Court of the United States

CYNTHIA DAVIS, WARDEN,

Petitioner,

v.

DAVID M. SMITH,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Federal courts' authority to grant habeas relief is judgment-based. Federal courts may "entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court." 28 U.S.C. §2254(a), (b)(1)(A); *see Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). When a petitioner who succeeds in obtaining federal habeas relief is retried or resentenced, that petitioner receives a new state-court judgment. *See Magwood v. Patterson*, 561 U.S. 320, 341–43 (2010). Any challenge to that new judgment requires a trip back to the state court to exhaust the remedies available there. *See* 28 U.S.C. §2241(C)(3). Federal courts thus may not continue to supervise state-court proceedings. *See Pitchess v. Davis*, 421 U.S. 482, 490 (1975) (*per curiam*).

After obtaining federal habeas relief, David Smith was retried and resentenced in state court. He did not file a state-court appeal. Nor did he file a second petition for a writ of habeas corpus. Instead, he sought and received additional relief in federal court on his *original* petition, alleging that the state-court proceedings failed to comply with the federal court's habeas writ and were marred by the same constitutional error that justified the federal court's original writ.

The Question Presented asks:

Do federal courts have jurisdiction to grant additional habeas relief even after a successful habeas petitioner was retried, reconvicted, and resentenced in state court—and is therefore in custody pursuant to a new state-court judgment?

LIST OF PARTIES

The Petitioner is Warden Cynthia Davis.

The Respondent is David M. Smith.

LIST OF DIRECTLY RELATED PROCEEDINGS

1. *State v. Smith*, No. 2016CR00186 (Ohio Ct. Common Pleas, Portage County) (first judgment entered Nov. 7, 2016; second judgment entered April 22, 2025).
2. *State v. Smith*, No. 2016-P-0074, 2018 WL 6313398 (Ohio Ct. App. Dec. 03, 2018).
3. *State v. Smith*, No. 2019-0164, 156 Ohio St.3d 1452 (Ohio S.Ct. Feb. 4, 2020).
4. *Smith v. Eppinger*, No. 5:20-CV-00438-JPC, 2023 WL 4410525 (N.D. Ohio Jan. 11, 2023) (report and recommendation), *adopted by* 2023 WL 4071835 (N.D. Ohio June 20, 2023).
5. *Smith v. Davis*, No. 23-3604, 2024 WL 3596872 (6th Cir. July 31, 2024).
6. *Smith v. Davis*, No. 24-421, 145 U.S. 93 (2025) (*certiorari* denied Jan. 27, 2025).
7. *Smith v. Davis*, No. 5:20-cv-438, 782 F. Supp. 3d 566 (N.D. Ohio May 12, 2025).
8. *Smith v. Davis*, No. 25-3383, 2026 WL 1601830 (6th Cir. June 4, 2026).

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INTRODUCTION

David Smith has been convicted in state court not once, but *twice*, of almost murdering Quortney Toliver with a hammer. Those facts may seem familiar for some readers of this petition. That is because this crime was the subject of a previous petition for *certiorari*, which drew a sharp rebuke from Justice Thomas (joined by Justice Alito) to the Sixth Circuit for its “taste for disregarding” the Antiterrorism and Effective Death Penalty Act (“AEDPA”). *See Davis v. Smith*, 145 S.Ct. 93 (2025) (Thomas, J., dissenting from denial of *certiorari*). So at first blush this case may seem like one of those cases that returns to this Court on unfinished business. *See, e.g., Franchise Tax Bd. v. Hyatt*, 587 U.S. 230 (2019); *Encino Motorcars, LLC v. Navarro*, 584 U.S. 79 (2018); *Horne v. Dep’t of Agric.*, 576 U.S. 350 (2015); *Bond v. United States*, 572 U.S. 844 (2014).

But it is not. Though this case concerns the same crime and the same habeas petitioner who successfully challenged his first conviction, it comes to this court after a *new* trial, a *new* conviction, and a *new* sentence. But Smith did not appeal his new conviction or sentence in state court. Nor did he file a new petition for a writ of habeas corpus in federal court. He instead sought, and received, additional federal relief based on his original habeas petition.

That should not have been possible. This Court has made clear that federal courts do not have jurisdiction “to maintain a continuing supervision over a retrial conducted pursuant to a conditional writ granted by the habeas court.” *Pitchess v. Davis*, 421 U.S. 482, 490 (1975) (*per curiam*). And it has held that a petitioner must be “‘in custody’ under the conviction

or sentence under attack at the time his petition is filed.” *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). Consistent with that principle, other circuits have held that “[n]o reasonable jurist would debate whether [federal courts] could offer habeas relief from a non-existent judgment.” *Vreeland v. Long*, No.26-1058, 2026 WL 1831653, *2 (10th Cir. June 25, 2026) (*per curiam*). And no circuit other than the Sixth has traversed past this Court’s established judgment-based limit to federal habeas jurisdiction.

Under this Court’s precedent, the Sixth Circuit should have denied Smith’s request for additional relief because his theory of relief did not match his theory of jurisdiction. Smith sought *relief* based on events that occurred during his retrial. He invoked the Sixth Circuit’s *jurisdiction*, by comparison, based on his original habeas petition. But the judgment on which the Court’s jurisdiction was based no longer existed. It had been superseded by Smith’s new conviction and sentence. *Cf. Magwood v. Patterson*, 561 U.S. 320, 341–43 (2010). Once that judgment dissolved, so too did the federal courts’ jurisdiction. Smith also could not point to his new conviction and sentence as the basis for federal habeas jurisdiction. He had not exhausted his retrial-based claims in state court, nor had he challenged the state court’s new judgment through a new federal petition for a writ of habeas corpus.

Putting all that together, this case checks all the boxes for *certiorari* review or even summary reversal. It strictly conflicts with the judgment-based limit on federal habeas jurisdiction announced by *Maleng*, *Magwood*, and *Pitchess*. It has marooned itself on a jurisdictional island far from any other court and from which only this Court can rescue it. And this case is

the perfect vehicle to resolve the Question Presented for two reasons. *First*, this is the rare case in which the percolating problem presents itself cleanly for this Court’s review. That is because several other Sixth Circuit panels have blessed this expanded federal jurisdiction, but ultimately denied habeas relief, repeatedly keeping direct review out of reach. *See, e.g., Allah-U-Akbar v. Bradshaw*, 154 F.4th 482, 489 (6th Cir. 2025); *Johnson v. Bobby*, 170 F.4th 523, 532 (6th Cir. 2026). *Second*, given the extreme circumstances of this case, this Court does not need to answer the thornier questions of the scope of federal courts’ authority to enforce their orders. Whatever that scope may be, it should not include granting habeas relief based on an old judgment that was superseded by a new one.

Worse, if left to stand, the decision below unlocks a new level of almost limitless federal oversight over state-court proceedings. Perhaps proving the point, although Smith has been released from custody, the district court continues to assert jurisdiction over this case and any future state-court proceedings. *See* Order, R.76, PageID#6482–83. This Court has said, “few exercises of federal judicial authority” intrude on State sovereignty as much as federal habeas review. *Shinn v. Ramirez*, 596 U.S. 366, 376 (2022). Of them all, this one takes the cake.

OPINIONS BELOW

The district court denied Smith's petition for habeas corpus on June 20, 2023. The opinion is available online. *Smith v. Eppinger*, No.5:20-CV-00438-JPC, 2023 WL 4071835 (N.D. Ohio June 20, 2023); Pet.App.139a. The Sixth Circuit reversed and directed the district court to issue a conditional writ. That opinion is not published but is available online. *Smith v. Davis*, No.23-3604, 2024 WL 3596872 (6th Cir. July 31, 2024); Pet.App.97a.

Smith was retried in state court and was again convicted. After his second conviction, the district court awarded Smith unconditional habeas relief. The opinion is published. *Smith v. Davis*, 782 F. Supp. 2d 566 (N.D. Ohio May 12, 2025); Pet.App.70a. The Sixth Circuit affirmed the district court's decision. Its opinion is not published but is available online. *Smith v. Davis*, No.25-3383, 2026 WL 1601830 (6th Cir. June 4, 2026); Pet.App.1a.

JURISDICTIONAL STATEMENT

The Sixth Circuit issued its judgment on June 4, 2026. It denied rehearing *en banc* on June 30, 2026. This petition timely invokes the Court's jurisdiction under 28 U.S.C. §1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

28 U.S.C. §2254(a) and (b)(1) provide in relevant part that:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a

State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

(b)(1) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that—

(A) the applicant has exhausted the remedies available in the courts of the State

28 U.S.C. §2241(c)(3) provides in relevant part that:

(c) The writ of habeas corpus shall not extend to a prisoner unless—

...

(3) He is in custody in violation of the Constitution or laws or treaties of the United States;

STATEMENT

I. The Sixth Circuit awarded David Smith conditional habeas relief after he was convicted in state court of attempting to murder Quortney Tolliver.

Quortney Tolliver was a drug dealer—and David Smith was one of her clients. Trial Tr. Vol.2, R. 10-3, PageID#985–87, 997–1000. Smith reached out to Tolliver about obtaining drugs and the two texted back and forth about his request—including haggling over the price. *See id.* at PageID# 997–1009. Tolliver and Smith concluded their negotiations around 11 p.m.

and Smith texted that he would see Tolliver “tomorrow.” *Id.* at PageID#1007–08.

The conversation resumed the next morning. Tolliver told Smith that she needed a ride to Cleveland so she could get Smith the drugs he wanted, and Smith texted her at 10 a.m. to say that he would come pick her up. *Id.* at PageID#1010–11. Smith checked in at 10:40 a.m. to see whether Tolliver was “ready” and, after further discussion, called to let Tolliver know that he was “up the street” and asked if he could come pick her up. *Id.* at PageID#1012–13. Tolliver said that he could. *Id.*

Not long after that call ended, Tolliver was attacked with a hammer. Trial Tr. Vol.7, R.10-8, PageID#2254–55. Tolliver testified at trial that in the moments leading up to the attack, Smith knocked on Tolliver’s door, and she opened it for him. Trial Tr. Vol.2, R. 10-3, PageID#1014. When Tolliver turned around to finish getting ready, she felt a blow to her head. *Id.* She “turned back around” and “looked at [Smith] and ... got another hit” to the head before blacking out. *Id.* Tolliver eventually woke up in a hospital. *Id.*

Tolliver was less than forthcoming when the police initially interviewed her. When the police approached Tolliver while she was recovering at a rehabilitation center and showed her a photo of Smith, Tolliver denied knowing him very well. Trial Tr. Vol.7, R.10-8, PageID#2245–49. Even at the time, the police did not credit her denials. Tolliver was out on bond, *id.* at PageID#2247, and the officer who interviewed Tolliver believed that she was lying to avoid implicating herself in criminal activity and to hide the fact that she was a drug dealer from her mother, who was

present during the initial interview. *Id.* at PageID#2247–48, 2245. The officer’s suspicion proved to be correct, as Tolliver later stated that she was certain that Smith was the one who attacked her. *Id.* at PageID#2254.

Tolliver’s testimony was not the only thing that linked Smith to the attack. Phone records placed Smith at Tolliver’s residence. Smith’s own words, preserved in the text messages with Tolliver, showed that he was coming to her house. *See above* at 5–6. Cell-tower location data did the same; it showed that, at the time of the attack, Smith’s cell phone was communicating with a cell-phone tower located less than 1,800 feet from Tolliver’s home. Trial Tr. Vol.7, R.10-8, PageID#2223, 2230–34. DNA evidence also linked Smith to the scene. Although the quality of the sample was poor, two DNA samples from Tolliver’s sink matched Smith’s DNA profile with a 1 in 3,914 and 1 in 155 chance of not being his. Trial Tr. Vol.6, R.10-7, PageID#1843–47.

An Ohio jury convicted Smith of attempted murder and other counts. *State v. Smith*, 2018-Ohio-4799, ¶¶3 (Ohio Ct. App.). The state trial court sentenced Smith to 22 years in prison. *Id.* at ¶4. A state appellate court affirmed, holding in relevant part that the trial court did not err by failing to suppress Tolliver’s testimony identifying Smith as her attacker. *Id.* at ¶¶8, 49.

Smith petitioned for a writ of habeas corpus in federal court. The district court denied Smith’s petition, Pet.App.139a, but a Sixth Circuit panel majority reversed, Pet.App.98a. Over Judge Thapar’s dissent, the habeas panel held that the Ohio courts misapplied the Supreme Court’s decision in *Neil v. Biggers*, 409

U.S. 188 (1972), when they permitted the State to introduce Tolliver’s identification of Smith as her attacker. Pet.App.108a–128a; *see also id.* at 129a–138a (Thapar, J., dissenting). That identification, the panel majority held, was tainted by impermissibly suggestive questioning by the police. Pet.App.109a–111a. The habeas panel ordered the district court to issue a writ of habeas corpus “unless the State proceeds, within 180 days, to prosecute Smith in a new trial without utilizing Tolliver’s identification of Smith, which,” the panel majority held, “shall be suppressed and excluded from evidence.” Pet.App.128a.

This Court denied the Warden’s petition for a writ of *certiorari*. Justice Thomas, joined by Justice Alito, dissented. *Davis v. Smith*, 145 S.Ct. 93 (2025). Writing that the panel “blatantly disregard[ed]” AEDPA and Supreme Court precedent, the dissent would have summarily reversed the grant of habeas relief “to ensure that federal courts do not exceed their very limited role in collateral review of state criminal convictions.” *Id.* at 97–98.

II. Smith was reconvicted and resentenced but the federal courts granted habeas relief based on events that occurred during his retrial.

A. Smith was tried for a second time and convicted.

The State retried Smith within the 180 days that the panel’s conditional writ allowed. And while the State did not introduce evidence about Tolliver’s tainted identification of Smith, it did elicit testimony indicating that Smith was the person who was at Tolliver’s door just before the attack. *See* Pet.App.23a; *see also id.* at 62a (Thapar, J., dissenting) (noting the

difference between “prohibited testimony that Smith was the attacker” and “Tolliver’s actual testimony that Smith arrived at her home before the attack”).

This was done consistent with the state court’s orders. In an attempt to faithfully implement the federal courts’ orders, the state trial court reviewed the Sixth Circuit’s opinion and concluded that the Sixth Circuit’s instructions about what evidence was inadmissible at retrial could “only logically pertain to [Tolliver’s] identification of [Smith] as her attacker, not as an individual she had interaction and contact with prior to and including the day of the incident.” Tolliver’s other interactions with Smith, the state court noted, were not affected by the suggestive identification procedure that the Sixth Circuit found problematic and were “confirmed by [Smith’s] own statement and phone records.” *See* Judgment Entry, *State v. Smith*, No.2016CR186, attached to *Smith v. Davis*, 6th Cir. No.23-3604, Mtn. to Clarify, Doc.28 at p.19.

Smith sought to preempt Tolliver’s testimony. Shortly before his retrial was scheduled to begin in state court, Smith filed a “Motion for Clarification of Conditional Writ” in which he asked the Sixth Circuit to prevent the State from introducing not just Tolliver’s tainted identification, but any evidence about Tolliver’s interactions with Smith. *See Smith v. Davis*, 6th Cir. No.23-3604, Mtn. to Clarify, Doc.28. The Sixth Circuit denied Smith’s motion the next day without comment and without asking the Warden to respond. Pet.App.96a.

Smith was ultimately convicted and sentenced for a second time. *See* Pet.App.3a.

B. Smith “appealed” his second conviction to the original federal habeas court rather than a state court.

Rather than filing a state-court appeal, Smith proceeded directly to federal court. Arguing that his retrial was inconsistent with the original panel’s conditional writ (which the panel granted based on supposed errors in the *first* trial affecting the *first* conviction), Smith sought and obtained an order from the district court “enforc[ing]” that writ. Pet.App.70a–71a.

The Warden asked the habeas panel to stay the district court’s order pending appeal. The panel declined, concluding in part that the Warden’s appeal was unlikely to succeed. Pet.App.28a. Most significantly, it gave little weight to the Warden’s challenge to the district court’s jurisdiction to review the state-court retrial proceedings. Federal habeas jurisdiction terminates, the panel wrote, either when a State satisfies the terms of a conditional writ of habeas corpus, or when it releases a habeas petitioner and vacates his conviction. Pet.App.29a.

The panel concluded that the Warden had done neither. On jurisdiction—the panel rejected the Warden’s argument that the district court lost jurisdiction when Smith’s initial conviction was vacated. Pet.App.31a–36a. The factors that the Warden pointed to as evidence of vacatur, including Smith’s transfer from state prison to county jail, the setting of a new bond, and the granting of a new trial, were, in the panel’s opinion, insufficient. *See id.* On the merits—the panel declined to recognize a difference between testimony identifying Smith as Tolliver’s attacker and testimony that Tolliver allowed Smith into

her home moments before the attack. Pet.App.30a–31a. Finding that the stay factors favored Smith, the panel denied the Warden’s motion for a stay and ordered that Smith be released immediately. Pet.App.41a.

Judge Thapar again dissented. He wrote that the majority “misunderst[ood] the limited nature of the extraordinary writ of habeas corpus,” and would have granted the stay because the district court lacked jurisdiction. Pet.App.53a (Thapar, J., dissenting). It was without jurisdiction, Judge Thapar wrote, both because Smith’s conviction had been vacated and because the terms of the conditional writ had been satisfied. Pet.App.46a–47a. Judge Thapar would have held that the totality of the circumstances demonstrated that Smith’s conviction had been vacated. Pet.App.47a–53a. Finally, Judge Thapar highlighted a constitutional problem with the majority’s conclusion that Smith’s original conviction was never vacated: If Ohio *had not* “vacate[d] Smith’s conviction before re-trying him for the same offense, then Smith’s second trial violated the Double Jeopardy Clause.” Pet.App.55a.

On the merits, the habeas panel’s opinion largely tracked its stay analysis. As foreshadowed by that earlier opinion, the panel majority held that the district court had jurisdiction to issue an unconditional writ of habeas corpus both because the State had not complied with the earlier conditional writ and because Smith’s original conviction had never been vacated. Pet.App.7a–17a.

Judge Thapar dissented yet again. He again emphasized that the majority engaged in a “severe and unprecedented intrusion onto state sovereignty.”

Pet.App.19a (quotation omitted) (Thapar, J., dissenting). He noted that the majority’s opinion conflicted with this Court’s precedent by allowing the district court to “maintain a continuing supervision over [Smith’s] retrial.” Pet.App.20a. (quoting *Pitchess*, 421 U.S. at 490).

The Warden sought rehearing *en banc*, but “no judge ... requested a vote on the suggestion for rehearing *en banc*,” and the Sixth Circuit denied that petition. Pet.App.155a. Smith was released from the Warden’s custody.

C. The federal district court has continued to demand updates about potential retrial in state court.

After the Sixth Circuit issued its mandate, the district court issued a new order in which it continued to supervise Smith’s state-court proceedings. *See* Order, R.76, PageID#6482–83. The order required the Warden to update the district court on the locally elected prosecutor’s plans to potentially retry Smith for a third time. *Id.* If the prosecutor intends to retry Smith, the district court demanded briefing from the Warden on whether either the Fifth Amendment’s Double Jeopardy Clause or the Sixth Circuit’s original conditional writ prevents such a retrial. *Id.*

REASONS TO GRANT THE PETITION

The decision below completes the checklist for this Court’s *certiorari* review. It is “in conflict with [this Court’s] precedents.” *See Army & Air Force Exch. Serv. v. Sheehan*, 456 U.S. 728, 733 (1982). It so far exceeds the views of other federal courts that it places the Sixth Circuit on an island of one. *See Braxton v. United States*, 500 U.S. 344, 347 (1991). And it

greenlights “intru[sions] on state sovereignty to a degree matched by few exercises of federal judicial authority,” *Shinn v. Ramirez*, 596 U.S. 366, 376 (2022), by allowing federal courts to meddle in state-court proceedings even after the judgment invoking the court’s jurisdiction has been replaced by a new one after a retrial.

The Sixth Circuit may have been “reluctan[t]” to “deploy[] en banc review” in this case, *see Davis v. Smith*, 145 S.Ct. 93, 97 (2025) (Thomas, J., dissenting), but this Court should not be so hesitant about exercising its own authority now to correct a grave jurisdictional error.

I. The Sixth Circuit defied this Court’s precedents by continuing to exercise habeas jurisdiction after Smith was retried, reconvicted, and resentenced in state court.

This Court has consistently held that the federal habeas power is focused on state court *judgments*. The Sixth Circuit disregarded this judgment-based limit on its jurisdiction—and not for the first time. This jurisdictional creep now allows federal courts in the Sixth Circuit to exercise jurisdiction based on expired state-court judgments and to supervise state-court proceedings even after a habeas petitioner has been retried, reconvicted, and resentenced in state court. In the Sixth Circuit at least, jurisdiction is endless. Indeed, the federal habeas court in this case continues to supervise a potential third trial before it has even begun. Tellingly, no other Circuit has come close to such an expanded view of federal habeas jurisdiction. The Sixth Circuit stands so far apart from the other circuits in flouting this Court’s law that the Warden cannot fairly claim that a true split exists.

That is because to ask the Question Presented is to answer it—in the negative.

A. The Sixth Circuit’s decision conflicts with this Court’s precedent.

1. As is relevant here, federal courts may entertain petitions for writs of habeas corpus from persons “in custody pursuant to the judgment of a State court.” 28 U.S.C. §2254. At common law, a writ of habeas corpus “authorized a single form of relief: the prisoner’s immediate release from custody.” *Wilkinson v. Dotson*, 544 U.S. 74, 85 (2005) (Scalia, J., concurring). And while AEDPA broadened the relief available to “permit relief short of release,” *see id.*, the Court has held that federal courts do not possess “supervisory authority over state trial courts,” *Jennings v. Stephens*, 574 U.S. 271, 278 (2015). Federal courts, in other words, may not “maintain a continuing supervision over a retrial conducted pursuant to a conditional writ granted by the habeas court.” *Pitchess v. Davis*, 421 U.S. 482, 490 (1975). This important limitation flows from three foundational habeas principles.

First, it flows from the requirement that a habeas petitioner must be “‘in custody’ under the conviction or sentence under attack at the time his petition is filed.” *Maleng v. Cook*, 490 U.S. 488, 490–91 (1989). AEDPA permits federal courts to “entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” §2254(a). Custody is an absolute requirement. AEDPA also provides that “the writ of habeas corpus *shall not* extend to a prisoner unless ... [h]e is in custody in violation of the Constitution or laws ...

of the United States.” §2241(c), (c)(3) (emphasis added).

Consistent with AEPDA’s custody requirements, the Court has held that federal courts lose jurisdiction over a habeas petition when a petitioner’s conviction has fully expired. *Maleng*, 490 U.S. at 491–92; *see also Alaska v. Wright*, 593 U.S. 152, 153–54 (2021) (*per curiam*). A petitioner who is “no longer serving the sentences imposed” pursuant to a state-court conviction “cannot bring a federal habeas petition directed solely at” that conviction. *Lackawanna Cnty. Dist. Atty. v. Coss*, 532 U.S. 394, 401 (2001). While some collateral consequences are sufficient to satisfy the custody requirement, the mere possibility of such consequences is not enough to confer jurisdiction. *Maleng*, 490 U.S. at 492.

Second, the limitation on continuing supervision flows from the clear lines that the Court has drawn at state-court judgments. The Court has held that when a successful habeas petitioner seeks additional habeas relief after having been resentenced in state court, the new sentence constitutes a “new judgment intervening between the two habeas petitions.” *Magwood v. Patterson*, 561 U.S. 320, 339 (2010) (quoting *Burton v. Stewart*, 549 U.S. 147, 156 (2007)); *cf. also Dotson*, 544 U.S. at 83 (distinguishing between a judgment authorizing a petitioner’s confinement and a “new judgment” obtained through a new trial). When a habeas petitioner receives a new judgment, any petition that challenges that judgment is a “new” petition under AEDPA and is not a “second or successive” petition for purposes of §2244(b). *Magwood*, 561 U.S. at 342.

Third, the limitation on continuing supervision flows from the exhaustion requirement that has

always attached to federal courts' habeas power. See *Picard v. Connor*, 404 U.S. 270, 275–76 (1971) (citing *Ex Parte Royall*, 117 U.S. 241 (1886)). The exhaustion requirement is now codified in §2254(b)(1)(A), which states that an “application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears that the applicant has exhausted the remedies available in the courts of the State.” Exhaustion requires a habeas petitioner to first challenge a state-court judgment in “state court in accordance with state procedures.” *Shinn*, 596 U.S. at 371. Such a requirement “reflects a policy of federal-state comity” and permits federal courts to entertain habeas claims “[o]nly if the state courts have had the first opportunity to hear the claim sought to be vindicated in a federal habeas proceeding.” *Picard*, 404 U.S. at 276. And it means, combined with *Magwood*, that a habeas petitioner who receives a new judgment must start again in state court—by complying with the exhaustion requirements that apply to all new habeas petitions.

These principles do more than just limit federal habeas courts' jurisdiction. They also restrict how far federal courts may go in enforcing their own orders. It is well-settled among the circuits that federal courts generally retain jurisdiction to enforce the terms of their conditional orders. See *Gibbs v. Frank*, 500 F.3d 202, 205 (3d Cir. 2007); *Jensen v. Pollard*, 924 F.3d 451, 454 (7th Cir. 2019); *Leonardo v. Crawford*, 646 F.3d 1157, 1161 (9th Cir. 2011); *Gentry v. Deuth*, 456 F.3d 687, 692 (6th Cir. 2006). But that power is limited by §2254 and §2241, which authorize federal courts to entertain habeas petitions only when those petitions are filed by individuals in custody pursuant

to a state-court judgment. That means jurisdiction to grant habeas relief runs out where custody and the judgment end.

2. The Sixth Circuit disregarded all of this. Most significantly, when it granted Smith habeas relief for the second time, it ignored this Court's precedents both defining a "judgment" and requiring that the judgment remain undisturbed throughout a habeas proceeding.

The Sixth Circuit agreed that it would have lacked jurisdiction to award Smith additional habeas relief if Smith's original conviction had been vacated. The panel simply concluded that it had not been. *See* Pet.App.6a–7a, 10a–17a. That conclusion conflicts with *Magwood*. And it ignores the most compelling evidence that Smith was no longer in custody pursuant to the state-court judgment that he originally challenged: his entirely new conviction and sentence.

Smith's second conviction should have provided irrefutable proof that he was no longer in custody pursuant to his original state-court judgment. No one disputes that Smith was retried after the Sixth Circuit issued its conditional writ of habeas corpus, he was convicted of attempted murder for a second time, and he was sentenced on that second conviction. That means that, when Smith sought additional habeas relief in federal court, he was not in custody pursuant to the judgment that his habeas petition originally challenged. He was instead in custody pursuant to his *new* state-court conviction. *See Magwood*, 561 U.S. at 324; *see also Burton*, 549 U.S. at 156 (a judgment in a criminal case consists of a conviction and sentence).

As Judge Thapar noted in dissent, if Smith's original judgment of conviction remained in place, then the

second judgment would have violated the Fifth Amendment's Double Jeopardy Clause. See Pet.App.55a–57a (Thapar, J., dissenting from the denial of a stay pending appeal). The Double Jeopardy Clause prohibits, in relevant part, “a second prosecution for the same offense after conviction” and “multiple punishments for the same offense.” *North Carolina v. Pearce*, 395 U.S. 711, 717 (1969). As Judge Thapar noted, if Smith's original conviction had not been vacated, then a retrial would, by itself, violate these prohibitions. See *id.* And if even a *trial* by itself would have run afoul of the Double Jeopardy Clause, then there can be no question that a *second judgment of conviction* for the same offense would have.

The Sixth Circuit majority largely ignored Smith's second judgment of conviction. It wrongly focused on whether Smith's conviction had been vacated “*before retrial*.” See Pet.App.31a (denying stay pending appeal) (emphasis added); Pet.App.10a–17a (focusing on events that occurred before retrial). And the circuit precedent on which the Sixth Circuit relied similarly involved pretrial events. See Pet.App.10a–17a. To be clear, even the pretrial events demonstrated that Smith's conviction had been vacated; as Judge Thapar wrote in dissent, the “totality of the circumstances” showed that was the case. See Pet.App.20a; Pet.App.49a–53a. But even if Smith's conviction had not been vacated *before* he was retried, his new conviction and sentence were, by themselves, incontrovertible evidence that his earlier conviction had been vacated *after* the conclusion of that trial. The resulting new judgment should have divested the federal courts of jurisdiction over this case.

The Sixth Circuit's contrary decision cannot be justified on the basis that Smith's second trial allegedly

involved the same type of constitutional errors that infected the first trial. If Smith were challenging the new state-court judgment, then the exhaustion requirements found in §2254(b)(1)(A) would apply. *See Taylor v. Philbin*, No.4:21-CV-214, 2022 WL 2913468, *2 (M.D. Ga. April 15, 2022). But Smith did not even try to satisfy those requirements; he never appealed his new conviction or otherwise challenged in state court the new judgment that now justified his detention.

Smith’s failure should have posed an insurmountable barrier to further relief. But it did not even slow the Sixth Circuit majority down. The Sixth Circuit awarded him a second round of habeas relief even though it acknowledged that Smith was attacking a new and different judgment born from a new trial and new sentence. *See* Pet.App.23a (denying a stay because Smith’s “retrial suffered from the same constitutional defect as his initial trial”); Pet.App.7a–9a (granting merits relief based on events at retrial).

A coda before proceeding. This Court has said that States may seek further review of a *grant* of habeas relief even after the judgment that provides the foundation for habeas jurisdiction has been vacated and replaced with a new judgment. In *Kernan v. Cuero*, 583 U.S. 1 (2017) (*per curiam*), for example, the Court held that even after a state-court resentencing, federal courts retain jurisdiction to “undo what [a] *habeas corpus* court did.” *Id.* at 6 (quotation omitted); *see also Calderon v. Moore*, 518 U.S. 149 (1996) (*per curiam*) (reversing grant of habeas relief even though “the administrative machinery necessary for a new trial has been set in motion”). But that asymmetry does not render false the judgment-based line that the Warden draws here. Reversing relief is meaningfully

different from granting additional relief, which is what Smith sought.

B. The Sixth Circuit’s decision is the latest in a line of cases expanding supervisory jurisdiction over state-court proceedings.

This is not the first or only case in which the Sixth Circuit has exceeded its habeas jurisdiction by continuing to supervise state-court proceedings. The initial excursions started small. They began with the time after writ issuance but before writ compliance. They then extended *after* writ compliance. They finally grew all the way beyond retrial, reconviction, and resentencing. The Court should take this opportunity to prune this jurisdictional Audrey II before the Sixth Circuit becomes the “Little Shop of Horrors.”

After writ issuance. One of the first examples of the Sixth Circuit’s dramatic expansion of federal habeas jurisdiction came in *D’Ambrosio v. Bagley*, 656 F.3d 379 (6th Cir. 2011), *cert. denied*, 565 U.S. 1185 (2012). That decision, which laid the groundwork for many of the decisions that followed, prohibited the retrial of a successful habeas petitioner based on events that occurred *after* a federal court had issued an unconditional writ of habeas corpus. *Id.* at 383 (quoting *D’Ambrosio v. Bagley*, 688 F.Supp.2d 709, 727–28 (N.D. Ohio 2010) as prohibiting retrial based on the State’s conduct ahead of retrial). According to the Sixth Circuit, Rule 60(b) gives federal habeas courts the power to act even “after [an] unconstitutional conviction [is] dispensed with.” *Id.* Federal habeas courts, *D’Ambrosio* held, have “continuing jurisdiction over [a] grant of an unconditional writ of habeas corpus pursuant to a Rule 60(b) motion as long as it had

jurisdiction to grant the unconditional writ in the first place.” *Id.* at 388.

Judge Boggs dissented in *D’Ambrosio*. He wrote that the *D’Ambrosio* majority ignored this Court’s decision in *Pitchess*, 421 U.S. at 486–87, when it relied on Rule 60(b) as a basis for asserting supervisory authority over the state-court proceedings. *See D’Ambrosio*, 656 F.3d at 393–95 (Boggs, J., dissenting). Judge Boggs wrote that it was “particularly troubling,” that the majority in *D’Ambrosio*, “permit[ed] federal courts to order habeas relief not only based on the conditions leading to an underlying conviction, but also based on the conditions of an ongoing state criminal proceeding.” *Id.* at 397.

After writ compliance. The Sixth Circuit’s subsequent decisions (including the one at issue here) have steadily expanded *D’Ambrosio*’s already-broad interpretation of its habeas jurisdiction. In *Mason v. Mitchell*, 729 F.3d 545 (6th Cir. 2013), for example, the Sixth Circuit continued to exercise jurisdiction over a habeas petition even though the petitioner’s unconstitutional sentence had undoubtedly been vacated. *See id.* at 549. According to *Mason*, federal courts have supervisory jurisdiction to decide, “in conjunction with a determination of whether [a] state complied with a conditional writ ... whether to bar reprosecution,” even after a State has complied with a conditional writ and vacated a petitioner’s conviction or sentence. *Mason*, 729 F.3d at 550 (citing *D’Ambrosio*, 656 F.3d at 389–90).

Sailing even further from shore, the Sixth Circuit recently claimed jurisdiction to supervise state-court proceedings after the conditions of a writ of habeas corpus have been fully satisfied. Relying on *Mason*’s

broad theory of federal-habeas jurisdiction, the Sixth Circuit held that federal appellate courts “retain[] jurisdiction to review a district court’s decision to convert a conditional writ to an unconditional writ despite the state’s subsequent compliance” with that writ. *Allah-U-Akbar v. Bradshaw*, 154 F.4th 482, 489 (6th Cir. 2025) (citing *Mason*, 729 F.3d at 549–50). Now, in the Sixth Circuit at least, federal courts retain jurisdiction to impose sanctions on a State that has fully complied with a writ of habeas corpus simply because they believe that the State did not do so quickly enough. *See id.*

Like Judge Thapar in this case, and Judge Boggs in *D’Ambrosio*, Judge Griffin dissented from the majority’s jurisdictional holdings in *Allah-U-Akbar*. *Id.* at 497–501. As the dissent did in *D’Ambrosio*, he emphasized the fact that 28 U.S.C. §2241 states in relevant part that the “writ of habeas corpus shall not extend to a prisoner unless,” he is “in custody in violation of the Constitution or laws or treaties of the United States.” *Allah-U-Akbar*, 154 F.4th at 497 (Griffin, J., dissenting) (quoting §2241(c)(3)). And once an “unconstitutional judgment is gone,” he wrote, “so too is federal jurisdiction.” *Id.* at 498 (Griffin, J., dissenting) (quotation omitted). As in this case, however, the dissent’s objections in *Allah-U-Akbar* fell on stony ground.

After new judgment. Finally, in a decision that foreshadowed the one at issue here, the Sixth Circuit recently held that even the “[i]ssuance of a new judgment ... does not strip us of our inherent and constitutionally recognized habeas power.” *Johnson v. Bobby*, 170 F.4th 523, 532 (6th Cir. 2026). Directly contradicting *Maleng*, it further held that a federal habeas court’s jurisdiction is not “limited to the

judgment that [a] §2254 petition attacked.” *Id.* at 531. That decision, which ultimately denied habeas relief, was grounded in the type of custody-focused analysis that this Court rejected in *Magwood* in favor of a judgment-focused inquiry. *See id.* at 532; *see also Magwood*, 561 U.S. at 333–34.

This case is therefore just the latest example of the Sixth Circuit’s insatiable jurisdictional appetite. Each of its decisions takes another step away from *Pitchess*’s understanding of limited federal-habeas jurisdiction. As long as it remains uncorrected, the Sixth Circuit’s broad jurisdictional precedent “lies about like a loaded weapon ready for the hand of any [court] that can bring forward a plausible claim of an urgent need.” *O’Lone v. Estate of Shabazz*, 482 U.S. 342, 357–48 (1987) (Brennan, J., dissenting) (quotation omitted).

Indeed, the district court below already has. Already in this case, it has viewed the Sixth Circuit’s precedent as an invitation to continue to supervise any potential state-court retrial of Smith. Even though Smith has been released from the Warden’s custody, the district court has inquired about whether the State intends to retry Smith and implied that there may be limits on its ability to do so. *See* Order, R.97. The district court’s order is plainly impermissible under *Pitchess* because, even if there is yet another retrial in this case, the jurisdictional hook for federal-habeas jurisdiction (the offending first judgment) has been vacated, and twice over at this point.

C. Unlike the Sixth Circuit, other circuits respect the jurisdiction-based line that this Court has drawn and cabin federal habeas jurisdiction to only a challenged judgment.

Unlike the Sixth Circuit in this case, most federal courts have acknowledged that federal habeas jurisdiction starts and ends with a challenged judgment. Some, pointing to *Maleng*, recognize that AEDPA's custody requirement demands "that [a] habeas petitioner be "in custody" under *the conviction or sentence under attack at the time his petition is filed*" and that federal courts lack jurisdiction to consider challenges to any *other* convictions. *Dockery v. Lee*, No.21-2234, 2022 WL 16543813, *2 (2d Cir. Oct. 31, 2022) (quoting *Maleng*) (emphasis in original); *see also* *Batiste v. Scott*, 134 F.3d 361 (table), 1998 WL 27137 (1st Cir. 1998) (*per curiam*); *Wilson v. Flaherty*, 689 F.3d 332, 337 (4th Cir. 2012); *In re Wilson*, No.25-60399, 2025 U.S. App. LEXIS 21213, *1 (5th Cir. Aug. 19, 2025) (*per curiam*). Others point to *Magwood's* similar rule. The Eleventh Circuit has held, for example, that *Magwood* made clear "that the only judgment that counts" for habeas purposes "is the judgment 'pursuant to' which the prisoner is 'in custody.'" *Patterson v. Fla. Dep't of Corr.*, 849 F.3d 1321, 1326 (11th Cir. 2017) (*en banc*); *cf. also* *Ferreia v. Sec'y, Dept. of Corr.*, 494 F.3d 1286, 1293 (11th Cir. 2007) (holding before *Magwood* that a federal court's habeas power is "focused on the judgment which holds the petitioner in confinement").

Consistent with this Court's judgment-focused approach, the Tenth Circuit has held that federal courts do not have jurisdiction to consider challenges to state-court judgments that no longer have any legal effect. *Magwood*, the Tenth Circuit held, "makes clear

that a §2254 application challenges a particular judgment.” *Vreeland v. Long*, No.26-1058, 2026 WL 1831653, *2 (10th Cir. June 25, 2026) (*per curiam*) (denying a certificate of appealability). When that judgment “no longer ha[s] any effect,” a federal district court cannot “offer habeas relief” based on the “non-existent judgment” and must dismiss a habeas challenge to that judgment “for lack of subject-matter jurisdiction.” *Id.* The Tenth Circuit found that this jurisdictional question is not a close call; it is so settled that “[n]o reasonable jurist” would disagree. *Id.*

Finally, several district courts in the Ninth Circuit have, like the Tenth Circuit, concluded that federal courts do not have jurisdiction over challenges to a no-longer-effective state-court judgment. One held that a habeas challenge was moot when a petitioner was resentenced and therefore was “no longer in custody pursuant to the original judgment of conviction, which [was] the judgment of conviction challenged in the habeas petition.” *Pellegrini v. Garrett*, No.2:01-cv-01382, 2021 WL 2916925, *2 (D.Nev. July 12, 2021). Another held that a petitioner’s resentencing deprived it of jurisdiction over a challenge to petitioner’s original sentence. *Yazzie v. Ryan*, No.CV-18-8222, 2021 WL 3492068, *4 (D.Ariz. Aug. 9, 2021) (applying *Maleng*). And a third concluded that it had no jurisdiction to consider in the first instance any challenges to a state-court resentencing. *Boggett v. Evans*, No.CV 06-1275, 2012 WL 6097106, *2 (E.D. Cal. Dec. 7, 2012). In so holding, it noted that federal courts retain “no jurisdiction to enforce any conditions concerning issues remanded to state court.” *Id.* (citing *In re C & M Properties, L.L.C.*, 563 F.3d 1156, 1162 (10th Cir. 2009) for the principle that “[a]ny district court

order putatively deciding any aspect of a claim remanded to state court is but an advisory opinion”).

These cases do not conflict with the Sixth Circuit’s decision in the more traditional sense. For good reason. None asks the relevant question—whether a federal habeas court can supervise a second (and potentially a third) trial after the judgment giving rise to jurisdiction has been replaced by a new one. That is because there should be no debate on the answer. And the fact that this question is not asked in cases from other circuits illustrates how far afield the Sixth Circuit has strayed from this Court’s precedent in *Pitchess*, *Maleng*, and *Magwood*. The Sixth Circuit should not be able to insulate its decision from review by exercising continuing supervisory jurisdiction in a way that no other circuit would have even contemplated. Rather, the Sixth Circuit’s novel approach to jurisdiction should encourage this Court to correct a Circuit that is far out of step with this Court’s law.

II. This case presents an ideal vehicle to address an important jurisdictional question that has repeatedly evaded review.

This case provides one of the first direct opportunities for this Court to address a malignant, and recurrent, aspect of the Sixth Circuit’s jurisdictional precedents. And, given the extreme posture of this case, it does not implicate harder questions about federal courts’ authority to enforce the terms of its orders.

A. This case cleanly presents an important question about federal habeas jurisdiction that has thus far evaded this Court’s review.

In many of the cases that the Sixth Circuit has announced and applied its unlawfully broad jurisdictional rules, it ultimately denied federal habeas relief. So this Court has routinely been denied the opportunity to take the question head on—or rectify the problem. Take a few recent examples. In *Johnson*, the Warden could not seek review of the Sixth Circuit’s holding that a federal court’s habeas jurisdiction is not “limited to the judgment [that a] §2254 petition attacked,” because the Circuit also denied substantive habeas relief. 170 F.4th at 531, 539. The Sixth Circuit did the same in *Allah-U-Akbar*. It reaffirmed *D’Ambrosio*’s and *Mason*’s broad theories of jurisdiction even though it ultimately denied the habeas petitioner the relief he sought. See *Allah-U-Akbar*, 154 F.4th at 489–494, 486. Because this Court reviews judgments, not opinions, *Chevron, U.S.A., Inc. v. NRDC, Inc.*, 467 U.S. 837, 842 (1984), the result has been to keep States under the Sixth Circuit’s supervisory thumb. And now, a federal court threatens to supervise a potential *third* trial based on purported errors in the first, even after the State obtained a *second* conviction from a *second* trial. *Above* at 12. This Court should take this opportunity to correct the mischief that abounds in the Sixth Circuit.

B. The extreme posture avoids harder questions about the limits on federal courts’ jurisdiction to enforce their own orders.

The important jurisdictional question that this case presents is not complicated by questions at the margins. This case asks whether a new state-court judgment deprives a federal court, whose jurisdiction arose from errors in a prior vacated judgment, of jurisdiction to exercise oversight predicated on the now-

superseded judgment. Because a new judgment provides a bright-line jurisdictional boundary, this case is not complicated by questions about federal courts' power to enforce their own orders, for example after a writ is issued but no trial has begun.

As a threshold matter, it is doubtful that the Sixth Circuit even had the power to issue the order that it did in this case. A conditional writ of habeas corpus “serves only to delay the release in order to provide the State an opportunity to correct the constitutional violation.” *Dotson*, 544 U.S. at 86 (Scalia, J., concurring) (quotation omitted). The Sixth Circuit’s original writ (which was based on purported errors in Smith’s first judgment of conviction) did more than that. By purporting to limit the evidence that could be introduced should the State seek to retry Smith, it attempted to dictate and control the state-court proceedings in a way that *Pitchess* would otherwise prohibit. As the district court observed, the Sixth Circuit’s conditional writ “invite[d] the federal judiciary” to supervise the State’s retrial process. Hearing Tr., R.51, PageID#3884. That is exactly what *Pitchess* says that federal habeas courts *may not* do. *Pitchess*, 421 U.S. at 490. At the very least, the implications of orders like the one the Sixth Circuit issued here show why such orders are “atypical.” See *Jennings*, 574 U.S. at 277.

But this case does not require the Court to decide whether such orders are merely “atypical” or whether they are, in fact, impermissible. Even assuming the Sixth Circuit *did* have the power to limit future state-court proceedings in the way that it did, and even assuming it could *generally* enforce its conditional writ, it missed its opportunity to do so here: before the prior

offending judgment was replaced by a new judgment from a new trial.

Perhaps proving the point, the Sixth Circuit did not need to wait to act in this case until after Smith had been retried and resentenced; it could have acted sooner. The Sixth Circuit issued the judgment at issue here after Smith had been retried, reconvicted, and resentenced. Smith, however, asked the Sixth Circuit to intervene before any of that happened. He turned to the federal courts for help on the eve of trial, after it became apparent that the state court intended to permit the State to introduce evidence implicating Smith in the attack on Tolliver. He asked the Sixth Circuit to “clarify” its conditional writ and to hold that the State could not introduce *any* evidence of Tolliver’s interactions with Smith—not just her tainted identification. *See Smith v. Davis*, 6th Cir. No.23-3604, Mtn. to Clarify, Doc.28. The Sixth Circuit denied Smith’s motion the next day. Pet.App.96a.

The Sixth Circuit’s decision to wait until after Smith was retried and resentenced simplifies this case. Because the Sixth Circuit chose not to avail itself of the opportunity to act before Smith was retried and resentenced, this case does not raise concerns about the power of federal courts to enforce their own orders. The only question at issue in this case is one of timing. It asks: *when* must federal courts exercise that power? Whatever the answer in other circumstances, the answer here is clear: a federal courts’ residual power to enforce the conditions of its order based on a first judgment evaporates with a second.

The Court also does not need to be concerned that a decision in the Warden’s favor will allow a State to “hold a prisoner under a new judgment infected by the

same conditional violation that justified the order's entry in the first place." *See Jennings*, 574 U.S. at 288 (Thomas, J., dissenting). State courts are unlikely to want to repeat a constitutional error or violate a federal court's order.

The state court here certainly did not. It made every effort to comply with the Sixth Circuit's order and tried to avoid repeating the constitutional mistake that provided the basis for the Sixth Circuit's conditional writ. After reviewing the conditional writ, the state court determined that it could "only logically pertain to [Tolliver's] identification of [Smith] as her attacker, not as an individual she had interaction and contact with." *See Smith v. Davis*, 6th Cir. No.23-3604, Mtn. to Clarify, Doc.28 at pp.18–19. Any fault in this case lies not with the state court, but with the Sixth Circuit's order, which, the state court noted, was "not specific" or "complete" in terms of what evidence it would allow the State to introduce. *See Smith v. Davis*, 6th Cir. No.23-3604, Supplement to Mtn., Doc.29 at pp.45–46.

The mere prospect that some other state court might repeat a constitutional error in some other proceeding does not mean that federal courts have license to exceed the limits of their jurisdiction. Even if a state court repeats a constitutional error, "[i]t will not take a court long to dispose of such claims where the court has already analyzed the legal issues." *See Magwood*, 561 U.S. at 340 n.15.

There is one last reason why the Court need not be concerned about what a decision in this case might say about the power of federal courts to enforce their own orders and that is because no violation of the Sixth Circuit's order occurred in this case. As Judge Thapar

noted, the State “did exactly” what the Sixth Circuit’s conditional writ required. Pet.App.57a. Any contrary conclusion was wrong, *see* Pet.App.57a–66a, and any suggestion that the Warden waived or forfeited such an argument was an abuse of discretion. As the district court acknowledged, the Warden “spoke to the merits of the retrial,” Transcript, R.51, PageID#3875, and the Warden maintained that the prosecutor “did everything they could to make sure that they were complying with the Sixth Circuit’s writ,” *id.* at PageID#3877. A “waiver is the intentional relinquishment or abandonment of a known right,” and a forfeiture “is the failure to make the timely assertion of a right.” *Hamer v. Neighborhood Hous. Servs.*, 583 U.S. 17, 20 n.1 (2017) (quotation omitted); *see also Hunter v. United States*, 146 S.Ct.1702, 1710 (2026) (“Under ordinary litigation principles, a waiver of a right requires some affirmative signal of ‘abandonment.’”). The Warden in this case did neither.

CONCLUSION

The Court should grant the petition for *certiorari*.

Respectfully submitted,

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