

IN THE
Supreme Court of the United States

RICHARD VASQUEZ,
Petitioner,

v.

ERIC GUERRERO, Director, Texas Department of
Criminal Justice, Correctional Institutions Division,
Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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CAPITAL CASE

QUESTION PRESENTED

1. Are suppression-of-evidence and false-testimony claims that have been available since trial subject to the successive petition bar under 28 U.S.C. § 2244(b)?

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INTRODUCTION

Richard Vasquez is a Texas inmate convicted of capital murder and sentenced to death for the brutal beating and sexual assault of four-year-old Miranda Lopez. For the last four years, Vasquez has engaged in a slew of piecemeal litigation attempting to raise successive federal habeas claims a decade after his initial federal habeas proceedings. The present litigation concerns two of those successive claims: a claim of State suppression of evidence and a claim of false testimony, both related to cocaine evidence presented at Vasquez’s trial.¹ Before the decision below, the Fifth Circuit had already twice rejected these claims—once on appeal of a disguised successive petition and once on authorization. *See Vasquez v. Lumpkin*, No. 22-70009, 2023 WL 2238995, at *2 (5th Cir. Feb. 24, 2023) (*Vasquez I*); *In re Vasquez*, No. 23-40079, slip op. at 2–4 (5th Cir. June 23, 2023), ECF No. 98 (*Vasquez II*). The authorization denial should have been the end of the road for these claims, *see* 28 U.S.C. § 2244(b)(3)(E), but it wasn’t.

Having lost an authorized ineffective assistance claim on second gateway review, *Vasquez v. Guerrero*, No. 25-70005, 2025 WL 3488844 (5th Cir. Dec. 4, 2025) (*Vasquez III*), Vasquez sought certiorari review from this Court of that second gateway-decision and also revived his unauthorized *Brady/Napue* claims. Pet. ii, *Vasquez v. Guerrero*, No. 25-1246 (U.S. Apr. 29, 2026) (First Pet.) (third question presented asking whether *Brady/Napue*

¹ The former proceeds under *Brady v. Maryland*, 373 U.S. 83 (1963), and the latter under *Napue v. Illinois*, 360 U.S. 264 (1959).

claims are “second or successive” within the meaning of § 2244(b)). And correctly anticipating jurisdictional and vehicle objections to this Court’s consideration of those claims, Vasquez returned to federal district court to file another (his third) federal petition as a so-called “protective measure” that would purportedly cure those objections. *See* ROA.4–52. At Vasquez’s request to give him a “clean[] avenue for appellate review,” ROA.14 n.1, the district court dismissed rather than transferred his successive petition, ROA.1072–74, and he sought a certificate of appealability (COA) from the Fifth Circuit on that dismissal, App.1a. In an unreasoned and unpublished decision, the Fifth Circuit denied Vasquez a COA. *Id.*

Vasquez seeks certiorari review of the Fifth Circuit’s summary COA denial, asking this Court to (once again, *see* First Pet. ii) decide whether *Brady/Napue* claims are “second or successive” within § 2244(b). But Vasquez provides no compelling reason for the Court to exercise its discretion—his question is not important or recurring, and he does even allege a circuit split. More importantly, Vasquez’s question presented suffers severe vehicle problems because the Court is jurisdictionally barred from reaching his impermissible authorization denial appeal, and the Fifth Circuit’s unreasoned COA denial is supported by several independent bases so Vasquez cannot show that the Fifth Circuit passed upon his question. Nevertheless, assuming the Fifth Circuit did reach Vasquez’s question, it was correct to deny COA based on its precedent requiring *Brady/Napue* claims to meet § 2244(b). Certiorari should be denied.

STATEMENT OF THE CASE

I. Facts of the Crime

The Court is familiar with the facts of Vasquez's crime. *See* Br. in Opp'n 2–5, *Vasquez v. Guerrero*, No. 25-1246 (U.S. July 6, 2026); *see also* Br. in Opp'n, *Vasquez v. Thaler*, No. 10-8666 (U.S. May 16, 2011). The federal district court has also provided a thorough recitation of the facts. *See* App.36a–38a. The Director thus only provides a summary of the relevant facts here.

Vasquez, a heroin and cocaine addict, was the sole caretaker of Miranda Lopez, his girlfriend's four-year-old daughter, on the morning of March 5, 1998. *Vasquez III*, 2025 WL 3488844, at *1. Angry about that situation because it prevented him from obtaining more drugs, Vasquez unleashed that anger on Miranda, striking her with significant force multiple times on the head, *id.* at *2 (“Although [Vasquez] admitted to striking Miranda,” he could not say how many times, but “evidence showed that there were ‘at least 20 to 30’ ‘areas of contusion’ on Miranda’s body—around her face, head, trunk, ‘and so forth.’”), and violently sexually assaulting her, *id.* at *2, 7. Evidence also showed that Miranda had a potentially lethal amount of cocaine in her system, though Vasquez denied giving her drugs and it was listed only as a contributing factor to her death. *Id.* The source of this evidence was both documentary and testimonial: a toxicology report that was admitted as evidence as part of Miranda’s medical records; the testimony of toxicologist Dr. Ronald Backer; and the testimony of medical examiner Dr. Lloyd White. *Id.* & n.3.

In particular, Dr. Backer testified at trial about the toxicology testing he did as follows:

Q. Can you please explain how blood is generally tested?

A. Well, when we receive a sample . . . *initially*, we do a screening test to see if there any types of *drugs of abuse or drugs*—the most common prescription drugs that would be available, and we actually extract the blood with an organic solvent and then subject that to what we call immunoassays, and immunoassays is a test based on an antibody antigen reaction.

. . . [T]his reaction, we can measure this in an instrument.

So we measure the reaction to various drugs, such as marijuana, *cocaine*, amphetamine, opiates, PCP or phencyclidine. *We measure these reactions; and if they take place, then* we actually re-extract another aliquot of the blood and use an instrument called a gas[]chromatograph mass[]spectrometer [(GC/MS)], which actually gives us a molecular fingerprint of the compound there.

And just like a police officer would calibrate a radar gun, we calibrate the instrument with known amounts of drugs so that we can compare the amount that was in the blood that we had to

that amount, so that we can come up with a quantity of drug that is present.

ROA.416–17 (emphasis added). Applying the science to Vasquez’s case, Dr. Backer testified that the “screening” test of Miranda’s blood “indicated the presence of cocaine,” and the subsequent confirmation test “found that there was indeed cocaine,” as well as cocaine metabolite, in the blood. ROA.418. The lab found .18 milligrams per liter of parent cocaine and .42 milligrams per liter of cocaine metabolite. ROA.418. Miranda was probably given the cocaine one to two hours before her blood was drawn at the hospital. ROA.422.

Dr. Backer’s testimony that the confirmatory test showed specific amounts of cocaine and cocaine metabolite in Miranda’s system was consistent with the results on the toxicological report. *Compare* ROA.418, with App.105a (showing “Confirmed GC/MS” results as .18 mg/L for parent cocaine and .42 mg/L for Benzoylcegonine, or cocaine metabolite). However, Dr. Backer’s testimony regarding the screening test was inconsistent with the toxicology report showing that the screening test was negative for “[d]rugs of [a]buse.” *See also* App.105a. “Following protocol, the testing should have stopped” at the screening test if the negative result was correct. ROA.253. Per the state court:

But, without explanation in the trial record, a confirmation test was done, and the result showed that her blood test was positive for cocaine and benzoylcegonine, a metabolite of cocaine, and that she had a significant amount of

cocaine and its metabolite in her blood. Apparently, at trial, neither the State nor the defense noted the obvious inconsistency between the screen result and the confirmation result, and neither side examined Dr. White or Dr. Backer on the inconsistency. The end result is that the jury heard that cocaine was in Miranda's blood.

ROA.253. This is the core evidence underlying Vasquez's claims. Miranda's death, however, was the result of the severe brain injuries. *Vasquez*, 389 F. App'x at 422.

II. Course of Proceedings

Vasquez was convicted of capital murder and sentenced to death in 1999. *Vasquez*, 389 F. App'x at 421. "Over the past twenty-seven years, Vasquez has extensively challenged his conviction and sentence in both state and federal court." ROA.1066–67. The Director focuses only on the history related to Vasquez's instant *Brady/Napue* claims.

It begins in 2019 when Vasquez "made a new discovery regarding the cocaine evidence" while preparing for a postconviction evidentiary hearing in state court:

Vasquez's counsel retained a consulting toxicologist, Dr. Valentine, to review how cocaine could have gotten into Miranda's system. Upon review, Dr. Valentine discovered that the Toxicology Report discussed at trial was flawed.

The preliminary screen for “drugs of abuse,” which provides either a positive or negative result, was listed as “negative,” ordinarily meaning that there are no drugs present. Nonetheless, in Vasquez’s case, the Toxicology Report indicated that further testing was conducted, and the testing revealed a high quantity of cocaine in Miranda’s system.

Dr. Valentine’s April 2019 discovery prompted Vasquez’s counsel to go back to Dr. Backer and Dr. White to point out the conflict. Both Dr. Backer and Dr. White recanted their trial testimony. Dr. Backer said that the Toxicology Report and his trial testimony were “not reliable evidence,” and Dr. White stated that he “would have insisted on a second toxicology report” to verify its accuracy.

Vasquez III, 2025 WL 3488844, at *2 (citations omitted). Though this cocaine evidence was not part of the subsequent claims remanded for development, the state habeas court entered numerous fact-findings addressing it. ROA.251–61.

Specifically, the court found that although the toxicology report was “certainly conflicting” and “raises concern,” it was “not necessarily irreconcilable,” given that Vasquez had offered “no evidence that the results of the subsequent test were not true other than the entry of ‘Negative’” for the screening test on the toxicology report. ROA.259–60. Indeed, “even if the screen[ing] test result was negative, the fact remains that the

subsequent testing did occur and the result showed the presence of cocaine in Miranda’s blood.” ROA.259. And if it’s true that a specific result on the confirmation test should have also been associated with a positive screening test result, then it is just as likely, if not more so, that “the screen test result was false and the confirmation result was true.” ROA.260. Simply put, “because the [confirmation] results were positive indicating a combined concentration for cocaine and its metabolite, then the screen test was false.” ROA.260.

The state habeas court thus found the most likely explanation for the “negative” “Drugs of Abuse” result was simply “clerical error.” ROA.260. Implicitly finding Dr. Valentine not credible, ROA.256, the court found: “the entry of a negative finding [on the screening test] is not true.” ROA.1260. Consequently, the trial testimony that Miranda had cocaine in her system was “reliable and credible evidence.” ROA.1260.

The Texas Court of Criminal Appeals (TCCA) adopted these findings and denied Vasquez habeas relief. *See Ex parte Vasquez*, No. WR-59,201-03, 2021 WL 3746008, at *1 (Tex. Crim. App. Aug. 25, 2021). Six months later, Vasquez raised claims predicated on the cocaine evidence—including the *Brady/Napue* claims at issue—but the CCA dismissed that subsequent application as an abuse of the writ without considering the merits of the claims. *Ex parte Vasquez*, No. WR-59,201-04, 2022 WL 17660560, at *1–2 (Tex. Crim. App. Dec. 14, 2022).

So ended Vasquez’s journey in state court and began the one in federal court that has remained active ever since. In 2022, Vasquez filed a motion under Federal Rule of Civil Procedure 60(b) arguing that “the state trial prosecutors” committed “fraud on the court” when they “relied on ‘false evidence’—i.e., the purportedly scientifically invalid evidence of . . . high levels of cocaine in [Miranda’s] system—to procure his conviction.” *Vasquez I*, 2023 WL 2238995, at *1–2. The district court dismissed Vasquez’s motion as a disguised successive petition. *Id.* at *1. Vasquez appealed, but he made no argument that his claims could be heard on the merits because *Brady/Napue* claims are not “second-or-successive” within the meaning of § 2244. *See generally id.* The Fifth Circuit affirmed the district court’s dismissal. *See Vasquez I*, 2023 WL 2238995, at *1.

Shortly before the Fifth Circuit affirmed the Rule 60(b) dismissal, Vasquez sought authorization under § 2244(b)(E) to file a successive petition raising nine claims for relief, including the instant cocaine-related *Brady/Napue* claims. *See Vasquez II*, No. 23-40079, slip op. at 2. Vasquez argued his diligence by relying on a prosecutor’s work product notes from a pre-trial interview with toxicologist Donna Trautman (“Trautman notes”) to suggest the State knew, and withheld, that the toxicology report was false and unreliable. *See* Reply Br. 10–11, *Vasquez II*, No. 23-40079, slip op. (5th Cir. June 23, 2023), ECF No. 36; *see also* Pet. 7–8. The notes said that “the initial screening” tests “just show[] positive or negative for drugs,” and the confirmatory test, i.e., the “chromatography,” “identifies the drug” and “the amount of drug in a compound.”

ROA.746.² This was identical to Dr. Backer’s testimony at trial, *see* ROA.416–17, except with less detail. Vasquez did not argue that authorization on his *Brady/Napue* claims was not needed because they should not be subject to § 2244(b).

Vasquez was denied authorization to file the *Brady/Napue* claims. *Vasquez II*, No. 23-40079, slip op. at 4. But he was granted authorization to file an ineffective-assistance-of-trial-counsel (IATC) claim predicted on the same cocaine evidence and actual innocence claims “insofar as they provide a ‘gateway’ for the” IATC claim. *See id.* at 3 & n.2.

Vasquez then filed the authorized IATC claim in district court. *See* Subsequent Pet. Writ of Habeas Corpus at ii, *Vasquez v. Guerrero*, No. C-23-168 (S.D. Tex. Feb. 11, 2025), ECF No. 1. In his habeas petition, Vasquez purported to “preserve[] all rights of appeal and other remedies with respect” to the Fifth Circuit’s denial of “authority to file” his *Brady/Napue* claims. *Id.* at 5 n.2. Vasquez argued that “authority should have been granted on all nine claims[.]” *Id.* In later briefing, he argued that his unauthorized *Brady/Napue* claims were “expressly incorporate[d]” into the gateway-innocence

² Though Vasquez was admonished for doing the same thing in the Fifth Circuit, *see* Ltr. 2–3, *Vasquez v. Guerrero*, No. 26-70008, 2026 WL 2751636 (5th Cir. Aug. 28, 2026), ECF No. 17, Vasquez’s citation to the Trautman notes is to the Electronic Record on Appeal in his prior Fifth Circuit proceeding, not the one below. *Compare* Pet.7 (citing ROA.6214–16), *with* ROA.1083 (final page of the ROA in the court below). The Trautman Notes can nevertheless be found in the ROA in this proceeding. *See* ROA.746–48.

claims. *See* Pet'r's Br. Demonstrating Satisfaction of 28 U.S.C. § 2244(b)(2) Reqs. 5 n.1, *Vasquez v. Guerrero*, No. C-23-168 (S.D. Tex. Feb. 11, 2025), ECF No. 23. Vasquez did not once suggest authorization denial was no barrier to the district court's consideration because he did not need authorization in the first place. To the contrary:

Vasquez acknowledge[d] that the Fifth Circuit's decision on [his *Brady/Napue* claims] does have important consequences. Under the Fifth Circuit's order, [the district court], if and when it reaches the merits, may not have the ability to grant Vasquez relief based solely on his *Brady* or [*Napue*] claims, whether related to false cocaine evidence The only two cases cited by the [Director] in this section of the Opposition—*Burton v. Stewart*, 549 U.S. 147 (2007), and *United States v. Key*, 205 F.3d 773 (5th Cir. 2000)—would support this view.

Pet'r's Reply Br. 10–11, *Vasquez v. Guerrero*, No. C-23-168 (S.D. Tex. Feb. 11, 2025), ECF No. 42; *see also id.* at 12 (“the [district court] may be precluded from considering the[*Brady/Napue*] claims for non-gateway purposes”).

The district court dismissed Vasquez's authorized IATC claim because Vasquez was not diligent in discovering its factual predicate—the toxicological report's inconsistent test results—which had “been available to Vasquez's attorneys since before trial.” App.84a. The district court nonetheless granted Vasquez a COA. App.89a.

Vasquez appealed. *Vasquez III*, 2025 WL 3488844, at *1. In his merits brief, Vasquez repeated “that he should also have been given permission to file his *Brady* and *Napue*[] claims” and “reserve[d] the right, if necessary at the appropriate time/place, to challenge the Court’s denial of that permission.” *See* Appellant’s Br. 29 n.10, *Vasquez III*, No. 25-70005, 2025 WL 3488844 (5th Cir. Dec. 4, 2025), ECF No. 26. The Fifth Circuit affirmed the district court’s second-gateway dismissal. *Vasquez III*, 2025 WL 3488844, at *8.³

Vasquez’s certiorari petition from the Fifth Circuit’s second-gateway decision was originally due March 30, 2026. *See* Appl. Ext. Time to File Pet. Writ Cert. 1, *Vasquez v. Guerrero*, No. 25-1246 (U.S. Mar. 16, 2026). But two weeks before the deadline, Vasquez asked this Court for a sixty-day extension of time. *Id.* Just four days after he sought the extension, Vasquez filed a *third* federal habeas petition—the one at issue here—raising his unauthorized *Brady/Napue* claims. *See* ROA.11–14 (filed March 20, 2026). He justified his filing as a “protective measure, in case any court should conclude

³ While Vasquez’s second-gateway appeal was pending in the Fifth Circuit, Vasquez sought mandamus relief in both state high courts regarding the Texas Attorney General’s (OAG) authority in federal habeas proceedings. *See* Pet. Writ Mandamus vi, *In re Vasquez*, No. 25-1143 (Tex. June 19, 2026) (filed Dec. 23, 2025); Order 1–2, *In re Vasquez*, No. WR-59,201-05 (Tex. Crim. App. Aug. 20, 2026) (filed Dec. 29, 2025). The Texas Supreme Court denied the mandamus petition on June 19, 2026. *See* Order, *In re Vasquez*, No. 25-1143 (Tex. June 19, 2026). And the CCA subsequently denied the twin mandamus petition. *See* Order 2, *In re Vasquez*, No. WR-59,201-05 (Tex. Crim. App. Aug. 20, 2026).

that he has not so far adequately raised and preserved his position that such claims are not successive and do not require pre-authorization under” § 2244(b). ROA.12. He noted he “intend[ed] to raise the issue” “in his anticipated petition for certiorari” regardless. *Id.*

He did—a month later when he included as his third question presented whether allegedly newly discovered *Brady/Napue* claims are “second or successive” within the meaning of § 2244(b). *See* First Pet. ii, *Vasquez v. Guerrero*, No. 25-1246 (U.S. Apr. 29, 2026). The district court then, at Vasquez’s request to “provide [him] the cleanest avenue for appellate review,” ROA.14 n.1, dismissed his third habeas petition instead of transferring it to the Fifth Circuit. *See* ROA.1072–74.

Vasquez noticed his appeal of the dismissal of his third habeas petition on June 4, 2026. ROA.1076. Vasquez filed his COA request in the Fifth Circuit the next day, but he did so before the court entered a briefing notice, and he improperly cited the electronic record on appeal in his prior appeal. *See supra* n.2. The court thus noticed Vasquez that it was taking no action on the premature COA application and allowed him until July 15, 2026, to refile. Ltr. 2–3, *Vasquez v. Guerrero*, No. 26-70008, 2026 WL 2751636 (5th Cir. Aug. 28, 2026), ECF No. 17. Vasquez, inadvertently missing the court’s postscript, did not refile by that date, instead filing on July 27, 2026, after obtaining leave. *See* Pet’r’s Unopposed Mot. Leave File Out of Time COA, *Vasquez v. Guerrero*, No. 26-70008, 2026 WL 2751636 (5th Cir. Aug. 28, 2026), ECF No. 19.

Meanwhile, in the simultaneous proceedings before this Court, the Director filed his brief in opposition. Br. Opp’n, *Vasquez v. Guerrero*, No. 25-1246 (U.S. July 6, 2026). As Vasquez anticipated, the Director argued that Vasquez’s *Brady/Napue* question presented is not worthy of certiorari review because, *inter alia*, it suffers from jurisdictional and vehicle problems, namely, that it was an impermissible appeal of the Fifth Circuit’s authorization denial and that his argument had never been pressed before. *See id.* at 29–31. Vasquez did not file his reply brief within the Court’s two-week waiting period. *See* Sup. Ct. R. 15.5. Instead, Vasquez filed his reply nearly three weeks after the Court scheduled the petition to be distributed for conference. Three days after that, Vasquez asked the Court to defer consideration of his first certiorari petition pending the Fifth Circuit’s decision on this appeal. Mot. Defer 7–8, *Vasquez v. Guerrero*, No. 25-1246 (U.S. Aug. 14, 2026) (Mot. Defer). The Director opposed. *See* Resp’t’s Response in Opp’n Mot. Defer 1–2, *Vasquez v. Guerrero*, No. 25-1246 (U.S. Aug. 24, 2026). That certiorari proceeding remains pending.

On August 26, 2026, the Director filed his opposition to Vasquez’s COA request in the court below, arguing that the Fifth Circuit was bound by its *Brady/Napue* precedent but other procedural reasons also supported the denial of a COA. Resp. in Opp’n Appl. COA 20–36, *Vasquez v. Guerrero*, No. 26-70008, 2026 WL 2751636 (5th Cir. Aug. 28, 2026), ECF No. 27. Two days later, the Fifth Circuit summarily denied COA. App.1a.

Vasquez sought certiorari review from this Court. Pet. (filed Sept. 11, 2026). At the same time,⁴ he filed a letter in his first certiorari proceeding, asking the Court to consider this petition at conference on his first petition. Ltr. 1, *Vasquez v. Guerrero*, No. 25-1246 (U.S. Sept. 17, 2026). This response follows.

REASONS FOR DENYING THE WRIT

I. Vasquez Provides No Compelling Reason to Grant Review.

The Court requires those seeking a writ of certiorari to provide “[a] direct and concise argument *amplifying* the reasons relied on for allowance of the writ.” Sup. Ct. R. 14.1(h) (emphasis added). The Court, however, would be hard pressed to discover any such reason in Vasquez’s petition, let alone amplification thereof. Vasquez makes no allegations of a circuit split or a conflict, and he makes no effort to explain why his question is important to the judiciary or citizenry at large. *See* Sup. Ct. R. 10(a), (c). Indeed, he concedes that the circuits are largely in agreement. *See* Pet.25 (admitting the Fourth, Sixth, Ninth, and Eleventh Circuits also “have existing precedent to the same effect” as the Fifth Circuit’s); *see also id.* at 26 (it is “true that at least four other circuits appear to follow the same approach as the Fifth Circuit”).

⁴ Vasquez also filed a subsequent state application for writ of habeas corpus on September 1, 2026, which also remains pending. *See Ex parte Vasquez*, No. WR-59,201-06 (Tex. Crim. App. Sept. 1, 2026).

The best he musters to show a compelling reason is to argue that two circumstances show how desperately the courts of appeals are nonetheless allegedly “clamoring for guidance,” Pet.25: 1) a member of the Court has twice expressed doubt that *Brady/Napue* claims should be construed as successive when the petitioner was unaware of the claim during the initial proceeding, *see id.* (citing *Storey v. Lumpkin*, 142 S. Ct. 2576, 2577–78 (2022) (Sotomayor, J., statement respecting the denial of certiorari); *Bernard v. United States*, 141 S. Ct. 504, 506–07 (2020) (Sotomayor, J., dissenting from the denial of certiorari)); and 2) panels in the circuits that have the same rule as the Fifth Circuit have “expressly denounced” their circuit’s precedent, showing there is an “entrenched *intra*-circuit split” on this issue, *id.* at 26–27 (emphasis added).

Both circumstances fall short of the “compelling reasons” that would justify granting the writ. Respectfully, single-justice concurrences or dissents in preliminary stage proceedings are not sufficient to establish a conflict warranting certiorari review. *See* Sup. Ct. R. 10(c). And panel disagreement with its own circuit’s precedent⁵ is also not the type of conflict that is ripe for resolution by this Court, *see* Sup. Ct. R. 10(a)—

⁵ *Long v. Hooks*, 972 F.3d 442, 485–88 (4th Cir. 2020) (en banc) (Wynn, J., concurring), is not a panel opinion but rather a concurring opinion to an en banc decision where the majority applied § 2244(b) to a *Brady* claim. *See id.* at 468–70. Similarly, *In re Jackson*, 12 F.4th 604, 611–16 (6th Cir. 2021) (Moore, J., concurring), is not a panel opinion but rather a concurrence to a majority decision applying § 2244(b) to *Brady/Napue* claims and granting a petitioner authorization to file them. *Id.* at 608–11.

that is the role of en banc, not certiorari, review. There is no conflict upon which to grant the writ.

More importantly, Vasquez cannot show that the Fifth Circuit's unpublished, unexplained denial passed upon the "second or successive" question at all, making his case an exceedingly poor vehicle in which to reach it. The Fifth Circuit had numerous reasons to deny a COA, all of which were alone sufficient to deny relief and many of which did not touch or depend on its precedent subjecting *Brady/Napue* claims to § 2244(b). *See infra* Section II. This means a favorable ruling on Vasquez's question presented would not change the outcome in the court below, rendering his question unimportant. And this Court is one "of review, not of first view," *Cutter v. Wilkinson*, 544 U.S. 709, 718 n.7 (2005), so it should not grant certiorari to address a question that the Fifth Circuit may not have passed on. Even if it did address that question, a request for mere error correction is hardly a good reason to expend the Court's resources, especially where, as here, there was no error and his underlying claims lack merit. *See* Sup. Ct. R. 10 ("A petition . . . is rarely granted when the asserted error consists of . . . the misapplication of a properly stated rule of law."). Certiorari review should be denied.

II. Vasquez's Case Is an Exceedingly Poor Vehicle to Address his Question.

Vasquez's petition asks this Court to take up whether *Brady/Napue* claims are "second or successive" such that they are subject to § 2244(b)(2). Pet.25–27. He argues this issue is "cleanly and directly presented"

for this Court’s review, but he is wrong—his case is mired in vehicle problems, all of which warrant denial of certiorari review.

1. Section 2244(b)(3)(E) expressly prohibits state prisoners like Vasquez from appealing, seeking rehearing of, or seeking a writ of certiorari from the courts of appeals’s denial of authorization. This bar is jurisdictional. *See Bowe v. United States*, 607 U.S. 13, 22 (2026) (citing *Stewart v. Martinez-Villareal*, 523 U.S. 637, 641–42 (1998)). Here, Vasquez sought—and was denied—authorization to file his instant, successive *Brady/Napue* claims in 2023. App.96a. Three years later, Vasquez filed a successive petition anyway and only belatedly argues that he never needed authorization in the first place. The Fifth Circuit’s 2023 authorization denial is therefore “the subject of” this petition. *See* § 2244(b)(3)(E); *see also Castro v. United States*, 540 U.S. 375, 380 (2003).

True, this is a different proceeding stemming from a new federal habeas petition, and the Fifth Circuit did not below “grant or deny” authorization. *See* Pet.28. But it did just that in 2023, and Vasquez intentionally bypassed that denial by filing a petition he was told he could not file. Permitting a petitioner to brazenly disregard an authorization denial in this manner would be an end run around the statutory ban on authorization appeals—a petitioner would never *need* to appeal, seek rehearing, or seek certiorari if he can simply invoke

appellate jurisdiction by filing the unauthorized claims anyway.⁶ Section 2244(b)(3)(E) would be meaningless.

Had Vasquez not sought, and been denied, authorization, this Court would have certiorari jurisdiction to review his question presented. But where Vasquez waited to seek certiorari only after a court of appeals denied authorization, this Court lacks it. At the very least, it makes his case a poor vehicle to review his question.

2. His question presented also suffers from severe vehicle problems because the Fifth Circuit’s unreasoned opinion means Vasquez cannot show that the court even passed on it. The district court dismissed Vasquez’s third petition based on the Fifth Circuit’s “second or successive” precedent. ROA.1070. However, the Fifth Circuit was not bound by that reasoning and could affirm the dismissal on any basis supported by the record. *See Kovac v. Wray*, 109 F.4th 331, 335 (5th Cir. 2024). Six different bases existed to support denying

⁶ It would be one thing if Vasquez had filed his federal petition before seeking authorization. Had he done so, the district court would have dismissed the successive petition or transferred it to the Fifth Circuit, and Vasquez could have appealed the dismissal or transfer order and alternatively asked for authorization. This is precisely what the petitioner in *In re Will*, 970 F.3d 536 (5th Cir. 2020), did several years before. *See id.* at 539. And it allowed the Fifth Circuit to reach “[t]he dispositive issue [of] whether Will’s petition is ‘second or successive’ under 28 U.S.C. § 2244(b),” *see id.* at 540, which would have been an appropriate “subject” of a certiorari petition to this Court. *See Castro*, 540 U.S. at 380.

COA, none of which had anything to do with the Fifth Circuit's successiveness precedent.

First, the Fifth Circuit could have denied COA because it may have decided it lacked jurisdiction to hear an impermissible appeal of its 2023 authorization denial. *See supra* Section II.1. Just as this Court lacks jurisdiction over Vasquez's certiorari petition, the Fifth Circuit may have concluded it lacked jurisdiction to hear Vasquez's backdoor appeal. If so, it never reached the merits of Vasquez's question presented, meaning this Court would be one of first view, not review.

Second, law of the case barred Vasquez's appeal. The law of the case doctrine provides that 'an issue of law or fact decided on appeal may not be reexamined either by the district court on remand or by the appellate court on a subsequent appeal.'" *Fuhrman v. Dretke*, 442 F.3d 893, 896 (5th Cir. 2006) (quoting *United States v. Becerra*, 155 F.3d 740, 752 (5th Cir. 1998), *abrogation on other grounds recognized by United States v. Farias*, 481 F.3d 289, 291–92 (5th Cir. 2007)). The law of the case doctrine applies even to questions of subject matter jurisdiction. *See Free v. Abbott Lab's, Inc.*, 164 F.3d 270, 272–73 (5th Cir. 1999). "Exceptions to the law of the case doctrine allow reexamination only if '(i) the evidence on a subsequent trial was substantially different, (ii) controlling authority has since made a contrary decision of the law applicable to such issues, or (iii) the decision was clearly erroneous and would work a manifest

injustice.” *Fuhrman*, 442 F.3d at 897 (quoting *Becerra*, 155 F.3d at 752–53).

Vasquez’s appeal in the court below followed the 2023 denial of authorization. That means the Fifth Circuit had already determined that Vasquez’s *Brady/Napue* claims were “second or successive” such that they must meet § 2244(b)’s gatekeeping requirements. Thus, the Fifth Circuit had already determined that the district court lacked jurisdiction to hear Vasquez’s claims, and Vasquez did not offer any justification for an exception to the law of the case doctrine. *See Fuhrman*, 442 F.3d at 897. Since law of the case would not have required a merits review of Vasquez’s question, he cannot show the Fifth Circuit squarely decided it.

Third, Vasquez’s argument was forfeited under Fifth Circuit precedent. *See Ward v. Santa Fe Indep. School Dist.*, 393 F.3d 599, 607–08 (5th Cir. 2004) (holding “a party cannot raise an issue on appeal that could have been raised in an earlier appeal in the same case”) (citing *Brooks v. United States*, 757 F.2d 734, 739 (5th Cir. 1985)). The Fifth Circuit’s forfeiture rule is intended to “serve[] judicial economy by forcing parties to raise issues whose resolution might spare the court and parties later rounds of remands of appeals.” *Id.* (quoting *United States v. Castillo*, 179 F.3d 321, 326 (5th Cir. 1999)). But Vasquez did the opposite of “serve judicial economy.” The proceeding at issue here was the fourth time Vasquez had appeared in the Fifth Circuit on the same core nucleus of claims, *see supra* Statement of the Case II, and not once did he ever argue that his

Brady/Napue claims were unripe and therefore not “second or successive.” Even if Fifth Circuit precedent was against him, he could have (properly) preserved his disagreement with the court’s authorization requirement for *Brady/Napue* claims. *Cf. United States v. Scruggs*, 714 F.3d 258, 264 (5th Cir. 2013). Instead, he made unadorned appellate-right-reservation statements that were insufficient to preserve anything. *See supra* Statement of the Case II.

Vasquez had every opportunity to argue that the Fifth Circuit’s law should be changed: the cases upon which he relies to show that the Fifth Circuit’s precedent is wrong, *see* Pet.25, preceded both his Rule 60(b) appeal and his request for authorization by months to years. *Compare Storey*, 142 S. Ct. at 2677–78 (Sotomayor, J., statement respecting the denial of certiorari) (opinion issued June 30, 2022), *and Bernard*, 141 S. Ct. at 506–07 (Sotomayor, J., statement dissenting from the denial of certiorari) (opinion issued December 10, 2020), *with Vasquez I*, 2023 WL 2238995, at *1–2 (motion for COA filed November 10, 2022), *and Vasquez II*, No. 23-40079, slip op. at 1 (motion for authorization filed February 8, 2023). Yet he let those opportunities go by three times before finally raising the argument in the instant appeal. The Fifth Circuit may well have decided that Vasquez “cannot raise the issue” now, *Ward*, 393 F.3d at 608, meaning it did not reach the merits of his question presented.

Fourth, the Fifth Circuit could have affirmed the district court’s dismissal of Vasquez’s third petition under the common law abuse of the writ doctrine. “The

phrase ‘second or successive’ is not self-defining.” *Panetti v. Quarterman*, 551 U.S. 930, 943 (2007). “It takes its full meaning from [this Court’s] case law, including decisions predating the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA).” *Id.* at 943–44. Thus, not every second-in-time petition challenging the same state court judgment is considered successive. *Id.* at 944. But “it is well-settled law of [the Fifth Circuit] that ‘a later petition is successive when it: (1) raises a claim challenging the petitioner’s conviction or sentence that was or could have been raised in an earlier petition; or (2) *otherwise constitutes an abuse of the writ.*’” *In re Sepulvado*, 707 F.3d 550, 553 (5th Cir. 2013) (emphasis added) (quoting *In re Cain*, 137 F.3d 234, 235 (5th Cir. 1998)). This definition is “[i]n accordance with [the court]’s strong policy against piecemealing claims.” *Crone v. Cockrell*, 324 F.3d 833, 838 (5th Cir. 2003).

It’s hard to envision a more abusive writ than this one. It bears emphasizing: Vasquez has been in the Fifth Circuit four times in the last four years on the same claims. Given that his 2022 Rule 60(b) motion was itself a disguised successive petition, he has filed three separate federal habeas petitions raising the same claims in four years. One of those (the one at issue here) he brazenly filed after he was denied authorization to do so. And he only filed it after losing on second-gateway review of the *authorized* IATC claim—the definition of piecemeal litigation. If that’s not enough, consider the broader picture. In his efforts to force the courts to hear his successive claims, he has initiated *twelve* total proceedings since 2022: three in federal district court,

four in the Fifth Circuit, three in the state high courts, and now two in this Court. *See supra* Statement of the Case II & nn.3–4.

Worse, he filed the instant federal petition with the express, sole purpose of manufacturing a vehicle and jurisdictional cure for his earlier, still-pending certiorari petition in this Court. That is, even though he had never argued to any court that his *Brady/Napue* claims should not be considered “successive,” he chose to include that forfeited, jurisdictionally barred argument in his first certiorari petition anyway. And aware that those jurisdictional and vehicle problems might pose a barrier to this Court’s review, he sought an extension of time to file the first certiorari petition—time which he used to flout the Fifth Circuit’s 2023 authorization denial by filing the unauthorized third habeas petition. He then attempted to parlay his appeal of the district court’s dismissal into a delay of his first certiorari proceedings. *See generally* Mot. Defer.

As this Court has acknowledged when discussing the pre-AEDPA abuse-of-the-writ doctrine, “Perpetual disrespect for the finality of convictions disparages the entire criminal justice system.” *See McCleskey v. Zant*, 499 U.S. 467, 492 (1991). Vasquez’s perpetual disrespect for the finality of his conviction was plain for the Fifth Circuit to see. Because it could have found dismissal of Vasquez’s petition warranted under the abuse of the writ doctrine, irrespective of its precedent on

Brady/Napue claims, Vasquez cannot show the Fifth Circuit passed upon the question presented.

Fifth, the Fifth Circuit might have affirmed the district court's dismissal on statute of limitations grounds. Given Vasquez started raising his *Brady/Napue* claims in federal court as early as 2022, his 2026 petition was clearly years late, especially since none of those prior federal proceedings toll. *See Duncan v. Walker*, 533 U.S. 167, 172 (2001) (properly filed federal habeas petitions do not toll the limitations period). The Fifth Circuit could have decided this without ever reaching the question presented.

Sixth, and finally, the Fifth Circuit may also have denied COA simply because Vasquez failed to state a valid constitutional issue. Getting a COA on a procedural-only district court ruling required Vasquez to show not only that the procedural ruling was debatable but that jurists of reason would debate whether he stated a valid claim of the denial of a constitutional right. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Though Vasquez failed to show the district court's procedural ruling was debatable, *see infra* Section III, he also could not show that anyone would debate the merits of his *Brady/Napue* claims, *see infra* Section IV. Since COA could have been denied on this basis alone, the Fifth Circuit could have done so without ever reaching his question presented. This Court should not exercise its discretion to review an unaddressed question.

3. Because any of these bases could serve as independent reasons that a COA should be denied,

Vasquez’s position would not change in the court below, even if he obtained a favorable ruling from this Court on the “second or successive” issue. Vasquez does not challenge these other, adequate bases that COA could have been denied; thus, an opinion that the Fifth Circuit erred in its *Brady/Napue* successiveness determination would have no effect on the outcome of Vasquez’s case: COA would still be denied. The Court’s opinion would be essentially advisory, *cf. Lambrix v. Singletary*, 520 U.S. 518, 523 (1997), or at the very least, the question is unimportant in Vasquez’s case and any others since the lower court’s opinion is unreasoned and unpublished. Certiorari should not grant certiorari to do make work.

III. The Fifth Circuit’s Straightforward Application of § 2244 to *Brady/Napue* Claims Is Nevertheless Correct.

Assuming that the Fifth Circuit denied Vasquez a COA based on its prior precedent requiring *Brady/Napue* claims to meet § 2244(b)(2), its straightforward reading of the statute was right.

“By 2023, Fifth Circuit precedent was clear that *Brady* and *Napue*[] claims not raised in a first-in-time application are ‘second or successive’ and cannot be asserted without advance authorization under” § 2244(b)(3). Pet.25; *see also In re Will*, 970 F.3d at 540; *Blackman v. Davis*, 909 F.3d 772, 778–79 (5th Cir. 2018) (citing *In re Davila*, 888 F.3d 179, 184–87 (5th Cir. 2018); *Leal Garcia v. Quarterman*, 573 F.3d 214, 221 (5th Cir. 2009); and *Johnson v. Dretke*, 442 F.3d 901, 906–11 (5th Cir. 2006)). These cases involved a

,straightforward analysis of § 2244(b)(2)(B)’s text, which “states that claims based on a *factual* predicate not previously discovered are successive.” *Blackman*, 909 F.3d at 778 (quoting *Leal Garcia*, 573 F.3d at 221 (emphasis in original)). *Brady/Napue* claims that “rely on precisely such undiscovered facts” “are therefore within the purview of the statutory language.” *Id.*

And this is easily squared with § 2244(b)(2)(B)’s requirements. For diligence under § 2244(b)(2)(B)(i), the availability of a *Brady/Napue* factual predicate turns on whether “due diligence at the *time of the first habeas petition* would have resulted in the discovery of the factual basis for the new claim such that it could have been included in the first petition.” *In re Davila*, 888 F.3d at 184. This rule recognizes the distinction between a *Brady* claim—a violation that necessarily occurs *at trial*—and the successiveness inquiry, which measures from the time of the first federal petition. *Id.* And for innocence under § 2244(b)(2)(B)(ii), the “facts underlying” many a *Brady* claim may show the petitioner’s innocence of “the underlying offense” by clear and convincing evidence. *See, e.g., In re Will*, 970 F.3d at 543–48 (finding prima facie showing of innocence).

Thus, Vasquez’s “argument that these claims do not fit or are in tension with AEDPA’s requirements for successive petitions under § 2244(b)(2)(B)” has been squarely rejected by the Fifth Circuit. *Blackman*, 909 F.3d at 778. And as Vasquez acknowledges, the argument has been rejected by the Fourth, Sixth, Ninth, and Eleventh Circuits, too. *See* Pet.25 (citing *In re*

Wogenstahl, 902 F.3d 621, 627–28 (6th Cir. 2018); *Tompkins v. Sec’y, Dep’t of Corr.*, 557 F.3d 1257, 1260 (11th Cir. 2009); *Evans v. Smith*, 220 F.3d 306, 309 (4th Cir. 2010); *United States v. Buenrostro*, 638 F.3d 720, 724 (9th Cir. 2011)); *see also Brown v. Muniz*, 889 F.3d 661, 671 (9th Cir. 2018). This is not an “open question,” Pet.25, necessitating this Court’s review.

Recognizing that the weight of authority in the circuits is against him, Vasquez argues for an extension dressed up as a conflict: he suggests the logic of *Panetti* should apply, as he lacked actual awareness of his *Brady/Napue* claims when he filed his first petition, so they were not ripe. Pet.25–26, 28–30. But *Panetti*’s logic did not turn on actual awareness of the factual predicate of a competency-to-be-executed claim; rather, it turned on when the violation *occurs*—once an execution is set. *See Burton v. Stewart*, 549 U.S. 147, 155 (2007) (the claim that a capital petitioner “was insane and therefore could not be put to death was necessarily unripe until the State issued a warrant for his execution”). That, “as a general matter,” does not occur “until after the time has run to file a first federal habeas petition.” *Panetti*, 551 U.S. at 943. “Congress did not intend the provisions of AEDPA addressing ‘second or successive’ petitions to govern a filing in the unusual posture presented [t]here: a § 2254 application raising [an incompetency-to-be-executed] claim filed as soon as that claim is ripe.” *Id.* at 945.

This reasoning is inapplicable here. Vasquez’s “claims were not unripe at the time he filed his initial petition because the purported *Brady* violations . . . had

already occurred when he filed his petition, although [Vasquez] was unaware of these facts.” *Wogenstahl*, 902 F.3d at 627–28; *see also Tompkins*, 557 F.3d at 1260. “Instead, [Vasquez]’s claims fall within the scenario contemplated by § 2244(b)(2).” *Wogenstahl*, 902 F.3d at 28; *see also Brown*, 889 F.3d at 671. There is no conflict between the circuits’ precedent and *Panetti*. Certiorari is not warranted to review the circuits’ straightforward application of § 2244(b)(2)(B).

IV.A Favorable Ruling Permitting Merits Review of His Claims Would Not Change His Position Because the Claims Are Meritless.

Even if the Court granted certiorari and reversed on the question presented (and none of the other independent bases remained, *see supra* Section II), Vasquez would still lose on merits review of his claims.

Under *Brady*, a petitioner must show that the prosecution withheld evidence favorable to the defense and that evidence was material—“there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.” *Strickler v. Greene*, 527 U.S. 263, 280 (1999) (quoting *United States v. Bagley*, 473 U.S. 667, 676 (1985)). “Impeachment evidence . . . as well as exculpatory evidence falls within the *Brady* rule.” *Bagley*, 473 U.S. at 676 (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)). And under *Napue*, “a conviction obtained through use of false evidence, known

to be such by representatives of the State, must fall under the Fourteenth Amendment.” 360 U.S. at 269.

Here, the CCA dismissed Vasquez’s *Brady/Napue* claims as abusive without reaching their merit. *See supra* Statement of the Case II. But because Vasquez first presented this evidence during a prior subsequent writ, the state habeas court made numerous fact-findings related to the cocaine evidence. *See* ROA.251–61. These findings were adopted by the CCA and are presumed correct absent clear and convincing evidence to the contrary. *See* § 2254(e)(1). And the Fifth Circuit has also already made law-of-the-case determinations relevant to the merits of Vasquez’s claims.

On the *Brady* claim, Vasquez primarily relies on the Trautman notes, *see supra* Statement of the Case II, arguing that the State “concedes that [he] accurately interprets the notes” “to reflect Trautman having explained to the prosecutors that a positive [confirmation] result cannot be squared with a negative result from a drugs-of-abuse screen.” Pet.8. Not true. The Trautman notes say nothing about a negative result nor do they say anything regarding the confirmatory test being contingent on a positive screening result. *See* ROA.746. Rather, the sum total that the notes say about the screening test is that “Patricia Berthold did the initial screening,” and the screening “just shows positive or negative for drugs.” ROA.746. And for the confirmatory test, the notes describe the machine used (“a Hewlett Packard machine with calibrations”), explain that Trautman herself is the one who “does the chromatography – which identifies the drug” and “the

amount of the drug in a compound,” and describe the process of shooting the solvents. ROA.746. The notes also describe, consistent with the toxicology report, that .18 milligrams per liter of blood parent cocaine were detected, as well as .42 milligrams per liter of benzoylecgonine. *Compare* ROA.746, *with* App.105a. Vasquez’s assertion that these notes show that “the State knew there was a fatal flaw in the report on Miranda’s blood,” Pet.7, is false.

To Vasquez’s chagrin, it was Dr. Backer who testified about the relationship between the two tests *at trial*. ROA.416–17. Indeed, Dr. Backer’s testimony parallels almost exactly what Vasquez claims Trautman said: “First, the lab performs an ‘initial screening’ for ‘drugs of abuse.’” *Compare* Pet.7, *with* ROA.416–17 (Backer testifying that “initially, we do a screening test to see if there are any types of drugs of abuse . . .”). “Then, *if* this initial screen is positive, the lab runs the blood through a GC/MS instrument to identify the type and quantity of drug that triggered the initial screen’s positive result.” *Compare* Pet.7, *with* ROA.417 (Backer testifying that “if [reactions] take place, then we actually re-extract another aliquot of the blood and use an instrument called a [GC/MS], which actually gives us a molecular fingerprint of the compound there,” including “a quantity of drug that is present”).

Thus, Dr. Backer did not “convey[] essentially the same information that Trautman revealed to the prosecutors before trial,” Pet.29, he conveyed *more*. Though Vasquez quibbles with the clarity of Dr. Backer’s testimony, Dr. Backer said more about the

contingent relationship between the two tests, *and* he specifically mentioned cocaine. *See* ROA.417 (“So we measure the reaction to various drugs, such as marijuana, cocaine, amphetamine, opiates, PCP or phencyclidine. We measure those reactions; and if they take place, then we . . . use an instrument called a [GC/MS].”).

If Vasquez believes the Trautman notes enough to establish State knowledge of an irreconcilable conflict,⁷ *see* Pet.8, they establish that trial counsel and Vasquez had knowledge too, meaning there was no suppression and, ergo, no *Brady* violation.

Indeed, the Fifth Circuit has already held that “Vasquez’s trial counsel was provided a copy of the Toxicology Report before trial.” *See Vasquez III*, 2025 WL 3488844, at *6. “Then, at trial, Dr. White testified that cocaine was detected in Miranda’s blood,” and “Dr.

⁷ Vasquez also claims that, following the Trautman interview, the State engaged in “a calculated tactic” to “abandon[] its original plan to introduce the toxicological report as a stand-alone exhibit.” Pet.11; *see also id.* at 28. In support, Vasquez points to an undated handwritten note on printed case research to show that the State had “initially planned (as one would expect) to introduce [the toxicological report] at trial in conjunction with Dr. Backer’s testimony.” *See* Pet.7 (citing ROA.556). Vasquez’s pure speculation shows nothing about the State’s plan, much less that it abandoned that plan as a result of the Trautman interview. Nevertheless, the State *did* admit the toxicology report at trial—as part of Miranda’s medical records—a fact which Vasquez conveniently leaves out. *See Vasquez III*, 2025 WL 3488844, at *2 n.3 (“Though Vasquez asserts that the State did not offer the report as a standalone exhibit, the record reveals that the report was admitted at trial as part of Miranda’s medical records.”).

Backer explained that the initial toxicological testing ‘indicated the presence of cocaine,’ and further analysis revealed that there ‘was indeed cocaine in the blood.’” *Id.* “This testimony, though, was in direct conflict with the Toxicology Report, which stated ‘negative’ with respect to ‘Drugs of Abuse.’” *Id.* All of which was known at trial and, therefore, not suppressed. Vasquez’s *Brady* claim lacks merit on this basis alone.

The same goes for Vasquez’s *Napue* claim. First, given that the Trautman notes don’t say what Vasquez claims, he fails to prove State knowledge that the test results were irreconcilable or that Miranda in fact had no cocaine in her blood. Second, the state court found Vasquez has never proven that the evidence that Miranda had cocaine in her blood was truly false. ROA.260. Given the high amounts found via the confirmatory test, it is just as, if not more, likely that the screening test results were clerical error, meaning Miranda did have cocaine in her blood. *Id.*; *see also Vasquez III*, 2025 WL 3488844, at *6 (“Also, notably, while there was a ‘negative’ test there also was a subsequent test that did show a high quantity of cocaine, so it is not as if there is no evidence of cocaine.”). Vasquez fails to overcome this presumptively correct finding with clear and convincing evidence. *See* § 2254(e)(1). There is thus no falsity.

Regardless, Vasquez cannot show materiality for either claim. Vasquez was charged with intentionally or *knowingly* causing four-year-old Miranda’s death, not by injecting with her cocaine, but by striking her on the

head repeatedly with his hand. App.15a.⁸ The State could thus prove intent by showing either that Vasquez acted with a “conscious objective or desire” to kill her or was at least “aware that his conduct [was] reasonably certain” to cause that result. *See* Tex. Penal Code § 6.03(a), (b). The State’s mens rea case fell into four general areas.

First was evidence regarding the immense force—“equivalent to [that] caused by a 65-m.p.h. car crash,” *see Vasquez*, 2008 WL 859147, at *7—involved in killing Miranda. Vasquez admitted to hitting her multiple times when he was the only adult in the house, and there “at least 20 to 30” contusions all over her body. *See* App.16a. The blows were forceful enough that, as the state court found, Miranda “was brain dead either when [Vasquez] stopped hitting her or by the time she arrived at the hospital.” ROA.277. “[I]t is quite difficult to imagine how an adult man repeatedly inflicting blows to the head and body of a three-foot-tall, 41-pound young girl was not at least aware that those blows could kill her.” App.30a.

⁸ Because Vasquez filed the instant federal petition in district court with the express purpose of obtaining a quick dismissal that he could appeal to this Court, the record in the district court is sparse. It lacks, for example, the reporter’s record and clerk’s record from Vasquez’s trial and postconviction proceedings. These normally would have been filed by the Director if he had been required to answer Vasquez’s petition, but the district court dismissed at the screening stage. *See* ROA.1067. This sparse record makes Vasquez’s case a poor vehicle to review his question presented; the Court should wait to reach such a question when a petitioner has not engaged in gamesmanship that had the effect of depriving the courts of a full record.

Second was evidence that Miranda had been sexually assaulted. The State's expert testified that Miranda's case was one of the worst sexual assault cases he'd seen. App.30a. Such "severe sexual assault provides a strong motive to silence a child." App.30a.

Third was Vasquez's lack of credibility. Vasquez lied numerous times, presenting contradictory stories about Miranda's death. *See* ROA.226–29. As the state court found, there was no credible evidence providing an alternative, innocent explanation for Miranda's death. ROA.227.

Fourth was the cocaine. But no amount of quibbling over the cocaine testing would undermine the significant and "compelling," App.30a, evidence that Vasquez knew repeatedly beating a tiny four-year-old girl on the head could kill her. Thus, Vasquez fails to prove materiality for either his *Brady* or his *Napue* claim. Because he would not benefit from a successiveness rule in his favor, certiorari review should be denied.

CONCLUSION

For the forgoing reasons, Vasquez's petition for a writ of certiorari should be denied.

Respectfully submitted,

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