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SUPREME COURT, U.S.

No. 26-5356

IN THE
SUPREME COURT OF THE UNITED STATES

BRADLEY LANE CROFT,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR REHEARING OF ORDER DENYING CERTIORARI UNDER SUPREME COURT RULE 44.2

Request to restore petition for consideration pending
Berry v. United States, No. 25-7026

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November 2, 2026

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PETITION FOR REHEARING

Pursuant to Supreme Court Rule 44.2, petitioner Bradley Lane Croft respectfully seeks rehearing of the October 13, 2026 order denying certiorari in No. 26-5356. That same day, this Court granted certiorari in Berry v. United States, No. 25-7026, to review the role of adverse circuit precedent and contrary judicial authority in determining whether an issue is debatable for purposes of a certificate of appealability (COA). Petitioner asks the Court to reconsider its denial and, if rehearing is granted, hold this petition pending Berry. In the alternative, petitioner requests that the Court defer disposition of this rehearing petition while Berry remains pending.

The request is deliberately narrow. It concerns only Question Presented One of the original certiorari petition, the preserved, timely Strickland claim about counsel's investigation of witness Wes Keeling and the unserved Midlothian Police Department subpoena. Petitioner does not reopen the separate forfeiture question, seek to adjudicate guilt, or ask this Court to vacate the criminal judgment now. Nor is this a second petition for certiorari. The new matter identified here is the Court's selection of the COA issue in Berry for plenary review, which had not occurred when the original petition was submitted.

I. THE BERRY GRANT PRESENTS A POTENTIALLY PERTINENT COA QUESTION.

The question granted in Berry asks whether § 2253 permits a COA when binding precedent within the applicant's circuit rejects the proposed appellate claim but another circuit has resolved that issue in the applicant's favor. Berry v. United States, No. 25-7026, Question Presented (cert. granted Oct. 13, 2026). The issue concerns what may count as disagreement among reasonable jurists at the jurisdictional gateway, not whether the applicant has proved the ultimate constitutional claim. See 28 U.S.C. § 2253(c); Slack v. McDaniel, 529 U.S. 473, 484 (2000); Miller-El v. Cockrell, 537 U.S. 322, 336–38 (2003).

Petitioner recognizes the distinction. His case does not present the precise cross-circuit division described in Berry. Instead, a published member of the Fifth Circuit panel expressly questioned the identity-specific premise on which the panel affirmed petitioner's aggravated-identity-theft convictions after Dubin. United States v. Croft, 87 F.4th 644 (5th Cir. 2023) (Ho, J., dubitante); Pet. App. 80a–81a. Judge Ho did not dissent on petitioner's Strickland claim or decide his later COA application. But he did question whether the "crux" of the predicate fraud was the instructors' identities or their qualifications. That narrower disagreement is relevant to whether reasonable jurists could debate a subsequent prejudice ruling that treated Keeling-related evidence as immaterial under a more general fraud theory.

Berry could illuminate the degree to which a court considering a COA must take seriously reasoned judicial disagreement about the governing legal premise, even when existing precedent forecloses ultimate merits relief. The grant itself decides nothing. Petitioner asks only that the Court retain the ability to consider its forthcoming explanation of the COA threshold in a closely related gatekeeping context.

II. THE PRESERVED KEELING CLAIM PRESENTS A CONCRETE COA DISPUTE.

Petitioner's first § 2255 motion, filed November 26, 2024, alleged that trial counsel failed to pursue the Midlothian Police Department subpoena and related investigative evidence bearing on Keeling's involvement, credibility, and testimony. Pet. App. 107a–114a. The March 28, 2019 interview memorandum described Keeling teaching a Universal K-9 handler course attended by some veterans in September 2016. Pet. App. 12a–13a. That later course does not by itself establish that Keeling was authorized to be listed as an instructor on the March 2016 application. Its relevance is narrower: it supplies a concrete lead for testing the scope of his relationship with the school and aspects of the Government's evidentiary account.

The original § 2255 record also contained conflicting descriptions of responsibility for the unserved subpoena. Petitioner identified an investigator's account attributing the arrangements to petitioner and civil counsel and a declaration from civil counsel denying the claimed criminal-subpoena arrangement. Pet. App. 113a–114a. Whether those conflicts prove deficient performance is a question for merits adjudication. The proposed COA question is instead whether an objectively reasonable jurist could debate the district court's reliance on a former trial lawyer's State Bar grievance response as establishing thorough investigation without factual development. See Pet. App. 21a–24a.

The prejudice question is related but distinct. In rejecting the original investigation claim, the district court treated Keeling testimony and impeachment material as immaterial to guilt under its earlier assessment of broader deceit. Pet. App. 23a–24a. Yet, in discussing a separate Dubin contention in the same § 2255 order, the district court recognized the Fifth Circuit's post-Dubin conclusion that the identity of the listed instructors, including who would teach, supplied the basis and crux of the wire-fraud theory supporting § 1028A. Pet. App. 36a–37a; Croft, 87 F.4th at 648–52. General evidence of deceit is not automatically a substitute for evaluating the significance of evidence to the more specific identity-based premise governing the aggravated-identity-theft counts.

The claim is not that all evidence concerning Keeling necessarily undermines that premise. Other trainers and other proof remain in the record; impeachment is not necessarily exoneration. The claim is that reasonable jurists could debate whether a prejudice inquiry limited to a generalized fraud sufficiency finding answered the legally pertinent question for those particular counts. Strickland v. Washington, 466 U.S. 668, 694 (1984); Dubin v. United States, 599 U.S. 110, 131–32 (2023).

This issue was preserved at the COA stage. Supplemental Issues Eight and Nine expressly connected Keeling, the unserved subpoena, and the identity-specific prejudice question. Pet. App. 91a–92a. The Fifth Circuit said that it had collectively considered and liberally construed the filings, recited the Slack standard, and denied a COA without a claim-specific explanation. Pet. App. 1a–3a (June 29, 2026). On rehearing, petitioner narrowed the request to the original investigation claim, and reconsideration was denied August 6, 2026. Pet. App. 4a–5a, 97a–106a. Although an unexplained COA denial is not itself proof of error, the tension between the two substantive theories supplies a legitimate threshold question under Miller-El and Buck v. Davis, 580 U.S. 100, 115–18 (2017).

III. RULE 44.2 IMPOSES A STRICT LIMIT; THE REQUESTED DISPOSITION IS NARROW.

Rule 44.2 permits rehearing of a certiorari denial only for intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented. Petitioner does not claim that the Berry grant constitutes a controlling holding. Nor does he claim that the grant arose after the denial in this case: both orders issued October 13, 2026. Indeed, those facts present substantial objections to rehearing, and the Court may conclude that it already considered both matters when acting on the same day.

The distinct ground offered is that the Court's selection of Berry for full review materially sharpened an issue that could not have been presented in this form when petitioner filed his certiorari petition in August. The earlier petition argued the correct COA threshold; it did not, and could not, ask for a hold in light of a then-unmade grant specifically addressing judicial disagreement at the § 2253 gateway. Petitioner submits that the resulting exceptional overlap is a substantial ground not previously presented within Rule 44.2, while recognizing the Court's demanding standard and discretion to conclude otherwise.

A grant of rehearing would not imply that Berry resolves petitioner's distinct fact-dependent Strickland issue, or that a decision in Berry must produce a grant, vacatur, and remand here. It would preserve a limited opportunity to evaluate the forthcoming COA rule against the actual original record, including the distinction between debate about the governing identity/crux premise and proof of counsel's deficient performance or prejudice. The Court could then deny certiorari if Berry does not bear on the question, or take whatever other action the eventual decision warrants.

CONCLUSION

The petition for rehearing should be granted, the October 13, 2026 denial vacated, and No. 26-5356 restored and held pending disposition of Berry v. United States, No. 25-7026. Alternatively, the Court should defer consideration of this rehearing petition pending Berry. Petitioner seeks no immediate ruling on the merits, no reopening of Question Presented Two, and no action affecting the separate petition in No. 26-5291.

Respectfully submitted,

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Date signed: November 2, 2026

CERTIFICATION UNDER RULE 44.2

I, Bradley Lane Croft, proceeding without counsel, certify that this petition for rehearing is restricted to the grounds permitted by Supreme Court Rule 44.2, namely intervening circumstances of substantial or controlling effect or other substantial grounds not previously presented. I further certify that the petition is presented in good faith and not for purposes of delay. I understand that Rule 44.2 requires this certification to accompany and be attached to every copy of the petition, with at least one copy bearing my signature.

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BRADLEY LANE CROFT, Petitioner

v.

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PROOF OF SERVICE UNDER RULE 29.5

I, Bradley Lane Croft, declare under penalty of perjury under 28 U.S.C. § 1746 that on the date stated below, I served one true copy of my petition for rehearing, including its Rule 44.2 certification.

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The foregoing is true and correct.

Executed on November 2, 2026.

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