

NO: ____

**IN THE
SUPREME COURT OF THE UNITED STATES**

BARBARA JEAN MERCER,

Petitioner,

v.

ANTHONY STEWART,

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 FOR REVIEW

Section § 2254(d)(2) allows habeas review for a violation of a state petitioner's rights where the state court's adjudication of the proceeding "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding."

At Petitioner's trial, evidence was presented to support the theory that Shemel Thomas was killed in defense of Petitioner. Nevertheless, the Michigan Court of Appeals concluded that the record contained "no evidence" to support a defense of others instruction. Is this question properly addressed under 28 U.S.C. § 2254(d)(2) as this Court held in *Brumfield v. Cain*, 576 U.S. 305 (2015). Or, is it properly disposed of under 28 U.S.C. § 2254(d)(1) as a "mixed question of law and fact"?

Contrary to this Court's precedent, the Sixth Circuit found in the decision below that "whether to provide a jury instruction" based on a particular set of facts "is not the kind of fact-based determination subject to scrutiny under § 2254(d)(2)," *Mercer v. Stewart*, 171 F.4th 897, 905 (6th Cir. 2026); *McMullan v. Booker*, 761 F.3d 662 (6th Cir. 2014). In a case like this, where the error involved a state court's misreading of the factual record, the lower court's decision conflicts with precedent from this Court, from the Ninth Circuit, and highlights the tension within the opinions of the Sixth Circuit.

Under Sixth Circuit precedent, factual issues like the one in this case can never reach §2254(d)(2). Following the Sixth Circuit's analysis in *Keahey v. Marquis*, 978 F.3d 474, 478–81 (6th Cir. 2020), it is clear that so long as the factual error involves a defense that this Court has not squarely and explicitly named as one a defendant has a right to present, §2254 petitioners who have been deprived of the right to present a defense in the Sixth Circuit have no path to relief once a state court has made an unreasonable determination of the facts.

PARTIES TO THE PROCEEDINGS

There are no parties to the proceeding other than those named in the caption of the case.

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**On Petition for Writ of Certiorari to the
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PETITION FOR WRIT OF CERTIORARI

Barbara Mercer respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The Sixth Circuit's unpublished opinion reversing the grant of habeas relief as to Mercer's conviction for the murder of Shemel Thomas is included in the Appendix at A-1. The district court's opinion granting in part and denying in part habeas relief is included in the appendix at A-2. The district court's order finalizing terms of habeas relief and is included in the appendix at A-3.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1) and Part III of this Court's rules. The decision of the court of appeals opinion reversing in part and affirming in part the district court's opinion granting in part and denying in part Petitioner's habeas claims was entered April 2, 2026. On July 9, 2026, this Court granted Petitioner an extension for filing this petition until August 30, 2026. This petition is timely filed pursuant to Supreme Court Rule 13.1.

STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in pertinent part:

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

Section 2254(d) of Title 28 of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) states, in pertinent part:

- (d) 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 with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
 - (1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

INTRODUCTION

This state habeas case arises out of a two victim and two defendant homicide trial in Jackson, Michigan in 2012. Barbara Mercer (Petitioner) was charged only as an aider and abettor, and her boyfriend, Richard Janish, was charged as the principal; the record is clear that Janish shot and killed both victims (Thomas and Hannah). The jury acquitted both defendants of first-degree murder. But the jury illogically convicted Mercer of two counts of second-degree murder, while convicting Janish of one count of second-degree murder (as to Thomas) and one count of voluntary manslaughter (as to Hannah, based on self-defense).

After exhausting state court appeals, Petitioner filed a § 2254 Petition for Writ of Habeas Corpus. The federal district court granted Petitioner a new trial as to the Thomas murder. The Sixth Circuit reversed.

Petitioner submits that the district court properly found that the Michigan Court of Appeals violated Petitioner's right to present a complete defense by basing its decision on an unreasonable determination of the facts. Specifically, the Michigan Court of Appeals found that there was "no evidence" to support a defense of others claim as it related to the killing of Thomas. The trial record, however, spoke to a number of facts that would have supported that conviction. The district court properly found that this was an unreasonable factual determination under 28 U.S.C. §

2254(d)(2). The Sixth Circuit held that the question was properly analyzed under Section 2254(d)(1) – not (d)(2) – and reversed on that basis. This is inconsistent with precedent from this Court, the Sixth Circuit, and highlights a split between the Sixth and Ninth Circuit.

STATEMENT OF THE CASE

1. In 2012, Mercer and her codefendant and former boyfriend were tried together and convicted of two homicides in Jackson County, Michigan. Janish shot and killed both Shemel Thomas and Anthony Hannah. Petitioner Mercer was on trial alongside him under an aiding and abetting theory. The issue in this petition is limited to an instructional issue involving the death of Thomas.

2. The trial record contained a variety of evidence suggesting that Petitioner was being sexually assaulted by Thomas (or, at the very least, that codefendant Janish could have reasonably believed she was being assaulted) at the time Janish shot Thomas.

3. In Michigan, the reasonable belief of imminent sexual assault of another justifies use of deadly force. The trial court declined a request for a defense of others instruction for the killing of Thomas. The Michigan Court of Appeal affirmed, finding that there was “no evidence” to support the instruction. On habeas review, the federal district court granted relief on this issue, as the state court determination that there was “no evidence” to support the instruction was a conclusion that was factually contradicted by the trial record. The district court separated the legal and factual questions and used §2254(d)(2) to reach the issue, as the conclusion that no evidence supported the instruction was a factual determination.

4. On appeal, the Sixth Circuit reversed, holding that Petitioner’s case was properly disposed of under §2254(d)(1) and that under that provision, she was not entitled to relief because “the Supreme Court has never clearly established [petitioner’s] alleged constitutional right to a self-defense instruction and because the state court did not unreasonably apply the most relevant Supreme Court holdings, he has no basis for habeas relief under § 2254(d)(1).” *Keahey v. Marquis*, 978 F.3d 474, 478–81 (6th Cir. 2020).

REASON FOR GRANTING THE WRIT

- I. **This Court's review is necessary to clarify tension between the circuits about the proper gateway for habeas review for claims that involve denial of defense instructions based on a state court's inaccurate recitation of the historical facts of the record.**

The Antiterrorism and Effective Death Penalty Act (AEDPA) requires a federal court sitting in habeas review to defer to a state court's adjudication of a claim on the merits, unless the state adjudication resulted in a decision that was "based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding," 28 U.S.C. §2254(d)(2).

"To prevail under the unreasonable determination of the facts clause, [Petitioner] must show an unreasonable determination of fact and that the state court decision was based on that unreasonable determination." *Miles*, 988 F.3d at 924 (citing *Rice v. White*, 660 F.3d 242, 250 (6th Cir. 2011)) (quotation marks omitted). *See also Ray v. Bauman*, 326 F. Supp. 3d 445, 468 (E.D. Mich 2018) (finding that state court decision "was an unreasonable determination of the facts" where the state court of appeals ignored a transcript critical to petitioner's claim, citing §2254(d)(2)).

The state court addressed a variety of evidence that would have supported a defense of others instruction and subsequently concluded that there was "no evidence" that would support the instruction. The district court on habeas review

treated this as a separate factual question under section §2254(d)(2) and granted relief through that provision.

On appeal, the Sixth Circuit reversed, holding that Petitioner’s case was unlike this Court’s opinion in *Brumfield v. Cain*, 576 U.S. 305 (2015) or its own precedent in *Wofford v. Woods*, 969 F.3d 685 (6th Cir. 2020) in which similar issues were properly analyzed as factual matters under §2254(d)(2). Instead, it held that in this case, this issue involved an error of law and was easily disposed of under §2254(d)(1). The Sixth Circuit had, during the pendency of Mercer’s petition, issued an opinion in *Keahey v. Marquis*, 978 F.3d 474, 478–81 (6th Cir. 2020) that foreclosed any path to relief for Mercer and anyone else who had been denied a self-defense instruction under §2254(d)(1). There, it held that “[b]ecause the Supreme Court has never clearly established [petitioner’s] alleged constitutional right to a self-defense instruction and because the state court did not unreasonably apply the most relevant Supreme Court holdings, he has no basis for habeas relief under § 2254(d)(1).” *Id.* Again, because of the state court’s factual determination in this case that there was no evidence to support the instruction – despite there being some – the district court was reversed after using §2254(d)(2) as its framework.

In addition to tension within the Sixth Circuit, the decision below departs from this Court’s precedent in *Brumfield* and highlights conflict with the way similar cases are treated in the Ninth Circuit.

In *Brumfield v. Cain*, this Court held that a state trial court's finding that the petitioner presented "no evidence of adaptive impairment" was "an unreasonable determination of fact" properly analyzed under 28 U.S.C. § 2254(d)(2). (*Id.* at 2020.) (citing *Brumfield v. Cain*, *supra*). The Sixth Circuit used 28 U.S.C. § 2254(d)(2) when it held that the Michigan Court Appeals' "no evidence" finding in a case involving removal of a juror was a factual determination subject to review under (d)(2). (*Id.* at 2021.) (citing *Wofford v. Woods*, 969 F.3d 685, 697–98 (6th Cir. 2020)). In *Brumfield* and *Wofford*, similar "no evidence" determinations were found to be properly challenged under (d)(2).

The circuits are divided over whether §2254(d)(2) reaches the factual determinations underlying a state court's resolution of a mixed question. The Ninth Circuit uses a different analysis than the one the Sixth Circuit used in the case below. In *Lambert*, the Ninth Circuit explained:

a federal court reviewing a state court conclusion on a mixed issue involving questions both of fact and law must first separate the legal conclusions from the factual determinations that underlie it. Fact-finding underlying the state court's decision is accorded the full deference of §§ 2254(d)(2) and (e)(1), while the state court's conclusion as to the ultimate legal issue -- or the application of federal law to the factual findings -- is reviewed per § 2254(d)(1) in order to ascertain whether the decision is "contrary to, or involved an unreasonable application of, clearly established" Supreme Court precedent. 28 U.S.C. § 2254(d)(1)."

Lambert v. Blodgett, 393 F.3d 943 (2004).

The Sixth Circuit in the decision below misused 28 U.S.C. § 2254. It created tension in its own circuit and created case law at odds with precedent from this Court and cases from the Ninth Circuit. This Court should grant the writ to clarify the appropriate framework for analyzing factual errors related to instructional issues.

CONCLUSION

For the foregoing reasons, Petitioner Barbara Jean Mercer asks that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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Detroit, Michigan
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