

No. _____

In the Supreme Court of the United States

QUINCY MARQUICE TAYLOR,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

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

PETITION FOR WRIT OF CERTIORARI

Respectfully submitted,

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QUESTION PRESENTED

Whether the Confrontation Clause of Amendment VI to the United States Constitution grants a criminal defendant a pretrial right to compel discovery of documents that may assist him in effectively cross-examining a witness.

PARTIES

The parties in the Sixth Circuit Court of Appeals include the petitioner Quincy Marquice Taylor, appellant below, and respondent United States of America, appellee below.

PROCEEDINGS DIRECTLY RELATED TO THE CASE

The proceedings that are directly related to the case include:

1. Eastern District of Kentucky, *United States of America v. Quincy Marquice Taylor*, Criminal No. 5:22-CR-137-DCR-01, judgment entered on November 3, 2025.
2. Sixth Circuit Court of Appeals, *United States of America v. Quincy Marquice Taylor*, No. 25-6035, judgment entered on June 16, 2026.

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PETITION FOR WRIT OF CERTIORARI

Petitioner Quincy Marquice Taylor respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a) is a reported opinion available at 178 F.4th 1017 (6th Cir. 2026). The opinion of the district court (App., *infra*, 15a) is not reported, but is available at *United States v. Taylor*, No. 5: 22-137-DCR, 2025 U.S. LEXIS 126672 (E.D. Ky. July 3, 2025).

JURISDICTION

This is a petition seeking certiorari review of the judgment of the Sixth Circuit Court of Appeals entered on June 16, 2026, and the jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

Amendment VI to the United States Constitution provides:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

STATEMENT OF THE CASE

Basis for Federal Jurisdiction. This petition seeks certiorari review of the judgment of the Sixth Circuit Court of Appeals, and the basis of federal jurisdiction is that it is a criminal case under the criminal laws of the United States that originated with an indictment of the petitioner in the Eastern District of Kentucky.

Underlying Facts. Petitioner Quincy Marquice Taylor (“Taylor”) was indicted in the Eastern District of Kentucky for: (1) possession with intent to distribute cocaine,¹ (2) possession of a firearm in furtherance of a drug trafficking crime,² and possession of a firearm by a convicted felon.³ R 1, Page ID 1-5. The key witness against Taylor was William Howell (“Howell”). It is the trial court’s denial of Taylor’s pretrial request to obtain court documents related to Howell’s expunged state court criminal cases that is the subject of this petition. The trial court rejected Taylor’s

¹ A violation of 21 U.S.C. § 841(a)(1).

² A violation of 18 U.S.C. § 924(c)(1)(A).

³ A violation of 18 U.S.C. § 922(g)(1).

argument that he was entitled to such records pursuant to the Confrontation Clause of the Sixth Amendment in order to be able to effectively cross-examine Howell. R 114, Page ID 1001-02.⁴ The Sixth Circuit Court of Appeals affirmed the trial court order denying Taylor access to Howell's criminal court records. R 158-1.

Howell was the key witness against Taylor, and his credibility was vital to the jury's determination as to Taylor's guilt.⁵ It was the testimony of Howell that connected Taylor to the drugs and firearm, thus leading to Taylor's conviction. Howell's testimony consisted of the following: Around midnight on October 27, 2021, Howell was parked off the roadway on an exit ramp on Interstate 75 in Lexington, Kentucky, at which time he witnessed a one-vehicle wreck on the exit ramp. Taylor exited the wrecked vehicle and asked Howell to take possession of a bag that was in the vehicle. Taylor showed Howell the contents of the bag, which contained drugs and a firearm. Howell refused to take the bag, and Taylor then hid the bag on the side of the exit ramp and left the scene. Shortly thereafter, police arrived at the scene and spoke with Howell who assisted them in finding the bag left behind by Taylor. R 145, Page ID 1431-1441. The bag contained a handgun and cocaine. R 145, Page ID 1506-1510. These were Howell's version of the facts and resulted in Taylor's conviction.

However, Howell's interaction with law enforcement authorities did not end there. In March of 2022, while Taylor's case was pending, Howell was charged in the

⁴ Taylor was convicted on all counts and sentenced to 360 months in prison. R 135, Page ID 1289-1295.

⁵ In its opinion in Taylor's first appeal, the Sixth Circuit characterized Howell's testimony as being critical to the government's case, characterizing Howell as the government's "star witness," and stating that "[w]ithout Howell, the government's case against Taylor collapses." *United States v. Taylor*, 127 F.4th 1008, 1011 and 1017 (6th Cir. 2025).

Gallatin Circuit Court with felony possession of a controlled substance (drug unspecified) and misdemeanor assault and possession of drug paraphernalia. R 108-1, Page ID 913-916. In July of 2022, federal agents interviewed Howell in preparation for Taylor's trial. During that interview, Howell brought up his pending Gallatin County felony drug possession charge and asked what "benefits" he might receive for cooperating, expressing concern about recent encounters with police. R 87-1, Page ID 734. Although no promises were made, one agent told Howell to consult his attorney, stating a benefit might be possible. *Id.*

In November of 2022, Howell subsequently pled guilty to the Gallatin County drug charges pursuant to a written plea agreement. He received a sentence of 18 months in prison, which was diverted for a period of 18 months on the condition that Howell did not commit any other offenses during the period of diversion. If Howell successfully completed his diversion, the charges would be "dismissed-diverted." R 108-1, Page ID 913-916; R 108-2, Page ID 917-919.

But Howell's problems did not end there. Only two months later, in January of 2023, while he was still on diversion from his prior drug charges, Howell was charged in the Gallatin Circuit Court with felony possession of a handgun by a convicted felon. R 108-3, Page ID 920-921. This new offense violated the terms of Howell's diversion agreement from his drug offense. If the diversion agreement was revoked, Howell's diverted felony drug offense would become a permanent conviction, and the new gun possession charge could serve as a basis for the Gallatin Circuit Court to impose Howell's diverted 18-month sentence. Fortunately for Howell, at that time, Taylor's

case was still pending trial. As a result, “the state prosecutor had communicated a willingness to dismiss Howell’s pending firearm charge as well as not pursuing revocation of the diversion agreement” if he continued to cooperate in the federal prosecution of Taylor. R 98, Page ID 798.

In May of 2023, while Howell’s diverted felony drug charge and subsequent felony gun charge were pending, Taylor’s case went to trial (for the first time). Howell testified at the trial, identifying Taylor as the possessor of the drugs and handgun in the bag that the police had located near the exit ramp, and Taylor was convicted of all three charges.⁶ R 48, Page ID 176.

A mere three days after Taylor’s conviction, Howell’s pending felony gun charge was dismissed by the Gallatin Circuit Court. R 98, Page ID 799. Because the gun charge had been dismissed, Howell was able to successfully complete his 18-month diversion on the felony drug charge, and such charge was also dismissed. *Id.* Subsequently, Howell’s diverted-dismissed felony drug possession case was expunged pursuant to KRS 431.076.⁷ R 109-7, Page ID 966-969.

Taylor’s conviction was subsequently reversed by the Sixth Circuit Court of Appeals and remanded to the trial court for a new trial. *United States v. Taylor*, 127

⁶ Not so coincidentally, Taylor’s charges of drug and firearm possession were the same type of alleged illegal conduct as Howell’s Gallatin County charges.

⁷ KRS 431.076 provides for the expungement of the court record of a criminal charge that has been dismissed. After the expungement, “the proceedings in the matter shall be deemed never to have occurred. The court and other agencies shall delete or remove the records from their computer systems so that any official state-performed background check will indicate that the records do not exist. The court and other agencies shall reply to any inquiry that no record exists on the matter.” KRS 431.076(6).

F.4th 1008 (6th Cir. 2025).⁸ Prior to the second trial, Taylor subpoenaed the court records from Howell's expunged felony drug case that had been dismissed-diverted. R 95, Page ID **; R 96, Page ID 791-92. Pursuant to KRS 431.076(6), the Gallatin Circuit Court Clerk and the Administrative Office of the Courts refused to produce the court records from Howell's expunged case. R 101-4, Page ID 808-812, 841-843.

Taylor filed a motion for the Gallatin Circuit Court Clerk and Administrative Office of the Courts to show cause why they should not be held in contempt for refusing to comply with the subpoena to produce the court records. R 101, Page ID 808-811. The government also filed a motion in limine to limit the scope of Taylor's cross-examination of Howell, seeking to "exclude any discussion of the underlying facts related to the now dismissed and expunged offenses [and] the specific nature of now-expunged misdemeanor offenses," which the government claimed would be unfairly prejudicial under Federal Rule of Evidence 403. R 98, Page ID 796-803; R 114, Page ID 996.

The trial court granted the government's motion to exclude testimony regarding Howell's misdemeanor charges; but denied the motion to exclude evidence as to what penalties Howell faced for the diverted-dismissed felony drug possession charge and the dismissed felony gun possession charge as those facts "allow the jury to assess the degree of [Howell's] potential motivation [to testify against Taylor] and

⁸ Although not directly pertinent to the issue raised here, the Sixth Circuit held the trial court should not have improperly limited Taylor's "ability to cross-examine Howell about matters going to bias, prejudice, or his motivation to testify," *id.* at 1015, and that the limitation prevented the jury from having "enough information to make an informed judgment as to the weight to place on Howell's testimony," *id.* at 1017 (citation modified).

bias.” R 114, Page ID 1001. More importantly, for purposes of this petition, the trial court also denied Taylor’s request for access to Howell’s expunged court records because, with the aforesaid inquiry the court was allowing Taylor to make about Howell’s two felony cases, “the jury will have sufficient information to assess Howell’s potential bias, prejudice, or motivation to testify.” *Id.* And because, even without the court records, “Taylor has sufficient information at his disposal to impeach Howell, if needed.” *Id.* at 1001-1002. But, without the records, Taylor was never able to see exactly what plea deal Howell received from the Gallatin County prosecutor and how it might be tied to his testimony against Taylor.

Taylor was subsequently convicted of all three charges and sentenced to 360 months in prison. R 135. Taylor appealed the conviction, raising the Confrontation Clause issue as to the denial of access to Howell’s criminal records (and other issues). The Sixth Circuit affirmed the ruling of the trial court, rejecting Taylor’s argument that the trial court’s denial of his request for Howell’s expunged criminal case records violated his right under the Confrontation Clause. The Sixth Circuit held that the right of confrontation is “basically a trial right,” which is “designed to prevent improper restrictions on the types of questions that defense counsel may ask during cross-examination.” R 158-1, Page ID 1647 (quoting *Barber v. Page*, 390 U.S. 719, 725 (1968) and *Pennsylvania v. Ritchie*, 480 U.S. 39, 53 (1987)). Citing the plurality opinion in *Ritchie* as support, the court held that “the right to confrontation does not create a concomitant right to pretrial discovery,” *id.*, and concluded “Taylor’s inability to obtain Howell’s criminal file from state-court officials does not infringe Taylor’s

confrontation rights. [citation omitted]. Taylor was able to confront Howell during his trial. And, through counsel, Taylor had the opportunity to cross-examine Howell, including about his criminal history and any incentives for his testimony,” *id.* The court rejected Taylor’s argument that he needed the court records to “meaningfully test Howell’s bias or credibility,” holding that the opportunity for the “rigorous testing” of a witness’ bias or credibility under the Confrontation Clause does not go so far as to authorize such testing in “whatever form a defendant may choose.” R 158-1, Page ID 1648. Again, relying upon the plurality opinion in *Ritchie*, the court concluded: “In sum, we conclude that the Confrontation Clause does not grant a defendant a pretrial right to compelled discovery of documents that might assist him in cross-examining a witness. *See Ritchie*, 480 U.S. at 52–54.” *Id.*

REASONS FOR ALLOWANCE OF THE WRIT

There must be compelling reasons to grant certiorari. Supreme Ct. R. 10. Reasons that might compel a grant of certiorari include the fact that the decision of the court of appeals is in conflict with the decision of other courts of appeals on an important legal issue, or the court of appeals has decided an important federal law question that has not been, but should be, settled by this Court. *Id.* An issue having constitutional dimension can be a compelling reason to grant certiorari, *Rice v. Sioux City Mem’l Park Cemetery, Inc.*, 349 U.S. 70, 74 (1955), particularly if the constitutional issue is of importance to the public and to future litigants, as distinguished from that of the parties, *NLRB v. Pittsburgh S.S. Co.*, 340 U.S. 498, 502 (1951) (citing *Layne & Bowler Corp. v. Western Well Works*, 261 U.S. 387, 393

(1923)), and there are presently conflicting decisions on such constitutional issue in the lower courts, *United States v. Constantine*, 296 U.S. 287, 290 (1935).

This appeal meets these criteria. It involves a constitutional issue in a criminal case involving the Confrontation Clause that has broad-ranging significance to future criminal cases, which constitutional issue has not been settled by this Court, and with there being a split on such issue among the lower courts. In fact, this Court previously granted certiorari in another case on this very issue, explaining that it did so “[i]n light of the substantial and conflicting interests held by the Commonwealth and [the defendant] Ritchie.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 46 (1987).⁹ For these reasons, the Court should grant certiorari.

I. The Issue Relates to a Fundamental Constitutional Right of the Criminally Accused

This is a criminal case involving the significant constitutional question of whether a defendant’s constitutional right under the “right of cross-examination” component of the Confrontation Clause compels the pretrial disclosure to the defendant of protected documents that would make cross-examination of a material witness more effective. As such, the issue is of great public importance beyond the parties here in that it involves an important and fundamental constitutional right relating directly to the proper administration of justice and is of great significance and consequence to future defendants who may encounter a similar situation.

⁹ Although the Court granted certiorari in *Ritchie*, it did not decide the Confrontation Clause issue by majority opinion.

Resolution of this constitutional issue by the Court is a compelling reason to grant certiorari.

This Court has often granted certiorari in cases involving fundamental constitutional issues in the context of a criminal proceeding, *Illinois v. Vitale*, 447 U.S. 410 (1980) (double jeopardy); *Pa. v. Mimms*, 434 U.S. 106 (1977) (search and seizure); *Chambers v. Mississippi*, 410 U.S. 284 (1973) (due process); *Ortiz v. United States*, 585 U.S. 427 (2018) (appointments clause), *Williams v. Taylor*, 529 U.S. 362 (2000) (ineffective assistance of counsel), and has even indicated that certiorari may be appropriate in a future case to “take up the constitutional issues presented” but not decided, *McClinton v. United States*, 143 S. Ct. 2400, 2403 (2023) (concurring opinion by Justice Sotomayor). The Court has also dismissed writs of certiorari as having been “improvidently granted” once the Court determined that the important constitutional issue believed to be the subject of the writ was not actually implicated, *Tacon v. Arizona*, 410 U.S. 351, 352 (1973); *Duncan v. Tennessee*, 405 U.S. 127, 127 (1972); *Massachusetts v. Painten*, 389 U.S. 560, 561 (1968), or when it became uncertain as to the precise federal constitutional issue that was decided by the lower court, *New York v. Uplinger*, 467 U.S. 246, 248 (1984). The Court has even, in rare instances, ordered briefing on a constitutional issue implicated, but not directly presented, by the question on which certiorari was granted. *United States v. Sineneng-Smith*, 590 U.S. 371, 381 (2020) (citing *Jennings v. Rodriguez*, 580 U. S. 1040 (2016) and *Johnson v. United States*, 574 U. S. 1069 (2015)). Thus, an important factor in the certiorari analysis is whether the case provides “an [] appropriate vehicle

for resolving the important constitutional issues raised by the parties.” *Uplinger*, 467 U.S. at 249.

This case does just that. It provides an appropriate vehicle for resolving the important constitutional issue of whether a defendant’s constitutional right under the “right of cross-examination” component of the Confrontation Clause compels the pretrial disclosure to the defendant of protected documents that would make cross-examination of a material witness more effective. In addition to being an issue of great public importance beyond the parties involved here, it is an issue that has not yet been decided by this Court. *See* Part II, *infra*.

II. This Court Has Never Decided the Issue

In 1986, this Court granted certiorari¹⁰ to address the same issue raised here; that being, the important constitutional issue of “whether and to what extent a State’s interest in the confidentiality of its investigative files concerning child abuse must yield to a criminal defendant’s Sixth and Fourteenth Amendment right to discover favorable evidence.” *Pennsylvania v. Ritchie*, 480 U.S. 39, 42-43 (1987). Or, more specifically, whether the “right to conduct cross-examination” component of the Confrontation Clause of the Sixth Amendment¹¹ compels the disclosure of protected information¹² that would make cross-examination of a witness more effective, thus

¹⁰ *Pennsylvania v. Ritchie*, 476 U.S. 1139 (1986).

¹¹ The Confrontation clause provides two types of protection for a criminal defendant: the right to physically face those who testify against him, and the right to conduct cross-examination. *Ritchie*, 480 U.S. at 51 (citing *Delaware v. Fensterer*, 474 U.S. 15, 18-19 (1985)).

¹² In *Ritchie*, the records sought were “protected” by a state statute that prohibited the Children and Youth Services Department from disclosing its investigative records about abuse of a child. In the case

promoting the Confrontation Clause's purpose of increasing the accuracy of the truth-finding process at trial.¹³ However, *Ritchie* was decided without a majority opinion on the Confrontation Clause issue.

In a *plurality* opinion, authored by Justice Powell, and joined by Chief Justice Rehnquist and Justices White and O'Connor, the four justices held that the Confrontation Clause did not require the protected information to be provided to the defendant for use in cross-examination of the witness, with the Court stating:

The opinions of this Court show that the right to confrontation is a trial right, designed to prevent improper restrictions on the types of questions that defense counsel may ask during cross-examination. See *California v. Green*, 399 U.S. 149, 157 (1970) ("[It] is this literal right to 'confront' the witness at the time of trial that forms the core of the values furthered by the Confrontation Clause"); *Barber v. Page*, 390 U.S. 719, 725 (1968) ("The right to confrontation is basically a trial right"). The ability to question adverse witnesses, however, does not include the power to require the pretrial disclosure of any and all information that might be useful in contradicting unfavorable testimony. Normally the right to confront one's accusers is satisfied if defense counsel receives wide latitude at trial to question witnesses. *Delaware v. Fensterer*, 474 U.S., at 20. In short, the Confrontation Clause only guarantees "an opportunity for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Id.*, at 20 (emphasis in original). See also *Ohio v. Roberts*, *supra*, at 73, n. 12 (except in "extraordinary cases, no inquiry into 'effectiveness' [of cross-examination] is required").

at bar, the records sought are "protected" by a state statute that prohibits the administrative branch of the state court system from disclosing court records in cases that have been expunged.

¹³ *Ritchie*, at 51-52, described the function of the cross-examination component of the Confrontation Clause as follows: "Of course, the right to cross-examine includes the opportunity to show that a witness is biased, or that the testimony is exaggerated or unbelievable. *United States v. Abel*, 469 U.S. 45, 50 (1984); *Davis v. Alaska*, 415 U.S. 308, 316 (1974). Because this type of evidence can make the difference between conviction and acquittal, see *Napue v. Illinois*, 360 U.S. 264, 269 (1959), *Ritchie* argues that the failure to disclose information that might have made cross-examination more effective undermines the Confrontation Clause's purpose of increasing the accuracy of the truth-finding process at trial. See *United States v. Inadi*, *supra*, at 396."

Ritchie, 480 U.S. at 52-53.

Three justices, however, disagreed with the plurality opinion. Justice Blackmon's concurring opinion stated that, while the plurality may be correct that the Confrontation Clause is a "trial right" in that it confers upon a defendant a right to conduct cross-examination at trial, the inquiry must go further and examine "the effectiveness of the cross-examination." *Id.* at 62. In Justice Blackmon's opinion, the plurality's opinion that the constitutional right of Confrontation is satisfied "so long as defense counsel can question a witness on any proper subject of cross-examination" ignores one of the primary purposes of cross-examination, which is "to call into question a witness' credibility." *Id.* According to Justice Blackmon, the right of cross-examination under the Confrontation Clause would be "an empty formality" if the scope of such right is divorced from the fundamental purpose of the effective use of cross-examination, which is to demonstrate that the witness is biased or cannot remember the events crucial to their testimony. *Id.* And while simple questioning of the witness will satisfy the purpose of cross-examination in most cases, there may be cases where the opportunity to cross-examine a witness in an effort to show bias, without being able to refer to underlying documents that help to confirm such bias, makes the opportunity to cross-examine "useless" or even "actively harm[s]" the defendant, by making it appear to the jury that defense counsel "was engaged in a speculative and baseless line of attack on the credibility of an apparently blameless witness" or that "defense counsel was doing nothing more than harassing a blameless witness." *Id.* at 62-64 (citing *Davis v. Alaska*, 415 U.S. 308 (1974)). Justice Blackmon

concluded that the Confrontation Clause prohibits the government from hindering a defendant's right to effectively cross-examine a witness at trial through use of some mechanism—such as a statute that protects the records from disclosure—that applies during the pretrial stage of the proceeding. *Id.* at 64-65.¹⁴

Justice Brennan's dissent, joined by Justice Marshall, mirrors the logic of Justice Blackmon. Justice Brennan states that a primary interest secured by the Confrontation Clause is the right of cross-examination, and that "[a] crucial avenue of cross-examination . . . may be foreclosed by the denial of access to material that would serve as the basis for this examination." *Id.* at 67. According to Justice Brennan, limiting the Confrontation Clause inquiry to the plurality's narrow view that it is only a trial right that prohibits placing limitations on the scope of cross-examination of a witness at trial ignores the true purpose of such right—*effective* cross-examination:

One way in which cross-examination may be restricted is through preclusion at trial itself of a line of inquiry that counsel seeks to pursue. See *ante*, at 53, n. 9 (citing cases). The logic of our concern for restriction on the ability to engage in cross-examination does not suggest, however, that the Confrontation Clause prohibits only such limitations. A crucial avenue of cross-examination also may be foreclosed by the denial of access to material that would serve as the basis for this examination. Where denial of access is complete, counsel is in no position to formulate a line of inquiry potentially grounded on the material sought. Thus, he or she cannot point to a specific subject of inquiry that has been foreclosed, as can a counsel whose interrogation at trial has been limited by the trial judge. Nonetheless, there occurs as effective a preclusion of a topic of cross-examination as if the judge at trial had ruled an entire area of questioning off limits.

¹⁴ Justice Brennan later reiterated his problem with the narrow interpretation of the Confrontation Clause by the plurality opinion in *Ritchie* in his opinion in *Kentucky v. Stincer*, 482 U.S. 730, 738 n.9 (1987).

Id. at 67.

Justice Brennan also points to other cases where the Court had recognized that the right of cross-examination may be infringed, even absent limitations on questioning imposed at trial. *Id.* at 68 (citing *Jencks v. United States*, 353 U.S. 657 (1957) and *United States v. Wade*, 388 U.S. 218 (1967)). And he concludes:

The creation of a significant impediment to the conduct of cross-examination thus undercuts the protections of the Confrontation Clause, even if that impediment is not erected at the trial itself. In this case, the foreclosure of access to prior statements of the testifying victim deprived the defendant of material crucial to the conduct of cross-examination.

Id. at 71.

Justices Stevens and Scalia did not address the Confrontation Clause analysis. Thus, the Confrontation Clause analysis in *Ritchie* consists of four justices holding the Confrontation Clause does not extend to documents sought by the defendant pretrial, and three justices stating that it does. Because a plurality opinion does not represent the views of a majority of the Court, the Court is not bound by the plurality's reasoning. *CTS Corp. v. Dynamics Corp. of Am.*, 481 U.S. 69, 81 (1987). Instead, such plurality opinion is simply a "point of reference for further discussion of the issue." *Texas v. Brown*, 460 U.S. 730, 737 (1983).

In its opinion here, the Sixth Circuit acknowledged that this Court has never squarely decided this issue and that the plurality opinion in *Ritchie* is not binding precedent. [Document 29-2, at Page 7, fn. 3] ("The Supreme Court has not definitively determined whether the Confrontation Clause creates any right to discovery. In *Ritchie*, four justices concluded that the Clause creates no such right, 480 U.S. at 51–

54, three justices concluded that the denial of access to certain materials and information before trial could violate the Confrontation Clause, *id.* at 61–66 (Blackmun, J., concurring in part and concurring in the judgment); *id.* at 66–72 (Brennan, J., dissenting, joined by Marshall, J.), and two justices did not weigh in.”).

Some lower courts have recognized that *Ritchie* is only a plurality opinion and that this Court has never decided this issue by majority opinion. *McCray v. Capra*, 45 F.4th 634, 646 (2d Cir. 2022) (“Other than in *Ritchie*, the Supreme Court has not directly addressed how, if at all, the Confrontation Clause affects pretrial discovery.”); *Middlebrooks v. Bell*, 619 F.3d 526, 542-43 (6th Cir. 2010); cert. granted, judgment vacated on other grounds, 566 U.S. 902 (2012) (“*Ritchie* was only a plurality opinion, and we cannot predict whether the Supreme Court will extend the Confrontation Clause to cover discovery requests under some circumstances.”); *United States v. Blue*, 340 F. Supp. 3d 862, 867 (D.S.D. 2018) (“[I]t is questionable whether Blue has a constitutional right to the records under *Ritchie*. Although Blue argues that access to the records is necessary to ‘assure him his Sixth Amendment right to confront and cross-exam his accusers,’ the plurality in *Ritchie* held that the right to confrontation is a trial right rather than ‘a constitutionally compelled rule of pretrial discovery.’”).

Again, even though this Court granted certiorari on this important constitutional issue in *Ritchie* in 1986, the Court did not resolve the issue by majority opinion. Now, after forty years without a definitive ruling on this issue, it is a proper time for the Court to again take it up and finally resolve it. This case is an appropriate vehicle for resolving this important constitutional issue. *Uplinger*, 467 U.S. at 249.

III. Lower Courts Are Split on the Issue and Some Continue to Rely on *Ritchie*'s Plurality Opinion

The lower courts are split on the issue of whether the Confrontation Clause compels the pretrial disclosure of protected documents that would make cross-examination of a witness more effective, thus promoting the Confrontation Clause's purpose of increasing the accuracy of the truth-finding process at trial. These conflicting opinions are an additional compelling reason to grant certiorari. *See Thompson v. Clark*, 596 U.S. 36, 41 (2022) (the Court may grant certiorari "to resolve split" among appellate courts).

Numerous lower courts have followed the plurality opinion in *Ritchie* and held that the constitutional right of confrontation is a trial right designed to prevent improper restriction on the types of questions that defense counsel may ask during cross-examination and that such right does not apply to seeking documents in pretrial discovery. *McCray v. Capra*, 45 F.4th 634 (2d Cir. 2022); *United States v. Fattah*, 914 F.3d 112, 179 (3d Cir. 2019); *United States v. Wright*, 866 F.3d 899, 912 n.3 (8th Cir. 2017); *Isaac v. Grider*, No. 98-6376, 2000 U.S. App. LEXIS 9629, at *21 (6th Cir. May 4, 2000). Some of these courts even cite *Ritchie* as if it is a majority opinion, neglecting to note it is only a plurality. *Ross v. DA of Allegheny*, 672 F.3d 198, 207 (3d Cir. 2012); *Barnes v. Vannoy*, 697 F. App'x 799, 805 (5th Cir. 2017); *United States v. Isa*, 923 F.2d 1300, 1306 (8th Cir. 1991); *United States v. Mejia*, 448 F.3d 436, 458 (D.C. Cir. 2006); *United States v. Gray*, No. 94-5776, No. 94-5801, No. 94-5923, No. 94-5932, No. 94-5950, 1996 U.S. App. LEXIS 17523, at *10 (4th Cir. July 17, 1996). One court even described *Ritchie* as "clearly indicating" that the Confrontation Clause does not apply

to pretrial discovery, *Carter v. Chappell*, No. 06cv1343 BEN (KSC), 2013 LX 78810, at *468 (S.D. Cal. Mar. 18, 2013), while another described *Ritchie* as “[t]he seminal Supreme Court case in this area,” *Grammer v. Easterling*, No. 1:11-CV-353, 2013 U.S. Dist. LEXIS 64111, at *27 (E.D. Tenn. May 3, 2013) (quoting *Renusch v. Berghuis*, 75 Fed. Appx. 415, 423 (6th Cir. 2003)). Various state courts have even followed *Ritchie* as apparent binding law. *State v. Pratt*, 669 A.2d 562, 570 (Conn. 1995); *Oakes v. Commonwealth*, 320 S.W.3d 50, 55 (Ky. 2010); *Commonwealth v. Figueroa*, 946 N.E.2d 142, 152 (Mass. App. 2011); *State v. Lopez*, 314 P.3d 236, 239 (N.M. 2013); *Commonwealth v. Morales*, 91 A.3d 80, 94 n.11 (Pa. 2014); *Martin v. Darnell*, 960 S.W.2d 838, 841 (Tex. App. 1997); *State v. Fortun-Cebada*, 241 P.3d 800, 807 (Wash. App. 2010).

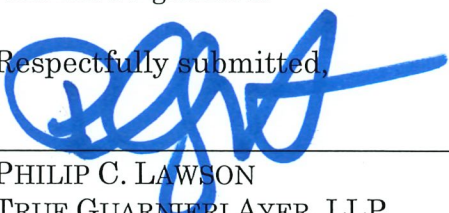
On the other hand, other lower courts have recognized *Ritchie* as being a mere plurality and declined to follow it, opting instead to follow the logic of Justice Blackmon and Brennan’s opinions that the right to effective cross-examination under the Confrontation Clause requires the defendant have pretrial access to documents necessary to show bias of a witness. *Wallace v. Price*, Civil Action No. 99-231, 2002 U.S. Dist. LEXIS 19973, at *71 (W.D. Pa. Oct. 1, 2002); *United States v. Herrick*, 2009 U.S. Dist. LEXIS 84719 (D.S.D. Sep. 17, 2009); *United States v. Arias*, 936 F.3d 793, 799 (8th Cir. 2019). Other courts have held this to be the proper interpretation of the Confrontation Clause without citing *Ritchie*. *United States v. Garrett*, 542 F.2d 23, 27 (6th Cir. 1976) (decided before *Ritchie*); *United States v. Tucker*, 249 F.R.D. 58, 67 (S.D.N.Y. 2008) (not citing *Ritchie*).

The logic of Justice Blackmun and Brennan's interpretation of the Confrontation Clause has also been adopted by jurists outside the federal system. In *People v. McCray*, 12 N.E.3d 1079 (N.Y. 2014), a state appellate judge questioned the logic of the plurality opinion in *Ritchie*, noting that "[m]any states have found the plurality's reasoning unpersuasive." *Id.* at 1085 (citing various opinions). Applying New York's confrontation clause, which he noted was more stringent than its federal counterpart, Judge Rivera followed the logic of Justice Blackmun and Brennan in his dissent: "Denial of documents that provide the defense with material to prepare for cross-examination and impeachment of the complainant in this case of alleged rape goes to the very core of the right to confront adverse witnesses. Without access to documents concerning reliability of the witness, the defendant cannot properly develop and pursue questioning favorable to the defense or address facts and related issues important to the truth finding process." *Id.* at 1084-85. *See also People v. Gissendanner*, 399 N.E.2d 924, 927 (N.Y. 1979) (decided prior to *Ritchie*).

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,



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