

26-5802

No. _____

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

ANTHONY SHAWN EWELL - Petitioner

vs.

UNITED STATES OF AMERICA - Respondant

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE ELEVENTH DISTRICT

PETITION FOR WRIT OF CERTIORARI

Anthony Shawn Ewell Reg. # 34694510
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FILED

AUG 11 2026

OFFICE OF THE CLERK
SUPREME COURT, U.S.

QUESTIONS PRESENTED FOR REVIEW

1. Whether the Eleventh Circuit Court of Appeals, post this Court's decision in Bowe v. United States, 146 S. Ct. 447, 223 L.Ed. 2d 311 (2026) concerning § 2255(H)(1), can apply requirements not in the statute.
2. Whether suppressed, flagrant police misconduct such as: unlawful investigation; First Amendment retaliatory actions; and material omissions to obtain warrant sufficient to grant a § 2255(H)(1) motion?

LIST OF PARTIES

Anthony Shawnn Ewell, Petitioner

United States of America, Respondant

RELATED CASES

There are no related cases pending.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgement below.

OPINIONS BELOW

☒ For cases from federal courts:

The opinion of the United States Court of Appeals appears at Appendix 1a-6a to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or

☒ is unpublished.

The opinion of the United States District Court appears appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or

☐ is unpublished

☐ For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☐ is unpublished

The opinion of the _____ court appears at Appendix _____ to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or

☐ is unpublished.

JURISDICTION

☒ For cases from Federal courts:

The date on which the United States Court of Appeals decided
my case was July 7, 2026.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States
Court of Appeals on the following date: _____,
and a copy of the order denying rehearing appears at Appendix
_____.

☐ An extension of time to file the petition for a writ of certiorari
was granted to and including _____ on _____
in Application No. ____A____.

The jurisdiction of this court is invoked under 28 U.S.C. §1254(1)

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. In Bowe v. United States 146 S.Ct. 447, 223 L.Ed. 2d 311 (2026), the best textual reading of 28 U.S.C.S. § 2255(H) is that, when a federal prisoner moves for authorization, a panel can authorize the filing if it satisfies one of the two grounds in §2255(H), the two and only two conditions in which a second or successive 28 U.S.C.S. § 2255 motion may proceed. Under §2255(H)(1) one of the conditions is newly discovered evidence that, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that no reasonable factfinder would have found the movant guilty of the offense. Statutory requirements tells the panel to use procedures to evaluate whether the federal prisoner's second or successive motion contains either newly discovered evidence §2255(H)(1) or new rule §2255(H)(2). Nothing in 2255(H) suggests that it incorporates §2244 for any other purpose. Thus, by its terms, §2255 does not incorporate the content requirements contained in §2244. Most importantly, purposive argument simply cannot overcome the force of the plain text of a statute.

2. Evidence seized pursuant to the search warrant [is] tainted by the prior illegal conduct. The question in determining whether evidence is tainted by an illegal search is whether the evidence was obtained through exploitation of the prior illegal conduct. Wong Sun v. United States, 371 U.S. 471, 487 (1963).

Courts are required to suppress evidence that directly or indirectly "the tainted Fruit of unlawful government conduct." United States v. Waide, 60 F. 4th 327, 338 (6th Cir. 2022) quoting Nix v. Williams, 467 U.S. 431, 104 S.Ct. 2501 81 L.Ed. 2d 377 (1984).

If an officer obtains evidence in violation of Fourth Amendment "including the direct products of police misconduct and evidence derived from illegal conduct

or fruits of the poisonous tree that evidence cannot be used." United States v. Perkins, 348 F.3d. 965 (11th Cir. U.S. App 2003).

Flagrancy of the Fourth Amendment violation especially when officers commit the illegal search the subjective purpose of seeking evidence of the sort at issue. Utah v. Strieff, 136 S.Ct. 2056, 195 L.Ed. 2d 400 (2016)

First Amendment Retaliation - the law is settled that as a general matter the first amendment prohibits government officials from subjecting an individual to retaliatory actions, including criminal prosecution for speaking out."

Hartman v. Moore, 547 U.S. 250,256, 126 S.Ct. 1695 164 L.Ed. 2d 441 (2006)

This factor is also important because it is fair to presume that if authorities acted flagrantly in violating the law, they probably did so for ulterior motives. Oregon v. Elstad, 470 U.S. 298 105 S.Ct. 1285, 84 L.Ed. 222 (1985), Brown v. Illinois, 422 U.S. 590 (1975).

The exclusionary rule reaches not only primary evidence obtained as a direct result of an illegal search, or seizure, but also evidence later discovered and found to be derivative of an illegality, or "Fruit of the Poisonous Tree".

Sequara v. United States, 468 U.S. 796, 904, 104 S.Ct. 3380 82 L.Ed. 2d 599 (1984).

In Rebalko v. Coral Springs, 552 f. Supp. 3d 1285; 2020 U.S. Dist. Lexis 204958, ultimately, then, the complaint has plausibly alleged that the officers acted outside their territorial jurisdiction and thus, without legal authority. Florida Statute, Fla. Stat. §901.25. Indeed, in a case presenting similar facts, the Eleventh Circuit recently reached the same conclusion. See Robinson v. Ash, 805 F. App'x 634, 636-38 (11th Cir. 2020). (App. 7a)

3. The statute under which Petitioner was prosecuted, though nothing turns on its terms, was 18 U.S.C. § 2252(a)(4)(b), one count, which provided: possession of child pornography.

4. The Fifth Amendment provides that no person shall be deprived of life,

liberty, or property, without due process of law. United States Const. Amend V.

INTRODUCTION

Petitioner discovered new, undisclosed evidence, that occurred prior to his guilty plea which included unlawful investigation initiated by local law enforcement; First Amendment Retaliatory action by local law enforcement who were defendants in a Federal Civil Rights case brought by Petitioner; and critical material omissions from affidavit support of warrant constitutes false statements. Dahl v. Holley, 312 F.3d. 1228 (11th Cir. 2002). This Court's intervention is necessary. See S.Ct. R. 10(a). The Court should grant review of this case to enforce it's recent (2026) ruling in Bowe v. United States concerning §2255(H) motions. (App. 7a & 11a)

STATEMENT OF THE CASE

I. Course of proceeding in the Section 2255(H)(1) case before this Court:

January 2026 - The Eleventh Circuit responded to Petitioner's initial 2255(H)(1) by denying the motion using "due diligence" and other requirements not consistent with the published 2255(H)(1) statute.

January 2026 - this Court in Bowe v. United States, resolved a circuit conflict determining that "due diligence" and "constitutional error" were not requirements for 2255(H) motions.

Petitioner resubmitted the 2255(H)(1) to the lower court requesting the panel to reconsider the motion based on this Court's decision in Bowe.

II. Relevant Facts Concerning Basis for 2255(H)(1) Motion

At the time of the March 10, 2023 Guilty Plea, the Petitioner had no knowledge of the following facts as it was withheld or not investigated by Petitioner's Public Defender, (ineffective assistance of counsel).

1) The AUSA stated that Fort Lauderdale [Police department] initiated an

investigation against Petitioner around November 2022. What was not known was that Fort Lauderdale investigated an alleged crime some 15 miles away in Hallandale Beach Florida. This was a violation of Florida State Law (Fla. Stat. 901.25). Thus an unlawful investigation, a Fourth Amendment violation, tainted all evidence there afterwards. (App.7a)

2) Court records (Appendix 11a) provide evidence that during November 2022 Petitioner was engaged in a Federal Civil Rights case against the same law enforcement entity that initiated the unlawful investigation. This is a First Amendment Retaliatory Action against Petitioner.

- 3) The warrant Judge received an affidavit with critical material omissions:
- i. unlawful investigation by Fort Lauderdale Police Dept. [FLPD] (App. 7a)
 - ii. active Federal Civil Rights lawsuit against Defendants FLPD (App.11a)
 - iii. material omission of technical issues of ISP change.
 - iv. 3 agencies were investigating FLPD officer Paul's misconduct (App.9a)

THE QUESTIONS PRESENTED ARE IMPORTANT

1. The three Constitutional violations presented are important and worthy of review. No reasonable factfinder would have found the Petitioner guilty of the offense.
2. The Eleventh Circuit's response included statements related to "actually, factually innocent". (App. 1a) However, citing Jones v. Hendrix, 599 U.S. 465; 143 S.Ct. 1857; 216 L.Ed. 2d 471; 2023, Justice Jackson states: "the text of §2255(h)(1) and (2) speaks unequivocally to the narrowing Congress wished to effect with respect to new-evidence and new-constitutional claims that we should not ascertain that Congress meant for the second or successive bar to have the same effect with respect to legal innocence claims - which, importantly, the statute does not mention. To put it bluntly, Congress knows how to speak clearly when it wants to disrupt the continuity of claims that are available to prisoners before and after it enacts legislation that address postconviction review procedures.

Senator Levin's statement (see e.g. 141 Cong. Rec. at 15040. 15042) cited in Jones v. Hendrix states:

"The text of §2255(h) says nothing about legal innocence claims, let alone expresses an intent to narrow the scope of available postconviction relief for that category of claims, in contrast to what the statute says about claims of new evidence or new constitutional rules. Congress could have easily stated somewhere in §2255(h) or §2244 that 'no circuit or district judge shall be required to consider a second or successive motion premised only on statutory claims, even claims suggesting innocence' or that 'a court of appeals shall not certify or authorize a second or successive §2255 petition that raises a statutory claim only.' Yet nothing close to this kind of language or distinction, appears on the face of the statute. Nor does an intent to foreclose statutory innocence claims appear in the legislative history of §2255(h), even though that history does clearly reflect a congressional intent to narrow the scope of postconviction relief for the categories expressly mentioned in §§ 2255(h)(1) and (2) (like new evidence claims.)"

REASONS FOR GRANTING THE WRIT

It is important that this Court course-correct the Eleventh Circuit once again concerning the resolution and directive in Bowe concerning the §2255(H) statute. Particularly given that those decisions leave federal prisoners without any remedy for violations of their constitutional rights. This Court's intervention is needed not only to restore uniformity to Bowe analyses in the lower courts, but also to bring the Eleventh Circuit into conformity with this Court's recent 2026 decisions.

In the Appeals Court decision (App.1a) the Eleventh Circuit argued that the Petitioner's claim was still subject to "due diligence" requirement which this Court reversed in Bowe while adding an "actual, factual innocence" requirement not present in the 2255(H) statute. See Jones v. Hendrix (Justice Jackson &

Senator Levin). This Court was clear that there are only two conditions and nothing more. Something has gone awry when the lower court makes applications of this Court's precedent into a null set.

3.A. Eleventh Circuit Conflicts With Supreme Court Precedent

The Eleventh Circuit ruling requiring "due diligence" conflicts with the precedent established in Bowe. The Eleventh Circuit ruling requiring "actual, factual innocence" conflicts with Jones v. Hendrix. The Eleventh Circuit's explanation of "newly discovered evidence" conflicts with the definition published in Barron's Dictionary of Legal Terms (2015 edition): "evidence in existence at the time of trial of which a party was unaware." Petitioner was unaware that the initiation of the investigation by Fort Lauderdale Police Dept. was unlawful per Fla. Stat. 901.25. In Brady v. Maryland, 373 U.S. 83 10 L.Ed. 2d 215, 83 S.Ct. 1194 (1970) when faced with the circumstance in which, at the time of the trial, the evidence was known to police investigators but not to the prosecutor, the Court again firmly held that the state "suppressed" the evidence. In the Brady context accidental failures to disclose also count as suppression. In Sawyer v. Whitley, 505 U.S. 333, 120 L.Ed. 2d 269, 112 S.Ct. 2514 (1992) at 339, "The prisoner must show a fair probability that, in light of all the evidence...tenably claimed to have been wrongly excluded or to have become available only after the trial, the trier of fact would have entertained a reasonable doubt of his guilt." (quoting Kuhlmann v. Wilson, 477 U.S. 436, 455 (1986). (App. 7a-11a)

B. Eleventh Circuit Conflicts With Fourth Circuit Precedent

In United States v. Garrett, 128 F.4th 583; 2025 U.S. App., Defendant's guilty plea was involuntary because of police misconduct. Petitioner also uncovered police misconduct after his guilty plea, however, the Eleventh Circuit does not recognize the plea to be involuntary - a conflict. (App. 7a)

C. Eleventh Circuit Conflicts With the Eleventh Circuit

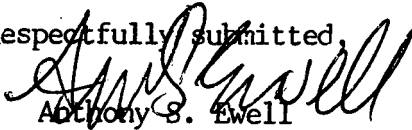
In Brady, the Supreme Court stated that a guilty plea is not voluntary if it was "induced by". among other things, "misrepresentation," Id. at 755 (quoting Shelton v. United States, 246 F.2d 571, 572 (5th Cir. 1957)(en banc)-(part of the Eleventh Circuit before 1980). In Johnson v. Singletary, 938 F.2d 1166, 1175, 1181-83 (11th Cir. 1991)(en banc), " a person cannot be guilty of a crime if a reasonable jury would entertain a reasonable doubt about any element of the crime." In Rebalko v. Coral Springs, 552 F. Supp. 3d 1285, 2020 U.S. Dist. Eleventh Circuit, ultimately the complaint has plausibly alleged that the officers acted outside their territorial jurisdiction and, thus, without lawful authority. Indeed, in a case presenting similar facts, the Eleventh Circuit recently reached the same conclusion. See Robinson v. Ash, 805 F. Appx 634, 636-38 (11th Cir. 2020). Also see Jones v. City of Atlanta, 192 F. Appx 894, 898 (11th Cir. 2006), Ball v. City of Coral Gables, 2007 U.S. Dist. (S.D. Fla Dec 19, 2007) (App. 7a-11a)

CONCLUSION

The petition for Writ of Certiorari should be granted based on conflict between a recent decision of the Supreme Court, Bowe v. United States, 2026, and a subsequent decision of the Eleventh Circuit Court of Appeals.

Petitioner requests this Court to summarily vacate the judgement of the court of appeals, and remand for further proceedings with the Court's recent decision. In light of the flagrant police misconduct, no reasonable factfinder would have found the Petitioner guilty of the offense.

Respectfully submitted,


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