No. 26-5988

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

KIRK COTTOM,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

FILED
AUG 31 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

PETITION FOR A WRIT OF CERTIORARI

TO THE UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

Kirk Cottom - ProSE

248 Wahl Road, Rochester NY 14609

QUESTION PRESENTED

Whether a Habeas Petitioner's Suspension Clause rights are violated when a court of appeals apparently interprets the gatekeeping requirements of 28 U.S.C. §2255(h)(1) so stringently that it operates as an absolute bar to filing a second or successive motion, regardless of the merit of the newly discovered evidence.

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Brady v. Maryland, 373 U.S. 83 (1963) ..... *passim*

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OPINIONS BELOW

The order of the United States Court of Appeals for the Eighth Circuit denying Petitioner's motion for clarification as to why they denied his second or successive motion under 28 U.S.C. §2255(h)(1) is located at Appendix 1.

JURISDICTION

The judgment/order of the United States Court of Appeals for the Eighth Circuit was entered on or about August 14, 2026. The jurisdiction of this Court is invoked under 28 U.S.C. §1254.

PARTIES TO THE PROCEEDING

Petitioner: Kirk Cottom was the Petitioner in the United States Court of Appeals for the Eighth Circuit.

Respondent: The United States Of America was the Appellee in the United States Court of Appeals for the Eighth Circuit.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The Suspension Clause of the United States Constitution, Article I, § 9, cl. 2, provides: "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it."

2. 28 U.S.C. §2255(e) provides, in relevant part:

"A prisoner in custody under sentence of a court of the United States claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or laws of the United States... may move the sentencing court to vacate, set aside or correct the sentence... Unless the motion and the record conclusively show that the prisoner is entitled to no relief, the court shall... grant a prompt hearing... A prisoner

may file a motion under this section only if... the remedy by motion is inadequate or ineffective to test the legality of his detention."

3. 28 U.S.C. §2255(h)(1) provides:

"A second or successive motion must be certified as provided in section 2244 by a panel of the appropriate court of appeals to contain— (1) 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 fact-finder would have found the movant guilty of the offense[.]"

STATEMENT OF THE CASE

A. Factual and Procedural Background:

On August 3, 2015 Petitioner entered into a Conditional Plea Agreement in Nebraska District Court. That agreement let him appeal the adverse decisions regarding the government's Rule 41(f) violation and the ruling of the Daubert hearing that a Network Investigation Technique data set was admissible at trial. Both conditional plea appeal issues were case dispositive. In sum, if Petitioner was successful on either issue, the case was over.

B. Prior §2255 Proceedings:

Petitioner filed a timely first motion to vacate his sentence under 28 U.S.C. §2255, which was denied by the district court in 2019. For the first petition and all successive petitions (22-2050, 23-3131 & 26-1808), the government willfully committed perjury and violated Brady & Giglio by not admitting that TB2's session ids and logs were fake.

C. The Eighth Circuit's Denial of Authorization for a Successive Petition:

Relying on the cumulative effect of the sequential discovery of new evidence, Petitioner filed a third successive application in the Eighth Circuit for authorization to file a second or successive §2255 motion pursuant to 28 U.S.C. §2255(h)(1).

The Eighth Circuit denied the application in a one sentence order and refused to explain their denial (App. 1). In doing so, the Petitioner is forced to assume that the Eighth Circuit secretly applied an unduly narrow and functionally impossible standard for satisfying §2255(h)(1). Specifically, the Eighth Circuit's nontransparent denial of a "perfect petition" without explanation makes their process *Kafkaesque*. The Eighth Circuit's *Kafkaesque process* has put the Petitioner into a legal purgatory that is opaque, irrational, impersonal, and apparently impossible to win. On the surface, the system seems formal and rule-bound, but it's actually inaccessible, contradictory, and applied in a way that deprives the Petitioner of a meaningful way to obtain relief.

Because of this opaqueness, the Petitioner is forced to assume that the Eighth Circuit is applying a hyper-technical and impossibly narrow construction of §2255(h)(1) to his petitions. In other words, the Eighth Circuit has erected an absolute bar to the Petitioner filing a successive petition, despite possessing compelling and irrefutable evidence that completely undermines the soundness of his conviction.

REASONS FOR GRANTING THE WRIT

A. *Kafkaesque* situations, like this one, are continuously occurring in habeas litigation. Therefore it is an important and recurring problem that needs a definitive resolution.

The central problem is not that §2255(h)(1) litigation presents a high bar to Petitioners. It is that the procedure itself in the circuit courts has become an unconstitutional habeas

suspension. They consistently produce unspecific one sentence denials, that totally prevent the Petitioners from understanding the basis for those denials. All §2255(h)(1) petitioners in the United States are confronted with a Circuit Courts that tersely say "**DENIED**" while at the same time refusing to justify the denial, when all it would take is an additional sentence or two.

Eighth Circuit Judge Kelly pointed out this problem in Daniel Lee v. United States. Like Lee, the Petitioner credibly alleged case ending perjury (Brady) violations and the government totally failed to respond. Therefore, Judge Kelly reasoned that the writ should have been granted.

B. This 8th Circuit case is an excellent vehicle to address the Suspension Clause problem.

The Eighth Circuit has allowed the government to commit perjury about the core evidence (TB2's logs) in all of Petitioner's successive habeas petitions. For 22-2050, the government made knowingly false arguments about the NIT & TB2 log evidence. For 23-3131, the government dropped defending the NIT and the TB2 log evidence and pivoted to falsely arguing that the new evidence wasn't *new* and even if it was, it was "merely impeachment" evidence against the NIT and the TB2 log evidence. For 26-1808 the government did not (because they could not) dispute that TB2's log evidence was fake or that the defense team colluded with the prosecution to keep that fact hidden from the Court.

Judge Kelly correctly asserted in Daniel Lee v. United States that the standard for GRANTING a successive habeas petition is that the Petitioner must "[make] a prima facie case that warrants 'a fuller exploration in the district court'." 26-1808 clearly presented a prima facie case that the government has been committing perjury (Brady violations) about the NIT on TB2 since 2015. Thus, the one word denial is untenable and the denial to clarify is *Kafkaesque*.

CONCLUSION

The Petitioner has been put into an unconstitutional *Kafkaesque loop* with the Eighth Circuit since 2022. The question presented goes to the very heart of the federal habeas corpus system. If the Eighth Circuit's opaqueness is allowed to stand, it effectively establishes an illegal suspension of habeas corpus - effectively repealing the §2255(h)(1) by weaponizing its gatekeeping authority so that no petitioner can ever pass through the gate.

This case presents the perfect vehicle to resolve that issue. Petitioner has compelling, irrefutable evidence that completely undermines the prosecution's case. Yet, under the Eighth Circuit's opaque framework, this evidence was *somehow* insufficient. This Court's intervention is necessary to ensure that the Suspension Clause remains a living guarantee of liberty, rather than a hollow promise defeated by ridiculously restrictive judicial gatekeeping.

In other words, the problem is not that §2255(h)(1) litigation is difficult. **It is that the procedure is perfunctory, unintelligible and insurmountable**. It quickly produces DENIALS while preventing the petitioners from understanding or contesting them. That totally illogical quality is central to the Suspension Clause question. The process frequently becomes *Kafkaesque*; because, the *new* evidence often comes from FOIA litigation. The FOIA litigation process allows the government to redact (black-out) information. Therefore, the government can use FOIA redactions to intentionally withhold the specific facts a petitioner needs to prove their Brady, Giglio and/or Cronic violations. The Eighth Circuit then apparently uses the absence of those specific facts (redacted by the government) as the justification to deny the petition.

Since that *Kafkaesque* FOIA loop is ridiculous, this Court should GRANT the writ and not allow this legal hellscape to continue. All gatekeeping courts should be required to spend a

few extra minutes (sentences) to explain the reason the §2255(h)(1) petition didn't meet the *prima facie* requirement to GRANT the permission to file a successive habeas petition.

Respectfully submitted, August 31, 2026



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APPENDIX 1

Order denying clarification