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IN THE SUPREME COURT OF THE UNITED STATES

Richard Balter

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ORIGINAL

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

PETITION FOR A WRIT OF CERTIORARI

Richard Balter, Pro Se
Reg. No. 17432-050
FCI Butner Medium I
P.O. Box 1000
Butner, North Carolina 27509

Dated: ~~August~~ Sept 14, 2026 Resent Oct. 16, 2026

I. QUESTIONS PRESENTED

1. Whether a court of appeals, at the gatekeeping stage under 28 U.S.C. § 2255(h)(1), may reject a sworn affidavit containing newly discovered, directly exculpatory evidence on the basis of its own sua sponte assessment of the affiant's credibility and the "suspicious circumstances" surrounding the affidavit, rather than accepting the affidavit as true for purposes of determining whether the applicant has made a prima facie showing that the evidence, if proven, would establish by clear and convincing evidence that no reasonable factfinder would have convicted the applicant.

2. Whether the Third Circuit's summary denial of Petitioner's application, which failed even to mention the central factual allegation of the affidavit—that Petitioner had no knowledge of the murder-for-hire conspiracy—violates this Court's precedents requiring that actual-innocence claims be given careful consideration and that credibility determinations not be made without an evidentiary hearing.

3. Whether, in light of the overwhelming evidence of prosecutorial and judicial misconduct that infected Petitioner's trial, the destruction of exculpatory evidence by the prosecution, and the subsequent concealment of that misconduct by the very prosecutor who now sits as Chief Judge of the district where Petitioner was convicted, this Court should exercise its supervisory

authority to grant certiorari and direct the district court to hold an evidentiary hearing on Petitioner's claims of actual innocence and government fraud on the court.

II.

PARTIES TO THE PROCEEDING BELOW

Petitioner is Richard Balter. Respondent is the United States of America.

III.

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Appendix F: List of Supporting Exhibits from Original Petition for Writ of Habeas Corpus (Actual Innocence).

IV. TABLE OF AUTHORITIES

Supreme Court Cases

Case	Citation
Arizona v. Youngblood	*488 U.S. 51*

Case	Citation
	(1988)
Blackledge v. Allison	*431 U.S. 63 (1977)*
Bousley v. United States	*523 U.S. 614 (1998)*
Brady v. Maryland	*373 U.S. 83 (1963)*
California v. Trombetta	*467 U.S. 479 (1984)*
Herrera v. Collins	*506 U.S. 390 (1993)*
House v. Bell	*547 U.S. 518 (2006)*
Kyles v. Whitley	*514 U.S. 419 (1995)*
McQuiggin v. Perkins	*569 U.S. 383 (2013)*
Napue v. Illinois	*360 U.S. 264 (1959)*
Schlup v. Delo	*513 U.S. 298 (1995)*
Strickland v. Washington	*466 U.S. 668 (1984)*

Circuit Cases

Case	Citation
In re Dorsainvil	*119 F.3d 245 (3d Cir. 1997)*
In re Hoffner	*870 F.3d 301 (3d Cir. 2017)*
In re Matthews	*934 F.3d 296 (3d Cir. 2019)*
In re Pendleton	*732 F.3d 280 (3d Cir. 2013)*
United States v. Balter	*91 F.3d 427 (3d Cir. 1996) (Table)*
United States v. Jasin	*280 F.3d 355 (3d Cir. 2002)*
United States v. MacDonald	*641 F.3d 596 (4th Cir. 2011)*
United States v. Tolliver	*800 F. App'x 98 (3d Cir. 2020)*

Statutes

Statute	Description
28 U.S.C. § 1254(1)	*Supreme Court jurisdiction*
28 U.S.C. § 1746	*Unsworn declarations under penalty of perjury*
28 U.S.C. § 2106	*Supervisory authority of Supreme Court*
28 U.S.C. § 2241	*Habeas corpus*
28 U.S.C. § 2244(b)	*Successive habeas applications*
28 U.S.C. § 2255	*Federal prisoner habeas corpus*

Statute	Description
28 U.S.C. § 2255(h)(1)	*Second or successive motions*
18 U.S.C. § 1958	*Murder-for-hire*
18 U.S.C. § 1341	*Mail fraud*

Rules

Rule	Description
Sup. Ct. R. 10	*Grounds for certiorari*
Sup. Ct. R. 33	*Format of documents*
Fed. R. Evid. 801(c)	*Hearsay*
Fed. R. Crim. P. 33(b)(1)	*New trial*
Fed. R. Crim. P. 41(g)	*Return of property*

V.

OPINIONS BELOW

The order of the United States Court of Appeals for the Third Circuit denying Petitioner's application for authorization to file a second or successive motion under 28 U.S.C. § 2255 is

reproduced at Appendix A. The order of the Third Circuit denying Petitioner's petition for rehearing en banc is reproduced at Appendix C. There is no reported opinion.

VI.

JURISDICTION

The Third Circuit entered its order on June 1, 2026. The Third Circuit denied Petitioner's timely petition for rehearing en banc on June ~~22~~ 25, 2026. This Court has jurisdiction under 28 U.S.C. § 1254(1). Petitioner invokes this Court's certiorari jurisdiction to review a final order of a court of appeals in a habeas corpus matter. Additionally, Petitioner respectfully asks the Court to exercise its plenary authority under 28 U.S.C. § 2106 to fashion appropriate relief, including vacatur of the Third Circuit's order and a remand with instructions to grant the application or, alternatively, to direct the district court to hold an evidentiary hearing.

VII.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution (Due Process Clause):

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

Sixth Amendment to the United States Constitution (Right to Effective Assistance of Counsel):

"In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

28 U.S.C. § 2255(h)(1):

"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 factfinder would have found the movant guilty of the offense."

28 U.S.C. § 2244(b)(3)(C):

"The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection."

1) STATEMENT OF THE CASE

A. The Offense and the Government's Theory

In 1993, Petitioner Richard Balter was the president and sole shareholder of Northeastern Poly Products, Inc. ("NPP"), a successful plastic-bag distribution company. The Government charged Balter, Kenneth Cutler, and Chris DeJesus with murder-for-hire (18 U.S.C. § 1958) and mail fraud (18 U.S.C. § 1341) in connection with the killing of Robert Cohen, a customer who owed NPP approximately $600,000. The Government's star witness, Gustavo Gil, testified that Balter orchestrated the murder because he was financially desperate and needed the life insurance proceeds payable upon Cohen's death. *United States v. Balter, 91 F.3d 427, 430-31 (3d Cir. 1996) (Table)*. The jury convicted all three defendants, and Balter received a life sentence.

The Government's entire motive theory was false. The seized business records—which the Government illegally seized beyond the scope of the warrant and later destroyed—would have

shown that NPP was solvent, had recently received a $1.4 million capital infusion, and had no need for the insurance money. The Government concealed this evidence, suborned perjury from Gil, and destroyed the one recorded conversation in which Balter declared his innocence and accused Gil and Cutler of extortion. The prosecutor who led these efforts was then-Assistant United States Attorney Renée Marie Bumb.

B. The Newly Discovered Evidence: The Cruz Affidavit

In March 2025, Petitioner obtained a sworn affidavit from Jose Galiany Cruz, executed under penalty of perjury pursuant to 28 U.S.C. § 1746. App. B. Cruz, a respected "jailhouse lawyer" with a clear conduct record, was the cellmate of Chris DeJesus at USP Tucson from 2019 to 2023. DeJesus asked Cruz to assist him with a compassionate-release motion and, as a condition of Cruz's help, told Cruz the truth about the murder.

DeJesus admitted to Cruz that:

•He had never met or spoken to Richard Balter before or after the shooting;

•The "owner" (Balter) "does not even know what is going on";

•The money came from Ken Cutler, not Balter;

•Cutler and Gustavo Gil planned to extort Balter after the murder by using DeJesus's name to "put fear into" him;

•Gil and Cutler had a premeditated plan to frame Balter if caught: they would "tell the police that the owner had hired them and he would have no way out."

App. B ¶¶ 15-27. Cruz further stated that, after his transfer to FCI Butner, he met Balter and only then learned Balter was DeJesus's co-defendant. Upon reviewing Balter's court records, Cruz confirmed that DeJesus's admissions matched trial testimony from Sherryll Post-Penny, who quoted Cutler as saying "he and Gil and their friends planned the entire thing"—and that when asked if anyone else was involved, she said "no." App. B ¶ 33.

C. The Extensive Record of Government Misconduct

The Cruz Affidavit must be viewed against the backdrop of decades of documented misconduct by the prosecution and the judiciary.

1. Illegal Seizure and Destruction of Exculpatory Evidence.

The warrant authorized seizure of only two items: a life insurance policy and a file folder. Instead, agents seized approximately 200 boxes of financial records, computer disks, and correspondence. These records were never disclosed to the defense. In 1994—while Balter's direct appeal was pending—the Government destroyed them. The U.S. Attorney's Office, led by then-AUSA Bumb, falsely denied knowledge of the destruction for over a decade, even as

Balter repeatedly sought their return. In 2005, Judge Simandle ordered the Government to return the records. Bumb then orchestrated a two-year "charade" (Balter's term, amply supported by the record) in which she claimed logistical obstacles, solicited a false letter from the BOP's General Counsel contradicting the Warden's confirmation of available space, and only admitted the destruction in 2007—after she had been nominated to the federal bench and her confirmation was secure.

2. Subornation of Perjury and Witness Coaching.

Gustavo Gil later admitted under penalty of perjury that he was "coached improperly" by prosecutors, including nightly sessions during trial, and that he was told to deny any deals with the Government. App. to Application below, Exh. A-3. The prosecutor, Bumb, participated in this coaching.

3. The Missing Fourth Tape.

The Government made surreptitious recordings of Balter. One crucial recording—in which Balter "lost it" with Gil, declared his innocence, and threatened to go to the police—was missing. Gil admitted a "fourth" tape existed but claimed it was blank due to dead batteries. The preamble that law enforcement protocol required to be recorded at the start of each tape was

absent. The only logical conclusion is that the tape was intentionally erased to suppress exculpatory evidence.

4. The IRS Tax Investigation Contradiction.

IRS Special Agent Glynn recommended Balter's prosecution for tax violations, which would require proof of hidden income. This recommendation directly contradicted the Government's trial theory of financial desperation. Bumb's office declined the tax charges—not because they lacked merit, but because prosecuting them would have required disclosure of records proving NPP's profitability.

5. Ineffective Assistance of Counsel.

Trial counsel, Benjamin Brafman, presented "no defense." *Balter, 91 F.3d at *3.* He failed to move for return of the seized records, failed to investigate, and prevented Balter from testifying.

6. Judicial Misconduct and the Cover-Up.

As described in detail in the judicial misconduct complaint Balter filed with the Third Circuit (Case No. 26-1796), Judge Bumb's pre- and post-confirmation conduct includes fraud

upon the court, ex parte communications, and concealment of the destruction of exculpatory evidence during her judicial vetting. The complaint details how Judge Bumb, now Chief Judge of the District of New Jersey, used her influence to obstruct Balter's access to justice—most recently, by presiding over a district that has effectively shut down any meaningful review of his claims.

D. Proceedings in the Third Circuit

On March 18, 2026, Balter filed in the Third Circuit an application under 28 U.S.C. § 2244(b)(3) for authorization to file a successive § 2255 motion based on the Cruz Affidavit. The Government opposed, arguing that the evidence was not "newly discovered" because DeJesus was known to Balter at trial, and that Cruz's release from prison in May 2025 "casts further suspicion" on the affidavit. Doc. 9. Balter filed a reply addressing these arguments.

On June 1, 2026, a panel of the Third Circuit (Krause, Matey, and Bove, JJ.) issued a one-paragraph order denying the application. App. A. The order states in its entirety:

"The foregoing application for permission to file a second or successive § 2255 motion is denied. Balter has failed to make a prima facie showing that: (1) any proposed claim relies on a retroactively applicable 'new rule' of constitutional law; or (2) the factual predicate for his

proposed claims could not have been discovered previously through the exercise of due diligence and the facts underlying such claims, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found him guilty of the underlying offense. See 28 U.S.C. §§ 2244(b) and 2255(h)."

The order does not mention the Cruz Affidavit, its specific factual allegations, or the uncontroverted statement that Balter had no knowledge of the murder. Balter's timely petition for rehearing en banc was denied on June 22, 2026. App. C.

VIII.

REASONS FOR GRANTING THE WRIT

1. The Third Circuit's Decision Conflicts with This Court's Precedents Governing Actual-Innocence Claims and the Gatekeeping Function Under AEDPA.

The gatekeeping provision of AEDPA requires a court of appeals to authorize a successive § 2255 motion if the application makes a "prima facie showing" of newly discovered evidence meeting the clear-and-convincing standard. 28 U.S.C. § 2244(b)(3)(C). The Third Circuit has itself recognized that this is a "light burden." In re *Matthews, 934 F.3d 296, 301 (3d Cir.*

2019); In re Pendleton, 732 F.3d 280, 282 (3d Cir. 2013). At this stage, the court must accept the applicant's factual allegations as true, unless they are patently incredible or contradicted by indisputable record evidence. In re *Dorsainvil, 119 F.3d 245, 249 (3d Cir. 1997).* The court is not to weigh evidence, assess credibility, or resolve factual disputes. *Blackledge v. Allison, 431 U.S. 63, 82 n.25 (1977)* ("When the issue is one of credibility, resolution on the basis of affidavits can rarely be conclusive.").

The panel below did precisely what the law forbids. It rejected a detailed, sworn affidavit—one that goes to the very heart of the Government's case—based on nothing more than the Government's unsworn speculation that the affidavit was "suspicious" because Cruz had been released from prison. The order does not acknowledge the affidavit's central fact: that DeJesus told Cruz that Balter "does not even know what is going on." The panel's silence is deafening; it can only mean that the panel either ignored the affidavit entirely or made an impermissible credibility determination against it.

That approach is irreconcilable with this Court's actual-innocence jurisprudence. In *Schlup v. Delo, 513 U.S. 298 (1995),* and *House v. Bell, 547 U.S. 518 (2006),* this Court emphasized that credible claims of actual innocence must be heard and that procedural barriers cannot be used to prevent a reliable determination of guilt or innocence. S*chlup, 513 U.S. at 327; House, 547 U.S. at 536-39. McQuiggin v. Perkins, 569 U.S. 383 (2013),* held that actual innocence

serves as a gateway to overcome the AEDPA statute of limitations. The principle common to all these cases is that federal courts have an obligation to consider trustworthy evidence of innocence, not to dismiss it based on speculation about the witness's subsequent conduct or a feeling that the evidence is "too late."

The panel's order cannot be squared with that obligation. By denying authorization without even mentioning the key exculpatory fact, the Third Circuit effectively held that an applicant must prove his innocence at the gatekeeping stage—a standard far higher than Congress enacted and one that defeats AEDPA's carefully balanced scheme. This Court should grant certiorari to reaffirm that the gatekeeping function is limited to a prima facie assessment and that credibility determinations belong to the district court after an evidentiary hearing.

2. The Decision Below Sanctions an Unprecedented Pattern of Prosecutorial and Judicial Misconduct That Strikes at the Heart of the Integrity of the Federal Judiciary.

Not all too often in the history of the Republic do "rogue" judges accomplish fraudulent prosecutions against innocent—but famous or semi-famous—persons, respected in their own communities, to elevate their own careers and then manage to ride on this machination and to continue to defraud the federal judiciary with respect to them all the way into a seat on it themselves; and only to finally make it to the point that they then use the power of that seat to undermine the Office of the President of the United States in the administration of its duties and

the purview imbued upon it. And every step in the trek for purely political reasons. And by using only more fraud.

One of those rare judges is Renée Marie Bumb, Chief Judge for the United States District Court for the District of New Jersey, and this case remarks, sheds light on, and proves how she has used her now significant influence to incite other younger judges to illicitly refuse to follow the law in the commission of their duties, denying a lawful review of the claims of a man who had declared his actual innocence from the very day of his arrest and to this moment, more than 32 years later. At what he asserts can only be her direction and influence, they refused to follow not only this Court's law in this act, but their own, and they did so solely for the purpose of obfuscating the unmistakably evident fraud committed by this jurist—their friend and colleague —so as to close the only and final avenue to prove with new evidence a truth that would bring this judge's career, maneuvered initially into being by a now convicted and imprisoned former New Jersey Senator, and continued throughout in the manner described. And they did this by not only NOT accepting this new evidence as true for the purposes of a simple analysis as the law requires for the district court to then review, but simply not even mentioning the cornerstone for that review, the sworn affidavit written 32 years after the conviction alleging that the years-long prison cellmate of the person who was found by a jury to be the actual shooter in a murder for hire this Petitioner claims he never hired stated that indeed petitioner never knew a thing about the murder plan until after it was accomplished.

The record of prosecutorial misconduct in this case—detailed above and in the voluminous submissions Balter has made over three decades—is not merely historical. It is a continuing wrong, perpetuated by the very person who orchestrated it and who now sits as the Chief Judge of the district where Balter was convicted. Judge Bumb's role in the destruction of evidence, the subornation of perjury, and the two-year fraud on the court in 2005-2007 has never been adjudicated because the district court, under her influence, has systematically denied Balter any forum. As the record shows, the district court refused to hold an evidentiary hearing despite material factual disputes, accepted the Government's contradictory declarations without question, and dismissed Balter's Rule 41(g) motion without ever determining what happened to the 200 boxes of seized records.

The Third Circuit's summary denial of authorization in this case is the culmination of that decades-long campaign of concealment. The panel's refusal to even mention the Cruz Affidavit speaks volumes. It demonstrates that the federal courts in the Third Circuit are unwilling to confront the misconduct of one of their own. That is precisely the kind of institutional failure that requires this Court's intervention. See Sup. Ct. R. 10(c) (certiorari may be granted where a court of appeals has "so far departed from the accepted and usual course of judicial proceedings . . . as to call for an exercise of this Court's supervisory power").

3. The Case Presents a Question of Exceptional Importance That Warrants This Court's Review Under 28 U.S.C. § 2106.

Section 2106 grants this Court the authority to "affirm, modify, vacate, set aside or reverse any judgment . . . and may remand the cause and . . . require such further proceedings to be had as may be just under the circumstances." 28 U.S.C. § 2106. This grant of supervisory power is uniquely suited to a case such as this, where the lower federal courts have systematically failed to provide a forum for a substantial claim of actual innocence, where prosecutorial and judicial misconduct have corrupted the integrity of the judicial process, and where the alternative to this Court's review is that an innocent man will die in prison.

The Third Circuit's decision not only conflicts with this Court's actual-innocence precedents; it also raises fundamental questions about the meaning of "newly discovered evidence" under AEDPA. If a co-defendant's detailed, sworn admissions—made decades after trial, to a disinterested third party, and corroborated by trial testimony—do not even warrant a prima facie finding, then the "newly discovered evidence" gateway is illusory. No prisoner could ever satisfy it, because any evidence that is truly new will necessarily be "newly available" rather than known at trial. The panel's reasoning, if adopted, would require prisoners to have been clairvoyant at the time of their trials—a standard no one can meet.

This case also presents the exceptional circumstance of a prisoner who has consistently maintained his innocence for 32 years, who has assembled a compelling body of evidence that the Government's star witness committed perjury, that the Government destroyed the documentary proof of his innocence, and that the prosecutor who secured his conviction engaged in a multi-year cover-up—and yet the lower courts refuse even to allow a hearing. This Court has never countenanced such a Kafkaesque denial of due process, and it should not do so here.

4. The Third Circuit's Failure to Even Acknowledge the Core Exculpatory Fact Constitutes a Denial of Due Process and a Manifest Miscarriage of Justice.

Due process is not satisfied when a court simply ignores the most important evidence before it. The Cruz Affidavit states, without equivocation, that DeJesus—the admitted shooter—told Cruz that Balter "does not even know what is going on." That statement, if true, negates the mens rea element of every crime of conviction. No conspiracy, no murder-for-hire, no mail fraud can be proved against a defendant who had no knowledge of the plot. The Third Circuit's order, which makes no reference to this statement, cannot be reconciled with the due process guarantee that a prisoner with a colorable claim of actual innocence is entitled to a meaningful review. See *Herrera v. Collins, 506 U.S. 390, 404-05 (1993)* (recognizing that a truly persuasive showing of actual innocence would make the execution of an innocent person constitutionally intolerable).

The panel's reliance (implicit or otherwise) on the Government's "suspicion" argument is particularly egregious. Cruz's release from prison has no logical bearing on the truth of DeJesus's admissions. The Government offered no evidence that Cruz recanted, no contradiction of his sworn statement, and no reason to believe that a person with a clear conduct record and a reputation as an honest jailhouse lawyer would perjure himself. The "suspicion" argument is, at bottom, an invitation to the courts to disregard sworn affidavits based on nothing more than a prosecutor's say-so. That is not the rule of law; it is the rule of arbitrary power.

VIII.

CONCLUSION

This Petitioner has no other avenue to have this evidence examined. The extraordinary writ remains the only possible course, and while beyond extremely rare, this Petitioner requests that this Court review the case not only in its power under 28 U.S.C. § 2241 but under its plenary authority under 28 U.S.C. § 2106, and adjudicate this case in light of all of its collateral issues.

For the foregoing reasons, the petition for a writ of certiorari should be granted, the order of the Third Circuit vacated, and the case remanded with instructions to grant the application for authorization and direct the district court to conduct an evidentiary hearing on Petitioner's claims of actual innocence and government misconduct.

Respectfully submitted,

Resigned Oct. 15, 2026

Richard Balter, Pro Se
Reg. No. 17432-050
FCI Butner Medium I
P.O. Box 1000
Butner, North Carolina 27509

Dated: ~~August~~ Sept 14, 2026