No. _____

IN THE
Supreme Court of the United States

KEITH ALLEN WOOD,

Petitioner,

v.

SHAWN STRAUGHN, SUPERINTENDENT
NORTHERN REGIONAL CORRECTIONAL FACILITY,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Double Jeopardy Clause protects a defendant's "valued right to have his trial completed by a particular tribunal." *Arizona v. Washington*, 434 U.S. 497, 503 (1978). When a mistrial is declared over the defendant's objection, the prosecution bears the burden of establishing the "high degree" of necessity sufficient to permit a second trial. *Id.* at 505–06. When alleged attorney misconduct during opening statement is asserted to have prejudiced the jury, *Washington* directs particular attention to "the likelihood that the impartiality of one or more jurors may have been affected." *Id.* at 511.

The question presented is:

Whether, under 28 U.S.C. § 2254(d)(1), a state court reasonably applies the Double Jeopardy Clause's manifest-necessity standard when it permits retrial after a mistrial declared over the defendant's objection where, before the jury was discharged, the defendant offered to admit the disputed evidence in full, and the trial court maintained the mistrial because of the prosecution's asserted strategic disadvantage and defense counsel's responsibility for creating the problem rather than prejudice that prevented the jury from fairly deciding the case.

PARTIES TO THE PROCEEDING

Petitioner Keith Allen Wood was the appellee below and the petitioner in the district court.

Respondent Shawn Straughn, Superintendent of Northern Regional Correctional Facility, was the appellant below and respondent in the district court.

RELATED PROCEEDINGS

This case arises from the following proceedings:

State of West Virginia v. Keith Allen Wood, No. 18-F-21, Circuit Court of Brooke County, West Virginia. A mistrial was declared over Wood's objection on February 16, 2021. The court denied Wood's motion to dismiss on double-jeopardy grounds on June 8, 2021. Wood was retried in August 2021 and sentenced on November 22, 2021.

West Virginia Supreme Court of Appeals, No. 21-0518, prohibition proceeding arising from the June 8, 2021 double-jeopardy ruling. The court declined to issue a rule to show cause on July 15, 2021. *State ex rel. Wood v. Olejasz*, No. 21-0518 (W. Va. July 15, 2021).

State v. Wood, No. 21-0964, Supreme Court of Appeals of West Virginia. Memorandum decision affirming Wood's conviction and rejecting his Double Jeopardy claim entered April 10, 2023; mandate later issued. *State v. Wood*, No. 21-0964, 2023 WL 2866229, (W. Va. Apr. 10, 2023).

Wood v. Olejasz, No. 1:21-CV-103, 2021 WL 4448936 (N.D.W. Va. Sept. 28, 2021). Pre-retrial federal habeas proceeding dismissed without prejudice following Wood's retrial.

Wood v. Straughn, No. 3:24-CV-41, 2025 WL 5088524 (N.D.W. Va. Sept. 30, 2025), rev'd and remanded, 182 F.4th 382 (4th Cir. 2026). Order granting habeas relief entered September 30, 2025; following remand, order denying habeas relief and directing Wood to report to custody entered July 23, 2026.

Wood v. Straughn, 182 F.4th 382 (4th Cir. 2026), No. 25-6842. The Fourth Circuit entered its published opinion and judgment reversing the district court on July 17, 2026. The court granted Respondent's motion to issue the mandate forthwith, and the mandate issued July 21, 2026. The court denied Wood's motion to recall and stay the mandate on July 23, 2026.

No petition for panel rehearing or rehearing en banc was filed.

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Petitioner, Keith Allen Wood, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS AND ORDERS BELOW

The published opinion of the United States Court of Appeals for the Fourth Circuit is reported at 182 F.4th 382 and is reproduced at Pet. App. 2a–27a. The Fourth Circuit entered judgment on July 17, 2026.

The September 30, 2025 order of the United States District Court for the Northern District of West Virginia granting Wood's petition for a writ of habeas corpus is unpublished and is reproduced at Pet. App. 32a–45a.

The April 10, 2023 memorandum decision of the Supreme Court of Appeals of West Virginia, *State v. Wood*, No. 21-0964, 2023 WL 2866229, is reproduced at Pet. App. 46a–63a.

The June 8, 2021 order of the Circuit Court of Brooke County denying Wood's motion to dismiss on Double Jeopardy grounds is unpublished and is reproduced at Pet. App. 64a–67a.

The July 15, 2021 order of the Supreme Court of Appeals of West Virginia declining to issue a rule to show cause in Wood's prohibition proceeding is unpublished and is reproduced at Pet. App. 68a–69a.

JURISDICTION

The Fourth Circuit entered judgment on July 17, 2026. No petition for rehearing was filed. This petition is timely because it is filed within 90 days of that judgment. Sup. Ct. R. 13.1, 13.3.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment provides in relevant part:

> "[N]or shall any person be subject for the same offence to be twice put in jeopardy of life or limb."

The Double Jeopardy Clause applies to the States through the Fourteenth Amendment. *Benton v. Maryland*, 395 U.S. 784, 794 (1969).

Section 2254(d) of Title 28 provides:

> 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.

STATEMENT OF THE CASE

This case concerns the constitutional line between misconduct by trial counsel and the "manifest necessity" required to terminate a jury trial over the defendant's objection.

The pretrial evidentiary rulings.

Wood was indicted in the Circuit Court of Brooke County, West Virginia, in Case No. 18-F-21. Before trial, two evidentiary matters became relevant to his defense.

First, a July 10, 2018 stipulated order addressed a forensic interview of the complaining witness conducted at Comfort House. The order restricted the *State's use* of that interview in its case-in-chief while preserving appropriate use in rebuttal. Pet. App. 70a.

Second, an April 17, 2020 order addressed proposed testimony from clinical social worker Sarah Aspenleiter. The court held that Aspenleiter would not testify as an expert and restricted hearsay statements made during treatment, while allowing testimony within her personal knowledge as a lay witness. Pet. App. 72a.

Those orders later became the asserted basis for terminating Wood's first trial.

The first trial and opening statements.

A jury was sworn on February 16, 2021. During opening statement, defense counsel outlined a theory that challenged the reliability of the allegations and referred to portions of the factual history connected with the Comfort House interview and Aspenleiter's treatment of the complainant. Pet. App. 77a–102a. The prosecutor did not contemporaneously object to the Comfort House or Aspenleiter references later asserted to violate the pretrial orders.

After opening statements, the State raised two concerns in chambers. It contended that defense counsel had referred to matters affected by the pretrial orders and sought to have the Comfort House recording and Aspenleiter materials admitted in response. Pet. App. 104a–127a.

Defense counsel disputed that the remarks violated the orders. The trial court expressed its contrary view, but initially discussed evidentiary consequences rather than termination of the trial. At one point the court indicated that the jury might simply have to remain "befuddled" about matters counsel had referenced. Pet. App. 108a–127a.

Only after that discussion did the trial judge ask whether either party wished to move for a mistrial. Wood declined. The prosecutor conferred and then moved for a mistrial. Wood objected. Pet. App. 127a.

The discussion then became still more significant. Defense counsel offered to permit the State to use the disputed evidence to cure any problem. The court initially declared a mistrial, stating that it could not sufficiently "salvage" the proceeding and that defense counsel had gone "grossly far afield." Pet. App. 128a–131a.

But the jury had not been discharged.

Defense counsel then made the proposed cure unequivocal: the State could introduce the entire Comfort House interview and the Aspenleiter records during its case-in-chief. Pet. App. 131a–132a. The trial judge confirmed the scope of the concession and asked the prosecutor whether allowing the trial to continue on those terms would nevertheless place the State at a "strategic disadvantage" because it had prepared its case under the pretrial rulings. The prosecutor answered yes. Pet. App. 132a.

The judge maintained the mistrial. He emphasized that the State had complied with the evidentiary orders, that the defense had not, and that "out of fundamental fairness" he was "forced" to declare a mistrial. He further stated that the retrial would not be scheduled immediately because the mistrial had been "occasioned by the defense." Pet. App. 132a–133a.

Only after that exchange did the court return to open court and discharge the jury. Pet. App. 135a–136a. The complete trial transcript and subsequent state-court papers are contained in the federal habeas record.

The state double-jeopardy proceedings.

Wood moved to dismiss the indictment on Double Jeopardy grounds. J.A. 120–21. On June 8, 2021, the trial court denied the motion. It characterized defense counsel's opening as having gone so far outside the evidentiary orders that the court had "no choice" but to grant the State's mistrial motion, and concluded that Wood could not invoke Double Jeopardy because

his own conduct had created manifest necessity. Pet. App. 64a–66a.

Wood sought a writ of prohibition from the Supreme Court of Appeals of West Virginia. That court declined to issue a rule to show cause on July 15, 2021. Pet. App. 68a.

Wood was retried in August 2021 and convicted. He again raised Double Jeopardy on direct appeal.

On April 10, 2023, the Supreme Court of Appeals affirmed. Its Double Jeopardy discussion relied principally on West Virginia precedent, including *State v. Keller*, which had observed "[t]he term 'manifest necessity' covers a broad spectrum of situations which in some instances bear little relationship to the literal meaning of this phrase. This is particularly true in cases where the conduct of one party at trial has created sufficient jury prejudice toward the other that it is unfair to continue with the trial and a mistrial is warranted." 177 W. Va. 616, 620, 355 S.E.2d 405, 409 (1987). Pet. App. 56a.

The court then disposed of Wood's federal claim by concluding that counsel "created a manifest necessity for the mistrial during his opening statement when he repeatedly referenced evidence that the trial court had clearly ruled inadmissible." *State v. Wood*, No. 21-0964, 2023 WL 2866229, at *5 (W. Va. Apr. 10, 2023); Pet. App. 56a.

The court did not separately identify or even contemplate what prejudice to the jury remained after Wood agreed to permit admission of the disputed evidence, nor did it explain why the trial could not continue before the already sworn jury. *Id.*

Federal habeas proceedings.

Wood timely sought relief under 28 U.S.C. § 2254 in the Northern District of West Virginia. The district court ultimately granted the writ on September 30, 2025. Pet. App. 32a.

The district court carefully examined the pretrial orders and the mistrial transcript. It concluded that the orders did not bar the opening statement in the sweeping manner later attributed to them. More importantly, the court concluded that the mistrial record did not reflect the sound exercise of discretion required by *Arizona v. Washington*. It emphasized that the trial court itself initiated the mistrial inquiry; the prosecutor moved for a mistrial only after the court invited the motion; Wood objected and proposed increasingly complete cures; and the judge nevertheless terminated the proceeding based substantially on perceived defense fault and the State's asserted strategic disadvantage. The district court held that the state adjudication unreasonably applied this Court's Double Jeopardy precedents and granted habeas relief. Pet. App. 39a–45a.

The Fourth Circuit's decision.

Respondent appealed. After argument on May 6, 2026, the Fourth Circuit reversed in a published opinion on July 17, 2026. Pet. App. 2a–27a.

The Fourth Circuit first held that interpretation of the two pretrial evidentiary orders was a matter of state law beyond federal habeas review. It explained that its obligation to accept the state courts' interpretation of those orders "lays crucial

groundwork" for the federal Double Jeopardy analysis. Pet. App. 20a.

The court then concluded that the West Virginia Supreme Court of Appeals had reasonably applied *Arizona v. Washington*. It rejected Wood's contention that the state court had improperly equated counsel's fault with necessity, reasoning that the state court's references to the evidentiary rulings sufficiently corresponded to *Washington*'s concern with prejudicial remarks during opening statement. Pet. App. 20a–22a.

The Fourth Circuit also emphasized *Renico v. Lett* and this Court's then-recent decision in *Klein v. Martin*, 607 U.S. 213 (2026). It reasoned that AEDPA added a further layer of deference to the trial court's already deferential manifest-necessity determination. It further held that no clearly established Supreme Court precedent required a formal on-the-record consideration of alternatives and that, in any event, the trial judge had considered alternatives when stating that he saw no way sufficiently to "salvage" the trial. Pet. App. 23a–26a.

The Fourth Circuit acknowledged that the case might present "a closer question" on direct review, but held that § 2254(d) foreclosed relief. It reversed and remanded with instructions to deny the habeas petition. Pet. App. 26a–27a.

The State then obtained immediate issuance of the mandate. The mandate issued July 21, 2026. The Fourth Circuit denied Wood's motion to recall and stay the mandate on July 23. That day, the district court entered judgment on remand and ordered Wood to return to custody by noon the following day. Wood is presently incarcerated at Northern Regional Correctional Facility.

REASONS FOR GRANTING THE PETITION

The decision below converts *Arizona v. Washington*'s "high degree" of necessity into deference to a fundamentally different determination: that defense counsel violated evidentiary rulings and thereby placed the prosecution at a strategic disadvantage.

This petition does not ask the Court to create a mandatory checklist for mistrial rulings. It does not ask the Court to require state judges to make formal findings. It does not ask the Court to reconsider AEDPA. And it does not ask a federal court to correct an error of state evidence law.

The question is narrower and antecedent:

Can perceived attorney fault itself reasonably establish the federal constitutional necessity to terminate a trial when, before the jury is discharged, the defendant offers a complete cure and the record identifies no remaining impairment of jury impartiality?

The Fourth Circuit answered yes. That answer conflicts with the substance of *Washington*, extends *Renico* beyond its rationale, and transforms *Klein*'s prohibition on federal opinion-writing requirements into permission to dilute the underlying constitutional standard.

I. The state court replaced the constitutional inquiry into manifest necessity with a determination of defense fault.

The Double Jeopardy Clause protects more than the interest in avoiding a second conviction. Once jeopardy attaches, a defendant possesses a "valued

right to have his trial completed by a particular tribunal." *Washington*, 434 U.S. at 503. A mistrial declared over his objection therefore permits reprosecution only when justified by manifest necessity. *United States v. Perez*, 22 U.S. 579, 580 (1824).

The standard is demanding. The prosecutor bears a "heavy burden" to justify the mistrial, and the circumstances must establish a "high degree" of necessity. *Washington*, 434 U.S. at 505–06.

At the same time, *Washington* deliberately rejected mechanical rules. The trial judge need not recite the phrase "manifest necessity," and the Constitution does not demand formal findings in every case. *Id.* at 516–17. The question instead is whether the record reflects the "sound discretion" required before depriving a defendant of his chosen jury. *Id.* at 514. That distinction is decisive here.

Washington itself involved alleged prejudice from defense counsel's opening statement. But the Court did not hold that an improper opening statement automatically establishes manifest necessity. It identified the constitutionally relevant judicial determination as "the likelihood that the impartiality of one or more jurors may have been affected by the improper comment." *Id.* at 511. Because that assessment is peculiarly entrusted to the trial judge, the judge's evaluation receives the "highest degree of respect." *Id.* at 510–11. The state adjudication here did something materially different.

The Supreme Court of Appeals quoted *Keller* for a proposition that was generally consistent with *Washington*: party misconduct may support a mistrial when it creates **sufficient jury prejudice that continued trial would be unfair**. But when the

West Virginia Supreme Court applied the rule, it did not find sufficient jury prejudice. It instead said that counsel "created a manifest necessity" because he "repeatedly referenced evidence that the trial court had clearly ruled inadmissible." 2023 WL 2866229, at *5. That moves directly from **violation** to **necessity**.

The distinction is not semantic. A violation of an evidentiary order asks what counsel was permitted to say. Manifest necessity asks whether, because of what was said, continuation before that jury became constitutionally intolerable. *Washington* makes the latter question indispensable.

Nor is Wood asking this Court to impose an opinion-writing requirement. *Early v. Packer*, 537 U.S. 3, 8 (2002) (per curiam), makes clear that a state court need not cite, or even be aware of, the Court's cases so long as neither its reasoning nor result contradicts them. *Klein* reinforces the same point.

The defect here is therefore not that the West Virginia court failed to cite *Washington* or write a longer opinion. It is that the constitutional result it approved rests on a proposition *Washington* does not recognize: that counsel's responsibility for precipitating a problem can itself supply the "high degree" of necessity required to extinguish the defendant's right to continue before the first jury.

Attorney fault and manifest necessity can overlap. They are not synonymous. This Court should grant review to restore that distinction.

II. The Fourth Circuit allowed a state-law predicate to perform work reserved for the federal manifest-necessity inquiry.

The Fourth Circuit's first move magnified the problem. It held that the meaning of the pretrial evidentiary orders was a state-law question that federal habeas courts could not revisit. Petitioner does not seek certiorari to establish a general federal power to reinterpret state evidentiary orders. The narrower problem is what the Fourth Circuit did next.

The court said that its obligation to accept the state courts' treatment of the orders "lays crucial groundwork" for the manifest-necessity analysis. From there, the perceived violation became substantial support for the federal constitutional conclusion.

That conflates two propositions: First, a federal habeas court ordinarily must accept a state court's authoritative construction of state law. Second, whether the consequences of conduct governed by state law satisfy a federal constitutional standard remains a federal question. Nothing in § 2254(d)(1) eliminates that distinction.

The Court can therefore assume for purposes of this case that defense counsel violated the orders. Wood still prevails if no fairminded application of *Washington* could treat the violation as establishing the high degree of necessity for aborting the trial.

That is especially important because the severity and consequences of the supposed violation were contested even in real time. The prosecutor did not contemporaneously object to the Comfort House or Aspenleiter references later asserted to violate the pretrial orders. Afterward, the State's first proposed

response was evidentiary: allow the State to introduce material that otherwise might have been excluded. The court initially discussed how the evidence could be handled. Only later did the judge invite a mistrial motion. Pet. App. 104a–127a.

Thus, the alleged state-law violation was not itself the federal constitutional event. What matters under *Washington* is what the violation did to the trial. If the violation irrevocably biased the jury, a mistrial could be necessary.

If the violation instead created an evidentiary imbalance that could be eliminated by admitting the underlying evidence—a remedy Wood accepted before the jury was discharged—the constitutional calculus is entirely different.

AEDPA requires deference to a reasonable state adjudication of that federal question. It does not turn the antecedent state-law characterization into the answer.

III. Even accepting the alleged evidentiary violations, the record does not reasonably establish the high degree of necessity required by Washington.

The full record makes this case substantially different from one in which a federal habeas court merely disagrees with a trial judge's discretionary assessment.

The prosecution did not interrupt the opening statement and tell the court that counsel had irreparably poisoned the jury. Instead, after the opening was completed, the State sought admission of additional evidence.

The trial court then held an evidentiary discussion. Its initial concern included the possibility that jurors might be confused or "befuddled." Pet. App. 110a–112a.

The court itself then raised mistrial and asked whether either party wished to move for one. Wood declined. The State moved only after the judge's invitation. Pet. App. 127a.

Wood objected and offered corrective measures. When the court initially announced the mistrial, Wood went further: he agreed that the State could place the entire Comfort House interview and Aspenleiter materials before the jury during its case-in-chief. Pet. App. 127a–132a. At that moment the jury remained empaneled.

The trial judge then asked the prosecutor not whether the jury had become incapable of impartial deliberation, but whether the cure would impose a **strategic disadvantage** on the State. The prosecutor said yes. Pet. App. 132a.

The court maintained the mistrial because the State had complied with its orders, the defense allegedly had not, and "fundamental fairness" required termination. The judge also attributed the occasion for the mistrial to the defense. Pet. App. 133a–135a. Only then did the court discharge the jury. Pet. App. 135a.

That chronology matters for substantive constitutional reasons. Whether a complete cure was offered and rejected before the jury was discharged bears directly on the substantive question established by *Washington*: whether there was a "high degree" of necessity for ending the trial.

While a court may not be required to utter findings about every alternative, a trial cannot reasonably be

said to have become constitutionally impossible to continue merely because the prosecution would prefer not to proceed under a cure that eliminates the asserted evidentiary disparity.

Nor does this case ask a federal habeas court to second-guess the trial judge's superior perception of jurors. The unusual point is that, once the complete cure was offered, the record identifies the remaining concern as prosecutorial **strategic disadvantage**—not an observational determination that the jury could no longer be impartial. That sharply distinguishes *Washington*.

There, defense counsel told jurors that prosecutorial misconduct had caused the state supreme court to award the defendant a new trial. 434 U.S. at 499–501. The trial court allowed extended argument, delayed its ruling, considered the consequences of a mistrial, and concluded that the improper remarks threatened the fairness of the jury's consideration. *Id.* at 515–16. This Court deferred to the judge's assessment of likely juror prejudice.

Here, the state adjudication uses *Washington*'s deference without identifying the assessment to which that special deference attaches.

The point is not that the state court's opinion was short. It is that the record, viewed even under AEDPA, does not transform prosecutorial strategic inconvenience into the "high degree" of necessity required to override Wood's constitutional right to his first jury.

IV. The Fourth Circuit extended *Renico* and *Klein* beyond their holdings and, in doing so, made AEDPA deference eclipse the underlying constitutional standard.

The Fourth Circuit considered two layers of deference: deference to a trial judge's manifest-necessity determination and AEDPA deference to the state appellate adjudication. That much is correct. *Renico* itself recognized the compounded deference applicable to a § 2254 challenge to a mistrial ruling. 559 U.S. at 773. But layered deference does not mean absence of a legal floor.

In *Renico*, the Court emphasized that *Washington* provides a general standard and affords trial judges substantial discretion. The Michigan case involved a jury that had deliberated after a lengthy trial and repeatedly communicated difficulties reaching a verdict. The habeas question was not whether federal judges would have declared a mistrial themselves; it was whether the state court was objectively unreasonable in concluding that the trial judge had acted within the broad range permitted by this Court's precedents. 559 U.S. at 772–79. Petitioner accepts that framework.

What he disputes is the Fourth Circuit's implication that, because the standard is general, an evidentiary violation plus defense fault can reasonably substitute for the required inquiry into necessity.

Similarly, *Klein v. Martin* does not resolve this case against Wood. *Klein* reversed the Fourth Circuit for imposing requirements on a state court's treatment of a Brady claim that this Court's precedents did not impose. The Court stressed that

§ 2254(d) focuses on the state court's decision, not its opinion-writing style; federal courts must give state decisions the benefit of the doubt and cannot treat a failure to discuss particular evidence as proof that the evidence was ignored. 607 U.S. at 218–22.

Wood asks for none of the practices *Klein* condemned. He does not argue that the West Virginia Supreme Court was required to discuss each alternative. He does not infer constitutional error from silence alone. He does not demand a more elaborate opinion. He challenges the **substantive application** of the governing rule to an undisputed procedural sequence: perceived evidentiary violation; judge-initiated mistrial inquiry; State motion; objection; complete cure before jury discharge; prosecutor's strategic-disadvantage objection; and continuation of the mistrial.

Klein commands federal courts to evaluate the state decision generously. It does not authorize them to change what *Washington* means.

Indeed, this case presents an important occasion to define that limit because the Fourth Circuit expressly acknowledged that Wood's claim might be a "closer question" on direct review, yet treated AEDPA as sufficient to sustain a decision in which fault and necessity had effectively merged.

Recent judicial debate underscores why the distinction matters. In *Sanders v. Plappert*, 168 F.4th 837 (6th Cir. 2026), the Sixth Circuit rejected a constitutional challenge to § 2254(d); Judge Stranch dissented, arguing that extreme conceptions of deference can raise Article III concerns when a federal court's independent constitutional judgment ceases to determine the legal inquiry before it. Petitioner does not ask this Court to decide the constitutional

question presented in *Sanders*. But the disagreement in *Sanders* illustrates the importance of the narrower boundary presented here.

Section 2254(d) restricts habeas relief. It does not rewrite the Double Jeopardy Clause. Construing AEDPA to preserve the distinction between deference and substitution avoids any need to approach the broader structural issue debated in *Sanders*. This case is an appropriate vehicle to enforce that boundary.

The district court and court of appeals reached opposite conclusions on the same record. And the dispositive issue is a recurring one: how § 2254(d) applies when an objected-to mistrial is attributed to attorney misconduct or violation of an evidentiary order.

The question therefore extends beyond whether one West Virginia trial should have continued. It concerns the boundary between state-law attorney fault and the federal constitutional prerequisite to a second prosecution.

The Court should grant review.

CONCLUSION

The petition for a writ of certiorari should be granted. The Court should reverse the judgment of the United States Court of Appeals for the Fourth Circuit and reinstate the district court's judgment granting the writ of habeas corpus.

In the alternative, the Court should vacate the judgment below and remand for reconsideration under the proper application of *Arizona v. Washington*, *Renico v. Lett*, and 28 U.S.C. § 2254(d)(1).

Respectfully submitted,

/s/ Carl N. Frankovitch

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