No. 21-1587

In the Supreme Court of the United States

TIM SHOOP, WARDEN,

Petitioner,

v.

JERONIQUE CUNNINGHAM,

Respondent.

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

BRIEF IN OPPOSITION

MICHAEL J. BENZA (Ohio 0061454)
Counsel of Record
17850 Geauga Lake Road
Chagrin Falls, Ohio 44023
(216) 319-1247
michael.benza@case.edu

KARL SCHWARTZ (PA 38994)
WISEMAN & SCHWARTZ, LLP
718 Arch Street, Suite 702 N
Philadelphia, PA 19106
(215) 360-3988
schwartz@wisemanschwartz.com

Attorneys for Respondent

CAPITAL CASE – NO EXECUTION DATE SET

QUESTIONS PRESENTED

1. When a habeas petitioner makes a prima facie showing of juror bias through evidence that the jury's foreperson received extraneous prejudicial information from her coworkers regarding the defendant and yet the state court refused to hold a hearing under *Remmer v. United States*, 347 U.S. 227 (1954), did the Circuit Court err by holding that the state court unreasonably applied this Court's precedent under 28 U.S.C. § 2254(d) and remanding to the district court to conduct such a hearing?

2. If 28 U.S.C. § 2254(e)(2) poses no bar to an evidentiary hearing on a habeas petitioner's "concrete and substantiated" juror bias claim based on the jury foreperson's undisclosed relationship with the victims' families—a claim not addressed on the merits in the state court—did the Circuit Court err in remanding the case to the district court to conduct a *Remmer* hearing?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTRODUCTION

The Petition should be denied. This case involves the straightforward application of settled law, and the Sixth Circuit's fact-specific analysis is sound. What is more, the Circuit Court's decision did not result in traditional habeas relief—in the form of a new trial, resentencing, etc.; what Mr. Cunningham received here was the modest remedy of a remand for a hearing to address his serious claims of juror bias, at least one of which has never been addressed by any other court. As a result, this Court's intervention would be particularly unwarranted—and premature—given the posture of this case. Should the district court actually *grant* habeas relief, and the Circuit Court affirm it, Petitioner will no doubt seek relief from this Court again and this Court will have another opportunity to consider the case. Indeed, since there has not yet been a hearing on the juror bias issue there has been no opportunity for a court to apply Federal Rule of Evidence 606(b)—let alone incorrectly—despite Petitioner's hand-wringing.

Because the Circuit Court's modest and fact-specific opinion was correct and grants only the limited remedy of a hearing, the Petition should be denied. It is not worthy of review by this Court—in summary fashion or otherwise.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Absent from Petitioner's Constitutional and Statutory Provisions Involved section is the specific statutory provision that is the foundation for the Circuit's decision: 28 U.S.C. § 2254(e)(2).

> (e)(2) If the applicant has failed to develop the factual basis of a claim in State court proceedings, the court shall not hold an evidentiary hearing on the claim unless the applicant shows that—

(A) the claim relies on—

(i) a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(ii) a factual predicate that could not have been previously discovered through the exercise of due diligence; and

(B) the facts underlying the claim would be sufficient to establish by clear and convincing evidence that but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

STATEMENT OF THE CASE

Jeronique Cunningham and his step-brother, Cleveland Jackson, were charged with multiple counts of aggravated murder and other offenses. Cunningham was tried first. Jackson was tried after Cunningham was sentenced to death. Pet. App. 99a & n.4.

After Cunningham's trial, but before the start of Jackson's trial, Gary Ericson, the investigator appointed to Jackson's trial team, interviewed several of Cunningham's jurors. Pet. App. 4a-5a. Petitioner—as he did in the court below—erroneously asserts that Ericson worked for Cunningham. Pet. 4. In truth, Ericson was appointed to Jackson's defense team and was conducting jury interviews on Jackson's behalf for the purpose of better presenting Jackson's case to the jury; he was not in any way affiliated with Cunningham or his legal team. *See* Pet. App. 4a-5a (*"Jackson's* investigator endeavored to interview Cunningham's jurors." (emphasis added)).

Ericson interviewed Nichole Mikesell, the foreperson of Cunningham's jury. Pet. App. 5a. The investigator wrote:

> [Mikesell] said that Jeronique is an evil person. *She said that some social workers worked with Jeronique in the past and were afraid of him.* She also said that if you observe one of the veins starting to bulge in his

> head, watch out and stay away because he might try to kill you. She also stated that Jeronique has no redeeming qualities.

Pet. App. 5a.

On July 16, 2003, Ericson signed an affidavit verifying the authenticity of his notes made a year earlier. *See* Pet. App. 5a; Dist. Ct. Dkt. 192-4, Page ID#5121.

When Cunningham's counsel learned of Mikesell's statements, he filed a timely state post-conviction petition asserting that Mikesell was biased against him based on this extrajudicial information. Pet. App. 5a-6a. Cunningham sought discovery on this matter and requested an evidentiary hearing. Pet. App. 6a. The State opposed discovery and a hearing, and the trial court denied both, relying on Ohio law that discovery is not available in state post-conviction proceedings. Pet. App. 179a-180a. *See also State ex rel. Love v. Cuyahoga Cty. Prosecutor's Off.*, 718 N.E.2d 426, 427 (Ohio 1998). The state courts rejected Cunningham's juror bias claim asserting that, because factual questions remained unresolved, the claim should be dismissed. Pet. App. 176a-177a.

Cunningham turned to federal court for substantive review of Mikesell's bias. The district court authorized an investigator who, for the first time, conducted juror interviews on Cunningham's behalf. Pet. App. 7a; Dist. Ct. Dkt. 92. During these interviews it was revealed that Mikesell had additional biases against Cunningham—she told other jurors that she worked with the families of the victims and harbored serious concerns over how they would react to an acquittal. *See* Pet. App. 7a-8a ("You don't understand. I know the families of the people that were shot in the kitchen. The families know me and I am going to have to go back and see them.

The families are my clients."). The district court allowed Cunningham to amend his petition to include this newly discovered claim of juror bias and permitted limited discovery, including depositions of Mikesell and two other jurors. Pet. App. 8a-9a. During Cunningham's deposition of Mikesell, Petitioner objected to any questions regarding this newly discovered issue, i.e., her connections to the victims' families and concerns over how they would react to an acquittal. Pet. App. 8a. The Magistrate Judge supervising the deposition sustained the objections. *Id.* To date, Mikesell has never answered a single question on her relationships with the families of the victims.

The habeas case was transferred to a different judge who dismissed the petition without holding a hearing on the issue of Mikesell's biases. Pet. App. 10a.

On appeal Petitioner asserted that there were state court vehicles for Cunningham to litigate his newly discovered claim of bias. Pet. App. 31a-32a. Cunningham advised the court that there were not and that the matter was ripe for federal court review. *Cunningham v. Hudson*, 756 F.3d 477, 484-85 (6th Cir. 2014). Over Cunningham's objections, the court remanded the matter to the district court with an eye towards Cunningham returning to state court to exhaust his claims. *Id.*; Pet. App. 11a; 31a-32a.

The district court stayed the federal proceedings to allow Cunningham to return to state court where he filed both a second post-conviction petition and a motion for a new trial. Pet. App. 11a. Both pleadings raised the claim of Mikesell's bias because of her connection to the victims or their families. *Id.* The state courts refused to provide litigation resources, denied discovery, and refused to hold a hearing on the claim. *Id.*

Instead, the state courts held that the trial court was "without jurisdiction to entertain" the petition. *State v. Cunningham*, 65 N.E.3d 307, 315 (Ohio Ct. App. 2016). This logic turned on the idea that Cunningham should have somehow discovered Mikesell's bias earlier in spite of the fact that the state courts denied him the opportunity to conduct discovery, refused to hold a hearing, or in any other way permit full and fair litigation of this claim. *Id.*

After this fruitless return to state court, Cunningham returned to the district court. He again renewed his requests to conduct discovery and for an evidentiary hearing. The district court adopted the logic of the state courts, finding that Cunningham procedurally defaulted this claim because he did not, and in fact could not, satisfy Ohio's successor post-conviction law. Pet. App. 12a.

On renewed appeal, the Circuit determined that Cunningham satisfied the predicates of 28 U.S.C. § 2254(d) and § 2254(e)(2) and was entitled to an evidentiary hearing on the two issues of Mikesell's biases. Pet. App. 77a.

As to Cunningham's first juror bias claim regarding external information that Mikesell may have received from her colleagues at the county's children-services agency, the Circuit determined that four of this Court's cases provided the clearly established precedent demonstrating that an evidentiary hearing was necessary to resolve these allegations: *Remmer v. United States*, 347 U.S. 227 (1954); *Smith v. Phillips*, 455 U.S. 209 (1982); *Michael Williams v. Taylor*, 529 U.S. 420 (2000); and *Cullen v. Pinholster*, 563 U.S. 170 (2011). Pet. App. 12a-26a. As to Cunningham's second juror bias claim relating to Mikesell's possible relationship with the victim's

families, the Circuit found that, contrary to the Petitioner's argument that state court vehicles existed and consistent with Cunningham's arguments that they did not, "it was always 'futile' for Cunningham to return to the Ohio courts." Pet. App. 32a.[1] On the merits, the Circuit determined that Cunningham raised a colorable claim of juror bias. Pet. App. 26a-42a. The Circuit remanded to the district court to conduct the *Remmer* hearing Cunningham was denied in state court. Pet. App. 42a-43a.

REASONS FOR DENYING THE WRIT

Certiorari should be denied. The limited decision below was correct, and the case does not implicate any circuit splits.

In regard to Cunningham's first juror bias claim the Circuit determined was adjudicated on the merits in state court, contrary to Petitioner's contention, the Sixth Circuit relied upon clearly established precedent of this Court, and not Sixth Circuit case law—*Remmer v. United States,* 347 U.S. 227 (1954) and *Smith v. Phillips,* 455 U.S. 209 (1982)—to find that the Ohio courts unreasonably applied that precedent. *Remmer*'s holding is explicit: "[i]n a criminal case, any private communications . . . with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial." 347 U.S. at 229. Even where there is a "paucity of information relating to the entire situation," facts credibly alleging such communications make "manifest the need for a full hearing." *Remmer v. United States*, 350 U.S. 377, 379-80 (1956). The Circuit found, as it had to, that "[b]y attaching evidence to his state postconviction petition that raised the question

[1] Petitioner now expressly waives any challenge to excusing any default. Pet. 24.

whether Mikesell had spoken to her colleagues about him, Cunningham credibly alleged that a 'private communication [occurred] with a juror during a trial about the matter pending before the jury.'" Pet. App. 17a. That language was taken directly from this Court; it was not dicta; and the Circuit's ruling was not based on a "paucity of information," but rather fulsome credible allegations.

In regard to Cunningham's second juror bias claim, the Circuit followed the clear direction of this Court in *Michael Williams v. Taylor*, 529 U.S. 420 (2000). The Circuit Court aptly held that "[t]his case is *Michael Williams* blow-for-blow." Pet. App. 42a. Yet, Petitioner barely mentions *Michael Williams,* nor begins to explain why the Circuit Court was wrong in pointing out the striking similarities between this case and *Michael Williams,* and, indeed, in recognizing that Cunningham's claim is "more concrete and substantiated" than Williams's was. Pet. App. 28a-29a. *Michael Williams* held that a diligent habeas petitioner can obtain a hearing on a juror bias claim—even one that the Court described as "vague." 529 U.S. at 442. Both the district court and the Circuit—majority *and* dissent—determined that Cunningham was diligent in pursuing the issues of Mikesell's misconduct and bias and was prevented from full, fair, and adequate judicial review because of the state courts' rulings, and Petitioner does not challenge that decision here. Pet. 23-24. And because Cunningham's allegations regarding juror bias are even stronger than in *Michael Williams*, he is entitled to a hearing.

Michael Williams also resolves any concerns regarding Federal Rule of Evidence 606(b). The Mikesell information is a paradigmatic example of the type of outside

influence brought to bear on a juror that is excluded under subsection (b)(2)(A) from the Rule 606(b)'s restriction. Additionally, even if Rule 606(b) *did* apply, it does not preclude a hearing for Cunningham's second claim as juror statements regarding deliberations can form the basis for a valid habeas investigation regardless of whether those statements implicate Rule 606(b). In *Michael Williams*, it was juror interviews that unearthed the potential juror bias issue. *See Michael Williams*, 529 U.S. at 443 ("petitioner's investigator on federal habeas discovered the relationships" between a juror and both the state's "main witness"—her ex-husband—and the prosecutor—who represented her in her divorce—"upon interviewing two jurors who referred in passing" to the juror by her prior married name). This information allowed investigation into public sources outside of the jury room. *Id*. In this case, while the initial information about Mikesell's connections to the victims or their families came from jurors, there are readily available sources of evidence to determine the bias—Cunningham simply needs a discovery order to obtain them. For example, the Children's Services records of the victims and their families should contain information identifying the agency employees who worked with the families. Additionally, Mikesell herself could directly answer the question Cunningham's counsel was previously barred from asking: whether she worked with the victims or their families. Once gathered, all of this evidence could be introduced to the district court without implicating Rule 606(b).

Finally, there are no circuit splits. Petitioner asserts a split regarding the application of Rule 606(b), Pet. 31-33, but all the cited cases arise in factual and

procedural postures inapplicable to the instant matter. Petitioner then attempts to invoke a second circuit split on an issue that is not an issue in this case: whether there exist circumstances in which a federal habeas court must hold an evidentiary hearing. Pet. 33-34. Whatever issue potentially exists as to the relationship between *Townsend v. Sain*, 372 U.S. 293 (1963); *Keeney v. Tamayo-Reyes*, 504 U.S. 1 (1992); and 28 U.S.C. § 2254(e)(2), the Circuit Court's decision did not implicate it because that court did not hold that an evidentiary hearing was required under *Townsend*. At no point in this litigation has the issue of a *Remmer* hearing been addressed under any legal theory except 28 U.S.C. § 2254(e)(2) and *Michael Williams v. Taylor*. Again, no conflict exists when the issues before the Circuit Court were not the same as the issues in other cases. This Court should not summarily reverse, nor is a merits grant warranted.

I. The Decision Below Is Correct.

A. As to Cunningham's First Claim of Juror Bias, the Circuit Court Faithfully Followed the Dictates of *Remmer* and *Phillips*.

The Circuit Court held that the state court unreasonably applied *Remmer*—among other decisions of this Court—in denying Cunningham's request for an evidentiary hearing. Pet. App. 17a. Petitioner argues that *Remmer* provided no guidance on the showing necessary to hold a hearing and was therefore an insufficient basis for the Circuit Court to order one. Pet. 19. According to Petitioner, absent a situation in which "undisputed evidence *proves* a juror was subjected to outside influences," a habeas court is precluded from ordering a hearing under *Remmer*. Pet.

20. This is simply not the law. And for good reason—one hardly needs an evidentiary hearing if a person has "undisputed evidence" on the subject.

In fact, *Remmer* and *Phillips* provided the Circuit Court with the necessary guidance for its decision. In *Remmer*, the Court held that "any private communication . . . with a juror during a trial about the matter pending before the jury is, for obvious reasons, deemed presumptively prejudicial." 347 U.S. at 229. And so the Court ordered a hearing to get to the bottom of the juror bias issue: "We do not know from this record, nor does the petitioner know, what actually transpired, or whether the incidents that may have occurred were harmful or harmless." *Id.* at 230.[2] This Court charted the proper course under such circumstances, a course that the Circuit Court honored:

> The trial court should not decide and take final action *ex parte* on information such as was received in this case, but should determine the circumstances, the impact thereof upon the juror, and whether or not it was prejudicial, *in a hearing* with all interested parties permitted to participate.

Id. at 229-30 (emphasis added). The *Phillips* Court, underscoring the integrity of the trial process, affirmed that "allegations of juror partiality" are sufficient to warrant a hearing. 455 U.S. at 215. *Remmer* and *Phillips* expressly reject Petitioner's cramped reading of these cases: allegations of bias do not need to be proven or conceded before a hearing is required.

[2] This language disposes of Petitioner's assertion that "there was no question that someone had attempted to bribe one of the jurors during the trial in that case." Pet. 17 (citing *Remmer*, 347 U.S. at 228).

As the Circuit Court made clear, Cunningham's evidentiary proffers created the inference that Mikesell "received during the trial information about Cunningham from social workers or Cunningham's case file," Pet. App. 23a n.4, putting Cunningham's showing (at the very least) on par with the *Remmer* and *Phillips* standards. The Circuit Court recognized, as did this Court in *Remmer*, that factual questions remain as to Juror Mikesell. Pet. App. 23a. Specifically, the Circuit found, as it had to, that "[b]y attaching evidence to his state postconviction petition that raised the question whether Mikesell had spoken to her colleagues about him, Cunningham credibly alleged that a 'private communication [occurred] with a juror during a trial about the matter pending before the jury.'" Pet. App. 17a.

Remmer, and the subsequent decision in *Phillips*, make clear that (1) proving actual bias is not a prerequisite for a hearing, *Remmer*, 347 U.S. at 229, and (2) prima facie "allegations of juror partiality" are sufficient to warrant a hearing, *Phillips*, 455 U.S. at 215; *see also Michael Williams*, 529 U.S. at 442 ("It may be that petitioner could establish that [the juror] was not impartial or that [the prosecutor's] silence so infected the trial as to deny due process." (citations omitted)). But asking these questions is the point of a *Remmer* hearing.

The *Remmer* standard, when applied to Mikesell's improper and external contacts, mandated a hearing, and the Circuit correctly found that the state post-conviction court's failure to hold one constituted an unreasonable application of *Remmer*. Pet. App. 17a. There has never been any dispute that Cunningham diligently attempted to obtain a hearing before the state post-conviction court for this first claim. Yet

despite Cunningham's diligence there was a total failure of the state court post-conviction process to provide a meaningful opportunity for a full and fair adjudication of the claims. In his initial post-conviction petition he presented the evidence that he had of Mikesell's misconduct: the report of Jackson's investigator. Cunningham requested discovery and a hearing on the issue which the State opposed. Notwithstanding that Cunningham proffered hard evidence of outside influence improperly brought to bear on the jurors, the state court dismissed the post-conviction petition without permitting discovery or holding a hearing. *State v. Cunningham*, No. 1-04-19, 2004 WL 2496525, *16 (Ohio Ct. App. Nov. 8, 2004).

It is worth noting that under Ohio law, as made clear by the trial court in this case, there is simply no avenue for post-conviction petitioners to obtain discovery. *State ex rel. Love v. Cuyahoga Cty. Prosecutor's Off.*, 87 Ohio St.3d 718 N.E.2d 426, 427 (Ohio 1998); *State v. Caulley*, No. 07AP-338, 2007 WL 4532671, at *4 (Ohio Ct. App. 2007); *State v. Ahmed*, No. 05-BE-15, 2006 WL 3849862, at *5 (Ohio Ct. App. 2006); *State v. Elmore*, No. 2005-CA-32, 2005 WL 2981797, at *5 (Ohio Ct. App. 2005); *State v. Buhrman*, No. 19535, 2003 WL 1571551, at *5 (Ohio Ct. App. 2003); *State v. Madrigal*, No. L-00-1006, 2000 WL 1713874, at *11 (Ohio Ct. App. 2000). *In this case*, that fact precluded Cunningham from obtaining and presenting the sources of the most prejudicial information that Mikesell received from individuals and institutions outside of the trial process. Ohio is free to establish the rules of its post-conviction process but the impact of those rules on the Writ is for this Court to determine. *See*

Henry v. Mississippi, 379 U.S. 443, 447 (1965); *Abie State Bank v. Weaver*, 282 U.S. 765, 773 (1931); *Ex parte Hawk*, 321 U.S. 114, 118 (1944).

The total absence of the ability to develop facts in post-conviction that occurred in this case (wholly consistent with the Ohio precedent cited above), eliminates the policy concerns of comity that limit the power of the habeas courts to conduct review, even under the more narrow § 2254(d)(1) lens. AEDPA constrained, but did not eliminate, federal *habeas* review. The Court continues to recognize the importance of the Great Writ and the duty of the federal courts to give substantive review to *habeas* petitions. *See Miller-El v. Dretke*, 545 U.S. 231 (2005); *Terry Williams v. Taylor*, 529 U.S. 362 (2000). Even under AEDPA's changes to the Great Writ, "the province of the court is, solely, to decide on the rights of individuals." *Marbury v. Madison*, 5 U.S. 137, 170 (1803). The Court specifically recognized that ceding federal review to the states would render AEDPA unconstitutional. *Terry Williams*, 529 U.S. at 378-79; *Hamdi v. Rumsfeld*, 542 U.S. 507, 575 (2004) (Scalia, J., dissenting) ("The Suspension Clause of the Constitution, which carefully circumscribes the conditions under which the writ can be withheld, would be a sham if it could be evaded by congressional prescription of requirements *other than the common-law requirement of committal for criminal prosecution* that render the writ, though available, unavailing." (emphasis in original)). The Suspension Clause issue is even greater in this case where the State's post-conviction scheme fails to provide an independent and adequate mechanism for review and protection of federal Constitutional rights.

B. As to Cunningham's Second Claim of Juror Bias, the Circuit Court's Determination Was Correct Under *Michael Williams* and Not Inconsistent With Federal Rule of Evidence 606(b)(1).

Petitioner does not challenge the Circuit Court's finding that Cunningham diligently tried to develop his second claim of juror bias, relating to Mikesell's relationship with the victims' families. Pet. 23-24. Petitioner does not challenge the Circuit Court's finding that Cunningham's inability to develop that claim was not a "failure" on his part, and thus does not preclude on that basis factual development under 28 U.S.C. § 2254(e)(2). *Id.* Petitioner does not challenge the Circuit Court's finding that Cunningham demonstrated cause for the lack of development of this claim in state court. Nor does Petitioner challenge the Circuit Court's finding that Cunningham's diligence was greater than that of the petitioner in *Michael Williams*. In short, there is no basis to dispute the Circuit Court's finding that Cunningham's multiple attempts to get to the heart of Mikesell's misconduct and bias demonstrates his diligence as a matter of federal law and his entitlement to a hearing.

1. *The Circuit Court's determination was correct under* Michael Williams*, and did not create a new "vague allegations rule."*

Petitioner argues that in granting the hearing, the Circuit created a "vague allegations" rule for an evidentiary hearing. Pet. 29-30. First, as for *Cunningham's* case the Circuit found Cunningham's allegations were not vague, but rather "even more specific than the 'vague allegations' of 'irregularities, improprieties and omissions'" in *Michael Williams*. Pet. App. 41a. Cunningham, like Williams, presented the evidence he had at the time of his petition, and the Circuit Court described Cunningham's claim as "more concrete and substantiated than Williams's."

Pet. App. 28a. At any rate, the full development of the facts is what the *Remmer* hearing is all about.

Petitioner misleadingly removed from its "vague allegation" references *Michael Williams*'s qualifying language that such allegations were sufficient there because "the[ir] vagueness was not [Williams's] fault," and because he made "reasonable efforts" to uncover the evidence. 529 U.S. at 424-44. At most this Court—not the Circuit Court—found that a district court may be less exacting where the petitioner made reasonable and diligent efforts at developing his evidence in state court but was thwarted from doing so by the process.[3] Regardless, the Circuit Court was not required to be less exacting here, as Cunningham managed to present compelling evidentiary proffers evincing bias.

It is also worth noting that the hearing ordered by the Circuit Court will not open the flood gates to evidentiary hearings upon mere "vague allegations." Pet. 30. *Michael Williams* was decided over twenty-years ago and yet Petitioner points to no cases in which his feared "vague allegations" resulted in an evidentiary hearing. *Amici* contended that "juror harassment is a serious problem that the States face." Amici Br. 10. Yet in support of such a grave allegation, *amici*, who represent a

[3] Petitioner erroneously suggests that *Williams* was myopically focused the question of diligence. Pet. 30 (quoting *Cullen v. Pinholster,* 563 U.S. 170, 184 (2011)). But an offhand and out-of-context snippet from *Pinholster* cannot change the fact that this Court in *Michael Williams* essentially remanded for the district court to hold an evidentiary hearing, and quoted *Phillips* when doing so. *See* 529 U.S. at 444 (remanding for "further proceedings . . . in light of cases such as [*Phillips* holding that] 'the remedy for allegations of juror partiality is a hearing in which the defendant has the opportunity to prove actual bias'").

combined population of approximately 84 million people, were able to cite but two Kentucky state court opinions (one an unpublished pleading from a lower court), a prosecutor's brief from a South Dakota case, and a thirteen-year-old newspaper article from Cincinnati, to "prove" their point. *Id.* at 10-11. It is a red herring. Attorneys are first and foremost members of the bars of each of their states and take their professional and ethical responsibilities seriously. No less so in this case.

2. The Circuit Court did not "ignore" or "suggest Rule 606(b) does not apply."

Petitioner claims that the Circuit Court "ignored" Federal Rule of Evidence 606(b) in ordering the evidentiary hearing on the second juror bias claim. Pet. 26. It did not. While the first evidence of Mikesell's connections with the families of the victims came from juror interviews, the evidence of Mikesell's bias will be located in Children's Services records that are clearly not subject to exclusion under Rule 606(b).

At the outset, it is worth noting that Petitioner is simply wrong in his assertion that "Cunningham's investigator 'showed up uninvited at [the juror's] home." Pet. 4, 25 (quoting Pet. App. 80a-81a (Ketheldge, J., dissenting) making the same error). In fact, it was Jackson's investigator who interviewed the jurors, after Cunningham's trial, in preparation for Jackson's trial. Pet. App. 4a-5a. The *sui generis* manner in which Cunningham learned of the juror's bias sets this case apart from the purported concerns raised by Petitioner and *amici* about Cunningham's alleged initial approaches to these jurors. Likewise, the allegation in the Circuit Court dissenting opinion, that Jackson's investigator showed up a year after the trial to speak with

Mikesell was also erroneous. Pet. App. 80a-81a. Although the affidavit by the investigator was signed a year after the Cunningham trial, Pet. App. 21a-22a, the actual interview occurred immediately after the trial, Dist. Ct. Dkt. 192-4, Page ID#5121 (stating Ericson attempted to interview jurors "[i]n preparation for Cleveland Jackson's trial"); *compare Cunningham*, 2004 WL 2496525, at *2 (stating Cunningham's trial ended June 18, 2002) *with Jackson v. Houk*, No. 3:07CV0400, 2008 WL 1946790 (N.D. Ohio May 1, 2008) (noting that *voir dire* in Jackson's trial began on July 16, 2002). This was not an abusive, invasive, or delayed inquiry, nor was Mikesell "harassed and beset by the defeated party in an effort to secure from them evidence of facts which might establish misconduct sufficient to set aside the verdict." *McDonald v. Pless*, 238 U.S. 264, 267-68 (1915).

Again mischaracterizing the Circuit Court opinion, Petitioner argues that it "appeared to suggest that Rule 606(b) did not apply." Pet. 29. Nowhere in the Circuit Court opinion can such a statement—or one conveying such an idea—be found. What the Circuit Court held was that Cunningham has apparent means to develop his claim of bias that do not implicate statements made during jury deliberations—at Cunningham's subsequent evidentiary hearing he "need not . . . rely on juror testimony." Pet. App. 38a; *see also* Pet. App. 41a-42a. Specifically, the Court understood that it would "be possible for Cunningham to prove that Mikesell was actually biased without relying on juror testimony in violation of Federal Rule of Evidence 606(b)," by, for example, offering "the testimony of a victim's family member." *See* Pet. App. 40a-41a (discussing Cunningham's state post-conviction

allegations alleging connections between juror Mikesell and victim's family members, allegations that are provable without reference to juror deliberations). Or, if Cunningham's investigation revealed Children's Services case-file records that would demonstrate this connection, the nature of his investigation does not render those records violative of Rule 606(b). That does not mean that Rule 606(b) "does not apply"; rather, it means that evidence necessary to prove Cunningham's claim does not implicate the Rule at this juncture—Rule 606(b) is an evidentiary rule that applies only "[d]uring an inquiry into the validity of a verdict," not an inquiry into whether someone is entitled to a hearing where that inquiry would take place.

It was hardly "specula[tive]" as Petitioner suggests, Pet. 32, for the Circuit Court to discuss the type of non-606(b) evidence that Cunningham could adduce to support his claim, *see* Pet. App. 41a-42a. Nor was it coincidental that Cunningham has been attempting to present the very type of evidence identified by the Circuit Court in the state and federal courts for most of the past two decades. Such evidence includes, *inter alia*, testimony from Mikesell and the family members and victims regarding the nature of their relationship; review and analysis of the Children's Services records of the victims and their family members; Mikesell's untruthful answers in voir dire about her personal knowledge of the case; her impartiality as a juror; and her pretrial, preconceived hostility toward Cunningham. Additionally, it includes evidence of those connections and any documentation relating to Cunningham in those records, that gave rise to, or demonstrated, Mikesell's bias. None of this material is subject to Rule 606(b) review. These are not "vague allegations" of bias but concrete assertions

by Mikesell herself demonstrating that she was biased and should not have sat on Cunningham's jury.

Petitioner attempts to invoke a pair of this Court's cases—*Tanner v. United States*, 483 U.S. 107 (1987), and *Warger v. Shauers*, 574 U.S. 40 (2014)—but those cases did not arise "under similar circumstances," as Petitioner claims. Pet. 26-27. Although Rule 606(b) ordinarily bars juror testimony "[d]uring an inquiry into the validity of a verdict," exceptions exist for "extraneous prejudicial information" and "outside influence," Rule 606(b)(2), and *Tanner* and *Warger* principally addressed the contours of those exceptions. *See Tanner*, 483 U.S. at 117-18 (discussing the "external/internal distinction to identify instances in which juror testimony impeaching a verdict would be admissible" under Rule 606(b)(2)(B) and concluding that "allegations of the physical or mental incompetence of a juror [is] 'internal' rather than 'external'"); *Warger*, 574 U.S. at 51-52 (rejecting argument that juror evidence was admissible under Rule 606(b)(2)(A)'s exception because "the excluded affidavit falls on the 'internal' side of the line"). The Court held in both cases that the juror evidence sought to be introduced would have fallen on the verboten "internal" side of the line for 606(b)(2) purposes and was therefore inadmissible. Notably, in both *Tanner* and *Warger* this Court was reviewing—on direct appeal—another court's decision not to allow certain evidence related to jury deliberations due to Rule 606(b); those cases have nothing to say about the situation at hand here, where Rule 606(b) is not currently implicated because no evidence was sought to be introduced.

Tanner, if anything, *supports* the Sixth Circuit's decision here. *Tanner* did not, contrary to Petitioner, hold "that it is not an abuse of discretion to deny a hearing when the only evidence supporting a hearing request is inadmissible under Rule 606(b)," or that "a district court was not required to hold an evidentiary hearing when the only evidence of juror misconduct was barred by Rule 606(b)." Pet. 28, 29. Rather, the district court in *Tanner* had *already* "held an evidentiary hearing giving petitioners ample opportunity to produce nonjuror evidence supporting their allegations"—and none turned up. 483 U.S. at 127. The district court had "invited petitioners to call any nonjuror witnesses, such as courtroom personnel, in support of their motion for a new trial" and "counsel took the stand and testified." *Id.* at 113. That is, the district court in *Tanner* did exactly what the Circuit Court ordered in this case: an evidentiary hearing where allegations of juror bias could be assessed, and where Rule 606(b) would apply.

It is also worth noting that Petitioner does not suggest that Rule 606(b) bars the evidentiary development of the first juror bias claim, in which Mikesell, during deliberations, disclosed improper information from co-workers and social service records. Presumably, Petitioner agrees with the Circuit Court that this type of information falls within Rule 606(b)(2)(A)'s exclusion for "extraneous prejudicial information." *See* Pet. App. 39a n.10. This raises the question of why the juror's relations with victims' family members and her definitive expectations of their reactions, that by her own admission would influence her verdict, do not fall within that exception as well. *See Warger,* 574 U.S. at 51 ("[I]nformation is deemed

'extraneous' if it derives from a source 'external' to the jury. . . . 'External' matters include . . . information related specifically to the case the jurors are meant to decide." (citing *Tanner*, 483 U.S. at 117)). Mikesell's relationships with this case's victims' family members and her expressed belief about their particular expectations of her jury performance fit that paradigm. In *Michael Williams*, 529 U.S. at 440-43, as here, the potential bias concerned undisclosed relationships between jurors and individuals connected to the prosecution. The fact that there was no evidence that those individuals had attempted to influence the verdict, did not resolve the question. *Id.* And here, there is more; there is actual testimony from another juror that the extraneous evidence *did* inform the verdict. *See* Pet. App. 7a-8a (juror "interpreted Mikesell's comments as pressure to vote guilty"). The *Michael Williams* Court remanded the juror bias claim to the district court for an evidentiary hearing under very similar factual and procedural circumstances. *See also Rushen v. Spain*, 464 U.S. 114, 121 n. 5 (1983) ("A juror may testify concerning any mental bias in matters unrelated to the specific issues that the juror was called upon to decide and whether extraneous prejudicial information was improperly brought to the juror's attention.").

Even if Rule 606(b) is applicable, this Court recognizes that exceptions to the rule will apply in the "'gravest and most important cases.'" *Pena-Rodriguez v. Colorado*, 137 S.Ct. 855, 865-66 (2017) (quoting *McDonald*, 238 U.S. at 269). Even in *Warger* itself, the Court recognized that "juror bias so extreme that, almost by definition, the jury trial right has been abridged" could justify an exception to Rule 606(b). 574 U.S. at 51 n. 3. Mikesell's hidden connection to the families of the victims forcing her vote

to convict regardless of the evidence is just the sort of extreme juror bias that *Pena-Rodriguez* and *Warger* identified. A juror with direct, personal connections to the victims in a homicide case clearly abridges the right to an impartial jury.

Regardless, in light of the Circuit Court's correctly pointing to external records and individuals now available to demonstrate bias at a hearing, Petitioner can do so without reference to Mikesell's comments to the other jurors.

3. Permitting further review will not subject jurors to harassment.

Petitioner relies on a hyperbolic argument that permitting further review will result in jurors being beset upon by over-zealous litigants, harassed and pressured into admitting that misconduct occurred during the deliberations. Pet. 25. That is not what happened in this case, will not happen as a result of the Circuit's decision, and is not based on the reality of juror interviews.

Rule 606(b) does not prohibit or eliminate juror interviews. It simply limits the evidentiary use of some juror statements. And juror interviews are a common and integral component of our civil and criminal justice system, provide for meaningful educational opportunities for attorneys to learn what jurors find important or not during trials, provide the public with insight into specific verdicts, and help ensure that the public nature of our justice system is maintained.

A wide range of sources recognize post-trial juror interviews as a regular and accepted part of trial practice. For example, the American Bar Association provides that "[u]nless prohibited by law, *the court should ordinarily permit the parties to contact jurors after their terms of jury service have expired*, subject, in the court's discretion, to reasonable restrictions." American Bar Association, Principles for

Juries and Jury Trials, Principle 18.D (2016) (emphasis added). Indeed, the handbook for jurors serving in the federal district courts acknowledges that, while a juror is not required to consent to an interview post-trial, these interviews either by lawyers or the press do take place. *See* Administrative Office of the United States Courts, Handbook for Jurors Serving in the United States District Courts 14 (2012). Practical guides and CLE courses routinely cover best practices for post-trial jury interviews. *See* National Jury Project, Inc., Jurywork: Systematic Techniques (Krause & Bonora, eds., 1995) (reviewing post-verdict interview techniques at chapter 13); Howard Varinsky & Laura Nomikos, *Post-Verdict Interviews: Understanding Jury Decision Making*, 26 Trial 64 (1990) (putting forward a suggested methodology for post-verdict jury interviews); Oregon State Bar CLE Seminar, *Inside Edition: What Attorneys Can Learn from Post-Trial Juror Interviews* (2019).[4] This is not to mention the respected body of materials from trial or jury consultants concerning post-trial interviews. *See, e.g.*, American Society of Trial Consultants, *Code of Professional Standards, Practice Area E: Post-Trial Jury Interviews* 46-53 (2013).[5] And it is not just lawyers that speak to jurors; one study found that a single newspaper published 750 articles over an eighteen-year period that featured post-trial interviews with one or more jurors. *See* Nicole B. Casarez, *Examining the Evidence, Post-Verdict Interviews and the Jury System*, 25 Hastings Comm. & Entm't L.J. 499, 506 (2003).

[4] https://s3-us-west-2.amazonaws.com/oregonstatebar/Seminars/2019/LI19-7.pdf.
[5] https://www.astcweb.org/Resources/Pictures/ASTCFullCodeFINAL20131.pdf.

Juror interviews are also routinely used in various judicial and administrative proceedings—and almost never involve, per Rule 606(b), "inquir[ies] into the validity of a verdict or indictment." For example, juror interviews are integral in clemency review. In Ohio, the Parole Board and the Governor place great weight on jurors' statements regarding the sentencing process as well as whether evidence not presented to them would have affected the sentencing decision. Meeting Minutes of the Adult Parole Authority, Columbus, Ohio, *In re: William Montgomery* 16 (Mar. 8, 2018).[6] This material is only available if the jurors are interviewed.

Social scientists and other researchers also conduct juror interviews, shedding light on such topics as the process of jury deliberations, juror reasoning, and how jurors understand evidence. NSF Committees of Visitors, FY 2004 Report (Mar. 18-20, 2004).[7] *See* also William J. Bowers, *The Capital Jury Project: Rationale, Design, and Preview of Early Findings*, 70 Ind. L. J. 1043 (Fall 1995); John H. Blume, An Overview of Significant Findings from the Capital Jury Project and Other Empirical Studies of the Death Penalty Relevant to Jury Selection, Presentation of Evidence and Jury Instructions in Capital Cases (Fall 2008) (providing overview of significant empirical findings).[8]

---

[6] https://www.drc.ohio.gov/Portals/0/William%20Montgomery%20Death%20Penalty%20Clemency%20Report%20and%20Recommendation%20(1).pdf?ver=2018-03-16-105832-040.

[7] https://www.nsf.gov/od/oia/activities/cov/sbe/2004/SPS_Cluster_COV-Report2004.doc.

[8] https://www.swlaw.edu/sites/default/files/2021-02/Williams%2C%20Kenneth%20-%20Empirical%20Studies%20Summaries.pdf.

In short, juror interviews are valuable and legitimate aspects of our criminal justice system. Rule 606(b) does not, should not, cannot, and will not, prevent these interviews. Petitioner's and *amici*'s histrionics over abuse and harassment are just that—histrionics.

* * *

Despite Petitioner's expressions of respect for defendants' Sixth Amendment rights to fair and impartial juries, at its core the Petition seeks this Court's intervention to stop a court from even inquiring into Cunningham's documented proffers giving rise to legitimate claims of bias. At no point has Petitioner ever offered any evidence rebutting Cunningham's submissions, choosing instead to try to prevent meaningful inquiry into the matter. The Circuit Court, consistent with this Court's Sixth Amendment jurisprudence, simply determined that a hearing was warranted. Nothing more.

II. The Sixth Circuit's Order Does Not Present A Developed Split That Merits This Court's Review.

A. There Is No Circuit Split Regarding Application of Rule 606(b).

The Circuit Court did not apply—or refuse to apply—Rule 606(b) because that Rule simply wasn't applicable in this case. That is because neither the Circuit Court decision nor the district court's refusal to consider the issue on the merits were an "inquiry into the validity of the verdict." Fed. R. Evid. 606(b)(1). Rather, the decision below was an inquiry into whether respondent is *entitled to* such an evidentiary hearing, where—everyone agrees—Rule 606(b) *would* apply. None of the cases Petitioner cites for the alleged "split," Pet. 31-32, arise in this posture. The vast

majority are, instead, straightforward direct-appeal applications of Rule 606(b), arising after a trial court has denied a request for a post-trial interview of a juror or to hold an evidentiary hearing related to a newfound juror affidavit.[9]

Moreover, the issues raised in every one of the cases that Petitioner cites involved exclusively questions and concerns internal to the deliberative process. *See, e.g.*, *United States v. Brown,* 934 F.3d 1278, 1303 (11th Cir. 2019) (juror's complaint about other juror's personal biases); *United States v. Baker,* 899 F.3d 123, 130-134 (2d Cir. 2018) (juror's complaint that other jurors presumed guilt and discussed the case with each other before deliberations). None involved juror consideration of extraneous prejudicial information improperly brought to the jury's attention. Thus, in none of the cited cases could the information provided to the trial court conceivably have (1) been covered by subsection (b)(2)(A); or (2) led to evidence admissible under Fed. R. Evid. 606(b)(2)(B). It is at best inaccurate to suggest that these cases stand for the proposition that the restrictions on Rule 606(b) apply to such extraneous information or apply outside of the evidentiary proceeding. None of those cases pointed to non-

[9] *See United States v. Brown*, 934 F.3d 1278, 1302-03 (11th Cir. 2019) (affirming district court's denial of a post-trial motion to interview a juror); *United States v. Baker*, 899 F.3d 123, 130-34 (2d Cir. 2018) (same); *United States v. Ford*, 840 F.2d 460, 465-66 (7th Cir. 1988) (denying post-trial request for an evidentiary hearing based on juror's letter); *United States v. Moses*, 15 F.3d 774, 778-79 (8th Cir. 1994) (same); *United States v. Leung*, 796 F.3d 1032, 1036 (9th Cir. 2015) (same, regarding juror affidavit); *United States v. Miller*, 806 F.2d 223, 225 (10th Cir. 1989) (affirming denial of post-trial "motion to inquire" regarding juror's alleged statements to pastor, which were relayed to counsel); *cf. United States v. Morris*, 570 Fed. App'x 151, 153 (3d Cir. 2014) (affirming denial of evidentiary hearing on alleged jury mistake); *United States v. Jackson*, 549 F.3d 963, 984 (5th Cir. 2008) (same).

606(b) evidence such as public domestic relations court files (*Michael Williams*) or public agencies Children's Services files (Cunningham).

And, indeed, the Circuit Court below has adjudicated cases in this posture in the same exact way as the circuits on the other side of the alleged "split." *See, e.g.*, *United States v. Brooks*, 987 F.3d 593, 603-04 (6th Cir. 2021) (holding district court did not abuse its discretion in declining to hold an evidentiary hearing based on juror's post-verdict note regarding juror-on-juror pressure during deliberations because it was barred by Rule 606(b)).

The stray habeas cases Petitioner does cite are readily distinguishable, and so do not create a split either. In the first, *Crowe v. Hall*, 490 F.3d 840 (11th Cir. 2007), the state habeas court had concluded that the defendant's juror bias claim failed, and refused to admit a juror affidavit to support the claim, concluding that it was barred by Rule 606(b). *Id.* at 847-48. The Eleventh Circuit determined that "Crowe cannot establish prejudice because the affidavits—the sole evidence of his allegations—are inadmissible in Georgia courts." *Id.* at 846. Additionally, *Crowe* did not remotely involve a prejudicial, outside influence; rather, it involved a juror's complaint that the jurors began discussing the case among themselves before deliberations began. *Id.* at 847-48. In contrast, Cunningham pointed to Mikesell's comments conceding extraneous influence, and pointed to admissible record evidence readily discoverable to establish the bias that Mikesell acknowledged.

In the second, *Austin v. Davis*, 876 F.3d 757 (5th Cir. 2017), the court of appeals—contrary to Petitioner's representation, Pet. 32, "address[ed] whether the district

court erred in failing to conduct an evidentiary hearing regarding juror bias." *Id.* at 799. The Fifth Circuit concluded that the district court did not abuse its discretion in denying an evidentiary hearing because the Fifth Circuit could "determine from the record that the post-trial juror statements at issue can be reconciled with each juror's statements during *voir dire*"—in other words, that even the inadmissible evidence provided no "there there" to follow up on. *Id.* As the Sixth Circuit determined, that is not the case here, and there are other sources besides juror testimony that could substantiate respondent's juror bias claim. *See* Pet. App. 40a (listing possible sources); *see also supra* at 17-18.[10]

Petitioner's asserted "split" is nothing more than the lower courts properly reviewing each case on its own unique facts and legal posture. Courts reaching different decisions in different cases based on different facts do not create a "split." A "circuit split" justifying a grant of certiorari is a disagreement between circuit courts that is severe enough to the point that one court of appeals' decision is "in conflict with the decision of another United States court of appeals on the same important matter . . . ." S. Ct. R. 10. The cases are not in conflict—there is no divergent interpretation of what Rule 606(b) means; no divergent legal standard or test; and no disagreement between the circuits about what this Court's Rule 606(b) jurisprudence means.

[10] Petitioner's final case, *Porter v. Zook*, 898 F.3d 408 (4th Cir. 2018), serves him no better. In that case there happened to be non-juror evidence already, but the Fourth Circuit did not hold such evidence is required when requesting an evidentiary hearing, contrary to Petitioner's suggestion. Pet. 33; *Porter*, 898 F.3d at 428-29 & n.7.

B. The Sixth Circuit Did Not Determine That A Hearing Was Mandatory Under *Townsend* and Therefore Any Alleged Circuit Split On That Issue Is Not Relevant To This Case.

Petitioner alleges the existence of a second split "regarding whether and when a federal habeas court *must* order an evidentiary hearing under § 2254(e)(2)." Pet. 33. But this purported split does not exist. Even if it did, it is not implicated here, which is which why it was not pressed or passed on below. To start, the Circuit Court in this case *agreed* that § 2254(e)(2) provided the relevant standard for assessing the hearing question. *See* Pet. App. 36a (concluding that, here, "the federal courts may hold an evidentiary hearing under § 2254(e)(2)"); *id.* at 42a ("The federal courts may accordingly hold an evidentiary hearing for his second juror-bias claim concerning Mikesell's relationship with the victims' families under § 2254(e)(2)."). Nor did the Court invoke *Townsend* in ordering a hearing. *See generally* Pet. App. Simply put, any purported split is just not relevant to the disposition of this case.

Regardless, this Court resolved the question of whether a district court's application of the § 2254(e)(2) exceptions are mandatory or discretionary in *Schriro v. Landrigan,* 550 U.S. 465, 468 (2007), in which it held: "In cases where an applicant for federal habeas relief is not barred from obtaining an evidentiary hearing by 28 U.S.C. § 2254(e)(2), the decision to grant such a hearing rests in the discretion of the district court." The Circuit Court followed this directive, concluding that § 2254(e)(2) did not bar an evidentiary hearing and, under the circumstances, the district court abused its discretion in not holding a hearing. *See* Pet. App. 12a (describing *Remmer* as holding "that a prima facie showing of juror bias . . . entitles a defendant to a

hearing"); *Brooks*, 987 F.3d at 603 (court reviews denial of evidentiary hearings for abuse of discretion).

To the extent that any of the cases Petitioner cites, Pet. 33-34, even suggest that based on *Townsend* Circuit Courts have deemed a hearing to be mandatory, all but one was decided before *Landrigan.* The one case that was decided after *Landrigan, Ward v. Jenkins*, 613 F.3d 692 (7th Cir. 2010), does not address *Townsend,* nor suggest that there are circumstances in which the district court's hands are tied. Rather, in *Ward,* as here, the Circuit Court found that under the facts of the case the district court should have granted a hearing. As in the case below, the *Ward* decision never mentions *Townsend,* nor provides any reason to believe that it was not reviewing a discretionary decision of the district court.

There is no circuit split. Nor is there anything in the opinion of the Sixth Circuit to suggest that it was not reviewing the discretionary decision of the district court.

CONCLUSION

The State of Ohio seeks to execute Jeronique Cunningham all the while trying to hide from judicial review at every level the base fact that the jury foreperson admitted to reviewing extrajudicial information and admitted that she had a previously undisclosed relationship with the victims or their families. When the State seeks to take a life, scrupulous adherence to constitutional protections is required. *Woodson v. North Carolina*, 428 U.S. 280 (1976). As Petitioner acknowledges "Criminal defendants are entitled to a fair and impartial jury." Pet. 1. There is clear evidence that Mikesell's presence on the jury violated this most basic constitutional principal. As in *Remmer*, "[w]e do not know from this record, nor does the petitioner know, what

actually transpired, or whether the incidents that may have occurred were harmful or harmless," 347 U.S. at 229, but those issues should be determined "in a hearing with all interested parties permitted to participate," *id.* at 230. At no point did the state courts permit discovery or hold a hearing on Mikesell's misconduct and bias. The Sixth Circuit's order for the district court to conduct a *Remmer* hearing is in strict compliance with this Court's jurisprudence, *see Michael Williams v. Taylor*, the Constitution, and the guiding principles of the Great Writ. For the foregoing reasons, the petition should be denied.

Respectfully submitted,

MICHAEL J. BENZA (Ohio 0061454)
Counsel of Record
17850 Geauga Lake Road
Chagrin Falls, Ohio 44023
(216) 319-1247
michael.benza@case.edu

KARL SCHWARTZ (PA 38994)
WISEMAN & SCHWARTZ, LLP
718 Arch Street, Suite 702 N
Philadelphia, PA 19106
(215) 360-3988
schwartz@wisemanschwartz.com

Attorneys for Respondent

August 17, 2022