***** CAPITAL CASE *****

No. 25-____

In the
Supreme Court of the United States

MARIO DION WOODWARD,
Petitioner,

v.

STATE OF ALABAMA,
Respondent.

On Petition for a Writ of Certiorari to the Alabama Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

Geoffrey G. Young
RILEY SAFER HOLMES & CANCILA LLP
810 SEVENTH AVENUE
SUITE 3505
NEW YORK, NY 10019

Christopher T. Vazquez
KATTEN MUCHIN ROSENMAN LLP
50 ROCKEFELLER PLAZA
NEW YORK, NY 10020

Counsel for Petitioner

James C. Martin
Counsel of Record
Colin E. Wrabley
Michael J. McCune
REED SMITH LLP
225 FIFTH AVENUE
PITTSBURGH, PA 15222
(412) 288-3131
jcmartin@reedsmith.com

John P. Kennedy
Samantha Kennedy
REED SMITH LLP
599 LEXINGTON AVENUE
NEW YORK, NY 10022

***** CAPITAL CASE *****

QUESTIONS PRESENTED

This postconviction capital case involves a claim under *Brady v. Maryland*, 373 U.S. 83 (1963), where the State of Alabama improperly withheld evidence that law enforcement had investigated an alternative perpetrator for the underlying crime. The Alabama Court of Criminal Appeals rejected the *Brady* claim, finding that the alternative-perpetrator evidence was immaterial, that the claim was barred by two state-law statutes of limitation, and that Defendant Mr. Woodward failed to meet Alabama's heightened requirements for pleading a state-law newly discovered evidence claim. The questions presented are:

(1) Whether a state court in a postconviction proceeding may summarily deny a *Brady* claim for failure to meet *Brady*'s materiality standard based on the alleged failure to plead how the withheld evidence of an alternative perpetrator "would have countered the State's significant evidence of guilt."

(2) Whether a state court in a postconviction proceeding may arbitrarily apply state-law statutes of limitation and pleading requirements to bar a *Brady* claim based on evidence material to a capital conviction first discovered during the postconviction phase.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellant below) is Mario Dion Woodward.

Respondent (appellee below) is the State of Alabama.

RELATED PROCEEDINGS

Circuit Court of Montgomery County, Alabama:

Mario Dion Woodward v. State of Alabama, Case No. CC-07-1388.61 (July 18, 2024)

Mario Dion Woodward v. State of Alabama, Case No. CC-07-1388.61 (Aug. 21, 2024)

Alabama Court of Criminal Appeals:

Mario Dion Woodward v. State of Alabama, Case No. CR-2024-0641 (June 20, 2025)

Mario Dion Woodward v. State of Alabama, Case No. CR-2024-0641 (Aug. 29, 2025)

Supreme Court of Alabama:

Mario Dion Woodward v. State of Alabama, Case No. SC-2025-0668 (Nov. 21, 2025)

U.S. District Court for the Middle District of Alabama (M.D. Ala.):

Mario Dion Woodward v. Jeff Dunn, Case No. 2:19-cv-425 (*filed* April 20, 2026)

Supreme Court of the United States:

Woodward v. Alabama, No. 13-5380 (Nov. 18, 2013), denied cert.

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OPINIONS BELOW

The Circuit Court of Montgomery County's order denying Mr. Woodward's petition for postconviction relief from a sentence of death is attached as Appendix E. The Circuit Court Order denying Mr. Woodward's Motion to Reconsider is attached as Appendix D. The ACCA's opinion affirming that denial is attached as Appendix A, and its order denying Mr. Woodward's motion for rehearing is attached as Appendix C. The Supreme Court of Alabama's order denying Mr. Woodward's petition for writ of certiorari is attached as Appendix B. Mr. Woodward's Amended Petition for Relief from Judgment Pursuant to Rule 32 of the Alabama Rules of Criminal Procedure is attached as Appendix F.

JURISDICTION

The ACCA issued its decision denying postconviction relief on June 20, 2025. It denied rehearing on August 29, 2025. Mr. Woodward filed a petition for writ of certiorari with the Supreme Court of Alabama on September 12, 2025, which denied the petition on November 21, 2025. On February 3, 2026, this Court granted Mr. Woodward an extension of time, until March 23, 2026, to file this Petition.

Mr. Woodward invokes this Court's jurisdiction pursuant to 28 U.S.C. § 1257(a). In imposing his death sentence, Mr. Woodward maintains that the State of Alabama has violated his rights under the Fourteenth Amendment to the Constitution of the United States.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides, in relevant part:

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life liberty, or property, without due process of law[.]

Rule 32.1 of the Alabama Rules of Criminal Procedure provides, in relevant part:

Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that:

(a) The constitution of the United States or of the State of Alabama requires a new trial, a new sentence proceeding, or other relief.

***

(e) Newly discovered material facts exist which require that the conviction or sentence be vacated by the court, because:

(1) The facts relied upon were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to file a posttrial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence;

(2) The facts are not merely cumulative to other facts that were known;

(3) The facts do not merely amount to impeachment evidence;

(4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and

(5) The facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that the petitioner received.

Rule 32.2 of the Alabama Rules of Criminal Procedure provides, in relevant part:

(c) Limitations Period.

Subject to the further provisions hereinafter set out in this section, the court shall not entertain any petition for relief from a conviction or sentence on the grounds specified in Rule 32.1(a) and (f), unless the

petition is filed: (1) In the case of a conviction appealed to the Court of Criminal Appeals, within one (1) year after the issuance of the certificate of judgment by the Court of Criminal Appeals under Rule 41, Ala.R.App.P. …

The court shall not entertain a petition based on the grounds specified in Rule 32.1(e) unless the petition is filed within the applicable one-year period specified in the first sentence of this section, or within six (6) months after the discovery of the newly discovered material facts, whichever is later[.]

PRELIMINARY STATEMENT

In a capital case like this one, this Court has insisted that federal constitutional safeguards must be rigorously applied before a state-imposed death sentence is carried out. That rigor extends fully and in particular to the due process right under *Brady v. Maryland* to receive and present material evidence giving rise to a reasonable probability that a different result could have been reached at trial had the evidence been available and presented to the jury. By setting this reasonable probability materiality standard, *Brady* seeks to ensure that the resolution in a criminal trial is just, fair, and worthy of confidence. *See Holmes v. South Carolina*, 547 U.S. 319, 324 (2006); *Kyles v. Whitley*, 514 U.S. 419, 432-54 (1995). And state courts, no less than federal courts, must scrupulously adhere to it.

But *Brady*'s materiality standard was erroneously reformulated in this capital case and that reformulation raised the materiality bar in a fashion that deprived Mr. Woodward of postconviction relief where the improperly withheld evidence—of an alternative perpetrator—indisputably would have changed the way he defended his case. Here, there is, in fact, "no confidence" that the jury would have convicted Mr. Woodward, *see Wearry v. Cain*, 577 U.S. 385 (2016) (*per curiam*), because the alternative-perpetrator evidence casts serious doubt on the prosecution's entire case. *See Kyles*, 514 U.S. at 435; *Green v. Georgia*, 442 U.S. 95, 97 (1979) (*per curiam*) (characterizing alternative-perpetrator evidence as "highly relevant" and holding its exclusion under state hearsay rules is "a violation of the Due Process Clause"). Mr. Woodward now faces a death sentence in circumstances where *Brady* relief is needed the most.

Unfortunately, there is nothing unique about the manifest injustice visited upon Mr. Woodward. Multiple states have reformulated *Brady*'s materiality standard to deny postconviction relief, just as the Alabama court did here. Specifically, the Alabama court found that the wrongly withheld alternative-perpetrator evidence was "immaterial" because Mr. Woodward had not shown how it would have "countered the State's significant evidence of guilt[ ]"—a standard that far exceeds and cannot be

squared with this Court's precedents. On the contrary, as this Court has explained, the *Brady* inquiry manifestly "does not require demonstration by a preponderance that disclosure of the suppressed evidence would have resulted ultimately in the defendant's acquittal[,]" *Kyles*, 514 U.S. at 434 (citation omitted), nor does it call for a harmless-error analysis focused on the State's evidence of guilt. But that is precisely the analysis the state court conducted in rejecting Mr. Woodward's postconviction petition.

Viewed in isolation, Alabama's deviation from the materiality standard fully supports the granting of this Petition. The refusal to provide a postconviction hearing where material evidence is presented fundamentally undermines the due process principles on which *Brady* is founded. If more impetus were needed, it is apparent that Alabama is not alone in running *Brady*'s materiality standard off its rails, with a resulting unjust denial of postconviction relief where this Court has made clear it is warranted.

The reasons for granting this Petition move from compelling to compelled when one considers the further erroneous and arbitrary application of state-law principles, all directed to denying Mr. Woodward the hearing that due process demands. In particular, the Alabama court erected limitations bars that expired before his *Brady* claim even accrued and rejected its own precedents in recognizing the

constitutional dimensions of Mr. Woodward's postconviction claim. It then applied its own heightened pleading requirements for newly discovered evidence that, like its *Brady* analysis, far exceeded what *Brady* commands. The end result is the same: the arbitrary application of state-law principles to defeat what due process requires, creating another independent reason for this Court to intervene.

The postconviction remedy *Brady* provides is a bulwark in furthering public confidence in the legitimacy of state-court convictions, something particularly critical where Mr. Woodward's life is at stake. The availability of post-conviction relief—as evident from *Brady* itself—is a cornerstone in implementing the fundamental due process protections accorded to convicted defendants. However, where, as here, a *Brady* claim is arbitrarily dispensed with by applying state-law principles that conflict with basic due process commands, the faith in our justice system is undermined, and irretrievably so.

This Petition provides this Court with the perfect opportunity to definitively declare what its own precedents command to avoid not just the wrongful outcome in this case, but others in Alabama and elsewhere where *Brady* claims are advanced, as they routinely and frequently are. This Court should grant

this Petition so Mr. Woodward receives the minimum postconviction process our Constitution demands.

STATEMENT OF THE CASE

I. Mr. Woodward's Direct Appeal Of His Death Sentence Imposed By Judicial Override

On September 29, 2006, Mr. Woodward was arrested and charged with the murder of Montgomery Police Officer Keith Houts. (Pet.App. 42a-44a) There was no direct evidence of Mr. Woodward committing the crime, and the State's case was premised upon circumstantial evidence, including Mr. Woodward's occasional use of the vehicle involved in the shooting that led to Officer Hout's death. (*Id.* at 42a) A jury convicted Mr. Woodward of capital murder in the Circuit Court of Montgomery County, Alabama, on August 25, 2008. (*Id.* at 44a) Based on mitigating evidence, the same jury recommended a sentence of life without parole by a vote of eight to four. (*Id.*) The Circuit Court overrode the jury's verdict and sentenced Mr. Woodward to death. (*Id.*)

The ACCA affirmed the conviction and death sentence on direct appeal. *Woodward v. State*, 123 So. 3d 989 (Ala. Crim. App. 2011), *as modified on denial of reh'g* (Aug. 24, 2012). In its ruling, the ACCA repeatedly highlighted the trial court's independent fact-finding and reliance on "evidence that the jury

did not hear" in deciding to override the jury's sentence. *E.g.*, *id.* at 1040.

In 2013, Mr. Woodward petitioned the Supreme Court of Alabama for certiorari and, relying on this Court's decision in *Ring v. Arizona*, 536 U.S. 584 (2002), argued that Alabama's judicial override procedure violated the Sixth and Eighth Amendments. Nevertheless, the Alabama Supreme Court denied certiorari. This Court did the same. *Woodward v. Alabama*, 571 U.S. 1045 (2013). Dissenting from the denial of certiorari, Justices Sotomayor and Breyer expressed their "deep concerns" about the constitutionality of Alabama's capital sentencing process, *id.* at 1046, noting that "we owe the validity of Alabama's system a fresh look[,]" *id.* at 1055.

Subsequent to this Court's denial, the Court decided *Hurst v. Florida*, 577 U.S. 92 (2016), holding that Florida's similar judicial override scheme was unconstitutional. Thereafter, in 2017, Alabama legislatively repealed its judicial override statute, but did not apply the repealer retroactively. As such, Mr. Woodward—along with dozens of other defendants—remains on death row despite being sentenced under an unconstitutional process.

II. Mr. Woodward's First Petition For Postconviction Relief

In April 2014, Mr. Woodward timely filed an initial petition for postconviction relief pursuant to Alabama Rule of Criminal Procedure 32, seeking relief on two grounds: (i) actual innocence; and (ii) ineffective assistance of counsel. (Pet.App. 40a) In October 2015, the same judge that presided over his trial summarily dismissed nearly all of his claims. (*Id.*)

After a subsequent hearing on Mr. Woodward's *Batson* claim, a final order of dismissal was entered. The ACCA affirmed, *Woodward v. State*, 276 So. 3d 713 (Ala. Crim. App. 2018), and in October 2019, after the Supreme Court of Alabama affirmed the ACCA's ruling, this Court denied certiorari. *Woodward v. Alabama*, 590 U.S. 917 (2019).[1]

[1] Mr. Woodward has filed a petition for writ of habeas corpus in federal district court. *Woodward v. Dunn*, No. 2:19-cv-00425 (M.D. Ala. 2019), ECF No. 1. That petition asserts that Mr. Woodward was improperly denied the opportunity to present evidence of his factual innocence related to his initial Rule 32 petition and that his sentencing by judicial override violated his Sixth, Eighth, and Fourteenth Amendment rights. (*Id.*) It remains pending.

III. Mr. Woodward Pursues A FOIA Claim Seeking Disclosure Of Facts Concerning His Arrest

Postconviction, Mr. Woodward made timely applications seeking disclosure of information concerning his arrest, but they were denied. As a result, he was compelled to resort to alternative mechanisms to obtain facts relevant to his claims for relief. Accordingly, on December 28, 2015, he sent a Freedom of Information Act request to the U.S. Department of Justice seeking records relating to the use of cell phone tracking technology in connection with his 2006 arrest by the United States Marshals Service (USMS). (Pet.App. 44a) The USMS responded on June 9, 2016, stating that it had not located any responsive records. (*Id.* at 44a-45a) Mr. Woodward filed an appeal with the DOJ's Office of Information Policy. The OIP responded with a boilerplate affirmance of USMS's response. (*Id.* at 46a)

With the OIP avenue shut down, Mr. Woodward filed a civil complaint to obtain the records he sought in his FOIA request. (*Id.* at 47a) In response, the USMS agreed to renew its search. In an abrupt turn of events, the renewed search unearthed 300 pages of responsive records. (*Id.*) Unfortunately, the pages contained significant redactions, many in their entirety. (*Id.*)

Following *in camera* review, on February 1, 2022, the District Court issued an order disclosing for the first time that certain pages of the production—previously misrepresented as "fax cover sheets"—consisted of sealed applications for electronic disclosure of telecommunications records and installation of a pen register and trap and trace, with court orders granting the same. *Woodward v. U.S. Marshals Serv.*, 18-cv-01249, 2022 WL 296171 (D.D.C. Feb. 1, 2022).

Then, following supplemental briefing, the District Court ruled that the USMS had falsely represented the nature of the withheld documents and improperly redacted many of them. *Woodward v. U.S. Marshals Serv.*, 18-cv-01249, 2022 WL 17961289 (D.D.C. Dec. 27, 2022). It specifically criticized the USMS's "hide the ball" approach to FOIA, which left the court to ruminate over "what other representations made in this case and, perhaps, others may be equally misleading?" *Id.* at *2 n.3. The USMS therefore was ordered to re-produce the documents, subject only to appropriate redactions, of personally identifying information for law enforcement and third parties.

Following this rebuke, in late January 2023, the USMS again re-produced the documents. (Pet.App. 48a) Mr. Woodward's name still was improperly redacted in this latest production. He therefore requested that the USMS re-produce the documents

with his name unredacted. (*Id.*) In this re-production, however, a suspect's name remained redacted on a pen-trap application dated September 26, 2023—the same day of Officer Houts's shooting. (*Id.*) The redacted name appeared, in context, to refer to Mr. Woodward. He accordingly requested that the USMS affirm that it had in fact complied with the District Court's order and left his name unredacted everywhere in the production.

The late May response by USMS to Mr. Woodward's redaction query was telling to say the least. It revealed that the redacted name was *not* Mr. Woodward, but a previously undisclosed suspect who had been investigated in connection with the shooting. (*Id.*) More significantly, the response showed that an investigating officer believed that this individual—not Mr. Woodward—was the driver of the vehicle from which Officer Houts was shot (*Id.*) None of this had ever been disclosed before.

IV. Mr. Woodward's Second Postconviction Petition Is Based On Newly Discovered Evidence Of An Alternative Perpetrator

Armed with this potentially exculpatory evidence, on October 18, 2023, Mr. Woodward filed a second Rule 32 petition for postconviction relief. (Pet.App. 34a-61a) This petition focused on the newly discovered pen-trap materials and the evidence that law enforcement believed someone other than Mr.

Woodward was the shooter (as amended, the "Rule 32 Petition"). Mr. Woodward specifically alleged that the new evidence was material to his case and that the State's suppression of it at trial violated his Fourteenth Amendment due process rights as set forth in *Brady*. (*Id.*)

Yet, without holding oral argument or an evidentiary hearing, the Circuit Court summarily dismissed Mr. Woodward's Rule 32 Petition in three terse sentences:

> The Petition is barred as untimely. Moreover, the Petition fails to plead sufficient facts that, if true, would entitle the Petitioner to relief pursuant to A.R.Cr.P. 32.1(e). Accordingly, the instant Petition is hereby DENIED and this matter dismissed.

(Pet.App. 33a)

V. Despite The Materiality Of The Improperly Withheld Evidence, Mr. Woodward's Second Postconviction Petition Is Summarily Dismissed

On appeal, the ACCA affirmed. (Pet.App. 1a-27a) It concluded that dismissal was appropriate because Mr. Woodward's *Brady* claim was time-barred under two different statutes of limitation set forth in Rule 32.2(c) and did not meet the pleading requirements

for newly discovered evidence claims set forth in Rule 32.1(e). (*Id.* at 15a-22a) The court also found that Mr. Woodward did not adequately plead his *Brady* claim under Rule 32.6(b). (*Id.* at 22a-25a)

The timeliness rulings. The ACCA found that federal *Brady* claims could be treated either as "newly discovered evidence" claims governed by Rule 32.1(e) or as "constitutional" claims governed by Rule 32.1(a). (*Id.* at 23a) As for newly discovered evidence, the court found the *Brady* claim was subject to Rule 32.2(c)'s 6-month limitations period keyed to "discovery" of the new facts in question. (*Id.* at 24a) Applying that construct, the ACCA determined that Mr. Woodward's claim was time-barred because he had received "the version of the newly discovered evidence on which his claims rely" on March 17, 2023, the date the USMS re-produced the pen-trap materials for a second time and more than 6 months before he filed his Rule 32 Petition. (*Id*. at 15a-16a)

The ACCA rejected Mr. Woodward's argument that the 6-month period did not begin to run until May 26, 2023, when he received confirmation that his name had in fact been entirely unredacted, meaning the remaining redacted name was someone else. The court found that confirmation "contained no new information[,]" but did not grapple with the fact that, given the multiple efforts Mr. Woodward had made to obtain unredacted documents, it was the first time he definitively knew that law enforcement had found

another suspect. (*Id*. at 17a) And, accordingly, it was the first time he learned of the factual predicate of his claim, the date that should start the six-month clock.

Turning to the constitutional characterization, the ACCA explained that such a claim is subject to Rule 32.2(c)'s one-year statute of limitations applicable to constitutional claims. (*Id.* at 23a-24a) The ACCA then found the one-year period barred Mr. Woodward's *Brady* claim because it was filed more than a decade after the ACCA's affirmance of Mr. Woodward's conviction and sentence in his direct appeal. (*Id.*) In making this determination, the court did not account for the fact that the claim could not have been filed within one year of that judgment because Mr. Woodward was not aware of the wrongfully concealed evidence until more than a decade later.

The newly discovered evidence ruling. The ACCA also found that a federal *Brady* claim "must meet all five prerequisites of 'newly discovered evidence' in Rule 32.1(e),'" and held that Mr. Woodward's petition failed to do so. (*Id.* at 25a) In reaching this result, the ACCA initially did not address or account for *Ex parte Beckworth*, where the Alabama Supreme Court held that *Brady* claims are *not* subject to Rule 32.1(e)'s pleading requirements. *See* 190 So. 3d 571 (Ala. 2013). Notwithstanding Alabama's controlling law, the ACCA applied the state-law pleading standard and found Mr. Woodward's *Brady* claim deficient

because he purportedly failed to plead specific facts explaining whether the result of his trial would have been different had the newly discovered evidence been known or how that evidence was relevant to his guilt or innocence. (*Id.* at 24a) The court further determined that the alternative-perpetrator evidence failed to show that Mr. Woodward was actually innocent because the "fact that another individual may have been under investigation in the hours following the shooting" is not relevant to Mr. Woodward's guilt or innocence "considering the substantial evidence presented at trial." (*Id.* at 21a-22a)

The materiality ruling. The ACCA independently held that Mr. Woodward failed to plead sufficient facts to show that the withheld alternative-perpetrator evidence satisfied *Brady*'s materiality standard. Quoting only a portion of one sentence from Mr. Woodward's twenty-one-page petition, the ACCA reasoned that while Mr. "Woodward pleaded that the evidence 'would have altered trial counsel's investigation and development of a defense at the guilt phase of the trial', … [he] failed to explain what that investigation would have revealed, what the new defense would have presented, or how that undefined defense would have countered the State's significant evidence of guilt." (*Id.* at 24a).

REASONS FOR GRANTING THE PETITION

As the record shows, Mr. Woodward painstakingly pursued the documentary evidence withheld by the prosecution and obtained it through a laborious FOIA process he initiated. Even then, the obfuscation continued, with repeated redactions in the disclosed materials and false representations about what it contained. By persevering, Mr. Woodward ultimately was able to determine that the withheld evidence revealed an alternative perpetrator, a development that severely undermined the State's circumstantial theory targeting Mr. Woodward, the only one the jury heard.

In these circumstances, the various rationales the ACCA offered for rejecting Mr. Woodward's postconviction petition for a *Brady* hearing reveal due process violations of the most basic sort. His petition was denied in contravention of the record, applicable state and federal-law principles, and what the interests of justice required given the significance of the evidence wrongfully withheld. Whatever standard of arbitrariness one chooses to adopt, the ACCA's ruling finding the alternative-perpetrator evidence to be immaterial, and thus inadmissible, meets it. This Court has intervened to correct this very type of injustice before, and for multiple reasons, must do so again now.

The Court's own precedents, and the many lower-court decisions that have followed them, stand in marked contrast to the result reached here. This Court has refused to allow state-law principles to be arbitrarily applied to deny *Brady* relief, and just as forcefully articulated that *Brady*'s materiality standard does not require anything more than a probable impact on a trial. Both these settled principles were elided in Mr. Woodward's capital case, just as they have been in numerous others. This conflict in results is intolerable and all the more so in a capital case like this one.

Given these circumstances, this Court must respond. It should grant certiorari and declare what federal law demands to avoid a manifest injustice in this case and others that are certain to follow.

I. The Decision Below Plainly Conflicts With This Court's *Brady* Materiality Standard, Widens A Division Among Lower Courts In Applying That Standard, And Is Demonstrably Wrong

The ACCA applied a standard for determining whether withheld evidence is material under *Brady* that plainly is at odds with this Court's precedents and exacerbates a conflict among the lower courts in applying this essential safeguard in *Brady*'s due process command. *See* Brandon L. Garrett & Adam M. Gershowitz, *The Brady Materiality Standard*, 78

Stanford L. Rev. 303, 308-310 (2026) (analyzing state and federal *Brady* rulings and finding that "there were significant differences in the type and quality of the analysis that courts utilized"). This persistent conflict is intolerable given the fairness and justice pillars established by *Brady* and the cases that follow it. This Court should grant this Petition and definitively declare what *Brady*'s materiality standard is and why it must be rigorously followed.

A. The ACCA Erroneously Applied A Heightened Materiality Standard In Conflict With This Court's Precedents

In *Brady*, this Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. "Evidence qualifies as material when there is 'any reasonable likelihood' it could have 'affected the judgment of the jury.'" *Wearry*, 577 U.S. at 392 (citation omitted). Central to this Court's holding is the notion that an overly high bar for materiality undermines the "truth-seeking function of the trial process." *United States v. Agurs*, 427 U.S. 97, 104 (1976).

In particular, to show the withheld evidence was material, a defendant "need not show that he 'more likely than not' would have been acquitted had the

new evidence been admitted." *Id.* (citation omitted). Rather, a defendant "must show only that the new evidence is sufficient to 'undermine confidence' in the verdict." *Id.* (citation omitted); *Kyles*, 514 U.S. at 434 ("[T]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."). "Given this legal standard," the Court has emphasized, defendants "can prevail even if … the undisclosed information may not have affected the jury's verdict." *Wearry*, 577 U.S. at 392 n.6.

Moreover, as this Court explained in *Kyles*, the *Brady* materiality analysis does not include any "need for further harmless-error review" looking at the strength of the State's case because "'a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different,' necessarily entails the conclusion that the suppression must have had 'substantial and injurious effect or influence in determining the jury's verdict[.]'" 514 U.S. at 435; *see also State ex rel. Clemons v. Larkins*, 475 S.W.3d 60, 85-86 (Mo. 2015) (rejecting state's argument that "harmless error would protect the verdict" from any *Brady* error "because of the weight of evidence presented at trial establishing Mr. Clemons' guilt" as "meritless in light of the United States Supreme Court's holding in *Kyles* that once a *Brady* violation has been found, 'there is no need for further harmless-error review.'").

Further, requiring a "countering guilt" showing also contradicts this Court's repeated insistence that materiality does not require a showing that the defendant "more likely than not" would have been acquitted, and that the materiality standard "is not a sufficiency of evidence test." *Kyles*, 514 U.S. at 434 (noting that the "possibility of an acquittal on a criminal charge does not imply an insufficient evidentiary basis to convict").

In the end, as this Court's observations portend, the "dispositive question" in determining materiality is *not* whether "there was sufficient evidence to support [the] conviction," which "mischaracterizes the materiality inquiry under *Brady*." *Thomas v. Westbrooks*, 849 F.3d 659, 663 (6th Cir. 2017) (cleaned up); *Amado v. Gonzalez*, 758 F.3d 1119, 1140 (9th Cir. 2014) (same). Rather, the focus is on "whether the guilty verdict entered against [the defendant] is worthy of confidence in the absence of the suppressed evidence." *Thomas*, 849 F.3d at 663 (reversing where district court decision "appear[ed] to deny relief because there was sufficient evidence to support [defendant's] conviction," and was based on a "mischaracteriz[ation of] the materiality inquiry under *Brady*"); *see also DiLosa v. Cain*, 279 F.3d 259, 264 (5th Cir. 2002) (state court erred when it "considered the sufficiency of the evidence in light of its potential to exculpate [defendant] instead of through the lens of its confidence in the verdict"); Garrett & Gershowitz, *supra* at 314 ("Under a correct application of the materiality standard, courts do not ignore the evidence actually presented at trial

suggesting the defendant was guilty. But they must think counterfactually about the withheld evidence that was not introduced. If the favorable withheld evidence had been part of the trial, what would have happened? How would it have landed with the jury?").

None of these governing principles were adhered to in Mr. Woodward's case and, as a result, he was denied the benefits of *Brady*'s due process command. While the ACCA paid lip-service to *Brady*'s materiality standard, referring briefly to the "reasonable probability" and "undermine confidence" language (Pet.App. 24a), in application, it followed a far stricter standard that bears no resemblance to the one this Court's precedents require. The ACCA found that Mr. Woodward did not adequately plead his *Brady* claim because he did not "explain what that investigation would have revealed, what the new defense would have presented, or how that undefined defense would have countered the State's significant evidence of guilt." (*Id.*) That determination, as articulated and then applied, departs from the materiality standard this Court has established—and in doing so, negates the result this Court's precedents require.

Here, the postconviction evidence plainly would have enabled Mr. Woodward to present a new defense—that the other suspect, not Mr. Woodward, was the driver of the Chevy Impala and the shooter of Officer Houts—a defense Mr. Woodward did not have because the evidence to support it was withheld.

Indeed, such evidence is "classic *Brady* material[,]" *Williams v. Ryan*, 623 F.3d 1258, 1265 (9th Cir. 2010) (quoting *Boyette v. Lefevre*, 246 F.3d 76, 91 (2d Cir. 2001)), as this Court itself has found. *See Kyles*, 514 U.S. at 445-49 (1995) (suppressed inconsistent statements by a police informant suggesting that the informant sought to frame the defendant and had committed the crime himself was material); *see also* Elizabeth R. Tenney et al., *Unpacking the Doubt in 'Beyond a Reasonable Doubt': Plausible Alternative Stories Increase Not Guilty Verdicts*, 31 Basic & Applied Soc. Psychol. (2009) (based on academic study where 253 college students participated as mock jurors, finding that jurors were significantly more likely to acquit a defendant who could point to a specific alternative perpetrator than one who simply argued his innocence).

And, more fundamentally, the "someone else did it" defense supported by the alternative-perpetrator evidence would have directly countered the State's theory of the case, based on circumstantial evidence, that it was Mr. Woodward, not someone else, who was driving the Impala and fired the shots.[2] To say that

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[2] Specifically, as Mr. Woodward set forth in his Rule 32 Petition:

- "the State presented no direct evidence that Mr. Woodward killed Officer Houts or was even at the scene of the crime" (Pet.App. 38a);
- "the State relied on circumstantial evidence connecting Mr. Woodward to the vehicle from

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jurors could reasonably have seen the case differently after considering the evidence the State improperly withheld is to state the obvious.

Given that, there can be no doubt the ACCA's decision is wrong under the controlling materiality

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which Officer Houts was shot and killed, a 2006 Chevrolet Impala" (*Id.*);

- the undisclosed alternative-perpetrator evidence "contradicts evidence presented by the State at trial," "seriously undermines the presentation of law enforcement's investigation of the shooting of Officer Houts," and "bolsters Mr. Woodward's repeated argument that he is innocent of this crime [and] that someone else committed the crime" (*Id.* at 20a);
- the undisclosed evidence "calls into question the conclusions drawn by the State from the circumstantial evidence linking Mr. Woodward to the shooting of Officer Houts, especially in light of the fact that law enforcement testified there was only one occupant in the 2006 Impala at the time of the shooting and 'the driver was the shooter'" (*Id.* at 59a); and
- the undisclosed evidence "weakens the link between Mr. Woodward and the vehicle from which Officer Houts was shot[ ]" and "demonstrates that there was another serious suspect"—notable because investigators stated, under penalty of perjury, that they had 'reason to believe' someone else was driving the 2006 Impala when Officer Houts was shot" (*Id.* at 60a).

standard and Mr. Woodward therefore was entitled to a postconviction hearing to perfect his *Brady* claim.

To make the point even more emphatically, consider the context. Evidence of a different suspect is undoubtedly material because the State's entire case hung on proving beyond a reasonable doubt a specific fact that this evidence directly cuts against: that Mr. Woodward was the driver of the vehicle from which Officer Houts was shot. The State argued forcefully at trial that no other individual could have been the driver of the vehicle, and that it was sure that there was one driver of the vehicle and "the driver was the shooter." (Pet.App. 59a-60a) Evidence that somebody else had been driving the vehicle and thus could have been the shooter at the very least supports a reasonable probability that Mr. Woodward would not be convicted.

Evidence that there was another suspect driving the vehicle would be particularly compelling here, given that the State's case against Mr. Woodward was premised entirely upon circumstantial evidence, not any physical or direct evidence placing him in the vehicle. (*Id.* at 60a) The State's circumstantial case—that Mr. Woodward was, beyond a reasonable doubt, the driver of the vehicle—would have been especially vulnerable to proof that the State suspected a different driver.[3] Here, the suppressed evidence

[3] The ACCA's unelaborated assertion that Mr. Woodward's purported confessions to the shooting were "direct" evidence of Mr. Woodward's guilt is wrong—those so-called

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would have been more than sufficient to sustain reasonable doubt at the guilt phase.

This is all the more true because the State, in its brief in response to Mr. Woodward's petition, openly speculated that the redacted suspect's name was Tiffany Surles—the primary driver of the vehicle involved in the shooting. Ms. Surles was a key trial witness for the State, which used her testimony to show that Mr. Woodward had access to her vehicle and confessed to the crime. (Pet.App. 43a-44a) Had Mr. Woodward known that Ms. Surles was an alternative suspect, his trial counsel could have impeached her testimony on grounds it was self-serving, questioned her on her cooperation with law enforcement, and pointed out why she had a biased motive to point the jury to Mr. Woodward. Questioning along these lines likewise would have cast considerable doubt over the State's circumstantial case.

In this instance, although prosecutors are not "necessarily required to disclose every stray lead and an anonymous tip," they must "disclose the existence

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"confessions," alleged statements made to third parties, were coerced, highly unreliable, and inadmissible hearsay. There is, in fact, no direct evidence supporting the State's theory of the case. The ACCA also suggested (in applying Rule 32.1(e), not *Brady*) that the alternative-perpetrator evidence would have been inadmissible hearsay (Pet.App. 20a-21a), but Mr. Woodward could have introduced it in a number of ways, including by calling the declarant as a witness at trial. (*See Id.* at 61a)

of 'legitimate suspects.'" *Gumm v. Mitchell*, 775 F.3d 345, 364, 371 (6th Cir. 2014) (citation omitted): *see Bies v. Sheldon*, 775 F.3d 386, 400, 401, 403 (6th Cir. 2014) (same). Indeed, as the en banc Ninth Circuit has explained, "[w]ithholding knowledge of a second suspect conflicts with the Supreme Court's directive that 'the criminal trial, as distinct from the prosecutor's private deliberations, [be preserved] as the chosen forum for ascertaining the truth about criminal accusations.'" *United States v. Jernigan*, 492 F.3d 1050, 1056-57 (9th Cir. 2007) (en banc) (quoting *Kyles*, 514 U.S. at 440). As the record shows, in a case like this one, the alternative-perpetrator evidence could be used "to uncover other leads and defense theories," as well as to "discredit" the prosecution. *Bowen v. Maynard*, 799 F.2d 593, 612-13 (10th Cir. 1986).

The ACCA's adoption and use of an erroneously elevated and misdirected materiality standard conflicts directly with *Brady* and resulted in the rejection of a hearing over postconviction evidence that under any reasoned analysis could have had a material impact on Mr. Woodward's trial. This is the precise circumstance where the proper application of *Brady*'s materiality standard has its highest utility and this Court should grant certiorari and say so.

B. The ACCA's Application Of A Heightened Materiality Standard Widens The Expansive Disagreement In The Lower Courts

A canvassing of pertinent cases implicating *Brady*'s materiality standard reveals yet another compelling reason for this Court to intervene. The ACCA's decision in fact widens a substantial and growing division in lower federal and state courts on the proper application of the *Brady* standard. *See* Garrett & Gershowitz, *The Brady Materiality* Standard, *supra* at 317-53.

On one side of the conflict, consider *Davis v. State*, 574 S.W.3d 666, 670 (Ark. 2019), where the Supreme Court of Arkansas found the withheld evidence—that the prosecutor entered into an agreement with a witness for the State—immaterial after merely citing to "the trial transcript" and "[trial] exhibits" and recounting the evidence against the defendant, without ever analyzing the withheld evidence or considering whether the jury would have discounted the State's witness's testimony "if it had known of the 'sweeter deal' the witness received in exchange for testifying."

Other courts, like the ACCA, similarly focus erroneously on the state's evidence of guilt. *See, e.g.*, *State v. Wayerski*, 922 N.W.2d 468, 483 (Wis. 2019) (holding suppressed evidence was not material based on "compelling evidence" of the defendant's guilt); *France v. Lucas*, 836 F.3d 612, 631 (6th Cir. 2016) (holding suppressed evidence was immaterial based

on the strength of the other evidence against the defendant); *Harshman v. Superintendent*, 368 F. Supp. 3d 776, 795 (M.D. Pa. 2019) (holding that Pennsylvania state court "improperly performed a sufficiency-of-the-evidence analysis, finding that, due to other circumstantial evidence presented at trial, the jury 'could have found' [defendant] guilty even without [the suppressed evidence]") (citation omitted); *DiLosa*, 279 F.3d at 264 (holding that Louisiana state court erred when it "considered the sufficiency of the evidence in light of its potential to exculpate [defendant] instead of through the lens of its confidence in the verdict").

On the other side, consider that many jurisdictions faithfully adhere to the materiality standard set forth by this Court. *See, e.g.*, *State v. Thomas*, 858 S.E.2d 52, 61 (Ga. 2021) (holding that in a *Brady* materiality analysis, "we review the record de novo and weigh the evidence as we would expect reasonable jurors to have done, rather than viewing all the evidence in the light most favorable to the verdicts"); *Blake v. State*, 180 So. 3d 89, 121 (Fla. 2014) ("To meet the materiality prong, the defendant must demonstrate a reasonable probability that had the suppressed evidence been disclosed, the jury would have reached a different verdict. A reasonable probability is a probability sufficient to undermine confidence in the outcome.") (citations omitted); *Engel v. Dormire*, 304 S.W.3d 120, 128 (Mo. 2010) ("The materiality standard for *Brady* claims is established when the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. The

question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence.") (citing *Kyles*, 514 U.S at 434-35).

The need to rectify these inconsistencies and put the law on its proper course is apparent and real—and nowhere more acute than where a capital conviction is at stake as it is here. Only a clear message from this Court can provide clarity on how the lower courts must apply the materiality standard to achieve the ends due process demands. Mr. Woodward's case is the perfect vehicle to do so.

II. The Decision Below Conflicts With Precedents From This Court And Others That Prohibit The Arbitrary Application Of State-Law Principles To Impede Due Process Rights

Certiorari also is warranted because the ACCA's arbitrary application of state-law statutes of limitation and pleading requirements to bar consideration of Mr. Woodward's legally viable postconviction *Brady* claim independently violates core due process protections that this Court and others have furthered. In doing so, the ACCA's decision conflicts with this Court's settled precedents and the decisions of lower courts, which adhere to what due process commands. This conflict provides a further and equally compelling reason for this Court

to step in. *See Wilson v. Hawaii*, 145 S. Ct. 18, 23 (2024) (statement of Gorsuch, J., respecting the denial of certiorari) (noting that "under the Constitution and our precedents, it is this Court's role to ensure that 'criminal defendants [enjoy] a meaningful opportunity to present a complete defense'" … "by precluding state-law rules that 'infring[e] upon a weighty interest of the accused and are arbitrary or disproportionate'") (citing *Holmes*, 547 U.S. at 324; *Chambers v. Mississippi*, 410 U. S. 284, 295 (1973)).

In *Brady*, this Court held that "the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. at 87. The "*Brady* rule's 'overriding concern [is] with the justice of the finding of guilt,'" and, in parallel, the government's "'interest . . . in a criminal prosecution is not that it shall win a case, but that justice shall be done[.]'" *Turner v. United States*, 582 U.S. 313, 324 (2017) (cleaned up).

In keeping with these guiding precepts, in state postconviction proceedings, no less than any others, *Brady*—and the due process principles that animate it—apply with full force. That means that state courts cannot deploy their own states' laws or rules to preclude the use of evidence to support a defense to criminal charges. *See Osborne v. Ohio*, 495 U.S. 103, 125 (1990) ("As Justice Holmes warned us years ago,

'[w]hatever springes the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.'") (quoting *Davis v. Wechsler*, 263 U.S. 22, 24 (1923) (Holmes, J.)).

This Court made this point directly in *Holmes*, when it invalidated the South Carolina courts' adherence to a state supreme court decision that effectively barred defendants from presenting alternative-perpetrator evidence in instances where the state's evidence of guilt was particularly strong. 547 U.S. at 324. The Court reasoned that the state supreme court's "arbitrary" decision violated the defendant's due process right to "a meaningful opportunity to present a complete defense[,]" and reversed it. *Id.* (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)); *Rock v. Arkansas*, 483 U.S. 44, 55 (1987) (explaining that "restrictions of a defendant's right to testify may not be arbitrary or disproportionate to the purposes they are designed to serve" and that "[i]n applying its evidentiary rules a State must evaluate whether the interests served by a rule justify the limitation imposed on the defendant's constitutional right to testify").

It should therefore come as no surprise that courts have rejected the application of state statutes of limitation specifically to curtail or impede arbitrarily a criminal defendant's ability to present evidence

supporting his defense—or contest the use of evidence against him.

For example, in *People v. Germany*, 674 P.2d 345 (Colo. 1983), the Colorado Supreme Court considered the application of a Colorado statute of limitations to bar challenges to a criminal conviction based on the state's use of evidence of a prior conviction. The limitations provision in question provided that "no person who has been convicted under a criminal statute of this or any other state of the United States shall collaterally attack the validity of that conviction unless such attack is commenced within the applicable time period [of three years for most felonies] as provided in this subsection (1), following the date of said conviction."

The court found the statute violated both the federal and Colorado due process clauses "because it creates a virtually unconditional time bar to the defendant's right to challenge the governmental use of unconstitutional convictions in a pending criminal prosecution, without affording him any opportunity to show that his failure to assert the constitutional challenge at an earlier time was the result of justifiable excuse or excusable neglect." *Id.* at 349. Indeed, the court continued, the effect of the bar was "arbitrary," because, for example, a "defendant who pleads guilty to a felony based on a statute which more than three years later is declared unconstitutional would be powerless to challenge the

prior conviction, despite the long-standing rule that a conviction under an unconstitutional law is void." *Id.* at 352.

The court acknowledged that the state could "enact reasonable requirements for collateral challenges to prior criminal convictions, thereby ensuring that claims will be raised at a time when they may be easily determined and necessary corrective action taken[.]" *Id.* at 350. But what states could *not* do is establish such requirements "without providing a criminally accused a meaningful opportunity to challenge allegedly unconstitutional convictions which the government seeks to use against him in a pending criminal prosecution." *Id.*

More recently, the Tennessee Supreme Court specifically applied due process principles in a case involving the timeliness of late-discovered *Brady* violations. *See Sample v. State*, 82 S.W.3d 267 (Tenn. 2002). There, the trial court dismissed defendant's petition for postconviction relief, which asserted a *Brady* claim based on the state's failure to disclose exculpatory evidence, and the intermediate appellate court affirmed because the petition had been filed after the expiration of Tennessee's three-year statute of limitations applicable to postconviction cases. *Id.* at 270.

As in *Germany*, the court in *Sample* acknowledged that the state "has a legitimate interest in preventing

the litigation of stale claims by enacting statutes of limitations in post-conviction cases[.]" *Id.* at 272. However, the court continued, "'due process requires that potential litigants be provided an opportunity for the presentation of claims at a meaningful time and in a meaningful manner.'" *Id.* (citation omitted). Thus, "due process may prohibit strict application of the statute of limitations in a post-conviction case 'when the grounds for relief, whether legal or factual, arise after ... the point at which the limitations period would normally have begun to run.'" *Id.* (citation omitted). The court concluded "that the record in this case preponderates against the trial court's determination that the petitioner's liberty interests in raising [*Brady*] issue[s] were outweighed by the State's interest in finality." *Id.* at 276.[4]

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[4] *See also In re Friend*, 489 P.3d 309, 321 (Cal. 2021) (noting that under "broad reading" of state statute, "a capital prisoner who discovers that the prosecution has suppressed material mitigation evidence … would have no recourse if the persons involved managed to conceal the information long enough[,]" and "[c]onsidering the weighty private interest at stake in a capital habeas corpus proceeding, the risk of error created when potentially meritorious claims are barred even if presented as promptly as reasonably possible upon discovery, and the dignitary significance of ensuring the validity of death judgments before execution, it is at least questionable whether governmental interests in finality of judgments and conservation of judicial resources can justify a rule

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In this instance, the ACCA's arbitrary application of state-law statutes of limitation and pleading requirements to bar Mr. Woodward's *Brady* claim conflicts with these decisions and the due process principles they espouse.

First, the court's strict application of Rule 32.2(c)'s one-year-from-direct appeal-judgment limitations period for "constitutional" claims arbitrarily precludes all *Brady* claims that, as here, are based on evidence first discovered after the limitations period has expired. That judgment was rendered in this case in 2011, but Mr. Woodward did not become aware of the alternative-perpetrator evidence until more than a decade later and thus could not have met the one-year statute. The arbitrary application of that limitations bar to reject Mr. Woodward's *Brady* claim turns fairness principles on their head. The State's success in concealing the evidence is rewarded and Mr. Woodward's death sentence remains.

Second, the ACCA's treatment of Mr. Woodward's *Brady* claim as a state-law "newly discovered evidence" claim subject to Rule 32.1(e)'s heightened pleading requirements—which far exceed what *Brady* and its progeny require—is equally arbitrary. A

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barring all but a very narrow class of claims presented in second or subsequent petitions regardless of whether barred claims could have been presented earlier").

Brady claim is based on the Fourteenth Amendment's Due Process Clause, and whether it has been adequately pleaded and proven is a matter of federal, not state, law. Indeed, in 2013—more than a decade before the ACCA's decision in this case—the Supreme Court of Alabama made clear that Rule 32.1(e)'s requirements do *not* apply to *Brady* claims. *Ex parte Beckworth*, 190 So. 3d 571, 574 (Ala. 2013) ("the elements of a claim of 'newly discovered material facts' as contemplated by Rule 32.1(e) need not be proved in order to entitle the petitioner to relief under Rule 32.1(a)").

There is more. In a brief in this Court, the State of Alabama acknowledged as much, which prompted the Court to vacate a judgment and remand for further consideration. *See* Brief in Opposition by State of Alabama to Petition for Writ of Certiorari, *Johnson v. State of Alabama*, 2017 WL 2729696, at *3 (May 10, 2017) ("[In *Ex parte Beckworth*], the Alabama Supreme Court made clear that alleged constitutional violations, including *Brady* claims, do not need to satisfy the heightened pleading requirements of newly discovered material facts under Rule 32.1(e)."); *Johnson v. Alabama*, 582 U.S. 927 (2017) (vacating judgment and remanding case to the ACCA in light of the State's position that the Court did not consider *Ex parte Beckworth*).

Yet here, the ACCA arbitrarily disregarded the direct relevance of *Ex parte Beckworth* and barred

consideration of the merits of Mr. Woodward's *Brady* claim based on the court's view that the claim did not meet the heightened Rule 32.1(e) requirements. That disregard for controlling state law is a due process violation in its own right. *See Hicks v. Oklahoma*, 447 U.S. 343, 346 (1980) (holding that "defendant's interest in the exercise of [a jury's] discretion is [not] merely a matter of state procedural law" but, rather, "one that the Fourteenth Amendment preserves against arbitrary deprivation by the State"); *Vitek v. Jones*, 445 U.S. 480, 488–89, (1980) ("Once a State has granted prisoners a liberty interest, … due process protections are necessary 'to insure that the state-created right is not arbitrarily abrogated.'") (citation omitted); *Johnson v. Missouri*, 143 S. Ct. 417, 418 (2022) (Jackson, J. dissenting) ("In short, [under the Due Process Clause], a State cannot provide a process for postconviction review … and then arbitrarily refuse to follow the prescribed procedures.").

Third, the ACCA's ruling that the limitations period for "newly discovered evidence" began to run *before* Mr. Woodward learned of the relevant new evidence is equally offensive to due process. Just as the Due Process Clause protects the *Brady* right and the broader right to present a defense from arbitrary state-law interference, it likewise prohibits arbitrary deprivations of Mr. Woodward's *state*-law rights as well—here, his assumed right under Alabama's state postconviction procedure to assert a "newly

discovered evidence" claim within 6 months of discovering the evidence in question. But the ACCA ignored the natural reading and application of the phrase "discovery of the newly discovered material facts[,]" which could be met only when Mr. Woodward first discovered that there was another suspect on May 26, 2023.[5] That defeated Mr. Woodward's federally grounded due process right and provides still further support for granting this Petition.

Fourth, the Rule 32.1(e) requirements themselves, as applied here by the ACCA, set a bar that lies far above *Brady*'s materiality standard in order to reject the *Brady* claim in the first place. The specific pleading requirements effectively mandate that the newly discovered evidence must be dispositive of guilt, not merely reasonably important to a jury in determining guilt. Erecting that heightened state-law barrier to defeat a postconviction hearing where due process guarantees would otherwise provide relief once again fits the very definition of arbitrariness.

To reject a *Brady* hearing in this instance in reliance on these erroneously applied state-law principles is—as this Court and others have made clear—an anathema to the result our system of justice must deliver in deciding whether a capital defendant

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[5] The Rule 32 Petition was filed on October 18, 2023, and, therefore, would be timely filed within the six-month limitation period if the accrual date is May 26, 2023.

has received a fair trial and can be subjected to the death penalty. This Court should grant certiorari to rectify this unfair and unjust result.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

James C. Martin
Counsel of Record
Colin E. Wrabley
Michael J. McCune
REED SMITH LLP
225 FIFTH AVENUE
PITTSBURGH, PA 15222
(412) 288-3131
jcmartin@reedsmith.com

Geoffrey G. Young
RILEY SAFER HOLMES &
CANCILA LLP
810 SEVENTH AVENUE
SUITE 3505
NEW YORK, NY 10019

John P. Kennedy
Samantha Kennedy
REED SMITH LLP
599 LEXINGTON AVENUE
NEW YORK, NY 10022

Christopher T. Vazquez
Katten Muchin
ROSENMAN LLP
50 ROCKEFELLER PLAZA
NEW YORK, NY 10020

March 23, 2026

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APPENDIX A

Rel: June 20, 2025

Notice: This unpublished memorandum should not be cited as precedent. See Rule 54, Ala. R. App. P. Rule 54(d) states, in part, that this memorandum "shall have no precedential value and shall not be cited in arguments or briefs and shall not be used by any court within this state, except for the purpose of establishing the application of the doctrine of law of the case, res judicata, collateral estoppel, double jeopardy, or procedural bar."

ALABAMA COURT OF CRIMINAL APPEALS

CR-2024-0641

MARIO DION WOODWARD

v.

STATE OF ALABAMA

Appeal from Montgomery Circuit Court
(CC-07-1388.61)

MEMORANDUM DECISION

WINDOM, Presiding Judge.

Mario Dion Woodward appeals the circuit court's dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P., in which he challenged his 2008 convictions for two counts of

capital murder and his sentence of death. Woodward was convicted of one count of capital murder for killing Officer Keith Houts, an on-duty police officer, see § 13A-5-40(a)(5), Ala. Code 1975, and convicted of a second count of capital murder for killing Houts by firing a deadly weapon from within a vehicle, see § 13A-5-40(a)(18), Ala. Code 1975. By a vote of 8-4, the jury recommended that Woodward be sentenced to life in prison without the possibility of parole. The trial court overrode the jury's recommendation and sentenced Woodward to death.

On December 16, 2011, this Court affirmed Woodward's convictions and sentence. *Woodward v. State* (CR-08-0145), 123 So. 3d 989 (Ala. Crim App. 2011). The Alabama Supreme Court subsequently denied certiorari review on April 19, 2013. On November 18, 2013, the Supreme Court of the United States denied Woodward's petition for a writ of certiorari. *Woodward v. Ala.*, 571 U.S. 1045 (2013).

In April 2014, Woodward filed his first Rule 32 petition, asserting a claim of newly discovered evidence and multiple claims of ineffective assistance of counsel.[1] The circuit court summarily dismissed all the claims raised in Woodward's petition but determined that an evidentiary hearing was warranted on Woodward's claim that trial counsel had been ineffective for failing to make a *Batson*[2] objection to the State's use of its peremptory strikes. After an evidentiary hearing, the circuit court issued

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[1] This Court may take judicial notice of its own records and does so in this case. *See Nettles v. State*, 731 So. 2d 626, 629 (Ala. Crim. App. 1998); *Hull v. State*, 607 So. 2d 369, 371 n.1 (Ala. Crim. App. 1992).

[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).

an order denying that claim. This Court affirmed the circuit court's dismissal in part and denial in part of Woodward's first Rule 32 petition on April 27, 2018. *See Woodward v. State*, 276 So. 3d 713 (Ala. Crim. App. 2018). The Alabama Supreme Court denied certiorari review on November 16, 2018, and the Supreme Court of the United States likewise denied certiorari review on October 7, 2019. *Woodward v. Ala.*, 140 S. Ct. 46 (2019).

On October 18, 2023, Woodward filed this, his second, Rule 32 petition, in which he alleged: 1) that newly discovered material evidence entitles him to a new trial and 2) that the State failed to disclose exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). In support of his petition, Woodward attached several documents he had obtained from the United States Marshals Service ("USMS") in connection with a complaint he had filed in federal court alleging violations of the Freedom of Information Act ("FOIA"). Woodward pleaded that some of the documents, namely, an application for an order authorizing the installation of a pen register or trap and trace device and the supporting affidavit, contained exculpatory information that constituted newly discovered evidence under Rule 32.1(e), Ala. R. Crim. P. The relevant portions of the application provide:

> "In support of this application, Assistant U.S. Attorney [REDACTED], states the following:
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> "1. Application is an "attorney for the government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure and, therefore, pursuant to Title 18, United States Code, Sections 2703(d), 3123(a), 3123(b)(2),

> and 3124(a), may apply for disclosure of telecommunication records and the installation of a pen register and trap and trace.
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> "2. Applicant certifies that the information sought is relevant and material to a [sic] ongoing criminal investigation, to wit: that the United States Marshals Service is conducting an investigation to [REDACTED] a suspected fugitive from justice, and under investigation by the United States Marshals Service for Assault I, in violation of the Code of Alabama Section 13A-6-20; and that it is believed that the requested telecommunications records, pen register and trap and trace will assist the United States Marshals Service in the apprehension of said suspected fugitive because cellular phone number (334) 312-4477 and (334) 312-5758 are cellular phone belonging to [REDACTED]. Investigators have developed information that [REDACTED] is the regular driver of a vehicle that was used in the shooting of a Montgomery Police officer on September 28, 2006. Investigators have reason to believe that [REDACTED] was driving the car at the time of the shooting. For that reason, it is believed that these records will assist in locating [REDACTED]."

(C. 84-86.) Additionally, the supporting affidavit states in pertinent part:

> "I, the undersigned affiant, state that the following information is true and correct to the best of my knowledge. I am a Deputy United States Marshal assigned to the Montgomery, Alabama office. I have been a

criminal investigator with the United States Marshals Service for nineteen years. During that time, I have conducted numerous fugitive investigations involving the tracking of cellular phones.

"On September 28, 2006, a Montgomery Police Officer was conducting a routine traffic stop in the area of North Decatur Street in Montgomery, Alabama. As the officer approached the car, an unknown person shot the police officer approximately five times and then drove off. Video from inside the patrol car shows that the car was a 2006 Chevrolet Impala with Alabama tag # [REDACTED].

"Investigators later determined that Alabama tag # [REDACTED] belongs to [REDACTED] of Lowndesboro, Alabama. Investigators located [REDACTED] at her work, and [REDACTED] told investigators that [REDACTED] is the operator of the vehicle. [REDACTED] also gave investigators her [REDACTED] cellular phone number, (334) 312-4477. [REDACTED] also told investigators that her [REDACTED] named Mario Woodward.

"Investigators with the Montgomery Police Department checked their intelligence databases and found that Woodward had given cellular number, (334) 312-5758 during a previous investigation.

"Investigators determined that the phone carrier for both phones is Alltel cellular. Investigators contacted Alltel concerning the

> subscriber information for both phones and found that both phones are based on the same account in the name of Mario Woodward.
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> "Based on my experience, phone records for (334) 312-4477 and (334) 312-5758 will aid in the location of [REDACTED] and Woodward."

(C. 87-88.) Woodward pleaded that the application and supporting affidavit constituted newly discovered evidence because the contents indicated that the USMS believed that someone other than Woodward was driving the vehicle from which Off. Houts had been shot.

On November 16, 2023, the State filed an answer and a motion to dismiss, arguing that Woodward's petition was untimely, successive, insufficiently pleaded, and without merit. On January 10, 2024, Woodward filed an amended petition, asserting additional facts and arguments in support of his previously raised claims and attaching one additional exhibit to support the amended filing. The State filed an amended answer and motion to dismiss on February 9, 2024, addressing the new factual allegations and arguments raised in Woodward's amended petition as well as the exhibit attached thereto. On April 3, 2024, Woodward filed a reply to the State's answer. On July 18, 2024, the circuit court issued an order summarily dismissing Woodward's Rule 32 petition, finding that his claims were precluded. Woodward filed a motion to reconsider on August 16, 2024, which was subsequently denied by the circuit court on August 21, 2024.

On appeal, Woodward reasserts the claims raised in his Rule 32 petition and argues that the circuit court erred by dismissing his petition without affording him an evidentiary hearing. Woodward also reasserts a claim from his motion to reconsider, contending that the circuit court's order summarily dismissing his petition was insufficient.

In this Court's opinion on direct appeal, we set out the following facts surrounding Woodward's convictions:

> "Montgomery police officer Keith Houts was on patrol in a neighborhood in north Montgomery on September 28, 2006, and he conducted a traffic stop at approximately 12:30 p.m. Shonda Lattimore testified that she was sitting on her porch when she saw a police officer begin to execute a stop on a gray Impala automobile being driven by a black man wearing a red hat. Lattimore testified that she saw the driver of the Impala reach down for something as the Impala and the police car, with its emergency lights on, passed by the end of her street, before they went out of sight. Soon after the cars passed out of her sight, she heard four or five gunshots fired.
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> "During the traffic stop Officer Houts entered the license tag of the Impala into the mobile data terminal in his patrol car; the vehicle was registered to Morrie Surles. Officer Houts's patrol car was equipped with a video camera that recorded the events that occurred during the stop. The video recording was played for the jury. The video showed that Houts got out of his patrol car

and approached the driver's side door of the Impala. Just as Officer Houts reached the door, the driver of the Impala fired a gun and shot Officer Houts in the jaw. Medical testimony established that the bullet entered Officer Houts's neck and severed his spine, causing him to collapse instantly. The driver then reached his arm out of the vehicle and shot Officer Houts four more times. The driver fled the scene in the Impala. Although the dashboard camera captured the shooting on videotape, it did not reveal the identity of the assailant because Officer Houts's patrol car was positioned behind the Impala and because the assailant did not get out of the vehicle.

"Although Officer Houts survived the shooting, he never regained consciousness, and he died two days later.

"The police determined that the Impala was registered to Morrie Surles ('Morrie'). Morrie testified that she had purchased the Impala for her daughter, Tiffany Surles ('Surles').

"At around 9:30 on the morning of the shooting, Woodward visited a family friend, Shirley Porterfield. According to Porterfield, Woodward was driving a light-colored Impala, and he was wearing blue jeans, a white t-shirt, and a red fleece jacket. At approximately the same time the shooting occurred, Sharon Shephard, a Montgomery Animal Control officer driving in the area, saw an Impala being driven by a dark-skinned male pass by her at a high rate of speed.

"During the evening on the date the shooting occurred, Surles's Impala was found burned in a Montgomery neighborhood. Thalessa Shipman testified that she was a captain of the "Neighborhood Watch" for her street. She said that she heard a loud car driving around the neighborhood on the night of September 28, 2006. The car stopped at her driveway in the cul-de-sac, then backed up to an empty lot located next to her lot. She identified the car as a dark-colored Dodge Neon. Shipman looked over the fence into the empty lot and saw a light-colored car there, and someone standing beside that car. Seconds later, the light-colored car went up in flames, and the person who had been standing next to the burning car jumped into the Neon, and the Neon sped away. Shipman contacted law-enforcement authorities, and they later identified the Impala as being registered to Morrie Surles based on the vehicle-identification number. Additional evidence established that a friend of Woodward's, Joseph Pringle, owned a black Dodge Neon that had a loose muffler and was loud. The State played a video recording of Pringle's Neon for Shipman, and she identified the sound of the car as the one she had heard on the night the car was burned in her neighborhood. A detective involved in the murder investigation received information about a black Dodge Neon, and on the day of the murder he and his partner located the car. Joseph Pringle was in the driver's seat, and another man was in the passenger seat; the

trunk of the vehicle was open. A third man was standing next to the car, speaking to Pringle; that man was holding a gas can.

"Tiffany Surles, Woodward's girlfriend at the time of the shooting, testified that in September 2006 she was living with Woodward in an apartment they had rented together. During the evening of September 27, 2006, Surles and Woodward argued, and Woodward left the apartment in her Impala, and he returned later that night. Surles testified that the following morning, on the day Officer Houts was shot, she was taking a shower when Woodward left the apartment again.

Woodward had the keys to her Impala the night before, and the Impala was gone. Surles had decided the night before that she was going to move out of the apartment. After Woodward left the apartment on the morning of the shooting Surles telephoned a friend, Wendy Walker, and asked her to help Surles move out of the apartment. Walker and Surles moved Surles's personal belongings to Walker's apartment, and the two women decided to drive to Birmingham to go shopping. Woodward telephoned Surles before she and Walker left for Birmingham, and he wanted Surles to meet him. Surles testified that Woodward met them at Walker's apartment complex and that he got out of a small, dark car. Walker testified that the car Woodward got out of was a black Neon. Neither woman saw Surles's Impala.

"Woodward joined Surles and Walker in Walker's vehicle, and they drove to Birmingham. Surles and Walker testified that during the trip to Birmingham Woodward said that he had 'messed up' and that he had shot a police officer who pulled him over. Walker testified that Woodward spoke on his cellular telephone during the trip and that she had heard him tell someone to 'get rid his girl[s] car.' (R. 963.) Surles stated that Woodward told her that he had taken care of her car. Surles said she did not get her car back. Walker and Surles testified that Woodward threw something out of Walker's vehicle while they were en route to Birmingham. Walker testified that the object Woodward threw was a gun.

"Walker and Surles testified that in Birmingham they went to the Century Plaza shopping mall. Woodward bought a change of clothing and then asked the women to drop him off at a building near the Valleydale exit of the interstate. Vernon Cunningham testified that he is acquainted with Woodward, and that Woodward telephoned him on September 28, 2006, and wanted to meet with him. Cunningham arranged to meet with Woodward and said two girls dropped Woodward off at the arranged meeting place on Valleydale Road in Birmingham later that day. Cunningham drove Woodward to Cunningham's house. On the way to Cunningham's house, they stopped at a grocery store; a videotape from the store's security camera showed that Woodward was wearing blue-jean shorts, a

red sweatshirt, and a red baseball cap with a white emblem on the front. After they arrived at Cunningham's house, Woodward gave Cunningham the sweatshirt and red baseball cap he had been wearing, and he told Cunningham to burn them. Cunningham testified that he burned the items in his outdoor grill, and the police found remnants of clothing in that grill. Cunningham also testified that Woodward told him that he had shot a police officer during a traffic stop.

"Cunningham testified that Woodward asked for a ride and Cunningham agreed to take him to a local restaurant. Roderick Jeter picked Woodward up at the restaurant and drove Woodward to Atlanta, where he dropped Woodward off at a gas station.

"Montgomery police detectives interviewed numerous witnesses, and, from the information they received, they determined that Woodward had confessed to shooting Officer Houts and that he was then in Atlanta.

"Deputy United States Marshal Joe Parker testified that a be-on-the-lookout, or 'BOLO,' had been issued for Woodward in the Atlanta area and that on the day after the shooting he recognized Woodward while he was at a gas station in Atlanta. Parker arrested Woodward. He further testified that, at the time of the arrest, Woodward spontaneously exclaimed, 'What's going on? I didn't shoot anybody.' (R. 1114.)

> "Records custodians for two cellular telephone companies testified about calls placed from Woodward's cellular telephones and as to which towers in Montgomery and Birmingham that the calls were routed through. That testimony established that Woodward was in the area where Officer Houts was shot at the same time the shooting took place.
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> "Finally, Agent Al Mattox from the Alabama Bureau of Investigation testified that he had reviewed and attempted to enhance the videotape from Officer Houts's dashboard camera. He testified that it appeared from the videotape that the person who killed Officer Houts was a black male."

Woodward v. State, 123 So. 3d 989, 999-1001 (Ala. Crim. App. 2011).

Standard of Review

Woodward appeals the circuit court's summary dismissal of his petition for postconviction relief filed pursuant to Rule 32, Ala. R. Crim. P. According to Rule 32.3, Ala. R. Crim. P., "[t]he petitioner shall have the burden of pleading and proving by a preponderance of the evidence the facts necessary to entitle [him] to relief." Rule 32.6(b), Ala. R. Crim. P., establishes the pleading requirements for postconviction petitions as follows:

> "The petition must contain a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the factual basis of those grounds. A bare allegation that a constitutional right has been violated and mere conclusions of law

> shall not be sufficient to warrant any further proceedings."

This Court has stated the following concerning the scope of Rule 32.6(b), Ala. R. Crim. P.:

> "'Rule 32.6(b) requires that the *petition* itself disclose the *facts* relied upon in seeking relief.' *Boyd v. State*, 746 So. 2d 364, 406 (Ala. Crim. App. 1999). In other words, it is not the pleading of a *conclusion* 'which, if true, entitle[s] the petitioner to relief.' *Lancaster v. State*, 638 So. 2d 1370, 1373 (Ala. Crim. App. 1993). It is the allegation of *facts* in pleading which, if true, entitle a petitioner to relief. After *facts* are pleaded, which, if true, entitle the petitioner to relief, the petitioner is then entitled to an opportunity, as provided in Rule 32.9, Ala. R. Crim. P., to present evidence proving those *alleged facts."*

Boyd v. State, 913 So. 2d 1113, 1125 (Ala. Crim. App. 2003) (emphasis in original).

> "The burden of pleading under Rule 32.3 and Rule 32.6(b) is a heavy one. Conclusions unsupported by specific facts will not satisfy the requirements of Rule 32.3 and Rule 32.6(b). The *full* factual basis for the claim must be included in the petition itself. If, assuming every factual allegation in a Rule 32 petition to be true, a court cannot determine whether the petitioner is entitled to relief, the petitioner has not satisfied the burden of pleading under Rule 32.3 and Rule 32.6(b)."

Hyde v. State, 950 So. 2d 344, 356 (Ala. Crim. App. 2006) (emphasis in original).

Moreover,

> "[a]n evidentiary hearing on a coram nobis petition [now a Rule 32 petition] is required only if the petition is 'meritoriouson its face.' *Ex parte Boatwright*, 471 So. 2d 1257 (Ala. 1985). A petition is 'meritorious on its face' only if it contains a clear and specific statement of the grounds upon which relief is sought, including full disclosure of the facts relied upon (as opposed to a general statement concerning the nature and effect of those facts) sufficient to show that the petitioner is entitled to relief if those facts are true. *Ex parte Boatwright*, *supra; Ex parte Clisby*, 501 So. 2d 483 (Ala. 1986)."

Moore v. State, 502 So. 2d 819, 820 (Ala. 1986). "The sufficiency of pleadings in a Rule 32 petition is a question of law. 'The standard of review for pure questions of law in criminal cases is de novo. *Ex parte Key*, 890 So. 2d 1056, 1059 (Ala. 2003).'" *Ex parte Beckworth*, 190 So. 3d 571, 573 (Ala. 2013) (quoting *Ex parte Lamb*, 113 So. 3d 686, 689 (Ala. 2011)). *See also Ex parte Hinton*, 172 So. 3d 348, 353 (Ala. 2012). With these principles in mind, this Court will address Woodward's claims.

I.

Woodward first argues that the circuit court erred by summarily dismissing his newly-discovered-evidence claim. Specifically, Woodward asserts that his newly-discovered-evidence claim satisfies all five requirements of Rule 32.1(e), Ala. R. Crim. P., and is, therefore, not subject to preclusion. In support of this argument, Woodward seeks postconviction relief based on what he characterizes as newly discovered

evidence: an application for an order authorizing the installation of a pen register or trap and trace device and a supporting affidavit, both of which are dated the same day as the shooting.

Initially, this Court holds that Woodward's claim is barred by Rule 32.2(c), Ala. R. Crim. P. Under the facts of this case, the alternate limitations period in Rule 32.2(c) required Woodward to file his petition "within six (6) months after the discovery of the newly discovered material facts." This Court's review of the record indicates he failed to do so.

On January 26, 2023, Woodward received a redacted copy of the application and supporting affidavit from the USMS. Woodward subsequently requested that any references to himself be disclosed, and, on March 17, 2023, he received a copy of the documents with references to himself unredacted. Woodward then "requested that the USMS confirm that Mr. Woodward's name was entirely unredacted from the March 17, 2023, reproduction." (C. 160.) On May 26, 2023, the USMS replied that Woodward's name had been fully unredacted in the March 17, 2023, response. In other words, Woodward received on March 17, 2023, the version of the alleged newly discovered evidence on which his claims rely. Woodward then filed his postconviction petition on October 18, 2023, more than six months after receiving this evidence.

Woodward asserts that May 26, 2023, the date on which he received *confirmation* from the USMS that his name had been redacted, should be considered the date of the discovery of the newly discovered material facts, and that, to hold otherwise would force petitioners to "rush to court with incomplete and ambiguous information to ensure they are not time

barred." (Woodward's reply brief, at 16 n.1.) However, nothing in Rule 32.2(c) required Woodward to file his petition immediately or to otherwise "rush" upon learning of the information contained in the application and supporting affidavit from the USMS. Rather, Rule 32.2(c) required Woodward to file his petition "within six (6) months after the discovery of the newly discovered material facts."[3] This he failed to do.

The response of the USMS Woodward received on May 26, 2023, contained no new information. Woodward learned of what he alleges are 3 newly discovered material facts on March 17, 2023. Because he filed his petition on October 18, 2023, more than six months after receiving this evidence, his petition was untimely. *See* Rule 32.2(c). Consequently, the circuit court did not err in dismissing this claim.

Moreover, even if Woodward had timely raised this claim, he still would not be entitled to relief because it fails to meet the requirements of Rule 32.1(e), Ala. R. Crim. P.

> "Subject to the limitations of Rule 32.2, any defendant who has been convicted of a criminal offense may institute a proceeding in the court of original conviction to secure appropriate relief on the ground that . . . [n]ewly discovered material facts exist which require that the conviction or sentence be vacated by the court."

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[3] Allowing a petitioner to restart the time for filing a petition by "confirming" evidence already known would allow a petitioner to extend the time indefinitely. This would defeat the purpose of Rule 32.2(c), Ala. R. Crim. P.

Rule 32.1(e), Ala. R. Crim. P. Newly discovered evidence is defined as evidence in which:

> "(1) The facts relied upon were not known by the petitioner or the petitioner's counsel at the time of trial or sentencing or in time to file a posttrial motion pursuant to Rule 24, or in time to be included in any previous collateral proceeding and could not have been discovered by any of those times through the exercise of reasonable diligence;
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> "(2) The facts are not merely cumulative to other facts that were known;
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> "(3) The facts do not merely amount to impeachment evidence;
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> "(4) If the facts had been known at the time of trial or of sentencing, the result probably would have been different; and
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> "(5) The facts establish that the petitioner is innocent of the crime for which the petitioner was convicted or should not have received the sentence that the petitioner received."

Rule 32.1(e), Ala. R. Crim. P. Before an allegation can be considered a claim based on newly discovered evidence, it must meet all five requirements of Rule 32.1(e), Ala. R. Crim. P. *See Tarver v. State*, 769 So. 2d 338, 340 41 (Ala. Crim. App. 2000) ("We have repeatedly stated that before a claim may be considered as newly discovered evidence the claim must meet the definition of newly discovered evidence found in Rule 32.1(e).").

> "The requirements in Rules 32.1(e)(1), (e)(2), and (e)(3) are self-explanatory. Rule 32.1(e)(5) requires not that the newly discovered facts actually establish a petitioner's innocence but that the newly discovered facts 'go to the issue of the defendant's actual innocence,' i.e., are relevant to the issue of guilt or innocence, 'as opposed to a procedural violation not directly bearing on guilt or innocence.' *Ex parte Ward*, 89 So. 3d 720, 727 (Ala. 2011). As for the requirement in Rule 32.1(e)(4) 'that the result probably would have been different had the newly discovered evidence been presented to the jury, this calculation must be made based on the probative value of the newly discovered evidence and its relationship to the other evidence presented to the jury.' *Id.* at 728."

Lloyd v. State, 144 So. 3d 510, 516 (Ala. Crim. App. 2013).

In this case, Woodward failed to plead the elements of newly discovered evidence sufficiently. In particular, Woodward failed to plead any facts in his amended petition explaining whether the result of his trial would have been different had the alleged newly discovered evidence been known at the time of trial as required by Rule 32.1(e)(4), Ala. R. Crim. P., especially considering the other evidence of guilt presented at trial.[4] Woodward also failed to plead any facts establishing how this alleged newly discovered evidence is relevant to the issue of his

[4] Throughout his petitions and his briefs to this Court, Woodward repeatedly refers to the State's evidence as "circumstantial." His confessions, however – of which he made at least three – constitute direct evidence of his guilt.

guilt or innocence, as required by Rule 32.1(e)(5), Ala. R. Crim. P. The only facts Woodward pleaded in his amended petition relating to the fourth and fifth prongs of Rule 32.1(e), Ala. R. Crim. P., are as follows:

> "(4) The newly-discovered evidence seriously undermines the presentation of law enforcement's investigation of the shooting of Officer Houts, contradicts evidence presented by the State at trial, and would have seriously altered Mr. Woodward's defense strategy at trial, such that a different outcome at trial is reasonably probable; and
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> "(5) The newly-discovered evidence further bolsters Mr. Woodward's repeated argument that he is innocent of this crime, that someone else committed the crime, and shows that Mr. Woodward should not have been convicted of this crime or received the death penalty, as detailed in Mr. Woodward's Initial Rule 32 petition."

(C. 163.) However, these "bare and conclusory" allegations are insufficient to support a claim of newly discovered evidence. *Moody v. State*, 95 So. 3d 827, 857 (Ala. Crim. App. 2011). Because Woodward failed to plead his newly-discovered-evidence claim sufficiently, the circuit court did not err in dismissing his claim. *See* Rule 32.7(d), Ala. R. Crim. P.

Yet, even if Woodward had sufficiently pleaded his claims, the alleged newly discovered evidence still fails to satisfy the requirements of Rule 32.1(e), Ala. R. Crim. P. For example, the application for an order authorizing the installation of a pen register or trap and trace device and the supporting affidavit contain

hearsay statements and would not be admissible to prove the truth of the matter asserted – that is, that law-enforcement officers suspected that another individual may have committed the offense in the hours following the shooting. *See Townley v. State*, 501 So. 2d 508, 509 (Ala. Crim. App. 1986) ("The courts of Alabama have consistently held that the admission of hearsay information contained in the affidavit in support of a search warrant constitutes reversible error."). At best, the documents could be admitted for the limited purpose of impeachment, which Rule 32.1(e)(3), Ala. R. Crim. P., explicitly excludes from the definition of newly discovered evidence. "'The trial court will not, of course, be put in error for refusing a new trial because of newly discovered evidence when such evidence would not be admissible upon a retrial of the cause." *Wynn v. State*, 246 So. 3d 163, 185 (Ala. Crim. App. 2016) (quoting *Houston v. State*, 208 Ala. 660, 663, 95 So. 145, 147 (1923)).

Additionally, Woodward's claim fails to satisfy the requirement in Rule 32.1(e)(5), Ala. R. Crim. P., that the purported newly discovered evidence "establish[es] that [he] is innocent of the crime for which [he] was convicted." At trial, "[t]he crux of the State's case was the overwhelming circumstantial evidence tying Woodward to the murder, Woodward's actions after the crime, such as his flight to Georgia and the statement he made when he was arrested, and Woodward's confessions to three witnesses that he had shot a police officer." *Woodward v. State*, 276 So. 3d 713, 764 (Ala. Crim. App. 2018). The fact that another individual may have been under investigation in the hours following the shooting is not "relevant to the issue of [Woodward's] guilt or inno-

cence" considering the substantial evidence presented at trial. *Lloyd*, 144 So. 3d at 516.

Consequently, the circuit court correctly found that Woodward's newly-discovered-evidence claim failed to satisfy the requirements of Rule 32.1(e), Ala. R. Crim. P., and, therefore, was subject to preclusion. *Lloyd v. State*, 144 So. 3d 510, 516 (Ala. Crim. App. 2013) ("[I]f all the requirements in Rule 32.1(e) are not satisfied, a claim of newly discovered material facts is subject to the preclusions in Rule 32.2."). Specifically, Woodward's claim is barred by Rule 32.2(b), Ala. R. Crim. P., because it was raised in a successive petition.

Woodward's claim of newly discovered evidence is procedurally barred, insufficiently pleaded, and without merit. Therefore, this issue does not entitle Woodward to any relief. *See* Rule 32.7(d), Ala. R. Crim. P.

II.

Woodward next argues that the circuit court erred in dismissing his claim that the State violated *Brady v. Maryland*, 373 U.S. 83 (1963), by failing to disclose the application for an order authorizing the installation of a pen register or trap and trace device and the supporting affidavit.

> "The United States Supreme Court in *Brady* held that 'the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith of the prosecution.' 373 U.S. at 87. 'To establish a *Brady* violation, [the petitioner] must demonstrate: (1) that the prosecution

> suppressed evidence; (2) that that evidence was favorable to [the defendant] or exculpatory; and (3) that the evidence was material.' *Ex parte Kennedy*, 472 So. 2d 1106, 1110 (Ala. 1985)."

Ray v. State, 80 So. 3d 965, 973 (Ala. Crim. App. 2011).

Again, Woodward asserts that the application and supporting affidavit contain information that the USMS initially suspected another person was driving the vehicle at the time of the shooting. Woodward pleaded in his amended petition that his *Brady* claim is based on newly discovered evidence but also pleaded that the State's failure to disclose the application and affidavit "violated Mr. Woodward's due process rights under the Fourth Amendment to the United States Constitution and Sections 6 and 13 of the Alabama Constitution," thereby entitling Woodward to a new trial. (C. 166.)

"A *Brady* claim may be raised in a postconviction petition as either a claim of newly discovered evidence under Rule 32.1(e), Ala. R. Crim. P., or a constitutional claim under Rule 32.1(a), Ala. R. Crim. P." *Stallworth v. State*, 171 So. 3d 53, 75 (Ala. Crim. App. 2013). Whether raised pursuant to Rule 32.1(a) or 32.1(e), Ala. R. Crim. P., "[a] *Brady* claim is subject to the procedural default grounds contained in Rule 32.2, Ala. R. Crim. P." *Barbour v. State*, 903 So. 2d 858, 868 (Ala. Crim. App. 2004). In cases where the appellant filed a direct appeal, as Woodward did in this case, Rule 32.2(c), Ala. R. Crim. P., requires claims raised pursuant to Rule 32.1(a), Ala. R. Crim. P., to be raised "within one (1) year after the issuance of the certificate of judgment by the Court of Criminal Appeals." *See Bryant v. State*, 181 So. 3d

1087, 1133-34 (Ala. Crim. App. 2011) (opinion on return to second remand) (holding that a *Brady* claim raised under Rule 32.1(a), Ala. R. Crim. P., may be subject to preclusion); *Wood v. State*, 891 So. 2d 398, 420 (Ala. Crim. App. 2003) (holding that the State's failure to comply with its discovery obligations under *Brady* was a nonjurisdictional claim). Thus, to the extent that Woodward raises a constitutional *Brady* claim pursuant to Rule 32.1(a), Ala. R. Crim. P., his claim is procedurally barred under Rule 32.2(c), Ala. R. Crim. P., because his petition was filed well after the one-year time limitation had expired. To the extent that Woodward raises a *Brady* claim based on newly discovered evidence pursuant to Rule 32.1(e), Ala. R. Crim. P., his claim is still procedurally barred by Rule 32.2(c) because, as explained above, Woodward failed to raise his claim in a petition filed within six months of his discovering of the evidence.

Moreover, Woodward's *Brady* claim is insufficiently pleaded. For instance, Woodward failed to plead sufficient facts to demonstrate that the evidence was material. "[E]vidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *Johnson v. State*, 612 So. 2d 1288, 1293 (Ala. Crim. App. 1992). Woodward pleaded that the evidence "would have altered trial counsel's investigation and development of a defense at the guilt phase of the trial" (C. 171), yet failed to explain what that investigation would have revealed, what the new defense would have presented, or how that undefined defense would have countered the State's significant evidence of guilt.

Additionally, a postconviction *Brady* claim raised in a Rule 32 petition must meet all five prerequisites of 'newly discovered evidence' in Rule 32.1(e), Ala. R. Crim. P." *McWhorter v. State*, 142 So. 3d 1195, 1259 (Ala. Crim. App. 2011) (citing *Payne v. State*, 791 So. 2d 383, 398 (Ala. Crim. App. 1999)). As discussed above, Woodward did not plead sufficient facts to establish that the application and supporting affidavit constitute newly discovered evidence; Woodward's *Brady* claim shares the failings of his claim of newly discovered evidence.

Woodward's *Brady* claim is procedurally barred and insufficiently pleaded. Therefore, this issue does not entitle Woodward to any relief. *See* Rule 32.7(d), Ala. R. Crim. P.

III.

Woodward finally argues that the circuit court's order summarily dismissing his petition is insufficient. Specifically, Woodward claims that the circuit court erred in dismissing his petition without making specific findings of fact regarding the merits of each of his claims.

"Rule 32.7(d), A. R. Crim. P., permits the trial court to dismiss the petition 'if the court determines that the petition is not sufficiently specific, or is precluded, or fails to state a claim, or that no material issue of fact or law exists which would entitle the petitioner to relief under this rule and that no purpose would be served by any further proceedings.'" *Patty v. State*, 652 So. 2d 337, 338-39 (Ala. Crim. App. 1994). "'Rule 32.7 does not require the trial court to make specific findings of fact upon a summary dismissal.'" *Woodward v. State*, 276 So. 3d 713, 737 (Ala. Crim. App. 2018 (quoting *Fincher v.*

State, 724 So. 2d 87, 89 (Ala. Crim. App. 1998)). "Contrary to [the appellant's] argument, ""Rule 32.9(d), Ala. R. Crim. P., requires the circuit court to make specific findings of fact only after an evidentiary hearing or the receipt of affidavits in lieu of a hearing." *Daniel v. State*, 86 So. 3d 405, 412 (Ala. Crim. App. 2011), quoting *Chambers v. State*, 884 So. 2d 15, 19 (Ala. Crim. App. 2003).

In this case, the circuit court summarily dismissed Woodward's amended petition on the grounds that it was time-barred pursuant to Rule 32.2(c), Ala. R. Crim. P., and insufficiently pleaded. The circuit court did not hold an evidentiary hearing or otherwise accept evidence. *See Harris v. State*, 365 So. 3d 1075, 1094 (Ala. Crim. App. 2021) (holding that when summarily dismissing a claim on the grounds that it is insufficiently pleaded, the circuit court is not required to "expres findings as to [the claim's] purported deficiency"); *Fowler v. State*, 890 So. 2d 1101, 1103 (Ala. Crim. App. 2004) ("Findings are not required if the petition is dismissed."). Therefore, Woodward's argument that the circuit court erroneously dismissed his petition without making specific findings of fact is without merit.

"[W]here a simple reading of the petition for postconviction relief shows that, assuming every allegation of the petition to be true, it is obviously without merit or is precluded, the circuit court [may] summarily dismiss that petition." *Shaw v. State*, 148 So. 3d 745, 765 (Ala. Crim. App. 2013) (internal citations and quotation marks omitted). Because Woodward's claims are meritless or insufficiently pleaded pursuant to Rules 32.3 and 32.6(b), Ala. R. Crim. P., summary disposition of Woodward's Rule 32 petition was appropriate.

Accordingly, the judgment of the circuit court is affirmed.

AFFIRMED.

Cole and Minor, JJ., concur. Kellum, J., concurs in the result. Anderson, J., recuses himself.

APPENDIX B

IN THE SUPREME COURT OF ALABAMA

SC-2025-0688

November 21, 2025

Ex parte Mario Dion Woodward. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CRIMINAL APPEALS (In re: Mario Dion Woodward v. State of Alabama) (Montgomery Circuit Court: CC-07-1388.61; Criminal Appeals: CR-2024-0641).

CERTIFICATE OF JUDGMENT

WHEREAS, the petition for writ of certiorari in the above referenced cause has been duly submitted and considered by the Supreme Court of Alabama and the judgment indicated below was entered in this cause on November 21, 2025:

Writ Denied. No Opinion. Shaw, J. – Stewart, C.J., and Bryan, Sellers, Mendheim, Cook, and McCool, JJ., concur. Wise, J., recuses herself.

NOW, THEREFORE, pursuant to Rule 41, Ala. R. App. P., IT IS HEREBY ORDERED that this Court's judgment in this cause is certified on this date. IT IS FURTHER ORDERED that, unless otherwise ordered by this Court or agreed upon by the parties, the costs of this cause are hereby taxed as provided by Rule 35, Ala. R. App. P.

I, Megan B. Rhodebeck, certify that this is the record of the judgment of the Court, witness my hand and seal.

/s/Megan B. Rhodebeck
Clerk, Supreme Court of Alabama

APPENDIX C

ALABAMA COURT OF CRIMINAL APPEALS

CR-2024-0641

MARIO DION WOODWARD

v.

STATE OF ALABAMA

(Appeal from Montgomery Circuit Court:
CC-07-1388.61)

August 29, 2025

NOTICE

You are hereby notified that on August 29, 2025, the following action was taken in the above-referenced cause by the Court of Criminal Appeals:

Application for Rehearing Overruled.

/s/ D. Scott Mitchell
D. Scott Mitchell, Clerk

APPENDIX D

UNIFIED JUDICIAL SYSTEM
STATE OF ALABAMA

AlaFile E-Notice

03-CC-2007-001388.61 Judge: BROOKE E REID

To: CAVIEDES RHONDA RICHARDSO
rhonda.caviedes@gmail.com

NOTICE OF COURT ACTION

IN THE CIRCUIT CRIMINAL COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA v. WOODWARD MARIO DION

03-CC-2007-001388.61

A court action was entered in the
above case on 8/21/2024 3:16:06 PM

ORDER
[Filer:]

Disposition: DENIED

Judge: BER

Notice Date: 8/21/2024 3:16:06 PM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104
334-832-1260

ELECTRONICALLY FILED
8/21/2024 3:16 PM
03-CC-2007-001388.61
CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA
GINA J. ISHMAN, CLERK

IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

_____

Case No.: CC-2007-001388.61

_____

STATE OF ALABAMA

v.

WOODWARD MARIO DION

Defendant.

_____

ORDER

MOTION TO RECONSIDER filed by WOODWARD MARIO DION is hereby DENIED.

DONE this 21st day of August, 2024.

/s/ BROOKE E REID
CIRCUIT JUDGE

APPENDIX E

UNIFIED JUDICIAL SYSTEM
STATE OF ALABAMA

AlaFile E-Notice

03-CC-2007-001388.61 Judge: BROOKE E REID

To: CAVIEDES RHONDA RICHARDSO
rhonda.caviedes@gmail.com

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT CRIMINAL COURT OF
MONTGOMERY COUNTY, ALABAMA

STATE OF ALABAMA v. WOODWARD MARIO DION

03-CC-2007-001388.61

The following matter was
FILED on 7/18/2024 4:54:04 PM

Notice Date: 7/18/2024 4:54:04 PM

GINA J. ISHMAN
CIRCUIT COURT CLERK
MONTGOMERY COUNTY, ALABAMA
251 S. LAWRENCE STREET
MONTGOMERY, AL, 36104
334-832-1260

IN THE CIRCUIT COURT OF
MONTGOMERY COUNTY, ALABAMA

Case No.: CC-2007-001388.61

STATE OF ALABAMA

v.

WOODWARD MARIO DION

Defendant.

FINAL ORDER

This matter is before the Court on Petitioner's Amended Petition for Relief from Conviction or Sentence, filed pursuant to Rule 32, A.R.CR.P., the State's Answer to Petition for Relief, and Petitioner's reply to State's Answer.

This Court, having reviewed the Petitioner's Request for Relief, pursuant to Rule 32 Ala. R. Crim. P., as well as the State's Answer, hereby makes the following finding:

The Petition is barred as untimely. Moreover, the Petition fails to plead sufficient facts that, if true, would entitle the Petitioner to relief pursuant to A.R.CR.P. 32.1(e). Accordingly, the instant Petition is hereby DENIED and this matter dismissed.

DONE this 18th day of July, 2024.

/s/ BROOKE E REID
CIRCUIT JUDGE

APPENDIX F

THE FIFTEENTH JUDICIAL CIRCUIT
MONTGOMERY COUNTY, ALABAMA

_____

No._____
Trial Case No. CC-07-1388.60

_____

MARIO DION WOODWARD,

Petitioner,

v.

STATE OF ALABAMA,

Respondent.

_____

PETITION FOR RELIEF FROM
JUDGMENT PURSUANT TO
RULE 32 OF THE ALABAMA
RULES OF CRIMINAL PROCEDURE

_____

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In 2008, Petitioner Mario Dion Woodward was convicted and sentenced to death for the murder of Keith Houts, a Montgomery Police Officer at the time. Mr. Woodward is now incarcerated at the William C. Holman Correctional Facility in Atmore, Alabama.

During his trial. the State presented no direct evidence that Mr. Woodward killed Officer Houts or was even at the scene of the crime. Instead, the State relied on circumstantial evidence connecting Mr. Woodward to the vehicle from which Officer Houts was shot and killed, a 2006 Chevrolet Impala. Newly discovered evidence, however, shows that the State failed to disclose investigators' sworn understanding that someone other than Mr. Woodward was driving the 2006 Impala at the time of the shooting. This new evidence is revealed in recently produced pen register and trap and trace ("pen-trap") applications submitted by the United States Marshals Service ("USMS") around the time of the shooting, when authorities were searching for potential suspects. The State's failure to disclose evidence showing that someone other than Mr. Woodward was a significant suspect violates the principles of *Brady v. Maryland,* 373 U.S. 83 (1963), its progeny, and Mr. Woodward's Constitutional due process rights.

Mr. Woodward is entitled to relief pursuant to Alabama Rule of Criminal 32.1(a) and (e). In support of his Petition, Mr. Woodward states the following:

PROCEDURAL HISTORY[1]

On August 25, 2008, Mr. Woodward was convicted of two counts of murder for the shooting and death of Montgomery Police Officer Keith Houts. C. 1351. Following the penalty phase trial, the jury recommended by a vote of eight to four that Mr. Woodward should be sentenced to life without possibility of parole—not death. R. 1702. On September 25, 2008, Judge Truman M. Hobbs. Jr. determined to override the jury's life-sentence recommendation and sentenced Mr. Woodward to death. T.R. 1792, T.C. 998-1004.

The Alabama Court of Criminal appeals denied Mr. Woodward's direct appeal of his conviction and death sentence on December 16, 2011, before issuing a modified decision denying Mr. Woodward's application for rehearing. *See Woodward v. State.* 123 So. 3d 989 (Ala. Crim. App. 2011), *as modified on denial of reh'g* (Aug. 24, 2012). On April 19, 2012, the Alabama Supreme Court denied Mr. Woodward's petition for writ of certiorari.

On November 18, 2013, the United States Supreme Court denied Mr. Woodward's petition for writ of certiorari. *See Woodward v. Alabama, 571 U .S.* 1045 (2013). Justice Sonia Sotomayor, joined in part by Justice Stephen G. Breyer, wrote a 17-page dissent expressing her "deep concerns" as to whether Alabama's capital sentencing scheme at the time, and the judicial override utilized in Mr. Woodward's case

---

[1] "T.C." refers to the clerk's record from the 2008 trial. "T.R." refers to the reporter's transcript from the 2008 trial, "C." refers to the certified clerk's record from the Rule 32 postconviction proceedings. "R." refers to the reporter's transcript from the Rule 32 proceedings.

in particular, "offends the Sixth and Eighth Amendments" of the United States Constitution. *Id.* at 406. Justice Sotomayor noted that she "would grant Woodward's petition for certiorari so that the Court could give this issue the close attention that it deserves." *Id.*

On April 15, 2014, Mr. Woodward filed a timely petition for postconviction relief pursuant to Rule 32 of the Alabama Rules of Criminal Procedure, which was amended with leave of court on December 22, 2014 ("Initial Rule 32 Petition"). C. 11, 206. Mr. Woodward's Initial Rule 32 Petition sought postconviction relief on two grounds: (i) actual innocence (Am. Pet. at 5-13); and (ii) ineffective assistance of counsel during pre-trial, guilt phase, and penalty phase proceedings (Am. Pet. at 14-109).

On October 9, 2015, the same judge that presided over Mr. Woodward's trial, Judge Hobbs, issued an order summarily dismissing nearly all of Mr. Woodward's Rule 32 claims, but granted an evidentiary hearing on Mr. Woodward's claim that trial counsel was constitutionally ineffective for failing to raise an objection under *Batson v. Kentucky,* 476 U.S. 79 (1986), in light of the State's apparent prima facie violation of *Batson* at trial. C. 1358-61. Following the evidentiary hearing, on February 23, 2016, the Court issued a final order dismissing Mr. Woodward's *Batson* claim. C. 1438-39. Thereafter, on April 27, 2018, the Alabama Court of Appeals affirmed. *See Woodward v. State,* 276 So. 3d 713 (Ala. Crim. App. 2018). On November 16, 2018, the Alabama Supreme Court affirmed. On October 7, 2019, the United States Supreme Court denied certiorari. *See Woodward v. Alabama,* 140 S. Ct. 46 (2019).

On June 18, 2019, Mr. Woodward filed a Petition for Writ of Habeas Corpus in the United States District Court for the Middle District of Alabama. *See Woodward v. Dunn,* No. 2:19-CV-00425-RAH (M.D. Ala. 2019) ("Habeas Petition"). Mr. Woodward's Habeas Petition asserted a variety of claims, including but not limited to that Mr. Woodward was improperly denied the opportunity to present evidence of his factual innocence related to his Initial Rule 32 Petition and Mr. Woodward's sentencing by judicial override violated his Sixth, Eighth, and Fourteenth Amendment rights. Mr. Woodward's Habeas Petition is fully brief and pending determination.

This Petition follows. It is predicated on grounds that are different from those previously raised and could not have been raised when Mr. Woodward's Initial Rule 32 Petition was heard: specifically, certain pen-trap applications recently produced by the USMS in response to Mr. Woodward's requests pursuant to the Freedom of Information Act and subsequent litigation in the U.S. District Court for the District of Columbia ("FOIA Litigation"). As a result of the FOIA Litigation, the USMS was ordered to produce certain information related to Mr. Woodward's arrest, which included pen-trap applications that demonstrate that, on the day of the shooting, the USMS was investigating a suspected "fugitive from justice" in connection with the shooting of Officer Houts who was *not* Mr. Woodward. In light of these documents, through counsel, Mr. Woodward sought to confirm from the USMS that the suspected fugitive noted in the pen-trap applications (whose name remains redacted) was not Mr. Woodward, which the USMS confirmed. In fact, by letter dated May 26, 2023, the USMS confirmed that Mr. Woodward's "name is not withheld" on the pen-trap application, and "[t]he

names that continue to be withheld relate to third-parties." Ex. 1 at 2. Based on the timing of the USMS's confirmation that the "fugitive from justice" in question was an alternative and unknown suspect, not Mr. Woodward, this Rule 32 Petition is timely pursuant to Rule 32.2(c).

As demonstrated below, Mr. Woodward is entitled to relief pursuant to Rules 32.1(a) and (e) of the Alabama Rules of Criminal Procedure.

STATEMENT OF FACTS

A. The Shooting and Mr. Woodward's Trial

On September 28, 2006, Officer Keith Houts of the Montgomery Police Department pulled over a 2006 Chevy Impala with the Alabama tag CS7563 for a traffic stop on North Decatur Street, in Montgomery, Alabama. C. 1075-82. As Officer Houts approached the driver's side window, the driver of the Impala shot Officer Houts five times then drove away. *Id.* Officer Houts died two days later. R. 1018-19. The shooting was captured on Officer Houts' police vehicle dashcam, but no physical features of the shooter are visible, except the shooter's right arm. C. 1075.

According to the Mobile Data Terminal in Officer Houts' patrol car, which he must have used prior to exiting the car, the 2006 Impala was registered to Morrie Surles. Subsequent investigation revealed that Morrie Surles purchased the car for her daughter, Tiffany Surles, who was Mr. Woodward's then-girlfriend. C. 1054. On the morning of the shooting, the 2006 Impala was not at the apartment that Tiffany Surles and Mr. Woodward shared at the time. T.R. 851. Tiffany Surles had no personal knowledge of Mr. Woodward driving or using the 2006 Impala on

September 28, 2006. *See* Am. Pet. ¶ 160. On the same evening of the shooting, a silver Impala was burned in Montgomery. T.R. 897-915. The police later determined that the burned Impala was registered to Morrie Surles. T.R. 899-900. Mr. Woodward was deemed a suspect, and the police issued a "be-on-the-lookout" alert to law enforcement on the basis of the circumstantial evidence supposedly linking Mr. Woodward to the shooting.

The next day, September 29, 2006, Mr. Woodward was in Atlanta with his friend Roderick Davenport. *See* Am. Pet. ¶ 67. Mr. Woodward learned through his friends, family, and former lawyer Tiffany McCord, that he was wanted by police in connection with the shooting of Officer Houts. *Id.* Mr. Woodward informed Ms. McCord that he intended to return to Montgomery to respond to the search for him. *Id.* On the same day, the USMS had been notified via an anonymous tip that Mr. Woodward was in Atlanta. T.R. 1101. Pursuant to that tip, Agent Joe Parker of the Atlanta USMS investigated an address provided by the Alabama authorities. *Id.* Before Mr. Woodward could return to Montgomery, Agent Parker identified and arrested Mr. Woodward at a gas station in Atlanta. T.R. 1113.

Mr. Woodward's trial for charges of capital murder in connection with the shooting and death of Officer Houts began on August 18, 2008. C. 11-12. The State presented 24 witnesses during the guilt phase. T.R. 2-5. The State's theory of guilt was threefold: (1) Mr. Woodward, through Tiffany Surles, was connected to the vehicle from which Officer Houts was shot; (2) data derived from cell phone towers purportedly placed Mr. Woodward at or near the scene of the crime at the time when Officer Houts was shot; and (3) Mr. Woodward allegedly told Tiffany Surles and two other people that

he shot Officer Houts. The State did not present any direct physical or forensic evidence identifying Mr. Woodward as the individual who shot Officer Houts or was at the scene of the crime.

On August 25, 2008, after deliberating for roughly four hours, the jury convicted Mr. Woodward of two counts of: (i) murder of an on-duty police officer in violation of Ala. Code § 13A-5-40(a)(5); and (ii) murder with a weapon fired from a vehicle in violation of Alabama Code § 13A-5-40(a)(18). C. 1351. At the penalty phase trial, the jury recommended Mr. Woodward be sentenced to life in prison and not given the death penalty. R. 1702. After receiving a pre-sentence investigation report and hearing supplemental evidence not presented to the jury, the Judge overrode the jury's recommendation and sentenced Mr. Woodward to death. T.R. 1792, T.C. 998- 1004.

B. Mr. Woodward's Freedom of Information Act Request

On December 28, 2015, based on his belief that law enforcement may have utilized cellphone tracking technology, or a "stingray" device, in furtherance of its investigation and ultimate arrest of Mr. Woodward on September 29, 2006, Mr. Woodward sent a Freedom of Information Act request (the "FOIA Request") to the United States Department of Justice. Ex. 2. As relevant here, the FOIA Request sought access to or the production of, *inter alia:*

> All records in any way relating to, pertaining to or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State

> of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of Investigations or the U.S. Marshalls [sic] located in Alabama and Georgia.

Id. at 2.

On December 31, 2015, the Department of Justice, Civil Rights Division responded to the FOIA Request, advising in part that, "[a]s a result of the large number of Freedom of Information and Privacy Acts requests received by the Civil Rights Division, some delays may be encountered in processing your request." Ex. 3 at 1.

On January 6, 2016, the Department of Justice. Justice Management Division responded as well, acknowledging receipt of the FOIA Request and indicating that the FOIA Request had been referred to the Civil Rights Division and the USMS. Ex. 4.

On June 9, 2016, the USMS responded to Mr. Woodward's FOIA Request. The USMS stated: "Pursuant to your request, the USMS conducted a search of the Investigative Operations Division. The Search located no records responsive to your request." Ex. 5. The USMS response further stated that:

> For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c)(2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an

> indication that excluded records do, or do not, exist.

Id. at 2.

On August 9, 2016, Mr. Woodward filed an appeal of the USMS's FOIA Request response with the Department of Justice's Office of Information Policy ("OIP"). Ex. 6. Mr. Woodward's OIP appeal noted, *inter alia,* that the USMS's response "does not indicate whether the USMS' search included a search for records possessed by the Alabama and Georgia District – which were specifically identified in the Request." *Id.* at 2.

The OIP responded to Mr. Woodward's appeal by letter dated August 23, 2016, affirming the USMS's response, averring that the databases searched included certain Georgia and Alabama records. and contending via boilerplate language that the USMS' search was proper and adequate. Ex. 7.

On May 15, 2017, more than a year after Mr. Woodward sent his FOIA Request, the Civil Rights Division responded, stating:

> [A]fter a thorough search, I have determined that the Civil Rights Division has no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts.

Ex. 8.

On August 10, 2017, Mr. Woodward timely submitted his appeal of the Civil Rights Division's determination and requesting expedited consideration, which was acknowledged as received by the OIP on August 11, 2017. Exs. 9-10.

Despite being informed by the OIP that expedited processing of Mr. Woodward's appeal was warranted, the OIP belatedly responded to Mr. Woodward's appeal of the Civil Rights Division's determination by letter dated September 29, 2017. Exs. 11-12. The OIP denied Mr. Woodward's appeal request for an itemized list of information withheld. and found that "the Civil Rights Division's response was correct and that it conducted an adequate, reasonable search for [responsive] records." Ex. 12 at 2.

C. Mr. Woodward's FOIA Litigation

On May 29, 2018, Mr. Woodward filed a civil complaint in the United States District Court, District of Columbia, against the Department of Justice, Civil Rights Division, and the USMS, for violations of the Freedom of Information Act (the "FOIA Complaint"). *See Woodward v. U.S. Marshals Serv.,* No. CV 18-1249 (RC) (D.D.C.). In particular, the FOIA Complaint sought an order directing the USMS to disclose the records Mr. Woodward previously requested in the FOIA Request. *See Woodward v. United States Marshals Serv.,* 534 F. Supp. 3d 121, 124-125 (D.D.C. 2021)

In response to Mr. Woodward's FOIA Complaint, as relevant here, the USMS produced 300 pages of responsive records subject to withholdings under certain FOIA Exemptions. *Id.* On April 20, 2021, the court denied cross-motions for summary judgment and ordered the USMS to provide a further explanation for its redactions and an *in camera* review of the redacted documents produced by the USMS. *Id.* at 132. After *in camera* review, on February 1, 2022, the court ordered the USMS to submit proof that certain sealed electronic surveillance orders and applications for disclosure of telecommunications records and install-

lation of a pen register and trap and trace (i.e. pen-trap order and applications) were in fact prohibited from disclosure. *See Woodward v. U.S. Marshals Serv.,* No. CV 18-1249 (RC), 2022 WL 296171 (D.D.C. Feb. 1, 2022).

On December 27, 2022, the court ordered that, with the exception of personally identifying information of third parties and law enforcement, USMS provide an otherwise unredacted version of pen-trap orders and applications to Mr. Woodward. *See Woodward v. US. Marshals Serv.,* No. CV 18-1249 (RC), 2022 WL 17961289, at *10 (D.D.C. Dec. 27, 2022) (granting summary judgment for Mr. Woodward). On January 26, 2023, the USMS re-produced the pen-trap orders and applications, redacted only to protect personal information of third parties and law enforcement. On March 17, 2023, after Mr. Woodward's current counsel requested the USMS unredact any reference to Mr. Woodward, the USMS again re-produced the pen-trap orders and applications. Notably, as discussed below, an additional suspect's name remained redacted on a pen-trap application from the day of Officer Houts' shooting. On May 26, 2023, the USMS confirmed in writing that the redacted suspect was not Mr. Woodward. Ex. 1.

GROUNDS SUPPORTING THE PETITION FOR RELIEF

I. NEWLY-DISCOVERY EVIDENCE SUPPORTS THIS PETITION

The documents produced by the USMS during the FOIA Litigation include, *inter alia,* applications for pen-trap orders submitted by the USMS on September 28, 2006, and September 29, 2006, in connection with the investigation of suspects involved in Officer Houts'

shooting. Specifically, the USMS filed an application on September 28, 2006 ("Pen-Trap Application No. 1109"), which states in pertinent part:

> [REDACTED] Assistant U.S. Attorney for the Middle District of Alabama, hereby applies to the court for an order, pursuant to Title 18, United States Code, Section 2703(d), 3132(a), 3123 (b)(2) and 3124 (a), directing Alltel and/or any other wireless or hardline telecommunications company to provide to agents of the United States Marshals Service, the following telecommunication records and assistance pertaining to cellular/wireless phone number (334) 312-4477 and (334) 312-5758 and any other Alltel cellular telephones identified from the requested records, for the time period of August 28, 2006, to the present and extending sixty (60) days past the date of this Order:
>
> . . .
>
> In support of this application, Assistant U.S. Attorney [REDACTED] states the following:
>
> 1. Applicant is an "attorney for the government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure and, therefore, pursuant to Title 18, United States Code, Sections 2703 (d), 3123 (a), 3132 (b)(2) and 3124 (a), may apply for disclosure of telecommunications records and the installation of a pen register and trap and trace.
>
> 2. Applicant certifies that the information sough is relevant and material to a ongoing criminal investigation, to wit: that the United States Marshals Service is conducting an

> investigation to locate [REDACTED] a suspected fugitive from justice, and under investigation by the United States Marshals Service for Assault I, in violation of the Code of Alabama Section 13A-6-20; and that it is believed that the requested telecommunications records, pen register and trap and trace will assist the United States Marshals Service in the apprehension of said suspected fugitive because cellular phone number (334) 312-4477 and (334) 312-5758 are cellular phones belonging to [REDACTED]. Investigators have developed information that [REDACTED] is the regular driver of a vehicle that was used in the shooting of a Montgomery Police officer on September 28, 2006. *Investigators have reason to believe that [REDACTED] was driving the car at the time of shooting.* For that reason, it is believed that these records will assist in locating [REDACTED].
>
> . . .

Ex. 13 at 123-125 (emphasis added).

The affidavit submitted in support of Pen-Trap Application No. 1109 states, in pertinent part:

> On September 28, 2006, a Montgomery Police Officer was conducting a routine traffic stop in the area of North Decatur Street in Montgomery. Alabama. As the officer approached the car an unknown person shot the police officer approximately five times and then drove off. Video from inside the patrol car show that the car was a 2006 Chevrolet Impala with Alabama tag# [REDACTED].

> Investigators later determined that Alabama tag# [REDACTED] belongs to [REDACTED] of Lowndesboro, Alabama. Investigators located [REDACTED] at her work and [REDACTED] told investigators that [REDACTED] is the operator of the vehicle. [REDACTED] also told investigators that her [REDACTED] named Mario Woodward.
>
> Investigators with the Montgomery Police Department checked their intelligence databases and found that Woodward had given cellular number, (334) 312-5758 during a previous investigation.
>
> Investigators determined that the phone carrier for both phones is Alltel cellular. Investigators contacted Alltel concerning subscriber information for both phones and found that both phones are on the same account in the name of Mario Woodward.
>
> Based on my experience, phone records for (334) 312-4477 and (334) 312-5758 will aid in the location of [REDACTED] and Woodward.

Id. at 127.

According to the USMS, as confirmed in writing by letter dated May 26, 2023, Mr. Woodward's name is not the name redacted on Pen-Trap Application No. 1109. Ex. 1. Thus, Pen-Trap Application No. 1109 shows, around the time of the crime, it was investigators' understanding—as represented to a federal court in a sworn affidavit—that someone other than Mr. Woodward was driving the 2006 Impala at the time Officer Houts was shot. This information was never previously shared with Mr. Woodward's trial counsel, and this is the first time that Mr. Woodward

was aware law enforcement considered any other suspects.

Based on this new evidence, Mr. Woodward is entitled to relief pursuant to Rule 32.1(e) because:

> (1) The newly-discovered material facts—in particular, Pen-Trap Application No. 1109—was not known by Mr. Woodward or his counsel at the time of trial or sentencing, or in time to file a posttrial motion pursuant to Rule 24, or in time to be included in Mr. Woodward's direct appeals or Initial Rule 32 Petition, and could not have been previously discovered through the exercise of reasonable diligence;
>
> (2) Pen-Trap Application No. 1109 is not merely cumulative;
>
> (3) Pen-Trap Application No. 1109 is not merely impeachment evidence[2];
>
> (4) The newly-discovered evidence seriously undermines the credibility of law enforcement's investigation of the shooting of Officer Houts, and contradicts evidence presented by the State at trial, such that a different outcome at trial is reasonably probable; and

---

[2] While the newly-discovered Pen-Trap Application No. 1109 certainly calls into question the veracity of the State's witnesses, it is not merely impeachment evidence because it controverts the State's ultimate finding that Mr. Woodward was the driver of the 2006 Impala involved in the shooting of Officer Houts. *See Farris v. State,* 890 So. 2d 188, 192 (Ala. Crim. App. 2003) (evidence that disputes State's witnesses "observations, recollections, opinions, and conclusions" satisfies Rule 32.1(e)(3)).

> (5) The newly-discovered evidence shows that Mr. Woodward should not have been convicted of this crime or received the death penalty.

Mr. Woodward is also entitled to relief pursuant to Rule 32.1(a) because the Alabama and United States Constitutions require a new trial. As detailed below, the newly-discovered evidence, particularly Pen-Trap Application No. 1109, was suppressed by the State in violation of *Brady v. Maryland* and Mr. Woodward's due process rights. *See McMillian v. State,* 616 So. 2d 933, 946 (Ala. Crim. App. 1993) ("[T]he prosecutor's failure to disclose [material evidence] denied the appellant due process, requiring us to reverse the conviction and death sentence and to remand the case for a new trial.").

Finally, neither Rule 32.2(b) nor (c) preclude the requested relief. The partially unredacted version of Pen-Trap Application No. 1109, as clarified by the USMS, is newly-discovered evidence since the information was not available at the time of Mr. Woodward's trial and Initial Rule 32 Petition. Such information also could not have been ascertained through reasonable diligence because only now—after submitting the FOIA Request, multiple appeals to the OIP, and commencing the FOIA Litigation—was Mr. Woodward able to obtain this significant evidence.

Indeed, in the court's December 27, 2022 Memorandum and Opinion in the FOIA Litigation, the court specifically noted that the USMS originally described its initial production (which was entirely redacted) "inaccurately as merely 'fax cover sheets requesting documentation and information from third parties. in connection with a law enforcement investigation of the

Plaintiff.'" *Woodward,* 2022 WL 17961289 at *2, n. 3. The court continued:

> [B]ut for the Court's decision to conduct *in camera* review, Plaintiff and the Court likely would not have learned that this page range was in fact almost entirely made up of pen register applications, orders, and related materials. . . . The agency's 'hide the ball' approach to FOIA is not consistent with its obligations under the statute and is unacceptable. The Court is left to wonder: what other representations made in this case and, perhaps, others may be equally misleading?

Id.[3] Thus, the USMS tried to keep this significant evidence from Mr. Woodward, and would have been able to continue doing so but for the court granting Mr. Woodward relief in the FOIA Litigation. But for the FOIA Litigation. Mr. Woodward would have never been able to obtain this significant information, and there is good cause regarding why this information was not previously presented during his trial or the Initial Rule 32 Petition.

Accordingly, as explained below, failure to entertain this Petition and grant relief would result in a miscarriage of justice.

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[3] In light of the court's concerns, the USMS wrote a letter explaining that its "Freedom of Information Act staff is developing updated procedures for reviewing and processing records pertaining to electronic surveillance[.]" Ex. 14.

II. THE STATE FAILED TO DISCLOSE EXCULPATORY EVIDENCE IN VIOLATION OF *BRADY V. MARYLAND* AND MR. WOODWARD'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION, SECTIONS 6 AND 13 OF THE ALABAMA CONSTITUTION, AND ALABAMA LAW

In *Brady v. Maryland,* the United States Supreme Court held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or to punishment. irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87 (1963). When "the net effect of the evidence withheld by the State . . . raises a reasonable probability that its disclosure would have produced a different result," a defendant is entitled to a new trial. *Kyles v. Whitley,* 514 U.S. 419, 421 (1995). "In short, due process requires the prosecution to disclose material evidence, upon request by the defense, when the evidence would tend to exculpate the accused or to impeach the veracity of a critical state's witness." *McMillian,* 616 So. 2d at 942 (granting Rule 32 relief).

Here, the State failed to disclose that, on the day of the shooting of Officer Houts, it was investigators' sworn understanding that someone other than Mr. Woodward was driving the 2006 Impala at the time of the shooting. This critical fact is revealed in Pen-Trap Application No. 1109, which too was never disclosed to Mr. Woodward or his trial counsel. Given that the State's case hinged on circumstantial evidence purporting to prove beyond a reasonable doubt that Mr. Woodward was the driver, this was potent exculpatory evidence. Accordingly, the State's failure

to disclose this new evidence violated Mr. Woodward's due process rights under the Fourteenth Amendment to the United States Constitution and Sections 6 and 13 of the Alabama Constitution. Mr. Woodward is entitled to a new trial.

A. The State Failed to Disclose the New Evidence

As demonstrated above, evidence that it was investigators' sworn understanding that someone other than Mr. Woodward was the driver of the 2006 Impala at the time of the shooting, was never disclosed by prosecutors at any time, including before Mr. Woodward's trial. during his direct appeals and during the initial Rule 32 proceedings. The records provided by the State at trial did not include Pen-Trap Application No. 1109, or any other pen-trap applications filed by the USMS in connection with the investigation of Officer Houts' shooting. Rather, the State produced hundreds of pages of Montgomery Police Department investigation reports prior to Mr. Woodward's arrest—none of which reference the pen-trap applications. Attached hereto as Annex I is an index cataloging the various documents turned over by the State to Mr. Woodward's trial counsel related to the investigation and Mr. Woodward's identification as a suspect prior to his arrest. Contained within the State's production were a handful of USMS reports documenting Mr. Woodward's arrest on September 29, 2006. *See, e.g.,* Annex I at 6. In response to Mr. Woodward's pretrial motion for exculpatory evidence and investigation files, the State explained: "Judge, we have provided everything that we have from the police department, ABI, marshals, everything." T.R. 12. The State's production of USMS records did not include any pen-trap applications or even any reports from September

28, 2006, the day of the shooting. Additionally, the State's production did not include any evidence suggesting that the State considered someone other than Mr. Woodward as the driver of the vehicle from which Officer Houts was shot.

Further, Mr. Woodward's trial counsel could not have obtained the new evidence through the exercise of reasonable due diligence. Trial counsel is not "expected to know that the prosecution disclosed only some parts" of requested evidence. *Martin v. State,* 839 So. 2d 665. 677 (Ala. Crim. App. 2001) (rejecting argument that counsel should have moved to compel the suppressed evidence at the time of trial). While Mr. Woodward's *Batson* claim in the Initial Rule 32 Petition was pending before this Court, he submitted the FOIA Request to obtain records regarding law enforcement's investigation of the shooting, based on his belief that improper cell-phone tracking tactics had been utilized to determine his location on the day after the shooting. On June 9, 2016, the USMS responded (after the permissible deadline) that its "search located no records responsive" to Mr. Woodward's request. Ex. 5. Thus began Mr. Woodward's seven-year effort to obtain the investigation records sought in the FOIA Request, including through multiple appeals and, ultimately, filing through the FOIA Litigation. Only after being chastised by the District Court for the District of Columbia did the USMS turn over the new evidence, and even still, Mr. Woodward's counsel had to confirm that Mr. Woodward's name was properly unredacted from the pen-trap records. *See Woodward,* 2022 WL 17961289 at *2, n.3 ("The agency's 'hide the ball' approach to FOIA is not consistent with its obligations under the statute and is unacceptable. The Court is left to wonder: what other

representations made in this case and, perhaps, others may be equally misleading?").

To be clear, the USMS' s sworn understanding that someone other than Mr. Woodward was driving the 2006 Impala at the time of the shooting is imputed to the State prosecutor. *See McMillian,* 616 So. 2d at 946 ("The knowledge of the investigating officers . . . is imputed to the prosecutor.").

Overall, the new evidence shows that investigators had a sworn understanding that someone else was driving the 2006 Impala at the time of the shooting, as revealed through Pen-Trap Application No. 1109, and such information was never disclosed by the State despite a requirement to do so. This Petition seeks to remedy that injustice.

B. The New Evidence That Investigators' Sworn Understanding That Someone Else Was the Driver of the 2006 Impala is Exculpatory and Material

"Evidence is material if there is a reasonable probability that, if it had been disclosed to the defense, the result of the proceeding would have been different." *Martin,* 839 So. 2d at 668. Exculpatory evidence supporting a *Brady* claim is evidence that "could well have been important to the jury in passing on the guilt or innocence of the appellant." *McMillian,* 616 So. 2d at 946. The newly-discovered evidence in this case—that investigators had a sworn understanding that someone other than Mr. Woodward was driving the vehicle from which Officer Houts was shot—clearly meets the material and exculpatory standards because it calls into question the conclusions drawn by the State from the circumstantial evidence linking Mr. Woodward to the shooting of

Officer Houts, especially in light of the fact that law enforcement testified there was only one occupant in the 2006 Impala at the time of the shooting and "the driver was the shooter." T.R. 1201.

The Court of Criminal Appeals decision in *Martin v. State* is notable here. The petitioner in *Martin* was convicted of murder during a robbery. *Martin,* 839 So. 2d at 667. "The State's case was entirely circumstantial." *Id.* at 669. For instance, at trial, the State "elicited testimony that Martin had been seen in possession of a scope that had been stolen along with a rifle approximately one month before the murder." *Id.* at 669. Other evidence showed that the bullet that killed the victim was fired from a stolen rifle, but the petitioner's fingerprints were not found on the rifle and "no one testified that Martin had ever been seen with the rifle itself." *Id.* After conviction and sentencing, petitioner sought relief under Rule 32 on the grounds that, *inter alia,* the State failed to disclose fingerprint reports in violation of *Brady*. Specifically, the State did not disclose reports showing that three latent prints were recovered from the scope of the murder weapon that did not match petitioner's fingerprints. *Id.* at 677. The court noted, "[t]he only piece of demonstrative evidence linking [petitioner] to the murder was the scope attached to the rifle when it was stolen" and testimony from petitioner's former girlfriend "that she saw [petitioner] with a rifle scope a day or two before the murder." *Id.* Thus, the court held that:

> The fact that three latent prints were recovered from the scope, but that they did not match [petitioner's] or his codefendant's, was material because it weakened the connection the State attempted to make between

> [petitioner], the murder weapon. and the fatal shooting. Moreover, the evidence suggested that someone other than [petitioner] had been in possession of the scope. The evidence should have been provided to [petitioner], and the failure to do so violated *Brady* principles.

Id.

The facts in *Martin* are remarkably similar to the newly-discovered evidence in this case. First, as noted above, Mr. Woodward's conviction was founded entirely on circumstantial evidence presented by the State. Officer Houts' dashcam video, which is the only evidence of the shooting, does not clearly reveal the driver of the 2006 Impala. T.C. 1075. Thus, the State's critical focus at trial was linking Mr. Woodward to the 2006 Impala on the day of the shooting. *See* T.R. 1291-1292, 1296, 1299. No direct evidence ever showed that Mr. Woodward was the driver of the vehicle at the time of the shooting. *See* T.R. 1290-1303. The new evidence now shows, in fact, that investigators had a sworn understanding that someone else was driving the 2006 Impala when Officer Houts was shot, and the USMS submitted sworn affidavits seeking to track phone activity of a suspect other than Mr. Woodard as a result. Just as in *Martin,* this new evidence is material because, at a minimum, it weakens the link between Mr. Woodward and the vehicle from which Officer Houts was shot. *See also Hamilton v. State,* 677 So.2d 1254, 1259-61 (Ala. Crim. App. 1996) (reversible error found when undisclosed evidence weakened a significant link in the prosecution's evidence). Furthermore, the new evidence demonstrates that there was another serious suspect, and there was no evidence turned over by the State disproving the involvement of this suspect. Indeed, investigators

stated, under penalty of perjury, that they had "reason to believe" someone else was driving the 2006 Impala when Officer Houts was shot. Thus, the new evidence is exculpatory because, like *Martin,* the State's failure to disclose the evidence prevented Mr. Woodward from investigating this other suspect or arguing to the jury that someone else was responsible for Officer Houts' murder.

In sum, the State's failure to disclose evidence that it was investigators' sworn understanding that someone else was driving the car at the time of Officer Houts' shooting, especially in light of the circumstantial nature of their case, was a violation of *Brady.* Mr. Woodward is entitled to a new trial. *See Martin,* 839 So. 2d. at 678 (court "compelled to find that the prosecution's evidentiary suppression undermines the confidence in the outcome of [petitioner's] trial.")

PRAYER FOR RELIEF

For all of the above reasons, and for any additional reasons that should appear to this Court or upon amendment of this Petition or at an evidentiary hearing, Mr. Woodward respectfully requests that this Court grant him the following relief:

a. If a new trial is not granted on this Petition alone, conduct an evidentiary hearing at which proof may be offered concerning the allegations in this Petition;

b. Issue an Order vacating Mr. Woodward's conviction and sentence; and

c. Grant Mr. Woodward a new trial.

* * *

Respectfully submitted,

/s/ Rhonda R. Caviedes
Rhonda R. Caviedes (CAV008)
ASB-064C-8753
1999 Bryan Street
Suite 3500
Dallas, TX 75201
Phone: (832) 291-4566
rhonda.caviedes@gmail.com

Geoffrey G. Young
Christopher T. Vazquez
KATTEN MUCHIN ROSENMAN LLP
50 Rockefeller Plaza
New York, NY 10020-1605
Phone: (212) 940-8800
Fax: (212) 940-8776
geoffrey.young@katten.com
christopher.vazquez@katten.com

John P. Kennedy
Samantha Kennedy
REED SMITH LLP
599 Lexington Avenue
New York, NY 10022
Phone: (212) 521-5400
Fax: (212) 521-5450

Pro Bono Counsel for Petitioner Mario Woodward

ATTORNEY VERIFICATION

I, Rhonda R. Caviedes, attorney of record for Petitioner in this action. am authorized to sign for Petitioner. I swear under penalty of perjury that, upon information and belief, the foregoing is true and correct.

Executed October 18th, 2023.

SWORN and SUBSCRIBED to before me on this 18th of October, 2023.

Amy Hinson
My Commission Expired
9/30/2025
Notary ID
125448808

Amy Hinson
Notary Public

ANNEX I

Summary of State Production of Investigation Files

Date	Document Type	Short Description
9/20/2006	Montgomery Police Department ("MPD") Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	Alabama Law Enforcement Tactical System ("LETS") Report	LETS Report re Mr. Woodward labeled as "suspect."
9/28/2006	Alabama LETS Report	Photo of Mr. Woodward labeled as "suspect."
9/28/2006	MPD Report	Biographical information re Mr. Woodward.
9/28/2006	MPD Report	Prior cases for Mr. Woodward.
9/28/2006	MPD Report	BOLO report re Mr. Woodward.
9/28/2006	MPD Report	MPD Report re daily assignment sheet.
9/28/2006	MPD Report	Emergency Medical Run Report re Officer Houts.
9/28/2006	MPD Report	BOLO report re Mr. Woodward.

Date	Document Type	Short Description
9/28/2006	MPD Report	MPD Uniform Incident/ Offense Report re Officer Houts shooting.
9/28/2006	MPD Report	MPD Uniform Incident/ Offense Report re Officer Houts shooting.
9/28/2006	MPD Report	MPD Uniform Incident/ Offense Report re Officer Houts shooting and search for Mr. Woodward.
9/28/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPR Report re law enforcement report for Mario Woodward.
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
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9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/28/2006	MPD Report	MPD Affidavit and Warrant re Officer Houts shooting and Mr. Woodward's arrest.
9/28/2006	MPD Report	MPD Affidavit and Warrant re Officer Houts shooting and Mr. Woodward's arrest.
9/28/2006	MPD Report	MPD Report re Officer Houts shooting and search for Mr. Woodward.
9/28/2006	MPD Report	MPD Report re Affidavit and search warrant for presumed home of Mr. Woodward.
9/28/2006	MPD Report	MPD Report re Affidavit and search warrant for presumed home of Mr. Woodward.

Date	Document Type	Short Description
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re Miranda rights form that Mr. Woodward "refused to sign."
9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
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Date	Document Type	Short Description
9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
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9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
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9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
9/29/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/29/2006	US Marshal Service ("USMS") Report	USMS Affidavit and Warrant re Officer Houts shooting and search for Mr. Woodward.
9/30/2006	MPD Report	MPD Report re Officer Houts shooting, investigation notes and arrest of Mr. Woodward.
9/30/2006	MPD Report	MPD Report re interview of Mr. Woodward following his arrest.
9/30/2006	MPD Report	MPD Report re investigation of Officer Houts shooting and summary of evidence for trial.
9/30/2006	MPD Report	MPD Uniform Incident/ Offense Report re arrest of Mr. Woodward.

Date	Document Type	Short Description
9/30/2006	MPD Report	MPD Uniform Incident/ Offense Report re arrest of Mr. Woodward.
9/30/2006	MPD Report	MPD Uniform Incident/ Offense Report re death of Office Houts and new charges for Mr. Woodward.
9/30/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/30/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
9/30/2006	Henry County (GA) Report	Henry County (GA) Report re profile report for Mr. Woodward.
9/30/2006	MPD Report	MPD Uniform Arrest Report re Officer Houts shooting and Mr. Woodward's arrest.
9/30/2006	MPD Report	MPD Uniform Arrest Report re Officer Houts shooting and Mr. Woodward's arrest.

Date	Document Type	Short Description
9/30/2006	Henry County (GA) Report	Henry County (GA) Report re waiver of extradition for Mr. Woodward.
10/1/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/1/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/1/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/2/2006	Alabama LETS Report	LETS Report re law enforcement offices killed in 2006.
10/2/2006	MPD Report	MPD Report re death of Officer Houts and services.
10/2/2006	MPD Report	MPD Report re death of Officer Houts and services.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	Alabama Bureau of Investigation ("ABI") Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting and arrest of Mr. Woodward.
10/2/2006	MPD Report	MPD Report re investigation of Officer Houts shooting and arrest of Mr. Woodward.
10/2/2006	MPD Report	MPD Report re Officer Houts death and Mr. Woodward's arrest.
10/3/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/3/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/3/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/4/2006	USMS Report	USMS Report re arrest of Mr. Woodward.
10/4/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/4/2006	ABI Report	ABI Report re investigation of Officer Houts shooting.
10/4/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/4/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/5/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/5/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/5/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/5/2006	Henry County (GA) Report	Henry County (GA) Report re arrest of Mr. Woodward.
10/6/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/6/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/6/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/6/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/7/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/7/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10:8/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/10/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/10/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/10/2006	MPD Report	MPD Report re investigation of Officer Routs shooting.
10/10/2006	Federal Bureau Investigation ("FBI") Report	FBI Report re interview of unnamed person about Mr. Woodward's alleged background.
10/10/2006	FBI Report	FBI Report re interview of unnamed person about Mr. Woodward's alleged background.
10/11/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/11/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/11/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/12/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/12/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/12/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/12/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/12/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/15/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/15/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/16/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/16/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/16/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
10/17/2006	ABI Report	ABI Report re investigation of Officer Houts shooting.
10/18/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/19/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.

Date	Document Type	Short Description
10/21/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/24/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/26/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/26/2006	MPD Report	MPD Report re investigation of Officer Houts shooting.
10/27/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
11/2/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
11/9/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.

Date	Document Type	Short Description
11/27/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
12/12/2006	MPD Report	MPD Report re witness statement about investigation of Officer Houts shooting.
2/8/2007	MPD Report	MPD Report re investigation of Officer Houts shooting and review of Mr. Woodward's cell phone records.
2/11/2007	MPD Report	MPD Report re investigation of Officer Houts shooting and court order for additional persons' cell phone records.
4/11/2007	ABI Report	ABI Report re summary of investigation of Officer Houts shooting and Mr. Woodward's arrest.
4/11/2007	ABI Report	ABI Report re Officer Houts shooting.
4/11/2007	ABI Report	ABI Report re arrest of Mr. Woodward.

Date	Document Type	Short Description
4/11/2007	ABI Report	ABI Report re summary of investigation of Officer Houts shooting and Mr. Woodward's arrest.
4/11/2007	ABI Report	Exhibits to ABI Report re summary of investigation of Officer Houts shooting and Mr. Woodward's arrest.
4/12/2007	ABI Report	ABI Report re investigation of Officer Houts shooting.
4/12/2007	ABI Report	ABI Report re investigation of Officer Houts shooting.
4/12/2007	ABI Report	ABI Report re investigation of Officer Houts shooting, including tactical team reports.
8/9/2007	MPD Report	MPD Report re synopsis of Officer Houts shooting and investigation.

EXHIBIT 1

U.S. Department of Justice

United States Marshals Service

Office of General Counsel

CG-3, 15th Floor
Washington, DC 20530-000/

May 26, 2023

Mr. John Kennedy
Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650

Via email: jkennedy@reedsmith.com

Re: *Woodward v. USMS*. Case No. 1:18-cv-01249

Dear Mr. Kennedy.

I write in response to questions posed by your client, Mr. Mario Woodward, regarding the adequacy of the United States Marshals Service (USMS) search in response to his Freedom of Information Act (FOIA) request. Specifically, your client questioned why no returns from telecommunication companies relating to the pen trap and trace orders filed in his criminal case were provided in the FOIA production made by the USMS. Additionally, you asked whether any additional records pertaining to the pen trap and trace orders exist in USMS systems and could be released to Mr. Woodward.

The original FOIA request was filed with the USMS on or about December 28, 2015, nine (9) years after Mr. Woodward was arrested on state murder charges. Upon receipt of the request, the USMS assigned the FOIA request No. 2016-USMS-29691. The request was

sent from the USMS FOIA Unit to two separate USMS offices (the Investigative Operations Division (10D) and the District Office in the Middle District of Alabama), so that a search could be conducted.

IOD searched the Justice Detainee Information System ("JDIS") database by name to locate records pertaining to Mr. Woodward. District personnel searched hard copy, investigative files for records pertaining to your client. All responsive records that were located pursuant to both searches were processed and released to Mr. Woodward. subject to withholdings. The USMS does not have additional records to process and release to Mr. Woodward. In addition, there are no further locations for the USMS to search for records (specifically, returns from telecommunications companies) pertaining to your client.

It is not clear why the USMS does not possess any relevant documents from telecommunications companies (to the extent any were returned pursuant to legal process). I note the Agency has produced some documents from the relevant timeframe (2006) to Plaintiff in connection with the FOIA production. There is no USMS records retention schedule that applies to documents sent from telecommunications companies. However, the USMS is bound by a government-wide transitory records policy which indicates the Agency must purge certain records (such as, those containing personally identifiable information) that do not have operational value and are not needed for a business or evidentiary purpose within a 180-day time period. Because the records in this case date back to 2006, it is not possible to ascertain whether records were received from the respective telecommunications companies in that year and destroyed after receipt (because the records had no

operational value for USMS), consistent with the mandatory federal records retention schedules, and/or forwarded to external entities working with the USMS.

Additionally, your client questioned whether personally identifiable information pertaining to him (specifically, his name) remains redacted on the fifty-seven (57) pages of records reprocessed and released to him. I reviewed the withholdings on the reprocessed records and can confirm his name is not withheld. The names that continue to be withheld relate to third-parties.

I hope this information is useful to you.

Sincerely,

/s/Charlotte Luckstone

Charlotte Luckstone
Senior Associate General Counsel
FOIA/PA Officer
Office of General Counsel

EXHIBIT 2

ReedSmith LLP
599 Lexington Avenue
New York, NY 10022-7650
Tel +1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

———

Geoffrey G. Young
Direct Phone: +1 212 549 0323
Email: gyoung@reedsmith.com

———

December 28, 2015

FREEDOM OF INFORMATION ACT REQUEST

By Electronic Mail and UPS Overnight Mail

FOIA/PA Mail Referral Unit
Department of Justice
Room 115, LOC Building
Washington, D.C. 20530-00001
MRUFOIA.Requests@usdoj.gov

Nelson D. Hermilla
Chief, FOIA/PA Branch
Civil Rights Division
Department of Justice
BICN Bldg., Room 3234
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
CRT.FOIAreq_uests@usdoj.gov

William E. Bordley
Associate General Counsel
Office of General Counsel
United States Marshals Service

FOIA/PA, CS4, 10th Floor
Washington, DC 20530-1000
usms.foia@usdoj.gov

Re: FOIA Request for Information

Dear FOIA Officer:

This firm represents Mario Woodward in connection with the action styled *State of Alabama v. Woodward,* 03-CC-2007-001388.60, which is pending in the Circuit Court of the State of Alabama, -county of Montgomery ("State v. Woodward"). This request is submitted on behalf of Mr. Woodward ("Requester"), who is presently detained at the William E. Donaldson Correctional Facility.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq.* ("FOIA") and corresponding regulations, we hereby request that we be allowed immediate access to the following documents (the 'Records") or, in the alternative, that we be immediately provided with copies of such "Records:

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office.
- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal

> law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of Investigations or the U.S. Marshalls located in Alabama and Georgia.

The Records are being requested in connection with Mr. Woodward's defense of the above-referenced action. We agree to pay reasonable fees for the Record(s) and understand that we will be notified before fees are incurred only where fees apply. This request is segregable, such that if any part is denied, the remaining part of the request should be complied with.

Pursuant to FOIA, please respond in writing within 20 (twenty) business days of this letter. If you decide to withhold any record(s) or redact any information from the record(s), please state the legal basis and specific exemption for that decision.

Please contact me if I may expedite your office's satisfaction of its obligations under FOIA, or otherwise address any of your questions or concerns.

Very truly yours,

/s/Geoffrey G. Young
Geoffrey G. Young

GGY:ao

EXHIBIT 3

U.S. Department of Justice
Civil Rights Division

NDH:ANF:TAW

Freedom of Information / Privacy Acts Branch -BICN
950 Pennsylvania Ave., NW
Washington, DC 20530

DEC 31 2015

Geoffrey Young, Esq.
Reed Smith
599 Lexington Avenue
New York, NY 10022-7650

Date Received:	December 30, 2015
	FOI/PA No.16-00086-F
Subject of Request:	All records pertaining to the Department of Justice investigation of law enforcement located in the County of Montgomery, Alabama for civil rights violations from January 1, 1994 through December 28, 2015, included but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office

Dear Mr. Young:

This is to inform you that your request for records from the files of the Civil Rights Division was received by the Division's Freedom of Information/Privacy Acts (FOI/PA) Branch on the date indicated above. Your request has been assigned the FOI/PA number shown above. Please refer to this number in any future correspondence concerning this request. In connection with review of your FOI/PA request, the following paragraph(s) are applicable:

____ In searching its file for records responsive to your request, _____ located records that originated with the Civil Rights Division. These records were referred to the Civil Rights Division as the originating component for review and release determination. Upon completion of our review, the releasable document(s) will be sent directly to you.

__XX__ As a result of the large number of Freedom of Information and Privacy Acts requests received by the Civil Rights Division, some delay may be encountered in processing your request. In an attempt to treat each requester fairly, we have adopted a policy of processing requests in the approximate order of receipt. Please be assured that your request is being handled as equitably as possible. We appreciate your patience and will provide you with a response at the earliest possible date.

Please note that the Civil Rights Division utilizes multi-track processing in which processing ranges from faster tracks for requests (seeking access to documents already processed

for prior requests) to much slower tracks for complex requests involving voluminous amounts of responsive documents or extensive consultation. At your option, you may wish to call the number below and limit the scope of your request to enable your request to be handled in the most expeditious manner available to fulfill your interests.

____ Since your letter did not include authorization or a certification of identity, we will close your file for now. We will re-open your request on receipt of the required authorization forms. The Privacy Act, and the Department of Justice Privacy Act regulation, 28 C.F.R. §16.41, require each person requesting records indexed or maintained under his or her name or another person's name, to furnish the Department with proof of identity/consent to disclosure. Please complete the enclosed form and return it directly to the Freedom of Information/Privacy Acts Branch, Civil Rights Division, US Department of Justice, Washington, D.C. 20530.

Should you wish to appeal the identification/consent requirement, you may do so by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, 1425 New York Avenue, N.W. Building, Suite 11050, Washington, D.C. 20530. Your appeal must be received by OIP within sixty (60) days from the date of this letter in order to be considered timely. The envelope should be marked "FOI/PA Appeal." You may also submit your appeal via OIP's electronic portal (at http://www.justice.gov/oip/efoia-portal.html). Following review by the Department, judicial review of the decision of the Attorney General

is available in the United States District Court in the judicial district in which you reside, in which you have your principal place of business, or in the District of Columbia.

If you have any further questions, contact this office by calling (202) 514-4210.

Sincerely,

/s/Nelson D. Hermilla
Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

EXHIBIT 4

U.S. Department of Justice
Washington, D.C. 20530

January 6, 2016

Geoffrey Young
599 Lexington Avenue
New York, NY 10022

Dear Mr. Young:

This is in response to your request for records, Tracking Number, EMRUFOIA122815. Your Freedom of Information Act and/or Privacy Act (FOIA/PA) request was received by this office which serves as the receipt and referral unit for FOIA/PA requests addressed to the Department of Justice (DOJ). Federal agencies are required to respond to a FOIA request within 20 business days. This period does not begin until the request is actually received by the component within the DOJ that maintains the records sought, or ten business days after the request is received in this office. whichever is earlier.

We have referred your request to the DOJ component(s) you have designated or, based on descriptive information you have provided, to the component(s) most likely to have the records. All future inquiries concerning the status of your request should be addressed to the office(s) listed below:

FOIA/PA
Civil Rights Division
Department of Justice
BICN Building, Room 3234
Washington, DC 20530
(202) 514-4209

FOIA/PA
US Marshals Service
Department of Justice
CS 4, 10th Floor
Washington, DC 20530
(202) 307-9054

Sincerely,

Evie Sassok, Assistant Director
Logistics Management
Facilities and Administrative Services Staff
Justice Management Division

EXHIBIT 5

Young, Geoffrey G.

From: Robinson, Nancy (USMS) <Nancy.Robinson@usdoj.gov>
Sent: Thursday, June 09, 2016 11:54 AM
To: Young, Geoffrey G.
Subject: RE: FOIA Request 2016USMS29691

U.S. Department of Justice
United States Marshals Service

Office of General Counsel
C5-4, 10th Floor
Washington, DC 20530-0001

June 9, 2016

Geoffrey G. Young
ReedSmith LLP
599 Lexington Avenue, 22nd Floor
New York, NY 10022

Re: Freedom of Information Act Request No. 2016USMS29691
Subject: James Bottoms

Dear Requester:

The United States Marshals Service (USMS) is responding to your request for a copy "1. all records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the

Montgomery Police Department or the Montgomery District Attorney's Office; and 2. all records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006. by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of Investigations or the U.S. Marshalls located in Alabama and Georgia."

Pursuant to your request, the USMS conducted a search of the Investigative Operations Division. The search located no records responsive to your request.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: https://foiaonline.regulations.gov /foia/action/public/home. Your appeal must be post-marked or electronically transmitted within 60 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and

should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,

William E. Bordley
Associate General
Counsel/FOIPA Officer
Office of General Counsel

From: Young, Geoffrey G. [mailto:GYoung@ReedSmith.com]
Sent: Monday, December 28, 2015 5:40 PM
To: USMS FOIA
Subject: FOIA Request

Dear Mr. Bordley,

Please see the attached. Please do not hesitate to contact me if you have any questions.

Best regards,

Geoffrey G. Young
212.549.0323
gyoung@reedsmith.com

ReedSmith LLP
599 Lexington Avenue 22nd Floor
New York, New York 10022
212.521.5400
Fax 212.52i 5450

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

EXHIBIT 6

Geoffrey G. Young
Direct Phone. +1 212 549 0323
Email: gyoung@reedsmith.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
Tel +1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

August 9, 2016

VIA OVERNIGHT MAIL AND FOIA PORTAL

U.S. Department of Justice
ATTN: Director, Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, D.C. 20530-0001

RE: Appeal of FOIA Request No. 2016USMS29691

Dear Director:

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552 *et seq.*

On December 28, 2015, Reed Smith LLP made a FOIA request to U.S. Department of Justice — and specifically, the U.S. Marshalls Service ("USMS") on behalf of our client Mario Woodward ("Requester"), for the following records (the "Request"):

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28,

2015, including but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office.

- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of Investigations or the U.S. Marshalls located in Alabama and Georgia.

On June 9, 2016, the USMS denied the Request on the grounds that the "search located no records responsive" to my request (the "Denial Letter"). Copies of the Request and the Denial Letter are enclosed.

The USMS must conduct a reasonable search for documents responsive to FOIA requests with methods that that are reasonably expected to produce all existing documents. *See* 5 U.S.C. § 552(a)(3)(C); *Zemansky v. United States EPA,* 767 F.2d 569, 571 (9th Cir. 1985). Furthermore, the USMS is required to construe FOIA requests liberally. *Truitt v. Dept of State,* 897 F.2d 540, 544-45 (D.C. Cir. 1990). USMS is required to make more than a "perfunctory search" and must follow obvious leads to discover requested documents. *Valencia-Lucana v. U.S. Coast Guard,* 180 F.3d 321, 325 (D.C. Cir. 1999). Importantly, it is the agency responding to the FOIA request that has the burden to demonstrate the adequacy of a search. *See Steinberg v. Dept. of Justice,* 23 F.3d 548, 551 (D.C. Cir. 1994).

We are appealing the Denial Letter because the USMS' representation that it has "no records" responsive to the Request appears to overlook the possibility of responsive records because the search was limited to the Investigative Operations Division. *See* Denial Letter ("Pursuant to your request, the USMS conducted a search of the Investigative Operations Division. The search located no records responsive to your request.") Thus, the USMS did not search for documents responsive to the Request in any other database or other repository within the USMS' possession, custody and control — including records with the Office of Internal Communications (OIC), Office of General Counsel (OGC), Tactical Operations Division (TOD), Special Operations Group (SOG) or Prisoner Operations Division (POD). Most glaringly, the Denial Letter does not indicate whether the USMS' search included a search for records possessed by the Alabama and Georgia Districts — which were specifically identified in the Request. Indeed, based upon publicly-available resources, the federal government has used "sting-ray" technology in Georgia, and we have a good-faith basis to believe that an adequate search will reveal the use of such technology as contemplated by the Request.

We trust that the USMS will seriously consider this appeal, and conduct an adequate search of all available document repositories and databases.

Because we have made this request as counsel on behalf of Mr. Woodward in connection with the action styled *State of Alabama v. Woodward,* 03-CC-2007-001388.60, which remains pending in Alabama state court system, Mr. Woodward is currently detained at the William E. Donaldson Correctional Facility, time

is of the essence. We would appreciate the USMS expediting its consideration of this appeal in every way possible. In any case, we will expect to receive a decision within twenty (20) business days, as required by law.

Thank you for your assistance.

Respectfully submitted,

/s/ Geoffrey G. Young
Geoffrey G. Young

GGY:ao

Geoffrey G. Young
Direct Phone. +1 212 549 0323
Email: gyoung@reedsmith.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
Tel +1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

December 28, 2015

FREEDOM OF INFORMATION ACT REQUEST

By Electronic Mail and UPS Overnight Mail

FOIA/PA Mail Referral Unit
Department of Justice
Room 115, LOC Building
Washington, D.C. 20530-00001
MRUFOIA.Requests@usdoj.gov

Nelson D. Hermilla
Chief, FOIA/PA Branch
Civil Rights Division
Department of Justice
BICN Bldg., Room 3234
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
CRT.FOIArequests@usdoj.gov

William E. Bordley
Associate General Counsel
Office of General Counsel
United States Marshals Service
FOIA/PA, CS4, 10th Floor
Washington, DC 20530-1000
usms.foia@usdoj.gov

Re: FOIA Request for Information

Dear FOIA Officer:

This firm represents Mario Woodward in connection with the action styled *State of Alabama v. Woodward,* 03-CC-2007-001388.60, which is pending in the Circuit Court of the State of Alabama, County of Montgomery ("State v. Woodward"). This request is submitted on behalf of Mr. Woodward ("Requester"), who is presently detained at the William E. Donaldson Correctional Facility.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*. ("FOIA") and corresponding regulations, we hereby request that we be allowed immediate access to the following documents (the "Records") or, in the alternative, that we be immediately provided with copies of such Records:

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office.
- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau

of Investigations or the U.S. Marshalls located in Alabama and Georgia.

The Records are being requested in connection with Mr. Woodward's defense of the above-referenced action. We agree to pay reasonable fees for the Record(s) and understand that we will be notified before fees are incurred only where fees apply. This request is segregable, such that if any part is denied, the remaining part of the request should be complied with.

Pursuant to FOIA, please respond in writing within 20 (twenty) business days of this letter. If you decide to withhold any record(s) or redact any information from the record(s), please state the legal basis and specific exemption for that decision.

Please contact me if I may expedite your office's satisfaction of its obligations under FOIA, or otherwise address any of your questions or concerns.

Very truly yours,

/s/Geoffrey G. Young
Geoffrey G. Young

GGY:ao

Young, Geoffrey G.

From: Robinson, Nancy (USMS) <Nancy.Robinson@usdoj.gov>
Sent: Thursday, June 09, 2016 11:54 AM
To: Young, Geoffrey G.
Subject: RE: FOIA Request 2016USMS29691

U.S. Department of Justice
United States Marshals Service
Office of General Counsel
C5-4, 10th Floor
Washington, DC 20530-0001

June 9, 2016

Geoffrey G. Young
ReedSmith LLP
599 Lexington Avenue, 22nd Floor
New York, NY 10022

Re: Freedom of Information Act Request No. 2016USMS29691
Subject: James Bottoms

Dear Requester:

The United States Marshals Service (USMS) is responding to your request for a copy "1. all records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015. including but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office; and 2. all records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal

law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of Investigations or the U.S. Marshalls located in Alabama and Georgia."

Pursuant to your request, the USMS conducted a search of the Investigative Operations Division. The search located no records responsive to your request.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIA online portal by creating an account on the following web site: https://foiaonline.regulations.gov /foia/action/public/home. Your appeal must be post marked or electronically transmitted within 60 days of the date of my response to your request. If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c) (2006 & Supp. IV (2010)). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

Sincerely,
William E. Bordley
Associate General Counsel/FOIPA Officer
Office of General Counsel

From: Young, Geoffrey G. [mailto: GYoung@ReedSmith.com]

Sent: Monday, December 28, 2015 5:40 PM

To: USMS FOIA

Subject: FOIA Request

Dear Mr. Bordley,

Please see the attached. Please do not hesitate to contact me if you have any questions.

Best regards,

Geoffrey G. Young
212.549.0323
gyoung@reedsmith.com

ReedSmith LLP
599 Lexington Avenue 22nd Floor
New York. New York 10022
212.521.5400
Fax 212.521.5450

* * *

This E-mail, along with any attachments, is considered confidential and may well be legally privileged. If you have received it in error, you are on notice of its status. Please notify us immediately by reply e-mail and then delete this message from your system. Please do not copy it or use it for any purposes, or disclose its contents to any other person. Thank you for your cooperation.

EXHIBIT 7

U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001
Telephone: (202) 514

Geoffrey Young, Esq.
Reed Smith LLP
599 Lexington Avenue
New York, NY 10023
pgourdine@reedsmith.com

Re: Appeal No. DOJ-AP-2016-004679
Request No. 2016USMS29691
SRO:RNB

VIA: FOIAonline

Dear Mr. Young:

You appealed on behalf of your client, Mario Woodward, from the action of the United States Marshals Service (USMS) on his Freedom of Information Act request for access to records concerning DOJ investigations of law enforcement in Montgomery, AL, for civil rights violations and the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts.

After carefully considering your appeal, I am affirming USMS's action on your client's request. USMS informed you that it could locate no responsive records subject to the FOIA in its files. USMS conducted a search of the Investigative Operations Division, Technical Operations Group, which included a search of the Georgia and Alabama districts. I have determined that USMS's action was correct

and that it conducted an adequate, reasonable search for such records. I note that the records you seek concerning civil rights investigations are most likely to be maintained by the Civil Rights Division of the Department, which also received a copy of your request.

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your client's underlying request, and the action of USMS in response to your client's request. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If your client is dissatisfied with my action on your appeal, the FOIA permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; e-mail at ogis@nara.gov; telephone at 202-7415770; toll free at 1-877-684-6448: or facsimile at 202-741-5769.

Sincerely,

8/23/2016
/s/Sean R. O'Neill
Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: SEAN O'NEILL

EXHIBIT 8

U.S. Department of Justice
Civil Rights Division

NDH:ANF:AKL
16-00086-F

Freedom of Information/Privacy Acts Branch - BICN
950 Pennsylvania Ave., NW
Washington, DC 20530

Mr. Geoffrey Young
599 Lexington Avenue
New York, NY 10022-7650

MAY 15 2017

Dear Mr. Young:

This is in further response to your December 28, 2015 Freedom of Information Act request, received by the Civil Rights Division, seeking access to records on "all record pertaining to the Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through December 28, 2015, included but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office." You also request information pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office Keith Houts.

After review of the responsive Civil Rights Division documents for information pertaining to investigations of law enforcement, I have determined that access to the documents should be denied pursuant to 5 U.S.C. §552(b)(5) since the records constitute predecisional deliberative material and attorney work

product and pursuant to 5 U.S.C. §552(b)(7)(E) since the records consist of sensitive investigative techniques which, if released, could reasonably be expected to risk circumvention of the law.

In addition, after a thorough search, have determined that the Civil Rights Division has no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office Keith Houts.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonlinesegulations.gov /foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request If you submit your appeal by mail, both the letter and the envelope should be clearly. marked "Freedom of Information Act Appeal."

Sincerely,

/s/ Nelson D. Hermilla

Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

EXHIBIT 9

Geoffrey G. Young
Direct Phone. +1 212 549 0323
Email: gyoung@reedsmith.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
Tel +1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

August 10, 2017

VIA OVERNIGHT MAIL AND FOIA PORTAL

Director, Office of Information Policy
U.S. Department of Justice
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001

RE: Freedom of Information Act Appeal concerning "FOI/PA No. 16-00086-F"

Dear Director,

This is an appeal under the Freedom of Information Act, 5 U.S.C. § 552 *et seq* ("FOIA").

On December 28, 2015, Reed Smith LLP made a FOIA request to the U.S. Department of Justice — and specifically, the Civil Rights Division — on behalf of our client Mario Woodward ("Requester"), for the following records (the "Request"):

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforce-

ment located in the County of Montgomery. Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the Montgomery Police Department of the Montgomery District Attorney's Office.

- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of investigations or the U.S. Marshals located in Alabama and Georgia.

The Civil Rights Division acknowledged receipt of this request by letter dated December 31, 2015, which letter also stated the above-referenced FOI/PA number and advised that some delay might be encountered in processing the Request.

On May 15, 2017 — nearly one year and half after the Request — the Civil Rights Division wrote to deny the Request (the "Denial Letter"), on the grounds that any responsive records would be exempt from FOIA' s disclosure obligations. Specifically, the request for records relating to investigations of law enforcement in Montgomery, Alabama was denied on the basis of 5 U.S.C. § 552(b)(5) as such documents "constitute predecisional deliberative material and attorney work product," as well as 5 U.S.C. § 552(b)(7)(E), as "the records consist of sensitive

investigative techniques which, if released, could reasonably be expected to risk circumvention of the law." The Civil Rights Division further stated that it possesses no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts. Copies of the Request and the Civil Rights Division's Denial Letter are enclosed herein.

The Civil Rights Division, when in receipt of a request for documents pursuant to FOIA, is obligated to conduct a search reasonably calculated to uncover all responsive documents. *See 5* U.S.C. § 552(a)(3)(C); *Weisberg v. US. Dep't of Justice,* 705 F.2d 1344, 1351 (D.C. Cir. 1983). The Civil Rights Division is required to make more than a "perfunctory search" and must follow obvious leads to discover requested documents. *Valencia-Lucana v. U.S. Coast Guard,* 180 F.3d 321, 325 (D.C. Cir. 1999). Importantly, the agency responding to the FOIA request bears the burden of demonstrating that it conducted an adequate search, as well as the applicability of any statutory exemption invoked as a basis for denying production of responsive documents. *See Roth v. U.S. Dep't of Justice,* 642 F.3d 1161, 1167 (D.C. Cir. 2011); *Steinberg v. U.S. Dep't of Justice,* 23 F.3d 548, 551 (D.C. Cir. 1994).

We appeal the Civil Rights Division's determination as expressed in the Denial Letter for three reasons:

- First, the Civil Rights Division's refusal to produce any documents whatsoever that relate in any way to investigations of law enforcement in Montgomery County, Alabama for civil rights violations appears to be an overbroad blanket denial. The necessary implication of the Denial

Letter's refusal to produce any documents is that the Civil Rights Division has concluded that *all* records within the scope of the Request, i.e. all records "in any way relating to, pertaining to, or mentioning" such investigations *over a period of 21 years,* are statutorily exempt as either attorney work product or law enforcement records which could reasonably be expected to risk circumvention of the law. This is a generic and extremely broad refusal, and the Denial Letter provides no explanation for its extraordinarily-broad scope.

- Second, if any portions of the requested documents are withheld on the basis of privilege or an exemption, the Civil Rights Division should describe the withheld material in detail and specify the statutory basis for the denial as well as the reasons for believing that the alleged statutory justification applies in this instance. *Vaughn v. Rosen,* 484 F.2d 820 (D.C. Cir. 1973), *cert. denied,* 415 U.S. 977 (1974).

- Finally, the Civil Rights Division represents that it has "no records pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office [sic] Keith Houts" after "thorough search," without specifying the nature or category of documents searched or clarifying that the documents searched included those named in the Request. Based on publicly-available resources, the federal government and local law enforcement entities have used

> "stingray" technology in Georgia, and we have a good-faith basis to believe that an adequate search will reveal the use of such technology as contemplated by the Request.

Accordingly, consistent with the Requester's statutory rights under FOIA, we hereby appeal the denial of the Request on his behalf. We trust that the Office of Information Policy will seriously consider this appeal, and conduct an adequate search of all available document repositories and databases.

Because we have made this request as counsel on behalf of the Requester, Mr. Woodward, in connection with the action styled *State of Alabama v. Woodward,* 03-CC-2007-001388.60, which remains pending in the Alabama state court system as Mr. Woodward remains detained at the William E. Donaldson Correctional Facility on death row, time is of the essence. We would therefore appreciate the OIP expediting its consideration of this appeal in every way possible. In any case, we will expect to receive a decision regarding this appeal within twenty (20) business days. as required by 5 U.S.C. § 552(a)(6)(A)(ii).

Thank you for your assistance.

Respectfully submitted,

/s/ Geoffrey G. Young
Geoffrey G. Young

GGY:ao

Enclosures

Geoffrey G. Young
Direct Phone. +1 212 549 0323
Email: gyoung@reedsmith.com

Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650
Tel +1 212 521 5400
Fax +1 212 521 5450
reedsmith.com

December 28, 2015

FREEDOM OF INFORMATION ACT REQUEST

By Electronic Mail and UPS Overnight Mail

FOIA/PA Mail Referral Unit
Department of Justice
Room 115, LOC Building
Washington, D.C. 20530-00001
MRUFOIA.Requests@usdoj.gov

Nelson D. Hermilla
Chief, FOIA/PA Branch
Civil Rights Division
Department of Justice
BICN Bldg., Room 3234
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
CRT.FOIArequests@usdoj.gov

William E. Bordley
Associate General Counsel
Office of General Counsel
United States Marshals Service
FOIA/PA, CS4, 10th Floor
Washington, DC 20530-1000
usms.foia@usdoj.gov

Re: FOIA Request for Information

Dear FOIA Officer:

This firm represents Mario Woodward in connection with the action styled *State of Alabama v. Woodward,* 03-CC-2007-001388.60, which is pending in the Circuit Court of the State of Alabama, County of Montgomery ("State v. Woodward"). This request is submitted on behalf of Mr. Woodward ("Requester"), who is presently detained at the William E. Donaldson Correctional Facility.

Pursuant to the Freedom of Information Act, 5 U.S.C. § 552 *et seq*. ("FOIA") and corresponding regulations, we hereby request that we be allowed immediate access to the following documents (the "Records") or, in the alternative, that we be immediately provided with copies of such Records:

- All records in any way relating to, pertaining to, or mentioning Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through today, December 28, 2015, including but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office.
- All records in any way relating to, pertaining to, or mentioning the use of any cell phone tracking technology during the investigation of the shooting death of Officer Keith Houts on September 28, 2006, by state and/or federal law enforcement located in the State of Alabama and/or the State of Georgia, including but

> not limited to the use of any GPS or "stingray" technology by the Alabama Bureau of Investigations or the U.S. Marshalls located in Alabama and Georgia.

The Records are being requested in connection with Mr. Woodward's defense of the above-referenced action. We agree to pay reasonable fees for the Record(s) and understand that we will be notified before fees are incurred only where fees apply. This request is segregable, such that if any part is denied, the remaining part of the request should be complied with.

Pursuant to FOIA, please respond in writing within 20 (twenty) business days of this letter. If you decide to withhold any record(s) or redact any information from the record(s), please state the legal basis and specific exemption for that decision.

Please contact me if I may expedite your office's satisfaction of its obligations under FOIA, or otherwise address any of your questions or concerns.

Very truly yours,

/s/Geoffrey G. Young
Geoffrey G. Young

GGY:ao

U.S. Department of Justice
Civil Rights Division

NDH:ANF:AKL
16-00086-F

Freedom of Information/Privacy Acts Branch - BICN
950 Pennsylvania Ave„ NW
Washington, DC 20530

Mr. Geoffrey Young
599 Lexington Avenue
New York, NY 10022-7650

MAY 15 2017

Dear Mr. Young:

This is in further response to your December 28, 2015 Freedom of Information Act request, received by the Civil Rights Division, seeking access to records on "all record pertaining to the Department of Justice investigations of law enforcement located in the County of Montgomery, Alabama for civil rights violations during the time period of January 1, 1994 through December 28, 2015, included but not limited to investigations of the Montgomery Police Department or the Montgomery District Attorney's Office." You also request information pertaining to the use of any cell phone tracking technology during the investigation of the shooting death of Office Keith Houts.

After review of the responsive Civil Rights Division documents for information pertaining to investigations of law enforcement, I have determined that access to the documents should be denied pursuant to 5 U.S.C. §552(b)(5) since the records constitute predecisional deliberative material and attorney work product and pursuant to 5 U.S.C. §552(b)(7)(E)

since the records consist of sensitive investigative techniques which, if released, could reasonably be expected to risk circumvention of the law.

In addition, after a thorough search, I have determined that the Civil Rights Division has no records pertaining to the use of any bell phone tracking technology during the investigation of the shooting death of Office Keith Houts.

If you are not satisfied with my response to this request, you may administratively appeal by writing to the Director, Office of Information Policy (OIP), United States Department of Justice, Suite 11050, 1425 New York Avenue, NW, Washington, DC 20530-0001, or you may submit an appeal through OIP's FOIAonline portal by creating an account on the following web site: https://foiaonline.regulations.gov /foia/action/public/home. Your appeal must be postmarked or electronically transmitted within 90 days of the date of my response to your request: If you submit your appeal by mail, both the letter and the envelope should be clearly marked "Freedom of Information Act Appeal."

/s/ Nelson D. Hermilla
Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

EXHIBIT 10

1425 New York Avenue N.W.
Suite 11050
Washington, DC 20005

Geoffrey G. Young
Reed Smith LLP
599 Lexington Avenue
New York, NY 10022-7650

August 11, 2017

Dear Geoffrey G. Young,

This is to advise you that your administrative appeal from the action of the Civil Rights Division regarding Request No. 16-00086-F was received by this Office on 08/11/2017.

The Office of Information Policy has the responsibility of adjudicating such appeals. In an attempt to afford each appellant equal and impartial treatment, we have adopted a general practice of assigning appeals in the approximate order of receipt. Your appeal has been assigned number DOJ-AP-2017-006021. Please mention this number in any future correspondence to this Office regarding this matter. Please note that if you provide an e-mail address or another electronic means of communication with your request or appeal, this Office may respond to your appeal electronically even if you submitted your appeal to this Office via regular U.S. Mail.

We will notify you of the decision on your appeal as soon as we can. If you have any questions about the status of your appeal, you may contact me at (202) 514-3642. If you have submitted your appeal through FOIAonline, you may also obtain an update on the status of your appeal by logging into your account.

Sincerely,

PRISCILLA JONES

Digitally signed by PRISCILLA JONES
Date: 2017.08.11 11:21:51 -04'00'

Priscilla Jones

Supervisory Administrative Specialist

EXHIBIT 11

U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue. NW
Washington, DC 20530-0001
Telephone: (202) 514-3642

Geoffrey G. Young, Esq.
Reed Smith. LLP
599 Lexington Avenue
New York, NY 10022-7650
gyoung@reedsmith.com

Re: Appeal No. DOJ-AP-2017-006021
Request No. 16-00086-F
SRO:MTC

VIA: Email

Dear Mr. Young:

This is to advise you that your administrative appeal made on behalf of your client, Mario Woodward, from the action of the Civil Rights Division was received in this Office on August 11, 2017. Your appeal has been assigned number DOJ-AP-2017-006021. Please mention this number in any future correspondence with this Office regarding this appeal.

After carefully considering your request, and based on the information you presented, I believe that expedited processing of your appeal is warranted. Accordingly, your appeal will be administratively adjudicated as quickly as practicable.

If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal.

Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

Sincerely,

8/14/2017
/s/Sean R. O'Neill
Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: OIP

EXHIBIT 12

U.S. Department of Justice
Office of Information Policy
Suite 11050
1425 New York Avenue, NW
Washington, DC 20530-0001
Telephone: (202) 514-3642

Geoffrey G. Young, Esq.
Reed Smith. LLP
599 Lexington Avenue
New York, NY 10022-7650
gyoung@reedsmith.com

Re: Appeal No. DOJ-AP-2017-006021
Request No. 16-00086-F
ADF:MTC

VIA: Email

Dear Mr. Young:

You appealed on behalf of your client, Mario Woodward, from the action of the Civil Rights Division of the United States Department of Justice on your client's Freedom of Information Act request for access to records concerning any investigations into Montgomery, Alabama law enforcement, as well as the use of cell phone technology in the investigation into the shooting death of Officer Keith Houts.

After carefully considering your appeal, I am affirming the Civil Rights Division's action on your client's request. The FOIA provides for disclosure of many agency records. At the same time, Congress included in the FOIA nine exemptions from disclosure that provide protection for important interests

such as personal privacy, privileged communications, and certain law enforcement activities. The Civil Rights Division properly withheld this information in full[1] because it is protected from disclosure under the FOIA pursuant to:

> 5 U.S.C. § 552(b)(5), which concerns certain inter- and intra-agency records protected by the deliberative process privilege and the attorney work-product privilege; and
>
> 5 U.S.C. § 552(b)(7)(E), which concerns records or information compiled for law enforcement purposes the release of which would disclose techniques and procedures or guidelines for law enforcement investigations or prosecutions.

Please be advised that for each of these exemptions, it is reasonably foreseeable that disclosure of the information withheld would harm the interests protected by these exemptions.

As to your appeal concerning the adequacy of the Civil Rights Division's search for responsive records subject to the FOIA, I have determined that the Civil Rights Division's response was correct and that it conducted an adequate, reasonable search for such records.[2]

Furthermore, I am denying your request that we itemize and justify each item of the information withheld. Your client is not entitled to such a listing at the administrative stage of processing FOIA

---

[1] The Civil Rights Division withheld sixty-three pages in full.

[2] The Civil Rights Division properly informed you that it could locate no records concerning the use of cell phone technology during an investigation of the shooting death of Officer Houts.

requests and appeals. *See, e.g., Citizens for Responsibility & Ethics in Wash. v. FEC*, 711 F.3d 180, 187 n.5 (D.C. Cir. 2013).

Please be advised that this Office's decision was made only after a full review of this matter. Your appeal was assigned to an attorney with this Office who thoroughly reviewed and analyzed your appeal, your client's underlying request, and the action of the Civil Rights Division in response to your client's request. If you have any questions regarding the action this Office has taken on your appeal, you may contact this Office's FOIA Public Liaison for your appeal. Specifically, you may speak with the undersigned agency official by calling (202) 514-3642.

If your client is dissatisfied with my action on your appeal, the FOIA permits him to file a lawsuit in federal district court in accordance with 5 U.S.C. § 552(a)(4)(B).

For your information, the Office of Government Information Services (OGIS) offers mediation services to resolve disputes between FOIA requesters and Federal agencies as a nonexclusive alternative to litigation. Using OGIS services does not affect your client's right to pursue litigation. The contact information for OGIS is as follows: Office of Government Information Services, National Archives and Records Administration, Room 2510, 8601 Adelphi Road, College Park, Maryland 20740-6001; email at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. You may also seek to resolve your dispute by contacting our FOIA Public Liaison at the telephone number listed above.

Sincerely,

9/29/2017

/s/Sean R. O'Neill
Sean R. O'Neill
Chief, Administrative Appeals Staff
Signed by: OIP

EXHIBIT 13

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA

CRIMINAL MISC:
NO: 1109 (UNDER SEAL)

IN THE MATTER OF THE APPLICATION OF THE UNITED STATES FOR AN ORDER FOR DISCLOSURE OF TELECOMMUNICATIONS RECORDS AND INSTALLATION OF A PEN REGISTER AND TRAP AND TRACE

APPLICATION

[Redacted] Assistant U.S. Attorney for the Middle District of Alabama, hereby applies to the court for an order, pursuant to Title 18, United States Code, Section 2703 (d), 3123 (a), 3123 (b)(2) and 3124 (a), directing Alltel and/or any other wireless or hardline telecommunications company to provide to agents of the United States Marshals Service, the following telecommunication records and assistance pertaining to cellular/wireless phone number (334) 312-4477 and (334) 312-5758 and any other Mel cellular telephones identified from the requested records, for the time period of August 28, 2006 to the present and extending sixty (60) days past the date of this Order:

1. Cell site activations and CDR Cell Site report;
2. Numbers dialed;
3. Incoming numbers if identified;

4. Call durations;

5. Subscriber, ESN (Electronic serial number) / MIN / IMSI / IMEI and billing information for the specified cellular / wireless telephone;

6. Subscriber, ESN / MIN / IMSI / IMEI and billing information for any other cellular / wireless telephones on this account or that may be identified from these records;

7. The physical address/location of all cellular towers in the specified market;

8. That the telecommunications providers for these cellular/wireless numbers provide twenty-four hour a day switch based engineering and technical assistance; this is to include any assistance or access necessary to facilitate the installation of a pen register and or trap and trace device to include switch based solutions. (UPON BEQUEST)

9. Specific location information;

10. Records and assistance requested in this order shall be provided to any agent of the United States Marshals Service upon request;

11. It is further ordered that all call detail records be provided in an electronic format specified by any agent of the United States Marshals Service;

12. It is further ordered that this order shall cover and be applied to any cellular/wireless MIN / ESN / IMSI / 1MEI that the subscribers of the phones covered by this order may change service to for the duration of this order;

13. It is further ordered that Alltel, and their resellers not terminate or restrict service to any cellular / wireless telephone covered by this order, for the duration of this order;

It is further requested pursuant to Title 18, United States Code, Section 2703 (d), that Alltel and/or any other wireless or hardline telecommunication company be ordered to provide the United States Marshals Service with subscriber information, including the names, addresses, credit and billing information of the subscribers, published and non-published, for the telephone numbers dialing or being dialed from the cellular/wireless phone number (334) 312-4477 and (334) 312-5758 and any other Alltel cellular telephones identified from the requested records, for the period of August 28, 2006 to the present and extending sixty (60) days past the date of this Order.

In support of this application, Assistant U.S. Attorney [Redacted] states the following:

1. Applicant is an "attorney for the government" as defined in Rule 54(c) of the Federal Rules of Criminal Procedure and, therefore, pursuant to Title 18, United States Code, Sections 2703 (d), 3123 (a), 3123 (b)(2) and 3124 (a), may apply for disclosure of telecommunications records and the installation of a pen register and trap and trace.

2. Applicant certifies that the information sought is relevant and material to a ongoing criminal investigation, to wit: that the United States Marshals Service is conducting an investigation to locate [Redacted] suspected fugitive from justice, and under investigation by the United States Marshals Service for Assault I, in violation of the Code of Alabama Section 13A-6-20; and that it is believed that the

requested telecommunications records, pen register and trap and trace will assist the United States Marshals Service in the apprehension of said suspected fugitive because cellular phone number (334) 312-4477 and (334) 312-5758 are cellular phones belonging to [Redacted] Investigators have developed information that [Redacted] is the regular driver of a vehicle that was used in the shooting of a Montgomery Police officer on September 28, 2006. Investigators have reason to believe that [Redacted] was driving the car at the time of shooting. For that reason it is believed that these records will assist in locating [Redacted]

3. Applicant requests that the Court issue an order pursuant to Title 18, United States Code, Sections 2703 (d), 3123 (a), 3123 (b)(2) and 3124 (a) Title 18, United States Code, Section 2703 (d) directing Alltel, to provide the requested records and assistance to agents of the United States Marshals Service.

4. Applicant further requests that this application and order be sealed by the Court until such time as the Court directs otherwise, since disclosure at this time would seriously jeopardize the investigation; and that the Court Order direct Alltel and any other telecommunications related carrier its agents and employees, not to disclose the existence of this order or of this investigation to the subscriber, or to any other person unless otherwise directed by the Court.

WHEREFORE, it is respectfully requested that the Court grant an order (1) directing Alltel, to furnish the requested records and technical assistance, and (2) sealing this application and order.

Respectfully submitted,

LEURA G ARRETT CANARY.
UNITED STATES ATTORNEY
[REDACTED]
ASSISTANT UNITED STATES ATTORNEY

AFFIDAVIT

I, the undersigned affiant state that the following information is true and correct to the best of my knowledge. I am a Deputy United States Marshal assigned to the Montgomery, Alabama office. I have been a criminal investigator with the United States Marshals Service for nineteen years. During that time I have conducted numerous fugitive investigations involving the tracking of cellular phones.

On September 28, 2006, a Montgomery Police Officer was conducting a routine traffic stop in the area of North Decatur Street in Montgomery, Alabama. As the officer approached the car an unknown person shot the police officer approximately five times and then drove off. Video from inside the patrol car show that the car was a 2006 Chevrolet Impala with Alabama tag# [Redacted] tag# [Redacted] Investigators later determined that Alabama tag# [Redacted] belongs to[Redacted] of Lowndesboro, Alabama. Investigators located [Redacted] at her work and [Redacted] told investigators that [Redacted] is the operator of the vehicle. [Redacted] also gave investigators her [Redacted] cellular phone number, (334) 312-4477. [Redacted] also told investigators that her [Redacted] Named Mario Woodward.

Investigators with the Montgomery Police Department checked their intelligence databases and found that Woodward had given cellular number, (334) 312-5758 during a previous investigation.

Investigators determined that the phone carrier for both phones is Alltel cellular. Investigators contacted Alltel concerning subscriber information for both phones and found that both phones are on the same account in the name of Mario Woodward.

Based on my experience, phone records for (334) 312-4477 and (334) 312-5758 will aid in the location of [Redacted] and Woodward.

/s/ Illegible
U.S. Magistrate Judge

9/28/06
Date

/s/[Redacted]
Deputy U.S. Marshal

9/28/06
Date

EXHIBIT 14

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 18-1249 (RC)

MARIO DION WOODWARD,

Plaintiff,

v.

UNITED STATES MARSHALS SERVICE,

Defendant.

DEFENDANT'S NOTICE OF COMPLIANCE

Defendant the United States Marshals Service (the "Marshals Service") respectfully informs the Court that it has made all disclosures required by the Court's December 27, 2022, Memorandum Opinion and Order, ECF Nos. 61, 62. Plaintiff agrees, and the parties are in the process of negotiating a stipulation of dismissal, to be filed shortly.

The Marshals Service further respectfully advises the Court that due to the concerns expressed in the Court's Opinion, the agency's Freedom of Information Act staff is developing updated procedures for reviewing and processing records pertaining to electronic surveillance, and for addressing records pertaining to electronic surveillance in litigation.

* * *

Dated: August 9. 2023

Respectfully submitted,

MATTHEW M. GRAVES, D.C. Bar #481052
United States Attorney

BRIAN P. HUDAK
Chief, Civil Division
By: */s/ Marsha W. Yee*
MARSHA W. YEE
Assistant United States Attorney
601 D Street, N.W.
Washington, D.C. 20530
Telephone: (202) 252-2539
Email: Marsha.Yee@usdoj.gov

Counsel for the United States of America