No. 23-6661

IN THE

Supreme Court of the United States

JUSTIN GRANIER,

Petitioner,

v.

TIM HOOPER, WARDEN,

Respondent.

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

REPLY BRIEF IN SUPPORT OF CERTIORARI

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INTRODUCTION

Petitioner Justin Granier is serving a life sentence without the possibility of parole for the murder of Luke Villar outside Delaune's Supermarket. Petitioner has always maintained that he did not shoot Villar. Sam Mobley worked at Delaune's shortly before the murder, and Mr. Mobley was one of the initial suspects police investigated for the murder. Mr. Mobley's mother, Gladys Mobley, sat on the jury that convicted petitioner.

Given that obviously problematic connection between a juror and a potential suspect, petitioner's federal habeas petition included a claim of implied juror bias. A claim of *actual* juror bias presents a question of fact as to whether a juror had "a state of mind that leads to an inference that the person will not act with entire impartiality." *Fields* v. *Brown*, 503 F.3d 755, 767 (9th Cir. 2007) (en banc) (citation omitted). *Implied* bias, by contrast, is a "bias conclusively presumed as [a] matter of law," *United States* v. *Wood*, 299 U.S. 123, 133-134 (1936), because a juror's connection to the case is such that she should be automatically disqualified, see *Crawford* v. *United States*, 212 U.S. 183, 196 (1909). In the decision below, the Fifth Circuit held that petitioner's implied-bias claim failed on two grounds. First, the court held that the doctrine of implied bias is not clearly established in this Court's precedent. Second, the court held that petitioner's claim necessarily failed because he had not shown any dishonesty during *voir dire* under the test laid out in *McDonough Power Equipment, Inc.* v. *Greenwood*, 464 U.S. 548 (1984). Pet.App.4-5.

Both holdings depart from the law in other circuits. As to the first, the Fourth Circuit holds that this Court's precedent clearly establishes the implied-bias

doctrine; the Ninth Circuit, like the Fifth Circuit below, disagrees. And as to the second, although the Fifth Circuit held that petitioner could establish bias only by meeting the test laid out in *McDonough*, at least six other circuits recognize that *McDonough* is *a* way, but not the exclusive way, to show juror bias. The Court should grant certiorari to resolve those conflicts.

ARGUMENT

I. The decision below conflicts with decisions of other circuits on two issues.

The Fifth Circuit's decision exacerbated one circuit split regarding juror-bias claims and created another. As it stands, individuals imprisoned in Louisiana may not bring federal habeas claims that are cognizable in Maryland. The Court should grant review to resolve those untenable conflicts.

A. The circuits are divided as to whether this Court's cases have clearly established the doctrine of implied bias.

As the Fifth Circuit has recognized, the "circuits are split" as to whether this Court's cases clearly establish the doctrine of implied bias. *Uranga* v. *Davis*, 893 F.3d 282, 288 (5th Cir. 2018).

The Fourth Circuit holds that the doctrine is clearly established. In *Conaway* v. *Polk*, 453 F.3d 567 (4th Cir. 2006), a habeas petitioner raised an implied-bias claim, alleging that his "Sixth Amendment right to an impartial jury was contravened" based on the presence of a juror who was a "double first cousin, once removed" of the father of a co-defendant who was also a "key prosecution witness." *Id.* at 581, 585. Examining this Court's precedent, the Fourth Circuit concluded that "the doctrine of implied or presumed bias has been recognized from our country's earliest days,

and it remains firmly rooted." *Id.* at 586. That court accordingly held that "the implied bias principle constitutes clearly established federal law as determined by the Supreme Court" and reversed a district court's dismissal of the implied-bias habeas claim. *Id.* at 588, 592.

The Fifth and Ninth Circuits take the opposite approach. In the Ninth Circuit's view, "[t]he Supreme Court has never explicitly adopted or rejected the doctrine of implied bias." *Hedlund* v. *Ryan*, 854 F.3d 557, 575 (9th Cir. 2017). On that premise, the Ninth Circuit has held that there is "no clearly established federal law [on] implied bias" within the meaning of Section 2254(d)(1). *Ibid.*

The decision below adopted that same approach. Pet.App.5-6.[1] Asserting that petitioner could not "point to a relevant *holding* from the Supreme Court" supporting implied bias, the Fifth Circuit held this Court's law did not clearly establish the principle, dooming petitioner's habeas claim. Pet.App.5-6.

Petitioner would plainly prevail under the Fourth Circuit's rule. If the presence on the jury of the double first cousin once removed of the father of an individual connected to the case gives rise to an implied-bias claim, then surely the mother of such an individual

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[1] In *Brooks* v. *Dretke*, 444 F.3d 328 (5th Cir. 2006), the Fifth Circuit had previously stated that "the doctrine of implied bias is 'clearly established Federal law as determined by the Supreme Court.'" *Id.* at 329, 332. In the two decades since *Brooks*, however, the Fifth Circuit has retreated from that approach, citing yet earlier binding precedent. See, *e.g.*, *Uranga*, 893 F.3d at 288 (noting argument "that *Brooks* was bound by our earlier opinion in *Andrew* v. *Collins*, [21 F.3d 612 (5th Cir. 1994),] which recognized that the Supreme Court ha[d] never embraced the implied bias doctrine" (footnote omitted)).

does. Petitioner's claim failed, though, because he was convicted in the Fifth Circuit, not the Fourth. This Court's review is needed to ensure that the success of such claims does not continue to depend on geographic fortuity.

B. The Fifth Circuit split from other circuits in holding that a juror-bias claim must satisfy the *McDonough* test.

Although the clear split on the existence of clearly established implied-bias law is reason enough to grant the petition, the Fifth Circuit's decision creates a second split that greatly intensifies the need for this Court's review.[2]

The Fifth Circuit stated that a second "insurmountable hurdle[]" to petitioner's implied-bias claim was his inability to "meet the *McDonough Power Equipment* framework." Pet.App.5. In *McDonough*, the Tenth Circuit ordered a new trial based on a juror's "mistaken, though honest[,] response" to a *voir dire* question. *McDonough*, 464 U.S. at 555. This Court reversed, holding that a new trial would be warranted only where a party could demonstrate a dishonest response to a material question on *voir dire*, where "a correct response would have provided a valid basis for a challenge for cause." *Id.* at 556. In its decision below, the Fifth Circuit read *McDonough* to establish the *exclusive* means for bringing a juror-bias claim. See

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[2] Although the petition principally focused on the first circuit split, this second circuit split is plainly implicated by the decision below and encompassed within the petition's first question presented, particularly when that *pro se* petition is liberally construed. To the extent the Court wished to hear the State's position on the second circuit split prior to granting the petition, the Court could call for a supplemental brief directed to that question.

Pet.App.5 ("[t]o bring a claim of bias, Granier" must satisfy *McDonough*). Because petitioner did not "identify any voir dire question that [Ms.] Mobley failed to answer honestly," the Fifth Circuit rejected his implied-bias claim out of hand. Pet.App.5.

That view stands in stark contrast to the approach of at least the First, Fourth, Sixth, Seventh, Eighth, and Tenth Circuits, all of which treat *McDonough* as *a*, not *the*, way to establish juror bias. Noting that *McDonough* addressed a situation of alleged "dishonest voir dire answers," those circuits understand *McDonough* as one kind of case "within a larger category that comprises all cases of alleged juror partiality." *Gonzales* v. *Thomas*, 99 F.3d 978, 985 (10th Cir. 1996). Accordingly, those courts recognize that *McDonough* "is not the exclusive test for determining whether a new trial is warranted on the basis of juror bias." *Dennis* v. *Mitchell*, 354 F.3d 511, 520 & n.4 (6th Cir. 2003); see *United States* v. *Brooks*, 727 F.3d 1291, 1307 n.10 (10th Cir. 2013) (the "*McDonough* framework is not the exclusive means" for showing juror bias (citation omitted)); *United States* v. *Brazelton*, 557 F.3d 750, 754 (7th Cir. 2009), *as amended* (Mar. 10, 2009) (addressing implied-bias claim without reference to *voir dire* questions); *Jones* v. *Cooper*, 311 F.3d 306, 310 (4th Cir. 2002) (*McDonough* "is not the exclusive test"); *Amirault* v. *Fair,* 968 F.2d 1404, 1405-1406 (1st Cir. 1992) ("requir[ing] a further determination on the question of juror bias even where a juror is found to have been honest"); C*annon* v. *Lockhart*, 850 F.2d 437, 440 (8th Cir. 1988) ("[A] juror's dishonesty is not a predicate to obtaining a new trial. The focus is on bias.").

There is no way to square the Fifth Circuit's decision with the law of those other circuits. The Fifth Circuit viewed petitioner's concession that he could not

meet *McDonough* as an "insurmountable hurdle" to his implied-bias claim. Pet.App.5. In other circuits, that concession would merely have prevented petitioner from asserting *one theory* of juror bias. See *Gonzales*, 99 F.3d at 985. The Court should grant certiorari to resolve the conflict over *McDonough*'s reach.

II. The decision below is wrong.

A. The implied-bias doctrine is clearly established by Supreme Court precedent.

Implied bias is a long-established doctrine. The doctrine can be traced "at least" back to "Aaron Burr's trial for treason." *Conaway*, 453 F.3d at 586 (citation omitted). Riding circuit in Virginia, Chief Justice Marshall observed that "personal prejudices" such as family connections "constitute a just cause of challenge" to a juror "because the individual who is under their influence is presumed to have a bias on [h]is mind which will prevent an impartial decision of the case." *United States* v. *Burr*, 25 F.Cas. 49, 50 (C.C.D. Va. 1807). He further explained that, although such a juror might "declare that he feels no prejudice in the case," the law still "cautiously incapacitates him from serving on the jury because it suspects prejudice." *Ibid.*

Following Chief Justice Marshall's lead, this Court has consistently recognized the cognizability of implied-bias claims. In *Crawford* v. *United States*, 212 U.S. 183 (1909), the Court relied on implied bias to hold that it was error to overrule a criminal defendant's challenge to the seating of a juror employed by the federal government. The Court observed that "[b]ias or prejudice * * * might exist in the mind of one (on account of his relations with one of the parties) who was quite positive that he had no bias," and "[t]he law therefore most wisely says that, with regard to

some of the relations which may exist between the juror and one of the parties, bias is implied, and evidence of its actual existence need not be given." *Id.* at 196.

The Court reaffirmed the implied-bias doctrine in *United States* v. *Wood*, 299 U.S. 123 (1936). *Wood* concerned a constitutional challenge to a post-*Crawford* federal statute under which federal employees were expressly qualified for jury service in the District. *Id.* at 133. Consistent with *Crawford*'s holding, *Wood* recognized that "[t]he Sixth Amendment requires" jurors to be impartial and that "[t]he bias of a prospective juror may be actual or implied; that is, it may be bias in fact or bias conclusively presumed as [a] matter of law." *Ibid.*; see *id.* at 134 (defining "implied bias" as "bias attributable in law to the prospective juror regardless of actual partiality"). *Wood* refused to "impute bias as [a] matter of law to the jurors in question" in that case, *id.* at 150—but in so doing, the Court carefully explained why the Sixth Amendment, via the implied-bias doctrine, did not compel a different result, *id.* at 142-150.

Three decades later, the Court again relied on implied bias to reverse a conviction. Five members of the jury that convicted the petitioner in *Leonard* v. *United States*, 378 U.S. 544 (1964) (per curiam), had heard another jury convict him on similar charges. *Id.* at 544. The Court "agree[d]" that those five jurors should have been automatically disqualified. *Id.* at 545; see *Smith* v. *Phillips*, 455 U.S. 209, 223 (1982) (O'Connor, J., concurring) (citing *Leonard* as an instance of the Court "us[ing] implied bias to reverse a conviction").

In the decades since, the Court has never abrogated the implied-bias doctrine. To the contrary, Justice O'Connor's concurrence in *Smith* noted that "none of our previous cases preclude the use of the conclusive

presumption of implied bias in appropriate circumstances." 455 U.S. at 223 (O'Connor, J., concurring). Two years later, five concurring Justices in *McDonough* recognized the doctrine's continued vitality. 464 U.S. at 556-557 (Blackmun, Stevens, and O'Connor, JJ., concurring); *id.* at 559 (Brennan and Marshall, JJ., concurring in the judgment).[3]

The Fifth Circuit inexplicably ignored all of that precedent. Instead, the court held that concurrences in *Smith* and *McDonough* could not "create clearly established law." Pet.App.6. Regardless of whether that is true in this context, as petitioner argued below, the full Court has several times recognized the viability of implied-bias claims. See Ct.App.Opening.Br.15 (discussing *Leonard*); En.Banc.Petition.3-4 (discussing *Leonard* and *Wood*).[4]

The Fifth Circuit's refusal to engage with this Court's precedent cannot make it go away. This Court's cases clearly establish the viability of an implied-bias claim, and the Fifth Circuit was wrong to conclude otherwise.

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[3] Nearly all circuits recognize the doctrine on direct review. See, *e.g.*, *United States* v. *Godfrey*, 787 F.3d 72, 81 (1st Cir. 2015); *United States* v. *Nieves*, 58 F.4th 623, 632 (2d Cir. 2023); *United States* v. *Mitchell*, 690 F.3d 137, 144 (3d Cir. 2012); *United States* v. *Umana*, 750 F.3d 320, 341 (4th Cir. 2014); *United States* v. *Diaz*, 941 F.3d 729, 737 (5th Cir. 2019); *Brazelton*, 557 F.3d at 753; *United States* v. *Needham*, 852 F.3d 830, 840 (8th Cir. 2017); *United States* v. *Kvashuk*, 29 F.4th 1077, 1092 (9th Cir. 2022); *United States* v. *Brooks*, 569 F.3d 1284, 1289 (10th Cir. 2009); *United States* v. *Garcia*, 445 F. App'x 281, 284 (11th Cir. 2011).

[4] After petitioner filed his petition for rehearing en banc, the panel withdrew its initial decision and issued a revised one, but did not alter course on either issue discussed in this brief.

B. A juror-bias claim does not require satisfying the *McDonough* test.

The Fifth Circuit also was wrong to treat *McDonough* as the exclusive way to establish a juror-bias claim. *McDonough* did not purport to govern all claims of potential juror bias. The limited claim asserted there was that a juror's inaccurate answers to questions in *voir dire* warranted a new trial. See *McDonough*, 464 U.S. at 549. And *McDonough* established a test for assessing whether such inaccuracy rose to the level of a constitutional violation. But the Sixth Amendment guarantees an impartial jury, not an honest *voir dire*. See *Morgan* v. *Illinois*, 504 U.S. 719, 729 (1992); *Warger* v. *Shauers*, 574 U.S. 40, 50 (2014) ("*voir dire* can be *an* essential means of protecting" right to impartial jury (emphasis added)). As this case demonstrates, sometimes a juror-bias claim is entirely separate from what happened in *voir dire*. When a petitioner raises such a claim, *McDonough* has nothing to say about it. See *McDonough*, 464 U.S. at 556-557 (Blackmun, J., concurring) (explaining that "regardless of whether a juror's answer is honest or dishonest" a trial court may assess "actual bias" or whether "the facts are such that bias is to be inferred").

III. This case presents an excellent vehicle to resolve important divisions in the lower courts.

A. The circuit splits implicated by the decision below require urgent resolution. A jury's impartiality—or lack thereof—"goes to the very integrity of the legal system." *Gray* v. *Mississippi*, 481 U.S. 648, 668 (1987). But without this Court's intervention, the right to a fair trial carries more force in Virginia than in Louisiana. That disparate application of federal law is inconsistent with this Court's clear command that the right to an impartial jury is "[a]mong those basic fair

trial rights that can never be treated as harmless." *Rivera* v. *Illinois*, 556 U.S. 148, 161 (2009) (citation omitted). So-called "structural error[s]" require "automatic reversal" because they "necessarily render[] a criminal trial fundamentally unfair or an unreliable vehicle for determining guilt or innocence." *Id.* at 155, 160-161. Withholding relief based solely on the circuit in which the petitioner is incarcerated creates an untenable disparity in federal rights that this Court should resolve.

B. This case also is a clean vehicle for reviewing those splits: this is anything but an edge case of implied bias, and petitioner would have prevailed under the law of other circuits. Ms. Mobley's son had two extremely prejudicial connections to the case. First, he was an initial suspect in the case—giving Ms. Mobley a powerful personal stake in convicting petitioner. Second, Ms. Mobley's son had very recently worked at the store where the clerk was murdered. When interviewed by petitioner's investigator after the conviction, the juror "repeatedly stated 'it could have been my son' or words to that effect referring to her son's employment at the scene of the crime and similar age to the victim.'" Pet.App.430. Such familial connections are in the heartland of the implied-bias doctrine. See, *e.g.*, *Smith*, 455 U.S. at 222 (O'Connor, J., concurring) (finding familial ties to "justify a finding of implied bias"); *Burr*, 25 F.Cas. at 50 (Marshall, C.J.) (the law is "so solicitous to secure a fair trial as to exclude [even] a distant, unknown relative from the jury"). Had the Fifth Circuit recognized the viability of an implied-bias claim and not required that petitioner shoehorn such a claim into the inapposite *McDonough* test, petitioner would have been able to establish that he did not receive the impartial jury that the Constitution demands.

C. Louisiana disagrees, principally attempting to muddy the waters by invoking bygone factual disputes. See, *e.g.*, Opp.22 (noting "estranged" mother-son relationship). But those arguments have no bearing on this Court's review of the Fifth Circuit's holdings that the implied-bias doctrine was not clearly established and that petitioner had to satisfy *McDonough*. This Court routinely grants review of unsettled threshold questions and reserves for remand other legal issues. See*, e.g.*, *Biden* v. *Texas*, 597 U.S. 785, 814 (2022). This is an excellent vehicle to resolve two critically important splits, and the Court should grant review.

CONCLUSION

The petition should be granted.

Respectfully submitted,

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