

No. 17-6383

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IN THE  
**Supreme Court of the United States**

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MATTHEW LEE CAYLOR

Petitioner,

v.

STATE OF FLORIDA,

Respondent.

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**On Petition for a Writ of Certiorari to the  
Supreme Court of Florida**

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**REPLY BRIEF FOR PETITIONER**

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## REPLY BRIEF FOR PETITIONER

The precise issue before the Court is whether the Court should extend its decision in *Mickens v. Taylor*, 535 U.S. 162, 175-76 (2002), and apply a standard of prejudice other than the standard articulated by *Strickland v. Washington*, 488 U.S. 668 (1984), to circumstances where the effect of defense counsel’s error cannot be meaningfully assessed under traditional *Strickland* prejudice analysis. Respondent’s Brief in Opposition is notable for its confusion regarding jurisdiction in this case, as well as its misunderstanding of Petitioner’s argument.

### I. The Court has jurisdiction

Respondent incorrectly states that “[n]o jurisdiction exists in this case, however, because Petitioner’s argument was never raised in state court.” (Brief in Opposition at Pg. 1). The Court has jurisdiction in this case as Petitioner properly raised the underlying constitutional provisions in both the state circuit court and the Supreme Court of Florida when he argued that trial counsel’s failure to take any action regarding a biased juror—when she indicated she (1) was not sure if she could not be fair and impartial in Petitioner’s case, (2) had been the victim of a crime, and (3) had a familial relationship with one of the witnesses in Petitioner’s trial—was a violation of his Constitutional rights. These federal constitutional issues were properly presented and considered by the courts below.

Additionally, as stated in the Petition, Petitioner may well have a traditional claim under *Strickland*, though Petitioner is not addressing such a claim at this certiorari juncture. Petitioner has raised an issue that asks this Court to answer the question left open in *Mickens*. (Petition at Pg. 2, n.1)

## II. Petitioner is not asserting a conflict claim

Respondent continuously muddles the actual issue in Petitioner's certiorari petition. Respondent is incorrect in stating that "[a]s Petitioner does not allege a former client representation as the source of the alleged conflict of interest as was raised in *Mickens*, he does not raise an unsettled question of federal law." (Brief in Opposition at Pg. 10). Petitioner is not asserting a conflict claim. Petitioner, as stated in the Petition, is requesting this Court to extend the standard of prejudice articulated in *Mickens* to other cases, including Petitioner's.

## CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant a writ of certiorari and address the question left open in *Mickens*.

Respectfully submitted,



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NOVEMBER 29, 2017

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**THE SUPREME COURT OF THE UNITED STATES**

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Petitioner,

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**CERTIFICATE OF SERVICE**

I hereby certify that on November 29, 2017, I served the foregoing notice by United States Mail, first class postage prepaid, to counsel of record for Respondent, Jennifer A. Donahue, Assistant Attorney General, via electronic mail at Jennifer.Donahue@myfloridalegal.com and at:

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