

No. _____

In The
Supreme Court of the United States

HENRY PAUL RICHARDSON,

Petitioner,

v.

UNITED STATES,

Respondent.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Fourth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

- I. Whether The Standard That Governs the AEDPA Provisions, 28 U.S.C. §2255(h)(1), §2244(b)(2)(B)(ii), and §2244(b)(3)(A), is inapplicable To A Second Habeas Petition Seeking Consideration of Defaulted Constitutional Claims based on A Showing of Actual innocence of the Crime Under The “More likely than not” Standard Prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995)?
- II. Whether The Lower Federal Courts Misapplied The Standard that Governs the Petitioner’s Second Habeas Petition, When the “Clear and Convincing” Standard imposed by *Sawyer v. Whitley*, 505 U.S. 333 (1992), and Later enacted by Congress As the Standard That Governs the AEDPA Provisions was Clarified Pre-AEDPA in *Schlup v. Delo*, 513 U.S. 298 (1995), That Sawyer Standard is inapplicable to A Claim of Actual innocence of Crime?
- III. There’s A Conflict Among Circuits As To Whether The Actual innocence Standard Decided Pre-AEDPA in *Schlup v. Delo*, 513 U.S. 298 (1995), Provides An Exception to the AEDPA Provisions, 28 U.S.C. §2255(h)(1), §2244(b)(2)(B), and §2244(b)(3)(A)?
- IV. Petitioner is Entitled to have his Defaulted Constitutional Claims Addressed in the District Court Based on A Showing of Actual innocence of the Crime Under The “More likely than not” Standard Prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995).

PARTIES TO THE PROCEEDINGS

This Petition Stems from a Habeas Corpus Proceeding in which Petitioner, Henry Paul Richardson, was the Petitioner before the United States District Court for the Eastern District of Virginia, and the United States Court of Appeals for the Fourth Circuit. Mr. Richardson is a federal prisoner and in the Custody of the United States. The Respondent is the United States.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Henry Paul Richardson respectfully submits this Petition for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINIONS BELOW

The Memorandum opinion and Order of the United States District Court for the Eastern District of Virginia denying Relief is found at No. 17-00732 (Pet. App.#B). The Fourth Circuit Opinion affirming the decision of the United States District Court is reported at Appeal No. 17-7517 (4th Cir. 2018) (Pet. App#A), and the Court's denial of rehearing en banc is not published (Pet. App.#D). All three decisions are reprinted in the Appendix attached here with this Petition.

STATEMENT OF JURISDICTION

The Fourth Circuit issued its Opinion on April 3, 2018, and denied Mr. Richardson's timely Petition for rehearing en banc on June 12, 2018. This Court has jurisdiction under 28 U.S.C. §1254.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment of the United States Constitution states, in relevant part: “Nor Shall any State deprive any person of life, liberty, or property, without Due Process of law. . . .”

The Sixth Amendment of the United States Constitution States, in relevant part: “The Right to Effective Assistance of Counsel for his defense.”

STATEMENT OF THE CASE

Since the Petitioner Henry Paul Richardson’s Trial on June 27, 2006, and after the decision of Petitioner’s First 28 U.S.C. §2255 Proceedings in the United States District Court in the Eastern District of Virginia, New evidence was discovered after the Completion of Investigator Mr. Alfred C. Brown’s investigation of Mr. Richardson’s innocence of the Murder of Freeman Brown that occurred on February 14, 2006.

NEW EVIDENCE THAT WAS NOT AVAILABLE AT PETITIONER’S TRIAL.

1. During the investigation, Investigator Mr. Brown conducted numerous interviews with the Government Sole eyewitness Sylvester T. Washington in which Mr. Washington revealed that his trial testimony was based on Police Coercion by Richmond Police Officer Sandy Ledbetter, Richmond Detective David E.

Burt and F.B.I. Agent Gary F. Jennings to falsely implicate Mr. Richardson as One of the Shooters when none of the Shooters were Mr. Richardson. See (Pet. App.#E, Sworn Affidavit of Investigator Mr. Alfred C. Brown in paragraph#16, and #17); also see Sworn Affidavit of Government Sole eyewitness Sylvester T. Washington in paragraph#13, and #14).

According to Investigator Mr. Brown's investigation and the information contained in the Sworn Affidavit, it was also revealed for the first time by the Key witness, Mr. Washington, that in exchange for his testimony, Richmond Police Officer Sandy Ledbetter and Richmond Detective David E. Burt had "An Agreement" to withhold from formally Charging and Prosecuting Mr. Washington on Charges of Murder, Robbery, and Possession of Cocaine. See (Pet. App.#E, Affidavit of Investigator Mr. Brown, in Paragraph#11). Mr. Washington also revealed that F.B.I. Agent Gary F. Jennings provided him over two-thousand dollars in cash before Mr. Richardson's Trial. (Pet. App.#E, Affidavit of Government Witness Mr. Washington, in paragraph#12; also see Affidavit of investigator Mr. Brown, in paragraph#13). New information was also revealed by the sole eyewitness, Mr. Washington, to Investigator Mr. Brown during the interview regarding the hospital encounter with Detective David E. Burt on February 21, 2006, Mr. Washington stated that he was asked some questions pertaining to him being shot, and he was shown some pictures and asked did he recognized any of the people in the pictures. According to Mr. Washington, he informed Detective Burt that he did recognize

the guys in the pictures from the Jackson Ward area. Then Detective Burt showed him a picture of Henry Richardson (Petitioner) and asked if he knew him, in which time Mr. Washington stated "Yeah." Mr. Washington stated that Detective Burt instructed him to initial and Circle the picture of Henry Richardson. Mr. Washington stated further that he was never asked by Detective Burt during the hospital encounter on February 21, 2006, to circle or initial the picture of the person who allegedly shot him and Freeman Brown." Mr. Washington Stated that he did not initial or Circle the picture of Henry Richardson (Petitioner) Shown to him by Detective Burt as the person involved with the shooting on February 21, 2006. According to Mr. Washington, he Signed the picture of Henry Richardson as Only knowing him when asked by Detective Burt and nothing further. See (Pet. App.#E, Affidavit of Investigator Mr. Brown, in paragraph#5, and #6).

**New eyewitness Account of
911 Caller Natilia Johnson**

Investigator Mr. Brown, during the Course of his investigation, developed a New Eyewitness, Natilia Johnson, who was identified as one of the 911 Callers that witnessed the Shooting that occurred on February 14, 2006. Ms. Johnson provided Investigator Mr. Brown a Sworn Affidavit and stated she was willing to testify before the Court if called upon in which Ms. Johnson Stated the following:

"On February 14, 2006, I was living at 204 West Coutts Street Apartment#D, Gilpin Court, Richmond, Virginia.

I was sitting on my Porch when I first saw a Silver Van coming down St. Paul Street. There were three individuals in the Van. I had never seen them before. The Van went up the Street, turned around and came back. The Van Stopped on Coutts and St. Paul Street, the person on the Passenger Side got out and had a weapon in his hand. The Van Sliding door opened and another guy out and he also had a weapon and they both started shooting.

The Description of the person who got out the passenger Side was brown Skinned, with Cornrows. The person who opened the Van sliding door had real dark skin. The both looked to be about 5'10" between 140 and 160 pounds. The driver had Cornrows also, but he never got out of the Van. They all had on dark hoodies. After Shooting stopped, the two guys got back in the Van and left.

When I looked out at the Street, Freeman Brown was lying by the telephone booth, he had been Shot also.

I have heard of Henry Richardson aka "Packer" but never been formally introduced to him. I've seen him around and my memory of him is he very light skinned. Neither of the Shooters were light skinned. They were much darker than Henry P. Richardson.

I lived next door to Jackie who was Freeman's girlfriend at that time. When the Shooting was over Jackie run over to Freeman Brown. I called sometime before 11:21 p.m. to 911 and told the operator what I saw happen. I don't remember telling the operator that I didn't wish to be seen.

Since the 911 Call, I have had no contacted me until Mr. Alfred C. Brown came to ask me questions regarding this incident." See (Pet. App.#E, Copy of Affidavit of Natilia Johnson).

New Eyewitness Account of Andrew Grant

Defense Attorney Joseph Morrissey was part of the investigation team that was conducting an investigation into Mr. Richardson's innocence of the Murder of Freeman Brown.

Mr. Morrissey developed New Eyewitness Andrew Grant who was identified as a friend of the living victim/Sole eyewitness Sylvester T. Washington and was also present during the Shooting on February 14, 2006. Mr. Grant informed Defense Counsel Mr. Morrissey that he had remembered the facts very well and Provided an Affidavit which Contained the following:

"On February 14, 2006, I had just exited the Tiger Mart Convenience Store and was Crossing the Street diagonally (See Map). I told Mr. Morrissey that I saw Sylvester T. Washington walking on St. Paul Street. As I Continued walking towards Washington, I saw a car drive up Coe Street and Stop in the middle of the road.

At first, I did not think anything of the Car. Then, all of sudden, I heard a loud voice yell at the person who was in the phone booth: "So you think that I am playing with you?" Then that person started shooting at the person in the phone booth. The person in the phone booth was Mr. Brown and he was killed by the gun Shots.

As soon as the Shooting took place, I ran and ducked behind some cars on St. Paul Street. However, I was able to see the person who was doing the Shooting. He was brown-Skinned male approximately 5'8" and very muscular weighing approximately 190-195 pounds. The Person who was Shooting was using an Assault rifle and fired approximately 8-9 shots. Brown was shot and killed and Washington was hit in the cross-fire. (The only reason that I was not shot/killed was because I ran behind the cars on St. Paul Street).

I also Remember that the Shooter had on a light tee shirt and a low-style haircut. While I do not know the name of the person that did the shooting, I know it was not Henry Richardson. Henry Richardson is Approximately 5'5" 145 pounds, light skinned with curly, bushy hair. I have not spoken to Henry Richardson in over 7 years a couple of weeks before the Shooting. Mr. Morrissey is the first person to ask me questions about the Shooting in seven years. See (Pet. App.#E, Affidavit of Andrew Grant).

**New Scientific evidence Contained in
Affidavit of Medical Expert Elkhonon Goldberg**

During Collateral Proceedings, Medical Expert Mr. Elkhonon Goldberg, who is a Clinical Professor of Neurology at New York School of medicine, reviewed the Circumstances that lead to Mr. Richardson's Conviction and incarceration.

After the Completion of Expert Mr. Goldberg's review of the Medical Records pertaining to Government Sole eyewitness/Victim Sylvester T. Washington from 2/14/06; and Trial Transcripts of *United States v. Henry Paul Richardson* on 6/26/06 to 6/27/06.

Thereafter, Expert Mr. Goldberg submitted an Affidavit addressing the issues related to the Validity of the presumed perpetrator's identification by the victim Mr. Washington. See (Pet. App.#E, Affidavit of Medical expert Elkhonon Goldberg).

Mr. Goldberg's Affidavit asserts that five issues of concern exist leading one to question the presumed perpetrator's identification by the victim, Mr. Washington. The first issue pertains to the possibility of retrograde Amnesia, i.e., Memory impairment for the events antedating the Assault. The Second issue pertained to Mr. Washington's mental State at the time when he made the identification. The third issue pertained to the format of the identification Procedure itself. The fourth issue pertained to the illicit Substances Mr. Washington reportedly had taken before the Assault. The fifth issue pertained to the medications Mr. Washington was on at and around the time of the

identification. See (Pet. App.#E, Copy of Affidavit of Medical Expert Mr. Goldberg which addresses each issue).

**Government Trial evidence
of Freeman Brown Homicide**

2. In the late evening hours on February 14, 2006, Freeman Brown and Sylvester T. Washington, was Standing at the Corner of West Coutts Street in Gilpin Court, Richmond, Virginia When a minivan drove down Saint Paul Street and Stopped at the intersection of West Coutts Street, an individual exited the passenger side of the minivan with an Assault weapon and another individual exited the sliding door of the minivan with an Assault weapon and both individuals began shooting in the direction of Freeman Brown and Sylvester T. Washington. As a result of the Shooting, Mr. Washington lapsed into a seven-day Coma and had made Statements that to the Ambulance technician and Detective Fultz that he could not identify the Shooters. Mr. Washington further stated that he was so heavily medicated that he did not remember any interaction with Detective David E. Burt, including making an identification of Petitioner Mr. Richardson as one of the Shooters during the hospital encounter on February 21, 2006. See (Pet. App.#E, Copy of Affidavit of Medical Expert Mr. Goldberg page#2, in paragraph#5).

The Government rested its Murder Case based solely upon the living victim, Sylvester T. Washington,

who made several Statements and later changed his Statement alleging that Mr. Richardson was one of the Shooters that exited the minivan. Mr. Washington was the Government only eyewitness to do so. In addition, the Government presented testimony from Ricky Scott who alleged that during the evening of February 14, 2006, Scott observed Mr. Richardson armed with an AK-47. According to Scott, he saw a minivan pull off and shortly thereafter heard a series of gunshots. Scott could not be certain where the allege gunshots were coming from, the area, location or who were firing the allege gunshots.

Defense Counsel's Evidence at Trial

3. Defense Counsel Cary Bowen and Taylor B. Stone during trial on June 27, 2006, presented testimony of two eyewitnesses, Ralph Davis and Kenneth Daniels who both witnesses alleged that they witnessed the minivan circle the block and stop in which the Shooters began Shooting in the direction of free-man Brown and Sylvester T. Washington. Both witnesses, Davis and Daniels testified further that none of the Shooters was Mr. Richardson.

Prior to Mr. Richardson's Trial, Defense Counsel Cary Bowen filed a Motion for appointment of Medical expert Jack Daniel review the Medical Condition of the Government Sole eyewitness Mr. Washington's mental State at the time of the allege identification during the hospital encounter on February 21, 2006 with Detective Burt day-two of Mr. Richardson's trial, Counsel

informed the Court that a medical expert was needed to assist the jury with Mr. Washington mental State because there was an issue regarding Whether Mr. Washington Could have identified Mr. Richardson under such circumstances. After the trial Court granted defense Motion for an expert, defense Counsel Cary Bowen or Taylor B. Stone failed to Consult a medical expert and the trial Proceeded with Mr. Richardson being found guilty. See (Pet. App.#F, Trial T. P. 262 thru 265, of Trial Counsel Cary Bowen regarding the issue for medical expert).

Second Habeas Petition and Proceedings

4. On June 16, 2017, Petitioner Mr. Richardson filed a Second habeas Petition Pursuant to 28 U.S.C. §2255 in the United States District Court that raised A Claim of Actual innocence of the Crime of Murder in which the Petitioner Relied upon the Actual innocence exception prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995), As A Procedural Gateway to have his defaulted Constitutional Claims heard on the Merits in light of the New evidence that was discovered by investigator Mr. Alfred C. Brown Over nine years after Mr. Richardson's Murder Trial on June 27, 2006, and over 2 and half years after the decision of Mr. Richardson's first 28 U.S.C. §2255 Proceedings on July 26, 2012. It was revealed to investigator Mr. Brown by the key witness that the Prosecution Violated its Constitutional Obligations Under *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972), for failing to disclose Prior to Mr. Richardson's trial that: (1) the

Government Sole eyewitness Sylvester T. Washington trial testimony was based upon Police Coercion by Richmond Police officer Sandy Ledbetter, Richmond Detective David Burt and F.B.I. Agent Gary F. Jennings to falsely implicate Mr. Richardson As One of the Shooters When none of the Shooters were Mr. Richardson; (2) the monetary payments Provided by F.B.I. Agent Gary Jennings to key witness Mr. Washington in exchange for his testimony; (3) the Agreement offered by Richmond Police officer Sandy Ledbetter and Detective David E. Burt to Mr. Washington in exchange for his testimony to withhold from formally Charging and Prosecuting Washington on Charges of Murder, Robbery, and Possession of Cocaine. and in light of New evidence Mr. Richardson's Murder Conviction Rested upon false testimony that the Prosecution has allowed to go uncorrected in violation of Due Process Clause of the Fifth Amendment Under the United States Constitution. See *Napue v. Illinois*, 360 U.S. 264, 269 (1959), denied Petitioner the full panoply of the Protections afforded to Criminal defendant by the Constitution.

Petitioner Raised Additional Constitutional Claims Where Mr. Richardson was deprived of the Right to Effective Assistance of Counsel in violation of the Sixth Amendment Where Trial Counsel Cary Bowen and Taylor B. Stone failed to Consult A Medical Expert during trial regarding the Reliability of the Sole eyewitness Mr. Washington's identification, the effects of trauma, and Pharmaceuticals on the Witness's Memory in light of Scientific evidence Contained in the affidavit of medical expert Mr. Elkhonon Goldberg that

was not available at Mr. Richardson's trial, Shows that it is "More likely than not" that no reasonable juror would have found Petitioner guilty of the Crime of Murder in light of New evidence.

Mr. Richardson also Raised A Claim Where he was deprived of the Right to Effective Assistance of Counsel in light of New evidence of the Prosecution's interference with Petitioner's defense Ability to Conduct an thorough investigation of the Crime of Murder and to identify an interview a 911 caller who were later identified by investigator Mr. Brown over 9 years after Mr. Richardson's trial in which 911 caller Natilia Johnson revealed in an Affidavit that she called 911 operator and reported the Shooting, including the Shooters description. Ms. Johnson revealed further to investigator Mr. Brown that she was familiar with Mr. Richardson's description from him living in area, however Mr. Richardson was not one of the people she witnessed involved in the Shooting, investigator Mr. Brown Showed Ms. Johnson a Copy of 911 call log report and asked her whether she remembered making such Statement that she didn't wish to be seen. According to Ms. Johnson's Affidavit, she never made such statement. See (Pet. App.#E, Affidavit of Natilia Johnson).

Mr. Richardson filed a Motion for Discovery Requesting the Court to transcribe A Transcript of the Audio tape recordings of the 911 Call placed to the Richmond Police department as alleged on the Richmond Police Call log report No. #1206, Richmond Police No. #20061214-1206, dated: 12/14/06, to Corroborate

New eyewitness Account of Ms. Natilia Johnson and in Support of an additional Brady Claim.

Petitioner Also Requested An evidentiary hearing on both his Gateway innocence Claim and his Substantive *Brady*, *Giglio*, *Napue*, and *Strickland* Constitutional Claims.

On October 31, 2017, the United States District Court dismissed Mr. Richardson's Second habeas Petition, As A "Successive 28 U.S.C. §2255 Motion."

The United States District Court Stated the Following:

"The Antiterrorism and Effective Death Penalty Act of 1996 restricted the jurisdiction of the District Courts to hear Second or Successive Applications for federal habeas Corpus Relief by Prisoners Attacking the Validity of their Convictions and Sentences by establishing A "Gatekeeping mechanism." Specifically, "before A Second or Successive Application is permitted by this Section is filed in the District Court, the Applicant Shall Move in the Appropriate Court of Appeals for An Order Authorizing the District Court to Consider the Application." 28 U.S.C. §2244(b)(3)(A). The Court has not received permission from the United States Court of Appeals for the Fourth Circuit to entertain Petitioner's Successive §2255 Motion. See (Pet. App.#B).

The Court of Appeals Decision

5. On December 20, 2017, Petitioner Mr. Richardson filed with the Court of Appeals for the Fourth Circuit, Requesting the Court to issue A Certificate of Appealability to Resolve the Legal Question Where the District Court failed to Address as A Matter of law of 'Whether Mr. Richardson Satisfied the two-part test Under the Procedural Gateway innocence Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995), Where Petitioner in Support of his Constitutional Violations, Presented New evidence that was not available at trial; and (2) Shows it is "More likely than not" that no reasonable juror would have Convicted him in light of New evidence Contained in five-affidavits. On April 3, 2018, the Fourth Circuit affirmed the District Court's decision alleging that the Petitioner filed an 'unauthorized Successive §2255 Motion." See (Pet. App.#A).

Court of Appeals en banc Decision

6. On April 26, 2018, Mr. Richardson filed A Timely Petition for rehearing or rehearing en Banc requesting the full Court to Resolve the Legal question of the Proper Standard that Govern Petitioner's Second habeas Petition Where *Schlup v. Delo*, 513 U.S. 298 (1995), "More likely than not" Standard is A different Standard than the "Clear and Convincing" Standard imposed by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Where Schlup "More likely than not" Standard is not Govern by the AEDPA

Provisions. On June 12, 2018, the Fourth Circuit denied the Petition for rehearing en banc, declining to Answer the Legal question. See (Pet. App.#D).

REASONS FOR GRANTING THE WRIT

This Court Should Grant Mr. Richardson's Writ Where Exceptional Circumstances of Great importance in Habeas jurisprudence have divided the Lower federal Courts below As to the Application of the Proper Standard that Govern Second or Successive Petitions After the enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (**AEDPA**) The Sole Question Remains to be Answered by this Court of "Whether the "Miscarriage of Justice Exception" Adopted As The Standard in *Schlup v. Delo*, 513 U.S. 298 (1995), Which was developed Under the Pre-AEDPA Regime, Remains Viable and Provides A Gateway Past the AEDPA Provisions. This Court Should Clarify Whether the Standard that Govern the AEDPA Provisions, 28 U.S.C. §2255(h)(1), for federal Prisoners and §2244(b)(2)(B)(ii) for State Prisoners is inapplicable to A Second Habeas Petition Seeking Consideration of defaulted Constitutional Claims based on A Showing of Actual innocence of the Crime Under the "**More likely than not**" Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995)?

When Congress Enacted Pub. L. 110 Stat. 1214 of 1996, 'it did not incorporate Schlup "**More likely than not**" Standard in neither Provision of the Statutory

texts of the AEDPA §2255(h)(1) for federal Prisoners, or §2244(b)(2)(B)(ii) for State Prisoners.

So How Can federal and State Prisoners be Required to Seek Pre-filing Authorization with the United States Court of Appeals Under 28 U.S.C. §2244 if the type of Habeas Petition Raise A Claim of Actual innocence of the Crime Under Schlup **“More likely than not”** Standard? See Section I Below.

This Court Should also Clarify the Proper Standard that Govern Mr. Richardson’s Second Habeas Petition, When the **“Clear and Convincing”** Standard imposed by *Sawyer v. Whitley*, 505 U.S. 333 (1992), and later Enacted by Congress As the Standard that Govern the AEDPA Provisions was Clarified Pre-AEDPA by this Court in *Schlup v. Delo*, 513 U.S. 298 (1995), that the **Sawyer** Standard is inapplicable to A Claim of Actual innocence of the Crime. 513 U.S. at 323-324. *Id.* See Section II Below.

This Court Should Also Settle the Conflict Among The United States District Courts and the United States Court of Appeals As To Whether the Actual innocence Standard Decided Pre-AEDPA in *Schlup v. Delo*, 513 U.S. 298 (1995), Provides An Exception to the AEDPA Provisions, 28 U.S.C. §2255(h)(1), and §2244(b)(2)(B), and if So, Whether Pre-filing Authorization is required under §2244(b)(3)(A) When A Habeas Petitioner Raise A Claim Under Schlup **“More likely than not”** Standard? See Section III Below.

I. This Court Should Settle The Exceptionally Important Question of Whether The Standard that Govern the AEDPA Provisions, 28 U.S.C. §2255(h)(1), §2244(b)(2)(B)(ii), and §2244(b)(3)(A), is inapplicable To A Second Habeas Petition Seeking Consideration of Defaulted Constitutional Claims Based On A Showing of Actual innocence of the Crime Under the “More likely than not” Standard Prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995).

This Case Presents A Manifest injustice in which the Petitioner Mr. Richardson has been incarcerated for the past 12-and-half years for a Murder New evidence establishes that he did not Commit.

On June 16, 2017, Petitioner Mr. Richardson filed A Second habeas Petition Pursuant to 28 U.S.C. §2255 in the United States District Court for the Eastern District Court of Virginia that Raised A Claim of Actual innocence of the Crime of the Murder of Freeman Brown that occurred on February 14, 2006, in which the Petitioner Relied upon the Actual innocence exception prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995), As A Procedural Gateway to have the defaulted Constitutional Claims heard upon the Merits in light of the New evidence that was discovered by investigator Mr. Alfred C. Brown Over 9 years after Mr. Richardson’s Trial on June 27, 2006, and 2-and-half years after the decision of Mr. Richardson’s first 28 U.S.C. §2255 Proceedings on July 26, 2012.

Despite the New evidence Contained in the Five-Affidavits that were obtained during Collateral

Proceedings that establishes Mr. Richardson's innocence, No federal Court has ever held a hearing to Assess the Scores of the New Witnesses and Adjudicate the Merits of Mr. Richardson's Actual innocence because the United States District Court on October 31, 2017, 'Misapplied the Standard that Govern the Petitioner's Second habeas Petition When the Court 'dismissed the Petition as an 'unauthorized Successive 28 U.S.C. §2255 Motion in which the Court instructed Mr. Richardson to Seek permission with the Court of Appeals for the Fourth Circuit to file A Second or Successive Application Pursuant to 28 U.S.C. §2244(b)(3)(A). See (Pet. App.#B). Mr. Richardson Appealed the District Court's decision on December 20, 2017. The Fourth Circuit affirmed the District Court's decision on April 3, 2018. See (Pet. App.#A).

Contrast to the Lower Federal decision Below, Mr. Richardson Asserts that the Standard that Govern the AEDPA Provisions is inapplicable to his Second habeas Petition because Richardson Raised A Claim of Actual innocence of the Crime Under the "More likely than not" Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995).

This Court has not Clarified Whether the Standard that Govern the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) Provisions, 28 U.S.C. §2255(h)(1), §2244(b)(2)(B)(ii), and §2244(b)(3)(A), is inapplicable to A Second Habeas Petition Seeking Consideration of defaulted Constitutional Claims based on A Showing of Actual innocence of the Crime Under the "**More likely than not**" Standard prescribed in

Schlup v. Delo, 513 U.S. 298 (1995). This Legal Question Remains to be Answered Since the Enactment of the AEDPA 22 Years Ago.

A. Schlup “More likely than not” Standard is [not] incorporated in neither of the Statutory Texts of the AEDPA Provisions, 28 U.S.C. §2255(h)(1), or §2244(b)(2)(B)(ii)

Mr. Richardson Asserts that When Congress Enacted Pub. L. 110 Stat. 1214, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), it did not incorporate Schlup “**More likely than not**” Standard of Review in neither of the Statutory Texts of the AEDPA Provisions, 28 U.S.C. §2255(h)(1) for federal Prisoners, or 28 U.S.C. §2244(b)(2)(B)(ii) for State Prisoners.

See Statutory Text of §2255(h)(1):

“Newly Discovered evidence that, if Proven and viewed in light of the evidence As A Whole, Would be Sufficient to establish by “**Clear and Convincing**” evidence that, but for Constitutional error, no reasonable fact-finder Would have found Movant Guilty of the offense;

Also See Statutory Text of §2244(b)(2)(B):

“(1) the factual Predicate for the Claim Could not have been discovered previously through the exercise of due diligence; (ii) the facts underlying the Claim, if Proven and viewed in light of the evidence As A Whole,

Would be Sufficient to establish by “**Clear and Convincing**” evidence that, but for Constitutional error, no reasonable factfinder Would have found the Applicant Guilty of the underlying offense.

The Question Remains to be Answered by this Court ‘How Can A Petitioner, Such as Mr. Richardson be Required to file Pre-filing Authorization with the United States Court of Appeals to file A Second or Successive Application Pursuant to 28 U.S.C. §2244(b)(3)(A), ‘When neither Statutory Text of the AEDPA Provision Addresses the type of [Petition] at issue in Mr. Richardson’s Case, ‘A Second Habeas Petition Seeking Consideration of defaulted Constitutional Claims based on A Showing of Actual innocence of the underlying [Crime] Under the “**More likely than not**” Standard Prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995)? See (Pet. App.#G) (Copy of the Fourth Circuit Standard Application Motion Under 28 U.S.C. §2244 for An Order Authorizing District Court’s To Consider Second or Successive Applications for Relief Under §2254 for State Prisoners and §2255 for federal Prisoners. See Page#3, paragraph#17, the Standard that govern §2244 does[not] incorporate Schlup “More likely than not” Standard.

Also See *House v. Bell*, decided 10 years after the Enactment of the **AEDPA** where this Court Ruled that neither AEDPA Provision ‘Addresses the type of [Petition] at issue – a first Habeas Petition Seeking Consideration of defaulted Constitutional Claims based on A

Showing of Actual innocence Under Schlup **“More likely than not”** Standard. 547 U.S. 518 (2006). *Id.*

Mr. Richardson Asserts that it Matters [not] of ‘Whether it is a Petitioner’s first, . . . [Second], or third Habeas Petition The Question is Whether the AEDPA Provisions Addresses the type of Habeas Petition at issue here, . . . [A] Petition Seeking Consideration of defaulted Constitutional Claims based on a Showing of Actual innocence of Crime Under Schlup “More likely than not” Standard. *Id.* Thus, the Standard that Govern the AEDPA Provisions is inapplicable to Richardson’s Second Habeas Petition for the Same reasons this Court decided *House. Id.*

This Court has Ruled that the Proper Standard for prisoners Asserting innocence As A Gateway to defaulted Constitutional Claims Must establish that, in light of New evidence, “it is more likely than not that no reasonable juror Would have found Petitioner Guilty beyond A reasonable doubt,” *Schlup*, 513 U.S. at 327, 115 S. Ct. 851, 130 L. Ed. 2d 808.

Several features of Schlup’s Standard bear emphasis here. First, While the Gateway Stage Claim requires “New Reliable evidence . . . not presented at trial,” *id.*, at 324, 115 S. Ct. 851, 130 L. Ed. 2d 808, the Habeas Court must Assess the likely impact of “all the evidence” on reasonable jurors, *id.*, at 327-329, 115 S. Ct. 851, 130 L. Ed. 808. Second, Rather than the requiring absolute Certainty About guilt or innocence, A Petitioner’s burden at the Gateway Stage is to demonstrate that more likely than not, in light of New

evidence, no reasonable juror would find him guilty beyond a reasonable doubt. This Standard is by [no] means **[equivalent]** to the **“Clear and Convincing”** Standard imposed by the AEDPA Provisions, §2255(h)(1), §2244(b)(2)(B)(ii). Rather, because A Schlup Claim involves evidence the Trial jury did not have before it, the inquiry requires the federal Court to Assess how reasonable jurors Would React to the overall, Newly Supplemented Record.

On 2013, this Court in *McQuiggin v. Perkins*, ‘Broad language that A Court Should “not Construe [AEDPA] to displace [our] traditional equitable Authority absent the clearest Command,” the decision dealt with Specially Claims of Actual innocence and Miscarriage of Justice Exception. 133 S. Ct. at 1934.

Mr. Richardson Asserts that *Schlup* Provides A Procedural **[Gateway Mechanism]**, Rather than Substantive. Richardson’s Constitutional Claims is not based Solely on his innocence, but Rather on his contention that the withholding of exculpatory and impeachment evidence by the Prosecution during Richardson’s trial on June 26, 2006, See *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972); and the denial of the Right to Effective Assistance of Counsel, See *Strickland v. Washington*, 466 U.S. 668 (1984), and Where Mr. Richardson’s Murder Conviction on June 27, 2006, Rested upon false testimony that the Prosecution has allowed to go uncorrected in violation of the Due Process Clause of the fifth Amendment Under the United States Constitution, See *Napue v. Illinois*, 360 U.S. 264, 269 (1959), denied the

Petitioner panoply of the Protections Afforded to Criminal defendants by the Constitution.

Petitioner Asserts that Schlup Standard differs in at least two important ways from the Standard imposed by the AEDPA Provision, §2255(h)(1). Richardson's Claim of innocence does not by itself Provides A basis for Relief. Instead, Richardson's Claim for Relief depends Critically on the validity of his *Brady*, *Giglio*, *Napue*, and *Strickland* Constitutional Claims. Richardson's Schlup Claim is thus "not itself A Constitutional Claim, but instead a Gateway through which he may pass to have his otherwise barred Constitutional Claims Considered on the Merits in the United States District Court." 513 U.S. at 315. *Id.*

Mr. Richardson Asserts that the Proper Standard that Governs his Second Habeas Petition is that he Must Show that A Constitutional violation has Probably Resulted in the Conviction of one who is Actual innocent, and (2) the Application of this Standard Arises in the Context of A Request for an evidentiary hearing – in the District Court, in Applying the Standard to the Request Must Assess the Probative force of Mr. Richardson's Newly Presented evidence in Connection with evidence of guilty adduced at trial; the District Court is not required to test the New evidence by a Standard Appropriate for deciding A Motion for summary Judgment. Instead, the District Court May Consider the Credibility of the Affiants bear on the Probable reliability of *that* evidence. 513 U.S. at 817. *Id.*

B. A Claim of Actual innocence Under the “More likely than not” Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995) is A Different Standard than the Standard imposed by AEDPA Provision, §2255(h)(1).

Mr. Richardson Asserts that there are two types of Actual innocence Standards which are fundamentally different and Requires A Different Standard of Proof. See *United States v. MacDonald*, 641 F.3d 596 (4th Cir. 2011), the Standard Applicable Under 28 U.S.C. §2255(h)(1) (“Requires Newly discovered evidence that, if Proven and viewed in light of the evidence As A Whole, Would be Sufficient to establish by “Clear and Convincing” evidence that no reasonable factfinder would have found the Movant guilty of the offense”). Moreover, §2255(h)(1)’s Standard of Proof is that imposed by *Sawyer v. Whitley*, 505 U.S. 333 (1992). *MacDonald*, 641 F.3d at 612. *Id.*

Also See in *MacDonald*, 641 F.3d at 611 (citing *Schlup*, 513 U.S. 298, 327 (“Recognizing that “Petitioner Must Support his allegations of Constitutional error with New reliable evidence Under the “**More likely than not**” Standard”); *Hamm v. Murphy*, 1995 U.S. App. Lexis 9720 (1st Cir. 1995) (footnote#10) (In discussing the “Actual innocence exception” in Context of eligibility for death penalty, the Court in *Sawyer v. Whitley*, 120 L. Ed. 269, 112 S. Ct. 2514 (1992), held that A Petitioner Must make a Showing by “Clear and Convincing” evidence. *Id.* 2517.

Thereafter, in *Schlup v. Delo*, 130 L. Ed. 2d 808, 115 S. Ct. 851 (1995), the Court held that A Claim of innocence as to the underlying [Crime] was to be tested by a Probability Standard: “A Petitioner Must Show it is **“More likely than not”** that no reasonable juror would have found Petitioner guilty beyond a reasonable doubt.” *Id.* at 867 (Adopting the Standard set forth in *Murray v. Carrier*, 477 U.S. 478, 496, 91 L. Ed. 2d 397, 106 S. Ct. 2639 (1986); *Ferranti v. United States*, 480 Fed. Appx. 634 (2d Cir. 2012) (28 U.S.C. §2255(h)(1) Standard is more Stringent than the Pre-AEDPA Gateway innocence Standard for filing A Successive Petition.” citing *Schlup v. Delo*, 513 U.S. 298 (1995); *Rivas v. Fischer*, 687 F.3d 514 (2d Cir. 2011); *Toussaint v. Klem*, 2004 U.S. Dist. Lexis 5403 (3d Dist. 2004) (“Stating that A Claim of Actual innocence must be based on “Reliable evidence not presented at trial “to Show that it is **“More likely than not”** no reasonable juror would have Convicted him in light of New evidence”); *Morris v. Dretke*, 90 Fed. Appx. 62 (5th Cir. 2004) (at 68 . . . distinguishes the two different Actual innocence Standards. A Petitioner who Claims he is Actually innocent of the underlying Crime Must Show that, based on reliable evidence not presented at trial by reason of a Constitutional violation, ‘it is “More likely than not” that no reasonable juror would have Convicted him in light of New evidence. citing *Schlup v. Delo*, 513 U.S. 298 (1995) . . .’ if on the other hand A Defendant Challenges his Sentence, based on Newly discovered evidence, because of Constitutional error, the Petitioner must show by “Clear and Convincing” evidence that no reasonable juror would have found the Petitioner

eligible for the death penalty in light of the New evidence. *Id.*; *Sawyer*, 505 U.S. 333 at 336”); *Cleveland v. Bradshaw*, 693 F.3d 626 (6th Cir. 2012) (“693 F.3d at 632 . . . the Eighth Circuit Concluded that the Petitioner Schlup Could not Obtain review of his Procedural barred Claims because he did not Satisfy the Standard set forth in *Sawyer v. Whitley*, 505 U.S. 333 (1992). To Obtain review Under Sawyer Standard, A Habeas Petitioner was required to Show by “Clear and Convincing” evidence that, but for a Constitutional error, no reasonable juror would have found the Petitioner death penalty eligible. *Id.* 336. This Court Granted Certiorari to determine ‘Whether the Sawyer Standard was the Proper Standard to Apply to Actual innocence of the Crime. The Court held that the Standard Set forth in *Murray v. Carrier*, 477 U.S. 478 (1986), which requires a Petitioner to show that it is “More likely than not” that no reasonable juror would have found petitioner guilty, “Rather than the Sawyer Standard Applied. *Schlup*, 513 U.S. 298, 327 (1995).

The AEDPA requirements for a Second or Successive Application are Stricter than the Schlup Standard in two ways . . . there is no requirement Under Schlup that the factual Claim was not discoverable through the exercise of due diligence. Second, . . . Schlup requires only an Applicant to Show it is **“More likely than not”** that no reasonable factfinder would have found him guilty. See *Cooper v. Woodford*, 358 F.3d 1117, 1119 (9th Cir. 2004); *Cornell v. Warden*, 2018 U.S. Dist. Lexis 25346 (9th Cir. 2018) (citing *Schlup v. Delo*, distinguishing Procedural Claims of innocence

from Substantive Claims of innocence, and holding that a Claim of Actual innocence may be Raised to Avoid A Procedural bar to Consideration of the Merits of a Petitioner's Constitutional Claims"); *Bruce v. Clementi*, 2018 U.S. App. Lexis 694 (10th Cir. 2018) (citing Schlup "**More likely than not**" Standard); *Sibley v. Culliver*, 377 F.3d 1196, 1205-06 (11th Cir. 2004) ("two different Actual innocence Standards"); Also See *Whitmore v. Avery*, 115 S. Ct. 1086 (1995) (mem.) ("Vacating judgment in which the "Clear and Convincing" Standard had been Applied, and Remand for further Consideration in light of Schlup "More likely than not" Standard").

Given the Exceptional importance of What is at Stake – A innocent person Who has been incarcerated for the Past 12-and-half years and Sentenced to life in federal prison for a Murder New evidence establishes he did not Commit. Mr. Richardson's Conviction was imposed in violation of the Due Process Clause of the fifth Amendment Right Under the United States Constitution – Certiorari is Warranted to Resolve the Question and Clarify Whether during the time Congress Enacted the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 110 Stat. 1214, Congress did not intend for lower federal Courts to Apply the Standard that Govern the AEDPA Provisions, 28 U.S.C. §2255(h)(1), and §2244(b)(2)(B)(ii), to federal or State Prisoners that files A Second Habeas Petition that Seeks Consideration of defaulted Constitutional Claims based on A Showing of Actual innocence of the Crime in light of New evidence Under the "**More**

likely than not” Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995), because neither Provision Addresses the type of **[Petition]** at issue before this Court in Mr. Richardson’s Case. Thus, the AEDPA Provisions is inapplicable to Mr. Richardson’s Second habeas Petition.

This is A Legal Question of Great Importance in Habeas jurisprudence that needs to be Resolved.

II. Whether The Lower federal Courts Misapplied The Standard that Govern Mr. Richardson’s Second Habeas Petition, When the “Clear and Convincing” Standard imposed by *Sawyer v. Whitley*, 505 U.S. 333 (1992), and Later Enacted by Congress As The Standard that Govern the AEDPA Provisions was Clarified Pre-AEDPA in *Schlup v. Delo*, 513 U.S. 298 (1995), that Sawyer Standard is inapplicable To A Claim of Actual innocence of the Crime.

Mr. Richardson Asserts that the United States District Court and the Fourth Circuit Court of Appeals Misapplied the Standard that Govern the Petitioner’s Second Habeas Petition filed Pursuant to 28 U.S.C. §2255 on June 16, 2017, When Mr. Richardson Sought Review of the defaulted Constitutional Claims based on A Showing of Actual innocence of the Crime of the Murder of Freeman Brown that occurred on February 14, 2006, in light of New evidence Under the **“More likely than not”** Standard prescribed by this Court in

Schlup v. Delo, 513 U.S. 298 (1995). See (Statement of Case).

On October 31, 2017, the United States District Court dismissed Mr. Richardson's Second Habeas Petition As An 'Unauthorized Successive 28 U.S.C. §2255 Motion that was Subject to the AEDPA Provisions. The District Court instructed Mr. Richardson to Seek Prefiling Authorization with the Court of Appeals to file a Second or Successive Application Pursuant to 28 U.S.C. §2244(b)(3)(A). See (Pet. App.#B), Mr. Richardson filed an Appeal with the Fourth Circuit. The Court failed to address the Legal Question and affirmed the District Court's decision on April 3, 2018. See (Pet. App.#A).

Mr. Richardson Asserts that this Court 23 years Ago on 1995, Granted Certiorari in *Schlup v. Delo*, 513 U.S. 298 (1995), to determine 'Whether the "**Clear and Convincing**" Standard imposed by *Sawyer v. Whitley*, 505 U.S. 333 (1992), was the Proper Standard to Apply to Actual innocence of A Crime. This Court Clarified in *Schlup* that the *Murray v. Carrier*, 477 U.S. 478 (1986), 'Probably Resulted Standard "Rather than the Stringent Sawyer Standard Must Govern the 'Miscarriage of Justice inquiry when a Petitioner who Raises a Claim of Actual innocence [of the Crime] to Avoid a Procedural bar. *Schlup*, 513 U.S. at 326-327. *Id.* This Court Ruled in *Schlup*, that the "**Clear and Convincing**"

Standard is inapplicable to Actual innocence of the crime. 513 U.S. at 323-24. *Id.*¹

Petitioner Asserts that during the time Congress Enacted the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), Pub. L. 110 Stat. 1214, ‘Congress incorporated in the Statutory Texts, 28 U.S.C. §2255(h)(1) for federal Prisoners and §2244(b)(2)(B)(ii) for State Prisoners the “Clear and Convincing” Standard imposed by *Sawyer v. Whitley*, 505 U.S. 333 (1992), As the Standard that Govern the AEDPA Provisions. See in *United States v. MacDonald*, 641 F.3d 596 (4th Cir. 2011) (“641 F.3d at 612 – the Standard Applicable Under §2255(h)(1) is that imposed by Sawyer”).

In Evaluating Richardson’s Claim of innocence, the United States District Court Applied the Standard that Govern the AEDPA Provisions and dismissed his Second Habeas Petition as An ‘Unauthorized Successive 28 U.S.C. §2255. The Court instructed Richardson to Seek Pre-filing Authorization with the Court of Appeals Pursuant to 28 U.S.C. §2244(b)(3)(A), Rather than Apply the **“More likely than not”** Gateway innocence Standard prescribed in *Schlup*, Supplied the Proper Standard for the District Court to Evaluate Richardson’s Claim of Actual innocence of the Crime.

Richardson Asserts that the **“Clear and Convincing”** Sawyer Standard that was Enacted by Congress as the Standard that Govern the AEDPA

¹ This Standard it Must be Said, is Somewhat Cryptic. See *Schlup*, 513 U.S. at 339 (“Rehnquist, C.J., dissenting) (“deriding the Standard as a **“Classic Mixing of Apples and Oranges”**)

Provisions has [no] Application to A Petitioner Who Claims that he is Actually innocent of the Crime, and that the District Court and the Fourth Circuit 'Misapplied the Standard that Govern the AEDPA Provision which incorporates the Sawyer Standard. *Schlup*, 513 U.S. at 324.

The Schlup Standard Requires the Habeas Petitioner to Show that "A Constitutional violation has Probably Resulted in the Conviction of One Who is Actual innocent." To establish the requisite Probability, the Petitioner Must Show that it is "More likely than not" that no reasonable juror would have Convicted him in light of the New evidence. At the Same time, the Showing of "More likely than not" imposes a different burden of Proof than the "Clear and Convincing" Sawyer Standard required Under the AEDPA Provision, § 2255(h)(1), and §2244(b)(2)(B)(ii). The Schlup Standard thus ensures that the Petitioner's Case is truly extraordinary," While Still Providing a Meaningful Avenue by which to Avoid A Manifest injustice. 513 U.S. at 327.

Given the Exceptional Importance of the Erroneous Decision of the United States District Court and the Fourth Circuit that 'Misapplied the Standard that Govern Mr. Richardson's Second Habeas Petition When the "**Clear and Convincing**" Sawyer Standard imposed by the AEDPA Provisions has 'No Application to Mr. Richardson's Claim of Actual innocence of the Crime Under Schlup "**More likely than not**" Standard – Certiorari is Warranted to Resolve the Proper Standard that Govern the Petitioner's Second

Habeas Petition, and Clarify Whether the “**Clear and Convincing**” Sawyer Standard Enacted by Congress As the Standard that Govern the AEDPA Provisions §2255(h)(1), and §2244(b)(2)(B)(ii), ‘Remains inapplicable to a Claim of Actual innocence of the Crime Under the “**More likely than not**” Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995).

III. This Court Should Settle The Circuit Conflict As to Whether The Actual innocence Standard Decided Pre-AEDPA in *Schlup v. Delo*, 513 U.S. 298 (1995), Provides An Exception to the AEDPA Provisions, 28 U.S.C. §2255(h)(1), §2244(b)(2)(B)(ii) and §2244(b)(3)(A).

Mr. Richardson Asserts that there’s A Growing Conflict Among United States Court of Appeals after the Enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), As to the Actual innocence Exception decided Pre-AEDPA in *Schlup v. Delo*, 513 U.S. 298 (1995), This Court Should Resolve the Legal Question of: ‘Whether the Gateway innocence Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995), Provides An Exception to the AEDPA Provisions, 28 U.S.C. §2255(h)(1), §2244(b)(2)(B)(ii), that Govern Second or Successive Petitions; and if So, Whether Pre-filing Authorization Pursuant to 28 U.S.C. §2244(b)(3)(A), is inapplicable to A Claim of Actual innocence of the Crime Under Schlup “**More likely than not**” Standard?

This Court has not explicitly determined Whether the **Schlup** Exception Provides A Gateway pass 28 U.S.C. §2244(b)(2)'s Successive Petition restrictions. See *Gage v. Chappell*, 793 F.3d 1159, 1168 (9th Cir. 2015). At least One of the Circuits has indicated that Schlup does not bypass §2244(b)(2). See *Jordan v. Secy., Dept. of Corr.*, 485 F.3d 1351, 1359 (11th Cir. 2007). In *Cooper v. Woodford*, the Ninth Circuit Considered the issue but declined to resolve it. 358 F.3d 1117, 1119 (9th Cir. 2004) (en banc). See Also *Jones v. Ryan*, 733 F.3d 825 841 n. 5 (9th Cir. 2013); *In re Ortiz*, 2009 U.S. App. Lexis 29936 (5th Cir. 2009) ("Whether the Actual innocence exception Under Schlup v. Delo, 513 U.S. 298 (1995), 'Survived §2244(b)'s bar to filing A Second or Successive habeas Application, is a Question we do not Answer"); Also See *Graham v. Blaisdell*, 2007 U.S. Dist. Lewis 88497 (1st Dist. 2007) (footnote#3) ("Whether the AEDPA Changed the Schlup "More likely than not" Standard of Proof to the More Stringent "Clear and Convincing" Standard at least in the Context Where A Petitioner Seeks to justify A Second or Successive Petition based on a Claim of Actual innocence 28 U.S.C. §2244(b)(2)(B)(ii). It is unclear which Standard of Proof Apply).

Furthermore, another Panel of the Ninth Circuit has held that even if a Petitioner Can qualify for an Exception to the AEDPA's bar on Successive Petitions, Such as the Actual innocence Exception, he Must Still Seek permission from the Ninth Circuit before filing his Petition in the District Court. *Woods v. Carey*, 525 F.3d 886, 888 (9th Cir. 2008); Also See Where the

Second Circuit has held that even if a Petitioner Can qualify for an Exception to the AEDPA's bar on Successive Petitions, Such as the Actual innocence exception, a Petitioner must still seek permission from the Second Circuit before filing his Petition in the District Court. *Torres v. Senkowski*, 316 F.3d 147, 154 (2d Cir. 2003).

Also See Where the Fourth Circuit in *Wolfe v. Johnson*, has left **[open]** the Legal question of "Whether, in appropriate Case, A Schlup Actual innocence issue Could be adjudicated in the first instance on Appeal." 565 F.3d 140, 164 n.33 (2009).

A Recent Panel of the Fourth Circuit affirmed the District Court's decision dismissing Mr. Richardson's Second §2255 Motion As An 'Unauthorized Successive §2255 on April 3, 2018. (Pet. App.#A). The District Court instructed Mr. Richardson to Seek permission with the Court of Appeals to file A Second or Successive Petition even if he raised a Claim of Actual innocence of the Crime. See (Pet. App.#B). This Court has not Clarified after the Enactment of the AEDPA of Whether Schlup **"More likely than not"** Standard Requires Pre-filing Authorization Pursuant to 28 U.S.C. §2244(b)(3)(A) . . . 'When **Schlup "More likely than not"** Standard is not incorporated in neither Provision of the AEDPA, §2255(h)(1), and §2244(b)(2)(B).

Given the Exceptional importance of the Growing Conflict Among the United States Court of Appeals that has an affect on Federal and State Prisoners – Certiorari is Warranted to Resolve the Conflict.

IV. Mr. Richardson is Entitled to have his Defaulted Constitutional Claims Addressed in the District Court based On A Showing of Actual innocence of the Crime Under the “More likely than not” Standard prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995).

A. Any Procedural Default is Excused As Mr. Richardson is Actual innocent.

This Court has held in *Schlup v. Delo*, that A Habeas Petitioner, Claiming Actual innocence and Asserting A Constitutional error, is Entitled to Habeas Review if the Petitioner Can: (1) Support his Allegations of Constitutional error with New Reliable evidence – Whether it be exculpatory Scientific evidence, trustworthy eyewitness Accounts, or Critical Physical evidence – that was not Presented at trial.” *Id.* at 513 U.S. 324; (2) “Show that it is “More likely than not” that no reasonable juror Would have Convicted him in light of New evidence.”

First, Petitioner Asserts that he Presented Sufficient New evidence of his factual innocence of the Crime of the Murder of Freeman Brown that was not Available at his trial on June 26, 2006, Mr. Richardson points to the evidence that was [not] Addressed by the District Court: (1) Outrageous Police and Prosecutorial Misconduct, including the fact that the Prosecution Sole eyewitness Sylvester T. Washington Trial testimony was based upon Police Coercion by law enforcement officials that was not disclosed to Mr. Richardson’s Trial Counsel, (2) Mr. Washington Recantation of his trial testimony Against Mr. Richardson, (3) New

eyewitness Accounts of Andrew Grant and Natilia Johnson Clearly exonerates Mr. Richardson of the Murder of Freeman Brown, (4) New exculpatory evidence that was discovered during investigator Mr. Alfred C. Brown's investigation that establishes Mr. Richardson's innocence, and (5) New Scientific evidence Provided by Medical expert Mr. Elkhonon Goldberg that calls into Question the Reliability of Sole eyewitness Mr. Washington's identification, the effects of trauma and Pharmaceuticals on his Memory rendering the Witness's identification testimony unreliable. See (Pet. App.#E).

Under *Schlup*, A Showing of Actual innocence Requires "Newly Presented evidence . . . that was [not] available at trial." Sufficient to establish that "it is **More likely than not**" that no reasonable juror Would Convict [Mr. Richardson] in light of New evidence." 513 U.S. at 324, 327.

Furthermore, "*Schlup* Makes plain that the Habeas Court Must Consider 'All the evidence, 'Old and [New], incriminating and Exculpatory without regards to Whether it would necessarily be Admitted Under 'Rules of Admissibility that Would Govern at trial.'"

Mr. Richardson Provided the District Court with Significant evidence of the extent of the Police and Prosecutorial Misconduct that took place during the investigation and Prosecution of his Case.

Richardson presented New evidence in the form of Five-Sworn Affidavits that was obtained during Collateral Proceeding that Shows the Prosecution

Violated its Constitutional Obligations Under *Brady v. Maryland*, 373 U.S. 83 (1963); *Giglio v. United States*, 405 U.S. 150 (1972), for failing to disclose Prior to Mr. Richardson's Trial that: (1) the Government Sole eye-witness Sylvester T. Washington trial testimony was based upon Police Coercion by Richmond Police officer Sandy Ledbetter, Richmond Detective David E. Burt, and F.B.I. Agent Gary F. Jennings to falsely implicate Mr. Richardson As One of the Shooters When none of the Shooters were Mr. Richardson; (2) the Monetary Payments Provided by F.B.I. Agent Gary F. Jennings to key Witness Mr. Washington in exchange for his testimony; (3) Mr. Washington was allowed to testify falsely at Mr. Richardson's trial that he did not receive any money from the Government When Asked during Cross-examination by defense Counsel Cary Bowen. The false testimony was allowed to go uncorrected by the Government. See (Pet. App.#F, Trial testimony of Sylvester T. Washington on June 26, 2006, page 135, Compare with Pet. App#E, Sworn Affidavit obtained during Collateral Proceedings of Mr. Washington, in paragraph#12; (4) the Agreement offered by Richmond Police officer Sandy Ledbetter and Richmond Detective David E. Burt to key witness Mr. Washington in exchange for his testimony, to withhold from formally Charging and Prosecuting Washington on Charges of Murder, Robbery, and Possession of Cocaine; (5) the Prosecution interference with Mr. Richardson's defense Ability to Conduct an thorough investigation, Specifically of identifying and interviewing A Critical eyewitness, 911 Caller Natilia Johnson who lived at the Scene of the Crime and Witnessed the allege

Murder of Freeman Brown; and (6) Trial Counsel Cary Bowen and Taylor B. Stone failed to Consult A Medical expert regarding the Reliability of the Sole eyewitness Mr. Washington's identification, the effects of trauma and Pharmaceuticals on the Memory of the witness in light of New Scientific evidence Obtained during Collateral Proceeding by Medical expert Mr. Elkhonon Goldberg rendered trial Counsel's performance in violation of the United States Constitution Right to Effective Assistance of Counsel Under Sixth Amendment. See (Pet. App.#E, Copy of Five-Sworn Affidavits of: investigator Alfred C. Brown, Government Sole eyewitness Sylvester T. Washington, New eyewitness Accounts of Andrew Grant and Natilia Johnson, and Medical expert Elkhonon Goldberg.

Mr. Richardson's Asserts that it is **"More likely than not"** that no reasonable juror Would have Convicted him of the Murder of Freeman Brown in light of the New evidence Contained in the Five-Affidavits. *Schlup*, 513 U.S. at 327.

This Court Should Vacate the Judgment below and Remand for further Proceeding Where Mr. Richardson is Entitled to have his Defaulted Constitutional Claims Addressed in the United States District Court based on A Showing of Actual innocence of the Crime Under the **"More likely than not"** Standard Prescribed in *Schlup v. Delo*, 513 U.S. 298 (1995), in light of the Newly Supplemented Record.



CONCLUSION

For the foregoing Reasons Stated, the Petition For
Writ Of Certiorari Should be Granted.

Respectfully submitted,
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--Petitioner--