No. 19-1357

IN THE

Supreme Court of the United States

ROBERT A. PEREZ, *Petitioner*,
v.
STATE OF COLORADO, *Respondent.*

On Petition for a Writ of Certiorari to the Supreme Court of Colorado

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the individual rights and protections guaranteed in our Constitution, including those provided by the Sixth Amendment, apply as robustly as the Constitution's text and history require, and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Sixth Amendment guarantees a number of procedural protections that must be provided in "all criminal prosecutions," including the right of the accused "to have compulsory process for obtaining witnesses in his favor." U.S. Const. amend. VI. These guarantees, along with the rights enumerated in the Fifth Amendment, reflected the Framers' belief that all individuals accused of a crime should enjoy a fair trial, one in which the state holds no advantage over the accused. Consistent with those provisions and the Fourteenth Amendment's guarantee of "due process of law," U.S.

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[1] The parties have consented to the filing of this brief, and their letter of consent has been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus* or its counsel made a monetary contribution to its preparation or submission.

Const. amend. XIV, § 1, this Court has long recognized that the accused enjoys the right to a full defense, including the right to access and present evidence in one's own defense. *See, e.g.*, *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) ("the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense" (internal quotations omitted)); *California v. Trombetta*, 467 U.S. 479, 485 (1984) (observing that this Court has long required that "criminal defendants be afforded a meaningful opportunity to present a complete defense"); *Chambers v. Mississippi*, 410 U.S. 284, 294 (1973) ("The right of an accused in a criminal trial to due process is, in essence, the right to a fair opportunity to defend against the state's accusations."); *cf. Strickland v. Washington*, 466 U.S. 668, 684-85 (1984) ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment.").

Applying those precedents, this Court held in *Pennsylvania v. Ritchie* that "a State's interest in the confidentiality of its investigative files concerning child abuse must yield to a criminal defendant's Sixth and Fourteenth Amendment right to discover favorable evidence." 480 U.S. 39, 42-43 (1987). It left open, however, the question whether that same rule applies when the records are held not by the state, but by a private individual or entity. This case squarely presents that unresolved question, which has divided the courts of appeals and state high courts, *see* Pet. 9-16.

Petitioner Robert Perez was accused of murdering his wife, but at trial he introduced, among other things, expert testimony that she died by suicide, and the government coroner also testified that he could not

rule out that possibility. Pet. App. 14a. To further support this theory, Mr. Perez also served a pretrial subpoena on his wife's medical provider, seeking her mental health records. *Id.* at 24a. The government, however, moved to quash the subpoena based on Colorado's statutory psychotherapist-patient privilege. *Id.* The trial court granted the motion, concluding that the only basis for authorizing disclosure of such records was waiver of the privilege by the patient or her representative, which had not occurred. *Id.* at 25a. The Colorado Court of Appeals affirmed, rejecting the argument that Petitioner's constitutional right to present a complete defense required the court to conduct an *in camera* review of the medical records to determine whether they contained evidence material to Petitioner's claim of innocence.

By allowing Colorado's state statutory privilege to prevent such *in camera* review, the court below undermined the important procedural protections provided by the Sixth Amendment and denied Mr. Perez the ability to present a full and fair defense. The judgment of the court below should be reversed.

When the Framers enshrined the Sixth Amendment in our national charter, they were responding to historic practices that had resulted in criminal trials that were heavily weighted in the government's favor. *See* Robert N. Clinton, *The Right to Present a Defense: An Emergent Constitutional Guarantee in Criminal Trials*, 9 Ind. L. Rev. 713, 793 (1976). Historically, "[t]he Crown was permitted to call witnesses, but the defendant had no absolute right to call any witnesses or present any evidence in his own behalf." *Id.* at 717 (citing 9 William Holdsworth, *A History of English Law* 224 (3d ed. 1944)). The accused also often lacked access to counsel, the ability to confront witnesses

against him, and even knowledge of the charges levied against him until the day of trial. 5 William Holdsworth, *A History of English Law* 192 (1924); Peter Westen, *The Compulsory Process Clause*, 73 Mich. L. Rev. 71, 82 (1974).

The Fifth and Sixth Amendments were adopted to respond to these abuses, and the Sixth Amendment's right to compulsory process, in particular, was "included in the Bill of Rights in reaction to the notorious common-law rule that in cases of treason or felony the accused was not allowed to introduce witnesses in his defense at all." *Washington v. Texas*, 388 U.S. 14, 19 (1967) (citing 3 Joseph Story, *Commentaries on the Constitution of the United States* §§ 1786-1788 (1st ed. 1833)). As this Court has explained, "the Framers of the Constitution felt it necessary specifically to provide that defendants in criminal cases should be provided the means of obtaining witnesses so that their own evidence, as well as the prosecution's, might be evaluated by the jury." *Id.* at 20. In other words, to the Framers, the accused could not present a full and fair defense unless he could stand on equal footing with the prosecution, able to call witnesses and present evidence in his own defense. *See generally* 3 Joseph Story, *supra*, at § 1786 (describing the right to compulsory process as of even "more direct significance, and necessity" than the well-established right to trial by jury).

Indeed, this Court has consistently recognized that the accused must be able to access evidence necessary to present his defense. *See, e.g.*, *Ritchie*, 480 U.S. at 56 ("Our cases establish, at a minimum, that criminal defendants have the right to . . . put before a jury evidence that might influence the determination of guilt."); *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867 (1982) (describing "'what might loosely be

called the area of constitutionally guaranteed access to evidence"'); *Trombetta*, 467 U.S. at 485 (same); *Jenkins v. McKeithen*, 395 U.S. 411, 429 (1969) ("The right to present evidence is, of course, essential to the fair hearing required by the Due Process Clause.").

The court below, however, refused to require the trial court to conduct an *in camera* review to determine whether Mr. Perez's wife's medical records contained exculpatory evidence. In the court's view, Mr. Perez had not made a sufficiently particularized showing that the records contained exculpatory evidence and therefore his constitutional right to present a full defense could not "overcome Colorado's strong public policy interest in securing the privacy of mental health records." Pet. App. 12a-13a. In doing so, the court below undermined the critically important right to present a complete defense enshrined in the Sixth Amendment.

Indeed, this Court has previously recognized that even significant privileges must sometimes give way in the face of countervailing constitutional interests. For instance, in *United States v. Burr*, Chief Justice Marshall suggested that documents that President Jefferson claimed were protected by executive privilege might be subject to review to determine whether they contained exculpatory evidence that Vice President Aaron Burr would be entitled to present at trial. 25 F. Cas. 30, 35 (C.C.D. Va. 1807) (hereinafter "*Burr*"). And, as noted earlier, in *Ritchie*, this Court recognized that "a State's interest in the confidentiality of its investigative files concerning child abuse must yield to a criminal defendant's Sixth and Fourteenth Amendment right to discover favorable evidence." 480 U.S. at 42-43. The defendant's ability to access such evidence should not turn on the happen-

stance of whether the relevant records are in the possession of the state or a private provider. This Court should grant the petition and reverse.

ARGUMENT

I. The Sixth Amendment Was a Response to Practices that Precluded Defendants from Preparing and Presenting a Defense.

The Sixth Amendment of the Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

Those rights, and indeed all the enumerated rights of criminal procedure included in the Bill of Rights, were "designed to cure certain specific obstacles previously imposed on the accused by common law procedure." Clinton, *supra*, at 793; *see* Westen, *supra*, at 77-78. The defining feature of criminal trials in seventeenth-century England "was the imbalance of advantage between the state and the accused." Westen, *supra*, at 81. As one commentator described, "[a] criminal trial in those days was not unlike a race between the King and the prisoner, in which the King had a long start and the prisoner was heavily weighted." 1 Sir James Stephen, *A History of the Criminal Laws of England* 397 (1883).

One notable feature of this disparity was that it obstructed a person standing trial in preparing and

presenting his defense. A defendant "was not informed of the charges against him until the day of his trial; he was denied the assistance of counsel . . . . He had no right to confront the witnesses against him in person; he had no right to summon witnesses in his favor, or, indeed, to present witnesses who were willing to testify voluntarily." Westen, *supra*, at 82 (citing 9 Holdsworth, *supra*, at 229, 232-33 and 5 Holdsworth, *supra*, at 192-93, 195). This led to criminal trials that "were primarily one-sided inquests into the truth of the prosecution's charges," without presentation of the accused's case at all. *Id.*

Some of the most egregious encroachments on defendants' abilities to present a defense came in the infamous seventeenth-century treason cases, which contributed to the founding generation's emphasis on liberty and fairness in the Bill of Rights. Clinton, *supra*, at 717-18. For instance, in Sir Walter Raleigh's trial for treason, he sought to confront the witness against him whose testimony provided the basis for the government's case. He argued that "the Common Trial of England is by Jury and Witnesses." *Trial of Sir Walter Raleigh*, *reprinted in* 2 Complete Collection of State Trials 18 (1816). The Chief Justice, rejecting that vision of adversarial truth-seeking that would later characterize the American criminal trial, replied: "No, by examination." *Id.*

The case of puritan minister John Udall similarly concerned a well-known Englishman who faced a one-sided criminal proceeding. Udall attempted to present favorable testimony of a voluntary witness, but he was told that the witness could not be heard because he would be offering testimony against the government's case—that is, against the Queen. *Trial of John Udall*, *reprinted in* 1 Complete Collection of State Trials 1271

(1816). When Udall was later before the court for sentencing, he presented the same evidence, but was condemned for failing to raise it earlier. His attempt to point out the hypocrisy did not convince the court. *Id.*

The "substantial lack of balance and fairness in the English criminal trial began to concern English jurists and citizens," Clinton, *supra*, at 718, leading to common law and statutory changes designed to even the playing field between prosecutor and defendant. *See, e.g.*, 4 William Blackstone, *Commentaries on the Laws of England* 353 (1st ed. 1765-69) (the House of Commons was "so sensible of this absurdity" that it passed a law guaranteeing the right to present witnesses to Englishmen who were tried for crimes committed in Scotland). Thus, "[t]he turn of the eighteenth century saw a rapid expansion of defendants' rights and a rapid movement toward a trial mechanism more evenly balanced between the Crown and the accused," Clinton, *supra*, at 720, and "[i]ncreasing stress was placed on the right of the defendant to fully prepare and present his defense," *id*. at 722.

In short, the abuses that prevented defendants from presenting a complete defense at English common law—and the reforms of the common law that then took place to address those abuses—motivated the Framers to include protections against such abuses in the Bill of Rights, as the next Section discusses.

II. The Accused Enjoys a Constitutional Right to Subpoena and Present Evidence in His Favor.

1. The history of the Sixth Amendment makes clear that it was adopted to afford an accused individual the right to subpoena evidence in his favor. Indeed, by the time the Bill of Rights was adopted, numerous state constitutions provided protections to those accused of

criminal offenses. Among other things, Virginia's Declaration of Rights included a guarantee that "in all capital or criminal prosecutions a man hath a right . . . to call for evidence in his favour." Clinton, *supra*, at 728 (quoting 1 B. Schwartz, *The Bill of Rights: A Documentary History* 235 (1971)); *see id.* ("Most of the states followed the lead of Virginia and adopted a provision similar" to the Virginia provision). And as the Bill of Rights was being drafted, many states proposed including a similar protection in the new federal charter. Some called for assurance that the defendant would be guaranteed the right "to call for evidence in his favor," while others proposed that the defendant be guaranteed "the means of producing his Witnesses." Westen, *supra*, at 96 (citing 2 B. Schwartz, *The Bill of Rights: A Documentary History* 967, 912-13 (1971)).

In response, James Madison drafted the Sixth Amendment which, among other things, provided that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have compulsory process for obtaining witnesses in his favor." U.S. Const. amend. VI. While records do not indicate why Madison adopted the particular formulation that he did, he may have been trying to produce a "neutral version that would satisfy the various states without adopting the language of any existing statute or recommendation." Westen, *supra*, at 98. Whatever his reasoning, there is no indication that his formulation was ever considered to be narrower than the various proposals being offered by the states or the protections that then existed in state constitutions. *Id.* And this Court has consistently "given the Clause the . . . reading reflected in contemporaneous state constitutional provisions," many of which focused specifically on an accused's right to present evidence and all of which supported a defendant's right

"to establish the essential elements of his case[.]" *Taylor v. Illinois*, 484 U.S. 400, 408 & n.13 (1988) (internal quotations omitted).

Indeed, the scant discussion of the provision that occurred in the First Congress suggested that the Framers were confident that courts could be trusted to ensure the Compulsory Process Clause would provide a robust right to compel both witnesses and documentary evidence. In the only debate concerning the Compulsory Process Clause in the House, Representative Burke moved to clarify that a person would be entitled to delay his trial "provided he made it appear to the court that the evidence of the witnesses, for whom process was granted but not served, was material to his defence," thereby making explicit the accused's right to have his evidence actually heard and not just compelled. 1 Annals of Cong. 785 (Joseph Gales ed., 1790). The amendment, however, was "rejected as superfluous on the ground that the courts could be trusted to construe the clause to achieve its" purpose. Westen, *supra*, at 98. Representative Harley argued that "in securing him the right of compulsory process, the Government did all it could; the remainder must lie in the discretion of the court." 1 Annals of Cong. at 785. And Representative Smith agreed that "the regulation would come properly in, as part of the judicial system." *Id.* The Senate then adopted the Sixth Amendment verbatim with little or no debate. Westen, *supra*, at 98.

2. This Court's precedents also confirm that the Sixth Amendment's protections were adopted to ensure that defendants can present a complete defense at trial. For instance, early in the Republic, Chief Justice John Marshall confirmed that the Compulsory Process Clause protects an accused's right to compel not only in-person testimony, but also papers and

other evidence. In Aaron Burr's famous treason trial, Burr attempted to compel President Thomas Jefferson and U.S. Attorney George Hay to produce certain letters that he believed "may be material in his defence." *Burr*, 25 F. Cas. at 35. In discussing whether the constitutional right to compel witnesses likewise entailed the ability to compel the production of letters that contained President Jefferson's private communications, Chief Justice Marshall explained that the "literal distinction" between papers and witnesses is "too much attenuated to be countenanced in the tribunals of a just and humane nation." *Id.* Limiting the Compulsory Process Clause to exclude the production of documents "would seem to reduce his means of defence within narrower limits than is designed by the fundamental law of our country." *Id.*; *see In re Dillon*, 7 F. Cas. 710, 713 (N.D. Ca. 1854) (declining to compel production of records on the ground that they were in the possession of a foreign citizen, but nevertheless explaining that "the right of the accused, under the constitution, to obtain a subpoena duces tecum, rests on the same ground as his right to process to compel the attendance of witnesses to testify orally"); *see also Trump v. Vance*, 2020 WL 3848062, at *6 (July 9, 2020) (approvingly citing Chief Justice Marshall's observation that the right "to compel the attendance of witnesses[]" extends to requiring those witnesses to "bring[] with them such papers as may be material in the defence"); Akhil Reed Amar, *Sixth Amendment First Principles*, 84 Geo. L.J. 641, 698 (1996) (if a defendant can generally use the Clause "to drag a human being, against her will, into the courtroom to tell the truth, surely he must also enjoy the lesser-included rights to present other truthful evidence that in no way infringes on another human being's autonomy. These lesser-included rights are plainly presupposed by the compulsory process clause").

In the years since, this Court has repeatedly recognized that the accused enjoy a constitutional right to present a "complete defense," *Holmes*, 547 U.S. at 324 (quoting *Crane v. Kentucky*, 476 U.S. 683, 690 (1986)), and that this right includes the right to access and present evidence, *see Trombetta*, 467 U.S. at 485 (noting the development of "'what might loosely be called the area of constitutionally guaranteed access to evidence'" (quoting *Valenzuela-Bernal*, 458 U.S. at 867). As this Court has explained it, there are a "group of constitutional privileges [that] deliver[] exculpatory evidence into the hands of the accused, thereby protecting the innocent from erroneous conviction and ensuring the integrity of our criminal justice system." *Id.*

In *Brady v. Maryland*, for example, this Court confirmed that the government must produce to the defendant potentially exculpatory information in its possession. As the Court explained, any other rule would result in "an unfair trial to the accused"—one that "does not comport with standards of justice." 373 U.S. 83, 87-88 (1963); *see Crane*, 476 U.S. at 690-91 (The opportunity to be heard "would be an empty one if the State were permitted to exclude competent, reliable evidence . . . . [E]xclusion of this kind of exculpatory evidence deprives a defendant of the basic right to have the prosecutor's case encounter and survive the crucible of meaningful adversarial testing." (internal quotation omitted)); *cf. United States v. Cronic*, 466 U.S. 648, 655 (1984) (explaining the importance of the right to counsel for enabling "powerful statements on both sides of the question," which is how truth "is best discovered" (quoting Kaufman, *Does the Judge Have a Right to Qualified Counsel?*, 61 A.B.A. J. 569, 569 (1975), citing dictum by Lord Eldon)).

Allowing Colorado's statutory psychotherapist-patient privilege to prevent Mr. Perez from subpoenaing his wife's medical records to determine whether they include evidence material to his defense undermines the important constitutional interests at stake, as the next Section discusses.

III. Denying *In Camera* Review of the Records Mr. Perez Requested Undermines His Constitutional Right to Access Evidence.

As just discussed, the Constitution guarantees the accused the right to access and present evidence in his defense. Notwithstanding that constitutional guarantee, the court below concluded that Mr. Perez was not entitled to have a court conduct *in camera* review of his wife's medical records because his request could not "overcome Colorado's strong public policy interest in securing the privacy of mental health records." Pet. App. 12a-13a. That conclusion undermines the important constitutional interests that the Bill of Rights was adopted to protect and should be reversed.

This Court has long recognized that claims of privilege or privacy must sometimes give way in the face of countervailing constitutional interests. During Aaron Burr's treason trial, for example, U.S. Attorney Hay argued that the materials Burr was seeking were protected by executive privilege. Although Chief Justice Marshall declined to lay out a "general rule" for when, if ever, a claim of executive privilege may permissibly encroach on a defendant's constitutional right to present evidence, *United States v. Burr*, 25 F. Cas. 187, 192 (C.C.D. Va. 1807), and the conflict was ultimately resolved outside the courts, the Chief Justice did observe that it would be "a very serious thing, if such letter should contain any information material to the defence, to withhold from the accused the power of making use of it," *id.*

Significantly, in an earlier decision regarding a different subpoena in the same case, directed to the President himself, Chief Justice Marshall seemed to contemplate that *in camera* review would be an appropriate avenue for balancing those interests. In response to the President's argument that "the letter contains matter which ought not to be disclosed," the Chief Justice reasoned that "[i]f [the letter] does contain any matter which it would be imprudent to disclose," and assuming that content "be not immediately and essentially applicable to the point, [it] will, of course, be suppressed." *Burr*, 25 F. Cas. at 37. Such a determination of the contents, and any subsequent suppression, would presumably require initial review by the court, enabling the court to allow suppression where appropriate without requiring the accused to meet the unduly high bar of knowing, in advance, what the records contain. *See Valenzuela-Bernal*, 458 U.S. at 871 n.8 (Chief Justice Marshall "found it unreasonable to require Aaron Burr to explain the relevancy of General Wilkinson's letter to President Jefferson . . . precisely because Burr had never read the letter and was unaware of its contents").

Years later, in *Davis v. Alaska*, this Court concluded that a statute that protected a witness's juvenile record from disclosure must give way in the face of a defendant's constitutional right to impeach a government witness. 415 U.S. 308 (1974). As this Court explained, "[t]he State's policy interest in protecting the confidentiality of a juvenile offender's record cannot require yielding of so vital a constitutional right as the effective cross-examination for bias of an adverse witness." *Id.* at 320; *cf. Peña-Rodriguez v. Colorado*, 137 S. Ct. 855, 869 (2017) (holding that "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal

defendant, the Sixth Amendment requires that [a state] no-impeachment rule give way in order to permit the trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee"); *United States v. Nixon*, 418 U.S. 683, 713 (1974) (privileges, even when they serve the government's interest in confidentiality, "cannot prevail over the fundamental demands of due process of law in the fair administration of criminal justice").

Most relevant here, in *Ritchie*, this Court held that courts must compel, for *in camera* review, mental health records that potentially contain evidence material to an accused's defense when those records are held by state agencies. 480 U.S. at 58. As the Court explained, *in camera* review can fully protect the defendant's and the state's interest in "ensuring a fair trial." *Id.* at 60. The Court did not there have occasion to decide whether the same standard should apply to privately-held records, but "the availability or extent of legal protection from disclosure should not depend on the fortuity of whether the witness obtained counseling from a state agency or a private practitioner or organization, particularly given that people of modest means may have no recourse but to rely on a public agency." Clifford S. Fishman, *Defense Access to a Prosecution Witness's Psychotherapy or Counseling Records*, 86 Or. L. Rev. 1, 28 (2007).

According to the court below, however, Colorado's state law privilege trumped Mr. Perez's constitutional right to access potentially exculpatory evidence. In its view, the trial court could not be required to engage in *in camera* review of the records because Colorado's state law privilege is absolute and can be overcome only by "a particularized showing . . . under extraordinarily narrow circumstances." Pet. App. 12a-13a.

Notably, given the abundant evidence Mr. Perez produced to show the materiality of the records he sought, the court's conclusion that he had not made a sufficiently particularized showing is testament to the fact that the court below has essentially erected a categorical bar to the release of such information. *Id.* at 13a-14a (describing Mr. Perez's "initial assertions to police regarding [his wife]'s suicidal ideations[,] . . . testi[mony] that she had bouts of intense sadness and that she had, on occasion, discussed suicide while vowing never to do it[,] . . . testi[mony] that she told [her brother] she took sleeping pills the Sunday before her death and wandered away from the house," other testimony from family and friends about her depression, and the expert testimony that her death could have been self-inflicted); *see also id.* at 31a-32a, 38a (defense counsel's representations during hearing on subpoena about the dates the decedent supposedly attended therapy, when police had first been made aware of her depression and therapy attendance, and specific instances that supported the reasoning that she was depressed and might be suicidal, including miscarriages and her statements to other witnesses about her depression around her inability to be a mother).

The court's conclusion gave short shrift to the critically important constitutional interests at stake, as well as this Court's recognition that such constitutional interests can trump the application of state rules that would undermine them. Indeed, in its cursory analysis of *Ritchie*, the court below failed to consider how the state's "policy interest" in "a statute or rule creating an evidentiary privilege," *Commonwealth of Kentucky v. Barroso*, 122 S.W.3d 554, 558 (Ky. 2003), could have been maintained by "production of such material for in camera inspection with all the

protection that a district court [would] be obliged to provide," *Nixon*, 418 U.S. at 706. Focusing solely on the interest in preserving confidential communications also overlooked the state's similarly compelling "interest in the fair and accurate adjudication of criminal cases," *Ake v. Oklahoma*, 470 U.S. 68, 79 (1985).

In sum, by denying even *in camera* review of Mr. Perez's wife's medical records, the court below meaningfully undermined Mr. Perez's ability to obtain the evidence he needed to present a full defense, thereby undermining the important interests served by the Sixth Amendment. This Court should grant the petition and reverse.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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