

No. 19-164

In The
Supreme Court of the United States

—◆—
DAVID SAMARRIPA, ET AL.,

Petitioners,

v.

GREGORY KIZZIAH, WARDEN, ET AL.,

Respondents.

—◆—
**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Sixth Circuit**

—◆—
**BRIEF OF *AMICI CURIAE* THE INNOCENCE
PROJECT, THE NATIONAL ASSOCIATION FOR
PUBLIC DEFENSE, CALIFORNIA ATTORNEYS
FOR CRIMINAL JUSTICE, AND JARRETT M.
ADAMS IN SUPPORT OF PETITIONERS**

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INTEREST OF *AMICI CURIAE*¹

The Innocence Project is a nonprofit organization and law school clinic dedicated primarily to providing pro bono legal and related investigative services to people who may be innocent but have been wrongfully convicted of crimes. The Innocence Project also seeks to prevent future wrongful convictions by researching how innocent people are convicted of crimes and pursuing reform initiatives designed to enhance the accuracy of the criminal justice system. Because wrongful convictions destroy lives and allow actual perpetrators to remain unpunished, the Innocence Project's work serves as an important check on the power of the state over criminal defendants and helps to ensure a safer and more just society. The Innocence Project has a compelling interest in promoting justice by ensuring that criminal proceedings reach accurate determinations of guilt. In furtherance of this mission, the Innocence Project supports and advocates on behalf of those who have been wrongfully convicted who are seeking habeas corpus relief, at both the State and Federal levels.

The National Association for Public Defense ("NAPD") is an association of more than 14,000 professionals who deliver the right to counsel throughout all U.S. states

¹ Pursuant to Rule 37.6, Counsel for *amici* represent that they authored this brief in its entirety and that none of the parties nor their counsel, nor any other person or entity other than *amici*, their members, or their counsel have made a monetary contribution intended to fund the preparation or submission of this brief. Counsel of record provided timely notice of the intent to file this *amicus* brief pursuant to Rule 37.2 and both parties have consented to the filing.

and territories. NAPD members include attorneys, investigators, social workers, administrators, and other support staff who are responsible for executing the constitutional right to effective assistance of counsel. NAPD's members are advocates in jails, in courtrooms, and in communities and are experts in not only theoretical best practices, but also in the practical, day-to-day delivery of legal services. Their collective expertise represents state, county, and local systems through full-time, contract, and assigned counsel delivery mechanisms, dedicated juvenile, capital, and appellate offices, and a diversity of traditional and holistic practice models.

In addition, NAPD hosts annual conferences and webinars where early access to counsel, pretrial release, discovery, investigation, cross-examination, and law enforcement and prosecutorial duties are addressed. NAPD also provides training to its members concerning zealous advocacy and strives to obtain optimal results for clients both at the trial level and on appeal, including in habeas corpus petitions.

California Attorneys for Criminal Justice ("CACJ") is a nonprofit California corporation and a statewide organization of criminal defense lawyers. CACJ is the California affiliate of the National Association of Criminal Defense Lawyers, the largest organization of criminal defense lawyers in the United States. CACJ is administered by a Board of Directors, and its by-laws state a series of specific purposes including "to defend the rights of persons as guaranteed by the United States Constitution, the Constitution of the State of

California, and other applicable law” and the improvement of “the quality of the administration of criminal law.” CACJ’s membership consists of approximately 1,700 criminal defense lawyers from around California and elsewhere, as well as members of affiliated professions. CACJ has appeared as *amicus curiae* before all reviewing courts in the State of California, as well as before this Court, and before a number of other reviewing courts on matters of importance to its membership.

A significant proportion of CACJ’s member lawyers represent persons seeking habeas corpus relief in capital and non-capital cases in both State and Federal post-conviction litigations. CACJ hosts one of California’s best attended continuing education programs on capital case defense in part to help provide education on current trends and developments in the law affecting post-conviction litigation. CACJ also hosts an annual appellate practice seminar. CACJ has a long standing interest in assisting persons seeking habeas corpus relief in obtaining such relief.

Jarrett M. Adams was wrongfully convicted of sexual assault at age 17 and sentenced to 28 years in a maximum security prison. After serving nearly 10 years and filing multiple appeals—including a habeas petition—Mr. Adams was exonerated. Mr. Adams used the injustice he endured as inspiration to become an advocate for the underserved and often uncounted. Mr. Adams earned his Juris Doctorate from Loyola University Chicago School of Law in May 2015 and is now a practicing attorney at The Law Office of Jarrett

Adams, PLLC, where he represents clients who often seek relief from similarly unjust incarcerations.

Accordingly, the Innocence Project, NAPD, CACJ, and Mr. Adams each has a strong interest in the issues raised in this case and each supports the grounds for certiorari identified by Petitioners. The Innocence Project, NAPD, CACJ, and Mr. Adams write separately as *amici curiae* to provide additional perspective about the importance of the issue and the practical implications of the Sixth Circuit’s decision if left standing.

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SUMMARY OF ARGUMENT

In 1798, in a letter to an individual seeking asylum in the United States, Thomas Jefferson articulated one of our nation’s core and enduring principles: “[T]he laws of the land, administered by upright judges . . . protect you from every exercise of power unauthorized by the constitution of the United States. . . . [H]abeas corpus secures every man here, alien or citizen, against every thing which is not law, whatever shape it may assume.” Letter from Thomas Jefferson to Archibald Hamilton, 26 September 1798, NATIONAL ARCHIVES, *available at* <https://founders.archives.gov/documents/Jefferson/01-30-02-0368>. Indeed, the availability of the writ of habeas corpus to everyone in the United States—regardless of financial status—is foundational to the American system of justice: “[T]here is no higher duty than to maintain it unimpaired.” *Bowen v. Johnston*, 306 U.S. 19, 27 (1939); *see also Smith v.*

Bennett, 365 U.S. 708, 712 (1961) (habeas corpus “has long been available in the federal courts to indigent prisoners of both the State and Federal Governments to test the validity of their detention”).

The Court should grant certiorari to resolve a clear split in the circuit courts, through which the Sixth and Seventh Circuits have improperly impaired the writ of habeas corpus. In these two circuits, impoverished petitioners who qualify for *in forma pauperis* status could have their ability to file appeals of habeas petition denials foreclosed by the imposition of partial filing fees. Petitioners’ review of case law and the text, structure, and history of the relevant statutes convincingly shows that the Sixth and Seventh Circuits have misinterpreted the law.

Amici curiae—organizations and individuals with vast first-hand experience filing habeas petitions and related appeals—write to share aspects of their experience that demonstrate the Court should grant Petitioners’ request for review.

First, habeas petitions—and appeals of denials of habeas petitions—have proven to be vital tools for *amici curiae* in seeking review of their own and their clients’ incarcerations. Without the ability to appeal denials of habeas petitions, many of *amici*’s clients, and *amicus* Mr. Adams himself, as well as other inmates, could still be unjustly detained in prisons today.

Second, for many of *amici*’s indigent clients, *in forma pauperis* status provides the only avenue of relief to appeal denials of habeas petitions. Accordingly,

amici have sought and been granted *in forma pauperis* status on behalf of their clients, and *amici* may not have been able to file appeals of denials of habeas petitions if the approach of the Sixth and Seventh Circuits had been followed and partial filing fees had been imposed. Further, *amici* often represent those who have established their actual innocence. If the courts were permitted to impose the barrier of partial filing fees on those who have been granted *in forma pauperis* status, many innocent individuals could be left without remedy to challenge their unjust incarcerations.

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ARGUMENT

I. ***IN FORMA PAUPERIS* STATUS IN HABEAS PETITIONS IS VITAL TO AVOID WRONGFUL INCARCERATIONS.**

Habeas corpus “assures among other things that a prisoner may require his jailer to justify the detention under the law.” *Peyton v. Rowe*, 391 U.S. 54, 58 (1968). “[I]n the United States, this high purpose has made the writ both the symbol and guardian of individual liberty.” *Id.* Without judicial review of their petitions, prisoners seeking habeas corpus relief may be incarcerated during “time that they might properly have enjoyed as free men” and women. *Id.* at 64. Accordingly, “a principal aim of the writ is to provide for swift judicial review of alleged unlawful restraints on liberty,” *id.* at 63, to ensure that unjust convictions do not stand and are overturned as soon as possible.

Importantly, these protections are guaranteed without prejudice to prisoners' financial status. Habeas corpus "has long been available in the federal courts to indigent prisoners of both the State and Federal Governments to test the validity of their detention" and "financial hurdles must not be permitted to condition its exercise." *Smith*, 365 U.S. at 712–13. The shield of habeas corpus protects personal freedom without discrimination: "[T]he Fourteenth Amendment weighs the interests of rich and poor criminals in equal scale, and its hand extends as far to each." *Id.* at 714.

Congress has long recognized and advanced these principles, as evidenced by its decision to make the district court filing fee for habeas petitions \$5 as compared with \$350 for district court filings in civil actions. *See* 28 U.S.C. § 1914(a). On appeal, however, filing fees increase to \$505, with no distinction drawn for appeals of a district court's denial of habeas petitions. *See* Court of Appeals Miscellaneous Fee Schedule (effective Sept. 1, 2018), *available at* <https://www.uscourts.gov/services-forms/fees/court-appeals-miscellaneous-fee-schedule>.

Indigent prisoners may seek relief from the \$505 filing fee for appealing a denial of a habeas petition by moving for *in forma pauperis* status in the district court and, if such motion is denied, by moving to proceed on appeal *in forma pauperis* in the court of appeals. *See* Fed. R. App. P. 24(a). The availability of appellate relief is particularly important for indigent habeas petitioners, given that habeas corpus is "a vital instrument for the protection of individual liberty,"

Boumediene v. Bush, 553 U.S. 723, 743 (2008), and “litigants *in forma pauperis* may, in the trial court, have suffered disadvantages in the defense of their cases inherent in their impecunious condition,” *Coppedge v. United States*, 369 U.S. 438, 450 (1962).

Amici are aware of many individuals who have moved to proceed on appeal *in forma pauperis*, and who eventually were successful in overturning their wrongful convictions after being granted *in forma pauperis* status to pursue their appeals. For instance,

- Bobby Joe Maxwell was arrested in April 1979 and charged with murdering ten men in downtown Los Angeles, a killing spree the media dubbed the “Skid Row Stabber” killings. *Maxwell v. Roe*, 628 F.3d 486, 491 (9th Cir. 2010). Lacking solid physical evidence tying Maxwell to the murders, the prosecution relied on the testimony of jailhouse informant Sidney Storch, who testified that Maxwell confessed to the murders while the two shared a cell. *Id.* Maxwell maintained his innocence throughout trial, but the jury convicted Maxwell and sentenced him to life in prison without the possibility of parole. In return for his testimony, Storch was released from custody one year and eight months early. *See id.* Maxwell filed a habeas petition on the basis that Storch’s testimony was false and that the prosecution withheld material information about the reduced sentence Storch received in return for his testimony. *Id.* The District Court for the Central District of California denied Maxwell’s habeas petition. *Id.* Maxwell

thereafter appealed to the Ninth Circuit and moved to proceed *in forma pauperis*, which was granted. Order Granting Motion to Proceed *In Forma Pauperis*, *Maxwell v. Roe*, No. 02-09555 (9th Cir. July 12, 2007) (Dkt. No. 12). The Ninth Circuit thereafter reversed the Central District of California's denial of Maxwell's habeas petition. *Maxwell*, 628 F.3d at 513.

- In June 1982, James Shortt was convicted of murder and robbery and sentenced to life in prison without parole. See Appellant's Opening Brief, *Shortt v. Roe*, No. 06-56172, 2008 WL 2861951, at *2 (9th Cir. May 29, 2008). He subsequently filed a habeas petition challenging the jury's conviction on the basis that the prosecution failed to disclose favorable material evidence regarding prosecution witnesses and such witnesses' false testimony. *Shortt v. Roe*, 342 Fed. Appx. 331, 332 (9th Cir. 2009). The District Court for the Central District of California denied Shortt's habeas petition, and he filed an appeal proceeding *in forma pauperis*. See Order Granting Motion to Proceed *In Forma Pauperis*, *Shortt v. Roe*, No. 06-56172 (9th Cir. Aug. 2, 2007) (Dkt. No. 10). The Ninth Circuit granted Shortt's habeas petition. *Shortt*, 342 Fed. Appx. at 332. Following a retrial, Shortt was acquitted on January 7, 2010. See The National Registry of Exonerations, James Shortt, available at <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3995>.

- George Lewis was convicted in November 1988 of first-degree criminal sexual conduct, based in part on the victim's statement that she was certain Lewis and a co-defendant had raped her. *See Lewis v. Erickson*, 946 F.2d 1361, 1361–62 (9th Cir. 1991). Lewis was sentenced to 152 months' imprisonment (shortened to 130 months on appeal). *Id.* at 1362. Thereafter, during the co-defendant's trial, the victim recanted her testimony and testified she could not identify the co-defendant. *Id.* Lewis thereafter moved for a new trial based on newly discovered evidence—*i.e.*, the victim recanting her testimony regarding Lewis's co-defendant, despite her earlier assertion that there was “no doubt in her mind” that Lewis and the co-defendant raped her. *Id.* at 1361–62. The District Court for Minnesota denied Lewis's habeas petition, which the Eighth Circuit reversed on the basis that, given the victim's recantation, the Eighth Circuit did not believe a second jury would convict Lewis. *Id.* at 1362–63. Lewis filed his habeas petition pursuant to *in forma pauperis* status. *See Order Granting Motion to Proceed In Forma Pauperis, Lewis v. Erickson*, No. 90-00147 (D. Minn. Feb. 27, 1990) (Dkt. No. 1). On November 14, 1991, the prosecution dropped the charge against Lewis and he was released. *See The National Registry of Exonerations, George Lewis, available at* <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=4539>.
- Paul House was convicted of murdering his neighbor and sentenced to death. *See House v.*

Bell, 547 U.S. 518, 532–33 (2006). He proceeded *in forma pauperis* before the Eastern District of Tennessee, the Sixth Circuit and this Court, challenging the DNA evidence used against him at trial and presenting new evidence that the victim’s abusive husband had killed her. *Id.* at 534. The Sixth Circuit refused to hear House’s habeas petition on procedural grounds. This Court reversed, holding that House’s demonstration of actual innocence was sufficiently strong that it would have been a miscarriage of justice for the Sixth Circuit to refuse to hear his habeas petition. *Id.* at 554–55. Following this Court’s reversal, the District Court overturned House’s conviction. After its appeal was denied, the prosecution conducted DNA testing. Rather than incriminate House, however, the testing cast further doubt on House’s guilt. On May 12, 2009, the prosecution dropped all charges. See The National Registry of Exonerations, Paul House, available at <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=3307>. Without the ability to appeal pursuant to *in forma pauperis* status, House could have been executed for a crime he did not commit.

Each of these individuals, and undoubtedly countless others, were able to appeal the denial of their habeas petitions to the appellate courts because they were able to proceed pursuant to *in forma pauperis* status. Had filing fees been imposed, these individuals—and others similarly situated—may not have been able to appeal the district courts’ denials of their

habeas corpus petitions. In short, many could remain unjustly detained in prison to this day.

II. PARTIAL FILING FEES IMPOSED ON THOSE WHO HAVE BEEN GRANTED *IN FORMA PAUPERIS* STATUS COULD IMPAIR THE ABILITY OF HABEAS PETITIONERS TO SEEK RELIEF.

The experience of *amici* demonstrates that imposing partial filing fees on indigent prisoners who appeal district court denials of habeas corpus petitions could severely impair access to habeas corpus relief. Wrongfully imprisoned individuals often depend on *in forma pauperis* status to file their appeals. If the courts impose partial filing fees on indigent appellants, individuals who lack financial resources will not be able to appeal improper denials of their habeas petitions, resulting in unjust imprisonments. Indeed, scholars have concluded that partial filing fee regimes can “have a chilling effect on potentially valid claims.” Julie M. Riewe, Note, *The Least Among Us: Unconstitutional Changes in Prisoner Litigation Under the Prison Litigation Reform Act of 1995*, 47 Duke L.J. 117, 131 (1997).

As examples of the potential impact of partial filing fees, *amici* are aware of the below individuals whose financial records demonstrate that they likely could not have filed for appellate review of their habeas petitions without *in forma pauperis* status:

- David Trammell was convicted of aggravated assault, felony theft, and aggravated robbery for stealing a service station tow truck and using the tow truck to steal a Corvette. *Trammell v. McKune*, 485 F.3d 546, 549 (10th Cir. 2007). At trial, Trammell claimed that another individual committed the crime and framed him. *Id.* The prosecution knew of Trammell's defense, yet did not disclose evidence it possessed that linked the other individual to the crime. *Id.* The District of Kansas denied Trammell's habeas petition, *id.* at 550, and Trammell appealed and proceeded *in forma pauperis* before the Tenth Circuit, see Order Granting Motion to Proceed *In Forma Pauperis*, *Trammell v. McKune*, No. 05-3354 (D. Kan. Sept. 27, 2006) (Dkt. No. 41). The Tenth Circuit granted Trammell's habeas petition, finding the prosecution violated Trammell's rights by failing to disclose material exculpatory evidence. See *Trammell*, 485 F.3d at 552. Per Trammell's motion to proceed *in forma pauperis*, he had just over \$1,000.00 in savings to support himself while he was in prison and owed \$156.00 per month in child support that he was not able to afford. See Application to Proceed *In Forma Pauperis*, *Trammell v. McKune*, No. 05-03354 (D. Kan. Sept. 1, 2005) (Dkt. No. 2).
- Hattie Tanner was convicted of murder based on weak incriminating evidence and insufficient consideration of potentially exculpatory evidence. See *Tanner v. Yukins*, 867 F.3d 661, 670, 674 (6th Cir. 2017). The District Court for the Eastern District of Michigan denied

Tanner's habeas petition, *id.* at 662–63, which Tanner appealed to the Sixth Circuit pursuant to *in forma pauperis* status, see Order Granting Motion to Proceed *In Forma Pauperis*, *Tanner v. Yukins*, No. 15-1691 (6th Cir. June 23, 2015) (Dkt. No. 4).² The Sixth Circuit reversed the District Court's denial of Tanner's habeas petition, holding that the Michigan Supreme Court unreasonably held that there was sufficient evidence to convict Tanner. *Tanner*, 867 F.3d at 674. The prosecution appealed to this Court, which declined to take the case. On March 19, 2018, Tanner was freed when the state dismissed the case against her. See The National Registry of Exonerations, Hattie Tanner, available at <http://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5299>. Per Tanner's motion to proceed *in forma pauperis*, she received \$58.72 in deposits each month from prison employment, and had a spendable account balance of just \$1.71. See Application to Proceed *In Forma Pauperis*, *Tanner v. Yukins*, No. 04-71155 (E.D. Mich. Dec. 13, 2005) (Dkt. No. 27).

- Kimberly Sharp was convicted of first-degree felony murder and kidnapping and was sentenced to life in prison. *Sharp v. Rohling*, 793 F.3d 1216, 1223 (10th Cir. 2015). Relying on a police officer's promise that she would not be incarcerated and that he would help her find a home for herself and her children, Sharp

² The order granting Tanner's motion to proceed *in forma pauperis* pre-dates the establishment of the partial filing fee regime in the proceedings below.

confessed to her involvement in the crime, showed the police officers the crime scene, and assisted in their reenactment of the crime. *Id.* at 1224. Following her conviction, Sharp filed a habeas petition with the District Court for Kansas, arguing that her confession had been involuntary and the state trial court's denial of her motion to suppress her involuntary confession violated her Fifth and Fourteenth Amendment rights. *See id.* at 1226. The District Court for Kansas denied her petition and Sharp appealed to the Tenth Circuit pursuant to *in forma pauperis* status. *See Order Granting Motion to Proceed In Forma Pauperis, Sharp v. Rohling*, No. 10-3100 (D. Kan. May 11, 2010) (Dkt. No. 25). The Tenth Circuit reversed the lower court's denial of Sharp's habeas petition. *Sharp*, 793 F.3d at 1240–41. Per Sharp's motion to proceed *in forma pauperis*, she received \$86.00 in deposits each month from prison employment and used that income on personal hygiene products and other necessary items. *See Application to Proceed In Forma Pauperis, Sharp v. Rohling*, No. 10-3100 (D. Kan. May 11, 2010) (Dkt. No. 3).

As these case studies demonstrate, the imposition of partial appellate filing fees will foreclose appellate review of the cases of some habeas petitioners solely because those individuals cannot afford partial filing fees. The select cases of successful habeas petitions *amici* highlight herein demonstrate the importance of *in forma pauperis* status to our justice system and show the real-world impact *in forma pauperis* status can have in individual cases. All petitioners, regardless

of wealth or status, should have equal access to justice, and the decision below represents a bar to such access.



CONCLUSION

WHEREFORE, this Court should grant the Petitioners' request for review.

Dated: September 4, 2019

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