No. _____

In the Supreme Court of the United States

ROBERT RICKS,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Robert Ricks was convicted at trial of conspiracy to distribute cocaine base, possession with intent to distribute cocaine base and heroin, possession of a firearm in furtherance of a drug trafficking crime, and being a previously-convicted felon in possession of a firearm. Petitioner's defense at trial was that the drugs and gun recovered from the room he shared with his girlfriend in her parents' house belonged to his girlfriend, Mandi Malbroue, who had multiple prior drug trafficking convictions herself.

Defense counsel interviewed Ms. Malbroue before trial. She admitted that the gun and drugs were hers but was unwilling to testify at trial because the case agent on Petitioner's case had threatened her with prosecution for perjury if she were to testify. In response to a motion to quash the indictment for substantially interfering with Petitioner's Fifth and Sixth Amendment rights to call witnesses and present a defense, the government filed a motion to grant Ms. Malbroue use and derivative use immunity under 18 U.S.C. 6002 and 6003. At trial, the case agent testified that if Ms. Malbroue testified, she would commit perjury. Ms. Malbroue refused to testify.

This petition presents the following question:

1. Whether the grant of use and derivative use immunity to a defense witness, which specifically excluded any "prosecution for perjury, giving a false statement, or failing to comply with this Order," cured the government's misconduct when the case agent threatened the defense witness that she would be committing perjury if she testified favorably for the defendant.

PARTIES TO THE PROCEEDINGS BELOW AND RULE 29.6 STATEMENT

Robert Ricks is the Petitioner in this case. Petitioner was the appellant in the United States Court of Appeals for the Fifth Circuit and was represented by Counsel of Record Avery B. Pardee. Petitioner was represented at trial by Avery B. Pardee and Michael W. Magner.

The United States was the appellee in the United States Court of Appeals for the Fifth Circuit and was represented by David E. Haller, Diane H. Copes, and Kevin G. Boitmann. The United States was represented at trial by David E. Haller and Myles D. Ranier.

Pursuant to Rule 29.6, Petitioner states that no parties are corporations.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Ricks respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit and the dissent are available at 2019 WL 2240710 and App. A (majority opinion) and App. B (dissent).

JURISDICTION

The United States Court of Appeals for the Fifth Circuit affirmed Petitioner's conviction on May 22, 2019. This Court has jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution, reproduced in full in App. C, provides in pertinent part that: "No person shall . . . be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment to the United States Constitution, reproduced in full in App. D, provides in pertinent part that: "In all criminal prosecutions, the accused shall enjoy the right to . . . have compulsory process for obtaining witnesses in his favor."

18 U.S.C. 6002, *Immunity generally*, reproduced in full in App. E, provides in pertinent part that:

> Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding before . . . a court . . . of the

> United States . . . and the person presiding over the proceeding communicates to the witness an order issued under this title, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination; but no testimony or other information compelled under the order (or any information directly or indirectly derived from such testimony or other information) may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

18 U.S.C. 6003, *Court and grand jury proceedings*, reproduced in full in App. F, provides in pertinent part that:

> In the case of any individual who has been called to testify . . . at any proceeding before . . . a court of the United States . . . , the United States district court for the judicial district in which the proceeding is or may be held shall issue, . . . upon the request of the United States attorney for such district, an order requiring such individual to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

STATEMENT OF THE CASE

This case raises the question of whether a grant of use and derivative use immunity under 18 U.S.C. 6002 and 18 U.S.C. 6003—which does not protect a witness from prosecution for perjury—cures a violation of Petitioner's Fifth and Sixth Amendment rights to call witnesses and present a defense without substantial interference by the government when (i) the government's case agent told the witness she would commit perjury if she testified consistent with the exculpatory facts she told the case agent, (ii) the witness's testimony would have been material to the disputed factual question of whether the gun and drugs belonged to the witness

rather than Petitioner, (iii) even after the grant of use and derivative use immunity, the case agent testified at trial that if the witness testified she would be committing perjury, and (iv) the witness refused to testify even with the grant of use and derivative use immunity.

The dissent from the majority opinion of the Fifth Circuit below illustrates the constitutional insufficiency of a grant of use and derivative use immunity under 18 U.S.C. 6002 and 18 U.S.C. 6003 under these circumstances. *See* App. B. A grant of use and derivative use immunity—which does not protect a witness from a prosecution for perjury—does not cure government misconduct when the specific threat made to the defense witness was that she would be *prosecuted for perjury* if she testified consistent with her statements to the case agent that exculpated Petitioner. Such immunity does not cure the "duress on the witness' mind" to enable the witness to make a "free and voluntary choice whether or not to testify." *Webb v. Texas*, 409 U.S. 95, 98 (1972). The Courts must be empowered to order that the government elect between granting immunity from prosecution for the specific offense with which the defense witness was threatened—perjury—or dismissal of the indictment.

I. Petitioner's trial and conviction.

Petitioner was convicted after a two-day trial of conspiracy, possession with intent to distribute and distribution of cocaine base and heroin, possession of a firearm in furtherance of a drug trafficking crime, and being a felon in possession of

a firearm. App. J at ROA.900-901.[1] Petitioner's defense was that the drugs and gun found in the bedroom that he shared with his girlfriend, Mandi Malbroue, in her parents' house belonged to Ms. Malbroue. App. J at ROA.935-939.

Petitioner and Ms. Malbroue were originally charged as co-defendants in state court. Ms. Malbroue pled guilty before Petitioner's case was accepted by the U.S. Attorney's Office for federal prosecution. App. J at ROA.1220-1221, 1579. At the same time that she pled guilty to the charges she faced with Petitioner, Ms. Malbroue pled guilty to separate gun and drug charges stemming from her distribution of narcotics during a period of time that Petitioner was incarcerated. App. G at ROA.779, App. J at ROA.937-938, 1302.

Ms. Malbroue was interviewed twice by ATF agents before Petitioner's trial and both times was adamant that that drugs and gun recovered from the bedroom she shared with Petitioner belonged to her. App. G at ROA.796, App. J at ROA.1220. During both interviews, the ATF case agent threatened Ms. Malbroue with criminal prosecution were she to testify consistent with her statements to the ATF. App. G at ROA.796, App. J at ROA.1221, 1225. When interviewed by defense counsel and the defense investigator, Ms. Malbroue said that though she wanted to testify on Petitioner's behalf, she had decided that she could not testify as a defense witness at

[1] The facts of the case are discussed by the Hon. James E. Graves, Jr., at length in his dissent from the Fifth Circuit's majority opinion. *See* App. B.

trial because she was afraid that the government would bring new federal charges against her. App. G at ROA.796.

The ATF case agent first interviewed Ms. Malbroue—without her counsel present—while her state court charges with Petitioner were pending. App. G at ROA.796-797; App. J at ROA.1220. A female ATF agent called Ms. Malbroue and asked her to come to the ATF office. App. G at ROA.797. Ms. Malbroue told the case agent and the female agent that the gun and drugs found in the bedroom she shared with Petitioner were hers and not Petitioner's. App. G at ROA.797; App. J at ROA.1221. The agents accused Ms. Malbroue of lying and the case agent told her that if she testified on Petitioner's behalf she was "going to go down for this too." App. G at ROA.797.

The ATF case agent next interviewed Ms. Malbroue after she pled guilty in state court and while she was serving her sentence. App. G at ROA.797; App. J at ROA.1224. Ms. Malbroue was issued a grand jury subpoena and was transported to the U.S. Attorney's Office. App. G at ROA.797; App. J at ROA.1224. Ms. Malbroue told the case agent again that the gun and the drugs found in the bedroom she shared with Petitioner were hers, and not Petitioner's. App. G at ROA.797; App. J. at ROA.1224-1225. She told the agents that she knew the gun recovered was in her drawer inside of a sock. App. G at ROA.797. She said that she kept the gun for her own protection because she had been robbed during the time period that she was selling drugs while Petitioner was incarcerated. App. G at ROA.798. The case agent

repeated his prior threat: "if you try to testify for Robert, you're going down too." App. G at ROA.798.

Defense counsel moved to quash the indictment based on this government interference with a defense witness. App. G at ROA.790. In an attempt to cure the misconduct, the Assistant U.S. Attorney filed a motion seeking immunity for Ms. Malbroue from federal prosecution for the drugs and gun under 18 U.S.C. 6002 and 18 U.S.C. 6003. App. H at ROA.834. The order of immunity provided that any testimony or other information provided by Ms. Malbroue may be used against her "in a prosecution for perjury [or] giving a false statement." App. I at ROA.837. This immunity was meaningless because it did not protect Ms. Malbroue from prosecution for the specific crime that the case agent had threatened: a prosecution for lying if she testified to the specific facts favorable to Petitioner. The case agent's testimony at trial made clear that Ms. Malbroue's use and derivative use immunity was meaningless: the case agent maintained that her testimony would subject her to prosecution for perjury.

Tellingly, the case agent did not threaten to prosecute Ms. Malbroue for her prior statements to the case agents which, if false, could subject her to prosecution under 18 U.S.C. 1001. Instead, the case agent threatened to prosecute Ms. Malbroue *only if* she testified consistent with her prior statements to the case agents that exculpated Petitioner in front of the grand jury or at Petitioners' trial. The purpose and effect was to prevent Ms. Malbroue from testifying as a defense witness.

During its case-in-chief, the Assistant U.S. Attorney questioned the case agent about his two interviews of Ms. Malbroue. App. J at ROA.1220. The case agent admitted that he conducted the first interview notwithstanding that Ms. Malbroue was represented by counsel for her pending state court charges with Petitioner. App. J at ROA.1220. The case agent confirmed that Ms. Malbroue told him during the first interview "that the drugs found during the NOPD search warrant were not Robert's and neither was the gun." App. J at ROA.1221.

The case agent likewise confirmed that his second interview of Ms. Malbroue took place outside the grand jury room, after he filed a writ to have her brought before the grand jury, while Ms. Malbroue was serving her prison sentence for her guilty pleas to drug and weapons charges. App. J at ROA.1224. Again, Ms. Malbroue told the case agent "that the guns and the drugs were hers." App. J at ROA.1225. The case agent testified that he told Ms. Malbroue that it would constitute perjury if she testified in front of the grand jury that the guns and the drugs were hers. *Id.* The case agent testified that, "We explained to her that we know what she was doing. We knew that she was taking—attempting to take the charge for Robert. We explained to her that if she was put into the grand jury and sworn under oath, that she'd be committing perjury in a federal grand jury." *Id.* The case agent testified that after he conveyed this threat, Ms. Malbroue "broke down. She was crying. She told us that she just couldn't do it," but that "she would cooperate on any other individuals" who were targets of the government's investigation "and would testify against them." *Id.*

The case agent testified that he "knew" Ms. Malbroue was not being truthful when she told him that the drugs and the gun belonged to her, and not Petitioner. App. J at ROA.1223. The case agent testified that Ms. Malbroue's plea bargain to lesser charges in state court proved that she would be lying if she testified that the gun and drugs found in the bedroom she shared with Petitioner belonged to her. App. J at ROA.1225. The case agent testified that he "knew" that Ms. Malbroue's intended testimony that the drugs and the gun were hers would "make her available to potential perjury charges" were she to testify. App. J at ROA.1226. Ms. Malbroue, who had been in the hallway, left the courthouse at some point during the case agent's testimony. As the Hon. James E. Graves, Jr. noted in his dissent below, "[r]egardless of whether Malbroue heard [case agent] Calagna's testimony, there is no dispute that this testimony corroborated Malbroue's statements about their meetings without the presence of her counsel and her fear that, if she testified to what she consistently maintained was truthful, authorities would pursue additional charges against her." App. B at 26.

Following the case agent's testimony that any testimony that Ms. Malbroue would give would be perjury, the defense re-urged the motion to quash. App. J at ROA.1430. The trial court denied the motion to quash because "an immunity deal [n]ever gives you license to perjure yourself." App. J. Petitioner was unable to call Ms. Malbroue as a witness in his defense.

Petitioner was convicted and sentenced to 300 months. *See* App. J at ROA.902.

II. Opinion of the Fifth Circuit Court of Appeals.

Petitioner appealed his conviction to the United States Court of Appeals for the Fifth Circuit which, by a 2-1 vote, affirmed Petitioner's conviction. *See* App. A. The majority did not address the insufficiency of the use and derivative use immunity to cure the case agent's threats that Ms. Malbroue would commit perjury if she were to testify favorably for Petitioner.

Judge Graves, in his dissent, rightly noted his concern that the use and derivative use immunity "set[] out exceptions for the very charges authorities had consistently threatened," and that the "grant of immunity containing exceptions for the very threats asserted" by the case agent "was not a cure." App. B at 27. Instead, "[n]ot only did the immunity order contain exceptions for the very charges" the case agent "repeatedly threatened" during his pretrial interviews of Ms. Malbroue, he "repeated the threat during trial." *Id.* at 28.

Judge Graves continued that "this is not about" the witness "seeking a license to perjure herself. This is about the government threatening her repeatedly by telling her that she would be prosecuted for additional charges if she testified" on Petitioner's behalf "because it *believed* she was lying, not that it had proof that she actually was lying." *Id.* at 28 (emphasis added). The fact that Ms. Malbroue's exculpatory testimony "did not align" with the government's "beliefs" about its proof "should not interfere" with Petitioner's "constitutional right to call witnesses without interference and present a defense." *Id.*

Instead, the majority treated the case agents' threats to Ms. Malbroue before trial as irrelevant. The majority concluded that because Ms. Malbroue was not present for the agent's trial testimony where he reiterated his pre-trial threats, his threats "did not amount to substantial interference." App. A at 10. The majority went further, concluding that the agent's testimony "talk[ing] about (not to) a potential witness about possible (not certain) prosecution" did not constitute a threat of prosecution for perjury were Ms. Malbroue to testify. *Id.* at 10.

Accordingly, the majority found no reversible error and affirmed Petitioner's conviction.

This petition follows.

REASONS FOR GRANTING THE PETITION

Few rights are more fundamental than that of a defendant to call witnesses and to present the defense theory of the case to allow the *jury*—not the government's case agent—to determine the truth. "The right to offer the testimony of witnesses . . . is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 19 (1967). It is the responsibility of "the jury, as sole judge of the credibility of a witness," to evaluate the testimony of any defense witness, and any evidence the government has to contradict the testimony, to "make an informed judgment as to the weight to place" on the witness's testimony. *Davis v. Alaska*, 415 U.S. 308, 319 (1974).

That a witness's testimony will contradict the government's evidence or will be inconsistent with the government's theory of the case does not allow the government to prevent a defendant from calling that witness—a witness whose testimony contradicts the government's proof is the very definition of a defense witness. *United States v. Vavages*, 151 F.3d 1185, 1190 (9th Cir. 1998) (that a defense witness's "testimony would have contradicted the testimony of the government's own witnesses does not form a sufficient basis" for a perjury admonition). Indeed, it would be "oppressive" if every witness whose testimony could be considered inconsistent with the government's theory of the case were subjected to the risk of a prosecution for perjury. *United States v. Viera*, 839 F.2d 1113, 1118 (5th Cir. 1988) (Williams, Wisdom, Politz, and Johnson, Js., dissenting). Instead, the jurors are "entitled to have the benefit of the defense theory before them" when deciding a defendant's fate. *Davis*, 415 U.S. at 318.

A criminal defendant has the right to present witnesses to establish his defense without fear of retaliation against the witnesses by the government. *See Webb v. Texas*, 409 U.S. 95, 98 (1972). "Cases involving Sixth Amendment deprivations are subject to the general rule that remedies should be tailored to the injury suffered from the constitutional violation." *United States v. Morrison*, 449 U.S. 361, 668 (1981). The Court has taken the approach of identifying and then neutralizing the violation "by tailoring relief appropriate in the circumstances to assure the defendant . . . a fair trial." *Id.* At some point, however, a constitutional error "alter[s] the decisional

dynamic" in a way that is "irreparable." *United States v. Stein*, 541 F.3d 130, 145 (2d Cir. 2008).

Petitioner's case raises an issue under *Webb* and *Morrison* not previously addressed by this Court. Lower courts need guidance on how to remedy the deprivation of a defendant's Fifth and Sixth Amendment rights when the government threatens a potential defense witness with prosecution for perjury if she testifies to facts exculpatory to the defendant. Use and derivative use immunity under 18 U.S.C. 6002 and 6003 may be sufficient to cure threats to prosecute the witness for her involvement in the underlying offense, but it plainly does not provide any assurance to a witness previously threatened with a perjury prosecution because the statute provides that her testimony may be used against her in a "prosecution for perjury" or "giving a false statement." 18 U.S.C. 6002(3). What type of remedy is required to allow the witness to testify to facts that are inconsistent with the government's theory of the case without fear of prosecution, and to restore the defendant to the position in which he would have been before the government threatened his witness with prosecution for perjury?

I. Use and derivative use immunity under 18 U.S.C. 6002 and 6003 does not cure the constitutional violation when a defense witness is threatened with prosecution for perjury.

Petitioner's conviction was obtained and affirmed on the premise that use and derivative use immunity under 18 U.S.C. 6002 and 6003 is sufficient to cure a prior threat of prosecution for perjury should a defense witness testify. That premise is incorrect. Use and derivative use immunity only protects the witness from the use of

her testimony and any information derived from it, *New Jersey v. Portash*, 440 U.S. 450, 457 (1979); 18 U.S.C. 6002, it does not protect her from a prosecution for perjury if she testifies to exculpatory information that the case agent believes is untrue.

As Judge Graves observed in his dissent,

> Malbroue was not immunized from anything. Not only did the immunity order contain exceptions for the very charges [case agent] Calagna repeatedly threatened, . . . Calagna repeated the threat [of prosecution] during trial. Despite both the majority's and the district court's characterizations, this is not about Malbroue seeking a license to perjure herself. This is about the government threatening her repeatedly by telling her that she would be prosecuted for additional charges if she testified on [Petitioner] Ricks' behalf because it believed she was lying, not that it had proof that she was actually lying . . .

App. B at 28. "At trial," the government "claimed to give Malbroue immunity to testify on Ricks' behalf but threatened her that if she testified to what she had maintained the entire time—that the gun and drugs were hers, they would prosecute her federally." App. B at 29.

The grant of use and derivative use immunity under 18 U.S.C. 6002 and 6003 was not tailored to the constitutional error that occurred in the case: the case agent told Ms. Malbroue that she would be prosecuted for perjury if she testified to the material exculpatory facts that she had told the case agent, and Ms. Malbroue refused to testify because she was afraid of being prosecuted. The use and derivative use immunity order allowed any testimony she gave to be "used against her" "in a prosecution for perjury, giving a false statement, or failing to comply with this Order." App. I at ROA.837.

Courts must construct the remedy for a constitutional violation to "restore[] the defendant to the circumstances that would have existed had there been no constitutional error." *United State v. Carmichael*, 216 F.3d 224, 227 (2d Cir. 2000). Use immunity *may* be sufficient to cure when the government's substantial interference with a defense witness stemmed from a threat to prosecute a witness on a substantive criminal charge, but it does not purport to and is not sufficient to cure a prior threat to prosecute a witness for perjury.

II. This Court should grant review in order to give lower courts guidance on what remedy to craft to cure a government threat to prosecute a defense witness for perjury.

Courts have struggled with what remedy to craft to cure prior threats of prosecution for perjury and ensure the availability of the defense witness at trial. Some have found that an assurance by the government that it will not prosecute a witness cures the threat, while others have rejected that same argument; some have remanded without clear direction on what remedy can be crafted; while others have remanded with instructions to grant complete testimonial immunity to the threatened defense witness. These inconsistent approaches show both that the government uses threats of perjury to interfere with a defendant's right to present a defense and call witnesses and that courts need direction on what to do when it occurs. Are lower courts entitled to order the government to assure a witness that she will not be prosecuted for perjury to cure an agent's threats that she will be prosecuted for perjury if she testified? If not, is any remedy other than dismissal of the indictment available?

This Court has declined to address whether or when defendants may have a right under the Due Process clause "to a judicially administered grant of immunity to a witness whose testimony is essential to an effective defense." *Autry v. McKaskle*, 465 U.S. 1085, 1087 (1984) (Marshall, J. and Brennan, J., dissenting from denial of certiorari). Petitioner's case presents a circumstance under which such a judicial administration of immunity may be appropriate: when the defense witness is made unavailable by the government's substantial interference with the witness's free choice whether to testify or not by threatening the witness with prosecution for perjury.

In the absence of any "statute or Supreme Court ruling authoriz[ing] judicial grants of immunity for a defense witness," lower courts may require that the government elect between granting immunity to a witness under 18 U.S.C. 6002 and 6003 to cure the government's substantial interference with a defense witness or dismissal of the case when that substantial interference is caused by a threat to prosecute the witness for her involvement in the underlying crime. *United States v. Quinn*, 728 F.3d 243, 247 (3d Cir. 2013). *See also United States v. Lord*, 711 F.2d 887, 891-92 (9th Cir. 1983); *United States v. Morrison*, 535 F.2d 223, 229 (3d Cir. 1976).

The difficulty arises when the threat of prosecution that rendered a witness unavailable was a threat of prosecution for perjury because the protection for the witness by the statutory remedy that the government may elect—use and derivative use immunity under 18 U.S.C. 6002 and 6003—is not coextensive with the threat that constituted substantial interference with the defense witness.

The Fifth Circuit has held that a prior threat to prosecute a defense witness for perjury if she testifies a certain way can be cured by the government "assur[ing]" the witness "that she would not be charged" before she testifies, and the district court "convey[ing]" that assurance to witness. *United States v. Bieganowski*, 313 F.3d 264, 291 (5th Cir. 2002). Absent a statutory mechanism to make such an assurance, what form must this assurance take, and how are lower courts to enforce such assurances to ensure the availability of defense witnesses?

The Sixth Circuit, on the other hand, in *United States v. Thomas*, found that a similar assurance to a defense witness who was threatened with a prosecution for misprision if he testified *did not* cure the threat. 488 F.2d 334, 336 (6th Cir. 1973). The court found the government's "statement that it would forego prosecution" of the defense witness "will not serve to wipe out the prejudicial effect of the" threat. *Id.* "Nothing short of complete immunity, if even that, could have relieved [the witness's] apprehension, and restored his free and voluntary choice, eliminating the prejudice." *Id.* The court remanded for a new trial but did not give instructions to the district court on how to proceed—and how could it, without an enabling statute or inherent authority to grant immunity to a defense witness who had been threatened?

Likewise, in *State v. N.B.*, the Superior Court of New Jersey, Appellate Division, interpreting the Fifth and Sixth Amendments of the United States Constitution directed the trial court to "fashion a remedy to extinguish any remaining effect of the State's intimidation" of a witness who had been threatened with prosecutions for perjury and false statements if he testified inconsistent with his

pretrial statements to the prosecutor, but recognized that it will be "difficult to construct a remedy for this situation on remand." 2017 N.J. Super. Unpub. LEXIS 490, at *21 (N.J. Super. Ct. Feb. 28, 2017). And in *People v. Shapiro*, the New York Court of Appeals, interpreting the Fifth and Sixth Amendments of the United States Constitution, considered how to remedy threats by a prosecutor to prosecute witnesses for perjury should their testimony as defense witnesses reveal "misstatements or inconsistencies" in their prior testimony at their own criminal trials. 409 N.E.2d 897, 903-906 (N.Y. 1980). The court found that the threats of prosecution for perjury substantially interfered with the defense's ability to present a defense and remanded with instructions that the witnesses be granted immunity from prosecutions for perjury based on their prior sworn testimony as a condition to retry the defendant. *Id.* at 906.

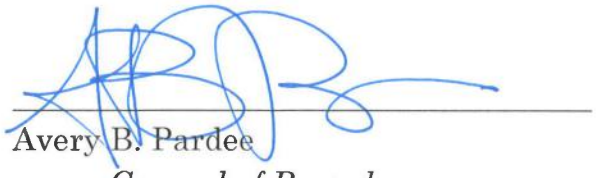
Courts need guidance on what remedy to craft to ensure that the truth-seeking function is restored to the jury and the defendant's Fifth and Sixth Amendment rights are honored. This case provides an excellent vehicle to do so.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Court grant his petition and issue a writ of certiorari to review the decision of the Fifth Circuit or grant the petition and summarily reverse with instructions to grant Ms. Malbroue immunity from prosecution for perjury to allow Petitioner to secure her testimony at trial.

This 14th day of August, 2019.

Respectfully submitted,



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