19-7353

No. ___-___

IN THE

SUPREME COURT OF THE UNITED STATES

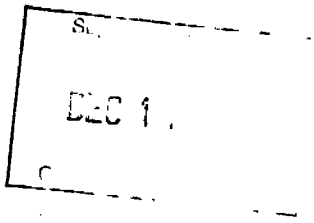
Enamidem Celestine OKON,

Petitioner.

Vs.

Nate Knutson,

Respondent.



On Petition For Writ Of Certiorari
To The Eighth Circuit Court of Appeals

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PETITIONER

QUESTION PRESENTED

Whether Petitioner filed "a second or successive" application by re-raising a claim in his second habeas petition that was not fully addressed and/or adjudicated under *Brecht* "substantial and injurious" effect in his first petition for constitutional error?

Okon

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CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth Amendments to the Constitution of the United States provides, in relevant part:

In 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 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 defense.

The Fourteenth Amendment to the Constitution of the United States, in relevant part:

Section I. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the States wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2244 (b) of Title 28, United States Code provides:

(b)

(1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed

Sections 2254(d) and (e) (1) of Title 28, United States Code, provide:

(d) An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State proceedings unless the adjudication of the claim----

(1) resulted in a decision that was contrary to , or involved an unreasonable application of , clearly established federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of facts in light of evidence presented in the State court proceeding.

(e) (1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of factual issue made by the State court shall be presumed correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

No. ___-____

IN THE

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Enamidem Celestine OKON,

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On Petition For Writ Of Certiorari
To The Eighth Circuit Court of Appeals

OPINIONS BELOW

The judgment of the court of Appeals (Pet. App. A) .The opinions of the district court (Pet. App. B). The findings and recommendation of the magistrate judge (Pet. App. C). The opinion of the Minnesota Court of Appeals (Pet. App. D) is reported at 2014 WL 3800324. The district court previous opinion (Pet. App. H) is reported at 2016 LEXIS 56141

JURISDICTION

The judgment of the court of appeals was entered on August 13th, 2019 (Pet. App. A). A petition for rehearing was denied on September 28th, 2019 (Pet. App. E). This Court's jurisdiction in invoked under 28 U.S.C. **§ 1254(1).**

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Sixth and Fourteenth Amendment and 28 U.S.C. **§§ 2244(b), 2254(d)(1)(2), are set forth at Petitioner Appendix F.**

STATEMENT OF THE CASE

Petitioner a black man was convicted in Stearns County in the State of Minnesota of aggravated rape of a white woman. Petitioner contends that he never penetrated the complainant has his entire defense. At pre-trial hearing, petitioner filed motion in limine under Rule 412 commonly known as "Rape shield Law" exceptions to offer the following evidence :(1) evidence that petitioner and complainant had sexual intercourse on at least one prior occasion, (2) evidence that complainant's prior sexual conduct as it relates to semen found in the DNA swabs, and complainant's underwear that showed five or more sources of semen from male individuals, excluding petitioners'. The trial court denied these motions. Trial court granted State's motion to preclude petitioner from any references to the complainant's prior work as escort (prostitute) at the time of alleged offense.

Petitioner argues that his right to confront his accuser was violated when the trial court prohibited him from important line of cross-examination. Petitioner then files a habeas corpus petition 2254 and he was denied relief without the court reviewing the constitutional error under the mandate of this Court in *Brecht* "substantial and injurious effect" standard. Again, petitioner files yet another habeas petition urging the court to rule on his post-conviction judgment that he again argued that his confrontation clause violation should be address under *Brecht* "substantial and injurious effect" standard, but the district court claimed that the claim was barred under 2244(b)(1). Petitioner disagreed, and argued all along that

since he raised a claim that was not review or addressed under the mandate of this Court in *Brecht* "substantial and injurious effect" standard, that the application is not second and that such should be governed under the "abuse-of-writ" standard.

REASON FOR GRANTING THE WRIT

At issue here are the standard under 2244(b) imposes before a court of Appeals may issue a pre-authrization. In resolving this case in light of *Magwood v.Patterson,* 561 U.S. 320 (2010), this Court decided again that when a habeas applicant seeks permission to initiate appellate review of the dismissal of his petition, the court of appeals should limit its examination to a threshold inquiry into the underlying merit of his claim. *Slack v. McDaniel*, 529 US 473, 481,120 S Ct. 1595, 146 L Ed 542 (2000). The lower court denied the application ruling that the application was barred under 2244(b). The petitioner argued that since he was raising a claim that he previously raised that was not addressed under the requirement of this Court as it relates to "confrontation clause violation" under under *Fry v. Pliler,* "that federal habeas courts must apply the *Brecht* "substantial and injurious" standard whether or not the State appellate court recognized the error and reviewed it for harmlessness. 551 U.S. at 121-22,"at its own discretion and of such, this claim is not abusive by any definition. "An abusive petition occurs 'where a petitioner files a petition raising ground that were available but not relied upon in a prior petition, or engages in other conduct that disentitles him to the relief he seeks." *Schlup,* 513 U.S. at 319 n. 34 (quoting *Kuhlmann,* 477 U.S. at 444 n.6). Also, in *Sanders v. United States,* 373 U.S. 1, 10 L. Ed. 2d 148, 83 S. Ct. 1068. (1963), this Court found that, "controlling weight may be given a prior application for federal habeas corpus or § 2255 relief only if: (1) the same ground presented in

the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the end justice would not be served by reaching the merits of the subsequent application. This application is not the type that requires preauthorization from the Eighth circuit as argued by the respondent in his response brief because the "**abuse-of-writ**" is applicable to previously raised claims which can be determined by the district court. Petitioner is **not raising new issues or claims** to warrant preauthorization from the Eighth circuit. The *Sanders* standard for successive petition is still applicable till this day. See *Winston v. United States AG,* 2013 U.S. Dist. LEXIS 109052 (citing *Sanders,* Nevertheless, "[e[ven if the same ground was rejected on the merits on a prior application, it is open to the applicant to show that the "ends of justice" would be served by permitting the redetermination of the ground." *Sanders,* 373 U.S. at 16). Under the abuse of writ doctrine, although the burden generally falls on the government to plead abuse of writ, the court may raise the issue *sua sponte* as long as it provides the petitioner with notice and opportunity to respond.

Here, petitioner raised a claim that he raised in his first application but the district court left unaddressed and unreview under the mandate of *Brecht* "substantial and injurious" effect at its own discretion, the second application would not be "second and successive. Re-raising a previously unaddressed claim is not abusive by any definition and it is not barred under 2244(b).

I. THE COURT BELOW APPLIED INCORRECT STANDARDS TO PETITIONER'S SUCCESSIVE APPLICATION IN LIGHT OF MAGWOOD V. PATTERSON, 561 U.S. 320 (2010).

In *Magwood v.Patterson,* 561 U.S. 320 (2010), Justice Kennedy, Chief Justice Robert , Justice Ginsburg, and Justice Alito all dissent in their opinion and reason that :"if the applicant in his second petition raises a claim that he raised in his first petition but the district court left unaddressed at his own discretion, the second application would not be "second or successive." The justices went further to state in the opinion "re-raising a previously unaddressed claim is not abusive. Whether or not this application is barred under § 2244(b) is a question this court should address. Absent two exceptions that are inapplicable here, the relevant statutory provision in AEDPA provides in part:

"(1) A claim presented in a second or successive habeas application under section 2254 that was presented in a prior application shall be dismissed.

The dissent in *Magwood v.Patterson,* 561 U.S. 320 (2010) shed some light on this situation and reasoned that "to respond to the court's concern, "if the applicant in his second petition raises a claim that he raised in his first but the district court left unaddressed at its own discretion, the second application would not be "second and successive. The majority agreed with the dissent by stating "of course, as the

dissent correctly states, if *Magwood* was challenging a undisturbed state-court judgment for the second time, abuse of writ principles would apply holding that an "application containing a claim that the petitioner had no fair opportunity to raise in the first habeas petition is not second or successive application." As noted by the dissent, re-raising a previously unaddressed claim is not abusive by any definition." Deciding whether an application itself is "second or successive" requires looking to the nature of the claim that the application raises to determine whether the petitioner had a full and fair opportunity to raise that claim in his earlier petition. Here, Okon raised had the opportunity to raise the claim but was not given a full and fair hearing by the court which in turn declined to address the error using the mandate under *Brecht 'substantial and injurios effect'* see *Toua Hong Chang v. Minnesota,* 521 F.3d 828, 838 (8th Cir. 2008)(applied *Brecht* standard to confrontation clause claim). Okon counters in his district court proceedings that § 2244(b) should not apply to his application as "second and successive" because the district court left the error unaddressed by not applying the mandate under *Fry v. Pliler,* "that federal habeas courts must apply the *Brecht* "substantial and injurious" standard whether or not the State appellate court recognized the error and reviewed it for harmlessness. 551 U.S. at 121-22,"at its own discretion and of such, this claim is not abusive by any definition. The "ends of justice" and abuse-of-the-writ standard governs this scenario and instant case. As reasoned by the dissent in *Magwood,* that "Reraising a previously unaddressed claim is not abusive by any definition." Whether this claim can be review on the merits is answered in the

Supreme Court's decision in *Sanders v. United States,* 373 US 1 (1963) the Court, in dealing with the problem of "successive application," stated:

"controlling weight may be given a prior application for federal habeas corpus or § 2255 relief only if: (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the end justice would not be served by reaching the merits of the subsequent application. [Emphasis added] 373 US at 15.

When a prisoner files multiple or repetitive petitions for habeas corpus relief, the abuse of writ doctrine set forth in 28 U.S.C. 2244(a) may bar his claim, again the Supreme Court in *Sanders* noted that 'if the Government opposes the petition as in this case that the petition is second and successive and is bar under 2244(b), an abuse of writ doctrine in *Sanders* shifts the burden to the petitioner to show that **"ends of justice"** would be served by the court entertaining his petition. See *Furnari v. united States Parole Comm'n,* 531 F.3d 241(3rd Cir. 2008); *Parks v. Reynolds,* 958 F.2d 989, 994 (10th Cir. 1992) (quoting *Sanders v. United States,* 373 U.S. 1 (1963)(same). In Okon's case, the magistrate judge erred by not applying that standard in his present petition. In *Sanders v. United States,* 373 U.S. 1 (1963), the Supreme Court distinguished successive petitions that rely on ground previously heard ("repetitive claims") from second petitions containing new claims ("new claims"). *Id.* 373 U.S. at 15-19. The Tenth Circuit states in *Parks v. Reynolds,* 958 F.2d 989, 994 (10th Cir. 1992) (quoting *Sanders v. United States,* 373 U.S. 1 (1963). "To make this showing, an applicant must demonstrate that "a constitutional

violation probably has caused the conviction of one innocent of the crime." In the instant case, the courts below choose to dismiss the petition without prejudice under 2244(b)(1), but the actual standard should have been the abuse-of-writ- standard.

While the Anti-terrorism and Effective Death Penalty Act (AEDPA) of 1996 bars "second and successive" habeas petitions, 28 U.S.C. 2244(b), these prohibitions do not and should not apply to a constitutional error (confrontation right) or claim that was **"previously unaddressed"** for a simple reason that a habeas court must adjudicate even a successive habeas claim when required to do so by the "ends of justice. See *Schlup v. Delo,* 513 U.S.298 (1995)(quoting *Sanders v. United States,* 373 U.S. 1(1963). Here, Okon raised an argument, not that he could not raise them but he actually raised them and the district court failed to adjudicate that claim by not applying the correct legal standard applicable to §2254 cases as prescribed and required by the Supreme Court decision in *Brecht v. Abrahamson,* 507 U.S. 619, 623 (1993). Accordingly, this court should apply the "Quick look approach" to petitioner's prior decision and find that this claim does not constitute an abuse of writ.

Like *Magwood,* Petitioner argues that in contrast, reads 2244(b) to apply to a "second and successive" application challenging the same court judgment. Petitioner claims that the court below never ruled on the merits of his "confrontation clause" violation under the *Brecht* "substantial and injurious effect" as mandated by this Court in *Fry v. Pliler,* 551 U.S. 112 (2007), "that federal habeas courts must apply the *Brecht* "substantial and injurious" standard whether or not the State appellate

court recognized the error and reviewed it for harmlessness. 551 U.S. at 121-22. Also, re-raising a claim that was not addressed given the standard of AEDPA for constitutional error committed by state court is not barred by 2244(b), rather it is subject to abuse of writ standard, of which this claim is not abusive in any nature, whether petitioner files a second and successive application by re-raising a claim in his second habeas petition that was unaddressed is a matter of review by this Court. As explained by this Court in *Panetti v. Quarterman,* 551 U.S.930 (2007) establishes that deciding whether an application itself is "second or successive" requires looking to the nature of the claim that the application raises to determine whether the petitioner had a full and fair opportunity to raise the claim in his earlier petition. This Court should look to the first habeas application to judge for itself whether for the sake of finality, comity, and federalism, the petitioner "Confrontation Clause" was reviewed under this Court's mandated *Brecht* "substantial and injurious" effect standard.

II. THE "ENDS OF JUSTICE" WOULD BE SERVED BY REVIEWING THE MERITS OF THIS CLAIM IN LIGHT OF *SANDERS V. UNITED STATES,* 373 U.S.1 (1963)

The answer to this question is found in *Sanders v. United States,* 373 U.S. 1 (1963). Accord *United States v. Davis,* 417 U.S. 333, 341-42, 41 L. Ed. 2d 109, 94 S.Ct. 2298 91974). In *Sanders,* this Court clearly held that while a court may rely on prior decision on the merits of a petitioner's claim, if the petitioner demonstrates that the "ends of justice" would be served by a new consideration of the issues, then

the court should treat them on their merits. *Id.* At 12, 15-17. The *Sanders* Court, in dealing with the problem of "successive application," explained that court may grant:

"controlling weight may be given a prior application for federal habeas corpus or § 2255 relief only if: (1) the same ground presented in the subsequent application was determined adversely to the applicant on the prior application, (2) the prior determination was on the merits, and (3) the end justice would not be served by reaching the merits of the subsequent application.

Before assessing whether Petitioner can qualify for such and exception under the "ends of justice" standard, this court should turn to the pre-1996 version of 28 USC § 2244(a), which permits successive petitions when the **"ends of justice"** so required. This court should do so because the "ends of justice" doctrine appears to remain a good and applicable law even though that art of law was removed from the statute books by a 1996 amendment. See *Sorrell v. McGrew,* 2015 U.S. Dist. LEXIS 70658. To say the least, even though congress removed the "ends of justice" exception from § 2244(a) in 1996 and replaced with a reference to § 2255, **some courts continue to refer to the "ends of justice" exception in specific circumstances.** See, e.g., *Alaimalo v. United States,* 645 F.3d 1042, 1047, 1050 (9th Cir. 2011) ("ends of justice" requires consideration of successive petition because new authority rendered underlying actions no longer criminal); *Lema v. INS,* 341 F.3d 853, 857 n.9 (9th Cir. 2003) ("ends of justice" exception remains good law even after 1996 amendment); *Straube v. Chertoff,* 560 F.Supp.2d 983, 985 (S.D. cal. 2008)

("[E]ven if [DHS civil detainee's § 2241] petition is successive, the 'ends of justice' require the court to review the petition.") It will be true to say that Okon's successive petition qualifies under the "ends of justice" OR **"other exception"** in this **specific circumstances**.

In a case in which a successive petition includes a claim for relief previously raised and rejected, if the Government opposes the petition on an abuse of writ, it has the burden to plead abuse of writ and must make the claim with clarity and particularity in its answers to the petition, which they did in this case by invoking 2244(b)(1). Specifically, the Government cites the District Court' 2016 order issued in response to Petitioner's second habeas petition in which the district court reviewed petitioner's "confrontation right" without applying the *Brecht* "substantial and injurious effect" to the challenged constitutional error committed by the trial court. But once the Government has made a claim of such, the burden shifts to the petitioner to show that "ends of justice" would be served by the court entertaining his petition. Petitioner has pointed out to this Court that in order to adjudicate a constitutional error (confrontation clause violation), the AEDPA requires the district court and the court of appeals to apply the *Brecht* "substantial and injurious effect" to such error. Petitioner has made a *pre ma facie* showing on the record that no court has ever adjudicate its constitutional error on the merit by using the correct AEDPA standard. This standard is still being used today, especially in 2255 habeas petition, which of course has the same standard applicable to 2254 application.

III. THE COURT BELOW ERRED BY NOT REVIEWING PETITIONER'S CONSTITUTIONAL ERROR IN LIGHT OF *BRECHT* "SUBSTANTIAL AND INJURIOUS EFFECT" STANDARD IN HIS PREVIOUS APPLICATION

A criminal defendant has a guaranteed right "to be confronted with the witnesses against him." U.S. Const. amend. VI. The Confrontation Clause applies to criminal defendants in state proceedings through the Fourteenth Amendment. *Pointer v. Texas,* 380 U.S. 400, 13 L, Ed 2d 923, 84 S. Ct. 1065 (1965). "The main essential purpose of confrontation is to secure for the opponent the opportunity of cross-examination." *Davis v. Alaska,* 415 U.S. 308, 315-16, 39 L Ed. 2d 347, 94 S. Ct. 1105 (1974).

The answer to this question is found in *Brecht v. Abrahamson,* 507 U.S. 619, 623 (1993). Accord *Fry v. Pliler,* 551 U.S. 112 (2007), as an established law by the Supreme Court that held "in all 28 U.S.C. § 2254 proceedings, a federal court must assess the prejudicial impact of the an alleged constitutional error in a state-court criminal trial under *Brecht* "substantial and injurious effect" whether or not the state appellate court recognize the error...that *Brecht* applies in all § 2254 cases)." A substantial and injurious effect occurs when the court finds itself in grave doubt about the effect of the error on the jury's verdict. Grave doubt exists where the issue of harmlessness is so evenly balanced that the court feels itself in virtual equipoise as to the harmlessness of the error. *Id.* (quotation, citations, and bracket omitted). Some sister circuit have ruled using this standard to confrontation right including

the Eighth Circuit. See *Toua Hong Chang v. Minnesota,* 521 F.3d 828, 838 (8th Cir. 2008)(applied *Brecht* standard to confrontation clause claim); *Bobadilla v. Carlson,* 570 F. Supp.2d 1098, case **No. 07-CV-1649 (PJS/RLE;** *Taque v. Richards,* 3 F.3d 1133 (7th Cir. 1993)(the Seventh circuit concluded on appeal of the denial of habeas petition, that defendant's confrontation right was violated when court barred evidence that provided alternative explanation for physical evidence of sexual assault victim under rape shield law); *U.S v. Bear Stop*, 997 F.2d 451 (8th Cir.1993) (Defendant charged with sexual assault of a boy was denied his right of **confrontation** when the district court precluded him from cross-examining boy's mother regarding possibility that victim's bloody underwear were associated with another sexual assault of victim by three older boys; absent any proof of type and timing of sexual assault by three boys, jury likely concluded that bloody underwear could only be result of sexual abuse by defendant.)"; *United States v. Begay,* 937 F. 2d 515 (10th Cir. 1991)(the Tenth circuit applied the rape shield law rule 412 and rule 403 and concluded that the trial court's exclusion of evidence offering alternative explanation of prior sexual assault victim's physical symptoms which was 'injury' to the vagina, contravened confrontation right); *Barbe v. McBribe*, 521 F.3d 443 (4th Cir. 2008) (exclusion of evidence to alternative explanation of victim condition was error that was substantial and injurious on the jury verdict)(writ granted); *Lajoie v. Thompson*, 217 F.3d 663 (9th Cir. 2000) (exclusion of evidence to alternative explanation of victim condition was error that was substantial and injurious on the jury verdict)(writ granted). If other circuits have been applying

Brecht "substantial and injurious effect" to claim of "confrontation right violation, the "ends of justice" would require this court to review Okon's "confrontation right" since the district court failed to do so in the prior application. The due process right implications as well as the fairness and integrity is heightened by the fact that Honorable Judge John Tunheim "found that Okon had sufficiently raised a federal law "confrontation right" argument with the Minnesota Court of Appeals" but the State court failed to adjudicate the constitutional issue (confrontation clause) under the mandated *Chapman* harmless-error review standard for relief. The "ends of justice" would be served by applying the *Brecht* "substantial and injurious effect" to the constitutional error of this claim which was never applied or conducted in both the state court and the federal courts.

In a habeas corpus 2254 proceedings, **AEDPA** instructs this court to utilize a **two-step** analysis to assess whether Okon's is entitled to federal habeas relief on Confrontation issue. Under the **first step**, this court may grant relief only if (a) the state court adjudication of the issue on its merit "resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established federal law, as determined by the Supreme Court of the United States," OR (b) the adjudication "resulted in a decision that was based on an unreasonable determination of facts in light of evidence presented in the State court proceedings." 28 USC § 2254(d). And even if error is determined, habeas corpus relief can only be granted, under the **second step** of the AEDPA analysis, if the error was **"not harmless beyond reason doubt" under *Chapman* harmless error analysis,**

or if the error had a "substantial and injurious effect or influence the jury in determining the jury's verdict." ***Brecht v. Abrahamson,*** **507 US 619(1993).** Okon once again claimed that the state failed to grant him judicial review of his "confrontation clause" claim in his post-conviction proceeding. See (Okon v. State, 2016 Minn. App. Unpub. LEXIS 1081). The factual and the legal issues adjudication was not full and fair given the standard set forth in AEDPA. Okon adopts the memorandum of law and affidavit of "ends of justice" argument on the merits of this claim.

Under AEDPA, this court is not entitled to award relief to a habeas corpus petitioner unless the error of which he complains resulted in, as the Supreme Court has explained "a reviewing Court would be unable to declare a belief that the restrictions of cross-examination and the rejection of offers of proof here were harmless beyond a reasonable doubt. *Chapman v. California*, 386 US 18, 17 L Ed 2d 705, 87 S Ct 824 1065 (1967); *U.S v. Stever*, 603 F.3d 747 (CA9 2010). If this court is in grave doubt concerning the effect of such a constitutional error, the habeas petitioner (Okon) is entitled to prevail. Okon contends that the Sixth Amendment Confrontation claim error in this case was "**not harmless**" and "**had a substantial and injurious effect on the jury's verdict"** with respect to all his convictions. The magistrate judge correctly ruled that the state court affirmed nonetheless, without acknowledging the significance of, or even adverting to petitioner's constitutional rights under the confrontation clause, even when the Petitioner presented the issue **twice** to that court on both direct appeal and post-conviction

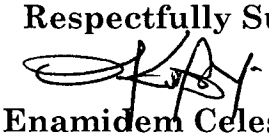
appeal. With regards to Okon's ground for relief, the failure of the State court to address both Okon's ground implicates Okon's fundamental, substantive and procedural due process right to judicial review, and the fairness and integrity of the State's judicial proceedings. The due process right implications as well as the fairness and integrity heightened by the fact that Honorable Judge John Tunheim "found that Okon had sufficiently raised a federal law "confrontation" argument with the Minnesota Court of Appeals" but the State court failed to adjudicate the constitutional issue (confrontation clause) under the mandated *Chapman* harmless-error review standard for relief. Id at p. 7. Furthermore, Honorable Judge John Tunheim's decision in Okon's first § 2254 petition does not serve the 'ends of justice' under *Sanders* because the Supreme Court held in *Fry v. Pliler,* that federal habeas courts must apply the *Brecht* "substantial and injurious" standard whether or not the State appellate court recognized the error and reviewed it for harmlessness. 551 U.S. at 121-22.

CONCLUSION

For the foregoing reasons stated above, Petitioner respectfully asks this Court to grant a "writ of certiorari" to answer the question presented for review as this issue would have a nationwide effect.

Dated: 12. 04. 2019

Respectfully Submitted:



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