No. 19-7496

In The

SUPREME COURT OF THE UNITED STATES

GARRY DEAN STRONER,

PETITIONER

Vs.

LORIE DAVIS, DIRECTOR,

RESPONDENT

ORIGINAL

On Petition For Writ Of Certiorari To The Court Of Appeals For The Fifth Circuit In Case No. 18-11339

PETITIONER'S PETITION FOR WRIT OF CERTIORARI

GARRY DEAN STRONER
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PRO SE LITIGANT
NO PHONE

QUESTIONS PRESENTED FOR RELIEF

1. Petitioner's trial counsel obtained the jury list two days prior to the day of jury selection. On the day of trial, the entire panel of sixty-five (65) people was seventy-one (71%) percent female and twenty-nine (29%) percent male, in which twenty-five (25%) percent of the male veniremembers were in the strike range. Petitioner's counsel, the prosecution, and the trial judge all struck every male veniremember from sitting as a juror. Therefore, in the situation this Honorable Court should determine whether the United States Constitutional right to be tried by an impartial jury drawn from sources reflecting a fair-cross section of the community—through means of an effective counsel—is violated when trial counsel failed to object that all male veniremembers were systematically excluded by means of either discrimination or intentional exclusion, resulting in an all woman jury to hear Petitioner's case?

2. This Honorable Court should determine whether the United States Constitutional right to the presumption of innocence, due process, and a fair trial have been violated, when the trial court, without a justifiable cause, ordered three uniformed officer's (and one non-uniformed officer) to surround the Petitioner while he testified during the guilt/innocence phase in order to temporarily replace Petitioner's visible shackling at trial?

3. The Prosecution misstated the factual basis of the evidence and introduced new evidence to the jury, by telling them that Petitioner actually sexually assaulted the prosecution, was con-

QUESTIONS PRESENTED FOR RELIEF

victed of two sexual assaults on two other women, and that Petitioner was a grand wizard of the KKK—all of which are not true nor placed in evidence. Therefore, in the situation, this Honorable Court should determine whether the United States Constitutional right to due process and a fair trial have been violated by the prosecution's manifestly improper closing argument, that is equivalent to an improper method calculated to produce an unjust sentence?

LIST OF PARTIES

[X] - All parties appear in the captionof the case on the cover page.

[ ] - All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows: N/A.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW:

[X] - For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

The opinion of the United States District Court appears at Appendix B (the Adopted Magistrate's Findings) to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[X] is unpublished.

[ ] - For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported;

or,

[ ] is unpublished.

The opinion of the N/A court appears at Appendix N/A to the petition and is

[ ] reported at N/A; or,

[ ] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

JURISDICTION:

[X] - For cases from federal courts:

The date on which the United States Court of Appeals decided my case was October 16, 2019. See Appendix A.

[X] No petition for rehearing was timely filed in my case.

[ ] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: N/A, and a copy of the order denying rehearing appears at Appendix N/A.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of the Court is invoked under 28 U.S.C. § 1254(1).

[ ] - For cases from state courts:

The date on which the highest state court decided my case was N/A.

[ ] A timely petition for rehearing was thereafter denied on the following date: N/A, and a copy of the order denying rehear-

ing appears at Appendix N/A.

[] An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. N/A.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED:

Pursuant to Rule 14(f), the Petitioner sets out the following constitutional authorities at this time. Truly, all other authority being caselaw is set out in the reasons to grant this petition herein. See R.Sup.Crt. Rule 14(f)(West 2017).

1. The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it. See United States Constitution article I, Section 9, Clause 2 (West 2019).
2. This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution or laws of any state to the contrary notwithstanding. See United States Constitution article VI, Clause 2 (West 2019).
3. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or

public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. See United States Constitution, amendment V (West 2019).

4. 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 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 defense. See United States Constitution, amendment VI (West 2019).
5. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state 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. See United States Constitution, amendment XIV, Section 1 (West 2019).

STATEMENT OF THE CASE:

In 2012, a jury convicted Petitioner of aggravated kidnapping and sentenced him to thirty-five (35) years imprisonment. State v. Stroner, No. F11-33918-R (265th Jud.Dist. Court, Dallas Cty., Tex. Mar. 23, 2012), aff'd, No. 05-12-00577-CR, 2014 WL 31218 (Tex.App. --Dallas, Jan. 03, 2014, pet. ref'd).

On March 24, 2015, the Petitioner raised the following grounds, among others, as shown: (1) Counsel rendered ineffective assistance for failing to request a fair-cross of indifferent persons; and failing to object to an all woman jury. (2) Trial Court abused its discretion when the court ordered four officers to surround the Petitioner to replace shakles while he testified, denying Petitioner's right to presume innocent, due process, and a fair trial. And, (3) the Prosecution's closing argument, during the punishment phase, is manifestly improper because the prosecution made several statements that was inflammatory and incurable. As a result, the a jury trusted in the imprimatur of the government rather than their own view of the evidence induced at trial, denying the Petitioner's right to due process and a fair trial.

On June 29, 2016, the Texas Court of Criminal Appeals denied Petitioner's state habeas corpus without a written order. See Ex parte Stroner, No. WR-84,013-01 (Tex.Crim.App. June 29, 2016) (denying relief without written order on the trial court's findings); See Appendix C.

On September 29, 2016, the Petitioner filed his federal habeas corpus, and shown the federal district court how the same three grounds for relief (among others) are contrary to, or unreasonably

applied to the United States Supreme Court's precedent. See Document #3, Pg. 6-17. Subsequently, the Northern District Court adopted the magistrate's findings of fact, conclusions of law, and debatably recommended to deny habeas relief as follows (Appendix B):

(1) Because Petitioner does not claim, much less establish, that the underrepresentation was the result of a systematic exclusion, an objection based only on the gender of the jurors would have been futile. See Appendix B, Pgs. 8-10.

(2) The presence of three uniformed officers during [Petitioner's] testimony was not inherently prejudicial as the jurors were unlikely to assume anything other than that the officers presence as reflective of the normal offical concern for the safety and order of the proceedings. See Appendix B, pgs. 14-15. And,

(3) [Petitioner] has not established that the prosecution's closing statements were improper or amounted to prosecutorial misconduct. Because, the first complained of argument related to statements that Petitioner had made during a jail cell, which was played for the jury during the punishemnt phase, thus, was simply a proper recount of the evidence. The second was also a recap of Officer Dix's testimony during the punishment phase regarding Petitioner's involvement with the KKKBanditos, or other non-law abiding group, and likewise proper. See Appendix B, Pgs. 16-18.

On January 14, 2019, the Petitioner filed his motion to issue a

certificate of appealability. The Petitioner made a substantial showing, of the following grounds, which are debatable among jurist of reason that another court could resolve the issues differently, or the issues are adequate to deserve encouragement to proceed further. The Petitioner argues on appeal, among others, that:

1a. Could a jurist of reason consider the Northern District Court's resolution debatable, for deciding that Petitioner could not demonstrate that the underrepresentation of the venire was the result of a systematic exclusion; therefore, an objection based only on the gender of the jurors would have been futile?

1b. Can a distinctive group be systematically excluded, with discriminatory intent, by means of challenging every male for cause or striking them from sitting on the jury?

2. Could a jurist of reason consider the Northern District Court's resolution debatable for deciding that, "the presence of three uniformed officers during Petitioner's testimony was not inherently prejudicial as the jurors were unlikely to assume anything other than that the officer's presence was reflective of the normal official concern for the safety and order of the proceedings? And,

3. Petitioner argues the prosecution misstated the factual basis of the evidence and introduced new evidence to the jury, by telling them that Petitioner actually sexually assaulted the prosecution, was convicted of two sexual assaults on two other women, and that Petitioner is the grand wizard of the KKK.

Therefore, could a jurist of reason consider the Northern District Court's resolution debatable, for holding that the Prosecution's closing argument "was simply a proper recount of the evidence," and "is not contrary to, or involved an unreasonable application, of clearly established federal law?"

On October 16, 2019, the Fifth Circuit Court of Appeals denied the Petitioner's certificate of appealability and held the following:

> [Petitioner] asserts that his trial counsel was ineffective for failing to challenge a veniremember who was unable to afford the presumption of innocence. Because he fails to show that reasonable jurist would debate the district court's deference to the state court decision denying the claim, a COA is DENIED. See Appendix A.

Truly, the Petitioner did not raise such a ground on his certificate of appealability; therefore, the Petitioner presents this writ of certiorari, timely, on or before January 14, 2020.

REASONS FOR GRANTING THE PETITION:

The Petitioner seeks for this Honorable Court to GRANT this Petition because the Fifth Circuit Court of Appeals did not address any of the grounds presented in Petitioner's certificate of appealability. The Fifth Circuit held:

> "[Petitioner] asserts that his trial counsel was ineffective for failing to challenge a veniremember who was unable to afford the presumption of innocence. Because he fails to show that reasonable jurists would debate the district court's deference to the state court decision denying the claim, a COA

is DENIED." See Appendix A.

Truly, the Petitioner did not raise this ground in his certificate of appealability. See Petitioner's COA. Accordingly, this Honorable Court held that, at the COA stage, the only question is whether the [Petitioner] has shown that "Jurists of reason could disagree with the district court's resolution of his constitutional claims or to deserve encouragement to proceed further." See Buck v. Davis, 137 S.Ct. 759, 774, 197 L.Ed.2d 1, 16, 2017 U.S. Lexis 1429, *25 (2017). This threshold question should be decided without "full consideration of the factual or legal bases adduced in support of the claims." Id. When the Fifth Circuit Court of Appeals sidesteps [the COA] process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction. Id. Simply put, the statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and then—if it is—an appeal in the normal course. See Buck v. Davis, 137 S.Ct. at 774, 197 L.Ed.2d at 17. As the Petitioner presents his three questions for relief to this Honorable Court, as he did in his certificate of appealability, this Petition should be GRANTED because the Fifth Circuit not only failed to follow this Court's precedent, but also failed to determine whether the three grounds are reasonably debatable among jurist of reason. See Sup. Crt. Rule 10; Appendix A.

QUESTION NUMBER ONE:

Petitioner's trial counsel obtained the jury list two days

prior to the day of jury selection. On the Day of Trial, the entire panel of sixty-five (65) people was seventy-one (71%) percent female and twenty-nine (29%) percent male, in which twenty-five (25%) percent of the male veniremembers were in the strike range. Petitioner's counsel, the prosecution, and the trial judge all struck every male veniremember from sitting as a juror. Therefore, in the situation this Honorable Court should determine whether the United States Constitutional right to be tried by an impartial jury drawn from sources reflecting a fair-cross section of the community—through means of an effective counsel—is violated when trial counsel failed to object that all male veniremembers were systematically excluded by means of either discrimination or intentional exclusion, resulting in an all woman jury to hear Petitioner's case?

SUPPORTING ARGUMENT:

A substantial showing is made when Petitioner, as explained below, involves issues which are debatable among jurist of reason that another court could resolve the issues differently, or that the issues are adequate to deserve encouragement to proceed further. Miller-El v. Cockrell, 537 U.S. 322, 330 (2003). Due Process guarantees to the Petitioner his right to a fair trial by a panel of impartial "indifferent jurors." Virgil v. Dretke, 446 F.3d 598, 605 (5th Cir. 2006). Therefore, Petitioner present the following evidence.

Counsel has the jury list two days prior to the day of jury selection. On the day of trial, the entire panel of sixty-five (65) people was seventy-one (71%) percent female and twenty-nine (29%) percent male, and twenty-five (25%) of the male veniremembers were in the strike range. See Attachments to Petitioner's State Habeas Application. After the voir dire examination, chal-

lenges for cause, and plenary strikes, no male veniremember was able to sit as a juror. Id. At this point, the trial judge gave both parties the opportunity to object to the panel of twelve being all women. RR2, 130-31. Even though the trial judge never seen the panel of twelve being all women, neither the state nor counsel objected. Id.

The Petitioner's argument of ineffective assistance of counsel has been two-tiered. First, Petitioner's counsel failed to request a fair cross-section of indifferent jurors that is based on their gender. In other words, counsel failed to address the court that male veniremembers were not fairly and reasonably represented of such persons in Dallas County, Texas. Truly, the entire jury pool was seventy-one (71%) percent female and twenty-nine (29%) percent male. Twenty-five (25%) percent of all male jurors were in the strike range. Therefore, at the very least, counsel should have sought to strike the current panel of venires and requested for a new empanelment.

Second, after the jury selection, counsel should have objected to the panel of twelve jurors being all women to hear a trumped-up family violence case called kidnapping of his own wife. In other words, counsel should have objected that all male jurors were systematically excluded by means of either discrimination or intentional exclusion because counsel, the prosecution, and the trial court altogether struck every male juror from hearing Petitioner's case. Accordingly, the lower courts decision is debatable because other federal courts would have resolved this issue differently, and this Honorable Court should GRANT Certiorari as explained:

Federal authority is clear that the Sixth Amendment secures to criminal defendants the right to be tried by an impartial jury drawn from sources reflecting a fair-cross section of the community. Berghuis v. Smith, 559 U.S. 314, 130 S.Ct. 1382, 1388 (2010); Taylor v. Louisiana, 419 U.S. 522, 95 S.Ct. 692 (1975). The United States Supreme Corut noted that the federal statutory is designed to make the jury a cross section of the community of both sexes. Ballard v. United States, 329 U.S. 187, 67 S.Ct. 261 (1946). This does not mean, of course, that every jury must contain representation of all the economic, social, religious, racial, political and geographical groups of the community; frequently such complete representation would be impossible. See Thiel v. Southern Pacific Co., 328 U.S. 217, 220, 66 S.Ct. 984, 985 (1946); Swain v. Alabama, 380 U.S. 202, 208, 85 S.Ct. 824, 830 (1965)("Neither the jury roll nor the venire need be a perfect mirror of the community or accurately reflect the proportionate strength of every identifiable group."). But, it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. Thiel, Supra, 328 U.S. at 220, 66 S.Ct. at 985. Recognition must be given to the fact that those eligible for jury service are to be found in every stratum of society. Truly, jury competance is an individual rather than a group or class matter. That fact lies at the very heart of the jury selection system. To disregard it is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury. Theil, 320 U.S. at 220, 66 S.Ct. at 985-86.

In Petitioner's case, the exclusion of men was intentional. The Prosecution in Petitioner's case is a woman. Both the prosecution and the defense counsel struck men off the jury panel, even against the wishes of Petitioner. After the judge gave both parties an opportunity to object to an all woman jury, it is clear that the intention of the prosecution, and counsel, desired an all woman jury to hear a trumped-up kidnapping case that involves the domestic violence against Petitioner's former wife. Petitioner told Counsel to object because Petitioner wanted at least one male veniremember to hear the case, not all women, excluding men.

The magistrate judge recommended to deny the Petitioner relief, and the northern District Judge adopted the Magistrate's findings and recommendation (See Appendix B). The Northern District Judge's decision to deny relief unreasonably applied federal law and it debatably held: Because "Petitioner does not claim, much less establish, that the underrepresentation was the result of a systematic exclusion, an objection based only on the gender of these jurors would have been futile." See Appendix B, Pgs. 8-9.

First, the lower courts interpretation of his claim is debatably erroneous. Truly, the trial court did not think this type of objection to be futile when the trial court, on its own initiative, gave both parties an opportunity to object to an all woman jury. RR2, 131. In Baston v. Kentucky, the United States Supreme Court held that the Equal Protection Clause forbids a prosecutor from challenging potential jurors solely on account of their race. Id. Further, the Fifth Circuit Court of Appeals, itself, recognized "the United States Supreme Court has held that a criminal convic-

tion of an african-american cannot stand under the equal protection clause of the Fourteenth Amendment if it is based on an indictment of a grand jury from which african-americans were excluded on the basis of race." Woodfox v. Cain, 772 F.3d 358, 381-83 (5th Cir. 2014). Likewise, a criminal conviction of an American male defendant cannot stand under the equal protection clause of the Fourteenth Amendment if it is based on a petit jury from which men were excluded on the basis of gender. Id. Again, in Taylor v. Louisiana, the United States Supreme Court did not think it to be futile when Taylor based his argument on gender. Id., 419 U.S. 522, 95 S.Ct. 692 (1975). Instead, the United States Supreme Court held that women were systematically excluded that denied Taylor his right to be tried by an impartial jury drawn from sources reflecting a fair cross section of his community. Id.

In ringing terms, systematic exclusion of a distinctive group and intentional exclusion by means of challenges for cause, or peremptory strikes, have one thing in common: discrimination! Can a distinctive group be systematically excluded, with discriminatory intent, by means of challenging every male for cause or strike striking them from sitting on the jury? Yes. In Petitioner's case, every male juror was systematically or intentionally excluded by means of either a challenge for cause or preliminary strike. Based on logic, counsel, at the very least, should have objected and questioned whether the exclusion of every male veniremember was the result of systematic or intentional exclusion, that denied Petitioner's right to an impartial jury fairly drawn from Dallas County, Texas. Further, the lower courts decision debatably relied

on three United States Supreme Court authority. Namely: Duren v. Missourri, 439 U.S. 357, 364 (1974); Taylor v. Louisiana, 419 U.S. 522 (1975); and Berghuis v. Smith, 559 U.S. 319 (2010). See Appendix B, Pg. 9.

There is one majestically debatable and distinguishable fact between the Supreme Court's authority and the resolution of the Northern District Court. In all three cases, counsel objected, investigated, and brought the trial court with statistical in formation relating to the underrepresentation of the jury pool, resulting in the exclusion of the underrepresented group. Cf. Duren v. Missourri, 439 U.S. 357, 364 (1974); Taylor v. Louisiana, 419 U.S. 522 (1975); Berghuis v. Smith, 559 U.S. 319 (2010); Thiel, supra, 328 U.S. 217, 66 S.Ct. 984 (The Court reversed the judgment for Respondent's railroad company because the district court should have granted petitioner passenger's motion to strike the jury panel due to the admitted wholesale exclusion of a large class of wage earners in disregard of the high standards of jury selection); Swain, supra, 380 U.S. 202, 85 S.Ct. 824 (The Court affirmed a judgment that denied Petitioner's motions [at trial] to quash the indictment, to strike jury panel, and to declare void the petit jury chosen in the case, all based on alleged individous discrimination in the selection of jurors). True enough, in Swain, the Supreme Court explained that Swain failed to carry his burden [at trial] in proving that there had been a purposeful discrimination based on race in the jury selection process in his case; therefore, the court upheld the trial judge's decision. Id., 380 U.S. 202, 85 S.Ct. 824.

Accordingly, for the lower courts to deny relief partially on the fact that Petitioner failed to "establish that the underrepresentation was the result of a systematic exclusion" is in conflict with this Court's holding in Swain. Cf. Swain, 380 U.S. 202, 85 S.Ct. 824; Appendix B, Pgs. 8-9; Sup. Crt. Rule 10. Truly, in Swain, Counsel objected, investigated and argued that there was a purposeful discrimination in the jury selection that excluded Negros from serving on the jury. But, the Petitioner's Counsel never objected, never sought to strike the empanelment, never asked for a new jury or anything. Counsel simply sat down and allowed the all woman jury to be empaneled. Truly, Petitioner's argument is not that he was denied his right to a fair cross section of Dallas County, but that Counsel rendered ineffective assistance for failing to object, investigate, and show the trial court that the underrepresentation was the result of a systematic or intentional exclusion of male veniremembers. Accordingly, this Petition should be granted by this Honorable Court. Ibid.

Sure enough, had counsel acted effectively, as the other attorneys did in each of the Supreme Court cases, there is a reasonable probability the trial proceeding would have been different. See Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052 (1984). Arguably, every single male veniremember was systematically or intentionally excluded by means of challenges for cause or preliminary strikes. See RR2. Taken together, Counsel should have objected to male veniremembers being excluded in this manner. Counsel has a duty to investigate, object, and establish, on the record, a prima facie case in order to convince the trial judge to

strike the jury panel. It is evident the trial judge was open to hear any objections and strike the jury because the trial court, on its own initiative, brought this issue up to both the prosecution and counsel. RR2, 130-31; See also Ballard v. United States, 329 U.S. 187, 192, 67 S.Ct. 261, 264 (1946)("If [Men] are excluded, only half of the available population is drawn upon for jury service."). Therefore, a reasonable jurist will find the lower courts' resolution—that counsel's objection to an all woman jury being futile—debatable! Buck v. Davis, 137 S.Ct. 759, 773 (2017). Finally, this Honorable Court should now address this issue and GRANT certiorari because the Fifth Circuit did not even address this issue, nor did it consider it on appeal. Buck v. Davis, 137 S.Ct. at 773; Sup. Crt. Rule 10.

QUESTION NUMBER TWO:

This Honorable Court should determine whether the United States Constitutional right to the presumption of innocence, due process, and a fair trial have been violated, when the trial court, without a justifiable cause, ordered three uniformed officer's (and one non-uniformed officer) to surround the Petitioner while he testified during the guilt/innocence phase in order to temporarily replace Petitioner's visible shackling at trial?

SUPPORTING ARGUMENT:

The central purpose of a criminal trial is to decide the factual question of the Petitioner's guilt or innocence. Delaware v. Van Arsdall, 475 U.S. 673, 681, 106 S.Ct. 1431, 1436 (1986). For this reason Justice Meyers explained that, "Unlawful and uncalled for shackling (or restraints) has a substantial effect on the jury's view of [a] defendant. The fact that a defendant is shack-

led (or restrained) without a [justifiable] cause gives the jury the perception that he is a much more dangerous criminal and [,] prevent[s] him from receiving a fair trial." See Bell v. State, 415 S.W.3d 278, 284 (Tex.Crim.App. 2013)(Justice Meyers Dissenting Opinion).

On appeal, Petitioner argues that the trial court erred and denied the Petitioner's right to the presumption of innocence, due process, and a fair trial, by ordering three uniform (and one non-uniform) officers to surround the Petitioner to temporarily replace his shackles while he testified. RR4, 6-7. Counsel objected to the fact that it gave the appearance of the Petitioner's guilt. Id. While it is true that one non-uniformed officer was sent across the courtroom, three uniformed officers remained around the Petitioner. Id. The trial court overruled the objections and broadly concluded that the extra security is for "security purposes." Id. Truly, then sole reason for three uniformed officers to surround the Petitioner is due to counsel's request that Petitioner be permitted to testify without shackles. Id. Therefore, relief should have been granted because of the trial court's erroneous decision to surround the Petitioner with three uniformed officers to temporarily replace his shackles denies due process.

The Northern District Court relied on Holbrook v. Flynn [475 U.S. 560, 106 S.Ct. 1340 (1986)], and United States v. Nicholson [846 F.2d 277 (5th Cir. 1988)]. See Appendix B, Pgs. 14-15; The Northern District Court's Order Adopting the Magistrate's Findings ("Order"), Pgs. 1-2. The Northern District Court held that, "the record support the magistrate judge's conclusion that the

trial court (1) overruled defense counsel's objection regarding the number of officers in the courtroom, citing "a security issue," (2) moved one of the officers to the other side of the courtroom, (3) noted that there were three uniformed officers in the courtroom and one non-uniformed officer who was in charge of the jury, and (4) explained that it had requested the extra security when counsel asked that Petitioner be permitted to testify without shackles. See Order, pg. 1-2. Therefore, the presence of three uniformed officers during Petitioner's testimony was not inherently prejudicial as the jurors were unlikely to assume anything other than that the officers presence was reflective of the normal official concern for the safety and order of the proceedings. Appendix B, Pgs. 14-15. Further, because the Fifth Circuit sidesteped the COA inquiry, this Honorable Court should now consider this issue for relief and grant certiorari, as this Honorable Court reads on. Buck v. Davis, 137 S.Ct. at 773-74; Sup. Crt. Rule 10.

Truly, the Fourteenth Amendment to the United States Constitution guarantees criminal defendants the right to a fair trial. See U.S. Const. Amend. XIV; Deck v. Missouri, 554 U.S. 622, 629-34; 125 S.Ct. 2007)(2005)(The appearance of a defendant in shackles before a jury ... violate[s] the [Petitioner's] Fifth and Fourteenth Amendments right to due process). In 1991, the Highest Court of Texas reasoned that, the use of restraints [shackles or to be surrounded by three uniformed officers while one testifies in the guilt/innocence phase] cannot be justified based on a general appeal to the need for courtroom security or simple refer-

ence to the severity of the charged offense. See Long v. State, 823 S.W.2d 259, 283 (Tex.Crim.App. 1991). In 2005, the United States Supreme Court agreed with this rationale. See Deck, supra, 554 U.S. at 629-34, 125 S.Ct. 2007. In Deck, the United States Supreme Court held that visible shackling [or surrounding Petitioner with three uniformed officers while he testifies] "can interfere with the accused's ability to communicate with his lawyer," [ability to participate in his own defense (including the ability to testify on his own behalf), and affront[s] the dignity and decorum of judicial proceedings that the judge is seeking to uphold." Deck, Supra, 554 U.S. at 630-31, 125 S.Ct. 2007 (citations omitted). In other words, the United States Supreme Court noted that the law of the land has been long forbidden routine use of visible shackles [or surround[ing] one that testifies] during the guilt/innocence phase of one's trial. Id. For this reason, the Supreme Court concludes that visible shackling [or surrounding one that testifies] undermines the presumption of innocence and the related fairness of the fact-finding process. Id.

Petitioner argues that a reasonable jury will find the lower courts resolution debatable because the lower courts have misapplied the factual basis between Petitioner's case and the holding in Holbrook v. Flynn, 475 U.S. 560, 106 S.Ct. 1240 (1986). In Holbrook, the Respondent had five other defendants in this trial. [illegible] But, the Petitioner was the only defendant. In Holbrook, he had four uniform troopers sitting quietly in the front row of the spectators section of the courtroom, providing some distance from the accused. Contrarily, even though one non-uniformed officer was

sent accross the courtroom, three uniformed officers surrounded Petitioner while he testified on his own behalf, excluding any distance from Petitioner, and this giving the appearance that the Petitioner is violent and guilty. In Holbrook, the trial judge overruled respondent's objection, primarily on the basis of voir dire, responses from the jury selection would not affect respondant's ability to receive a fair trial. Nevertheless, in Petitioner's case, the jury was never questioned on whether surrounding Petitioner while he testified would affect their ability to remain impartial and fair. This, the trial court in Petitioner's case only overruled the objection because it was for "security reasons," and to temporarily replace the Petitioner's rutine shackling. Truly, the Court in Holbrook could not find an unacceptable risk of prejudice in the spectable of four such officers quietly sitting in the first row of a courtroom's spectator section, involving five different defendants. However, in Petitioner's case, this Honorable Court should find that surrounding Petitioner with three uniformed officers (while he testified during guilt/innocence phase) unmistakably indicates the need to separate the Petitioner from the community at large; therefore, branding the jury, in their eyes, with an unmistakable mark of guilt. Axiomly, this issue deserves encouragement to proceed further, Buck v. Davis, 137 S.Ct. at 773-74, and this Honorable Court should excerise Its power of supervision to entertain this ground and grant certiorari at bar, Sup. Crt. Rule 10.

Additionally, the Petitioner argues that the lower courts resolution is debatable because the lower courts have misapplied the

holding in United States v. Nicholson, 846 F.2d 277 (5th Cir. 1988). In Nicholson, he has previously attacked and severely injuried his own counsel. Nicholson threatened to burn and kill people, and had several outbursts in the current trial with threatening and vulgar language. See Nicholson, 846 F.2d at 278-279. To the contrary, in Petitioner's case, Petitioner never threatened anyone, never used vulgar language of any kind in the courtroom, and never caused any kind of outburst in his trial. In other words, the Petitioner never gave the trial court any justifiable reason to order uniformed officers to surround Petitioner while he testified, much less to restrain Petitioner with rutine shackling. The trial court in Nicholson, ordered him to be restrained by non-visible leg irons, and had three United States Deputy Marshals, being in plain clothes to accompany Nicholson. However, the trial court in Petitioner's case took a more severe measure than that of the trial court in Nicholson. Truly, there is no legitimate reason why the trial court should order three officers in uniforms to surround Petitioner, while he testifies and his behavour is calm and collect throughout trial. The trial court in Nicholson was completely justified to restrain Nicholson because of his unpredictable violent behavour that he exhibited. Nevertheless, when the Petitioner's behavour is completely calm and collect, the trial court is not justified for ordering three uniformed officers to surround Petitioner in order to temporarily replace his rutine shackling. Accordingly, citing "a security reason" without more is not a proper justification for what the trial court did; therefore, the trial court abused its discretion. Deck,

Supra, 554 U.S. at 630-31, 125 S.Ct. 2007.

Accordingly, this Honorable Court should hold that three uniformed officers surrounding Petitioner while he testified unmistakingly indicated that Petitioner was violent, guilty, and needed to be separated from the all woman jury and community at large. Truly, this issue deserves encouragement to proceed further, Buck v. Davis, 137 S.Ct. at 773, and this Honorable Court shouldggrant certiorari because the Fifth Circuit neglects to address the issue at bar. Sup. Crt. Rule 10.

Furthermore, the Petitioner argues that the lower courts decision is also debatable for holding that three uniform officers surrounding Petitioner while he testified is not inherently prejudicial. The lower court "fails to take account of Holbrook's statement that shackling is 'inherently prejudicial.' 475 U.S. 568, 106 S.Ct. 1340, a view rooted in [The United States Supreme] Court's belief that the practice will often have negative effects that 'cannot be shown from a trial transcript.'" See Deck, Supra, 544 U.S. at 623, 125 S.Ct. at 2009 (quoting Riggins v. Nevada, 504 U.S. at 137, 112 S.Ct. 1810). Not only did the lower courts fail to take this statement in account; but also failed to take account of the fact that surrounding the Petitioner with three uniformed officers while he testified was to temporarily replace the Petitioner's visible and rutine shackling. Id.

Thus, "where a court, without adequate justification, orders the defendant to wear shackles visible to the jury, the defendant need not demonstrate actual prejudice to make out a due process violation." Deck, Supra, 544 U.S. at 623, 125 S.Ct. at 2009. In

Petitioner's case, the tiral court asked for extra security since counsel made a request to have Petitioner testify without shackles, and also because "it's a security issue." RR4, 6-7. The trial court did not refer to Petitioner being an escape risk or even a threat to courtroom security, nor explain why shackles and extra security was necessary during the guilt phase of Petitioner's trial. Therefore, the trial court is without adequate justification, and proving the prejudice being inadequate. Nevetheless, the state must prove "beyond a reasonable doubt that the shackling [or surrounding the Petitioner with three uniformed officers] did not contribute to the verdict obtained." Deck, supra, 544 U.S. at 623, 125 S.ct. at 2009 (quoting Chapman v. California, 386 U.S. 18, 24, 87 S.Ct. 824).

The Lower courts decision is, again, debatable in Petitioner's case because it failed to hold the prosecution to their burden of proving that surrounding the Petitioner with three uniform officers, to temporarily replace rutine shackling, did not contribute to the conviction obtained. Id. Axiomly, the Petitioner argues that inherit prejudice is visible. The jury was an all woman jury. The prosecution was a woman. The Petitioner was accused of kidnapping his own wife, unlawfully restraining her, and physically abusing her. The Petitioner was visibly shackled before the jury during the guilt/innocence phase of trial, then as soon as the Petitioner decides to testify, the court orders extra security (i.e., surrounded Petitioner with three uniform officers) while he testified.

In other words, as soon as Petitioner got some what close to

the jury, only a dangerous and guilty person needs to be surrounded by uniformed officers to protect the all woman jury. In a normal courtroom setting, the witness stand is right next to the jury as oppose to the defense's table being across the courtroom and away from the jury. Cf. Nicholson, supra, 846 F.2d at 278-79. And inherent prejudice is compounded in Petitioner's jury note. The jury note said: "Please explain what happens if we can't come to an unanimous decision." See Jury Note during guilt/innocence phase in clerk's record. Axiomly, the jury had a serious doubt about whether Petitioner was guilty. Nevertheless, they reasoned that because the trial court took such great measures to protect them, Petitioner must be too dangerous, too violent to let out on the street; therefore, they convicted the Petitioner. The Prosecution never provide beyond a reasonable doubt that surrounding the Petitioner with officers, to replace shackles while he testified, did not contribute to his verdict obtained. Thus, the lower courts never made the prosecution explain why the extra security and shackles would be justified or necessary. Taken

Taken together, a reasonable jurist will find the lower courts resolution—that surrounding Petitioner with three uniformed officers, to temporarily replace visible shackling, is not inherently prejudicial—debatable! Buck v. Davis, 137 S.Ct. at 773. Finally, this Honorable Court should grant certiorari because the Fifth Circuit neglects to address the issue at bar. Buck, 137 S.Ct. at 773-74; Sup. Crt. Rule 10.

QUESTION NUMBER THREE:

The Prosecution misstated the factual basis of the evidence and introduced new evidence to the jury, by telling them that Petitioner actaully sexaully assaulted the prosecution, was convicted of two sexual assaults on two other women, and that Petitioner was a grand wizard of the KKK—all of which are not true nor placed in evidence. Therefore, in the situation, this Honorable Court should determine whether the United States Constitutional right to due process and a fair trial have been violated by the prosecution's manifestly improper closing argument, that is equivalent to an improper method calculated to produce an unjust sentence?

SUPPORTING ARGUMENT:

A Substantial showing is made when the Petitioner, as explained below, involves issues which are debatable among jurist of reason that another court could resolve the issues differently, or that the issues are adequate to deserve encouragement to proceed further. Buck v. Davis, 137 S.Ct. at 773; Miller-El v. Cockrell, 537 U.S. 322, 330, 123 S.ct. 1029 (2003).

The Petitioner presents the prosecution's closing argument, during the punishment phase, that was manifestly improper because the following statements to the jury are not true, new evidence that has not been entered into evidence, incurable, and inflammatory:

> "You heard from the testimony about two woman he sexually assaulted already and he's sitting here on these jail calls making light of them, making fun of sexually assaulting me. That's who Garry is." ...
>
> "Now look at this tattoo here. He's not affiliated with the KKK? He's walking around with a Grand Wizard tattoo on his chest. It doesn't get more involved and associated with a gang than that."

RR5, 41-42. It is almost universally frowned upon for the prosecutor to testify in the trial she is prosecuting. See 42 Geo. L. J. Ann. Rev. Crim. Proc., Pgs. 650-51 (2013). Petitioner argues that the prosecution's remarks, here, are patently improper. See United States v. Murrah, 888 F.2d 24, 26 (5th Cir. 1989). As applied, the Fifth Circuit Court has continously held that "a prosecutor may not directly refer to or even allude to evidence that was not adduced at trial." Id., (citing United States v. Morris, 568 F.2d 396 (5th Cir. 1979)). Thus, "a prosecutor may not give a personal opinion about the varacity of a witness. Id., (citing United States v. Herrera, 531 F.2d 788 (5th Cir. 1976)). Further, "A prosecutor may not suggest that other supportive evidence exists which the government chose not to develop." Id., (citing Ginsberg v. United States, 257 F.2d 950 (5th Cir. 1958). In addition to these trial verbotens, the prosecutor may not charge the [Petitioner] with extrinsic offenses other than those specifically allowed by the Federal Rules of Evidence and interopretive jurisprudence. Id., (Citing Fed. R. Evid. Rule 404; and United States v. Beechum, 582 F.2d 898 (5th Cir. 1978)(en banc)).

Accordingly, Petitioner argues that there is a factual dispute at hand. The lower court said that the prosecution's statements at closing argument is a proper recount of the evidence. Appendix B, Pg. 17. The lower courts resolution is not true, and the lower courts resolution is debatable, as explained:

The first part of the closing argument, the prosecution told the jury that Petitioner was convicted of sexually assaulting two women. The Prosecution also told the jury that Petitioner sexually

assualted the prosecutor, Ms. Mitchell. Riddle v. Cockrell, 288 F.3d 713, 721 (5th Cir. 2002)(A prosecutor may not testify at the trial of a case they are prosecuting). The only evidence that comes remotely close to this statement is from a phone call from the jail. The Petitioner and Ms. Sherri Franks were acting silly or stupid, and "made fun" of the prosecutor. RR5, 30. At most, the phone call contained statements involving a conspired sexual assault on the prosecutor only. RR5, 24-26. Truly, the Petitioner never actually sexually assaulted the prosecutor as otherwise relayed to the jury. Thus, the phone call never mentions any other conspired or attempted sexual assault against anyone else, much less a conviction. The Petitioner has never been convicted of a sexual offense, and Petitioner maintains he never sexually assaulted the prosecutor nor two other women.

In ringing terms, the prosecutor may not use the closing argument to testify that she is a rape victim, and further accuse Petitioner of raping two other women. This testimony is an improper method calculated to produce an unjust sentence. Burger v. United States, 295 U.S. 78, 88 (1935).

The second part of the closing argument, the Prosecution shown the jury a picture of Petitioner's tattoo. The Prosecution then told the jury that this picture represents a grand wizard of the KKK; therefore, the Petitioner is the grand wizard of the KKK. This statement is far from the truth! Truly, the only evidence that comes remotely close to this statement is from the testimony of Ms. Stefenie Huffins, Petitioner's former probation officer, and Officer Jason Dix, a thirteen year investigator in the gang

unit. First, on direct examination by Ms. Mitchell:

> **Ms. Mitchell:** Q: During the course of monitoring him, did [Petitioner] ever acknowledge any affiliation with the Ku Klux Klan? **Ms. Stefanie Huffins:** A: Not when I was supervising him, but prior to [,] there were some court or probation documents specifying that, yes. Q: And that is part of his probation record? A: Yes, it is.

RR5, 12. Also, the prosecutor used Officer Dix' testimony to enter Exhibit 71, being a picture of the Petitioner's tattoo, in evidence. RR5, 15. However, to the contrary, Officer Jason Dix testified as follows:

> (On Cross-examination by Mr. Rosemergy) **Defense Counsel:** Q: So it doesn't necessarily mean he's involved in their activities, does it? A: No, I cannot testify that he said he was involved with anybody. Q: Okay. And do you know for a fact he's a member of the KKK? A: No, Sir. I do not.

RR5, 17. Officer Jason Dix is an experienced investigator of thirteen years, dedicated in gang affiliations. RR5. Officer Jason Dix checked their database of the gang membership and affiliations concerning the KKK. Truly, the Petitioner's name did not show up anywhere. Id. The evidence in the record arguably shows whether Petitioner might have some association with the KKK. However, their is no evidence in there record to show whether the Petitioner is the grand wizard, a gang leader, of the KKK. In Other words, the evidence shows that Petitioner is NOT a member of the KKK, much less the grand wizard!

Accordingly, on appeal, Petitioner argues that the prosecutor made several statement during their closing argument in the punishment, that was not true and unsupported by the record. As shown above, the prosecution lied to the jury and told them that

Petitioner actually sexually assaulted her, was convicted of sexually assaulting two other women, and Petitioner was a grand wizard of the KKK. Therefore, because the prosecutor made untrue, incurable, and inflammatory statements, that are not in evidence, during closing argument, it is declared as manifestly unjust. See Parker v. Gladden, 385 U.S. 363, 364, 87 S.Ct. 468, 470 (1966) ("the evidence developed against [Petitioner] shall come from the witness stand in a public courtroom where there is full judicial protection of the [Petitioner's] right of confrontation, of cross-examination, and of counsel."). The lower courts decision is plainly contrary to federal law, and unreasonably applied to federal precedent at bar. The lower courts not only allowed the prosecutor to violate the law, but assured the jury to trust in the imprimatur of the government instead of the jury's own view of the evidence adduced at trial. A reversal is required and certiorari should be granted because the prosecution made several incurable and inflammatory comments that are not true nor in evidence, in which substantially affected the Petitioner's right to have a fair trial.

Truly, harm is visible by the jury note that said: "we would like to review the reports/details regarding the two (2) prior convictions. Specifically, the prosecutor made reference [sexual] assaults of two other women. We need tounderstand who those two women were and what there accusations were about." See Jury Note at Punishment in Clerk's Record. This jury note sheds light on how the prosecution's improper statements had on the minds of the jury. Simply put, the jury deliberation became infected by the

prosecution's statements and it is true that the prosecution's statements forced the jury to increase their punishment at trial. Certiorari should be granted by this Honorable Court. Sup. Crt. Rule 10.

Further, the lower courts debatably held that Petitioner has not established that the prosecution's closing statement were improper or amounted to prosecutorial misconduct. Because, the first complained of argument related to statements that Petitioner had made during a jail cell, which was played for the jury during the punishment phase, thus, was simply a proper recount of the evidence. The second was also a recap of Officer Dix' testimony during the punishment phase regarding Petitioner's involvement with the KKK, Banditos, or other non-law abiding group, and likewise proper. Appendix B, Pgs. 16-18. As explained, the lower courts resolution is completely debatable or wrong because it fails to correctly apply the facts to the federal law at hand. Further, other jurist of reason would have resolved this issue differently, as shown.

The role of the prosecution in closing argument is to assist the jury in analyzing, evaluating and applying the evidence. See United States v. Garza, 608 F.2d 629 (5th Cir. 1979). In Garza, the prosecutor made several remarks in which he sought personally to vouch for his credibility to bolster the governments case. The prosecutor indicated that it would not have been brought, and he would not personally have participated, if [Petitioner's] guilt had not already been determined. Id. 608 F.2d at 661-62. The Fifth Circuit held that the prosecutor should not have injected

her status as a government attorney into the closing argument; therefore, denying Garza his right to a fair trial. Id. Likewise, this Honorable Court should hold that Ms. Mitchell should not have injected her status of being a rape victim and telling the all woman jury that Petitioner was convicted for raping two other women. Therefore, this statement alone ultimately denied Petitioner a fair trial.

In ringing terms, it is the duty of the prosecutor not to assert her personal opinion as to the justness of a cause, as to the credibility of a witness, or as to the guilt or innocence of an accused. ABA Code of Prof'l. Responsibility, § DR 7-106(C)(4) (1976). Accordingly, the prosecutor may not make any material misstatements of fact. See United States v. Wilson, 135 F.3d 291, 297-99 (4th Cir. 1998). In Wilson, he argued whether it was improper for the prosecutor to argue precipitously in summation that [Talley] "shot [a man] dead" for snatching some drugs. As applied, the government [just as the lower courts in Petitioner's case similiarly held] contends that the murder argument was fair comment on the admissible evidence of Talley's gun use. According to the government, Talley's firing of the gun after the curbside incident "was an intergral part of the charged conspiracy." Wilson, 135 F.3d 291, 297. The Fourth Circuit agrees that "this evidence of Talley's gun use was admissible becuase it arose out of the alleged conspiracy. Id., at 298 (citing United States v. Morgan, 117 F.3d 849, 861 (5th Cir. 1997). But, that does not mean it was proper for the Prosecutor to use this evidence in final argument to press a claim of murder against Talley. Id., at 298. Likewise,

in Petitioner's case, it is not proper to use the phone call evidence to press a claim that Petitioner sexually assaulted the prosecutor and two other women. It is also not proper for the prosecution during final arguments to use testimony of Officer Dix to press a claim that Petitioner is the grand wizard, a gang leader, of the KKK. The Fourth Circuit held that the Prosecution's improper closing argument, indicating soured curbside drug deal, deprived defendant of fair trial in violation of due process. Id., 135 F.3d at 291. The lower courts resolution is therefore debatable and this Honorable Court should grant certiorari to explain that a prosecutor cannot act in the manner as Ms. Mitchell did in Petitioner's case. See Sup. Crt. Rule 10.

Again, in United States v. Murrah, 888 F.2d 24 (5th Cir. 1989), the fifth circuit held that "as representative of the government the prosecutor is compelled to seek justice, not convictions." Justice is served only when "convictions are sought and secured in a manner consistent with the rules that have been crafted with great care over the centries." Id., 888 F.2d at 27. Just like the Prosecution's remarks, in Murrah, were inflammatory and misleading because the prosecutor assured the jury that the governemnt indeed possessed damning evidence but chose not to use it for purposes solely dictated by trial tactics. Id., 888 F.2d at 25-27. So also, it is true that this Honorable Court should hold the Prosecutor's material misstatements, in Petitioner's case, that possessed extra damning evidence (even though it is not true evidence), compromised Petitioner's right to have a fair [punishment] trial, relief is warranted.

Furthermore, as this Honorable Supreme Court said in Turner v. Louisiana, 379 U.S. 466, 472-73 (1965), "the evidence developed against a defendant shall come from the witness stand in a public court room where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel, and not from the prosecution's closing argument." So also, this Honorable Supreme Court should uphold full judicial protection in Petitioner's case. Truly, the jury was unaware of the untrue alleged sexual assault convictions on two other women, and demanded at deliberation to have someone explain the story to them. See Jury Note at Punishment; Giglio v. United States, 405 U.S. 150, 153, 92 S.Ct. 763 (1972)(This Court made clear that deliberated deception of a court and jurors by the presentation of known false evidence is incompatible with rudimentary demands of justice.). Axiomly, the jury note in Petitioner's case is strict proof that the prosecution's material misstatements infected the jury's minds while they deliberated Petitioner's punishment. See United States v. Young, 470 U.S. 1, 12, 105 S.Ct. 1038, 1044 (1985)(The Court must consider the probable effect the prosecution's response would have on the jury's ability to judge the evidence fairly). In other words, the prosecution's untrue and false testimony alleging Petitioner raped her, two other women, and Petitioner being a grand wizard of the KKK, carries with it the imprimatur of the government. This truly induced the jury to trust the government's judgment rather than their own view of the evidence.

Therefore, there is a reasonable probability that the jury

would have assessed the punishment differently, and provided a lesser sentence to Petitioner, had the prosecution never made the material misstatements of fact. United States v. Mendoza, 522 F.3d 482, 501-502 (5th Cir. 2008)(In this circuit, the test applied to determine whether a trial error makes a trial fundamentally unfair is whether there is a reasonable probability that the verdict might have been different had the trial been properly conducted).

Taken together, jurist of reason could disagree with the lower courts resolution of his prosecutional misconduct claim concerning the material misstatements of fact that denied the Petitioner to have a fair trial, and denied Petitioner his right to due process. Accordingly, jurist of reason can conclude the material misstatements of fact made by the prosecution is adequate to deserve encouragement to proceed further. Buck v. Davis, 137 s.Ct. at 773-774. Finally, because the Fifth Circuit Court of Appeals never addressed this issue on appeal, this Honorable court should grant certiorari at bar. Buck v. Davis, 137 S.Ct. at 773-74; Sup. Crt. Rule 10.

CONCLUSION AND PRAYER FOR RELIEF:

The Petitioner prays this Honorable Court will GRANT certiorari and order briefs on the merits.

Date: January 8, 2020.

Respectfully Submitted,

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