19-8110

No. 19A711

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
FEB 27 2020
OFFICE OF THE CLERK

DeVinche AlBritton — PETITIONER
(Your Name)

vs.

Harold Clarke, Director
VA Dept of Corrections — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The Fourth Circuit Court of Appeals
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DeVinche Javon AlBritton
(Your Name)
Sussex II State Prison
24427 Musselwhite Dr
(Address)
Waverly, VA 23891
(City, State, Zip Code)

(Phone Number)

## QUESTIONS PRESENTED

(1) Does the availability in Public Records qualify as an Independent or Adequate State procedural ground to bar a State prisoner's claim of prosecutorial misconduct in violation of >(Brady v. Maryland, 373--U.S. 83 (1963)) from recieving §2254 Federal Habeas review and relief? (pgs 10-13)

(2) Does the AntiTerrorism and Effective Death Penalty Act of 1996--(AEDPA)'s deferential standard of review under §2254(d) apply to a State Supreme Court's decision to procedurally bar a state prisoner's Brady prosecutorial misconduct claim raised in the state's initial--review collateral proceeding which alleges the misconduct and Brady violation based on "Newly Discovered Evidence" from §2254 Federal Habeas review and relief? (pgs 14-15),

(3) Did the presumption of correctness under §2254(e) apply to a decision of a State's Highest Court which directly conflicts with and contravenes this Court's decision (Amadeo v. Zant, 486 U.S. 214 (1988) regarding a State criminal prosecution's Constitutional duty and legal obligations to disclose Brady material available in public records ? (pgs 16-17)

(4) Should the "equitable" rule exception established by this Court's decision(s) ( Martinez v. Ryan, 566 U.S. 1 (2012) and Trevino v.--Thaler, 133 S.Ct. 1911 (2013)), be extended to also include and apply to a State prisoner's Brady prosecutorial misconduct claim based on "Newly Discovered" evidence uncovered during Direct Appeal and/or post-conviction proceedings ? (pgs 18-23)

## QUESTIONS PRESENTED (Cont)

(5) Should a Federal Habeas Court be Constitutionally required under 28U.S.C.§2254(e) to conduct an independent materiality analysis of "Newly Discovered" Brady material as prescribed by this Court's prior decision((Kyles v. Whitley, 514 U.S. 419 (1995))in performing a de novo review of a state prisoner's Brady prosecutorial misconduct claim for a reasonable determination of the "prejudice" element caused by the Brady violation ?(pgs 24-25)

(6)DDoes a State's Criminal prosecution violate a prisoner's Access to the Courts, Equal Protection, and Due Process Rights under the 1st, and 14th Amendments U.S. Constitution when it denies and/or refuses a Self-Represented prisoner's Brady disclosure requests during their stat State criminal trial as the prisoner is being held in the State's custody as a segregated prisoner pending trial ?(pgs 26-27)

(7) Did the Fourth Circuit Court of Appeals and the Lower District Court err under 28 U,SCC. §2254(e) in refusing to Grant Petitioner's request for an Evidentiary Hearing upon his "Newly Discovered" Brady Evidence after his establishment of the State Government's suppression and interference as "cause" to excuse the State's asserted procedural default rule used to bar §2254 Federal Habeas review and relief ?(pgs 28-29)

(8) Did the Fourth Circuit Court of Appeals and Lower District Court err in Granting the State Government's motion to dismiss Petitioner's motion to compel the State's prison officials to allow petitioner the right to recieve his relevant legal documents and trial transcripts from his family through the prison's legal mailing system for his pending Federal Habeas proceedings without allowing the petitioner the opportunity to file any responsive pleading thereto ?(page 30)

(9) Did the Fourth Circuit Court of Appeals err in refusing to apply this Court's ruling in (Ayestas v. Davis, 5518 U.S.____, 200 L.ED.2D--376 (2018) in its determination of Petitioner's funding request under 18 U.S.C. §3599(f) to obtain investigative services for his "Newly--Discovered" Brady prosecutorial misconduct evidence which would have established his entitlement to Federal Habeas relief ? (page 31)

## LIST OF PARTIES

[X] All parties appear in the caption of 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:

## RELATED CASES

Albritton v. Commonwealth, VA Court of Appeals No. 0925-13-1 (--Dismissal Order January 15, 2014) (Appx-F

Albritton v. Clarke, Record No. 160255 ( VA Spm Ct Order Nov 18,--2016) (Appx-D)

Albritton v. Clarke, Civil Action No. 2:16 cv 737 (U.S. Dist. E.D.--VA. February 1st, 2018) (Appx-B

Albritton v. Clarke, Civil Action No. 2:16 cv 737 (U.S.Dist. E.D.-VA. September 21, 2018) (Appx-C)

Albritton v. Clarke, Civil Action No. 2:16 cv 737 (U.S. Dist. E.D.-March 12, 2019 and April 24, 2019, Orders) (Appx-E)

Albritton v. Clarke, No.19-6350, 19-6464, and 19-6674, U.S. Court of Appeals for the Fourt Circuit. Judgments entered October 1st and 21st, 2019. (Appx -A ).

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## INDEX TO APPENDICES

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

[ ] 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 _____; 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 and C the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

[ ] For cases from **state courts:**

The opinion of the highest state court to review the merits appears at Appendix D & E to the petition and is

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[ ] is unpublished.

The opinion of the Virginia Court of Appeals court appears at Appendix F to the petition and is

[ ] reported at _____; 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 1, 2019 and October 21, 2019

[ ] 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: _____, and a copy of the order denying rehearing appears at Appendix _____.

[X] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. 19 A 711.

The jurisdiction of this 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 _____. A copy of that decision appears at Appendix _____.

[ ] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

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

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

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Under the Due Process clauses of the 5th and 14th Amendments of the U.S. Constitution, the production of exculpatory evidence by the prosecution is essential to a fair trial. This Constitutional provision is critical to a criminal's essential "function of adjudicating guilt or innocence."

Under the Due Process clauses of the 5th and 14th Amendments of the U.S. Constitution, The prosecution's failure to disclose evidence favorable to an accused violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution.

Under the Due Process clauses of the 5th and 14th Amendments the U.S. Constitution, the prosecutor's duty encompasses both impeachment material and exculpatory evidence, and it includes material that is "known only to police investigators and not to the prosecutor.

Under the Due Process and equal protection clauses of the 5th and 14th Amendments of the U.S. Constitution, The Constitutional obligation of a criminal prosecution to provide a defendant Brady material includes information and materials available in public records.

Under the Due Process clauses of the 5th and 14th Amendments the U.S. Constitution, A prosecutor's false or misleading statements disclaiming the existence of Brady material obviates the need for a petitioner to conduct an independent investigation.

Under the Due Process clauses of the 5th and 14th Amendments of the U.S. Constitution, Where the prosecution makes an affirmative representation that no Brady material exists, but it in fact has Brady material in its possession, the petitioner will not be penalized for failing to discover that material.

Under the Due Process clauses of the 5th and 14th Amendments of the U.S. Constitution, When police or prosecutors conceal significant, exculpatory, or impeachment material in the State's possession, it is ordinarily incumbent on the State to set the record straight.

The Equal Protection clause guarantees that no State shall "deny to any person within its jurisdiction the equal protection of the laws. > U.S. Constitution Amendment XIV, § 1.

The Fourteenth Amendment guarantees "meaningful access to justice" in criminal cases.

Under The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) to which a federal court must defer to a state court's resolution of a claim that has been "adjudicated on the merits in State court proceedings." see> 28 U.S.C. § 2254(d).

Where a state court has not considered a properly preserved claim on its merits, a federal court must assess the claim de novo.

Under the 1st, 5th, 6th, and 14th Amendments U.S.C., A federal habeas court must review de novo purely legal issues and mixed questions of law and fact.

Under the Due Process clauses of the 1st and 14th Amendments of the U.S. Constitution, The state's initial review-collateral proceeding is the first available proceeding for a prisoner to raise a claim of Brady prosecutorial misconduct based upon newly discovered evidence, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal.

Under the Due Process clauses of the 1st and 14th Amendments of the U.S. Constitution, State procedural framework, by reason of its design and operation, inadequate to bar federal habeas review of a Brady prosecutorial misconduct claim under AEDPA § 2254 (d)).

Under the 1st and 14th Amendments U.S. Constitution, a Pro se defendant who is held as a state prisoner pending a state criminal prosecution, is entitled to have Access to the Courts, equal protection, and due process of the law.

Under the Due Process clauses of the 1st and 14th Amendments of the U.S. Constitution, state petitioners are Constitutionally entitlement to have an evidentiary hearing conducted upon newly discovered Brady evidence under § 2254(e).

Habeas Petitioners have a 1st, 5th, 6th, and 14th Amendment Right to receive upon request to a Federal Court, Funding for Investigative Services for the development of evidence which would establish their entitlement to Federal Habeas Relief.

## STATEMENT OF THE CASE

On September 6, 1999, the alleged victim after she arrived at her job contacted the Virginia Beach Police and reported that a stranger had abducted and raped her as she walked from her residence to work. According to the factual findings of the Virginia Court of Appeals, After the incident, the alleged victim continued to walk to work and she failed to report the incident to police officers parked in a nearby parking lot.

The alleged victim testified that, after [Petitioner] raped her, he had asked to see her identification, recited her name and address out loud, that he knew where she lived and told her not to tell anyone.

The alleged victim explained that she did not report the incident to the nearby police officers because she was afraid that [Petitioner] was still watching her and knew where she lived.

The alleged victim testified that she kept walking to work because she knew that she would be safe there. Upon arriving at work, the victim stated that she immediately told a co-worker what had happened and that they called police.

The victim was taken to the Chesapeake General Hospital and a sexual assault nurse examiner ("SANE") named Kathryn McDonald ("Nurse McDonald") examined the alleged victim and collected biological samples from the victim. In 1999-2010, the Virginia State laboratory policy was to only develop DNA profiles from biological evidence from a known suspect. Because the alleged victim claimed that she did not know her rapist, no suspect was developed.

The matter remained unresolved until January 2010, when the "cold case" was assigned to an investigator and a subsequently performed DNA analysis indicated that Petitioner Albritton could not be eliminated as a possible contributor of the samples collected in 1999.
On November 1, 2010, Petitioner DeVinche Albritton, who was already in the custody of and serving a 18 year sentence in the Virginia Department of Corrections ("VDOC") was charged in the Virginia Beach Circuit Court by grand Jury indictment with one count of Abduction with the intent to Defile, in violation of Virginia Code § § 18.2-48 and 18.2-10; one count of Rape, in violation of Virginia Code § 18.2-61; and one count of Forcible Sodomy, in violation of Virginia Code § 18.2-67.1.

An arrest warrant was issued and executed on November 17, 2010 at the Lawrenceville Correctional Center where [Petitioner] was serving his 18 year sentence from a April 25 2005 conviction by the Virginia Beach Circuit Court on Unrelated felony state charges.

On November 18, 2010, Petitioner Albritton came before the Virginia Beach Circuit Court, where he was found to be indigent, and that he immediately invoked his Sixth Amendment Right to self-representation, so the court appointed the Public Defender's Office as standby counsel. Petitioner Albritton immediately filed several pro se motions which included but was not limited to requesting for discovery, and to be appointed the funds to hire the services of a private investigator.

The Virginia Beach Circuit Court granted Petitioner Albritton's motion for discovery and ordered the Virginia Beach Commonwealth's Attorney Office ("The Prosecution") to provide Petitioner Albritton with any and all discovery material in accordance with Brady v.Maryland, 373 U.S. 63( 1963 ), but denied his motion for funds to hire a private investigator for his defense. See> (Appx- , ).

Petitioner Albritton upon being provided with documents in the discovery material given to him by the prosecution, found that the file was missing the Virginia's hospital ("SANE") protocol relevant to the examination performed by ("SANE") nurse examiner Kathryn McDonald in 1999, causing Petitioner Albritton to make further Brady requests for the production of the documentation for his defense at trial regarding the state prosecution's key expert witness Nurse McDonald's opinion testimony and evidence against him.

The Virginia Beach Circuit Court leading up to the trial, held multiple hearings in regards to Petitioner Albritton's Brady request for the production of the relevant hospital ("SANE") protocol for his defense, where the prosecution on multiple occasions mislead petitioner as to the protocol's availability. See e.g.> (Appx- G pages 12 & 27)

On June 13, 2011 at a hearing to suppress all evidence gathered by Nurse McDonald during the alleged victim's September 6, 1999, ("SANE") examination, the state prosecution was put on the record by the Honorable Patricia L. West of the Virginia Beach Circuit Court that the state prosecution would either produce the relevant ("SANE") protocol to petitioner Albritton for his defense at trial or inform him that the material no longer existed, and Judge West denied the motion as premature, to be raised at trial. see > (Appx- , G page 31)

Petitioner Albritton's first jury trial was held between March 26 and 28, 2012, where he continued to represent himself.

Petitioner Albritton prior to the commencement of his trial moved to suppress the The ("SANE") examination evidence and Nurse examiner Kathryn McDonald's expert opinion, citing the prosecution's failure to produce the relevant ("SANE") protocol for his defense. However, the Trial Judge on the morning of trial, deferred the motion to be treated as an objection to the evidence at the close of the prosecution's case. See > (Appx- , G page 40 )

Petitioner Albritton at the close of the prosecution's case, successfully moved to strike the charge of Forcible Sodomy, which the trial court dismissed with prejudice over the objection of the prosecution, but denied all other motions raised by Petitioner Albritton.

On March 28, 2012, after hearing both the state's prosecution case, Petitioner Albritton's defense, and closing statements, the jury requested to examine the victim's clothing worn the morning of her alleged abduction and Rape, to which Petitioner Albritton agreed and asked the trial court that the jury's request to examine the clothing should be granted. See> (Appx- , G

However, the state prosecutors objected to allowing the jury's request to examine the victim's clothing and trial court sided with the state prosecutors, and refused the jury's request to examine the victim's clothing worn the morning of the alleged Rape. see (Appx- , ). Immediately thereafter, the jury returned and announced in open court that they were unable to reach a Verdict as to the remaining charges (Rape and Abduction with Intent to Defile) and was discharged by the court as a hung jury, upon which the Commonwealth immediately demanded a retrial at the next available date. See> (Appx- , G

The second trial was commenced a year later where Petitioner Albritton was retried by a new jury between the dates of April 22, 2013 through to April 24, 2013, comprised of 11 women with 1 male juror, and again Petitioner Albritton was returned and held in the custody of the local Virginia Beach City Jail for trial in segregation and represented himself with standby counsel appointed by the trial court.

Once again the relevant hospital ("SANE") protocol was still not located or produced by the state prosecution to Petitioner Albritton for his defense at trial, despite his requests, upon which the jury on April 24, 2013, found Petitioner Albritton guilty of both Rape and Abduction w/intent to defile, and recommended he serve a life sentence for the Rape and 30 years plus a $25,000.00 fine for the Abduction w/intent to defile, upon which the trial court accepted and imposed in its entirety.

Immediately after the court imposed the jury's recommended life sentence, Petitioner Albritton was informed that he would be taken back to the Virginia Beach city jail and placed on "suicide watch" indefinitely as was the Jail's policy and procedure for all prisoners sentenced to a life or death sentence. Prisoners while on suicide watch are stripped naked of all clothing, observed by deputies nonstop, not allowed to possess any legal materials, and are not told for how long they are to remain on suicide watch status, which prompted Albritton to invoke his right to the appointment of counsel for his direct appeal right before he was placed on suicide watch not knowing for how long he would be held on the status at the jail.

However, Petitioner Albritton days later was unexpectedly released back into the custody of the Virginia Department of Corrections ("VDOC") where he as transported back to the Lawrenceville Correctional Center.

Soon thereafter, Petitioner Albritton was notified by Attorney Gregory Pugh, that he had been appointed by the trial court to represent him for his direct appeal. However, Petitioner Albritton after he had been taken off of suicide watch and transferred back to Lawrenceville no longer wished to continue with appellate counsel for his appeal and directed counsel Pugh to file a motion to withdraw and Albritton himself also filed a motion to the Virginia appeals court to be allowed to proceed pro se for his direct appeal.

Nevertheless, both motions filed by Albritton and Attorney Pugh were denied by the appeals court. See> (Appx- , )

Petitioner Albritton due to his newly received Life sentence for Rape, could no longer be housed at Lawrenceville and was soon thereafter transferred to the Sussex I State Prison while Attorney Pugh filed and exhausted his direct appeals in the Virginia Appellate Court system.

However, while his direct appeal was pending review in the Virginia Supreme Court, Petitioner Albritton's Sister and his Aunt Vera Henry, who is now deceased, who were the only family members speaking to him during that

The newly discovered SANE protocol obtained by the private investigator directly impeached the state prosecution's key and vital expert witness testimony and evidence presented by ("SANE") nurse Kathryn McDonald, the suppressed impeachment evidence of which the prosecution failed and refused to produce for Petitioner Albritton's jury trials, despite their assurances to do so. See> (Appx- E

Petitioner Albritton immediately informed Appellate Counsel Pugh and the Virginia Supreme Court about the "Newly Discovered Evidence" in regards to finding the suppressed Virginia Hospital ("SANE") protocol found by the private investigator and asked for appellate counsel Pugh's assistance in presenting the ("SANE") protocol in his appeal and filed a motion to the Supreme Court to consider the ("SANE") protocol with his pending appeal petition.

Nevertheless, both Mr. Pugh and the Virginia Supreme Court refused Petitioner Albritton's request for help in regards to the newly discovered ("SANE") protocol, and his Direct Appeal petition was thereafter denied on January 7th, 2015, as was his petition for rehearing. See (Appx- E

Petitioner Albritton's request for a reconsideration of his request to supplement the record with his newly discovered ("SANE") protocol evidence was also refused. See> (Appx- , ).

On February 17, 2016, Petitioner Albritton timely filed a petition for a writ of habeas corpus in the Virginia Supreme Court, wherein Albritton raised substantially all of the claims raised in his subsequent Federal § 2254 habeas Petition. See (Appx- F

Nevertheless, the Supreme Court of Virginia on November 18, 2016, dismissed all of Albritton's Constitutional claims raised in his state habeas petition, in particular, his claim (4) alleging the Brady violation committed by the Commonwealth of Virginia, holding that the claim was procedurally barred under Virginia law by the rule of Slayton v. Parrigan, 215 Va. 27, 29, 205 S.E.2d. 680, 682 (1974), cert, denied, 419 U.S. 1108 (1975), because Petitioner Albritton in his Brady claim necessarily acknowledged that the allegedly withheld ("SANE") protocol was easily discoverable and available in public records at the time of his trial (citing its decision in > Porter v. Warden of Sussex I State Prison, 283 Va. 326, 330, 111 S.E.2d 534, 541 (2012)( holding that a Brady claim was procedurally barred because the allegedly withheld evidence was available to the petitioner in public records), and that his claim (5) alleging the ineffective assistance of his appellate counsel for failure to raise or argue the Commonwealth's violation of his Brady rights during his direct appeal proceedings, which was dismissed for Petitioner Albritton's failure to satisfy either the "performance" or "prejudice" prongs of Strickland v. Washington, 466 U.S. 668 (1984). All other claims raised by Petitioner Albritton in his state habeas petition were either dismissed by the Virginia Supreme Court as procedurally barred under the rule of Slayton or for failure to satisfy both prongs of the two-part test in Strickland. See> (Appx- , ).

On December 26, 2016, petitioner Albritton filed his §2254 petition for federal habeas relief wherein he raised the following nine grounds: (1) that the trial court wrongly disallowed materials to refresh a witness's memory; (2) that appellate counsel was ineffective for not properly arguing that the trial court abused its discretion with respect to allegation (1); (3) That the Commonwealth's expert witness gave inadmissible testimony; (4) That the Commonwealth violated his Rights under Brady by suppressing and refusing to provide Petitioner with a copy of the relevant hospital SANE protocol ; (5) that Petitioner's appellate counsel was ineffective for not arguing the matter set forth in allegation (4); (6) that the Commonwealth wrongly introduced hearsay evidence; (7) that the trial court wrongly denied Petitioner's proffered jury instructions that would have supported his defense theory; (8) that Petitioner's appellate counsel was ineffective for not raising the matters set forth in allegation (7); and (9) that cumulative error violated Petitioner's right to a fair trial.

Petitioner Albritton's § 2254 petition was referred to a United States Magistrate Judge pursuant to the provisions of 28 U.S.C § 636(b)(1)(B) and (C) and Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia for report and recommendation.

The Magistrate Judge's Report and recommendation filed February 1st, 2018, recommended the dismissal of, Albritton's § 2254 habeas Petition with prejudice, deferring to and holding that under AEDPA 28 U.S.C. § 2254(d), the Supreme Court of Virginia's November 18, 2016, determination of Albritton's habeas claims to be reasonable and not contrary to established law on the subject, and therefore his federal habeas claims presented were not only procedurally barred, but also meritless in substance, therefore entitling Petitioner Albritton to no relief. See> (Appx- B

On February 20, 2018, Petitioner Albritton filed timely objections to the Magistrate's report and recommendation, however, on March 6, 2018, the United States District Court entered in its final order adopting and approving the Magistrate Judge's February 1, 2018, Report and Recommendation, thereby dismissing Petitioner Albritton's §2254 habeas petition with prejudice and refused to issue him a Certificate of Appealability for anyone of his § 2254 habeas claims. See> (Appx- B

Albritton then filed a Rule 60(B) Motion and on September 21, 2018, the United States District Court, Eastern District of Virginia, entered an order reinstating Albritton's habeas petition and directed the Respondent to file a response thereto. See> (Appx- C.

On March 12, 2019, after reviewing the filings of both the Respondent and Albritton in regards to his Rule 60(b) Motion, the United States District Court Granted Albritton's motion to amend his newly obtained motion to suppress hearing transcript showing that the state prosecution had lied and misrepresented the facts of their search for and the existence of the newly discovered ("SANE") protocol in response to his Brady request for its production at trial, thereby holding that Albritton had established Governmental suppression and interference as "cause," Ordered the Respondent Virginia Department of Corrections (VDOC) to show cause within 30 days why the Federal District Court should not grant Petitioner Albritton's motion to compel the Sussex II State Prison to allow him to receive the relevant copy of his June 13, 2011 motion to Suppress hearing transcript for his pending habeas proceedings from his family through the prison's legal mail delivery. See> (Appx- A

However, the court refused and denied without prejudice his request for an evidentiary hearing on the Newly discovered Brady evidence uncovered during his post-conviction proceedings, and denied Albritton's Rule 60(B) Motion without ever ruling on the "materiality" or "prejudice" caused by the suppression of his newly discovered Brady evidence. See> (Appx- , ).

On April 12, 2019, the Respondent filed a opposition brief to Petitioner Albritton's motion to compel with supporting affidavits from both Sussex II prison and VDOC officials, arguing that Albritton's Constitutional rights to receive his suppression hearing transcript from his family were outweigh by the fact that drugs could be smuggled into the prison which staff were not trained or ready to handle.
On April 24, 2019, the District Court without affording Petitioner Albritton the opportunity to file his response to the respondent's opposition brief, granted the respondent's request and denied his motion to compel, thus foreclosing his efforts to receive his June 13, 2011, suppression hearing transcript for his pending federal court proceedings. See> (Appx- A

Albritton appealed the district Court's March 12, 2019, order filed as Record No(s). 19-6530, 19-6464 and its April 24, 2019, Order, as Record No. 19-6734, all in the Fourth Circuit Court of Appeals, which refused his Appeal in consolidated Record No(s). 19-6530 and 19-6464 on August 26, 2019. See> (Appx- , ).
Petitioner Albritton timely filed a petition for a rehearing and/or en banc, and moved the Appeals Court to grant him the funds for investigative services to further develop his Newly obtained Brady evidence under a new ruling of the U.S. Supreme Court (Ayestas v. Davis, 584 U.S. _____ (2018)).
The Appeals Court on October 1st, 2019, denied Albritton's petition for a rehearing and/or a hearing en banc, and on October 7, 2019, denied his request for investigative services. See> (Appx- A

On November 2019, Petitioner Albritton filed a Rule 27(b) Motion to take witness Depositions in the relevant U.S. District Court in Norfolk, Virginia, which had dismissed his § 2254 habeas petition in Civil Action No.2:16 cv 737, asking the District Court to allow him to take the depositions of three named expert witnesses who developed the withheld Virginia hospital ("SANE") protocol in the 1990's and who were absent and unable to testify in his defense for his state criminal jury trials, where his Rule 27(b) motion is still pending. See> (Appx- A

Thereafter, Petitioner Albritton filed an Application to Extend the time for him to file his Petition for a Writ of Certiorari, and on December 27, 2019, The Chief Justice of the U.S. Supreme Court granted Albritton's request in Application No. 19A711, thereby extending the time for him to file his petition for Certiorari until February 28, 2020. Petitioner Albritton now presents the foregoing in support of his Petition for a Writ of Certiorari as follows:

# Reasons For Granting The Petition

(1) A state prisoner's failure to discover Governmentally suppressed and withheld impeachment evidence during his state criminal trial proceedings later found to be available in public records does not qualify as an independent and adequate state procedural ground to bar the prisoner's Brady violation claim from receiving § 2254 federal habeas review and relief.

Petitioner Albritton moves this Honorable Court to grant his petition for a writ of Certiorari on the above federal question of law presented, thereby concluding that as a matter of law, the Virginia Supreme Court's procedural rejection of his Brady claim does not rest on an adequate state ground to bar federal habeas review in accordance with clearly established federal law as determined by this Court.
The Supreme Court has explained that although a Constitutional protection may be denied on state grounds, "it is the province of [federal courts] to inquire whether the decision of the state court rests upon a fair and substantial basis. If unsubstantial, Constitutional obligations may not be avoided." See > Lawrence v. State Tax Comm'n, 286 U.S. 276, 282, 52 S.Ct. 556 (1932). "[A] right claimed under the Federal Constitution, finally adjudicated in the Federal courts, can never be taken away or impaired by state decisions." "Any other conclusion strikes down the very foundation of the doctrine of res judicata, and permits the state court to deprive a party of the benefit of its most important principle, and is a virtual abandonment of the final power of the Federal courts to protect all who come before them relying upon rights guaranteed by the Federal Constitution and established by the judgements of Federal courts."> Deposit Bank v. Frankfort,, 191 U.S. 499, 517, 24 S.Ct. 154 (1903).

The Fourth Circuit Appeals Court and lower federal District Court erred by failing to independently determine the adequacy of Virginia's highest Court's procedural default rules asserted to bar § 2254 federal habeas review and relief of a state prisoner's Brady prosecutorial misconduct claim alleging the Commonwealth's UnConstitutional suppression and withholding of impeachment evidence later found to be available in public records. > Strickler v. Greene, supra....

It is well established that federal courts will not review questions of federal law presented in a habeas petition when the state court's decision rests upon a state-law ground that "is independent of the federal question and adequate to support the judgment."> Coleman v. Thompson, 501 U.S. 722, 750, 111 S.Ct. 850 (1991); see also >Lee v. Kemna, 534 U. S. 362, 375, 122 S.Ct. 877 (2002). In the context of federal habeas proceedings, the independent and adequate state ground doctrine is designed to "ensur[e] that the state's interest in correcting their own mistakes is respected in all federal habeas cases." Coleman, 501 U.S. at 732, 111S.Ct. 2546. When a petitioner fails to properly raise his federal claims in state court, he deprives the State of "an opportunity to address those claims in the first instance" and frustrates the State's ability to honor his Constitutional rights. >Id., at 732, 748, 111 S.Ct 2546.
That does not mean, however, that federal habeas review is barred every time a state court invokes a procedural rule to limit its review of a state prisoner's claims. The Supreme Court has recognized that " 'the adequacy of state procedural bars to the assertion of federal questions' is not within the State's prerogative finally to decide; rather, adequacy 'is itself a federal question.' " > Lee, 534 U.S., at 375, 122 S.Ct. 877 (quoting Douglas v. Alabama, 380 U.S. 415, 422, 85 S.Ct. 1074 (1965); see also > Coleman, 501 U.S., at 736, 111 S.Ct. 2546. ("[F]ederal habeas courts must ascertain for themselves if the petitioner is in custody pursuant to a state court judgment that rests on independent and adequate state grounds").

Therefore, the questions before this Court is whether federal review of Albritton's > Brady claim was procedurally barred because the allegedly withheld evidence was available in public records, where Albritton had failed to discover the Brady material at the time of his trial and was there ever an opportunity provided by Virginia for Albritton to have raised his Brady prosecutorial misconduct claim prior to its alleged default? The answers of which should be a resounding "No."

According to this Court's prior decisions, in deciding whether such a State procedural bar is adequate, it is not enough to say that the rule "generally serves a legitimate State interest" rather, the adequacy is determined with reference to the particular application of the rule. (quoting > Lee v. Kemna, supra. ).
In this regard, Petitioner Albritton offers the opinions from the Second andThird Circuit Courts of Appeals for this Court to consider as guidance on how the Court should review and determine the adequacy of Virginia's procedural

rule asserted to bar his Brady violation claim from § 2254 federal habeas review and relief, where the Second Circuit held in > Silverstein v. Henderson, 706 F.2d 361, 367 n.11 (2d Cir. 1983) ("[A]n unsupported or manipulative finding of procedural default would not constitute an adequate state ground barring federal habeas relief.")(dicta).

In a more recent decision, the Third Circuit in its adequacy determination of a state's procedural rule, reasoned that "a state procedural rule on which the state relies to establish a procedural default is inadequate, hence does not bar federal relief if: (1) the state procedural rule on its face as applied is arbitrary or violates due process; or (2) the state rule on its face or as an error before the error became reasonably apparent. See. e.g., Evans v. Secretary, 645 F.3d 650, 658 (3rd Cir.) cert. denied, 132 S.Ct. 349 (2011).

Petitioner Albritton argues that Virginia's procedural rules asserted in his case are inadequate on both instances given.

Here, Virginia's Highest Court procedurally defaulted Petitioner Albritton's Brady violation claim under its rules and decisions in > Slayton v. Parrigan, and > Porter v. Warden of Sussex I State Prison, supra,.... First, Virginia's rule under Slayton v. Parrigan, supra, holds that a claim which could have been raised at trial or on direct appeal, but was not, is procedurally barred from the state's initial-collateral habeas review and subsequent federal habeas proceedings. Second, the Virginia Supreme Court's decision in > Porter which was used as a procedural rule in conjunction with Slayton ( holds that a Brady claim is procedurally barred when the allegedly withheld Brady evidence was available to the petitioner from another source or in public records).

Petitioner Albritton argues that these Virginia procedural rules of Slayton and Porter were both arbitrarily applied against him in his case, where he was unreasonably penalized by having his Constitutional Brady prosecutorial misconduct claim procedurally defaulted, dismissed without having any adjudication on the merits, and barred from § 2254 federal habeas review for his alleged failure to discover the pertinent hospital ("SANE") protocol during his trial proceedings, despite the fact that during the times relevant, he was acting pro se, being held as a segregated inmate at a local city jail for trial which specifically prohibited all inmates from receiving or possessing any information from computers or off the Internet and that the State criminal prosecution in response to his multiple pro se discovery requests, continuously made false and misleading representations of the facts on the trial record that they were diligently searching for the relevant hospital ("SANE") protocol to provide it to him for his defense at trial and finally that it no longer existed.

Petitioner Albritton argues that two U.S. Supreme Court cases ( Strickler v. Greene, 527 U.S. 263, 281-82, 119 S.Ct. 1936 (1999) and Banks v. Dretke, 540 U.S. 668 (2004)) establish that a prosecutor's false or misleading statements disclaiming the existence of Brady material obviates the need for a petitioner to conduct an independent investigation. see e.g., Bell v. Bell, 512 F.3d 223, 241 (C.A.6 (Tenn.) 2008)("the rule emerging from Strickler and Banks is clear: Where the prosecution makes an affirmative representation that no Brady material exists, but it in fact has Brady material in its possession, the petitioner will not be penalized for failing to discover that material").

Accordingly, contrary to > Strickler and Banks, the Virginia procedural rules asserted were arbitrarily applied against Petitioner Albritton's Brady prosecutorial misconduct claim where he was penalized for not uncovering the Governmentally suppressed and withheld impeachment evidence that was caused by the Government's interference and prosecutorial misconduct.

Additionally, Petitioner Albritton argues that Virginia's procedural rule in Porter also violated his due process rights, where contrary to the Virginia Supreme Court's decision in Porter, the U.S. Supreme Court's decision in >.Amadeo v. Zant, 486 U.S. 214 (1988 ) long ago held that "the Constitutional obligation of a criminal prosecution to provide a defendant Brady material includes information available in public records.

Therefore, in light of the Supreme Court's decision in >Amadeo v. Zant, supra,... Virginia's rule in Porter cannot be affirmed by the lower federal district and the Fourth Circuit Appeals courts.

Moreover, Petitioner Albritton asserts that he was also entitled to have been provided a copy of Virginia's hospital ("SANE") protocol as impeachment evidence by the state criminal prosecution under the Virginia Freedom of Information Act ("VFOIA").

Under Virginia law, the ("VFOIA") gives citizens the right of ready access to all public records held by the state and its officers and employees. see >VA Code Ann §§ 2.2-3700 through 3704 (2005). While, section § 2.2-3703 (C) excludes all persons incarcerated in any state, local, or federal correctional facility from enjoying any of the rights afforded under VFOIA to make requests for public records. However, this subsection shall not be construed to prevent an incarcerated person from exercising his Constitutionally protected rights, including, but not limited to his rights to call for evidence in his favor in a criminal prosecution. > § 2.2-3703 (C).

Consequently, Petitioner Albritton had a Constitutional due process right under both clearly established federal law and Virginia law to have been provided upon his discovery requests a relevant copy of Virginia's hospital ("SANE") protocol available in public records for his defense as impeachment evidence by the state criminal prosecution in accordance with this Court's prior decision in Brady v. Maryland, supra....

Finally, Petitioner Albritton argues that Virginia's procedural rule in > Porter was also inadequate to have barred federal habeas review and relief of his Brady prosecutorial misconduct claim, due to the fact that the asserted rule required for him to have made an objection to the state Prosecution's false and misleading representations regarding their suppression of the Brady material before he ever discovered that the withheld ("SANE") protocol actually existed. see e.g., >Sanchez-Llamas v. Oregon, 548 U.S. 331, 359, 126 S.Ct. 2669 (2006) ("in the case of a Brady claim, it is impossible for the defendant to know as a factual matter that a violation has occurred before the exculpatory evidence is disclosed").

The fact that the prosecution failed to disclose exculpatory evidence is a type of claim that often can be asserted for the first time only in post-conviction proceedings" see > United States v. Dominguez-Benitez, 542 U.S. 74, 83, n.9, 124 S.Ct. 2333 (2004).

Albritton asserts that as a matter of law as determined by this Court's prior decisions, he properly and timely presented his Brady prosecutorial misconduct claim to Virginia's Highest Court for habeas review and relief under Virginia Code § 8.01-654 as soon as he discovered the relevant ("SANE") protocol at the first and only opportunity that Virginia afforded him, which was after his direct appeal was dismissed. See> Gray v. Netherland, 518 U.S. 152, 162, 116 S.Ct. 2074 (1996).

Habeas relief generally is not available unless the petitioner has "exhausted the remedies available" in state courts, which means utilizing all procedures available under state law to raise the claim. see § 2254(c). The exhaustion doctrine requires that the petitioner present the substance of his claim to the state courts to give those courts a fair "opportunity to apply controlling legal principles to the facts bearing upon [the petitioner's] constitutional claim. Picard v. Connor, 404 U.S. 270, 276 (1971)("[S]tate prisoner [must] present the state courts with the same claim he urges upon the federal courts").

A petitioner satisfies the exhaustion requirement by presenting his claim to the state's highest Court for review under Virginia's "established review process." See> O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

Nevertheless, Petitioner Albritton argues that when he raised his Brady prosecutorial misconduct claim to the Virginia Supreme Court in his initial collateral-review proceedings under § 8.01-654 ,which was his first and only opportunity to present his Brady violation claim after the Governmentally suppressed ("SANE") protocol was located, the Court applying its procedural default rule under Slayton and citing its decision in Porter as grounds, unreasonably dismissed his Brady violation claim as procedurally defaulted.

Petitioner Albritton asserts that the Virginia Supreme Court's decision to procedurally default his Brady violation claim was clearly contrary to this Court's decisions in >Amadeo, Strickler, and Banks, where his failure to discover that the withheld hospital ("SANE") protocol was available in public records, was only due to the prosecutors false and misleading representations that they would search for and finally that the relevant ("SANE")protocol no longer existed.

Petitioner Albritton states that Virginia's argument that their criminal prosecutors were not obligated to produce Brady materials which were available in public records, also fails under clearly established federal law as prescribed by this Court's decisions in> Amadeo, Strickler, and Banks.

Additionally, it was Unreasonable under clearly established Federal law, where in order for Petitioner Albritton's Brady prosecutorial misconduct claim to have been reviewed on the merits, Virginia required him to have made his objection to the prosecutor's false and misleading statements that they were searching for the ("SANE") protocol and finally that it no longer existed at the time of his trial , and to have raised his Brady violation claim on his direct appeal, which was impossible for him to have done under the circumstances in his case. See > >Sanchez-Llamas v. Oregon, supra.....

Moreover, Petitioner Albritton argues that due to Virginia's procedural framework, by reason of its design and operation, as well as the circumstances by which he was able to uncover that the Governmentally suppressed and withheld Brady impeachment evidence actually existed, it was impossible for him to have known to made an objection to the prosecution's Brady violation at the time of his trial, and because it was alleged by the state court that no such objection on the matter was ever made or preserved at trial, he was thereby foreclosed from arguing the matter on direct appeal, thus his initial state collateral-review proceedings under Virginia Code § 8.01-654 was his first and only opportunity to raise his Brady prosecutorial misconduct claim to Virginia's highest Court for adjudication. See > Gray v. Netherland, supra.....

Accordingly, Virginia's procedural default rule(s) asserted to bar Petitioner Albritton's Brady prosecutorial misconduct claim is inadequate as a matter of clearly established federal law as determined by this Court's prior decisions.

# Reasons For Granting The Petition

(2) The AEDPA's deferential standard of review under 28 U.S.C § 2254(d) did not apply to the Virginia Supreme Court's November 18, 2018, decision to procedurally default Petitioner Albritton's Brady prosecutorial misconduct claim which was based on newly discovered evidence uncovered during his post-conviction proceedings and was properly exhausted in the state's initial-collateral review proceedings.

Petitioner Albritton moves this Honorable Court to Grant him a Writ of Certiorari to resolve this important question of federal law presented, and to thereby hold that the deferential standard of review under 28 U.S.C § 2254(d) does not apply to a State Court's decision which procedurally bars a fairly presented Constitutional Brady prosecutorial misconduct claim that: (1) has not been "adjudication on the merits," and
(2) was based upon newly discovered Governmentally withheld and suppressed Brady impeachment evidence uncovered during post-conviction proceedings.

First, Petitioner Albritton asserts that he properly exhausted and fairly presented his Brady prosecutorial misconduct claim during his initial state collateral-review proceedings which was his first and only opportunity to present his Brady violation claim supported by his newly discovered evidence uncovered during his post-conviction proceedings for adjudication on the merits by the Virginia Court system. see > United States v. Dominguez-Benitez, 542 U.S. 74, 83, n.9, 124 S.Ct. 2333 (2004) ("The fact that the prosecution failed to disclose exculpatory evidence is a type of claim that often can be asserted for the first time only in post-conviction proceedings"); see also e.g., >United States v. Dodson, 291 F.3d 268, 275 (4th Cir. 2002) (stating that Brady claims often arise for the first time in collateral proceedings); United States v. King, 628 F.3d 693, 702 (4th Cir. 2011) (Brady cases... typically involves a defendant's post-trial discovery of evidence that the Government has assertedly suppressed). In > Banks v. Detrke, quoting Justice Ginsberg's opinion of the Court, "when police or prosecutors conceal significant, exculpatory, or impeachment material in the State's possession, it is ordinarily incumbent on the State to set the record straight." > Id. 540 U.S. at 676.

Federal habeas relief generally is not available unless the petitioner has "exhausted the remedies available" in state courts, which means utilizing all procedures available under state law to raise the claim. see § 2254(c). The exhaustion doctrine requires that the petitioner present the substance of his claim to the state courts to give those courts a fair "opportunity to apply controlling legal principles to the facts bearing upon [the petitioner's] constitutional claim. > Picard v. Connor, 404 U.S. 270, 276 (1971) ("[S]tate prisoner [must] present the state courts with the same claim he urges upon the federal courts"). A petitioner satisfies the exhaustion requirement by presenting his claim to the state's highest Court for review. see> O'Sullivan v. Boerckel, 526 U.S. 838, 845 (1999).

However, Petitioner Albritton asserts that his Brady prosecutorial misconduct claim was never "adjudicated on the merits" by the Virginia Supreme Court despite being fairly presented, because it was explicitly dismissed as procedurally barred under Slayton v. Parrigan, and Porter v. Warden, supra... See> Stewart v. Smith, 534 U.S. 157, 122 S.Ct. 1143 (2001) (It was clear that the state court's procedural ruling was truly independent of the merits); Cf.> Kernan v. Hinojosa, 578 U.S. ____, 136 S.Ct. ____, 194 L.Ed.2d 701, 2016 US LEXIS 3051 ("State Court's denial of petition for federal habeas corpus relief under 28 U.S.C § 2254 was subject to deferential review, as presumption-that where last reasoned opinion on claim explicitly imposed procedural default, later decision rejecting claim was not on merits-was amply refuted").
The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) requires a prisoner who challenges (in a federal habeas court) a matter "adjudicated on the merits in State court" to show that the relevant state-court "decision" (1) "was contrary to, or involved an unreasonable application of, clearly established Federal law," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in State court proceeding." 28 U.S.C. § 2254(d).
Deciding whether a State court's decision "involved" an unreasonable determination of the facts requires the federal habeas court to "train its attention on the particular reasons--both legal and factual--why state courts rejected a state prisoner's federal claims."> Hittson v. Chatman, 576 U.S. ____, ____ (2015)(GINSBURG, J., concurring.in denial of certiorari) (slip op., at 1), and to give appropriate deference to that decision, Harrington v. Richter, 562 U.S. 86, 101-102 (2011).

This is a straightforward inquiry when the last state court to decide a petitioner's federal claim explains its decision on the merits in a reasoned opinion. In that case, a federal habeas court simply reviews the specific reasons given by the state court and defers to those reasons if they are reasonable. the Supreme Court has affirmed this approach time and again. See, e.g., Porter v. McCollum, 558 U.S. 30, 39-44 (2009)(per curiam); Rompilla v. Beard, 545 U.S. 374, 388-392 (2005); Wiggins v. Smith, 539 U.S. 510, 523-538 (2003).

This Court further extended this approach in >Wilson v. Sellers, 584 U.S. _____ (2018) ( "holding that the federal court should "look through" the unexplained decision to the last related state-court decision that does provide a relevant rationale"). By its terms > § 2254(d) bars relitigating of any claim "adjudicated on the merits" in state court, subject only to the exceptions in > §§ 2254(d)(1) and (2). Absent cause and prejudice or a miscarriage of justice, a Federal court may not review Constitutional claims when a state court has declined to consider their merits on the basis of an adequate and independent state procedural rule. See> Harris v. Reed, 489 U.S. 255, 262, 109 S.Ct. 1038 (1989).

Petitioner Albritton to support his assertion of no applicability of § 2254(d) to his Brady prosecutorial misconduct claim dismissed by the Virginia Supreme Court, cites the rulings of multiple Federal Circuit Courts of Appeals including the Fourth Circuit, all of which have consistently held that AEDPA's deferential standard of review under § 2254(d) does not apply to a State court's decision to dismiss a Constitutional claim as procedurally defaulted under state law grounds, holding that the claim was not "adjudicated of the merits." See, e.g., > Appel v. Horn, 250 F.3d 203, 210 (3rd Cir. 2001) (holding that a federal habeas court must review de novo purely legal issues and mixed questions of law and fact when, "although properly preserved by the defendant, the state court has not reached the merits of the claim thereafter presented to a federal habeas court."); Pirtle v. Morgan, 313 F.3d 1160, 1167 (9th Cir. 2002) (where state supreme court rejected claim on procedural grounds, there is no merits adjudication entitled to AEDPA deference and district court reviews constitutional issue reviewed de novo), cert. denied, 539 U.S. 916, 123 S.Ct. 2286 (2003); McGregor v. Gibson, 248 F.3d 946, 951 (10th Cir. 2001) ("because the state court applied a procedural bar, we review the District court's conclusions of law de novo and it factual findings for clear error"); Weeks v. Angelone, 176 F.3d 249, 258 (4th Cir. 1999) aff'd on other grounds, 528 U.S. 225 (2000) (de novo standard applies to case because "Supreme Court of Virginia failed to address [petitioner's claim] on the merits"); also >Grandison v. Corcoran, 2000 U.S. APP. LEXIS 17958, at *48 (4th Cir. July 24, 2000)(per curiam) (claim, which state court "rejected... on procedural grounds," is reviewed "de novo, as there has been No state "adjudication on the merits" deserving deference under 28 U.S.C. § 2254 (d)) "AEDPA" standards do not apply if the state court judgment rested exclusively on procedural grounds, however, because such judgment does not adjudicate the merits. also> Cone v. Bell, 556 U.S. 449, 472, 129 S.Ct. 1769 (2009) ("Because the Tennessee courts did not reach the merits of Cone's Brady claim, federal habeas review is not subject to the deferential standard that applies under AEDPA... instead, the claim is reviewed de novo.")

Accordingly, the Fourth Circuit Appeals Court and lower Federal District Court erred in applying the deferential standard of § 2254 (d), because of the fact that the Virginia Supreme Court explicitly dismissed Petitioner Albritton's properly presented Brady prosecutorial misconduct claim as procedurally defaulted under state law grounds in a "plain statement" in its November 18, 2018, dismissal Order, therefore, his Brady prosecutorial misconduct claim as a matter of federal law was never "adjudicated on the merits" by the state court as required by the terms of 28 U.S.C. § 2254(d) and was not barred by the provisions of 28 U.S.C. §§ 2254(d)(1) or (2) as the federal statute was inapplicable to his Brady prosecutorial misconduct claim. See. Cf> Sexton v. Beaudreaux, 585 U.S. ____, 138 S.Ct. _____, 201 L.Ed.2d 986, 2018 US LEXIS 4038, ("the Federal Court of Appeals erred under 28 U.S.C.S. § 2254(d) in applying the de novo, rather than deferential, standard to the state court's summary decision that the accused's trial attorney was not ineffective for failing to file a motion to suppress identification testimony").

(3) The presumption of correctness under AEDPA § 2254(d) did not apply to a decision of Virginia's highest court regarding the state prosecution's constitutional duty and obligation to disclose Brady material available in public records.

"Traditionally, decisions on questions of law are reviewable de novo." see > Highmark Inc. v. Allcare Health Management Systems, Inc., 572 U.S. ___, ____, 134 S.Ct. 1744 (2014).

Petitioner Albritton would ask this Court to grant him Certiorari by reaffirming its previous decision in Amadeo v.Zant, supra... and to hold that the Fourth Circuit Appeals and lower federal district courts erred in deferring to Virginia law under the AEDPA to dismiss his Brady prosecutorial misconduct claim as procedurally defaulted rather than assess his Brady claim and newly discovered evidence under the de novo standard of review.

The Fourth Circuit Court of Appeals has affirmed and entered in a decision in conflict with and contrary to a decision of this Court (Amadeo v. Zant, supra.. ).

Under Teague v. Lane, 489 U.S. 288, 301, 310 (1989), habeas relief is generally not available if granting the relief would require the retroactive application of a "new constitutional rule[ ] of criminal procedure" or the application of a rule that would "break[ ] new ground or impose[ ] a new obligation on the States or Federal Government. Id. An old rule applies both on direct and collateral review while a new rule, unless it falls within an exception under Teague, is applicable only to cases still pending on direct review. See > Griffith v. Ky., 479 U.S. 314, 328 (1987).

Accordingly, the decision in > Amadeo was an old rule established by this Court which applied and controlled in Petitioner Albritton's case where he alleged a Brady prosecutorial misconduct claim for evidence suppressed and withheld by the state criminal prosecution which was available in pubic records.

The Fourth Circuit Appeals Court and lower federal district court erred under the AEDPA's 28 U.S.C.S. § 2254 (d) in applying the deferential, rather than the de novo standard of review to the highest state-court's decision that petitioner's Brady misconduct claim was procedural defaulted.

A state court decision must satisfy four perquisites in order to qualify under § 2254(d). There must be : (1) a state court adjudication, (2) on the merits, (3) in formal state court proceedings, and (4) the adjudication must have resulted in a decision.

In Sexton v. Beaudreaux, 585 U.S. ____, 138 S.Ct. _____, 201 L.Ed.2d 986, 2018 US LEXIS 4038, this Court held that the Federal Court of Appeals erred under 28 U.S.C. § 2254(d) in applying de novo, rather than deferential, standard to state court's summary decision that accused's trial attorney was not ineffective for failing to file a motion to suppress identification testimony.

However, in Petitioner Albritton's case now before the Court, the Fourth Circuit Appeals Court and lower Federal District Court did the opposite, and applied the deferential standard of AEDPA's § 2254(d) where it did not apply, rather than conduct a de novo review when it was obligated to do so.

Petitioner Albritton asserts that because the Virginia Supreme Court did not reach the merits of his > Brady prosecutorial misconduct claim, § 2254 federal habeas review of his claim was not subject to the deferential standard that applies under AEDPA to which a federal court must defer to a state court's resolution of a claim that has been "adjudicated on the merits in State court proceedings."> 28 U.S.C. § 2254(d).

Conversely, where a state court has not considered a properly preserved claim on its merits, a federal court must assess the claim de novo. See, e.g., > Rompilla v. Beard, 545 U.S. 374, 390, 125 S.Ct. 2456 (2005) (de novo review where state courts did not reach the prejudice prong under Strickland v. Washington, supra,...); also> Cone v. Bell, supra.....

Additionally, Albritton asserts that pursuant to this doctrine, AEDPA's deference requirement did not apply to his Brady prosecutorial misconduct claim made on federal habeas review which was premised on Brady material that had surfaced for the first time during his post-conviction proceedings as established by previous decisions of the Fourth, Sixth, Ninth, and Tenth Circuit Courts of Appeals, which entitled him to have been given a de novo review assessment of his Brady violation claim and newly discovered Brady evidence in support thereof. see e.g.,>Daniels v. Lee, 316 F.3d 477, 487 (4th Cir. 2003) (suggesting that when "evidence on which [a federal claim] is premised was only discovered [after the conclusion of state court proceedings,] it does not trigger the deference mandate of AEDPA"); Williams v. Coyle, 260 F.3d 684, 706 (6th Cir, 2001), cert. denied, > 536 U.S. 947 (2002) (reviewing Brady claim de novo when exculpatory material surfaced for the first in federal habeas proceedings); Rojem v. Gibson, 245 F.3d 1130, 1140 (10th Cir.2001) (same); see also Cargle v. Mullin, 317 F.3d 1196, 1206 (10th Cir. 2003) (holding that AEDPA's standard of review does not apply when new issues are considered on federal habeas review); and Killian v. Poole, 282 F.3d 1204, 1208 (9th Cir. 2002) ("AEDPA deference does not apply to [a] claim [when] [e]vidence of the [claim] was adduced only at the hearing before the [federal] magistrate judge."); > Pirtle v. Morgan, 313 F.3d 1160, 1167 (9th Cir. 2002) (where state supreme court rejected claim on procedural grounds, there is no merits adjudication entitled to AEDPA deference and district court reviews constitutional issue de novo), cert. denied, 539 U.S. 916, 123 S.Ct. 2286 (2003).

Accordingly, for the reasons given herein the above, this Honorable Court should hold that the presumption of correctness under AEDPA did not apply to the Virginia Supreme Court's decision to bar Petitioner Albritton Brady claim.

(4) The "equitable" rule exception established by the decisions of this Court ( Martinez v. Ryan, 566 U.S. 1(2012) and Trevino v. Thaler, 133 S.Ct. 1911 (2013), should be extended to also include and apply to claims of Brady prosecutorial misconduct that are based on newly discovered Brady impeachment evidence uncovered during post-conviction proceedings.

Petitioner Albritton in the interest of fair and equal justice moves this Honorable Court to Grant his petition for a writ of Certiorari, thereby ruling that the "equitable" rule exception established by this Court's prior decisions ( Martinez and Trevino ), should be extended to also include and apply to his Brady prosecutorial misconduct claim that is based on newly discovered Brady impeachment evidence uncovered during his post-conviction proceedings. See e.g.,> (United States v. Dominguez-Benitez, 542 U.S. 74, 83, n.9, 124 S.Ct. 2333 (2004) ("the fact that the prosecution failed to disclose exculpatory evidence is a type of claim that often can be asserted for the first time only in post-conviction proceedings").

Petitioner Albritton argues that the "equitable" rule in > Martinez is applicable to his case, because it addresses and excuses the exact type of unreasonable state procedural default rules being asserted as contemplated by this Court's decisions ( Martinez and Trevino ) .

While this is not the first time that this Court has been asked to expand the "equitable" rule established by its decisions in > Martinez and Trevino..., nor will it be the last, Petitioner Albritton states that his case, however, is the very first time that this Supreme Court has been asked to extend Martinez's "equitable" rule to a state prisoner's Brady prosecutorial misconduct claim.

Petitioner Albritton states that the late Justice Scalia, dissenting in > Martinez, anticipated cases like his now before this Court, where he wrote: "[t]here is not a dimes worth of difference in principle" between trial-counsel Ineffective-Assistance of Counsel (IAC) claims and Brady claims that have been procedurally defaulted by initial collateral review counsel.> Martinez, 132 S.Ct. at 1321 (Scalia, J., dissenting)

The Ninth Circuit Court of Appeals In > Hunton v. Sinclair, 732 F.3d 1124 (9th Cir. 2013) a case virtually identical to Petitioner Albritton's, held " >Martinez does not permit resuscitation of a procedurally defaulted Brady claim." However, in his dissenting opinion from the Ninth Circuit Court's holding, Circuit Judge William Fletcher also quoting the late Justice Scalia wrote: "Justice Scalia, dissenting in >Martinez, anticipated cases like the one before us. He wrote that '[t]here is not a dimes worth of difference in principle' between trial-counsel IAC claims and Brady claims that have been procedurally defaulted by initial collateral review counsel. I agree. I conclude that the equitable rule established in Martinez applies in a case where a petitioner, acting pro se during his initial collateral review proceedings in state court, failed to raise and thereby procedurally defaulted his Brady claim. I would reverse the decision of the district court and remand to allow that court to determine whether Hunton can satisfy the four-part test under Martinez that would allow an excuse of his procedural default." Id

Petitioner Albritton states that to date, there has been only one other case to reach this Court's review regarding the question of whether Martinez's "equitable" rule should be extended to include other claims, where in > Davila v. Davis, 137 S.Ct. 2058, (2017), this Court in a 5-4 decision declined to extend Martinez to allow a federal court to hear a substantial, but procedurally defaulted, claim of ineffective assistance of appellate counsel when a prisoner's state post-conviction counsel provided ineffective assistance by failing to raise that claim.

The Court in delivering its opinion in> Davila wrote: " The Court in > Martinez made clear that it exercised its equitable discretion in view of the unique importance of protecting a defendant's fair trial right, particularly the right to effective assistance of counsel, as the Court explained, "the limited nature" of its holding "reflect[ed] the importance of the right to the effective assistance of trial counsel," which is "a bedrock in our Justice System." > Martinez, 566 U.S. at 12, 16, 132 S.Ct. 1309. "In declining to expand the > Martinez exception to the distinct context of ineffective assistance of appellate counsel, we do no more than respect that judgment. > Id.

However, Justice Breyer in his dissenting opinion given in > Davila, with whom Justice Ginsburg, Justice

Sotomayor, and Justice Kagan joined, wrote: "In my view, this same exception (with the same qualifications) should apply when a prisoner raises a constitutional claim of ineffective assistance of appellate counsel. See, e.g., > Evitts v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830 (1985) (Constitution guarantees a defendant an effective appellate counsel, just as it guarantees a defendant an effective trial counsel). Given (Martinez and Trevino), the prisoner in the first example who complains about his trial counsel can overcome the procedural default but, in the Court's view today, the prisoner in the second example who complains about his appellate counsel cannot. Why should the law treat the second prisoner differently? Why should the Court not apply the rules of > Martinez and Trevino to claims of ineffective assistance of both trial and appellate counsel"?

Petitioner Albritton argues that his Brady prosecutorial misconduct claim unlike a claim of ineffective assistance of appellate counsel is in the exact same procedural posture as that of any claim of ineffective assistance of trial counsel, where Judge William Fletcher of the Ninth Circuit Court of Appeals explained in great detail how and why > Martinez's equitable rule should be extended to also apply to Brady claims brought by state prisoners.

In > Hunton v. Sinclair, 732 F.3d 1124 (9th Cir. 2013), Judge William A. Fletcher in his dissenting opinion wrote: the Court in >Trevino summarized the four part test > Martinez had established to determine whether a federal habeas court may excuse a state court procedural default. "Cause" to excuse the default may be found (1) the claim of ineffective assistance of trial counsel was a "substantial" claim; (2) the "cause" consisted of there being "no counsel" or only "ineffective" counsel during the state collateral review proceeding; (3) the state collateral review proceeding was the "initial" review proceeding in respect to the "ineffective assistance of trial counsel claim", and (4) state law requires that an ineffective assistance of trial counsel [claim] be raised in an initial-review collateral review proceeding."> Martinez, [132 S.Ct. at 1318-19, 1321] (the fourth requirement was relaxed in Trevino, as just described).

The Court has provided several reasons justifying its new equitable rule excusing procedural default.
First, "if counsel's errors in an initial review collateral proceeding do not establish cause to excuse the procedural default in a federal habeas proceeding, no court will review the prisoner's claims."> Martinez, 132 S.Ct. at 1316.
Where "the initial review-collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance of trial counsel, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal."> Id. at 1317.

Second, the Court recognized the importance of having effective legal assistance in bringing an ineffective assistance of Counsel claim (IAC). >Id. at 1317. The Court wrote: claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy. when the issues cannot be raised on direct review, moreover, a prisoner asserting an ineffective assistance of trial counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim... The same would be true if the state did not appoint an attorney to assist the prisoner in the initial-review collateral proceeding. The prisoner, unlearned in the law, may not comply with the state's procedural rules or may misapprehend the substantial details of federal Constitutional law. While confined to prison, the prisoner is no position to develop the evidentiary basis a claim of IAC which often turns on evidence outside the trial record. > Id. at 1317. Each of these reasons applies with equal force to a defaulted Brady claim.

First as in > Martinez and Trevino, where the prisoner was prevented from raising a trial counsel IAC claim on direct appeal. Almost all Brady claims, like all trial counsel IAC claims, rely on evidence outside the trial record. In Petitioner Albritton's case, Virginia law currently prohibits the direct appellate review of any claim that was not objected to or preserved on the trial court record. See Va. Code. § 8.01-384 (to preserve an issue for appeal, an objection had to be stated together with the grounds at the time of the ruling); Virginia Supreme Court Rule 5A:18 (the Virginia Court of Appeals may not consider any matter not preserved or objected to the trial court).

In this case now before the Court, Petitioner Albritton, acting pro se, prior to and throughout his entire state jury trials, filed for Brady evidence disclosure and requested funds to hire a private investigator to assist him in gathering information and evidence for his defense. The trial Court ordered the state prosecution to comply with Albritton's Brady disclosure requests, but refused to appoint him the assistance or funds to hire a private private investigator. see (Appx- C

Thereafter, the state prosecution taking full advantage of the fact that Petitioner Albritton, who was indigent, acting pro se, and being held at the local jail under lockdown status with no available means of outside assistance to gather any information or evidence for his defense, refused his requests to produce the relevant hospital ("SANE") protocol in order to fairly challenge the state prosecution's Expert witness and medical evidence.

Additionally, Petitioner Albritton was prevented from objecting to or preserving his Brady prosecutorial misconduct claim in the trial court due to the fact that as the trial record reflects, the state prosecutors on June 13, 2011, gave him and the trial court false and misleading assurances in response to his Brady request that they would diligently search for the relevant hospital ("SANE") protocol to provide it to him or if such could not be located, inform him that the relevant material no longer existed. See (Tt 6-13-11 pgs 20-30). Nevertheless, the requested ("SANE") protocol was never produced or provided, Petitioner Albritton was convicted by the jury and sentenced to Life plus 30 years to which he filed a direct appeal.

However, while his direct appeal was in its final stage pending review in the Virginia Supreme Court, Petitioner Albritton's Sister and his Aunt Vera Henry, who is now deceased, who were the only family members willing to speak to him during that time, got involved to help him and hired a private investigator, who using the search engine "google" was able to easily uncover the relevant hospital ("SANE") protocol dated for December 11th, 1990 available in public records. See (Appx-A pg 1

Petitioner Albritton asserts that issues regarding the procedural posture of his Brady claim are identical to the issues presented in Martinez and Trevino, as the Court wrote in > Martinez: where "the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance of trial counsel, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal." 132 S.Ct. at 1317. This was true in > Martinez with respect to a trial counsel IAC claim, it is equally true here with respect to a Brady claim. Second, just as for a trial counsel IAC claim, it is important for a Brady claim that a prisoner have effective assistance in developing evidence to support his claim. For both trial counsel IAC and Brady claims, most of all the important evidence is outside of the trial record. A prisoner acting pro se, or with only the assistance of ineffective collateral review counsel, cannot perform the necessary investigative work to collect and present the evidence in an initial-review collateral proceeding. See > Martinez, 132 S.Ct. at 1317 (describing the challenges prisoners face in investigating claims and gathering evidence outside of the record); > 2013 U.S. App. LEXIS 17.

Third, trial counsel IAC and Brady claims vindicate bedrock principles of our judicial system. Effective assistance of trial counsel and production of exculpatory evidence by the prosecution are both essential to a fair trial. Both are critical to a criminal's essential "function of adjudicating guilt or innocence." > Martinez, 132 S.Ct. at 1317.

Petitioner Albritton argues that because of the fact that the Government had him held in a facility which prohibited inmates from having any information from computer and the internet while he awaited trial, that the state prosecution gave false and misleading representations to his Brady requests, and that he was denied effective assistance of counsel for his state initial collateral review proceedings which was his first and only opportunity to present his Brady prosecutorial misconduct claim based on the newly discovered evidence obtained during his post-conviction proceedings, the rule in > Martinez, is applicable to excuse the state's asserted default, where Virginia's procedural default rules under > Slayton and > Porter, are not adequate state grounds upon which the State Court can reasonably rely to bar his Brady prosecutorial misconduct claim from Federal § 2254 habeas review and relief, as these Virginia rules made it impossible for any defendant to have raised a Brady prosecutorial misconduct claim, which is based on newly discovered impeachment evidence suppressed by the prosecution. see e.g.,> Trevino v. Thaler, 133 S.Ct. 1911 (2013) (that where state procedural framework, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise an ineffective assistance of counsel claim on direct appeal, a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial, if in the initial review collateral proceeding, there was no counsel or counsel that proceeding was ineffective) (citing Martinez v. Ryan, supra.

Accordingly, This Court's "Equitable" Rule in > Martinez should be extended to also include Brady prosecutorial misconduct claims which are based on "Newly Discovered" Evidence obtained during post-conviction proceedings, as contemplated by this Court's "equitable" rule in > Martinez, where it was clearly impossible for Petitioner Albritton to have raised his Brady prosecutorial misconduct claim at any time during his Trial or Direct Appeal proceedings under Virginia Law for a review on the Merits.

Petitioner Albritton in further support of his position for the extension and application of > Martinez's "Equitable" rule to his current Brady prosecutorial misconduct claim, offers cases previously decided by this Court, and the Fourth and Ninth Circuits Courts of Appeals, where the rulings and opinions in these relevant cases presented indicate that the rule in > Martinez must be extended for Fair and Equal Justice.

First, Petitioner Albritton argues that due to Virginia's procedural framework, by reason of its design and oporation, as well as the circum-stances by which he was only able to discover that the Governmentally suppressed and withheld Brady impeachment evidence actually existed, it was impossible for him to have made any timely objection to the State prosecution's Brady misconduct violation against him at any time during his trial court proceedings. See> United States v. King, 628-F.3d 693, 702 (4th Cir. 2011).

Moreover, because it was alleged by the Respondent Commonwealth of Virginia that No such objection to the State prosecution's Brady misconduct violation was ever made or preserved in the Trial court, as such facts were unknown to Petitioner Albritton at that time during trial and that the suppressed ("S.A.N.E.") protocol was only discovered during the final stage of his direct appeal after his jury trial, he was thereby foreclosed from raising or arguing the State prosecution's Brady prosecutorial misconduct of suppressing and withholding the relevant ("S.A.N.E.") protocol on direct appeal and that his efforts to do so were ultimately rejected by the Virginia Supreme Court. See>-(Appx- E , pages 2-10 and 12).

Therefore, Petitioner Albritton's "initial state collateral review" proceedings under Virginia Code § 8.01-654 was his first and only opportunity for him to have raised his Brady prosecutorial misconduct claim to Virginia's Highest Court (The Virginia Supreme Court) for an adjudication on the merits. See>(Trevino v. Thaler, supra..;(quoting--United States v. Dominguez-Benitez,supra...)

Nevertheless, the Virginia Supreme Court erroneously and unreasonably refused to review the merits of Petitioner Albritton's Brady prosecutor misconduct claim on inadequate state procedural default rule grounds. See> Cone v. Bell,supra....

Moreover, the Fourth Circuit Court of Appeals and Lower District Court's rulings in Petitioner Albritton's case regarding the application of the procedural default doctrine and how Brady prosecutorial misconduct claims are to be reviewed under the AEDPA § 2254(d) conflicts with the rulings of this Court and a ruling of the Ninth Circuit Court of Appeals in>--Amado v. Gonzalez, 758 F.3d 1119 (9th Cir.2013).

In > Massaro v. United States, 538 U.S. 500 (2003), the Supreme Court stated that " The procedural-default rule is neither a statutory nor a constitutional requirement, but it is a doctrine adhered to by the Courts to conserve judicial resources and to respect the laws important interest in the finality in Judgments." Id.at 504. The general rule in federal habeas cases is that defendants who fail to raise a claim on direct appeal is barred from raising a claim on collateral review. See>--Sanchez-Llamas v. Oregon, 548 U.S. 331, 359, 125 S.Ct. 2669 (2006).

The basic framework of an advrersary system.... require[s] parties to present their legal claims at the appropriate time for adjudication. Id. These rule include the doctrine of procedural default, under which a federal court will not review the merits of claims, including Constit--utional claims, that a State court declined to hear because the prisoner failed to abide by a State procedural rule.> Coleman v. Thompson,supra...

However, Martinez modified > Coleman's rules in a narrow circumstance: where State Law requires that a defendant bring an ineffective-assistance -of-trial -counsel claim in post-conviction proceedings rather than on direct appeal, an attorney's Constitutionally deficient performance in

the initial collateral review proceeding can establish "cause" to excuse the default of the petitioner's ineffective assistance of trial counsel claim.> Martinez, 132 S.Ct. at 1318.

In Trevino, this Court expanded > Martinez and held that Martinez's exception also applies "when a State's procedural framework, by reason of its design and operation, makes it highly unlikely in a typical case that a defendant will have a meaningful opportunity to raise an ineffective assistance of counsel claim on direct appeal," even if the State does not explicitly require ineffective assistance of trial counsel claims to be brought on collateral review. (quoting> Trevino, 133 S.Ct.--at 1921) ("a procedural default will not bar a federal habeas court from hearing a substantial claim of ineffective assistance at trial, if in the initial review collateral proceeding, there was no counsel or counsel for that proceeding was ineffective").

Therefore, based upon the fact that the Government interfered with Petitioner Albritton's Constitutional rights to the disclosure of the relevant impeachment evidence under Brady and that the evidence was not discovered until after his trial and conviction, the State should not be able to claim any procedural default for his failure to present his Brady prosecutorial misconduct claim during his trial or direct appeal and that any such default must be excused under the "equitable" rules in> Martinez v. Ryan and Trevino v. Thaler, supra...

Accordingly, the application of the rule in Martinez and Trevino must be extended to apply here, due to Virginia's procedural Framework, by reason of its design and operation, as well as the circumstances by which Petitioner Albritton was only able to discover that the State criminal prosecution suppressed and withheld the relevant Brady impeach--ment evidence, as its existence was not discovered until after his trial and during direct appeal which made it impossible for him to have objected and raise his Brady claim on direct appeal under Virginia Law, therefore, Petitioner Albritton properly raised his claim to the State's highest Court in his first and only opportunity to do so and he never recieved assistance of counsel or a review on the merits that he was entitled. See> Cone v. Bell, supra....

# Reasons For Granting The Petition

(5) The Federal habeas Court performing a de novo review of a state petitioner's Brady prosecutorial misconduct claim should be Constitutionally required to conduct a materiality analysis of newly discovered Brady evidence as prescribed by this Court's decision ( Kyles v. Whitley, 514 U.S. 419, 115 S.Ct.1555 (1995)), for a determination of "prejudice."

Petitioner Albritton moves this Honorable Court to address the important issue of federal law as to how a federal habeas court is to proceed in the review of a state prisoner's Brady prosecutorial misconduct claim allegedly defaulted in the state-court upon the prisoner's establishment of "cause" to excuse their default. See > Cone v. Bell, supra....

For instance, should the federal habeas court upon the state petitioner's establishment of "cause" to excused an alleged state procedural default be Constitutionally required under federal law to engage in a materiality analysis regarding the "prejudice" element of a Brady violation as prescribed by this Court's decision (Kyles v. Whitley, 514 U.S. 419, 115 S.Ct.1555 (1995))

The Fourth Circuit Court of Appeals and lower District Court erred in dismissing Petitioner Albritton's Brady violation claim without ever determining the materiality of his newly discovered Brady evidence regarding the prejudice element of Brady and denying him a certificate of appealability, which not only conflicts with a decision of this Court, but also decisions of both the Sixth, Ninth, and Tenth Circuit Courts of Appeals. See e.g.,> Wagle v. Sherry, 687 Fed. Appx 487, 490 (2017) ("Although we consider materiality in light of the evidence as a whole, we evaluate the tendency and force of the undisclosed evidence item by item."); also > Benn v. Lambert, 283 F.3d 1040, 1053 (9th Cir. 2002); and Jamison v. Collins, 291 F.3d 380 (10th Cir. 2002) (same) (quoting > Kyles v. Whitley, supra...)

Significantly, a Brady proscutorial misconduct claim has three essential elements: (1) the evidence must be favorable to the accused; (2) it must have been suppressed by the government, either willfully or inadvertently; and (3) the suppression must have been material, i.e., it must have prejudiced the defense at trial. > Strickler v. Greene, 527 U.S. 263, 281-82, 119 S.Ct. 1936 (1999). Under Brady, "[t]he touchstone of materiality is a 'concern that the suppressed evidence might have affected the outcome of the trial.' "(quoting Agurs, 427 U.S. at 104, 96 S.Ct. 2392). Unless suppressed evidence is "material for Brady purposes, [its] suppression [does] not give rise to sufficient prejudice to overcome [a] procedural default." Strickler v. Greene, 527 U.S. at 282, 119 SCt. The Supreme Court's touchstone on materiality is > Kyles v. Whitley, 514 U.S. 419, 115 S.Ct.1555 (1995).
As the Supreme Court has stressed, it has "rejected a standard that would require the defendant to demonstrate that the evidence if disclosed probably would have resulted in acquittal."> United States v. Bagley, 473 U.S. 667, 680, 105 S.Ct. 3375 (1985)(citing United States v. Agurs, 427 U.S. 97, 111, 96 S.Ct. 2392 (1976). Rather, the Court has "defined a 'reasonable probability' as 'a probability sufficient to undermine confidence in the outcome' " of the trial. Id. at 682, 105 S.Ct. 3375 (citing Strickland v. Washington, 466 U.S. 668, 694, 104 S.Ct. 2052 (1984). In assessing materiality, a reviewing court need not be convinced to an absolutely certainty that proper disclosures, had they been made, would have resulted in a different verdict. Indeed, " [t]he question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial, understood as a trial resulting in a verdict worthy of confidence."> Kyles, 514 U.S. at 434, 115 S.Ct. 1555.

Here, Petitioner Albritton proved and satisfied the first two elements of his Brady prosecutorial misconduct claim, but because of the Government's interference where they both created and asserted a procedural default, he was prevented from developing, and arguing the factual basis of the prejudice caused by the prosecutorial misconduct of suppressing and withholding the impeachment evidence during his jury trial. The guiding principle of Brady is that a jury should be permitted to hear and evaluate all relevant evidence going to a defendant's guilt or punishment. > Brady v. Maryland, supra...

Albritton argues that he was denied his right to have presented the relevant hospital SANE protocol for the jury to have considered such against the prosecution's false and misleading expert witness's opinion testimony and her documentary evidence presented.against him which clearly violated his rights to a fair trial under Brady v. Maryland, supra....

Petitioner Albritton cites two cases from the Fourth and Ninth Circuit Courts of Appeals in further support of his proposition and as examples for this Court to consider in determining whether a federal habeas court in the review of a procedurally barred Brady Claim by the state courts, should be required to perform a materiality analysis of the uncovered Brady material to determine the "prejudice" caused by its suppression prior to the Brady claim's dismissal, once governmental interference is established by a petitioner to "excuse" the default.

First, in the case of > Monroe v. Angelone, 323 F.3d 286 (C.A.4 (Va.) 2003), the Fourth Circuit in affirming the lower District Court's grant of habeas relief to a state prisoner held that the state's nondisclosure if material, favorable evidence violated its Brady disclosure obligations, warranting federal habeas relief. There the Fourth Circuit stated: "An important consideration here is that, under > Kyles, the question of materiality must be considered 'collectively, not item by item.' " In assessing the issue of materiality, we must evaluate the importance of the Commonwealth's suppression of the habeas Evidence. To do so, we first assess the Commonwealth's evidence that Monroe committed first-degree murder. We then weigh against this evidence the strength of Monroe's defense. Finally, we consider whether the Habeas Evidence, had it been disclosed and used effectively, is likely to have affected the verdict of first-degree murder.> United States v. Bagley, supra,... In other words, we examine whether the Commonwealth's suppression of the Habeas Evidence was material to the fairness of Monroe's trial." See> Monroe, 323 F.3d at 302.

In the Second case of> United States v. Price, 566 F.3d 900 (C.A.9. (Or.)( 2009), the Ninth Circuit reversed and remanded the denial of a defendant's Brady claim holding that (1) the prosecutor failed in his duty to learn of results of investigation into criminal past of star witness, and (2) failure to disclose her criminal past was prejudicial. There the Ninth Circuit stated: "In determining whether the failure to disclose > Brady material undermines our confidence in the outcome of the trial, we must weigh the withheld evidence "in the context of the entire record." Id. at 913 (quoting Benn v. Lambert, supra...)

Petitioner Albritton argues that > Monroe, Price, and Benn are just a small example of the many cases in which the lower Federal Circuit Courts of Appeals have granted relief upon a petitioner's Brady violation claim after a materiality analysis was conducted for the determination of the prejudice caused by the withheld evidence consistent with this Court's decision in > Kyles v. Whitley, supra....

Petitioner Albritton argues that the Fourth Circuit Court of Appeals and lower District Court's failure to have conducted a materiality analysis of the newly discovered Brady impeachment evidence in support of his Brady prosecutorial misconduct claim after he had established that the Government violated and interfered with his Constitutional rights Brady has worked a miscarriage of justice where his Brady violation claim has never received a review on the merits by any Court of law. See > Monroe v. Butler, 485 U.S. 1024, 108 S.Ct. 1582 (1988) (Justice Marshall dissenting: " I would grant this petition for certiorari because the state courts refused to grant petitioner appropriate relief for the state's violation of his rights under Brady v. Maryland, supra... In doing so the state courts countenance impermissible official conduct and left the victim of this conduct without effective Constitutional protection.")

Accordingly, the Federal habeas court should be Constitutionally required to conduct a materiality analysis upon newly discovered Brady evidence for the prejudice determination upon a petitioner's establishment of Government suppression and interference under Brady v. Maryland, supra... consistent with this Court's decisions.

# Reasons For Granting The Petition

(6) A state criminal prosecution does violate a Prisoner's Access to the Courts, equal protection, and due process rights under the 1st and 14th Amendments U.S. Constitution when it denies and refuses a self-represented prisoner's Brady disclosure requests during their state criminal trial as they are being held in the custody of the state as a segregated prisoner awaiting trial.

Petitioner Albritton moves this Honorable Court to Grant him a writ of Certiorari upon this important issue of federal law presented, to hold that as he was a self-represented defendant being held in custody by the state criminal prosecution as a state prison inmate at a local jail during his state criminal trial proceedings, the state criminal prosecution violated his Access to the Courts, equal protection, and due process rights under the 1st and 14th Amendments of the U.S. Constitution, when it committed Brady prosecutorial misconduct against him by denying and refusing his pro se Brady disclosure requests to produce and provide him with a copy of the relevant hospital ("SANE") protocol which was both vital and neccessary for his defense of challenging the prosecution's key Expert witness testimony and evidence against him.

First, Petitioner Albritton states that the trial record proves that as a matter of fact and Law, the state criminal prosecution committed Brady prosecutorial misconduct in his case. See (Appx- 6g ; Appx- 6g ; and Appx- 6g ). The U.S. Supreme Court has held that there are three essential elements for a Brady prosecutorial misconduct claim (1) evidence favorable to the accused; (2) suppression of the evidence by the prosecution; and (3) prejudice as a result of the evidence being suppressed. See > Strickler v. Greene, supra; and > Banks v. Dretke, supra., (quoting > Amadeo v. Zant, supra...,). This Court has held that to rise to the level of a due process violation, "the prosecutorial misconduct must be of sufficient significance to result in the denial of defendant's right to a fair trial." > Greer v. Miller, 483 U.S. 756, 765, 107 S.Ct. 3102 (1987). Effective assistance of trial counsel and production of exculpatory evidence by the prosecution are both essential to a fair trial. Both are critical to a criminal's essential "function of adjudicating guilt or innocence." > Martinez, 132 S.Ct. at 1317. "A prisoner's right of access to courts may not be denied or obstructed." > Johnson v. Avery, 393 U.S. 483, 485 (1969).

Albritton argues that because he was a prisoner of the state and was representing himself for his pending criminal trial, he should have been further protected under the First and Fourteenth Amendment clauses of the U.S. Constitution. "A fundamental right is one that is 'explicitly or implicitly guaranteed' by the Constitution.">San Antonio Indep. Sch. Dist. V. Rodriguez, 411 U.S. 1, 33, 93 S.Ct. 1278 (1973). "A prison inmate retains his First Amendment Rights that are not inconsistent with his status as a prisoner or with legitimate penological objectives of the correctional system." See > Overton v. Bazzetta, 539 U.S. 126, 131, 123 S.Ct. 2162 (2003) (quoting > Pell v. Procunier, 417 U.S. 817, 822, 94 S.Ct. 2800 (1974).

The Fourteenth Amendment provides that No State shall "deprive any person of life liberty or property without due process of Law." This Court has long recognized that the Amendment's Due Process clause, like its Fifth Amendment counterpart, "guarantees more than fair process." > Washington v. Glucksberg, 521 U.S. 702, 719, 117 S.Ct. 2258 (1997). The clause also includes a substantive component that "provides heightened protection against government interference with certain fundamental rights and liberty interests." > Id. at 720, 117 S.Ct. 2258; also > Reno v. Flores, 507 U.S. 292, 301-302, 113 S.Ct. 1439 (1993).

Drawing on these notions of fairness and equality, the Supreme Court has held that the Fourteenth Amendment guarantees "meaningful access to justice" in criminal cases.> Ake v. Oklahoma, 470 U.S. 68, 77, 105 S.Ct. 1087 (1985). All criminal defendants are entitled to an "adequate opportunity to present their claims fairly within the adversary system." Ross v. Moffitt, 417 U.S. 600, 612, 94 S.Ct. 2437 (1974). Petitioner Albritton argues that as he was exercising his Constitutional rights to self-representation while he was being held in custody by the state criminal prosecution pending trial, his access to the courts was obstructed, where his Constitutional rights asserted under Brady, was especially "substantial" as the state's prisoner while he proceeded to trial, pro se.

However, the state prosecutors used the fact that Petitioner Albritton was in jail and his custody status as a means to suppress and withhold Brady impeachment evidence in order to secure his conviction. See > Greer v. Miller, supra...

# Reasons For Granting The Petition

(7) The Fourth Circuit and lower District habeas Court err in refusing to grant Petitioner's request for an evidentiary hearing upon his newly discovered Brady evidence under § 2254 (e) upon his establishment of the interference and suppression by the state Government as cause for his alleged default of his Brady prosecutorial misconduct claim in the state court proceedings.

Petitioner Albritton moves this Honorable Court to grant his petition for a writ of certiorari upon this presented Constitutional error of federal law committed by the Fourth Circuit Court of Appeals and lower District Court, to thereby hold that he was entitled to have been granted an evidentiary hearing upon his newly discovered Brady evidence.

Petitioner Albritton argues that the Federal habeas Court was obligated to have reviewed his Brady prosecutorial misconduct claim, where he had established that the state Government of Virginia violated his Federal Constitutional rights under Brady and that his rights to have called witnesses and evidence in his favor at his jury trial were also violated, where he was self-represented without the aid of Counsel.

This Court in California v. Trombetta, 467 U.S. 479, 485, 104 S.Ct. 2528 (1984) held that "[T]he Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense." > Id. "Few rights are more fundamental that that of an accused to present witnesses in his own defense, see, e.g., Chambers v. Mississippi, 410 U.S. 284, 302, 93 S.Ct. 1038 (1973). Indeed, this right is an essential attribute of the adversary system itself the right to compel a witness' presence in the courtroom could not protect the integrity of the adversary process if it did not embrace the right to have the witness' testimony heard by the trier of fact. The right to offer testimony is thus grounded in the Sixth Amendment " Taylor v. Illinois, 484 U.S. 400, 408-409, 108 S.Ct. 646 (1988).

Petitioner Albritton argues that once he presented the Federal District Court and the Fourth Circuit Court of Appeals with proof that he was violated by the state Government of Virginia, and that his efforts to raise and litigate the violation of his Constitutional rights in his state initial-review collateral proceedings were impeded, that he was entitled to have a hearing.

Under (AEDPA) 28 U.S.C. § 2254(e)(2) in order to obtain an evidentiary hearing, petitioner must "show cause for his failure to develop the facts in state-court proceedings and actual prejudice resulting from that failure" unless failure to hold evidentiary hearing would result in "fundamental miscarriage of justice." If, however, the facts are still not developed despite the petitioner's diligence in the state proceedings, then the petitioner does not need to fulfill the requirements of § 2254(e)(2) because the petitioner is not considered to have "failed to develop" the facts. See e.g.,> Williams v. Taylor, 529 U.S. 420, 437 (2000) (diligence requires, "at a minimum, seek[ing] an evidentiary hearing in state court in the manner prescribed by law").

Here, Petitioner Albritton argues that despite his due diligence in spite of the state Government's suppression and interference, he was never afforded any evidentiary hearing upon his newly discovered Brady impeachment evidence in the state court, and the Fourth Circuit Court and lower District Court in denying him a federal evidentiary hearing, simply deferred to the state court's decision which effectively covered up the facts of the state criminal prosecution's misconduct by refusing to conduct an evidentiary hearing thereupon. see > Sanchez-Llamas v. Oregon, supra... ("in the case of a Brady claim, it is impossible for the defendant to know as a factual matter that a violation has occurred before the exculpatory evidence is disclosed"); > Winston v. Kelly, 592 F.3d 535, 552-53 (4th Cir. 2010) (petitioner entitled to evidentiary hearing because did not have opportunity to develop claim in state court, despite due diligence). In fact, Petitioner Albritton argues that virtually every Circuit Courts of Appeals has held that a petitioner who was never afforded an evidentiary hearing in the state court proceedings despite due diligence is entitled to a federal evidentiary hearing in the federal court.

Moreover, Petitioner Albritton argues that it was a further violation of his Constitutional rights for the Federal Courts to refuse to order the state prison officials and Government to allow for his family to send to him relevant legal documents and trial transcripts which were needed in the presentation of his Brady prosecutorial misconduct claim, which this Court in >Martinez had established that prisoners obstacles to overcome in presenting Brady

claims.
See > Martinez, 132 S.Ct. at 1317 (describing the challenges prisoners face in investigating claims and gathering evidence outside of the record).

Petitioner Albritton asserts that it was both unreasonable and unconstitutional for the Federal Habeas court and Fourth Circuit Court of Appeals to have denied him an evidentiary hearing and to at the very least should have stopped the state from impeding his efforts to have presented his Brady prosecutorial misconduct claim for adjudication, where he was denied the right to have his family purchase and mail him a copy of the relevant transcript to the prison where he is housed. See (Appx- , ).

Accordingly, the Fourth Circuit Court of Appeals and lower District Court erred by refusing to conduct an evidentiary hearing upon Albritton's newly discovered Brady impeachment evidence upon his establishment that the state Government of Virginia suppressed and withheld the evidence during his criminal trials and further impeded his efforts to present his Brady prosecutorial misconduct claim to the Federal Court system for an adjudication on the merits.

# Reasons For Granting the Petition

(8) The Fourth Circuit Appeals and lower U.S. District Court erred in granting the Respondent Commonwealth of Virginia's motion to dismiss his motion to compel regarding his rights to receive legal documents and trial transcripts through prison mailing system without allowing Petitioner the opportunity to file a response which would have established his entitlement to Federal Habeas relief.

Petitioner Albritton moves this Honorable Court to Grant him a Petition for a writ of Certiorari upon this issue of Federal law, where he was not allowed and denied his opportunity to submit a response to the state Government's unreasonable and unconstitutional deprivation of his 1st and 14th Constitutional Rights of access to the Courts and due process of law in receiving legal mail correspondence.

Petitioner Albritton argues that where the U.S. District Court had decided to order the respondent Commonwealth of Virginia on March 12, 2019, to show Cause why the Federal habeas Court should not Grant him relief from the state Government's violation of his Constitutional rights to receive legal mail contrary to federal law, that when the Attorney General for the Commonwealth of Virginia filed their response to the U.S. District Court regarding the restrictions placed on his 1st Amendment right to receive legal mail, Petitioner should have been allowed to reply and submit evidence in support of his reply which would have entitled him to have been Granted Federal relief.

Petitioner Albritton asserts that the Fourth Circuit Appeals Court and lower District Court disregarded their own standing rule and directive that Petitioners are entitled to be given an opportunity to file a response to a Respondent's motion to dismiss, where in accordance with > Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and Local Civil Rule 7(K) for the U.S. District Court Eastern District of VIRGINIA, the petitioner is entitled to file a response opposing the motion by filing counter-affidavits, statements, exhibits or other legal or factual material that supports his position in the case. In addition to such material, the petitioner is entitled to file a legal brief in opposition to the one filed by the respondent. Id.

Petitioner Albritton states that the ruling in > Roseboro v. Garrison, supra..., has not been overruled or modified since 1975, nor has this Honorable Court ever been presented with the issue relevant in Roseboro, thus this matter should be reviewed by this Court on those Grounds.

Nevertheless, Petitioner Albritton argues that he was never given that chance to file any reply or submit despite the ruling in > Roseboro, where he would have submitted documentary evidence to prove that the Commonwealth of Virginia was not being truthful in regards to the real reason why it did not want to allow Petitioner's family members to mail him his legal documents and trial transcripts, as the excuse of drugs and contraband smuggling given by the state Government would have been easily refuted and disproved by relevant documents and affidavits from prison officials and a review of state and federal police records regarding the arrests of prison officers and deaths of prison inmate from drug overdoses.

Moreover, Albritton would have argued and submitted proof that the drugs and contraband was actually being smuggled in by the prison officers and not through the prison legal mail as there had been at least 100 or more officers statewide who were caught, fired, and prosecuted for the smuggling since the alleged new mailing policy went into effect .

Petitioner Albritton argues that it was unfair and Unconstitutional for the State Government's sole response to be given for the restrictions and violation of his 1st, 6th, and 14th Amendment rights to access to the courts, self-representation, and due process and that he was not allowed to give his reply thereto, and for that reason, the Federal Court's denial of his Motion to Compel should now be overruled, and the matter remanded for a decision consistent with such opinion which would give Petitioner Albritton the opportunity to file his response thereto.

Accordingly, it was Constitutional error for the Federal Habeas Court to have Granted the State Government's motion to dismiss and restrictions placed upon Petitioner Albritton's 1st, 6th, and 14th Amendment rights of access to the courts, self-representation, and due process, where Petitioner should have been allowed to reply and submit evidence in support of his reply regarding the State Government's restrictions placed upon his rights to receive legal mail through the state prison's mailing system. See > Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), and Local Civil Rule 7(K) for the U.S. District Court Eastern District of VIRGINIA.

# Reasons For Granting The Petition

(9) The Fourth Circuit Court of Appeals erred in refusing to apply the standard mandated by this Court's decision in (Ayestas v. Davis, 518 U.S. _____ , Record No. 16-6795 (2018)), in its determination of Petitioner Albritton's funding request to obtain investigative services for his Newly discovered Brady prosecutorial misconduct evidence which would have further established his entitlement to Federal Habeas relief.

Petitioner Albritton moves this Honorable Court to Grant his Petition for Certiorari upon this issue presented, to hold that this Court's decision (Ayestas v. Davis, 518 U.S. _____ , Record No. 16-6795 (2018)), is retroactive and applicable to his case where he sufficiently requested and was entitled to have received funding to obtain investigative services for his newly discovered Brady evidence.

Petitioner Albritton argues that under this Court's ruling in > Ayestas v. Davis, supra.., he was entitled to have been Granted his funding request which would have produced the addresses and statements of the relevant expert witnesses that the state Government of Virginia suppressed and prevented from testifying in his defense at his jury trials.

Petitioner Albritton argues that the evidence which would have been produced had the Fourth Circuit Appeals Court complied with his funding request for investigative services under Ayestas v. Davis, supra..., would have established his entitlement to Federal habeas relief from the violations of his Constitutional rights.

Petitioner Albritton asserts that the investigative services had he been Granted such, would have located and produced relevant documents and expert witness statements that would have proved that the state criminal prosecution's key expert witness and evidence was falsely asserted and manipulated in order to find Petitioner guilty of a crime that he did not commit

Petitioner Albritton argues that it was only due to the State Government's violations of his Constitutional rights under Brady and interference that he was denied having the relevant expert witnesses subpoenaed to testify for his defense at his trial.

Accordingly, The Fourth Circuit Court of Appeals erred under Ayestas v. Davis, supra..., by failing to Grant Petitioner Albritton's funding request for investigative services, which would have produced evidence that would have entitled him to be Granted Federal Habeas relief thereby.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Date: February 27, 2020

"I certify that the above notary is not a party to this action"
Offender signature