IN THE SUPREME COURT OF THE UNITED STATES

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BRANDON RAY BUCKLES,

PETITIONER,

vs.

UNITED STATES OF AMERICA,

RESPONDENT.

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ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Is it improper for a district court to summarily deny a federal prisoner's motion to vacate, set aside or correct a sentence pursuant to 28 U.S.C. § 2255 without an evidentiary hearing where the prisoner alleges trial counsel was ineffective by stipulating to an essential element of the offense without the prisoner's consent and without investigating a meritorious defense, thereby, depriving the prisoner Fifth and Sixth Amendment rights to a fair trial and to effective assistance of counsel?

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, BRANDON RAY BUCKLES, (hereinafter Buckles) respectfully prays that a writ of certiorari issue to review the unpublished memorandum of the United States Court of Appeals for the Ninth Circuit entered on May 12, 2020, affirming the district court's order summarily denying his motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255 without an evidentiary hearing.

OPINION BELOW

On May 12, 2020, the Ninth Circuit Court of Appeals entered an unpublished memorandum affirming the district court's order denying Buckles' motion to vacate, set aside or correct his sentence pursuant to 28 U.S.C. § 2255. The unpublished memorandum is attached in the Appendix (App.) at pages 1-4. This petition is timely.

JURISDICTION

The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fifth Amendment to the United States Constitution states in pertinent part: "[n]o person shall ... be deprived of life, liberty, or property, without due process of law...." U.S. Const., Amend. V.

The Sixth Amendment to the United States Constitution states in pertinent part: "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury ... and to have the Assistance of Counsel for his defence." Const., Amend. VI.

Section 1153 of Title 18 of the United States Code states the following in pertinent part:

> (a) Any Indian who commits against the person or property of another Indian ... a felony under chapter 109A ... within Indian country, shall be subject to the same law and penalties as other persons committing any of the above offenses, within the exclusive jurisdiction of the United States.

18 U.S.C. § 1153(a).

Section 2246 of Title 28 of the United States Code states the following in pertinent part:

> On application for a writ of habeas corpus, evidence may be taken orally or by deposition, or, in the discretion of the judge, by affidavit. If affidavits are admitted any party shall have the right to propound written interrogatories to the affiants, or to file answering affidavits.

28 U.S.C.A. § 2246.

Section 2255 of Title 28 of the United States Code states the following in pertinent part:

> (a) A prisoner in custody under sentence of a court established by Act of Congress claiming the right to be released upon the ground that the sentence was imposed in violation of the Constitution or the laws of the United States, or that the Court was without jurisdiction to impose such sentence, or that the sentence was in excess of the maximum authorized by law, or is otherwise subject to collateral attack, may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that the judgment was rendered without jurisdiction, or that the sentence imposed was not authorized by law or otherwise open to collateral attack, or that there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.

28 U.S.C.A. § 2255(a) and (b).

STATEMENT OF THE CASE

On January 7, 2015, the government obtained a three count indictment charging Buckles in the United States District Court for the District of Montana with one count of sexual abuse in violation of 18 U.S.C. § 2242(2)(B), and two counts of making material false statements to the Federal Bureau of Investigation (FBI) during the investigation in violation of 18 U.S.C. § 1001(a)(2).[1] The government alleged that the federal court had jurisdiction under 18 U.S.C. §

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[1] 18 U.S.C. § 2242(2)(b) states in pertinent part: "[w]hoever, in the special maritime and territorial jurisdiction of the United States ... knowingly– ... (2) engages in a sexual act with another person if that other person is– (B) physically incapable of declining participation in, or communicating unwillingness to engage in, that sexual act; ... or attempts to do so, shall be fined

1153(a), the Indian Major Crimes Act (IMCA). App. 15-18. Buckles was convicted after a jury trial on all three counts.[2]

Count I of the indictment alleged that Buckles was, "an Indian person" within the meaning of the IMCA and "knowingly engaged in a sexual act with J.L.S.B," on or about June 26, 2010, when she was incapable of consent. App 16. At close of evidence, the district court, among other elements, instructed the jury that the government was required to prove beyond a reasonable doubt that Buckles "was an Indian person." App. 27. The district court also instructed the jury that for Count III, charging a false statement, the government had to prove Buckles made a false statement to "FBI Special Agent David Burns in a matter within the jurisdiction of the FBI, an agency of the United States." App. 28. The matter within the jurisdiction of the FBI was an alleged violation of the IMCA. Thus, Indian status was an element on all counts of conviction.

On appeal of the district court's summary denial of his § 2255 motion, Buckles centered on the elements in Counts I and III that required the government to prove that Buckles was "an Indian person" at the time he committed the offenses in June of 2010. App. 2. In his § 2255 motion, Buckles alleged that trial counsel failed to investigate his status as a non-Indian. App. 34. He alleged that had trial counsel conducted such investigation, he could have put forward

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under this title and imprisoned for any term of years or for life."

18 U.S.C. 1001(a)(2) states in pertinent part: (a) ... "whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully– ...(2) makes any materially false, fictitious, or fraudulent statement or representation ... shall be ... imprisoned not more than 5 years."

[2] The district court vacated the conviction on Count II.

evidence that negated status as "an Indian person" at the time of the alleged offenses. App. 58-59.

Before Buckles' jury trial, his trial counsel entered into a stipulation with the prosecution.[3] App. 19-21. The filed stipulation does not contain Buckles' signature. App. 21.

During the district court's preliminary instructions to the jury, the district court read the following stipulation to the jury:

> Instruction Number 13. The parties have stipulated to the follow (sic), that means they have agreed to the following facts: Number 1. The defendant, Brandon Ray Buckles, is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation. Number 2. The Assiniboine and Sioux Tribes are federally-recognized tribes. Three. The defendant, Brandon Ray Buckles, is an Indian person. No further evidence is required to prove that the defendant is an Indian person. You should treat these facts as having been proved.

App 25. The stipulation did not specify that Buckles was "an Indian person" at the time of the alleged sexual abuse offense, which occurred nearly five years prior to Buckles' trial. App. 19- and 25. The district court did not discuss the stipulation with Buckles before it was entered into the record at his jury trial. App. 25.

During trial, the district court admitted Government Exhibit 1. App. 30. Exhibit 1 is a Certificate of Indian Blood for Buckles. *Id.* The certificate shows that Buckles has 3/16 quantum of blood with the Assiniboine and Sioux Tribes of Fort Peck. *Id.* The certificate includes an "Enrollment Status: Enrolled." It includes an "Enrollment Number: 206-AM-

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[3] The stipulation that Buckles was "an Indian person" was filed on April 1, 2015. App. 19. Trial commenced on June 1. 2015. App. 22.

001731." *Id.*[4]

At the close of evidence, the district court reread the stipulation that Buckles was "an Indian person" to the jury, stating, "[t]he parties have stipulated as follows: (1) "Buckles is an enrolled member of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation;" (2) "The Assiniboine and Sioux Tribes are federally recognized tribes;" and (3) Buckles "status as an Indian person has been proven beyond a reasonable doubt. You should treat these facts as having been proved." App. 29. Again, the stipulation did not specify that Buckles was "an Indian person" at the time of the alleged sex abuse offense in 2010. App. 20, 25, and 29.

Buckles' § 2255 motion alleged that trial "[c]ounsel failed to appropriately investigate [Indian] status." App. 34. The motion alleged that "Buckles was not eligible for any benefits" from the Tribes of Fort Peck. *Id.* It alleged Buckles "[w]as denied benefits [and] per capita payments" and the Bureau of Indian Affairs, the "BIA did not recognize [him] as an Indian[,] [and] Buckles blood quantum did not allow him to be a full member of the Tribe[s]." *Id.* He claimed "[c]ounsel was ineffective for stipulating that Buckles was an Indian for purposes of 18 U.S.C. § 1153." *Id.*

In his memorandum with "Points and Authorities in Support" of his motion, Buckles elaborated on his allegations. He alleged the following: (1) "he is not an Indian," since he cannot have full membership in the Assiniboine or Sioux tribes with only 3/16 blood quantum App. 55;[5] (2) the "AM" in his enrollment number in the Certificate of Blood means "associate member"

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[4] The "AM" in the number on the certificate means Associate Member. App. 56.

[5] *See, United States v. Smith*, 442 Fed. Appx. 282, 284 (9th Cir. 2011) (recognizing that a quantum of at least 1/8 blood, but less than 1/4 blood permits "associate membership" in the tribes.

App. 56; (3) Buckles "attempted to apply for benefits reserved for tribal members in 2011 and was denied - as he was not an actual member of the Tribes and [not] eligible" *Id.*; (4) "[i]n 2012 Buckles applied for per capita payment [of] ... $2500 reserved for Indians and again denied" *Id.*; (5) he was denied funds for medical treatment though the Tribes "since he was not a formal member and not eligible to receive the benefit" App. 56-57; (6) "Buckles did not involve himself in Indian social life" App. 57; (7) "Buckles did not participate in 'sweats'" *Id.*; (8) Buckles did not attend "'pow-wows'" *Id.*; (9) Buckles did not vote, nor was he eligible to vote "in Tribal affairs" *Id.*; (10) Buckles did not "attend Tribal counsel meetings" *Id.*; and (11) North Dakota state records from 2008 and the first Presentence Investigation Report for this case identified Buckles' race as "'white' non-indian." *Id.*

Buckles alleged that he "advised defense counsel ... that he was not an Indian." *Id.* He advised counsel that "he was denied per capita payments and denied formal enrollment" with the Tribes. Buckles alleged that he told trial counsel that "he was denied government benefits reserved for Indians[,] ... that he lived on and off the reservation and went to a public school integrated with non-Indians." *Id.* He advised counsel "that he was denied assistance from the tribal clinic." App. 58.

Buckles alleged that he "did not agree with [counsel] stipulating to Indian status, did not sign any papers stipulating to Indian status, nor [was he] consulted as to whether he would authorize stipulating to Indian status." App. 58. Buckles alleged that the district court did not inquire as to whether he agreed with the stipulation, nor did the district court inquire of Buckles whether "he agreed to waive the Government's burden to prove ... an essential element of the offense..." *Id.*

Finally, Buckles re-alleged that trial counsel "was ineffective for stipulating that Buckles was an Indian for purposes of the IMCA." *Id.* He alleged that trial counsel "should have properly investigated Buckles' Indian status and challenged this contention at trial." *Id.* Finally, Buckles alleged that "but for [counsel's] deficient performance there was a reasonable probability that the outcome would have been different." App. 59.

The district court did not order the government to answer Buckles' § 2255 motion. The district court did not seek any discovery from the parties, nor did it hold an evidentiary hearing on Buckles' motion. Instead, the district court summarily denied Buckles' motion. App. 5-14.

At the time of Buckles' trial, the test for determining Indian status was set forth in *United States v. Maggi*, 598 F.3d 1073, 1080-81 (9th Cir. 2010);[6] and *United States v. Bruce*, 394 F.3d 1215, 1223-24 (9th Cir. 2005). App. 8. The test applied by the district court at the time of Buckles' trial to determine Indian status for IMCA purposes was as follows: (1) the defendant had a quantum of Indian blood traceable to a federally recognized tribe; and (2) the defendant was a member of, or was affiliated with, a federally recognized tribe. *Id.* (citing *Maggi*, 598 F.3d at 1080-81; and *Bruce*, 394 F.3d at 1223-24).[7]

Buckles' § 2255 motion challenged the second prong of the test. In denying his motion, the district court wrote:

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[6] *Maggi* was overruled in part by *United States v. Zepeda*, 792 F.3d 1103, 1106-07, 1113 (9th Cir. 2015) (*en banc*). *Zepeda* overruled *Maggi* only in so far as *Maggi* held that the requirement that a tribe be federally recognized applied to both prongs of the two-part test to determine Indian status. *Zepeda* clarified that proof of federal recognition of a tribe only applies to the second prong. *Id.* It was the second prong that was at issue before the Ninth Circuit, but not the federal recognition aspect of the second prong. Buckles concedes that the Assiniboine and Sioux Tribes of the Fort Peck Reservation were federally recognized tribes in 2010.

[7] Buckles agrees that he has "some [quantum of] Indian blood" under the first prong.

> The certificate also satisfied the second prong of the test. In *Smith*, the court considered whether an associate member of the Fort Peck Tribes who had relinquished his membership years before trial nonetheless qualified as an Indian. The court determined that evidence "that Smith at one time enjoyed formal tribal enrollment," even as an associate member, was "the most important indicator of tribal recognition of a defendant's Indian status," although he had altered his enrollment status. *See Smith*, 442 Fed. Appx. at 284.

App. 9 (citing *United States v. Smith*, 442 Fed. Appx. 282, 284 (9th Cir. 2011)).

The district court further stated, "[a]n enrolled tribal member, even one with fewer rights and privileges than others, is by definition 'affiliated with' a tribe" ... [and] "the Ninth Circuit may one day decide the second prong of the test requires a stronger affiliation than associate membership in the Fort Peck Tribes." *Id.* The district court relied on *Zepeda* where the Ninth Circuit upheld the defendant's conviction under the IMCA. *Id. Zepeda* held that evidence at trial met both prongs of the test - the evidence consisted of an enrollment certificate and the testimony from defendant's brother that their father was an Indian. App. 9-10.

The district court essentially utilized Buckles' Certificate of Indian Blood from the Tribes (Government Exhibit 1) as conclusively establishing that Buckles' was "entitled to no relief." In affirming the district court, the Ninth Circuit held,

> The district court correctly rejected that argument. Certificates of enrollment are important evidence of Indian status. *See, e.g., id.; Zepeda*, 792 F.3d at 1115–16; *United States v. Alvirez*, 831 F.3d 1115, 1124 (9th Cir. 2016). And, this Court has previously decided that an individual with the same enrollment status as Buckles, with the same tribe, qualified as an Indian person. *See United States v. Smith*, 442 F. App'x. 282, 284–85 (9th Cir. 2011). Accordingly, Buckles' trial counsel was not ineffective in making the strategic decision to stipulate to the fact that Buckles is an "Indian person." *See United States v. McMullen*, 98 F.3d 1155, 1157 (9th Cir. 1996). And, because the critical facts that informed counsel's decision are not contested, the trial court did not err in dismissing

> this § 2255 motion without an evidentiary hearing. *See United States v. Howard*, 381 F.3d 873, 877 (9th Cir. 2004).

App. 3-4.

Ninth Circuit authority recognizes, however, that enrollment is just one factor of four that courts consider when reviewing whether sufficient evidence establishes Indian status under the IMCA, § 1153. Those factors are:

> "in declining order of importance, evidence of the following: 1) tribal enrollment; 2) government recognition formally and informally through receipt of assistance reserved only to Indians; 3) enjoyment of the benefits of tribal affiliation; and 4) social recognition as an Indian through residence on a reservation and participation in Indian social life." *Id.* at 1224 (quoting *United States v. Lawrence*, 51 F.3d 150, 152 (8th Cir.1995)); *accord. United States v. Ramirez*, 537 F.3d 1075, 1082 (9th Cir.2008).

United States v. Cruz, 554 F.3d 840, 846 (9th Cir. 2009) (quoting *Bruce*, 394 F.3d at 1224)

In *Cruz*, the Ninth Circuit noted,

> As *Bruce* itself makes clear, "[t]ribal enrollment is 'the common evidentiary means of establishing Indian status, but it is not the only means nor is it necessarily determinative' .... [E]nrollment, and indeed, even eligibility therefor, is not dispositive of Indian status." 394 F.3d at 1224-25 (quoting *United States v. Broncheau*, 597 F.2d 1260, 1263 (9th Cir.1979)). Although the parties in *Ramirez* raised only a limited question, the opinion specifically acknowledges the Bruce test and the four applicable factors that are determinative of its second prong. *See Ramirez*, 537 F.3d at 1082. Because the dispute on appeal related to the facts underlying only one of the factors, the court had no reason to note the relative weight of the various other factors-specifically, that they are to be considered "in declining order of importance." *Bruce*, 394 F.3d at 1224.

554 F.3d at 846 n. 6.

Since tribal enrollment is not "necessarily determinative," then Buckles would be entitled to relief if after reviewing discovery or receiving evidence the district court determined that counsel entered the stipulation without Buckles' consent and evidence established a factual defense that Buckles did not qualify as an "Indian person" within the meaning of IMCA as he alleged in his § 2255 motion. Buckles alleged several factors that supported his claim that he did not qualify as "an Indian person." Indeed, the district court found that Buckles "reasonably could have contested the issue of Indian status." App. 9. The district court ultimately concluded that trial counsel's failure to investigate Buckles' Indian status "was not unreasonable" under *Strickland v. Washington*, 466 U.S. 668, 687-88, 694 (1984). App. 10.

REASONS FOR GRANTING THE WRIT

1. The question of whether a district court improperly dismisses a federal prisoner's motion to vacate, set aside or correct the sentence pursuant to § 2255 without an evidentiary hearing where the prisoner alleges trial counsel stipulated to an element of the offense without the prisoner's consent and before investigating a meritorious defense presents a significant federal question that should be addressed by the Court.

The Court has stated:

> The Fifth Amendment to the United States Constitution guarantees that no one will be deprived of liberty without "due process of law"; and the Sixth, that "[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury." We have held that these provisions require criminal convictions to rest upon a jury determination that the defendant is guilty of every element of the crime with which he is charged, beyond a reasonable doubt. *Sullivan v. Louisiana*, 508 U.S. 275, 277–278, 113 S.Ct. 2078, 2080–2081, 124 L.Ed.2d 182 (1993). The right to have a jury make the ultimate determination of guilt has an impressive pedigree. Blackstone described "trial by jury" as

> requiring that "*the truth of every accusation*, whether preferred in the shape of indictment, information, or appeal, should afterwards be confirmed by the unanimous suffrage of twelve of [the defendant's] equals and neighbors...." 4 W. Blackstone, Commentaries on the Laws of England 343 (1769) (emphasis added). Justice Story wrote that the "trial by jury" guaranteed by the Constitution was "generally understood to mean ... a trial by a jury of twelve men, impartially selected, who must unanimously *concur in the guilt of the accused before a legal conviction can be had.*" 2 J. Story, Commentaries on the Constitution of the United States 541, n. 2 (4th ed. 1873) (emphasis added and deleted). This right was designed "to guard against a spirit of oppression and tyranny on the part of rulers," and "was from very early times insisted on by our ancestors in the parent country, as the great bulwark of their civil and political liberties." *Id.*, at 540–541. *See also Duncan v. Louisiana*, 391 U.S. 145, 151–154, 88 S.Ct. 1444, 1448–1450, 20 L.Ed.2d 491 (1968) (tracing the history of trial by jury).

United States v. Gaudin, 515 U.S. 506, 509–11 (1995).

In addition, criminal defendants' right to present evidence and witnesses in their defense at trial is as fundamental to due process as is the right to have the prosecution prove each element of the offense beyond a reasonable doubt. *Washington v. Texas*, 388 U.S. 14, 19 (1967). In *Washington*, the Court reiterated,

> The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies. Just as an accused has the right to confront the prosecution's witnesses for the purpose of challenging their testimony, he has the right to present his own witnesses to establish a defense. This right is a fundamental element of due process of law.

Id.

Finally, Sixth Amendment protections include criminal defendants' right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984). This right imposes a duty on trial counsel to "make reasonable investigations." *Id.* at 690-91.

In 1977, the Court granted a petition for writ of certiorari under similar circumstances in *Blackledge v. Allison*, 431 U.S. 63 (1977). The Court resolved the question of whether a federal district court erred in failing to hold an evidentiary hearing before summarily denying a state prisoner's habeas corpus petition filed pursuant to 28 U.S.C. § 2254.

In *Blackledge*, the defendant claimed that during his state court criminal proceedings, his trial counsel induced him to plead guilty by promising that the judge would impose a maximum of 10 years in prison. He alleged that he was told by counsel that counsel had consulted with the judge and prosecutor about the 10 year sentence. Instead of imposing 10 years, the sentencing court imposed 17 to 21 years in prison. *Id.* at 68-69.

The district court dismissed the petition without receiving any evidence and without holding an evidentiary hearing. The district court relied on a form signed by the trial court judge at the time of the guilty plea that "conclusively showed that [the defendant] had chosen to plead guilty knowingly, voluntarily, and with full awareness of the consequences." *Id.* at 69-70.

The defendant in *Blackledge* claimed that the district court should have held an evidentiary hearing before ruling on his petition. On appeal, the Fourth Circuit reversed and remanded for an evidentiary hearing. *Id.* at 70-71 (citing *Allison v. Blackledge*, 533 F.2d 894 (4th Cir. 1976)). The prison warden, Blackledge, filed a petition for writ of certiorari. The Court "granted certiorari ... to consider the significant federal question." *Blackledge*, 431 U.S. at 71.

The Court concluded that the defendant's allegations in his petition "were not in themselves so 'vague and conclusory' ... as to warrant dismissal for that reason alone." *Id.* at 75 (citing *Machibroda v. United States*, 368 U.S. 487, 495 (1962)). The Court further wrote:

> Allison alleged as a ground for relief that his plea was induced by an unkept promise. But he did not stop there. He proceeded to elaborate upon this claim with specific factual allegations. The petition indicated exactly what the terms of the promise were; when, where, and by whom the promise had been made; and the identity of one witness to its communication. The critical question is whether these allegations, when viewed against the record of the plea hearing, were so "palpably incredible," *ibid.*, so "patently frivolous or false", *Herman v. Claudy*, 350 U.S. 116, 119, 76 S.Ct. 223, 225, 100 L.Ed. 126, as to warrant summary dismissal. In the light of the nature of the record of the proceeding at which the guilty plea was accepted, and of the ambiguous status of the process of plea bargaining at the time the guilty plea was made, we conclude that Allison's petition should not have been summarily dismissed.

Blackledge, 431 U.S. at 75–76.

The Court then explained the process by which federal district courts may receive evidence on habeas corpus petitions, short of a full evidentiary hearing. *Id.* at 80. The Court recognized that the warden may move for summary judgment under Federal Rule of Civil Procedure 56. Such procedure would allow the defendant to respond, and provide the district court a means to determine the existence of any "genuine issue of fact." *Id.* at 80-81.

The Court also recognized that existing rules of procedure permit district court's to receive evidence without a full evidentiary hearing. *Id.* at 81-82. Likewise, a district court may receive evidence in a habeas corpus proceeding "taken orally or by deposition, or, in the discretion of the judge, by affidavit." 28 U.S.C. § 2246. The Court noted,

> There may be cases in which expansion of the record will provide "evidence against a petitioner's extra-record contentions . . . so overwhelming as to justify a conclusion that an (allegation of a dishonored plea agreement) does not raise a substantial issue of fact." *Moorhead v. United States*, 456 F.2d 992, 996 (CA3). But before dismissing facially adequate allegations short of an evidentiary hearing, ordinarily a district judge should seek as a minimum to obtain affidavits from all persons likely to have firsthand knowledge of the existence of any plea agreement. *See Walters v. Harris*, 460 F.2d, at 992. " 'When the issue is one of credibility, resolution on the basis of affidavits can rarely be conclusive, but that is not to say they may not be helpful.'" Advisory Committee Note to Rule 7, Rules Governing Habeas Corpus Cases, 28 U.S.C., p. 269 (1976 ed.), quoting *Raines v. United States*, 423 F.2d 526, 530 (CA4).

Blackledge, 431 U.S. at 82 n. 25.

The Court affirmed the Fourth Circuit's remand of the case to the district court. The Court stated, "[i]n short, it may turn out upon remand that a full evidentiary hearing is not required. But Allison is 'entitled to careful consideration and plenary processing of (his claim,) including full opportunity for presentation of the relevant facts.'" *Blackledge*, 431 U.S. at 82–83 (quoting *Harris v. Nelson*, 394 U.S. 286, 298 (1969)).

Buckles' § 2255 motion and memorandum allege facts that, if proved, establish that trial counsel's actions and inactions denied him fundamental constitutional rights to a fair trial under both the Fifth and Sixth Amendments. Buckles alleged that trial counsel entered a stipulation with the prosecutor as to Indian status at trial without his consent, and without investigating facts that Buckles provided to counsel that would negate status as "an Indian person." App. 56-59.

As in *Blackledge*, Buckles went further and specifically alleged facts that necessitated further evidentiary development in order to test the veracity and accuracy of the allegations. *See*, App. 56-59; and Petition at 6-7, *supra*. Buckles alleged that he informed trial counsel of facts

that proved "he was not an Indian." App. 57-58. Buckles alleged that trial counsel "advised him that since he had some indian (sic) blood and lived on the reservation, the Government could establish that he was an Indian." App. 58. Buckles alleged that he "did not agree with [trial counsel's] stipulating to Indian status, did not sign any papers stipulating to Indian status, nor [was he] consulted as to whether he would authorize stipulating to Indian status." *Id.* Buckles alleged trial counsel "was ineffective for stipulating that Buckles was an Indian for purposes of IMCA." *Id.* As in *Blackledge*, Buckles' motion, the files and records of his case do not conclusively show he is entitled to no relief. 28 U.S.C. § 2255(b).

The district court did not seek evidence nor did the court provide Buckles an opportunity to develop the record to support his factual allegations. Instead, the district court summarily denied Buckles' § 2255 motion, although the district court found that Buckles could have reasonably challenged Indian status. App. 9.

The district court concluded that Ninth Circuit case-law, coupled with Buckles' certificate of Indian blood as an associate member of the Tribes of Fort Peck, establish that trial counsel's stipulation to Indian status, and his failure to investigate facts that negated Indian status, did not fall outside the range of professional assistance, under the first prong in *Strickland.* App. 10. (citing *Strickland*, 466 U.S. at 687-88, 694). In essence, the district court's order finds that Buckles "motion and the files and records of the case conclusively show that [Buckles] was entitled to no relief." 28 U.S.C. § 2255(b).

Ninth Circuit case law, however, also establishes that tribal enrollment is not "necessarily determinative" of Indian status. *Cruz*, 554 F.3d at 846 n. 6. This supports the district court's view that Buckles could have challenged Indian status at trial. App. 9.

Buckles alleged that he attempted to have trial counsel investigate evidence that ran contrary to Indian status. App. 57-58. Instead, trial counsel entered into a stipulation that alleviated this defense at trial. App. 19-21. Only additional development of the record and evidence could resolve Buckles' allegations. Thus, the district court's order summarily denying Buckles' § 2255 motion is squarely at odds with the Court's decision in *Blackledge*.

Therefore, the Court should grant this petition to resolve the significant federal question.

2. This case is the ideal vehicle for the Court to resolve this significant federal question.

As in *Blackledge*, this petition raises a significant federal question that this Court should address and resolve. This Court has not addressed this type of federal question since deciding *Blackledge*. This case presents the Court with an ideal vehicle to reiterate the principal's announced in *Blackledge*, and to apply those principals in circumstances that protect the federal constitutional rights of both federal and state prisoners in post-conviction proceedings under Title 28. *See*, *Davis v. United States*, 417 U.S. 333, 344-45 (1974) ("No microscopic reading of § 2255 can escape either the clear and simple language of § 2254 authorizing habeas corpus relief 'on the ground that (the prisoner) is in custody in violation of the . . . laws . . . of the United States' or the unambiguous legislative history showing that § 2255 was intended to mirror § 2254 in operative effect."). Resolution of this question will impact post-conviction proceedings throughout the nation and serve as a current reminder to federal district courts the importance of the writ of habeas corpus to the federal system of justice.

As the Court previously stated,

> The writ of habeas corpus is the fundamental instrument for safeguarding individual freedom against arbitrary and lawless state action. Its pre-eminent role is recognized by the admonition

> in the Constitution that: 'The Privilege of the Writ of Habeas Corpus shall not be suspended * * *.' U.S.Const., Art. I, s 9, cl. 2. The scope and flexibility of the writ—its capacity to reach all manner of illegal detention—its ability to cut through barriers of form and procedural mazes—have always been emphasized and jealously guarded by courts and lawmakers. The very nature of the writ demands that it be administered with the initiative and flexibility essential to insure that miscarriages of justice within its reach are surfaced and corrected.

Davis, 417 U.S. at 344.

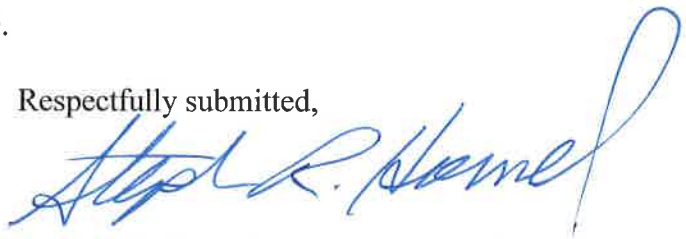
Resolution of this significant federal question will promote a universal application of the federal habeas corpus process. This case presents an ideal vehicle for the Court to accomplish that end.

CONCLUSION

Based on the foregoing, it is requested that this Court grant this petition for writ of certiorari.

Dated this 10th day of August, 2020.

Respectfully submitted,



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Appendix