

No. \_\_\_\_\_

IN THE  
Supreme Court of the United States

JOSE LUIS SANCHEZ, JR.,

*Petitioner/Appellant,*

v.

DONALD HOLBROOK,

*Respondent/Appellee.*

On Petition For Writ of Certiorari  
To The Ninth Circuit Court of Appeals

---

PETITION FOR WRIT OF CERTIORARI

---

Richard D. Wall  
CJA Appointed Counsel for Petitioner  
1604 W. Dean  
Spokane, WA 99201  
(509) 747-5646

## **QUESTION PRESENTED**

Whether 18 U.S.C. § 2254(d) of the Anti-Terrorism and Effective Death Penalty Act (AEDPA), prohibiting federal courts from granting a writ of habeas corpus to a petitioner in state custody except where the state court decision is "contrary to, or involved an unreasonable application of, clearly established federal law" as determined by this Court, or is based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding" is unconstitutional on its face because it impermissibly interferes with the exercise of the federal judicial power granted exclusively to this Court and the lower federal courts by Article III of the United States Constitution.

## TABLE OF CONTENTS

Table of Cited Authorities .....	iii
List of Parties .....	iv
List of Directly Related Proceedings .....	iv
Petition for Writ .....	1
Opinions and Orders Below .....	1
Basis for Jurisdiction .....	1
Constitutional Statutory Provisions Involved .....	1
Statement of the Case .....	2
Reasons for Granting the Writ .....	4
Conclusion .....	14
Proof of Service .....	15

## APPENDIX

Ninth Circuit Memorandum Decision .....	1
Order Denying Petition Under 28 U.S.C. § 2254.....	6

## TABLE OF CITED AUTHORITIES

### Supreme Court Cases:

<i>Bank Markazi v. Peterson</i> , 578 U.S. ___, 136 S.Ct. 1310, 194 L.Ed.2d 463 (2016) .....	6
<i>Buckley v. Valeo</i> , 424 U.S. 1, 96 S.Ct. 612, 46, L.Ed.2d 659 (1976) .....	5
<i>City of Boerne v. Flores</i> , 521 U.S. 507, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997) .....	7
<i>Duckworth v. Serrano</i> , 455 U.S. 1, 102 S.Ct. 18, 70 L.Ed.2d 1 (1981) .....	10
<i>Ex Parte Bollman and Swarwout</i> , 8 U.S. (Cranch) 75, 2 L.Ed. 554 (1807) .....	10
<i>In re Davis</i> , 557 U.S. 952, 130 S. Ct. 1, 174 L.Ed.2d 614 (2009) .....	12, 13
<i>Lonchar v. Thomas</i> , 517 U.S. 314, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996) .....	10
<i>Massachusetts v. Mellon</i> , 262 U.S. 447, 43 S.Ct. 597, 67 L.Ed.1078 (1923) .....	6
<i>Nixon v. Administrator of General Services</i> , 433 U.S. 425, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977).....	5
<i>Northern Pipeline Const. Co v. Marathon Pipe Line Co.</i> , 458 U.S. 50, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982) .....	6
<i>Penry v. Lynaugh</i> , 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989) .....	8
<i>Preiser v. Rodriguez</i> , 411 U.S. 475, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973) .....	10
<i>Teague v. Lane</i> , 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) .....	8, 9
<i>United States v. Klein</i> , 80 U.S. (13 Wall) 128, 20 L.Ed. 519 (1871) .....	9

<i>Wayman v. Southard</i> , 10 Wheat. 1, 46, 6 L.Ed. 253 (1825) .....	5
<i>Wellness International Network, LTD v. Sharif</i> , 575 U.S. 665, 135 S.Ct. 1932, 191 L.Ed.2d 911 (2015) .....	5
<i>Williams v. Taylor</i> , 529 U.S. 362, 412, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000) .....	9
<i>Wright v. West</i> , 505 U.S. 277, 112 S.Ct. 2482, 120 L.Ed.2d 225 (1992) .....	8, 9
<b>Court of Appeals Cases:</b>	
<i>Crater v. Galaza</i> , 508 F.3d 1261 (9th Cir. 2007) .....	9, 12
<i>Green v. French</i> , 143 F.3d 865 (4th Cir. 1998) .....	9
<i>Irons v. Carey</i> , 505 F.3d 846 (2007) .....	11
<i>Lindh v. Murphy</i> , 96 F.3d 856 (7th Cir. 1996) .....	9
<b>Statutes:</b>	
18 U.S.C. § 2244 .....	10
18 U.S.C. § 2254 .....	passim

**List of Parties:**

United States of America

Jose Luis Sanchez, Jr.

**List of Directly Related Proceedings:**

*Jose Luis Sanchez, Jr. v. Donald Holbrook*

United States District Court for the Eastern District of Washington  
1:17-cv-03196-SAB

*Jose Luis Sanchez, Jr. v. Donald Holbrook, Washington State Dept. of Corrections*  
Ninth Circuit Court of Appeals  
No. 18-35899

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

Petitioner respectfully prays that a writ of certiorari issue to review the opinion of the United States Court of Appeals for the Ninth Circuit entered on December 16, 2020.

**OPINIONS AND ORDERS BELOW**

The District Court for the Eastern District of Washington entered it Order Denying Petition Under 28 U.S.C. § 2254 on September 26, 2018. The Ninth Circuit Court of Appeals entered its Memorandum opinion affirming the District Court on December 16, 2020.

**BASIS FOR JURISDICTION**

The Court of Appeals had jurisdiction under 18 U.S.C. § 1291. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

**CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED**

**United States Constitution, Article III, §1:**

The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.

**28 U.S.C. § 2254(d):**

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

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

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

### **STATEMENT OF THE CASE**

Petitioner was charged in Yakima County Superior Court of the State of Washington with two counts of Aggravated First-Degree Murder, two counts of Attempted First-Degree Murder; one count of First Degree Robbery, one count of First Degree Burglary, and one count of Unlawful Possession of a Firearm. He waived his right to a jury trial on the Unlawful Possession of a Firearm charge and proceeded to trial on the remaining charges. A jury found him guilty as to those counts. Petitioner then proceeded to trial on the firearm charge. After denying his motion to suppress the 9mm handgun recovered from a vehicle in which Petitioner was a passenger, the trial court found him guilty of that charge as well. Petitioner was sentenced to life in prison without the possibility of parole.

On direct appeal, the Washington Court of Appeals held that the trial court had erred in denying the motion to suppress the 9mm handgun in the second trial, but that the error was harmless. The court upheld Petitioner's conviction and sentence as to all counts.

After exhausting his state court remedies, Petitioner sought relief in the United States District Court for the Eastern District of Washington under 28 U.S.C. § 2254. The

petition raised claims of (1) denial of Sixth Amendment right to assistance of counsel by disqualification of counsel of choice; (2) denial of right to effective assistance of counsel during in-chambers discussion; (3) violation of right to a public trial, ER 196; (4) denial of right to due process by the admission of certain eyewitness identification testimony at trial; (5) violation of Sixth and Fourteenth Amendment rights by conducting trial in jailhouse courtroom; (6) violation of Fourteenth Amendment by denial of motion to suppress; (7) denial of effective assistance of counsel by appointed counsel's failure to move to suppress evidence prior to trial; (8) sufficiency of the evidence; (9) denial of Sixth Amendment right to present a defense; (10) error in admission of evidence regarding 9mm handgun; (11) error in admission of evidence of post-arrest conduct, (12) constructive denial of counsel due to conflict of interest; and (13) ineffective assistance of counsel at the initial arraignment. In a 44 page written order, the District Court denied the petition and entered judgment in favor of Respondent. (Appendix, p. 6) The District Court also declined to certify any issues for appeal. (Appendix, p. 49)

The Ninth Circuit Court of Appeals granted a certificate of appealability with respect to three issues: (1) whether the trial court violated appellant's constitutional rights by conducting the trial in the jailhouse courtroom; (2) whether counsel rendered ineffective assistance by failing to attend the initial arraignment proceeding, or by failing to file a suppression motion before the jury trial; and (3) whether the initial arraignment proceeding constituted a critical stage of trial. On December 16, 2020, the Ninth Circuit Court of Appeals filed a Memorandum opinion affirming the District Court's denial of the petition. (Appendix, p. 1)

Both the District Court and Court of Appeals relied on the deferential standard of review imposed by 18 U.S.C. 2254(d) to conclude that Petitioner was not entitled to a writ of habeas corpus. Both the District Court and Court of Appeals held Petitioner failed to establish that the state court decisions denying relief were contrary to clearly established federal law or had unreasonably applied clearly established federal law as determined by this Court, or involved an unreasonable determination of facts based on the evidence presented in the state court. Specifically, the Ninth Circuit held that Petitioner had failed to establish that he was entitled to relief under 18 U.S.C. § 2254(d) based on the trial court's decision to conduct his jury trial in a jailhouse courtroom, the failure of his trial counsel to move to suppress the 9mm handgun prior to the first trial, the absence of representation at his initial appearance, and the failure of counsel to attend his arraignment. (Appendix, p. 1-5) The Ninth Circuit did not address Petitioner's argument that the standard of review under 28 U.S.C. § 2254(d) is unconstitutional because it interferes with the exercise of judicial power vested exclusively in the federal courts by Article III of the United States Constitution.

#### **REASONS FOR GRANTING THE WRIT**

This case presents an important question of federal constitutional law that has not been directly addressed by this Court and that could significantly alter the standard applicable to review of petitions for writ of habeas corpus by a state prisoner.

**This Court should issue the writ case and reverse the decision of the Ninth Circuit Court of Appeals by holding that 28 U.S.C. § 2254(d) is unconstitutional on**

**its face and that the District Court erred by relying on the deferential standard imposed under that section to deny the petition for writ of habeas corpus.**

If there was anything the Framers of the Constitution can be said to have generally agreed upon it is that freedom from tyranny is best preserved by the division of political power into its separate functions (executive, legislative, and judicial). As Chief Justice Marshall explained in *Wayman v. Southard*, 10 Wheat. 1, 46, 6 L.Ed. 253 (1825), "the legislature makes, the executive executes, and the judiciary construes the law." The Framers, having experienced the intermingling of legislative and judicial powers understood the importance of establishing a truly independent judiciary distinct from both the executive and legislature. *Wellness International Network, LTD v. Sharif*, 575 U.S. 665, 135 S.Ct. 1932, 1950-51, 191 L.Ed.2d 911 (2015), (Roberts, C.J., dissenting). This separation of powers protects the whole constitutional structure by requiring that each branch retain its essential powers and independence while not interfering in the exercise of legitimate powers by the other two branches. *Buckley v. Valeo*, 424 U.S. 1, 120-22, 96 S.Ct. 612. 46, L.Ed.2d 659 (1976). Preserving the separation of powers is one of this Court's "most weighty responsibilities." *Wellness International Network, LTD v. Sharif*, 135 S.Ct. at 1954, (Roberts, C.J., dissenting).

The standard for determining when the act of one branch improperly interferes with the independent power of another branch is whether the act prevents or substantially impairs performance by that branch of its essential role in the constitutional system. *Nixon v. Administrator of General Services*, 433 U.S. 425, 443, 97 S.Ct. 2777, 53 L.Ed.2d 867 (1977). The essential role of the judiciary under the constitutional

framework is to interpret and apply the law in cases properly brought before the courts. *Massachusetts v. Mellon*, 262 U.S. 447, 488, 43 S.Ct. 597, 67 L.Ed.1078 (1923). Thus, Congress exceeds its constitutional authority when it attempts to direct the courts how to interpret and apply the law in a particular case or to a particular set of circumstances. *Bank Markazi v. Peterson*, 578 U.S. \_\_\_, 136 S.Ct. 1310, 1323, 194 L.Ed.2d 463 (2016).

This Court has recognized that in creating a statutory right, Congress may define that right in part by prescribing the manner in which it is enforced, but may not do so when the right arises under the Constitution:

The Constitutional system of checks and balances is designed to guard against "encroachment or aggrandizement" by Congress at the expense of the other branches of government. *Buckley v. Valeo*, 424 U.S. at 122, 96 S.Ct. at 683. But when Congress creates a statutory right, it clearly has the discretion, in defining that right, to create presumptions, or assign burdens of proof, or prescribe remedies; it may also provide that persons seeking to vindicate that right must do so before particularized tribunals created to perform the specialized adjudicative tasks related to that right. Such provisions do, in a sense, affect the exercise of judicial power, but they are also incidental to Congress' power to define the right that it created. No comparable justification exists, however, when the right being adjudicated is not of congressional creation. In that situation, substantial inroads into functions that have traditionally been performed by the Judiciary cannot be characterized merely as incidental extensions of Congress' power to define rights that it created. Rather, such inroads suggest unwarranted encroachments upon the judicial power of the United States, which our Constitution reserved for Art. III courts.

*Northern Pipeline Const. Co v. Marathon Pipe Line Co.*, 458 U.S. 50, 83-84, 102 S.Ct. 2858, 73 L.Ed.2d 598 (1982). Even where Congress has been expressly given the right to adopt legislation enforcing a constitutional right, Congress does not have the power to determine what constitutes a violation of the right. That power resides exclusively in the

judiciary. *See, City of Boerne v. Flores*, 521 U.S. 507, 519-20, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997).

In light of the foregoing principles, there can be little doubt that § 2254(d) by its express language violates the separation of powers doctrine and impermissibly interferes with the exercise of federal judicial power conferred solely on this Court and the lower federal courts by Article III. § 2254(d) directs this court, the Justices thereof, all circuit judges, and all district court judges, to deny a petition for habeas corpus from a state prisoner unless the petitioner establishes that the state court decision is "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States", or is based on "an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U.S.C. § 2254(d) Thus, when a state prisoner petitions for a writ of habeas corpus on the grounds that his or her custody violates the United States Constitution, § 2254(d) purports to both define the scope of that right by reference to the existing decisions of this Court and also the burden of proof the petitioner must meet in order to obtain relief. § 2254(d) further purports to establish the applicable standard of review with respect to factual determinations made by the state courts.

Defining the scope of a constitutional right, establishing the burden of proof, and setting the standard of review for appeal from an adverse decision are all unequivocally judicial functions, not legislative functions. The performance of each of these functions is essential to the traditional role of courts in interpreting and applying the law in a

particular case to a particular set of facts. Indeed, prior to passage of the AEDPA, this Court had developed various standards applicable to petitions filed by state prisoners, including when a petitioner could benefit from the retroactive application of a new rule, *see, Teague v. Lane*, 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989); *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989). This Court has repeatedly held that federal courts could defer to a state court's factual determinations, but that determinations of law were subject to *de novo* review. *See, Wright v. West*, 505 U.S. 277, 300-303, 112 S.Ct. 2482, 120 L.Ed.2d 225 (1992)(O'Connor, dissenting).

If this Court was not exercising Article III powers by deciding what standard of review to apply and what degree of deference to give state court decisions on habeas review, then what was it doing? Was it exercising legislative powers? No, this Court was doing exactly what is required to be done to resolve any case properly brought before it in a judicial manner. By directing the federal courts, including this Court, to employ only one method for determining what the law is and dictating the standard of review to be applied in all cases, Congress has clearly usurped the power and duty of the federal courts to say what the law is and how it is to be applied.

It is no answer to suggest that, because the power to issue the writ in the first instance is conferred by statute, Congress may prescribe the manner in which the courts determine whether the writ should issue in any particular case. *See, e.g., Green v. French*, 143 F.3d 865, 874 (4th Cir. 1998), *cert. denied* 525 U.S. 1090, 119 S.Ct. 844, 142 L.Ed.2d 698 (1999), *overruled on other grounds by Williams v. Taylor*, 529 U.S.

362, 412, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000); *Lindh v. Murphy*, 96 F.3d 856, 869 (7th Cir. 1996). Jurisdiction equals power. When Congress grants jurisdiction over a particular class of cases to the federal courts, the courts acquire all judicial power necessary and proper to adjudicate those cases on the merits. Congress does not retain any judicial powers because, under Article III, all federal judicial power resides at all times solely with the courts.

This Court has recognized that the power to confer jurisdiction does not include the power to acquire or restrain the judicial powers of the courts by directing or limiting the courts' exercise those powers. *See, United States v. Klein*, 80 U.S. (13 Wall) 128, 20 L.Ed. 519 (1871)(striking down a federal statute requiring courts to interpret a presidential pardon as conclusive evidence that a claimant seeking to recover property confiscated by the government during the Civil War had given aid to the Confederacy); *see also, Crater v. Galaza*, 508 F.3d 1261, 1264-65 (9th Cir. 2007)(Reinhardt, C.J., dissenting) (noting that this Court has consistently permitted Congress to exercise "quantitative powers" over the federal courts' jurisdiction by defining which cases the courts can or cannot decide, but has never allowed Congress to "tinker with the qualitative aspects of the adjudicative process," by limiting or directing what rules of decision a court can use in deciding a case).

It is also no answer to assert that § 2254(d) merely limits the remedies available to a habeas petitioner and therefore does not infringe upon the judicial power of the courts. *See, e.g., Lindh v. Murphy*, 96 F.3d at 872; *Green v. French*, 143 F.3d at 874-75.

Although the issuance of a writ is often referred to as a "remedy," the writ itself it is merely an instrument by which the courts may provide the only real remedy for a person held in custody in violation of the Constitution, i.e., release from confinement. *See, Preiser v. Rodriguez*, 411 U.S. 475, 484, 93 S.Ct. 1827, 36 L.Ed.2d 439 (1973)(“the essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and . . . the traditional function of the writ is to secure release from illegal custody.”). The writ is merely a means to an end. *Ex Parte Bollman and Swarwout*, 8 U.S. (Cranch) 75, 2 L.Ed. 554 (1807).

Congress does have the authority to limit when and under what circumstances a federal court can entertain a habeas petition without regard to whether the petitioner's custody violates the Constitution. For example, Congress can require a petitioner to first exhaust available state remedies before seeking habeas relief in federal court and in fact has done so in under the AEDPA, 28 U.S.C. § 2254(b). *See, Duckworth v. Serrano*, 455 U.S. 1, 19, 102 S.Ct. 18, 70 L.Ed.2d 1 (1981); *Lonchar v. Thomas*, 517 U.S. 314, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). Congress also can, and has, limited the ability of federal courts to entertain successive petitions. *See, 28 U.S.C. § 2244(b)*.

But requiring exhaustion of state remedies and limiting consideration of successive petitions affects only the reach of the federal courts' habeas powers by limiting the courts' jurisdiction. Such measures do not purport to tell federal judges how they should go about deciding whether to grant or deny a petition on its merits. They do not instruct the courts as to what burden of proof to apply, what law to rely upon, or the

standard of review to be used. § 2254(d), however, does all of those things. § 2254(d) does not tell federal courts and federal judges *when* and under what circumstances they can exercise their Article III powers to issue a writ of habeas corpus. Instead, it tells federal courts and federal judges *how* to exercise Article III powers to determine the merits of the petitioner's claims in cases where Congress has already granted the federal courts jurisdiction. In this way, § 2254(d) violates Article III by directly controlling the exercise of federal judicial power by this Court and the lower federal courts. *See, Irons v. Carey*, 505 F.3d 846, 854-55 (2007)(C.J., Noonan, concurring)(explaining that Congress' power to determine jurisdiction does not include the power to instruct federal courts "how to think, how to ascertain the law, how to judge").

Not only is § 2254(d) unconstitutional on its face, it has proven to be unworkable in practice. The present case is a good example of how the § 2254(d) imposes significant burdens on the federal courts without any corresponding benefit in terms of the orderly disposition of cases on the merits. Here, the District Court required 44 pages of analysis to dispose of the claims raised in the Petition. The court necessarily addressed the underlying merits of each of those claims, at least to the degree necessary to conclude whether the state courts' rulings met the reasonableness standards under § 2254(d), but did not make any independent determination as to whether Petitioner's custody actually violated the Constitution.

The Ninth Circuit then certified three of those claims for appeal. The Ninth Circuit engaged in the same process as to each of those claims. With respect to

Petitioner's claim that conducting his trial in a jailhouse courtroom was so inherently prejudicial as to amount to a denial of due process, the Ninth Circuit simply noted that this Court has not specifically addressed the degree of prejudice that arises from the use of a jailhouse courtroom. The court concluded that Petitioner could not point to any clearly established federal law on that issue, therefore the District Court did not err by refusing to issue the writ. (Appendix, p. 2) The Court of Appeals also held that there was no need for an evidentiary hearing on that issue because the absence of "clearly established federal law" precluded any relief regardless of the degree of prejudice. (appendix, p. 4-5) In other words, even if the use of the jailhouse courtroom was so prejudicial as to result in an unfair trial in violation of Petitioner's due process rights, it would not make any difference. The federal courts would still be prohibited by § 2254(d) from granting the writ or providing any form of relief.

The best that can be said after all the effort expended by the district and appellate courts in this matter is that the state courts did not intentionally or blatantly deny petitioner's constitutional rights, even if their decisions were demonstrably wrong and the petitioner's custody actually violates the Constitution. One must ask, is this really the proper role of federal courts? Is this how the federal courts protect and enforce those rights solemnly enshrined in the Constitution? Or do the restrictions imposed by § 2454(d) require the federal courts to become "complicit in the ongoing violation" of an individual's right not to be held in custody in violation of the Constitution? *See, Crater v. Galaza*, 508 F.3d at 1269( Reinhardt, C.J., dissenting).

The Justices of this Court have also struggled to resolve the conflict between the restrictions imposed by § 2254(d) and the Court's duty to decide cases in a manner consistent with the Constitution. For example, in *In re Davis*, 557 U.S. 952, 130 S. Ct. 1, 174 L.Ed.2d 614 (2009), in which the Court transferred an original petition to the District Court for an evidentiary hearing, Justices Stevens, Ginsburg, and Breyer, seemed unsure as to how § 2254(d) would apply to petition raising a claim of actual innocence. Those Justices expressed serious doubt that § 2254(d) would preclude habeas relief to a petitioner who had established his actual innocence simply because the state court's denial of that same claim might be characterized as not entirely unreasonable. They suggested the District Court might conclude that § 2254(d) did not apply with the same "rigidity" to an actual innocence claim or was unconstitutional to the extent it would bar relief for a death row inmate who had established his actual innocence. *Id.*

Justice Scalia and Thomas objected to the transfer of the petition to the district court, arguing that under the § 2254(d), that court would be powerless to grant relief, even if it was convinced of the petitioner's innocence. Scalia pointed out that this Court had repeatedly reversed lower court decisions that had failed to apply § 2254(d) "with no consideration of constitutional entitlement." and argued that it was "improper to grant the extraordinary relief of habeas corpus on the possibility that we have approved - indeed, directed - the disregard of constitutional imperatives in the past." *Id.*

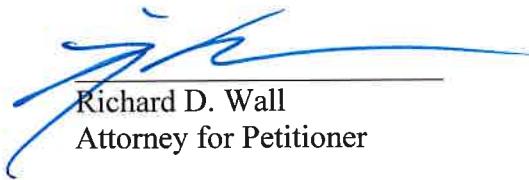
The question whether § 2254(d) requires federal courts to disregard such "constitutional imperatives" when considering a petitioner's claim that he or she is being

held in violation of the Constitution remains unanswered to this day. The time has come for this Court to address that question head-on.

## **CONCLUSION**

For the foregoing reasons, Petitioner respectfully request that this Court grant the Petition for a Writ of Certiorari, hold that 28 U.S.C. § 2254(d) unconstitutional, reverse the decision of the Ninth Circuit Court of Appeals, and remand to the District Court for reconsideration of Petitioner's claims without regard to the limitations imposed under that section.

Respectfully submitted this 12th day of March, 2021.



Richard D. Wall  
Attorney for Petitioner