USSC #20-7653

IN THE

SUPREME COURT OF THE UNITED STATES

JEFFREY TODD DENTON

vs.

JOHN DAVIDS, WARDEN

PETITION FOR REHEARING

This matter is before this Court on the Petitioner's request for a Rehearing pursuant to USCS R 16.3 which states in relevant parts: Whenever the Court denies a petition for a writ of certiorari, the Clerk will prepare, sign, and enter an order to that effect. The order of denial will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Supreme Court Justice. As such, this Petition for Rehearing is being appropriately and timely filed in this Court by sending it as institutional expedited legal mail within 25-days after the Court issued its ruling on June 07, 2021 to be reviewed by this Court for the reasons outlined below:

The Petitioner understands that this most extraordinary relief will not be granted unless there is a reasonable likelihood of the Court's reversing its previous position and granting certiorari. See *Richmond v Arizona 434 US 1323, 98 SC 8 (1977)* (Rehnquist, J., in chambers). In the instant case, the Petitioner was convicted in a state court and sentenced to 40 to 60 years. The State Supreme Court affirmed his convictions. Following his convictions in the state's highest court, the Petitioner did not seek a Writ of Certiorari nor did he seek relief by way of a Wirt of Habeas Corpus, rather, the Petitioner in the instant case sought permission

from the Sixth Circuit Court of Appeals asking the Court to allow him to file this Writ of Habeas Corpus in the Federal District Court based on (**a**) a Brady violation and (**b**) a claim that evidence was withheld by the Prosecution will show by clear and convincing evidence that the Petitioner in this case is innocent and is requesting a suspension of the court's order denying certiorari review for further consideration on (**1**) prosecutorial misconduct and (**2**) actual innocence on the grounds that, if proven, there is a reasonable likelihood the court will reverse its previous decision denying his petition for certiorari for the following reasons.

IMMUNITY FOR POLICE OFFICERS, PROSECUTORS, AND JUDGES

As an initial matter, the subject of immunity is unrelated to the petitioner case because it was not raised in the state and federal courts but is still relevant to this case and to the entire United States of America for this Court to settled the doctrine of immunity across the board and establish new procedures that are new standards for correcting Police Officers, Prosecutors, and Judges errors that are subject to these old and outdated immunity standards.

For example, in 1986 this Supreme Court addressed entitled to **qualified immunity** regarding **Police Officers** in *Malley v Briggs 475 US 335; 106 SC 1092 (1986)* stating that a State Police Officer sought review of a decision of the First Circuit Court of Appeals which reversed the District Court ruling that a State Police Officer was entitled to a directed verdict in the action that the **Arrestees** brought in a Civil Complaint. The Appellate Court found that the State Police Officer was not entitled to **absolute immunity**.

In *Malley v Briggs*, the State Police Officer was in charge of a wiretap investigation in which the arrestees, based on two intercepted phone calls, the State Police Officer obtained warrants for the arrestees on drug-related charges and the **charges were subsequently dismissed**. This Supreme Court affirmed the Appellate Court's decision, which found that the State Police Officer was not entitled to **absolute immunity**. This Court declared that the State

Police Officer was subject to **qualified immunity** under an **objective reasonableness standard** and **that only where a warrant application lacked indicia of probable cause so as to render its existence unreasonable would immunity be lost**. This Supreme Court affirmed the ruling that the State Police Officer was not entitled to absolute immunity and that the State Police Officer was subject to qualified immunity under an objective reasonableness standard under which immunity would be lost only where a warrant application lacked indicia of probable cause as to render its existence unreasonable. This Court concluded by saying, the police, we therefore believe that in a case such as this, the Court should expressly hold that the **decision by a judge** is entitled to substantial evidentiary weight and **a more restrictive standard will discourage police officers** from seeking warrants out of fear of litigation and possible personal liability.

The Petitioner in this case states that this type of ruling in 1900's to the present date inspire and motivate police officers to do anything they wanted to do under this outdated standards of qualified immunity.

In 1919, this Supreme Court addressed entitlement to **absolute immunity** regarding **Prosecutors** in *Burns v Reed 500 US 478; 111 SC 1934 (1991)* stating that a prosecutor is entitled to **absolute immunity** in a civil complaint because **a prosecutor's appearance as a lawyer for the state** in a probable cause hearing in which the prosecutor examines a witness and successfully supports an application for a search warrant, because (**1**) **like witnesses, prosecutors, and other lawyers, are absolutely immune for making false and defamatory statements in judicial proceedings**, so long as the statements were related to the proceedings, for eliciting false or defamatory testimony from witnesses; (**2**) **such immunity extended to any hearing before a tribunal which performed a judicial function**; (**3**) absolute immunity is justified by concerns of policy, because (**a**) the prosecutor's actions in

question involve the prosecutor's role as advocate for the state rather than the prosecutor's role as administrator or investigative officer, (**b**) appearance at a probable cause hearing is associated with the judicial phase of the criminal process and is connected with the initiation and conduct of a prosecution, particularly where the hearing occurs after arrest, and (**c**) **absolute immunity serves the policy of protecting the judicial process**, as there is a substantial likelihood of annoying litigation **that might have an untoward effect on the independence of the prosecutor**; and (**4**) the judicial process is available as a check on prosecutorial actions at a probable cause hearing.

For purposes of liability for damages, this Court stated that a prosecutor has not met his burden of showing that the relevant factors justify an extension of **absolute immunity** to the prosecutorial function of giving legal advice to the police in the investigative phase of a criminal case, and thus the prosecutor is entitled to only **qualified immunity** for giving such advice, because (**1**) no support has been identified in either History or American Common Law for extending such **absolute immunity** to prosecutors; (**2**) advising the police at the investigative phase is not so intimately associated with the judicial phase of the criminal process as to require **absolute immunity**; (**3**) even if there is some risk of burdensome litigations, such concern justifies **absolute prosecutorial immunity** only for actions **that are connected with the prosecutor's role in judicial proceedings**; (**4**) **although the absence of absolute immunity may cause prosecutors to consider their advice more carefully**, (**a**) where an official could be expected to know that the official's conduct would violate statutory or constitutional rights, the official should be made to hesitate, (**b**) the **qualified immunity** standard is sufficiently protective, and (**c**) it would be inappropriate to allow prosecutors **absolute immunity** for giving legal advice, but to allow police officers only **qualified immunity** for following the advice; (**5**) **absolute immunity is not so expansive as to include any action by a prosecutor** in some

way related to the ultimate decision whether to prosecute; and (**6**) although there are several checks other than civil litigation to prevent abuses of authority by prosecutors, the judicial process, is one of the most important checks, will not necessarily restrain out-of-court activities by a prosecutor that occur prior to the initiation of a prosecution, such as the activity of providing legal advice to the police, particularly where a suspect is not eventually prosecuted.

The Petitioner in this case states that this type of ruling, from the 1900 to the present date encourage prosecutors to do anything they wanted to do under this outdated standards of absolute immunity.

For over a century, this Supreme Court has addressed entitlement to **judicial immunity** regarding **judges** in *Forrester v White 484 US 219; 108 SC 538 (1988)* and *Philippines v Pimentel 553 US 851; 128 SC 2180 (2008)* stating that although Congress has not undertaken to cut back the **judicial immunities** which have been recognized by the United States Supreme Court, however, this Court did stated that it should be at least as cautious in extending those immunities as the Court, has been, when dealing with officials whose peculiar problems the court knows less well than the problems of judges, and at the same time, this Court stated it may not ignore compelling reasons that may well justify **broader protections for judges** than for some other officials. This Court then stated that suits against judges for damages are not the only available means through which litigants can protect themselves from the consequences of judicial error, most judicial mistakes, or wrongs are open to correction through ordinary mechanisms of review, which are largely free of the harmful side effects associated with exposing judges to personal liabilities. In the attempt to draw the line between truly judicial acts, for which immunity from suits is appropriate, **and acts that simply have happened to been done by judges**, immunity, as in other contexts, **is justified**, and defined by the functions such immunity protects and serves, not by the person to whom immunity attaches, likewise,

there is no precise and general definition of the class of acts which are entitled to judicial immunity, there is an intelligible distinction between judicial acts and the administrative, legislative, or executive functions that judges may on occasion be assigned by law to perform. **As a class, judges have long enjoyed a comparatively sweeping form of immunity**, that are not perfectly well defined. Judicial immunity originated, in medieval times, as a device for discouraging collateral attacks and thereby helping to establish appellate procedures as the standard system for correcting judicial error. **This Court found that judicial immunity was the settled doctrine of the** English Courts **for many centuries, and has never been denied in the courts of this country**. **Besides protecting the finality of judgments, this Court concluded that, judicial immunity also protected judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants**.

The Petitioner in this case states that this type of ruling, for many centuries protect judges from every judicial error they do in our American Courts under this outdated standard of judicial immunity.

For all of the reasons stated above, this Court should do a precise and general definition of the class of acts which are entitled to qualified, absolute, and judicial immunity to protect American Citizens from worrisome actions by Police Officers, Prosecutors, and Judges with new procedures as a standard system to protect the people in this great country from these types of errors in our criminal justice system.

The Petitioner will now address two grounds that, if proven, there is a reasonable likelihood this court will reverse its previous decision denying his petition for certiorari based on the State of Michigan, Genesee County Prosecutor's actions in his case under the **qualified immunity** standards for the following reasons.

BRADY VIOLATION

To establish a *Brady v Maryland 373 US 83; 83 SC 1194 (1963)* the Supreme Court held that the suppression by the prosecution of 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. See *Wilson v Mitchell 498 F3d 491, 512 (6th Cir 2007)* (quoting *Brady* ibid 373 US at 87). The material which **must be disclosed** under *Brady* encompasses impeachment evidence as well as exculpatory evidence. *Wilson* ibid 498 F3d at 512 citing *United States v Bagley 473 US 667, 676; 105 SC 3375 (1985)*. To establish a *Brady* violation, the Petitioner must establish: (**1**) the prosecution suppressed or withheld evidence (**2**) such evidence was favorable to the defense and (**3**) the suppressed evidence was material. See *United States v Dado 759 F3d 550, 559-60 (6th Cir 2014)*.

First, the lower courts disregard several important facts: (**1**) that the Petitioner was arrested on January 09, 1999, however, the police released the Petitioner from custody without providing him with any information on why he was being released; (**2**) both the Genesee County Prosecutor's Office and Genesee County Police Department knew that on January 09, 1999 that a state required medical report was on file and in their possession from the Hurley Medical Center prepared by Doctor Gomez relating to the primary examination of the victim indicating that there were no signs that the victim had been repeatedly penetrated in her vagina and anus on the same date this crime allegedly happened, (**3**) both the Genesee County Prosecutor's Office and Genesee County Police Department also knew that on January 09, 1999 the Petitioner was removed from the resident where he was living with the victim and her Mother and there was no further contact with the victim; (**4**) on February 17, 1999, for unknown reasons, the victim was seen by Norman Carter Director of the Child Evaluation Clinic at McLaren Regional Medical Center who examined the victim and prepared a medical report for the state,

i.e. the prosecution, identifying that the victim's hymen and anal rings revealed repeated sexual penetrations; (**5**) if this is true, it occurred after the Petitioner was arrested on January 09, 1999 and after the victim was examined on January 09,1999 by Doctor Gomez at the Hurley Medical Center; (**6**) three months later, on March 11, 1999, the Petitioner was re-arrested based on the examination report prepared by Doctor Gomez; and (**7**) The Petitioner contends that Doctor Gomez medical report was willfully and intentionally suppressed by the prosecutor because it had the potential of (**a**) changing the outcome of the Petitioner's Jury Trial and (**b**) would have changed the Petitioner's defense theory by showing the jury that Doctor Gomez Medical Report demonstrates that the victim was not sexually assaulted on January 09, 1999. **Second**, part of this argument relates a prosecutor's appearance as a lawyer for the state, which this court stated: **That prosecutors are lawyers and are absolutely immune for making false and defamatory statements in judicial proceedings**. **Third**, the same can be said regarding Police Officers where this Court stated in relevant part:

> Police Officer was subject to qualified immunity under an objective reasonableness standard under which immunity would be lost only where there was a lacked indicia of probable cause as to render its existence unreasonable. The same standard of objective reasonableness that is applied in a suppression hearing, also defines, qualified immunity, to an officer whose request for an arrest warrant but purportedly caused an unconstitutional arrest. Only where the arrest is so lacking in indicia of probable cause as to render its existence unreasonable will the shield of immunity be lost.

The lower courts ignored the fact that Sergeant Scott Sutter, the officer in charge of this case, advised the victim Mother to take her daughter to the Hurley Medical Center to get any evidence that her daughter was sexually assaulted. This report provided by the Hurley Medical Center clearly indicates that the Doctor Gomez found no evidence that the victim was sexually assault because her hymen and anal rings were grossly intact at the time of her examination on January 09, 1999. The victim even testified that she only went to **one hospital** and was only seen by **one doctor** and **the prosecution** never asked the victim to identify the hospital

and the doctor who examined her. However, the one person who knew the contents of both medical reports was the prosecutor who listed Doctor Carter as a witness who testified at the Petitioner Jury trial that his findings were consistent with repeated virginal and anal penetration and did not list Doctor Gomez to testify about his findings as to his examination on the day [January 09,1999] this alleged incident took, where the Petitioner was arrested and released on the grounds that Doctor Gomez found were no signs that the victim had been repeatedly penetrated in her vagina and anus.

To establish a *Brady* violation, in this case, the Petitioner clearly has established: (**1**) the prosecution suppressed or withheld evidence contented in Doctor Gomez medical report from the defense (**2**) that Doctor Gomez medical report was favorable to the defense and (**3**) Doctor Gomez suppressed medical report was material. More importantly, the Genesee County Prosecutor's actions in his case was accomplished under the **qualified immunity** standards were this Court stated the [**prosecutors**] are absolutely immune for making false and defamatory statements in judicial proceedings. This standard has put more innocence people in prison, like that in the present case, due to the unethical activities by Police Officers and Prosecutors in our criminal justice system because they are entitled to qualified immunity to protect them from American citizens aggravating actions where such immunity would be lost only where there was a lacked indicia of probable cause as to render its existence unreasonable. These facts are relevant to this case and to the entire United States of America for this Supreme Court to settled the doctrine of immunity across the board for Police Officers, Prosecutors, and Judges, and establish new procedures with new standards for correcting Police Officers, Prosecutors, and Judges errors that are subject to these old and outdated immunity standards.

In the present case, if this Court were to remove these Prosecutorial errors and consider the victim's first examination by Doctor Gomez Medical Report that validated evidence favorable to the Petitioner in his defense that the victim was not sexually assaulted on January 09, 1999, this Court would then be obligation to **Grant** the Petitioner any and all relief he is entitled too. For the reasons outlined herein, this Court should order the Petitioner's Petition for a Writ of Certiorari, which was denied, is suspended pending disposition on whether (**1**) the Genesee County Prosecutor's Office and Police Department withheld critical evidence that was favorable and material to the Petitioner's defense and (**2**) was it accomplished by the Genesee County Prosecutor Office and the Police Department under the **qualified immunity** that are subject these old and outdated standards.

ACTUAL INNOCENCE

There is one factor in this case, this court should Court should take into consideration, that the petitioner has never pursued a Writ of Certiorari to this United States Supreme Court where two standards may be applied in this case on the questions presented.

First, AEDPA's statutes of limitation prescribe when state prisoners may apply for writs of habeas corpus in federal court, however, the statutes of limitation are not jurisdictional, and do not require courts to dismiss claims as soon as the clock has run. See Perkins v McQuiggin 670 F3d 665 (6th Cir Mich 2012) quoting Day v McDonough 547 US 198, 208; 126 SC 1675 (2006). Likewise, in Souter v Jones 395 F3d 577, 602 (6th Cir 2005) the Sixth Circuit Court of Appeals held that where an otherwise time barred habeas petitioner can demonstrate that it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt the petitioner should be allowed to pass through the gateway and argue the merits of his constitutional claims. The gateway of an actual innocence claim, this Court aforesaid, does not

require the granting of the writ but instead permits the petitioner to present his original habeas petition as if he had not filed it late. Id. Souter 395 F3d at 596. **Second**, as the Sixth Circuit recognized in *Souter* an exception to timeliness should be made in the rare and extraordinary case where a petitioner can demonstrate a credible claim of actual innocence. Indeed, a credible claim of actual innocence functions as a wholly separate and superseding circumstance that acts as an equitable exception to the statute of limitations. See e.g. Lee v Lampert 653 F3d 929, 933 at n.5 (9th Cir 2011).

However, federal jurisprudence also demonstrates that such claims are rare, constituting a narrow class of cases implicating a fundamental miscarriage of justice. As unwavering in Schlup v Delo 513 US 298, 314-315; 115 SC 851 (1995), this Supreme Court stated that in order to credibly claim actual innocence a petitioner must show that it is more likely than not that no reasonable juror would have convicted him in the light of the new evidence. Id. *Schlup* 513 US at 327. Moreover, any such new evidence presented must be reliable, **whether it consists of exculpatory scientific evidence**, trustworthy eyewitness accounts, **or critical physical evidence that was not presented at trial**. Id. *Schlup* 513 US at 324. **Thus a petitioner must present more than an existential possibility of innocence that rests on speculation or present arguments that simply revisit minor discrepancies in trial testimony or evidence**. A petitioner who can present new and reliable evidence of actual innocence under these exacting standards should be entitled to a review of his claims of constitutional error without the untimeliness of his petition standing in the way is reviewed de novo.

In the Present case, the Petitioner claims that the prosecution violated *Brady v Maryland 373 US 83; 83 SC 1194 (1963)* when the prosecutor failed to turn over to his defense contented of Hurley Medical Center Nurse Report and Doctor Gomez Medical Report. The Prosecutor

received a copy of these reports, Sergeant Sutter received a copy of these reports, however, the Petitioner and his Defense Counsel did not. The Petitioner is also not denying that Defense Counsel elicited testimony from a prosecuting witness, Sergeant Sutter, who testified:

Q. Sergeant Sutter, did you receive any sort of report from Hurley Medical Center?

A. Yes, I did.

Q. Okay, and does your report also reflect what the results of that visit to Hurley were?

A. Yes, it does.

Q. Were they negative or positive as to evidence of sexual abuse?

A. Well, I'm not a doctor, but there were no abnormalities.

Q. What doctor performed the test?

A. Doctor Gomez.

The lower courts assumed that because of this line of questioning defense counsel had Doctor Gomez medical report in his possession is a misrepresentation of the true facts. While the lower courts acknowledge that Doctor Gomez medical report was never admitted into evidence by the prosecution. The lower court disregarded the fact that defense counsel's line of questioning was illustrated from the information contained in the Petitioner's presentencing investigation report on page-3, which stated in relevant parts:

> On January 09, 1999, Ashley Mclaren was taken to Hurley Medical Center Emergency Room where she was examined for possible sexual assault. The Hurley Report indicated no signs of vaginal or rectal disruption. However, on February 17, 1999, Ashley was examined at McLaren Regional Medical Hospital and that examination revealed disruption of hymenal and anus tissue consistent with repeated vagina and anal penetration.

Contrary to the lower courts, the words revealed, exposed, discovered, or disclosed are meritless meanings under *Brady v Maryland 373 US 83; 83 SC 1194 (1963)* because the true contents of Doctor Gomez medical report were never given to the defense by the prosecution on why Doctor Gomez examination revealed no disruption or disorder to the victim's hymenal

and anus tissue. As such, the only word in a *Brady* violation is whether Doctor Gomez medical report was suppressed, meaning concealed, hidden, or repressed by the Prosecution.

In Bousley v United States 523 US 614, 622 118 SC 1604 (1998) the court stated that an actual innocence claim may even overcome a prisoner's failure to raise a constitutional objection on direct review. In House v Bell 547 US 518; 126 SC 2064 (2006) the court reiterated that a prisoner's proof of actual innocence may provide a gateway for federal habeas review of a procedurally defaulted claim of a constitutional error. Thus, the Petitioner has demonstrated by clearly and convincing evidence a colorful claim that he is actually innocence of the crime for which he was convicted of and has met both *Schlup* and *Brady* standards by demonstrating that the victim's initial examination was (**1**) performed on January 09, 1999; (**2**) by Doctor Gomez and (**3**) Doctor Gomez medical report was suppressed because it demonstrated his innocence because this medical report indicated that Doctor Gomez saw no evidence of a sexual assault.

For the reasons outlined herein, this Court should order the Petitioner's Petition for a Writ of Certiorari, which was denied, is suspended pending disposition on whether (**1**) the Genesee County Prosecutor's Office withheld critical evidence that was favorable and material to the Petitioner's defense and (**2**) determine whether this act was accomplished by the Genesee County Prosecutor Office under the **qualified immunity** that are subject these old and outdated standards.

RELIEF SOUGHT

For the reasons stated herein, this court should Grant the Petitioner's Petition for Rehearing based on (**1**) the standards set forth by this court in *Schlup v Delo* and *Brady v Maryland* because the state withheld critical evidence that was favorable and material to the Petitioner's defense and (**2**) this court should also naturalize these old standards of immunity

and revise new standards of immunity that will still afford Police Officers, Prosecutors, and Judges immunity and summarize other standards that will protect American Citizens from Police Officers, Prosecutors, and Judges who abuse their immunity in our criminal justice system, or in the alternative, grant such other relief as this Court deems just and fair.

SUBMITTED BY:

JEFFREY TODD DENTON #288247

DATED: 6/22, 2021

CERTIFICATION OF SERVICE

The petitioner certifies that he served the within Petition for Rehearing on counsel for the respondent by enclosing a copy thereof in an envelope with postage prepaid and addressed too:

1. The Office of the Michigan Attorney General
   Appellate Division
   PO BOX: 30217
   Lansing, Michigan 48909 **And:**

2. The Solicitor General of the United States
   U.S. Department of Justice
   950 Pennsylvania Avenue, NW
   Washington, DC 20530

By deposing them in the Michigan Department of Corrections Institutional Mailing system on 6 22, 2021 and further certifies that all parties required to be served have been served.

SUBMITTED BY:

JEFFREY TODD DENTON #288247

DATED: 6/22, 2021