

NO: 20-8205

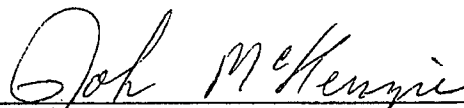
**IN THE  
SUPREME COURT OF THE UNITED STATES**

In Re: John L. McKenzie

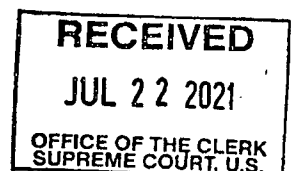
**PETITION FOR LEAVE TO FILE PETITION  
FOR REHEARING**

Petitioner, John L. McKenzie, respectfully asks leave of this Honorable Court to file his attached petition for Rehearing pursuant to Supreme Court Rule 44.

Respectfully submitted,



John L. McKenzie, DC# 930334  
Okeechobee Correctional Institution  
3420 N. E. 168<sup>th</sup> Street  
Okeechobee, FL, 34972.



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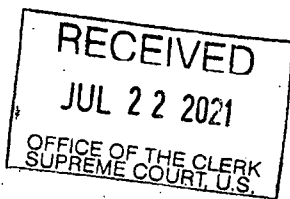
**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**ON**

**PETITION FOR REHEARING AND  
PLENARY REVIEW**

John L. McKenzie, DC# 930334  
Okeechobee Corr. Inst.  
3420 N. E. 168<sup>th</sup> Street  
Okeechobee, FL, 34972.  
*Pro se*



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**IN THE  
SUPREME COURT OF THE UNITED STATES**

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In Re: John L. McKenzie

**PETITION FOR REHEARING AND PLENARY REVIEW**

Petitioner, John L. McKenzie (McKenzie), respectfully petitions this Court for Rehearing by the full Court of his actual innocence Habeas Corpus petition pursuant to Supreme Court Rule 44 and states that the Court may have overlooked or misapprehended the facts and/or law in the following ways:

1. Denial of McKenzie's petition without explanation is contrary to this Court's standard regarding actual innocence claims, it assures that an actually innocent man will die in prison<sup>1</sup> without ever having been allowed to present to the judiciary his allegations of fundamental constitutional rights, which resulted in an actually innocent man being imprisoned for life. It also undermines long lines of this Court's decisional laws, especially those dealing with actual innocent and related standards of review.

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<sup>1</sup> Thirty years ago McKenzie now 70, was diagnosed with Hepatitis C. Untreated until 2019 when finally cured, the disease caused irreparable liver damage. Recently diagnosed with severe fibrosis (Cirrhosis), with a Metavir score of 89 out of 100 (death), and a lesion on the left liver tube, yet to determine if cancerous. (See attached).

2. Specifically, *Schlup v. Delo*, 513 U.S. at 316 suggests this Court has held manifest miscarriage of justice doctrine to be mandatory, not discretionary: "If a petitioner...presents [sufficient] evidence of innocence....the Petitioner should be allowed to pass through the gateway and argue the merits."

3. Briefly restated, the key points of fact this Court may have misapprehended are:

A. The **sole** evidence used to convict McKenzie was fabricated by the BRPD. The DNA sample was "manipulated" by an evidence custodian. This is evident and would be proven by: (1) The fact that this same Police Dept. also manipulated DNA on another piece of evidence (a washcloth), alleging the presence of his DNA thereon; later proven to be impossible due to his being out of State when it was collected in 1987; (2) The BRPD evidence bag alleged to be a rape kit, **clearly** was not the same one released to police by Dr. Franklin in 1989. Provable through reliable witnesses. (3) Police had McKenzie's buccal swabs (DNA) since 2000. There is absolutely no rational explanation for why the **original rape kit disappeared and was replaced by a police evidence bag** unless it was to manipulate its contents.

B. Official documents were altered and falsified to conceal the fact that a rape kit was created in 2006. See Appendices previously submitted.

C. Victim's affirmative refusal to identify McKenzie and her positive ID of Miller and fingerprint evidence, exonerate McKenzie.

4. In Re: *Davis*, 557 U.S. 952 (2009) this Honorable Court remanded Davis to District Court to "receive testimony and make findings of fact as to whether evidence that could not have been obtained at the time of trial clearly establishes

Petitioner's innocence." Remand was granted despite that Davis had an evidentiary hearing in State court. McKenzie has never had a hearing. In *Fay v. Noia*, 83 S. Ct. 822, 841 (1963) the Court said:

"But conventional notions of finality in criminal litigation cannot be permitted to defeat the manifest federal policy that federal constitutional rights of personal liberty shall not be denied without the fullest opportunity for plenary federal judicial review." *Id.* at 841.

5. "I would add that the whole process of federal habeas corpus review is to make an exception to finality. Indeed, in this context, our duty to search for constitutional error is at its apex." *Haynes v. Davis*, 733 Fed. Appx. 766, 2015 U.S. App. LEXIS 11955 (5<sup>th</sup> Cir. 2018), quoting *Burger v. Kemp*, 483 U.S. 776, 785 (1987) ("our duty to search for constitutional error [is] with painstaking care." See also, *Dretke v. Haley*, 541 U.S. 386, 396-98 (2004) (and that preclusive doctrines and formalities "yield to the imperative of correcting...fundamentally unjust incarceration."

6. This case presents very serious allegations that if true, establish actual innocence. Any reasonable possibility that McKenzie is innocent, perhaps caught up because of a prior record, politics, or some other unknown factor - this Honorable Court as the last line of defense **must** intervene. It cannot allow McKenzie to unjustly remain in prison for the rest of his life when a simple evidentiary hearing would resolve the many unanswered question, and put to rest

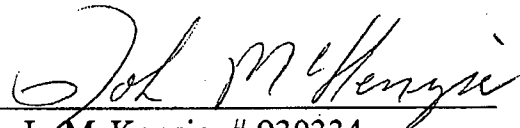
once and for all the question: Is McKenzie actually innocent? A full Court review would preclude a cursory dismissal or at minimum provide a reason for such dismissal.

### CONCLUSION

McKenzie respectfully requests a full Court hearing and asks this Honorable Court to uphold his Constitutional rights, the same as afforded in *House v. Bell*, 547 U.S. 578; *Schlup v. Delo*, 513 U.S. at 346-49; *In re. Davis*, 557 U.S. 952; and others, and remand this case to the District Court (S.D. of Fla.) for an evidentiary hearing.

### CERTIFICATE OF PETITIONER

I, John L. McKenzie, Petitioner, *Pro se*, do hereby certify pursuant to Supreme Court Rule 44, that the Petition for Rehearing is presented in good faith and not for purposes of delay. And is restricted to the grounds enumerated.



John L. McKenzie, # 930334  
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