No. 21-____

IN THE

Supreme Court of the United States

STEVEN CARROL DEMOCKER,
Petitioner,

v.

STATE OF ARIZONA,
Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of the State of Arizona

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This petition presents the question whether offering an implausible third-party culpability defense violates a defendant's right to the effective assistance of counsel where there is a readily available, coherent, and compelling defense.

PARTIES TO THE PROCEEDING

Steven Carroll DeMocker was the defendant/petitioner in the proceedings below.

The State of Arizona was the plaintiff/respondent in the proceedings below.

RELATED PROCEEDINGS

Arizona Supreme Court:

State v. *DeMocker*, No. CR-21-0113-PR (Ariz. Nov. 3, 2021) (post-conviction proceedings)

Arizona Court of Appeals, Division One:

State v. DeMocker, No. 1-CA-CR 20-0456 (Ariz. App. Mar. 16, 2021) (post-conviction proceedings)

Arizona Superior Court, Yavapai County:

State v. *DeMocker*, No. P1300CR201001325 (Ariz. Super. Ct. July 22, 2020) (post-conviction proceedings)

Arizona Supreme Court:

State v. *DeMocker*, No. CR-16-0462-PR (Ariz. July 28, 2017) (direct appeal proceedings)

Arizona Court of Appeals:

State v. *DeMocker*, No. 1 CA-CR 14-0137 (Ariz. App. Oct. 11, 2016) (direct appeal proceedings)

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Petitioner Steven Carroll DeMocker respectfully petitions for a writ of certiorari to review the judgment of the Arizona Court of Appeals.

INTRODUCTION

This petition concerns a trial in which defense counsel put forth an entirely implausible defense to first-degree murder, resulting in the wrongful conviction of an innocent man. Trial counsel put forth this implausible defense instead of developing and presenting critical forensic evidence that would have devastated the state's already weak and circumstantial case. The presentation of an implausible defense is a recurrent problem and whether it violates the right to counsel presents a split of authority between the Arizona state courts and at least three federal circuit courts of appeal, including the Ninth Circuit.

In Mr. DeMocker's case, the implausible theory was that the decedent's tenant committed the murder. Despite initial reasons to suspect him, the theory had a major—and obvious—flaw. The tenant had an alibi that was corroborated by witnesses and cellphone data, as confirmed by the prosecution and defense experts prior to trial. Trial counsel nonetheless presented a meandering case that the tenant was the true perpetrator. In both its case and in closing arguments, defense counsel repeatedly emphasized that it was the third party who committed the offense.

The key evidence linking Mr. DeMocker, who is lefthanded, to the murder of his ex-wife was a golf club. During the many searches of Mr. DeMocker's home, the investigation uncovered a golf club cover, but not the related lefthanded club. Mr. DeMocker averred that he had provided the victim, a frequent

garage sale host, with the club in question. App. 112a. Nonetheless, the state's case emphasized that the club must have been the murder weapon and presented "experts" to opine that the blunt force injuries at issue were caused by the missing club in question.

However, had trial counsel conducted a competent investigation into the impression evidence, they would have discovered—and the jury would have learned—that if the injuries were indeed caused by a golf club, it would have been a righthanded club. The injuries from what would have been the face of the club are oriented relative to the impressions from a potential club shaft such that they could not have been left by Mr. DeMocker's missing club.

But instead of providing this critical information, trial counsel presented the jury with a meandering series of barely relevant witnesses about the purported culpability of a person with an iron-clad alibi. That presentation needlessly set the jury up to make a choice between an implausible perpetrator and the person whom the state accused of murder, Mr. DeMocker.

The Arizona courts' resolution of this issue, finding no fault for presenting an implausible defense and foregoing such crucial investigation, is at odds with the controlling precedents of several federal circuits, including the Ninth Circuit. This Court should grant review and reverse.

OPINIONS BELOW

The Arizona Supreme Court's order denying review of Mr. DeMocker's petition for postconviction relief is unreported. Pet. App. 1a–2a. The Arizona Court of Appeal's decision granting review but denying relief is unreported. *Id.* at 3a–6a. The Arizona Superior

Court's decision denying Mr. DeMocker's petition for post-conviction relief is also unreported. *Id.* at 7a–146a.

JURISDICTION

The Arizona Supreme Court entered judgment against Mr. DeMocker on November 3, 2022. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Sixth Amendment, U.S. Const. amend. VI, provides in relevant part:

> "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of counsel for his defense."

STATEMENT

A. Two Trials and a Conviction

1. On May 28, 2008, Petitioner Steven DeMocker and Carol Kennedy reached an agreed upon dissolution of their marriage. As reflected in that settlement, each of them was ready to move on with their lives, focusing both on their lives apart and on being supportive parents to their two daughters. RT08/22/2013 at 68.

On the evening of July 2, 2008, Carol Kennedy was tragically murdered in her home. In a bloody assault, Ms. Kennedy was bludgeoned to death, leaving a gruesome, bloodied scene in her small office. RT07/19/2013 at 43.

That same evening, after hearing of the tragedy from his daughter's boyfriend, Mr. DeMocker went to Ms. Kennedy's home. Soon after his arrival, Mr. DeMocker was asked if he would submit to questioning at the Yavapai County Sheriff's Office. He agreed

and drove to their office. Without pursuing other leads, law enforcement landed on Mr. DeMocker as the primary suspect. RT07/24/2013 at 58; RT07/19/2014 at 44–45.

Within 24 hours of finding Ms. Kennedy, law enforcement executed two search warrants at Mr. DeMocker's residence. RT08/08/2013 at 162–68. Mr. DeMocker also voluntarily submitted a blood sample, cheek swabs, nail clippings, and the clothes he was wearing on July 2, 2008. At no point did the State uncover physical evidence linking Mr. DeMocker to the murder. Over five months from the murder, the State indicted Mr. DeMocker.

The state's case on actus reus turned on a missing golf club. Mr. DeMocker, who is lefthanded, had a golf club cover for a lefthanded fairway wood, but lacked the club in question. RT07/19/2013 at 48.

The State's theory for motive was that the 2008 financial crisis had devastated Mr. DeMocker's financial services business and that together with the divorce, he had been placed in economic distress. The extent of his financial hardship was contested at trial, including via the defense's emphasis on Mr. DeMocker's ability to secure loans and/or a higher income as well as by the fact that he had agreed to the terms of the divorce.[1] RT07/19/2013 at 72–74.

2. After Mr. DeMocker's first trial abruptly ended in mistrial, with his highly regarded lawyers required to

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[1] In the post-conviction proceedings below, Mr. DeMocker also raised a claim that trial counsel was ineffective for failing to challenge the state's financial expert's use of double counting in calculating his liabilities, and thereby dramatically overstating his alleged economic distress.

withdraw and replaced by appointed counsel,[2] the State, for a second time, presented its case.

Prior to the second trial, defense counsel had learned that a tenant of the decedent, James Knapp, had failed business dealings with and romantic interests rebuffed by the decedent. Counsel also learned that Mr. Knapp had an alibi. At the time of the murder, he was "at least three miles away" from the scene of the offense. App. 84a–85a. That alibi was corroborated by cell phone tower data provided by the state. The state's analysis of that data, exonerating Mr. Knapp, was confirmed by the defense prior to the second trial.

At the second trial, the state called several state experts to testify that the impressions left on Ms. Kennedy were consistent with the club in question. RT08/09/2013 at 7,14; RT07/31/2013 at 7, 16. The defense questioned whether the impressions could have been made by a different blunt instrument but did not query whether the angle of the impressions might reflect a righthanded, rather than lefthanded club. RT08/09/2013 at 60–71; RT07/31/2013 at 98–100.

At the close of the State's evidence, the defense moved for a judgment of acquittal. Although the trial court denied the motion, the judge observed that he would not be "surprise[d] . . . if there was a not guilty verdict or a hung jury." RT09/11/2013 at 117.

The defense focused extensively on proving that Jim Knapp, Ms. Kennedy's tenant, killed her. The defense called a total of nineteen witnesses. Eleven testified

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[2] After the mistrial, the State added a charge related to Mr. DeMocker's adult child having used her benefits from Ms. Kennedy's life insurance policy to pay for his legal defense.

exclusively about Mr. Knapp, many of whom were character witnesses. For example, Julie Corwin, Mr. Knapp's former fiancé testified about meeting Mr. Knapp online and the circumstances surrounding his proposal to her, as well as Mr. Knapp's manipulative behavior during and after their brief relationship. RT09/06/2013 at 6, 12, 36–39, 53–55.

The defense also called two former employees of a café to testify about Mr. Knapp's involvement with the company and his failed plans to open a franchise with Ms. Kennedy. RT09/11/2013 at 128; RT09/12/2013 at 8. Carol Walden, formerly a developer at the chain, testified about how Mr. Knapp was eager to engage in a joint investment with a "Carol." Walden knew nothing more about Ms. Kennedy, including her last name, until trial. RT09/11/2013 at 129–32, 149. Glenn Elvenholl testified about Mr. Knapp introducing Ms. Kennedy as his girlfriend and business partner, as well as Mr. Knapp's backing out of a deal to acquire the store in 2009. RT09/12/2013 at 8, 9–10, 27–28, 42–46.

Four witnesses were called to testify about only the circumstances surrounding Mr. Knapp's own, unrelated death. These included the first responder who found Mr. Knapp, the case agent in charge of the investigation, a criminalist, and a firearms expert. Additionally, they questioned Ms. Kennedy's medical examiner, who also examined Mr. Knapp, about his autopsy of Mr. Knapp.

Finally, at Mr. DeMocker's trial, defense counsel called Dr. Omri Berger. He provided psychiatric testimony about Mr. Knapp's risk of violence and suicide. Dr. Berger opined that Mr. Knapp had depression and exhibited behaviors consistent with antisocial and borderline personality traits. RT09/19/2013 at 25, 52-57, 110.

In closing arguments, trial counsel returned to Jim Knapp time and again. They referenced Mr. Knapp as the true perpetrator no fewer than 173 times during closing arguments. RT09/27/2013 at 182–83; RT10/01/2013 at 4–25. As the defense was forced to concede, the State's closing argument very effectively made the point that they were attempting to simply "divert attention away from Mr. DeMocker." RT09/27/2013 at 84.

Having been presented a choice between Mr. Knapp with his alibi and Mr. DeMocker with his missing golf club, the jury convicted Mr. DeMocker of first-degree murder, and the court imposed the only available sentence: life without the possibility of parole. App. 31a–32a.

B. Post-Conviction Review Proceedings

1. In post-conviction proceedings, Mr. DeMocker alleged that trial counsel were ineffective because, inter alia, they presented the "James Knapp did it" defense. App. 82a. The post-conviction court rejected the claim on the merits. It concluded that the problems with presenting a non-credible defense were no more than claims based on "20/20 hindsight and second-guessing defense counsel's strategic decision," which it deemed to be a reasonable effort to give "the jury an alternate theory about the murder to consider in the context of all the evidence." App. 92a. However, it also acknowledged that "[i]n reality" Mr. Knapp had a "confirmed" alibi. App. 89a n.5.

Mr. DeMocker also alleged that counsel should have presented evidence that if the blunt instrument in question was a golf club, it was righthanded. Pet. at 41. In a post-conviction deposition, trial counsel

testified that it was the defense team's view that they "had to go after the golf club." Resp. to Pet. Ex. 1 at 27.

2. The post-conviction court concluded that because the State's expert in question offered admissible testimony on point, Mr. DeMocker's claim concerning counsel's failure to present evidence that any golf club was righthanded was meritless: "The Court finds that [trial counsel's] decision not to move to preclude [the state's expert] had a reasonable basis." App. 130a.

The judge in post-conviction, who had also overseen the trial, explained some of his critiques at trial, "Yes, this Court did admonish counsel for needless repetition, but the Court never thought that Petitioner's attorneys were not adequately representing him." App. 22a.

3. Mr. DeMocker appealed, raising these issues before the Arizona Court of Appeals and the Arizona Supreme Court. The former granted review but denied relief. The latter denied Mr. DeMocker's petition for review.

This petition follows.

REASONS FOR GRANTING THE PETITION

The Arizona courts' resolution of Mr. DeMocker's claim has denigrated the right to effective assistance of counsel, "a bedrock principle in our criminal justice system." *Martinez v. Ryan*, 566 U.S. 1, 12 (2012). Competent counsel preserve claims on appeal, *see, e.g.*, *id.*, and for review in habeas proceedings. *See Edwards v. Carpenter*, 529 U.S. 446 (2000). And, relevant here, the right to effective assistance serves as a bulwark against wrongful conviction of the innocent. *See Martinez*, 566 U.S. at 12 (citing *Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)).

Here, the Arizona state courts got the constitutional question wrong. The Sixth Amendment requires counsel to avoid presentation of highly implausible defenses where other substantial defenses exist. *See Strickland v. Washington*, 466 U.S. 668, 690–91 (1984). This is both because presenting the available substantial defense may avoid a wrongful conviction and because presenting an implausible defense damages the credibility of anything the defense presents. The chosen defense here was particularly problematic because it put a choice to the jury that would inexorably lead them to land on Mr. DeMocker as the perpetrator. Faced with a choice between what the defense was offering—a theory foreclosed by a highly corroborated alibi—and the prosecution's circumstantial case, with critical aspects left unchallenged, the jury made the predictable choice.

It is for this reason that the Arizona courts' resolution of this question conflicts with that of the federal circuits that have addressed it. Putting on an implausible defense costs credibility with the jury, and where other viable defenses exist, that toll results in a reasonable probability that the outcome would be different. *Id.* at 694. In light of this conflict, including with the Ninth Circuit, this Court should grant review to preserve the critical role that the right to counsel plays in preventing the wrongful conviction of the innocent.

I. PRESENTING AN IMPLAUSIBLE DEFENSE, WHERE A VIABLE DEFENSE IS READILY AVAILABLE, VIOLATES THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

"[T]he right to counsel is the right to effective assistance of counsel." *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970). The Sixth Amendment's

guarantee is transgressed both where the government interferes with counsel's ability to make important decisions about how to conduct the case and where counsel fails to "render 'adequate legal assistance.'" *Strickland*, 466 U.S. at 686.

1. To demonstrate that counsel's conduct fell below the constitution's demands, a defendant must show that counsel's performance "fell below an objective standard of reasonableness" and that but for that deficiency, there is a reasonable probability that the outcome would have been different. *Id*. at 688, 694. Counsel's strategic decisions receive deference, but only to the extent such decisions are made "'after thorough investigation and facts relevant to *plausible* options are virtually unchallengeable.'" *Wiggins v. Smith*, 539 U.S. 510, 521 (2003) (quoting *Strickland*, 466 U.S. at 690) (emphasis added). But deference is owed to a strategic decision only to the extent it is made in reliance on an adequate investigation. *See Williams v. Taylor*, 529 U.S. 362, 396 (2000).

But trial counsel who elect to raise implausible defenses are not owed deference. *See Wiggins*, 539 U.S. at 521. Indeed, "it is rarely a good strategic decision to advance a transparent lie as your client's primary defense, and certainly not when there is a far more plausible defense available." *Sanders v. Ratelle*, 21 F.3d 1446, 1460 (9th Cir. 1994). The problem with putting forward an implausible defense is that it is likely to make the jury "profoundly annoyed" and unwilling to look charitably upon other evidence put forth by the defense. *Daniels v. Woodford*, 428 F.3d 1181, 1211 (9th Cir. 2005).

Moreover, "[a] court adjudicating a *Strickland* claim can't just label a decision 'strategic' and thereby immunize it from constitutional scrutiny." *Dunn v. Jess*,

981 F.3d 582, 592–93 (7th Cir. 2020) (quoting *Jones v. Calloway*, 842 F.3d 454, 464 (7th Cir. 2016)). Instead, they must inquire both whether the investigation upon which the decision was premised was reasonable and whether the decision itself was reasonable.

The Arizona courts here failed to make precisely that inquiry, countenancing trial counsel's having put on an implausible defense as a reasonable strategic choice. App. 92a. It did so even as it acknowledged the "reality" of the third-party defense's utter implausibility. App. 89a n.5. These contradictory positions cannot both stand. Either the third-party culpability defense was viable—which it was not—or counsel performed deficiently by pursuing it.

Trial counsel's deficiency is particularly stark because another defense was readily available. The state's case was entirely circumstantial, with no physical evidence tying Mr. DeMocker to the brutal, bloody homicide. As the trial judge remarked, it would not have been surprising if the jury returned a not guilty verdict based on reasonable doubt. RT09/11/2013 at 117.

And a not-guilty verdict would have been virtually assured had the defense conducted a thorough investigation into the state's theory of the actual murder weapon. Had they done so, the defense could have excluded Mr. DeMocker's "missing" lefthanded golf club as the blunt instrument in question. That evidence, in turn, would have undermined one of the most important pieces of evidence for the state. *See Miller v. United States*, 14 A.3d 1094, 1097–98 (D.C. Ct. App. 2011) (noting importance of handedness where there is a conflict in the evidence over whether the actus reus of the crime was committed with the left or right

hand); *Phillips v. State*, 878 S.W.2d 617, 617–18 (Tex. Crim. App. 1994) (same).

The availability of the other strategy trial counsel actually pursued as well as the important forensic evidence that it failed to pursue demonstrate that choosing the implausible defense constituted deficient performance.

2. Of course, Mr. DeMocker is not entitled to relief unless he can also prove that the decision prejudiced him. *See Strickland*, 466 U.S. at 694. And the ready availability of alternative, compelling defenses demonstrates the prejudice of having counsel pursue a patently implausible one. The post-conviction court demurred, arguing that concerns about trial counsel's credibility constituted nothing more than "20/20 hindsight." App. at 92a.

But it is a critical part of trial counsel's duties to "build [and sustain] some credibility with the jury." *Hooks v. Workman*, 689 F.3d 1148, 1213 (10th Cir. 2012) (Gorsuch, J., dissenting). And failing to stick to plausible defenses has long been known to risk disabling jurors from assessing the defense's best evidence. *See* Scott E. Sundby, *The Capital Jury and Absolution: The Intersection of Trial Strategy, Remorse, and the Death Penalty*, 83 Cornell L. Rev. 1557, 1574–77 (1998) (explaining jury receptivity to defense arguments after being presented with highly implausible defense claims); Gary Goodpaster, *The Trial for Life: Effective Assistance of Counsel in Death Penalty Cases*, 58 N.Y.U. L. Rev. 299, 325 (1983) (noting that presenting implausible evidence will cause the jury to "distrust counsel, and view the defendant more harshly").

But trial counsel did not do so here, drawing criticism from the trial court and, undoubtedly, distrust from the jurors. Because they presented the "James Knapp did it defense," they were in the unenviable position of having to defend themselves to the jury, claiming that what they had put forth was not "crazy." RT09/27/2013 at 84.

That position was unenviable for trial counsel, but it was devastating for Mr. DeMocker, who was wrongfully convicted because of it. Having squandered their credibility over an implausible third-party defense, trial counsel was unable to convince the jury to take seriously the more pressing problems with the case.

Mr. DeMocker, who has no prior criminal record, provided DNA and fingernail samples shortly after Ms. Kennedy's bloody death. He provided the clothes he was wearing on the night of her murder. His house was repeatedly searched within 24 hours of her death. Yet there was no biological evidence linking him to her murder. These shortcomings alone create a reasonable probability that the outcome would have been different.

But had trial counsel also conducted the necessary investigation into the forensic findings at the heart of his case, the likelihood of a different outcome is all but certain. Challenging the key forensic conclusion in the case—that the murder weapon was Mr. DeMocker's missing golf club—by demonstrating that if it was a golf club, the club was righthanded would have resulted in Mr. DeMocker going free. Instead, he faces death in prison.

II. THE ARIZONA COURTS' DECISION IS CREATES A SPLIT ON A RECURRING FEDERAL QUESTION

The Arizona courts' resolution of this case implicates a recurrent question and is in conflict with the decisions of at least three federal courts of appeal, including the Ninth Circuit.

Unfortunately, Mr. DeMocker's case represents a recurring phenomenon whereby state courts have stood by while defense counsel put forth an implausible defense despite the existence of a compelling case that was consistent with the evidence. In *Phillips v. Woodford*, the Ninth Circuit observed that it was "not the first occasion on which we have been called upon to consider an effectiveness claim grounded upon a petitioner's contention that his counsel was ineffective for accepting his implausible story rather than conducting a further investigation." 267 F.3d 966, 978 (9th Cir. 2001); *see also Daniels*, 428 F.3d at 1210 (holding counsel deficient for presenting a "ludicrous" defense that could have only "profoundly annoyed" the jury); *Bemore v. Chappell*, 788 F.3d 1151, 1165 (9th Cir. 2015) (holding counsel constitutionally ineffective for presenting defendant's proposed alibi instead of a mental illness-related defense); *Johnson v. Baldwin*, 114 F.3d 835, 839 (9th Cir. 1997) (holding counsel constitutionally ineffective in rape prosecution for presenting defendant's uncorroborated alibi instead of arguing that no rape had occurred). In such instances, the Ninth Circuit has held that counsel's conduct falls below what the constitution requires where another, more plausible defense exists. *Sanders*, 21 F.3d at 1460. The deficiency here is more pronounced than the otherwise on-point Ninth Circuit cases because the implausible theory originated not with Mr. DeMocker, but with defense counsel.

The holding in this case also conflicts with the Seventh Circuit. In *Dunn v. Jess*, the court held that presenting a defense that was "medically impossible" constituted ineffective assistance of counsel. 981 F.3d 582, 593 (7th Cir. 2020). There the presentation was ineffective precisely because another viable defense was available, yet went unexplored and, therefore, unpresented to the jury. *Id.* at 595.

Finally, the Eleventh Circuit has held that presenting a defense of accident or excusable homicide violates the right to counsel where there exists a more plausible claim of self-defense. *See Weidner v. Wainwright*, 708 F.2d 614, 616 (11th Cir. 1983).

In each instant, the Circuit Court held counsel is unconstitutionally ineffective for foregoing plausible defenses in favor of highly implausible defenses. In each instance, the Circuit Court would reach a different result than that put forth by the Arizona state courts. And the Ninth Circuit cases, where Mr. DeMocker was tried and convicted, directly contradict the outcome in his case. This Court should grant review.

III. THIS PETITION PROVIDES AN IDEAL OPPORTUNITY TO ADDRESS COUNSEL'S CONSTITUTIONAL OBLIGATION TO PROTECT THE INNOCENT

This petition is an excellent vehicle to address the inadequacy of the representation of Mr. DeMocker's trial counsel.

The claim at issue was addressed on the merits of the constitutional question presented, both by the Superior Court, App. C, and by the Arizona Court of Appeals. App. B.

It is also an important issue, particularly in Arizona. That is, inadequate legal representation has led to

numerous wrongful convictions in Arizona, including in the relatively rural county where Mr. DeMocker as convicted. National Registry of Exonerations, *Arizona* available at https://tinyurl.com/2ph2fxfd.

This Court in recent years has not hesitated to review the habeas decisions of state high courts rather than awaiting those cases on federal habeas. The Court has granted certiorari in more than a dozen cases in this posture over the past five Terms, including in three summary reversals.[3]

This petition presents a question of whether the courts will leave a wrongfully convicted person in prison for the rest of his life or provide him with an opportunity to have a fair trial. Trial counsel's decision to put a third party on trial forfeited all credibility with the jury, leaving them unable to fairly assess the weak case before them. Their failure to conduct a competent assessment of the forensic evidence left a defense to a key part of the state's case unpresented.

For over a decade, Mr. DeMocker has been incarcerated for a crime that he did not commit. Requiring him to await a full round of federal habeas corpus review would be unjust and, in light of the significance of the questions presented in this case, is not warranted.

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[3] *See Jones* v. *Mississippi*, 141 S. Ct. 1307 (2021); *McKinney* v. *Arizona*, 140 S. Ct. 702 (2020); *McGirt* v. *Oklahoma*, 140 S. Ct. 2452 (2020); *Madison* v. *Alabama*, 139 S. Ct. 718 (2019); *Moore* v. *Texas*, 139 S. Ct. 666 (2019) (per curiam); *Garza* v. *Idaho*, 139 S. Ct. 738 (2019); *Moore* v. *Texas*, 137 S. Ct. 1039 (2017); *Weaver* v. *Massachusetts*, 137 S. Ct. 1899 (2017); *Turner* v. *United States*, 137 S. Ct. 1885 (2017); *Rippo* v. *Baker*, 137 S. Ct. 905 (2017) (per curiam); *Foster* v. *Chatman*, 578 U.S. 488 (2016); *Williams* v. *Pennsylvania*, 579 U.S. 1 (2016); *Wearry* v. *Cain*, 577 U.S. 385 (2016) (per curiam).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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