21-5256

No. 21-

In The

SUPREME COURT OF THE UNITED STATES

In re Isaiah S. Harris Sr., Petitioner

PETITION FOR WRIT OF HABEAS CORPUS

Isaiah S. Harris Sr. #570016
Richland Correctional Institution
P.O Box 8107
Mansfield, Ohio 44901

Pros se Litigant

Mr. Dave Yost
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QUESTION(S) PRESENTED

Mr. Harris' habeas petition presents exceptional circumstances that have sharply divided the courts below. Eight out of twelve United States of Appeal Circuits have controlling case law that "violates clearly established" United States Supreme Court case precedent with an "affirmative due diligence" 4th prong to the Brady analysis. Also, Harris highlights a Sixth Circuit court **split** about whether the **"new"** evidence required under **Schlup** includes only **"newly discovered"** evidence that was not available at the time of trial, or broadly encompasses **all** evidence that was not presented to the fact-finder, i.e., **"newly presented"** evidence.

(1) Whether or not, the prosecutor's obligation under Brady to turn over evidence **in the first instance stands independent** of the defendant's knowledge in this case, or does the fact that defense counsel **knew or should have known** irrelevant to whether the prosecution had an obligation to disclose the information?

(2) Whether or not, if it is proper for the **trial court to admit** to a Brady violation on the record, then deny the defendant the right to present a defense and to fully cross-examine the accuser with the impeachment and exculpatory evidence?

(3) Whether or not, if due process violations still matter in this case or, can those due process violations remain intact and hinge on a fact of law, of whether there's a **meaningful difference** between **newly discovered** evidence or **newly presented** evidence, while the **classification** of the evidence is predicated on the **State's suppression** of Brady-Chambers evidence at trial.

(4) Whether or not, if impeachment evidence, **by itself**, can demonstrate actual innocence where it gives rise to sufficient doubt about the validity of the conviction, under the **Schlup** actual innocence "gateway standard"?

(5) Whether or not, it is true that **today in America** any court or agency can hide evidence, while knowing that fact, and the outcome will be predicated on which circuit you were charged with a crime in?

LIST OF PARTIES

[X] all parties appear in the caption of the cover page.

Just to be clear, The Warden of Richland Correctional Institution is Mr. Kenneth Black and Ohio's Attorney General is Mr. Dave Yost and Petitioner Prison inmate is Isaiah S. Harris Sr.

TABLE OF CONTENTS

Title:	Page#
Opinions Below	1.
Jurisdiction	1.
Constitutional and Statutory Provisions Involved	2.
Statement of the Case	4.
Reasons for Granting the Writ	24.
I. Statement of Reasons for not filing...	25.
II. The Exceptional Circumstances of this case...	25.
Conclusion	29.

INDEX TO APPENDICES

Appendix A- Sixth Cir. order	Appendix O- P. report 06 (door report)
Appendix B- Federal District rehearing	Appendix P- P. report 5-07 (same lie)
Appendix C- Federal District order	Appendix Q- P. report 02 (stepbrother)
Appendix D- Magistrate Judge's order	Appendix R- P. report 03 (same lie)
Appendix E- Magistrate Judge's R&R	Appendix S- visit list and pictures 3-30-21
Appendix F- Supreme Court of Ohio	Appendix T- P. report 7-17-08(911 no reason)
Appendix G- Direct appellant's brief	Appendix U- Judgement Entry 2009
Appendix H- Ninth District of Ohio's order	Appendix V- Supreme Court rule 20
Appendix I- §2241 Power to Grant Writ	Appendix W- Fed R. Evid. 608
Appendix J- §2254 State Custody(remedies)	Appendix X- Fed R. 611
Appendix K- §2244 AEDPA 1year-time-limit	Appendix Y- Fed R. Crim. Proc. 16
Appendix L- §2253 COA	Appendix Z- 5th,6th,14th U.S. Const. Amend.
Appendix M- P. report 11-08 (rape report)	
Appendix N- P. report 11-7 (same door)	

TABLE OF AUTHORITIES CITED

CASES	PAGE#
Banks v. Dretke, 540 U.S. 668, (U.S. 2004)	14.
Bell v. Arn, 536 F. 2d 123, (6th Cir. 1976)	21,22.
Benge v. Johnson, 474 F.3d 236, (6th Cir. 2007)	14,16.
Brady v. Maryland, 373 U.S. 83, (U.S. 1963)	14.
Brown v. Palmer, 441 F.3d 347, (6th Cir. 2006)	26,27.
Buck v. Davis, 137 S. Ct. 759, (U.S. 2017	19.
Carter v. Bell, 218 F.3d 581, (6th Cir. 2000)	14.
Chambers v. Mississippi, 410 U.S. 284, (U.S. 1973)	14,15,16.
Cleveland v. Bradshaw, 693 F.3d 626, (6th Cir. 2012)	20.
Davis v. Lafler, 658 F. 3d 525, (6th Cir. 2011)	21.
Estes v. Texas, 381 U.S. 532, (U.S. 1965)	26.
Ex parte Fahey, 332 U.S. 258, (U.S. 1947)	24.
Ex parte Milligan, 71 U.S. 2, (U.S. 1866)	26.
Gamble v. United States, 139 S. Ct. 1960, (U.S. 2019)	19.
Giglio v. United States, 405 U.S. 150, (U.S. 1972)	15,16,21.
Hohn v. United States, 524 U.S. 236, (6th Cir. 1998)	26.
Jackson v. Virginia, U.S. 307, (U.S. 1979)	23.
Lall v. Berg, 556 Fed. Appx. 449, (6th Cir. 2014)	26,27.
Mc Quiggin v. Perkins, 569 U.S. 383, (U.S. 2013)	22,23,24.
Smith v. Cain, 565 U.S. 73, (U.S. 2012)	14,15,22.
Strickler v. Greene 527 U.S. 263, (U.S. 1999)	7,14,15,18.
United States v. Mullins, 22 F.3d 1365, (6th Cir. 1994)	14,16.
United States v. Tavera, 719 F. 3d 705, (6th Cir. 2013)	14,20,24.
Wearry v. Cain, 136 S. Ct. 1002, (U.S. 2016)	14,22.

STATUTES AND RULES	PAGE#
Supreme Court Rule 20	24.
28 U.S.C. §2241 Power to grant writ	24,25.
28 U.S.C. §2242 Application	24,25.
28 U.S.C. §2244 (d)(1)(D) 1st time Habeas one-year ...	22,23,24,27.
28 U.S.C. §2253 (c)(1)(c)(2) (COA)	19,27.
28 U.S.C. §2254 State Custody	4,24.
U.S.C. Fed Rule Crim Proc. R. 16 (a)(E)(i)(ii)	11.
U.S.C. Fed Rules Evid R. 608 (A)(1)	23.
U.S.C. Fed Rule 611. (b)	23.

OTHER	PAGE#
THE FITH AMENDMENT OF THE UNITED STATES CONST.	1.
THE SIXTH AMENDMENT OF THE UNITED STATES CONST.	1.
THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONST.	1.

PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Isaiah S. Harris, Sr. invokes this Court's broad and discretionary power pursuant to 28 U.S.C. § § 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution, to remand this case to the Sixth Circuit with instructions to grant an unconditional writ of Habeas corpus relief.

OPINION BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is unpublished at USAP6 No. 17-3326, September 28, 2017 and attached at appendix A.

STATEMENT OF JURISDICTION

The order of the court of appeals denying equitable tolling to overcome 28 U.S.C. § 2244(d)(1)(D), Brady-Chambers due process relief, and (COA) certificate of appealability under its duty pursuant to 28 U.S.C. §2253(c)(1)(c)(2) was entered on September 28, 2017. This Court's jurisdiction is invoked pursuant to 28 U.S.C. § § 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution.

RELEVANT CONSTITUTIONAL AND STATUORY PROVISIONS

THE FIFTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law;

THE SIXTH AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: shall enjoy the right to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

THE FOURTEENTH ANMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

CONSTITUTIONAL AND STATUTORY INVOLED

Banks v. Dretke, 540 U.S. 668, (U.S. 2004)

Bell v. Arn, 536 F. 2d 123, (6th Cir. 1976)

Benge v. Johnson, 474 F.3d 236, (6th Cir. 2007)

Brady v. Maryland, 373 U.S. 83, (U.S. 1963)

Brown v. Palmer, 441 F.3d 347, (6th Cir. 2006)

Buck v. Davis, 137 S. Ct. 759, (U.S. 2017

Carter v. Bell, 218 F.3d 581, (6th Cir. 2000)

Carvajal v. Dominguez, 542 F.3d 561, (7th Cir. 2008)

Chambers v. Mississippi, 401 U.S. 284, (U.S. 1973)

Cleveland v. Bradshaw, 693 F.3d 626, (6th Cir. 2012)

Davis v. Lafler, 658 F.3d 525, (6th Cir. 2011)

Dennis v. Sec'y, Pa. Dep't of Corr., 834 F.3d 263, (3rd Cir. 2016)

Ellesworth v. Warden, N.H. State Prison, 333 F.3d 1, (1st Cir. 2003)

Estes v. Texas, 381 U.S. 523, (U.S. 1965)

Ex parte Fahey, 332 U.S. 258, (U.S. 1947)

Ex parte Milligan, 71 U.S. 2, (U.S. 1866)

Gamble v. United States, 139 S. Ct. 1960, (U.S. 2019)

Giglio v. United States, 405 U.S. 150, (U.S. 1972)

Hohn v. United States, 524 U.S. 236, (U.S. 1998)

In re Sealed Case No. 99-3096, 185 F.3d 887, (D.C. Cir. 1999)

Jackson v. Virginia, 443 U.S. 307, (U.S. 1979)

Lall v. Bergh, 556 Fed. Appx. 449, (6th Cir. 2014)

May v. Hines, 141 S. Ct. 1145, (U.S. 2021)

Mc Quiggin v. Perkins, 569 U.S. 383, (U.S. 2013)

Ramos v. Louisiana, 140 S. Ct. 1390, (U.S. 2020)

Sistrunk v. Armenakis, 292 F.3d 669, (9th Cir. 2002)

Smith v. Cain, 565 U.S. 73, (U.S. 2012)

Strickler v. Greene, 527 U.S. 263, (U.S. 1999)

United States v. Brown, 650 F.3d 581, (5th Cir. 2011)

United States v. Holloway, 939 F.3d 1088, (10th Cir. 2019)

United States v. Howell, 231 F.3d 615, (9th Cir. 2000)

United States v. Le Roy, 687 F.2d 610, (2nd Cir. 1982)

United States v. Mullins, 22 F.3d 1365, (6th Cir. 1994)

United States v. Parker, 790 F.3d 550, (4th Cir. 2015)

United States v. Rigal, 740 Fed. Appx. 171, (11th Cir. 2018)

United States v. Roy, 781 F.3d 416, (8th Cir. 2015)

United States v. Tavera, 719 F.3d 705, (6th Cir. 2013)

Wearry v. Cain, 136 S. Ct. 1002, (U.S. 2016)

STATEMENT OF THE CASE

On May 20, 2009, at trial Harris' **Motion for Acquittal** were denied at the close of the State's case, as well at the close of evidence. (T.p. ID# 219, 253, 264-267) In case number 09CA009605 (trial case number 08CR076357). The Court returned a verdict of guilty on both counts, and imposed a sentence of a total term of eighteen months in prison. In case number 09CA009606 (trial case number 08CR075721). The trial court returned a verdict of guilty of Domestic Violence and **not guilty** of **Felonious Assault,** and imposed a sentence of a total term of eighteen months in prison. In case number 09CA009607 (trial case number 08CR077230) the trial court returned a verdict of **not guilty** of **Kidnapping,** but guilty on the remaining counts of the indictment, and imposed a sentence of twenty and ½ years in prison for a grand total of 23 ½ years in prison. (T.p. ID# 268-275). See **appendix U (judgment entry).**

On June 17, 2009, Harris filed a notice of appeal to the Court of Appeals in all three cases. On September 25, 2009, the court of appeals issued and order consolidating the three cases for purposes of appeal.

The Ninth District Court of Appeals affirmed the judgment of the trial court on March 22, 2010. See **appendix H.** The Supreme Court of Ohio declined to accept jurisdiction on August 25, 2010- case number 2010-0787. See **appendix F.** Harris then filed a petition for a writ of habeas corpus, pursuant to 28 U.S.C. §2254, on April 18, 2014.

September 11, 2014, Harris filed a **Motion to Extend the Record,** so that the record could be supplemented to include: The alleged, victim's pretrial police reports concerning charges of domestic violence against petitioner from 2002 through 2008: **Particularly Mr. Taylor's police reports lodged in 2003 and 2007 which resulted in the police determining that there was "no merit to her allegation."** (and where in **2007** the police had informed her that they discussed charging her with making a false allegation) ... On February 3, 2015 Magistrate Judge Greg White **denied** this Motion to Expand the Record and denied Harris' further request for a 60-day extension of time to file his Traverse; and ordered Harris to file his Traverse by February 24, 2015. Yet, prior to receiving the Court's February 3, 2015, order, Harris filed

a **Motion for Leave to Amend his petition,** on February 6, 2015, so as to add two additional grounds for relief. The District Court **granted** Harris' Motion for Leave...', and ordered that Harris' Traverse be filed by... See **appendix D (Mag. Judge's order).**

The charges in case number 09CA009606 (trial case number 08CR075721), arose out of the incident on **March 26, 2008.** On that date, Kiesha Taylor testified that Harris came to her house, choked and punched her several times. (T.p. ID# 130-141).

At the time, there was a protection order issued in connection with case number 08CR075721 which prohibited petitioner Harris from having any contact with Ms. Taylor. On **June 30, 2008,** Harris was charged with domestic violence and violation of a protective order, case number 09CA009605 (trial case number08CR076357).

In case number 09CA009607 (trial case number 08CR0077230), Ms. Taylor testified that Harris came to her house at **11:30 pm November 12, 2008,** and allegedly kicked in the door and came in. (T.p. ID# 159.) See **appendix M (1st page thereof).**

The two of them spoke, then this episode ended at **5:00am November 13, 2008,** after Harris allegedly forced Ms. Taylor to perform oral sex on him. (T.p. ID# 159-170). Ms. Taylor testified that after the first two incidents, she and Harris would meet and have consensual sex several time: which included her performing oral sex on him. (T.p. ID# 187-193). She also admitted that she went to the county jail to visit him several times after he was arrested and charged in all three cases. (T.p. ID# 221-222). **Ms. Taylor testified to the children's names and birthdays. (T.p. ID# 130-131).**

With respect to the **March 26, 2008** incident Harris testified he contacted Ms. Taylor so as to gain her permission to see their son (Isaiah Jr.)- because **March 26, 2008** is the **day before his birthday.** The two of them- Ms. Taylor and Harris- began arguing and a female, which had accompanied him, began fighting with Ms. Taylor. Ms. Taylor falsely claimed that Harris was the assailant because she was mad for him being involved with another woman. (T.p. ID# 227).

Harris and Ms. Taylor continued to see each other and have sexual relation after this incident. (T.p. ID# 228). Harris

contacted Ms. Taylor so as to make arrangements for her to bring their children to see him on **June 30, 2008-** which is their **daughter's birthday,** and Ms. Taylor agreed. However, Ms. Taylor, then showed up at the appointed time **without** the kids and the two of them got into an argument over such. And again Ms. Taylor and Harris' female companion got into a physical altercation. (T.p. ID# 228-229). Ms. Taylor had falsely accused Harris as being the assailant: because she was jealous of him being involved with another woman.

With respect to the November, 2008, incident Harris testified that Ms. Taylor fabricated the entire story. He denied have contact with Ms. Taylor at all that day (T.p. ID# 230). Harris testified that Ms. Taylor had filed **false charges** against him in the past- as can be fully substantiated by the previous police reports. (T.p. ID# 222-226).

Also, the witness **admitted** she has a tendency **to lie** on petitioner Harris and that she was almost charged for lying to the prosecution. (T.p. ID# 178-180). The State's witness admitted during her testimony that she would **knowingly lie** to achieve her end. (T.p. ID# 186-187). So with the testimonial evidence from the sole witness on the record and the **Brady-chambers evidence unlawfully suppressed off** the record the State's case falls apart on these material points; that the sole witness credibility is intact to carry the conviction, and Harris' trial is fundamentally and constitutionally fair.

Harris was denied his **"Brady-Chambers"** right to a fundamental fair trial guaranteed by the Fifth, Sixth, and the Fourteenth Amendments of the United States Constitution. Thus, petitioner Harris was denied his rights to **due process** as the record shows the trial court was put on notice, to the existence of **exculpatory Brady evidence.** To wit: (on the record as follows) Q: you have been falsely accused by her in the past. A: yes. Mr. Pierre: Objection. A: yes, I was. The Court: Hold on a second. **I'll allow it.** Mr. Rich: I might as well put this on this record. My issue with this is, once again I believe it was **Brady material,** because we are dealing with the same parties, in the same city, with the same police department, and there are **three or four incidents** with the same people, in which it is **very clear there is impeachment evidence** with Ms. Taylor. Once again, defense counsel has to do a

public record request. So I do have this information, **but that does not alleviate the State's burden to be providing exculpatory evidence.** And when I say exculpatory evidence, I mean, it is favorable to the defense. It is evidence that **I could impeach her with** that I started to get into, a degree in which I believe that the Court will allow. This is not a personal attack on Mr. Pierre. My long- standing argument is I still believe that the questions are not asked of the individual police department about impeachment evidence or evidence favorable to the defense. As I have been standing here right now, I'm willing to argue I bet you Mr. Pierre doesn't have personal knowledge these incidents and reports exist, **but by law he is deemed to have knowledge** because of the agents, the Lorain police Department. Once again, I feel there is favorable information that was available that should have been provided, and it wasn't. The Court: be this as it may, Mr. Rich what does that have to do with the question to him? Mr. Pierre: Am I going to get a chance to respond to his **Brady** argument? The Court: **No, I think you will have to sit there and take it.** (T.p. ID# 223-224)[1]

In the present case the trial judge and the State's prosecutor became **vitiators.** The reason why the Judge said **"No, I think you have to sit there and take it."** Is because if the prosecutor (Mr. Pierre) would have responded on the record to the defense's **Brady** argument. All that "acknowledged" Brady evidence would have come out during Isaiah S. Harris, Sr.'s trial in 2009 and the state **never intended** that to happen. Also, what was revealed on the record the prosecutor **did not know** these police reports existed. **Strickler at 281-82.**

In the case at bar, the victim accused Harris of not only numerous instance of domestic violence but also one count of rape: whereas the alleged victim claimed that during the one episode of domestic violence she testified that: Harris kicked open the door and forced her at **knife** point to perform oral sex on him. (T.p. ID# 160-167) The victim testified, while under direct examination by the State that on the night in question- November 12, 2008, Harris kicked in the back door. (T.p. ID# 160-167).

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[1] **The Trial Court denied Harris' right to a fair trial with a verdict worthy of confidence by knowingly suppressing favorable evidence for the defense in violation of Chambers v. Mississippi, 410 U.S. 283 See HN1,2,3.**

Yet, within the official uniform incident report, by the police- under the section "method of entry" **no damage to the door** was indicated in this regard. Id. **appendix M (November 2008 rape report), at the first page thereof- under offense section.** Also, on the first page thereof appendix M is the time the incident began **11:30pm.**, concluded **5:00am.**, and when the police were called at **6:06am.**

Moreover, when one **directly compares** the contents of appendix M to the official uniform incident report marked as **appendix N (2007 same door)**- in 2007 the same door which involved a burglary at the alleged victim's address almost one year to the date prior to the night in question (at the exact same rear back door)- **two boxes were clearly checked, at the first page thereof,** clearly indicating that the door **had a dead-bolt lock.** As you can see here the intruder gained entry and the door had **sustained visible damage** as a result of being kicked in by the intruder. As you read the police report from**2007, (same door)** this officer observed **the door frame broken** on the inside of the **rear door and the deadbolt broke** as if somebody had **kicked or pushed** their way in. Id. **appendix N page 1,4. (2007 same door).**

Furthermore, to highlight the common practice of the **Lorain Police** Department's reporting of detail, to journalize damage caused in burglaries please see, **appendix O under section narrative supplement at a page 3 thereof (2006 door report).** Here in 2006 the reporting officer stated: **"door frame to inner and outer door shattered."** This further proves that on the night in question at appendix M in the November 2008, **(rape police report)** the door was never kicked in, as the witness later testified in court. This evidence compared with **appendix M (2008 rape report) and appendix N (2007 same door report)** has clear impeachment value because the police reports are involving the **same door and "method of entry,"** and the two report are in **stark contrast** to one another as the State's sole witness testified that the door was kicked in by Harris on the night of the November 2008 rape incident. This **Brady evidence** withheld from the record would have put the case in such a different light cause it further highlights that the State's sole witness testimony is unreliable.[2]

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[2] Harris was found **not guilty** beyond a reasonable doubt by the Court of **felonious assault,** and **Kidnapping** which are part of the key elements of the

Moreover, the alleged victim- during her testimony on cross- examination- **perjured herself** by actually revealing a different person (other than Harris) who actually caused the damage to the back-door of her residence on November 12, 2008, the night of the allege rape: where she was being question about informing Harris that she had a boyfriend. To Wit: (on the record as follows) Q: and you lied to him about having this particular boyfriend, did you not? Mr. Pierre: Objection. She answered no. A: No. Q: So you told him that you were sleeping with some guy from Chicago? A: **"He was there. He had kicked the door in. I mean, everything. He was knocking on the door."** Q: "The guy from Chicago?" **A: "Yeah."** (T.p. ID# 196)

Furthermore, during all the apparent noise Harris would have surely caused by kicking the apartment (duplex) door loose; **which contained a deadbolt,** to gain entry; such noise did not alarm her neighbor; **nor wake any of her three children that was in bed at the time.** (T.p. ID#162).

Ironically, however, the victim had previously, come very close to being prosecuted for **fabricating an almost identical accusation** against Harris- there Ms. Taylor alleged that Harris had **broken into her residence and threaten to assault her with a knife** while she was carrying their third child. *And the only reason that she evaded prosecution was as a direct result of her being pregnant.* At the time of this incident she was **two months pregnant May 3, 2007**, and Harris was not aware she made these charges until he was pulled over by police two months later **July 5, 2007,** which made her **four months pregnant** by the time he was arraigned on these charges. See **appendix P at 3,5. (2007 same lie report) See also (T.p. ID# 178-179).** Ms. Taylor testified to the **age and birthdays** of their three children and this report form **2007** shows she was pregnant with their third child **born January 3, 2008.** (130- 131)

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incidents and testimony. Those **not guilty** verdicts further **vitiates** Harris' conviction in light of the facts within the November 2008 rape police report revealed that the **incident started at 11:30pm November 12, 2008 and lasted until 5:00am November 13, 2008.** The November 2008 rape police report **did not** report damage to the deadbolt and door frame as consistent with other reports pertaining to that type of burglary on that type of door and lock.

As Harris now stands convicted this time in 2008, she took her antics a step further: by adding a **rape allegation** for a more dramatic effect. Yet, Harris was **unlawfully prevented** from introducing this exculpatory evidence during his trial, and also **unjustly prevented** from thoroughly questioning her- so as to impeach her credibility- pertaining to the specifics of this event. To Wit on the record as follows. (the alleged victim while under cross-examination by defense counsel). Q: Hi. Now you were asked about these incidents with Isaiah in chronological. Correct? A: Yes. Q: And would you agree with me some of the problems you had as a couple go back to 2002. Correct? A: Yes. Q: and early on in 2002 he was accused of domestic violence by you. Correct? Mr. Pierre: Objection. The Court: I'll overrule it. Q: Correct? A: Yes. Q: Did you tell Mr. Pierre or Det. Sivert about any of the police reports and incidents with the defendant, prior to the case that they asked about? A: From 2002? Q: Right. A: No. Q: **You recall you were actually going to be charged in Lorain Municipal Court. Correct?** Mr. Pierre: Objection. The Court: Overruled. A: I **believe so, yeah.** Q: **For lying to the prosecutor. Correct?** A: **"I..."** Q: Let me ask you this. It would be something pretty easy to remember, correct, if you were going to be charged. Right? A: Yes. (Mr. Rich hands the document to Mr. Pierre) Mr. Pierre: for the record, I just want to object to the use of defendant's exhibit 1. I **have never seen it.** The State did request reciprocal discovery, and it is not something that has ever been provided in this case. The Court: Let's see what it is. We don't have a jury, so I will hopefully be able to sort it all out. Q: I'm going to show you what has been marked as defendant exhibit 1. I want you to take a look at that. Do you recognize the date on here? A: Yes. Q: August 5, 2002. I want you to, not read out loud, but I want you to read that statement to yourself. Mr. Pierre: I'm going to object. Is he trying to refresh her recollection? The Court: I'm waiting to see. We haven't gotten a question yet. (T.p. ID# 178-180).

In fact, the State did everything it could to **prevent Brady material** from being revealed on the record- i.e. The suppression of the evidence is attributed to the State as revealed on the record. *Exculpatory evidence that the State failed to turn over to the defense in spite of its duty under Crim. R. 16.* To Wit on the record as follows: Q: Do you recall she was going to be **charged** for lying to the police department? A: **Yes, in 2007**. Q: And when I provided

you all the discovery in this case, correct? A: Yes. Q: Do you recall ever getting that from the State of Ohio, that incident? A: No. Mr. Pierre: Objection. The Court: Sustained. Stricken. Mr. Pierre: Thank You. The Court: "Last time we cover that issue, Mr. Rich." Mr. Rich: Thank you, Your Honor. (T.p. ID# 226- 227).

Petitioner Harris exposed here, that the vitiation of the proceedings was solidified here, and any hopes of a fair trial ended here. When the Trial Judge said "Last time we cover that issue, Mr. Rich..." The Trial Judge and State's prosecutor are vitiators because they are okay with the fact that "there is favorable information that was available that should have been provided, and it wasn't. See (T.p. ID# 223-224).

Thus, as relevant to this case, U.S.C. Fed Rules Crim. Proc. R. 16 (a)(E)(i)(ii) permits the accused to inspect tangible evidence that is material to the preparation of his defense. See appendix Y.

In the case at bar within the official uniform incident report marked as appendix M, See at page 5, paragraph 1,2, and 3 (2008 rape police report), under narrative supplement it reveals the police initially responds to a menacing complaint. Also, it reveals Ms. Taylor knew of Harris' plans to go to trial for the March 26, 2008 and June 30, 2008 incidents.

This prior knowledge of Harris' plans to go to trial calls into question her motive to change the nature of the initial complaint from a misdemeanor menacing complaint to a first degree felony rape complaint. This is in addition to the fact that there is proof the door was not kicked in. Harris asserts non- harmless Brady-Chambers due process violations due to the fact the defense counsel was not allowed to cross- examine the State's sole witness about these revelations.

With respect to the March and June 2008 incidents that Harris was convicted of at trial, Ms. Taylor testified that Harris beat her up. (T.p. ID# 130-141). (The State theorized that it was out of jealousy or despair). Yet, within the official uniform incident report dated in 2002 marked as appendix Q See at first page thereof. (2002 stepbrother report) reveals four months after Ms. Taylor gave birth to their first child Isaiah Jr. Petitioner Harris learns that Ms. Taylor was sleeping with his stepbrother and with all the rage and hurt created by this type of betrayal. Harris did not react in

such a barbaric manner, such as beating or raping Ms. Taylor. (T.p. ID#222-223). See **appendix Q (2002 stepbrother report).** This evidence **eviscerates** the State's current theory that Harris is reckless and violently impulsive enough to do the current crimes Harris is convicted of now. This becomes clearer when each individual case and **motive** for the crimes is **not fully developed** by the State's theory, because Harris has **no criminal history.**

Speaking of history, the allege victim has a **history of fabricating** nearly identical charges from nearly identical stories that Harris is charged and convicted of now in relation to the March and June 2008 charges.[3] (without any other evidence but testimony from that witness). **See appendix R see at pages 3,5. (2003 same lie) under narrative supplement.** A 2003 police report, where it was reported by Ms. Taylor that Harris had a **gun (another weapon)** and **punched** and **kicked** her in the head before leaving the residence. The police then came to that address to speak with Ms. Taylor and she **did not have** any signs of being assaulted and she **did not wish** to press charges. **See appendix R, at pages 3,5. (2003 same lie) under narrative supplement.** Although these allegations were later dropped the seriousness to the complaint is directly related to and consistent with the seriousness of the false allegations Harris stands now convicted of. This **Brady evidence is directly in line** with Ms. Taylor's testimony that she will **lie** to achieve her end. See (T.p. ID# 186-187).

Moreover, directly after the March and June 2008, incidents Ms. Taylor testified that she would meet with Harris and have consensual sex (T.p. ID# 187-193) She also, admitted that she went to the **county jail to visit** Harris after he was charged in **all three cases.** (T.p. ID# 192-194). Yet, soon after Harris' conviction and to this **very day** Ms. Taylor comes to **visit Harris in prison** and

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[3] Prior to the 2008 incidents Harris (incidents Harris' is now convicted of) has **no criminal history** and the fact that Ms. Taylor has a proven **history for fabricating** nearly identical criminal charges on Harris, **was not fully** explored during trial due to the State's neglect of clear constitutional duty and fundamental fairness.

takes family pictures. See approved prison visitors list. See appendix S (March 30, 2021 Visit list at pages 1,2, and 3.[4]

Furthermore, this is during the time frame after the March and June 2008 incidents in another police report marked as appendix T (2008, 911 for no reason report, July 17, 2008 at page 4.) It reveals that Ms. Taylor will dial "911 emergency" for no reason at all. It was revealed that Harris did not threaten her or their kids in any way, and he did not come to her residence at that particular time. "She did not want to file a charge at the time she just wanted to know if Harris violated the protection order by requesting to see his children." Yet, considering the fact that at this very time it was revealed in trial testimony, that after the March and June 2008 incidents, Ms. Taylor testified that she would meet with Harris and have consensual sex. (T.p. ID# 187-193). This call raises some serious concerns to her motive for calling "911 emergency" during this time frame that her and Harris was having consensual sex and no charges being filed against Harris for violating the protection order, (this is an interesting power dynamic) this was the last call she made before the November 2008 rape report. This is during the same time period that she also, admitted that she went to the county jail to visit Harris after he was charged in all three cases. (T.p. ID# 192-194).

Now, before this Court is a rare and exceptional case of a fact-bound power dynamic between Harris, Ms. Taylor, and the State. Whenever, it is convenient for Ms. Taylor to use Harris for sex, come visit Harris in jail and prison, while controlling when he can be a father to their three children, in addition to holding the keys to his rights to life and liberty, she does what she wants. It's very rare you see a case like this, that the State endorse by withholding Brady evidence because it is convenient (like Ms. Taylor) to do so to maintain Harris' conviction.

Harris asserts that the Brady-Chambers due process violation are non-harmless and puts the State's case in a different light to undermine confidence in the outcome of his trial. Harris is entitled to equitable tolling of the statute of limitation, because Harris has made a credible showing of actual innocence with

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[4] It should be noted that to **this day she comes to visit Harris in prison** and is reluctant to tell the truth regarding Harris' conviction because **she fears she will be prosecuted** and charged with making false allegations.

"newly presented", trustworthy evidence this Court cannot have confidence in the outcome of Harris' trial in light of all the impeaching evidence.

A. UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

On September 28, 2017. Clerk Deborah S. Hunt did an **unpublished** merits review and denied (COA). **See appendix A at 3rd page 1st paragraph.**

The Sixth Circuit used case law that is in direct opposition to United States Supreme Court precedents used in **Brady v. Maryland, 373 U.S. 83, (1963); Giglio v. United States, 405 U.S. 150, (1972); Chambers v. Miss., 410 U.S. 284, (1973); Smith v. Cain, 565 U.S. 73, (2012); Wearry v. Cain, 136 S. Ct. 1002, (2016); and Strickler v. Greene, 527 U.S. at 281-82. (1999).**

The Sixth Circuit United States Court of Appeals stated: "Although the **trial record** shows that the **prosecution did not disclose** to Harris that K.T. had previously made domestic violence allegations against him that the **police determined were unfounded,** the record also shows that Harris' attorney acquired the information independently before trial. **Consequently,** the prosecution's failure to disclose the impeaching evidence was harmless". **See Carter v. Bell, 218 F.3d 581, 601, (6th Cir. 2000)** (Stating that there is **no Brady violation** if the information was available to defendant from another source.) **See appendix A at 3rd page 1st paragraph.**

However, Sixth Circuit precedents revealed in **United States v. Tavera, 719 F.3d 705,** the precedents set forth **"had defendant taken** any steps to pursue the information he admittedly possessed about Medoza's identity and his potentially exculpatory knowledge, the government would have been required to respond truthfully." **Because defendant did nothing, our precedents in Benge and Mullins absolve the government of responsibility."** See **Benge, 474 F.3d at 243-44; Mullins, 22 F.3d at 1371-72.** The Supreme Court rebuked the Court of Appeals for relying on such a **"due diligence requirement"** to undermine the Brady rule. **See Banks v. Dretke, 540 U.S. 668, At HN14,8.**

Therefore, the Sixth Circuit precedent relied on in **Carter v. Bell,** is clearly erroneous because the underlying precedents in **Benge and Mullins** absolve the government of responsibility cause defendant **did nothing** to take advantage of the knowledge of Brady evidence at trial. In Harris' case **what is so apparently distinguishable** is the fact that Harris **did attempt to use** the Brady evidence in open court, the suppression of the Brady evidence is attributed to the State. Thus, the resulting constitutional violations are **very harmful** to petitioner's fundamental rights to **due process.** And an **"affirmative due diligence" 4th prong requirement** to the Brady analysis, **succinctly put, does not apply in this case.** "[T]here are **three components** of **a true** Brady violation: [(1)t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching: [(2)] that evidence must have been suppressed by the State, either willfully or inadvertently; and [(3)] prejudice must have ensued." **Strickler, 527 U.S. at 281-82.** Taken together, the materiality and prejudice prongs do not require a defendant to show that disclosure of the evidence would have ultimately led to an acquittal. Instead, the defendant **must establish only that in absence** of the evidence **he did not receive a fair trial**, "understood as a trial resulting in a verdict worthy of confidence." **Kyles, 514 U.S. at 434.** If the undisclosed evidence "could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict, "then a Brady violation has occurred." See **id. at 435.** See also, **Smith v. Cain, 132 S. Ct. 627, 630, 181 L Ed 2d 571, (2012) Internal quotation marks omitted)** ("[E]vidence is material within the meaning of Brady when there's reasonable probability that, had the evidence been disclosed, the result of the proceeding would have been different.") "A reasonable probability does not mean that the defendant would more likely than not have received a different verdict with the evidence, **only that the likelihood of a different result is great enough to undermine [] confidence in the outcome of the trial." Id. At 630** (internal quotation marks omitted.)

"Impeachment evidence may be considered "material" for purposes of **Brady when the government's case depends almost entirely on a witness's testimony,** without which, there could be

no indictment and **no evidence** carry the case to a jury." See **Giglio, 405 U.S., at 154-55. (added emphasis)**

The right of an accused in criminal trial to due process is, in essence, **the right to a fair opportunity to defend against the State's accusations.** The rights to confront and cross- examine witnesses and to call witnesses in one's own behalf have long been recognized as **essential to due process...** The right of cross-examination **is more than a desirable rule** of trial procedure. It is **implicit** in the constitutional rights of confrontation, and helps assure the **'accuracy of the truth- determining process'...** It is, indeed, **'an essential and fundamental requirement** for the kind of fair trial which is this Country's constitutional goal.' See **Chamber v. Mississippi, 410 U.S. 284, 294 (1973) (cites omitted).**

The crux of what the "affirmative due diligence" 4th prong requirement to the Brady analysis used in some form or fashion by 8 out of 12 Circuits, is **defendant's actions** in taking advantage of the knowledge of the Brady evidence at trial. See **Benge, 474 F.3d at 243-44; Mullins, 22 F.3d at 1371-72.** What is **distinguishable** in Harris' case is the fact that Harris **did attempt to use** Brady evidence in open court. The suppression of the Brady evidence is attributed to the State.

The eight different United States of Appeal Circuits with controlling Circuit law that contravenes "clearly established" United States Supreme Court precedent with an "affirmative due diligence" 4th prong requirement to the Brady analysis are the **1st, 2nd, 4th, 5th, 6th, 7th, 8th, and the 11th**, appeal circuit courts.[5]

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[5] **United States v. Mullins, 22 F.3d 1365, See HN5 (6th Cir,)** The government's failure to disclose potentially exculpatory information does not violate Brady "where a defendant **'knew or should have known** the essential facts permitting him to take advantage of any exculpatory information,' or where the evidence is available to defendant from another source." **United States v. Parker, 790 F.3d 550, See (HN6 4th Cir.) United States v. Brown, 650 F.3d 581, See (HN1, 5th Cir.) Ellsworth v. Warden, N.H. State Prison, 333 F.3d 1, See (HN7, 1st Cir.) United States v. Le Roy, 687 F.2d 610, See (HN8, 2nd Cir.)**

United States v. Roy, 781 F.3d 416 See (*10, 8th Cir.) There was no Brady [**10] violation here. **"The government does not suppress evidence in violation of Brady by failing to disclose evidence to which the defendant had access through other channels."** United States v. Santisteban, 501 F.3d 873, 877 (8th Cir. 2007) (alteration omitted), quoting United States V. Zuazo, 243

The four different United States of Appeal Circuits **along with** the **United Supreme Court** that **never required or recognized** a 4th or 5th prong to the Brady analysis with an "affirmative due diligence" requirement, are the **3rd, 9th, 10th, and D.C. Circuit.** "The prosecutor's obligation to turn over evidence **in the first instance stands independent** of the **defendant's knowledge** in this case, the fact that **defense counsel knew or should have known is irrelevant** to whether the prosecution had an obligation to disclose the information." **See United States v. Howell, 231 F.3d 615, 625, Also HN7,8, and 9.**[6]

F.3d 428, 431 (8th Cir. 2001) (internal quotation marks omitted). See United States V. Ladoucer, 573 F.3d 628, 636 (8th Cir. 2009)

Carvajal v. Dominguez, 542 F.3d 561, See (HN5, 7th Cir.), While most commonly viewed as prosecutor's duty to disclose to the defense, the duty imposed pursuant to Brady extends to the police and requires that they similarly turn over exculpatory/impeaching evidence to the prosecutor, thereby triggering the prosecutor's disclosure obligation. A Brady suppression occurs when the government fails to turn over even evidence that is known only to police investigators and not to the prosecutor. A Brady violation can be broken down into three basic elements: **(1)** the evidence at issue is favorable to the accused, either being exculpatory or impeaching; **(2)** the evidence must have been suppressed by the government, either willfully or inadvertently; and **(3)** there is a reasonable probability that prejudice ensued—in other words, materiality. Evidence is suppressed when **(1) the prosecutor fails to disclose the evidence in time for the defendant to make use of it, and (2) the evidence is not otherwise available to the defendant through the exercise of reasonable diligence.** Evidence is material if there is a reasonable probability that, hade the evidence been disclosed to the defense, the result of the proceeding would have been different.

See United States v. Rigal, 740 Fed. Appx 171 See (HN3, 11th Cir.) To establish a Brady violation, a defendant must show that **(1)** the government possessed evidence favorable to her; **(2) she did not possess the evidence and could not obtain it with reasonable diligence; (3)** the government suppressed the favorable evidence; and **(4)** the evidence was material. For Brady purposes, evidence is material if a reasonable probability exists that, had the evidence been disclosed, the outcome of the proceeding would have been different. A reasonable probability is a probability that is sufficient to undermine confidence in the outcome.

[6] The **government admits** that it **learned of the mistake in the police reports before trial and did not** reveal the error to the defense. Nevertheless, the government argues that Howell is not entitled to a mistrial for three reasons: **(1)** because Howell **knew** that the money was actually recovered from him, the government was under no obligation to disclose the information **[*625]** to the defense; **(2)** the correct information was inculpatory in that it suggested that

The eight different appeal circuit court including the 6th Circuit, (Harris' court) are contravening stare decisis. **See Ramos v. Louisiana, 140 S. Ct. 1390 See, *1411, *1403.** [7] "Stare decisis isn't supposed to be the art of methodically ignoring what everyone knows to be true." R. Cross & J. Harris, Precedent in

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Howell committed the offense, and therefore the government was under no duty to disclose the information to the defense; and **(3)** even if the mistakes in the reports should have been disclosed, Howell was not sufficiently prejudiced to warrant a mistrial. **We conclude [**23] that the government's first two arguments are baseless,** but that the third has merit, and therefore will not disturb his conviction. **HN7** Consonant with the special role the American prosecutor plays, the Supreme Court in Brady v. Maryland held "that the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, irrespective of the good faith or bad faith of the prosecution." 373 U.S. 83, 87, 83, S. Ct. 1194, 10 L. Ed. 2d 215 (1963). Since Brady, the Court has held that the duty is applicable **even though there has been no request by the accused,** United State v. Bagley, 473 U.S. 667, 676, 87 L. Ed. 2d 481, 105 S. Ct. 3375 (1985), and that rule covers information **"known only to the police** investigators and not the prosecutor. [**22] "Kyles v. Whitley, 514 U.S. 419, 438, 131 L. Ed. 2d 490, 115 S. Ct. 1555 (1995).

More recently, the **Supreme Court clarified the three elements of a "true" Brady violation:** "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." **Strickler, 527 U.S. at 281-82**.

The government's contention that it had **no duty to disclose** the mistake to the defense **because Howell knew the** truth and could have informed his **counsel is wrong. HN8** The availability of particular statements through the defendant himself **does not negate** the government's duty to disclose. See United States v. McElroy, 697 F.2d 459, 465 (2d Cir. 1982). Defendants often mistrust their counsel, and even defendants who cooperate with counsel cannot always remember all of the relevant facts or realize the legal importance of certain occurrences. See id. **HN9** Consequently, **"defense counsel is entitled to plan his trial strategy on the basis of full disclosure by the government regardless of the defendant's knowledge or memory of the disclosed statements.' Id.**

[7] **Stare decisis isn't supposed to be the art of methodically what everyone knows to be true.** Of course, the precedents of the United States **Supreme Court warrant deep respect as embodying the considered views of those who have come before.** But stare decisis has never been treated as an inexorable command. And the doctrine is at its **weakest when courts interpret the United States Constitution** because a mistaken judicial interpretation of that supreme law is often practically impossible to correct through other means. To balance these consideration, when it revisits a precedent the Supreme Court has traditionally considered the quality of the decision's reasoning; its consistency with related decisions; legal developments since the decision; and reliance on the decision.

English Law 1 (4th ed. 1991) (attributing this aphorism to Jeremy Bentham).

The truth that the 6th Circuit **methodically ignored** was the trial court **prosecutor's obligation** under Brady and that the suppression of all that evidence is attributed to the State.

"Stare Decisis promotes the evenhanded, predictable, and consistent development of legal principle, fosters reliance on judicial decisions, and contributes to the **actual** and **perceived integrity** of the judicial process..." **See Gamble v. United States, 139 S. Ct. 1960, at HN4.**

Petitioner Harris asserts that today in America **any Court or Agency can hide evidence and the outcome will be predicated on which circuit you were charged with a crime in.** On a fundamental question of law such as this, this shouldn't be the case and it is today. **66.6% or eight out of twelve** United States Circuit Appeals Court are in violation.

Sixth Circuit Clerk Deborah S. Hunt did a merits review that's **unpublished** and that very act, not only violated the aforementioned constitutional statutes and Supreme Court case law. The unpublished act is **without jurisdiction. See Buck v. Davis, 137 S. Ct. 759 See HN4, 5.**[8]

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[8]**HN4 A state prisoner** whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal. Federal law requires that he first obtain a certificate of appealability (COA) from a **circuit justice or judge.** 28 U.S.C.S. § 2253(c)(1). A COA may issue only if the applicant has made a substantial showing of the denial of a constitutional right. 28 U.S.C.S. § 2253(c)(2). Until the prisoner secures a COA, the Court of Appeals may not rule on the merits of his case.

HN5 The certificate of appealability (COA) inquiry is not coextensive with a merit analysis. At the COA stage, **the only question** is whether the applicant has shown that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could concluded the issues presented are adequate to deserve encouragement to proceed further. This threshold question should be decided without full consideration of the factual or legal bases adduced in support of the claims. When a court of appeals sidesteps the COA process by first deciding the merits of an appeal, and then justifying it's denial of a COA based on its adjudication of the actual merits, **it is in essence deciding an appeal without jurisdiction.**

Petitioner Harris declares that even though Sixth Circuit Clerk Deborah S. Hunt **acted in ultra vires. See appendix L.** The more troubling fact of the matter is the controlling Sixth Circuit case law the clerk relied on. This situation is made clear in **United States v. Tavera, 719 F.3d 705.** As dissenting Sixth Circuit Judge Eric L. Clay clearly pointed out. **See dissent, (3rd paragraph).**[9]

B. ACTUAL INNOCENCE AND BRADY

Petitioner Harris implores this court in this case to justify the exercise of its discretionary powers also because, "there is a circuit split about whether the **"new"** evidence required under **Schlup** includes only **"newly discovered"** evidence that was not available at the time of trial, or broadly encompasses **all** evidence that was not presented to the fact-finder, i.e., **"newly presented"** evidence. **See Cleveland v. Bradshaw, 693 F.3d 626, (**20).**[10]

In this case Harris would like to highlight another major problem in Ohio Courts for petitioners like Harris who have an

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[9] If we were writing on a blank slate or applying Brady without considering the subsequent controlling case law of the Sixth Circuit, the majority's holding might well be sustainable. **However, Brady is not the only star in the constellation of cases that we are obliged to [**25] consider and faithfully apply. Even if many of the controlling cases are unwise or ill-conceived in light of the fairness concerns that underpin Brady, we are no less bound to adhere to them.** A prior published panel decision "remains controlling authority unless an inconsistent decision of the United States Supreme Court requires modification of the decision or this Court sitting en banc overrules the prior decision." Rutherford v. Columbia Gas, 575 F.3d 616, 619 (6th Cir. 2009). Furthermore, "[i]n the Sixth Circuit, as well as all other federal circuits, one panel cannot overrule a prior panel's published decision." United State v. Washington, 127 F.3d 510, 517 (6th Cir. 1997).

[10] There is a circuit split about whether the **"new"** evidence required under **Schlup** includes only **newly discovered** evidence that was not available at the time of trial, or broadly encompasses **all** evidence that was not [**20] presented to the fact-finder during trial, i.e. **newly presented evidence. See Connolly v. Howes, 304 F. App'x 412, 419 (6th Cir. 2008) (Sutton, J., concurring). Our opinion in Souter suggests that this Circuit considers "newly presented" evidence sufficient.** See 395 F.3d at 596 n.9. However, just as Judge Sutton stated in his concurrence in Connolly, "we need not address... **whether there is a meaningful difference between 'newly discovered' and 'newly presented' evidence,"** 304 F. App'x at 419, because the evidence Cleveland submits to demonstrate his innocence is **analogous** to the evidence considered **"new"** by the **Schlup Court.**

overt Brady violation on the record, and where the desire to file a post-conviction is at 1000%. **See appendix D (Magistrate Judge's order)** Greg white's order granting leave to amend petition to include two additional grounds for relief, February 18, 2015. Also, **See appendix E, (Magistrate Judge's R&R see at page 11, paragraph 5.)** In **Harris v. Clipper, 2015, U.S. Dist. Lexis 187060** stating: "Simply put, the evidence Harris would like to add now (and which he would have liked to present at trial) **may or may not** have had an impact on the trial judge's assessment of K.T.'s credibility. Issues of credibility are reserved to the finder of fact." **Also, See appendix B (Federal District rehearing at page 3, paragraph 1,2, and 3).** This opinion defies all logic and **Giglio, 405 U.S., at 154-55 (added emphasis)** When the District Court Stated: **"impeachment evidence is not sufficient to establish a gateway claim of innocence."** Harris maintains, the cases cited by the District Court are used **out of context** because the impeachment history and relationship between the alleged victim and defendant are always **intrinsic.**

"Pieces of evidence are **not** to be viewed in **a vacuum;** rather, they are viewed in relation to the other evidence in the case." **See Davis v. Lafler, 658 F.3d 525, at HN10 (6th Cir. 2011).** Ms. Taylor's testimony was called into question with **very limited** cross-examination on the record. So with the **wealth of Brady** evidence **withheld** from the record the only way Harris' conviction could stand is in **a vacuum** detached from logic, context, and the reality that Ms. Taylor is a proven liar, that lied in the past and is lying now. This begs the **question** how can any reasonable Court feel confident with a verdict, or find Harris guilty of the essential elements of the crime(s), beyond a reasonable doubt, **by connecting dots,** that was said on the record, (under direct State review), it was **based solely on inferences** made by that witness's trial testimony? (explaining that a state court's decision **is not unreasonable** if it took the controlling standard "seriously and produce[d] an answer **within the range** of defensible positions"). **Id. at [*535] (internal quotation marks omitted).**

Harris would like to say that the former head prosecutor, for **Lorain County, Ohio**, turned United States Magistrate judge Greg White's characterization, was at best **off key** and **short sighted** to **existing** United States Court of Appeals for the Sixth

Circuit precedent and **future** United States Supreme Court Brady case law when he made that statement in 2015.

"Issues concerning the admissibility of evidence are state law question and not open to challenge on collateral review **unless the fundamental fairness** of the trial has been so impugned as to amount to **denial of due process**" See **Bell v. Arn, 536 F.2d 123 (6th Cir. 1976). See Brofford v. Marshall, 751 F. 2d 845 (1985 See HN11, 6th Cir. 1985)**

"To prevail on his Brady claim, Wearry need **not show** that he 'more likely than not' would have been acquitted had the new evidence been admitted." **Smith v. Cain, 565 U.S. 73, 75, 132 S. Ct. 627, 630, 181 L. Ed. 2d 571, 574 (2012) (internal quotation marks and brackets omitted).** "He must **only show** that the new evidence is sufficient to 'undermine confidence' in the verdict. Ibid.[6] Given this legal standard, Wearry can prevail even if, as the dissent suggest, the undisclosed information **may not** have affected the jury's verdict." **Wearry v. Cain, 136 S. Ct. 1002, (*1006)**

Harris would like to affirm this is **analogous** with the actual innocence **Schlup** requirements for first time habeas petitioners like Harris to overcome **28 U.S.C.S. §2244 (d)(1)(D). See appendix K.**

Mc Quiggin v. Perkins, 569 U.S. 383, See HN8- "No showing of innocence required". Also see, HN10,15,16,1,7, and 12.

Under Carriger, **HN6** impeachment evidence, **by itself**, can demonstrate actual innocence, where it gives rise to "sufficient doubt about the validity of [the] conviction." Carriger, 132 F.3d at 478; see also Schlup, 513 U.S. at 330 ("Under the gateway standard..., [*677] the **newly presented** evidence may indeed call into question the credibility of the witnesses presented at trial.") **Sistrunk v. Armenakis, 292 F.3d 669, at HN6.**

In habeas proceedings, a claim of actual innocence requires the introduction of new reliable evidence – whether it be exculpatory scientific evidence, trustworthy eyewitness accounts,

or critical physical evidence—**that was not presented at trial. See Sistrunk v. Armenakis, 292 F.3d 669, at HN5.**

In Ohio, a case without any physical evidence, were the credibility of the witness's testimony is central to up hold a conviction. Today in Ohio the prosecutor has **no** Brady obligations, because the trial court can **suppress fundamental** evidence that only refer to a witness' **veracity. See appendix W (Rule of Evid. R. 608(A)(1))** and then **vitiate** the scope of cross-examination. **See appendix X under Rule 611. Mode and order of interrogation...(B).** On the record without any consequence.

Then the **State appointed appellate counsel** read the record and clearly seen a Brady violation **on the record** in the trial transcripts. Then **fails to tell** defendant that the **evidence off the record** can support [his] direct appeals claim that the (state appointed) appellate counsel decided to raise **independent of Harris' input, stating:**

"This verdict in this case is against the **sufficiency and manifest weight** of the evidence and should be reversed because it violates the 5th, 6th and 14th amendments to the United States Constitution, and Article 1, Section 10 of the Constitution of the State of Ohio. Because the witness in this case has a long history of telling lies about the defendant in this case". **See appendix G, 4th page thereof.**

That Brady evidence would have negated any inference made by that testimony during direct appeal. **See appendix H, State v. Harris, 2010- Ohio- 1081, (at *p1 through *16).** While the State affirms Harris' conviction on the **sufficiency of the evidence** grounds, the State **relied solely** on **inferences** drawn from that uncontested testimony, to find Harris guilty of every essential element of the crimes beyond a reasonable doubt. "And this type of claim can almost always be judged on the written record without need for an evidentiary hearing in the federal court." **Jackson v. Virginia, 443 U.S. 307, at 322, also see HN9,10, and 11.** Especially, in light of the fact Harris was found **not guilty** beyond a reasonable doubt of **felonious assault** and **kidnapping,** while the State **withheld** Brady evidence.

C. REASON FOR GRANTING THE WRIT

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which "appeal is a clearly inadequate remedy." **Ex parte Fahey, 332 U.S. 258, 260 (1947). 28 U.S.C.S. §2244(d)(1)(D) See appendix K,** requires (first time) habeas petitioners to file a claim within one year of the time in which **new evidence** could have been **discovered** through the exercise of due diligence. "It would be bizarre to hold that habeas petitioner who asserts a convincing claim of actual innocence may overcome the statutory time bar **§2244(d)(1)(D)** erects, yet simultaneously encounter a court- fashioned diligence barrier to pursuit of her petition." **Mc Quiggin v. Perkins, 569 U.S. 383, at HN13.**

Harris points out the **classification of the evidence is key here.** In the Sixth Circuit there is a Circuit split about whether the **"new"** evidence required under **Schlup** includes only **newly discovered** evidence that was not available at the time of trial, or broadly encompasses **all** evidence that **was not presented** to the fact-finder. i.e., **"newly presented"** evidence. **See Cleveland v. Bradshaw, 693 F. 3d 626, at(**20).**

Harris affirms his case is extraordinary because a unique chain of events coupled with a legal environment made from "controlling case law that's unwise or ill-conceived in light of the fairness concerns that underpin Brady" **United States v. Travera, 719 F.3d 705 (6th Cir. 2013) dissent Judge Eric L. Clay.**

Rule 20 **(See appendix V)** of this court requires a petitioner seeking a writ of habeas corpus demonstrate that **(1)** "exceptional circumstances warrant the exercise of this power", and **(2)** adequate relief cannot be obtained in any other form or from any other court **(3)** "the writ will be in aid of the court's appellate jurisdiction." Further, this court's authority to grant relief is limited by **28 U.S.C.S. § §2254(B)(i)(ii)(d)(1) and 2241(c)(3). See appendices I and J.** And any considerations of a first time habeas petition must be "imfor[ed]" by **28 U.S.C.S. §2244(d)(1)(D)**

Mr. Harris' last hope for an evidentiary hearing, new trial, or **unconditional habeas** relief regarding his **Schlup** actual innocence **"Gateway"** claim lies with this Court. His case presents exceptional circumstance that warrant exercise of this Court's discretionary powers.

I. STATEMENT OF REASON FOR NOT FILING IN THE DISTRICT COURT

As required by this Court's Rule **20.1, 20.4, and 28 U.S.C.S. §§2241 and 2242.** Mr. Harris states that he has not applied to the District Court because the Sixth Circuit Court prohibited such an application. **See appendix A.** Mr. Harris exhausted his state remedies for his **Schlup** actual innocence **"gateway"** claim because either there is an absence of available state corrective process; or circumstances exist that render such process ineffective to protect the rights of the applicant.

Since Mr. Harris exhausted his State remedies and was denied permission by the Sixth Circuit Court of Appeals for a certificate of appealability, **he cannot obtain relief in any other form or any other court.**

II. THE EXCEPTIONAL CIRCUMSTANCES OF THIS CASE WARRANT THE EXERCISE OF THIS COURT'S JURISDICTION

The courts that have reviewed Mr. Harris' **Schlup** innocence claim have been sharply divided. **Eight out of twelve or 66.6%** United States of Appeal Circuit Courts have controlling case law that **"violates clearly established"** United States Supreme Court case precedent with an "affirmative due diligence" 4th prong requirement to the **Brady analysis.** Also, Mr. Harris highlights a Sixth Circuit Court split about whether the **"new"** evidence required **under Schlup** includes only **"newly discovered"** evidence that was not available at the time of trial, or broadly encompasses **all** evidence that was not presented to the fact-finder, i.e. **"newly presented"** evidence.

What makes Harris' case **exceptional** is the fact that whether the **classification** of the evidence is **newly discovered** or **newly presented,** it's all **predicated** on the **State's suppression** of **Brady-Chambers** evidence at trial.

Furthermore, in light of **unwise** or **ill-conceived** controlling case law that was applied in Harris' case, coupled with the fact, the mother of his three children has displayed an **undeniable fact-bound pattern** to lie and maintain close contact with Mr. Harris, is **rare** and **exceptional,** and would aid and warrant the exercise of this Court's appellate jurisdiction.

Foremost, Harris maintains that the **"writ will be in aid of the Court's appellate jurisdiction,"** because the Court has jurisdiction to review denials of applications for certificates of appealability, because those denials are judicial in nature. **See Hohn v. United States, 524 U.S. 236, (1998) (cites omitted). Also, See Ex parte Milligan, 71 U.S. 2, 4 wall. 2, 110-113, 18 L. Ed. 281, (1866),** which reasoned that a petition for habeas corpus is a suit because the petitioner seeks **"that remedy which the law affords him"** to recover his liberty.

Moreover, Harris declares that in theory and in public, every reasonable mind cherishes **the right to due process.** Then in a blink of an eye, when adding the strong stigma of a criminal charge to the mix. **Now, who really cares about due process? The accuser or the accused, the Judges or the Prosecutors, the Legislatures or the Advocacy Groups?** The truth of the matter is nobody cares, until it's you who needs due process, or your son or daughter who needs due process to work. **This Court holds:** "Our system of law has always endeavored to prevent **even the probability** of unfairness..." **Estes v. Texas, 381 U.S. 532, See HN8, and HN9 (1965) (add emphasis)**

Today in 2021, Harris affirms, that nobody is safe because everything is for sport, there is nothing sacred, everything is up for grabs, and **fundamental rights have eroded for finality.** Nowhere in the sense of "everything is up for grabs and nothing is sacred" is that statement made evermore clear, then in recently decided case **Mays v. Hines, 141 S. Ct. 1145, at [***10].** Where the judgment of the Sixth Circuit was reversed.

In a classic, **"he said, she said"** case such as Harris' and in light of the Sixth Circuit's arbitrariness, petitioner Isaiah S. Harris, Sr. invokes this Court's broad and discretionary power, to remand this case to the District Court or Sixth Circuit Court with instruction to grant an unconditional writ of habeas corpus. **(1)** The record is devoid of proof by the State that defendant sexually

penetrated the alleged victim while using force. **(2)** The record does not support retrial because the State's case **rest with Ms. Taylor's 13-year-old (to date)** incredible testimony. **Lall v. Bergh. 556 Fed. Appx. 449, See HN3,4, and 5. Unconditional habeas granted. Also, See Brown v. Palmer, 441 F.3d 347, at [**15].**

Now, Harris comes to the United States Supreme Court, praying for relief from a classic "railroad" unconstitutional conviction. Only in America can the rich and the poor alike bring forth their claims, aspire to be heard, get equal attention and treatment under our constitutional law. Harris avers, **if he was charged with a crime in one of the four remaining** United States of appeal circuits **without** an "affirmative due diligence' 4th prong requirement to the Brady analysis, **he would have been home years ago.**

Foremost, because of Harris' **serendipitous** argument, of the **analogous affect** his **Brady-Chambers** claim will have on his **Schlup** innocence claim, to overcome or to satisfy, **28 U.S.C.S. §§ 2253(c)(1)(c)(2) COA, and 2244(d)(1)(D) AEDPA's** one year-time limitation for first time habeas petitions. Because **none of** the standards of reviews imposed on Harris' constitutional claims **require** absolute certainty in regards to his innocence.

It looks like Harris will never have his day in Court, because of State **vitiators,** and their total disregard for Supreme Court precedent, and criminal procedure.

Moreover, whether the **classification** of the evidence is **newly discovered** or **newly presented,** it is all predicated on the State's **suppression** of Brady-Chamber evidence at trial. Harris prays that this **fact does not** leave him unprotected by our constitutional law, because that would be fundamentally unfair, un-American, and **not akin to the standards of justice** that every citizen is guaranteed to enjoy in America today.

Subsequently, prior to Harris' classic "railroad" unconstitutional conviction, he has **no criminal history.** Speaking of history, the alleged victim has a **history of fabricating nearly identical** charges from nearly identical stories that Harris is charged and convicted of now in relation to all the charges from **2008. If Harris had** a violent criminal history with Ms. Taylor the State would relish **in its relevance to this case** and could use any similar violent crime within the **past ten-years** of the **2008** incidents. **But, because Harris doesn't have** a violent criminal history with Ms. Taylor, and she's the one with a **history of almost being criminally charged** for making false claims, **it would defy all logic to think that's irrelevant to this case,** or to **analyze** all the facts surrounding Harris' case **in a vacuum, to demur** the **exceptional** and **intrinsic** nature of his case.

This leaves one to ask, does a self-taught pro se pauper's right to life and liberty matter today in America, does his aspirations and dreams matter today in America, or will he be forever silenced, as just another name or number in a stack of paper?

In despite of Harris' situation these facts remain forever, **(1)** that Harris did not get a fair trial, **(2)** every appeals review has been objectively unreasonable in light of the facts and law, **(3)** this conviction rest with the credibility of a witness that's a proven lair, **(4)** and the government suppressed this evidence, **(5)** the appeal court's **methodically ignored** what everyone knows to be true, that Harris is guaranteed a fair trial in America today. **"A measure of justice, is not the same as equal justice or equal protection of the law."** Harris prays the United States Supreme Court grants unconditional habeas relief.

D. CONCLUSION

The petition for writ of habeas corpus *in re Isaiah S. Harris, Sr.* should be unconditionally granted.

Respectfully Submitted,

Isaiah S. Harris Sr.

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