21-7248

No. 22-

In The

SUPREME COURT OF THE UNITED STATES

In re Isaiah S. Harris Sr., Petitioner

PETITION FOR WRIT OF MANDAMUS

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

Pro se Litigant

Solicitor General of the United States,
Room 5614, Department of Justice,
950 Pennsylvania Ave., N.W.,
Washington, DC. 20530-0001

QUESTION(S) PRESENTED

Harris' case presents exceptional circumstances that warrant exercise of this Court's discretionary power. Because of the willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this court, has allowed U.S. Supreme Court Case Analyst Mr. Clayton R. Higgins, Jr., and Sixth Circuit Clerk Ms. Deborah S. Hunt to become the judge, jury and executioner of Harris' protected constitutional rights to get proper redress in federal court pursuant to ***§§2254(B)(i)(ii)(D)(1) and 2241(c)(3).*** Which has had a detrimental effect on Harris' meritorious constitutional Brady-Chambers due process claims, leaving no other remedy but mandamus, for the right to issuance of the writ is clear and indisputable.

(1) Is it clear and indisputable that, U.S. Sixth Circuit Appeal Court Clerk Deborah S. Hunt ***acted in ultra vires*** in her unpublished COA merits review, when she denied Harris' constitutional claims, in light of federal statutory policy? ***See §2253(c)(1)(c)(2) in comparison to Cir. R. 45. Duties of Clerk-Procedural Orders.***

(2) Is it clear and indisputable that, U.S. Supreme Court Case Analyst Mr. Higgins, and U.S. Court of Appeals for the Sixth Circuit Clerk Ms. Hunt, went beyond professional norms and violated Harris' ***1st and 14th U.S. Const. Amend.*** freedom of speech to file grievance against the government to get redress and equal protection of law?

(3) Is it clear and indisputable that, the issuance of the writ is appropriate in this case because exceptional circumstances from the respondents have amounted to a judicial ***"usurpation of power," or a "clear abuse of discretion,"*** justifying the invocation of this extraordinary remedy?

(4) Is it clear and indisputable that, it is agreeable to principles and usages of law, to compel the performance of a ministerial act, under the U.S. Sixth Circuit Appeal Court's jurisdiction for a de novo certificate of appealability of Harris' claims, in light of the facts and law presented in this action?

LIST OF PARTIES

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

Just to be clear, The United States Supreme Court Case Analyst Clayton R. Higgins, Jr., and The United State Court of Appeal for the Sixth Circuit Appeals Court Clerk is Deborah S. Hunt, will be represented by The United States Solicitor General. I don't know the Solicitor's personal name, be he/she was severed by title and address. The Warden of Richland Correctional Institution is Kenneth Black, and Petitioner Prison Inmate is Isaiah S. Harris Sr.

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PETITION FOR WRIT OF MANDAMUS

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 for a proper COA determination in compliance with firmly established federal statutory law pursuant to Cir. R. 45., and §2253(c)(1)(c)(2), and to compel U.S. Supreme Court Case Analyst Clayton R. Higgins to recuse himself for failure to adhere to this Court's Rule 14.5 and 1st Amendment of the United States Constitution.

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 STATUTORY PROVISIONS

THE FIRST AMENDMENT OF THE UNITED STATES CONST. STATES IN RELEVANT PART: Congress shall make no law... abridging the freedom of speech... or the right to petition the Government for redress of grievances.

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 witness against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

THE FOURTEENTH AMENDMENT 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.

CONSTITUTINAL AND STATUTORY PROVISIONS INVOLVED

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

Barton v. Warden, S. Ohio Corr. Facility, 786 F.3d 450, (6th Cir. 2015)

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

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

Bowen v, Johnston, U.S. 19, (U.S. 1939)

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

Brofford v. Marshall, 721 F.2d 845, (6th Cir. 1985)

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

Burns v. Ohio, 360 U.S. 252, (U.S. 1959)

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

Castro v. United States, 540 U.S. 374, (U.S. 2003)

Chambers v. Mississippi, 410 U.S. 283, (U.S. 1973)

Cheney v. United States Dist. Court, 542 U.S. 367, (U.S. 2004)

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

Cotton v. Clerk, 2015 U.S. Dist. LEXIS 106060 (6th Cir. 2015)

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)

Douglas v. California, 372 U.S. 353, (U.S. 1963)

Estes v. Texas, 381 U.S. 532, (U.S. 1965)

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

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

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

Gunner v. Welch, 749 F.3d 511, (6th Cir. 2014).

Hemphill v. New York, 2022 U.S. LEXIS 590, (U.S. 2022)

Hill v. Mitchell, 2012 U.S. Dist. Lexis 40312, (6th Cir. 2012)

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

House v. Bell, 547 U.S. 518, (U.S. 2006)

EXCEPTIONAL CIRCUMSTANCES THAT WARRANT THE RIGHT TO ISSUANCE OF THE WRIT IS CLEAR AND INDISPUTABLE
(Statement of the Case)

This Court's power to grant an extraordinary writ is very broad but reserved for exceptional cases in which **"appeal is clearly inadequate remedy." See *Ex parte Fahey, 332 U.S. 258, at 260 (U.S. 1947). See appendixes I and J 28 U.S.C. §§2241 Power to Grant Writ and 2254 State Custody Federal Remedies.***

With due regard, not merely for the reviewing functions of this Court, but for the **"drastic and extraordinary"** nature of the mandamus remedy. ***See Ex parte Fahey, 332 U.S. 258, at 259. (U.S. 1947).*** "These should be resorted to only where appeal is clearly inadequate remedy. We are unwilling to utilize them as substitutes for appeals." ***Id, at [*260].***

> *"Although courts have not confined themselves to an arbitrary and technical definition of **"jurisdiction"**, only exceptional circumstance amounting to a judicial **"usurpation of power", or a "clear abuse of discretion"**, will justify the invocation of this extraordinary remedy",* ***Cheney v. United States Dist. Court, 542 U.S. 367, at HN6,HN7 (U.S. 2004).***[1]

Harris' case has an extremely extraordinary criminal rule and appellate rule posture, and it is nothing more than a direct reflection of the respondent(s) United States Supreme Court Case Analyst Mr. Clayton R. Higgins, Jr. and United States Court of Appeals for the Sixth Circuit Clerk Ms. Deborah S. Hunt's on going conspiracy to violate Harris' protected first amendment

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[1] As the **writ of mandamus** is one of the **most potent weapons** in the judicial arsenal, **three conditions must be satisfied before it may issue. First,** the party seeking issuance of the writ have no other adequate means to attain the relief he desires, -- a condition designed to ensure that the writ will not be used as a substitute for the regular appeals process. **Second,** the petitioner must satisfy the burden of showing that his right to issuance of the writ is "clear and indisputable". **Third,** even if the first two prerequisites have been met, the issuing court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances. **These hurdles, however demanding, are not insuperable.** The United Supreme Court has issued the writ to restrain a lower court when its actions would threaten the separation of powers **by embarrassing the executive arm of the Government** or result in the intrusion by federal judiciary on a delicate area of federal-state relations.

United States Constitutional rights to free speech to file grievance against the government to get proper redress.

The ongoing conspiracy consist of U.S. Supreme Court's case analyst Mr. Higgins' clearly abusive pattern of just holding Harris' filings for an exorbitant amount of time. This fact is coupled with the fact the U.S. Court of Appeals for the Sixth Circuit's clerk Ms. Hunt's illegal unpublished COA decision without the slightest indication Harris case was ever before a judge. ***See appendix A in comparison to appendix HH, II, JJ, UU (published orders and COA's).***

On September 28, 2017 Sixth Circuit Clerk Ms. Hunt did an illegal, unpublished merits review and denied COA. ***See appendix A.*** Also, this order is contrary to the traditional ministerial role of clerks and this courts holding in ***Buck v. Davis, 137 S. Ct. 759, at HN4,5 (U.S. 2017). Also, See appendix L (§2253(c)(1)(c)(2), and appendix LL (Cir. R. 45. Duties of Clerks).***

Then after the Sixth Circuit's illegal unpublished order, Harris filed a motion on ***December 10, 2017*** to extend the 90-day time limit to file a writ of certiorari with this Court, for a period of 60-days pursuant to this ***Court's rule 30.2.*** So as to avoid his petition for a writ of certiorari from being considered untimely as of ***December 27, 2017.*** The ***December 10, 2017*** application for an extension of time would have made Harris' then writ of certiorari timely by ***February 25, 2018.***

U.S. Supreme Court case analyst Mr. Higgins', ***November 9, 2018*** correspondence revealed that Harris' writ of certiorari was postmarked for ***February 16, 2018 and received February 23, 2018.*** Thus, making the writ timely ***if*** this court granted Harris' 60-day motion to extend the time from ***December 27, 2017 to February 25, 2018. See appendix EE, and KK.***

What is so significant here is that Mr. Higgins' ***November 9, 2018 correspondence is 9-months*** after the fact Harris filed his original writ of certiorari. ***See appendix EE.*** Whether if Harris can prove Higgins to be a willful conspirator or not, this exorbitant amount of time from when Harris filed his writ of certiorari in comparison to the amount of time when he receives Mr. Higgins' correspondence ***9-months later***, bares the mark of impropriety.

Thereafter, the ***November 9, 2018 letter***, Mr. Higgins told Harris on the phone there are two available avenues to get the writ of certiorari to be considered filed timely. ***(1)*** Send mailing affidavit regarding the ***December 10, 2017*** motion pursuant to this ***Court's rule 29.2***. ***(2)*** A Motion to direct the clerk to proceed with the out of time certiorari as if it is timely.

Now, Harris does exactly what case analyst Mr. Higgins told Harris to do over the phone and Mr. Higgins sent a second letter dated ***February 15, 2019, 3-months later*** from the time Harris spoke with Higgins regarding His ***November 9, 2018*** correspondence. ***See appendix KK.*** This letter reveals that filing was received on ***November 28, 2018*** soon after the phone call to Mr. Higgins.

Then in ***March 2019*** after the ***February 15, 2019*** letter, Harris filed an application to Justice Elena Kagan, (at the time) addressed to the Justice allotted to the Circuit which the case arises, pursuant to this ***Court's rule 22***. ***See appendix MM.***

Mr. Higgins ***did not*** file this motion ***See appendix NN (proof of postage for app to Justice Kagan) and see appendix 00 (proof of postage follow up letter for app to Justice Kagan).*** Higgins ***did not*** file or respond to either filing in any way, pursuant to this ***Court's rule(s) 14.5 or 39.8. See appendix GG in comparison to appendix TT.***

So now two years later from when the application was supposed to be filed, Harris sends a letter along with a writ of habeas corpus to formally withdraw the application to Justice Kagan and Certiorari ***to pursue a writ of habeas corpus on April 28, 2021. See appendix QQ.***

Ultimately, Harris had to file a writ of mandamus on Higgins on ***July 23, 2021*** to compel Higgins to file Harris' then habeas action. ***See appendix RR (proof of postage).*** Harris' habeas action was then docketed on ***August 5, 2021*** and credited for being filed ***May 11, 2021.***

Like in ***2021,*** Harris had to file a mandamus against U.S. Supreme Court Case Analyst Mr. Higgins, to get his ***May 11, 2021*** habeas action filed in this court. *Harris now files an updated mandamus action to include Mr. Higgins and to formally withdraw Harris'* ***December 15, 2021*** mandamus action. ***See appendix FF (December 15, 2021 proof of postage).*** Because of Higgins' abusive pattern of just holding Harris' filings without giving notice as to why. In essence Harris had to file a mandamus to get a case number for his ***May 11, 2021 habeas action.*** Now Harris files a mandamus to get a case number for this current ***February 3, 2022 mandamus action.***

Thus, this pattern from Mr. Higgins is further illuminated by the fact Harris acted in good faith to timely appeal in the U.S. Supreme Court from the Sixth Circuit under this Court's rule 10. Higgins has continued to be an obstruction to Harris' filings and his action are further perpetuated to this day. Harris filed a writ of mandamus against Sixth Circuit Clerk Ms. Hunt on ***December 15, 2021*** and to this day it has yet to be filed and docketed. ***See appendix FF. (proof of postage).***

> The mark of impropriety is further illuminated here when this court considers this ***Court's rule 14.5. (See appendix GG) States: "If the Clerk determines that a petition submitted timely in good faith is in a form that does not comply with this rule..., the clerk will return it with a letter indicating the deficiency. A corrected petition submitted in accordance with rule 29.2 no more than 60-days after the date of the clerk's letter will be deemed timely. See appendix PP (Higgins' response to mandamus)***

This begs the question(s) for this court to consider for context to clarify Harris' very serious allegations against respondents in this action. ***(1)*** Did U.S. Supreme Court clerk Mr. Scott S. Harris even know U.S. Supreme Court case analyst Mr. Higgins had Harris' writ of certiorari for ***9-months*** without filing it or notifying Harris of the deficiency? ***(2)*** Where did Mr. Higgins have Harris' filing stored at for ***9-months? (3)*** Today where is Harris' writ of mandamus filed on ***December 15, 2021? (4)*** Since Harris is a capable pro se litigant with previous filings docketed on every jurisdictional level in this county. ***(5)*** Why is Mr. Higgins the only case analyst handling Harris' filings for 4-years now, when there is at least 20 different case analyst to choose from?

While this court ponders on those questions Harris wants to focus on why Harris has come to the U.S. Supreme court for help in the first place. ***(1)*** Because Sixth Circuit Clerk Ms. Hunt has no legal authority to make any determination as to the legality or constitutionality or the merits of Harris' constitutional claims, and Harris is entitled to a lawful COA determination. ***(2)*** Clerk Hunt has a clear duty to perform the ministerial function of her office to allow a circuit judge or justice to review Harris' claims for COA. ***(3)*** Harris has a clear legal right to compel the performance of that duty. ***(4)*** Harris is without an adequate remedy in the ordinary course of law. **(5)** Because of clerk Hunt's unauthorized COA determination is unreviewable by any court.[2]

Harris affirms, that the duty of the clerk is ministerial in nature in every jurisdiction in the nation as reflected in U.S. Supreme Court and Ohio Supreme Court precedents in ***Burns v. Ohio, 360 U.S. 252, at HN5, and HN6 (U.S. 1960); also see State ex rel. Langheney v. Britt, 151 Ohio St. 3d 227, at p21-24, (2017).***

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[2] "The Court ought to assist by mandamus, upon reasons of justice, as the writ express, and upon reasons of public policy to preserve, order and good government. This writ ought to be used upon all occasions where in justice and good government there ought to be one". ***Marbury v. Madison, 5 U.S. 137, at HN8 and HN9 (U.S. 1803).***

If it pleases the court, Harris would like to argue the points in clerk Hunt's illegal COA determination and the points of the District Court's resolution of Harris' claims on procedural ground, that jurist of reason could debate over. ***See Miller-El v. Cockrell, 537 U.S. 322, at HN2,5,6,7,8, and 10. (U.S. 2003); Slack v. McDaniel, 529 U.S. 473, at 1,6,7,8,8, and 10. (U.S. 2000)***

Harris takes this measure ***(1)*** to demonstrate to this court not just how offensive clerk Hunt's power grab is. ***(2)*** Once this Court issues the writ of mandamus, that it won't be in vein and result in a rubber stamped denial. ***(3)*** Because the Sixth Circuit Clerk's analysis makes a mockery of the U.S. Constitution and is in fact in opposition to the policy and procedures handed down by this Court. ***(4)*** Most importantly the clerks order was made without jurisdiction. ***(5)*** Harris has a right to compel the Sixth Circuit for a lawful de novo COA determination.

With that being said, Harris maintains a writ of mandamus can be filed on anyone.

> *"The writ of prohibition appears to have been used more than the writ of mandamus to control inferior courts mandamus could issue to any person in respect of anything that pertained to his office and was in the nature of a public duty."* ***See 1 Halsbury's laws of England para, 81 (4th ed. 1973).***
>
> *"The legal proposition that mandamus will lie in appropriate cases to correct willful disobedience of the rules laid down by this Court in not controverted."* ***See Will v. United States, 389 U.S. 90, at 100 (U.S. 1967) (added emphasis)***
>
> *"The peremptory writ of mandamus has traditionally been used in the federal courts only to confine an inferior court to a lawful exercise of its prescribed jurisdiction or to compel it to exercise its authority when it is its duty to do so..."* ***See Will v. United States, 389 U.S. 90, at HN1 (U.S. 1967).***
>
> *"For the overriding rule of judicial intervention must be "first, do no harm."* ***See Castro v. United States, 540 U.S. 375, at 386 (U.S. 2003) (added emphasis)***

DEAD-BANG-WINNING-ARGUMENT NEVER CONSIDERED BY A SIXTH CIRCUIT JUDGE OR JUSTICE BECAUSE OF CLERK HUNT'S INTERVENTION

The Sixth Circuit Clerk used case law that is in direct opposition to U.S. Supreme Court precedents used in ***Brady v. Maryland, 373 U.S. 83, (U.S. 1963); Giglio v. United States, 405 U.S. 150, (U.S. 1972); Chambers v. Miss., 410 U.S. 284, (U.S. 1973); Hemphill v. New York, 2022 U.S. LEXIS 590, at HN11, (U.S. 2022); Smith v. Cain, 565 U.S. 73, (U.S. 2012); Wearry v. Cain, 136 S. Ct. 1002, (U.S. 2016); and Strickler v. Greene, 527 U.S. at 281-82. (U.S. 1999).***

> The Sixth Circuit Clerk Stated: *"Although the trial record shows that the prosecution did not disclose to Harris that K.T. had previously made domestic violence allegation 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 impeachment evidence was harmless."* ***See Carter v. Bell, 218 F.3d 581, at 601. (6th Cir. 2000)*** *(Stating that there is no Brady violation if the inforrnation was available to defendant from another source.)* ***See appendix A at 3rd page 1st paragraph.***

The Crux of what the contravening "affirmative due diligence" 4th prong to the Brady analysis illegally applied here by a clerk, and used in some form or fashion by 8 out of 12 U.S. Appeal Circuit Courts that have 38 out of 50 States within their respective jurisdictions, is ***defendant's actions*** in taking advantage of the knowledge of the Brady evidence at trial. ***See Benge, 474 F.3d at 234-44; Mullins, 22 F.3d at 1371-72.*** What is apparently distinguishable in Harris' case is the fact the Court suppressed it in defiance of Harris' numerous attempts to use the Brady evidence in open court and in defiance of the U.S. Constitution.

Whether or not, if the controversial "affirmative due diligence" 4th prong to the Brady analysis is applied here or not, at the very least, jurists of reason could flatly disagree because ***(1)*** Harris' numerous attempts to use the Brady evidence at trial and the suppression of the

evidence is still attributed to the state. ***(2) The U.S. Supreme Court never required or recognized this controversial "affirmative due diligence" 4th prong to the Brady analysis.***

So as a consequence of Ms. Hunt's intervention Harris is left high & dry without any other legal recourse but the issuing of this writ of mandamus to confine the Sixth Circuit to a lawful exercise of it's prescribed jurisdiction. The U.S. Supreme Court is the only Court able to compel it to exercise its authority when it is its duty to do so.

Harris affirms his right to issuance of the writ is clear and indisputable with exceptional circumstance amounting to a judicial ***"usurpation of power", or a "clear abuse of discretion",*** justifying the invocation of this extraordinary remedy. Because clerk Hunt's denial of Harris' COA is without legal authority.

Harris was denied his **"Brady-Chambers"** right to a fundamental fair trial guaranteed by the Fifth, Sixth, and Fourteenth Amendments of the United States Constitution. Thus, Harris was denied his constitutionally protected rights to **due process** as the trial record clearly 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.*** See (T.p.ID#223-224)[3]

In the present case, the trial judge and State's prosecutor became vitiators. The reason why the Judge said ***"No, I think you will 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 on the record.*** All that "acknowledged" Brady evidence would have come out during Isaiah S. Harris Sr.'s trial in 2009 and the State of Ohio ***never intended that to happen.*** Also, what was revealed on the record the prosecutor ***did not know*** these police reports existed.

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

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[3] This is the **single most important clue that implicates all State officials,** by knowingly willful Deprivation of Rights Under Color of Law pursuant to ***18 U.S.C.S. §242. See appendix AA.*** 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 ***Brady v. Maryland, 373 U.S. 83, (U.S. 1963); Chambers v. Mississippi, 410 U.S. 283, at HN1,2,3, (U.S. 1973); and Imbler v. Pachtman, 424 U.S. 409, at 429,441,443, (U.S. 1976) See Strickler v. Greene, 527 U.S. at 281-82 (U.S. 1999); Banks v. Dretke, 540 U.S. 668, at HN14 (U.S. 2004); United States v. Howell, 231 F.3d 615, 625, at HN7,8, and 9; Dennis v. Sec'y, Pa. Dep't of Corr., 834 F.3d 263, at HN10,11,13,14, and 15 (3rd Cir. 2016); United States v. Tavera, 719 F.3d 705, See dissent 3rd paragraph, (6th Cir. 2013); Benge v. Johnson, 474 F.3d 236, 242-44 (6th Cir.2007); United States v. Mullins, 22 F.3d 1365, 1371-72 (6th Cir. 1994); Giglio v. United States, 405 U.S. 150, 154-55 (U.S. 1972) Barton v. Warden, S. Ohio Corr. Facility, 786 F.3d 450, at HN18,19,20,21,25,26 (6th Cir. 2015).***

examination by the State that on the night in question November 12, 2008 Harris kicked in the back-door. (T.p.ID# 160-167).

Yet, within the official uniform incident report, by the Lorain Police under the section "method of entry" **no damage to the rear back-door** was indicated in this regard. See **appendix M (November 2008 rape report), at first page thereof- under offense section.** Also, on the first page thereof **appendix M** is the time the incident began at **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 report)*** in 2007 the same door was involved in 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 report) this officer observed ***the door frame broken*** on the inside of the ***rear door and the dead-bolt broke as if somebody had kicked or pushed their way in. Id. See appendix N at page 1,4. (2007 same door report).***

Furthermore, to highlight the common practice of the Lorain Police Department's reporting of details to journalize damage caused in burglaries please see, **appendix O under section narrative supplement at 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 reports ***(from 2007 and 2008)*** 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.[4]

Moreover, the alleged victim- during her testimony on cross-examination- ***perjured herself*** by actually revealing a different person other than Harris who may have actually caused the damage to the **back-door** of her residence on ***November 12, 2008*** the night of the alleged rape. ***(thus, strengthening Harris' alternate suspect theory defense offered at trial)*** 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".***

[4] Significantly, 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 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 she testified the rape occurred at exactly 2:00am, and Harris stayed at her house for 3-more hours ending this incident at 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 that style of burglary on that type of door and lock. ***Also, it was never indicated that Harris ejaculated or that anyone took a restroom break during this five-and-a-half-hour-long-rape-rant.*** The State's theory struggles to find ***a logical motive*** to support Ms. Taylor's instant allegation.

Q: "The guy from Chicago"?
A: ***"Yeah".***
See (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 dead-bolt to gain entry,*** such noise did not alarm her neighbor nor wake any of their three children that was in bed at the time. See (T.p.ID# 162).

Ironically, 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 (similar to 2008 rape report),*** while she was carrying their third child. And the only reason that she evaded prosecution was 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 pages 3,5. (2007 same lie report) Also see (T.p.ID# 178-179).** Ms. Taylor testified to the ***age and birthdays*** of their three children and this report from 2007 shows she was pregnant with their third child **born January 3, 2008. See (T.p.ID# 130-131).**

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 ***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.
See (T.p.ID# 178-180)

Harris proves his case was **never investigated in good faith**, tried, or convicted ***in the interest of justice.*** As the Lorain Police, Prosecutor and Trial Judge ***Knowingly conspires on the record*** to deprive Harris of his basic constitutional rights to a fundamentally fair trial.

To wit: (on the record as follows the alleged victim while under cross-examination by defense counsel).

Q: ***So you are willing to lie if it suits your purposes?***
A: Excuse me?
Q: ***So you are willing to lie if you feel it will benefit you?***
A: ***Yes.***
Q: ***Like you did at Lorain Municipal Court?***
Mr. Pierre: ***Objection!***
The Court: ***Sustained!***
See (T.p.ID# 186-187).

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 the discovery in the 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.
See ***(T.p.ID# 226-227).***

Harris has 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).[5] Also, Harris exposed here, that he has satisfied the ***controversial "affirmative due diligence" 4th prong requirement to the Brady analysis,*** and the threshold question at the ***COA Stage*** that jurists of reason could debate over in a ***de novo*** lawful exercise of the Sixth Circuit Court jurisdiction. ***See Chambers v. Miss., 410 U.S. 284, (U.S. 1973); Hemphill v. New York, 2022 U.S. LEXIS 590, at HN11, (U.S. 2022).***

Thus, as relevant to this case, ***U.S.C. Fed Rules Crim. Proc. R. 16(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 1,2,3 (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 correlated by the fact there is proof the back-door was not kicked in at all or at least not by Harris on the night in question, and the fact she has a ***barefaced history*** of fabricating very serious allegations on Harris.

In the case at bar within the official uniform incident report marked as ***appendix M See at page 6, (2008 rape police report), under narrative supplement,*** the report reveals a bizarre version of the alleged rape on the night of ***November 12, 2008.*** Where Harris was reported to have ***two knives, one in each hand, a non-erect-penis that didn't ejaculate,*** and was quoted as

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[5] ***See Estes v. Texas, 381 U.S. 532, at HN7, HN8, and HN9(U.S. 1965) (emphasis added)***

saying: ***"I'm sorry, I wanted to see what would you do," after allegedly forcing her to perform oral sex.*** While the alleged victim ***indicated she had her cell phone*** the entire time during said incident, and Harris ***did not*** take her phone from her, to prevent Ms. Taylor from dialing "911 emergency" like she always does per the volumes of police reports.

This account of the November 12, 2008 rape incident does not fit the states theory, of painting Harris as a "love struck jealous type" that kicked down the victim's door, desperate for instant, ***forceful, oral*** sexual gratification, ***with one knife, and an erect penis.***

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. See (T.p.ID# 130-141). ***The State theorized that it was out of jealousy or despair.*** Yet, within the official incident report dated in 2002 marked as **appendix Q see first page thereof. (2002 stepbrother report)** ***reveals four months after*** Ms. Taylor gave birth to their first child Isaiah Jr., 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.*** This is in addition to, the fact Ms. Taylor

testified that Harris knew of some boyfriend from Chicago, there is not a clear consensus of what could motivate such alleged barbaric behavior from Harris (as testified to by Ms. Taylor) in the context of how he handled previous hurt inflicted by the stepbrother report early on in Harris' and Ms. Taylor's relationship.[6]

Speaking of history, the alleged victim has a ***history of fabricating*** nearly identical charges from nearly identical stories that Harris was charged and convicted of now in relation to the March and June 2008 charges. ***See appendix R, see at pages 3,5. (2003 same lie) under narrative supplement.***

In this 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 did not wish to press charges.*** 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. 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).*** Ms. Taylor's ***modus operandi*** is very apparent here, but wait there is more ***Brady evidence unlawfully withheld from the record.***

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

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[6] The correct **question to ask** to shed light on the missing link in this case to make sense of this whole equation of Harris' and Ms. Taylor's relationship? What **motivating factor(s)** does Ms. Taylor have to **fabricate now proven serious allegations** against Harris, and how does she handle the fact that Harris had sexual partners other than Ms. Taylor?

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 takes family pictures. See approved prison visitors list.*** **See appendix S March 30, 2021 visitors list at pages 1,2, and 3.**[7]

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 police 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 continuously throughout each case he was charge with in 2008. (T.p.ID# 192-194).

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[7] 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.**

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 ***endorsed by withholding Brady evidence because it is convenient (like Ms. Taylor)*** to do so to maintain Harris' conviction.

See **appendix M (rape police report) at page 7 last paragraph. Under narrative supplement** it reveals that dispatch ran a CCH (criminal background history check) on Harris and Harris ***has been arrested many times for domestic violence but there were not any conviction. Id.***

> Domestic Violence Arrest Provisions of ***R.C. 2935.03(B)(3)(A)-*** City required to adopt policy in compliance with this rule. ***O.R.C. 2935.032(A)(2)-*** provision requiring the peace officers, to do all of the following: ***(A)(2)(C) ...**** conduct separate interviews with victim and the alleged offender in separate locations, ** and take a written statement from the victim that indicates the ***frequency and severity*** of any prior incidents of physical abuse of the victim by the alleged offender, ***** number of times the victim has called peace officers for assistance,*** **** and the disposition of those calls, if known. **See appendix BB at page 3.**

Because of officer R. Hall's, Det. Buddy Sivert's, and Lt. Stack's total ***failure to follow the state of Ohio's mandates in O.R.C. 2935.032 as required.*** Now proven to be the ***origin or genesis*** of the malicious prosecution that was knowingly maintained and perpetuated by all court officials named in this action, culminating in the North Eastern District of Ohio's bizarre analysis of Harris' ***Brady evidence unlawfully withheld from the record.***

See appendix E (Magistrate Judge Greg White'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 like to presented 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 1,2,3, and 4). This opinion from the District Court defies all logic and the U.S. Supreme Court's holding in ***Giglio, 405 U.S. at 154-55[8] (added emphasis)*** When the District Judge Sara Lioi seconded the ***may or may not*** function or value of Harris' evidence, while clearly identifying it as impeachment evidence, ***which are all the hallmarks to be successful under Brady and it's progeny when she stated:*** *"At best the evidence that he points to now provides* ***merely impeachment value, which is not sufficient to establish a gateway claim of innocence". Id.***

Harris maintains, the cases cited by the District Court are used ***out of context*** because the ***alleged violent history and proven impeachment history in the relationship*** between the alleged victim and defendant are always ***intrinsic.*** Especially in the context of ***may or may not*** had an effect of the outcome of Harris' case.

> "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 unlawfully 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.***

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[8] **"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** to carry the case to a jury". **(added emphasis)**

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 from that witness's trial testimony? **See appendix H (Direct Appeal).**

> "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 position". ***See Davis v. Lafler, 658 F.3d 525, at 535 (6th Cir. 2011).***

Harris would like to say that the ***District Court Judge Sara Lioi's*** and former head prosecutor for ***Lorain County, Ohio, turned United States Magistrate Judge Greg White's*** characterization, ***is at best, off key, to existing*** U.S. Supreme Court and Sixth Circuit Precedent when they handed down their orders in ***2015 and 2017.***

> "Issues of concerning the admissibility of evidence are state law questions 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); Brofford v. Marshall, 751 F.2d 845, at HN11 (6th Cir. 1985).***

> "To prevail on his Brady claim, Wearry need not show that he 'more likely than not' would have been acquittal 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 (U.S. 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, at 1006 n.6. (U.S. 2016).***

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

See House v. Bell, 547 U.S. 518, at HN2,3, 6, and 7. (U.S. 2006)[9] **HN3-** "Yet a petition supported by a convincing gateway showing raises sufficient doubt about the petitioner's ***guilt to undermine confidence*** in the result of the trial without the assurance that the trial was untainted by constitutional error; hence, ***a review of the merits*** of the constitutional claims is ***Justified." (added emphasis)***

See Mc Quiggin v. Perkins, 569 U.S. 383, See HN8- "No showing of innocence required." Also See HN10,15,16,1,7,13 and 12.(U.S. 2013).[10] ***HN13- 28 USCS §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."

Harris points out the ***classification of the evidence is key here.*** "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 (6th Cir. 2012).***[11]

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[9] **HN7** The ***gateway actual-innocence standard*** for habeas corpus relief ***is by no means equivalent to the standard which govern claims of insufficient evidence.*** When confronted with a challenge based on trial evidence, courts presume the jury resolved evidentiary disputes reasonable so long as sufficient evidence supports the verdict. Because an actual-innocence claim involves evidence the trial did not have before it, ***the inquires the federal court to assess how reasonable jurors would react to the overall,*** newly supplemented record. If new evidence so requires, ***this may include consideration of the credibility of the witnesses presented at trial.***

[10]**HN10** "i.e. ***a first petition*** for federal habeas relief, the miscarriage of justice exception ***survived the AEDPA's passage intact and unrestricted.***

[11] ***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.***

The United States Court of Appeals for the Sixth ***Circuit has not been reluctant to grant habeas corpus relief*** where material evidence impeaching key prosecution witnesses was suppressed. ***See Hill v. Mitchell, 2012 U.S. Dist. LEXIS 40312, at HN5 (6th Cir. 2012) (added emphasis). See also, Lewis v. Wilkinson, 307 F.3d 413, at HN6,8,9, and 10, (6th Cir. 2000).***

Significantly for this case, withheld information is material under ***Brady*** only if it would have been admissible at trial or would have led directly to admissible evidence. ***See United States v. Ogden, 685 F.3d 600, 605 (6th Cir. 2012).*** To prevail on a ***Brady claim,*** a petitioner need only show that the undisclosed evidence was ***"likely admissible under Ohio law." See Wogenstahl v. Mitchell, 668 F.3d 307, at 325 n.3. (6th Cir. 2012).*** Of course, when subject to AEDPA deference, it must be that any reasonable jurist would believe the ***Brady evidence*** would lead to admissible evidence. ***See State v. Bryant, 2020-Ohio-1175, at p11, p15 "permitting evidence to be admitted if it shows motive to lie, or of, lie." Also, see State v. Lumpkin (Feb. 25, 1992), 10th Dist. No. 91 Ap-567, 1992 Ohio App. LEXIS 856 "the motive of a State's witness to lie... impeach the witness's credibility and character for truthfulness which is accomplished through Evid. R. 607,608,609."; State v. Ali, 2021-Ohio-4596, (404(B) Evid); State v. Marshall, 2021-Ohio-4434, at p43-p44. (8th Dist. Ohio 2021)***

Harris highlights, this courts precedent when dealing with a scenario similar to Harris' case, when there is one witness and ***Brady evidence*** was suppressed that called the witness's credibility into question. ***See Robinson v. Mills, 592 F.3d 730, at HN6,8 (6th Cir. 2010)***

> ***HN6-*** "Considerable authority from the U.S. Supreme Court and the U.S. Court of Appeals for the Sixth Circuit indicates that a defendant suffers prejudice from the withholding of favorable impeachment evidence when the ***prosecution's case hinges on the testimony of one witness." HN8-*** "In the context of a ***Brady claim, it makes little sense to argue*** that because the defendant tried to impeach the key witness and failed, any further impeachment evidence would be useless. It is more likely that defendant

> may have failed to impeach the key witness because the most damning impeachment evidence in fact was withheld by the government. ***(added emphasis)***

Furthermore, Harris points to this Court's holding in ***Barton v. Warden, S. Ohio Corr. Facility, 786 F.3d 450, at HN18,19,20,21,25,26 (6th Cir. 2015).***

> Where in ***HN25 Stated:*** "to reiterate: ***Brady requires*** the State to turn over ***all material exculpatory and impeachment evidence to the defense.*** It does not require the State simply to turn over some evidence, on the assumption that defense counsel will find the cookie from a trail of crumbs."

Harris further argues, in light of ***Barton at HN18, 19, and 26,*** where this court outlines the ***three components of a true Brady violation,*** and ***'cause and prejudice'*** to the defense for failure to develop facts in state-court proceedings ran parallel with two of the three components in ***Maupin & Brady analysis.***

In determining whether the information withheld from defendant was material and prejudicial to his defense, the court's inquiry is guided by the ***reasonable-probability standard.*** This standard 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. See Barton, HN26. (6th Cir 2015).***

> As the Court wrote in ***Schlup, "[Schlup's]*** constitutional claims are based not on his innocence, but rather on his contention that... the withholding of evidence [citation omitted], denied him the full panoply of protections afforded to criminal defendants by the Constitution." ***Schlup v. Delo, 513 U.S. 298, 115 S. Ct. 851,860, 130 L. Ed. 2d 808 (1995).*** Therefore, the petitioner is required to present ***"evidence of innocence"*** such that ***"a court cannot have confidence in the outcome of the trial." 115 S. Ct. at 861.*** In other words, the claim is procedural, not substantive. ***See id. at 860*** ("Schlup's claim of innocence... is procedural, rather than substantive."). The ***Schlup Court*** contrasted this showing with that required under a ***Herrera claim in which the court must find that the "new facts unquestionably establish Schlup's innocence." Id. at 862.***

Harris wants to reiterate, ***how at best, -off key and at worst, - bizarre or illogical,*** the opinions from the District Court used in Harris' case is, in light of all the U.S. Supreme Court and U.S. Sixth Circuit Appeals Court controlling precedent that Harris relies on to gain habeas relief. Significantly, here in the context of the District Court's admission on record, *"At best the evidence that he points to now provides* ***merely impeachment value, which is not sufficient to establish a gateway claim of innocence", and the "<u>may or may not</u> effect on the witness's credibility", Brady analysis to deny Harris habeas relief in 2017.***

Harris declares that, in Ohio a case ***without any*** physical evidence, ***where 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's veracity for truth, on the record without any consequence in defiance to applicable rules. ***See appendixes V, W, & X under Fed Rule(s) 401,608 & 611.***

Then the state's appointed appellate counsel read the record and clearly seen a ***Brady violation on the record*** in trial transcripts. Then ***fails to tell*** defendant that the ***evidence off the record*** can support [his] sole direct appeals claim that the state appointed appellate counsel decided to raise ***without ever communicating with, or Harris' input Stating:*** "The verdict in this case is against the ***sufficiency*** 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 I, Section 10 of the constitution of the State of Ohio. Because the witness in this case has a long history of ***fabricating lies*** about defendant in this case, and defendant's testimony refutes every element he was charged in the indictment. ***See appendix G, 4th page thereof (appellate counsel direct appeals brief)***

Harris avers, that ***the Brady evidence*** would have negated any inference drawn from that testimony during direct appeal. ***See appendix H, State v. Harris, 2010-Ohio-1081, at p1 though p15.*** The record reflects the state affirms Harris' conviction on the ***sufficiency of the evidence grounds, based solely on inferences drawn for that uncontested testimony, to find Harris guilty of every essential element of the Crime(s) beyond a reasonable doubt.***

Harris submits to this court, that "and this type of claim can almost always be judged on the written record". ***See 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, after the witness testified to those elements of those two charges, while the state withheld Brady evidence.***

Harris points to this Court's holding in ***Gunner v. Welch, 749 F.3d 511, at HN1 (6th Cir. 2014).*** This Court held: It would have been futile for defendant to file a post-conviction motion as the 180-day period had long since run as a direct consequence of the failure of his appellate counsel to provide him with relevant information. The district court's denial was reversed, and the case was remanded for consideration of the habeas petition on the merits.

> ***In Gunner HN1-*** A claim of ineffective assistance of counsel that is dependent on facts that are not part of the trial record cannot be raised on direct appeal. Instead, it must be raised in a post-conviction proceeding pursuant to ***Ohio Rev. Code. Ann. §2953.21. See appendix CC (post-conviction statute).*** Because the Ohio General Assembly intended that the direct appeals process run concurrently with the post-conviction process in criminal cases, it provided that such a petition must be filed within 180-days from the date on which the trial transcripts is filed with the appellate Court, ***Ohio Rev. Code. Ann. §2953.21(A)(2).*** By setting as the triggering event the filing of the transcripts in the direct appeal of the judgement of conviction, the legislature effectively acknowledged that the trial record plays as critical a role in preparing a post-conviction petition as it does in prosecuting a direct appeal.

Harris asserts, that the Ohio General Assembly intended that the direct appeals process run concurrently with the post-conviction process in criminal cases, it provided that such a petition must be filed within 180-days from the date on which the trial transcripts is filed with the appellate Court, ***Ohio Rev. Code. Ann. §2953.21(A)(2).*** One could speculate that the Ohio General Assembly intended to streamline the appellate procedure process to benefit all parties involved.

Yet, instead this 180-day concurrent post-conviction procedure has had an unintended consequence or effect as being a ***rubber-stamp to finalize inherently unconstitutional convictions, while also giving those unconstitutional convictions more validity, because of the deferential status State adjudicated claims enjoy per the rules for federal habeas court review.***

Harris affirms, that the Ohio General Assembly has since extend the 180-day time period to file post-conviction petitions from 180-days to 365-days ***See appendix CC, (Ohio Rev. Code. Ann. §2953.21(A)(2)).***

REASON FOR GRANTING THE WRIT

Rule 20 ***(See appendix SS)*** of this Court requires a petitioner seeking a writ of mandamus demonstrate that ***(1)*** "exceptional circumstances warrant the exercise of this power", ***(2)*** "adequate relief cannot be obtained in any other form or from any other Court, and ***(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. §§ 2254(B)(i)(ii)(d)(1) and 2241(c)(3). See appendix I & J.***

Mr. Harris' last hope for a lawful first-time federal habeas COA review with the Sixth Circuit Court lies with this Court. His case presents exceptional circumstances that warrant exercise of this Court's discretionary power.

This begs the question(s) where are the gatekeepers of righteousness? In essence, Harris filed a timely appeal to the Sixth Circuit, received a case number, and never made it to a judge's docket or notice. Clerk Hunt attempted to bury Harris in the everyday shuffle of cases going through the Court without the slightest blip on anyone's radar.

In a system that affords due process, where everyone has been sworn to uphold the constitution, any willful contrary act, is the exception. His case presents exceptional circumstances that warrant exercise of this Court's discretionary power.

I. STATMENT 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. §§ 2241 and 2242.*** Mr. Harris states that he has not applied to the District Court because the Sixth Circuit Court ***Clerk*** has prohibited such an application. ***See appendix A.*** In addition to, the fact the District Court ***doesn't have jurisdiction*** to issue the writ of mandamus to compel the Sixth Circuit to do anything. ***See Cotton v. Clerk, 2015 U.S. Dist. LEXIS 106060 (6th Cir. 2015).***

See Sandlain v. United States, 2017 U.S. Dist. LEXIS 72606, at *8 and *9 (6th Cir. 2017). Ms. Hunt has a troubling track record of committing fraud by signing and denying pro se motion for certificate of appealability ***(COA's) without any indication it was ever before a judge.*** Ms. Hunt is a rogue agent that preys on financially vulnerable, pro se, convicted minorities like Harris. The only Court that can bring an end to Ms. Hunt's tyrannical reign and hold her accountable for her willful disobedience of federal policy is the U.S. Supreme Court.

Harris wants to alleviate any ambiguity as to whether Ms. Hunt acted within the scope of her duties. Harris direct this Court to do a simple comparison with ***appendix LL & L.*** Harris affirms, Ms. Hunt's actions are indefensible and the Solicitor General of the United States is faced with an impossible task of trying to do so in the face of federal statutory policy. Moreover, the only way Harris can be defeated is if U.S. Supreme Court Case Analyst Mr. Higgins holds this mandamus action in his office at the Supreme Court without filing it and putting it on the docket, ***until April 16, 2032*** which is the end of Harris' prison term. Even then the merits of this mandamus action before the Court today will still be reviewable by this Court and will aid to its jurisdiction.

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

Because of the willful disobedience or adoption of a deliberate policy in open defiance of the federal rules handed down by this court, has allowed case analyst Mr. Higgins and clerk Hunt to become the Judge, jury, and executioner of Harris' protected constitutional rights to get proper redress in federal court pursuant to ***§§ 2254(B)(i)(ii)(D)(1) and 2241(c)(3). See appendix I and J,*** which has had a detrimental effect on Harris' meritorious constitutional ***Brady-Chambers due process claims,*** leaving no other remedy but mandamus, Harris' right to issuance of the writ is clear and indisputable.

> Foremost, Harris maintains, that *the "writ will be in aid of the Court's appellate jurisdiction,"* ***(1)*** Because the Court has jurisdiction to review denials of application for certificates of appealability, because those denials are judicial in nature. ***See Hohn v. United States, 524 U.S. 236, (U.S. 1998) (cites omitted).***
>
> ***Also (2) See Ex parte Milligan, 71 U.S. 2, 4 wall. 2, 110-113, 18 L. Ed. 281, (U.S. 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.*

> ***(3) See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6, (U.S. 2004).*** *"the common-law writ of mandamus against a lower Court is codified at 28 U.S.C. §1651(a): The United States Supreme and all courts established by Act of Congress may issue all writs necessary or appropriate of their respective jurisdictions, and agreeable to the usages and principles of law."*

It was well established law by the U.S. Supreme Court on ***February 22, 2017 in Buck v. Davis, 137 S. Ct. 759, at HN4 & HN5,*** "That when a circuit judge or justice decides an appeal on merits by sidestepping the ***COA*** process they are effectively deciding an appeal without jurisdiction." So how much more so does an ***unauthorized unpublished COA decision*** on the merits by a clerk, offends a Court's jurisdiction?

> *"Any unconstitutional act is null and void of law, it confers no rights, it imposes no duties, it affords no protections, it creates no office."* ***See Norton v. Shelby County, 118 U.S. 425, at HN1, (U.S. 1886)***

Harris highlights that, ***in essence clerk Hunt's order denying Harris a proper COA review is not binding like it never existed or happened,*** but for the real life consequence(s) of Harris spending more time in prison on a patently unconstitutional conviction without a proper remedy for relief. [12]

Harris ask this Court, ***"does a tree in the forest make a sound when it falls, if no one is there to hear it fall?"*** Harris affirms, that the illustration use here is tantamount to the extraordinary times we are living in today. Where case analyst and clerks act as gods or judges, where the back-drop is the January 6th, Capital Riot and an ongoing Covid-19 Global Pandemic. Which are now considered polarizing events, because of widespread misinformation. Since we are not living in a ***vacuum*** we are all feeling the effects of these exceptionally uncertain times.

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[12] See ***Bowen v. Johnston, 306 U.S. 19, at HN9 (U.S. 1938); and Johnson v. Avery, 393 U.S. 438, at HN1 (U.S. 1969).***

Today, to have faith in someone with the ability to reason... has increasingly become the exception. How many trees have fallen...? ***This term?*** How many inherently unconstitutional cases have case analyst and clerks ended without making a sound? Will a Judge or Justice get a chance to rule on this mandamus?

This Court knows the answer to the ***"riddle of the fallen tree,"*** that Harris used to crystallize the insidious actions of a rogue U.S. Supreme Court Case Analyst and Sixth Circuit Clerk. This Court will signal to the judicial world that it is clear and indisputable that a fallen tree does make a sound. ***A case analyst and a clerk's role is not judicial but ministerial in nature, and neither has any legal authority to hold a case for an exorbitant amount of time or decide its substance.***

Harris points out here, that one could only speculate what could be the motivating factor(s) for such an embarrassing break down in the actual and perceived integrity of the judicial process, or is this normal policy put in place for financially vulnerable, pro se, convicted minorities like Harris? Today Harris presents to this Court a very alarming set of facts that this Court has a constitutional duty to correct. The respondents have violated Harris' 1st U.S. Constitutional Amendments rights.

WHAT IS CLEAR AND INDISPUTABLE

- That the United States Appeals Court for the Sixth Circuit's ***September 28, 2017*** order that denied Harris (COA) a certificate of appealability is unauthorized by federal constitutional and statutory law, and the rules and policy handed down by this Court.

- U.S. Supreme Court Case Analyst Mr. Higgins obstructed Harris' access to this Court, by not filing Harris' ***December 15, 2021*** mandamus action.

- Sixth Circuit Clerk Ms. Hunt has no legal authority to grant or deny a COA. Especially when one considers federal statutory policy. ***See appendix L (§2253(c)(1)(c)(2) COA) in comparison to appendix LL (Cir. R. 45 Duties of Clerks- Procedural Orders)***

- ***HN6*** *" The authority to issue the writ of mandamus to an officer of the united States, commanding him to perform a specific act required by law of the United States, is within the scope of the judicial powers of the United States, under the constitution."*[13]

- ***HN8*** *"The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection."*

- ***HN9*** *"Where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded."*

- ***HN14*** *"The Court ought to assist by mandamus, upon reasons of justice, as the writ expresses, and upon reasons of public policy, to preserve, order and good government. This writ ought to be used upon all occasions where the law has established no specific remedy, and where in justice and good government there ought to be one."*

- ***HN15*** *"To render the mandamus a proper remedy, the officer to whom it is directed, must be to whom, on legal principles, such writ may be directed; and the person applying for it must be without any other specific remedy."*[14]

- Harris affirms, *"the right to issuance of the writ is clear and indisputable with exceptional circumstances amounting to a judicial "usurpation of power," or a "clear abuse of discretion," will justify the invocation of this extraordinary remedy."*[15]

Harris' case presents a troubling set of facts of how the full weight of an oppressive government can be applied to a criminal defendant. Luckily, for Harris this is America and no one is above the law. Harris can file suit(s) on all bad actors who willfully deprives him of his protected constitutional rights to file grievance against the government to get proper redress pursuant to ***18 USCS §242 Deprivation of Rights Under the Color of Law.***

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[13] ***HN5*** Under the constitution, the power to issue a mandamus to an executive officer of the United States, may be vested in the inferior court of the United States; and it is the appropriate writ, and proper to be employed, agreeably to principles and usages of law, to compel the performance of a ministerial act, necessary to the completion of an individual right arising under the laws of the United States. ***See Kendall v. United States, 37 U.S. 524, at HN5, HN6. (U.S. 1838)***

[14] ***See Marbury v. Madison, 5 U.S. 137, at HN8, HN9, HN14, and HN15. (U.S. 1803).***

[15] ***See Cheney v. United States Dist. Court, 542 U.S. 367, at HN6. (U.S. 2004).***

The U.S. Supreme Court case analyst and Sixth Circuit Court clerk has a clear legal duty to perform the ministerial function of their office, to file and docket Harris' writ of mandamus and allow Harris to have access to this Court and Sixth Circuit court. So Harris can exercise his clear legal right to compel the performance of that duty, to file grievance against the government to get redress. Harris asserts, there is no other adequate remedy in the ordinary course of law if Harris can't even get a case number in this court after he has complied with all applicable rules.

Federal policy dictates, that U.S. Supreme Court Case Analyst Mr. Higgins can't just hold Harris' filings in his office for an exorbitant amount of time without giving notice as to why. Also, the Sixth Circuit Clerk Ms. Hunt has no legal authority to grant or deny Harris' certificate of appealability. Harris maintains, the United States Supreme Court is the only Court with authority to Correct the Sixth Circuit for allowing their Clerk Ms. Hunt to do an illegal, unpublished COA determination.

Mr. Harris asserts, his 1st Amendment rights to freedom of speech and the right to file grievance against government to get redress, is the principal right that firmly establishes every other right and protection that proceeds it with the U.S. Constitution. The 1st Amendment is as American as The Great Seal of our Nation, The Pledge of Allegiance, and Citizenship.

With that being said, Harris asked these final question(s). In light of ***Cir. R. 45. Duties of Clerks, (appendix LL), in comparison to §2253(c)(1)(c)(2) (COA), (appendix L),*** and Deborah S. Hunt's unpublished denial of Harris' COA without any indication it was ever before a judge. What reasonable mind could disagree with the fact that Ms. Hunt exceeded her power?

In light of ***Supreme Court Rule 14.5, in comparison to 39.8, appendix GG in comparison to appendix TT,*** and Clayton R. Higgins, Jr.'s history of holding Harris' filings for exorbitant amounts of time without giving notice as to why. What reasonable mind could disagree with the fact that Mr. Higgins exceeded his power?

Harris sheds light today, on an open conspiracy to silence a pro se, self-taught, financially vulnerable, minority such as himself. Harris is no longer naïve in his search for justice. Harris' rights continues today to be violated intentionally, calculatedly, without shame.

The record is not silent about this open conspiracy to silence Harris. *Will it serve Harris well to upload this mandamus action, contact every law firm in the country, and hold a public fund raiser to pay for this Court's filing fee?* Because the record reflects, not even the 1st Amendment right to be heard is respected without money or a huge public following, seemingly, according to U.S. Supreme Court Case Analyst Mr. Higgins and U.S. Court of Appeals for the Sixth Circuit Clerk Ms. Hunt.

One can only speculate as to why Harris was singled out by Mr. Higgins and Ms. Hunt. Harris affirms, without the 1st Amendment right to free speech to file grievance against the government to get redress, there is no 14th Amendment right to equal protection. ***Succinctly put, no court or agency can break the law to enforce the law.*** Nevertheless, the right to issuance of the writ is clear and indisputable.[16]

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[16] "But where the merits of the *one and only appeal* an indigent has as of right are decided without benefit of counsel, we think an unconstitutional line has been drawn between rich and poor." ***See Douglas v. California, 372 U.S. 353, at 357.***

CONCLUSION

Harris prays that this Court issues the writ of mandamus because he has shown that it is appropriate, agreeable to principles and usages of law, and he has no other legal recourse. ***Harris affirms although this standard is demanding it is not insuperable.*** The right to issuance of the writ is clear and indisputable.

Respectfully submitted,

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