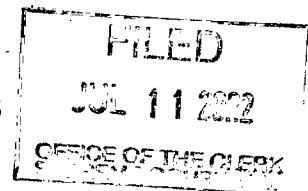


No. 22-5195

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



C. Raymond Jones Jr #1107489 PETITIONER
(Your Name)

VS.

Bobby Lumpkin, Director of TDCJ RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

The United States Court Of Appeals
For The Federal District Courts.

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

C. Raymond Jones Jr #1107489
(Your Name)

12071 F.M. 3522-Robertson Unit

(Address)

Abilene, Texas, 79601

(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. The Supreme Court should help decide in Federal & State Court Split, to review "Newly Reliable Evidence" under Herrera House Schulp type claims. Is it Newly Discovered or Newly Presented?
2. Under 2254(D)(1) would deprive petitioner to obtain A De Novo Review, & to Correct a Miscarriage Of Justice.
3. This Gives the Supreme Court a opportunity to review Actual Innocence Claims, to Correct a Miscarriage Of Justice.
4. The Courts decision is Incorrect in not resolving his Actual Innocence claims, Overcome the AEDPA Statue Of Limitations.
5. The Supreme Court should help decide, if the Federal & State Courts decision is Incorrect?
6. This Gives Supreme Court opportunity to resolve his Actual Innocent Claims to his Constitutional Claims on the Merit's.
7. The Supreme Court should help decide on Federal & State Courts not wanting to review his Strauder V. West Virginia, Equal Protection Right Claims.
8. The Supreme Court should help resolve his Brady violations that allowed the Federal & State Courts to withheld Exculpatory Impeachment Evidence to Illegally convict a Actually Innocent Man.
9. The Supreme Court should help decide on Federal & State Court Split, on "A New Rule" violating his Confrontation Clause Rights, decided in Crawford V. Washington, made Retroactive after his conviction in 2004.
10. The Supreme Court should help resolve his "Newly Presented Evidence", to allow petitioner Actual Innocent claims to pass thru "Gateway".
11. The Supreme Court should help resolve his Ineffective Assistance Of Counsel Claims, that allowed State Protection to Illegally convict a Actual Innocent man.

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

reported at Federal District Courts; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix A to the petition and is

reported at Federal District Courts; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix N/A to the petition and is

reported at Texas Criminal Court of Appeals; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Texas Criminal Court of Appeals court appears at Appendix N/A to the petition and is

reported at Not Available; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Nov-12-2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: Nov-12-2021, and a copy of the order denying rehearing appears at Appendix A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A 3:21-cv-01445-S-BN.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was W01-74866N(G). A copy of that decision appears at Appendix N/A.

A timely petition for rehearing was thereafter denied on the following date: Mar-31-2021, and a copy of the order denying rehearing appears at Appendix N/A.

An extension of time to file the petition for a writ of certiorari was granted to and including N/A (date) on N/A (date) in Application No. A Not Available.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in Relevant part: "No Person 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 to the United States Constitution provides in Relevant Part: "In all Criminal Prosecutions, the accused shall, have assistance of Counsel for his defense" "To be Confronted with the Witnesses against him".

The Eighth Amendment to the United States Constitution provides in Relevant part: "To be free from Cruel and Unusual Punishment". "The Actual Physical Condition of the Prison and its utilities and Prisoners Access to Recreational Opportunities".

The Fourteenth Amendment to the United States Constitution provides in Relevant part: "No Shall any State deprive any person of life liberty, or property without Due Process of Law". "Nor deny to any person within its Jurisdiction the Equal Protection of the Law".

STATEMENT OF THE CASE

On Oct-31-2000(Halloween). In the City of Dallas,Texas. Local Businessman Tagi Hisham was found Murdered in the Toys-R-Us parking lot. The Police Investigation into the Murder lead to No Suspects with No solid clues as to the Perpetrators until Co-defendant C.Marshall was Questioned by Police Detectives about a Robbery committed on the other side of town,from the use of Stolen Cellphone where the victim Cedric Coleman links suspects to the Murder. The Police apprehend the Petitioner Jones & charge him with Capital Murder & Aggravated Robbery,because the Information provided to Police by C.Marshall subsequently led to the arrests of Jones & (5) five other co-defendants remain untried in this case the Petitioner Jones who is the only long hair suspect in the group that was identified with being at the scene by victim Cedric Coleman, but not as the suspect who robbed him of his valuables, shows he was misidentified at this Murder, where the State Courts made Plea Deals with Co-defendants C.Marshall & J. Whaley to pin the crime on Jones,in exchange to be spared the Death Penalty & Immunity from both these Criminal Offenses, an the State failure to disclose to the Jury, that (7) seven suspects were involved in a Crime Spree, and there is No Evidence petitioner committed these crimes.

The "Newly Discovered and Reliable Evidence" in a "No Evidence" case shows that, but for Constitutional Errors, "It is More Likely than Not, that No Reasonable Juror would have found Evidence Sufficient to prove Petitioner Guilty Beyond A Reasonable Doubt of Capital Murder. On February-12-2002, Judgement of Conviction for Capital Murder was entered by the 195th Judicial District Court of Dallas County, Texas and Petitioner Jones was Sentenced to Mandatory Life Imprisonment, and that he should be Acquitted/ Released from custody of the TDCJ Institution.

REASONS FOR GRANTING THE PETITION

There is a conflict among The Circuit Courts on the exact points of Errors involved in this cas. The Federal & State Courts has a long line of case's to assist petitioner in his reason's why he should be Acquitted/Released from this Illegal Conviction in a "No Evidence" case of Capital Murder,which The State Courts allowed the Prosecution to Severance from Aggravated Robbery,as he did raise issues of "Newly Discovered and Reliable Evidence" to prove Actual Innocence claims,he shows the Federal & State Courts Erred in Dismissing his Petition,to not want to Grant a COA,with committing a "Fundamental Miscarriage Of Justice",to not want to Acquit A Actual Innocent man,of this Illegal Conviction.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

C Raymond Jones #107489

Date: July-11-2022

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

C. Raymond Jones Jr #1107489 — PETITIONER
(Your Name)

VS.

Bobby Lumpkin, director/TDCJ RESPONDENT(S)

PROOF OF SERVICE

I, C Raymond Jones Jr #1107489, do swear or declare that on this date, February 11th, 2022, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Office Of The Clerk Supreme Court Of The United States

Washington, D.C. 20543

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 11-2022, 2022

C Raymond Jones #1107489
(Signature)

12071 F.M. 3522 - ROBERTSON UNIT
ABILENE, TEXAS 79601

No: _____

In The

S Supreme Court Of The United States

C Raymond Jones #1107489

Petitioner

v.

Bobby Lumpkin, Director Of TDCJ

Respondent(s)

On Petition For A Writ Of Certiorari To The
United States Court Of Appeals
For The Federal District Court Of Texas

Petition For Writ Of Certiorari

The Petitioner, Respectfully Petitions For A Writ Of Certiorari with making "Freestanding Actual Innocence Claims" to show that his conviction resulted from many Constitutional & Due Process Violations, being dismissed by the Federal & State Court Of Appeals, with committing a "Fundamental Miscarriage Of Justice", to keep Incarcerated a "Actual Innocent" Man, with not allowing him to be Acquitted/Released out of the TDCJ Institution, as he proves in his "No Evidence" case of Capital Murder, he is not the person who committed the crime, bringing "Newly Presented Evidence" that was not available at his trial. Herrera V. Collins, 506 U.S 4 (1193); Schulp V. Delo 513 U.S 298(1195); House V. Bell 547 U.S 518 (2006); McQuiggins V. Perkins 569 U.S 383(2013).

Hohn V. United States 524 U.S 236(1998) The Supreme Court Held: That Denials Of COA could be brought to the Supreme Court through a Petition For Writ Of Certiorari.

Opinions Below

The Opinions of The Federal & State Courts is Unpublished.

Jurisdiction

On Feb-12-2002, Judgement of Conviction for Capital Murder was entered by The 195th Judicial District Court of Dallas County Texas and petitioner Jones was sentenced to Mandatory Life Imprisonment.

Deborah E.Farris filed Direct Appeal Feb-10-2003.COA #05-02-00344-CR. Petitioner never filed PDR.

Petitioner filed his first Application for Writ of Habeas Corpus in Apr-19-2004. On July-28-2004, The Court Of Appeals Denied the Writ F01-74866-N. On Sept-26-2014, Jones filed his Second Application for Writ Of habeas Corpus. On Oct-29-2014, The Court of Criminal Appeals Denied the Writ W01-74866-B;WR-58-866-02.

Petitioner filed his Third Application for Writ of habeas Corpus in Dec-17-2020. On Feb-15-2021. The Court Of Appeals denied the Writ W01-74866-N(G), On Mar-31-2021. Texas Court Of Criminal Appeals Dismissed without Written Order as Subsequent Writ of Habeas Corpus.

Petitioner filed his first Application 2254 to Federal District Courts on June-18-2021. On Nov-12-2021 Appeals THe Magistrate Judge decision in case,Cause No# 3:21-CV-01445-S-BN. The Federal District Court Denies his 2254,with denying him to file COA or to Appeal any Decision. Petitioner Appeals to THe 5th Circuit Court Of Appeals on May-23-2022. This Petition is Timely filed Pursuant to 28 USC § 2101(C).

Constitutional And Statutory Provisions Involved

The Fifth Amendment to the United States Constitution provides in

relevant part: "No Person 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 to the United States Constitution provides in relevant part; "In all Criminal Prosecutions, the accused shall, have assistance of Counsel for his Defense". "To be Confronted with the Witnesses against him".

The Eighth Amendment to the United States Constitution provides in relevant part: "To be free from Cruel and Unusual Punishment".

"The Actual Physical Condition of the Prison and its utilities and prisoners Access to Recreational Opportunities".

The Fourteenth Amendment to the United States Constitution provides in relevant part: "No shall any State deprive any person of Life, Liberty, or Property without Due Process of Law". "Nor deny to any person within its Jurisdiction the Equal Protection of the Law".

Statement Of Case

This case presents a Fundamental and frequently recurring Question of Law over which Federal & State Courts are openly and Intractably Divided. Due to this Circuit Court Split over what Constitutes "New" Evidence in Herrera, House, Schulp type Actual Innocence claims, the Federal District Courts Procedurally dismissed petitioner's Application for Writ of Habeas Corpus, to State he is Time-Barred, thus perpetuating a "Fundamental Miscarriage Of Justice".

On Oct-31-2000(Halloween). In the City of Dallas, Texas. Local Businessman Tagi Hisham was found Murdered in the Toys-R-Us parking lot. The Police Investigation into the Murder lead to No Suspects with No solid clues as to the Perpetrators until Co-Defendants C. Marshall was questioned by Police Detectives about a Robbery

committed on the other side of town, from the use of stolen cell-phone where the victim Cedric Coleman links suspects to the Murder. The Police apprehend the petitioner Jones & charge him with Capital Murder & Aggravated Robbery, because the Information provided to Police by C.Marshall subsequently led to the arrests of Jones & (5) five other Co-defendants remain untried in this case the Petitioner Jones who is the only long hair suspect in the group that was identified with being at the scene by victim Cedric Coleman, but not as the suspect who robbed him of his valuables, shows he was misidentified at this Murder, where the State Courts made Plea Deals with Co-defendants C.Marshall & J. Whaley to pin the crime on Jones, in exchange to be spared the Death Penalty & Immunity from both these Criminal Offenses, and the State failure to disclose to the Jury, that (7) seven suspects were involved, and there is No Evidence petitioner committed these crimes.

The "Newly Presented Evidence" in a "No Evidence" case shows that, but for Constitutional Errors, "It is More Likely than Not that No Reasonable Juror would have found Evidence Sufficient to prove Petitioner Guilty Beyond a Reasonable Doubt of Capital Murder. On February-12-2002, Judgement of Conviction for Capital Murder was entered by the 195th Judicial District Court of Dallas County Texas and Petitioner Jones was sentenced to Mandatory Life Imprisonment, and that he should be Acquitted/Released from custody of the TDCJ Institution.

Reasons For Granting The Petition

Herrera V.Collins, 506 U.S 390(1993) The Petitioner asserts his "Freestanding Actual Innocence" claim to demonstrate that he did not commit this crime, which the Federal & State Courts are not reviewing his Constitutional & Due Process Right Violations on

the Merits, to keep imprisoned a Innocent man.

Schulp V.Delo, 513 U.S 298(1995) The Petitioner can show "Newly Presented Evidence" to prove his "Actual Innocence", if established, it functions as "Gateway", permitting Habeas petitioner to have considered on Merits claim's of Constitutional Error that would otherwise be Procedurally Barred. The Petitioner otherwise Barred claims may be considered on the Merits if his claims of "Actual Innocence" is sufficient to bring him within the narrow class of case's implicating a "Fundamental Miscarriage of Justice".

House V.Bell 547 U.S 518(2006) The Petitioner asserts why he should be Acquitted/Released from this Illegal Conviction in a "No Evidence" case of Capital Murder connected to Aggravated Robbery, as he did raise Constitutional & Due Process Violations in his previous Writs, bringing "Newly Presented Evidence", to prove Actual Innocence claims, to show the Federal & State Courts Erred in dismissing his Petitions, to not want to Grant a COA, with committing a "Fundamental Miscarriage Of Justice", to not want to Acquit a Actual Innocent man, see Carriger V.Stewart, 132 F.3d 463(9th Cir 1997); Majoy V.Roe 296 F.3d 770(9th Cir 2002); Souter V. Jones 395 F.3d 577(6th Cir 2005); Schulp V.Delo, *supra*.

McQuiggins V.Perkins, 569 U.S 383(2013) The Petitioner makes a "credible" showing of "Actual Innocence" may allow a petitioner to pursue his Constitutional Claims on the Merits, notwithstanding the existence of a Procedural Bar to relief. "A Fundamental Miscarriage Of Justice Exception", is grounded in the Equitable Discretion of Habeas Courts to see that Federal Constitutional Errors do not result in the Incarceration of Innocent persons. To Overcome AEDPA's Time Limitations, he asserts "Newly Presented Evidence" of Actual Innocence, relying on Two Affidavits, Police Reports, & Waiver of Death Penalty Clause Evidence, to show he is

not the suspect who committed this crime, with having argued many times his Constitutional & Due Process Rights Violations, which the State Courts had No "Overwhelming" Evidence to convict petitioner in a "No Evidence" case of Capital Murder.

Murray V. Carrier, 477 U.S 478 (1986) The Petitioner asserts "A Constitutional Violation has Probably Resulted in the conviction of one who is Actually Innocent".

1. Federal & state Courts are Intractably, Split over "Newly Discovered" an "Newly Presented", to prove his Actual Innocence.

In Herrera V. Collins 506 U.S 4 (1993) The Supreme Court Held: "The Constitution prohibits the Imprisonment of one who is Innocent of the crime for which he was convicted", as petitioner makes a Substantial showing of Actual Innocence to be Acquitted/Released out of TDCJ Institution.

Petitioner brought a "Clear and Convincing" showing of "What Constitutes "Newly Reliable Evidence" under the Herrera, House, Schulp type Actual Innocence Standards to overcome AEDPA Statute Of Limitations, with showing there is a Split on what is "New" evidence between Federal Circuit Courts, to not want to investigate Petitioner Constitutional Claim's on the Merit's.

Petitioner brought a Schulp type Actual Innocence claim, under 28 USCA § 2254, as the Federal & State Court of Appeals denied petitioner a COA and dismissed petitioners Writ based on Procedural Bar, stating he didnt "Demonstrate that Reasonable Jurist would find the District Court assessment of the Constitutional Claims debatable or wrong" see Slack V. McDaniel 529 U.S 473, 484 (2000) see also, Bare V. Estelle 463 U.S 880 (1983).

Federal Circuit Courts are Intractably Split on what constitutes "New Reliable Evidence", see Wright V. Quarterman, 470 F.3d 581 (5th Cir 2006). The Fifth Circuit has not weighed in Fratta V. Davis,

889 F.3d 225,232(5th Cir 2018) yet,in Finley V.Johnson,243 F.3d 213(5th Cir 2001),this Circuit applied the "Newly Presented" standard as opposed to the "Newly Discovered" Standard.

The Federal District Court in this case unfairly took advantage of the Federal Circuit Split and applied the wrong Standard(Newly Discovered) in order to dismiss petitioner's Actual Innocence claim,without identifying evidence to prove his Guilt. The result is a "Miscarriage Of Justice" is perpetuated.

These federal District Courts routinely quote Moore V.Quarterman, 534 F.3d 454,2008 U.S App. Lexis 14284,to apply the "Newly Discovered" Standard of Review to Actual Innocence Claims.

"The Information in Huel's Affidavit not "New" (Given that it was always within the reach of Moore's personal knowledge or reasonable investigation) i.d at 465(see also Hancock V. Davis,906 F.3d 387,389-90(5th Cir 2018)).

Without "Clearly Established" Federal Law in this area,Texas Federal Districts apply "Newly Discovered" Standards, and this serves to provide a Procedural Mechanism to bar review of claims where there has been a "Fundamental Miscarriage Of Justice",see McQuiggins V.Perkins,569 U.S 383(2013);Murray V.Carrier,477 U.S 478(1986).

In Schulp V.Delo,513 U.S 298(1995). The Supreme Court Held:

"The Gateway should open only when a petition presents evidence of Innocence so strong that a Court cannot have confidence in the outcome of the trial unless the Courts is also satisfied that the trial was free of Nonharmless Constitutional Error".see Brecht V.Abrahamson,507 U.S 619(1993).

The Petitioner's 2254 Federal Habeas Corpus,he brings "Reliable Evidence" that State Courts excluded,to show that "It is More Likely Than Not,that No Reasonable Juror would have found him Guilty Beyond A Reasonable Doubt",as petitioner puts forward Evidence pointing to a different suspect. The Jury did not know about Capital Murder connected to Aggravated Robbery,or that

these crimes involved (7) seven suspects total, that shows petitioner was not involved. The Evidence is so significant & reliable that, considered with the trial record as a whole, it undermines confidence in the result of the trial, as he was not the same suspect who was identified at the scene of this Capital Murder, connected to Aggravated Robbery, and the petitioner brings "Newly Presented Evidence" that was not available at the time of trial.

1. Petitioner Actual Innocence is itself the Constitutional Basis of the Habeas petition. see Herrera V. Collins, supra.

2. Petitioner asserts his Freestanding Actual Innocence claim serves to pass thru "Gateway" to get the Federal Courts to consider claims that would otherwise be barred from hearing.

3. Petitioner shows that his conviction resulted from Constitutional Violations. see Schulp V. Delo, supra.

4. Petitioner claims his Actual Innocence should serve to pass thru Gateway to consideration of Constitutional claims Time-Barred, under AEDPA's one year Limitation period. see 28 USCA § 2244(D).

In House V. Bell 547 U.S 518(2006). The Supreme Court Held:

"The Petitioner has cast Doubt on his Guilt sufficient to satisfy Herrera Schulp Gateway Standard for obtaining Federal Review, but instead, the Circuit Courts are Intractably Split over, whether petitioner brings "Newly Reliable Evidence" to show he is Actually Innocent of committing this Murder, which is "Newly Presented" and wasnt available at the time of trial.

The Prosecutor kept Jury in the blind about all the Evidence, as petitioner makes a "Compelling and Convincing" showing of Actual Innocence, and recognizing that in Herrera V. Collins, supra. The Courts decided "In a Capital case, a truly persuasive demonstration of Actual Innocence made after trial would render the Incarceration of petitioner Unconstitutional, because there is no other "Overwhelming" Evidence of petitioner Guilt, and that there is a Reasonable Probability the Evidence found by him in January of 2010 would

2019 would prove these Constitutional Errors "Had Substantial and Injurious effect or influence in determining the Jury's Verdict" see Brecht V. Abrahamson, 507 U.S 619(1993); O'Neal V. McAninch 513 U.S 432(1995), "Where a Constitutional Violation has probably resulted in the conviction of one who is Actually Innocent, see Murray V. Carrier, 477 U.S 478(1986); Schulp V. Delo 513 U.S 298(1995); House V. Bell, 547 U.S 518(2006)

2. 28 USCA § 2254(D)(1) would deprive Petitioner of obtaining De Novo Review that would Bar the Correction of a Miscarriage Of Justice.

The Petitioner was convicted in a "No Evidence" case of Capital Murder which was based on a Unreasonable Determination of the facts, as petitioner brings "Newly Presented Evidence", to make a "Freestanding Actual Innocence Claims", under Herrera V. Collins, supra.

A Petitioners "Otherwise Barred claims may be considered on the Merit's, if his claim of Actual Innocence is sufficient to bring him within the Narrow class of case's, implicating a "Fundamental Miscarriage Of Justice", see Carrier V. Stewart 132 F.3d 463, 477 (9th Cir 1997) (Quoting Schulp, 513 U.S at 315, 115 S.Ct 851); House V. Bell 547 U.S 518(2006); Brown V. Johnson 224 F.3d 461(5th Cir 2000); Majoy V. Roe 296 F.3d 770(9th Cir 2002).

Under AEDPA Statute Of Limitation's, a Federal Court may issue a Writ of Habeas Corpus in case's involving illegal convictions, and can prove their Actual Innocence, that: (1) Resulted in a decision that was Contrary to, or involved an Unreasonable Application of, Clearly Established Federal Law, as determined by the Supreme Court of the United States, or (2) Resulted in a decision that was based on an Unreasonable Determination of the facts in light of the Evidence presented in the State Court proceeding 28 USCA § 2254(D)(1)(2) see

Barefoot V.Estelle 463 U.S 880(1983).

Petitioner makes a "Freestanding Actual Innocence Claims" to prove he is not the suspect who committed this Capital Murder, and to make a Substantial showing of his Constitutional Rights, under 28 USCA § 2253(C)(2)(3), to "Demonstrate that Reasonable Jurist's would find the District Courts assessment of the Constitutional claims debatable or wrong" see Chapman V.California 386 U.S 18 (1967). Federal Law requires Reversal of a State conviction involving a Constitutional Violation that is Not Harmless Beyond a Reasonable Doubt, which the petitioner is "In custody in violation of the Constitution or Laws of The United States" 28 USC § 2254(A) and therefore should pass thru "Actual Innocence" Gateway, to show the Courts convicted the wrong person, as his general assessment of their Merit's. Crone V.Cockreil, 324 F.3d 833(5th Cir 2003) Texas Federal District Courts is stating this "Evidence" did not satisfy the Herrera House Schulp Actual Innocence Standards to overcome AEDPA Statute Of Limitations, to allow petitioner's 2254 Federal Habeas Corpus to pass thru Gateway, with not wanting to make legal determination on "Whether his conviction was tarnished by a Constitutional violation that is Not Harmless Beyond a Reasonable Doubt. see Brecht V.Abrahamson 507 U.S 619(1995); O'Neal V. McMinch 513 U.S 432(1995), to want to review his "Newly Presented" that wasnt available at the time of trial, showing the State Court convicted the wrong person, as his ineffective Assistance of Counsel did not present a theory of Murder committed by someone else, or to have the State Courts identify evidence that proves petitioner Guilty, and to allow the Jury to hear Petitioner was identified as someone totally different in Aggravated Robbery, which the Courts is disputing in this case, whether or not he found "newly Presented Evidence" that can prove his "Freestanding Actual Innocence

Claim's", see Herrera V.Collins,supra.

Since there is a legitimate Circuit Split on the issue of what Constitutes "New" it is too obvious to all that the Texas Federal & State Courts decision involved an Unreasonable Application of Clearly Established Federal Law in Herrera House Schulp type Actual Innocence claims,to not allow petitioner to pass thru Gate way ,as the petitioners "Newly Presented Evidence" shows he was not in a conspiracy or agreement with Co-defendants to rob or Murder any person this Halloween Night,which there was a disagreement about going to a party.

Petitioner asks this Court to Grant relief and De Novo Review in order to correct the "Miscarriage Of Justice" in this case, The Constitutional Errors that took place in petitioner's trial did have "a Substantial and Injurious effect or influence in determining the Jury's Verdict",see Kotteakos V.U.S 328 U.S 750(1946) Chapman V.California 386 U.S 18(1967).

3. This gives the Supreme Court a Opportunity, to Review his "Freestanding Actual Innocent Claims", an to correct a Miscarriage Of Justice.

The Supreme Court should resolve whether a prisoner may be entitled to Habeas Relief based on a "Freestanding Actual Innocence Claims",see Herrera V.Collins,supra;but it was recognized that a prisoner "Otherwise subject to defenses of Abusive or Successive use of the Writ may have his Federal Constitutional claim considered on the Merit's,if he makes a proper showing of Actual Innocence,see Schulp V.Delo,supra.

To Resolve a Circuit Split on whether AEDPA's Statue Of Limitations can be overcome by a showing of Actual Innocence.see McQuiggins V.Perkins,supra.;San Martin V.McNeil 633 F.3d 1257(CA 11 2011) ("A Court may consider an untimely § 2254 petition if,by refusing to consider the petition for untimeliness, the Court

thereby would endorse a "Fundamental Miscarriage Of Justice" because it would require that an individual who is Actually Innocent remain imprisoned".) see also Rivas V.Fischer 687 F.3d 514,548(CA 2 2012)(Collecting Cases).

Most recently,in House V.Bell,supra. The Court has said, a petitioner's proof of Actual Innocence may provide a "Gateway" for Federal habeas Review of a Procedurally Defaulted claims of Constitutional Error. 547 U.S at 537-538,126 S.Ct 2064,165 Led2d 1. These Decisions "Seek to balance the societal interests in finality,comity, and conservation of scarce Judicial resources with the individual interest in justice that arises in the Extraordinary casesSchulp V Delo,supra. sensitivity to the injustice of incarceration of a innocent individual should not abate when the impediment is AEDPA's Statue Of Limitations.

Petitioner argues under Herrera,House,Schulp type Actual Innocence claims "Newly Presented" should be the Standard Of Review,to overcome AEDPA's Statue Of Limitation's,to show that he was Illegally Convicted in a "No Evidence" case of Capital Murder,with finding Evidence he Discovered in January of 2019,to show he was not in a Conspiracy or Agreement with Co-defendants to rob or murder any person this Halloween Night,which the Courts made out to the Jury that he did everything by himself,without identifying evidence to prove his Guilt. The Possibility that Constitutional Errors at his trial caused the conviction of a Actually Innocent person,is sufficient by itself to permit Plenary Review of the Petitioner's "Freestanding Actual Innocent Claims" see Chapman V.California,supra Brecht V.Abrahamson 507 U.S 619(1993).

Texas has Enacted Statutory Laws that create Unconstitutional Barrier's and Impediments which prevent petitioner having reviewed his "Newly Presented Evidence",to show the State Court convicted

the wrong person, who may have Factual Knowledge of Exculpatory/ Impeachment Evidence, and its location, from accessing that evidence to prove his claims, of Actual Innocence/Miscarriage Of Justice.

Two Examples are Texas Government Code § 552.028 and Texas Code of Criminal Procedure Art.39.14(F).

Tex.Gov.Code § 552.028 prevents one who is Incarcerated, or their family members from obtaining information from Government Agencies. Only Exceptions is if its the prisoners Attorney, but see the next example.

Tex.C.C.P art 39.14(F) prevents ones Attorney from providing copies of Documentation to assist in their case.

These Impediments to obtaining evidence oppressively restrict a Pro Se Litigant and unfairly prejudice the prisoner who must commonly cannot afford to hire a lawyer. These Unconstitutional State Laws are reminiscent of Jim Crow Laws passed in darker periods of our Nation's History.

Petitioner's Ineffective Assistance of Counsel failed to investigate both his clients case's to show there is No "Overwhelming" evidence to prove his Guilt, as petitioner was not identified at this Murder, which there is No Physical evidence, No Murder Weapon, No Eye Witness Identification, but only false testimony from Co-defendants, promised Plea Deals & Immunity, and not charged in these Criminal Offenses, which petitioner brings "Newly Presented Evidence", that could prove the State Courts intentionally withheld "Reliable Evidence" to illegally Convict a Actual Innocent man which over the years suppressed his requests to find Exculpatory/Impeachment Evidence, as "It is More Likely than Not that No Reasonable Jurors would find him Guilty Beyond a Reasonable Doubt", as reasonable jurist's would not have found petitioner Guilty of these (2) two Criminal Offenses, if the Jury was told the whole story & not part of the story, as the Federal & State Courts is being incorrect in its failing to investigate his Actual Innocence claims.

The Result is that rather than "Miscarriage Of Justice" being reviewed and corrected, prisoner's spend their time seeking documents to prove their claims. Valuable Government resources are expended in an effort to prevent a Pro Se Litigant to obtain documents he has factual knowledge of and thus carrying his burden of proof required, (see Michael Morton Act Tex.C.C.P 39.14) If the petitioner files a 11.07 and points to the Evidence only, the State ignores it and Writs not supported with evidence are routinely denied without a written order.

Therefore, Petitioner asks this Court to Grant his Petition for Writ Of Certiorari to provide petitioner the Exculpatory evidence he seeks to further prove his "Freestanding Actual Innocence Claims", under Herrera V.Collins, supra; Schulp V.Delo, supra.

4. Under 28 USCA § 2244(D)(1),
Petitioner would be Barred by Statute Of Limitations.

With a Circuit Court Split on what is "New" Evidence it is too obvious to all that the Federal & State Courts decision did involve a Unreasonable Application of Clearly Established Federal Law in a Herrera House Schulp type Actual Innocence claims which the petitioner shows he is not the person who committed this crime, see Finley V.Johnson 243 F.3d 215(5th Cir 2001); Santellan V Cockrell 271 F.3d 190(5th Cir 2001); Williams V.Taylor 529 U.S 362 (2000), under 28 USCA § 2254(D)(1,2).

Under a Herrera V.Collins, supra. The Petitioner makes a "Free-standing Actual Innocence Claim", showing he may have been convicted because of Constitutional Trial Errors, "Whom Society has Grievously Wronged", where the Constitutional Errors have affected the accuracy of the Verdict. see Brecht V.Abrahamson, supra. see also Grutsinger V.Davis 929 F.3d 259(5th Cir 2019).

In this case, Petitioner presents "Trustworthy Eye Witness accounts

(Francisco Ortega & Cedric Coleman affidavits), that prove "No Rational Jury could have found beyond a Reasonable Doubt that Petitioner, having long hair to his shoulders was seen fighting victim Tagi Hisham, which his Ineffective Assistance of Counsel failed to investigate both his clients case's, to show he is not the same suspect who committed this Murder (cedric Coleman Police Report). The evidence was not presented at trial, and the Jury never got to hear his Co-defendants being involved in other crimes afterwards. It Proves the State Prosecution knew not to mention both these crimes in one trial or wouldnt be able to convict petitioner.

Petitioner also presents Physical Evidence (Documents of Police Reports, Affidavits, etc), that were not presented at trial, as the State Courts decision was based on an Unreasonable Determination of the facts in light of the evidence presented in his trial, to show that petitioner was convicted on a factual theory that he could have committed a crime, which there is "No Evidence" to support his Guilt.

The Trustworthy Eye-Witness accounts, connecting the petitioner to the crime should be called into question in direct contradiction of evidence presented at trial, with not positively identifying petitioner with long hair to his shoulders, that none of the Eye-Witnesses at this Murder was able to identify. There is a reasonable Likelihood that, if credited, would undermine the State Court Conviction, as him being the person who committed this crime, with not identifying none of his Co-defendants or the evidence to prove his Guilt.

In McQuiggins V. Perkins 133 S.Ct 1924 (2013). The Supreme Court held: "Actual Innocence, if proved, serves as a Gateway through which a Petitioner may pass, whether the Impediment is a Procedural Bar, as it was in Schulp V. Delo 513 U.S 298, 115 S.Ct 851, and

House V.Bell 547 UWS 518,126 S.Ct 2064,or Expiration of the AEDPA Statute Of Limitations",i.d at 1935.

The Supreme Court should review the AEDPA to authorize Habeas Relief,because it finds the Courts reasoning Unsatisfactory,to keep Incarcerated a Actual Innocent man,to deny review of Meritous claims of a Miscarriage Of Justice,see McQuiggins V.Perkins,supra A Narrow defining of what "New" to mean"Newly Discovered" thwarts the intent,principles, and reasoning of cases like Schulp V.Delo 513 U.S 298(1995):House V.Bell 547 U.S 518(2006):McQuiggins V. Perkins 569 U.S 383(2013),when as in this case,Texas has enacted laws to prevent a Pro Se Litigant from obtaining the "New Reliable Evidence" he may have Factual Knowledge of. On the Contrary, the "Newly Presented" Standard provides a Equitable avenue to correct Miscarriage Of Justice.

Therefore, Petitioner asks this Court to Grant his Petition for Writ Of Certiorari,to create "Clearly Established Law" on what is "New" in the context of Herrera House Schulp type Actual Innocence Claims.

5. The Federal & State Courts,
Decision is Incorrect.

Since the Federal & State Courts dismissed his Habeas Petition as a Subsequent Application according to Texas Code Of Criminal Procedure,art.11.007 & 4(a-c),without a written order,it can only be assumed the Courts applied the Erroneous Standard Of Review,to Petitioners Herrera House Schulp type Actual Innocence claims, which the petitioner presents "Newly Presented Evidence" that wasnt available at his trial.see

This is Contrary to Herrera V.Collins,supra. Which prevents petitioner from presenting a "Freestanding Actual Innocence Claim", or a Schulp V.Delo,supra a "Actual Innocence Claim" that should

surpass a Procedural Default Bar, to allow a Review of his Constitutional Claims on the Merits.

Petitioner alleges that the Prosecutor withheld Exculpatory/Impeachment evidence disparaging his Constitutional Rights by improperly vouching for the perjury testimony, which his trial Counsel failed to object during trial, with the prosecutors separating his Capital Murder connected to Aggravated Robbery, with failing to identify evidence to prove the petitioner Guilty, which his Appellate Counsel failed to raise issues on Direct Appeal in the State Courts, to show how he could be proved Actually Innocent. Viewed in light of this, and other evidence not presented at petitioner's trial, the Federal & State Courts fail to make a Probable Cause Determination or to investigate his Constitutional & Due Process Rights being violated, which petitioner argues the "Ends Of Justice" Standard articulated by the Supreme Court in Sanders V. United States 373 U.S 1(1963).

6. This case gives the Supreme Court an Opportunity,
to Correct A Miscarriage Of Justice,
and provide Guidance for the Lower Courts,
to Release a Actual Innocent man.

Petitioner concedes that his § 2254 Habeas Petition was filed after he Discovered New Evidence in January of 2019, which was timely filed in 2020, with claiming a "Freestanding Actual Innocence Claims", should be a Exception to AEDPA's Time-Bar existing and argues that he has made a sufficient showing of Actual Innocence in order for his § 2254 Petition to proceed. see Barefoot V. Estelle 463 U.S 880(1983); Neville V. Dretke 423 F.3d 474(5th Cir 2005). Petitioner files his Petition, to make "A Substantial showing of his Constitutional Rights being violated", under 28 USCA § 2253(c) (2)(3), to "Demonstrate that Reasonable Jurists would find the District Courts assessment of Constitutional Claims Debatable or wrong"

Slack V.McDaniel 120 S.Ct 1595(2000).

The Elements for a Miscarriage Of Justice which petitioner must bring forth are: (1) New Reliable Evidence;(2) Not Presented at trial;and (3) More Likely Than Not that No Reasonable Juror would have convicted him in light of New Evidence,see Schulp V.Delo 513 U.S 298,324,327(1995).

1. Francisco J.Ortega/Police Report,shows he identifys suspects at this Capital Murder,but does not positively identify petitioner as committing this crime,as it also contradicts J.Whalely testimony of not being there on the scene.

2. Aggravated Robbery/Police Report,shows the Petitioner wore a painted face mask & Long hair to his shoulders,which is not same suspect in Capital Murder.

3. State Prosecution severanced Capital Murder connected to Aggravated Robbery,to allege different evidence,an to show that Co-defendants were promised Plea Deals & Immunity to not be charged in these Criminal Offenses.

Therefore, Petitioner asks this Court to Grant his Petition for Writ Of Certiorari,to Correct a "Fundamental Miscarriage Of Justice" on the Circuit Courts not giving a Review of Herrera House Schulp type Actual Innocence Claims.

7. Federal & State Courts Failing to review Grand Jury Discrimination Claims,that Excluded members of his own Race to be selected,with Prosecutor Misconduct leading up to Indictment.

In Strauder V.West Virginia 100 U.S 303,25 Led2d 664(1880). The Supreme Court Held: "That Racial Discrimination in the selection of the Grand Jury violates The Equal Protection Clause,as in such case,"The Selection of Grand Jury Members in violation of the Equal Protection Clause mandates that the conviction be vacated". The Petitioner argues that his Illegal Conviction,is based upon a Indictment returned by a Grand Jury from which Blacks were excluded,because of their race,which is a denial of the Equal Protection Laws Guaranteed by the 14th Amendment,with the Courts not releasing this Grand Jury Information,that was prejudiced against

petitioner in both these case's,for Capital Murder & Aggravated Robbery,see Alexander V.Louisiana 405 U.S 625(1972);Amadeo V.Zant 486 U.S 214(1988);Rideau V.Whitley 237 F.3d 472(5th Cir 2000).

The Petitioner is subjected to Indictment made by Grand Jury,that has been selected in an Arbitrary and Discriminatory manner,in violation of the Constitution and Laws of the United States.

Illegal and Unconstitutional Grand Jury selection procedure cast doubt on the integrity of the whole Judicial Process. They create the appearance of bias in the decision,which the prosecution knew to not disclose certain Exculpatory/Impeachment Evidence that proves petitioner Actual Innocent. The "Newly Presented Evidence" indicates that Grand Jury Indictment failed to mention his Co-defendants in Capital Murder connected to Aggravated Robbery,which he requests the Grand Jury Impanelment information,Witness Statements,Arrest Warrants,etc, to recover missing "Reliable Evidence" withheld by the State Prosecution,that was not mentioned at his trial,an to show that the State Courts can not identify evidence to prove his Guilt of committing these crimes,to convict a "Actually Innocent man".see Franks V.Delaware 438 U.S 154(1978); U.S V.Williams 504 U.S 36(1992).

The Petitioner has standing to challenge the system used to select his Grand Jury,on the ground that it Arbitrary excludes from service the members of his own Race,where the claim is that Blacks were systematically excluded from Grand Jury service. For Congress has made such Exclusion a Crime 18 USC § 243.

The Federal & State Courts ignoring to do a correct Standard Of Review,the Exclusion of Blacks who were Qualified persons from service on Grand Juries solely on the basis of their Race violates the Equal Protection Guarantee of the 14th Amendment,see Vasquez V.Hillary 474 U.S 254(1986);see also Woodfox V.Cain 609 F.3d 774 (5th Cir 2010). The Petitioner argues that,the Government engaged

in prosecutor misconduct by painting a unfair presentation to the Grand Jury and sponsoring false or perjured testimony from Co-defendants C.Marshall & J.Whaley to get a Indictment,because the perjured testimony is conflicted with other Evidence in this case, with the Courts not releasing this Grand Jury Information,which painted a false impression to the Grand Jury Members, and promised Plea Deals & Immunity to his Co-defendants.

The 5th Circuit Court Criminal Appeals decision to not Grant a COA is incorrect in not addressing his Equal Protection Rights Claims, to provide the petitioner with Grand Jury Information which allowed the prosecution to convict a innocent man in a "No Evidence" case of Capital Murder,with not affording Blacks at trial the same rights Guaranteed by the Constitution,see Crandel V.Cain 421 F.Supp2d 928 (2004);Guice V.Fortenberry 722 F.2d 276(1984);Rose V.Mitchell 433 U.S 545(1979).

The Texas Federal & State Courts is failing to review his Strauder V.West Virginia claims to not want to address "That members of his own Race or Ethnic group were systematically and purposefully Excluded from Grand Jury service,so the Government could Illegally Convict a Actual Innocent Man". The Courts not releasing Grand Jury Information,with him being indicted in both case's for Capital Murder connected to Aggravated Robbery,with none of his Co-defendants. The Courts refuse to answer his Grand Jury Indictment Ground, upon a finding that the Government knowingly sponsored the perjured testimony,see Strauder V.West Virginia,supra.see also;Peters V.Kiff 407 U.S 493(1972),as the petitioner seeks this Grand Jury Impanelment Information,Witness Statements,Arrest Warrants,etc. to show the Prosecution did not allow the Grand Jury Members,to find that the Government knew of the perjury and did nothing to rectify or prevent it,as the Texas federal & State Courts cant ignore that

perjury from Co-defendants C.Marshall & J.Whalely did not substantially influence the Grand Jury's decision to indict the petitioner, in a "No Evidence" case, who was basically the only suspect indicted in both these Criminal Offenses. The Petitioner was singled out in both Indictments for Capital Murder & Aggravated Robbery, as the Government knew it could not convict a "Actual Innocent Man" in this Murder, without them severing both the case's to allege different evidence in this Grand Jury discrimination, see Bank Of Nova Scotia V.United States 487 U.S 250(1988); United States V.Mechanik 475 U.S 66(1986).

The Petitioner has made Equal Protection Claims in his Habeas Corpus 11.07 & 2254, to have reviewed his Constitutional & Due Process Rights being violated, which his ineffective assistance of counsel failed to file Motion to Quash Indictment, after the Courts showed they had "No Evidence" in this Capital MUrder case, which the State over the years denying his evidence request, the Grand Jury Information to show, they conducted a Illegal Impanelment to convict a Actual Innocent man, see Strauder V.West Virginia, supra.

8. Federal & State Courts failing to Investigate his Brady Violations, to use Perjured Testimony to Illegally Convict a Actual Innocent Man.

In Brady V.Maryland 373 U.S 83,83 S.Ct 1194(1963). The Supreme Court Held: "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".

The prosecutor severance of Capital Murder connected to Aggravated Robbery did fail to allow the Jurors to hear all the Courts evidence against petitioner, as he shows that "His conviction resulted from Constitutional & Due Process Violations". see Monroe V.Blackburn 476 U.S 1145(1986).

1. The Jury did not hear his Co-defendants was promise Plea Deals

& Immunity not charged in this capital Murder & Aggravated Robbery.

2. The State Prosecution Not disclosing a Francisco J.Ortega Affidavit that could have been used to impeach the Credibility of J. Whaley,his Co-defendant Not charged in these Criminal Offenses who said he wasnt on the murder scene.

3. The Jury did not hear Cedric Coleman Police report shows that T.Williams misidentified the Petitioner with coming into his Barbershop,when petitioner is later identified in this Aggravated Robbery.

The Petitioner assert's in "Freestanding Actual innocence Claims" "There is a reasonable Probability that,had this Exculpatory/Impeachment Evidence been disclosed to petitioner,the result of the Jury trial would have been different,see Kyles V.Whitley 514 U.S 419(1995). To The Extent,the Discrepancies between these Plea Deals & Police Reports,show they are Favorable to Petitioner,because they could have been used to Impeach C.Marshall & J.Whaley & T.Williams Credibility and there identification of petitioner.

United States V.Bagley 473 U.S 667(1985). The Supreme Court Held: That Impeachment Evidence is "Evidence Favorable to an Accused",within the meaning of Brady,so that,if disclosed and used effectively,it may make the difference between conviction and Acquittal".

The State Prosecution withheld Police Reports from Francisco J. Ortega that could have impeached J.Whaley credibility,the Prosecution withheld Police Report from Cedric Coleman that shows C.M Marshall & J.Whaley are still involved in Criminal Offenses after this Murder, and contradicts T.Williams Eye-Witness Testimony,that Falsely Identifys Petitioner.

The Texas Federal District & 5th Circuit Court of Appeals,not wanting to Grant him a COA or to review his Constitutional Claims on the Merits,to show the Courts can not identify evidence to prove his Guilt,with something other than false testimony to get a Conviction,as Trial Judge Nelms never read to the Jury Accomplice

Witness Instruction or Law Of Parties Instruction,to solely base crimes done by petitioner,as he alleges that Constitutional Errors at his trial deprived the Jury of Critical Evidence that would have established his Innocence,which "It is More Likely than Not That No Reasonable Juror,would have found petitioner Guilty beyond a Reasonable Doubt".see Schulp V.Delo,supra. as the petitioner shows Substantial Evidence pointing to a different suspect,that he was not afforded a fair trial, and,"If proven and Viewed in light of the Evidence as a whole,would be sufficient to establish by "Clear and Convincing" evidence that but for the Constitutional Error, No Reasonable fact-finder would have found the petitioner Guilty of the Underlying Offenses". 28 USCA § 2244(B)(2)(B)(i)-(ii), see Blackmon V.Scott 22 F.3d 560(5th Cir 1994);see also Banks V. Dretke 540 U.S 668(2004)see Wilson V.Whitley 28 F.3d 433(5th Cir 1994).

The Exculpatory/Impeachment Evidence, is witness affidavits & Police Reports found by petitioner,which are claims based on New Facts that he was unable to fully and fairly raise,due to his Evidence Requests being denied by the State Courts,which is "Newly Presented Evidence" that should allow petition to pass thru Actual Innocence Gateway, showing that State Prosecution gave his Co-defendants Plea Deals & Immunity from being tried in Capital Murder & Aggravated Robbery "A Incentive to testify falsely in order to secure a conviction".

Whenever the Government fails,in response to a request,to disclose Impeachment Evidence relating to the Credibility of its key witnesses, the Truth-Finding process of trial is Necessarily thrown askew. "Without C.Marshall Hearsay Testimony told to T.Williams & J.Whaley testimony,there could have been No Indictment and No Evidence to carry the case to the Jury. T.Williams Hearsay testi-

"In all Criminal prosecutions, the accused shall enjoy the rights, to be Confronted with the witnesses against him". U.S Const.

Amend 6. Admission of hearsay statements of the type at issue violates the Clause unless the witness is unavailable and the defendant had prior opportunity to cross-examine him.

Petitioner's conviction became final on Direct Appeal well before Crawford was decided, and Crawford announced a New Rule, i.e "A Rule that was not dictated by precedent existing at the time the defendants conviction became final".

The Texas Federal & State Courts are showing there is a Split on Crawford V. Washington, being Retroactive between Federal Circuit Courts, which was decided in 2004, after Petitioner case was finalized, see Lave V. Dretke 416 F.3d 372 (5th Cir 2005), which his Appellate Counsel did not reargue his Confrontation Clause Rights being violated.

The Federal Circuit Courts are Intractably Split on what constitutes his "Confrontation Clause Rights", see Crawford V. Washington supra. see Bruton V. United States 391 U.S 123 (1968); see also Lilly V. Virginia 527 U.S 116 (1999). The Fifth Circuit has not weighed in United States V. Alvarado-Valdez 521 F.3d 337 (5th Cir 2008), but Granted Relief in United States V. Jimenez 464 F.3d 555 (5th Cir 2006), see U.S V. Rodriguez-Martinez 480 F.3d 303 (5th Cir 2007).

The Federal District Court in this case unfairly took advantage of the Circuit Court Split and applied the wrong Standard (Third Party hearsay Statements), in order to dismiss petitioners "Free-standing Actual Innocence Claims" without actually reviewing the Merits, showing that a Denial of Cross-Examination to explore the bias of a Prosecution Witness violates Confrontation Clause, whether or not the Denial influenced the outcome of the trial and

whether or not the witness was important to the Prosecutions case.

see Delaware V.Van Arsdall 475 U.S 673(1986).

The Denial to review his Merits,causes a Conflict over whether his 6th Amendment Rights should have been corrected,because the Courts allowed unreliable statements told to T.Williams,that should not have entered his trial,because they shifted responsibility for crimes to petitioner, and that their admission would violate the sixth Amendment Confrontation Clause "The Error cannot be harmless if it might have contributed to the verdict,even taking account of the other evidence". The Trial Judge Nelms overruled objections to say under Guidry V.State 9 S.W.3d 133(Tex Crim App 1999),he will admit Hearsay Statements from T.Williams not positively identifying the petitioner,or knowing if these accusations made by his Co-defendants C.Marshall were true or fabricated lies,see Crawford Washington,su pra. "The Admission of Third Party Statements against the petitioner without giving him opportunity to cross-examine his Co-defendant C.Marshall,so the Jury can hear all the evidence which is a "Miscarriage Of Justice". The Confrontation Clause, under Crawford V.Washington,supra. shows that "There was a Reasonable Probability Cedric Coleman Police Report & C.Marshall testimony would have changed the outcome of the proceedings. "The Central concern of the Confrontation Clause is to ensure the Reliability of the evidence against a Criminal defendant by subjecting it to Rigous Testing in the context of an Adversary proceeding before the trier of fact".see Bruton V.United States,supra. see also Lilly V.Virginia,supra. when the Government seeks to offer a Co-defendant out-of-court statements against the accused, and in this case,the Co-defendant is unavailable,Courts must decide whether the Clause permits the Courts to deny the accused his usual right to force the witness "To Submit to cross-examination,

the "Greatest Legal Engine ever invented for the Discovery of Truth". see Crawford, *supra*.

The Texas Federal & State Courts under the impression of Ohio V. Roberts 446 U.S 56(1980) to fail within a "Firmly Rooted Hearsay Exception", or bear particularized Guarantees of trustworthiness to be admitted at trial, violated the petitioner's right to cross-examine Cedric Coleman & C.Marshall, to bring out the truth about who committed the Murder, as Crawford overruled Roberts, because Roberts was inconsistent with the Original Understanding of the Confrontation Clause which the Crawford Rule would be to improve the accuracy of fact-finding in Criminal trials. As the Hearsay Statement did contribute to the conviction, when T.Williams made statement (9) nine months later, about what he heard from his Co-defendants, with not positively identifying petitioner, because the Government closing argument relied on that very evidence. There is no way to determine whether the Jury would have convicted petitioner, if he would of had a chance to cross-examine Cedric Coleman & C.Marshall, to show that petitioner was identified as someone totally different in Aggravated Robbery, which he did not committ this Capital Murder, and the State Courts failing to identify evidence that proves him Guilty.

The Petitioner shows T.Williams Hearsay Testimony allowed in trial violated his Confrontation Clause, see Ackerly V. Kulmaczewski 981 F.3d 70(1st Cir 2020), see Crawford V. Washington, *supra*.

For Several reasons, this case provides a perfect opportunity to correct "A Fundamental Miscarriage Of Justice" over whether his 6th Amendment Rights being violated to not Confront his accusers, which the Petitioner is now raising claims he did not know about under Crawford V. Washington, *supra*, that the State Prosecution rendered his trial fundamentally unfair, to convict a "Actual Innocent

Man",as the prosecutor kept insisting to the Jury,that C.Marshall statements should be believed,because he was Guaranteed Plea Deals & Immunity from the State Courts,to accuse other people in the Dallas County Jail of doing crimes,which the Jury did not hear at his trial,"It is More Likely than Not that No Reasonable Juror, would have found petitioner Guilty beyond a Reasonable Doubt",see Schulp V.Delo,supra.

Therefore,Petitioner asks this Court to Grant his Petition for Writ Of Certiorari,to create "Clearly Established Law" on what is a "New Rule" made in Crawford V.Washington,to assist in him proving Actual Innocence Claims,to pass thru Gateway.

10. Federal & State Courts failing to review
"Newly Discovered Evidence",which is
"Newly Presented Evidence" that was not available at trial
to prove his Freestanding Actual Innocence.

The "Newly Discovered and Reliable Evidence" as a whole so completely undermines the conviction against petitioner,bringing his "Freestanding Actual Innocence Claims",that he did not do this crime,with bringing "Newly Presented Evidence" the State Courts withheld from the Jury to evaluate,that was not available at his trial,an the result is a "Miscarriage Of Justice" is perpetuated. The Constitutional Law requires the Federal & State Courts to re-evaluate the Eye-Witness accounts at trial,as well as those who made Statements in Affidavits which petitioner has "Newly Presented",to show there is No "Overwhelming" Evidence to prove his Guilt,as petitioner was not identified at this Murder,which there is No Physical Evidence,No Murder Weapon,No Eye Witness Identification, but only false testimony from Co-defendants promised Plea Deals & Immunity,an Not charged in these Criminal Offenses. The "Newly Presented Evidence",that was not available at his trial is Exculpatory Scientific Evidence,Trustworthy Eye Witness Accounts

and Critical Physical Evidence, see Schulp V. Delo, supra. as petitioner brings forth Critical Physical Evidence, that can prove the State Prosecution withheld Evidence.

Newly Presented Evidence
Discovered in January of 2019

1. Petitioner brings Trustworthy Eye Witness Accounts from Francisco J.Ortega/Police Report was not brought up at his trial, will show that petitioner stayed in car, as he seen suspect wearing a painted face mask fighting victim Tagi Hisham, who was Not the petitioner with having long hair to his shoulders, which contradicts J.Whalely lying about not being on the Toys-R-Us parking lot & wearing a Wolf mask, with Francisco J.Ortega not being brought to trial, so he can identify what the suspect look like?, to prove the petitioner did not committ this crime.

2. Petitioner brings Trustworthy Eye Witness Accounts from Michael D.Wilson Affidavit, to show that Co-defendant C.Marshall was going around the Dallas County Jail, looking to tell on anybody about different crimes, because he was under the impression of recieving the Death Penalty for numerous felony offenses he committed, an wanted to get out of being executed, with coming up with a plan to have Co-defendant J.Whalely to lie on his behalf, to give perjured testimony at petitioner's trial, which his Ineffective Counsel never investigated other witnesses Michael Brisco, who C.Marshall was accusing him of killing his girlfriend, together with C.Marshall in another Capital Murder case/Cause No: F01-73342.

3. Petitioner brings Critical Physical Evidence, is Police Report from Aggravated Robbery, shows that Cedric Coleman identify several suspects who robbed him for his car, jewelry, Phone, etc. which Police Detectives connected Capital Murder connected to Aggravated Robbery, finding stole cellphone in C.Marshall possession, where

they show a suggestive Photo picture to Cedric Coleman, who identify's petitioner with wearing a painted face mask & long hair to his shoulders, that isn't the same suspect identified in this Capital Murder, as the petitioner never got a chance to cross-examine Cedric Coleman or C. Marshall to bring out the truth of him & J. Whaley Not being charged in this Aggravated Robbery, to show how the State Prosecution withheld Evidence & promised them Deals after his trial, that can prove Petitioner is Actually Innocent of this crime,

4. Petitioner brings Critical Physical Evidence is Co-defendants Waiver of Death Penalty Clause Agreements, which they was promised Plea Deals & Immunity to lie on the Petitioner, which he did not find "Newly Presented Evidence" until January of 2019, which was Not available at his trial, as the State Courts refuse to release other Exculpatory Evidence/Documents to Petitioner.

In The Present Case, Petitioner has alleged a "Freestanding Actual Innocence Claims", pointing to facts & evidence in the record which if proven, should Grant the Petitioner a Immediate release out of prison, which the Federal & State Courts can not identify evidence of his Guilt, or say petitioner can not prove that his Conviction resulted from Constitutional & Due Process Rights Violations. "That failure to consider the claims will result in a "Fundamental Mis-Carriage Of Justice", see McQuiggins V. Perkins 133 S.Ct 1924(2013), as the petitioner shows "A Constitutional Violation has Probably resulted in the conviction of one who is Actual Innocent of the crime", see Schulp V. Delo, supra. (Quoting Murray, 477 U.S at 496, 106 S.Ct 2639), as his Document request for Grand Jury Impanelment, Witness Statements, Arrest Warrants, etc. to prove the state Courts knew his Co-defendants absolutely resolved themselves of doing any crimes, to put it all on the petitioner, which evidence does Not show

he committed these crimes. "It is More Likely than Not that No Reasonable Juror would have convicted him in light of the New Evidence", Schulp,supra.

The Result is that rather than "Miscarriage Of Justice" being corrected, they are perpetuated by there not being "Clearly Established" Law of what "New Reliable Evidence" is? If the Newly Discovered Standard is allowed then the Principles and Reasoning of Herrera V.Collins,506 U.S 4(1993);Schulp V.Delo,513 U.S 298(1995); House V.Bell.547 U.S 518(2006);McQuiggins V.Perkins,569 U.S 583 (2013) are thwarted. The "Newly Presented Evidence" Standard properly provides an avenue to correct "Miscarriage Of Justice" while "Newly Discovered and Reliable Evidence" perpetuates them.

Texas Federal District Courts should have reached the Merit's rather than deny his "Newly Presented Evidence" which shows petitioner can obtain relief under Herrera,House,Schulp type Actual Innocent Claims, which he not only should have met the Actual Innocent Standard, to overcome AEDPA Statute Of Limitations, but was entitled to immediate release under Herrera V.Collins,supra. As Petitioner shows he did not committ this crime, was Not identified by Eye Witnesses that he was seen with long hair to his shoulders fighting Tagi Hisham, trial counsel failed to conduct individual interviews with Michael Brisco, Michael D.Wilson, or any of his Co-defendants to discover, they was involved in Aggravated Robbery a hour later after this Murder, trial counsel failed to conduct individual interviews with any of the potential witnesses at this Murder, to show his client with long hair to his shoulders was not involved in this crime, which requires the Federal & State Courts to do the correct Standard Of Review, to asses how Reasonable Juror's would react to the overall, Newly Supplemented Record.

Therefore, Petitioner asks this Court to Grant his Petition For

Ineffective Assistance Of Counsel not objecting to Trial Judge Nelms never reading to the Jury,Accomplice Witness Instruction or Law Of Parties Instruction,to solely base crimes were done by petitioner alone,when there was involved (7) seven suspects total,who not tried in Court.

The Federal & State Courts fail to review his "Freestanding Actual Innocence Claims",saying he cant overcome AEDPA Statue Of Limitations,which petitioner shows he had Ineffective Counsel,who did abandon his client,after he received a Life Sentence in Capital Murder with not reviewing the evidence in Aggravated Robbery case,which shows his "Trial Counsel representation fell below an Objective Standard of Reasonableness" to not prove his client is Actually Innocent,which the Courts can not identify evidence to prove him Guilty.

The Failure of his Ineffective Counsel not trying to investigate both his client's case's,demostrates Actual Prejudice,i.e, A Reasonable Probability that,but for Counsel's Deficient Performance the result of the trial would have been different",see Strickland V.Washington,supra. see also Williams V.Taylor,529 U.S 362(2000), would show that Counsel was not functioning as the Counsel Guaranteed by the Sixth Amendment,to provide Reasonable effective assistance,see Brown V.Johnson,224 F.3d 461(5th Cir 2000);Harrison V. Quarterman,496 F.3d 419(5th Cir 2001). Had the Jury heard all this Crucial Evidence left out of his trial,with his trial counsel not objecting to Suggestive Up-in-Court Identification Procedure,to not allow the Jury to see his Co-defendants,due to his trial counsel failure to investigate both his client's case's,to interview and call as a Witness Michael Brisco,Michael D.Wilson,because petitioner had incompetent trial counsel who did not represent his client to the best of his abilities,see Tunstall V.Hopkins,306 F.

F.3d 601(8th Cir 2002). His Trial Counsel was ineffective with his investigation, as the counsel's conduct so undermined the proper functioning of the Adversarial Process that the trial cannot be relied on as having produced a just result, as "It is More Likely than Not that No Reasonable Juror would have found him Guilty beyond a Reasonable Doubt" as "Counsel entirely fails to subject the Prosecutions case to meaningful Adversarial Testing", see Perillo V. Johnson, 205 F.3d 775(5th Cir 2000); United States V. Cronic 466 U.S 648(1984).

Based on the Evidence, the Federal & State Courts should have found the Petitioner "Freestanding Actual Innocence Claims, proves his ineffective trial counsel was objectively unreasonable at trial, because the behavior of counsel in not investigating his client's Capital Murder connected to Aggravated Robbery, would show the petitioner is not the same suspect, with Eye Witnesses seeing more than several suspects on the scene, with saying suspect who committed this Murder, had on a painted face mask & a bald or college cut, which the Courts couldnt prove with "Overwhelming" evidence that petitioner did this crime, which proves he did not & makes him Innocent.

Petitioner argues that he would prove his "Freestanding Actual Innocent Claims", if he had been provided Grand Jury Information, Exculpatory/Impeachment Evidence, but his requests for evidence over the years, being denied, as petitioner shows his trial counsel was ineffective for failing to file Motion's to Quash Indictments, Petitioner proves that Counsel Performance fell below an objective Standard Of Reasonableness in light of the surrounding circumstances and that this Deficiency caused Prejudice to the petitioner by denying him a fair trial, as the petitioner 6th Amendment right to counsel has been violated, see Strickland, *supra*.

Petitioner contends that his Appellate Counsel was Ineffective because she did not raise the issues of ineffective trial counsel with respect to point out his conviction resulted from Constitutional & Due Process Right violations, being forced to trial by himself, in a Suggestive Up-in-Court Identification Procedure, that singled out petitioner, with not allowing the Jury to see his Co-defendants, or to show the Jury he was not driving no red car, "Because the Errors at the Appellate stage stemmed from the Errors at trial, if there was no prejudice from the trial Error, there was also No Prejudice from the Appellate Error", see Evits V. Lucey 469 U.S 387(1985), as the petitioner suffered ineffective Appellate Counsel on Direct Appeal, who failed to point out petitioner has long hair to his shoulders, an not the same suspect at the scene of this Murder, see Trevino V. Thaler, *supra*.

The Federal & State Courts refusing to allow petitioner to overcome AEDPA Statute Of Limitations to prove his "Freestanding Actual Innocent Claims", as "It is More Likely than Not that No Reasonable Juror would have convicted him of the underlying offense" (Quoting Schulp V. Delo, *supra*), as Appellate Counsel failed at not mentioning on Direct Appeal any of these Constitutional Violations which did help convict a Actually Innocent Man, see Martinez V. Ryan, 566 U.S 1(2012); Trevino V. Thaler, 569 U.S 413(2013).

Therefore, Petitioner proves his "Freestanding Actual Innocence Claims" of not committing this crime, asking this Court to Grant his Petition For Writ Of Certiorari, to allow a Innocent man to be set free, Acquitted, Released out of prison.

Conclusion

The Petition For Writ Of Certiorari should be Granted.

Respectfully Submitted,

C Raymond Jones #1107489