No. 22–5736

IN THE
SUPREME COURT OF THE UNITED STATES

ERNESTO SALGADO MARTINEZ,
PETITIONER,

-vs-

DAVID SHINN, et al.,
RESPONDENTS.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF IN OPPOSITION

MARK BRNOVICH
ATTORNEY GENERAL

JOSEPH A. KANEFIELD
CHIEF DEPUTY AND CHIEF OF STAFF

JEFFREY L. SPARKS
DEPUTY SOLICITOR GENERAL/
SECTION CHIEF OF CAPITAL LITIGATION

LAURA P. CHIASSON
ASSISTANT ATTORNEY GENERAL
CAPITAL LITIGATION SECTION
(COUNSEL OF RECORD)
400 W. CONGRESS, BLDG. S-215
TUCSON, ARIZONA 85701-1367
LAURA.CHIASSON@AZAG.GOV
CLDOCKET@AZAG.GOV
TELEPHONE: (520) 628-6520

ATTORNEYS FOR RESPONDENTS

CAPITAL CASE
QUESTIONS PRESENTED FOR REVIEW

1. Did the district court abuse its discretion by denying Martinez's request to reopen the judgment under Federal Rule of Civil Procedure 60(b)(6)?

2. Did the Ninth Circuit err by refusing to grant a certificate of appealability on the district court's denial of Rule 60(b)(6) relief because no reasonable jurist could find that Martinez had demonstrated extraordinary circumstances justifying reopening the judgment?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES PAGE

STATUTES

RULES

JURISDICTION

This Court lacks jurisdiction to consider the first Question Presented because it does not seek review of a case in the court of appeals, but of a district court ruling. *See* 28 U.S.C. § 1254 (granting jurisdiction in this Court to review "[c]ases in the courts of appeals"). In addition, 28 U.S.C. § 2101(c) requires that "any writ of certiorari intended to bring any judgment or decree in a civil action … before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree." The "judgment or decree" brought before this Court in the first Question Presented is the district court's denial of Martinez's Motion for Relief from Judgment Pursuant to Rule 60(b), which order was issued on March 23, 2021. *See* App. A. The court denied his motion for reconsideration on May 14, 2021. *See* App. B. Accordingly, because Martinez filed his petition for writ of certiorari more than 90 days after the entry of the judgment at issue in the first Question Presented, it is "jurisdictionally out time" and may not be considered. Sup. Ct. R. 13.2.

Respondents do not dispute this Court's jurisdiction to consider the second Question Presented, which addresses the Ninth Circuit's denial of a certificate of appealability. *See Dart Cherokee Basin Operating Co., LLC v. Owens*, 574 U.S. 81, 90 (2014) ("The case was 'in' the Court of Appeals because of Dart's leave-to-appeal application, and we have jurisdiction to review what the Court of Appeals did with that application.").

INTRODUCTION

Martinez was convicted of the 1995 murder of an on-duty police officer during a traffic stop, and was sentenced to death. After he exhausted his state and federal appeals, and the Ninth Circuit issued its mandate, Martinez filed a motion under Federal Rule of Civil Procedure 60(b) to reopen the judgment to allow discovery on claims that the state withheld exculpatory evidence and that a witness had recanted his testimony. Martinez relied on *Mitchell v. United States*, 958 F.3d 775 (9th Cir. 2020), which had recently been decided by the Ninth Circuit, as an "extraordinary circumstance" requiring relief under Rule 60(b). App. A-3–4. The district court denied the motion and declined to issue a certificate of appealability (COA). App. A-5–6. Martinez then moved for a COA in the Ninth Circuit, which that court denied.

Martinez presents two issues in his petition for writ of certiorari. First, he asserts that the district court abused its discretion in denying his Rule 60(b) motion for discovery. Petition at 18–22. As explained above, this Court lacks jurisdiction to consider this issue. In any event, this Court should not grant the writ because Martinez merely seeks to correct the district court's perceived error in finding he did not demonstrate extraordinary circumstances warranting reopening his judgment. Second, Martinez asserts that the Ninth Circuit's erred by denying a COA. *Id.* at 22–26. Because Martinez again merely seeks error-correction, and does not assert that the Ninth Circuit's ruling conflicts with that of other circuits or decided an "important question of federal law" that has not yet been settled by this Court, this Court should deny the writ. Sup. Ct. R. 10.

STATEMENT OF THE CASE

Petitioner Ernesto Martinez was convicted in 1997 on one count of first-degree murder of a police officer, two counts of theft, and two counts of misconduct involving weapons. *See State v. Martinez* (*Martinez I*), 999 P.2d 795, 799, ¶ 12 (Ariz. 2000). The Ninth Circuit summarized Martinez's crimes as follows:

> In August 1995, Martinez stole a blue Monte Carlo and used it to drive from California to Arizona. Martinez met with his friend, Oscar Fryer, in Globe, Arizona shortly before the murder of Officer Martin.
>
> Fryer and Martinez spoke in Martinez's car for about thirty minutes. Fryer asked Martinez where he had been; Martinez responded that he had been in California. Fryer asked Martinez if he was still on probation; Martinez responded that he was, and that he had a warrant out for his arrest. Martinez told Fryer that he had come to Arizona to visit friends and family.
>
> While in the car with Fryer, Martinez removed a .38 caliber handgun with black tape wrapped around the handle from underneath his shirt and showed it to Fryer. Fryer asked Martinez why he had the gun; Martinez responded that it was "[f]or protection and if shit happens."
>
> As Martinez was showing the gun to Fryer, they spotted a police officer in the area. Fryer asked Martinez what he would do if he was stopped by the police. Martinez responded that "he wasn't going back to jail."
>
> Following that conversation, Martinez drove from Globe to Payson on a stretch of State Route 87—better known as the Beeline Highway. Several witnesses testified to having seen Martinez and his car around Payson that morning.
>
> Susan and Steve Ball were among those witnesses. Martinez tailgated them on the Beeline Highway "for a long time" before passing their car "very quickly on the left-hand side." Shortly after that, the Balls saw Martinez's car pulled over to the side of the road, with a police car stopped behind him and a police officer standing outside the driver's side door. As they drove by, they said

> to each other that it was "good" that the driver "got the speeding ticket."
>
> But shortly after the Balls saw Martinez's car pulled over, "the same blue car passe[d] [them] on the left-hand side going very quickly." The couple found it "very strange" because "there was no time [for the driver] to have gotten a speeding ticket." When Martinez's car ran a red light, the Balls knew that "[s]omething [was] going on."
>
> The Balls were suspicious for good reason. After being pulled over for speeding by Officer Martin, and after the Balls had passed Martinez's car, Martinez shot Officer Martin four times with a .38 caliber handgun—the same gun he had shown Fryer days earlier. The bullets struck Officer Martin's right hand, neck, back, and head. The back and head wounds were fatal.
>
> After shooting Officer Martin, Martinez stole Officer Martin's .9mm Sig Sauer service weapon and continued driving down the Beeline Highway. The Balls wrote down Martinez's license plate number when they spotted his car again.
>
> Martinez was arrested in Indio, California the day after the murder of Officer Martin. Hours after his arrest, Martinez called Mario Hernandez, a friend. After Hernandez passed the phone to his brother, Eric Moreno, Martinez laughingly told Moreno that "he got busted for blasting a jura"—a slang term in Spanish for a police officer.

Martinez v. Ryan (*Martinez II*), 926 F.3d 1215, 1221–22 (9th Cir. 2019) (footnotes and some internal quotation marks and alterations omitted). A jury convicted Martinez of first-degree murder, theft, and misconduct involving weapons. The trial court sentenced Martinez to death, and the Arizona Supreme Court affirmed his convictions and death sentence. *Id.* at 1222.

Martinez filed a state petition for post-conviction relief, which was denied, as was his petition for review. *Id.* He then filed a federal habeas petition, which the district court denied. *Id.* While Martinez's appeal was pending in the Ninth Circuit,

this Court decided *Martinez v. Ryan*, 566 U.S. 1 (2012). *Id.* The Ninth Circuit granted Martinez's request for a remand so the district court could consider his claims in light of *Martinez*. *Id.* It also granted leave for Martinez to "file in the district court a renewed request for indication whether the district court would consider a [Federal Rule of Civil Procedure] 60(b) motion for reconsideration of Claim 4 and for consideration of a possible *Brady-Napue* claim in light of newly discovered evidence." *Id.* at 1222–23 (quotation marks omitted). The district court denied Martinez's remanded claims as well as his request that it consider a motion for relief from judgment under Rule 60(b). *Id.* at 1223.

The Ninth Circuit granted a COA on the remanded claims and ordered a new round of briefing. *Id.* It affirmed the district court's dismissal of Martinez's habeas petition, including his claim that the State improperly withheld evidence of Fryer's drug use and the benefits Fryer received for his testimony. *See id.* at 1227–29. It also held that it lacked jurisdiction to review the district court's denial of Martinez's "renewed request for indication of whether the district court would consider a Rule 60(b) motion for reconsideration," because the district court's ruling was not a "final determination on the merits." *Id.* at 1229 (quotation marks omitted). The Ninth Circuit denied Martinez's petition for panel rehearing and rehearing en banc. *See* Ninth Cir. No. 08-99009, Dkt. 171. This Court denied Martinez's petition for certiorari on May 18, 2020, and the Ninth Circuit issued its mandate on May 20, 2020. *Martinez v. Shinn*, 140 S. Ct. 2771 (2020); Ninth Cir. No. 08-99009, Dkts. 176, 177.

On July 29, 2020, Martinez filed a Motion for Relief from Judgment pursuant to Rule 60(b) in the district court. Dist. Ct. No. 2:05-CV-01561, Dkt. 136. In that motion, Martinez asserted he was not presenting new claims for relief, but only sought to reopen the judgment "based on three contentions …, including discovery pursuant to … *Mitchell v. United States*, 958 F.3d 775 (9th Cir. 2020)."[1] *Id.* at 1. Specifically, Martinez sought discovery on his claims that (1) the prosecutor suppressed evidence that the ignition in the car he was driving was intact when he was arrested, contrary to the evidence at trial; and (2) Fryer had recanted his testimony that Martinez told him he was not going back to jail if he was stopped by police. *Id.* at 3–4. Martinez asserted that this evidence would rebut the State's evidence of premeditation. The district court rejected this motion as well as Martinez's motion for reconsideration. Apps. A, B.

The Ninth Circuit denied Martinez's COA motion in a published opinion. *See* App. C. In so doing, the court stated that its "holding in *Mitchell* falls short of satisfying the extraordinary circumstances requirement" for relief under Rule 60(b)(6). App. C-7. As a result, "[t]he district court therefore did not err in applying [the court's] well-settled rules governing discovery in habeas proceedings in denying Martinez's Rule 60(b)(6) motion for additional discovery." App. C-8. The court then held that "[i]t is beyond debate among reasonable jurists that the district court did not abuse its discretion in denying Martinez's motion under Rule 60(b)(6)," and denied a COA. *Id.*

[1] In *Mitchell*, the Ninth Circuit held that a district court has jurisdiction to consider a Rule 60(b) motion that merely seeks to "develop evidence for a potential new claim." 958 F.3d at 786.

The Ninth Circuit denied Martinez's motion for rehearing. Ninth Cir. No. 08-99009, Dkt. 171.

REASONS FOR DENYING THE WRIT

This Court grants certiorari "only for compelling reasons," Sup. Ct. R. 10, and Martinez has presented no such reason. In particular, Martinez has not established that the Ninth Circuit "has entered a decision in conflict with the decision of another United States court of appeals" or "has decided an important federal question in a way that conflicts with relevant decisions of this Court." Sup. Ct. R. 10(a), (c). Rather, Martinez "assert[s] error consist[ing] of erroneous factual findings [and] the misapplication of a properly stated rule of law," for which this Court "rarely grant[s]" certiorari review. Sup. Ct. R. 10. Because Martinez merely seeks correction of the district court's perceived error in denying Rule 60(b) motion, and the Ninth Circuit's denial of a COA, this Court should deny his petition.

I. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY DENYING MARTINEZ'S RULE 60(B) MOTION.

Martinez asserts that the district court erred by denying his Rule 60(b) request for discovery. Petition at 18–22. As explained earlier, this Court lacks jurisdiction to consider that question. Moreover, Supreme Court Rule 10 establishes that a writ is appropriate to review the decision of a United States court of appeals or of a state court of last resort; it does not contemplate granting the writ to review a district court decision. *See* Sup. Ct. R. 10(a)–(c). This Court should not, therefore, entertain Martinez's request for a writ on this issue. In any event, the district court appropriately denied Martinez's Rule 60(b) motion.

A. The district court's ruling.

The district court noted that it had jurisdiction to consider Martinez's Rule 60(b) motion to the extent Martinez was "seeking discovery and merely 'the opportunity to attempt to develop a claim.'" App. A-3 (quoting *Mitchell*, 958 F.3d at 786). It further noted that Martinez must establish "extraordinary circumstances" to justify reopening the judgment. *Id.* (citing *Phelps v. Alameida*, 569 F.3d 1120, 1135 (9th Cir. 2009)). The court assumed, but did not decide, that *Mitchell* was an "extraordinary change in the law" favoring reopening the judgment. *Id.* The district court then determined that, even if Martinez obtained the evidence he sought, "there is no significant likelihood [he] would obtain relief" on his claims because he lacked a vehicle to present the claims under AEDPA and because, "in light of the other evidence in the record, disputes about the car's ignition switch or what a witness may or may not have heard Martinez say seem highly unlikely to lead to a different result." App. A-4. Accordingly, *Mitchell* did not require reopening the judgment to allow discovery, and the court denied Martinez's motion and COA.

The district court also denied Martinez's motion for reconsideration, elaborating that "the proper test under *Napue* is materiality; the Court must determine whether there is any reasonable likelihood that the false testimony could have affected the judgment of the jury; if so, then the conviction must be set aside." App. B-4. The court concluded that any claimed *Napue* violation did not affect the jury's verdict:

> Martinez asserts Sheriff Detective Douglas Beatty testified at the guilt phase of trial that the ignition was missing from a 1975 Monte Carlo driven by Martinez at the time of his arrest, which led prosecutors to argue Martinez had stolen the car and, therefore, had motive to shoot the

> victim, a state police patrolman, during a traffic stop and premeditated the homicide. ***But there was ample evidence, aside from Detective Beatty's testimony about the missing ignition switch, that the Monte Carlo was stolen and that the murder was premeditated***.

App. B-4–5 (emphasis added; record citation omitted). The court explained that, to prove premeditation, the State had relied on the medical examiner's testimony as well as "the amount of time it would have taken Officer Martin to walk the distance from his vehicle to the stolen Monte Carlo, where he was shot at the driver's side door." App. B-6. "[T]he prosecution placed no significance on the testimony of Det. Beatty regarding the missing ignition switch" to establish premeditation.[2] App. B-7–8.

B. The district court reasonably rejected this claim.

Although Martinez asserts that the district court abused its discretion in rejecting his Rule 60(b) motion, he identifies no error in the court's decision. Martinez begins by discussing this Court's ruling in *Bracy v. Gramley*, 520 U.S. 899 (1997), which addressed "good cause" for discovery under Rule 6(a) of the Rules Governing Habeas Cases. Petition at 19. He then concludes that "[t]ension exists between *Bracy* and the procedure employed here to determine whether Martinez was entitled to discovery in habeas pursuant to Rule 60(b)." *Id.* He does not, however, explain what this "tension" is. Nor is any "tension" apparent, because Martinez did not seek discovery under Habeas Rule 6(a); he sought to reopen his final judgment under Federal Rule of Civil Procedure 60(b) in order to conduct discovery. Thus, Habeas Rule

[2] The district court held that Martinez had mischaracterized "the significance placed on Det. Beatty's testimony" and that "the prosecutor did not assert that Martinez stole the Monte Carlo, only that the Monte Carlo he was driving was stolen, an uncontroverted fact whether the ignition switch was missing or not." App. B-5.

6(a)'s "good cause" requirement was not at issue here.[3] Under Rule 60(b), Martinez was required to demonstrate "extraordinary circumstances" before the judgment could be reopened. *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005) ("[O]ur cases have required a movant seeking relief under Rule 60(b)(6) to show 'extraordinary circumstances' justifying the reopening of a final judgment."). Accordingly, no "tension" exists between *Bracy* and the district court's denial of Rule 60(b) relief.

Martinez next asserts that the district court "minimized [his] showing of extraordinary circumstances," claiming that he established that the State failed to disclose a photograph and notes establishing that the vehicle's ignition was intact when he was arrested, contrary to the testimony at trial. Petition at 20. But even if Martinez is correct that the State failed to disclose this evidence, it is not exculpatory because it does not establish or suggest that Martinez did not kill Officer Martin.

To the extent Martinez asserts, as he did in the district court, that evidence of the intact ignition rebuts the State's argument that he premeditated the murder, he is incorrect. *See* Petition at 22 (alleging that the prosecutor elicited false testimony "in support of the premeditation element of first degree murder"). The district court explained (and Martinez does not dispute) that the State did *not* rely on the missing

---

[3] In denying the motion for reconsideration, the district court cited Habeas Rule 6(a) in observing that *Mitchell* "did not set aside the bar on discovery in state habeas cases in the absence of good cause." App. B-3. It further noted that Martinez could not establish good cause because he "has no procedurally proper mechanism for demonstrating entitlement to relief." *Id*

ignition to establish premeditation.[4] *See* App. B-6–7. "In fact, the missing ignition was not mentioned at all during closing argument" and "only briefly in rebuttal" to support an argument unrelated to premeditation. *Id.* Martinez does not dispute the district court's conclusion, and he does not identify any other way in which the ignition evidence would have changed the jury's verdict. Petition at 21–22.

Martinez nevertheless complains that the district court should not have found that any *Napue* violation was immaterial without first allowing discovery on the question. *Id.* at 21. But the district court explained that in considering materiality, it assumed that Martinez could prove his allegations:

> For purposes of the materiality analysis, the Court assumes Martinez could prove the ignition switch was intact at the time of his arrest, that Maricopa County prosecutors were told by Detective Beatty or California criminalist Ricci Cooksey that the ignition in the Monte Carlo driven by Martinez was intact when it was impounded after his arrest, and that Fryer's testimony regarding Martinez's statements about what he would do if stopped by police were successfully impeached.

App. B-5 n.2. Given that the district court assumed Martinez's claims to be true, Martinez does not explain why the court was required to permit discovery before concluding that any *Napue* violation was immaterial. This Court should deny the writ.

[4] The district court explained that "Martinez has repeatedly, explicitly and incorrectly stated throughout these proceedings that … the prosecution sought to prove premeditation through the testimony of Det. Beatty concerning the condition of the ignition." App. B-6 (quotation marks omitted); *see id.* n.3 (providing additional examples of Martinez's misstatements).

II. THE NINTH CIRCUIT APPROPRIATELY DENIED A CERTIFICATE OF APPEALABILITY.

In denying Martinez's COA motion, the Ninth Circuit stated: "Applying the factors set forth in *Phelps*, 569 F.3d at 1134–40, we find that the holding in *Mitchell* falls short of satisfying the extraordinary circumstances requirement here." App. C-7. The court concluded that "[i]t is beyond debate among reasonable jurists that the district court did not abuse its discretion in denying Martinez's motion under Rule 60(b)(6)."[5] App. C-8.

Martinez now asserts that the Ninth Circuit erred by "fail[ing] to address the other factors identified in *Phelps* … as supporting the 'extraordinary circumstances' required by *Gonzalez*." Petition at 24. He then lists the factors that he claims the court below failed to consider. *Id.* at 24–25. But the Ninth Circuit explicitly stated that it applied the *Phelps* factors in finding that *Mitchell* was not an extraordinary circumstance requiring reopening the judgment. App. C-7. That it did not expressly discuss each factor does not warrant granting the writ.

Moreover, Martinez did not cite the *Phelps* factors in his COA motion, let alone argue that those factors warranted a COA.[6] Instead, he asserted (1) that "[r]easonable

---

[5] Martinez asserts in the heading of his claim and in his Question Presented that the Ninth Circuit "violated the rule of *Buck v. Davis,* 137 S. Ct. 759 (2017)" in denying a certificate of appealability. Petition at i, 22. While he discusses *Buck* in his petition, however, Martinez presents no argument that the Ninth Circuit's opinion is contrary to its holding. *See id.* at 23–26.

[6] This fact is demonstrated by Martinez's citation to district court documents for his argument. *See* Petition at 24–25. Martinez claims that he "relied for support of his motion for COA in the Ninth Circuit on his district court pleadings." Petition at 24 (citing Ninth Cir. No. 21-99006, Dkt. 2, at 1–2). But "[p]arties must not append or

jurists could debate whether Martinez's failure to identify a vehicle with which to bring a federal 'claim' bears the dispositive weight the district court attached to it," Ninth Cir. No. 21-99006, Dkt. 2, at 13, and (2) that "reasonable jurists could also debate the portion of the district court's order in which it found that 'there is no meaningful likelihood his conviction or sentence would be upset' even assuming that the discovery would prove the *Napue* claim," *id.* at 14. Martinez cannot complain that the Ninth Circuit failed to address arguments he did not make.

Martinez also claims that "[t]wo additional circumstances found extraordinary by this Court in *Buck* [*v. Davis*, 137 S. Ct. 759 (2017)]"—disparate treatment and being sentenced to death—are present in his case. Petition at 25. Martinez did not assert either in the district court or in the Ninth Circuit, however, that these alleged circumstances warranted reopening the judgment. In any event, neither circumstance is extraordinary or supports a finding that reasonable jurists would debate the district court's refusal to reopen his judgment.

First, Martinez claims that he "has been treated disparately from other Arizona prisoners" because "[t]he Ninth Circuit remanded another Arizona capital appeal to the district court for consideration of a possible *Brady* claim," while it directed him to file "a request for indication whether the district court would consider a Rule 60(b) motion." Petition at 25–26 (citing *Gallegos v. Ryan*, Ninth Cir. No. 08-99029, Dkt. 72-1, at 4). But the Ninth Circuit merely granted the relief Martinez had requested. The court explained that Martinez had filed a motion in the district court "styled 'request

---

incorporate by reference briefs submitted to the district court … or refer this Court to

for indication whether [the] district court would consider a rule 60(b) motion,'" which the court denied. *Martinez II*, 926 F.3d at 1229 (alteration in original). Martinez later sought a remand pursuant to *Townsend v. Sain*, 372 U.S. 293 (1963), and *Quezada v. Scribner*, 611 F.3d 1165 (9th Cir. 2010), which the Ninth Circuit construed as a "motion for leave to file in the district court a renewed Request For Indication Whether District Court Would Consider A Rule 60(b) Motion for reconsideration of Claim 4 and for consideration of a possible *Brady-Napue* claim in light of newly discovered evidence." Ninth Cir. No. 08-99009, Dkt. 99, at 2–3. The court granted that motion. *Id.* at 3. Martinez cannot complain that he was treated disparately when he was granted the relief he requested.

Martinez also incorrectly asserts that the fact that he has been sentenced to death is an "extraordinary circumstance" under *Buck*. Petition at 26 (citing *Buck*, 137 S. Ct. at 779). In *Buck*, this Court called the cases at issue "extraordinary" not merely because they were capital cases but because the state sought to vacate the death sentences of five defendants after an expert testified in each case that the defendant's race made him more likely to be dangerous in the future. *Buck*, 137 S. Ct. at 779 ("It is not every day that a State seeks to vacate the sentences of five defendants found guilty of capital murder."). Nothing in *Buck* supports a conclusion that the mere fact that a case is a capital one is an extraordinary circumstance requiring the judgment to be reopened under Rule 60(b)(6). If this were the standard, then no capital habeas judgment would ever be final.

---

such briefs for the arguments on the merits of the appeal." Ninth Cir. R. 28-1(b).

Martinez notes that the above "circumstances played no role in the Ninth Circuit's debatability calculus," claiming this was error. Petition at 26. He ignores, however, that the reason these factors "played no role" is that he did not identify them as "extraordinary circumstances" requiring relief. Because Martinez did not assert below that either his alleged disparate treatment or his death sentence was an extraordinary circumstance requiring reopening his judgment, the Ninth Circuit did not err by failing to consider these circumstances in denying his COA motion.

The Ninth Circuit did not err in denying a COA on the district court's refusal to reopen the judgment to allow discovery on claims that would have had no impact on the jury's verdicts.

CONCLUSION

Based on the foregoing authorities and arguments, Respondents respectfully request that this Court deny the petition for writ of certiorari.

Respectfully submitted,

MARK BRNOVICH
Attorney General

JOSEPH A. KANEFIELD
Chief Deputy and Chief of Staff

JEFFREY L. SPARKS
Deputy Solicitor General/Section Chief of Capital Litigation

s/ Laura P. Chiasson
Laura P. Chiasson
Assistant Attorney General
Capital Litigation Section
(Counsel of Record)

Attorneys for RESPONDENTS

SB5VNQHO0EX4HW