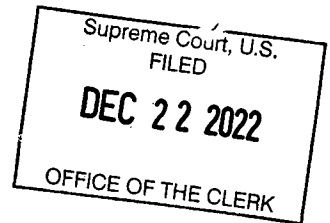


22-6525  
No. \_\_\_\_\_

**ORIGINAL**

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_



KEITH D. ARLINE, JR. — PETITIONER  
(Your Name)

vs.

S. MOORE, WARDEN — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

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

PETITION FOR WRIT OF CERTIORARI

KEITH D. ARLINE, JR.  
(Your Name)

CENTINELA STATE PRISON, P.O. BOX 921, CI-229  
(Address)

IMPERIAL, CA. 92251  
(City, State, Zip Code)

N/A  
(Phone Number)

## QUESTION(S) PRESENTED

- 1) WHETHER THE CALIFORNIA SUPREME COURT RENDERED A DECISION IN CONFLICT WITH THE LAW OF THE UNITED STATES SUPREME COURT ANNOUNCED IN BRADY V. MARYLAND, 373 U.S. 83, 87 (1963), KYLES V. WHITLEY, 514 U.S. 419, 437 (1995) AND, PENNSYLVANIA V. RICHIE, 480 U.S. 39, 60 (1987) (PLURALITY OPINION) WHEN IT DENIED PETITIONER'S BRADY CLAIM THAT THE PROSECUTOR IS SUPPRESSING MATERIAL EXCULPATORY EVIDENCE — PETITIONER'S CHEMICAL TEST RESULTS — IN POSSESSION OF THE POLICE?
- 2) WHETHER THE CALIFORNIA SUPREME COURT RENDERED A DECISION IN CONFLICT WITH THE LAW OF THE UNITED STATES SUPREME COURT ANNOUNCED IN WILLIAMS V. TAYLOR, 529 U.S. 420, 430, 434 (2000) WHEN IT DENIED PETITIONER'S REQUEST FOR AN EVIDENTIARY HEARING UNDER THE PROSECUTOR'S SUPPRESSION OF MATERIAL EXCULPATORY EVIDENCE?

## 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:

## RELATED CASES

IN RE BROWN, 17 CAL. 4TH 873 (1998)  
PEOPLE V. DUCHINE, 60 CAL. APP. 5TH 798 (2021)  
CITY OF LOS ANGELES V. SUPERIOR COURT, 52 P. 3d 129 (CAL. 2002)  
IN RE SASSOUNIAN, 887 P.2d 527 (CAL. 1995)  
UNITED STATES V. BUNDY, ET AL., NO. 18-10287 (9TH CIR. AUG. 06, 2020)  
ANDERSON V. CALDERON, 232 F.3d 1053 (9TH CIR. 2000)  
JEFFERSON V. UNITED STATES, 730 F.3d 537 (6TH CIR. 2013)  
UNITED STATES V. KOJAYIAN, 8 F.3d 1315 (9TH CIR. 1993)  
28 U.S.C. § 2254 RULE 6  
BANKS V. DRETKE, 540 U.S. 668 (2004)  
IMBLER V. PACHTMAN, 424 U.S. 409 (1976)  
YOUNGBLOOD V. W. VA., 547 U.S. 867 (2006)  
CONE V. BELL, \_\_\_ U.S. \_\_\_, 129 S. CT. 1769 (2009)  
COLEMAN V. THOMPSON, 501 U.S. 722 (1991)  
MAPLES V. THOMAS, 565 U.S. 266 (2012)  
MURRAY V. CARRIER, 477 U.S. 478 (1986)  
ROBINSON V. IGNACIO, 360 F.3d 1044 (9TH CIR. 2004)  
STANLEY V. SCHRIRD, 598 F.3d 612 (9TH CIR. 2010)  
UNITED STATES V. FRADY, 456 U.S. 152 (1982)  
COOPER V. WOODFORD, 358 F.3d 1117 (9TH CIR. 2004)

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## OTHER

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 \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; 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 \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; 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 A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the COURT OF APPEALS, 4TH DIST. DIV. TWO court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

FOR CASES FROM STATE COURTS: (CONT.)

THE OPINION OF THE RIVERSIDE COUNTY SUPERIOR COURT  
APPEARS AT APPENDIX C TO THE PETITION AND IS

☐ REPORTED AT \_\_\_\_\_; 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 \_\_\_\_\_.

☐ 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: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

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 OCT. 26, 2022.  
A copy of that decision appears at Appendix A.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

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



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

BERGER V. UNITED STATES, 295 U.S. 78, 88 (1935) ("THE REPRESENTATIVE ... OF A SOVEREIGNTY ... WHOSE INTEREST ... IN A CRIMINAL PROSECUTION IS NOT THAT I SHALL WIN A CASE, BUT THAT JUSTICE SHALL BE DONE"); BRADY V. MARYLAND, 373 U.S. 83, 87 (1963) ("SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED ... VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION"); EARLY V. PACKER, 537 U.S. 3, 8 (2002) (PER CURIAM) ("SO LONG AS NEITHER THE REASONING NOR THE RESULT OF THE STATE COURT DECISION CONTRADICTS"); HARRINGTON V. RICHTER, 562 U.S. 86, 98 (2011) (DISCUSSING SECTION 2254(d)(1) AND (2)); IN RE BROWN, 17 CAL. 4TH 873, 881-891 (1998) (GRANTED RELIEF FROM FIRST-DEGREE MURDER CONVICTION, DUE TO THE PROSECUTOR FAILED TO DISCLOSE BLOOD SAMPLE TEST RESULTS TO DEFENSE PRIOR TO TRIAL THAT WAS IN THE POLICE POSSESSION VIOLATING BRADY); KYLES V. WHITLEY, 514 U.S. 419, 433, 437, 438-439 (1995) ("IF THERE IS A REASONABLE PROBABILITY THAT, HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT"; "THE INDIVIDUAL PROSECUTOR HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THE CASE, INCLUDING THE POLICE"; "THE PROSECUTOR RESPONSIBILITY FOR FAILING TO DISCLOSE KNOWN, FAVORABLE EVIDENCE RISING TO A MATERIAL LEVEL OF IMPORTANCE IS INESCAPABLE") "SUCH DISCLOSURE WILL SERVE TO JUSTIFY TRUST IN THE PROSECUTOR AS 'THE REPRESENTATIVE ... OF A SOVEREIGNTY ... WHOSE INTEREST ... IN A CRIMINAL PROSECUTION IS NOT THAT I SHALL WIN A CASE, BUT THAT JUSTICE SHALL BE DONE'"; QUOTING BERGER, 295 U.S. AT 88.); MCNABB V. UNITED STATES, 318 U.S. 332, 345 (1943) ("MAKING ... THEMSELVES ACCOMPLICES IN WILFUL DISOBEDIENCE OF LAW"); PENNSYLVANIA V. RICHELIE, 480 U.S. 39, 60 (1987) (PLURALITY OPINION) (THE GOVERNMENT'S CONSTITUTIONAL DUTY TO DISCLOSE CONTINUES THROUGHOUT PROCEEDINGS); STRICKLER V. GREENE, 527 U.S. 263, 280-281 (1999) ("EVIDENCE KNOWN ONLY TO POLICE INVESTIGATORS AND NOT TO THE PROSECUTOR"; "THE INDIVIDUAL PROSECUTOR HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THIS CASE, INCLUDING THE POLICE"; QUOTING KYLES, 514 U.S. AT 437.); UNITED STATES V. BAGLEY, 473 U.S. 667, 678 (1985) ("FAIR TRIAL"); WILLIAM V. TAYLOR, 529 U.S. 420, 430, 434-435 (2000) ("BY THE TERMS OF ITS OPENING CLAUSE THE STATUTE APPLIES"; "THE PRISONER HAS FAILED TO DEVELOP THE FACTS"; "UNDEVELOPED IN STATE COURT"; "THE PROSECUTION(S) CONCEAL(MENT OF) THE FACTS"; "ONLY A PRISONER WHO HAS NEGLECTED HIS RIGHTS IN STATE COURT NEED SATISFY (§2254(e)(2)'S TWO) CONDITIONS"); FOURTEENTH AMENDMENT ("DUE PROCESS CLAUSE"); AEDPA (ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996, NOW CODIFIED AT 28 U.S.C. § 2254(c)(2)); 28 U.S.C. § 2254(d)(1)(2) (1) "CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES", (2) "BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED (CONT.)

IN THE STATE COURT PROCEEDING"). 28 U.S.C. § 2254(c)(2) ("IF THE APPLICANT HAS FAILED TO DEVELOP THE FACTUAL BASIS OF A CLAIM IN STATE COURT PROCEEDING", "SHALL NOT HOLD AN EVIDENTIARY HEARING ON THE CLAIM", "A NEW RULE OF CONSTITUTIONAL LAW", "A FACTUAL PREDICATE THAT COULD NOT HAVE PREVIOUSLY BEEN DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE", "SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT BUT FOR CONSTITUTIONAL ERROR, NO REASONABLE FACTFINDER WOULD HAVE FOUND THE APPLICANT GUILTY OF THE UNDERLYING OFFENSE").

## STATEMENT OF THE CASE

PETITIONER WAS NOT GIVEN A "FAIR TRIAL", UNITED STATES V. BAGLEY, 473 U.S. 667, 678 (1985), AS THE PROSECUTOR SUPPRESSED MATERIAL EXCULPATORY EVIDENCE — THAT IS PETITIONER'S CHEMICAL TEST RESULTS FROM THE DRAWN BLOOD SAMPLE THAT WAS SPECIFICALLY TESTED FOR ALCOHOL AND DRUGS — PRIOR TO TRIAL AND IS STILL BEING WITHHELD, IN VIOLATION OF BRADY V. MARYLAND, 373 U.S. 83, 87 (1963), AND WAS A DUE PROCESS VIOLATION THAT UNDERMINED THE FAIRNESS OF PETITIONER'S TRIAL.

THE RIVERSIDE COUNTY SUPERIOR COURT OF CALIFORNIA, JUDGE, HON. RUSSELL MOORE, FILED A SUPPLEMENTAL DENIAL ORDER ON JUNE 25, 2021, RULING THAT "THE DISTRICT ATTORNEY CANNOT DISCLOSE OR FAIL TO DISCLOSE EVIDENCE THAT DOES NOT EXIST." (SEE APPENDIX-C.). THAT NON-DISCLOSED EVIDENCE IS IN POSSESSION OF THE RIVERSIDE COUNTY POLICE DEPARTMENT, THAT THE "PROSECUTOR HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THIS CASE, INCLUDING THE POLICE." KYLES V. WHITLEY, 514 U.S. 419, 437 (1995). DUE TO THE CONSTITUTIONAL ERROR, IT IS PREJUDICIAL THAT PETITIONER BEEN PROVENTED TO USE THE INTOXICATION IN THE DEFENSE; WAS DEPRIVED TO USE THE INTOXICATION TO NEGATE THE ELEMENTS OF FIRST- DEGREE MURDER; TO OFFER EXPERT TESTIMONY ON THE INTOXICATION SIDE-EFFECTS ON PETITIONER'S STATE OF MIND WHEN PETITIONER WAS TWENTY-TWO (22) YEARS OLD AT THE TIME OF THE CRIME; AND THE SENTENCE PETITIONER ALREADY SERVED IN PRISON (22 YEARS). FINALLY, PETITIONER HAS BEEN REPEATEDLY DEPRIVED OF AN EVIDENTIARY HEARING CONCERNING THE PROSECUTOR'S SUPPRESSION OF THE FACTS AND EVIDENCE. THE CALIFORNIA SUPREME COURT DECISION CONFLICTS WITH THIS COURT'S PRECEDENTS.

## REASONS FOR GRANTING THE PETITION

THE STATE'S FAILURE TO DISCLOSE PETITIONER'S CHEMICAL TEST RESULTS THAT IS IN THE POLICE POSSESSION CONSTITUTES A DUE PROCESS — BRADY — VIOLATION THAT RESULTED IN AN UNFAIR TRIAL IN VIOLATION OF PETITIONER'S CONSTITUTIONAL RIGHTS.

THE CALIFORNIA SUPREME COURT DECISION CONFLICTS WITH THIS COURT PRECEDENTS.

STANDARDS OF REVIEW: PETITIONER HAD FILED THE HABEAS CORPUS PETITION AFTER APRIL 24, 1996, WHICH THE ANTITERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996 ("AEDPA") GOVERNS. RELITIGATION IS BARRED UNLESS THE STATE COURT'S DECISION WAS (1) "CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISH FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES," AT THE TIME THE STATE COURT ADJUDICATED THE CLAIM, 28 U.S.C. § 2254(d)(1), OR (2) "BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDING," id. § 2254(d)(2), HARRINGTON V. RICHTER, 562 U.S. 86, 98 (2011). AEDPA DOES NOT REQUIRE CITATION — OR EVEN AWARENESS — OF SUPREME COURT PRECEDENT "SO LONG AS NEITHER THE REASONING NOR THE RESULT OF THE STATE COURT DECISION CONTRADICTS" PRECEDENT. EARLY V. PACKER, 537 U.S. 3, 8 (2002) (PER CURIAM).

LEGAL STANDARD: THE STATE PROSECUTORS HAVE A DUTY UNDER THE FOURTEENTH AMENDMENT DUE PROCESS CLAUSE TO DISCLOSE CERTAIN EVIDENCE TO CRIMINAL DEFENDANTS. SEE BRADY V. MARYLAND, 373 U.S. 83, 87 (1963). THE BRADY RULE EXTENDS TO "EVIDENCE 'KNOWN ONLY TO POLICE INVESTIGATORS AND NOT TO THE PROSECUTOR'" STRICKLER V. GREENE, 527 U.S. 263, 280-281 (1999). "(T)HE INDIVIDUAL PROSECUTOR HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THIS CASE, INCLUDING THE POLICE" (Id. AT 281, QUOTING KYLES V. WHITLEY (1995) 514 U.S. 419, 437.). THE PROSECUTOR'S FAILURE TO DISCLOSE EXCULPATORY EVIDENCE IS PREJUDICIAL "IF THERE IS A "REASONABLE PROBABILITY" THAT, HAD THE EVIDENCE BEEN DISCLOSED TO THE DEFENSE, THE RESULT OF THE PROCEEDING WOULD HAVE BEEN DIFFERENT." KYLES, 514 U.S. AT 433-34. THE QUESTION IS "WHETHER IN ITS ABSENCE (THE DEFENDANT) RECEIVED A FAIR TRIAL, UNDERSTOOD AS A TRIAL RESULTING IN A VERDICT WORTHY OF CONFIDENCE" (Id. AT 434.). THIS COURT HELD THAT "SUPPRESSION BY THE PROSECUTION OF EVIDENCE FAVORABLE TO AN ACCUSED... VIOLATES DUE PROCESS WHERE THE EVIDENCE IS MATERIAL EITHER TO GUILT OR TO PUNISHMENT, IRRESPECTIVE OF THE GOOD FAITH OR BAD FAITH OF THE PROSECUTION" (BRADY, 373 U.S. AT 87.). FOR A SUCCESSFUL BRADY CLAIM REQUIRES A SHOWING THAT THE EVIDENCE WAS: (1) FAVORABLE TO THE ACCUSED; (2) SUPPRESSED BY THE PROSECUTION; AND (3) PREJUDICIAL. SEE STRICKLER, 527 U.S. AT 281-82. FINALLY, THE COURT'S EXERCISE OF ITS SUPERVISORY POWERS PROTECTS THE INTEGRITY OF THE FEDERAL COURTS AND PREVENTS THE COURTS FROM "MAKING .... THEMSELVES ACCOMPLICES IN WILFUL DISOBEDIENCE OF LAW." MENABBE V. UNITED STATES, 318 U.S. 332, 345 (1943).

REASONS FOR GRANTING THE PETITION  
(CONT.)

HERE, THE STATE OF CALIFORNIA HAD ADOPTED THE RIVERSIDE COUNTY SUPERIOR COURT RULING IN THE SUPPLEMENTAL DENIAL ORDER THAT IS OBJECTIVELY UNREASONABLE AND CONTRADICTS THIS COURT CONTROLLING PRECEDENT PURSUANT TO KYLES, 514 U.S. AT 437/"(T)HE INDIVIDUAL PROSECUTOR HAS A DUTY TO LEARN OF ANY FAVORABLE EVIDENCE KNOWN TO THE OTHERS ACTING ON THE GOVERNMENT'S BEHALF IN THIS CASE, INCLUDING THE POLICE". MOREOVER, PETITIONER HAD ESTABLISHED A BRADY VIOLATION BY STRONGLY RELYING ON A SIMILAR STATE CASE UNDER IN RE BROWN, 17 CAL. 4TH 873, 881-891 (1998), THAT GRANTED RELIEF FOR A DUE PROCESS VIOLATION AND CITED AND QUOTED KYLES, (IBID. 17 CAL. 4TH AT PP. 877-881, 891.). PETITIONER HAD SATISFIED ALL THREE SHOWINGS OF (1) FAVORABLE TO THE ACCUSED; (2) SUPPRESSED BY THE PROSECUTION; AND (3) MATERIAL/PREJUDICE. (SEE STRICKLER, 527 U.S. AT 281-82.

THE STATE OF CALIFORNIA IS STILL SUPPRESSING PETITIONER'S CHEMICAL TEST RESULTS IN VIOLATION OF PENNSYLVANIA V. RICHIE (1987) 480 U.S. 39, 60 (A PROSECUTOR'S DUTY TO DISCLOSE IS ONGOING); BRADY, 373 U.S. AT 87. THE LAW STATES, "SUCH DISCLOSURE WILL SERVE TO JUSTIFY TRUST IN THE PROSECUTOR AS 'THE REPRESENTATIVE ... OF A SOVEREIGNTY ... WHOSE INTEREST ... IN A CRIMINAL PROSECUTION IS NOT THAT I SHALL WIN A CASE, BUT THAT JUSTICE SHALL BE DONE.'" (KYLES, 514 U.S. AT 439, QUOTING BERGER V. UNITED STATES, 295 U.S. 78, 88 (1935)). SEE IBID. AT 438 ("THE PROSECUTION'S RESPONSIBILITY FOR FAILING TO DISCLOSE KNOWN, FAVORABLE EVIDENCE RISING TO A MATERIAL LEVEL OF IMPORTANCE IS INESCAPABLE."). A "FAIR TRIAL" WAS DENIED. BAGLEY, 473 U.S. AT 678.

WHEREFORE, AT THIS STAGE OF PROCEEDINGS, THE CALIFORNIA SUPREME COURT RULING IS AN OBJECTIVELY UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED UNITED STATES SUPREME COURT LAW AS PRONOUNCED IN KYLES, 514 U.S. AT 437.

EVIDENTIARY HEARING:

STANDARDS OF REVIEW: PETITIONER FILED THIS PETITION FOR WRIT OF HABEAS CORPUS AFTER 1996, WHICH IS GOVERNED BY THE ANTI-TERRORISM AND EFFECTIVE DEATH PENALTY ACT OF 1996, NOW CODIFIED AT 28 U.S.C. § 2254(c)(2), THAT RESTRICTS THE AVAILABILITY OF AN EVIDENTIARY HEARING IN FEDERAL HABEAS PROCEEDINGS. "IF THE APPLICANT HAS FAILED TO DEVELOP THE FACTUAL BASIS OF A CLAIM IN STATE COURT PROCEEDINGS, § 2254(c)(2) STATES, THEN THE HABEAS COURT "SHALL NOT HOLD AN EVIDENTIARY HEARING ON THE CLAIM" UNLESS IT FINDS TWO CONDITIONS MET. IBID.

LEGAL STANDARD: UNDER 28 U.S.C. § 2254(c)(2), A PETITIONER HAVE TO MEET ONE OF THE TWO CONDITIONS — (1) THE CLAIM MUST RELY ON EITHER "A NEW RULE OF CONSTITUTIONAL LAW" OR "A FACTUAL PREDICATE THAT COULD NOT HAVE PREVIOUSLY BEEN DISCOVERED THROUGH THE EXERCISE OF DUE DILIGENCE." IBID. (2) THE FACTS UNDERLYING THE CLAIM MUST BE "SUFFICIENT TO ESTABLISH BY CLEAR AND CONVINCING EVIDENCE THAT BUT FOR CONSTITUTIONAL ERROR, NO REASONABLE FACTFINDER WOULD HAVE FOUND THE APPLICANT GUILTY OF THE UNDERLYING OFFENSE." IBID.; SEE WILLIAMS V. TAYLOR, 529 U.S. 420, 430 (2000) ("BY THE TERMS OF ITS OPENING CLAUSE THE STATUTE APPLIES" ONLY

## REASONS FOR GRANTING THE PETITION (CONT.)

WHEN "THE PRISONER HAS FAILED TO DEVELOP THE FACTS").

HERE, THE RESTRICTION DO NOT APPLY TO PETITIONER BECAUSE "THE APPLICANT HAS FAILED TO DEVELOP THE FACTUAL BASIS OF (HIS) CLAIM IN STATE COURT PROCEEDINGS", §2254(e)(2). PETITIONER'S CLAIM WENT "UNDEVELOPED IN STATE COURT" BECAUSE OF "THE PROSECUTION'(S) CONCEAL(MENT OF) THE FACTS", NOT DUE TO PETITIONER'S OWN NEGLIGENCE, AS IS THEN §2254(e)(2)'S RESTRICTION OF EVIDENTIARY HEARINGS WOULD NOT APPLY. id. AT 434.

THUS PETITIONER DOES NOT HAVE TO MEET THE SECTION'S STRINGENT DEMANDS. SEE id., AT 435 ("ONLY A PRISONER WHO HAS NEGLECTED HIS RIGHTS IN STATE COURT NEED SATISFY (§2254(e)(2)'S TWO) CONDITIONS"). MAKING PETITIONER ENTITLED TO AN EVIDENTIARY HEARING, THE MERITS OF PETITIONER'S BRADY CLAIM IS COGNIZABLE, AND THE SUPPRESSED EVIDENCE GOES TO BOTH GUILT AND PUNISHMENT/SENTENCING. THE GRANTING OF AN EVIDENTIARY HEARING WOULD RESULT IN GRANTING PETITIONER RELIEF ON THE MERITS, THE SUPREME COURT DECISION IS OBJECTIVELY UNREASONABLE APPLICATION OF UNITED STATES SUPREME COURT LAW PURSUANT TO WILLIAMS, 529 U.S., AT 434; EARLY, 537 U.S., AT 8 (THE "DECISION CONTRADICTS" PRECEDENT).

FINALLY, PETITIONER BEEN DEPRIVED OF AN EVIDENTIARY HEARING IN ALL STATE COURT'S—LOWER— DUE TO THE STATE'S CONCEALMENT OF BOTH EVIDENCE AND FACTS; WAS PETITIONER EVER CONSTITUTIONALLY OR STATUTORLY ENTITLED TO AN EVIDENTIARY HEARING IN STATE COURT'S UNDER THE CIRCUMSTANCES ?

### **CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

  
\_\_\_\_\_

Date: DECEMBER 22, 2022