No._____

IN THE SUPREME COURT OF THE UNITED STATES

TONY KHONG,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

On Petition For A Writ of *Certiorari* To The United States Court of Appeals for the Ninth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

In Kyles v. Whitley, 514 U.S. 419 (1995), the Court held that to demonstrate a state's suppressed impeachment evidence is material under the multi-prong inquiry set forth in cases such as Brady v. Maryland, 373 U.S. 83 (1963), and Gilgio v. United States, 405 U.S. 150 (1972), a defendant had to show that it "undermine[d] confidence in the outcome of the trial." Although that formulation derived from language in United States v. Bagley, 473 U.S. 667, 678 (1985), Kyles's focus on the trial's fairness rather than the possibility of a different jury verdict marked a significant shift in how the Court approached materiality in the Brady/Giglio context.

The question presented is as follows:

Did the Ninth Circuit's de novo disposition of Petitioner's Brady claim in the habeas corpus context, which focused exclusively on Bagley's earlier rule ("a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding might have been different," 473 U.S. at 682), conflict with Kyles's and its progeny's expanded approach toward materiality?

LIST OF PARTIES

[X] 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:

LIST OF DIRECTLY RELATED PROCEEDINGS

1. Superior Court of the State of California, County of Sacramento, People of the State of California v. Tony Khong, No. 12F05779. The Superior Court entered judgment on May 16, 2014.

2. Court of Appeal of the State of California, Third Appellate District, The People v. Tony Khong, No. C076416. The Third District Court of Appeal entered judgment on June 8, 2016.

3. Superior Court of the State of California, County of Sacramento, In Re: Tony Khong, No. 17HC00140. The Superior Court entered judgment on June 1, 2017.

4, Court of Appeal of the State of California, Third Appellate District, In Re: Tony Khong, No. C085202. The Third District Court of Appeal entered judgment on October 5, 2017.

5. Supreme Court of the State of California, Khong (Tony) on H.C., No. S245717. The California Supreme Court entered judgment on February 14, 2018.

6. United States District Court for the Eastern District of California, Tony Khong v. Scott Frauenheim, No. 2:18-cv-00580-KJM-DB. The district court entered judgment on September 8, 2020.

7. United States Court of Appeals for the Ninth Circuit, Tony Khong v. Scott Frauenheim, No. 20-17032. The Ninth Circuit entered judgment on December 22, 2022.

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Petitioner Tony Khong respectfully requests that the Court issue a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, entered on December 22, 2022.

OPINION BELOW

A three-judge panel of the Ninth Circuit originally issued an unpublished memorandum disposition and entered judgment on December 22, 2022, affirming the district court's denial of Petitioner's petition for a writ of habeas corpus under 28 U.S.C. § 2254.[1]

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[1] A copy of the memorandum disposition is included in the Appendix. See App. 1-4 (Khong v. Frauenheim, No. 20-17032 (9th Cir. Dec. 22, 2022)).

JURISDICTION

The Ninth Circuit entered judgment in this case on December 22, 2022. App. 1-4. This Court has jurisdiction under 28 U.S.C. § 1254(1). See also S. Ct. R. 13.3; S. Ct. Miscellaneous Order, July 19, 2021.

CONSTITUTIONAL PROVISION INVOLVED

Section One of the Fourteenth Amendment to the United States Constitution specifies as follows, in pertinent part: " . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[2]

STATEMENT OF THE CASE

Petitioner draws the following factual recitation from the district court record, including attachments to his habeas petition and state court filings that the State lodged in the district court. Although Khong continues to maintain his innocence, he nevertheless will – other than a section in which he highlights multiple inconsistencies among S.T.'s different accounts of what transpired

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[2] The Ninth Circuit reviewed the district court's order de novo, without applying any deference to the state court's rulings under 28 U.S.C. § 2254(d). See App. 3.

between October and December 2011 (see infra at 15-18) – endeavor to present the case's material facts in the light most favorable to the State. See, e.g., Jackson v. Virginia, 443 U.S. 307, 319 (1979).

A. Petitioner Grows Up in a Stable and Loving Family and Earns a GED, But Experiences Emotional Trauma After His Mother's Death

Petitioner Tony Khong was born in Sacramento, California, in 1986. App. 275, 280. He regularly attended school in Sacramento through the twelfth grade, and played organized basketball and volleyball. But during his sophomore year, shortly after his fifteenth birthday, Petitioner unfortunately began associating with peers who did not influence him constructively. App. 276-278, 280.

Beginning in approximately 2004, Petitioner moved back into his familial home in Sacramento, where his father, mother and at least one of his siblings were then residing. But Petitioner's mother contracted cancer, resulting in her tragic death in 2007 when Petitioner was only twenty-one years old. App. 280.

As one of Petitioner's sisters later opined before his sentencing proceedings (see infra at 21-22), Petitioner's mother's death became an emotional inflection point for him, one that resulted in his losing his usual equanimity. In her letter to the Superior Court judge who presided over Petitioner's state trial (see infra at 15-21), Petitioner became "lost without" his mother's "guidance," (App. 281), no

longer having a role model for the "virtuous, kind, soft spoken and loving" characteristics that Petitioner's mother sought to inculcate in her children. Id.

B. Through One of His Relatives, Petitioner Befriends S.T, and Drives S.T. to Pick Up C.T. from a Local Gas Station

At some juncture in 2011, S.T., who was then approximately fifteen years old, was living in the Sacramento metropolitan area. While babysitting for a family member one evening in Stockton, California, S.T. met C.T., a similarly aged girl who – like S.T. – was of Hmong heritage. C.T. then lived in Oroville, California. App. 12, 30-33, 89-90, 93.

The two girls apparently maintained an acquaintanceship, resulting in C.T.'s text messaging S.T. approximately three weeks, informing S.T. that C.T. was then located at a gas station in Elk Grove, California (close to Sacramento), and needed to be picked up. Consequently, S.T., who did not then own a car, asked an older friend, Tyrone Tran ("Tyrone"), to drive her to the gas station where C.T. was waiting. Petitioner and Tyrone joined S.T. in the car, which Petitioner drove. That day was the first time that Petitioner and S.T. had ever met. App. 12, 34-42, 89-92, 137.

Unbeknownst to anyone in the car before it arrived at the gas station that evening, C.T. had run away from her home in Oroville and needed a place to stay

in the Sacramento area. Consequently, C.T. apparently convinced Petitioner, who had a bedroom located adjacent to the garage at his father's house, to allow C.T. to stay there – and sporadically at Tyrone's home – temporarily while she looked for a more-permanent housing arrangement. App. 39-42, 55, 222-24. During the operative October-December 2011 period, Petitioner apparently was working at "an autobody part car shop." App. 75, 233.

C. Like C.T., S.T. Eventually Runs Away from Home, and the Two Girls Become Prostitutes, Which Petitioner Allegedly Encourages and Facilitates Between October and December 2011

Approximately one week after S.T., Petitioner, and Tyrone picked up C.T. from the gas station in Elk Grove, S.T. decided to run away from what she had perceived to be a desperate domestic situation. Among other things, C.T. was one of eighteen persons (her mother, ten siblings, and six nieces and nephews) living in the same three-bedroom house. App. 12, 31, 95-96.

Following her decision to leave her family's house, S.T. called Tyrone. As S.T.'s friend, he sought to help her by picking her up from where she was then located and taking her to his house. The next day, S.T. reconnected with C.T. App. 12, 43-44.

During what was apparently a short period leading up to October 2011, S.T. moved from house to house (including only approximately two nights at

Petitioner's house, App. 136-138), and she continued to see C.T. sporadically. At one point, unlike S.T. who did not have an income source, S.T. learned from C.T. that C.T. had $40 in cash. Speaking somewhat obliquely, C.T. described "peer pressure" as the means through which she had earned the money. App. 12, 44-45, 97-98, 196. S.T. then noticed C.T.'s leaving to go somewhere with Petitioner after he mentioned following a phone call that "she had work," and upon returning with him would have money and food. App. 12, 45-46, 150-151.

Because S.T. did not then perceive herself as being a capable income earner, S.T. at least initially relied on C.T. for monetary support, including purchasing food for S.T. Periodically, C.T. would leave with Petitioner and go to an unspecified destination. Upon returning, C.T. typically had more money than she had possessed before the brief excursion with Khong. App. 45-46, 51-53.

Perhaps unsurprisingly, then, S.T. and C.T. spoke – apparently in August 2011 – about this subject matter. C.T. suggested that the two girls could support each other "in order to have a living." App. 55, 104. S.T. inferred C.T. to be discussing prostitution. Id. She did not initially want to be a prostitute, but she more generally felt guilty about having C.T. pay for her food while S.T. was not doing anything to more directly support herself. App. 12, 56, 99-103.

Ostensibly sometime in October 2011, S.T. met with Petitioner to discuss

how she could earn money to support herself. Petitioner apparently told S.T., "'You could either do this or you can just work at the strip bar.'" App. 12, 46-47. S.T. construed the first option as being a prostitute, and apparently then connected the two options Petitioner supposedly presented as ones that C.T. may similarly have had. App. 12, 48-49, 52-53. Petitioner also supposedly suggested to S.T. that she could not continue to rely on S.T. App. 198.

Initially, S.T. balked at prostituting herself, and supposedly informed Petitioner that she did not want to do that. App. 54. But S.T. eventually relented because of what she referred to generally as "peer pressure[]" and needing to "contribute" to the two girls' informal partnership. App. 12, 53-54, 56, 201-202.

Consequently, throughout the October-December 2011 time period, S.T. would be waiting in a particular room while Petitioner stepped out to speak in Vietnamese on a cellular phone. Petitioner then would return and inform S.T. and/or C.T., "'You guys have work,'" apparently referring to prospective dates. App. 50-52, 57, 121, 136-137.

Next, Petitioner, Tyrone, or a man named Stephen Tran ("Stephen") would drive S.T. and/or C.T. to motels or residences for dates, men aged 30-60 years old. App. 12-13, 58-59, 74, 143-144, 156-157, 195-197, 206-207. S.T. did not then have a cellular phone, nor did she speak Vietnamese (the men who paid for sex

with S.T. apparently were of Asian heritage (App. 78)), so Petitioner was responsible for making the arrangements. App. 12-13, 79, 151-152, 198.

At trial, S.T. testified that she would follow into a room the man who had arranged with Petitioner for the date. There, S.T. – using an alias – would engage in vaginal or anal intercourse with the man, whom Petitioner referred to as an "OG," (App. 13, 80-81) but not any other acts. The man would wear a condom, which Petitioner, Stephen, or Tyrone provided. Once the two had finished their intercourse, the man paid either S.T. or Petitioner $40 for the date. S.T. and Petitioner then split the payment in half, so that each received $20 from the transaction. None of the men who had intercourse with S.T. ever discussed payment terms with her. App. 13, 59-64, 67-69, 71, 80-81, 152-153.

Importantly, S.T. noted during her trial testimony that Petitioner never threatened her emotionally or physically to compel her to be a prostitute and divide payments with Petitioner. App. 114-115, 202-204. Rather, S.T. testified that giving Petitioner $20 from each date – what she termed "respect" – was essentially consideration for the food and shelter that Petitioner allegedly provided her. App. 13, 64-66, 116-117, 202. At times, S.T. bought food directly for Petitioner, something he did not direct her to do. App. 13, 74, 117.

S.T. estimated that she went on more than 30 dates with men that Petitioner

had arranged. App. 12, 77. Consistent with S.T.'s testimony that Petitioner was not physically or emotionally abusive toward her (see supra at 8), Petitioner also did not compel her to wear certain clothes, style her hair particularly, use specific types of makeup, perform certain sexual acts with the customers, or stay at his house. App. 81-83, 116, 146, 196, 202-204. Nor did Petitioner enter into an agreement with her regarding prospective customers, the price she would charge for a particular sex act, and fee-sharing arrangements. App. 115-116, 198. Moreover, S.T. sometimes declined to work as a prostitute on particular occasions, and Petitioner did not compel her to do otherwise. App. 198.

C.T. did not testify at trial because law enforcement authorities were unable to locate her. Consequently, the State introduced evidence pertinent to C.T.'s supposed work as a prostitute through statements she had supposedly made to S.T., Winchester, and Detective Jeff Morris of the Sacramento Police Department. See supra at 5-7; infra at 11-13.

D. After Winchester Stops C.T. and Stephen in a Vehicle, the Alleged Prostitution Operation Ends

During the early afternoon on December 7, 2011, a material event in Petitioner's case transpired in the Sacramento metropolitan area, the particularities of which could have tended to corroborate S.T.'s inconsistent testimony regarding

Petitioner's purported conduct – but only if the jury deemed then-Officer Noah Winchester to have testified credibly at Petitioner's trial.

At approximately 1:15 p.m. that afternoon, Winchester, then employed as a uniformed officer with the Los Rios Community College District for approximately 5.5 years, was patrolling campus roads in his department-issued vehicle at Cosumnes River College in Elk Grove. He soon observed a vehicle that was playing music loudly through booming bass speakers during school hours, so much so that Winchester ostensibly deemed there to be reasonable suspicion that the driver was violating applicable provisions of California's Vehicle Code and perhaps local ordinances. App. 13-14, 164-167.

Consequently, Winchester turned on his patrol car's lights and executed a vehicular stop. The driver complied, and pulled over to the right side of a parking lot. Winchester then approached the car's left side and asked the driver, who was Stephen, for his license and registration. Stephen gave those items to Winchester. App. 14, 167, 169. Winchester observed subjectively that Stephen seemed to be nervous. App. 14.

While Tran was complying, Winchester noticed subjectively that a young girl of school age was sitting in the passenger's seat and also seemed to be nervous. Concerned that the girl, who was C.T., might be a truant, Winchester

caught her attention and asked her to step out of the vehicle and walk toward his patrol car. C.T. complied with Winchester's request. App. 14, 168-170.

Upon questioning from Winchester, C.T. falsely identified herself as S.T., an eighteen-year-old woman (she was actually fourteen at the time), and incorrectly told Winchester that Stephen was driving her to a Hmong cultural festival in Stockton. Suspicious that C.T. was not being truthful, Winchester warned her that it is a crime to lie to a police officer. At that point, C.T. gave her real name and age. Ostensibly with C.T.'s consent, Winchester searched her purse, and he supposedly discovered approximately 20-30 condoms and multiple Plan B pills. App. 14, 170-173. Eventually, Winchester placed C.T. in the backseat of his patrol car and decided to question Stephen, who was then still in the driver's seat. App. 14, 174-175.

As Stephen was answering Winchester's questions, Winchester noticed that Stephen's cell phone was ringing repeatedly. The then-officer next asked Stephen for permission to search the phone, which Stephen gave. Winchester apparently noticed that the phone's caller ID evidenced that several missed calls purportedly originated from "Tony Khong." App. 14, 175-177, 180-181. While holding the phone, Winchester supposedly, saw a text message from "Tony Khong" to Stephen: "grab the girl and dip, Nigga [sic]." App. 14, 175, 181-182. Winchester

could not determine who was actually placing the calls and sending the text. App. 181-182.

Concerned that something more than simple truancy might be afoot, Winchester decided that he would detain C.T. and take her to a campus police station for further interrogation. At the scene, Winchester apparently elicited from Stephen that C.T. was a prostitute and Petitioner was her pimp. App. 178-179. Later, C.T. supposedly identified Petitioner in a photograph that Winchester showed C.T. Id.

Ultimately, S.T. decided to stop working as a prostitute in December 2011, partly because she simply did not want to continue doing it, and partly resulting from Winchester's vehicular stop of C.T. and Stephen. App. 13. After Petitioner supposedly learned from Stephen about that incident, Petitioner allegedly told S.T., "'We've got to go'" because C.T. and S.T. were "hot right now." Petitioner then drove S.T. to Tyrone's house and never again saw her outside of a courthouse. App. 13, 76, 185-186.

E. S.T. Speaks to a Detective from the Sacramento Police Department, and Acknowledges That She Initially Lied to Him

Sometime after leaving both prostitution and Petitioner's house, S.T. spoke voluntarily to Detective Jeff Morris of the Sacramento Police Department in

February 2012, approximately eight months after she had run away from home. At trial, S.T. acknowledged that she was not categorically truthful with Detective Morris (indeed, she testified flippantly, "Why would I?" (App. 84), and suggested that she then thought she needed C.T.'s permission to be fully forthcoming. App. 14, 84-85, 88, 97-98. Among other things, S.T. coyly suggested to Detective Morris that she did not know Petitioner, later correcting herself after having dissembled, stating somewhat disingenuously that she thought Detective Morris was asking about another person with "Tony" as a first name. App. 85-86, 138-39, 190-92.

Moreover, after Detective Morris indicated to S.T. that C.T. had cooperated fully with his investigation (apparently referencing an interview that he had conducted with C.T. in Oroville on January 17, 2012, App. 14), S.T. by her own account became "disappointed and upset" because she wished for the operative events of October-December 2011 to remain secret. App. 86-87, 139-140. In particular, S.T. stated to Detective Morris, "'Oh my goodness. She snitched. What the fuck?'" App. 139-140, 192-193. Only at that juncture did S.T. decide to cooperate by giving a statement. App. 140, 193-194.

F. Detective Morris and an FBI Agent Interview Petitioner for More Than an Hour

After Detective Morris apparently invited him to do so, Petitioner appeared voluntarily for an interview with Detective Morris and an FBI agent at a Starbucks shop in downtown Sacramento on February 9, 2012. Following eighty minutes of questions and answers, the law enforcement officers permitted Petitioner to leave the shop. App. 187-189.

G. Law Enforcement Authorities in an Amended Complaint Ultimately Charge Petitioner with Several Counts, Including Pimping, Pandering, and Human Trafficking

Shortly after law enforcement authorities concluded their investigation, the Sacramento County District Attorney's Office filed a complaint in the Superior Court on September 7, 2012, which it later amended on July 31, 2013. App. 243-256. As amended, the complaint alleged that Petitioner, Tyrone, and Stephen collectively committed four counts: (a) pimping charges involving C.T. and S.T., respectively (counts 1 and 2, supposedly violating California Penal Code § 266h(b)(2)); and (b) pandering charges concerning the two girls (counts 3 and 4, allegedly violating California Penal Code § 266i(b)(2)). App. 251-252.

Separately, the amended complaint accused Petitioner of violating California Penal Code § 261.5(d) by supposedly having had intercourse with S.T.

when she was fifteen years old (count 5). It also alleged that Petitioner violated California Penal Code §§ 266h "and/or" 266i by supposedly having trafficked C.T. and S.T. (counts 7 and 8). And it further charged Petitioner's earlier conviction for violating California Penal Code § 459 in 2009 as a prior offense for enhancement purposes under California's Three Strikes sentencing regime. App. 253.

Following a two-day preliminary hearing that concluded on August 1, 2013, a Superior Court judge in Sacramento determined that "sufficient cause" existed to permit the State to proceed to trial against Petitioner on counts 1-5 and 7-8. Petitioner pleaded not guilty to all of the amended complaint's counts against him, and he remained detained pretrial. App. 257-259.

H. S.T.'s Statement to Detective Morris, Her Testimony at a Preliminary Hearing, and Her Testimony at Petitioner's Trial in April 2014 Contain Multiple Inconsistencies

While S.T. was testifying on cross-examination at Petitioner's state court trial on April 3, 2014, Petitioner's defense attorney exposed multiple inconsistencies existing among S.T.'s earlier statement to Detective Morris, her testimony during the preliminary hearing in 2013, and what she had testified regarding on direct examination that same day. To wit:

- S.T. testified inconsistently regarding her conversation with C.T.

about prostitution, noting during the preliminary hearing that C.T. had presented it as a choice between pole dancing at a strip club or sex work with customers. She apparently made a similar statement to Detective Morris. But at trial, S.T. portrayed the conversation as focusing on prostitution exclusively. App. 105-109, 200-01. Additionally, contrary to her trial testimony on direct examination, S.T. had testified during the preliminary hearing – and told Detective Morris – that earning money was her primary reason for turning tricks, not because of guilt about C.T.'s paying for her food (see supra at 6-7). App. 110-114, 198.

- Contrasting with her testimony on direct examination about "peer pressure" being one of the overriding rationales for why she had decided to prostitute herself (see supra at 6-7), S.T. stated on cross-examination that she had changed her mind about the subject following the conversation with C.T. because she could not conceive of other ways to earn income. App. 112-114.

- Additionally, S.T. testified inconsistently at the preliminary hearing and at trial – not clarified by what she had told Detective Morris – whether she gave Petitioner $20 only if she received at least $60 from a customer or, instead, the threshold was $40. App. 118-120, 197. She also ostensibly had conflicting testimony during the two separate court appearances concerning whether C.T. gave money to Petitioner after she had a date with a customer. App. 70-71, 121-

122, 151.

- Perhaps most importantly (considering that it involved one of the counts that the amended complaint set forth, see App. 253), S.T. gave contradictory testimony and statements regarding whether she had sex with Petitioner between October and December 2011. At trial and during her interview with Detective Morris, S.T. stated that she had indeed had intercourse with Petitioner in his bedroom. App. 72-73, 122-132.

But during the preliminary hearing, S.T. testified that she actually had never had sex with Petitioner. App. 123, 128-130, 153-155. And she also dissembled initially during her interview with Detective Morris, coyly telling him that she had initially thought he was referencing a "Tony" other than Petitioner. See supra at 13.

- Further, S.T. gave contradictory accounts about the sex acts that she performed as a prostitute, testifying initially at the preliminary hearing that they involved oral and anal sex, before later stating at trial that they involved anal and vaginal intercourse. App. 80-81, 133-135, 155. Contrarily, S.T. apparently told Detective Morris that she had performed oral, anal, and vaginal sex acts. App. 199.

- S.T. also provided conflicting testimony about how she felt about

C.T.'s having decided to cooperate. During the preliminary hearing, she acknowledged that she was indeed angry that C.T. had snitched to Detective Morris. But at trial, S.T. toned down her reaction, describing herself as being merely "disappointed" in what C.T. had done. App. 86-87, 139-143.

- And regarding Stephen's role in the putative conduct, S.T. told Detective Morris that Stephen would drive her to customers' homes and then return her from them. But at trial, S.T. testified that she did not recall whether Stephen drove her to her temporary residence after she had finished performing a sex act with a customer. App. 143-146, 156-157; supra at 7-8, 12-13.

I. C.T. is Unavailable to Testify at Trial, Heightening Winchester's Importance

Further complicating the State's case-in-chief at Petitioner's trial in April 2014, C.T.'s father testified that after law enforcement authorities returned C.T. to the family's household in December 2011, she ran away from their residence a few days later. And despite speaking with C.T. approximately a week before Petitioner's trial commenced, C.T.'s father did not know her whereabouts when he testified on April 7, 2014. App. 207-211. Further, an investigator with the Sacramento County District Attorney's Office also attempted to contact C.T. shortly before the trial started, but was unsuccessful in talking with her. App. 212-

217.

Necessarily, then, C.T.'s absence not only heightened the importance of S.T.'s inconsistent testimony, but also made a putative corroboratory witness such as Winchester – who testified about a purported link between C.T., Stephen, and Petitioner that existed as of December 7, 2011 (see supra at 9-12) – more material than he otherwise would have been. And this is because Winchester was the only witness whom the State called regarding the supposed traffic stop that ultimately launched the State's investigation of Petitioner.

J. Petitioner Adduces Exculpatory Evidence During His Defense Case

Although he exercised his constitutional right not to testify, Petitioner did proffer a defense case focused on creating reasonable doubts about S.T.'s account of what supposedly transpired at Petitioner's residence. For instance, Muey Saetern, one of Khong's sisters-in-law, testified that she lived at that house during the operative October-December 2011 time period. App. 218-221. Saetern testified that although she knew C.T. through unspecified social circles, she had never met S.T., nor did Saetern ever see Petitioner at the house with C.T. or any other female. App. 222-225. She also stated that Petitioner might have been working at a car-related shop when the material events underlying this case

transpired. App. 222-223, 226.

Moreover, Lani Khong ("Lani"), Petitioner's sister, testified that she also lived in Petitioner's residence during the October-December 2011 time period. App. 227-231. Much like Saetern, Lani also never saw Petitioner with females at the house during those operative months. Indeed, Lani insisted that because Petitioner had minor-aged nephews and nieces living in the house then, there was apparently at least a tacit understanding that he could not bring females into the residence. App. 232-235.

K. The Jury Requests Testimony from C.T. and, Initially, the Superior Court Orders the Court Reporter to Transcribe Testimony from Both S.T. and Winchester

After the jury began its deliberations, it perhaps understandably wanted to examine any actual testimony that the unavailable C.T. may have given about her purported first-hand experiences during the October-December 2011 time period. Consequently, it sent a note to the Superior Court judge on April 9, 2014, that requested "any testimony, comments, or discussion by [C.T.] that can be used as evidence in this case." App. 260, 263. Responding to that note, the judge informed the jury that he would order the court reporter to transcribe S.T.'s and Winchester's testimonies in their entireties to be read back to them – ostensibly because C.T. had not ever testified under oath during the underlying state

proceedings. App. 236-240, 264.

Later that day, the jury sent two clarifying notes to the Superior Court judge. In the first, the jury observed that it only needed to hear S.T.'s testimony on cross-examination and redirect examination. App. 261, 265. And in the second, the jury stated that it "no longer need[ed]" Winchester's testimony. App. 260-261.

L. The Jury Convicts Petitioner on Five Counts

After deliberating for parts of two days, the jury convicted Petitioner on counts 1-2, 4, and 7-8. It acquitted Petitioner on count 3 (concerning the supposed pandering of C.T.) and hung on count 5 (involving allegations that Petitioner had intercourse with S.T.), therefore resulting in a mistrial regarding that particular count. App. 260-261, 266-274.

M. The Superior Court Judge Sentences Petitioner to an Aggregate Custodial Term of 20 Years in a State Prison

At a sentencing hearing in Superior Court on May 16, 2014, the judge denied Petitioner's motion under People v. Romero, 13 Cal.4th 497 (Cal. 1996), to dismiss the strike allegation stemming from his prior conviction in 2008. App. 241. Under California state sentencing principles, the judge then took the upper term of eight years for Petitioner's conviction under count 7 and doubled it because of the strike, resulting in a 16-year custodial term. He next determined

that one-third of the midterm sentence for count 8 would be two years – also doubled because of the strike, therefore resulting in a four-year custodial term. App. 242.

Deciding that he would have the sentences for the two different counts run consecutively, the judge therefore imposed an aggregate custodial term of 20 years. App. 242.

N. On Direct Appeal, the Third DCA Affirms Petitioner's Conviction and Sentence

Raising several issues that are not directly pertinent to this appeal because he did assert them in his § 2254 petition, Petitioner next prosecuted a direct appeal in the Third District of the California Court of Appeal ("Third DCA"). Principally, he contended that the State's prosecutor committed reversible misconduct at trial because she had vouched for S.T.'s credibility, exhorted the jury to consider community values when deliberating, and misrepresented how the jury should assess whether the state had proven the essential elements for each count beyond a reasonable doubt. App. 282-284.

Rejecting Petitioner's arguments, the Third DCA affirmed Petitioner's conviction and sentence in an unpublished opinion on June 18, 2016. App. 320-354. Petitioner apparently did not seek direct review in either the California

Supreme Court or this Court.

O. Petitioner Learns Through Published Newspaper Articles That Law Enforcement Authorities in Northern California Were Investigating Whether Winchester Had Been a Serial Rapist While Employed as a Police Officer

After Petitioner's direct appeal became final, The Sacramento Bee newspaper published an article that, among other things, reported that while Winchester was employed as a police officer for the Los Rios Community College District in 2013 – the year before Petitioner's trial and sentencing occurred (see supra at 21-28) – the Sacramento Police Department had commenced what the article termed "a sexual assault investigation." Most importantly for Petitioner's present appeal, the article further reported that "Los Rios officials were notified of it" contemporaneously in 2013. App. 360-361; see also App. 357.

Further, the article detailed a second investigation by the Sacramento Sheriff's Department that "involved a 2013 incident that was not reported to authorities until 2015," after Winchester "had left" the Los Rios Community College District to work for the San Mateo Police Department. App. 360-361. As of when The Sacramento Bee published the article (apparently in 2015), both of those investigations were active. App. 361.

And even more disturbing, the article reported that law enforcement

authorities in both San Mateo and Sacramento Counties were then investigating Winchester for "a series of sexual assaults while on duty" as a police officer "in recent years," resulting in Winchester's resigning from the San Mateo Police Department. App. 360. Indeed, the Sacramento District Attorney's Office confirmed that two of Winchester's then-alleged assaults occurred while Los Rios Community College District employed him, a tenure that lasted until January 16, 2015. Id.

P. The District Attorney's Office in San Mateo County Prosecutes Winchester for Several Sexual Assaults

Rather unfortunately, the investigations that The Sacramento Bee reported in 2015 yielded considerable inculpatory evidence regarding Winchester. Consequently, the San Mateo County District Attorney's Office filed a complaint in California Superior Court on July 20, 2016. It alleged that Winchester had committed twenty-two felony counts involving five different victims. App. 367-385. Quite notably, fifteen of the counts stemmed from offenses that Winchester had – then allegedly – committed against two women in Sacramento County in 2013. App. 372-385. One of the women in Sacramento County was seventeen-years old when Winchester victimized her. App. 363.

In a nutshell, the complaint's heinous allegations involved Winchester's overriding modus operandi of deliberately using his position as a uniformed police officer to intimidate the victims into having sexual intercourse – and other acts of a sexual nature – with him. See App. 364, 368, 370, 372, 374, 378, 381, 383. They included the following categories of offenses: violating California Penal Code (a) § 209(b)(1), by kidnapping women to commit rape (counts 1, 11, and 15); (b) § 261(a)(7), by committing rape after threatening to imprison, arrest, or deport the victim (counts 2-3, 5, and 20); (c) § 261(a)(2), by using "force, violence, duress, menace, and fear of immediate and unlawful bodily injury" to engage in sexual intercourse (count 19); (d) § 460(a), by committing first-degree burglary (count 4); (e) § 243.4(a), by touching women's vaginas and breasts when he had unlawfully restrained them (counts 6-9, 12, and 13); (f) § 289(g), by penetrating women's anuses with his finger after threatening to arrest or deport them (count 14); (g) § 422(a), by threatening to commit a crime against the victim that would result in "death and great bodily injury" (count 16); (h) §288A(c)(2)(A), by using "force, violence, duress, menace, and fear of immediate and unlawful bodily injury" to engage in "oral copulation" (counts 17, 18, and 21); and (i) § 288A(k), by engaging in "oral copulation" after threatening to imprison, arrest, or deport the victim (count 22). Id.

Q. A California Superior Court Judge Denies Petitioner's State Habeas Petition, Involving a *Brady/Giglio* Claim

Possessing significant evidence that Petitioner could have used to impeach Winchester if the State had produced it to him as soon as 2013 (see supra), Petitioner filed a counseled state habeas petition in California Superior Court in Sacramento County in early-April 2017. In it, he alleged that the State violated its constitutional obligations under Brady v. Maryland, 373 U.S. 83 (1963), Giglio v. United States, 405 U.S. 150 (1972), and their progeny to have produced impeachment-worthy evidence – here, a then-ongoing investigation into allegations that at least one of Winchester's two victims in Sacramento County had made – regarding a material witness at his trial, the outcome of which might have been different if Petitioner had the evidence available timely to use during Winchester's cross-examination. App. 285-297.

A Superior Court judge then entered a reasoned order on June 1, 2017, that denied Petitioner's petition. Significantly, the judge acknowledged that Petitioner had a facially viable Brady/Giglio claim because "the facts [Petitioner] cited show a possibility that there was impeaching information about Winchester that was not disclosed to the defense." App. 6. But generally speaking, the judge noted that Petitioner – at least in her estimation – needed to "show[] that

Winchester was a material witness, i.e., a witness whose testimony was crucial as to the question of guilt or innocence." Id.

Turning toward the merits, the Superior Judge summarized the crux of Winchester's trial testimony – essentially, the traffic stop that yielded evidence in C.T.'s purse indicating she was a prostitute, the caller ID on Stephen's phone illustrating that Petitioner was calling him, and the inculpatory text message that Petitioner supposedly sent Stephen (App. 6; see supra at 11-12). But she then attempted to minimize its probative value as corroborating S.T.'s trial testimony. App. 6.

For instance, the Superior Court judge determined that although Winchester arguably was "significant for the investigation in [Petitioner's] case in that Winchester made a traffic stop that led to discovery of [Petitioner's] name on the driver's cell phone, [] this does not mean that Winchester's testimony was material to [Petitioner's] convictions . . . ." App. 6. She reasoned that – at least in her estimation – "[o]nce evidence of prostitution was presented, the items in C.T.'s purse might have corroborated that evidence, but without additional evidence, they showed nothing." Id. (emphasis added). More particularly, the Superior Court judge surmised – apparently without considering that C.T. was only fourteen years old when the traffic stop occurred (see supra at 11) – that "[t]he items could have

been possessed by a teenager who was not engaged in prostitution." Id.

Additionally, the Superior Court judge assessed the significance of Winchester's testimony about Petitioner's name's and text message's appearing in Stephen's phone. Perhaps acknowledging that this evidence might have been corroboratory that "[Stephen] was transporting C.T. so that she would not be found to be a part of a prostitution ring," she concluded that "without other information, the message has no particular meaning. It does not say why [Stephen] should get the girl and go." App. 7.

Further analyzing the evidence that the State adduced during its case-in-chief at trial, including the statements that Detective Morris took, the Superior Court judge reasoned that "[t]he crucial testimony at trial came from S.T., and her testimony showed that [Petitioner] arranged sex acts for her and C.T., and that he transported them or arranged transportation to the sex customers." App. 7. Thus, the Superior Court judge concluded, "[e]ven without the testimony from Winchester, [the State] had presented evidence that supported the convictions. [Khong] has not explained how Winchester's testimony might otherwise have affected his defense." Id.

Finally, the Superior Court judge determined that the jury's initially requesting Winchester's testimony to be read back while they were deliberating

was not significant because it later rescinded that request. App. 7.

R. The California Court of Appeal Summarily Denies Petitioner's Habeas Petition

Petitioner next filed a pro se habeas petition in the Third DCA, once again asserting his Brady/Giglio claim regarding the State's not having timely produced evidence about investigations into Winchester's serial predatory conduct. 5-ER-1099-1191. Without any reasoning, the Third DCA denied Petitioner's petition on October 5, 2017. App. 9.

S. The California Supreme Court Denies Petitioner's Habeas Petition in a Vague, Unreasoned Order

Attempting to exhaust his state remedies, Petitioner filed a pro se habeas petition in the California Supreme Court on November 29, 2017. App. 391-486. That court then vaguely denied the petition on February 14, 2018, writing as follows: "The petition for a writ of habeas corpus is denied. (See People v. Duval (1995) 9 Cal.4th 464, 474 [a petition for writ of habeas corpus must include copies of reasonably available documentary evidence].)." App. 9.

T. Petitioner Files a Habeas Petition in the District Court Under § 2254

Moving into the federal courts, Petitioner filed a pro se habeas petition in the United States District Court for the Eastern District of California on March 16,

2018, under 28 U.S.C. § 2254. As he had done in his three earlier state petitions (see supra at 25-29), Petitioner asserted that the State had violated Brady, Giglio, and their progeny by not timely producing material impeachment evidence concerning then-extant criminal investigations regarding Winchester in Sacramento County in 2013 and 2014. App. 487, 489, 499, 503-505.

Addressing the merits, the State principally made two arguments. First, apparently disagreeing with contrary reasoning from the Superior Court (see supra at 27-28), it contended that Petitioner "did not demonstrate that the prosecution actually or constructively possessed exculpatory information relating to [] Winchester at the time of [Khong's] 2014 trial." App. 518-519 & nn.3-4). And second, the State argued that "evidence that [] Winchester had been investigated for sexual misconduct was not material for Brady purposes." App. 519-521 & n.5).

U. A Magistrate Judge Issues a Report Recommending That a District Court Judge Deny Petitioner's Habeas Petition

After Petitioner filed a pro se traverse (App. 522-533), a magistrate judge in the Eastern District of California issued a report on June 10, 2019, that recommended a district court judge (namely, Chief Judge Kimberly J. Mueller) deny Petitioner's habeas petition.

Reviewing Petitioner's claim de novo (App. 22) – and apparently presuming that the State had violated its obligations under Brady and Giglio to disclose evidence to Petitioner pretrial regarding the law enforcement investigations in Sacramento County concerning Winchester – the magistrate judge determined generally that the evidence at issue was not material to Petitioner's trial. App. 22-25.[3] More particularly, the magistrate judge concluded initially, Winchester's testimony regarding the unavailable C.T. was – at least in her estimation – "limited," notwithstanding that the magistrate judge identified several different areas concerning C.T. (including C.T.'s demeanor, her initial prevarications, the prostitution-related items in her purse, and her identifying Petitioner in a photograph) about which Winchester testified. App. 23.

Next, the magistrate judge minimized the significance of the jury's having initially requested Winchester's testimony to be read back at trial, noting that the jury later reconsidered. App. 24. Then, without discussing the many inconsistencies among S.T.'s statement to Detective Morris, preliminary hearing testimony, and trial testimony, the magistrate judge once again determined that

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[3] In a footnote, the magistrate judge assumed that Petitioner would have been permitted to have impeached Winchester on cross-examination at trial with evidence regarding Winchester's being an investigatory target or subject. App. 23 n.2.

Winchester's testimony was insignificant because he did not have anything to say about several essential elements of the five counts for which the jury convicted Petitioner. App. 24-25.

In a nutshell, therefore, the magistrate judge concluded as follows:

> Even if the jury disbelieved everything Winchester testified to, there is no reasonable probability the result of the trial would have been different. The prosecution's other evidence, primarily in the form of S.T.'s testimony, provided the jury with everything it needed to convict [Petitioner]. In fact, [Petitioner's] trial attorney recognized that fact. In his closing argument, he told the jury: 'this case rests solely upon the credibility and believability of [S.T.].'

App. 25. And the magistrate judge essentially adopted the Superior Court judge's reasoning that ". . . Winchester was significant to the investigation, but he was not significant to the conviction." Id.

V. The District Court Adopts the Report and Recommendation in Its Entirety, and Does Not Issue a Certificate of Appealabilty

After Petitioner timely objected pro se to the magistrate judge's report and recommendation (see App. 534-539, the district court adopted it in its entirety on September 8, 2020. Concomitantly, it declined to issue a certificate of appealability to Petitioner, and issued a judgment that same day in the State's favor regarding Khong's § 2254 petition. App. 27-28.

W. The Ninth Circuit Issues a Certificate of Appealability to Petitioner, Appoints Counsel, and Directs Him to Brief Three Certified Issues

Undaunted by the district court's order and judgment, Petitioner ostensibly requested pro se that the Ninth Circuit issue a certificate of appealability for his Brady/Giglio claim. A two-judge panel agreed, so issued a certificate to Petitioner for that claim on December 20, 2021, and also directed Petitioner to brief whether (a) he had adequately exhausted it and (b) it was procedurally barred – ostensibly by the People v. Duvall citation in the California Supreme Court's order. App. 543-544.

Later, Petitioner understandably moved the Ninth Circuit for it to appoint counsel to represent him in this appeal and brief those three certified issues. The Ninth Circuit accordingly entered an order that directed the Sacramento Office of the Federal Defender to appoint counsel from the Criminal Justice Act Appellate Panel that it administers. App. 545.

X. The Court of Appeals' Disposition

In a skeletal, unpublished memorandum disposition that it issued on December 22, 2022, a three-judge panel of the Ninth Circuit affirmed the district court's denial of Khong's habeas petition under § 2254. After determining that Khong had exhausted his Brady/Giglio claim in the California state courts and

determining that it was not procedurally barred, the panel – applying de novo review – concluded that the withheld evidence regarding state criminal investigations of Winchester was not material.

In a nutshell, without applying the legal standard that this Court set forth in Kyles v. Whitley, 514 U.S. 419, 434 (1995), to determine materiality – namely, that the suppressed evidence merely "'undermines confidence in the outcome of the trial (quoting United States v. Bagley, 473 U.S. 667, 678 (1985)) – the Ninth Circuit concluded instead in a mere solitary paragraph of analysis that " . . . even if []Winchester's testimony had been entirely discredited by the undisclosed impeachment evidence, there is no reasonable probability that the outcome would have been different" (emphasis added). App. 4.

ARGUMENT

1. At bottom, the rule that the Ninth Circuit applied to adjudicate Petitioner's Brady/Giglio claim overlooked the developments in the Court's case law regarding materiality and prejudice in this context since Bagley in 1985. Thus, instead of applying Kyles' test, which focuses on whether the suppressed exculpatory materials were sufficiently material to "undermine confidence in the outcome of the trial" (514 U.S. at 434), the Ninth Circuit focused exclusively on Bagley's narrower rule, limited solely to inquiring whether there was a

"reasonable probability" that the "outcome would have been different." App. 4.

2. Consequently, because the Ninth Circuit misapplied the Court's Brady/Giglio materiality case law, and concomitantly determined that Petitioner's claim was exhausted and not procedurally barred, Petitioner's case presents a suitable vehicle to alert lower federal courts and state courts of the proper rule they should apply in this context. Also, the Ninth Circuit did not question that the State had indeed suppressed exculpatory impeachment before and during Petitioner's trial. And here, applying Kyles' rule would likely lead to a different outcome for Petitioner because the suppressed evidence regarding Winchester was – given his importance in corroborating key portions of the putative victim's testimony – indeed material to the State's case-in-chief.

The Court should therefore grant Petitioner's petition for a writ of certiorari. See Sup. Ct. R. 10(c).

I. THE NINTH CIRCUIT'S BRADY/GIGLIO MATERIALITY ANALYSIS OVERLOOKED KYLES'S AND ITS PROGENY'S SHIFT TOWARD EVALUATING WHETHER THE SUPPRESSED EXCULPATORY MATERIAL UNDERMINED THE TRIAL'S CONFIDENCE.

A. Simply stated, a state contravenes Brady and Giglio – and therefore violates the Fourteenth Amendment's Due Process Clause – whenever it fails to disclose material impeachment evidence timely to a criminal defendant.

See Giglio, 405 U.S. at 154. The Court has held that a Brady/Giglio violation should result in a new trial under the following circumstances: when (1) the evidence withheld would have been favorable at trial to the defendant because it is exculpatory or would impeach a prosecution witness; (2) the prosecutor, whether acting willfully or inadvertently, failed to disclose the evidence timely; and (3) the prosecutor's withholding the evidence prejudiced the defendant because of its materiality. See, e.g., Kyles, 514 U.S. at 432-33.

When evaluating the untimely disclosed evidence, as the Court directed in Kyles, an adjudicator must consider it "collectively, not item by item." 514 U.S. at 436. And whenever the withheld discovery is not "merely cumulative" of other evidence that the defendant already possessed at trial, then the Brady/Giglio violation is structural and thus not amenable to a harmless error analysis. 514 U.S. at 435.

B. As Petitioner has already discussed, the Ninth Circuit presumed in its disposition that materiality is the only the prong in the Brady/Giglio inquiry that is at issue. In Bagley, the Supreme Court held that a defendant sustains prejudice following a Brady/Giglio violation whenever "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding might have been different." 473 U.S. at 682 (emphasis added).

But a mere ten years later, the Court's materiality-related focus shifted toward a more-holistic analysis. As the Court held in Kyles, "the question is not whether the defendant would more likely than not have received a different verdict with the evidence, but whether in its absence he received a fair trial . . . ." Kyles, 514 U.S. at 434. Indeed, Kyles crafted this broader rule from language appearing in Bagley itself. Id. (holding that prejudice occurs when the "government's evidentiary suppression 'undermines confidence in the outcome of the trial.'") (quoting Bagley, 473 U.S. at 678)).

Consistent with Kyles's shift toward a broader approach toward materiality rather than a narrow verdict-focused inquiry, the Court has repeatedly emphasized Kyles's formulation instead of what Bagley discussed. See, e.g., Turner v. United States, 137 S. Ct. 1885, 1893 (2017); Smith v. Cain, 565 U.S. 73, 75-76 (2012); Cone v. Bell, 556 U.S. 449, 470 (2009); Youngblood v. West Virginia, 547 U.S. 867, 870 (2006) (per curiam); Banks v. Dretke, 540 U.S. 668, 698-99 (2004); United States v. Ruiz, 536 U.S. 622 (2002); Strickler v. Greene, 527 U.S. 263, 290 (1999).

C. Here, however, the Brady/Giglio materiality rule that the Ninth Circuit applied in this disposition reflects an outdated – and, indeed, incorrect – approach toward whether the suppressed evidence regarding criminal

investigations of Winchester might have resulted in jury acquittals on some or all of the five counts on which it convicted Petitioner. See App. 4. In so doing, the Ninth Circuit's disposition evinces a circumscribed focus in this context that Kyles and its progeny abandoned – instead, now inquiring whether the evidence's being suppressed deprived the defendant of a fair trial because he could not timely access potentially exculpatory impeachment evidence. See supra at 37.

* * *

Consequently, because the Ninth Circuit's Brady/Giglio materiality rule conflicts directly with the Court's holdings in Kyles and its progeny regarding the same subject matter, this Court should grant Petitioner's petition for a writ of certiorari. See Sup. Ct. R. 10(c).

II. THIS CASE IS A SUITABLE VEHICLE FOR RESOLVING THE CONFLICT THAT THE NINTH CIRCUIT'S DISPOSITION CREATED.

A. As Petitioner discussed supra (at 33-34), the Ninth Circuit concluded that Petitioner properly exhausted his Brady/Giglio claim and he was not procedurally barred from asserting it. Further, the Ninth Circuit presumed that all of the Brady/Giglio prerequisites (for example, demonstrating that there was suppressed exculpatory evidence during the state court trial) were satisfied. App. 3-4. Thus, there are no jurisdictional problems associated with the claim,

and it is ripe for the Court to adjudicate questions regarding it.

B. Further, by applying a more-restrictive rule regarding Brady/Giglio materiality than Kyles and its progeny specify, the Ninth Circuit made it significantly more difficult for Petitioner to prevail. But if the Ninth Circuit instead had to determine only whether the suppressed evidence precluded Petitioner from getting a fair trial, Petitioner likely would have prevailed on appeal under that test.

As Petitioner discussed at length (see supra at 9-12), Winchester not only testified (without objective supporting evidence) that Petitioner had attempted to contract Stephen by phone and text while Stephen was in a car with C.T., a purported victim, but also stated that Stephen and C.T. had given post-detention statements that included information about Petitioner's putative role in the prostitution scheme. Thus, during a trial when S.T. was the only supposed victim to testify because C.T. was unavailable (see supra at 18-19), and S.T. had appreciable credibility problems (see supra at 15-18), Winchester was an important corroboratory witness for the State during its case-in-chief. And without being able to use suppressed evidence regarding then-ongoing serious criminal investigations of Winchester to impeach him (see supra at 23-24), that affected Petitioner's ability to get a fair trial.

* * *

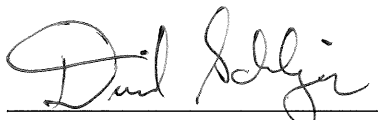
Consequently, the Ninth Circuit's not applying Kyles and its progeny's rule regarding materiality to Petitioner's Brady/Giglio claim likely impacted the outcome of Petitioner's appeal. And because that claim is amenable to federal judicial review under § 2254, the Court should therefore grant Petitioner's petition for a writ of certiorari – if only to signal firmly to the federal and state courts that Kyles's materiality rule governs in this context.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Dated: March 22, 2023

Respectfully submitted,



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No._____

IN THE SUPREME COURT OF THE UNITED STATES

TONY KHONG,

Petitioner,

v.

SCOTT FRAUENHEIM,

Respondent.

On Petition for A Writ of *Certiorari* to The United States Court of Appeals for the Ninth Circuit

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PROOF OF SERVICE

I, David A. Schlesinger, declare that on March 22, 2023, as required by Supreme Court Rule 29, I served Petitioner Tony Khong's MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on counsel for Respondent by depositing an envelope containing the motion and the petition in the United States mail (Priority, first-class), properly addressed to her, and with first-class postage prepaid.

The name, address, telephone, and email address of counsel for Respondent is as follows:

David Andrew Eldredge, Esq.
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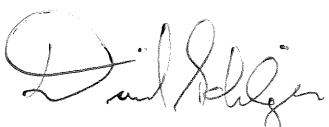
Counsel for Respondent

Additionally, I mailed a copy of the motion and the petition to my client, Petitioner Tony Khong, by depositing an envelope containing the documents in the United States mail, postage prepaid, and sending it to the following address:

Tony Khong
#G-32579
CRC - California Rehabilitation Center (Norco)
P.O. Box 3535
Norco, CA 92860

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

Executed on March 22, 2023



DAVID A. SCHLESINGER
Declarant