No. _____

In The

Supreme Court of the United States

ANDRE DOW,

Petitioner,

v.

THE STATE OF NEVADA,

Respondent.

On Petition For A Writ Of Certiorari To The Nevada Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Mr. Dow's Sixth Amendment right to counsel of choice was violated and prejudice should have been presumed by the lower court in light of this Court's decision in *U.S. v. Gonzalez-Lopez*.

2. Whether the testimony of Mr. Dow's attorney, violated the attorney-client privilege, and Mr. Dow's rights to due process and a fair trial.

3. Whether Mr. Dow was not permitted to present a complete defense at trial.

4. Whether the admission of Mr. Dow's lyrics against him at trial violated his First Amendment rights and right to a fair trial.

STATEMENT OF RELATED CASES

A. *Andre Dow, Petitioner, vs. The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, The Honorable Donald M. Mosley, District Judge, Respondents, and The State of Nevada, Real Party in Interest*, Nevada Supreme Court Docket Number No. 49311 – Order denying petition for writ of habeas corpus (pre-trial petition for writ of habeas corpus);

B. *Andre Dow v. The State of Nevada*, Nevada Supreme Court Docket Number No. 52583 - Order of Affirmance entered on May 26, 2010 (Judgment of Conviction);

C. *Andre Dow v. The State of Nevada*, Nevada Court Appeals Docket No. 70410-COA - Order affirming in part and reversing in part and remanding to district court entered on June 11, 2019 (first post-conviction petition);

D. *Andre Dow v. The State of Nevada*, Nevada Supreme Court Docket No. 70410 – Order denying State's petition for review entered on November 7, 2019 (first post-conviction petition);

E. *Andre Dow v. The State of Nevada*, Nevada Court Appeals Docket No. 83271-COA - Order of Affirmance entered on June 13, 2022 (first post-conviction petition);

F. *Andre Dow v. The State of Nevada*, Nevada Supreme Court Docket No. Docket No. 83271 – Order denying Mr. Dow's petition for rehearing entered on October 24, 2022 (first post-conviction petition);

STATEMENT OF RELATED CASES – Continued

G. *Andre Dow v. The State of Nevada*, Nevada Supreme Court Docket No. 70410 – Order denying Defendant's petition for review entered on November 7, 2022 (first post-conviction petition);

H. *Andre Dow v. The State of Nevada*, Nevada Supreme Court Docket No. 86004 (currently on appeal to the Nevada Supreme Court – briefing has not commenced (second post-conviction petition).

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Petitioner Andre Dow ("Mr. Dow") respectfully prays that a writ of certiorari issue. Review should be granted under Supreme Court Rule 10(b) and (c).

OPINION BELOW

The Nevada Court of Appeals did not select its opinion for publication. The decision from the Nevada Court of Appeals is reprinted in the Appendix ("App.") 1-6. That court's order denying Petitioner's Petition for Rehearing is attached as App. 22.

The Nevada Supreme Court's order denying Petitioner's Petition for Review is attached as App. 23. The District Court's Findings of Fact and Conclusions of law is attached as App. 13-21.

JURISDICTION

On June 13, 2022, the Nevada Court of Appeals entered its Order of Affirmance. App. 1-6. Said Order was in relation to the Eighth Judicial District Court's denial of Mr. Dow's post-conviction petition for writ of habeas corpus. On September 22, 2022, the Nevada Court of Appeals denied Mr. Dow's Petition for Rehearing. App. 22.

On November 7, 2022, the Nevada Supreme Court denied Mr. Dow's Petition for Review. App. 23. The jurisdiction of this Court is invoked under 28 U.S.C. 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

Under the First Amendment, "Congress shall make no law . . . abridging the freedom of speech. . . ." U.S. Const. amend. I.

Under the Fifth Amendment, "No person shall be . . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

Under the Sixth Amendment, "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury . . . to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

STATEMENT OF THE CASE

Mr. Dow was charged by way of Grand Jury Indictment in the Eighth Judicial District Court, Clark County, Nevada, along with co-defendant Jason Mathis as follows: Counts 1 & 3 – Conspiracy to Commit Murder; and Counts 2 & 4 – Murder With Use of a Deadly Weapon.

Mr. Dow's jury trial began on July 14, 2008, and lasted six days. On July 21, 2008, the jury returned a verdict of guilty as to Counts 1 & 3, and guilty of First Degree Murder with Use of a Deadly Weapon with respect to Counts 2 & 4.

Following a penalty phase on that same day, the jury imposed a sentence of life imprisonment without the possibility of parole on each of Counts 2 & 4, respectively. Thereafter, on September 30, 2008, the Court adjudicated Mr. Dow guilty and sentenced him to imprisonment without the possibility of parole.

Mr. Dow's judgment of conviction was filed on October 9, 2008. Mr. Dow filed a timely notice of appeal on October 15, 2008. The notice of appeal was filed by trial counsel, however, Mr. Dow's direct appeal was ultimately filed by Nevada attorney, Lisa Rasmussen, and California attorney, Stuart Hanlon.

In addition, an individual named Tim Finnegan, who was holding himself out as an attorney (and was also being represented as Mr. Dow's "lawyer" by Stuart Hanlon), performed the direct appeal briefing. Unbeknownst to Mr. Dow and his agents at the time, Tim Finnegan was not a licensed Nevada, nor California, attorney.

Mr. Dow's Opening Brief on direct appeal was filed with the Nevada Supreme Court on May 27, 2009. On May 26, 2010, the Nevada Supreme Court affirmed Mr. Dow's conviction. On June 21, 2010, remittitur issued.

On April 20, 2015, Mr. Dow, in proper person, filed his first post-conviction petition for writ of habeas corpus in the District Court. Mr. Dow also filed a motion for appointment of counsel on the same day.

The State filed its response on June 4, 2015. On June 9, 2015, the District Court held a hearing,

without Mr. Dow's presence, and denied the Petition as time barred. The District Court also denied Mr. Dow's motion for appointment of counsel.

On July 10, 2015, the District Court entered its findings of fact, conclusions of law, and Order denying said petition.

On July 16, 2015, Mr. Dow, in proper person, filed a Motion for Rehearing and again attached as an exhibit a letter from Mr. Hanlon indicating that a post-conviction petition was being handled by "Tim."

Mr. Dow also attached a letter establishing that he had submitted a bar complaint on Mr. Hanlon.

On August 11, 2015, undersigned counsel appeared on behalf of Mr. Dow, and the District Court ultimately vacated and set aside its previous findings of fact, conclusions of law, and Order denying Mr. Dow's post-conviction petition. The District Court then also set a supplemental briefing schedule, as well as oral argument on the supplemental petition for February 2, 2016. The District Court did not set an evidentiary hearing. The parties thereafter filed additional supplemental briefings with the District Court.

On March 1, 2016, after entertaining oral argument, the District Court denied Mr. Dow's petition for writ of habeas corpus without conducting an evidentiary hearing. The District Court entered its findings of fact and conclusions of law, and Order on April 6, 2016. On May 15, 2016, Mr. Dow timely filed his notice of appeal.

On June 11, 2019, the Nevada Court of Appeals issued an Order affirming in part, reversing in part, and remanding the matter for an evidentiary hearing related to the issue of good cause. The Nevada Court of Appeals found in part that "Dow provided specific allegations that were not belied by the record and, if true, would warrant relief."

The Nevada Court of Appeals also stated "[t]herefore, we conclude the district court erred by denying this good-cause claim without conducting an evidentiary hearing. Accordingly, the district court should conduct an evidentiary hearing to assess Dow's claim of attorney abandonment and whether he can demonstrate cause to excuse the delay." The State's Petition for Review was ultimately denied.

On March 17, 2021, the District Court conducted an evidentiary hearing. Witnesses Stuart Hanlon, non-attorney Tim Finnegan, Lisa Rasmussen, Matt Machon, Carlos Levexier, and Mr. Dow, testified.

In addition to other evidence, it was established at the evidentiary hearing that Mr. Finnengan was not a licensed attorney, and that he and Mr. Hanlon made misrepresentations to Mr. Dow and his associates regarding Defendant's petition for writ of habeas corpus.

At the evidentiary hearing on March 17, 2021, Mr. Dow was not permitted to introduce evidence regarding the prejudice prong of NRS 34.726. Rather, the hearing was bifurcated by the District Court, and Mr. Dow limited to presenting evidence regarding the "good cause" for the delay in filing.

On April 1, 2021, the District Court heard oral argument and found that Defendant established good cause to show that the delay in filing the Petition was not his fault. The court set the matter for additional argument on the issues related to "prejudice." On May 11, 2021, the District Court heard oral argument and stated that Mr. Dow had not established prejudice. The District Court also denied Defendant's request for the District Court to grant an evidentiary hearing on the issues related to "prejudice."

On June 17, 2021, Mr. Dow filed his Motion for Reconsideration regarding the denial of his post-conviction petition for writ of habeas corpus and evidentiary hearing. On June 23, 2021, the State filed its Opposition to said Motion.

On June 29, 2021, the District Court held a hearing on Mr. Dow's Motion for Reconsideration, and denied said Motion.

On July 8, 2021, the District Court entered its Notice of Entry of Findings of Fact and Conclusions of Law which denied Mr. Dow's petition for writ of habeas corpus. App. 13-21.

On July 21, 2021, Defendant timely filed his notice of appeal. After being fully briefed, but without oral argument, on June 13, 2022, the Nevada Court of Appeals entered its Order of Affirmance in relation to the District Court's denial of Mr. Dow's previously filed petition for writ of habeas corpus.

On September 22, 2022, the Nevada Court of Appeals denied Mr. Dow's Petition for Rehearing. On November 7, 2022, the Nevada Supreme Court denied Mr. Dow's Petition for Review.

FACTUAL BACKGROUND

At the start of Mr. Dow's jury trial in this case, Nevada attorney Anthony "Tony" Sgro was Mr. Dow's privately retained counsel of choice. Mr. Sgro had appeared on behalf of Mr. Dow throughout the earlier proceedings in this case. However, on the first day of Mr. Dow's jury trial, Mr. Sgro was not present. Instead, Jonathan Powell and Erick Ferran, who were associates of Mr. Sgro's firm at the time, appeared on Mr. Dow's behalf. Mr. Powell, on behalf of Mr. Dow, requested a short continuance of the trial because Mr. Sgro was allegedly out of the jurisdiction.

Mr. Powell clearly stated on the record that Mr. Srgo was Mr. Dow's counsel of choice:

> I am sure you are probably not inclined to do what we're going to request but we would move that you continue trial to Thursday. The reasoning for that is Mr. Sgro will be returning from town on Thursday. Now, prior to this time one of the conflicts was he had a medical malpractice trial starting next Monday. However, that case has since been settled which would allow Mr. Sgro when he returned – I believe he's returning between Wednesday and Thursday at midnight – would allow him to

> get up to speed on Thursday. I could do the voir dire Thursday morning or Mr. Ferran could. That would allow opening statements after lunch and we could do – call witnesses then. The reason why we're asking is we believe that it'll create a better record for – if there is need for an appeal as ***Mr. Sgro is clearly the choice of Mr. Dow in this case***.

(emphasis added).

The District Court responded:

> THE COURT: ***Okay. Well, we're starting today***. Anybody that's ready is here, you know. If he wants to join the team in the middle, ***I don't care. We're dancing today***.
>
> MR. POWELL: Thank you, Your Honor.
>
> THE COURT: ***The motion is denied***.

Id. (emphasis added).

After the trial court denied the request for a brief continuance, so that Mr. Sgro could serve as lead counsel, the parties conducted voir dire and then the State presented its case in chief.

The State's theory at trial in this matter was that Mr. Dow entered into a conspiracy with the co-defendant, Jason Mathis, to lure the two victims to an area wherein the victims were ultimately shot to death. Specifically, the State alleged that the victims were killed in retaliation for the death of a hip-hop musician named "Mac Dre," who was previously shot to death in Missouri.

The State asserted at trial that Mr. Dow lured the two victims, Mr. Watkins aka "Fat Tone", and Mr. Aikens, to Las Vegas under the guise that they would meet famous hip-hop music star "Snoop Dogg," wherein Snoop Dogg would help further Mr. Watkins' music career.

According to the State, rather than arrange a meeting with Snoop Dogg, Mr. Dow drove the victims from the MGM Hotel and Casino in Las Vegas to an isolated location near co-defendant Mr. Mathis' residence, wherein both men were shot to death by the defendants.

At trial, there was video camera footage of Mr. Dow and the victims walking through the MGM Hotel and Casino to the parking garage, however, there was no video footage which depicted that they all left in the same vehicle.

The State also introduced evidence of Mr. Dow's alleged flight after the incident in question, including evidence which allegedly suggested that Mr. Dow fled to Northern California following the shooting, where he later allegedly killed another participant in the Watkins/Aikens homicide, Ms. Lee Laursen.

The State attempted to corroborate the killing of Ms. Larsen through the testimony of criminal defense attorneys Marty Hart and Keith Brower.[1] The State

[1] Mr. Brower was Mr. Dow's counsel in a previous matter, and over Defendant's objection, and Mr. Brower's objection, Mr.

also called a witness identified as "Antoine Mouton," who testified that Mr. Dow indicated in an alleged conversation that he was involved in the murders.[2]

After the State rested, attorney Powell indicated on the record again that Mr. Dow was requesting that Mr. Sgro be permitted to appear. The Court indicated that it would permit Mr. Sgro to appear, albeit in the middle of the trial, however, the court warned Mr. Dow that bringing in another lawyer late could be viewed negatively by the jury. Specifically, the court engaged in the following exchange with the parties:

> MR. POWELL: Today, yes. Mr. Dow has, as you know requested Mr. Sgro at various times during this trial. He is again requesting Mr. Sgro –
>
> THE COURT: To do what?
>
> MR. POWELL: – participate in this trial and that would be-,
>
> THE COURT: He can.

Browe was ordered to testify. *See also infra*. This issue was also not specifically addressed on direct appeal.

[2] On December 21, 2021, Defendant filed a petition for writ of habeas corpus related to alleged *Brady*/*Gigilio* violations related to this witness. Said Petition raises significant issues which also warrants reversal of Mr. Dow's convictions (including that Mr. "Mouton" was in custody at the time of an alleged conversation). Mr. Mouton also recanted his prior statements to law enforcement and his testimony. These issues are also subject to a recently filed appeal with the Nevada Supreme Court and Mr. Dow reserves his rights regarding said petition.

MR. POWELL: Yeah, I just want to clear it with Your Honor that if he – if we all are in agreement that Mr. Sgro come on board and assist that Your Honor would have no problem with that?

THE COURT: I have no problem. I do not. And I'm not telling you this so you won't do it, but I'll tell you this, I've had one experience in my life where I've seen that happen and I happened to be the plaintiff's lawyer in a fairly substantial personal injury case and I got a big award and then there was a punitive damage phase. And they brought somebody else in along, you know to sort of shore it up and the jury took from that, that the – their team thought that they were just a hose. Their team didn't think they were doing very good and didn't have a very good case and I got a big punitive damage awarded too. Not saying don't do it. I'm just saying there is a reasonable inference to be drawn to bringing in a relief pitcher in the eighth inning and sometimes that is, a oh, shit, our starters are fucking up. We're in trouble.

MR. POWELL: Understood, Your Honor, and I explained that to Mr. Dow and it's a consideration.

THE COURT: Well, what I'm saying is I don't care.

MR. POWELL: Yeah.

THE COURT: You can bring in Bozo the Clown, F. Lee Bailey, you can bring them in

> tomorrow; I don't care. Do whatever you want to do.
>
> THE DEFENDANT: I want Sgro to come because he's familiar with the case. It's not like he's a stranger –
>
> THE COURT: Not a problem.
>
> THE DEFENDANT: – you know. If he would have been here earlier I believe a lot of this shenanigans wouldn't have jumped off, but now you know.
>
> THE COURT: You're not getting any quarrel from me. You can have him if you want him, if he's ready. Not a problem. And I think, actually, when I was arguing the case I mentioned a little something about a relief pitcher and how arrogant it must be of them to think that, you know, you people are so not doing your job that they're going to –
>
> MR. DiGIACOMO: Those seven would never let me get away with that but I hope Sgro shows up, 'cause I'll find a different way to stick it to him.

The defense then presented its case and called witnesses which established that Mr. Dow was a well-known hip hop music artist and was motivated to help the alleged victim, Mr. Watkins a.k.a. Fat Tone with his music career.

The defense also called two witnesses, namely, Franzen Wong, and Joe Tasby, whose testimony suggested that Mr. Dow was at the parking lot of 97.5

radio station from 12:00 am to at least 2:00 am on the morning of the murders, and not at the crime scene.

After putting on most of its defense witnesses, counsel Powell informed the court that there were timing issues with securing Mr. Dow's additional witnesses. Despite counsel for Mr. Dow asking for additional time for witnesses to arrive, the District Court refused and only permitted one additional witness to testify for Mr. Dow.

As stated above, Mr. Dow was ultimately convicted by the jury. After Mr. Dow was convicted, counsel Jonathan Powell filed a Motion for New Trial. The motion argued that a new trial was warranted as Mr. Dow was deprived of his counsel of choice, Mr. Sgro.

Said motion also set forth that Mr. Dow was not able to call certain witnesses in support of his defense. Specifically, counsel for Mr. Dow provided declarations from witnesses Gary Owens and Daryl Anderson. The declaration from Gary Owens set forth that he had previously met one of the alleged victims in this matter, Anthony "Fat Tone" Watkins in San Francisco with Mr. Dow. According to Mr. Owens, he was informed that defense witnesses were supposed to testify on Friday (July 18, 2008) and Monday (July 21, 2008).

According to Mr. Owens, based on these representations he made plans to travel to Las Vegas on July 18, 2008, so that he could testify on Monday, July 21, 2008. However, Judge Bell ultimately changed the defense testimony schedule to Thursday July 17, 2008, and Friday, July 18, 2008. When Mr. Owens arrived at

the courthouse, the parties had already begun closing arguments and he never testified.

Mr. Owens had personal knowledge that Mr. Dow had previously helped to promote Mr. Watkins' music, and that on a previous occasion, Mr. Watkins borrowed the same automobile that he was found killed in, and that Mr. Watkins drove this car around San Francisco without Defendant being present.

Like Mr. Owens, the declaration of Daryl Anderson also set forth important exculpatory testimony that Mr. Dow was not able to present at trial. According to the Motion for New Trial:

> Mr. Anderson was originally contacted regarding testifying on Monday, as he had work engagements and it would have been difficult for him to be present on Friday. After he confirmed his ability to come on Monday, and after Defendant was told to have his witnesses available by Friday morning at the latest, Defendant attempted to contact Mr. Anderson to have him come in earlier on Friday, but Defendant was not able to reach him on such short notice. When Defendant did finally contact him in the middle of the week, it was already too late for him to change his employment responsibilities. It was not possible for Mr. Anderson to arrive on Friday at all to testify. Mr. Anderson would have testified to the following: that he had a long standing professional relationship with Mr. Watkins; that he seen [sic] Mr. Watkins driving the automobile he was found dead in around Las Vegas,

> without Defendant; that Mr. Watkins reached out through Mr. Anderson to contact Defendant in order to allow them to do music together; that there were a number of individuals looking for Mr. Watkins, possibly to do him harm, and Defendant was not one of them; that he spoke to Mr. Watkins while he was in Las Vegas, shortly before he was killed, and Mr. Watkins was attempting to arrange studio time for him and Defendant in Mr. Anderson's studio.

The Motion for New Trial additionally stated in part:

> These witnesses' testimony would have been crucial during trial. No other witness could testify that Mr. Watkins was in San Francisco with Mr. Dow after the Mac Dre killing, the one place he was supposed to be in the most danger. No other witness could testify to other individuals looking for Mr. Watkins, potentially to harm him. No other witness could testify that it was Mr. Watkins that reached out to Defendant in order for their musical collaboration to start, not the other way around. No other witness could testify that Mr. Watkins had possession and control of the car he was found dead in wholly apart from Defendant and that it would not have been unusual for Mr. Watkins to have driven the automobile with Defendant. Because Defendant was denied his ability to call witnesses on his own behalf that he had previously subpoenaed, Defendant was denied a proper trial.

After Mr. Dow was convicted, he ultimately retained California attorney Stuart Hanlon to handle his direct appeal. Mr. Hanlon utilized Nevada attorney Lisa Rasmussen as local counsel.

Despite the above issues being raised in Mr. Dow's Motion for New Trial, these issues were *not* raised in Mr. Dow's direct appeal.

Significantly, after Mr. Dow's trial, Carlos Levexier, a witness who testified for Mr. Dow at his sentencing phase, spoke to one of Mr. Dow's trial attorneys, Erick Ferran, who stated to the effect that Mr. Dow's attorneys "would fall on the sword" in Mr. Dow's post-conviction matters. Mr. Ferran indicated to Mr. Levexier "on the last day of Mr. Dow's trial after Mr. Dow was sentenced, that another firm should argue ineffective assistance counsel in post-conviction matters because Mr. Sgro was not Mr. Dow's counsel at trial, and Sgro's absence amounted to ineffective assistance of counsel for Mr. Dow at trial." According to Mr. Levexier, there were other witnesses to the conversation.

Notably, when undersigned counsel attempted to ask Mr. Levexier about this conversation during the evidentiary hearing on March 17, 2021, the State objected and undersigned counsel was prohibited by the District Court from doing so.

At the evidentiary hearing on March 17, 2021, Mr. Finnegan admitted that he was not a licensed attorney.

In addition to hiring counsel to file the direct appeal, Mr. Dow, through his agents, Matthew Machon,

as well as Mr. Levexier, also paid to have a post-conviction petition filed on Mr. Dow's behalf.

During the evidentiary hearing on March 17, 2021, Mr. Finnegan admitted that he informed Mr. Dow and his agents that the "clock stopped" for the time to file a post-conviction petition. Specifically, Mr. Finnegan testified in part:

> Q. And did you tell – you told them that as long as you were investigating the clock was stopped; correct?
>
> A. ***Yeah. I think I – the way I probably phrased it was as long as we were exercising due diligence and discovering new evidence that it would toll the period. Yes***.

(emphasis added). Mr. Finnegan also testified in part:

> Q. . . . . But my question is this: I mean, you're saying that there was apparently some decision to forego filing in the Nevada state court but then you're telling Mr. Dow and Mr. Machon, knowing they're relaying the information to him, as well, saying well first we have to file in state court. So if you were aware that there's a one-year deadline, and then you're also telling them the clock stopped while investigating, don't you understand how – you understand there would be confusion here?
>
> A. Yeah. I don't doubt that the – ***the whole habeas deadline law was confusing***.

> Q. And then I'm just going to show you Exhibit 67. You had previously given a – you were also interviewed during the Bar investigation process by the California Bar; correct?
>
> A. By an investigator, yes.
>
> Q. And in your – let me ask it this way. Did you ever tell Andre Dow at any point in time that the habeas would not be filed by you or Mr. Hanlon?
>
> A. It would not be filed?
>
> Q. Did you ever say to Andre, we're not filing a petition for you.
>
> A. No.

(emphasis added).

Moreover, on July 19, 2010, after Mr. Dow questioned Mr. Hanlon about the status of his post-conviction petition, Mr. Hanlon wrote a letter to Mr. Dow which stated as follows:

> I have been in trial for 6 weeks. I have not been around at all.
>
> ***Equally as important is that Tim is doing this writ and habeas corpus and not me. I have agreed to be involved if it goes to oral argument but I am not working on the habeas. Therefore, I am forwarding your letter to him***. I hope there was no misunderstanding on what my involvement with [sic] be regarding this but the money was

> for him and not me. ***He is in charge of this***. I never told you that I would come out to see you.
>
> ***I am not trying to be difficult but this is how we set up the appeal work. Again, I am forwarding your letter to Tim***.

(emphasis added).

Notwithstanding these representations, no Petition would be filed by Mr. Hanlon or Mr. Finnegan. On at least one occasion, Mr. Hanlon even sent a text message to Mr. Machon which stated in part that "Tim is his [Mr. Dow's] lawyer." Mr. Hanlon also wrote to Mr. Machon that "As u [sic] know all money you paid went to Tim and the investigator." *Id.*

During the evidentiary hearing on March 17, 2021, Stuart Hanlon testified in part:

> A. So it looks like Tim got all the money, but he didn't. He got all the money that they eventually paid, and there was (video interference) to pay anybody else.
>
> Q. Now, when you do the appeal work, and have you done postconviction writs with Mr. Finnegan?
>
> A. Have I done – I'm trying to remember. I don't know if I've done writs with him. I've done writs with other people, but I don't know if I've done writs with him. I can't remember.

Q. Okay. Now, when you, for example, in this specific case, Mr. Finnegan was [sic] then turned to Mr. Dow to speak with him about his case; is that correct?

A. Say again. He what? I'm sorry.

Q. When you brought on Tim Finnegan to work on the appeal, you introduced him to Mr. Dow to speak with him; correct?

A Yes. Because, I mean, there was a reason why, but, yes.

Q. What was the reason?

A. The reason is is that Mac, Mr. Dow would call all the time. He was writing and calling all the time, and I needed someone to deal with him on a basis besides me because I didn't have the time. So I introduced to him Tim, who was working on it, but also would be a buffer between me and Mr. Dow, I'm going to tell you the truth, because it was hard to take the calls and read the letters, all of which I read, and I got calls daily from Mr. Dow, and Tim was a buffer in a sense.

Q. And you testified –

A. That's the –

Q. Sorry. Go ahead.

A. No, that's – go ahead.

> Q. And you testified – so you specifically did not inform clients that Mr. Finnegan was not an attorney; correct?
>
> A. ***No, I didn't inform them of that***.
>
> Q. Okay. In fact, you actually told people that Mr. Finnegan was an attorney; correct?
>
> A. Well, I think I told Mr. Dow that for reasons, again, the same reason. I wanted Mr. Dow to deal with him, and I think looking back at the letters that I sent you, ***it was a mistake I made. I shouldn't have said that Tim was a lawyer when I knew he wasn't, but I just needed a buffer between Mr. Dow and myself***, and Tim did that, and I said those things, ***but I knew Tim wasn't a lawyer***, and I never represented to any Court that he was a lawyer, ***but I did represent it to Mr. Dow***.

(emphasis added).

After Mr. Dow and his agents continued to try and reach Mr. Finnegan and Mr. Hanlon, to no avail, Mr. Dow was forced to file his first post-conviction petition, in proper person, on April 20, 2015. That petition was initially denied by the District Court and was remanded for an evidentiary hearing in the Nevada Court of Appeals Order filed on June 11, 2019.

As stated above, after the evidentiary hearing on March 17, 2021, the District Court heard argument,

found good cause for the filing of the Petition in 2015, but denied an evidentiary hearing related to "prejudice," and ultimately denied Mr. Dow's Petition.

REASONS FOR GRANTING PETITION

1. This Petition should be granted as Mr. Dow's Sixth Amendment right to counsel of choice was violated and prejudice should have been presumed by the lower court in light of this Court's decision in *U.S. v. Gonzalez-Lopez*.

In its June 13, 2022 Order, the Nevada Court of Appeals stated in part that:

> On the morning of the first day of trial, Dow informed the trial court that he wished to have substitute counsel. Dow noted that his substitute counsel was out of the jurisdiction and he would therefore need trial to be continued a few days to accommodate substitute counsel's travel schedule. The district court rejected Dow's request to continue trial but informed Dow that substitute counsel was free to join the defense when he was available to do so. In light of the timing of Dow's request, Dow did not demonstrate that the trial court abused its discretion.

App. 7.

As stated above, at the start of Mr. Dow's jury trial in this case, Mr. Powell, requested a short continuance

of the trial because Mr. Sgro was allegedly out of the jurisdiction.

Even after Mr. Dow was convicted, counsel Mr. Sgro's law firm filed a Motion for New Trial on his behalf. The motion argued that a new trial was warranted as Mr. Dow was deprived of his counsel of choice, specifically Mr. Sgro. Thus, it is respectfully submitted that the Court of Appeals misapprehended this material fact, as Mr. Sgro was not "substitute counsel."

Accordingly, the Nevada Court of Appeals' decision ignores that Mr. Sgro was Mr. Dow's hired trial counsel, the District Court violated Mr. Dow's Sixth Amendment right to counsel of choice, and direct appeal counsel was ineffective for failing to raise this issue of direct appeal. Moreover, because Mr. Sgro was not "substitute counsel," prejudice should have been *presumed* in light of the right to counsel of choice violation.

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

Defendants like Mr. Dow have a vital interest at stake: the constitutional right to retain counsel of their own choosing. *See Wheat v. United States*, 486 U.S. 153, 159, 108 S.Ct. 1692, 100 L.Ed.2d 140 (1988).

This Court has described that right, separate and apart from the guarantee to effective representation,

as "the root meaning" of the Sixth Amendment. *United States v. Gonzalez–Lopez*, 548 U.S. 140, 147–148, 126 S.Ct. 2557, 165 L.Ed.2d 409 (2006); cf. *Powell v. Alabama*, 287 U.S. 45, 53, 53 S.Ct. 55, 77 L.Ed. 158 (1932) ("It is hardly necessary to say that, the right to counsel being conceded, a defendant should be afforded a fair opportunity to secure counsel of his own choice").

Indeed, this Court held that the wrongful deprivation of choice of counsel is "structural error," immune from review for harmlessness, because it "pervades the entire trial." *Gonzalez–Lopez*, 548 U.S., at 150, 126 S.Ct. 2557.

In *U.S. v. Gonzalez-Lopez*, 548 U.S. 140, 126 S.Ct. 2557 (2006), this Honorable Court held that a denial of the Sixth Amendment right to counsel of one's own choosing is "structural" error. This Court recognized that the deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Id.* at 150 (quoting *Sullivan v. Louisiana*, 508 U.S. 275, 282, (1993).

In *Gonzalez-Lopez*, this Court stated:

> We have little trouble concluding that erroneous deprivation of the right to counsel of choice, "with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as 'structural error.'" *Id.*, at 282, 113 S.Ct. 2078. ***Different attorneys will pursue different strategies with regard to investigation and discovery,***

> ***development of the theory of defense, selection of the jury, presentation of the witnesses, and style of witness examination and jury argument***. And the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial. In light of these myriad aspects of representation, the erroneous denial of counsel bears directly on the "framework within which the trial proceeds," *Fulminante*, supra, at 310, 111 S.Ct. 1246-or indeed on whether it proceeds at all. ***It is impossible to know what different choices the rejected counsel would have made, and then to quantify the impact of those different choices on the outcome of the proceedings***. Many counseled decisions, including those involving plea bargains and cooperation with the government, do not even concern the conduct of the trial at all. Harmless-error analysis in such a context would be a speculative inquiry into what might have occurred in an alternate universe.

Id. at 150 (emphasis added).

This Court further stated:

> ***Where the right to be assisted by counsel of one's choice is wrongly denied, therefore, it is unnecessary to conduct an ineffectiveness or prejudice inquiry to establish a Sixth Amendment violation. Deprivation of the right is "complete" when the defendant is erroneously***

> ***prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received***. To argue otherwise is to confuse the right to counsel of choice-which is the right to a particular lawyer regardless of comparative effectiveness-with the right to effective counsel-which imposes a baseline requirement of competence on whatever lawyer is chosen or appointed.

Id. at 148 (emphasis added).

Here, Mr. Dow's trial was infected with structural error as he was deprived his counsel of choice at the trial. Specifically, the trial court committed structural error in failing to continue the trial in order to permit Mr. Dow to have his counsel of choice, Tony Sgro, present at the start of the trial. Jonathan Powell and Erick Ferran were inexperienced attorneys at the time, and objected at the start of the trial. This error, despite again being raised by former counsel in Mr. Dow's Motion for New Trial, was denied by the trial court, and was never raised on direct appeal.

At the time, Mr. Sgro had tried numerous jury trials in both the civil and criminal arena, and is a death penalty qualified trial lawyer. The fact that Mr. Dow was denied his counsel of choice, and is now serving a life sentence, warrants a new trial. The impact Mr. Sgro would have had on the outcome of Mr. Dow's trial is incalculable as contemplated by the *Gonzalez-Lopez* Court.

In light of the foregoing, it is respectfully submitted that compelling grounds exist, and this Petition should be granted, as prejudice should have been presumed, and the Nevada Court of Appeals' decision conflicts with this Court's decision in *U.S. v. Gonzalez-Lopez*.[3]

2. This Petition should be granted as the testimony of Mr. Dow's attorney, violated the attorney-client privilege and Mr. Dow's rights to due process and a fair trial.

As this Honorable Court has long recognized, "[c]onfidential disclosures by a client to an attorney made in order to obtain legal assistance are privileged." *Fisher v. United States*, 425 U.S. 391, 403 (1976). This principle has been a foundation of the American legal system from the earliest days of the nation. The well understood certainty and breadth of that privilege protects both clients and lawyers, ensuring that clients feel able to provide complete information to their lawyers and that lawyers are in turn able to provide fully informed legal advice.

This Court has also long recognized that encouraging full and frank communication between lawyers and their clients promotes the public "interest and

[3] It should also be noted that the Order from June 13, 2022 does not address that undersigned counsel was not permitted to question Mr. Hanlon and Mr. Finnegan during the evidentiary hearing on March 17, 2021, as to why they did not include this significant issue on appeal.

administration of justice." *Hunt v. Blackburn*, 128 U.S. 464, 470 (1888).

As then-Justice Rehnquist later explained in his opinion for the Court in *Upjohn*, the purpose of the privilege "is to encourage full and frank communication between attorneys and their clients and thereby promote broader public interests in the observance of law and administration of justice." *Upjohn Co. v. United States*, 449 U.S. 383, 389 (1981).

In its June 13, 2022 Order, the Nevada Court of Appeals overlooked that the basis upon which that evidence was admitted, relied on the testimony of Keith Brower, who was Mr. Dow's attorney.

On February 8, 2008, at a pretrial hearing in this matter, over attorney Keith Brower's and Mr. Dow's objection, the Court ordered Mr. Brower to testify about an alleged phone conversation. Mr. Brower's attorney, Greg Denue, objected to Mr. Brower testifying.

The State's allegation in this case was that this alleged call by Mr. Brower resulted in the subsequent uncharged murder of Ms. Laursen.[4]

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[4] Mr. Dow also asserted in his petition that trial counsel failed to properly investigate, including, but not limited to, that the alleged call was not made. This is an issue which also requires further factual development at an evidentiary hearing. Mr. Dow's underlying petition raised other issues including, but not limited to, the effectiveness of his trial counsel, conduct of the prosecution, and defendant's speedy trial rights. Mr. Dow reserves all rights and remedies related to any claims raised in his prior filings.

The State used this alleged "other act" evidence at trial against Mr. Dow to support their argument that he allegedly committed the two murders with co-defendant Jason Mathis. The District Court refused to uphold the attorney client privilege and ordered this testimony over the objection of Defendant and his prior counsel, Keith Brower. There was no exception to the attorney-client privilege, and Mr. Dow and Mr. Brower did not waive this privilege.

On direct appeal, counsel (including non-licensed attorney Mr. Finnegan) on behalf of Mr. Dow, argued that Mr. Dow was prejudiced when the District Court explained to the jury Mr. Brower and Mr. Hart both attempted to assert the attorney-client privilege, but that the court was ordering them to testify anyway. The ultimate issue as to why Mr. Brower and Mr. Hart were able to testify was not specifically addressed.

In its June 13, 2022 Order, it appears that the Nevada Court of Appeals recognized that the introduction of the testimony from Mr. Brower violated the attorney-client privilege, however, the Court stated in part "[e]ven excluding the testimony of Dow's former attorney, as explained previously, there was significant evidence of Dow's guilt presented at trial. Thus, any error in admitting the communications with Dow's former attorney was harmless beyond a reasonable doubt." App. 9.

Without the testimony of Mr. Brower (and especially including the now recanted testimony of Mr.

"Mouton,"[5]) the State did not provide sufficient evidence to support the alleged "other act" evidence (murder of Ms. Laursen in California) by clear and convincing evidence.[6] Thus, it is respectfully submitted that this resulted in significant prejudice to Mr. Dow and the Nevada court's orders conflict with decisions from this Court which recognize the importance of the

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[5] By way of additional background, on December 21, 2021, Petitioner filed another petition for writ of habeas corpus in the District Court related to *Brady*/*Gigilio* violations regarding the State's witness, Antione "Mouton." Said Petition raises significant issues which also warrants reversal of Mr. Dow's convictions (including that Mr. "Mouton" was in custody at the time of the alleged conversations with Mr. Dow). On April 28, 2022, Mr. Dow filed a Supplement to his new petition for writ of habeas corpus (Post-Conviction), which included a Declaration from Antione "Mouton" whereby he recanted his prior testimony. The District Court heard argument on June 10, 2022, and conducted an evidentiary hearing on September 23, 2022 and December 2, 2022 related to Mr. Dow's new Petition. Mr. "Mouton" testified, including, but not limited to, that he fabricated his statements to law enforcement as well as his testimony at Mr. Dow's trial. Mr. "Mouton" also recently testified in part that he felt "squeezed" and "misled" by law enforcement. Moreover, it is significant to note that the State should have disclosed (and the jury should have also been made aware) that Mr. Mouton's contact information and telephone number was in Ms. Larsen's cell phone at the time she was killed. The District Court recently denied said new petition and the matter was recently appealed to the Nevada Supreme Court. Mr. Dow reserves all rights and remedies regarding the issues raised in said petition.

[6] *See Tinch v. State*, 113 Nev. 1170, 1176, 946 P.2d 1061, 1064–65 (1997); *Manley v. State*, 115 Nev. 114, 979 P.2d 703 (1999) (wherein the Nevada Supreme Court held in part that the violation of the defendant's attorney-client privilege also violated the defendant's Sixth Amendment right to counsel).

attorney-client privilege and a defendant's right to a fair trial.

Accordingly, it is submitted that this Petition should be granted on this basis as well.

3. This Petition should be granted as Appellant was not permitted to present a complete defense at trial.

A defendant's right to present a defense was articulated by this Honorable Court in *Holmes v. South Carolina*, 547 U.S. 319 (2006). This Court, quoting *Krane v. Kentucky*, 476 U.S. 683, 690 (1986), held: "'Whether rooted directly in the Due Process Clause or in the Compulsory Clause of the Sixth Amendment, the constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.'" *See id.*; *see also United States v. Nixon*, 418 U.S. 683, 711, 94 S.Ct. 3090, 3109, 41 L.Ed.2d 1039 (1974).

Like the issue involving Mr. Dow being denied his counsel of choice at trial, it is respectfully submitted that Mr. Dow's direct appeal counsel was ineffective for failing to raise this issue on direct appeal, and Mr. Dow has been prejudiced. Specifically, Mr. Dow was not able to present the testimony of Gary Owens and Daryl Anderson. These witnesses would have been able to support Mr. Dow's defense that he did not murder the alleged victims with co-defendant Jason Mathis.

The District Court's Findings of Fact and Conclusions of Law completely ignores this argument as well, and this material evidence was not admitted at trial.

Furthermore, counsel for Mr. Dow, in their motion for new trial, provided declarations from witnesses Gary Owens and Daryl Anderson. The declaration from Gary Owens set forth that he had previously met one of the alleged victims in this matter, Anthony "Fat Tone" Watkins in San Francisco with Mr. Dow. According to Mr. Owens, he was informed that defense witnesses were supposed to testify on Friday (July 18, 2008) and Monday (July 21, 2008).

According to Mr. Owens, based on these representations he made plans to travel to Las Vegas on July 18, 2008, so that he could testify on Monday, July 21, 2008. However, Judge Bell ultimately changed the defense testimony schedule to Thursday July 17, 2008, and Friday, July 18, 2008.

When Mr. Owens arrived at the courthouse, the parties had already began closing arguments and he never testified. Mr. Owens had personal knowledge that Mr. Dow had previously helped to promote Mr. Watkins' music, and that on a previous occasion, Mr. Watkins borrowed the same automobile that he was found killed in, and that Mr. Watkins drove this car around San Francisco without Defendant being present.

Like Mr. Owens, the declaration of Daryl Anderson also set forth important exculpatory testimony that

Mr. Dow was not able to present at trial. According to the Motion for New Trial:

> Mr. Anderson was originally contacted regarding testifying on Monday, as he had work engagements and it would have been difficult for him to be present on Friday. After he confirmed his ability to come on Monday, and after Defendant was told to have his witnesses available by Friday morning at the latest, Defendant attempted to contact Mr. Anderson to have him come in earlier on Friday, but Defendant was not able to reach him on such short notice. When Defendant did finally contact him in the middle of the week, it was already too late for him to change his employment responsibilities. It was not possible for Mr. Anderson to arrive on Friday at all to testify. Mr. Anderson would have testified to the following: that he had a long standing professional relationship with Mr. Watkins; that he seen Mr. Watkins driving the automobile he was found dead in around Las Vegas, without Defendant; that Mr. Watkins reached out through Mr. Anderson to contact Defendant in order to allow them to do music together; that there were a number of individuals looking for Mr. Watkins, possibly to do him harm, and Defendant was not one of them; that he spoke to Mr. Watkins while he was in Las Vegas, shortly before he was killed, and Mr. Watkins was attempting to arrange studio time for him and Defendant in Mr. Anderson's studio.

The Motion for New Trial additionally stated in part:

> These witnesses' testimony would have been crucial during trial. No other witness could testify that Mr. Watkins was in San Francisco with Mr. Dow after the Mac Dre killing, the one place he was supposed to be in the most danger. No other witness could testify to other individuals looking for Mr, Watkins, potentially to harm him. No other witness could testify that it was Mr. Watkins that reached out to Defendant in order for their musical collaboration to start, not the other way around, No other witness could testify that Mr. Watkins had possession and control of the car he was found dead in wholly apart from Defendant and that it would not have been unusual for Mr. Watkins to have driven the automobile with Defendant. Because Defendant was denied his ability to call witnesses on his own behalf that he had previously subpoenaed, Defendant was denied a proper trial.

The proffered testimony of Mr. Owens would have helped to contradict the State's theory that Mr. Dow would have wanted Mr. Watkins killed, as he was previously assisting him with his music career. In addition, the fact that Mr. Dow had previously lent the vehicle at issue to Mr. Watkins, would have helped explain the fact that Mr. Dow did not drive away in the same car with the victims as they left the MGM on the night in question (and that Mr. Watkins drove the vehicle).

Thus, it is respectfully submitted that the Nevada Court of Appeals' finding that "Dow did not demonstrate that the trial court abused its discretion in this

regard or that the trial court precluded him from presenting a defense" (June 13, 2022 Order at p. 7), overlooks the substantial prejudice that resulted, and that the State did not present significant evidence of Mr. Dow's guilt during trial.

The proffered testimony of Mr. Owens would have helped to contradict the State's theory that Mr. Dow would have wanted Mr. Watkins killed, as he was previously assisting him with his music career. In addition, the fact that Mr. Dow had previously lent the vehicle at issue to Mr. Watkins, would have helped explain the fact that it was possible that Mr. Dow did not drive away in the same car with the victims as they left the MGM on the night in question.

As such, the Court of Appeals' decision conflicts with decisions which support that defendants have a constitutional right to present a complete defense. Accordingly, this Petition should be granted.

4. This Petition should be granted as the admission of Mr. Dow's lyrics against him at trial violated his First Amendment rights and right to a fair trial.

At trial, the prosecution admitted evidence of Mr. Dow's rap lyrics against him at trial. Trial counsel did object to this evidence, however, on direct appeal, the issue was not raised. This evidence and related argument by the State was extremely prejudicial to Mr. Dow.

The State argued in closing:

> But you have to take into consideration the evidence of those lyrics. And, you know, for what it's worth, Mr. Tomsheck didn't talk about it, Mr. Powell didn't talk about it, there was a lot of talk about it in jury selection, we played it at the very end of the case, but you have to ask yourself: What's he really saying on that album? Right?
>
> Forty to fifty shots, dead people in the streets, you know.
>
> Don't snitch. Don't cooperate.
>
> I've been on the run for ten months.
>
> I'm on the run like the Taliban.
>
> Never without my gun.
>
> What's he – and then he's found in a house with a gun. Is it the rap that he is alone? Is he just a professional rapper? Or, is he a guy who carries guns with him, as the evidence shows he is? That's it. He's mocking it. He's talking about it like nobody's ever going to hold me accountable for this. And you now know that he did it and his accountability is coming.

Like the other significant issues raised herein, this issue was ignored by Mr. Dow's direct appeal counsel. Mr. Dow was not permitted to factually develop this issue further as the District Court denied an evidentiary hearing related to the prejudicialness of the issues. There is no reasonable strategy as to why this issue

was not raised on direct appeal, and the failure to do so was extremely prejudicial to Mr. Dow.

It is respectfully submitted that the Nevada Court of Appeals completely ignored Mr. Dow's First Amendment rights. App. 10. In the case at bar, Mr. Dow's vague and general hip-hop music lyrics should not have been admitted, and they had no purpose besides showing an alleged propensity for violence. First Amendment protection extends to music "as a form of expression and communication." *Ward v. Rock Against Racism*, 491 U.S. 781, 790, 109 S.Ct. 2746, 105 L.Ed.2d 661 (1989); *see also Schad v. Borough of Mt. Ephraim*, 452 U.S. 61, 65 (1981) ("Entertainment, as well as political and ideological speech, is protected; motion pictures, programs broadcast by radio and television, and live entertainment, such as musical and dramatic works, fall within the First Amendment guarantee.").

While the "First Amendment . . . does not prohibit the evidentiary use of speech to establish the elements of a crime or to prove motive or intent[,]" *Wisconsin v. Mitchell*, 508 U.S. 476, 489, 113 S.Ct. 2194, 124 L.Ed.2d 436 (1993), it does bar the admission of evidence relating to a defendant's "abstract beliefs . . . when those beliefs have no bearing on the issue being tried." *Dawson v. Delaware*, 503 U.S. 159, 165, 168, 112 S.Ct. 1093, 117 L.Ed.2d 309 (1992).

Certain courts have excluded evidence of hip-hop/rap music lyrics as irrelevant and unduly prejudicial. *Compare also, e.g. United States v. Johnson*, 469 F.Supp.3d 193, 222 (S.D.N.Y. 2019) (excluding as

irrelevant and unduly prejudicial rap lyrics that made references to violence, possible allusions to police misconduct, and used profanity, but appeared to have little to no probative value); *United States v. Stephenson*, 550 F.Supp.3d 1246, 1255 (M.D. Fla. 2021) (excluding videos due to the risk that the jury would render a conviction based on defendant's rap lyrics incorporating profane, offensive, and racially insensitive words and violent and sexual imagery, which was far greater than probative value of evidence in establishing defendant's knowledge, possession, and intent); *State v. Skinner*, 218 N.J. 496, 500, 95 A.3d 236 (2014) (concluding that rap lyrics, which predated the alleged crime "constituted highly prejudicial evidence against [the defendant] that bore little or no probative value as to any motive or intent behind the attempted murder offense with which he was charged"); *United States v. Bey*, 2017 WL 1547006 (E.D. Pa. 2017) (holding that the rap music evidence was inadmissible as unfairly prejudicial under Fed. R. Evid. 403); *United States v. Williams*, 2017 WL 4310712 (N.D. Cal. 2017); *People v. Taylor*, 2019 WL 926601 (Cal. App. 4th Dist. 2019) (unpublished); *Com. v. Gray*, 463 Mass. 731, 978 N.E.2d 543 (2012); *Hannah v. State*, 420 Md. 339, 23 A.3d 192 (2011); *People v. Foster*, 2015 WL 2412383 (Mich. Ct. App. 2015); *State v. Cheeseboro*, 346 S.C. 526, 552 S.E.2d 300 (2001).

Indeed, there is a danger that some members of the jury will consider rap music in particular "more offensive, in greater need of regulation, and more literal and autobiographical" than another genre featuring

the same lyrics. Adam Dunbar, Charis E. Kubrin & Nicholas Scurich, *The Threatening Nature of "Rap" Music*, 22 Psych., Pub. Pol'y & L. 280, 288 (2016).

Accordingly, the introduction of this evidence/argument at trial warrants reversal.

It appears that this Honorable Court has not specifically addressed the application of the First Amendment to hip-hop lyrics being admitted against a defendant at a criminal trial. *Compare, e.g.*, *generally Elonis v. United States*, 575 U.S. 723, 740 (2015) ("Given our disposition, it is not necessary to consider any First Amendment issues."). It is respectfully submitted that this an important issue of federal law that warrants this Petition being granted.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for certiorari be granted.

Respectfully submitted,

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