No. 22-993

IN THE
Supreme Court of the United States

IN RE KRISHNA MAHARAJ, *Petitioner*,

BRIEF OF CROSS PARTY MEMBERS OF BOTH HOUSES OF THE UNITED KINGDOM PARLIAMENT AS *AMICI CURIAE* IN SUPPORT OF THE PETITION FOR A WRIT OF HABEAS CORPUS

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INTERESTS OF *AMICI CURIAE*[1]

Amici are 61 members of the United Kingdom Parliament.[2] They come from both the House of Commons and the House of Lords, and they represent various political parties or are unaligned. *Amici* file this brief in support of the habeas petition of Krishna Maharaj, a citizen of the United Kingdom, who has presented substantial evidence that he is innocent of the crime of which he was convicted in 1986.

As parliamentarians, *amici* are exceedingly familiar with the core principles of criminal justice that have long existed as part of English law—core principles that the United States adopted at its founding and continue to serve as the backbone of the legal systems in both the United States and the United Kingdom. Among the foundational aspects of English law is the principle that the state shall punish no innocent person. Based on this principle and the legal authorities detailed in this brief, *amici* respectfully ask this Court to grant the petition of this British citizen, Mr. Maharaj.

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[1] No party or counsel for a party authored any part of this brief, and no person or entity other than *amici* and their counsel made a monetary contribution intended to fund the preparation or submission of the brief. Counsel for *amici* notified counsel for each party at least 10 days before the filing deadline of *amici*'s intention to file this brief.

[2] The Appendix to this brief lists the *amici*.

SUMMARY OF ARGUMENT

Based on their experiences with English law and its application, the Framers of the United States Constitution and their successors designed the American legal system to protect the innocent. Consistent with this deeply rooted focus on protecting the innocent, this Court should confirm the availability of a free-standing claim for habeas relief based upon proof of actual innocence and without the need to show constitutional error in the trial that produced the erroneous conviction.

For centuries—dating to the Assize of Clarendon (1166), the Magna Carta (1215), and the Petition of Right (1628)—the English legal system has focused on protecting the innocent. In the seminal *Commentaries on the Laws of England* from 1765, William Blackstone explained that "[t]he law holds that it is better that ten guilty persons escape than that one innocent suffer."[3] The approach of the laws of England and of the laws of the United States go hand in hand. Blackstone's works "constituted the preeminent authority on English law for the [American] founding generation." *Alden v. Maine*, 527 U.S. 706, 715 (1999). The American adoption of Blackstone's innocence-focused principles reflected a "'fundamental value determination of [American] society' … that 'it is far

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[3] William Blackstone, *Commentaries on the Laws of England*, 21st ed. (1765; London: Sweet, Maxwell, Stevens & Norton, 1844), bk. IV, ch. 27, p. 358.

worse to convict an innocent man than to let a guilty man go free.'" *Yates v. Aiken*, 484 U.S. 211, 214 (1988) (quoting *In re Winship*, 397 U.S. 358, 372 (1970) (Harlan, J., concurring)); *see also Coffin v. United States*, 156 U.S. 432, 456 (1895) (quoting Blackstone's ratio).

Many aspects of American constitutional and criminal law reflect the supreme priority given to protecting the innocent, including: guaranteeing counsel; requiring a factual basis for guilty pleas; requiring proof beyond a reasonable doubt for a conviction; and applying waiver principles flexibly. The American resolve to protect the innocent has been especially important (and necessary) when it comes to evidence in habeas proceedings. As this Court has emphasized, "the habeas court must consider all the evidence, old and new, incriminating and exculpatory, without regard to whether it would necessarily be admitted under rules of admissibility that would govern at trial." *House v. Bell*, 547 U.S. 518, 537–38 (2006) (citation and quotation marks omitted).

The Eleventh Circuit's approach to Petitioner's habeas petition is inconsistent with the fundamental value determination of American society to protect the innocent. It permits a habeas court to avoid the fundamental question of innocence, creating the potential for the type of error that practitioners and jurists in England and the United States have sought to prevent for centuries. This Court should grant Mr. Maharaj's petition.

ARGUMENT

I. For centuries, protecting the innocent has been a top priority of the English legal system.

In 1215, King John of England signed the Magna Carta, thereby limiting royal authority and establishing law as a power in itself. The Great Charter expressly set forth laws that applied to the people *and* the king. Of the sixty-three clauses in the Magna Carta, four are still valid today, including clauses 39 and 40:

> No free man shall be seized, imprisoned, dispossessed, outlawed, exiled or ruined in any way, nor in any way proceeded against, except by the lawful judgement of his peers and the law of the land.
>
> To no one will we sell, to no one will we deny or delay right or justice.

UK Parliament, *The contents of Magna Carta*.[4]

[4] https://bit.ly/3RQoGtD (last visited May 5, 2023).

The Magna Carta—along with the Assize of Clarendon (which pre-dated the Magna Carta) and the Petition of Right (which post-dated the Magna Carta)—provided grounds for the writ of habeas corpus, which was codified in the Habeas Corpus Act of 1679. *See* The British Library, *Learning Timelines: Sources from History, Habeas Corpus Act 1679*.[5]

Over the ensuing centuries, these foundational documents—and the ideas on which they were based—drove the development of key legal principles, many of which have centered on protecting the innocent. Blackstone's statement that it is better that ten guilty persons escape than that one innocent suffer reflects the fact that innocence is central not just to any one particular criminal case but also to the proper functioning of the legal system as a whole. In the eighteenth and nineteenth centuries, Blackstone's ratio became a legal maxim. Judgments from as early as 1790 emphasize that "nothing can be more important than to guard innocence." *The trial of Robert Griffin Jackson, James Apsay, Thomas Arnold and Alexander Barclay* (UK 1790).[6]

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[5] https://bit.ly/3DwFZeH (last visited May 5, 2023).

[6] https://bit.ly/3dnzWi6 (last visited May 5, 2023).

II. In turn, protecting the innocent has been a top priority of the United States' legal system.

The history of English law is relevant, of course, because the United States "borrow[ed]" its "system of jurisprudence from the English law." *Proprietors of Charles River Bridge v. Proprietors of Warren Bridge*, 36 U.S. 420, 545 (1837). Blackstone's writings in particular influenced the individuals who formed and led the early American government. As this Court has recognized, Blackstone's "works constituted the preeminent authority on English law for the founding generation." *Alden*, 527 U.S. at 715. "Nowhere have Blackstone's *Commentaries* been more influential than in the United States, where they formed the basis for legal education for well over a century …." Wilfrid Prest, *Blackstone's Magna Carta*, 94 N.C. L. Rev. 1495, 1495 (2016). "In the first century of American jurisprudence, Blackstone's 'Commentaries were not merely an approach to the study of law; for most lawyers they constituted all there was of the law.'" *Hart v. Massanari*, 266 F.3d 1155, 1166 n.14 (9th Cir. 2001) (quoting Daniel J. Boorstin, *The Mysterious Science of the Law* 3 (1941)).

Blackstone's Commentaries "continue to be cited by counsel and judges in federal and state jurisdictions up to the present day." Prest, *Blackstone's Magna Carta*, 94 N.C. L. Rev. at 1495–96. "Indeed, the *Commentaries* are currently 'undergoing a renaissance at the Supreme Court.'" *Id.* at 1496 n.4 (quoting

Jessie Allen, *Reading Blackstone*, *in Re-Interpreting Blackstone's Commentaries* 215, 215 (Wilfred Prest ed., 2014)). For example, the Court's majority opinion in *Dobbs v. Jackson Women's Health Organization* references Blackstone no less than ten times. *See* 142 S. Ct. 2228, 2249–54 (2022) (citing 1 Blackstone, *Commentaries on the Laws of England* 129–30 (7th ed. 1775) (internal citations omitted)).

Relying on English law—and Blackstone in particular—the Framers emphasized the importance of protecting the innocent. Channeling Blackstone, Benjamin Franklin wrote in 1785 that "it is better a hundred guilty persons should escape than one innocent person should suffer." Letter from Benjamin Franklin to Benjamin Vaughan (Mar. 14, 1785), *in* 9 *The Complete Works of Benjamin Franklin* 80, 82 (John Bigelow ed., 1888). "[T]he Framers hardly could have made it more clear that innocence protection mechanisms … were integral to constitutional criminal procedure." Robert J. Smith, *Recalibrating Constitutional Innocence Protection*, 87 Wash. L. Rev. 139, 152 (2012); *Fields v. Soloff*, 920 F.2d 1114, 1117 (2d Cir. 1990) ("It was this power -- the ability to thwart government persecution of innocent citizens -- that the framers sought to preserve in the Constitution."). Thus, it is no surprise that this Court has expressly relied on Blackstone's statement that "it is better that ten guilty persons escape than that one innocent suffer." *Coffin*, 156 U.S. at 456 (quoting 2 Bl. Com. c. 27, margin page 358, ad finem).

To be sure, the Constitution does not expressly list a right to be free from detainment or execution when innocent, but neither must it do so when it comes to deeply rooted rights of this ilk. "[T]his Court has held that the Constitution protects unenumerated rights that are deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty." *Dobbs*, 142 S. Ct. at 2304 (Kavanaugh, J., concurring). The deeply rooted nature of this right is reflected in many aspects of American law—for example:

- Guaranteeing counsel protects the innocent. *See Argersinger v. Hamlin*, 407 U.S. 25, 27 n.1 (1972) ("The assistance of counsel will best avoid conviction of the innocent -- an objective as important in the municipal court as in a court of general jurisdiction.") (quotation marks omitted).

- Requiring a factual basis for a guilty plea protects the innocent. *See North Carolina v. Alford*, 400 U.S. 25, 38 n.10 (1970) ("Because of the importance of protecting the innocent and insuring that guilty pleas are a product of free and intelligent choice, various state and federal court decisions properly caution that pleas coupled with claims of innocence should not be accepted unless there is a factual basis for the plea[.]").

- Requiring proof beyond a reasonable doubt for a conviction protects the innocent. *See Yates*, 484 U.S. at 214 (noting that the prohibition against relieving

the State of its burden of persuasion beyond a reasonable doubt "protects the 'fundamental value determination of our society,' given voice in Justice Harlan's concurrence in *Winship*, that 'it is far worse to convict an innocent man than to let a guilty man go free.'") (quoting *In re Winship*, 397 U.S. at 372).

• Applying waiver principles flexibly (to ensure a defendant has not unknowingly relinquished rights) protects the innocent. *See Schneckloth v. Bustamonte*, 412 U.S. 218, 241–42 (1973) ("A strict standard of waiver has been applied to those rights guaranteed to a criminal defendant to insure that he will be accorded the greatest possible opportunity to utilize every facet of the constitutional model of a fair criminal trial …. The Constitution requires that every effort be made to see to it that a defendant in a criminal case has not unknowingly relinquished the basic protections that the Framers thought indispensable to a fair trial.").

The American resolve that the system must protect the innocent is especially important to writs of habeas corpus and the evidence supporting habeas petitions. "[T]he key purpose of federal habeas corpus is to free innocent prisoners." *Good v. Berghuis*, 729 F.3d 636, 637 (6th Cir. 2013) (citing *Stone v. Powell*, 428 U.S. 465, 486, 490 (1976)).

In sum, protecting the innocent has been a top priority of the English legal system. The decisions referenced above show that the United States' legal system

naturally accorded similar deference to that need to protect the innocent.

III. The Eleventh Circuit's ruling fails to protect the innocent.

By any account, Petitioner has presented substantial evidence supporting his innocence. For this reason, the Eleventh Circuit authorized Petitioner to file a successor habeas petition. But when the Eleventh Circuit later reviewed the district court's denial of Petitioner's claim, it refused to consider critical evidence establishing Petitioner's innocence. The habeas petition summarizes a stunning collection of evidence that has emerged: testimony and documentary evidence from multiple persons closely connected to the drug cartel that committed the murders that shows that the cartel committed them, that Petitioner had been framed, and that the prosecution's star witness perjured himself in this trial and is a serial perjurer. The Eleventh Circuit adhered to its view that evidence of innocence is irrelevant if not tethered to an established other constitutional error.

The Eleventh Circuit's approach is inconsistent with the "fundamental value determination of [American] society" [*Yates*, 484 U.S. at 214] to protect the innocent. The Eleventh Circuit's approach permits a state or federal authority to continue to incarcerate or indeed to execute an innocent person even where a petitioner demonstrates that the facts underlying their claim establish that no reasonable trier of fact

could have found them guilty beyond a reasonable doubt.

Gatekeeping rules serve important functions in the administration of justice, but they should not become an impenetrable barrier to the achievement of justice. Here, Petitioner has amassed compelling evidence that a drug cartel committed the murders and framed him, as further detailed in his habeas petition. The Eleventh Circuit approach prevents critical evidence from being heard on its merits. That approach is a formula for inflicting the worst kind of error—depriving an innocent but erroneously convicted and imprisoned person the opportunity to prove his innocence. This is the kind of error that practitioners and jurists in England and the United States have sought to prevent for centuries.

To be sure, the difficulty of fashioning a rule that accommodates the need for gatekeeping and screening with the need to protect the innocent has spawned what Petitioner Maharaj has described as different and conflicting expressions in the lower state and federal United States courts of what the rule should be. But that is all the more reason to grant the habeas petition and settle this critically important question of law. This Court will rarely have an occasion like this one, where the evidence of innocence is so clear and compelling, yet the prisoner has no procedural pathway to have the evidence of his innocence weighed on its merits.

CONCLUSION

Thirty-seven years after a Colombian drug cartel murdered two of their money launderers and framed Kris Maharaj for the double murder, Mr. Maharaj remains erroneously imprisoned. In the intervening years, members of the drug cartel have admitted the murders, yet the state has raised procedural roadblocks at every juncture to prevent such evidence from exonerating Mr. Maharaj. Before Mr. Maharaj dies in prison for crimes that he did not commit, this Court should grant his petition.

Respectfully submitted,

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May 5, 2023

APPENDIX

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List of *Amici Curiae*

The 61 United Kingdom parliamentarians who sign on to this brief are the following:

Parliamentarian	**House**	**Affiliation**
Debbie Abrahams	Commons	Labour
Lord Alton of Liverpool, KCSG KCMCO (David Alton)	Lords	Crossbench
The Baroness Bakewell of Hardington Mandeville DBE (Joan Bakewell)	Lords	Liberal Democrats
The Rt Hon Hilary Benn	Commons	Labour
The Bishop of Coventry (the Rt Revd Christopher Cocksworth)	Lords	Lords Spiritual
The Rt Hon the Baroness Blackstone (Tessa Blackstone)	Lords	Labour
Sir Peter Bottomley	Commons	Conservative
The Rt Hon Ben Bradshaw	Commons	Labour

Parliamentarian	**House**	**Affiliation**
The Baroness Brinton (Sarah Brinton)	Lords	Liberal Democrats
The Lord Brooke of Alverthorpe (Clive Brooke)	Lords	Labour
The Rt Hon the Lord Browne of Ladyton (Desmond Browne)	Lords	Labour
Richard Burgon	Commons	Labour
Ian Byrne	Commons	Labour
The Lord Carlile of Berriew CBE, KC (Alexander Carlile)	Lords	Crossbench
The Lord Crisp, KCB (Edmund Crisp)	Lords	Crossbench
Dame Caroline Dinenage	Commons	Conservative
The Rt Hon the Baroness D'Souza, CMG (Frances D'Souza)	Lords	Crossbench
The Lord Faulkner of Worcester (Richard Faulkner)	Lords	Labour

Parliamentarian	**House**	**Affiliation**
The Rt Hon Chris Grayling	Commons	Conservative
The Lord Griffiths of Burry Port (Leslie Griffiths)	Lords	Labour
The Lord Hacking (David Hacking)	Lords	Labour
The Rt Hon the Lord Hain (Peter Hain)	Lords	Labour
The Rt Hon Harriet Harman KC	Commons	Labour
The Lord Hastings of Scarisbrick CBE (Michael Hastings)	Lords	Crossbench
Gordon Henderson	Commons	Conservative
Wera Hobhouse	Commons	Liberal Democrats
The Rt Hon the Baroness Jay of Paddington (Margaret Jay)	Lords	Labour
The Baroness Jolly (Judith Jolly)	Lords	Liberal Democrats

Parliamentarian	**House**	**Affiliation**
The Baroness Jones of Whitchurch (Margaret Beryl Jones)	Lords	Labour
The Rt Hon the Lord Kinnock (Neil Kinnock)	Lords	Labour
Danny Kruger MBE	Commons	Conservative
The Baroness Lister of Burtersett CBE (Ruth Lister)	Lords	Labour
Sir Tony Lloyd	Commons	Labour
Jonathan Lord	Commons	Conservative
Timothy Loughton	Commons	Conservative
Kenny MacAskill	Commons	Alba Party
The Lord Macpherson of Earls' Court GCB (Nicholas Macpherson)	Lords	Crossbench
Rachael Maskell	Commons	Co-operative
Stuart McDonald	Commons	SNP
The Rt Hon John McDonnell	Commons	Labour

Parliamentarian	**House**	**Affiliation**
The Rt Hon the Lord McNally (Tom McNally)	Lords	Liberal Democrats
The Rt Hon the Baroness Neville-Jones DCMG (Lilian Neville-Jones)	Lords	Conservative
Charlotte Nichols	Commons	Labour
The Rt Hon the Baroness Northover (Lindsay Northover)	Lords	Liberal Democrats
The Lord Oates (Jonathan Oates)	Lords	Liberal Democrats
The Baroness O'Loan DBE MRIA (Nuala O'Loan)	Lords	Crossbench
The Baroness Altmann CBE (Ros Altmann)	Lords	Conservative
The Rt Hon the Baroness Royall of Blaisdon (Janet Royall)	Lords	Labour

Parliamentarian	**House**	**Affiliation**
The Rt Hon the Earl of Sandwich (John Montagu)	Lords	Crossbench
Andrew Selous	Commons	Conservative
The Lord Sharkey (John Sharkey)	Lords	Liberal Democrats
The Rt Hon Sir Desmond Swayne	Commons	Conservative
The Rt Hon the Baroness Taylor of Bolton (Winifred Taylor)	Lords	Labour
The Rt Hon the Lord Taylor of Holbeach CBE (John Taylor)	Lords	Conservative
The Lord Taylor of Warwick (John Taylor)	Lords	Non-affiliated
The Rt Hon Sir Stephen Timms	Commons	Labour
The Rt Hon Valerie Vaz	Commons	Labour
The Rt Hon the Lord Wallace of Tankerness KC (James Wallace)	Lords	Liberal Democrats

Parliamentarian	**House**	**Affiliation**
The Rt Hon the Lord Wigley (Dafydd Wigley)	Lords	Plaid Cymru
The Lord Wood of Anfield (Stewart Wood)	Lords	Labour
The Baroness Young of Hornsey OBE (Margaret Young)	Lords	Crossbench