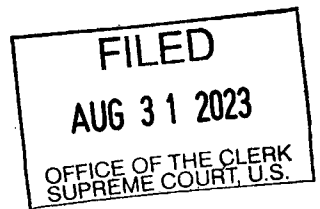


No. 23 - 6226



IN THE
SUPREME COURT OF THE UNITED STATES

CARMEN A. ZAMMELLO, — PETITIONER
(Your Name)

vs.

ASHLEY MOODY, AG, et al — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

U.S. COURT OF APPEALS, ELEVENTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

CARMEN A. ZAMMELLO, #083535
(Your Name)

O.C.I. 3420 NE 168TH ST
(Address)

OKEECHOBEE, FLORIDA, 34972
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1. WHEN WILL A STATE'S "SUBSTANTIVE LAW" BE APPLIED IN A FEDERAL COURT ??
..
2. DOES THE HISTORIC NATURE OF THE WRIT OF HABEAS CORPUS AND PRINCIPLES OF FEDERALISM PRECLUDE A FEDERAL COURT'S DIRECT INTERFERENCE WITH A STATE COURT'S MISCONDUCT OF STATE LITIGATION FOR HABEAS RELIEF ??
..
3. IN DECIDING TO ISSUE A WRIT OF HABEAS FOR A STATE PRISONER MUST A DISTRICT COURT DEAL WITH THE FOLLOWING THREE FACTORS: (1) FEDERAL LAW, (2) STATE LAW AND (3) THE FACTS TO WHICH THE LAW MUST BE APPLIED ??
..
4. WHEN THE CUMULATIVE CONSTITUTIONAL VIOLATIONS AND ERRORS AT TRIAL DEPRIVES THE JURY OF CRITICAL EVIDENCE THAT WOULD PROVE THE DEFENDANTS' INNOCENCE, "DOES THE USE OF AN 'IMPROPER STANDARD' BY BOTH THE COURT OF APPEALS AND THE DISTRICT COURT, REQUIRE PROPERLY BALANCED DICTATES OF JUSTICE TO DECIDE WHETHER A FUNDAMENTAL MISCARRIAGE OF JUSTICE EXCEPTION APPLIES ??
..

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[✓] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RICKY DIXON, Secy. DEPT. OF CORR. et al.

RELATED CASES

FOR QUESTION #1, ERIE RR. CO. - V - TOMPKINS, 304 U.S. 64 (1938)(SAME); BYARS - V - STATE, 823 S02d 740 (FLA. 2002) (SAME); JAIMES - V - STATE, 51 S03d 445 (FLA. 2010)(SAME); RAY - V - STATE, 933 S02d 716 (FLA. 4th DCA 2006)(SAME) AND FAULK - V - STATE, 222 S03d 621 (FLA. 1st DCA 2017)(FACTUALLY THE SAME).

FOR QUESTION #2, GRAY - V - NETHERLAND, 518 U.S. 152 (1996) (SAME) AND BARRY - V - BROWER, 864 F 2d 294 (3rd. CIR. 1988)(SAME)

FOR QUESTION #3, BURNETT - V - GRATAN, 468 U.S. 42 (1984)(SAME)

FOR QUESTION #4, SCHLUP - V - DELO, 513 U.S. 298 (1995)(SAME) (CITING MURRAY - V - CARRIER)) ; WILLIAM - V - TAYLOR, 520 U.S. 362 (2000)(SAME) AND ACHIN - V - STATE, 436 S02d 30 (FLA 1982)(FACTUALLY THE SAME)

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TABLE OF AUTHORITIES CITED

CASES

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[See APPENDIX "A" THE APPLICATION FOR (COA)
AT PP. 1-21 AND COMPARE TO "THE QUESTIONS
PRESENTED AND RELATED CASES" AND THEN TO
ALL APPENDICES "B THROUGH TO B-3", COLLECTIVELY]

STATUTES AND RULES

28 U.S.C. sec. 2254(d)(1)

28 U.S.C. sec. 1915(b)(4)

RULE 11 Governing sec. 2254 CASES

sec. 810.02(1)(b), FLORIDA STATUTES (2003)

sec. 810.015, FLORIDA STATUTES (2001)

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the United States district court appears at Appendix B-B3 to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

☒ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

The opinion of the BOTH STATE COURT DECISIONS court appears at Appendix C to the petition and is

☐ reported at _____; or,

☐ has been designated for publication but is not yet reported; or,

☒ is unpublished.

JURISDICTION

☒ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was APRIL 5th 2023, IN APPEAL CASE # 23-10205

☐ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

☒ An extension of time to file the petition for a writ of certiorari was granted to and including 9-2-23 (date) on 8-10-23 (date) in Application No. 23 A 19, See APPX. "D"

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☒ For cases from **state courts**:

The date on which the highest state court decided my case was 9-29-21. A copy of that decision appears at Appendix C.

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

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

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

[See APPENDIX "A" THE APPLICATION FOR (CDA) AT
PP 1-24 AND COMPARE TO "THE QUESTIONS PRESENTED
AND RELATED CASES" PORTIONS OF THE INSTANT PETITION.

28 U.S.C. 2254(d)

28 U.S.C. 1915(b)(4)

RULES GOVERNING SEC.

2254 CASES (RULE 11)

Sec. 810.02(1)(b), FLA. STATS. (2003)

Sec. 810.015, FLA. STATS. (2001)

4TH AND 14TH AMENDMENTS, U.S. CONST. AT ALL APPENDICES
"A THROUGH TO J" COLLECTIVELY.

STATEMENT OF THE CASE

THE CORE FACTS IN THIS EXTRAORDINARY CIRCUMSTANCES CASE ARE ESSENTIALLY UNDISPUTED AND PRESENTS IMPORTANT CONSTITUTIONAL QUESTIONS THAT URGENTLY CALLS FOR REVIEW AND EXERCISE OF THIS HONORABLE COURT'S SUPERVISORY POWER BECAUSE THE EXISTENCE OF A CONFLICT BETWEEN THE DECISIONS OF WHICH REVIEW IS SOUGHT AND DECISIONS OF THIS COURT AND OTHER APPELLATE COURT'S ON THE SAME ISSUES, IS PREJUDICIAL TO THE EFFECTIVE ADMINISTRATION OF THE BUSINESS OF THE COURT'S AND CONSIDERATION TO THE IMPORTANCE TO PUBLIC OF THE SAME ISSUES AT BAR ..." [SEE ALL APPENDICES "A THROUGH B-3" AND COMPARE TO APPENDICES "C" AND THEN TO "E-J" COLLECTIVELY]; E.G. CF. *SCHLUP V. DELO*, *SUPRA*, *ID.* (1995) (SAME); (CITING *MURRAY V. CARRIER*)); *MCQUIGGIN V. PERKINS*, *ID.* (2013) (SAME); *EX PARTE ROYALL*, *SUPRA*, *ID.* (1886) (SAME); *COLE V. ARKANSAS*, *SUPRA*, *ID.* (1948) (SAME); *WILLIAMS V. TAYLOR*, *SUPRA*, *ID.* (2000) (SAME); *KNOWLES V. MIRZAYANCE*, *SUPRA*, *ID.* (2009) (SAME); *LAWHORN V. ALLEN*, *SUPRA*, *ID.* (11TH CIR. 2008) (SAME) (CITING *GERSTEIN V. PUGH*)); *ROMINE V. HEAD*, *SUPRA*, *ID.* (11TH CIR. 2001) (SAME); *DEMARCO V. U.S.*, *SUPRA*, *ID.* (11TH CIR. 1991) (SAME) (CITING

NAPUE V. ILL.)); *DONALDSON V. O'CONNER, SUPRA, ID.* (5TH CIR. 1974) (SAME), VACATED ON OTHER GROUNDS, 422 U.S. 563 (1975); *DRAKE V. PORTUONDO, SUPRA, ID.* (2ND CIR. 2009) (SAME) (CITING *NAPUE V. ILL.*)); *BYARS V. STATE*, (FLA. 2002) (SAME) AND *ACHIN V. STATE, SUPRA, ID.* (FLA. 1982) (FACTUALLY THE SAME).

THIS CASE ARISES OUT OF THE FALSE ARREST/FALSE IMPRISONMENT AND CONTINUOUS ILLEGAL DETENTION OF THE PETITIONER FOR "A POLICE SPONSORED NONEXISTENT BURGALRY, WITHOUT REASONABLE SUSPICION, PROBABLE CAUSE, A VALID COMPLAINT OR WARRANT AND WITHOUT DUE PROCESS OR EQUAL PROTECTION OF LAW, IN VIOLATION OF THE CONSTITUTION, LAWS, OR TREATIES OF THE UNITED STATES AND FLORIDA, 'AFTER AN UNCORROBORATED TELEPHONE TIP THAT REPORTED THE ALLEGED BURGLARY IN-PROGRESS WAS TAKEN PLACE AT MARIO'S PIZZA AND DUE TO AN IMPROPER POLICE INVESTIGATION' ON MARCH 10, 2004, BECAUSE THE RECORDS VEHEMENTLY SUGGEST THAT THE PETITIONER IS 'ACTUALL INNOCENT' OF THE CHARGE OUTLINED IN THE INFORMATION, WHICH ACCUSES [ME] OF COMMITTING A BURGLARY TO AN OCCUPIED STRUCTURE ..." [SEE APPENDIX "C" AND COMPARE TO ALL APPENDICES "E-J" COLLECTIVELY]; E.G. CF.

SCHLUP V. DELO, SUPRA, ID. (1995) (SAME) (CITING *MURRAY V. CARRIER*)); *MCQUIGGIN V. PERKINS, ID.* (2013) (SAME); *EX PARTE ROYALL, SUPRA, ID.* (1886) (SAME); *COLE V. ARKANSAS, SUPRA, ID.* (1948) (SAME); *WILLIAMS V. TAYLOR, SUPRA, ID.* (2000) (SAME); *KNOWLES V. MIRZAYANCE, SUPRA, ID.* (2009) (SAME); *LAWHORN V. ALLEN, SUPRA, ID.* (11TH CIR. 2008) (SAME) (CITING *GERSTEIN V. PUGH*)); *ROMINE V. HEAD, SUPRA, ID.* (11TH CIR. 2001) (SAME); *DEMARCO V. U.S., SUPRA, ID.* (11TH CIR. 1991) (SAME) (CITING *NAPUE V. ILL.*)); *DONALDSON V. O'CONNER, SUPRA, ID.* (5TH CIR. 1974) (SAME), VACATED ON OTHER GROUNDS, 422 U.S. 563 (1975); (REITERATING THAT: "[C]LAIM OF FALSE IMPRISONMENT WAS A 'CONTINUING VIOLATION' AND THUS NOT BARRED BY STATUTE OF LIMITATIONS"); *DRAKE V. PORTUONDO, SUPRA, ID.* (2ND CIR. 2009) (SAME) (STATING THAT: "[A] CONVICTION OBTAINED THROUGH TESTIMONY THE PROSECUTOR KNOWS TO BE FALSE IS REPUGNANT TO THE U.S. CONSTITUTION") (CITING *NAPUE V. ILL.*)); *ACHIN V. STATE, SUPRA, ID.* (FLA. 1982) (SAME) (REITERATING THAT: [I]N FLORIDA, "ONE MAY NEVER BE CONVICTED OF A NON-EXISTENT CRIME"); *BYARS V. STATE, SUPRA, ID.* (FLA. 2002) (SAME) (STATING THAT: IN FLORIDA, "NEITHER COURTS NOR ADMINISTRATIVE AGENCIES HAVE POWER TO MODIFY THE PLAIN

PURPOSE AND INTENT OF A LEGISLATURE AS EXPRESSED BY THE LANGUAGE EMPLOYED IN STATUTES”); *CASTILLO V. STATE, SUPRA, ID.* (FLA. 4TH DCA 2006) (SAME) (CITING *STATE V. GRAY*, (FLA. 1983)); *RAY V. STATE, SUPRA, ID.* (FLA. 4TH DCA 2006) (SAME) (QUOTING SECTIONS 810.015 FLA. STATS. (2001) AND 810.02(1)(B) FLA. STATS. (2003), COLLECTIVELY)); *SWARTZ V. STATE, SUPRA, ID.* (FLA. 4TH DCA 2003) (SAME) (REITERATING THAT: [I]N FLORIDA “PROBABLE CAUSE TO ARREST EXISTS ONLY WHEN THE ‘TOTALITY OF THE CIRCUMSTANCES’ MORE LIKELY THAN NOT POINTS TO THE COMMISSION OF A CRIME”) (CITING *ILL. V. GATES* (1983)) AND *CITY OF ST. PETERSBURG V. AUSTRINO, SUPRA, ID.* (FLA. 2ND DCA 2005) (FACTUALLY THE SAME) (CONCLUDING THAT: [I]N FLORIDA, “AN ARRESTING OFFICER IS REQUIRED TO CONDUCT A REASONABLE INVESTIGATION TO ESTABLISH PROBABLE CAUSE”) (CITING *ILL. V. GATES* (1983))).

THUS, SINCE I WAS CONVICTED OF A NONEXISTENT OFFENSE, “THERE IS A CLEAR VIOLATION OF FEDERAL AND STATE [DUE PROCESS] PRINCIPLES, ‘ENTITLING [ME] TO HABEAS CORPUS RELIEF’ UNDER 28 U.S.C. SEC. 2254 (D)(1); *WILLIAMS V. TAYLOR, SUPRA, ID.* (2000) (SAME); *KNOWLES V. MIRZAYANCE, SUPRA, ID.* (2009) (SAME); *LAWHORN*

V. ALLEN, SUPRA, ID. (11TH CIR. 2008) (SAME); *DEMARCO V. U.S., SUPRA, ID.* (11TH CIR. 1991) (SAME); *DONALDSON V. O'CONNER, SUPRA, ID.* (5TH CIR. 1974) (SAME); *DRAKE V. PORTUONDO, SUPRA, ID.* (2ND CIR. 2009) (SAME) (CITING *NAPUE V. ILL.*)); *ACHIN V. STATE, SUPRA, ID.* (FLA. 1982) (SAME) *BYARS V. STATE*, (FLA. 2002) (SAME); *RAY V. STATE, SUPRA, ID.* (FLA. 4TH DCA 2006) (SAME); *SWARTZ V. STATE, SUPRA, ID.* (FLA. 4TH DCA 2003) (SAME) AND *CITY OF ST. PETERSBURG V. AUSTRINO, SUPRA, ID.* (FLA. 2ND DCA 2005) (FACTUALLY THE SAME), "ON ALL THE CLAIMS RAISED IN MY PREVIOUS HABEAS CORPYS PETITIONS BECAUSE ADJUDICATION OF MY CLAIMS BY BOTH THE U.S. COURT OF APPEALS NAD THE DISTRICT COURT, AS WELL AS THE STATE COURT'S [IS/WA] CONTRARY TO CLEARLY ESTABLISHED FEDERAL LAW AND INVOLVED AN UNREASONABLE APPLICATION OF FEDERAL LAW, AS DETERMINED BY THIS HONORABLE COURT AND WAS BASEDD ON A UNREASONABLE DETERMIATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN BOTH THE FEDERAL AND STATE COURT'S PROCEEDINGS, AND WHERE, AS HERE, THE CUMULATIVE CONSTITUTIONAL VIOLATIONS RESULTED IN [MY] CONVICTION, PROCEDURAL DEFAULT SHOULD NOT BAR REVIEW OF MY CLAIMS ...]" [SEE ALL APPENDICES "A THROUGH B-3" AND COMPARE TO

APPENDICES “C” AND “E-J” COLLECTIVELY]; E.G. CF. *SCHLUP V. DELO*, *SUPRA*, *ID.* (1995) (SAME) (CITING *MURRAY V. CARRIER*)); *MCQUIGGIN V. PERKINS*, *ID.* (2013) (SAME); *WILLIAMS V. TAYLOR*, *SUPRA*, *ID.* (2000) (SAME); *KNOWLES V. MIRZAYANCE*, *SUPRA*, *ID.* (2009) (SAME); AND *ANDERSON CITY OF BESSEMER*, *SUPRA*, *ID.* (1985) (FACTUALLY THE SAME); *COLE V. ARKANSAS*, *SUPRA*, *ID.* (1948) (SAME); *MARKHAM V. U.S.*, *SUPRA*, *ID.* (1895) (SAME) AND *EX PARTE ROYALL*, *SUPRA*, *ID.* (1886) (FACTUALLY THE SAME).

SUBSEQUENTLY, BASED UPON THE FOREGOING INTRINSIC/EXTRINSIC FRAUDULENT HEARSAY EVIDENCE ON THE COURT AND THE IMPROPER POLICE INVESTIGATION IN THIS CASE AT BAR, AT THE PETITIONER’S TRIAL IN AUG. 2005, “IN ORDER TO COMPENSATE FOR THE LACK OF EVIDENCE OF MOTIVE AND FOR THE FALSE ARREST/FALSE IMPRISONMENT WITHOUT PROBABLE CAUSE, THE RECORDS EVIDENCE IN THE CASE VEHEMENTLY SUGGESTS THAT THE POLICE OFC. DAVID MAUCH CONSPIRED TO FABRICATE A FALSE CONFESSION FOR MALICIOUS PROSECUTION, IN WHICH VIOLATED MY CONSTITUTIONAL RIGHT TO A FAIR TRIAL, BECAUSE THE ASST. PROSECUTOR ROSENWASSER ‘KNOWINGLY PERMITTED THE INTRODUCTION OF FALSE TESTIMONY AND WITHHELD CRITICAL

REQUESTED EXCULPATORY IMPEACHING EVIDENCE' (OFC. STEPHANE BANKS) THAT WOULD HAVE UNQUESTIONABLY SUPPORT MY CLAIM OF INNOCENCE OF THE ALLEGED POLICE SPONSORED FALSE BURGLARY CHARGE, THEREBY DELIBERATELY DECEIVING THE COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE AND CONTRIBUTED TO THE DEPRIVATION OF DUE PROCESS, IN VIOLATION OF *BRADY V. MARYLAND*, (1963) AND *GIGLIO V. U.S.* (1972), COLLECTIVELY AND AS SUCH IS TRUE, BECAUSE IT IS ESTABLISHED THAT THE PROSECUTOR ROSENWASSER KNOWINGLY PERMITTED THE INTRODUCTION OF FALSE TESTIMONY AND THEN CAPITALIZED ON THE PERJURED TESTIMONY IN HIS CLOSING ARGUMENT, "THE JURY'S VERDICT MIGHT BE ALTERED BECAUSE YING IS WRONG AND ROSENWASSER IS AN OFFICER OF THE COURT WHOSE DUTY IS TO PRESENT A FORCEFUL AND TRUTHFUL CASE TO THE JURY NOT TO WIN AT ANY COST..." [SEE APPENDIX "C" AT PP. 1-4 AND COMPARE TO ALL APPENDICES "E-J" COLLECTIVELY]; E.G. CF. *ROMINE V. HEAD*, *SUPRA*, *ID.* (11TH CIR. 2001) (SAME) (STATING THAT: "[H]ABEAS RELIEF IS DUE TO BE GRANTED FOR 'IMPROPER PROSECUTORIAL ARGUMENT' ONLY WHERE, AS HERE, THERE HAS BEEN A VIOLATION OF DUE PROCESS"); *DEMARCO V. U.S.*, *SUPRA*, *ID.*

(11TH CIR. 1991) (SAME) (CITING *NAPUE V. ILL.*); *DRAKE V. PORTUONDO*, *SUPRA*, *ID.* (2ND CIR. 2009) (FACTUALLY THE SAME) (CITING *NAPUE V. ILL.* 1959)) AND *STATE V. GLOSSEN*, *SUPRA*, *ID.* (FLA. 1985) (SAME) (CONCLUDING THAT: [UNDER THE DUE PROCESS PROVISION OF FLA. CONST. ART. 1. SEC. 9., “GOVERNMENTAL MISCONDUCT WHICH VIOLATES THE CONSTITUTIONAL DUE PROCESS RIGHT OF A DEFENDANT, REQUIRES THE DISMISSAL OF CRIMINAL CHARGES”).

MOREOVER, BECAUSE IT IS APPARENT THAT BOTH STATE WITNESSES [MAUCH AND MANETT’S] TESTIMONY CONTAINED SIGNIFICANT FALSEHOODS, THERE IS A STRONG LIKELIHOOD THAT THESE FALSEHOODS WAS VIRTUALLY IMPORTANT TO THE JURY’S DECISION TO CREDIT THEIR TESTIMONY BUT, “THE PRINCIPLE THAT A STATE MAY NOT KNOWINGLY USE FALSE EVIDENCE, INCLUDING FALSE TESTIMONY, TO OBTAIN A TAINED CONVICTION, IMPLICIT IN ANY CONCEPT OF ORDERED LIBERTY, DOES NOT CEASE TO APPLY MERELY BECAUSE THE FALSE GOES ONLY TO THE CREDIBITLITY OF THE LYING WITNESSES AND AS SUCH IS TRUE, THE JURY’S ESTIMATE OF THE TRUTHFULNESS OF [MAUCH AND MANETTA’S] FALSE TESTIMONY MAY WELL HAVE BEEN DETERMINATIVE OF THE SINGLE ISSUE AT TRIAL – *ZAMMIELLO’S* INTENT...” [SEE ALL APPENDICES “E-

J” COLLECTIVELY]; E.G. CF. *ROMINE V. HEAD*, *SUPRA*, *ID.* (11TH CIR. 2001) (SAME); *DEMARCO V. U.S.*, *SUPRA*, *ID.* (11TH CIR. 1991) (SAME) (CITING *NAPUE V. ILL.*)); *U.S. FRIES*, *SUPRA*, *ID.* (SAME) (STATING THAT: “[T]O UPHOLD A CONVICTION, IN THE ABSENCE OF ANY EVIDENCE AS TO AN ESSENTIAL ELEMENT, WOULD BE A MISCARRIAGE OF JUSTICE”) (CITING *IN RE WINSHIP*, (1970) AND OTHER RELEVANT LANDMARK CASE COLLECTIVELY); *DRAKE V. PORTUONDO*, *SUPRA*, *ID.* (2ND CIR. 2009) (FACTUALLY THE SAME) (CITING *NAPUE V. ILL.*)) AND *STATE V. GLOSSEN*, *SUPRA*, *ID.* (FLA. 1985) (SAME) (CITING FLA. CONST. ART. 1. SEC. 9)).

IN SUM, BECAUSE THE CASE FILES RECORDS VEHEMENTLY ESTABLISH THAT THE GOVERNMENT KNOWINGLY PERMITTED THE INTRODUCTION OF FALSE TESTIMONY IN MY 2005 TRIAL AND THEN CAPITALIZED ON THE PERJURED TESTIMONY IN HIS CLOSING ARGUMENTS REINFORCED THE DECEPTION OF THE USE OF FALSE TESTIMONY AND THEREBY, CONTRIBUTED TO THE DEPRIVATION OF DUE PROCESS RIGHT TO A FAIR TRIAL, “THE STATE DISTRICT COURT CLEARLY COMMITTED CONSTITUTIONAL ERROR BY REJECTING MY CLAIMS OF ‘IMPROPER PROSECUTORIAL MISCONDUCT/ARGUMENT’ ON HABEAS REVIEW AND ERRONEOUSLY DENIED HABEAS RELIEF,

AND AS SUCH IS TRUE, THE STATE COURT'S ADJUDICATION ON THE MERITS OF MY CLAIMS WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AS DETERMINED BY THIS HONORABLE COURT AND THUS, 'REVERSAL, NOT VACATUR, OF THE STATE DISTRICT COURT'S ERRONEOUS JUDGMENT IS WARRANTED' BECAUSE A CONVICTION OBTAINED THROUGH TESTIMONY THE PROSECUTOR KNOWS TO BE FALSE IS REPUGNANT TO THE CONSTITUTION AND TO BE SURE, "THIS HONORABLE COURT HAS CONSISTENTLY HELD THAT A CONVICTION OBTAINED BY THE KNOWING USE OF PERJURED TESTIMONY IS FUNDAMENTALLY UNFAIR, AND MUST BE SET ASIDE WHEN, AS HERE, THERE IS ANY REASONABLE LIKELIHOOD HTAT THE FALSE TESTIMONY AFFECTED THE JUDGMENT OF THE JURY BECAUSE THE JURY'S VERDICT MUGHT BE ALTERED..." [SEE APPENDIX "C" AT PP. 1-4 AND COMPARE TO ALL APPENDICES "E-J" COLLECTIVELY]; E.G. CF. *WILLIAMS V. TAYLOR*, *SUPRA*, *ID.* (2000) (SAME); *KNOWLES V. MIRZAYANCE*, *SUPRA*, *ID.* (2009) (SAME); *ROMINE V. HEAD*, *SUPRA*, *ID.* (11TH CIR. 2001) (SAME); *DEMARCO V. U.S.*, *SUPRA*, *ID.* (11TH CIR. 1991) (SAME) (CITING *NAPUE V. ILL.*)); *DRAKE V. PORTUONDO*, *SUPRA*, *ID.* (2ND CIR. 2009) (SAME) (CITING *NAPUE V. ILL.* 1959)).

REASONS FOR GRANTING THE PETITION

IN 2013 THE PETITIONER FILED HIS [FIRST] 28 U.S.C. Sec. 2254 PETITION FOR WRIT OF HABEAS CORPUS, IN THE U.S. DISTRICT COURT MIDDLE DISTRICT OF FLORIDA (CASE NO. 8:13-CV-02285-JSM-TGW) RAISING ONE MIXED BRADY/GIGLIO CLAIM IN GROUND ONE AND DECLARING INNOCENCE TO THE ALLEGED "FALSE - POLICE SPONSORED BURGLARY CHARGE" BECAUSE (1) THE STATE WITHHELD CRITICAL REQUESTED EXCULPATORY IMPEACHING EVIDENCE FROM THE JURY THAT WOULD HAVE PROVED MY INNOCENCE (APPX. "I" : 1 AND (2) BECAUSE THE STATE KNOWINGLY DECEIVED THE COURT AND JURORS BY THE PRESENTATION OF KNOWN FALSE EVIDENCE AND THAN CAPITALIZED ON THE PERTURED TESTIMONY IN HIS CLOSING ARGUMENTS AND THEREBY, CONTRIBUTED TO THE DEPRIVATION OF MY DUE PROCESS RIGHT TO A FAIR TRIAL. [See APPX. "B" AT PP 1-4 AND COMPARE TO ALL APPENDICES "E - J" COLLECTIVELY]. e.g. CE SCHLUP - V - DELO, SUPRA, Id. (1995) (SAME) (CITING MURRAY - V - CARRIER). MCQUIGGIN - V - PERKINS, SUPRA, Id. (2013) (SAME). WILLIAMS - V - TAYLOR, SUPRA, Id. (2000) (SAME). ROMINE - V - HEAD, SUPRA, Id. (11th CIR. 2001) (SAME) (STATING THAT: "[H]ABEAS RELIEF IS DUE TO BE GRANTED FOR 'IMPROPER PROSECUTORIAL ARGUMENT' ONLY WHERE, AS HERE, THERE HAS BEEN A VIOLATION OF DUE PROCESS"). DEMARCO - V - U.S., SUPRA, Id. (11th CIR. 1991) (FACTUALLY THE SAME) (REITERATING THAT: "[D]E-LIBERATE DECEPTION OF A COURT AND JURORS

BY THE PRESENTATION OF KNOWN FALSE EVIDENCE IS INCOMPATIBLE WITH RUDIMENTARY DEMANDS OF JUSTICE"))(CITING GIGLIO-V- U.S. AND NAPUE -V- ILL. COLLECTIVELY); ANTHONY-V- CAMBRA, SUPRA, Id. (9th CIR. 2000)(SAME)(STATING THAT: "[A] FEDERAL HABEAS PETITIONER HAS A RIGHT TO AMEND A MIXED PETITION TO DELETE UN-EXHAUSTED CLAIMS AS AN ALTERNATIVE TO SUFFERING DISMISSAL")(CITING ROSE-V- LUNDY AND OTHER RELEVANT AUTHORITIES) AND DRAKE-V- PORTUONDO, SUPRA, Id. (2nd. CIR. 2009)(FACTUALLY THE SAME)(CITING NAPUE-V- ILL. AND OTHER RELEVANT AUTHORITIES)).

SUBSEQUENTLY, THE RESPONDENT'S FILED A LIMITED RESPONSE TO THE PETITION AND REQUESTED THE COURT TO DISMISS MY PETITION AS TIME-BARRED. [see APPX. "B" ORDER DISMISSING PETITION AS TIME-BARRED AT PP. 1-4 COLLECTIVELY]; e.g. cf. Schlup-V- Delo, SUPRA, Id. (1995)(SAME)(CITING MURRAY-V- CARTER). MCQUIGGIN-V- PERKINS, SUPRA, Id. (2013)(SAME). DEMARCO-V- U.S., SUPRA, Id. (11th CIR. 1991)(SAME)(CITING NAPUE-V- ILL.). ANTHONY-V- CAMBRA, SUPRA, Id. (9th CIR. 2000)(2000)(SAME). DONALDSON-V- O'CONNOR, SUPRA, Id. (5th CIR. 1974)(FACTUALLY THE SAME)(STATING THAT: "[C]LAIM OF FALSE IMPRISONMENT WAS A 'CONTINUING VIOLATION' AND THUS NOT BARRED BY STATUTE OF LIMITATIONS") AND DRAKE-V- PORTUONDO, SUPRA, Id. (2nd. CIR. 2009)(FACTUALLY THE SAME)(CITING NAPUE-V- ILL AND OTHER RELEVANT AUTHORITIES)).

THE PETITIONER THEN FILED A MOTION FOR SUMMARY JUDGMENT, ARGUING AMONG OTHER THINGS THAT "I WAS 'ACTUALLY INNOCENT' OF THE FALSE-POLICE SPONSORED BURGLARY CHARGE" BUT, LO AND BEHOLD, 'THE DISTRICT COURT REJECTED MY CLAIMS ON HABEAS REVIEW THAT' "MY DUE DUE PROCESS RIGHTS WERE VIOLATED BECAUSE 'THE PROSECUTION'S INTENTIONAL AND REPETITIVE MISREPRESENTATIONS AT TRIAL ATTACKED A VIABLE DEFENSE' AND ABSENT THE PROSECUTORIAL MIS-CONDUCT THERE [IS/WAS] A REASONABLE PROB-ABILITY THAT THE JURY WOULD HAVE REACHED A CLEAN DIFFERENT VERDICT AND AS SUCH IS TRUE,

THE DISTRICT COURT CLEARLY ERRED BY FAILING TO CONSIDER DIRECT EVIDENCE THAT 'THE PROSECUTION WAS AWARE THAT BOTH OF HIS WITNESSES [MAUCH AND MANEMA] TESTIFIED FALSELY' BEFORE ERRO-NEOUSLY AND ARBITRARY DENYING THE PETITIONER HABEAS RELIEF ON APRIL 29th 2014. . ." [see APPX. "B" ORDER DISMISSING PETITION AS TIME-BARRIED AT PP. 1-4 COLLECTIVELY AND COMPARE TO APPX."C" AT PP. 1-4 AND THEN TO ALL APPENDICES "E - J" COLLECTIVELY]; e.g. CF Schlup-v-DeLo, SUPRA, Id (1995)(FACTUALLY THE SAME)(CITING MURRAY-V-CARRIER); MCQUIGGIN-V-PERKINS, SUPRA, Id (2013)(SAME); WILLIAMS-V-TAYLOR, SUPRA, Id (2000)(SAME); ANDERSON-V-CITY OF BESSEMER, SUPRA, Id (1985)(SAME); ROMINE-V-HEAD, SUPRA, Id (11th CIR. 2001)(SAME); DEMARCO-V-U.S., SUPRA, Id (11th CIR. 1991)(SAME)(CITING NAPUE-V-ILL);

ANTHONY - V - CAMBRA, SUPRA, Id (9th CIR. 2000) (SAME)
(CITING ROSE - V - LUNDY AND OTHER RELEVANT
AUTHORITIES, COLLECTIVELY)). DRAKE - V - PORTUONDO,
SUPRA, Id (2nd CIR. 2004) (FACTUALLY THE SAME)
(CITING NAPUE - V - ILL AND OTHER RELEVANT AUTH -
ORITIES COLLECTIVELY)); ACHIN - V - STATE, SUPRA,
Id (FLA. 1982) (SAME); STATE - V - BYARS, SUPRA, Id.
(FLA. 2002) (SAME) AND RAY - V - STATE, SUPRA, Id.
(FLA. 4th DCA 2006) (FACTUALLY THE SAME).

ADDITIONALLY, IN THE CASE AT BAR, BECAUSE
THE RESPONDENT'S DID NOT RAISE ANY PROCEDURAL
DEFAULT ISSUES, "THE PERVASIVE UNFAIR AND
PREJUDICIAL RULINGS AND FACTUAL FINDINGS
MADE BY BOTH THE ELEVENTH CIRCUIT COURT
OF APPEALS AND THE MIDDLE DISTRICT COURT,
IN DENYING HABEAS RELIEF AND REFUSING
TO ISSUE A (COA) ARE CLEARLY ERRONEOUS",

AND TO BE SURE, BOTH OF THE FEDERAL COURT'S
HAS ARBITRARY ENTERED DECISIONS IN CONFLICT
WITH, AND CONTRARY TO, THE DECISIONS OF THIS
HONORABLE COURT AND OTHER U. S. COURT OF
APPEALS ON THE SAME IMPORTANT QUESTIONS
OF LAW, "BY CRAFTING AND IMPOSING THEIR OWN
PROCEDURAL RULES THAT URGENTLY CALLS FOR AN
EXERCISE OF THIS HONORABLE COURTS' SUPERVISORY
POWER, 'TO PROPERLY BALANCE THE SOCIETAL
INTEREST IN FINALITY, COMITY, AND CON -
SERVATION OF SCARCE JUDICIAL RESOURCES'
WITH THE INDIVIDUAL INTEREST IN JUSTICE

THAT ARISES IN THIS EXTRAORDINARY CASE, BECAUSE THE CASE FILE RECORDS VEHEMENTLY INDICATE THAT ZAMMIELLO IS 'ACTUALLY INNOCENT' OF THE FALSE - POLICE SPONSORED BURGLARY CHARGE AND THUS, THE PROCEDURAL DEFAULTS SHOULD NOT BAR REVIEW OF MY CLAIMS. . " [see ALL APPENDICES "A THROUGH TO C" AND COMPARE TO ALL APPENDICES "E THROUGH TO J" COLLECTIVELY]; e.g. cf. Schlup-v-Deio, SUPRA, Id. (1995) (SAME) (CITING MURRAY-v-CARRIER); McQuiggin-v-Perkins, SUPRA, Id. (2013) (SAME); WILLIAMS-v-TAYLOR, SUPRA, Id. (2000) (SAME); SLACK-v-McDaniel, SUPRA, Id. (2000) (SAME); STEWART-v-MARTINEZ-VILLAREAL, SUPRA, Id. (1998) (SAME); GRAY-v-NETHERLAND, SUPRA, Id. (1996) (SAME) (FINDING THAT: "[I]T IS THE OBLIGATION OF THE STATE TO RAISE PROCEDURAL DEFAULT ISSUES"); TREST-v-CAIN, SUPRA, Id. (1997) (FACTUALLY THE SAME); ANTHONY-v-CAMBRA, SUPRA, Id. (9th CIR 2000) (SAME) (CITING SLACK-v-McDaniel AND OTHER RELEVANT AUTHORITIES)); DRAKE-v-NORTUONDO, SUPRA, Id. (2nd CIR 2009) (SAME) (CITING NAPUE-v-ILL AND ANDERSON-v-CITY OF BESSEMER, COLLECTIVELY)); Achin-v-STATE, SUPRA, Id. (FLA. 1982) (SAME); STATE-v-BYARS, SUPRA, Id. (FLA 2002) (SAME); AND RAY-v-STATE, SUPRA, Id. (FLA. 4th DCA 2006) (FACTUALLY THE SAME).

MOREOVER, BECAUSE NEITHER OF THE FEDERAL COURT'S RULES ARE REQUIRED UNDER THIS HONORABLE COURTS BINDING PRECEDENTS ABOVE AND IS PREJUDICIAL TO THE EFFECTIVE AND EXPEDITIOUS ADMIN -

ISTRATION OF THE BUSINESS OF THE COURT'S, "IT WAS ERROR FOR THE DISTRICT COURT TO TREAT MY [SECOND] HABEAS CORPUS 'AS AN UNAUTHORIZED SUCCESSIVE PETITION AND THEN REFUSE TO ISSUE A (COA)'" AND TO BE SURE, 'BOTH OF THE FEDERAL COURT'S CLEARLY ERRED' IN DENYING THE PETITIONER HABEAS RELIEF, BECAUSE "THE CUMULATIVE CONSTITUTIONAL ERRORS AND VIOLATIONS HAS RESULTED IN THE CONVICTION OF ONE WHO IS 'ACTUALLY INNOCENT' AND THUS, THE PROCEDURAL DEFAULTS SHOULD NOT BAR REVIEW OF MY CLAIMS WHERE, AS HERE, BOTH THE CIRCUIT COURT OF APPEALS AND THE DISTRICT COURT 'DID NOT AFFORD PROCEDURAL DUE PROCESS AND CLEARLY DEPARTED FROM THE ESSENTIAL REQUIREMENTS OF LAW AND AS SUCH IS TRUE, THERE [IS/WAS] A SERIOUS VIOLATION OF CLEARLY ESTABLISHED PRINCIPLES OF LAW, RESULTING IN A MISCARRIAGE OF JUSTICE. . ." [see ALL APPENDICES "A THROUGH A-1" AND COMPARE TO "B-1 THROUGH C" AND THEN TO "E THROUGH J" COLLECTIVELY]; e.g. Schlup - v - Delo, SUPRA, Id. (1995)(SAME); McQuiggin - v - Perkins, SUPRA, Id. (2013)(SAME). Williams - v - Taylor, SUPRA, Id. (2000)(SAME). Anderson - v - City of Bessemer, SUPRA, Id. (1985)(SAME). U.S. - v - Fries, SUPRA, Id. (11th CIR. 2013)(SAME) (STATING THAT: "IT TO UPHOLD A CONVICTION, IN THE ABSENCE OF ANY EVIDENCE AS TO AN ESSENTIAL ELEMENT, WOULD BE A MIS-CARRIAGE OF JUSTICE")(CITING In re Winship)). Anthony - v - Cambra, SUPRA, Id. (9th CIR. 2000)(SAME); Drake - v - Portuondo, SUPRA, Id. (2nd CIR.

2009)(FACTUALLY THE SAME); Achin-v-STATE, SUPRA, Id. (FLA. 1982)(SAME); STATE-v-BYARS, SUPRA, Id. (FLA. 2002)(SAME) AND RAY-v-STATE, SUPRA, Id. (FLA. 4th DCA 2006)(FACTUALLY THE SAME).

THUS, FOR ALL THE FOREGOING REASONS, THE PETITIONER HUMBL Y PRAYS THIS HONORABLE COURT WILL GRANT CERTIORARI REVIEW OF BOTH OF THE FEDERAL COURT'S ERRONEOUS LEGAL CONCLUSIONS AND FACTUAL FINDINGS IN DENYING ME HABEAS RELIEF AND REFUSING TO ISSUE A (C.O.A) FOR CLEAR ERROR "TO DETERMINE WHETHER THE FEDERAL COURT'S ACCOUNT OF THE EVIDENCE IS PLAUSIBLE IN LIGHT OF THE RECORD VIEWED IN ITS ENTIRETY BECAUSE I AM 'ACTUALLY INNOCENT' OF THE FALSE-POLICE SPONSORED BURGLARY CHARGE AND THUS, THE PROCEDURAL DEFAULTS SHOULD NOT BAR REVIEW OF MY CLAIMS OR ANY OTHER RELIEF AS JUSTICE SO REQUIRES. . ." [see ALL APPENDICES "A THROUGH TO C" AND COMPARE TO "E THROUGH TO J" COLLECTIVELY], e.g. CF. Schlup-v-DeLo, SUPRA, Id. (1995)(SAME)(CITING MURRAY-v-CARRIER); Mcquiggin-v-Perkins, SUPRA, Id. (2013)(SAME); WILLIAMS-v-TAYLOR, SUPRA, Id. (2000)(SAME); ANTHONY-v-CAMBRA, SUPRA, Id. (9th CIR. 2000)(SAME)(CITING SLACK-v-McDANIEL AND OTHER RELEVANT AUTHORITIES); DRAKE-v-PORTUONDO, SUPRA, Id. (2nd CIR. 2004)(FACTUALLY THE SAME)(CITING ANDERSON-v-CITY OF BESSEMER AND OTHER RELEVANT AUTHORITIES); Achin-v-STATE, SUPRA, Id. (FLA. 1982)(SAME); STATE-v-BYARS, SUPRA, Id. (FLA. 2002)(SAME) AND RAY-v-STATE, SUPRA, Id. (FLA. 4th DCA 2006)(FACTUALLY THE SAME).

CONCLUSION

WHEREFORE, FOR THE REASONS HEREIN,

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Carmen A. Zamudio, #083535

Date: OCT. 6th 2023