23-6522

No. _____

SUPREME COURT OF THE UNITED STATES

Autley I. Salahuddin,

Petitioner,

vs.

Washington State Prison Warden,
Attorney General, State of Georgia

Respondent.

On Petition for a Writ of Certiorari to
the United States Court of Appeals
for the Eleventh Circuit

PETITION FOR A WRIT OF CERTIORARI

Autley I. Salahuddin
GDC-1000403289
Washington State Prison
PO BOX 206
Davisboro, GA. 31018

I. Questions Presented

- Whether the filing of a direct appeal is a prerequisite to the filing of a habeas petition?

- Whether exculpatory scientific evidence, that was excluded for review by jurors, may serve as new evidence to satisfy the threshold showing of actual innocence?

- Whether the circuit court subjected Petitioner to a fundamental miscarriage of justice by affirming the district court's ruling void an understanding of what constitutes "new evidence"?

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III. List of Parties

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

IV. Related Cases

- State of Georgia v. Autley I. Salahuddin, II, No. 09CR01133 and 10CR00696, Superior Court of Douglas County, Georgia. Judgement entered on Aug. 18, 2010.
- Salahuddin v. Humphrey, No. 2011-SU-V-356-TW (State Habeas corpus), Superior Court of Butts County, Georgia. Judgement entered on Feb. 1, 2012.
- Salahuddin v. Humphrey, No. S12H1054, Supreme Court of Georgia. Judgement entered on Oct. 29, 2012
- Salahuddin v. Washington SP Warden, et al., No. 1:22-cv-05163-CAP, U.S. District Court for the Northern District of Georgia. Judgement entered on Apr. 26, 2023.
- Salahuddin v. Washington SP Warden, et al., No. 23-11673-F, U.S. Court of Appeals for the Eleventh Circuit. Judgement entered on Sept. 22, 2023

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VII. Petition for Writ of Certiorari

Autley I. Salahuddin, an inmate currently incarcerated at Washington State Prison in Davisboro, Georgia, respectfully petitions this Court for a writ of certiorari to review the judgement below.

VIII. Opinions Below

The opinion of the United States Court of Appeals appears at Appendix A to the petition and is unpublished. The opinion of the United States district court appears at Appendix B to the petition and is also unpublished.

IX. Jurisdiction

Mr. Salahuddin's case was decided by the United States Court of Appeals on September 22, 2023. A timely petition for rehearing was denied by the United States Court of Appeals on November 2, 2023, and a copy of the order denying rehearing appears at Appendix D. Mr. Salahuddin invokes this Court's jurisdiction under 28 U.S.C. § 1254(1).

X. Constitutional, Statutory, and Other Provisions Involved

United States Constitution, Amendment XIV

> All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

Official Code of Georgia Annotated, Section 50-12-172 - Cy pres

> If a charitable trust or gift cannot be executed in the manner provided by the settlor or donor, the superior court shall exercise equitable powers in such a way as will as nearly as possible effectuate the intention of the settlor or donor.

Official Code of Georgia Annotated, Section 40-5-66 - Appeals from decisions of Department of Public Safety

> (a) Except as provided in subsection (h) of Code Section 40-5-67.1, subsection (h) of Code Section 40-5-64, and subsection (g) of Code Section 40-5-64.1, any decision rendered by the department shall be final unless the aggrieved person shall desire an appeal. In such case, such person shall have the right to enter an appeal in the superior court of the county of his or her residence or in the Superior Court of Fulton County. Such appeal shall name the commissioner as defendant and must be filed within 30 days from the date the department enters its decision or order. The person filing the appeal shall not be required to post any bond nor to pay the costs in advance.

The Holy Qur'an, Sahih International, Al-Baqarah 2:283

> And if you are on a journey and cannot find a scribe, then a security deposit [should be] taken. And if one of you entrusts another, then let him who is entrusted discharge his trust [faithfully] and let him fear Allāh, his Lord. And do not conceal testimony, for whoever conceals it - his heart is indeed sinful, and Allāh is Knowing of what you do.

XI. Statement of the Case

Autley Ibn-Faheem Salahuddin is an American Muslim named after his father Autley Faheem Salahuddin, with the 'Arabic name IBN meaning "son of...". His legal name is commonly abbreviated as "Autley I. Salahuddin," with his father's name abbreviated as "Autley F. Salahuddin". **Autley I. Salahuddin**, herein after referred to as "Petitioner," is a state prisoner currently confined at Washington State Prison in Davisboro, Georgia, and has filed *pro se* 28 U.S.C. § 2254 habeas corpus petition challenging his 2010 Douglas County convictions and sentences for aggravated battery, aggravated assault, kidnapping, manufacturing marijuana, and possession of a firearm during the commission of a felony. Petitioner paid the requisite $5.00 statutory filing fee, and after the initial screening of the petition, the magistrate judge recommended dismissal because the petition was considered time-barred. Petitioner filed an *Objection* to the

recommendation of the magistrate judge, setting forth the merits of his petition by citing that he was denied a full and fair evidentiary hearing in his state habeas proceedings, and is actually innocent of the underlying criminal charges in an attempt, specifically, to overcome AEDPA's time limitations. In support of his claim, Petitioner referenced the findings of a psychological evaluation he was ordered to submit to at the trial level that was excluded for review by jurors at trial.

Upon review, the district court, without conducting an evidentiary hearing, declined to reach the merits of the petition and utilized the *Schlup* standard for "actual innocence" citing Petitioner must "support his allegations of constitutional error with new reliable evidence . . . that was not presented at trial" ***Schlup v. Delo*, 513 U.S. 298, 324 (1995)**. The district court rejected the psychological evaluation and deemed it insufficient, in its opinion, to satisfy the threshold showing of "actual innocence" required by *Schlup*. The district court further denied the certificate [of appealability], requiring Petitioner to submit an application to the United States Court of Appeals for a certificate and leave to proceed with a successive writ of habeas corpus.

Petitioner submitted an *Application* for a certificate to the United States Court of Appeals presenting two issues with the ruling of the district court. Upon review, the circuit court affirmed the district court's ruling, thus making a writ of certiorari the last Due Process remedy to be exhausted.

Questions Presented

The following federal questions were presented to the United States Court of Appeals for the Eleventh Circuit on *Motion for Reconsideration* (***Appendix E***), and the court adopted reticence as its formal response, departing from the accepted and usual

course of judicial proceedings. Alternately, in an act of impropriety, the United States Court of Appeals allowed the judge who provided the initial ruling of the court to sit on a two-judge review panel of his own judgment, to which he ruled "(Petitioner) has offered no meritorious arguments to warrant relief" **(*See Appendix D*, p. A-19, lines 6-7)**.

Question #1:

WHETHER THE FILING OF A DIRECT APPEAL IS A PREREQUISITE TO THE FILING OF A HABEAS CORPUS PETITION?

Summary:

The State of Georgia's Office of the Attorney General claims that its citizens are not entitled to a state habeas corpus evidentiary hearing if they failed to file a direct appeal of their conviction first.

Background:

On July 26, 2009, Petitioner was arrested and jailed in Douglas County, Georgia. To date, Petitioner has never been before a magistrate judge for a first appearance or commitment hearing; although, the very next morning, a Douglas County magistrate judge issued nine warrants, in Petitioner's legal name, that read "warrants executed on the 26th day of July, 2009". Shortly after Petitioner's detention, his father retained the counsel of Attorney Christopher L. Wynn who, on September 15, 2009, filed preliminary motions, in Petitioner's legal name and against the aforementioned warrants, including but not limited to an *Entry of Appearance*, a *Motion for Bond*, a *Waiver of Arraignment and Demand*, and a prepared *Rule Nisi on Motion for Bond* that was signed by the Honorable David T. Emerson.

Approximately two weeks later, the grand jury in Douglas County, Georgia returned a multi-count true bill of indictment against "Autley Salahuddin," an alias created by the State; and on November 17, 2009, scheduled an arraignment hearing for that defendant despite the *Waiver of Arraignment and Demand* filed on behalf of Petitioner. Petitioner noted the misnomer, and informed the State's prosecutor and trial court that a middle initial in the name of the accused must be present to differentiate between he and his father who share the same first and last name. Approximately nine months later, the same grand jury returned a second multi-count true bill of indictment against "Autley I. Salahuddin, II," another alias created by the State, and the name of Petitioner's *unborn* son named after him.

On August 3, 2010, despite the *Waiver of Arraignment and Demand* that had been filed, Petitioner was summoned to the arraignment hearing of defendant "Autley I. Salahuddin, II". Judge Emerson asked Petitioner to enter a plea on behalf of the defendant in an attempt to constitute the issue between the accused and the State. Petitioner objected to the inaccuracy of his identification as the person named in the indictment, for he possessed a copy of his driver's license which the prosecution placed in the discovery of defendant "Autley Salahuddin". Petitioner informed the court that he was not the accused and also in possession of motions filed in his legal name that had not been responded to or heard by the presiding judge. Petitioner expressed that he would not be responsible for creating the issue between the indicted alias and the State, and moved that the court grant a direct verdict of acquittal, as no evidence was presented by the prosecution identifying him as the person named in the indictment. The trial court denied the motion. Petitioner then moved that the trial court conduct a 'reasonable doubt' test to test the sufficiency of the evidence available. Judge Emerson refused to conduct the

'reasonable doubt' test, and entered a plea, himself, on behalf of the indicted alias in his absence. Petitioner then invoked his sovereignty on the record and appointed Judge Emerson as his trustee in accordance with the *Holy Qur'an* **(2:283)** and the Law of Trusts **(O.C.G.A. §50-12-172)**, to which Judge Emerson immediately refused to accept trusteeship. Petitioner also sent a certified letter to Judge Emerson, invoking his sovereignty and appointing trusteeship, that Judge Emerson withheld from being filed under the docket. Approximately two weeks later, "Autley I. Salahuddin, II" was convicted on all counts and sentenced to 45 years in Georgia prisons.

Petitioner declined to file a direct appeal on behalf of a defendant he was not; and elected, instead, to initiate a petition for writ of habeas corpus challenging the constitutional legality of his incarceration in March 2011. On November 28, 2011, Petitioner was scheduled for a State habeas corpus evidentiary hearing, to which the State's attorney immediately moved that the court deny Petitioner a hearing, claiming that Petitioner was not entitled to an evidentiary hearing because he defaulted procedurally through his failure to file a direct appeal of the conviction first. The State's attorney provided:

> "Your Honor, I would just cite that our argument in response to all of his allegations is that, like he said, the direct appeal was not filed. **You have to proceed on the direct appeal of your criminal conviction before you can get to this point of habeas, otherwise, everything's waived.** You have to go through that process. And there's case law and the statute that supports that.
>
> I'd cite to the court **Earp versus Angel**, which is a Georgia Supreme Court case 257 GA 333 from 1987. It basically held that failure to follow available appellate procedures is a procedural bar to raising grounds that could have been raised either at the trial level or at the appellate level in a habeas petition, which is essentially what we have here today" **(*See Appendix E*, p. A-62, lines 14-25; p. A-63, lines 1-2)**.

Petitioner responded to the State attorney's position providing:

> "Your Honor, that's not true. The issues that I raised with regards to my name or misnomer were raised at the arraignment hearing which was held on August the 3rd of 2010, in the Douglas County courthouse, where the honorable David C. Emerson is the overseer. I have stated from day one that there were motions that were filed in my legal name, the trial court never heard any of the motions, in which case they had 90 days in order to do so" (***See Appendix E*, p. A-63, lines 4-12**).

In response to hearing both sides the habeas court said "it seems to me the best ground basis for me to do is before I go into all the issues would be to grant the State's motion and let you appeal up and see are you correct or is he correct" (***See Appendix E*, p. A-64, lines 6-9**). ". . . I'm telling you if you're correct, if I grant his motion, you'll have the right to appeal it and you can set forth that argument to **the Court of Appeals**" (***See Appendix E*, p. A-68, lines 2-5**) .

Petitioner presented the question at hand to the United States Court of Appeals, twice, in an *Application* for a certificate and on *Motion for Reconsideration;* and, in both instances the same judge ruled and adopted reticence as a formal response to the question presented, consequently calling for an exercise of this Court's supervisory power.

Question #2:

WHETHER EXCULPATORY SCIENTIFIC EVIDENCE, THAT WAS EXCLUDED FOR REVIEW BY JURORS, MAY SERVE AS NEW EVIDENCE TO SATISFY THE THRESHOLD SHOWING OF ACTUAL INNOCENCE?

Summary:

The United States district court provided an opinion, citing *Schlup,* that conflicts with a relevant decision of this Court in *Schlup.*

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Background:

On October 20, 2009, Attorney Christopher L. Wynn presented Petitioner before the Honorable David T. Emerson for a bond hearing he moved the court to conduct. Judge Emerson denied bond and ordered Petitioner to undergo a psychological evaluation to ascertain why he was making his first appearance for a criminal matter at the age of 35. Per Attorney Wynn's recommendation, Petitioner's father retained the clinical services of psychologist Dr. Dennis L. Herendeen, whose forensic opinion yielded that Petitioner suffered from an "Adjustment Disorder Unspecified," which resulted in the incident that led to his detention. Dr. Herendeen's findings exculpated Petitioner, and were submitted to the trial court approximately six months *prior* to the trial proceedings.

On August 17, 2010, during the second day of trial, the prosecuting attorney informed the trial court that he had a "*Motion in Limine*", expressing "Judge, the defendant's questions are very artfully reaching out for a mental health, mental incompetency defense, and we have not been served with any notice of any such defense" **(*See Appendix F*, p. A-85, lines 10-14)**. The trial court sustained the motion. Petitioner then moved that the court reconsider its sustentation of the motion by stating ". . .I ask that you reconsider that, Your Honor, because you ordered the evaluation when I was represented by counsel". The court responded "No, I didn't. . . I didn't order it when you were represented by counsel. The Dr. Herendeen evaluation was obtained, I think, through **Chris Wynn** (emphasis added)" **(*See Appendix G*, p. A-92, lines 8-16)**. Petitioner's psychological evaluation was never entered as evidence for the defense or considered by jurors for their verdict.

On April 14, 2023, Petitioner filed an *Objection* to the Final Report and Recommendation of the magistrate judge in the United States district court for the Northern District of Georgia. Petitioner asserted that he was actually innocent of the underlying criminal charges, and referenced in support of his claim the findings of the psychological evaluation that was excluded for review by jurors at trial. The district court utilized the *Schlup* standard for actual innocence and opined:

> "Here, the petitioner claims the new evidence he relies upon is the psychological evaluation that was excluded by the state trial court. **This evidence is not new**. In fact, the petitioner concedes that he has been challenging the exclusion of the evaluation since the trial judge's ruling years ago. Thus there is nothing about this evidence—even assuming that it establishes actual innocence, which it likely does not—that could excuse the time bar that prevents the petitioner's filing of a federal petition challenging his 2010 conviction" (***See Appendix B*, p. A-6, lines 11-18**).

Question #3:

WHETHER THE CIRCUIT COURT SUBJECTED PETITIONER TO A FUNDAMENTAL MISCARRIAGE OF JUSTICE BY AFFIRMING THE DISTRICT COURT'S RULING VOID AND UNDERSTANDING OF WHAT CONSTITUTES NEW EVIDENCE?

Summary:

The United States Court of Appeals did not review the ruling of the district court for errors; and, provided a contrastingly different opinion than the district court that also conflicts with a relevant decision of this Court in *Schlup*.

Background:

On June 7, 2023, Petitioner submitted an *Application* for a certificate to the United States Court of Appeals citing that the district court erred in its ruling deeming his

psychological evaluation insufficient to serve as new evidence because **(1)** the district court did not possess the evaluation to factually determine if it exculpated Petitioner, and **(2)** Petitioner should have received an evidentiary hearing from the district court because he firmly established all of the six factors set out by this Court in ***Townsend v. Sain*, 372 U.S. 293 (1963)**. Alternately, Petitioner cited that the district court erred in its understanding of what new evidence is, and referenced the standard of ***Murray v. Carrier*, 477 U.S. 478 (1986)**, which this Court "held" as one of three cases relied upon as an exception for fundamental miscarriages of justice and utilized to adjudicate *Schlup*. The Court of Appeals affirmed, in part, the ruling of the district court; however, it ruled that Petitioner's psychological evaluation "did not constitute "new evidence of innocence," considering that he had sought to admit the report at his 2010 trial. *See Schlup v. Delo*, 513 U.S. 298, 316 (1995)" **(*See Appendix A*, p. A-3, lines 22-26)**. In affirming the district court's ruling that Petitioner's psychological evaluation did not qualify as new evidence, the United States Court of Appeals sanctioned the district court's ruling, while simultaneously providing a ruling that also conflicts with the relevant and cited decision of this Court in *Schlup*.

XII. REASONS FOR GRANTING THE PETITION

Question #1:

WHETHER THE FILING OF A DIRECT APPEAL IS A PREREQUISITE TO THE FILING OF A HABEAS CORPUS PETITION?

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Summary:

The State of Georgia's Office of the Attorney General claims that its citizens are not entitled to a state habeas corpus evidentiary hearing if they failed to file a direct appeal of their conviction first.

Argument:

The Office of the Attorney General serves as the "defender" for the State of Georgia; whereby it aims, in essence, to justify the acts of the judiciary. The present question; however, draws deserving scrutiny to the creed of said office, and the thousands of United States citizens it has subjected to a textbook example of epistemic injustice. The Georgia Office of the Attorney General believes that "you have to proceed on the direct appeal of your criminal conviction before you can get to this point of habeas," and cited "to the Court ***Earp versus Angel***, which is a Georgia Supreme Court case 257 GA 333 from 1987" **(*See Appendix E*, p. A-62, lines 16-22)**. This belief, therefore, makes the filing of a direct appeal a prerequisite to the filing of a state habeas corpus petition.

Pursuant to ***Earp***, "in 1985 the Department of Public Safety declared Angel a habitual violator and revoked his driver's license for 5 years. Angel did not appeal this action..." (***Earp* supra, at 333**), filed a petition for habeas corpus relief, and "**failed to follow the appellate procedure available under O.C.G.A. § 40-5-66** [emphasis added] to attack his adjudication as a habitual violator" **(*See Earp supra*, at 334)**. Scrutiny of **O.C.G.A. § 40-5-66** provides:

> ". . .any decision rendered by **the department (of public safety)** shall be final unless the aggrieved person shall desire an appeal. In such case, such person shall have the right to enter an appeal in the superior court of the county of his or her residence or in the Superior Court of Fulton County".

The citation of ***Earp,*** in support of the State's claim that Petitioner was procedurally barred from having an evidentiary hearing in 2011, is and has always been without merit and plainly incorrect. The requisite appeal was specifically tied to an adjudication by the Department of Public Safety (emphasis added), and not a superior court of law. The fact that the present question should be posed to this Court is proof of the epistemic injustice perpetuated by the State of Georgia's Office of the Attorney General and its judiciary. Despite a clear objection to the creed of the State's attorney upon sound knowledge, the dispositive directive given was for Petitioner to present this question to the United States Court of Appeals - which adopted reticence as its formal response, in both instances, when this federal question was presented.

In ***Horton v. Wilkes,*** **250 Ga. 902, 903 (1983),** the Georgia Supreme Court provided what could be construed as the only prerequisite to initiating a state petition for habeas corpus. It reads, ". . .under Georgia law a defendant cannot bring a petition for writ of habeas corpus **until his conviction is final"** (emphasis added). The current question has a far-reaching impact for all United States citizens who cross into Georgia's borders, more especially those who may be detained unlawfully. Petitioner's alleged conviction became final in September 2010, and he did not initiate a state habeas corpus petition until March 2011. Petitioner should never have been denied an evidentiary hearing, under the pretense that he was procedurally barred, because he elected to not file a direct appeal of the conviction, and requests this Court's affirmation of his claim through a direct answer to this federal question.

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Question #2:

WHETHER EXCULPATORY SCIENTIFIC EVIDENCE, THAT WAS EXCLUDED FOR REVIEW BY JURORS, MAY SERVE AS NEW EVIDENCE TO SATISFY THE THRESHOLD SHOWING OF ACTUAL INNOCENCE?

Overture:

The United States Court of Appeals and the United States district court both deemed Petitioner's psychological evaluation insufficient to serve as new evidence in his actual innocence claim, and cited *Schlup* to support its ruling; however, both rulings are in conflict with a clearly established precedent of this Court in *Schlup*. Considering the United States Court of Appeals affirmed the opinion of the district court, Petitioner intends to scrutinize the ruling of the district court, specifically, within the arguments of this question, and focus on the ruling of the United States Court of Appeals within this petition's third federal question.

Summary:

The United States district court provided an opinion, citing *Schlup*, that conflicts with a clearly established precedent of this Court in *Schlup*.

Argument:

"A petitioner does not meet the threshold requirements unless he persuades the district court that, in light of the new evidence, no juror, acting reasonably, would have voted to find him guilty beyond a reasonable doubt" **(*Schlup* supra, at 329).** The United States district court provided the following in its ruling deeming Petitioner's psychological evaluation insufficient to serve as new evidence in his actual innocence claim, which was later affirmed by the United States Court of Appeals.

> "To demonstrate actual innocence, a petitioner must "support his allegations of constitutional error with new reliable evidence . . . that was not presented at trial." *Schlup v Delo,* 513 U.S. 298, 324 (1995). Here, the petitioner claims the new evidence he relies upon is the psychological evaluation that was excluded by the state trial court. This evidence is not new. In fact, the petitioner concedes that he has been challenging the exclusion of the evaluation since the trial judge's ruling years ago. Thus, there is nothing about this evidence—even assuming that it established actual innocence, which it likely does not—that could excuse the time bar that prevents the petitioner's filing of a federal petition challenging his 2010 conviction" **(*See Appendix B*, p. A-6, lines 8-18).**

There are four things to note about the ruling of the district court. First and foremost, the district court knew Petitioner had been evaluated by a psychologist; however, it did not possess or review the evaluation to know if it exculpated Petitioner. Secondly, the district court knew the evaluation had been excluded for review by jurors at trial. Thirdly, the district court concluded that the evaluation was not new "even assuming that it established actual innocence" (emphasis added) ***(See Appendix B*, p. A-6, lines 15-16)**. And finally, the district court cemented its ruling with the following citation of this Court in *Schlup* - "To demonstrate actual innocence, a petitioner must "support his allegations of constitutional error with new reliable evidence . . . that was not presented at trial." *Schlup v Delo*, 513 U.S. 298, 324 (1995)" **(*See Appendix B*, p. A-6, lines 8-10).**

Petitioner draws this Court's attention to the " . . . " provided in the district court's citation *after* the words "new reliable evidence". The " . . . " represent specific facts of law, established by this Court, that must be considered in light of the question presented. The actual words (emphasis added) from this Court's ruling in *Schlup* are as follows: "To be credible such a claim requires petitioner to support his allegations of constitutional error with new reliable evidence—**whether it be exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence**—that was not presented at trial" ***(Schlup***

supra, at 324). Unequivocally, the psychological evaluation of Petitioner serves as "exculpatory scientific evidence" because the "forensic opinion" (emphasis added) provides:

> "His official Access I diagnosis is Adjustment Disorder Unspecified. The essential element of an Adjustment Disorder is a psychological response to an identifiable stressor or stressors that results in the development of clinically significant emotional or behavioral symptoms. By definition, an adjustment disorder must resolve within six months of the termination of the stressor" **(*See Appendix E*, p. A-49, "Forensic Opinion", lines 11-14).**

In *Schlup*, this Court ruled that exculpatory scientific evidence, that was not presented at trial, may serve as new reliable evidence in an actual innocence claim; however, the district court provided a ruling, also referencing this Court's ruling in *Schlup*, to the contrary. The district court knew that this Court provided three examples of new evidence in its ruling; yet, knowingly, deliberately, and intentionally omitted established facts in its citation, and falsified a binding precedent with the declaration "this evidence is not new". Put plainly, the district court erred. This error is magnified by the district court's unreasonable distortion, through omission, of this Court's clearly established precedent in *Schlup*. In light of Petitioner having never been granted an evidentiary hearing in neither the state nor district court, the district court's conclusions are not supported by the record, and should not have been affirmed. Petitioner's appearance in the United States district court served as his first "bite at the apple," to which his psychological evaluation should have been deemed worthy to meet the threshold showing of actual innocence to lift the procedural bar; and (he), consequently, should have been granted leave to file a successive writ of habeas corpus in the same court.

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Question #3:

WHETHER THE CIRCUIT COURT SUBJECTED PETITIONER TO A FUNDAMENTAL MISCARRIAGE OF JUSTICE BY AFFIRMING THE DISTRICT COURT'S RULING VOID AND UNDERSTANDING OF WHAT CONSTITUTES NEW EVIDENCE?

Summary:

The United States Court of Appeals did not review the ruling of the district court for errors; and, provided a contrastingly different opinion than the district court that also conflicts with a clearly established precedent of this Court in *Schlup.*

Argument:

"Factual findings and credibility determinations made by the district court in the context of granting or denying the petition are reviewed for clear error" ***Lambert v. Blodgett*, 393 F.3d at 964 (2004).** It was incumbent on the circuit court to exercise due diligence and review the district court's ruling for clear errors; however, it appears it simply affirmed the district court's decision without even checking the citation in *Schlup* that the district court referenced. The circuit court erred in its understanding of new evidence in contrast to the district court's ruling that it was tasked with reviewing; and, provided the following in its ruling denying the certificate – "He likewise could not overcome the procedural bar based on his actual innocence claim, because the psychological report that he relied upon in support of the claim did not constitute "new evidence of innocence," considering that he had sought to admit the report at his 2010 trial' **(*See Appendix A*, p. A-3, lines 22-26).** The circuit court ruled that because Petitioner "*sought* to admit the report at (his) 2010 trial," (it) did not constitute "new evidence of innocence" in Petitioner's actual innocence claim. The circuit court was tasked with

reviewing the district court's ruling, and it provided a ruling that is contrastingly different in reference to the same standard in *Schlup*.

With regard to the psychological evaluation serving as "new evidence," the district court provided the following – "To demonstrate actual innocence, a petitioner must "support his allegations of constitutional error with new reliable evidence . . . that was not presented at trial" **(See *Appendix B*, p. A-6, lines 8-10).** The district court's reference of *Schlup* pointed to evidence that was *already* presented at trial as not being "new reliable evidence." The circuit court; however, dismissed the psychological evaluation, not because it was "presented at trial," as *Schlup* specified, but because Petitioner "*sought to admit* the report at (his) 2010 trial." **The rulings of the district and circuit courts are not the same** (emphasis added). The word "sought," used by the circuit court, is a past reference to an attempt to obtain or achieve something. Whereas if something has been or "was presented," that infers that it actually happened in the past. Petitioner was not successful in his "attempt" to have the psychological evaluation considered by reasonable jurists; therefore, no finder of fact could reasonably conclude that (he) successfully "presented" the evaluation to the jurors at trial. The *Schlup* ruling of this Court does not read that if a petitioner "tried" or "sought" to have evidence submitted, that it is inadmissible to serve as "new evidence." The evidence had to be "presented" to, and considered by jurors at trial to be ruled out, and Petitioner's psychological evaluation does not meet that criteria.

When this Court adjudicated *Schlup*, it. considered "a trio of cases (it) firmly established as an exception for fundamental miscarriages of justice. *Murray v. Carrier*, 477 U.S., at 495; *Kuhlmann v. Wilson*, 477 U.S. 436; *Smith v. Murray*, 477 U.S. 527" (***Schlup***

supra, (b) at 299). Of the three cases, this Court: "Held: The standard of *Murray v. Carrier,* 477 U.S. 478 – which requires a habeas petitioner to show that. "constitutional violation has probably resulted in the conviction of one who is actually innocent," id., at 496" **(*See Schlup* supra, at 298).**

> "To satisfy *Carrier's* "actual innocence" standard, a petitioner must show that, in light of the new evidence, it is more likely than not that no reasonable juror would have found him guilty beyond a reasonable doubt. **The focus on actual innocence means that a district court is not bound by the admissibility rules that would govern at trial,** but may consider the probative force of relevant evidence that was either wrongly excluded or unavailable at trial. The district court must make a probabilistic determination about what reasonable, properly instructed jurors would do, and it is presumed that a reasonable juror would consider fairly **all of the evidence** presented and would conscientiously obey the trial court's instructions requiring proof beyond a reasonable doubt" **(*See Schlup* supra, (d) at 299).**

This Court's standard for determining actual innocence was also articulated in *Kuhlmann* as

> "[t]he prisoner must "show a fair probability that, **in light of all the evidence,** including that alleged to have been illegally admitted (but with due regard to any unreliability of it) and evidence tenably claimed to have been wrongly excluded or to have become available only after the trial, the trier of the facts would have entertained a reasonable doubt of his guilt." Ibid. (footnote omitted). Thus, the question whether the prisoner can make the requisite showing must be determined by reference to all probative evidence of guilt or innocence" **(*See Kuhlmann* supra, at 455, n.17).**

"Justice O'Connor wrote in *Carrier* that "in an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal habeas court may grant the writ even in the absence of a showing of cause for the procedural default"" **(*See Schlup* supra, at 321).** "In *Kuhlmann,* for example, Justice Powell concluded that a prisoner retains an overriding "interest in obtaining his release from custody if he is innocent of the charge for which he was incarcerated"" **(*See Schlup* supra, at 321).**

The United States Court of Appeals erred in its initial ruling denying Petitioner leave to proceed with a successive petition for writ of habeas corpus. Not only did the circuit court neglect to diligently review the ruling of the district court for errors; but, it utilized *Schlup* as its "standard" to gauge actual innocence unreasonably. As stated previously, and to add emphasis, when Petitioner submitted a *Motion for Reconsideration*, the United States Court of Appeals, assigned the same judge, who provided the initial ruling for the court, to sit on a two-judge review panel of his own judgement (emphasis added).

This petition, in its totality, is a philippic against the unparalleled and unprecedented impropriety of now State of Georgia "overseer" David T. Emerson, and the branches of state judiciary he has influenced. Nothing short of a judicial lynching has this case been. This petition presents this Court with an opportunity to clarify a procedural presumption by Georgia's Office of the Attorney General, as well as what "standard" should be employed to determine actual innocence—more especially since its justices differed greatly over the holding of *Carrier*. Finally, this petition serves as the last administrative judicial remedy, to be exhausted, available to citizens of this country who have been denied procedural and equal protection defenses this Court has arduously spent in excess of 150 years attempting to establish and preserve.

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XIII. Conclusion

For the foregoing reasons, Petitioner respectfully requests that this Court issue a writ of certiorari to review the judgment of the United States Court of Appeals.

DATED this 2nd day of January, 2024.

Respectfully submitted.

Autley I. Salahuddin
Petitioner, *pro se*