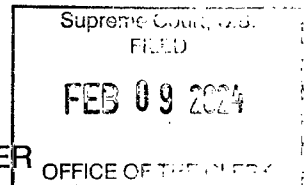


No. 23-6747

IN THE
SUPREME COURT OF THE UNITED STATES

Michael Miller — PETITIONER
(Your Name)



vs.

Michelle Buckner — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Michael Miller
(Your Name)

255 WEST HIGHWAY 32
(Address)

LITCHINGO, MISSOURI 65542
(City, State, Zip Code)

N/A
(Phone Number)

QUESTION(S) PRESENTED

1). WHEN THE DISTRICT COURT AND/OR THE UNITED STATES COURT OF APPEALS DENY, IN ITS CONCLUSION, A PETITIONER'S CONSTITUTIONAL CLAIM, WHILE HOLDING THE PETITIONER TO A STANDARD OF REVIEW DIFFERENT THAN THE STANDARD OF REVIEW SET BY THE UNITED STATES SUPREME COURT, DOES THE U.S. SUPREME COURT THEN CONSIDER THAT TO BE A VIOLATION OF THE UNITED STATES CONSTITUTIONAL LAW? NAMELY AMENDMENTS FIVE AND FOURTEEN. DUE PROCESS OF LAW AND A FAIR AND IMPARTIAL TRIAL.

2). WHEN THE WORDS "MUST" AND "WILL" ... AS IN "THIS INSTRUCTION MUST BE GIVEN" AND "WILL BE THE LAST INSTRUCTION WHICH THE COURT READS TO THE JURY" MEAN THE COURT IS OBLIGATED BY LAW TO ORALLY READ THE SPECIFIC INSTRUCTION TO THE JURY AND IS THE COURT'S FAILURE TO ORALLY READ THE INSTRUCTION, AS INTENDED, TO THE JURY A VIOLATION OF DUE PROCESS OF LAW, UNDER THE UNITED STATES CONSTITUTION AND ITS AMENDMENTS? NAMELY AMENDMENTS FIVE AND FOURTEEN. DUE PROCESS OF LAW AND A FAIR AND IMPARTIAL TRIAL.

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:

RELATED CASES

- Michael Miller V. Michelle Buchner, No. 4:20-CV-00726 THWS, U.S. DISTRICT COURT, EASTERN DISTRICT of MISSOURI. JUDGEMENT ENTERED JUNE 16TH, 2023.
- UNITED STATES COURT of APPEALS, NO. 23-2652. JUDGEMENT ENTERED SEPTEMBER 28, 2023. FOR THE EIGHTH CIRCUIT.
- Miller V. Buchner, NO. 23-2652. UNITED STATES COURT of APPEALS FOR THE EIGHTH CIRCUIT. JUDGEMENT ENTERED NOVEMBER 15, 2023.
- MISSOURI CIRCUIT COURT, TWENTY-SECOND JUDICIAL CIRCUIT, CITY of St. LOUIS, MILLER V. STATE of MISSOURI, NO. 1722-CC01234, FINDINGS of FACT, CONCLUSIONS of LAW AND ORDER. ENTERED APRIL 5TH, 2018.

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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 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 B 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 ~~MISSOURI COURT OF APPEALS EASTERN DISTRICT~~ court appears at Appendix B 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 SEPTEMBER 28, 2023.

☐ 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: NOVEMBER 15, 2023, 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. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was 8-27-2019.
A copy of that decision appears at Appendix B.

☐ 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

- 28 U.S.C. § 2254 For writ of HABEAS CORPUS BY A PERSON IN STATE CUSTODY. FEDERAL HABEAS RELIEF CAN BE GRANTED ONLY IF THE STATE COURT ADJUDICATION "RESULTED IN A DECISION THAT WAS CONTRARY TO, OR INVOLVED AN UNREASONABLE APPLICATION OF, CLEARLY ESTABLISHED FEDERAL LAW, AS DETERMINED BY THE SUPREME COURT OF THE UNITED STATES," 28 U.S.C. § 2254 (d)(1), OR "WAS BASED ON AN UNREASONABLE DETERMINATION OF THE FACTS IN LIGHT OF THE EVIDENCE PRESENTED IN THE STATE COURT PROCEEDINGS." 28 U.S.C. § 2254, (d)(2). THE FEDERAL LAW MUST BE CLEARLY ESTABLISHED AT THE TIME PETITIONER'S STATE CONVICTION BECAME FINAL, AND THE SOURCE OF DOCTRINE FOR SUCH LAW IS LIMITED TO THE UNITED STATES SUPREME COURT. "A STATE COURT'S DECISION IS CONTRARY TO 'CLEARLY ESTABLISHED SUPREME COURT PRECEDENT WHEN IT IS OPPOSITE TO THE SUPREME COURT'S CONCLUSION ON A QUESTION OF LAW OR DIFFERENT THAN THE SUPREME COURT'S CONCLUSION ON A SET OF MATERIALLY INDISTINGUISHABLE FACTS. A FEDERAL COURT MAY GRANT RELIEF UNDER THE 'UNREASONABLE APPLICATION' CLAUSE IF THE STATE COURT CORRECTLY IDENTIFIED THE GOVERNING LEGAL PRINCIPLE, BUT UNREASONABLY APPLIED IT TO THE FACTS OF THE PARTICULAR CASE." STANDARD OF REVIEW IS CONTROLLED BY UNITED STATES SUPREME COURT CASE "SLACK V. MCDANIEL, 529 U.S. 473, 484 (2000)" WHEREAS THE FEDERAL STANDARD OF REVIEW IS "REASONABLE JUDGE WOULD FIND - THE DISTRICT COURT'S ASSESSMENT OF THE CONSTITUTION CLAIM DEBATABLE OR WRONG."
- CERTIFICATE OF APPEALABILITY, PURSUANT TO F.R.A.P. 22 ("COA")
STANDARD OF REVIEW - UNDER 28 U.S.C. § 2253(c)(2), A COA MAY ISSUE IF AN APPELLANT HAS MADE "A SUBSTANTIAL SHOWING OF THE DENIAL OF A FEDERAL CONSTITUTIONAL RIGHT." THIS IS A "MODEST STANDARD." THE UNITED STATES SUPREME COURT HAS EXPLAINED THAT IN DETERMINING WHAT CONSTITUTES THE PREREQUISITE SHOWING FOR OBTAINING LEAVE TO APPEAL A DISTRICT COURT'S DENIAL OF HABEAS

STATEMENT OF THE CASE

On February 27, 2015, A JURY CONVICTED PETITIONER MILLER OF FIRST DEGREE MURDER AND ARMED CRIMINAL ACTION (CASE NO. 1222-CR06056-01). On April 17, 2015, THE TRIAL COURT SENTENCED MILLER TO CONCURRENT SENTENCES OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE AND LIFE IMPRISONMENT. PETITIONER'S CONVICTION AND SENTENCE WERE AFFIRMED ON APPEAL. STATE V. MILLER, 508 S.W.3d 170 (MO. CT. APP. 2016.) - MILLER SOUGHT DISCRETIONARY RELIEF IN THE MISSOURI SUPREME COURT. THE MISSOURI SUPREME COURT DENIED PETITIONER'S APPLICATION FOR TRANSFER ON JANUARY 31, 2017, AND THE MANDATE ISSUED ON FEBRUARY 10, 2017. MILLER DID NOT FILE A PETITION FOR WRIT OF CERTIORARI IN THE UNITED STATES SUPREME COURT - ON MAY 4, 2017, MILLER FILED A TIMELY PRO-SE MOTION FOR POST-CONVICTION RELIEF PURSUANT TO MISSOURI SUPREME COURT RULE 29.15. THE MOTION COURT HELD AN EVIDENTIARY HEARING ON MARCH 26, 2018. PETITIONER MILLER WAS NOT PRESENT FOR THE HEARING. AFTER THE EVIDENTIARY HEARING, THE MOTION COURT DENIED POST-CONVICTION MOTION ON APRIL 5, 2018. THE MISSOURI COURT OF APPEALS EASTERN DISTRICT AFFIRMED THE DENIAL OF RULE 29.15 RELIEF ON AUGUST 27, 2019. THE MANDATE ISSUED ON SEPTEMBER 19, 2019. PETITIONER FILED A PETITION UNDER 28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS ON JUNE 3, 2020. RELEVANT TO THE CONSIDERATION OF THE QUESTIONS PRESENTED HERE, MILLER WAS DENIED WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2254 ON JUNE 16TH 2023. MILLER THEN FILED AN APPLICATION FOR A CERTIFICATE OF APPEALABILITY, IN THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT CASE NO. 4:20-CV-00726-PW3, DENIED SEPTEMBER 28, 2023. PETITIONER FILED FOR PETITION FOR REHEARING. THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT DENIED MILLER'S PETITION FOR REHEARING ON NOVEMBER 15, 2023.

CONTINUATION OF PAGE 4 (STATEMENT OF THE CASE)
RELATIVE TO QUESTION 1.

AT THE BEGINNING OF TRIAL, THE TRIAL COURT SWORE TO READ TO THE JURY TWO INSTRUCTIONS CONCERNING THE LAW APPLICABLE TO THE CASE, AND ITS TRIAL, BEFORE OPENING STATEMENTS. INSTRUCTION NUMBER ONE, MAI-CR 3d 302.01 AND INSTRUCTION NUMBER TWO, MAI-CR 3d 302.02. (SEE APPENDIX B - PAGE 21). THE TRIAL COURT ONLY READ INSTRUCTION #1, 302.01 TO THE JURY. THE COURT THEN, WITHOUT READING INSTRUCTION #2, 302.02 TO THE JURY, ALLOWED OPENING STATEMENTS TO COMMENCE. AFTER OPENING STATEMENTS WERE CONCLUDED, THE TRIAL COURT THEN RETRACTED WITH AN APOLOGY AND READ INSTRUCTION #2, 302.02 TO THE JURY BELATEDLY.

THEN LATER, AT THE END OF TRIAL, AND AT THE CLOSE OF EVIDENCE, BUT BEFORE CLOSING ARGUMENTS WERE MADE, THE TRIAL COURT SWORE THAT IT WAS GOING TO READ THE REMAINDER OF THE INSTRUCTIONS TO THE JURY. (SEE APPENDIX B - PAGE 27). THE TRIAL COURT DID NOT. IN FACT, THE TRIAL COURT NEVER READ THE FINAL INSTRUCTION, MAI-CR 3d 302.06 THAT IT SWORE TO READ TO THE JURY AT CLOSING ARGUMENT NOR BEFORE THE JURY RETIRED FOR ITS DELIBERATIONS.

THE DISTRICT COURT FOLLOWED THE MISSOURI COURT OF APPEALS IN ITS OPINION AND STANDARDS OF REVIEW DENYING PETITIONER HERE BY HOLDING THAT "MILLER CANNOT MEET THE DIFFICULT BURDEN OF SHOWING A 'FUNDAMENTAL DEFECT WHICH INHERENTLY RESULTS IN A COMPLETE MISCARriage OF JUSTICE,' WILLIAMS, 736 F.2d at 1267, A BURDEN THE SUPREME COURT HAS ACKNOWLEDGED IS EVEN GREATER THAN THE SHOWING REQUIRED TO ESTABLISH PLAIN ERROR."

SECOND PAGE OF... CONTINUATION OF PAGE 4 (STATEMENT OF THE CASE)
RELATIVE TO QUESTION 1.

ON DIRECT APPEAL." HENDERSON, 431 U.S. at 154. (SEE APPENDIX B-PAGE 27)

THE ISSUE HERE IN PETITIONER'S CAUSE. CASE NO. 4:20-CV-00726 RWS
IS THAT THE UNITED STATES DISTRICT COURT'S DECISION AND
ORDER DENYING PETITIONER RELIEF ON HIS PETITION UNDER
28 U.S.C. § 2254 FOR WRIT OF HABEAS CORPUS BY A PERSON
IN STATE CUSTODY IS NOT BASED ON ITS OWN INDEPENDANT
DETERMINATION AS IT FOLLOWS THE ANALYSIS OF THE MISSOURI
COURT OF APPEALS' APPLICATION... NOR DOES THE U.S. DISTRICT COURT
IN DENYING PETITIONER RELIEF FOLLOW AND ADHERE TO THE
STANDARD OF REVIEW SET FORTH BY THE UNITED STATES SUPREME
COURT IN "SLACK V. MCDANIEL, 529 U.S. AT 484-485", WHEREAS
IT IS CLEARLY ESTABLISHED FEDERAL CONSTITUTIONAL LAW THAT
"JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE
PETITION STATES A VALID CLAIM OF THE DENIAL OF A
CONSTITUTIONAL RIGHT," IS THE STANDARD OF REVIEW, FOR NOT
ONLY PETITIONER HERE IN CASE NO. 4:20-CV-00726 RWS,
BUT FOR EVERY PETITIONER PETITIONING UNDER 28 U.S.C.
§ 2254 ON APPEAL FROM A CRIMINAL TRIAL.

CONTINUATION OF PAGE 4 (STATEMENT OF THE CASE)
RELATIVE TO QUESTION 2.

AT THE END OF TRIAL, IN CASE NO. 4:20-CV-00726-BWS,
INSTRUCTION MAI-CR 38 302.06. (SEE APPENDIX B, PAGES 26-27)
WAS TO BE READ TO THE JURY, WITH INTENT TO GUIDE THE JURY
THAT AT THIS PART OF TRIAL, THE ATTORNEYS FOR BOTH THE STATE AND
FOR DEFENDANT WILL MAKE ARGUMENTS NOW THAT ARE INTENDED TO
HELP YOU UNDERSTAND THE EVIDENCE AND HOW TO APPLY THE LAW,
BUT OF MOST IMPORTANCE, THEIR ARGUMENTS, AFTER THIS
INSTRUCTION IS READ, ARE "NOT" EVIDENCE. (SEE APPENDIX B, PAGES 26-27)
THE ISSUE HERE IS THAT THE PETITIONER HERE WAS NOT AFFORDED
THAT DUE PROCESS OF LAW. NOR DID PETITIONER ENJOY A FAIR AND
IMPARTIAL TRIAL BECAUSE THE JURY NEVER HEARD THIS INSTRUCTION
ORALLY BY THE COURT, WHICH MEANS THE JURY WAS NOT PROPERLY
GUIDED. PETITIONER CITED UNITED STATES V. BECERRA, 939
F.3d 995 (2019). (SEE APPENDIX F, PAGE 5) WHERE IN U.S. V. BECERRA,
THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT HELD THAT THE
DISTRICT COURT'S FAILURE TO ORALLY INSTRUCT THE JURY, INSTEAD
GIVING THE JURY THEIR INSTRUCTIONS AT THE BEGINNING OF TRIAL,
ASKING THEM TO TAKE THE INSTRUCTIONS TO DELIBERATIONS, WAS
STRUCTURAL ERROR BECAUSE ASSUMING THAT JURORS WERE
GENERALLY AWARE OF THE LAW TO BE APPLIED WAS A PROTECTION WITHOUT
WHICH A CRIMINAL TRIAL COULD NOT RELIABLY SERVE ITS FUNCTION,
THE IMPACT ON THE JURY'S VERDICT OF A FAILURE TO INSTRUCT JURORS

SECOND PAGE OF... CONTINUATION OF PAGE 4 (STATEMENT OF THE CASE)
RELATIVE TO QUESTION 2.

Orally WAS NECESSARILY UNQUANTIFIABLE AND INDETERMINATE.....

A KEY ASPECT OF THE TRIAL WAS HIDDEN FROM PUBLIC OBSERVATION,
AND THE SOLEMNITY OF THE OCCASION FOR THE PUBLIC WAS FATALLY
COMPROMISED. SEE APPENDIX F, PAGE 5.

PETITIONER'S FIFTH AND FOURTEENTH AMENDMENTS OF THE UNITED
STATES CONSTITUTION WERE VIOLATED AT TRIAL BECAUSE THE
INSTRUCTION THAT WAS INTENDED TO BE READ ORALLY BEFORE THE
ATTORNEY'S CLOSING ARGUMENTS AND BEFORE THE JURY RETIRED TO
DELIBERATIONS WAS NEVER READ, LEAVING THE JURY WITHOUT
GUIDANCE ON THE EVIDENCE AND APPLYING THE LAW AT AN EXPLICITLY
EXCLUSIVE STAGE OF A CRIMINAL TRIAL.

THE INSTRUCTION MAI-CR 3d 302.00 EXCLUSIVELY DIRECTS, "THIS
INSTRUCTION "MUST" BE GIVEN IN EVERY CASE AND "WILL" BE THE
LAST INSTRUCTION WHICH THE COURT "READS" TO THE JURY "BEFORE"
IT RETIRES FOR ITS DELIBERATIONS. NOTES ON USE. (SEE APPENDIX
B, PAGE 27).

THE MISSOURI COURT OF APPEALS AND THE UNITED STATES DISTRICT COURT
DECIDED TO DENY PETITIONER RELIEF ON THIS FIFTH AND FOURTEENTH
AMENDMENT VIOLATION OF THE UNITED STATES CONSTITUTION CONCLUDING IN
ERROR THAT "BECAUSE THE JURY WAS PROVIDED WITH INSTRUCTION
MAI-CR 3d 302.00 IN WRITING, WE FIND THAT THE JURY WAS
PROVIDED SUFFICIENT GUIDANCE REGARDLESS OF WHETHER

THIRD PAGE OF... CONTINUATION OF PAGE 4 (STATEMENT OF THE CASE)
RELATIVE TO QUESTION 2.

INSTRUCTION W/AI-CR 3d 302.06 WAS READ AND NO PLAIN ERROR LIES."
(SEE APPENDIX B, PAGE 27)

THE FACTS RELATIVE TO THIS CASE AND THE QUESTION PRESENTED
HERE IS THAT THE COURT SWORE AT THE CLOSE OF EVIDENCE, IN A
CRIMINAL TRIAL, BUT BEFORE CLOSING ARGUMENTS WERE MADE,
THAT IT WAS COINCIDE TO READ TO THE JURY THE REMAINDER
OF THE INSTRUCTIONS. (SEE APPENDIX B, PAGE 27)
THE COURT FAILED TO DO SO.

CONTINUATION OF PAGE 3 (CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED)

CORPUS RELIEF, AN APPELLANT MUST "SHOW THAT REASONABLE JURISTS COULD DEBATE (OR, FOR THAT MATTER, AGREE THAT) THE PETITION SHOULD HAVE BEEN RESOLVED IN A MANNER DIFFERENT OR THAT THE ISSUES PRESENTED WERE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) QUOTING *Barefoot v. Estelle*, 463 U.S. 890, 893 & N.4 (1983). WHEN THE DISTRICT COURT DENIES A HABEAS PETITION ON PROCEDURAL GROUNDS WITHOUT REACHING THE UNDERLYING CONSTITUTIONAL CLAIM, A COA SHOULD ISSUE IF THE APPELLANT SHOWS THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE PETITION STATES A VALID CLAIM OF THE DENIAL OF A CONSTITUTIONAL RIGHT AND THAT JURISTS OF REASON WOULD FIND IT DEBATABLE WHETHER THE DISTRICT COURT WAS CORRECT IN ITS PROCEDURAL RULING.

THE SUPREME COURT IN *BAREFOOT V. ESTELLE* ELABORATED ON THE STANDARD FOR ISSUANCE OF A COA: IN REQUIRING A QUESTION OF SOME SUBSTANCE, OR 'A SUBSTANTIAL SHOWING OF THE DENIAL OF A FEDERAL RIGHT, OBVIOUSLY THE PETITIONER NEED NOT SHOW HE SHOULD PREVAIL ON THE MERITS. HE HAS ALREADY FAILED IN THAT ENDEAVOR. RATHER, HE MUST DEMONSTRATE THAT THE ISSUES ARE DEBATABLE AMONG JURISTS OF REASON; THAT A COURT COULD RESOLVE THE ISSUES IN A DIFFERENT MANNER; OR THAT THE QUESTIONS ARE ADEQUATE TO DESERVE ENCOURAGEMENT TO PROCEED FURTHER.

TO BE CLEAR, THE STANDARD FOR OBTAINING A COA IS QUITE MINIMAL. AS NOTED BY THE SUPREME COURT: "WE DO NOT REQUIRE PETITIONER TO PROVE, BEFORE THE ISSUANCE OF A COA, THAT SOME JURISTS WOULD GRANT THE PETITION FOR HABEAS CORPUS. INDEED A CLAIM CAN BE DEBATABLE

CONTINUATION OF PAGE 3 (CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED)

EVEN THOUGH EVERY JURIST OF REASON MIGHT AGREE, AFTER THE COA HAS BEEN GRANTED AND THE CASE HAS RECEIVED FULL CONSIDERATION, THAT PETITIONER WILL NOT PREVAIL." MILLER-EL V. LOCKWELL, 537 U.S. 322, 338 (2003)

CONTINUATION OF PAGE 3 (CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED)

- AMENDMENT V OF THE CONSTITUTION OF THE UNITED STATES PROTECTS AGAINST DOUBLE JEOPARDY AND IS PROTECTION AGAINST COMPULSORY SELF-INCRIMINATION... PROTECTION AGAINST DEPRIVATION OF LIFE, LIBERTY, OR PROPERTY WITHOUT DUE PROCESS OF LAW.

- AMENDMENT XIV (FOURTEENTH AMENDMENT)... SECTION 1.

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 LAWS.

- BASICALLY, WE THINK OF PROCEDURAL DUE PROCESS IN TERMS OF "NOTICE," AND THE OPPORTUNITY FOR A "FULL AND FAIR HEARING". PROCEDURAL DUE PROCESS ALSO MEANS THE OPPORTUNITY TO BE HEARD BY AN UNBIASED JUDICIAL PLATFORM. IN THE AREA OF CRIMINAL LAW, WHEN THE GOVERNMENT SEEKS TO DEPRIVE THE PERSON OF HIS LIBERTY, WE AFFORD THE GREATEST PROCEDURAL

CONTINUATION OF PAGE 3 (CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED)

SAFEGUARDS TO ENSURE A FAIR TRIAL.

SUBSTANTIVE DUE PROCESS... SEE DANIELS V. WILLIAMS, 474 U.S. 332, 106 S. CT. 662, 805 88 L. ED 2D 662 (1986).

HISTORICALLY, THE GUARANTEE OF SUBSTANTIVE DUE PROCESS WAS MEANT TO SECURE THE INDIVIDUAL FROM THE ARBITRARY EXERCISE OF POWERS OF GOVERNMENT. IT CONCERNS THE DELIBERATE DECISION OF GOVERNMENT OFFICIALS TO DEPRIVE A PERSON OF LIFE, LIBERTY, OR PROPERTY. THE TERM "LIBERTY" USED IN THE FOURTEENTH AMENDMENT IS NOT DEFINED IN THE TEXT. YET, THE CONCEPT OF SUBSTANTIVE DUE PROCESS IS ROOTED IN THE TERM "LIBERTY".

PERSONAL LIBERTY IS MORE THAN ACTUAL PHYSICAL RESTRAINT AND INCLUDES THE CONCEPT OF "FUNDAMENTAL RIGHTS". THE ROLE OF SUBSTANTIVE DUE PROCESS IS TO PROTECT "FUNDAMENTAL RIGHTS" FROM ARBITRARY DEPRIVATION BY STATE GOVERNMENTS. RIGHTS THAT HAVE BEEN RECOGNIZED AS FUNDAMENTAL ARE MANY.

REASONS FOR GRANTING THE PETITION

1. RELEVANT TO QUESTION ONE... UNDER RULE 10(a) THIS COURT SHOULD BE COMPELLED TO CONSIDER ON CERTIORARI AND CORANT WRIT FOLLOWING REVIEW BECAUSE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI HAS SO FAR DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS WHEN IT DENIED PETITIONER DUE PROCESS OF LAW IN BASING ITS CONCLUSION ON A STANDARD OF REVIEW OTHER THAN THAT SET FORTH BY THE UNITED STATES SUPREME COURT. (SEE APPENDIX B PAGE 27). THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT HAS NOT CORRECTED THE COURT'S VIOLATION, IN TURN SANCTIONING SUCH A DEPARTURE BY THE DISTRICT COURT AND COURT OF APPEALS TO CALL FOR AN EXERCISE OF THIS COURT'S SUPERVISORY POWER.

2. RELATIVE TO QUESTION TWO... UNDER RULE 10(c), THIS COURT SHOULD REVIEW ON WRIT OF CERTIORARI AND FOLLOWING CONSIDERATION SHOULD CORANT WRIT DUE TO COMPELLING REASONS THAT THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MISSOURI AND THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT, IN CASE NO. 4:20-CV-00726 RWS, HAS DECIDED AN IMPORTANT QUESTION OF LAW THAT HAS NOT BEEN, BUT SHOULD BE SETTLED BY THIS COURT, BECAUSE THE DISTRICT COURT (U.S.) AND THE U.S. COURT OF APPEALS HAS PRESUMED THAT THE WORDS "MUST" AND "WILL" IN A CRIMINAL TRIAL'S INSTRUCTIONS TO THE JURY (SEE APPENDIX B, PAGES 25 AND 27) ARE NOT INTENDED TO MEAN THE COURT, IN A CRIMINAL TRIAL, MUST AND WILL ORALLY READ SPECIFIC INSTRUCTIONS MAI-CR 3d 302.06 TO THE JURY. IN ITS ORDER DENYING PETITIONER RELIEF UNDER 28 U.S.C. § 2254 WRIT OF HABEAS CORPUS.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. K. Smith", written over a horizontal line.

Date: FEBRUARY 07, 2024