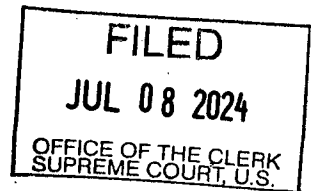


UNITED STATES SUPREME COURT
WASHINGTON D.C.

24 - 5259



ISIAH WILLIAMS,

Petitioner,

PETITION FOR WRIT
OF CERTIORARI

Docket No: _____

v

RAYMOND SHANLEY,

Respondent,

WRIT OF CERTIORARI
PETITION

Respectfully submitted,

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Orleans Correctional Facility
3531 Gaines Basin Road
Albion, New York 14411-9199

TO: Scott Harris, Clerk
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Washington, DC 20543

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Petitioner/ Williams

QUESTIONS PRESENTED:

I. Did the Court of Appeals exceed its authority under Rule 52(a) F.R.C.P., in holding that Petitioner has not made a substantial showing of denial of a constitutional right in regards to Williams gateway actual innocence claim, and dismissed the appeal?

II. Does Rule 52(a), F.R.C.P., forbid the Court of Appeals from reviewing the credibility finding of a trial judge in relation to a claim of actual innocence?

III. Did petitioner met his burden of establishing a gateway claim of actual innocence?

IV. Did the Court of Appeals erred when it upheld the trial courts ruling in regards to the new evidence being from family members are not credible and compelling evidence without affording Petitioner of the opportunity to meet his burden of proof at an evidentiary hearing?

V. Whether Petitioner has made a "colorable" and "credible" claim of actual innocence within the Schulp/House requirements of the United States Supreme Court and other Circuit Court of Appeals/

VI. Did the trial court erred when it gave deference in violation of the House ruling for AEDPA standards for deference to the State Court ruling for an actual innocence claim ruled by this Court?

VII. Petitioner was entitled to an evidentiary hearing in order to establish that his exculpatory trustworthy eyewitnesses were reliable for a compelling actual innocence claim under Schulp/House, and a hearing is one requirement of Schlup's in regards to an actual innocence claim?

VIII. There is no AEDPA requirements for an actual innocence claim once a criminal defendant pass the "gateway", and presents new evidence, a evidentiary hearing is necessary to determine credibility, old and new evidence, with admissible, or inadmissible evidence?

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OPINIONS BELOW:

The decision of the Court of Appeals are reported at _____ F.3d _____, (2014), and are appendix in A to the Petition, and the decision may not be reported. There was no rehearing in this matter sought. The district court decision which is reported at 2023 WL 7168871, 20-cv-0688(JLS), filed 10/31/2023 (WDC) is set up at Appendix B to the Petition for the District Court's Finding of Facts and Conclusions of Law.

JURISDICTION:

The judgment of the Court of Appeals for the Second Circuit was entered on April 18, 2024. There was no rehearing. The date for which this Petition for Writ of Certiorari are **are due** is July 18, 2024. Jurisdiction of this Court is invoked **under** 28 USC Section 1254(1). The judgment of the New York **State Court** of Appeals was entered on October 15, 2018 in **Appendix K** set up in the record of appendix.

STATEMENT OF THE CASE:

Isiah Williams, an inmate with the New York State Department of Corrections & Community Supervision, seeks review of of the Second Circuit's decision entered in Williams v Shanley, 2023 WL 7168871, 20-cv-688(JLS)[October 31, 2023]. The panel unanimously found that Petitioner did not made a substantial showing of the denial of a constitutional right, in relation to a gateway actual innocence claim, with a claim that he was denied the effective assistance of counsel. There was no application for any rehearing en banc.

Petitioner bases for review does warrants this court to issue a writ of certiorari. First, Petitioner argues that several circuits court disagrees that a relative can be deemed credible under the facts and can account as an reliable and credible witness after a hearing in order to determine their credible live in open court, before the relative can be deemed unreliable, and not credible, and the Second Circuit decision in this case conflict with the decision of the Ninth Circuit in Smolen v Chater, 80 F.3d 1273, 1289, 9th Circuit Court (1996), fact that Petitioner's alibi witnesses was family members, and or lay person cannot be ground to reject his/her testimony. The District Court cited all cases [to] the Second Circuit that was district court ruling. The matter was never granted any appeal to be settled on appeal. The ruling conflicts with the Ninth Circuit Court, and the Federal Circuit Courts in Wright v United States Postal Service, 183 F.3d 1328, 1333, Fed. Cir. (1999),

holding, "A family member, while relevant, is not sufficient to disregard as a witness testimony", and the Second Circuit may be in conflict with its own circuit decision, and may be split as ruled in Brownridge v Miller, No. 06-cv-6777(RJD)(SMG), 2010 WL 2834829, at 6 (EDNY 2010), ruled that[An alibi is not disngenuous merely because it involves family members].

Given the high burden associated with claiming an alibi witness both the credible and compelling claim for actual innocence for habeas corpus hurdles, meaning that Petitioner's concerns are very indeed founded and has merit for this court to settle an issue in related to lay persons, and family members being an alibi defense. If the State can call such people to convict the guilty, than the same must account for the Petitioner in his case, such witness cannot be deemed not credible and unreliable on paper, without holding a hearing in order to determine that person demeanor, and any inconsistent prior statements; see Anderson v City of Bessemer City, N.C., 470 US 564 (1985). [see Appendix C][p.p. 34-55]

Petitioner was convicted for the crimes of Criminal Possession of a Forged Instrument in the Second Degree (2) counts and Scheme to Defraud in the Second Degree a lesser included crime of First Degree. Petitioner was sentence to a term of (20) years in life as an non-violent felony offender under the New York State's Persistent Felony Statute Criminal Procedure Law 400.20 & Penal Law 70.10. Petitioner has been in prison for the past 16½ years and counting, as of this filing.

Petitioner was charged in a (15) count forgery related indictment as an accompish. Petitioner direct appeal was affirmed in the first trial 101 AD3d 1734, 4th Dept. (2012). Petitioner case was reversed for a new trial because the state court forfeited his constitutional right to counsel. Petitioner proceeded to his second trial with new counsel, and was convicted. The direct appeal was affirmed in 163 AD3d 1422, 4th Dept. (2018), lv. denied 32 NY3d 1069, (2018)[Stein,J.][refer to 101 AD3d 1730, 4th Dept. (2012)]

Petitioner proceeded to trial with unwarranted counsel that did not visit his client one time after he was appointed by the court until the morning of trial. Defendant went on record complaining about counsel's failure to investigate and subpoena documents in regards to an alleged co-defendant that was prosecuted in Western District Court of New York for the same crimes that Petitioner was being prosecuted in State court, counsel failed to allow his client to participate in the defense who possessed material and relevant information; (ABA Standards of Criminal Justice Section 4.4-1 & 4.3-8(a) (b) [3ed 1993]), were violated. [see Appendix C]

Counsel denied petitioner of the right to present any alibi defense, let alone a sound alibi defense that would of defeated the prosecution's case. Petitioner's defense was doomed from the start when counsel never visited his client in regards to allow him to learn counsel's strategy for trial reasons, and to investigate for exculpatory material witnesses, were omitted by counsel's lapses and errors on this record.

The State argued a very short standard boilerplate argument in rebuttal to Petitioner's actual innocence claim, and the same for petitioner's claim that he was denied the effective assistance of counsel, and never presented any official court record, affidavit, and transcripts that contradict (ed) Petitioner's constitutional gateway claim, that he was actual innocence. The state misplaced Strickland when Petitioner argued that counsel failed to investigate his alibi defense, and that counsel ignored his alibi claim, without even investigating the alibi defense, rolling that defense under the yellow school bus, without reasons to the record. Here, Petitioner did not present his relief based on frivolous claims of actual innocence, and the district court conducted no hearing in order to determine demeanor, and whether the family members were lying, and whether there was any inconsistent in their statements, and hearing testimony was lacking in both state court and federal court.

The federal district court was wrong when it ruled that the State Court made a factual finding, including assessment of witness credibility, this court owes deference to them under the AEDPA's provisions dealing with factual determinations, and quoted 28 USC Section 2254(d)(2) and (e)(1); see Shabazz v Artuz, 336 F.3d 154, 163, 2nd Cir. Crt. (2003); and Cotto v Herbert, 331 F.3d 217, 233 2nd Cir. Crt. (2003). [see Appendix B, p.p. 59-76]

Under Rule 52(a) the district court was incorrect, and the Court of Appeals should of applied the correct legal standards of Rule 52(a), F.R.C.P., and reached a different determination as ruled in Doe v Menefee, 391 F.3d 147, 2nd Cir. Crt. (2004).

DISTRICT COURT PROCEEDING:

On June 5, 2020, Williams filed a petition for a writ of habeas corpus with the United States District Court for the Western District of New York. His claims of error related to trial court amended the indictment; prosecutorial misconduct, false testimony, ineffective assistance of counsel, and Brady violations, and actual innocence.

Petitioner moved for an stay and abeyance in order to proceed back to state court to exhaust newly discovered evidence in related to Shanda Williams, Kenneth Miller, and Rashoad Harvey in regards to the Fifth Amendment claim that he was compelled to become a witness against himself, dated January 3, 2021, since he filed a new CPL 440 motion to the lower court, dated 11/20/2020.

The Magistrate Judge granted an stay and abeyance motion in an order dated September 23, 2021; (see Appendix H). The Respondent's appeal[ed] the Magistrate court ruling to the District Court in its motion brief, dated 10/5/2021. And Petitioner opposed that motion upon the grounds that the Respondent never made any objections to the Magistrate court in the first instances. The District Court granted the Respondent's objections and denied the stay and abeyance motion. Thus, ruled that Petitioner should amend the petition under Rule 15, and that petitioner was within the tolling period of limitations for the amendment of the newly discovered exhausted claims, dated 12/11/2022 in its order. That Respondent was given (60) days to answer the new claims, and after Petitioner had (30) days to file any rebuttal answer to the new amended claims[see Williams v Shanley, 2022 WL 17629736].

Respondent filed its amended answer and state record on or about February 1, 2023; (see Appendix G), and after (wards) Petitioner filed his amended rebuttal answer with his state record, and another correction answer, dated February 9, 2023; (see Appendix E/F).

The District Court denied Petitioner's petition, and dismissed the petition in its (83) page ruling; (see Appendix B). Petitioner did not move for any rehearing pursuant to en banc, but proceeds to this court to be granted Writ of Certiorari.

SECOND CIRCUIT COURT PROCEEDING:

Petitioner filed a timely Notice of Appeal to the District Court of Western New York, and to the Second Circuit Court of Appeals, dated 11/9/2023. He later filed a Notice of Motion for permission seeking an certificate appealability. in his (73) page amended motion with Exhibit A[lower court ruling to CPL 440 actual innocence gateway claim]. Petitioner filed another additional letter to the court for the same relief as ruled in its ruling in Doe v Menefee, 391 F.3d 147, 2nd Cir. Crt. (2004), dated 12/14/2023; see Appendix C/D.

The Second Circuit Court of Appeals denied the appeal and dismissed the appeal upon the grounds that Petitioner failed to make a substantial showing of a constitutional violation; (see Appendix A, dated April 18, 2024.

Accordingly, this appeal to this Court is timely within (90) days allowed by statute of this Court rules.

REASONS FOR GRANTING THE PETITION:

This case warrants review by this Court for two grounds. First, the Second Circuit's application of Schulp/House conflicts with both ruling sought by this Court itself, as well as decisions of other Courts of Appeals. If left uncorrected, that decision will effectively eliminate in Schulp/House claims in postconviction proceeding under 28 USC 2254(e)(2) & 28 USC 2254 (b) both in the Second Circuit Court of Appeals.

Second, the Second Circuit's application of Schulp v Delo, 513 US 298 (1995), and House v Bell, 547 US 518 (2006); both cases citing Anderson v City of Bessemer City, N.C., 470 US 564 (1985), and the application of Strickland v Washington, 466 US 668 (1984) directly conflicts with this Court's decision in both Schulp/House ruling, as well as numerous decisions of the Circuit's Court of Appeals both before and after Schulp/House. Indeed, the Second Circuit's Schulp/House ruling, and the same with the Strickland's ruling reflects a persistent refusal to recognize what this Court and other Circuits recognize as fundamental in actual innocence claims with an independent constitutional violations, and counsel must investigate exculpatory material witnesses for defenses, such as an alibi defense, and counsel cannot make a "reasonable tactical decision" to forego an exculpatory material witness that possesses material information to the defense, as here, during pre-trial investigation for a sound trial defense, absent such an investigation.

More generally, the decision in this case makes clear that the Second Circuit continues to be in conflict with the teaching of this court, and the laws of the other Circuit Courts, respecting the appropriate standard of review under both 28 USC 2254(e)(2) & 28 USC 2254(d)(1). In House, this Court held that a district court entertaining a claim of actual innocence is not bound by the AEDPA's provisions requiring district courts to defer to the fact-finding of the State courts, and in Schulp's that the proper standard is for the district court to conduct an evidentiary hearing, as one of the requirements set forth by this Court in Schulp; citing Anderson, supra. The Circuit ruled in contrary of the abovementioned ruling set forth by this Court, and that decision runs afoul of this Court's precedent ruling. This court set forth the proper standards of review in a federal habeas corpus case is whether that State court's application of federal law was "objectively reasonable;" (at id. 519-37). This court rejected the **Second** Circuit's far more deferential approach, which authorized in House that the district court is not bound by the AEDPA's standards in an actual innocence claim, and a hearing must be held on the merits in order to determine the credibility of the witnesses in regards to then being credible and reliable with all the other old, and new evidence, as ruled in Schulp/House, and this Court's most recent ruling in McQuiggins v Perkins, 569 US 383, 386, 399-411 (2013).

The Second Circuit actually applied a standard of review as lax as the ones that have been rejected. The Second Circuit held that Petitioner's witnesses being family members, and or lay persons that they are not **credible** and that his actual innocence claim was not credible and compelling, and made this determination in contrary to the ruling set forth in Schulp/House, and avoided any contact with the witnesses Shanda Williams, Kenneth Miller, Rashod Harvey, Matthew Mix, counsel in violation of the ruling in Schulp/Anderson and Petitioner's due process rights.

In this regards, the Second Circuit is in conflict not only with Schulp/House but also with the Fourth, Sixth, Eighth, and Ninth Circuits, and District Court Circuit. As, the Ninth Circuit explained: "fact that alibi witnesses was family members, and or lay persons cannot be grounds for reject (ing) his/her testimony"; see Smolen v Charter, 80 F.3d 1273, 1289, 9th Cir. Crt. (1996); Wright v US Postal Service, 183 F.3d 1328, 1333, Fed Cir. Crt. (1999).

The trial court also denied Petitioner's alibi witness Kenneth Miller upon the grounds of passage of time suggesting that his affidavit are unreliable because it took him (12) years to come forward with his affidavit, but as ruled by the Sixth Circuit Court, passage of time alone does not convince a court to reject any alibi defense; see Cleveland v Bradshaw, 693 F.3d 626, 641, 6th Cir. Crt. (2012)[[T]he passage of time is [not] sufficient to reject of itself to render [an alibi] affidavit unreliable].

To the contrary, as argued in the Amended Petition to the trial court, the fact that Kenneth Miller and Shanda Williams both submitted their affidavit's in support of this fifth litigation CPL 440 postconviction motion should of supported the reliability itself of their affidavits in Volume III of the appendix; [refer to VOLUME III Miller & Shanda Williams affidavits]. The affidavits proves that them both was able and willing for cross-examination on what they said in the affidavits, and Shanda Williams for both of her affidavits, at the evidentiary hearing. And petitioner provided a reasonable explanation for the passage of time, and so did Kenneth Miller in his affidavit, dated October 2, 2020. As he lost contact with Petitioner for the past (12) years. A hearing should of been conducted within the standards set forth in Schulp; citing Anderson, supra., and ruling in House.

The Second Circuit's ruling are contrary to the ruling in [House]; that deals with a family member his [sister] in regards to exculpatory material information that lead to this Court granting his actual innocence claim, and the trial court was to apply the Carrier standard in this type of rare case. In House, supra., the sister was his alibi witness; (id. at 523). In Poindexter v Booker, 301 Fed.Appx. 522, 528, 6th Cir. Crt. (2008)[[W]e have granted habeas relief when counsel failed to investigate particularly when counsel failed to investigate key witnesses][emphasis omitted]; Grooms v Solem, 923 F.2d 88, 90, 8th Cir. Crt (1991)[Once a defendant identifies potential eyewitnesses, it is unreasonable not to make some effort to contact [alibi witnesses] to ascertain whether their testimony would aid the defense]; and

Crisp v Duckworth, 743 F.2d 580, 584, 7th Cir. Crt. (1984)[
An attorney who fails to even interview a readily available
witness whose noncumulative testimony may potentially aid the
defense should not be allowed automatically to defend his
omission simply by raising the shield of 'trial strategy
and tactics']; see also Fanaro v Pineda, No 10-cv-1002, 2012
WL 1854313, at 3 (SD Ohio, 5/12/2012[State court acted unreasonable
in failing to hold a hearing at which [] credibility determination
could be made])). Here, Petitioner's defense rests on the alibi
testimony in relation to Kenneth Miller, and that of Shanda
Williams both family members, and the trial court erred in
rejecting family members affidavits and or testimony without
conducting a hearing in accordance to Schulp/Anderson requirements
in order to determine credibility at a hearing, and not on paper,
does violates Petitioner's federal due process rights afforded
to him within the XIV Amendment of the United States Constitution;
see District Attorney's Office for Third Judicial Dist. v Osborn,
557 US 52 (2009)[see U.S.Const.Amend. XIV].

The Second Circuit's Court ruling are contrary to this
Court's ruling in House regarding family members, and all the
other Circuit Courts ruling abovementioned, and cited because
the Second Circuit's ruling runs afoul of this Court's precedent's
ruling, and those followed by all other Circuit Court of Appeals,
list abovementioned, warranting this Court to grant Writ of
Certiorari in this matter. Petitioner set forth sufficient facts
in his affidavit that he informed counsel multiple times in regards
that he had alibi witnesses to be investigated, and that counsel

never visited the client one time after being appointed by the court until the day of trial in violation of this Court's mandates in Strickland, and Wiggins, *supra.*; (see Volume II Appendix L state court transcripts, dated 6/15/2015 p.p. 2-34 & Volume III petitioner's affidavits Exhibit 3 & 5 related to counsel's errors and lapses)[see ABA Standards of Criminal Defense Section 4.4-1 & 4.3-8(a)(b) (3ed rd 1993)][see Strickland v Washington, 466 US 668 (1984)][see U.S.Const.Amend. VI & XIV], were violated.

The trial court in its ruling from pages 59-76 never mentions Schulp/House in its ruling citing any conclusion of fact and conclusion of law in its determination that would provide this Court with any intelligent appellate court review in its (83) page ruling in Appendix B, but misapplied the salient facts and the United States Supreme Court cases that was cited in Petitioner's Reply Amended Memorandum of Law in Appendix C p.p. 2-55. This case does warrants to be granted Writ of Certiorari. The record in this case is devoided of the real facts in regards to counsel's strategy not to investigate, and or at least attempt to locate Mr. Miller for at least an interview, and the same for Shanda Williams, are matters off the record that entitled petitioner to an evidentiary hearing, and the same for Kenneth Miller and Shanda Williams at a live hearing with coupled with Mr. Williams testimony. There should of been no deference applied to the State court ruling by the federal courts. The record proves that petitioner was not the person that cash the forged checks on the dates in question, and was acquitted on all other (13) counts.

Accordingly, the Second Circuit decision does run afoul of multiple circuit court of appeals, as established abovementioned, and with the current past ruling from the First and Eleventh Circuits Court of Appeals. The First Circuit Court of Appeals ruled in Bowling v Vose, 3 F.3d 559, 1st Cir. Crt. (1993)[In a arson trial the Petitioner advised counsel of two exculpatory material witness that could give relevant and material testimony in regards to his alibi defense, who was his common law wife and her sister. Counsel did investigate the sister as an witness to the alibi, but that was late, and denied by the trial court. The First Circuit Court of Appeals ruled that counsel was ineffective under the facts and circumstances, thus remanded the matter back to the trial court in order to determine whether petitioner was prejudice under the Strickland, standards]

In another alibi criminal prosecution, the Eleventh Circuit Court of Appeals ruled in Cade v Montgomery, 799 F.2d 1481, 11th Cir. Crt. (1986)[In a robbery trial criminal prosecution counsel failed to investigate Petitioner's mother and girlfriend in relation to an alibi defense, and failed to move for an continuance when no defense witnesses appeared other than petitioner himself, were ineffective for not investigating both of the alibi witnesses that defense counsel's inadequate pretrial investigations of alibi defense are grounds of ineffective assistance of counsel, and was reversed and remanded with instructions to the trial court].

The above listed cited cases deals with family members such as common law wife, sister in law, mother, and girlfriend, did not rule that they were not credible since they were family.

In this regards, the Second Circuit is in conflict not only with Schulp/House, and Anderson, but also all the Circuit Courts like the Fourth, Sixth, Seventh, Eighth, and Ninth, & DC Circuit Appeals As explained abovementioned with the Ninth Circuit: "fact that alibi witnesses was family members and or lay persons cannot be ground to reject his/her testimony".

Here, this Court must caution, however, that the increment need not be great, otherwise, habeas corpus relief would be limited to state court decisions so far off the mark as to suggest judicial incompetence; see Francis, S. v Stone, 221 F.3d 100, at 111, 2nd Cir. Crt. (2000)[internal quotation marks and citation omitted]. The Third and Eighth Circuits similarly ask "whether the state court decision, evaluated objectively and on the merits, resulted in an outcome that cannot be justified"; Keller v Larkins 251 F.3d 408, at 418, 3rd Cir. Crt. (2000)[internal citation and quotation omitted]. And the Ninth Circuit has interpreted the abovementioned as the same reinforcing the standard previously established by the Third and Eighth Circuits.

This Court thus chose to adopt the interpretation of the AEDPA that espoused the more robust habeas review; Van Tran v Lindsey, 212 F.3d 1143, 1150-51, 9th Cir. Crt., Cert denied 531 US 944 (2000); accord Gun v Ignacio, 263 F.3d 965, 971, 9th Cir. Crt. (2001); see also Neal v Puckett, 286 F.3d 230, 235-36, 5th Cir. Crt. (2002)[en banc]. This Court must provide Williams with the right that Congress prescribed. Petitioner waives review in regards to all other claims in the Petition, except those expressly, argued, herein below.

POINT I: THE TRIAL COURT FINDING OF PETITIONER'S GATEWAY ACTUAL INNOCENCE WAS CLEARLY ERRONEOUS UNDER RULE 52(a).

In this circumstance, actual innocence "does not merely require a showing that a reasonable doubt exists in the light of new evidence, but rather that no reasonable juror would have found the defendant guilty. To proceed through the Schulp gateway a petitioner must present a "credible" and "compelling" claim of actual innocence. This requires petitioner to support his allegations of constitutional claims with new reliable evidence-whether it be exculpatory scientific evidence, trust (worthy) eyewitness accounts, or critical physical evidence that was not presented at trial; Schulp, 513 US 298, at 324, (1995).

The district court was to apply the Carrier v Murray, 477 US 478 (1986) standards when reviewing this case. That standard is intended to focus the inquiry on actual innocence. In assessing the adequacy of petitioner's showing, therefore, the district court is not bound by the rules of admissibility that would be govern at trial, when determining the merits of the evidence[new and old]. [refer to McQuiggins v Perkins, 569 US 383, 386 (2013)]

Instead, the emphasis on "actual innocence" allows the reviewing court also to consider the probative force of relevant evidence that was either excluded or unavailable at trial...The habeas court must make its determination concerning the petitioner's innocence "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 trial; see [id. at 327-328][citations omitted].

The district court was wrong to determine the credibility in regards to petitioner's alibi witnesses named Shanda Williams and Kenneth Miller, since both of them was family members, when that Circuit are split on that issue. The state court held no hearing in regards to their demeanor in open live court, was lacking in order to make a valid determination in regards to whether the both of petitioner's witnesses were credible under the Schulp requirements, as ruled by this Court. The District Court did determine correctly that both witnesses statements was new, and can be used for "actual innocence"; (see Appendix B p.p. 19); see Rivas, 687 F.3d 514 , 2nd Cir. Crt. (2012)[id. at 543][stating that "new evidence" under Schulp is evidence not heard by the jury].

The Petitioner argued all the abovementioned to the district court, and the Court of Appeals; see Appendix C Petitioner's request motion for certificate of appealability, dated 11/28/2023 p.p. 3-55 & Appendix D Petitioner additional submissions, dated 12/14/2023 p.p. 1-3; and Appendix E Supplemental Amended Petition p.p. 1-72; and Application to State Court for permission to appeal in Appendix I p.p. 1-45], all was denied for a hearing in order to determine the credibility in regards to Kenneth Miller and Shanda Williams in regards to whether Williams had offered a credible and reliable alibi defense, was never sought in any pre-trial hearing by the trial courts, rendering that the Court of Appeals was misguided by Rule 52(a) of F.R.C.P.;

see Anderson v City of Bessemer City, N.C., 470 US 564 (1985); quoting United States v United States Gypsum, 333 US 364, 395 (1948). District Court finding are reviewed for clear error

Here, Petitioner requests that this Court apply Rule 52(a) to this case, since Petitioner's federal due process rights were violated, since the matter was never reviewed for credibility determine in a hearing in order to review demeanor of the witnesses involved. Petitioner is not asking this Court to reverse the finding of the trier of fact simply because it is convinced that it would have decided the case differently. Because this Court would overstep the bounds of its duty under Rule 52(a), if it was to undertake the role of the lower court.

Here, there was two permissible views of the evidence, the factfinder's choice between them both can be clearly erroneous; see United States v Yellow Cab Co., 338 US 338, 342 (1949). Here, the two courts violated Petitioner's Fourteenth Amendment of the United States Constitution when them both denied Petitioner a hearing in order to determine whether his two witnesses was credible and reliable, only a hearing being held was to ensure the credibility in relation to Shanda Williams and Kenneth Miller, and the same for the Fifth Amendment in regards to Rashod Harvey. The two factfinder's was not able to determine the validity of the evidence in regards to the Schulp standards without conducting a hearing to hear live testimony; see Califano v Yamasaki, 442 US 682, at 690-93 (1979); see also Goldberg v Kelly, 397 US 254, at 267-278 (1970). Here, both courts denied Petitioner of the right to be heard, as ruled

the same for the right to counsel ; as ruled by this Court in Powell v Alabama, 287 US 45, at 68-69 (1932). The decision cannot rest upon legal rules sought by the lower court, and the court of appeals where Petitioner was denied the most important stage of the process the right to be heard, and the same in regards to allow the factfinder to see the witnesses in live court for their demeanor, and any inconsistent prior statements, must not be ruled on paper, only, does violates Petitioner's right to procedural due process, this matter must be remanded back to the Court of Appeals with instructions to be remanded back to the trial court in order to conduct a hearing in order to determine the witnesses demeanor in light of their statements, and the other evidence in petitioner's favor; see Goldberg v Kelly, 397 US at 267-278[see U.S.Const. Amend. XIV], were violated[see Appendix C Exhibit A State Court ruling in regards to CPL 440 actual innocence denial without any hearing]. The district court was not to give any deference to the state court ruling where no hearing held in order to determine the validity of the credibility in regards to Shanda Williams & Kenneth Miller. The decision marker's conclusion as to the credibility in relation to Shanda Williams & Kenneth Miller must rest solely on the legal rules and evidence adduced at the hearing, was missing with both courts ruling; see Ohio Bell Tel. Co. v PUC, 301 US 292 (1937); United States v Abilene & Co., 265 US 274, 288-89 (1924).

There was no way to ensure that the determination sought was valid within the rules of Schulp requirements without

NOTE: The trial court in its ruling impeached both witnesses with their own written affidavits without a live hearing for rebuttal.

conducting a live hearing in order to determine the witnesses demeanor on the witness stand, this determination made by both courts does runs afoul of the Fourteenth Amendment of the United States Constitution, and are not in compliance with Schulp elementary requirements, because the decision maker was not able to state the reasons for their determination that was sought, as argued below; see House v Bell, 547 US 518, at 555-565 (2006); see also Doe v Menefee, 391 F.3d 147, 2nd Cir. Crt. (2004)[id. at 163-65].

Here, the trial court failed to hear the new evidence and testimony in a hearing in order to make a valid assessment where, as was not done herein, that the new evidence consist of testimony, not paper, that challenges the facts on which the prosecution relied in obtaining the conviction, the court was to carefully consider the nature of the testimony in light of the existing record to determine where it can be considered reliable; see Schulp, 513 US at 327-328; and Anderson, 470 US at 575.

The trial court denied petitioner one element of a hearing in order to determine that the testimony constitutes new reliable evidence. After, which the court was to than evaluate whether it's subjective impression of the testimony can be sustained in light of the record as a whole.

The trial court was the only place that petitioner had available to him, after the state court had denied him a hearing pursuant to CPL 440.30(5); People v Brown, 33 NY3d 983, 986 (2019)[see CPL 440.30(1)(a) & CPL 440.30(4)(a)], and was generally best place to evaluate testimony in light of the witnesses demeanor, credibility determination are not composed

of demeanor evaluations alone. Even after a hearing if the Court finds that a witness appears to be telling the truth it must, as Anderson Court recognizes, evaluate the testimony in light of the substance of other evidence, considering the potential motives to be untruthful that the witness may possess, corroboration or the lack thereof, internal consistency, and the inferences or assumptions that crediting particular testimony would be require; see Anderson, 470 US at 575.

Here, the trial court overlooked the first element that is a requirement in order to determine whether a witness is credible and or reliable is an evidentiary hearing requirement, was never met by the trial court in this matter, and the same was done in the State court denial; (see Appendix A-E), and (Appendix I & J), all was argued to the State Court, and the district court, and Court of Appeals, now this Court in order to be granted relief. The decision to deny Petitioner a hearing was in violation of this Court's two ruling in Schulp/Anderson.

Only, after the Court of Appeals remand this matter back for an evidentiary hearing in accordance to 28 USC 2254(e)(2), and having the district court review both Shanda Williams, Kenneth Miller, and Isiah Williams, counsel Matthew Mix in light of Shanda Williams prior statement and Williams's admissions of his innocence with the other evidence in the record, does create an probability that the courts would not have been left with a "definite and firm conviction" that the Court of Appeals in its denial to dismiss the petition/appeal committed clear legal error in not crediting their testimony without a

evidentiary hearing being held pursuant to 28 USC 2254(e)(2); see Anderson, 470 US at 573; and Schulp, 513 US at 327-28.

In the abovementioned context it was clear legal error for the Court of Appeals to find Shanda Williams, Kenneth Miller, Rashod Harvey, Isiah Williams, and counsel Matthew Mix testimony does not constitute new reliable evidence. This matter must be remanded in order to allow the district Court to conduct a hearing on the credibility determination in regards to Miller, and Shanda Williams on Petitioner's actual innocence claim. This would allow Williams to "establish" his innocence by a preponderance of the credible evidence, that he was denied; (see Appendix A Court of Appeals, denial, dated 4/18/2024).

In support of the state court record Petitioner provided the written statements of Kenneth Miller, Shanda Williams, Isiah Williams, and Rashod Harvey, supported with official court records, transcripts, and discovery that supported his claim of actual innocence. Counsel never investigated Petitioner's alibi defense during pre-trial, and acted outside of the scope of his representation when he never visited the client one day prior to trial in order to allow petitioner to know his trial strategy, and to allow defendant to participate with his alibi defense; [see Strickland v Washington, 466 US 668, 690-91 (1984)] [see ABA Standards of Criminal Defense Section 4.4-1 & 4.3-8(a) (b) (3rd 1993)], were violated; see also Holland v Florida, 130 S.Ct. 2549 (2010). There were multiple conflicting statements that warranted a hearing to be held in this matter.

Here, this Court must determine that a factual

finding is "clearly erroneous only if although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made; see Ortega v Duncan, 333 F.3d 102, 106, 2nd Cir. Crt. (2003). Here, a hearing would of determine certain details of what occurred on November 29, 2007, and December 13, 2007, and that Petitioner was at Ike's Kitchen working, and maintaining the Bar & Grill on the dates that those forged checks was cashed, and that he was not involved in any crimes on those dates in question; (see Appendix C to E).

The court had to review all witnesses demeanor while on the stand, the discrepancies between their testimony and written statements, and their lack of credibility, only than the court can determine who is credible, and who is not credible for Schulp/Anderson, at a hearing in accordance to 28 USC 2254(e)(2), and should of applied no deference to the state court ruling under 28 USC 2254(e)(1), was misapplied in this matter. [see Volume III, Exhibit 1 to 10]

Only, the abovementioned would of allow Petitioner to establish his burden of proof by an preponderance of the evidence. It would of allow the court to be "entitled to great weight", in light of its full opportunity to see all witnesses hear testimony, review evidence, and observe demeanor, for an sufficient result within legal standards; see People v Parsons, 169 AD3d 1425, 4th Dept. (2019); citing People v Thidobeu, 151 AD3d 1548, 1552, 4th Dept. (2017), lv. denied 31 NY3d 1155 (2018). The state court in this case violated its own standards when ruling on witnesses credibility in this case, with no hearing.

The Court of Appeals should of been aware that the Carrier, standards "does not require absolute certainty about the petitioner's guilt or innocence; see House v Bell, 547 US 518, 538 (2006). Rather, the standard is a probabilistic one that requires a petitioner to show that upon consideration of the new evidence "it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt"; see Schulp, 513 US at 327.

In undertaking this probabilistic inquiry, "[i]t must be presumed that a reasonable juror would consider fairly all of the evidence...[and] would conscientiously obey the instructions of the trial court requiring proof beyond a reasonable doubt[see CPL 250.20 & 300.10][alibi instructions/and affirmation defense instructions], was argued to the trial court and Court of Appeals; (see Appendix C p.p. 2-55 & Appendix E p.p. 23-72)[see id. at 329]. The standard to be applied was to be much more less strict than the insufficient evidence standard outlined in Jackson v Virginia, 443 US 307 (1979)[looks to whether there is sufficient evidence which if credited, could support the conviction, because it focuses on what a reasonable juror would do;](id. at 329-30).

In this case the judge himself determined Williams guilt in denying the 28 USC 2254 petition without a hearing, and one was warranted under 28 USC 2254(a) in order to determine Petitioner is being held in state custody against his constitutional rights.

POINT II: WILLIAMS HAS MADE A COLORABLE CLAIM IN REGARDS TO HIS ACTUAL INNOCENCE UNDER SCHULP'S REQUIREMENTS & CREDIBLE.

Williams **case** is analogous with the ruling of Schulp at bar, and that he has established a colorable claim of actual innocence sufficient to warrant allowing his federal constitutional claim that he was denied the effective assistance of counsel for not investigating his alibi defense, and witnesses named Kenneth Miller, and Shanda Williams to be heard in federal court.[see McQuiggins v Perkins, 569 US 383, 398-102 (2013)]

In Schulp, the petitioner was convicted for murder while he was serving time in prison. Two correctional officers **identified** Schulp as one of the assailants. A "wrong man" defense was presented at trial. However, Schulp's trial attorney had failed to adequately investigate by not interviewing potential exculpatory witnesses. There was also evidence that the State had not disclosed to the defense names of potentially exculpatory eyewitnesses to the killing. This evidence uncovered as a result of the investigation by a different defense counsel post-conviction.

On appeal, Schulp raised **some of the same issues raised** appellant himself, herein, i.e., **false testimony, and ineffective assistance of counsel**. Schulp's claims were twice rejected in the federal courts, over dissenting opinions. The Supreme Court held that "if the habeas court were merely convinced that th[e] assurance that the trial was untainted by constitutional errors Schulp's threshold showing of innocence would justify a review of the merits of the constitutional claims, (id. at 317). Accordingly, the matter was remanded back to the district court for reconsideration

of Petitioner's claim of actual innocence.

Schlup squarely disposes of Respondent's primary assertion that the new evidence **presented was not credible/compelling and that Williams provided no explanation for the (12) years delay** to satisfy the Schlup gateway test. In Schlup, the post-conviction evidence consisted of affidavits from presumably available witnesses; it did not involve exculpatory physical evidence; Schlup, 513 US at 310-313. Furthermore, the Court held that Schlup had made a prima facie showing of actual innocence even though the affidavits offered did not negate every piece of incriminating evidence in the record, *id.* at 332, fn. [see Appendix G Respondent's answer p.p. 10-11]

Schlup merely requires that the new evidence be "exculpatory scientific evidence, trustworthy eye-witnesses accounts, or critical physical evidence that was not presented at trial"; Schlup, 513 US at 324. **Williams met the requirements in this matter & material misstatements or falsehoods made by witnesses like Jones and Hay-Boler, and the two alibi statements in regards to Kenneth Miller and Shanda Williams does constitute newly discovered evidence under the Schlup standard; see Souter v Jones, 395 F.3d 577, 6th Cir. Crt. (2005)[concluding that because the only physical evidence upon which Souter's conviction rested the alleged fact that he had assaulted the victim with a liquor bottle found at the scene had been discredited, and the remainder of the case against him was entirely circumstantial, he had succeeded in meeting the Schlup standards]; Paradis v Arave, 130 F.3d 385, 396 9th Cir. Crt. (1999)[granting Schlup review based on medical records**

which were Brady material never turned over to the defense which strongly suggested that the victim did not die at the time the prosecution claimed]; Carriger v Stewart, 132 F.3d 46, 9th Cir. Crt. (1997)[granting Schulp review where prosecution suppressed evidence that informant who had testified against had confessed to the police that he himself had killed the victim]; Garcia v Portuondo, 334 F.Supp.2d 446 (SDNY 2004)[granting Schulp review where petitioner was convicted on basis of single eye-witness and subsequent evidence produced established that petitioner was in Dominican Republic just two hours before the murder occurred in the Bronx]; Reasonover v Washington, 60 F. Supp.2d 937 (ED, Mon. 1999)[granting Schulp review where prosecution suppressed tape-recording of jail house conversation between petitioner and testifying accomplice where they had discussed their innocence]; see also Bragg v Norris, 128 F.Supp.2d 587 (ED Ark. 2000)[granting Schulp review where new evidence was uncovered discrediting the testimony of undercover agent which was that the linchpin of the prosecution's case][see id. at 326-333(Schulp's)].

In Sacco v Greene, 2007 WL 432966 (SDNY), the court ordered an evidentiary hearing in a first petition case involving a claim of actual innocence based on post-trial affidavits from the defendant's wife; in her affidavit, the wife mentioned a tele (phone) conversation defendant had with the murder victim that, if true, would have made it impossible for him to have been at the murder scene at the time the crime occurred. There was also evidence from other witnesses that someone else confessed to the murder. While the issue of ineffective assistance of counsel

was raised in State courts, the new affidavits were not. Nevertheless, the district court ordered an evidentiary hearing on the petitioner's claim of actual innocence because it was his first habeas corpus petition; accord House v Bell, supra.

The abovementioned foregoing cases clearly establish that discovery of new evidence offered by the Petitioner, and or falsehood testimony offered by state agents can satisfy the Schlup standards to be granted the relief sought, herein.

Here, discrediting Tameka Jones and Veronica Hay-Boler revised the whereabouts of Petitioner on November 29, 2007 & December 13, 2007 effectively have reestablished the whereabouts of Petitioner as being within the time period of an alibi from Kenneth Miller, alone, and the false testimony in regards to Mrs. Jones at the Monroe County Grand Jury, and the first trial of the defendant that was reversed on appeal in 101 AD3d 1730-34, and the same for Mrs. Hay-Boler lying that defendant called her (8) times while they were riding in the same vehicle for those time periods; (see Appendix C to E).

The evidence was discovered by defendant after trial, and was available for counsel during the trial. Trial counsel's failure to use the critical alibi evidence constituted the nadir of ineffective assistance of counsel; counsel's ineffectiveness itself raises a very strong possibility that petitioner would have been acquitted had the jury heard from Shanda Williams and Kenneth Miller evidence, and had the jury been advised of the alibi instructions pursuant to CPL 250.20 & 300.10 [affirmative defense], and counsel failed to offer.

Accordingly, Petitioner was denied the effective assistance of counsel within the context of the Sixth Amendment of the United States Constitution, had counsel investigated the alibi defense, there's a reasonable probability that the outcome of this trial would of been more favorable to Petitioner within the standrds set forth in Strickland v Washington, 466 US 668, 687-88; 690-91; and 694-96 (1984)[see U.S.Const.Amend. VI & XIV], were violated. Counsel's representation did fell below an objective standard of reasonableness set forth in Strickland, as argued to the Court of Appeals; (see Appendix C p.p. 2-55).

It must be judicially noted that Respondent argued that Petitioner presented a "freestanding" claim that he was actual innocence, and that the claim was not cognizable for relief, wholly lacks merit. The Respondent in its answer never argued the salient off record material facts with any conclusion of law to rebut Petitioner's claim that he was not denied the effective assis (tance) of counsel for counsel failure to investigate two exculpatory material witnesses, and the reasons for not following up on the alibi claim when he was advised by Petitioner off the record, as was provided in Petitioner's affidavit, should of been more properly addressed at a hearing in order to determine whether the claims lacked merit and untrue; (see Appendix 3, Voulme III). Refer to Respondent's answer in Appendix G p.p. 9-13, should of been rejected by the Court, and a evidentiaty hearing held in accordance to 28 USC 2254(e)(2), and rejected 28 USC 2254(e)(1), as ruled in Schulp/ House. The trial court was incorrect to apply the AEDPA's deference ruling in such a "rare" case.

POINT III: THE STATE COURT RULING IS NOT ENTITLED TO ANY DEFERENCE
AS WAS RULED BY THE FEDERAL COURTS.

In, House, 126 S.Ct. at 2078, this Court here ruled that a federal district court entertaining a claim of actual innocence is not bound by the AEDPA's provisions requiring district courts to defer to fact-finding of state courts absent clear and convincing evidence of an erroneous determination; rather, because a claim of actual innocence presents a mixed question of fact and law, this Court further ruled that a district court may conduct its own evidentiary hearing and make an "independent assessment" of the credibility of the witnesses and the evidence offered by the petitioner in support of his claims of actual innocence.

In this case at bar, the State judge's finding of fact should not be accorded deference because: (1) the court heard no testimony from any eye-witnesses in regards to the alibi defense; (2) there was no testimony from trial counsel in regards to whether he was informed of the alibi defense, as written in Williams affidavit; (3) the Judge in this matter made the only credibility determination on paper in violation of Petitioner's XIV of the United States Constitution; (4) the district attorney had committed multiple prior Brady violations, and suppressed the Grand Jury subpoena in regards to the cell phone records of the Petitioner with the appearance of impropriety; and (5) the fact-finding process was done simply wrong and bias against Petitioner claiming that he are actual innocence.

NOTE: In this case the judge himself determined defendant's guilt as the sole person without any accord to Schulp/House mandates

For, example a hearing would of allow Petitioner to prove that his family members were indeed credible under the facts, and when Shanda Williams made her affidavit in 2019 that Mr. Miller was not under Petitioner's control since he was unaware of his whereabouts for the past (12) years.

The state court discredit Kenneth Miller affidavit on a mistake of facts and law, thus never ruling on the issue in regards to Shanda Williams affidavit. Here, Petitioner can rebut the state court ruling with the same evidence that went before the state court, and the presumptive would be met by Petitioner at a hearing held in accordance to 28 USC 2254(e)(2); and the Court of appeals improperly ruled wrong siding with the district court ruling in regards to Kenneth Miller and Shanda Williams affidavit's; see Cullen v Pinholster, 563 US 170, at 180 (2013)[see 28 USC 2254(d)(1)(2)], were violated, herein.

The trial court rejected Williams claims in regards to counsel failure to investigate his alibi defense, and that counsel ignored Williams multiple attempts to him in regards that he had an alibi defense to offer, was omitted by counsel's off record strategy choices not reflected in the record; see Wiggins v Smith, 539 US 510, 534 (2012); Rompilla v Beard, 545 US 374 (2012); see also this Court's ruling in Harrington v Richer, 562 US 86, at 101-103 (2011). Schriro v Landrigan, 550 US 465, 474 (2007), controls whether to grant a hearing, and the Court of Appeals misguided that ruling when determining the validity of Petitioner's appeal in its denial; (see Appendix A COA denial, dated 4/18/2024).

NOTE: Williams pleas to the state court for new counsel the morning of jury selection, since he never met with counsel one time after counsel was appointed by the court[see Appendix L T.T. p.p. 2-21].

Williams refers this Court to his arguments sought in his multiple filing to the federal courts that went ignored; (see Appendix C to E, and State court permission to appeal in Appendix K, and Petitioner's argument on the record to the State Court in regards to Petitioner complaining about counsel's errors and lapses in Appendix L T.T. p.p. 2-35). Defendant did advance that claim on direct appeal, and that claim was denied, and the same to the State Court of Appeals in Appendix K Appellate Court denial, and Court of Appeals denial).

Sadden to continue to argue that Petitioner was denied what the federal constitution affords a criminal defendant the right to meaningful representation; see McMann v Richardson, 397 US 759, 771 n. 14 (1970)[holding claims of ineffective assistance of counsel are governed by the Supreme Court holding in Strickland v Washington, 466 US 668, 687-88 (1984); and Williams Taylor, 529 US 362, 390 (2000). Petitioner was denied the right to meet the two prongs requirements for such a claim, and counsel should of been able to explain his strategy to the Court at a hearing whether it was State court of Federal court, simply put.

The federal court denied Petitioner of the last opportunity that is the second part of Schulp test is to determine whether the new evidence submitted by Williams is reliable, The State in its answer did not attack the reliability of Miller and Shanda Williams affidavits; (see Appendix G Respondent's supplemental answer p.p. 1-15) or Petitioner's affidavit, and the district court only found this evidence unreliable because they was Petitioner family members, and never ruling in regards to Petitioner's affidavit, all (3) affidavit was consistent with

each other; (see Appendix C p.p. 2-55). This Court have no reason to question the reliability of this evidence, and it should be deemed reliable and credible under Schulp, and the information was readily available to counsel, as expressed in Williams affidavit, and those affidavit's was never refuted by the State with any court record, official document, and or transcripts pursuant to CPL 440.30(4)(d)(i)(ii); see People v Stetin, 192 AD3d 1331, 3rd Dept. (2021). Miller affidavit was the core of Petitioner's defense, that went omitted by counsel's off record legitimate strategy; see Strickland v Washington, 466 US at 687-88; and 690-91/694-96. [see U.S.Const.Amend. VI]

Lastly, the trial court ruled incorrect when the court ruled that Miller and Shanda Williams was not credible because they were family members, denying Petitioner due process of law. That they were bias and had a motive to falsify an alibi for Williams; (see Appendix B p.p. 59-76). Respondent never argued such a claim in its answer; (see Appendix G Respondent's answer p.p. 12-14). Respondent presented no evidence whatsoever that Miller and Williams[Shanda] were biased other than the court's denial, and that they were related to Petitioner. That alone should have not allowed the court to deny Williams petition determinations as to their reliability; see Brownridge v Miller, No. 06-cv- 6777(RDJ)(SMG), 2010 WL 2834829, at 6 (EDNY 2010)[an alibi is not disingenuous merely because it involves family members]; see also Wright v US Postal Service, 183 F.3d 1328, 1333 (Fed Cir. 1999)[A family member interest, while relevant, is not sufficient to disregard a witness testimony]; see also

Smolen v Chater, 80 F.3d 1273, at 1289, 9th Cir. Crt. (1996)[The fact tha a lay witness is a family member cannot be ground for rejecting his/her testimony].

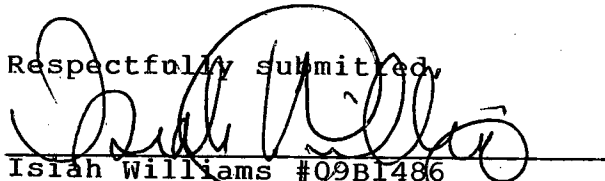
In any event, at the time they submitted their affidavits, Petitioner and Shanda was separated for years since the incarceration, and Kenneth was not able to locate for multiple years, since he moves around to different residence, all was matters off the record that would of establish that they were both credible and reliable under the facts and circumstances, after Petitioner was convicted Shanda and him both agreed for a separation, as written in Shanda's 2019 affidavit to the court. The court should of had difficulty believing that Kenneth and Shanda were bias in favor of a common law family member, since Williams lost contact with Miller for (12) years and counting, and still never spoken to him to as of date, and there was no evidence in the record that provided the court that they were lying in favor of Williams, and that they submitted perjurious affidavit's in support of Williams claims that he are actual innocence in order to exonerate him. That denial by the trial court, and upheld by the Court of Appeals was purely speculation, and biasness towards Williams, warranting this Court to grant Writ of Certiorari in this matter[see Appendix Volume III].

CONCLUSION

For the above reasons, the judgment and opinion of the Second Circuit Court of Appeals should be reversed and the case remanded with instructions to dismiss Petitioner's Habeas Corpus petition the finding of the district court.

DATED: July 31, 2024
Albion, New York

Respectfully submitted,



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