

No. _____

IN THE
Supreme Court of the United States

RYAN LAWRENCE ANTHONY,
Petitioner,

v.

GARRETT LANEY,
Superintendent, Oregon State Correctional Institution,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

Kurt David Hermansen
Supervisory Assistant Federal Public Defender
859 Willamette Street, Suite 200
Eugene, Oregon 97401
Cell: (619) 436-8117 ♦ Office: (541) 465-6937
Kurt_Hermansen@fd.org

Counsel for Petitioner

QUESTION PRESENTED

Strengthening *Chambers v. Mississippi*, this Court in *Holmes v. South Carolina*, 547 U.S. 319 (2006), held that even where the government's forensic evidence is strong, defendants have a due process right to present exculpatory evidence that someone else committed a murder. Despite *Chambers* and *Holmes*, the state court excluded evidence of serial-killer Smith's confession. Did the state court contravene *Chambers* and *Holmes* by excluding serial killer Smith's confession and condemning an innocent man to the fate of dying in prison?

PARTIES TO THE PROCEEDINGS

Petitioner, Ryan Lawrence Anthony, is serving a life sentence at the Oregon State Correctional Institution in Salem, Oregon. Respondent, Garrett Laney, is the Superintendent of the Oregon State Correctional Institution. Respondent is represented by the Office of the Oregon Attorney General.

RELATED PROCEEDINGS

Counsel for Petitioner is unaware of any related proceedings beyond the state and federal court proceedings in this case, which are attached in Appendices A through D.

TABLE OF CONTENTS

	Page
Opinions Below.....	1
Jurisdictional Statement.....	2
Relevant Statutory and Constitutional Provisions	2
Statement of the Case	2
A. Introduction: The Constitutional Error Was Not Harmless.....	2
B. Anthony and his jurors were denied exculpatory evidence at trial, which usurped the jury's function and denied Anthony a fair trial.	3
C. The state court excluded serial-killer Smith's confessions, contrary to this Court's clearly established holdings in <i>Chambers</i> and <i>Holmes</i> , in violation of Ryan Anthony's due process right to present a complete defense.....	4
Reasons for Granting the Petition.....	8
Conclusion	25

INDEX TO APPENDIX

APPENDIX A:	Memorandum Opinion in Case No. 23-35030 by United States Court of Appeals for the Ninth Circuit	App. 1a-13a
APPENDIX B:	United States District Court Judgment and Order adopting U.S. Magistrate Judge's Findings and Recommendation along with those Findings and Recommendation	App. 14a-48a
APPENDIX C:	Order Denying Timely Petition for Rehearing by United States Court of Appeals for the Ninth Circuit	App. 49a
APPENDIX D:	Last reasoned Oregon Court of Appeals Opinion affirming Petitioner Anthony's conviction	App. 50a-51a

TABLE OF AUTHORITIES

	Page
Federal Cases	
<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991)	5
<i>Brechert v. Abrahamson</i> , 507 U.S. 619 (1993)	3, 24
<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973)	4, 5, 6, 9, 11, 12, 14, 15, 20, 21, 25
<i>Crane v. Kentucky</i> , 476 U.S. 683 (1986)	10
<i>Cudjo v. Ayers</i> , 698 F.3d 752 (9th Cir. 2012)	9, 14, 15, 21, 24
<i>Fieldman v. Brannon</i> , 969 F.3d 792 (7th Cir. 2020)	10
<i>Gable v. Williams</i> , 49 F.4th 1315 (9th Cir. 2022)	9, 11, 14
<i>Green v. Georgia</i> , 442 U.S. 95 (1979) (per curiam)	10
<i>Holmes v. South Carolina</i> , 547 U.S. 319 (2006)	3, 5, 21, 22, 23, 25
<i>Kotteakos v. United States</i> , 328 U.S. 750 (1946)	3, 23, 24
<i>Kubsch v. Neal</i> , 838 F.3d 845 (7th Cir. 2016) (en banc)	10
<i>Lockyer v. Andrade</i> , 538 U.S. 63 (2003)	25

<i>O'Neal v. McAninch,</i> 513 U.S. 432 (1995)	23
---	----

<i>United States v. Scheffer,</i> 523 U.S. 303 (1998)	23
--	----

Federal Statutes

18 U.S.C. § 3006A(d)(7)	1
28 U.S.C. §1254(1) (2008)	2
28 U.S.C. § 2254(d)	12

State Cases

<i>State v. Anthony,</i> 247 Or. App. 582 (2012)	13, 14, 17, 18
---	----------------

Other

<i>Every Juror Wants A Story: Narrative Relevance, Third Party Guilt and the Right to Present A Defense,</i> 44 Am. Crim. L. Rev. 1069 (2007)	8
U.S. Const. Amend. V & VI	2

No. _____

IN THE
Supreme Court of the United States

RYAN LAWRENCE ANTHONY,
Petitioner,

v.

GARRETT LANEY,
Superintendent, Oregon State Correctional Institution,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Ryan Lawrence Anthony, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered on February 2, 2024, affirming the denial of habeas corpus relief.

Opinions Below

The District Court denied habeas corpus relief in an unpublished opinion on December 13, 2022 (Appendix B). The Ninth Circuit affirmed

the denial of habeas corpus relief in an unpublished opinion on February 2, 2024. (Appendix A). The Ninth Circuit denied panel and en banc rehearing on May 9, 2024 (Appendix C).

Jurisdictional Statement

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1) (2008).

Relevant Statutory and Constitutional Provisions

In all criminal prosecutions, the accused shall enjoy the right to ... have compulsory process for obtaining witnesses in his favor....

U.S. Const. Amend. VI.

No person shall be ... deprived of life, liberty, or property, without due process of law....

U.S. Const. Amend. V.

Statement of the Case

A. Introduction: The Constitutional Error Was Not Harmless.

In Oregon, the state court did not conduct a harmless error analysis even though evidence that a serial killer who was later convicted of other, similar murders in the same vicinity in the same time frame twice con-

fessed to the murders at issue here. Admitting serial-killer Smith's confession may well have raised a reasonable doubt as to Anthony's innocence. On balance, the dissenting Ninth Circuit judge harbored a "grave doubt" as to whether the exclusion of the evidence was likely to have substantially influenced the jury's verdict. *Kotteakos v. United States*, 328 U.S. 750, 765 (1946); *see Brecht v. Abrahamson*, 507 U.S. 619, 623, 637-38 (1993). Thus, federal habeas relief should have been granted.

B. Anthony and his jurors were denied exculpatory evidence at trial, which usurped the jury's function and denied Anthony a fair trial.

In 2007, Ryan Anthony had a jury trial in Oregon state court. But that jury never got to hear that serial-killer Smith had confessed to the murders and was convicted of robbing and killing others in that area around the same time. After the state court *prevented* Anthony from presenting evidence in 2007 that serial-killer Smith had confessed to the murders in 1980, Anthony's jury found Anthony guilty of the 1980 robbery and murders of Ottilia and Casper Volks and the court sentenced Anthony to multiple terms of life imprisonment.

After Oregon appellate and post-conviction courts denied relief, Anthony filed a federal habeas petition. That petition asserted that the state

trial court wrongly prevented Anthony from presenting testimony from William Jackson that serial-killer Smith had confessed to the murders. His federal habeas petition argued that the exclusion of Smith's out-of-court confessions violated Anthony's due-process rights under *Chambers v. Mississippi*, 410 U.S. 284 (1973). The federal district court denied the petition, and two members of a three-judge Ninth Circuit panel voted to affirm the district court's denial with one panel member dissenting. Granting certiorari is appropriate based on the reasons set forth in the dissent and in this Petition.

C. The state court excluded serial-killer Smith's confessions, contrary to this Court's clearly established holdings in *Chambers* and *Holmes*, in violation of Ryan Anthony's due process right to present a complete defense.

After waiting 27 years to charge Ryan Anthony with murdering Otilia and Casper Volks in Lake Oswego, Oregon, the prosecution successfully excluded serial-killer Smith's confessions. Thus, Anthony was denied the right to present the defense that serial-killer Smith committed the murders with Gerald Atherton, not Ryan Anthony.

The murders Anthony was charged with fit the modus operandi of serial-killer Smith's home-invasion-robbery-burglary-murder spree in

and around the time and place of the murders that Anthony was unfairly convicted of. Yet, this Court’s 2-to-1 panel opinion perpetuates the state’s constitutional due process violation, creating conflicts with intra- and inter-circuit law and with clearly established Supreme Court law, all in violation of Anthony’s constitutional right to present a complete defense.

See Chambers v. Mississippi, 410 U.S. 284 (1973) (recognizing a due process right that trumps hearsay rules by permitting a defendant to present confession evidence that tends to show someone else committed the crime); *Holmes v. South Carolina*, 547 U.S. 319 (2006) (even where the government’s forensic evidence is strong, defendants have a due process right to present third-party-culpability evidence).

Here, the 2-to-1 panel opinion is based on serious legal error. En banc review is warranted given the conflict on this recurring question of federal criminal law, where the need for national uniformity and compliance with clearly established Supreme Court authority is paramount.

As this Court has recognized, a suspect’s confession is “probably the most probative and damaging evidence that can be admitted against him....” *Arizona v. Fulminante*, 499 U.S. 279, 292 (1991). Yet, Anthony

was denied that powerful evidence (of serial-killer Smith's confessions) at trial simply because Smith was deemed "untrustworthy." But this untrustworthiness determination was not made when serial-killer Smith confessed. Rather, the state court's untrustworthiness determination was made based on confusing answers Smith gave more than 27 years after he confessed to one of his confederates (William Jackson).

The constitutional right to present a complete defense affords criminal defendants the right to introduce into evidence third parties' declarations against penal interest — their confessions — when the circumstances surrounding the statements "provid[e] considerable assurance of their reliability." *Chambers*, 410 U.S. at 300. *Chambers* does not require that a serial killer have a reputation for honesty for his confession to be admissible at the trial of a person accused of committing the murders the serial killer confessed to.

Each of serial-killer Smith's three confessions to Jackson was made spontaneously to Jackson (Smith's criminal associate for other crimes and murders), with the first confession made shortly after the Volks were

murdered. ER-749-50.¹ In fact, Jackson said Smith had spoken about the Volks' murders just a few days after they occurred. ER-749-51. Jackson said Smith had money, which he said was from the people in Lake Oswego. ER-749-50. About nine months later, Smith again acknowledged, "me and Atherton did that one," referring to the Lake Oswego murders. Smith said the two had been out cruising on Smith's motorcycle when they happened upon the Volks' home. ER-136, 750.

Moreover, Jackson's own admissions show that serial-killer Smith's murders fit a pattern that matched the murder of the Volks couple. Jackson acknowledged that he and Smith committed several murders together in 1980, proximate to the Volks' murders. ER-665. The homicides they committed were random and motivated by robbery, ER-647, just as the Volks' murders involved robbery. ER-136.

In addition, Smith himself acknowledged being a serial killer — in some instances along with Jackson — in the area at the time of the Volks' murders. ER-610. But Anthony's jurors never got to hear that Smith had

¹ "ER" stands for the Excerpts of Record filed with the United States Court of Appeals for the Ninth Circuit.

confessed to Jackson even though Smith admitted that his murder spree was a random killing spree. ER-233-34, 237-38.

How could Anthony's jury fairly determine culpability where they were denied evidence that someone else (i.e., serial-killer Smith) committed the crime? Clearly, the answer is that they could not, which denied Anthony a fair trial.²

Reasons for Granting the Petition

Here, Supreme Court review is necessary to secure and maintain uniformity of this Court's decisions, and because the proceeding involves a question of exceptional importance. Moreover, because the Ninth Circuit failed to follow this Court's clear jurisprudence, summary reversal of the judgment is warranted.

Strengthening *Chambers v. Mississippi*, this Court in *Holmes v. South Carolina*, held that even where the government's forensic evidence is strong, defendants have a due process right to present exculpatory evidence that someone else committed a murder. Yet, despite *Chambers*

² See John H. Blume et. al., *Every Juror Wants A Story: Narrative Relevance, Third Party Guilt and the Right to Present A Defense*, 44 Am. Crim. L. Rev. 1069, 1069 (2007).

and *Holmes*, the state court excluded evidence of a serial killer Smith's confession, and the lower federal courts failed to correct that unconstitutional result. Because the lower court decisions contravene *Chambers* and *Holmes* by excluding serial killer Smith's confession and condemning an innocent man to the fate of dying in prison, this Court should summarily reverse the Ninth Circuit.

This Court's review is needed to maintain uniformity of this Court's decisions given the intra-circuit conflict, the inter-circuit split, and the conflict with clearly established Supreme Court authority.

The 2-to-1 panel opinion directly conflicts not only with intra- and inter-circuit law, it also directly conflicts with clearly established United States Supreme Court precedent. Because Anthony's liberty is at stake, getting it right and ensuring fair criminal trials is of exceptional importance. The confessions in *Chambers*, *Gable*, and *Cudjo*, were all made by confessed murderers, yet their confessions were deemed reliable enough that they should have been presented to a jury. *See Chambers*, 410 U.S. at 288-89, 302-03; *Gable v. Williams*, 49 F.4th 1315, 1327, 1330 (9th Cir. 2022); *Cudjo v. Ayers*, 698 F.3d 752, 756, 766-68 (9th Cir. 2012).

Moreover, the other reasons stated in the panel opinion for denying Anthony a new trial or habeas relief directly conflict with opinions of various circuits and conflict with this Court’s clearly established law. *See, e.g., Fieldman v. Brannon*, 969 F.3d 792, 810 (7th Cir. 2020) (granting habeas relief because the jury may have, if given the chance, credited Fieldman’s defense, which would have undermined confidence in the verdict); *Kubsch v. Neal*, 838 F.3d 845, 862 (7th Cir. 2016) (en banc) (due process demands that evidence rules must be overridden in circumstances like those in *Chambers*, and because the facts of Kubsch’s case parallel closely the facts of *Chambers*, *Green*, *Crane*, and *Holmes*, failing to apply those cases amounted to an unreasonable application of law clearly established by the Supreme Court); *Crane v. Kentucky*, 476 U.S. 683 (1986) (murder case in which the Court found that the exclusion of evidence pursuant to a state evidentiary rule violated Crane’s due process rights); *Green v. Georgia*, 442 U.S. 95 (1979) (per curiam) (murder case in which the Court found that the exclusion of hearsay evidence violated Green’s due process rights).

Our constitution guarantees criminal defendants “the right to a fair opportunity to defend against the State’s accusations.” *Chambers*, 410 U.S. at 294; *see also Gable*, 49 F.4th at 1329. “Few rights are more fundamental than that of an accused to present witnesses in his own defense.” *Chambers*, 410 U.S. at 302. In *Chambers* this Court held that excluding evidence of a third party’s confessions and precluding Chambers from cross-examining the third party deprived Chambers of a fair trial. *Id.* at 300-02. This Court explained in *Chambers* that the hearsay confessions the defendant was precluded from introducing “were originally made and subsequently offered at trial under circumstances that provided considerable assurance of their reliability” because (1) the confessions were made “spontaneously to a close acquaintance shortly after the murder;” (2) the confessions were “corroborated by some other evidence in the case;” and (3) “each confession [] was in a very real sense self-incriminatory and unquestionably against interest.” *Id.* at 300-01. Thus, where the state court rejects defense evidence that has “persuasive assurances of trustworthiness” and is “critical” to the defense, excluding

the evidence on hearsay grounds unconstitutionally deprives the defendant of a fair trial. *Id.* at 302.

Here, Anthony was precluded from introducing the testimony of William Jackson, serial-killer Smith’s former close criminal associate, who told police that Smith confessed twice to the Lake Oswego murders. That ruling denied Anthony his due process right to a fair trial contrary to *Chambers* and its progeny.

The state court and the panel’s reasons for rejecting Anthony’s *Chambers* claim were inconsistent with, or unreasonably misapplied, *Chambers*. They also reflected an unreasonable determination of the facts. *See* 28 U.S.C. § 2254(d). Evidence of Smith’s confessions was undoubtedly critical to Anthony’s defense, and the confessions were sufficiently corroborated. Thus, Anthony’s constitutional right to present a complete defense was violated.

In affirming the exclusion of the evidence, the Oregon Court of Appeals unreasonably relied on the fact that at the time of the 2007 pre-trial hearing, Smith “was a self-confessed serial killer, serving five consecutive life sentences,” as a reason to exclude testimony about Smith’s

confessions. App. 51a (*State v. Anthony*, 247 Or. App. 582, 585-86 (2012)). However, when Smith first confessed to Jackson in 1980, he was not in custody nor was he a convicted killer. It was arbitrary and capricious for the state court to exclude Smith’s confessions (made in 1980) because he was deemed unreliable (in 2007). Letting that faulty legal determination stand dooms the Ninth Circuit’s 2-to-1 panel opinion. The only valid focus is on whether the confessions that serial-killer Smith made were reliable when he made them to one of his partners in crime in 1980, near the time of his robbery/killing spree and the robbery/murders of the Volks couple.

Moreover, the fact that Smith was a “self-confessed serial killer” made his earlier confessions *more credible*, not less. Smith was a serial killer active in the same geographic area during the relevant time; he committed multiple random home invasion burglary-murders that summer in the Portland and southern Washington areas, some of which involved elderly victims. ER-55, 99-100, 104, 233-37. In some instances, Smith stabbed his victims to death, ER-237, 267, which corroborates Smith’s involvement in the Volks’ murders, ER-454, 796, 1443-44, and helps exculpate Anthony since no murder weapon was ever found that

tied Anthony to the murders. ER-190, 477. That Smith was committing similar crimes in the same area during the same time as the murders with which Anthony was charged forcefully corroborated Smith's confessions.

The state court's flawed analysis constitutes an unreasonable application of *Chambers*, as well as an unreasonable determination of the facts because a third-party suspect who has confessed to murder will always, by definition, be a "confessed [] killer." App. 51a (*Anthony*, 247 Or. App. at 585).

If the fact that someone is a confessed killer makes their statements "singularly untrustworthy," *id.*, then no *Chambers* claim could ever succeed. For example, the hearsay murder confessions at issue in *Chambers*, *Gable*, and *Cudjo* were all made by confessed murderers, yet their confessions were deemed reliable enough that they should have been presented to the jury. *See Chambers*, 410 U.S. at 288-89, 302-03; *Gable*, 49 F.4th at 1327, 1330; *Cudjo*, 698 F.3d at 756, 766-68.

This Court should grant rehearing and recognize the corroborative fact that serial-killer Smith was committing similar crimes during the relevant time and location.

This Court should also recognize that serial-killer Smith’s confessions were corroborated in several other key respects. For example, Smith confessed on more than one occasion. Smith confessed at least twice: once days after the murder, and a second time nine months later. Although multiple confessions are not required for a *Chambers* claim to succeed, *see, e.g.*, *Cudjo*, 698 F.3d at 756, the “number of independent confessions … provide[s] additional corroboration for each,” *Chambers*, 410 U.S. at 300.

In addition, Smith’s first confession — that he committed the murders with a man named Atherton — was made in Atherton’s presence. ER-237. Rather than deny Smith’s statement at the time it was made, Atherton’s “mouth fell open” and he responded by asking Smith to “be quiet.” ER-551, 654. Atherton’s failure to deny Smith’s statement corroborated the confession as well.

Moreover, when Smith first confessed days after the murder, he had money on him, which was what prompted Jackson to ask him where he got the money from. ER-13, 58-59, 158, 488, 750, 928. The evidence that the victims' wallets were both empty also corroborates Smith's confession since he admitted to having money from the job in Lake Oswego. ER-62-63, 204, 293, 456.

Further, Smith's second confession indicated that he was riding his motorcycle when he and Atherton came upon the victims' house and committed the murders. ER-15, 19, 26, 71, 106. This detail is consistent with evidence that on the day of the murders as well as the day afterward, witnesses saw two motorcycles parked across the street from the victims' residence. ER-15, 19, 26, 135. One of the motorcycles had a similar color, engine size, and front panel to Smith's motorcycle. ER-543-44. Further corroboration is provided by the fact that Smith used his motorcycle as transportation in at least one other home invasion burglary-murder (i.e., the Wilson murder) the same summer. ER-234. The motorcycle evidence is also exculpatory because Anthony did not own or have access to a motorcycle at the time of the murders. ER-2922.

The fact that two motorcycles were seen near the victims' residence provided corroboration of Smith's second confession, and the witness reports indicated that one of the motorcycles shared similar characteristics to Smith's. But the state court failed to recognize that corroboration. App. 51a (*See Anthony*, 247 Or. App. at 585-86). Smith confirmed that he owned a 750cc Honda motorcycle. ER-220. He also confirmed that he frequented the City of Lake Oswego on many occasions in 1980 as he both worked at a local car dealership and his brother's foster father, Charles Moore, resided in Lake Oswego. ER-220. In addition to the familial relationship, Smith confirmed that Charles Moore financed his 750cc Honda motorcycle. ER-220.

Smith's admission that he and Atherton committed the murders was also consistent with eyewitness testimony that on the night of the murders, around 10:20 pm, two men, conspicuously dressed in black hooded coats on a warm summer night, were in the Safeway parking lot directly across from the victims' residence, walking toward Volks' house.³

³ Ms. Eilertson clearly saw two men walking in the parking lot near Fifth Street, both wearing black hooded coats that were conspicuous because it was a warm summer night. ER-1126-28, 2688-89, 2696-98, 2707. David Jorling, a law student, lived about two and a half blocks from the Volks. ER-1757, 2400.

The sighting of two men headed toward the victims' house matched Smith's account that he committed the murders with Atherton.

A major flaw that cries out for certiorari review and habeas relief is the fact that the state court (and the 2-to-1 panel) unreasonably rejected Jackson's testimony about Smith's confessions based on serial-killer Smith's lack of credibility as a witness at the 2007 pretrial hearing. App. 51a (*Anthony*, 247 Or. App. at 585-86). But Smith's quality as a witness in 2007 was not pertinent. It was Jackson whose testimony Anthony sought to admit, and Jackson's testimony concerned statements serial-killer Smith had made more than two decades earlier. Further, Smith's availability as a witness weighed in favor of admitting Jackson's testimony. If Smith were called to the stand at trial, the jury could evaluate for itself whether it believed Smith's later disavowal of his confessions; if Smith's testimony was "disjointed and evasive," App. 51a (*Anthony*, 247 Or. App. at 585), that would undermine the credibility of his recantation.

Jorling saw two newer motorcycles parked across street from Volks' house. ER-2420-24. Jorling saw the Volks' front door was open, and a man standing and looking out. ER-2404-09, 2466-71. In 1980, shortly after the murders, Jorling could not identify Anthony in a 4-pack photo array. ER-2042, 2476-77.

Clearly, serial-killer Smith's confessions were corroborated by other evidence, such as the following:

- Jackson said Smith had money from the people in Lake Oswego. ER-749-50.
- Smith participated in many random and brutal murders in the Portland metro area in 1980; Smith admitted his random killing spree. ER-233-34, 237-38.
- Smith's crime spree involved home invasion robberies committed within several blocks of a major thoroughfare, including near the Volks' murders. ER-665.
- Smith confirmed that he owned a 750cc Honda motorcycle in 1980 and that he frequented the City of Lake Oswego on many occasions in 1980. ER-220, 237, 750-52.
- Smith used his motorcycle for transportation to and from at least one other murder. ER-234, 237.

- Serial-killer Smith's random murders were motivated by robbery. ER-647.
- Smith acknowledged being a serial killer around the time and the location of Volks' murders. ER-610.
- Multiple eyewitnesses placed two motorcycles parked near the Volks' home on the day of the murders and the night after the murders; Smith — not Anthony — owned and rode a motorcycle in 1980. ER-26.
- Smith said he and Atherton had been out cruising on Smith's motorcycle when they happened upon Volks' home. ER-750.
- Anthony did not have access to, or drive, a motorcycle. ER-2922.

In addition, relying on Smith's lack of credibility as a live witness was contrary to *Chambers*, which makes clear that it is the jury's role to evaluate the credibility of witnesses. 410 U.S. at 301. *Chambers* explained that the hearsay rule excludes out-of-court statements because

“they are usually not made under oath or other circumstances that impress the speaker with the solemnity of his statements; the declarant’s word is not subject to cross-examination; and he is not available in order that his demeanor and credibility may be assessed by the jury.” 410 U.S. at 298. But where, as here and as in *Chambers*, the individual who allegedly confessed is available as a witness, the individual may be examined under oath and “his demeanor and responses weighed by the jury.” *Id.* at 301. *See also Cudjo*, 698 F.3d at 763 (“Supreme Court precedent makes clear that questions of credibility are for the jury to decide.”); *id.* at 768 n.6 (“the Supreme Court requires credibility questions be left to the jury”); *Holmes*, 547 U.S. at 330 (determining credibility involves “the sort of factual findings that have traditionally been reserved or the trier of fact”).

Notably, the strength of the prosecution’s case does not absolve the State’s exclusion of third-party culpability evidence for at least two additional reasons.

First, prejudice analysis is not part of the *Chambers* calculus. *See Holmes*, 547 U.S. at 330. In *Holmes* this Court, in a unanimous opinion

written by Justice Alito, reversed Holmes' conviction where a state rule prohibited his attempt to introduce proof that a third-party committed the murder he was charged with where the prosecutor's forensic evidence was strong. *Holmes*, 547 U.S. at 323-24, 329, 331. Despite the strength of the prosecution's forensic evidence, exclusion of a third-party confession violated Holmes' due process right to present a complete defense. *Id.* at 331.

The holding in *Holmes* shows that the *Chambers* error in this case is by its nature prejudicial. In *Holmes*, Justice Alito writing for the Court eschewed harmless error analysis in the *Chambers* context notwithstanding the strength of the prosecution's evidence against Holmes, which included the following forensic evidence:

- (1) Holmes' palm print was found just above the doorknob on the interior side of the front door of the victim's house;
- (2) fibers consistent with Holmes' black sweatshirt were found on the victim's bed sheets;
- (3) matching blue fibers were found on the victim's pink nightgown and on Holmes' blue jeans;
- (4) microscopically consistent fibers were found on the pink nightgown and on Holmes' underwear;

(5) Holmes' underwear contained a mixture of DNA from two individuals, and 99.99% of the population other than Holmes and the victim were excluded as contributors to that mixture; and

(6) Holmes' tank top was found to contain a mixture of Holmes' blood and the victim's blood.

Holmes, 547 U.S. at 322.

Logic dictates eschewing harmless-error analysis here because *Chambers* “does not stand for the proposition that the defendant is denied a fair opportunity to defend himself whenever a state or federal rule excludes favorable evidence.” *United States v. Scheffer*, 523 U.S. 303, 316 (1998). Rather, due process considerations trump state evidentiary rules when the exclusion of evidence “undermine[s] fundamental elements of the defendant’s defense.” *Id.* at 315. Hence, as a matter of law and logical inference, it should be nearly impossible for a reviewing court to conclude that the error that occurred here “did not influence the jury, or had but very slight effect” on its verdict. *Kotteakos v. United States*, 328 U.S. 750, 764 (1946); *see also O’Neal v. McAninch*, 513 U.S. 432, 445 (1995) (“[W]hen a habeas court is in grave doubt as to the harmlessness of an error that affects substantial rights, it should grant relief”).

Second, deference under § 2254(d) is inapplicable to the prejudice question here because the state court did not conduct a harmless error analysis. *See Cudjo*, 698 F.3d at 768.

Grave doubt dooms the 2-to-1 panel opinion. If Anthony’s jurors had heard evidence that serial-killer Smith (who was convicted of similar nearby murders) had confessed twice to robbing and killing the Volks in Lake Oswego, at least one juror may well have harbored a reasonable doubt as to Anthony’s guilt or innocence. Thus, “grave doubt” exists as to whether the exclusion of the evidence was likely to have substantially influenced the jury’s verdict. *Kotteakos*, 328 U.S. at 765; *see Brecht*, 507 U.S. 623, 637-38. Hence, federal habeas relief is needed.

Conclusion

For the foregoing reasons, the Court should issue a writ of certiorari. Federal law as determined by this Court is clear: due process requires that the “minimum essentials of a fair trial” include a “fair opportunity to defend against the State’s accusations” and the right “to be heard in [one’s] defense.” *Chambers*, 410 U.S. at 294. Here, the State court’s exclusion of serial-killer Smith’s confession did not serve to “focus the trial on the central issues by excluding evidence that has only a very weak logical connection to the central issues.” *Holmes*, 547 U.S. at 330. Thus, the trial court’s decision to exclude reliable material evidence of serial-killer Smith’s guilt constitutes an objectively unreasonable application of clearly established federal law. *See Lockyer v. Andrade*, 538 U.S. 63, 75 (2003). Supreme Court review and summary reversal is appropriate.

Dated this October 4, 2024.

s/Kurt David Hermansen

Kurt David Hermansen
Attorney for Petitioner

IN THE
Supreme Court of the United States

RYAN LAWRENCE ANTHONY,
Petitioner,

v.

GARRETT LANEY,
Superintendent, Oregon State Correctional Institution,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE NINTH CIRCUIT

Certificate of Compliance

I, Kurt David Hermansen, counsel of record and a member of the Bar of this Court, certify that the Petition for a Writ of Certiorari complies with the 9,000-word limit of Supreme Court Rule 33.1(g)(i), as it contains **4,414 words**, excluding the table of contents and the table of authorities.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 4, 2024, in Eugene, Oregon.

s/Kurt David Hermansen
Attorney for Petitioner