

24-7427

No. _____

October term, 2024

IN THE

SUPREME COURT OF THE UNITED STATES

FILED

APR 07 2025

OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

PHILLIP WHITE - Petitioner,

VS.

AIMEE SMITH, WARDEN - Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF GEORGIA

PETITION FOR WRIT OF CERTIORARI

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The Petitioner respectfully submits this petition for a writ of certiorari to review the arbitrary and unfair judgment of the Georgia Supreme Court summarily denying equitable habeas corpus relief, despite clear and convincing evidence of actual innocence and constitutional structural reversible errors appearing on the face of the record in violation of Petitioner's fundamental rights under the United States Constitution.

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QUESTIONS PRESENTED

The Petitioner, Mr. Phillip White, was wrongfully convicted in the State of Georgia for a crime he did not commit. His wrongful conviction was marred by multiple constitutional structural violations and systemic errors that rendered the trial and appellate proceedings fundamentally unfair. Despite presenting new, compelling evidence of actual innocence, the Georgia courts arbitrarily applied procedural bars to preclude habeas review, perpetuating a grave miscarriage of justice. The enforcement of unconstitutional statutes, coupled with procedural barriers that prevent meaningful review, perpetuates systemic injustices and undermines public confidence in the judicial system. By granting certiorari, this Court can reaffirm its commitment to safeguarding fundamental rights, correcting miscarriages of justice, and preserving the integrity of habeas corpus jurisprudence.

1. Does Georgia Habeas Corpus Act violate the Liberty Clause of the Fourteenth Amendment when a state post-conviction court arbitrarily and unfairly applies procedural bars, rendering them inadequate to preclude federal habeas review and resulting in a fundamental miscarriage of justice?
2. Whether the wrongful conviction and continued incarceration of an actually innocent Petitioner violate constitutional protections, including the First, Fourth, Sixth, Eighth, Ninth, and Fourteenth Amendments.
3. Whether newly uncovered psychiatric mitigating evidence under *Sears v. Upton* satisfies the actual innocence gateway claim under *Schlup v. Delo* and *McQuiggin v. Perkins* when the state court record reflects a *McCoy v. Louisiana* structural error by clear and convincing evidence.
4. Whether the Petitioner's convictions, based on void ab initio judgments, violate due process rights under *Fiore v. White* and *Lawrence v. Texas*.
5. Whether the Georgia courts' enforcement of arbitrary procedural bar rules contravenes the Suspension Clause and denies meaningful habeas corpus review.
6. Whether ineffective assistance of trial and appellate counsel violated the Petitioner's Sixth Amendment rights at all critical phases of his prosecution.
7. Whether the Petitioner's continued incarceration constitutes cruel and unusual punishment under the Eighth Amendment.
8. Whether the Georgia habeas court's fact-finding deficiencies and subsequent Georgia Supreme Court's denial decision violated federal constitutional principles and the Constitution's original meaning.
9. Does the Double Jeopardy Clause of the Fifth Amendment and the Sixth Amendment right to notice preclude an State Appellate Court from affirming a conviction based on lesser-included conduct not materially charged in the indictment or submitted to the jury, where the evidence in light of the verdict was constitutionally insufficient to support the greater offense and constituted an acquittal?

10. Whether the wrongful conviction and incarceration of an individual who is actually innocent violate the Ninth Amendment's unenumerated rights, the Eighth Amendment's prohibition against cruel and unusual punishment, and the Liberty, Due Process, and Equal Protection Clauses of the Fourteenth Amendment, thereby necessitating the recognition of a freestanding actual innocence precedent?
11. Whether the Georgia Supreme Court's decision and the underlying post-conviction proceedings deprived the Petitioner of a meaningful opportunity to present claims of ineffective assistance of counsel, violating the principles articulated in *Sears v. Upton*, *Martinez v. Ryan*, *Trevino v. Thaler*, and *Ake v. Oklahoma*, and resulting in a fundamental miscarriage of justice?
12. Whether systemic procedural barriers enforced by the Georgia courts were inadequate to preclude federal review under *Jones v. Sec'y Dep't of Corr.*, and whether such barriers caused a fundamental miscarriage of justice warranting equitable habeas corpus relief under *Murray v. Carrier*?
13. Whether prosecutorial misconduct and cumulative structural errors-including constitutionally insufficient evidence to support conviction under *Jackson v. Virginia* and violation of the Double Jeopardy Clause-require entry of a judgment of acquittal under *Burks v. United States* as a matter of federal law?
14. Whether the respondent's continued custody of the Petitioner under a void ab initio judgment violates fundamental constitutional protections and demands this Court's intervention to establish a freestanding actual innocence precedent that preserves the ends of justice?

LIST OF PARTIES

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

RELATED PROCEEDINGS

1. Douglas County Superior Court: Trial Court Case No. 16CR00760 (Final Judgment: February 13, 2018).
 2. Georgia Court of Appeals: White v. State, A21A1202 (Constructive Amended Final Judgment: March 10, 2022).
 3. Dooly County Superior Court: Habeas Corpus Case No. 23DV-0046 (Final Judgment: March 5, 2024).
 4. Georgia Supreme Court: White v. Smith, Warden, Case No. S24H1242 (Denials: March 4, 2025, and March 31, 2025).
- State of Georgia v. Phillip Aber White, Indictment No. 16CR00760 (Ga. Super. Ct. Douglas Cnty.)(final order following defective jury verdict entered February 13, 2018; void ab initio order granting out-of-time motion for new trial entered March 19, 2019 without constitutional or statutory authority in violation of the principles articulated in Hammer v. Neighborhood Hous. Servs. of Chi., 138 S.Ct. 13 (2017) and Bowles v. Russell, 551 U.S. 205, 210, 127 S.Ct. 2360 (2007); void ab initio order denying motion for new trial entered January 21, 2021; and void ab initio order acknowledging constructive amended judgment of Court of Appeals of the State of Georgia as the constructive amended judgment of the court entered April 1, 2022)
 - Phillip Aber White v. State of Georgia, No. A21A1202 (Ga. Ct. App.)(void ab initio constructive amended judgment entered March 10, 2022; remittitur sent March 31, 2022 under Hammer v. Neighborhood Hous. Servs. of Chi., 138 S.Ct. 13 (2017) and Bowles v. Russell, 551 U.S. 205, 210, 127 S.Ct. 2360 (2007))
 - Phillip White v. Aimee Smith, Warden, No. 23DV-0046 (Ga. Super. Ct. Dooly Cnty.)(order denying equitable habeas corpus relief under arbitrary and unfair procedural bar rules entered March 5, 2024 without inquiring if failure to adjudicate the writ on the merits would result in a fundamental miscarriage of justice under OCGA §9-14-48(d) and Murray v. Carrier)
 - Phillip White v. Aimee Smith, Warden, No. 24H1242 (Ga.)(order denying arguable merit certificate of probable cause to appeal entered March 5, 2025; order denying rehearing entered March 31, 2025; order denying stay of remittitur entered March 31, 2025)

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Authorized equitable habeas corpus relief under Georgia law. The habeas court's and subsequent Georgia Supreme Court's failure to grant relief in this case violated the petitioner's right to the privilege of the writ of habeas corpus and contravened the United States Constitution.

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28 U.S.C. § 2254: Provides statutory framework for federal review of state court habeas corpus proceedings.

OCGA § 9-14-48(d): Mandates habeas corpus relief to avoid a fundamental miscarriage of justice.

Other Constitutional Authorities

1. First Amendment

- Guarantees the right to petition the government for redress of grievances.

2. Fourth Amendment

- Protects against unreasonable seizures.

3. Fifth Amendment

- Enforces double jeopardy protections and procedural due process.

4. Sixth Amendment

- Secures the right to personal autonomy, effective counsel, and trial by jury.

5. Eighth Amendment

- Prohibits cruel and unusual punishment, especially in cases involving void judgments.

6. Ninth Amendment

- Protects unenumerated rights, including privacy and personal autonomy.

7. Fourteenth Amendment

- Ensures liberty and due process protections against arbitrary state actions.

8. Suspension Clause - Article I, Section 9, Clause 2

- Protects access to habeas corpus remedies.

Relevant Treaties and International Law

- United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP): Articles addressing autonomy, self-determination, and protection against discriminatory procedural statutes.
- International Covenant on Civil and Political Rights (ICCPR): Safeguards for procedural fairness and protections against arbitrary detention.

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

Introduction

This extraordinary petition arises from the void ab initio convictions of Mr. Phillip White under Georgia law, reflecting two fundamental miscarriages of justice: (1) a void judgment of conviction involving Count 2 (aggravated sodomy) based on insufficient evidence, prosecutorial misconduct, fraudulent material allegations, and a void unconstitutional statute invalidated by *Lawrence v. Texas*, 539 U.S. 558 (2003); and (2) a void judgment of conviction involving Count 5 (aggravated assault), which was void ab initio due to non-amendable defects in the indictment that deprived Petitioner of adequate constitutional notice and due process in violation of the Sixth Amendment. Both convictions violates principles articulated in *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001) and were tainted by cumulative structural errors, including a fundamental denial of psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985), constructive amendments to the indictment in violation of *Stirone v. United States*, 361 U.S. 212 (1960), egregious prosecutorial misconduct, legally insufficient evidence, ineffective counsel in violation of the Sixth Amendment secured personal autonomy pursuant to the principles established in *Martinez v. Ryan*, 566 U.S. 1, 5-14 (2012), and arbitrary and unfair procedural default rulings, all of which demonstrate systemic failures in violation of the Due Process Clause that require this Court's intervention to correct a fundamental miscarriage of justice under the principles articulated in *Murray v. Carrier*, 477 U.S. 478, 485, 495 (1986).

The Petitioner's fundamentally unfair trial, deficient post-conviction direct review proceedings that lacked subject matter jurisdiction pursuant to the principles established in *Hammer v. Neighborhood Hous. Servs. of Chi.*, 138 S.Ct. 13, 16 (2017) as well as *Bowles v. Russell*, 551 U.S. 205, 210 (2007), and arbitrary state habeas corpus proceedings contrary to *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001) were marred by systemic constitutional violations, judicial missteps, and cumulative structural errors that fundamentally undermined the fairness of the proceedings. These errors include:

1. Constructive amendment of the charges set forth in the indictment procured by fraud upon the court, which unconstitutionally broadened the scope of conviction to encompass theories not submitted to the jury or materially charged in the indictment in violation of the principles established in *Cole v. Arkansas*, 333 U.S. 196 (1948); *McCormick v. United States*, 500 U.S. 257 (1991); *Blakey v. Washington*, 542 U.S. 296 (2004); and *Erlinger v. United States*, 602 U.S. 821 (2024).
2. Egregious Prosecutorial misconduct, including the withholding of knowledge involving exculpatory evidence that entitled Petitioner to expert psychiatric expert assistance under *Ake v. Oklahoma* to pursue an plausible insanity defense as articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024), that deprived Petitioner his right to present a full defense; and the presentation of false testimony and failure to correct false evidence during the pre-trial phase, guilt-innocence phase, inadequate

competency hearing, sentencing phase, and post-conviction phase in violation of the principles established in *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959).

3. Ake, Strickland, and McCoy structural errors resulting from trial and appellate counsel's failure to request critical psychiatric expert assistance as deliberately requested by Petitioner as a fundamental objective of his defense, despite overwhelming evidence of Petitioner's mental impairments at the time of the alleged offense, during the fundamentally unfair trial, and during the course of post-conviction proceedings in violation of *Martinez v. Ryan*, 566 U.S. 1, 5-14 (2012).

4. The trial court's refusal to issue jury instructions on lesser-included offenses, in contravention of this Court's holding in *Cole v. Arkansas*, 333 U.S. 196 (1948), *Stirone v. United States*, 361 U.S. 212 (1960), and *Beck v. Alabama*, 447 U.S. 625 (1980), which mandates such instructions to preserve fundamental fairness.

5. The denial of Petitioner's exhausted federal constitutional claims under Georgia's arbitrary and unfair procedural default statute, O.C.G.A. §9-14-42, despite newly uncovered psychiatric evidence under *Sears v. Upton* demonstrating actual innocence and egregious ineffective assistance of counsel under *Trevino v. Thaler*, 569 U.S. 413 (2013).

The Petitioner has consistently maintained his innocence under the Sixth Amendment secured personal autonomy and has presented newly uncovered mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) that establishes his incompetence to stand trial under *Cooper v. Oklahoma*, 517 U.S. 348 (1996) and refutes the allegations upon which his conviction was based that entitles him to a judgment of acquittal under *Burks v. United States*, 437 U.S. 1 (1978). Despite this, the state habeas court arbitrarily and unfairly denied equitable habeas corpus relief on procedural grounds, and the Georgia Supreme Court summarily rejected the Petitioner's arguable merit application for a certificate of probable cause to appeal, perpetuating a profound miscarriage of justice.

I. Count 2: Aggravated Sodomy Conviction

This petition arises from the extraordinary and unjust circumstances surrounding the void judgment of conviction and sentence of the Petitioner, Phillip White, under Georgia's OCGA §16-6-2, a statute invalidated by this Court in *Lawrence v. Texas*, 539 U.S. 558 (2003).

The conviction and sentence under Count 2 are void under *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001) because the State prosecutor knowingly and willfully instituted a charge that did not factually or legally occur as materially set forth in the non-amendable defective indictment. The material allegations of the indictment fraudulently stated that the Petitioner committed aggravated sodomy in only one specified descriptive manner, described as "*performed a sexual act with the involving an act of sodomy by putting his penis in the anus*" of another, yet the evidence adduced at trial unequivocally demonstrated that no such

descriptive act factually occurred which was prejudicial error pursuant to the principles established *Stirone v. United States*, 361 U.S. 212, 217-219 (1960). This prosecutorial misconduct violated the Petitioner's constitutional right to grand jury review and resulted in an invalidated statute being arbitrary applied without constitutional authority contrary to *Lawrence v. Texas*, 539 U.S. 558 (2003).

The trial court compounded these errors by failing to grant a directed verdict of acquittal requested by Petitioner, despite clear and convincing evidence that the only specified Actus Reus descriptively set forth in Count 2 with greater particularity than required by the federally invalidated Georgia OCGA §16-6-2 sodomy statute did not factually or legally occur as materially alleged in the indictment in violation of *Stirone v. United States*, 361 U.S. 212, 219 (1960). Under *Jackson v. Virginia*, 443 U.S. 307 (1979), *Burks v. United States*, 437 U.S. 1 (1978), and *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001) this constituted a structural reversible error, depriving the Petitioner of his Sixth Amendment right to a fair trial and jury determination as articulated in *Erlinger v. United States*, 602 U.S. 821 (2024). Further injustices occurred when the appellate court constructively amended the jury's guilty verdict in violation of the principles set forth in *McCormick v. United States*, 500 U.S. 257, 269-270 (1991), adopting theories of lesser-included offense conduct (unsuccessful attempt act of sodomy) that were constitutionally protected by the Ninth Amendment's privacy guarantees under *Lawrence v. Texas*, 539 U.S. 558 (2003) and the Liberty Clause of the Fourteenth Amendment. These actions violated double jeopardy principles as articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024), rendering the conviction void ab initio because the evidence in light of the verdict clearly and convincingly constituted "an acquittal" to the greater offense for double jeopardy purposes.

II. Count 5: Aggravated Assault Conviction

The conviction under Count 5 is void ab initio due to non-amendable defects in the indictment, which descriptively omitted the divisible Actus Reus constituting the material essential elements of "an assault" as statutorily defined under OCGA §16-5-20(a)(2) to establish a violation of aggravated assault. The absence of these essential elements and material fact necessary to constitute an violation of the aggravated assault charge deprived the Petitioner of constitutional notice under the Sixth Amendment, rendering him unable to effectively prepare a full plausible defense at trial in violation of *Russell v. United States*, 369 U.S. 749, 763-769 (1962). The State prosecutor's knowingly and willfully omission of an material fact necessary to constitute a valid charge violated due process protections and deprived the Petitioner of his constitutional right to present a full defense.

The defective indictment failed to support a valid offense, rendering the jury's verdict void ab initio under *Henderson v. Hames*, 287 Ga. 534 (2010) pursuant to the principles articulated in *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), opinion reinstated, 4 F. 4th 1292 (11th Cir. 2021)(en banc)(*holding that Georgia's aggravated assault statute is divisible as to both the aggravator element, and the type of simple assault committed. Quoting Smith v. Hardrick*, 266 Ga. 54, 55, 464 S.E.2d 198 (1995)) in which this Court affirmed the "*Moss Court's reasoning*" in *Borden v. United States*, 141 S.Ct. 1817 (2021). Subsequent

affirmations by the Georgia appellate courts without adequate subject matter jurisdiction pursuant to *Bowles v. Russell*, 551 U.S. 205 (2007) violated federal standards under *Stirone v. United States*, 361 U.S. 212, 215-219 (1960), *Russell v. United States*, 369 U.S. 749, 763-771 (1962), and *United States v. Cronin*, 466 U.S. 648 (1984); and denied equitable relief required to correct the systemic injustice inflicted upon the Petitioner.

OPINIONS BELOW

On March 4, 2025, the Georgia Supreme Court summarily denied the Petitioner's application for a certificate of probable cause to appeal the state habeas court's March 5, 2024, order denying equitable habeas corpus relief. The state habeas court mischaracterized Petitioner's exhausted Sixth Amendment secured right to personal autonomy claim as set forth in *McCoy v. Louisiana*, 584 U.S. 414 (2018) that would have sufficiently satisfy the cause and prejudice prong to excuse the procedural default effects of Grounds One through Eight pursuant to the principles established in *Martinez v. Ryan*, 566 U.S. 1, 5-14 (2012). Instead the state habeas court arbitrarily and unfairly relied on Georgia's procedural default statute, OCGA §9-14-42, to bar consideration of the Petitioner's exhausted federal constitutional claims, which included newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) for a showing of actual innocence pursuant to the standard set forth in *McQuiggin v. Perkins*, 569 U.S. 383 (2013). The Petitioner had clearly and convincingly demonstrated structural constitutional errors, including:

1. A violation of *Ake v. Oklahoma*, 470 U.S. 68 (1985), due to trial counsel and appellate counsel's failure to request psychiatric expert assistance, depriving Petitioner an adequate competency determination, the right to present a full defense including an plausible insanity defense as articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024), and fundamental right to not stand trial while incompetent.
2. A structural violation of *Cooper v. Oklahoma*, 517 U.S. 348 (1996), where the trial court failed to conduct an adequate competency determination despite clear and convincing evidence of Petitioner's mental impairments; and the failures to grant psychiatric expert assistance contemplated by *Ake* to conduct an appropriate examination of Petitioner's newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) to effectively assist in the evaluation, preparation and presentation of the Petitioner's competency determination constructively denied Petitioner "*meaningful access to justice*" in violation of the Sixth Amendment and the Due Process Clause of the Fourteenth Amendment.
3. A structural violation of *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001), where Petitioner's convictions for aggravated sodomy (Count 2) and aggravated assault (Count 5) failed to satisfy due process standards of the Fourteenth Amendment. The evidence presented at the fundamentally unfair trial was constitutionally insufficient to prove the essential elements of the offenses as descriptively set forth in the indictment, as required by *Jackson v. Virginia*, 443 U.S. 307 (1979).
4. A structural violation of the Double Jeopardy Clause, as the evidence in light of the verdict constituted "*an acquittal*" for the greater offense charged in Count 2 and Count 5 respectively

under the principles set forth in *McElrath v. Georgia*, 601 U.S. 87 (2024), and the record clearly and convincingly shows Petitioner is constitutionally entitled to an entry of a judgment of acquittal under the principles articulated in *Burks v. United States*, 437 U.S. 1 (1978) to correct a fundamental miscarriage of justice under the standard set forth in *Murray v. Carrier*, 477 U.S. 478 (1986).

The Georgia Supreme Court's summary denial was contrary to this Court's precedents in *Murray v. Carrier*, 477 U.S. 478 (1986), *Fiore v. White*, 531 U.S. 225 (2001), *Sears v. Upton*, 561 U.S. 945 (2010); *McQuiggin v. Perkins*, 569 U.S. 383 (2013), *In re Davis*, 130 S.Ct. 1 (2009), which recognize that newly uncovered evidence of actual innocence may serve as cause to excuse procedural defaults. Furthermore, the denial implicated the Suspension Clause of the United States Constitution by depriving Petitioner of the meaningful opportunity to seek habeas relief for a fundamental miscarriage of justice. The Georgia Supreme Court's silent denial of Petitioner's motion for reconsideration and motion to stay remittitur on March 31, 2025, solidified its failure to address the manifest constitutional structural violations present in the case.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §1257(a) and 28 U.S.C. §2254(d)(1), as the Petitioner's exhausted federal claims for equitable habeas corpus relief arise from state court proceedings that involved the denial of constitutional rights and implicated structural constitutional errors. The Georgia Supreme Court's March 4, 2025, decision denying Petitioner's application for a certificate of probable cause to appeal constitutes a final judgment on exhausted federal constitutional issues, making this petition ripe for review by this Court.

The jurisdictional basis of this case is supported by this Court's precedents, including *McWilliams v. Dunn*, 137 S. Ct. 1790 (2017), which emphasized the necessity of reviewing state post-conviction rulings raising Sixth Amendment and structural error claims. Similarly, *Sears v. Upton*, 561 U.S. 945 (2010), reinforced this Court's authority to address state court denials of exhausted federal constitutional claims involving ineffective assistance of counsel and mitigating evidence pursuant to the principles established in *United States v. Cronin*, 466 U.S. 648, 653-667 (1984), *Martinez v. Ryan*, 566 U.S. 1, 5-14 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013).

The constitutional questions presented in this petition implicate fundamental rights protected under the Fifth, Sixth, Ninth, and Fourteenth Amendments, including:

1. The right to effective assistance of counsel under *United States v. Cronin*, 466 U.S. 684 (1984), *Martinez v. Ryan*, 566 U.S. 1, 5-14 (2012), and the right to psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985).
2. The right to not stand trial while incompetent under the principles established in *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

3. The right to equitable relief for actual innocence under *McQuiggin v. Perkins*, 569 U.S. 383 (2013) and the Ninth Amendment's recognition of unenumerated rights, including the right to be free from wrongful incarceration.

This petition is timely filed under Supreme Court Rule 13(3), as the Georgia Supreme Court denied the Petitioner's motion for reconsideration and motion to stay remittitur on March 31, 2025, making the filing deadline June 29, 2025. The issues presented are of exceptional national importance and warrant this Court's review to address the systemic injustices and constitutional structural violations that resulted in the Petitioner's wrongful conviction and continued wrongful incarceration.

CASE OVERVIEW

This petition presents extraordinary constitutional challenges and systemic judicial failures that necessitate Supreme Court intervention under the Suspension Clause and the fundamental principles of habeas corpus jurisprudence. The Petitioner—a demonstrably innocent individual—remains wrongfully incarcerated under a void ab initio judgment procured by fraud, ineffective assistance of counsel, prosecutorial misconduct, and prejudicial procedural barriers. These cumulative constitutional structural errors, compounded by deficient fact-finding by the habeas court and silent denials by the Georgia Supreme Court, demand this Court's authority to redress the fundamental miscarriage of justice under the Suspension Clause and to ensure equitable habeas corpus relief. The cumulative constitutional violations underscore the urgent need to establish a freestanding actual innocence precedent and ensure equitable post-conviction review for all state prisoners asserting innocence claims.

I. Systemic Judicial Failures

The Petitioner's wrongful conviction and void sentence arise from structural errors in the indictment, ineffective assistance of trial and appellate counsel, prosecutorial misconduct, and the unconstitutional application of arbitrary procedural barriers by Georgia courts. The evidence in light of the verdict clearly demonstrates actual innocence, requiring equitable habeas relief and the recognition of a freestanding actual innocence precedent. The Georgia Court of Appeals decision in *White v. State*, A21A1202 (Decided March 10, 2022), unconstitutionally affirmed the Petitioner's convictions based on legal and factual grounds not charged in the indictment or specifically found by a jury in violation of *McCormick v. United States*, 500 U.S. 257 (1991), and was later invalidated under the appellate pipeline doctrine pursuant to *Cook v. State*, 313 Ga. 471 (Decided March 15, 2022) for lack of subject matter jurisdiction under *Bowlers v. Russell*, 551 U.S. 205, 210-213 (2007).

The Petitioner's case reveals systemic deficiencies across all levels of judicial review:

1. **Trial Court Proceedings**: The Douglas County Superior Court failed to ensure the Petitioner's constitutional rights were upheld. Void ab initio judgments for Count 2 (aggravated sodomy) and Count 5 (aggravated assault) were issued despite jurisdictional defects, insufficient proof of essential elements, and suppressed exculpatory evidence. The trial court's competency determination was fundamentally flawed, arbitrarily finding the

petitioner competent to stand trial without addressing documented psychiatric impairments, in violation of *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

2. **Appellate Review**: The Georgia Court of Appeals constructively amended the jury's defective guilty verdict to conform to the evidence, violating constitutional principles under *Cole v. Arkansas*, 333 U.S. 196, 197-202 (1948), *Stirone v. United States*, 361 U.S. 212, 213-219 (1960), *Beck v. Alabama*, 447 U.S. 625 (1980), *United States v. Cronin*, 466 U.S. 648, 653-667 (1984); *Fiore v. White*, 531 U.S. 225 (2001), and *Erlinger v. United States*, 602 U.S. 821 (2024). This action deprived the Petitioner of his Sixth Amendment right to trial by jury and rendered the judgment void ab initio.

3. **State Habeas Proceedings**: The Dooly County Superior Court failed to adjudicate exhausted federal constitutional claims on their merits, including newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010). Arbitrary enforcement of procedural bar rules under OCGA § 9-14-48(d) obstructed equitable relief and perpetuated irreparable harm.

4. **Georgia Supreme Court Review**: The Georgia Supreme Court summarily denied the Petitioner's application for a certificate of probable cause without addressing exhausted federal constitutional claims, structural reversible errors, or actual innocence arguments under *Schlup v. Delo*, 513 U.S. 298 (1995). Its silent denials contravened due process protections and the Suspension Clause.

II. Constitutional Structural Violations

The Petitioner's void ab initio convictions violate multiple constitutional guarantees:

1. **Due Process and Liberty**: Void ab initio judgments for Counts 2 and 5 contravened evidentiary sufficiency standards under *Jackson v. Virginia*, 443 U.S. 307 (1979), and due process protections under *Fiore v. White*, 531 U.S. 225 (2001). Count 2 relied on the unconstitutional OCGA § 16-6-2 statute, invalidated under *Lawrence v. Texas*, 539 U.S. 558 (2003), which abridged the Petitioner's Ninth Amendment rights to privacy and personal autonomy.

2. **Double Jeopardy Protections**: Retrial for void judgments is constitutionally barred under *Burks v. United States*, 437 U.S. 1 (1978), and *McElrath v. Georgia*, 601 U.S. 87 (2024). The evidence in light of the verdict constitutes "an acquittal" for double jeopardy purposes.

3. **Effective Assistance of Counsel**: Trial counsel failed to investigate newly uncovered psychiatric mitigating evidence, challenge void indictment procured by fraud upon the court, or preserve exhausted federal constitutional claims, violating the Petitioner's Sixth Amendment rights under *Strickland v. Washington*, 466 U.S. 668 (1984); *United States v. Cronin*, 466 U.S. 648 (1984) and *McCoy v. Louisiana*, 585 U.S. 414 (2018).

4. **Fair Trial and Expert Assistance**: The Petitioner's right to psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985) was violated by prosecutorial misconduct, trial court abuse of discretion, and systemic suppression of evidence. These cumulative errors

invalidated the competency determination pursuant to the principles established in *Cooper v. Oklahoma*, 517 U.S. 348 (1996) and deprived the Petitioner of his right to present a plausible insanity defense under *McElrath v. Georgia*, 601 U.S. 87 (2024).

5. **Cruel and Unusual Punishment**: The Petitioner's continued incarceration despite overwhelming evidence of innocence constitutes cruel and unusual punishment under the Eighth Amendment pursuant to the standard set forth in *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010).

III. Procedural Inequities

Arbitrary enforcement of procedural barriers denied the Petitioner access to equitable habeas corpus relief. The Georgia courts failed to apply federal constitutional standards, including the actual innocence gateway under *McQuiggin v. Perkins*, 569 U.S. 383 (2013), and cause-and-prejudice exceptions under *Murray v. Carrier*, 477 U.S. 478 (1986). These procedural deficiencies violate the Suspension Clause and undermine the integrity of post-conviction review.

A. Habeas Court Fact-Finding Deficiencies and Constitutional Structural Reversible Errors

The State court record reflects by clear and convincing evidence that there was insufficient evidence to satisfy the only specified actus reus involving "*a sexual act with the involving an act of sodomy by putting penis in the anus*" essential element as to the charged offense descriptively set forth in Count 2 of the indictment with greater particularity than required by the unconstitutional statute pursuant to *Lawrence v. Texas*, 539 U.S. 558 (2003). Furthermore, the evidence in light of the verdict was legally insufficient to authorize any reasonable trier of fact to find guilt beyond a reasonable doubt and constituted "an acquittal" for double jeopardy purposes, which evidence entitled Petitioner to a judgment of acquittal under *Burks v. United States*, 437 U.S. 1 (1978). The habeas court was authorized to set aside Conviction based on the insufficient weight of the evidence under *Tibbs v. Florida*, 457 U.S. 31 (1982).

The habeas court's deficient fact-finding inquiry resulted in an objectively unreasonable determination of facts and contributed to decisions that are contrary to or involved an unreasonable application of federal law, in violation of the Supremacy Clause. These fact-finding deficiencies included:

1. **Failure to Address Constitutional Structural Reversible Errors Appearing on the Face of the Record**: The habeas court failed to adequately consider the Petitioner's exhausted federal constitutional claims, including newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010). This evidence established the Petitioner's incompetence to stand trial under *Cooper v. Oklahoma*, 517 U.S. 348, 354-369 (1996), negated the mens rea requirement from Count 2 and Count 5, and qualified him for a plausible insanity defense under *McElrath v. Georgia*, 601 U.S. 87 (2024). The court also neglected to

evaluate cumulative due process deficiencies involving prosecutorial misconduct under *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959).

2. **Arbitrary Application of Procedural Bar Rules**: The habeas court arbitrarily enforced procedural bar rules under the unconstitutional Georgia Habeas Corpus Act as applied to Petitioner to preclude adjudication of exhausted federal constitutional claims, contravening the equitable mandate of OCGA § 9-14-48(d), which requires habeas corpus relief “*in all cases...to avoid a fundamental miscarriage of justice.*” These unconstitutional barriers violated federal habeas corpus standards under *Murray v. Carrier*, 477 U.S. 478 (1986), and failed to account for the Suspension Clause protections.

3. **Denial of Equitable Relief for Void Judgments**: The habeas court failed to remedy void ab initio judgments in Counts 2 and 5, which were predicated on unconstitutional statutes, evidentiary insufficiencies, and fabricated charges. Count 2 (aggravated sodomy) relied on the federally invalidated OCGA § 16-6-2 statute, while Count 5 (aggravated assault) omitted divisible essential actus reus elements, rendering both judgments legally void under *Burks v. United States*, 437 U.S. 1 (1978).

B. Silent Denials and Procedural Violations by the Georgia Supreme Court

The Georgia Supreme Court’s summarily silent denials, without addressing the petitioner’s exhaustive federal constitutional claims, further exacerbate this fundamental miscarriage of justice:

1. **Unconstitutional Silence on Exhausted Federal Constitutional Issues**: On July 2, 2024, the Petitioner filed an arguable merit application for a certificate of probable cause to appeal the habeas court’s deficient decisions, supported by a memorandum of law filed on January 6, 2025. The Georgia Supreme Court’s summarily denial failed to address key issues involving constitutional structural reversible errors, prosecutorial misconduct, and newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010).

2. **Continued Exhaustion of Federal Claims**: On March 10, 2025, the Petitioner filed a timely motion for reconsideration and motion to stay remittitur, offering the Georgia Supreme Court a final opportunity to correct the grave miscarriage of justice appearing on the face of the record. The Court’s subsequent denial on March 31, 2025, again failed to address the Petitioner’s exhausted actual innocence claims under *McQuiggin v. Perkins*, 569 U.S. 383 (2013), and freestanding actual innocence claims articulated in *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010).

3. **Violation of Supremacy Clause and Federal Habeas Jurisprudence**: The Georgia Supreme Court’s failure to apply federal constitutional law and precedents, including *Fiore v. White*, 531 U.S. 225 (2001), *Schlup v. Delo*, 513 U.S. 298 (1995), and *Jackson v. Virginia*, 443 U.S. 307 (1979), contravenes the Supremacy Clause. This deliberate inaction perpetuates the Petitioner’s wrongful incarceration and procedural inequities.

C. Necessity for Supreme Court Intervention

The Petitioner's case is ripe for this Court's jurisdiction to address Georgia's systemic judicial failures, arbitrary procedural barriers, and inequitable enforcement of void judgments under the color of state law. Specifically:

1. **Actual Innocence Under Federal Standards**: The Petitioner's gateway actual innocence claim under *McQuiggin v. Perkins* and freestanding actual innocence claim under *In re Davis* demonstrate that no reasonable factfinder would have convicted the Petitioner in light of the newly uncovered psychiatric mitigating evidence and cumulative due process violations.
2. **Void Judgments Under Federal and State Law**: The evidence in Count 2, in light of the verdict, constitutes an acquittal for double jeopardy purposes under *Burks v. United States*, while Count 5's omission of essential elements renders it void ab initio. The habeas court's refusal to vacate these void judgments contravenes federal law, OCGA § 9-14-48(d), and equitable principles articulated in *Russell v. United States*, 369 U.S. 749 (1962), *Stirone v. United States*, 361 U.S. 212 (1960), and *Henderson v. Hames*, 287 Ga. 534 (2010).
3. **Trust Responsibility and Indigenous Rights**: Procedural failures violated federal treaties ensuring trust protections for the Petitioner's indigenous autonomy and right to self-determination, further breaching constitutional guarantees of liberty and due process.

D. The Importance of Establishing Uniform Habeas Corpus Standards

This Court's intervention is essential to resolve disparities in habeas corpus jurisprudence, unify standards for evaluating innocence claims, and prevent future miscarriages of justice. By addressing the Petitioner's case, this Court can:

1. **Ensure Consistency in Federal and State Post-Conviction Review**: Uniform application of federal constitutional law ensures that state procedural barriers do not perpetuate wrongful convictions.
2. **Reinforce the Principles of Fairness, Equity, and Justice**: Establishing a freestanding actual innocence precedent promotes public confidence in the judicial system and safeguards individual liberty.
3. **Protect Access to Equitable Remedies for Void Judgments**: Procedural fairness demands equitable relief for void ab initio judgments and systemic due process violations.

The Petitioner's extraordinary case reflects the systemic judicial failures and constitutional structural violations inherent in modern habeas corpus jurisprudence. The habeas court's fact-finding deficiencies, combined with the Georgia Supreme Court's summarily silent denials, underscore the urgent need for this Court to intervene under the Suspension Clause. Establishing equitable habeas corpus remedies and a freestanding actual innocence precedent is critical to correcting the grave miscarriage of justice and preserving the principles of fairness, equity, liberty, and justice.

IV. Suspension Clause Protections and the Backstop Against Arbitrary Detention

The Suspension Clause, enshrined in Article I, Section 9, Clause 2 of the United States Constitution, guarantees access to habeas corpus remedies as a safeguard against wrongful incarceration and systemic judicial inequities. Justice Ketanji Brown Jackson's dissent in *Jones v. Hendrix*, 599 U.S. 465 (2022), reinforces the constitutional imperative of preserving habeas corpus protections to vindicate all innocence claims—including statutory, legal, and actual innocence—while addressing procedural and jurisdictional failures. The Petitioner's case exemplifies the need for robust Suspension Clause protections, as newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) establishes:

1. **Incompetence to Stand Trial:** Evidence withheld by the prosecution demonstrates the Petitioner's mental impairments, rendering him incapable of meaningfully participating in his defense at the time of the trial court's inadequate competency determination hearing.
2. **Negation of Criminal Liability:** Psychiatric evidence raises doubt about culpability at the time of the alleged offense and negates the mens rea requirement for conviction. The evidence in light of the verdict clearly and convincingly established that the actus reus descriptively set forth in Count 2 did not occur and the actus reus insufficiently set forth in Count 5 did not occur which deprived Georgia from proving that there was a joint operation of an act and intent to establish a crime has factually or legally occurred as set forth in the defective indictment that was procured by fraud upon the court. As a result, the evidence constituted an acquittal for double jeopardy purposes pursuant to the principles established in *McElrath v. Georgia*, 601 U.S. 87 (2024).
3. **Qualification for Insanity Defense:** The Petitioner's mental health records entitled him to psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985) and qualify him for a plausible insanity defense under *McElrath v. Georgia*, 601 U.S. 87 (2024).

These cumulative due process deficiencies violate the strict requirements of the Liberty and Due Process Clauses of the Fourteenth Amendment, reinforcing the need for equitable habeas corpus relief.

A. Ineffective Assistance of Counsel Claims

The Petitioner's ineffective assistance of counsel claims underscore systemic judicial failures and demonstrate structural reversible errors across all critical phases of proceedings:

1. **Pre-Trial Phase:** Counsel failed to investigate the petitioner's documented mental impairments, depriving him of psychiatric expert assistance essential for evaluating competency and culpability under *Ake v. Oklahoma*, 470 U.S. 68 (1985). There is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different.
2. **Guilt-Innocence Phase:** Counsel failed to incorporate newly uncovered psychiatric mitigating evidence, violating procedural fairness under *United States v. Cronin*, 466 U.S. 648 (1984) and *Schlup v. Delo*, 513 U.S. 298 (1995). There is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different.

3. **Competency Determination Phase:** Counsel neglected to advocate for a meaningful competency evaluation, resulting in a fundamentally unfair determination under *Cooper v. Oklahoma*, 517 U.S. 348 (1996). There is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different.
4. **Sentencing Phase:** Counsel failed to present psychiatric mitigating evidence at sentencing, violating procedural standards set forth in *Sears v. Upton*, 561 U.S. 945 (2010). There is a reasonable probability that, but for counsel's errors, the outcome of the proceeding would have been different.
5. **Post-Conviction Phase:** Appellate counsel failed to preserve exhausted federal constitutional claims, including jurisdictional defects and evidentiary insufficiencies, obstructing access to habeas relief under OCGA § 9-14-48(d).

These cumulative deficiencies satisfy the cause-and-prejudice standard under *Murray v. Carrier*, 477 U.S. 478 (1986), and necessitate equitable habeas relief to correct a fundamental miscarriage of justice.

B. Prosecutorial Misconduct and Constitutional Violations

The Petitioner's conviction is further undermined by prosecutorial misconduct, including:

1. **Suppression of Exculpatory Evidence:** Knowledge of material psychiatric records were withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), preventing expert evaluation of competence and culpability at the time of the alleged incident.
2. **Fabrication of Charges:** False evidence was presented to the grand jury and trial court, and false testimony regarding investigative reports was left uncorrected, violating *Napue v. Illinois*, 360 U.S. 264 (1959).
3. **Constitutionally Void Charges:** Count 2 (aggravated sodomy) relied on the federally invalidated OCGA § 16-6-2 statute, as clarified in *Lawrence v. Texas*, 539 U.S. 558 (2003), and *Fajardo-Rebollar v. U.S. Attorney Gen.*, No. 21-10390 (11th Cir. 2023). Count 5 (aggravated assault) omitted divisible actus reus elements, rendering it void ab initio under *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), opinion reinstated, 4 F.4th 1292 (11th Cir. 2021) and *Henderson v. Hames*, 287 Ga. 534 (2010).

C. Equitable Resolution of Innocence Jurisprudence

Justice Jackson's dissent in *Jones v. Hendrix* emphasizes the necessity of reconciling inconsistencies in innocence claims and habeas corpus protections across jurisdictions. The Petitioner's case illustrates these conflicts, involving:

1. **Statutory Innocence:** Conviction under OCGA § 16-6-2 constitutes statutory innocence, as the statute was invalidated under federal law in *Lawrence v. Texas*.

2. Legal Innocence: Jurisdictional defects and structural reversible errors render the Petitioner's judgment void ab initio under *Fiore v. White*, 531 U.S. 225 (2001) *Hammer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13 (2017), and *Bowles v. Russell*, 551 U.S. 205 (2007).

3. Actual Innocence: Newly uncovered psychiatric mitigating evidence establishes compelling proof that no reasonable factfinder would have found the petitioner guilty, satisfying the freestanding actual innocence standard articulated in *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010).

D. Equitable Need for Supreme Court Precedent

This Court's intervention is essential to establish a freestanding actual innocence precedent and unify habeas corpus protections across jurisdictions. By addressing the Petitioner's case, this Court can:

1. Protect fundamental constitutional rights against wrongful conviction and incarceration.
2. Resolve disparities in post-conviction review standards for innocence claims, ensuring equitable relief across federal and state jurisdictions.
3. Reinforce the principles of fairness, equity, liberty, and justice that are foundational to habeas corpus jurisprudence.

The Petitioner's extraordinary case underscores the constitutional importance of habeas corpus protections under the Suspension Clause, as emphasized in Justice Jackson's dissent in *Jones v. Hendrix*. The compelling evidence of actual innocence, combined with systemic judicial failures and ineffective counsel claims, necessitates Supreme Court intervention to establish equitable remedies, unify post-conviction review standards, and preserve the integrity of the justice system.

V. Urgent Need for Supreme Court Review

This case presents unresolved constitutional questions of profound importance:

- 1. Recognition of Actual Innocence Precedents:** Establishing freestanding actual innocence claims under the standard set forth in *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010), to address systemic judicial failures and prevent wrongful incarceration.
- 2. Uniform Habeas Corpus Standards:** Reconciling procedural inequities across federal and state jurisdictions to protect fundamental rights and ensure equitable access to remedies.
- 3. Suspension Clause Protections:** Reinforcing habeas corpus guarantees against arbitrary state actions and ensuring meaningful review of constitutional claims.

VI. Earnest Prayers for Equitable Constitutional Relief

The Petitioner respectfully requests this Court's intervention to correct the grave miscarriage of justice resulting from systemic judicial failures, structural reversible errors, and

constitutional violations. Granting certiorari will provide equitable habeas corpus relief, safeguard fundamental rights, and restore public confidence in the integrity of the justice system.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **United States Constitution:** First, Fourth, Fifth, Sixth, Eighth, Ninth, and Fourteenth Amendments.
2. **28 U.S.C. §§ 2241 and 2254:** Governing habeas corpus relief.
3. **OCGA § 9-14-48(d):** Mandating habeas corpus relief to avoid miscarriages of justice.

STATEMENT OF THE CASE

This extraordinary case is rooted in systemic judicial failures, constitutional structural violations, and procedural inequities, culminating in the wrongful conviction and prolonged incarceration of an actually innocent Petitioner. The constitutional deficiencies present throughout all stages of the judicial proceedings—from the trial court to the Georgia Supreme Court—underscore the need for intervention from this Court to correct profound injustices and safeguard fundamental constitutional protections.

I. Initial Investigation and Malicious Prosecution

A. Noble Cause Corruption Doctrine and Fourth Amendment Violations

The unconstitutional actions of the Douglas County Sheriff's Office, specifically lead investigator Trent Wilson, demonstrate a clear violation of the Fourth Amendment's protection against unreasonable searches and seizures. The investigator unlawfully entered and seized the Petitioner's private indigenous residence without constitutional or statutory authority, acting under the color of law in violation of 18 U.S.C. §242. This unlawful entry and seizure deprived the Petitioner of his civil rights and constituted an abuse of authority.

Noble Cause Corruption Doctrine: As articulated in *Luna v. Massachusetts*, 354 F.3d 108 (1st Cir. 2004), noble cause corruption occurs when law enforcement officials engage in misconduct under the guise of pursuing justice. In this case, Investigator Wilson solicited a fellow investigator, who had no active involvement in the investigation, to initiate a search warrant application based on fraudulent investigative material. This conduct reflects a deliberate conspiracy to deprive the Petitioner of his constitutional rights in violation of 18 U.S.C. §241.

B. Insufficient Search and Arrest Warrants

The constitutionally insufficient search warrant affidavit (17SW238) completed by Investigator Cindy West failed to establish probable cause, as required under *Garmon v. Lumpkin County*, 878 F.2d 1406 (11th Cir. 1989). The affidavit did not track statutory language or provide sufficient facts to support a charge of rape under O.C.G.A. §16-6-1. Instead, it relied on allegations involving constitutionally protected conduct, as recognized in

Powell v. State, 270 Ga. 327 (1998), and Lawrence v. Texas, 539 U.S. 558 (2003). The Eleventh Circuit holding in Fajardo-Rebollar v. U.S. Attorney Gen., No. 21-10390 (2023) established the indisputable fact that *"sodomy is no longer a crime and does not involve 'sexual intercourse' as the term is defined under Georgia law."*

Similarly, the arrest warrant affidavit 16MJD1267 failed to establish probable cause, relying on allegations that only constituted attempted aggravated sodomy under O.C.G.A. §§16-4-1 and 16-6-2, as clarified in Howard v. State, 272 Ga. 242 (2000). The affidavit's reliance on constitutionally protected conduct further invalidated the warrant pursuant to Lawrence v. Texas, 539 U.S. 558 (2003) and Fajardo-Rebollar v. U.S. Attorney Gen., No. 21-10390 (2023).

The second constitutionally insufficient search warrant affidavit (17SW239) completed by Investigator Trent Wilson failed to establish probable cause, as required under Garmon v. Lumpkin County, 878 F.2d 1406 (11th Cir. 1989). The investigative facts only set forth material allegations involving constitutional protective conduct of non-commercial sexual intimacy between persons legally able to consent in private constituting, *"she said she felt him trying to put his penis in her anus,"* an attempted sodomy under OCGA §16-4-1 which was not a crime in Georgia pursuant to Lawrence v. Texas, 539 U.S. 558 (2003) and Fajardo-Rebollar v. U.S. Attorney Gen., No. 21-10390 (2023).

The material allegations in the affidavits described non-commercial sexual intimacy between persons legally able to consent in private, which is no longer a crime in Georgia pursuant to Lawrence v. Texas, 539 U.S. 558, 565 (2003) and Fajardo-Rebollar v. U.S. Attorney Gen., No. 21-10390 (Decided Feb. 3, 2023)(*"sodomy is no longer a crime and does not involve 'sexual intercourse' as the term is defined under Georgia law"*). The constitutional protective conduct did not authorized the state arbitrary intrusion in the Petitioner's Ninth Amendment right to privacy and right to be left alone that is protected under the Liberty Clause of the Fourteenth Amendment. The affidavit's insufficiency rendered the search warrant invalid, violating the Petitioner's Fourth Amendment rights.

C. Fraudulent Indictment and Judicial Estoppel

The Douglas County District Attorney's Office acted beyond its constitutional and statutory authority by instituting a charge of aggravated sodomy that did not factually or legally occurred as descriptively set forth in Count 2 of the indictment with greater particularity than required by the federally invalidated OCGA §16-6-2 sodomy statute. Therefore, Count 2 of the indictment was procured by fraud upon the court, as it materially misrepresented the allegations set forth in the search warrants as well as arrest warrants and constructively amended the charges to include conduct that was factually unsupported by the evidence.

Judicial Estoppel Doctrine: Under New Hampshire v. Maine, 532 U.S. 742 (2001), judicial estoppel prohibits parties from assuming contradictory positions in legal proceedings. The constructive amendment of Count 2 violated this doctrine, as the allegations were insupportable as a matter of fact and law.

D. Equitable Relief Under OCGA §9-14-48(d)

The Petitioner sought equitable relief under OCGA §9-14-48(d) to correct the fundamental miscarriage of justice resulting from the fraudulent indictment and procedural violations. The Georgia Court of Appeals' decision in *White v. State*, A21A1202 (Decided March 10, 2022), which upheld the constructive amendment of the charges, further underscores the need for this Court's intervention to preserve the ends of justice.

E. Constitutional and Statutory Violations

1. **18 U.S.C. §241 (Conspiracy Against Rights)**: Investigator Wilson's solicitation of a fellow investigator to submit a fraudulent search warrant application constitutes a conspiracy to deprive the Petitioner of his constitutional rights.
2. **18 U.S.C. §242 (Deprivation of Rights Under Color of Law)**: The unlawful entry and seizure of the Petitioner's residence, coupled with the fraudulent indictment, violated the Petitioner's civil rights under color of state law.
3. **Fourth Amendment**: The insufficient search and arrest warrants violated the Petitioner's right to be free from unreasonable searches and seizures.
4. **Ninth and Fourteenth Amendments**: The fraudulent charges and procedural violations deprived the Petitioner of his fundamental rights to privacy, liberty, and due process.

The Petitioner respectfully requests this Court grant certiorari to address the systemic violations of constitutional and statutory rights in this case. The actions of the Douglas County Sheriff's Office and Douglas County District Attorney's Office demonstrate a clear pattern of noble cause corruption, fraudulent conduct, and procedural violations that have resulted in a fundamental miscarriage of justice under the standard set forth in *Murray v. Carrier*, 477 U.S. 478 (1986). This Court's intervention is necessary to establish a freestanding actual innocence precedent under the Suspension Clause, Eighth Amendment, Ninth Amendment, and Liberty Clause of the Fourteenth Amendment, ensuring uniform application of equitable habeas relief in state and federal courts.

II. Trial Proceedings and Void Ab Initio Convictions

The Petitioner's wrongful conviction and void sentence arise from structural errors in the indictment, ineffective assistance of trial and appellate counsel, prosecutorial misconduct, and the unconstitutional application of procedural barriers by Georgia courts. The evidence in light of the verdict constituted "an acquittal" for double jeopardy purposes and clearly demonstrates actual innocence, requiring equitable habeas relief and the recognition of a freestanding actual innocence precedent.

On February 13, 2018, the Douglas County Superior Court entered a void ab initio judgment of conviction against the Petitioner for aggravated sodomy (Count 2) and aggravated assault (Count 5) in Case No. 16CR00760. These defective convictions procured by fraud upon the court, however, were fundamentally flawed and legally void ab initio due to

structural reversible errors appearing on the face of the record, non-amendable constitutional violations, and procedural deficiencies, including:

1. **Constitutional Invalidity of Count 2 (Aggravated Sodomy):** Count 2 was unlawfully predicated on OCGA § 16-6-2, a statute declared unconstitutional under *Powell v. State*, 270 Ga. 327 (1998), and federally invalidated by *Lawrence v. Texas*, 539 U.S. 558 (2003). The unconstitutional statute criminalized private, non-commercial consensual sexual conduct protected by the Ninth and Fourteenth Amendments. The judgment for Count 2 violated the Petitioner's constitutional rights to privacy and personal autonomy and is void ab initio.

2. **Defective Indictment and Evidentiary Insufficiencies in Count 5 (Aggravated Assault):** The constitutionally insufficient indictment omitted the divisible actus reus, "an assault" as statutorily defined §16-5-20(a)(2), which was an essential element for the aggravated assault charge insufficiently set forth in Count 5 as clarified under *Henderson v. Hames*, 287 Ga. 534 (2010), and *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), opinion reinstated, 4 F.4th 1292 (11th Cir. 2021). The defective indictment and evidentiary insufficiencies rendered the conviction for Count 5 void ab initio.

3. **Prosecutorial Misconduct:** The prosecution suppressed knowledge of exculpatory evidence, including investigative reports from Trent Wilson documenting the Petitioner's manic episode and mental impairments during the time of the alleged incident. This material evidence entitled the Petitioner to psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985). The prosecutor's deliberate withholding of this material evidence violated *Brady v. Maryland*, 373 U.S. 83 (1963), and deprived the Petitioner of a fundamentally fair trial. Furthermore, false testimony presented during the trial exacerbated the due process violations, contravening *Napue v. Illinois*, 360 U.S. 264 (1959).

4. **Ineffective Assistance of Trial Counsel:** Trial counsel failed to investigate the Petitioner's mental impairments, secure psychiatric expert assistance, and challenge void judgments stemming from unconstitutional statutes and defective indictments in violation of *United States v. Cronin*, 466 U.S. 648 (1984). These omissions violated the Petitioner's Sixth Amendment right to effective assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984), and deprived him of a full and plausible insanity defense as articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024).

A. Fundamentally Unfair Trial

In February 2018, the Petitioner was wrongfully convicted in Georgia of aggravated sodomy and aggravated assault under a non-amendable defective indictment that failed to provide constitutionally adequate notice and particularity of the alleged offenses. Count 2 implausibly alleged "*a sexual act with the involving an act of sodomy by putting penis in the anus of another,*" yet the state prosecution failed to present any evidence to support the only specified actus reus/descriptive essential element materially set forth in the indictment. Count 5 similarly lacked sufficient evidentiary support for the elements of aggravated assault.

The Petitioner's guaranteed right to present a full defense was severely impaired by multiple instances of prosecutorial misconduct, including the suppression of exculpatory evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and the knowing use of false testimony in violation of *Napue v. Illinois*, 360 U.S. 264 (1959). Despite the prosecution's constitutional obligations, the state failed to meet its burden of proving the offenses' elements beyond a reasonable doubt, as required by *Jackson v. Virginia*, 443 U.S. 307 (1979).

The trial court compounded these failures by:

1. Denying the Petitioner's arguable merits motion for a directed verdict of acquittal on Count 2.
2. Denying the Petitioner's constitutional right to psychiatric expert assistance in violation of *Ake v. Oklahoma*, 470 U.S. 68 (1985).
3. Fraudulently finding the Petitioner competent to stand trial in violation of *Cooper v. Oklahoma*, 517 U.S. 348 (1996).
4. Refusing to provide a lesser-included offenses instruction warranted by the evidence adduced at the fundamentally unfair trial, thereby violating the Petitioner's right to trial by jury as articulated in *Blakely v. Washington*, 542 U.S. 296 (2004).

B. Trial Court's Abuse of Discretion and Denial of Directed Verdict

The trial court abused its discretion by denying Petitioner's motion for a directed verdict of acquittal for Count 2, despite the undisputed material facts and evidence presented at trial. Specifically, the evidence failed to establish the specified Actus Reus or descriptive essential element of "*did perform a sexual act with the involving an act of sodomy by putting his penis in the anus*" as charged in the indictment. The court's refusal to grant an acquittal violated principles of federal constitutional law under *Burks v. United States*, 437 U.S. 1 (1978), *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001), *McElrath v. Georgia*, 601 U.S. 87 (2024) and the Fifth and Sixth Amendments.

1. Material Evidence Presented in State's Case-In-Chief: The evidence in light of the verdict confirmed that Petitioner's conduct only involved an inchoate act, involving "*attempted but failed to penetrate the victim vaginally or anally*," as later acknowledged by Douglas County Superior Court Judge Cynthia Adam in her void ab initio post-conviction order pursuant to *Hammer v. Neighborhood Hous. Servs. of Chi.*, 138 S.Ct. 13 (2017) and *Bowles v. Russell*, 551 U.S. 205 (2007). These undisputed facts indicated that the conduct underlying the void judgment only constituted an inchoate actus reus involving an unsuccessful attempt to commit sodomy under OCGA §§16-4-1 and 16-6-2, rather than the completed act of aggravated sodomy as implausibly charged in Count 2.

2. State's Theoretical Argument and Judicial Misconduct: During the motion for directed verdict, the State improperly argued that "*the aggravated sodomy statute does not require penetration*" in violation of the Due Process Clause and cited medical evidence of injuries "*consistent with some level of forced penetration*" in violation of the principles articulated in *Napue v. Illinois* and *Brady v. Maryland*. However, these claims were directly contradicted by

the evidence presented at trial, which unequivocally demonstrated that no penetration occurred, disproving the only specified actus reus descriptively set forth in Count 2 and constituted an acquittal for double jeopardy purposes. This misrepresentation of fact constituted fraud upon the court and deprived the Petitioner of his right to an impartial tribunal and entitlement to a entry of a judgment of acquittal under *Burks v. United States*, 437 U.S. 1 (1978).

C. Jury Instruction Errors and Constructive Amendment

The trial court's jury instructions further compounded the constitutional violations by defining the crime of aggravated sodomy in a material manner inconsistent with the specific allegations in the indictment. The instructions allowed the jury to convict Petitioner based on alternatives statutory methods of committing sodomy that were not materially alleged in Count 2, violating the Petitioner's due process rights and the principles articulated in *Cole v. Arkansas*, 333 U.S. 196 (1948), *Stirone v. United States*, 361 U.S. 212 (1960); *Beck v. Alabama*, 447 U.S. 625 (1980), and *Blakely v. Washington*, 542 U.S. 296 (2004).

1. Improper Basis for Conviction: The indictment specifically charged Petitioner with committing aggravated sodomy by "*putting his penis in the anus*" of the alleged victim. However, the trial court's jury instructions included the invalidated statutory definition of sodomy in violation of the principles articulated in *Lawrence v. Texas* without limiting the instructions to the specific descriptive material manner alleged in Count 2 with greater particularity than required by the federally invalidated Georgia OCGA §16-6-2 statute. This structural error allowed the jury to convict Petitioner based on an unalleged method of committing the crime, constituting reversible error.

2. Supreme Court of Georgia Precedent: The Supreme Court of Georgia has held in *Watson v. State*, 293 Ga. 817 (2013) that it is reversible error to charge the jury that a crime may be committed by two methods when the indictment charges it was committed by one specific method. The trial court's failure to limit the jury instructions to the specific allegations in Count 2 violated this precedent and deprived the Petitioner of his constitutional right to due process.

3. Constructive Amendment and Judicial Estoppel: The appellate court of Georgia constructively amended the jury's guilty verdict to include omitted lesser-included offense conduct, such as "*attempted to put his penis in her rectum*" and "*attempted to have vaginal and anal sex with her.*" These judicial fact findings were not specifically charged in the indictment or submitted to the jury for deliberation, violating the Petitioner's Fifth Amendment grand jury right and the principles articulated in *Stirone v. United States*, 361 U.S. 212 (1960), *New Hampshire v. Maine*, 532 U.S. 742 (2001), *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001), and *McElrath v. Georgia* 601 U.S. 87 (2024).

D. Constitutional Structural Violations

The trial court's denial of Petitioner's motion for directed verdict and its erroneous jury instructions violated multiple constitutional protections:

1. **Due Process and Burden of Proof:** The State failed to meet its constitutional burden of proving the specified Actus Reus and descriptive essential element of Count 2 beyond a reasonable doubt, as required under *Jackson v. Virginia*, 443 U.S. 307 (1979). The trial court's refusal to grant a directed verdict of acquittal violated the Petitioner's due process rights and constituted a structural reversible error under *Stirone v. United States*, 361 U.S. 212 (1960); *Beck v. Alabama*, 447 U.S. 625 (1980), and *Blakely v. Washington*, 542 U.S. 296 (2004).

2. **Right to Present a Full Defense:** The trial court's denial of Petitioner's request for lesser-included offense instructions and the State's misrepresentation of evidence deprived the Petitioner of his right to present a full defense, including a legally sufficient abandonment defense and a plausible insanity defense under *McElrath v. Georgia*, 601 U.S. 87 (2024).

3. **Ninth and Fourteenth Amendments:** The cumulative constitutional violations, including judicial and prosecutorial misconduct, deprived the Petitioner of his fundamental rights to privacy, liberty, and due process. These rights are protected under the Ninth Amendment's recognition of unenumerated rights and the Fourteenth Amendment's Liberty Clause.

E. Post-conviction Deficiencies Deprived Georgia Subject Matter Jurisdiction

The Superior Court of Douglas County in case number 16CR00760 and subsequently the Georgia Court of Appeals in *White v. State*, A21A1202 (Decided March 10, 2022; Remittitur sent March 31, 2022) acted beyond its constitutional and statutory authority to take subject matter jurisdiction involving an invalidated motion for out-of-time appeal that was filed on March 8, 2019 and subsequently granted by the trial court on March 19, 2019 pursuant *Hammer v. Neighborhood Hous. Servs. of Chi.*, 138 S.Ct. 13 (2017) and *Bowles v. Russell*, 551 U.S. 205 (2007).

Under Georgia law, the Douglas County trial court lacked constitutional or statutory authority to grant Petitioner's motion for out-of-time appeal on March 19, 2019 under *Cook v. State*, 313 Ga. 471 (Decided March 15, 2022). This rendered the order void ab initio, as well as all subsequent orders, including:

1. Denial of motion for new trial (January 21, 2021);
2. Amended sentencing order (February 5, 2021);
3. Constructive amended judgment set forth in *White v. State*, A21A1202 was unconstitutionally adopted as the trial court constructive amended ruling (April 1, 2022).

D. Equitable Need for Freestanding Actual Innocence Precedent

This extraordinary case underscores the need for a freestanding actual innocence precedent to protect against wrongful convictions and wrongful incarceration. The trial court's erroneous jury instructions, coupled with the State's fraudulent allegations and the appellate court's constructive amendment of the verdict, demonstrate systemic failures that necessitate equitable relief.

1. Preserving the Ends of Justice: The trial court's errors and the State's misconduct deprived the Petitioner of a fair trial and resulted in a wrongful conviction. A freestanding actual innocence precedent would provide constitutional protection against such miscarriages of justice and ensure that individuals are not wrongfully incarcerated based on fraudulent or insufficient evidence.

2. Uniform Application in State and Federal Courts: Establishing a freestanding actual innocence precedent under the Suspension Clause, Eighth Amendment, Ninth Amendment, and Liberty Clause of the Fourteenth Amendment would ensure uniform application of equitable habeas relief in both state and federal courts, safeguarding the fundamental rights of all individuals wrongfully incarcerated.

These cumulative structural errors rendered the Petitioner's trial fundamentally unfair, resulting in a void judgment of conviction that is incapable of supporting the Petitioner's continued incarceration. The Petitioner respectfully requests this Court grant certiorari to address the systemic constitutional violations, judicial misconduct, and abuse of discretion that resulted in the wrongful conviction for Count 2. The trial court's refusal to grant a directed verdict of acquittal, coupled with its erroneous jury instructions, deprived the Petitioner of his right to a fair trial and impartial tribunal. This Court's intervention is necessary to vacate the void judgment, establish a freestanding actual innocence precedent, and provide equitable relief under the Suspension Clause, Eighth Amendment, Ninth Amendment, and Liberty Clause of the Fourteenth Amendment.

III. Appellate Court Proceedings

On March 10, 2022, the Georgia Court of Appeals entered a constructive amended final judgment in *White v. State*, Case No. A21A1202, affirming the Petitioner's convictions without adequate jurisdiction under *Bowles v. Russell*, 551 U.S. 205 (2007) and *Cook v. State*, 313 Ga. 471 (Decided March 15, 2022). However, the appellate proceedings were plagued by constitutional structural violations and procedural deficiencies, including:

1. Constructive Amendment of Jury Verdict: The appellate court amended the defective jury verdict to conform to the evidence rather than reversing the conviction for insufficient evidence as required under *Fiore v. White*, 531 U.S. 225 (2001). This unconstitutional action violated the Sixth Amendment's guarantee of trial by jury and rendered the judgment void ab initio.

2. Failure to Instruct on Lesser-Included Offenses: The appellate court failed to ensure that the trial court instructed the jury on lesser-included offenses supported by evidence adduced at trial. This constitutional omission violated *Stover v. State*, 256 Ga. 515 (1986), *Powell v. Georgia*, 270 Ga. 327 (1998), *Cole v. Arkansas*, 333 U.S. 196 (1948) *Stirone v. United States*, 361 U.S. 212 (1960), and *Beck v. Alabama*, 447 U.S. 625 (1980), further compromising the integrity of the trial proceedings.

3. Contravention of Federal Evidentiary Standards: The appellate court misapplied evidentiary sufficiency standards under *Jackson v. Virginia*, 443 U.S. 307 (1979), and ignored

constitutional defects in Counts 2 and 5. Furthermore, the appellate court misapplied the prejudice inquiry/analysis standard under *Strickland v. Washington*, 466 U.S. 668 (1984) involving the ineffective assistance of counsel structural errors.

IV. Habeas Corpus Proceedings

On March 5, 2024, the Dooly County Superior Court arbitrarily denied the Petitioner equitable habeas corpus relief in *White v. Aimee Smith, Warden*, Case No. 23DV-0046. The habeas court's decision reflects systemic judicial failures that obstructed access to meaningful relief:

1. **Deficient Fact-Finding Inquiry:** The habeas court refused to evaluate newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) demonstrating the Petitioner's incompetence to stand trial pursuant to *Cooper v. Oklahoma*, 517 U.S. 348 (1996) and negating mens rea requirements. This newly uncovered material evidence satisfies actual innocence standards under *Schlup v. Delo*, 513 U.S. 298 (1995), but was ignored by the habeas court.
2. **Arbitrary Enforcement of Procedural Barriers:** Procedural bar rules under OCGA § 9-14-48(d) were enforced arbitrarily to obstruct the petitioner's claims, contravening federal habeas corpus principles articulated in *McQuiggin v. Perkins*, 569 U.S. 383 (2013).
3. **Failure to Remedy Void Judgments:** Despite clear jurisdictional defects and constitutional violations, the habeas court refused to vacate the void ab initio judgments for Counts 2 and 5, perpetuating systemic judicial inequities.

V. Georgia Supreme Court Review

On March 4, 2025, the Georgia Supreme Court summarily denied the Petitioner's application for a certificate of probable cause to appeal the habeas court's judgment. The court subsequently denied the Petitioner's motion for reconsideration and motion to stay remittitur on March 31, 2025. These silent denials demonstrate systemic judicial failures:

1. **Failure to Address Exhausted Federal Claims:** The Georgia Supreme Court ignored the Petitioner's exhausted constitutional claims, including actual innocence arguments under *McQuiggin v. Perkins* and structural reversible errors under *Burks v. United States*, 437 U.S. 1 (1978).
2. **Violation of the Supremacy Clause:** The court failed to apply binding federal precedents, including *Lawrence v. Texas* and *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010).
3. **Arbitrary Denial of Equitable Relief:** The court's refusal to adjudicate exhausted constitutional claims and provide equitable habeas corpus relief violated the Petitioner's right to the privilege of the writ of habeas corpus under the Suspension Clause.

VI. Cumulative Impact of Judicial Failures

The cumulative deficiencies at all critical stages of judicial review resulted in the Petitioner's wrongful conviction and continued incarceration under void ab initio judgments. Arbitrary procedural barriers, suppressed exculpatory evidence, ineffective counsel, and systemic judicial inequities deprived the petitioner of a meaningful adversarial inquiry and equitable relief. This extraordinary case demands intervention from this Court to correct profound injustices, protect constitutional rights, and prevent future miscarriages of justice.

Suspension Clause Analysis and Post-Conviction Review for State Prisoners

The Suspension Clause of Article I, Section 9 of the United States Constitution guarantees the privilege of the writ of habeas corpus as a safeguard against arbitrary and unlawful state actions. This case underscores the critical role of the Suspension Clause in ensuring meaningful post-conviction review for state prisoners, particularly those asserting actual innocence and challenging void ab initio judgments. Justice Jackson's dissent in *Jones v. Hendrix*, 599 U.S. 465 (2023), further illuminates the constitutional importance of habeas corpus as a remedy for wrongful incarceration and systemic judicial failures.

I. Constitutional Guarantee of Habeas Corpus

The Suspension Clause states: "*The privilege of the writ of habeas corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.*" This Clause is rooted in the principle that habeas corpus serves as a vital remedy to correct irreparable harm caused by unconstitutional detention. For state prisoners, this privilege ensures a full and fair corrective process to address structural reversible errors, procedural deficiencies, and constitutional violations.

Justice Jackson's dissent in *Jones v. Hendrix* emphasizes that habeas corpus is a fundamental safeguard against wrongful incarceration, particularly when procedural barriers prevent meaningful review of constitutional claims. She argued that the Antiterrorism and Effective Death Penalty Act (AEDPA) should not be interpreted to foreclose habeas relief for individuals who are factually innocent or whose convictions rest on unconstitutional grounds. Her analysis underscores the Suspension Clause's role in ensuring that habeas corpus remains a meaningful remedy for addressing miscarriages of justice.

II. Procedural Barriers and Systemic Judicial Failures

The Petitioner's case exemplifies how state procedural barriers and judicial inequities can obstruct meaningful habeas corpus relief:

1. Arbitrary Enforcement of Procedural Bar Rules: In the Petitioner's habeas corpus proceedings before the Dooly County Superior Court, procedural bar rules under OCGA § 9-14-48(d) were enforced arbitrarily to prevent review of exhausted federal constitutional claims. This obstruction contravenes federal standards articulated in *Murray v. Carrier*, 477 U.S. 478 (1986), which requires cause-and-prejudice exceptions for overcoming procedural default when constitutional violations have occurred.

2. Failure to Adjudicate Meritorious Claims: The habeas court failed to adjudicate compelling exhausted federal constitutional claims on their merits, including actual innocence under *Schlup v. Delo*, 513 U.S. 298 (1995), and newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) demonstrating the Petitioner's incompetence to stand trial and negating mens rea requirements. These omissions violate due process protections and perpetuate the Petitioner's wrongful incarceration.

3. Misapplication of State Law: The state courts' enforcement of procedural barriers deprived the Petitioner of equitable relief under OCGA § 9-14-48(d), which mandates habeas corpus relief to avoid a fundamental miscarriage of justice. This misapplication of state law highlights systemic inequities in post-conviction review.

Justice Jackson's dissent in *Jones v. Hendrix* underscores the dangers of procedural barriers that foreclose habeas relief for individuals asserting constitutional violations. She argued that such barriers undermine the foundational purpose of habeas corpus as a remedy for unlawful detention and erode public confidence in the justice system.

III. Structural Reversible Errors and Void Judgments

The Suspension Clause protects against incarceration under void ab initio judgments stemming from structural reversible errors:

1. Constitutional Defects in Count 2 (Aggravated Sodomy): Count 2 relied on the unconstitutional OCGA § 16-6-2 statute, invalidated under *Powell v. State*, 270 Ga. 327 (1998), and *Lawrence v. Texas*, 539 U.S. 558 (2003). This judgment is legally void and cannot sustain detention.

2. Evidentiary Insufficiencies in Count 5 (Aggravated Assault): The indictment omitted divisible essential elements, "an assault" as statutorily defined in OCGA § 16-5-20(a)(2), required under *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), opinion reinstated, 4 F.4th 1292 (11th Cir. 2021), and failed to meet constitutional evidentiary sufficiency standards under *Fiore v. White*, 531 U.S. 225 (2001).

3. Failure to Address Lesser-Included Offense Standards: Both the trial and appellate courts ignored precedents requiring jury instructions on lesser-included offenses, as established in *Beck v. Alabama*, 447 U.S. 625 (1980), *Cole v. Arkansas*, 333 U.S. 196 (1948), *Stover v. State*, 256 Ga. 515 (1986), and *Powell v. State*, 270 Ga. 327 (1998). These omissions constitute structural reversible errors that invalidate the judgments.

Justice Jackson's dissent in *Jones v. Hendrix* highlights the importance of ensuring that habeas corpus remains available to address structural errors and void judgments. She argued that procedural barriers should not preclude relief for individuals whose convictions rest on unconstitutional grounds.

IV. Actual Innocence and Freestanding Claims

The Suspension Clause guarantees equitable habeas corpus relief for Petitioners asserting actual innocence:

1. **Gateway Innocence Standard:** The Petitioner's newly uncovered psychiatric mitigating evidence satisfies the actual innocence gateway standard under *McQuiggin v. Perkins*, 569 U.S. 383 (2013). This evidence, including investigative reports documenting the Petitioner's manic episode during the alleged offense, demonstrates that no reasonable factfinder would have convicted him under the principles set forth in *McElrath v. Georgia*, 601 U.S. 87 (2024).
2. **Freestanding Innocence Standard:** This case raises critical questions regarding the recognition of freestanding actual innocence claims under *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010). Such claims are essential to preventing wrongful incarceration and ensuring the integrity of judicial processes.

Justice Jackson's dissent in *Jones v. Hendrix* underscores the importance of recognizing actual innocence claims as a constitutional remedy for addressing wrongful incarceration. She argued that habeas corpus must remain a meaningful avenue for individuals asserting innocence to seek relief.

V. Suspension Clause Violations

The Georgia courts' systemic failures and procedural barriers violate the Petitioner's constitutional right to habeas corpus under the Suspension Clause:

1. **Obstruction of Access to Remedies:** Arbitrary procedural bar rules obstructed meaningful review of federal constitutional claims, depriving the Petitioner of equitable relief and perpetuating his wrongful incarceration.
2. **Failure to Remedy Void Judgments:** The Georgia courts' refusal to vacate void ab initio judgments in Counts 2 and 5 constitutes an unconstitutional denial of the privilege of the writ of habeas corpus.
3. **Silent Denials by the Georgia Supreme Court:** The Georgia Supreme Court's silent denials of the Petitioner's applications for relief fail to satisfy constitutional due process requirements and contravene Suspension Clause protections.

Justice Jackson's dissent in *Jones v. Hendrix* emphasizes that the Suspension Clause must be interpreted to preserve habeas corpus as a remedy for addressing systemic judicial failures and ensuring access to equitable relief.

VI. Urgent Need for Supreme Court Intervention

The Suspension Clause serves as a constitutional safeguard against systemic inequities and arbitrary state actions. This case presents profound questions regarding:

1. The recognition of freestanding actual innocence claims as a constitutional remedy for wrongful incarceration.
2. The reconciliation of procedural inequities in state and federal habeas corpus jurisprudence.

3. The preservation of habeas corpus protections to ensure access to equitable relief for individuals asserting void judgments and actual innocence.

Justice Jackson's dissent in *Jones v. Hendrix* underscores the urgent need for this Court to address these issues and reaffirm the foundational role of habeas corpus in protecting individual rights and ensuring justice. Granting certiorari in this case is essential to uphold the Petitioner's constitutional right to habeas corpus, rectify systemic judicial failures, and protect the integrity of the justice system.

SIXTH AMENDMENT AND THE ESSENTIAL ROLE OF A TRIAL BY JURY

Justice Gorsuch's dissent in *Rimlawi v. United States*, 604 U.S. __ (2025) underscores the critical importance of the Sixth Amendment's guarantee of trial by jury and its foundational role in ensuring fairness and justice in criminal proceedings. His dissent resonates profoundly with the Petitioner's case, highlighting systemic judicial failures, constitutional violations, and procedural inequities that demand this Court's intervention.

I. Fundamental Right to Trial by Jury and Constructive Amendment of Verdicts

Justice Gorsuch emphasized that the Sixth Amendment's promise of trial by jury is inviolable and must be preserved to protect against judicial overreach. In *Rimlawi v. United States*, the Fifth Circuit upheld a judge's authority to impose restitution based on judicial fact-finding, bypassing the jury's role. Justice Gorsuch expressed grave concerns about this practice, citing *Apprendi v. New Jersey*, 530 U.S. 466 (2000), and *Southern Union Co. v. United States*, 567 U.S. 343 (2012), which reaffirm that only a jury may determine facts that increase a defendant's penalties.

Similarly, in the Petitioner's case, the Georgia Court of Appeals constructively amended the defective jury verdict to conform to the evidence, rather than reversing the conviction for insufficient evidence as required under *Fiore v. White*, 531 U.S. 225 (2001). This unconstitutional action violated the Petitioner's Sixth Amendment right to trial by jury and rendered the judgment void ab initio. The trial court's failure to instruct the jury on lesser-included offenses, as mandated by *Cole v. Arkansas*, 333 U.S. 196 (1948), *Beck v. Alabama*, 447 U.S. 625 (1980), *Stover v. State*, 256 Ga. 515 (1986), and *Powell v. State*, 270 Ga. 327 (1998) further undermined the integrity of the trial proceedings.

Justice Gorsuch's dissent underscores the principle that the right to trial by jury must mean no less today than it did at the Nation's founding. The Petitioner's case exemplifies the dangers of judicial overreach and the erosion of constitutional protections when the jury's role is diminished.

II. Misapplication of Evidentiary Standards and Structural Reversible Errors

Justice Gorsuch's dissent also highlights the misapplication of evidentiary standards that infringe on the constitutional rights of defendants. In *Rimlawi*, he questioned the Fifth Circuit's reliance on judicial fact-finding to impose restitution, which contravenes the historical role of the jury at common law.

In the Petitioner's case, the trial and appellate courts misapplied the *Jackson v. Virginia*, 443 U.S. 307 (1979), standard of review, failing to recognize the insufficiency of evidence to sustain the convictions. Count 2 (aggravated sodomy) relied on the unconstitutional OCGA § 16-6-2, a statute invalidated under *Powell v. State*, 270 Ga. 327 (1998), and *Lawrence v. Texas*, 539 U.S. 558 (2003). Count 5 (aggravated assault) was based on a non-amendable defective indictment that omitted essential actus reus elements, violating *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), opinion reinstated, 4 F.4th 1292 (11th Cir. 2021). These structural reversible errors rendered the judgments void ab initio and incapable of legal support.

III. Prosecutorial Misconduct and Suppression of Exculpatory Evidence

Justice Gorsuch's dissent underscores the importance of ensuring fairness in criminal proceedings by holding prosecutors accountable for their actions. In *Rimlawi*, he emphasized the need for jury findings to justify penalties, reflecting the broader principle of adversarial fairness.

In the Petitioner's case, the prosecution suppressed knowledge of critical psychiatric mitigating evidence that was newly uncovered pursuant to *Sears v. Upton*, 561 U.S. 945 (2010), including investigative reports documenting the Petitioner's manic episode and mental impairments at the time of the alleged incident. This evidence, which was material to the Petitioner's defense pursuant to *Ake v. Oklahoma*, 470 U.S. 68 (1985) and *McElrath v. Georgia*, 601 U.S. 87 (2024), was withheld in violation of *Brady v. Maryland*, 373 U.S. 83 (1963). The prosecution's presentation of false testimony to the grand jury and during trial further violated *Napue v. Illinois*, 360 U.S. 264 (1959), undermining the integrity of the proceedings and depriving the Petitioner of a fundamental fair trial.

IV. Denial of Psychiatric Expert Assistance and Competency Determination

Justice Gorsuch's dissent highlights the broader implications of judicial failures to uphold constitutional protections. In *Rimlawi*, he expressed concerns about the erosion of the jury's role in determining facts critical to sentencing.

In the Petitioner's case, the trial court failed to provide psychiatric expert assistance as required under *Ake v. Oklahoma*, 470 U.S. 68 (1985), during critical fact-finding stages and disregarded newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010) that was readily available at the time of the inadequate competency determination. The court arbitrarily determined the Petitioner's competency to stand trial without invoking his right to trial by jury for a proper evaluation. These cumulative errors invalidated the competency determination under *Cooper v. Oklahoma*, 517 U.S. 348 (1996), and deprived the Petitioner of his Sixth Amendment right to psychiatric expert assistance and right to present a full and plausible defense, including an insanity defense as articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024).

V. Void Judgments and Double Jeopardy Protections

Justice Gorsuch’s dissent reinforces the principle that void judgments are legal nullities under federal law and cannot sustain detention. In *Rimlawi*, he emphasized the historical role of the jury in determining facts critical to criminal penalties.

In the Petitioner’s case, the void ab initio judgments for Counts 2 and 5 constitute “an acquittal” for double jeopardy purposes under *McElrath v. Georgia*, 601 U.S. 87 (2024). Retrial is constitutionally barred under *Burks v. United States*, 437 U.S. 1 (1978), and the Petitioner is entitled to immediate release from wrongful incarceration.

VI. A Plea for Equitable Relief

The Petitioner comes before this Court not merely as an individual seeking procedural redress but as an innocent indigenous person who has endured wrongful incarceration due to the systemic failures of the justice system. The application of Georgia’s arbitrary procedural bar rules to deny equitable habeas corpus relief in light of compelling evidence of actual innocence under *McQuiggin v. Perkins*, 569 U.S. 383, Pp. 391-398, 185 L.Ed.2d, at 1030-1034 (2013) constitutes a fundamental miscarriage of justice that must be corrected to preserve the integrity of the judicial process and the public’s faith in the rule of law.

The Suspension Clause of the Constitution protects against the arbitrary denial of the writ of habeas corpus, ensuring that individuals have a meaningful opportunity to challenge unlawful detention. This case exemplifies the urgent need to preserve that protection. The Petitioner’s claims are further reinforced by the Ninth Amendment’s guarantee of unenumerated rights, including the right to liberty and the right to be free from wrongful incarceration.

The Petitioner respectfully prays that this Court grant certiorari to review the critical constitutional questions presented in this petition, to vacate the void judgments procured through fraud upon the court, and to establish a constitutional standard for freestanding actual innocence claims. This relief is necessary to correct a profound miscarriage of justice, ensure the uniform application of federal habeas corpus principles, and uphold the core constitutional values enshrined in the Fifth, Sixth, Ninth, and Fourteenth Amendments.

Justice Gorsuch’s dissent in *Rimlawi v. United States* underscores the urgent need for this Court to address systemic judicial failures, protect the Sixth Amendment’s guarantee of trial by jury, and ensure fairness in criminal proceedings. The Petitioner’s case exemplifies the profound constitutional violations and procedural inequities that arise when these principles are disregarded. Granting certiorari is essential to rectify these injustices, uphold the integrity of the justice system, and reaffirm the foundational role of the jury in safeguarding individual rights.

Equitable Need for a Freestanding Actual Innocence Precedent

This extraordinary case underscores the need for a freestanding actual innocence precedent to protect against wrongful convictions and wrongful incarceration. The trial court’s erroneous jury instructions, coupled with the State’s fraudulent allegations and the

appellate court's constructive amendment of the verdict, demonstrate systemic failures that necessitate equitable relief.

1. Preserving the Ends of Justice: The trial court's structural errors and the State's misconduct deprived the Petitioner of a fundamentally fair trial and resulted in a wrongful conviction. A freestanding actual innocence precedent would provide constitutional protection against such miscarriages of justice and ensure that individuals are not wrongfully incarcerated based on fraudulent or insufficient evidence.

2. Uniform Application in State and Federal Courts: Establishing a freestanding actual innocence precedent under the Suspension Clause, Ninth Amendment, and Liberty Clause of the Fourteenth Amendment would ensure uniform application of equitable habeas relief in both state and federal courts, safeguarding the fundamental rights of all individuals.

These cumulative structural errors rendered the Petitioner's trial fundamentally unfair, resulting in a void judgment of conviction that is incapable of supporting the Petitioner's continued incarceration. The Petitioner respectfully requests this Court grant certiorari to address the systemic constitutional violations, judicial misconduct, and abuse of discretion that resulted in the wrongful conviction for Count 2. The trial court's refusal to grant a directed verdict of acquittal, coupled with its erroneous jury instructions, deprived the Petitioner of his right to a fair trial and impartial tribunal. This Court's intervention is necessary to vacate the void judgment, establish a freestanding actual innocence precedent, and provide equitable relief under the Suspension Clause, Eighth Amendment, Ninth Amendment, and Liberty Clause of the Fourteenth Amendment.

A. Principles of *In re Davis* (2009); and *In re Davis*, No. CV409-130 (S.D. Ga. Aug. 24, 2010)

The decision in *In re Davis*, 130 S. Ct. 1 (2009), underscores the constitutional imperative to address claims of actual innocence in extraordinary cases. In *Davis*, this Court transferred the habeas petition to the U.S. District Court for the Southern District of Georgia for an evidentiary hearing to determine whether newly discovered evidence clearly established the Petitioner's innocence. Justice Stevens, concurring, emphasized that the substantial risk of executing an innocent person justified the extraordinary use of this Court's original habeas jurisdiction.

The Southern District of Georgia concluded that the constitutional right exists for a freestanding actual innocence claim. Having reasoned that the Eighth Amendment forbids execution [or incarceration] of the actual innocent, a Petitioner must show by clear and convincing evidence that no reasonable juror would have convicted him in light of the new evidence. If an Petitioner satisfy the "clear and convincing evidence" standard for actual innocence, he would be entitled to equitable habeas corpus relief in federal court.

Relevance to Petitioner's Case: The Petitioner's claims mirror the exceptional circumstances in *Davis*. Newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010), clearly and convincingly demonstrates that the Petitioner was incompetent to

stand trial under the principles articulated in *Cooper v. Oklahoma*, 517 U.S. 348 (1996) and establishes a plausible insanity defense under the principles articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024), which clearly and convincingly shows that Georgia violated the principles articulated in *Ake v. Oklahoma*, 470 U.S. 68 (1985) which deprived Petitioner a fundamental fair trial as required by the Due Process Clause of the Fourteenth Amendment. These indisputable facts, combined with the insufficiency of evidence involving Count 2 and Count 5 respectively under the principles articulated in *Fiore v. White, Warden, et al.* (2000), warrant equitable habeas relief to correct a fundamental miscarriage of justice. An "*applicant is entitled to habeas corpus relief if it is found that upon the record evidence adduced at the trial no rational trier of fact could have found proof of guilt beyond a reasonable doubt,*" *Jackson v. Virginia*, 443 U.S. 307 324 (1979).

B. Standard Articulated in *McQuiggin v. Perkins* (2013)

In *McQuiggin v. Perkins*, 569 U.S. 383 (2013), this Court held that actual innocence, if proven, serves as a gateway to overcome procedural barriers, including the expiration of the Antiterrorism and Effective Death Penalty Act's (AEDPA) statute of limitations. Justice Ginsburg, writing for the majority, emphasized that the fundamental miscarriage of justice exception is grounded in the equitable principles of habeas corpus and the Suspension Clause.

Application to Petitioner's Case: The Petitioner has presented compelling evidence of actual innocence, including newly uncovered psychiatric records and expert testimony under *Sears v. Upton* while also demonstrating that the only specified alleged Actus Reus in Count 2 did not factually or legally occur, constituting an acquittal under the principles articulated in *McElrath v. Georgia*. Under *McQuiggin*, this evidence satisfies the actual innocence gateway standard, allowing the Petitioner to overcome procedural default and seek equitable relief.

C. Constitutional Authority for Freestanding Actual Innocence Claims

1. Suspension Clause (Article I, Section 9, Clause 2)

The Suspension Clause protects the privilege of the writ of habeas corpus, ensuring that individuals have a meaningful opportunity to challenge unlawful detention. This constitutional safeguard is particularly relevant in cases involving actual innocence, where procedural barriers would otherwise preclude relief. The Petitioner's case demonstrates the need for a freestanding actual innocence precedent to prevent the arbitrary denial of habeas relief in state and federal courts. The Suspension Clause safeguards the privilege of habeas corpus to challenge unlawful detentions. The refusal of the Georgia courts to provide equitable relief despite demonstrated actual innocence undermines this constitutional protection.

2. Cruel and Unusual Punishment Clause of the Eighth Amendment

The Eighth Amendment prohibits the execution or continued incarceration of an individual who is demonstrably innocent, even if the conviction was obtained through legal means. The wrongful incarceration of an indisputably innocent person would constitute cruel and unusual punishment, a violation of due process, and denial of fundamental fairness.

3. *Provisional Protections of the Ninth Amendment*

The Ninth Amendment recognizes unenumerated rights, including the right to be free from wrongful incarceration and arbitrary state actions. The Petitioner's claims invoke these protections, as the fraudulent charges under Count 2 and the void ab initio indictment under Count 5 reflect systemic violations of his fundamental rights to privacy, autonomy, and liberty. The Ninth Amendment protects unenumerated rights, including the right to be free from wrongful convictions and incarceration. The arbitrary and unfair procedural barriers imposed by Georgia courts' infringes upon these protections.

4. *Liberty Clause of the Fourteenth Amendment*

The Liberty Clause guarantees protection against arbitrary state actions that deprive individuals of life, liberty, or property without due process of law. The Petitioner's wrongful convictions, based on insufficient evidence and procedural misapplications, violate this constitutional guarantee. The fundamental right to judicial review of compelling claims of innocence is fundamental and thus protected by the Due Process Clause of the Fourteenth Amendment. A uniform standard for freestanding actual innocence claims is necessary to ensure that state and federal courts uphold these protections. The Liberty Clause ensures protection against arbitrary and prejudicial state actions. The Georgia courts' systemic failures in adjudicating the writ of habeas corpus violated these constitutional guarantees, necessitating this Court's intervention.

D. Uniform Application in State and Federal Courts

The principles articulated in *In re Davis* and *McQuiggin v. Perkins* highlight the need for a uniform standard for freestanding actual innocence claims. Such a standard would:

1. Ensure that individuals wrongfully convicted due to structural errors, prosecutorial misconduct, or insufficient evidence have access to equitable habeas relief.
2. Protect against the arbitrary enforcement of void judgments procured through fraud upon the court, as demonstrated in the Petitioner's case.
3. Reinforce the constitutional protections of the Suspension Clause, Ninth Amendment, and Liberty Clause, ensuring that state and federal courts adhere to uniform principles of justice.

E. Ernest Prayers for Equitable Relief

The Petitioner respectfully prays this Court grant certiorari to establish a constitutional precedent for freestanding actual innocence claims under the Suspension Clause, Eighth Amendment, Ninth Amendment, and Liberty Clause of the Fourteenth Amendment. This relief is necessary to correct the fundamental miscarriage of justice evident in the Petitioner's case and to ensure the uniform application of equitable habeas principles in state and federal courts.

The Petitioner's case exemplifies the urgent need for a uniform state and federal freestanding actual innocence precedent. Such a precedent is necessary to:

1. Resolve inconsistencies in habeas corpus jurisprudence.
2. Protect the fundamental rights of innocent individuals.
3. Ensure that wrongful convictions are not perpetuated through procedural technicalities and systemic failures.

The Petitioner's continued incarceration under a void ab initio judgment violates the Ninth Amendment's protection against wrongful conviction and incarceration, the Eighth Amendment's prohibition against cruel and unusual punishment, and the Fourteenth Amendment's guarantees of liberty, due process, equal protection. These violations demand this Court's intervention to preserve the principles of fairness, equity, and justice.

Reasons to Grant the Petition

This case raises profound constitutional and procedural issues of national significance that demand this Court's intervention. The Petitioner's wrongful conviction and continued incarceration under void ab initio judgments are the result of systemic judicial failures, arbitrary procedural barriers, and constitutional structural violations. Granting certiorari is necessary to address these profound injustices, reconcile inconsistencies in habeas corpus jurisprudence, and uphold the principles of fairness, liberty, and equity enshrined in the Constitution.

I. Grave Constitutional Violations Require Supreme Court Review

The Petitioner's convictions violated numerous constitutional protections, warranting this Court's intervention to restore justice and safeguard fundamental rights:

1. Void Ab Initio Judgments and Structural Reversible Errors: Count 2 (aggravated sodomy) was based on OCGA § 16-6-2, a statute invalidated as unconstitutional under *Powell v. State*, 270 Ga. 327 (1998), and *Lawrence v. Texas*, 539 U.S. 558 (2003). This judgment is void ab initio, as it criminalized constitutionally protected conduct.

Count 5 (aggravated assault) is constitutionally unsustainable due to omitted actus reus essential elements in the indictment, violating standards articulated in *United States v. Moss*, 920 F.3d 752 (11th Cir. 2019), opinion reinstated, 4 F.4th 1292 (11th Cir. 2021), and *Fiore v. White*, 531 U.S. 225 (2001). The trial and appellate courts failed to vacate these void judgments, perpetuating irreparable harm.

2. Violation of the Sixth Amendment Right to Trial by Jury: The Georgia Court of Appeals without subject matter jurisdiction under *Bowlers v. Russell*, 551 U.S. 205 (2007) constructively amended the defective jury verdict to conform to the evidence, violating the Petitioner's Sixth Amendment rights as articulated in *Cole v. Arkansas*, 333 U.S. 196 (1948), *Beck v. Alabama*, 447 U.S. 625 (1980), *Blakely v. Washington*, 542 U.S. 296 (2004), *McCoy v. Louisiana*, 138 S. Ct. 1500 (2018), and *Erlinger v. United States*, 602 U.S. 821 (2024). The jury was not instructed on lesser-included offenses supported by evidence, further compromising the integrity of the verdict.

3. Suppression of Exculpatory Evidence and Prosecutorial Misconduct: The prosecution suppressed knowledge involving critical psychiatric mitigating evidence, including investigative reports from lead investigator Trent Wilson documenting the Petitioner's manic episode and mental impairments during the alleged offense. This violated *Brady v. Maryland*, 373 U.S. 83 (1963), and deprived the Petitioner of a fair trial. The presentation of false testimony to the grand jury and during trial further contravened *Napue v. Illinois*, 360 U.S. 264 (1959).

4. Denial of Psychiatric Expert Assistance: The trial court failed to provide the Petitioner with psychiatric expert assistance as required under *Ake v. Oklahoma*, 470 U.S. 68 (1985), and disregarded newly uncovered psychiatric mitigating evidence under *Sears v. Upton*, 561 U.S. 945 (2010). This deprivation invalidated the competency determination under *Cooper v. Oklahoma*, 517 U.S. 348 (1996) and the Petitioner's ability to present a full and plausible defense, including an insanity defense as articulated in *McElrath v. Georgia*, 601 U.S. 87 (2024).

II. Procedural Barriers Obstructed Meaningful Adjudication of Constitutional Claims

The Georgia post-conviction courts arbitrarily denied the Petitioner's exhausted federal constitutional claims under unconstitutional procedural bar rules that were manifestly unfair and inadequate to preclude federal review. These procedural barriers:

1. Contravened the principles outlined in *Jones v. Sec'y Dep't of Corr.*, 778 F. App'x 626 (11th Cir. 2019), and *Murray v. Carrier*, 477 U.S. 478 (1986).
2. Failed to adjudicate the Petitioner's exhausted federal constitutional claims on their merits, as required by Georgia law under OCGA §9-14-48(d) ("*in all cases habeas relief shall be granted to avoid a fundamental miscarriage of justice*").

The Georgia court's refusal to grant relief was objectively unreasonable under *Strickland v. Washington*, 466 U.S. 668 (1984); *Ake v. Oklahoma*, 470 U.S. 68 (1985); *Yates v. Aiken*, 484 U.S. 211 (1988); *Fiore v. White, Warden, Et al.*, 531 U.S. 225 (2001); *Cone v. Bell*, 556 U.S. 449 (2009); *Sears v. Upton*, 561 U.S. 945 (2010); *McQuiggin v. Perkins*, 569 U.S. 383 (2013); *McWilliams v. Dunn*, 137 S.Ct. 1790 (2017) and *McCoy v. Louisiana*, 584 U.S. 414 (2018); *McElrath v. Georgia*, 601 U.S. 87 (2024); *Andrew v. White, Warden*, 604 U.S. _ 145 S.Ct. 75 (Jan. 21, 2025); and *Gossip v. Oklahoma*, 604 U.S. _ (Feb. 25, 2025), and demonstrated a fundamental miscarriage of justice. This arbitrary and prejudicial enforcement of procedural barriers further necessitating this Court's intervention.

The Georgia courts' enforcement of arbitrary procedural barriers violated the Petitioner's constitutional rights and obstructed access to meaningful habeas corpus relief:

1. Failure to Address Exhausted Federal Claims: The Georgia habeas court and Supreme Court failed to adjudicate the Petitioner's exhausted actual innocence claims and federal constitutional structural violations on their merits, despite overwhelming evidence of prosecutorial misconduct, structural reversible errors, and ineffective assistance of counsel.

2. Misapplication of Procedural Bar Rules: Procedural barriers under OCGA § 9-14-48(d) were enforced arbitrarily, contravening federal standards under *Murray v. Carrier*, 477 U.S. 478 (1986), which require exceptions for cause-and-prejudice and fundamental miscarriages of justice.

3. Suspension Clause Violations: The Georgia courts' denial of meaningful access to habeas corpus remedies violated the Suspension Clause, which guarantees equitable relief for state prisoners asserting actual innocence and challenging void judgments.

III. Clear and Convincing Evidence of Actual Innocence

The Petitioner has presented newly uncovered psychiatric mitigating evidence pursuant to *Sears v. Upton*, 561 U.S. 945 (2010) that satisfies the actual innocence standards articulated in *Schlup v. Delo*, 513 U.S. 298 (1995), and *McQuiggin v. Perkins*, 569 U.S. 383 (2013):

1. Demonstrated Incompetence and Lack of Mens Rea: Investigative reports and psychiatric records establish the Petitioner's was factually incompetence to stand trial under *Cooper v. Oklahoma*, 517 U.S. 348 (1996) and negated the mens rea requirements for the alleged offenses.

2. Suppression of Exculpatory Evidence: The prosecution's suppression of knowledge involving material psychiatric evidence at the time of the alleged incident and his constitutional right to psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985) prevented the Petitioner from challenging his culpability and presenting an insanity defense pursuant to *McElrath v. Georgia*, 601 U.S. 87 (2024).

3. Freestanding Actual Innocence Claims: This case raises critical questions regarding the recognition of freestanding actual innocence claims under *In re Davis*, 130 S.Ct. 1 (2009) and the subsequent standard set forth in *In re Davis*, No. CV409-130, 2010 WL 3385081 (S.D. Ga. Aug. 24, 2010), as a constitutional remedy for wrongful incarceration.

IV. Ineffective Assistance of Counsel at All Critical Stages

The Petitioner's Sixth Amendment rights were violated by ineffective assistance of counsel at every critical phase of the proceedings:

1. Pre-Trial Phase: Trial counsel failed to investigate the Petitioner's mental impairments or secure psychiatric expert assistance, depriving him of a meaningful opportunity to challenge the charges.

2. Guilt-Innocence Phase: Counsel's failure to incorporate exculpatory evidence and challenge void judgments undermined the integrity of the trial and deprived the petitioner of a full and plausible defense.

3. Post-Conviction Phase: Appellate counsel failed to preserve federal claims, address jurisdictional defects, or challenge the enforcement of arbitrary procedural barriers, perpetuating the petitioner's wrongful incarceration.

V. Uniform Habeas Corpus Standards Are Essential

This case exemplifies the urgent need for this Court to establish uniform standards for federal and state habeas corpus jurisprudence:

1. **Actual Innocence Claims:** The Petitioner's case demonstrates the necessity of recognizing freestanding actual innocence claims to protect against wrongful incarceration.
2. **Access to Equitable Relief:** The procedural inequities in this case underscore the importance of ensuring consistent application of habeas corpus protections across jurisdictions.
3. **Preservation of Public Confidence:** Addressing systemic judicial failures and ensuring equitable access to remedies will restore public trust in the integrity of the justice system.

VI. Supreme Court Review Is Necessary to Prevent Future Miscarriages of Justice

The Petitioner's case presents unresolved constitutional questions of profound significance, including the enforcement of actual innocence standards, the recognition of freestanding innocence claims, and the protection of habeas corpus rights under the Suspension Clause. Granting certiorari is essential to rectify the grave constitutional violations and systemic judicial failures that resulted in the petitioner's wrongful conviction and continued incarceration.

By addressing these profound issues, this Court can establish equitable habeas corpus protections, reconcile procedural inequities, and prevent future miscarriages of justice. The petitioner respectfully requests this Court's intervention to correct these extraordinary errors and provide meaningful relief.

Conclusion

This petition for writ of certiorari underscores urgent and unresolved constitutional and procedural questions central to the fair administration of justice. The Petitioner's wrongful convictions rest on void ab initio judgments procured by fraud upon the courts, structural reversible errors, jurisdictional defects, suppressed exculpatory evidence, ineffective assistance of counsel, and systemic judicial inequities. This extraordinary case highlights the imperative dangers of arbitrary procedural barriers and judicial overreach in obstructing meaningful habeas corpus relief, violating fundamental rights, and perpetuating wrongful incarceration.

The evidence presented in this petition—including newly uncovered psychiatric mitigating evidence—clearly and convincingly demonstrates the Petitioner's actual innocence, satisfying both gateway and freestanding standards articulated in *Schlup v. Delo*, 512 U.S. 298 (1995) and *McQuiggin v. Perkins*, 569 U.S. 383 (2013). This compelling showing of actual innocence and the numerous structural reversible errors appearing on the face of the state court record equitably invoke this Court's authority to establish a new precedent that ensures justice for the wrongfully convicted. The cumulative errors across all stages of

proceedings resulted in irreparable harm, depriving the Petitioner of the rights guaranteed under the Sixth Amendment, Eighth Amendment, the Suspension Clause, and other fundamental constitutional provisions. The systemic failures in this case highlight the need for a freestanding actual innocence precedent to prevent further miscarriages of justice. Recognizing such a precedent aligns with this Court's Suspension Clause authority and protects the foundational principles of fairness, equity, and justice.

This extraordinary case raises profound constitutional issues and presents a compelling opportunity for this Court to address systemic failures, fundamental miscarriages of justice, and the need to establish a freestanding actual innocence precedent. These failures stem from constitutional structural errors that "*probably*" resulted in the conviction of an innocent person, and decisions by the Georgia courts that were "*objectively unreasonable*."

I. The Core Constitutional Issues

This petition presents fundamental constitutional questions of national significance, including:

1. *Whether freestanding claims of actual innocence warrant recognition as a basis for equitable habeas relief under the Eighth Amendment, Ninth Amendment, and the Liberty Clause of the Fourteenth Amendment.*
2. *Whether the Ninth Amendment's protection of unenumerated rights, including the right to privacy and the right to be free from wrongful incarceration, establishes a constitutional foundation for federal habeas corpus relief.*
3. *Whether procedural default rules, when applied arbitrarily to bar exhausted federal constitutional claims, violate the Suspension Clause and the Fourteenth Amendment's Liberty Clause.*
4. *Whether state courts may rely on void judgments procured through fraud upon the court, misapplied jurisdictional rules, and inadequate procedural safeguards to deny meaningful review of exhausted federal constitutional claims.*

II. The Georgia Supreme Court's Decision Conflicts with This Court's Precedents

The Petitioner's wrongful convictions for aggravated sodomy and aggravated assault were unconstitutionally achieved through violations of the Double Jeopardy Clause of the Fifth Amendment, inadequate notice under the Sixth Amendment, and violations of the Due Process Clause of the Fourteenth Amendment. These egregious structural failures directly conflict with precedents such as *Fiore v. White*, *Jackson v. Virginia*, *Burks v. United States*, *Sears v. Upton*, *Yates v. Aiken*, *McCoy v. Louisiana*, and *McElrath v. Georgia*. The Georgia courts' refusal to grant equitable habeas corpus relief to avoid a fundamental miscarriage of justice based on these exhausted federal constitutional violations is contrary to established federal law and warrants certiorari.

The Georgia Supreme Court failed to provide the Petitioner with a meaningful opportunity to present and litigate claims of ineffective assistance of counsel, a critical constitutional protection articulated in *Sears v. Upton*, 561 U.S. 945 (2010), and *Trevino v. Thaler*, 569 U.S. 413, 428 (2013). Specifically:

1. The Petitioner's trial and appellate counsel failed to investigate and present compelling evidence of his mental impairments, as required by *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Porter v. McCollum*, 558 U.S. 30 (2009).
2. Counsel failed to seek psychiatric expert assistance under *Ake v. Oklahoma*, 470 U.S. 68 (1985), which deprived the Petitioner of a full and fair defense and violated the Due Process Clause.
3. The Petitioner's incompetence to stand trial, as revealed through newly uncovered psychiatric evidence, was ignored, in direct conflict with *Cooper v. Oklahoma*, 517 U.S. 348 (1996).

These judicial failures constitute a fundamental miscarriage of justice, as recognized in *Murray v. Carrier*, 477 U.S. 478 (1986), and were further compounded by the Georgia courts' refusal to address them properly, violating principles established in *McWilliams v. Dunn*, 582 U.S. ____ (2017). The refusal to act in the face of overwhelming evidence rendered the Georgia court's rulings "objectively unreasonable" under *McWilliams v. Comm'r, Ala. Dep't Corr.*, 940 F.3d 1218 (11th Cir. 2019).

III. Procedural Barriers were Arbitrary and Inadequate

The Georgia courts' arbitrary and constitutionally unfair application of procedural bar rules was inadequate to preclude federal review, as the decision were neither independent of the federal questions presented nor consistent with constitutional due process requirements. Under *Jones v. Sec'y Dep't of Corr. and OCGA §9-14-48(d)*, the Petitioner was entitled to a merits adjudication of his federal exhausted constitutional claims, which the Georgia courts' arbitrarily denied. This manifest unfairness constitutes a fundamental miscarriage of justice under *Murray v. Carrier*.

The Petitioner's exhausted federal constitutional claims were dismissed under Georgia's arbitrary procedural bar rules, which failed to meet the adequacy requirements outlined in *Jones v. Sec'y Dep't of Corr.*, 778 F. App'x 626 (11th Cir. 2019). Specifically:

1. The Georgia courts' procedural rulings were not independent of federal questions involving trial and appellate counsel's ineffectiveness under *McCoy v. Louisiana*, 584 U.S. 414 (2018), and should not have precluded federal review.
2. The refusal to adjudicate the Petitioner's exhausted constitutional claims on the merits violated Georgia's own post-conviction laws under OCGA § 9-14-48(d).
3. The enforcement of procedural bars was manifestly unfair, rendering the state's procedural rules inadequate and inconsistent with federal due process requirements.

This arbitrary enforcement denies Petitioners like this one access to habeas corpus relief and perpetuates grave injustices.

IV. Egregious Prosecutorial Misconduct and Structural Errors Render the Convictions Void

Prosecutorial misconduct, combined with cumulative structural errors, deprived the Petitioner of a fundamental fair trial. These include:

1. Suppression of knowledge involving exculpatory evidence under *Brady v. Maryland*.
2. Presentation of false testimony and failure to correct false testimony under *Napue v. Illinois*.
3. Procedural and substantive failures under *Ake v. Oklahoma*, *Cooper v. Oklahoma*, and *McCoy v. Louisiana*.
4. The failure to produce sufficient evidence of culpability under *Jackson v. Virginia*, 443 U.S. 307 (1979), and *In re Winship*, 397 U.S. 358 (1970). Such misconduct undermines the fairness of the proceedings and warrants entry of a judgment of acquittal under *Burks v. United States*, 437 U.S. 1 (1978).

These violations resulted in void ab initio convictions, incapable of standing under federal constitutional standards. This Court's intervention is essential to resolve inconsistencies in habeas corpus jurisprudence, prevent arbitrary enforcement of void judgments, and uphold the principles of equity and justice.

V. Public Confidence in the Justice System Requires Certiorari

The systemic failures in this extraordinary case undermine public trust in the justice system. Recognizing a freestanding actual innocence precedent would reaffirm the fundamental principles of fairness and equitably provide a safeguard against future wrongful convictions.

The Petitioner's continued incarceration under a void judgment violates fundamental constitutional protections:

1. **Ninth Amendment:** Protects unenumerated rights, including the right to avoid wrongful conviction and incarceration.
2. **Eighth Amendment:** Prohibits cruel and unusual punishment, which includes the wrongful incarceration of an innocent person.
3. **Fourteenth Amendment:** The arbitrary enforcement of a void judgment infringes upon the Petitioner's liberty, due process, and equal protection rights.

Georgia's actions also violate federal statutes under 18 U.S.C. §§ 241 and 242, which prohibit deprivation of constitutional rights under color of state law.

VI. Necessity of Supreme Court Review

This Court's intervention is essential to:

1. **Rectify Grave Constitutional Violations:** Protect the Petitioner's inalienable rights to liberty, due process, and habeas corpus against the enforcement of void judgments and systemic judicial failures.
2. **Establish Uniform Habeas Corpus Standards:** Reconcile inconsistencies in state and federal jurisprudence to ensure equitable access to remedies for individuals asserting actual innocence.
3. **Protect Foundational Rights:** Safeguard the Sixth Amendment's guarantee of trial by jury, the Eighth Amendment's prohibition against arbitrary procedural barriers.
4. **Restore Public Confidence in the Justice System:** Reaffirm fairness, equity, and accountability in judicial processes to preserve the integrity of the justice system.

VII. Equitable Prayer for Grant of Certiorari

This Court's intervention is critical to address systemic judicial failures and clarify unresolved constitutional questions. The convictions under Count 2 and Count 5 reflect fundamental miscarriages of justice, including fraudulent allegations, defective indictments, procedural misapplications, and denial of access to mitigating evidence. By granting certiorari, this Court can vacate void judgments, affirm constitutional protections, and establish precedent for equitable habeas relief to safeguard against wrongful incarceration.

This petition satisfies the criteria for certiorari under Rule 10 of the Supreme Court Rules due to the following compelling reasons:

1. **Conflict with Federal Appellate Court Precedents:** Georgia's reliance on arbitrary and unfair procedural default rules and refusal to vacate void judgments conflict with federal jurisprudence, including *Bowles v. Russell*, 551 U.S. 205 (2007), *Hamer v. Neighborhood Housing Services of Chicago*, 138 S. Ct. 13 (2017), and Eleventh Circuit decisions addressing procedural fairness in post-conviction proceedings.

The constructive amendment of charges violates this Court's holdings in *Stirone v. United States*, 361 U.S. 212 (1960), and undermines the Sixth Amendment's protections against prejudicial amendments to the indictment.

2. **Unresolved Constitutional Questions:** Freestanding actual innocence claims remain an unsettled but essential aspect of habeas corpus jurisprudence. This Court's intervention is needed to affirm the role of equitable relief in addressing wrongful convictions and systemic judicial failures.

The Ninth Amendment's recognition of unenumerated rights, including privacy and autonomy, compels the development of constitutional safeguards against wrongful incarceration based on arbitrary and procedurally inadequate state actions.

3. **Systemic Judicial Failures:** Georgia's unconstitutional denial of Petitioner's habeas corpus petition highlights a broader pattern of systemic failures, including procedural

misapplications, refusals to adjudicate exhausted federal constitutional claims on the merits, and reliance on jurisdictionally void judgments to deny relief.

The Petitioner's continued incarceration under a February 2018 void *ab initio* judgment is unconstitutional. This ongoing deprivation of liberty violates the Eighth Amendment's prohibition against cruel and unusual punishment, the Fourteenth Amendment's guarantee of due process and equal protection, and the Ninth Amendment's protection against wrongful conviction and incarceration. In light of the clear and convincing evidence of actual innocence and the cumulative constitutional violations, the Petitioner is equitably entitled to federal and state habeas corpus relief under a freestanding actual innocence precedent.

Granting certiorari in this extraordinary case is essential to uphold the Constitution's promise of justice and equity for all individuals, particularly those asserting innocence and challenging wrongful incarceration. By addressing the profound issues presented in this petition, this Court can provide equitable relief, prevent future miscarriages of justice, and protect the constitutional rights that lie at the heart of a just society.

The Petitioner respectfully request that this Court grant the writ of certiorari to correct the grave miscarriage of justice evident in this extraordinary case and ensure that the principles of fairness, liberty, and due process are upheld.

Respectfully submitted, this 7th day of April, 2025

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