No.

In the
United States Supreme Court

Marco Antonio Casillas,

Petitioner,

v.

Janan Cavagnolo, Warden,

Respondent.

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

Petition For a Writ of Certiorari

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Questions Presented

This Court has repeatedly held that courts of appeal should not adjudicate the ultimate merits of a habeas claim when determining whether to issue a certificate of appealability (COA). *Buck v. Davis*, 580 U.S. 100 (2017). Moreover, the COA statute only contemplates looking to the constitutional violation itself—the "denial of a constitutional right"—and not the question of prejudice. *See* 28 U.S.C. § 2253(c)(2). Therefore, the first question presented is:

1. Whether the Ninth Circuit's practice of adjudicating the ultimate merits of a habeas petition at the COA stage, often on prejudice grounds, violates this Court's decision in *Buck* and 28 U.S.C. § 2253(c)(2).

An accused, under *Chambers*, has the right to present necessary and trustworthy evidence of innocence. As to trustworthiness, this Court has cautioned against courts engaging in credibility determinations—the province of the jury. But lower courts are doing just that. Therefore, the second question presented is:

2. Whether *Chambers* and its progeny preclude courts from engaging in credibility determinations when assessing the "trustworthiness" of excluded evidence.

Parties to the Proceeding

The habeas petitioner is Marco Antonio Casillas, imprisoned at California State Prison, Solano. The current warden of that facility is Janan Cavagnolo. Prior case captions reflected Ken Clark and Jason Schultz—prior wardens of that facility.

Related Proceedings

U.S. Court of Appeals for the Ninth Circuit

- *Casillas v. Clark*, 23-2213, 2025 U.S. App. LEXIS 6884, 2025 WL 900430 (March 25, 2025)

U.S. District Court for the Central District of California

- *Casillas v. Clark*, 21-cv-01267-SPG (C.D. Cal. August 10, 2023)

California Supreme Court

- On habeas review: *In re: Marco Antonio Casillas on Habeas Corpus*, S268228 (June 23, 2021)
- On petition for review on direct review: *California v. Casillas*, S259441 (February 11, 2020)

California Court of Appeal

- On direct review: *California v. Casillas*, B281363 (October 28, 2019)

California Superior Court, Ventura County

- *California v. Casillas*, 2014018724 (March 15, 2017)

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The Ninth Circuit's unpublished decision is available at 2025 WL 900430 and reproduced in the appendix at Pet. App. 1a-4a. The district court's rulings are reproduced at Pet. App. 5a-50a. And the state-court opinions and orders are reproduced in the appendix as indicated in the table of contents.

Jurisdiction

The Ninth Circuit issued its memorandum disposition on March 25, 2025. Pet App. 1a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

28 U.S.C. § 2253(c)(2) provides that:

> A certificate of appealability may issue . . . only if the applicant has made a substantial showing of the denial of a constitutional right.

The Sixth Amendment to the Constitution provides, in relevant part, that:

> In all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

The Fourteenth Amendment Section 1 to the Constitution provides, in relevant part, that:

> No State shall . . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

This case came down to who committed a murder: either Raymond Perez or Petitioner Casillas. There was strong reason to believe Perez was the murderer.

A. Who committed the murder: Raymond Perez or Petitioner Casillas?

After entering their house in Ventura, CA, Jake Bush and his mother realized they'd been burglarized—noticing missing items like jewelry. 7-ER-1302-03.[1]

When Bush went to check one of the bedrooms, someone jumped out of the closet, stabbed him repeatedly, then fled. *See* 7-ER-1299; 8-ER-1460, 1472; 10-ER-1843. Bush died. 10-ER-1856.

Just after the stabbing, two 11-year-old girls outside saw a Hispanic man leave the Bush house, tucking something shiny into his pants. 8-ER-1378-80, 1403; 14-ER-2681-82. Given their age, they provided a generic description of the man. *See* 8-ER-1380-01, 1388, 1408-09, 1429, 1432; 14-ER-2682, 2693. Based on this description, however, police were able to complete a sketch. 15-ER-3145.

The trail went cold. But, over the years, two suspects emerged: Raymond Perez and Petitioner Marco Casillas.

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[1] "ER" refers to the excerpts of record and "RJN" refers to the request for judicial notice. These are available on the Ninth Circuit Pacer page at: Dockets 13 and 14. *See Casillas v. Clark*, 23-2213 (9th Cir.).

1. The evidence that Perez committed the murder

The first suspect was Raymond Perez. Various facts demonstrated he committed this murder.

a. Perez had a record of burglaries and a prior stabbing.

Perez fit the criminal profile of the suspect. A month before the stabbing of Bush, Perez had stabbed someone else. 14-ER-2793, 2793-94, 2820, 2948. He had also, around the same time, burglarized several homes. 14-ER-2765, 2788-89, 2948. He had a lengthy criminal history. 14-ER-2787-90. And he frequently carried weapons, and collected knives. 14-ER-2789, 2811, 2818, 2836.

b. Perez is arrested a month after the murder with jewelry and a knife, but escapes.

About a month after the Bush murder, Perez was arrested on a minor drug charge. 14-ER-2797. In his possession were two items of note: woman's jewelry, like the jewelry taken from the Bush home, and a knife. 14-ER-2766, 2807-11. This knife bore the letters "CWB" standing for the Crazy White Boyz gang. 14-ER-2811.

One of the people arrested with Perez flagged him as a possible suspect in the Bush murder, and police thought Perez matched the suspect's description and looked like the sketch. Therefore, police sought to interview Perez. 14-ER-2803-04.

Police didn't immediately get that interview, however, because Perez escaped from the police station. 14-ER-2804-05, 2815. This

escape, as District Attorney Investigator Volpei later commented, was suspicious behavior because escape is rare and flight when suspected of murder establishes Perez's motive—particularly if he thought the jewelry could tie back to the Bush house as the facts suggested. 4-ER-617.

c. Rearrested, Perez evinces knowledge about the murder and paranoia about being charged for it.

Weeks later, after another attempt to escape, police re-arrested Perez with a semi-automatic handgun without serial numbers. 14-ER-2812-14. Perez claimed, without questioning about the murder, that he was being framed for murder and "believed he was a prime suspect in a murder that had occurred in the city of Ventura." 14-ER-2814.

Perez went on to explain the circumstances of his escape. When police took him to the interview room, he was scared and thought about "murder, murder, murder." He believed police were out to get members of the Crazy White Boyz. And "[h]e was paranoid and did not want to be questioned or arrested for murder." 14-ER-2815.

Ventura police then re-interviewed Perez. Police flagged that "we've talked with a lot of people and we've been told that Perez said he wasn't going to go away for stabbing somebody." Although denying involvement, Perez confirmed that he wasn't going away for stabbing somebody and stated that all the Crazy White Boyz were being picked up because one of them killed a kid—showing knowledge of the murder. 14-ER-2794.

d. Perez confesses to the murder, revealing non-public details.

Separately, while in custody, informant Roy Miller informed police that Perez had confessed to murdering Bush. Miller detailed this confession in a three-page letter, explaining that Perez had confessed to the murder and that a white male named Russell Scott had acted as lookout. 14-ER-2823-25. Scott, however, abandoned that post prior to Bush re-entering the home. 14-ER-2855. The note also explained that Perez had taken jewelry from the home and detailed Perez's initial escape from police custody; Perez ran because he was "sure [police] knew he did it." 14-ER-2824.

To corroborate this confession, with Volpei's help, Miller had two recorded conversations with Scott. Over the course of those conversations, Scott admitted that "Perez was all spun out when a mom and kid came home" and "the kid went to his room at the back of the house or something and got stabbed . . . ." 14-ER-2835. Perez told Scott that he or the kid was in the closet, when he jumped out, and Perez stabbed the kid six or seven times. 14-ER-2842. Scott confessed that "I don't know why [Perez] would have laid [Bush] out, but he just did." 14-ER-2835. All told, after some initial reluctance to admit it, Scott confirmed that Perez murdered Bush. 14-ER-2835-36, 2842.

Perez's confession, as Volpei explained, included details "that no one [but the perpetrator] would have known" or were not public. 15-ER-3011; *see also* 4-ER-593, 618. For example, that Perez took jewelry;

that he'd hid in the closet when Bush came in; and that he'd escaped from custody were all nonpublic details. 4-ER-610, 617-18.

Regarding the knife, Perez initially suggested he threw it into the ocean, but later explained that it was found a few doors from the Bush residence. 14-ER-2842.

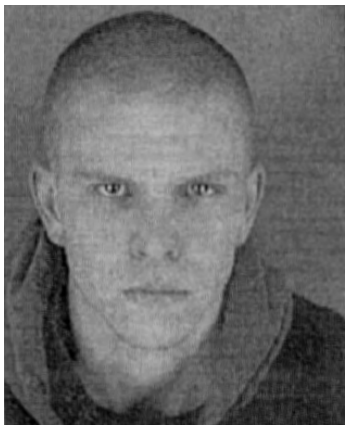
Finally, Miller also explained that Perez confessed to a different stabbing, which police corroborated. 14-ER-2818, 2820.

e. Perez's girlfriend insinuates that Perez was the murderer.

Volpei also learned that Perez's girlfriend at the time might have information. Perez's girlfriend, who was in prison, wanted permission to attend her grandmother's funeral. *See* 4-ER-606. If that happened, she promised to provide Volpei the details to corroborate Perez's involvement. 4-ER-637; *but see* 14-ER-2859 (initially suggesting that Scott may have been the murderer). She even tried to kill herself after speaking to Volpei—which suggested to Volpei that he was on the right track because Perez's murder of Bush struck a nerve with her. 4-ER-610, 637.

f. Perez looks similar to the composite sketch of the murderer.

Just as Perez's co-arrestee had flagged, Perez looked similar to the composite sketch of the murderer:

The Suspect	**Perez**
	
15-ER-3145	14-ER-2787

Scott also said that the composite sketch looked "identical" to Perez. 14-ER-2837, 2842. So much so that it surprised him that police didn't arrest Perez on the murder when they had him in custody. 14-ER-2837.

g. District Attorney Investigator Volpei believes Perez committed the murder.

Based on all these above facts, Volpei—the initial *district attorney investigator*—believes that Perez murdered Bush. 4-ER-564, 593.

2. The competing evidence that Casillas allegedly committed the murder.

Casillas, in contrast, never disputed he was present at the Bush residence. Shortly before the stabbing, Casillas met Perez, and the two planned to burglarize the area in question. 2-ER-183-84.

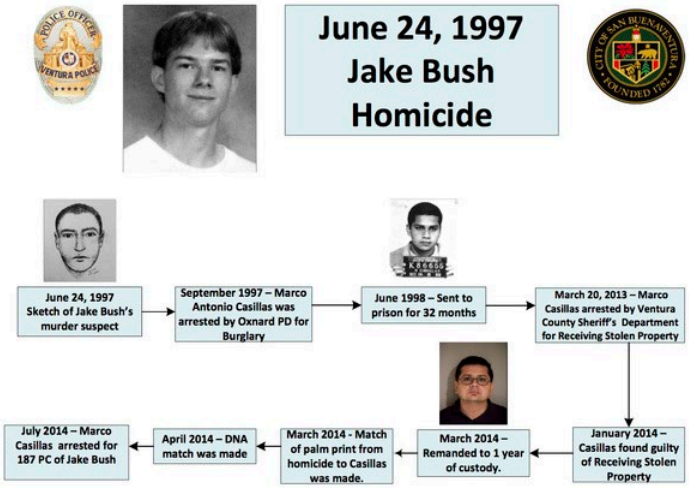
The day of Bush's murder, Casillas met Perez who stated that his friend, Scott, was going to help them—but he didn't show up. 2-ER-184. Perez and Casillas therefore went to the Bush residence that morning. But because the doors required keys from both inside and outside, Casillas thought it would be extremely difficult to carry items out and wanted to leave. Perez wanted to stay, but Casillas left and Perez acquiesced and left with him. 2-ER-184-85.

Casillas drove Perez back, and Scott was waiting for Perez. That was the end of Casillas's involvement. 2-ER-185.

3. The arrest and identification

Decades after Bush's death, police arrested Casillas due to his DNA and forensic link to the Bush residence.

Pleased with their arrest, a day after arresting Casillas, the Ventura Police Department put out a press release identifying Casillas as the murderer:



RJN, Exhibit A; 14-ER-2906; 15-ER-3066; *see* 11-ER-2263-67 (describing exhibit and noting that Ventura Police Department put it out as a press release).

After the media picked it up, one of the girls who'd seen the suspect observed this police press release. 8-ER-1390-91; 11-ER-2268. Though it had now been 17 years since seeing the suspect as an 11-year-old, she thought that the photo "totally looks like him." 14-ER-2904; *see* 5-ER-927-28. As she later put it at trial, she "just knew it was him." 8-ER-1391. This identification served as the only evidence that placed Casillas at the Bush residence around the time of Bush's death.

Police, however, never attempted to validate this identification, because they never bothered showing her a lineup. 11-ER-2267. Nor did they validate it with any other witness. For example, they interviewed the neighbor who had the suspect knock on her door, and even though she was pretty sure she could identify the individual, police never showed her a lineup either. 11-ER-2259-61.

This failure to show lineups appears to have been intentional strategy. Regarding that neighbor, for example, the investigator discussed it with the prosecutor, who decided not to show her a photo lineup. 11-ER-2262-63. Then, they told that neighbor she could view the press release. 11-ER-2263.

Although Casillas litigated this identification as impermissibly suggestive, the trial court admitted it. 5-ER-937-39.

4. The trial court excludes all evidence against Perez.

Over the course of multiple hearings, the trial court excluded all the evidence that Perez committed the murder.

With respect to all the above evidence other than Miller's note, the court held—in a difficult-to-follow decision—that it was speculation and there was not "any code or judicial authority that would ever permit it." 5-ER-818-20, 1026-27. Difficult to follow, that is, because evidence codes don't really "permit" introducing any specific evidence. Rather, all relevant evidence is generally admissible, subject to the exclusions of the evidence code. *See, e.g.*, Cal. Evid. Code § 351; Fed. R. Evid. 402. That confusion notwithstanding, this ruling effectively precluded all corroborating evidence except Miller. On Miller, the court ordered a hearing. 5-ER-817.

At that hearing, Miller didn't vouch for his letter, and therefore, the foundational elements of California's past-recollection hearsay exception were lacking. 6-ER-1130-31; *see* Cal. Evid. Code § 1237.

Therefore, the court excluded Miller's testimony and note. 6-ER-1155-60.

With that, the trial court had excluded all the evidence that Perez committed this murder.

B. The trial and verdict

Having gutted Casillas' defense, nearly the entire prosecution case was that Casillas was *present* at the house. All Casillas could do, in contrast, was insinuate that someone else could have been present. But without his core evidence that Perez committed the murder the prosecutor got to mock this idea in closing.

During her closing, the prosecutor mocked the "absurd" idea that some "unknown phantom person just happened to pick this same house on the same day during the same hour to burglarize . . . ." 13-ER-2570. "That is what you would have to think," she added, "That would just be absurd, pure speculation to think that somebody else was there, because all of those things would have had to have happened, and there's no evidence of that." *Id.*

In rebuttal, in the last thing she argued to the jury, the prosecutor again mocked the "phantom person" theory that someone else was there, calling it "unreasonable" and "absurd." 13-ER-2631-32.

After about a day of deliberations, the jury found Casillas guilty of first-degree murder. 1-ER-76-78; 13-ER-2644. The trial court sentenced Casillas to life without the possibility of parole. 1-ER-76; 13-ER-2660.

C. The state court's decision on direct appeal.

On appeal, Casillas argued a violation of his right to present a complete defense for excluding all the evidence that Perez was the murderer. 3-ER-503-30.

The California Court of Appeal affirmed. Citing only a California case, the court held that the right to present a complete defense is "subject to the rules of evidence." 1-ER-71; *see* 1 ER-70-72. It found Miller's testimony was inadmissible under Cal. Evid. Code § 1237, because Miller failed to "vouch for the truthfulness" of his letter, which he essentially admitted was made up. 1-ER-71-72. The court thus held that the trial court "did not *abuse its discretion* in refusing to admit evidence of third party culpability." 1-ER-72 (emphasis added).

The California Supreme Court summarily denied review. 1-ER-51.

D. Federal habeas review

1. The district court denies review.

Casillas filed a petition for writ of habeas corpus in district court. But the district court denied relief. *See* Pet. App. 5a-50a.

Casillas appealed.

2. The Ninth Circuit finds no violation of the right to present a defense by making a credibility determination against Casillas' evidence.

On appeal, the Ninth Circuit resolved the right to present a defense issue by holding the evidence against Perez was untrustworthy. In essence, the court found that Miller's note detailing

Perez's non-public confession—even though corroborated and substantiated by the district attorney's own investigator—lacked credibility because Miller got one detail incorrect and was out to save himself. Pet. App. 3a.

3. The Ninth Circuit denies a certificate of appealability (COA) on an impermissibly-suggestive identification claim, because no prejudice existed.

Casillas also sought a certificate of appealability on an impermissibly-suggestive identification claim. On that front, the Ninth Circuit ruled that, although the identification may well have been impermissibly suggestive, no prejudice existed: "Although the identification may have been the product of impermissibly suggestive circumstances, Casillas was not prejudiced by its admission." Pet. App. 4a (citations omitted). The court therefore denied a certificate of appealability. *Id*.

Reasons for Granting the Writ

A. The Ninth Circuit's COA analysis violates *Buck v. Davis* and 28 U.S.C. § 2253(c)(2).

1. The Ninth Circuit has been ruling on the merits of habeas petitions, without granting COAs, in violation of *Buck*.

To appeal an issue on federal habeas review, a petitioner needs to obtain a certificate of appealability (COA) by demonstrating "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). To obtain that COA, only one reasonable jurist need "disagree with the district court's resolution of his constitutional claims," or "conclude the issues presented are adequate to deserve encouragement to proceed further." *Buck v. Davis*, 580 U.S. 100, 115 (2017). In a word, the claim need only be "debatable." *Id.* at 116.

Given the issue need only be debatable, the COA threshold is low. *See Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003); *Tennard v. Dretke*, 542 U.S. 274, 289 (2004); *Banks v. Dretke*, 540 U.S. 668, 705 (2004); *Tharpe v. Sellers*, 583 U.S. 33, 33-35 (2018) (per curiam); *see also McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019) (Sotomayor, J., dissenting from denial of certiorari).

This Court has explained the proper inquiry for COAs in *Buck*. This inquiry, "we have emphasized, is not coextensive with a merits analysis." *Buck*, 580 U.S. at 115. Rather, when the court of appeals conflates merits and the COA inquiry, and decides the merits of the appeal at the COA stage, it essentially decides an appeal without

jurisdiction and places an impermissibly-high burden on the petitioner. *Id.* at 115-17. Put simply, a "court of appeals should limit its examination at the COA stage to a threshold inquiry into the underlying merit of the claims, and ask only if the District Court's decision was debatable." *Id.* at 116 (cleaned up). It should not reach the ultimate merits. *Id.*

Despite *Buck*'s holding to avoid adjudicating the ultimate merits, the Ninth Circuit has recently been adjudicating COA issues by analyzing the ultimate merits of the underlying claim. *See, e.g.*, *Catlin v. Broomfield*, 124 F.4th 702, 742-45 (9th Cir. 2024) (*Napue* and *Brady*); *Atkins v. Bean*, 122 F.4th 760, 783-86 (9th Cir. 2024) (considering both prongs of *Strickland*); *Payton v. Davis*, 906 F.3d 812, 820-22 (9th Cir. 2018); *see also Hernandez v. Peery*, 141 S. Ct. 2231, 2236 (2021) (Sotomayor, J. dissenting from the denial of certiorari from the denial of a COA in the Ninth Circuit). These were all "ultimate merits determinations the panel[s] should not have reached." *Buck*, 580 U.S. at 116.

All told, *Buck* is clear: the courts of appeal are not to resolve ultimate merits issues at the COA stage. Despite that clear holding, the Ninth Circuit has repeatedly done that, as it did here. Therefore, this Court should grant certiorari or reverse to re-iterate this lost message of *Buck*.

2. Denying COAs based on a lack of prejudice violates 28 U.S.C. § 2253(c)(2) because that statute dictates that the COA analysis only involves looking at the constitutional violation, not prejudice.

Even more problematic, in denying the COAs noted above, the Ninth Circuit often rested its COA analysis on prejudice. *See, e.g.*, *Catlin*, 124 F.4th at 742-45 (analyzing *Napue* and *Brady* COA issues, inter alia, on prejudice grounds); *Atkins*, 122 F.4th at 783-86 (considering both prongs of *Strickland*, including the prejudice prong, in the COA inquiry); *Payton*, 906 F.3d at 820-22 (denying a COA on materiality/prejudice grounds, even after "[c]onsidering the Supreme Court's guidance in *Buck* . . . ."). That's also what the Ninth Circuit did here, despite suggesting that Casillas had established the merits of his claim: "Although the identification may have been the product of impermissibly suggestive circumstances . . . ." Pet. App. 4a.

Resting the COA analysis on prejudice is particularly fraught.. While *merits* determinations can often be a clear legal issue (e.g. whether evidence was suppressed or false), whether *prejudice* ensued often involves careful record analysis to determine whether the habeas court is in grave doubt as to the harmlessness of an error. *Cf. O'Neal v. McAninch*, 513 U.S. 432, 445 (1995). Because that involves close record analysis, and a less clearcut inquiry, reasonable jurists will necessarily disagree on prejudice more.

Perhaps that's why the COA statute only speaks in terms of the "denial of a constitutional right," rather than "entitlement to relief."

See 28 U.S.C. § 2253(c)(2). Ordinary canons of statutory interpretation suggest this language means the COA inquiry only involves constitutional violation analysis, not prejudice.

Textually, this language suggests that a petitioner need only show that a constitutional right has been violated (the constitutional violation itself) rather than his entitlement to relief (the constitutional violation plus prejudice). The ordinary use of the term "constitutional right" is distinct and separate from the prejudice inquiry. *See generally, Brecht v. Abrahamson*, 507 U.S. 619, 630 (1993) ("We [have] rejected the argument that the Constitution requires a blanket rule of automatic reversal in the case of constitutional error . . . .").

Moreover, had Congress intended otherwise, it could have used different language as it did elsewhere in AEDPA. Other provisions of AEDPA speak to "claims"—which clearly encompass prejudice—rather than just the denial of a constitutional right. *E.g.*, 28 U.S.C. § 2254(d) (referencing *claims* adjudicated on the merits). This suggests those terms have different meanings. Therefore, the ordinary textualist canons of statutory interpretation suggest § 2253 only contemplates looking to the merits of the claim at the COA stage, rather than prejudice.

To be sure, later decisions regarding COAs have assumed the prejudice inquiry applies. *See, e.g.*, *Tharpe v. Sellers*, 583 U.S. 33, 35 (2018) ("The question of prejudice—the ground on which the Eleventh Circuit chose to dispose of Tharpe's application—is not the only

question relevant to the broader inquiry whether Tharpe should receive a COA."). This appears to have originated with the pre-AEDPA decisions requiring a certificate of probable cause to appeal. That standard involved whether "the petition should have been resolved in a different manner . . . ." *Slack v. McDaniel*, 529 U.S. 473, 477 (2000) (*citing Barefoot v. Estelle*, 463 U.S. 880, 893 (1983)). "Resolving the petition in a different manner," as a wholistic look at the result, necessarily contemplates the prejudice inquiry. But "denial of a constitutional right," does not. *See* 28 U.S.C. § 2253(c)(2).

Because it does not appear that the Court has ever assessed how § 2253's language differs from pre-AEDPA language, this Court should grant review to clarify the correct COA standard, particularly when prejudice determinations are involved.

3. This case is a perfect vehicle to address this issue.

This COA issue is squarely presented by the facts: the Ninth Circuit decided the merits without issuing a COA and it did so on prejudice grounds. Pet. App. 4a. The court even suggested that the merits of the claim had been met: "Although the identification may have been the product of impermissibly suggestive circumstances . . . ." Pet. App. 4a. Therefore, this case presents a perfect vehicle to address the COA inquiry in prejudice cases.

B. The "trustworthiness" analysis of the *Chambers* line of cases has devolved into making credibility determinations in violation of this Court's decision in *Holmes*.

1. The Sixth and Fourteenth Amendments, under *Chambers* and *Holmes*, guarantee the accused the right to present necessary and trustworthy evidence.

The Constitution, whether rooted in the Due Process clause or the Sixth Amendment, guarantees every criminal defendant the fundamental right to a meaningful opportunity to present a complete defense. *Holmes v. South Carolina*, 547 U.S. 319, 324 (2006) (*citing Crane v. Kentucky*, 476 U.S. 683, 690 (1986); *California v. Trombetta*, 467 U.S. 479, 485 (1984)). This right is a fundamental element of due process. *Washington v. Texas*, 388 U.S. 14, 19 (1967). Indeed, few "rights are more fundamental than that of an accused to present witnesses in his own defense." *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973).

The exercise of this fundamental right has a simple framework laid out by this Court in *Chambers*: an accused has the right to present trustworthy and necessary exculpatory evidence at trial. *Chambers*, 410 U.S. at 284. While state evidentiary rules generally apply, they are arbitrary or disproportionate to their purposes, and the Sixth Amendment demands ignoring them, when they exclude trustworthy evidence critical to the defense. *See Holmes*, 547 U.S. at 325-26 (collecting cases).

2. The courts of appeal have misunderstood the trustworthiness inquiry to allow them to make credibility determinations regarding the proposed evidence—the sole province of the jury.

"Trustworthy" may well be imprecise language, because questions of credibility are for the jury to decide. *See United States v. Bailey*, 444 U.S. 394, 414-15 (1980) ("The Anglo-Saxon tradition of criminal justice embodied in the United States Constitution . . . makes jurors the judges of the credibility of testimony offered by witnesses. It is for them, generally, . . . to say that a particular witness spoke the truth or fabricated a cock-and-bull story."). Indeed, "the conviction of our time that the truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury or by the court . . . ." *Washington v. Texas*, 388 U.S. 14, 22 (1967) (*citing Rosen v. United States*, 245 U.S. 467, 471 (1918)).

Most recently in *Holmes*, the Court spoke regarding this aspect of *Chambers*. Justice Alito, writing for a unanimous court, critiqued South Carolina's approach of making the determination of the admission of third-party culpability evidence based on the strength of the prosecution's evidence alone. It didn't matter that there was forensic evidence against the accused or "the prosecution's evidence, *if credited*, would provide strong support for a guilty verdict. . . . " *Holmes v. South Carolina*, 547 U.S. 319, 330 (2006). Instead, credibility is a

treacherous ground to look at these issues, because that's something the jury should assess looking at all the relevant evidence:

> where the credibility of the prosecution's witnesses or the reliability of its evidence is not conceded, the strength of the prosecution's case cannot be assessed *without making the sort of factual findings that have traditionally been reserved for the trier of fact* and that the South Carolina courts did not purport to make in this case.

Id. (emphasis added). The point being that, if only crediting one side's evidence, the strength of the other side's position is lost. *See id.* at 331.

But a post-conviction court making a credibility call does just that. It makes the "sort of factual findings that have traditionally been reserved for the trier of fact." It misses the strength of the accused's evidence by simply discounting it without considering a trial where the jury might have credited it. And it dispenses with the wisdom of *Holmes*—that trials aren't assessed on one side's evidence alone—by only crediting the prosecution's evidence. Therefore, the trustworthiness inquiry does not allow the court to make the sorts of credibility determinations reserved for the jury.

Courts of appeal, however, have misapplied this law and routinely make credibility determinations reserved for the jury in *Chambers* cases. *See, e.g., Maness v. Wainwright*, 512 F.2d 88, 92 (5th Cir. 1975) ("we do not find in a close relative's testimony the 'persuasive assurances of trustworthiness' cited by the Court in *Chambers*"); *see id.*

at 93 (Clark J. Dissenting) ("The distinction which the majority perceives between the proof wrongly excluded in *Chambers v. Mississippi* and that refused in the case at bar is . . . obscure to me."); *D.S.A. v. Circuit Court Branch 1*, 942 F.2d 1143, 1153 (7th Cir. 1991) (making a credibility determination of another's murder confession); *Pittman v. Sec'y, Fla. Dep't of Corr.*, 871 F.3d 1231, 1248 (11th Cir. 2017) (same); *contra United States v. Goodlow*, 500 F.2d 954, 958 (8th Cir. 1974) ("To reason that the credibility of these witnesses is such that their testimony would not be believed attempts to substitute judicial discretion in an area where factfinding prerogatives control").

What happened here is endemic to this issue. Essentially, the Ninth Circuit found the proposed evidence lacked credibility—despite the objective corroboration and the district attorney's own investigator believing someone else committed the murder. *See* Pet. App. 3a. Therefore, the Ninth Circuit was wrong to make a negative credibility determination—that's the jury's role. Because this error has become commonplace, this Court should grant certiorari to clarify this type of credibility determination is impermissible.

3. Courts making credibility determinations creates a Catch-22 of constitutional rights for an accused trying to present evidence of his innocence—particularly in California.

By ruling on credibility, the courts of appeal have also created a no-win constitutional situation. Our Republic rests on an adversarial legal system—one with at least two sides to every story. Given that

adversarial system, a jurist could almost always believe one side over the other. That is one reason we have a jury to ferret out the truth and make credibility determinations. But, by allowing a court to make this determination on habeas review, without any live testimony, a court can almost always find reasons a witness or evidence isn't credible. Particularly so because the excluded evidence was never tested in the crucible of trial.

This is all the more problematic in California. The California courts appear to operate under a misunderstanding of *Chambers* and *Holmes*: holding that the rules of evidence don't ordinarily infringe on the right to present a defense. *See, e.g., California v. Robinson*, 37 Cal. 4th 592, 626-27 (2005); *California v. Chavez*, 22 Cal. App. 5th 663, 680 (2018). But that's not the correct inquiry, because this Court has time and time again found violations of the right-to-present-a-complete-defense under otherwise-valid state evidentiary rules. *See, e.g.*, *Chambers*, 410 U.S. at 300-02; *Green*, 442 U.S. at 97; *Crane*, 476 U.S. at 686-87, 692; *Rock*, 483 U.S. at 55-56, 61; *Holmes*, 547 U.S. at 323-31. Put simply, California courts are looking to the state rules, not whether they excluded necessary and trustworthy evidence to an accused's defense.

This places petitioners in a Catch-22—Casillas exemplifies this. On direct appeal, the California court of appeal applied its wrong understanding of *Chambers* to analyze the issue under a state hearsay exception using the "abuse of discretion" standard. Pet. App. 71a-73a.

Then, on habeas review, the court of appeal simply found the evidence not credible, even though there were strong reasons—like corroboration, all the above evidence against Perez, or the district attorney's own investigator—to believe it. This is a heads-I-win-tails-you-lose situation.

4. This case is a perfect vehicle for addressing this issue.

The trustworthiness issue is squarely presented by the Ninth Circuit's decision. In fact, it's uniquely presented by these facts, because there were numerous reasons to believe Casillas' proposed evidence, noted above. Thus, the only way to come to the Ninth Circuit's conclusion was a negative credibility determination—the sort reserved solely for the trier of fact.

Indeed, the Ninth Circuit expressly noted Casillas' arguments that the excluded evidence "provided non-public details that bolstered the trustworthiness" and yet, essentially decided that the informant was not credible. Pet. App. 3a. That opinion presents the opportunity to correct courts making credibility determinations in right-to-present-a-defense cases.

5. This Court's intervention is necessary to protect the innocent and defend the right to a jury trial.

The right to present a defense is a fundamental element of due process, *Washington*, 388 U.S. at 19, and few rights are more fundamental, *Chambers*, 410 U.S. at 302. In large part, this is because

the evidence at issue is that *someone else committed the murder*. *Cf. Chambers*, 410 U.S. at 292-94; *Green*, 442 U.S. at 96 & n.1.

Precluding evidence that someone else committed the murder is precisely how you convict the innocent—Casillas exemplifies that. Strong evidence shows that someone else committed this murder. But the trial court excluded all of it. Without this Court's intervention, the innocent—like Casillas—will continue to sustain convictions for murders they didn't commit.

Worse yet, this essentially abandons the purpose of the jury trial. Long ago, our Republic opted for a system wherein we hear from all persons with apparent knowledge and leave the credibility and weight of that testimony to the jury. *Washington*, 388 U.S. at 22. These types of rulings do away with that principle. They allow the prosecution to present unrebutted evidence of guilt—without hearing an accused's evidence of innocence—in a manner that this Court rightly rejected in *Holmes*. To paraphrase Justice Scalia, by opining that the State's evidence is reliable and the accused evidence isn't, that's "akin to dispensing with [a] jury trial because a defendant is obviously guilty. This is not what the Sixth Amendment prescribes." *Crawford v. Washington*, 541 U.S. 36, 62 (2004). But, at least in California, we have essentially dispensed with the jury right in this respect.

All told, this Court's intervention is necessary to protect the innocent and the very purpose of trials.

Conclusion

For these reasons, the Court should grant certiorari. Alternatively, the Court should vacate the Ninth Circuit's judgment and remand.

Respectfully submitted,
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