

No. 17-_____

In the
Supreme Court of the United States

IN RE RONNIE M. LYLES,

Petitioner.

On Petition for Extraordinary Writ of Habeas Corpus
to the United States Circuit Court for the Fifth Circuit

PETITION FOR EXTRAORDINARY WRIT
OF HABEAS CORPUS

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QUESTIONS PRESENTED

Can a conviction stand, when appellant's claims concerning trial and appellate courts exposes structural defects at the heart of his conviction in an "extraordinary case, where constitutional violations has resulted in the conviction of one who is actually innocent"?

LIST OF PARTIES

The undersigned counsel of record certifies that all parties do not appear in the caption of the case on the cover, and that the following listed persons and entities, as described in Supreme Court Rule 14.1(b) and 29.1 have an interest in the outcome of this case. These representations are made in order that the Judges of this Court may evaluate possible disqualification or recusal. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Petitioner

- Ronnie M. Lyles

Respondents

- Paul D. Connick, Jr. District Attorney; Terry M. Boudreaux, Assistant District Attorney; Andrea F. Long, Assistant District Attorney; Joseph T. Oubre, Assistant District Attorney; Amanda L. Calogero, Assistant District Attorney
- Newell Normand, Sheriff; James Wine, Sergeant; Larry Dyess, Detective; Omalee Gordon, Sergeant
- Christopher B. Edwards, Attorney (Lyles' former criminal trial attorney).
- Ferdinand J. Kleppner, Attorney (Lyles' former criminal appellate attorney).
- John G. DeRussy, Attorney (Lyles' former civil suit attorney in *Ronnie M. Lyles v. Seacor Marine*,

Inc., Civil Action No. 01-3121 Section “S” (4), United States District Court, Eastern District of Louisiana (2003)).

- William B. Schwartz, Attorney (Counsel for the Defendant Seacor Marine, Inc.)
- Charles V. Cusimano, II, Judge (Presiding Judges in criminal case No. 00-4973, Division “L”, *State of Louisiana v. Lyles* (2001)).
- James L. Cannella, Circuit Judge; Walter J. Rothschild, Circuit Judge; Emile St. Pierre, Circuit Judge. (Presiding Judges in criminal appeal No. 03-KA- 141 *State v. Lyles*, (2003)).
- Mary Ann Vial Lemmon, United States District Judge
- Jeff Landry, Louisiana Attorney General
- Solicitor General of the United States

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
LIST OF PARTIES	ii
TABLE OF AUTHORITIES	x
PETITION FOR EXTRAORDINARY WRIT OF HABEAS CORPUS.....	1
RELIEF SOUGHT	2
DECISIONS BELOW	3
JURISDICTION.....	3
RULE 20 STATEMENT	4
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	5
STATEMENT OF THE CASE.....	12
A. Facts	12
B. Certiorari Incident to Appeal Statute	18
SUMMARY OF THE ARGUMENT	19
REASONS FOR GRANTING THE WRIT	22
I. CONFLICT WITH DECISION OF OTHER COURTS.....	22
II. THE QUESTION PRESENTED IS ONE OF EXTRAORDINARY NATIONAL IMPORTANCE THAT THE LOWER COURTS WILL NOT FURTHER ANALYZE	23
CONCLUSION.....	34

TABLE OF CONTENTS – Continued

Page

APPENDIX TABLE OF CONTENTS

Appendix A. United States Court of Appeals, Fifth Circuit Order No. 04-30950, Certificate of Appealability (COA), Denied, Dated: March 17, 2005.....	1a
Appendix B. United States District Court, Eastern District of Louisiana Report and Recommend- ation No. 03-2948, 28 U.S.C. § 2254 Writ of Habeas Corpus, Denied, Dated: March 16, 2004 ..	3a
Appendix B1. United States District Court, Eastern District of Louisiana Order No. 03- 2948, Motion for Termination of Prosecution, Denied, March 16, 2004	7a
Appendix B2. United States District Court, Eastern District of Louisiana Order No. 03- 2948, Approval and Adoption of the U.S. Magistrate Judge's Report and Recommenda- tion, Denied, Dated: July 20, 2004	8a
Appendix B3. United States District Court, Eastern District of Louisiana Judgment No. 03-2948, U.S. District Judge's Decree, Denied, Dated: September 21, 2004	11a
Appendix B4. United States District Court, Eastern District of Louisiana Order No. 03- 2948, Certificate Appealability, Denied, Dated: September 30, 2004	12a

TABLE OF CONTENTS – Continued

	Page
Appendix B5. 24th JD-Assistant District Attorney's Response in Opposition to Granting Writ of Habeas Corpus, Dated: December 5, 2003 ..	13a
Appendix C. Louisiana Supreme Court Ruling No. 2003-KH-2523, Petition for Writ of Certiorari, Denied, Dated: September 26, 2003	29a
Appendix D. Louisiana Fifth Circuit Court of Appeals Ruling No. 03-KA-141, Conviction and Sentences Affirmed, Dated: September 16, 2003.....	32a
Appendix D-1. Louisiana Fifth Circuit Court of Appeals Order No. 03-KA-141, Appeal Submitted for Consideration and Judgment, Dated: August 28, 2003.....	71a
Appendix D-2. Louisiana Fifth Circuit Court of Appeals Order No. 03-KA-141, Order for the Defendant to Have a New Appellate Counsel Sign the Record as Representing Him, Dated: August 8, 2003.....	72a
Appendix D-3. Louisiana Fifth Circuit Court of Appeals Order No. 03-KA-141, Order Granting Ferdinand J. Kleppner's Motion to Withdraw as Counsel of Record, Dated: August 8, 2003..	73a
Appendix E. 24th Judicial District Court Judgment No. 00-4973 Jury Verdict of Guilty and Motion to Adopt the Verdict of the Jury by the Court, Dated: March 15, 2001	76a

TABLE OF CONTENTS – Continued

	Page
Appendix E1. Jefferson Parish Sheriff's Office Police Report, Probable Cause Affidavit of Sergeant James Wine Dated: July 26, 2000	77a
Appendix E2. Jefferson Parish Sheriff's Office Police Report, Rights of Arrestee or Suspects Form of Deputy Todd Revere, Dated: July 26, 2000.....	79a
Appendix E3. 24th JDC-Bill of Information, Dated: September 21, 2000.....	81a
Appendix E4. Lyles Motion to Suppress the Evid- ence, Dated: August 24, 2000.....	83a
Appendix E5. Lyles Motion for Discovery, Dated: August 24, 2000.....	87a
Appendix E6. 24th JDC-Excerpts from the Pre- liminary Hearing Transcripts (pg. 14-15), Dated: September 8, 2000; Excerpts from the Trial Transcripts (pg. 67-68), Dated: March 15, 2001.....	92a
Appendix E7. 24th JDC-Excerpt from the Preliminary Hearing Transcripts (pg. 20), Dated: September 8, 2000.....	95a
Appendix E8. 24th JDC-Excerpt from the Trial Transcripts (pg. 8), Dated: March 14, 2001.....	96a
Appendix E9. 24th JDC-Excerpt from the Trial Transcripts (pg. 6-7), Dated: March 15, 2001 .	97a
Appendix E10. 24th JDC-Excerpt from the Trial Transcripts (pg. 11), Dated: March 15, 2001...	99a

TABLE OF CONTENTS – Continued

	Page
Appendix E-11. 24th JDC-Excerpt from the Trial Transcripts (pg. 12), Dated: March 15, 2001.	100a
Appendix E-12. 24th JDC-Excerpt from the Trial Transcripts (pg. 19), Dated: March 15, 2001.	101a
Appendix E-13. 24th JDC-Excerpt from the Trial Transcripts (pg. 20), Dated: March 15, 2001.	102a
Appendix E-14. 24th JDC-Excerpt from the Trial Transcripts (pg. 21), Dated: March 15, 2001.	103a
Appendix E15. 24th JDC-Excerpt from the Trial Transcripts (pg. 22), Dated: March 15, 2001.	104a
Appendix E16. 24th JDC-Excerpt from the Trial Transcripts (pg. 23), Dated: March 15, 2001.	105a
Appendix E17. 24th JDC-Excerpt from the Trial Transcripts (pg. 40-41, 50, 61), Dated: March 15, 2001	106a
Appendix E18. 24th JDC-Excerpt from the Trial Transcripts (pg. 42), Dated: May 9, 2001. (Sentencing)	108a
Appendix E19. 24th JDC-Multiple Bill of Infor- mation, Dated: May 11, 2001	109a
Appendix E20. 24th JDC-Excerpt from the Trial Transcripts (pg. 2-4), Dated: July 10, 2002. (Sentencing, Multiple Bill)	113a

TABLE OF CONTENTS – Continued

	Page
Appendix E21. 24th JDC-Excerpt from the Trial Transcripts (pg. 16, 31), Dated: May 9, 2001. (New Trial Hearing)	116a
Appendix E22. Statement of Sandra Washington, Taken at the Law Offices of Ferdinand Klep- pner, 3500 N. Causeway Blvd., Metairie, Loui- siana on Friday, August 17, 2001, Commenc- ing at 3:30 p.m.	117a
Appendix F. United States Court of Appeals, Fifth Circuit Opinion No. 03-31008; CV 01-3121 S, Affirmed, Dated: June 18, 2004	124a
Appendix F-1. United States Court of Appeals, Fifth Circuit Judgment No. 03-31008; D.C. Docket No. 01-3121 S, Dated: June 18, 2004	126a
Appendix G. United States District Court, Eastern District of Louisiana Reasons for Judgment No. 01-3121-S, Denied Dated: September 16, 2003.....	127a

TABLE OF AUTHORITIES

	Page
CASES	
<i>Barefoot v. Estelle</i> , 463 U.S. 880, 103 S.Ct. 3383, 77 L.Ed.2d 1090 (1983)	33
<i>Betts v. Brady</i> , 316 U.S. 455, 62 S.Ct. 1252, 86 L.Ed. 1595 (1942)	22
<i>Bradley v. Fisher</i> , 13 Wall. 335, 20 L.Ed. 646 (1812)	11
<i>Brady v. Maryland</i> , 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963)	29, 31
<i>Brecht v. Abrahamson</i> , 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993)	28
<i>Buckley v. Fitzsimmons</i> , 509 U.S. 259, 113 S.Ct. 2606, 125 L.Ed.2d 209 (1993)	11
<i>Dade v. Diguglielmo</i> , 283 Fed. Appx. 979 (3rd Cir. 2008)	22
<i>Davis v. Alaska</i> , 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974)	14
<i>Douglas v. California</i> , 372 U.S. 353, 83 S.Ct. 814, 9 L.Ed.2d 811 (1963)	15, 29, 30
<i>Evitts v. Lucey</i> , 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985)	22
<i>Forrester v. White</i> , 484 U.S. 219, 108 S.Ct. 538 (1988)	11
<i>Gideon v. Wainwright</i> , 372 U.S. 335, 83 S.Ct. 792, 9 L.Ed.2d 799 (1963)	22
<i>Giglio v. United States</i> , 405 U.S. 150, 92 S.Ct. 763 (1972)	29

TABLE OF AUTHORITIES—Continued

	Page
<i>Green v. Lambert</i> , 288 F.3d (9th Cir. 2003)	22
<i>Griffin v. Breckenridge</i> , 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971)	9, 12
<i>Griffin v. Illinois</i> , 351 U.S. 12, 76 S.Ct. 585, 100 L.Ed. 891, 55 A.L.R.2d 1055 (1956)	30
<i>Grooms v. Johnson</i> , 208 F.3d 488 (5th Cir. 1999)	22
<i>Hernandez v. Texas</i> , 347 U.S. 475, 74 S.Ct. 667, 98 L.Ed. 866 (1954)	6
<i>Hirabayashi v. United States</i> , 320 U.S. 81, 63 S.Ct. 1375, 87 L.Ed. 1774 (1943)	6
<i>Hurd v. Hodge</i> , 334 U.S. 24, 68 S.Ct. 847, 92 L.Ed. 1187 (1948)	6
<i>Imbler v. Pachtman</i> , 424 U.S. 409, 96 S.Ct. 984, 47 L.Ed.2d 128 (1976)	11
<i>Jiminez v. Rice</i> , 222 F.3d 1210 (9th Cir. 2000)	22
<i>Johnson v. Zerbst</i> , 304 U.S. 458, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357 (1938)	22
<i>Kush v. Rutledge</i> , 460 U.S. 719, 103 S.Ct. 1483, 75 L.Ed.2d 413 (1983)	9
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995)	29
<i>Lockhart v. Fretwell</i> , 506 U.S. 364, 113 S.Ct. 838, 122 L.Ed.2d 180 (1993)	28

TABLE OF AUTHORITIES—Continued

	Page
<i>Mackey v. United States</i> , 401 U.S. 667, 91 S.Ct. 1160, 28 L.Ed. 404 (1971)	28
<i>Malley v. Briggs</i> , 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986)	11
<i>Miller-El v. Cockrell</i> , 537 U.S. 322, 123 S.Ct. 1029 (2003)	32
<i>Miranda v. Arizona</i> , 384 U.S. 436 (1966)	13
<i>Mooney v. Holohan</i> , 294 U.S. 103, 55 S.Ct. 340, 79 L.Ed. 791 (1935)	29
<i>Napue v. Illinois</i> , 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959)	29
<i>Oyama v. California</i> , 332 U.S. 633, 68 S.Ct. 269, 92 L.Ed.249 (1948)	6
<i>Powell v. Alabama</i> , 287 U.S. 45, 53 S.Ct. 55, 77 L.Ed. 158, 84 A.L.R. 527 (1932)	22
<i>Rose v. Lundy</i> , 455 U.S. 509, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982)	28
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000)	1, 17, 33
<i>St. Francis College v. Al-Khazraji</i> , 481 U.S. 604, 107 S.Ct. 2022 (1987)	6
<i>State v. Lopes</i> , 01-1383 (La. 12/7/01), 805 So.2d 124 (2001)	8
<i>State v. Tillery</i> , 167 So.3d 15 (La. App. 5 Cir. 2014)	13

TABLE OF AUTHORITIES—Continued

	Page
<i>Stone v. Powell</i> , 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976)	28
<i>Strickland v. Washington</i> , 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984)	passim
<i>Stump v. Sparkman</i> , 435 U.S. 349, 98 S.Ct. 1099 (1978)	11
<i>Teague v. Lane</i> , 489 U.S. 288, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989)	28
<i>United States v. Bagley</i> , 473 U.S. 667, 105 S.Ct. 3375 (1985)	29
<i>United States v. Cronic</i> , 466 U.S. 648, 104 S.Ct. 2039, 80 L.Ed.2d 657 (1984)	22, 23
<i>Williams v. Taylor</i> , 529 U.S. 362, 120 S.Ct. 1495, 146 L.Ed.2d 389 (2000)	31, 32
<i>Wilson v. Walker</i> , 204 F.3d 33 (2d Cir. 2000)	22
<i>Zernial v. United States</i> , 714 F.2d 431 (5th Cir. 1983)	9

CONSTITUTIONAL PROVISIONS

La. Const. Art. I, § 16	8
U.S. Const. amend. IV	13
U.S. Const. amend. VI	23, 24, 27
U.S. Const. amend. XIV	passim
U.S. Const. Art. III, § 2	3

TABLE OF AUTHORITIES—Continued

	Page
STATUTES	
8 U.S.C. § 43.....	7
28 U.S.C. § 1251	3
28 U.S.C. § 1254(1)	3
28 U.S.C. § 1651	3
28 U.S.C. § 2253.....	1, 17
28 U.S.C. § 2254.....	1, 16, 17, 32
28 U.S.C. § 2254(d)(1)	2, 31
28 U.S.C. § 2254(d)(2)	2, 31, 32
28 U.S.C. § 2254(e)(1)	32
42 U.S.C. § 1981.....	6, 7
42 U.S.C. § 1983.....	7
42 U.S.C. § 1985.....	8, 9, 11
46 U.S.C. § 688.....	10
La. Rev. Stat. § 14:81.....	13, 24
La. Rev. Stat. § 15:529.1.....	15
La. Rev. Stat. § 47:1979.....	7

TABLE OF AUTHORITIES—Continued

	Page
JUDICIAL RULES	
Fed. R. Civ. P. 41(a)	20
Fed. R. Civ. P. 41(b)	20
La. Code Crim. P. 465	13
La. Code Crim. P. 473	13
La. Code Crim. P. 924.1	16, 18, 19
Sup. Ct. R. 10	18
Sup. Ct. R. 14.1	ii
Sup. Ct. R. 29.1	ii



PETITION FOR EXTRAORDINARY
WRIT OF HABEAS CORPUS

Petitioner Ronnie M. Lyles ("Petitioner") respectfully petitions this Court for an extra-ordinary writ of habeas corpus to review the order of the United States Court of Appeals for the Fifth Circuit in New Orleans, Louisiana mandating a district court's dismissal of a 28 U.S.C. § 2254 application on procedural grounds for failure to exhaust state court remedies. "A COA may be issued only if the movant makes a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(C)(2). When, as here, a district court dismisses a 28 U.S.C. § 2254 application on procedural grounds, a COA may not issue unless the prisoner shows that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

To the extent that the District Court's decision rest on procedural grounds, petitioner has shown that reasonable jurists would find it debatable whether petitioner had raised "a valid claim of a Fourteenth Amendment constitutional right to the effective assistance of counsel," and they would "find it debatable whether the district was correct in its procedural ruling[s]." *Id.*

The Louisiana Supreme Court's adjudication of the claim (1) resulted in a decision that was contrary to, and involved an unreasonable application of,

clearly established Federal law, as determined by the Supreme Court of the United States; and (2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding. 28 U.S.C. § 2254(d)(1), (2). Petitioner is therefore entitled to relief if the Louisiana Supreme Court's decision rejecting his deprivation of the right to the effective assistance of counsel claim was either "Contrary to, or involved an unreasonable application of," that established law. It was both.

The Federal Question involved here has been presented to the lower State District Court, State Court of Appeals, and the Louisiana Supreme Court. Therefore, there is no reason for this Court to refrain from definitively resolving the question presented now.



RELIEF SOUGHT

Petitioner requests this Court issue a Writ of Mandamus to the Louisiana trial court vacating the conviction of Ronnie Lyles, and dismissing the case with prejudice in light of the egregious constitutional violations present at his trial and the lack of a legal instrument of indictment.



DECISIONS BELOW

The Order of the United States Court of Appeals, Fifth Circuit No. 04-30950 is unreported, and a copy is attached as App.1a to this petition. The Judgment of the United States District Court, Eastern District of Louisiana No. 03-2948 is unreported, and a copy is attached as App.3a to this petition. The Ruling of the Louisiana Supreme Court Writ No. 2003-KH-2523 is reported at *State ex rel. Ronnie M Lyles v. State of Louisiana*, 2003-KH-2523 (La. 9/26/03), 854 So.2d 350 (La. 2003), and a copy is attached as App.29a to this petition. The Decision of the Louisiana Fifth Circuit Court of Appeals No. 03-KA-141 is reported at *State v. Lyles*, 858 So.2d 35 (La. App. 5th Cir. 2003), and a copy is attached as App.32a to this petition. The Judgment of the Twenty Fourth Judicial District Court No. 00-4973 is unreported, and a copy is attached as App.76a to this petition.



JURISDICTION

This Petition for Extraordinary Writ of Habeas Corpus is filed pursuant to Sup. Ct. R. 20.4(a). This Court has jurisdiction under U.S. Constitution Article III, § 2, 28 U.S.C. §§ 2241, 1254(1) and 1651 to review the Court of Appeals' decision by extraordinary writ of habeas corpus.



RULE 20 STATEMENT

This petition is in aid of the Court's appellate jurisdiction as it provides the Court an opportunity to open the lid on and fix the corrupt practices taking places in Louisiana trial and appellate courts. The Louisiana courts are famously dishonest, and in this case, the facts clearly show that the Louisiana courts unconstitutionally exceeded their jurisdiction and abused their discretion through usurpation and unlawful seizure and assumption of another's position, office, and authority and circumvention of state and federal laws by forcing an innocent criminal defendant through a full-blown state criminal trial preceding without first establishing whether there was probable cause for the defendant's arrest.

This habeas petition is being brought directly to this Court, since the Louisiana courts are in the practice of backing up and supporting each other's convictions, regardless of the facts or the interests of justice. This is also true at the federal district court level, where the Eastern District of Louisiana routinely ignores valid habeas petitions, in support of their Louisiana state court brethren. Thus, the Petitioner believes that application to the district court would be counterproductive, and that the best remedy is available through direct application to this Court, which as stated above, would be mutually beneficial in aid of its appellate jurisdiction.



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- U.S. Const. amend. XIV

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- La. Code of Crim. P., Art. 924 (2000)

An application for post-conviction relief is a petition filed by a person in custody after sentence following conviction for the commission of an offense seeking to have the conviction and sentence set aside.

- La. Code of Crim. P., Art. 924.1 (2000)

An application for post-conviction relief shall not be entertained if the petitioner may appeal the conviction and sentence which he seeks to challenge, or if an appeal is pending.

- 42 U.S.C. § 1981

The Amendment is enforced by Title 42 § 1981 United States Code:

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefits of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like Punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.

Based on the history of § 1981, Congress intended to protect from discrimination identifiable classes of persons who are subject to intentional discrimination solely because of their ancestry or ethnic characteristics. Such discrimination is racial discrimination that Congress intended § 1981 to forbid, whether or not it would be classified as racial in terms of modern scientific theory. *St. Francis College v. Al-Khazraji*, 481 U.S. 604, 107 S.Ct. 2022 (1987). Under prior cases, discrimination by States on the basis of ancestry violates the Equal Protection Clause of the Fourteenth Amendment, *Hernandez v. Texas*, 347 U.S. 475, 479, 74 S.Ct. 667, 671, 98 L.Ed. 866 (1954); *Oyama v. California*, 332 U.S. 633, 646, 68 S.Ct. 269, 275, 92 L.Ed.249 (1948); *Hirabayashi v. United States*, 320 U.S. 81, 100, 63 S.Ct. 1375, 1385, 87 L.Ed. 1774 (1943). *See also Hurd v. Hodge*, 334 U.S. 24, 32, 68 S.Ct. 847, 851, 92 L.Ed. 1187 (1948). § 1981, “at a minimum,” reaches discrimination against an individual “because he or she is genetically part of an ethnically and physiognomically distinctive sub-group-

ing of homo sapiens." A distinctive physiognomy is not essential to qualify for 1981 protection. "Disparate treatment" for civil rights purposes means treating a person differently because of his race, it implies consciousness of race, and purpose to use race as decision making tools. Here petitioner shows that he was subjected to intentional discrimination based on the fact that he was born a Negro, not solely on the place or nation of his origin, or his religion, and therefore he has made out a case under § 1981. U.S.C. Const. amend. XIV, 42 U.S.C. § 1981.

- 42 U.S.C. § 1983

The Amendment is enforced by Title 42 § 1983 United States Code:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or caused to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. By 8 U.S.C. § 43 (derived from § 1 of the Civil Rights Act of April 20, 1871, 17 Stat. 13, continued without substantial change as R.S. § 1979).

Whether the petitioner has stated a claim for which relief might be granted under 42 U.S.C. § 1983 turns on whether he alleges that State action has deprived him of an interest that is constitutionally recognized as life, liberty, or property without due process of law.

Here Petitioner states a claim that he was deprived of his life, liberty, and property interests without due process of law because he was deprived of the constitutional right to “effective assistance of counsel” “to an impartial trial,” “to confront and cross-examine the witnesses against him,” “to present a defense,” “to testify in his own behalf,” and “to right to assistance of counsel on first direct appeal,” as a result of the Louisiana State and Federal Court judges’ personal bias, prejudice, and intentional racial, invidious discrimination. The Louisiana Judges, Prosecutors, and Attorneys violated the Louisiana Constitution Article 1, § 16 of 1974, which provides that, “Defendant has a right to a fair trial.” This constitutional article is the source of specific rights due a defendant in a criminal trial. *State v. Lopes*, 01-1383, p. 3 (La. 12/7/01), 805 So.2d 124, 126 (emphasis added). *See also* LA Constitution Article I, § 16.

- 42 U.S.C. § 1985

The Amendment is enforced by Title 42 § 1985 United States Code:

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws (and) in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising

any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages, occasioned by such injury or deprivation, against any one or more of the conspirators. *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790, 29 L.Ed.2d 338 (1971). U.S.C. Constitution Amend. XIV, 42 U.S.C. § 1985(3).

42 U.S.C. § 1985 accords a cause of action to any person injured as a result of a conspiracy to interfere with the civil right described in the Act: Subsection 1 relates to a conspiracy to prevent a public official from performing his duty, Subsection 2 relates to a conspiracy to obstruct justice or to intimidate a party, a witness, or a juror, and Subsection 3 concerns the acts of two or more persons in conspiracy to, or in going in disguise to, deprive any person of certain rights. Both subsections clause 2 of subsection 2 and 3 relate only to actions motivated by racial or some other type of invidious, class-based discrimination. *Kush v. Rutledge*, 460 U.S. 719, 725-26, 103 S.Ct. 1483, 148788, 75 L.Ed.2d 413 (1983). The heart of the cause of action accorded by § 1985 is a conspiracy to interfere with a person's civil rights. *Kush*, 460 U.S. 719, 725-26, 103 S.Ct. 1483, 1487-88, 75 L.Ed.2d 413. The essence of a conspiracy is an understanding or agree between the conspirators. *Zernial v. United States*, 714 F.2d 431, 434-35 (5th Cir. 1983).

In *State of Louisiana v. Ronnie M Lyles*, criminal action no. 00-4973, Division "L" (2001), Twenty Fourth Judicial District Court, Parish of Jefferson, Gretna, Louisiana and *Ronnie M Lyles v. Seacor Marine, Inc.*, civil action no. 01-3121 Section "S" (4), United

States District Court, Eastern District of Louisiana, Parish of Orleans, New Orleans, Louisiana (Judge Lemmon's Decree without costs "to be taxed" was not final), Lyles was the main and only target of the conspiracy agreement to obstruct the due course of justice to deprive him of his right to Maintenance and Care benefits for the work-related injury he sustained in 1998 while employed at Seacor, and damages as a result of his Jones Act injury. (App. E 21, pp. 16, 31). The conspirators/acts done in the furtherance of the object of the conspiracy, motivated by racial, invidious discrimination with intent to deprive the negro citizen Lyles of the constitutional right "to an impartial trial," "to effective assistance of counsel," "to confront and cross-examine the witness against him," "to present a defense," "to testify in his own behalf," and "to assistance of counsel on first appeal as of right," did deprive him of his life, liberty, and property without due process of the law. (App. G, pp. 1-18).

Those judges, prosecutors, police, and private attorneys were acting with purposeful discrimination under color of State and Federal law in agreement that Lyles was a Negro arrested for child molestation. The inflammatory and collateral nature of the State and Federal Judges' misrepresentation of the criminal and civil court evidence—which was, in essence 1) evidence of Lyles' innocence, and 2) evidence of Seacor's liability under the Jones Act, 46 U.S.C. § 688 and the General Maritime Law, were acts of personal bias, prejudice, animosity, malice, and lack of good faith in undertaking the acts that enabled those Judges to take up their Judge's pen and sign their Judgments, Judges may not inoculate

their conduct by the pen-stroke. *Forrester v. White*, 484 U.S. 219, 108 S.Ct. 538 (1988). These assertions clearly support the requisite animus to deprive Lyles of the equal enjoyment of legal rights because of his race. The petition, then, states a cause of action under 42 U.S.C. § 1985.

“Police officers are not immune if a reasonably well-trained officer would have known that his affidavit failed to establish probable cause.” *Malley v. Briggs*, 475 U.S. 335, 106 S.Ct. 1092, 89 L.Ed.2d 271 (1986). “Prosecutors do not have absolute immunity, although they may have qualified immunity, they are not immune for their misconduct in fabrication of evidence and shopping for a favorable expert witness to establish probable cause for arrest because those acts are ‘administrative’ rather than quasi-judicial.” *Imbler v. Pachtman*, 424 U.S. 409, 427, 96 S.Ct. 984, 993, 47 L.Ed.2d 128, 142 (1976); *Buckley v. Fitzsimmons*, 509 U.S. 259, 276, 113 S.Ct. 2606, 2617, 125 L.Ed.2d 209, 228 (1993). 42 U.S.C. § 1985(2).

Judges are not immune for their acts done in furtherance of the object of conspiracy with intent to obstruct the due course of justice, motivated by racial, invidious discrimination with intent to deny Negro citizens equal protection of the law because these abusive actions are outside the scope of their customary judicial duties, non-judicial in nature, and taken in the clear absence of all jurisdiction. *Stump v. Sparkman*, 435 U.S. at 357, 98 S.Ct. at 1105 (quoting *Bradley v. Fisher*, 13 Wall. 335, 351, 20 L.Ed. 646 (1812)).

What the Supreme Court of the United States has here is a conspiracy to affect the equality of pro-

tection by the law, and equality of privileges and immunities under the laws. Lyles has shown clear and convincing evidence that the conspirators were conscious of and trying to influence the law, and were endeavoring to obstruct and interfere with it. Such private discrimination is an inequality before the law, and there exist an indisputable manipulation of the law and its agencies to give sanction or sanctuary for doing so. *Griffin v. Breckenridge*, 403 U.S. 88, 91 S.Ct. 1790, 29 L. Ed. 338 (1971).

Indeed, the conduct here alleged lies dead-center in the core of the coverage intended by Congress and it would be hard to conceive of wholly private conduct that would come within the statute if the does not.



STATEMENT OF THE CASE

A. Facts

On the evening of July 26, 2000, Ronnie M. Lyles, an African-American citizen and Negro citizen of the State of Mississippi was an out-of-town guest staying at the Bon Soir Hotel located on the Westbank Expressway in the City of Westwego, in the State of Louisiana (App. E 10, pp. 11), Lyles was the sole occupant in room number 65. (App. E 12, pp. 19). He heard a knock on the door to his room (App. E 13, pp. 20) at which time he opened the door and was approached by a group of Jefferson Parish Sheriff's Office ("J.P.S.O.") police officers who forced entry into his room. The police asked him to state his name, and he replied, "Ronnie Mack Lyles." (App. E 14,

pp. 21). Sergeant-James Wine, the arresting officer, swiftly placed Lyles into handcuffs and told him that he was under arrest without explanation. (App. E 1, pp. 1) (App. E 14, pp. 21). Lyles was not advised of his rights per *Miranda v. Arizona*, 384 U.S. 436 (1966) (App. E 2, pp. 1). The police officers proceeded to conduct a thorough search of his person, private luggage, attorney's mail, and entire hotel room, but found no evidence of a crime being or having been committed. The police violated the Fourth Amendment when, without probable cause, they unreasonably searched and seized him and transported him to the police station in one swift action without explanation or custodial detention. (App. E 14, pp. 21). Lyles did not consent to the search, and there were no warrants for his arrest. (App. E 10, pp. 11).

On September 20, 2000, State of Louisiana filed a two-count Bill of Information charging Lyles with the violation of Louisiana Revised Statute 14:81 indecent behavior with juveniles. (App. E 3, pp. 1). The Bill of Information in this situation was totally defective because it did not conform to the short form criteria set forth under La.C.Cr.P. art. 465 and lacks compliance with La.C.Cr.P. art. 473 because it does not contain the names, abbreviations, initials, surnames, known juveniles, nor dates of birth. (App. E 17, pp. 40-41, 50, 61) for the first time to Lyles' surprise, Lyles was prejudiced from the variance. *State v. Tillery*, 167 So.3d 15, 14-429 (La. App. 5 Cir. 2014).

Lyles filed a Motion to Suppress the Evidence under the Fourth Amendment to the United States Constitution, challenging the unreasonable search

and admissibility of the police report and its contents. (App. E 4, pp. 1-3).

At the preliminary hearing on probable cause for his arrest, Lyles was denied the right "to Confront and Cross-examination the witnesses against him," "to present a defense," and "to testify in his own behalf." (App. E 7, pp. 20)

At the evidentiary hearing on suppression of the evidence and probable cause for his arrest, Lyles was deprived of the constitutional rights "to an impartial trial," "to the effective assistance of counsel," "to Confront and Cross-examination the witnesses against him," "to present a defense," and "to testify in his own behalf," when his right to Presence was unconstitutionally waived by the trial court and rendered the trial unfair. (App. E 8, pp. 3). No specific showing of prejudice was required in *Davis v. Alaska*, 415 U.S. 308, 94 S.Ct. 1105, 39 L.Ed.2d 347 (1974), because the petitioner had been "denied the right of effective cross-examination" which "would be constitutional error of the first magnitude and no amount of showing of want of prejudice would cure it." *Id.*, at 318, 94 S.Ct. at 1111. In *Lyles* absence from the trial court the arresting officer testified that, "The only corroborating thing that I have was the fact that Mr. Lyles was at Room # 65." (App. E 15, pp. 22). The officer gave the following justification for his actions: "I was told by the complainants that I had, that Mr. Lyles had relocated to Mississippi, and I believe on the initial report, upon interview, Mr. Lyles's girlfriend, who was the link between the victims and himself, by girlfriend, that he had relocated to Mississippi when they attempted

to contact him upon the first report. It was my fear, too, that he may again leave for Mississippi without being detained and booked for the pending charges.” (App. E 16, pp. 23). Following the hearing, the Court denied the Motion to Suppress. (App. E 11, pp. 12).

The jury returned a verdict of guilty on count one and two. (App. E, pp. 125). The trial court adopted the verdict of the Jury. (App. E, pp. 127) The trial court sentenced Lyles to concurrent terms of 6 years imprisonment. (App. E 18, pp. 42). The State subsequently filed a Multiple Bill of Information under the Louisiana Habitual Offender Law, La. R.S. 15:529.1 charging Lyles as a fourth (quad) felony offender. (App. E 19, pp. 1-2). Following the hearing, the court adjudicated Lyles as a fourth felony offender, vacated the previous 6-year sentence as to count two and resentenced him to 20 years imprisonment. (App. E 20, pp. 204)

On May 9, 2001, Lyles’ Motion for New Trial was heard and denied.

On July 16, 2002, Lyles’ Motion for Appeal was granted. Lyles filed a Pro Se Brief with three assignments of error raising a Federal Question on his first appeal as of right. (App. D, page 6, *Id.* at 2). The Court of Appeals rejected Lyles’ claim for the deprivation of the right to effective assistance of counsel and deprived him of the right to counsel on his first appeal as a right. *Douglas v. California*, 372 U.S. 353, 9 L.Ed.2d 811, 83 S.Ct. 814 (1963), held that the Fourteenth Amendment guarantees a criminal defendant the right to counsel on his first appeal as of right.

On September 10, 2003, Lyles filed a Writ of Certiorari to the Louisiana Supreme Court raising the same Federal Question for review.

On September 16, 2003, without appointing the indigent defendant Lyles with the assistance of counsel the court decided his appeal and affirmed his convictions and sentence. On September 26, 2003, the Louisiana Supreme Court rendered its decision on Lyles' Petition for Writ of Certiorari and stated as follows: Denied. Appeal Pending. La.C.Cr.P. art. 924.1 (App. C).

On October 27, 2003, Lyles' filed an application for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2254 in the United State District Court for the Eastern District of Louisiana. The Federal U.S. Magistrate Judge who considered the § 2254 was troubled and confused by the claims. (App. B, page 2, *Id.* at 1). He, nevertheless, recommended, deference to the State Court prosecutors' justifications for exhaustion requirement, that petitioner be denied relief. The United States Magistrate Judge gave the following justification for his procedural ruling:

His only filing with the highest state court was filed on September 10, 2003, and was a request for that court to review the lower appellate court's ruling on a complaint of an ethical violation by his attorney.

See Louisiana Supreme Court Docket No. 2003-KH-2523. A staff member of this Magistrate Judge contacted the Louisiana Supreme Court and confirmed that the only writ application filed with that Court relative to Lyles' 2000 conviction was Writ No. 2003-KH-2523 (App. B, page 3, *Id.* at 3)

On March 16, 2004, the § 2254 petition was dismissed without prejudice for failure to exhaust State Court remedies. The U.S. District Court adopted the U.S. Magistrate's report and recommendation and ordered, adjudged, and decreed that the petition be dismissed on September 20, 2004. (App. B 2 pp.1-3). On September 30, 2004, the District Court also denied the Certificate of Appealability ("COA") and stated as follows, "There is absolutely no showing of the denial of a constitutional right. The petitioner did not exhaust his State remedies." (App. B 4, page 1).

On October 8, 2004, Lyles sought a COA pursuant to 28 U.S.C. § 2253 from the United States Court of Appeals, Fifth Circuit, which held:

A COA may be issued only if the movant makes "a substantial showing of the denial of a constitutional right." *See* 28 U.S.C. § 2253 (C)(2). When, as here, a district court dismisses a 28 U.S.C. § 2254 application on procedural grounds, a COA may not issue unless the prisoner shows that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). Lyles has not shown that jurists of reason would debate the district court's dismissal, without prejudice, of his application for failure to exhaust his state remedies.

On March 17, 2005, Lyles Motion for a COA, as well as his Motion for Appointment of Counsel was denied.

Ronnie Mack Lyles is an innocent man.

B. Certiorari Incident to Appeal Statute

In 1980, the State of Louisiana enacted a statute which preserved the authority to preclude entertaining a “certiorari incident to appeal” in those circumstances where judges elect to forgo conducting a discretionary review of a Federal question and expeditiously determine the certiorari for which no other adequate or speedy relief exists and instead deny certiorari. Louisiana Code of Criminal Procedure Article 924.1 reads in pertinent part:

An application for post-conviction relief shall not be entertained if the petitioner may appeal the conviction and sentence which he seeks to challenge, or if an appeal is pending.

The Louisiana Supreme Court, in its ruling specifically reserved the issue of the constitutionality of the legislation. The Louisiana legislature has created a certiorari incident to appeal exception to the writ of certiorari requirement. A uniform application for post-conviction relief and writ of certiorari differ under Supreme Court Rule 10, Section 5. The Louisiana Code of Criminal Procedure Article 924.1, and Louisiana Jurisprudence runs afoul of the requirement of fundamental fairness embodied in the Due Process Clause of the Fourteenth Amendment. It is impossible for defendants in the State of Louisiana to receive fundamental fairness being denied

an application for a writ of certiorari review on a deprivation of the right to the effective assistance of counsel claim even after lower appellate court has already decided appeal, where Article 924.1 gives the State the luxury to have defendants prove prejudice.

Article 924.1 procedure spelled out by the legislature and Louisiana Jurisprudence is unfair, it does not pass constitutional muster under the Due Process Clause. (1) (T)he Due Process means "law of the land," (2) Legislative enactment of Article 924.1 offended the Due Process Clause, (3) The bottom line is, Article 924.1, runs afoul of the Due Process Fundamental Fairness.



SUMMARY OF THE ARGUMENT

The Federal Circuit held in this case that "Lyles has not shown that jurists of reason would debate the district court's dismissal, without prejudice, of his application for failure to exhaust his State remedies." State's deprivation of petitioner's Fourteenth Amendment right to the effective assistance of counsel was the only claim to be tried and one seeking a declaratory judgment invalidating the exhaustion requirement. This ruling in no way hinged upon the Federal Circuit's special expertise in substantive Certificate of Appealability law.

Rather, the Federal Circuit's decision rests entirely upon its outright rejection of this Court's decision interpreting the Fourteenth Amendment and the Due Process Clause. To endorse the claim of an ex-

haustion requirement in this case, the Federal Circuit cast aside this Court's basic test for the determination of Fourteenth Amendment rights, rejected this Court's precedents holding that the Due Process Clause of the Fourteenth Amendment guarantees a criminal defendant the right to the effective assistance of counsel, and to the right of assistance of counsel on his first appeal as of right.

In the State's response in opposition to granting writ of habeas corpus the State ruled that Lyles' habeas petition contained both exhausted and unexhausted claims and is a mixed petition which should be dismissed without prejudice. *Id.* at pg. 10, 14-16. Petitioner has demonstrated that reasonable jurist could conclude that the U.S. District Court's dismissal of the writ for failure to exhaust State Court remedies holding was wrong. In the habeas context it would be appropriate for an order dismissing a petition to instruct an applicant that upon his return to Federal Court he is to bring only exhausted claims. *See*, Fed. Rules Civ. Proc. 41 (a) and (b). In this case, however, the petition was dismissed without condition and without prejudice.

Petitioner raised his "Federal Question" and presented it before the trial court, appellant court, and Louisiana Supreme Court who's decision rejecting his deprivation of the Fourteenth Amendment right to the effective assistance of counsel claim, among others, was contrary to, and involved an unreasonable application of, clearly establish Federal law, as determined by the Supreme Court of the United States. The U.S. District Court did not give full consideration to the substantial evidence petitioner put

forth in support of the prima facie case. Instead, it accepted without question the State Court's evaluation of petitioner's failure to exhaust State Court remedies. The United States Court of Appeals for the Fifth Circuit evaluated Lyles' application for a COA in the same way. The Court of Appeals, moreover, was incorrect for an even more fundamental reason, because it had no jurisdiction to decide this case in the first place.

In addition, the Federal Circuit has created a conflict with its sister circuits in areas outside of its expertise in COA law. Before the Federal Circuit's decision, the Circuit Courts had uniformly held that the exhaustion requirement is satisfied when the grounds urged in a federal petition were previously presented to the State's highest court in a procedurally proper manner. The Court also refused to follow the decisions in the Second, Third, and Ninth Circuits, as well as the uniform practice of all the district courts that most effectively employ "stay and abeyance" in the wake of the U.S. Supreme Court's recent decision.

The Supreme Court made it clear that the prisoner satisfies the exhaustion requirement if he properly pursues a claim throughout the entire appellate process of the Supreme Court Justices correctly observe that this case created the type of conflict with other Circuits that warrants Supreme Court review.



REASONS FOR GRANTING THE WRIT

I. CONFLICT WITH DECISION OF OTHER COURTS

The holding of the Courts below that petitioner failed to exhaust State Court remedies is directly contrary to the holding of three Federal Circuits. *See Wilson v. Walker*, 204 F.3d 33 (2nd Cir. 2000); *Dade v. Diguglielmo*, 283 Fed. Appx. 979 (3rd Cir. 2008); *Green v. Lambert*, 288 F.3d (9th Cir. 2003) (“When the [State] Supreme Court here accurately passed on the merits, it took its opportunity to address the Federal claim.”); *see also Jiminez v. Rice*, 222 F.3d 1210 (9th Cir. 2000); *Grooms v. Johnson*, 208 F.3d 488. In addition, the Supreme Court of the United States has held that “[t]he deprivation of the right to the effective assistance of counsel . . . will warrant reversal. “*Strickland v. Washington*, 466 U.S. 686-697-698, 104 S.Ct. 2052 (1984); *accord United States v. Cronin*, 466 U.S. 648, 104 S.Ct. 2039, 2044 n.11, 80 L.Ed.2d 657 (1984); *Evitts v. Lucey*, 469 U.S. 387, 83 L.Ed.2d 821, 105 S.Ct. 830 (1985); *Gideon v. Wainwright*, *supra*, held that the Sixth Amendment right to counsel was “so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the States by the Fourteenth Amendment.” *Id.*, at 340, 9 L.Ed.2d 799, 83 S.Ct. 792, 23 Ohio Ops 2d 258, 93 A.L.R. 2d 733 (1963); *quoting Betts v. Brady*, 316 U.S. 455, 465, 86 L.Ed. 1595, 62 S.Ct. 1252 (1942); *also Powell v. Alabama*, 287 U.S. 45, 77 L.Ed. 158, 53 S.Ct. 55, 84 A.L.R. 527 (1932); *Johnson v. Zerbst*, 304 U.S. 458, 82 L.Ed. 1461, 58 S.Ct. 1019, 146 A.L.R. 357 (1938).

II. THE QUESTION PRESENTED IS ONE OF
EXTRAORDINARY NATIONAL IMPORTANCE THAT
THE LOWER COURTS WILL NOT FURTHER ANALYZE

The Supreme Court has repeatedly recognized the importance of the public at large of resolving questions of public confidence in the courts. This case presents a fundamental question of the interpretation of this Court's decision in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). The question presented is of great public importance because it affects the operations of the court systems in all fifty (50) states, the District of Columbia and hundreds of city and county courts. In view of the large amount of litigation over criminal court proceedings, guidance on the question is also of great importance to citizens, because it affects their ability to receive fair decisions in criminal court proceedings that may result in months or years of added litigation or harsh punitive confinement.

The issue's importance is enhanced by the fact that the lower courts in this case have seriously misinterpreted *Strickland*. This Court held in *Strickland* that the Sixth Amendment guarantees the right to effective assistance of counsel in criminal prosecutions. *Strickland v. Washington*, 466 U.S. 668 (1984). The Court reiterated this point in *United States v. Chronic*, 466 U.S. 648, 104 S.Ct. 2039, 2044 n. 11, 80 L.Ed.2d 657 (1994), and added that there are some circumstances in which although counsel is present, "the performance of counsel may be so inadequate that, in effect, no assistance of counsel is provided."

The Supreme Court explained in *Strickland* that a violation of the right on which Lyles relies has two components:

First, the defendant must show that counsel's performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.*, at 687, 104 S.Ct. 2052.

To establish ineffectiveness, a "defendant must show that counsel's representation fell below an objective standard of reasonableness." *Id.*, 688, 104 S.Ct. 2052. To establish prejudice he "must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability sufficient to undermine confidence in the outcome." *Id.*, at 694, 104 S.Ct. 2052

The criminal defense attorney, Christopher B. Edwards, 501 Derbigny Street, Gretna, Louisiana was hired to represent Lyles on the criminal charges of La.R.S. 14:81 indecent behavior with juveniles, two counts. Based on the fact that allegations of sexual child abuse was involved in this case, counsel Edwards was required to conduct a thorough, continuing, and independent investigations and dis-

covery, including but not limited to: (App. E 6, pp. 14-15, 67-68):

1. Reviewing the social service, psychiatric, psychological, drug and alcohol, medical, law enforcement, school and other records of the child;
2. Reviewing the court files of the child and siblings, case-related records of the Department of Social Services and other service providers;
3. Contacting lawyers for the other parties and Court appointed special advocates for background information;
4. Contacting and meeting with the parents, guardians and/or caretakers of the child, with the permission of their attorneys;
5. Obtaining necessary authorizations for the release of information;
6. Interviewing individuals involved with the child, including school personnel, social workers, foster parents and other caretakers, neighbors, relatives, coaches, clergy, mental health professionals, physicians, law enforcement officers, and other potential witnesses;
7. Reviewing relevant photographs, video or audio tapes and other evidence; and
8. Attending treatment, placement, and administrative hearings, other proceedings involving legal issues, and school conferences or staffing's concerning the child as needed.

The criminal defendant Lyles was prejudiced by his attorney's failure to investigate and discover exculpatory evidence. Upon the state prosecutor Joseph T. Oubre's Discovery request from the criminal defense attorney Christopher B. Edwards during the March 14, 2001 hearing on suppression of the evidence the following discussion ensued: (App. E 9, pp. 6-7)

MR. OUBRE: Your Honor, and that falls in to what the State's discovery was all about, you know, requesting alibis or whatever information that the defense may have, and he said that there was none.

MR. EDWARDS: Your Honor, on the discovery, I'll take that out of order. I actually did receive discovery from the State, and I told Mr. Oubre that I didn't have any, and that remains the case. But in terms of their motion for discovery, I do not have any for them.

MR. OUBRE: And I guess for the record, your Honor, the State will ask the same question, I believe, that you don't have anything for us? Is that what you said?

MR. EDWARDS: Right.

MR. OUBRE: And you are satisfied?

MR. EDWARDS: Well, in a sense that we don't have an alibi, we don't have any reports to give you.

MR. OUBRE: And are you satisfied with what's been given by us to you?

MR. EDWARDS: I've been given what I believe is the discovery I'm entitled to.

The total lack of effort by trial counsel to investigate precluded the development of the facts surrounding the alleged crime. In light of the circumstantial case against Lyles, counsel's deficient performances cause this Court serious doubts about the reliability of his conviction. On this issue the Court's findings should be substantial and compelling. Trial counsel's efforts to investigate the facts of this case were perfunctory. Counsel did not use an investigator. The hearing transcript shows that the investigation made by counsel essentially was limited to reading the police report on the case.

This Court can agree that trial counsel's failure to adequately investigate the fact of the alleged crime falls below the objective standard of reasonable assistance required under the Sixth Amendment. Adequate representation probably would have produced a different result. The jury that convicted Lyles knew of the circumstantial evidence implicating him, but had no reason to doubt the inferences the State drew from the facts. At retrial the jury will be confronted with substantial evidence supporting an alternative theory of the alleged crime. It would be a fundamental miscarriage of justice to affirm Lyles' conviction in a non-capital case, given the probability that a jury would have reasonable doubt about his guilt if he were tried with effective counsel. Counsel's deficient performance rendered the trial fundamentally unfair. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); *Lockhart v. Fretwell*, 506 U.S. 364, 372, 113 S.Ct.

838, 844, 122 L.Ed.2d 180 (1993); *see e.g.*, *Stone v. Powell*, 428 U.S. 465, 96 S.Ct. 3037, 49 L.Ed.2d 1067 (1976); *Brecht v. Abrahamson*, 507 U.S. 619, 113 S.Ct. 1710, 123 L.Ed.2d 353 (1993). Constitutional errors that undermine confidence in the fundamental fairness of the State adjudication certainly justify the issuance of the federal writ. *See, e.g.*, *Teague v. Lane*, 489 U.S. 288, 311-314, 109 S.Ct. 1060, 103 L.Ed.2d 334 (1989) (quoting *Mackey v. United States*, 401 U.S. 667, 692-694, 91 S.Ct. 1160, 28 L.Ed. 404 (1971) (Harlan, J., concurring in judgments in part and dissenting in part), and quoting *Rose v. Lundy*, 455 U.S. 509, 544, 102 S.Ct. 1198, 71 L.Ed.2d 379 (1982) (STEVENS, J., dissenting)). The deprivation of the right to the effective assistance of counsel recognized in *Strickland* is such an error. *Strickland*, 466 U.S. 686, 697-698, 104 S.Ct. 2052.

Counsel's deficient performance prejudiced Lyles' defense and deprived him of a fair trial. His failure to investigate and present exculpatory evidence to the jury, raised "a reasonable probability that the result of the trial proceeding would have been different" if competent counsel had presented and explained the significance of all the available evidence. Trial counsel's failure to review the record before trial and his resulting failure to impeach State witnesses with information about their agreement with the State constituted ineffective assistance of counsel under the standard set out in *Strickland*. Defense counsel discovered New Evidence indicating that the Government had failed to disclose the Jefferson Parish Sheriff's Office-Police Report, Department of Social Services-Case Files, and promise made to its key witnesses that she would not be prosecuted

if she testified for the Government. (App. E 22, page 7, pp. 2-24).

The State withheld the date of "Christmas" and introduced it at trial for the first time to Lyles' surprise and he was prejudiced from the variance. (App. E 17, pp. 40-41, 50, 61). In the State's case-in-chief, the prosecutor introduced and used false and perjured trial testimony of its key witness and allowed that testimony to go uncorrected. The witness's false, fabricated, and perjured trial testimony with regards to the alleged crime occurring on "Christmas" was not corroborated by the record of the trial court. Where Government's case depended entirely on testimony of a witness, and without it there could have been no indictment and no evidence to carry cast to jury, such witness' credibility was important issue in case, and evidence of any understanding or agreement as to future prosecution would be relevant to such witness' credibility and jury was entitled to know of it. *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763 (1972). The Supreme Court should grant certiorari to determine whether the evidence not disclosed was such as to require a new trial under the due process criteria of *Kyles v. Whitley*, 514 U.S. 419 (1995); *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375 (1985); *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173, 3 L.Ed.2d 1217 (1959); and *Mooney v. Holohan*, 294 U.S. 103, 112, 55 S.Ct. 340, 342, 79 L.Ed. 791 (1935).

The Supreme Court should also keep in mind that in *Douglas v. California*, 372 U.S. 353, 9 L.Ed.2d 811, 83 S.Ct. 814 (1963), the Court held that the

Fourteenth Amendment guarantees a criminal defendant the right to counsel on his first appeal as of right. *Douglas v. California*, *supra*, recognized that the principles of *Griffin* required a State that afforded a right of appeal to make that appeal more than a “meaningless ritual” by supplying an indigent appellant in a criminal case with an attorney. 372 U.S., at 358, 9 L.Ed.2d 811, 83 S.Ct. 814.

When a State opts to act in a field where its action has significant discretionary elements, such as where it establishes a system of appeals as of right though not required to do so, it must nonetheless act in accord with the dictates of the Constitution, in particular, in accord with the Due Process Clause. The State’s deprivation of Lyles’ right to counsel on his first appeal as of right recognized in *Douglas* is a constitutional error in violation of the Fourteenth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

Petitioner now turns this Court’s attention to the AEDPA, which provided:

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State Court shall not be granted with respect to any claim that was adjudicated on the merits in State Court proceedings unless the adjudication of the claim—

1. resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as deter-

mined by the Supreme Court of the United States; or

2. resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State Court proceeding. 28 U.S.C. § 2254(d)(1), (2).

A State Court decision is “contrary to” federal law established by the Supreme Court “if the State Court arrives at a conclusion opposite to that reached by [the Supreme] Court on a question of law or it the State Court decides a case differently than [the Supreme] Court has on a set of materially indistinguishable facts.” *Williams v. Taylor*, 529 U.S. 362, ___, 120 S.Ct. 1495, 1523, 146 L.Ed.2d 389 (2000). It follows that the Louisiana Supreme Court rendered a “decision that was contrary to, and involved an unreasonable application of, clearly established Federal law.” Lyles’ constitutional rights to assistance of counsel, effective assistance of counsel, and exculpatory and impeachment evidence as defined in *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); and *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), was violated. Lyles is therefore entitled to relief if the Louisiana Supreme Court’s decision rejecting his deprivation of the right to assistance of counsel, deprivation of the right to effective assistance of counsel, and deprivation of the right to exculpatory evidence favorable to the accused claims was either “contrary to, or involved an unreasonable application of,” that established law. It was both.

The Supreme Court can conclude that all three conditions are met by petitioner's denial of right "to assistance of counsel," to effective assistance of counsel," and "to exculpatory evidence favorable to the accused-Brady claims."

In *Miller-El v. Cockrell*, 537 U.S. 322, 123 S.Ct. 1029 (2003), the Supreme Court explained: A Federal Court's collateral review of a State-Court decision must be consistent with the respect due State Courts in our Federal system. Where 28 U.S.C. § 2254 applies, our habeas jurisprudence embodies that deference. Factual determinations by State Courts are presumed correct absent clear and convincing evidence to the contrary, § 2254(e)(1), and a decision adjudicated on the merits in a State Court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the State-Court proceeding, § 2254(d)(2); *see also Williams*, 529 U.S., at 399, 120 S.Ct. 1495 (opinion of O'CONNOR, J.)

Here, the District Court dismissed the petition based on procedural grounds. The *Slack* court holds as follows: When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling. This construction gives meaning Congress' requirement that a prisoner demonstrate substantial underlying constitutional claims

and is no conformity with the meaning of the “Substantial showing” standard provided in *Barefoot, supra*, at 893, and n. 4, 103 S.Ct. 3383, and adopted by Congress in AEDPA.

To the extent that the district court’s decision rest on procedural grounds, reasonable jurist would find it debatable whether petitioner had raised “a valid claim of the denial of a constitutional right,” and they would “find it debatable whether the district court was correct in its procedural ruling[s].” *Id.* In addition, petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court’s resolution of his constitutional claims; or another court could resolve the issues differently; or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further. *Slack, supra*, at 484, 120 S.Ct. 1595. Applying these principles to petitioner’s application, the Court can conclude a COA should have issued.

Thus, the court below seriously misinterpreted *Strickland* by failing to distinguish between “a complaint of an ethical violation by petitioner’s attorney” and “a deprivation of the right to the effective assistance of counsel claim.” The Court should correct that misinterpretation and make it clear that the deprivation of the right to the effective assistance of counsel as defined in *Strickland* violated the Fourteenth Amendment to the United States Constitution.

Because of the Fifth Circuit’s exclusive nationwide subject matter jurisdiction, and its lack of jurisdiction to hear and decide this case, this Court will

not benefit from further discussion of the question presented by the lower courts. Further debate outside of this Court has been foreclosed by the Fifth Circuit. Therefore, there is no reason for this Court to refrain from definitively resolving the question presented now.



CONCLUSION

The Fifth Circuit has pronounced a rule of pressing national importance. Its ruling, requiring an exhaustion of State Court remedies where the only claim to be tried is a claim for the deprivation of the right to the effective assistance of counsel invalidates an exhaustion requirement, directly conflict with the precedents of this Court and the Circuit Courts. For each of the reasons set forth above, this Court should grant an extraordinary writ of habeas corpus to the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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