No. 18-6214

In the Supreme Court of the United States

RICARDO RENE SANDERS,

Petitioner,

v.

RONALD DAVIS, WARDEN,

Respondent.

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

BRIEF IN OPPOSITION

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CAPITAL CASE
QUESTIONS PRESENTED

1. Whether, in the circumstances of this case, the court of appeals erred in determining that the California Supreme Court's summary denial of petitioner's state-habeas petition was reasonable under 28 U.S.C. § 2254(d).

2. Whether the court of appeals erroneously considered the materiality of allegedly exculpatory evidence in this case in isolation rather than cumulatively.

3. Whether petitioner was entitled to a certificate of appealability on his claim that his Eighth Amendment rights were violated by the time it has taken the federal court system to resolve the constitutional claims in his capital case.

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STATEMENT

1. Petitioner Ricardo Sanders was convicted and sentenced to death for four murders committed during his armed robbery of a Bob's Big Boy restaurant in Los Angeles. Pet. App. 12-13.

Testimony established that, on September 27, 1980, Carletha Stewart—a waitress at the restaurant—had run into coworker Brenda Givens off-site and told her the restaurant would be robbed that night. Pet. App. 16, 18. Sanders and Franklin Freeman (Stewart's cousin) surveilled the restaurant, accompanied by Stewart and her then-boyfriend Andre Gilchrest. *Id.* at 16-19 & n.7. Stewart, who was off-duty, asked a waitress how many employees would be there later that night. *Id.* at 17. The group left for Stewart's house shortly before the restaurant's closing time. *Id.* at 18-19. Sanders and Freeman then went back to the restaurant with two shotguns. *Id.* at 19. When they did not return, Stewart went to the restaurant to check on them; she told Gilchrest that Sanders and Freeman had called off the robbery because the manager did not come out. *Id.* at 17, 19.

On December 14, Sanders and Freeman tried again. Pet. App. 13. Armed with shotguns, they forced their way into the same restaurant around closing time as an employee was unlocking the door for the last customers to leave. *Id.* at 13-14. Freeman knocked one employee out by hitting him on the head with the butt of his shotgun. *Id.* at 14. Sanders made the manager, Michael Malloy, give him money from the safe. *Id.* Sanders forced customers and employees to enter a walk-in freezer and hand over their valuables, and

announced that they were "'going to get hurt.'" *Id.* at 14-15. Sanders and Freeman ordered everyone to face the wall, and shot until their ammunition ran out. *Id.* at 15. Three people died at the scene, with a fourth dying from related complications later. *Id.* There were seven survivors, many of whom suffered serious injuries. *Id.*

Restaurant employees told police they suspected that Stewart (who was now dating Sanders) was involved. Pet. App. 16. Givens reported Stewart's warning about the September robbery plan. *Id.* at 16-17. Gilchrest came forward to tell police about the September robbery attempt as well. *Id.* at 18-19. Police executing a search warrant found shotgun shells and two shotguns at Sanders' home. *Id.* at 20. They also found a shotgun at Freeman's father's house. *Id.* In Stewart's home, police found coins rolled in Bank of America wrappers, which matched the packaging of coins stolen from the restaurant safe. *Id.* at 14, 20.

In a lineup procedure shortly after the robbery, Sanders was identified by two surviving victims: Rhonda Robinson and Ismael Luna. Pet. App. 21. Malloy—and two survivors whose injuries prevented them from attending the lineup, Tami Rogoway and Dionne Irvin—each watched a videorecording of the lineup within the next nine days and identified Sanders. *Id.*[1] Three months later, at the preliminary hearing, Malloy and Rogoway again identified

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[1] Irvin, who had been seriously injured in the robbery, was ruled incompetent to testify at trial. *Id.* at 15, 21-22.

Sanders without equivocation; another survivor, Derwin Logan (who had identified someone other than Sanders at the lineup) viewed Sanders in court and, without making a positive identification, said Sanders was "'a very good likeness'" of the robber. *Id.* at 21, 23. Robinson said she could not tell if Sanders was the robber, and Luna said Sanders did not "'seem to be'" one of the robbers. *Id.* at 23. At trial, Malloy, Rogoway, Robinson, and Luna all identified Sanders as one of the robbers. *Id.* at 24-25.

The jury convicted Sanders of four counts of first-degree murder and multiple associated charges, found special circumstances of multiple murder and robbery-murder, and sentenced Sanders to death. Pet. App. 22, 25.[2] The California Supreme Court affirmed. *People v. Sanders*, 11 Cal. 4th 475 (1995), cert. denied, 519 U.S. 838 (1996).

2. Sanders' state habeas corpus petition, filed in the California Supreme Court, was considered roughly contemporaneously with his direct appeal. Among the petition's claims were multiple allegations about witness perjury, suggestive identification processes, undisclosed or unpreserved exculpatory evidence, and other prosecutorial misconduct. *See* D.C. Doc. 17, at 14-15 (listing state petition's claims). In 1996, the California Supreme Court issued

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[2] Freeman, who was tried separately, was convicted and sentenced to life without parole. Pet. App. 25 n.12. Stewart pleaded guilty to four counts of first-degree murder and was sentenced to four concurrent terms of life with the possibility of parole. *Id.*

a summary order stating that the petition was denied "on the merits." Pet. App. 85.

3. In 1997, Sanders filed a habeas corpus petition in federal court, raising forty-five claims. D.C. Doc. 17. Final judgment—which reflected interim decisions by the various district judges who were assigned at different stages of the case—was entered against Sanders in 2010. *See* Pet. App. 30, 87.

With respect to the claims Sanders raises now, the district court refused Sanders' request for an evidentiary hearing, Pet. App. 30, 103, because Sanders "fail[ed] to show a colorable basis, even if the facts alleged in support of [Sanders' claims] were proved true," *id.* at 144. The court reasoned that Sanders' factual allegations, even if credited, could not establish a violation of *Brady v. Maryland*, 373 U.S. 83 (1963). *See, e.g.*, Pet. App. 147-148 (noting that information about Rogoway's relationship with an informant was already known to Sanders' counsel); *id.* at 150 (reasoning that grand jury testimony that Sanders pointed to "in no way indicate[d] that [Rogoway] was pressured to testify falsely"); *id.* at 160 (reasoning that an alleged statement to Logan could not be deemed improperly suggestive "because it did not result in an identification"); *id.* at 163 (noting that Sanders' attorney's cross-examination of Gilchrest showed that he already knew that Gilchrest had sought reward money). The court acknowledged that the materiality of suppressed evidence must be considered collectively, not individually. *Id.* at 145-146, 167. In this case, however, the court determined that the facts pleaded by Sanders could

not establish that any favorable information was suppressed at all. *Id.* at 167. Finally, the court rejected Sanders' argument that his execution would be cruel and unusual in light of the delays since the original imposition of his sentence. *Id.* at 291-292; *see Lackey v. Texas*, 514 U.S. 1045 (1995) (memorandum of Stevens, J., respecting denial of certiorari) (discussing whether delays in execution can constitute cruel and unusual punishment under the Eighth Amendment). The court denied a certificate of appealability. Pet. App. 89-90.

4. The court of appeals granted Sanders a certificate of appealability as to 18 claims, but not the *Lackey* claim concerning delay. Pet. App. 82-83. The court unanimously affirmed, in a thorough opinion. *Id.* at 9-80.

The court explained that "[a] summary denial from the California Supreme Court is an adjudication on the merits for AEDPA purposes." Pet. App. 31 (citing *Harrington v. Richter*, 562 U.S. 86, 98 (2011), and *Cullen v. Pinholster*, 563 U.S. 170, 187 (2011)). The court quoted this Court's explanation of the "'prima facie case'" standard that California courts apply when considering whether to dismiss a petition, *id.* at 32 (quoting *Pinholster*, 563 U.S. at 188 n.12); *see infra,* pp. 13-14, and stated that Sanders could "satisfy § 2254(d)(1) only by showing that there was no reasonable basis for the California Supreme Court's decision," Pet. App. 32 (quoting *Pinholster*, 563 U.S. at 187–188, and *Richter*, 562 U.S. at 98 (internal quotation marks omitted)).

Applying these standards, the court rejected Sanders' claims that various prosecution witnesses provided material false testimony or that the prosecution knowingly allowed witnesses to testify falsely. Pet. App. 33-49; *see, e.g., id.* at 37 ("[I]n order to prevail ..., Sanders would have to show that Rogoway gave *false* testimony, not just that she testified inconsistently over time. This he did not do."); *id.* at 41 (a later statement by Malloy did not "come close to demonstrating that his trial testimony was false or that the prosecution knew, or should have known, that it was wrong"); *id.* at 44 ("[t]here is no evidence the prosecution had reason to doubt the testimony Robinson actually gave"); *id.* at 49 ("Sanders did not support the claim that Woods lied or that the prosecution knew his testimony was false.").

In discussing Sanders' *Brady* claims, the court stated that "[s]uppressed evidence must be considered 'collectively, not item by item.'" Pet. App. 50 (citing *Kyles v. Whitley*, 514 U.S. 419, 436 (1995)). With respect to each item of allegedly suppressed evidence, however, the court concluded that the California Supreme Court had a reasonable basis for concluding that no improper suppression had occurred even if Sanders' factual allegations were credited. *Id.* at 51-60; *see, e.g., id.* at 54 (although Sanders alleged that Rogoway identified him in order to secure conjugal visits with an inmate in custody, "Rogoway identified Sanders at the lineup and in court ... before [the inmate] claims their relationship started and before there is any record of him obtaining his [jail] furloughs"); *id.* at 56 (Sanders could not explain how a

complained-of statement suggested to Malloy that he should select Sanders in the lineup, and the state court could have reasonably determined that the additional instructions at the lineup cured any suggestion); *id.* at 58 (notes which Sanders alleged reflected a promise of reward money to Gilchrest in fact suggested "that the prosecution did *not* promise any witness the reward," and the defense was in any event "well aware of" Gilchrest's interest in any reward at the time of trial); *id.* at 60 (the state court could have reasonably concluded that Sanders "did not show that the prosecution knew about [Givens'] mental health treatment"; in any event, Givens did not identify either robber, and the testimony she did give was corroborated by two others).[3]

The court rejected Sanders' claim that Gilchrest was such an unreliable witness as to require the conviction to be voided under *Mesarosh v. United States*, 352 U.S. 1 (1956). Pet. App. 68 (reasoning that the state court could have distinguished *Mesarosh* because Gilchrest was not a government agent, the only count to which his testimony was critical was one on which he was

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[3] As the court noted, Sanders' "legal characterization of [some] claims has shifted over time." Pet. App. 61. Sanders had framed certain claims in his state petition and district court pleadings as involving "improperly influenced identifications." *Id.* On appeal, however, Sanders reframed them "as *Brady* violations for the first time and assert[ed] that the prosecution failed to disclose" certain allegedly suggestive features of the identifications. *Id.* at 62. In any event, the court of appeals rejected the claims as insufficient even if Sanders' allegations were credited. *See, e.g., id.* at 63 (reasoning that even if a court were to credit Sanders' factual allegations about the police providing a suggestive photo to certain witnesses, those witnesses had already identified Sanders before the photo was allegedly shown).

corroborated, and the jury was aware of reasons to treat Gilchrest's testimony with suspicion).

The court also rejected Sanders' claim that the prosecution failed to preserve evidence in violation of *California v. Trombetta*, 467 U.S. 479 (1984), and *Arizona v. Youngblood*, 488 U.S. 51 (1988). *See* Pet. App. 69-70 (reasoning that, given the record from an evidentiary hearing at Sanders' trial, the California Supreme Court could have reasonably concluded that "Sanders did not show [a missing] lineup card possessed an exculpatory value before it was lost," and that Sanders was able to obtain comparable evidence to make up for the missing card).

The court likewise rejected Sanders' claim that police used an informant to elicit statements from him in violation of *Massiah v. United States*, 377 U.S. 201 (1964). Pet. App. 72-73 (there was no reason to believe that the informant at issue "initiated the conversation with Sanders ... or made any effort to elicit incriminating statements"); *id.* (reasoning that the state court's decision could have been based on the lack of any showing "that [the informant] agreed to serve as the prosecution's agent"). And the court rejected Sanders' claim that that his trial counsel was ineffective for failing to move to suppress a lineup. *Id.* at 73-78.

Finally, considering all of Sanders' claims together, the court concluded that "[c]umulative error does not require reversal of Sanders' convictions." Pet. App. 80.

Sanders' petition for rehearing en banc was denied without dissent. Pet. App. 7.

ARGUMENT

1. Sanders first asserts that the court of appeals misapplied the standard of review when considering whether the state court's denial of relief was reasonable. He therefore asks this Court to "clarify that under *Harrington v. Richter*, 562 U.S. 86, 98 (2011), when the federal habeas courts evaluate the summary denial of a California habeas petition, the issue is whether the court reasonably found the defendant failed to allege a prima facie case ... and not whether he failed to prove his claims." Pet. i. Sanders did not raise this issue with specificity in the lower courts until his petition for en banc review. *See* C.A. Doc. 130.[4] In any event, the governing law is clear, and the court of appeals properly applied it.

a. In *Richter*, this Court considered how the California Supreme Court's summary orders should be interpreted under the deferential habeas standards of 28 U.S.C. § 2254. Richter, a California inmate, had filed a state-habeas petition with the California Supreme Court. 562 U.S. at 96. The California Supreme Court denied his petition in a one-sentence summary order. *Id.* In applying Section 2254(d) under such circumstances, this Court held, a federal

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[4] Sanders' opening brief in the court of appeals did frame the standard of review, under Section 2254(d), as asking whether it was reasonable for the California Supreme Court to conclude that Sanders had not stated a prima facie case. C.A. Doc. 64, at 97-98. But Sanders did not explain how the district court's opinion misapplied California's prima facie case standard.

court "must determine what arguments or theories ... could have supported [] the state court's decision, and then it must ask whether it is possible fairminded jurists could disagree that those arguments or theories are inconsistent with the holding in a prior decision of this Court." *Id.* at 102.

Although the court of appeals quoted that passage from *Richter* when stating the standard of review in Sanders' case, Pet. App. 32, Sanders contends that the court must have misunderstood the scope of reasons that could have supported the California Supreme Court's summary order. He argues that the court of appeals mistakenly assumed the California Supreme Court resolved credibility determinations and contested inferences, when in fact the state court was obliged to do nothing but accept the allegations in his petition.

Under California law, if a habeas corpus petition establishes a prima facie claim for relief, the court customarily issues an order to show cause. *People v. Duvall*, 9 Cal. 4th 464, 475 (1995); *People v. Romero*, 8 Cal. 4th 728, 737-738 (1994). In this context, the term "prima facie" has a specific meaning. The court receiving such a petition "evaluates it by asking whether, assuming the petition's factual allegations are true, the petitioner would be entitled to relief." *Duvall*, 9 Cal. 4th at 474-475. But the court does not evaluate the petition's allegations uncritically. "'For purposes of collateral attack, all presumptions favor the truth, accuracy, and fairness of the conviction and sentence....'" *Id.* The court "presume[s] the regularity of proceedings that resulted in a final judgment," and "the burden is on the petitioner to establish

grounds for his release." *Id.* The petitioner must "state fully and with particularity the facts on which relief is sought," supported by "reasonably available documentary evidence supporting the claim, including pertinent portions of trial transcripts and affidavits or declarations." *Id.* "Conclusory allegations made without any explanation of the basis for the allegations do not warrant relief [or] an evidentiary hearing." *Id.*; *see, e.g., In re Seaton*, 34 Cal. 4th 193, 206 (2004) (allegation that the district attorney's office "deliberately concealed its alleged manipulation of the jury pool" was insufficient because petitioner "allege[d] no specific facts that, if true, would establish such concealment"). Critically, "'[t]he proof ... must be a demonstrable reality and not a speculative matter.'" *People v. Karis*, 46 Cal. 3d 612, 656 (1988). Where these standards are not met, the petition may be summarily denied. *Duvall*, 9 Cal. 4th at 475.

Sanders acknowledges that the court of appeals characterized the California procedure correctly. *See* Pet. 27 (the "Ninth Circuit did acknowledge ... that summary denial means the court determined the claims did not state a prima facie case for relief"); *id.* (the "opinion also acknowledged that in evaluating a habeas petition, the California Supreme Court will assume that the allegations are true"). Nonetheless, he contends, the court of appeals erred in not finding the California Supreme Court's decision unreasonable, because he "most certainly alleged a prima facie case for relief (or colorable claim for relief) and should have been entitled to, at a minimum, discovery and an

evidentiary hearing in the district court so that he could prove his allegations." *Id.* at 28. But Sanders does not even identify which of his many claims for relief the California Supreme Court or the federal courts were mistaken about—let alone how his state habeas petition established a prima facie case on each claim.[5] In any event, as detailed above, the court of appeals (like the district court before it) did not rely on any assumption that the California Supreme Court resolved factual disputes or contested inferences in denying Sanders' claims. Instead, the court of appeals relied on the inherent legal insufficiency of Sanders' claims. *See supra,* pp. 6-8.[6]

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[5] Sanders' supporting amici likewise do not explain how the particular allegations and support in Sanders' state habeas petition would have compelled the state court to grant a hearing under the applicable state-law standard. *See* Loyola Law School Alarcon Advocacy Center Br. 5-18. There is thus no basis for comparing Sanders' case to cases in which this Court has addressed state courts' failures to follow their own procedures. *Id.* at 13-16.

[6] Amici note that at certain points in its lengthy opinion, the court of appeals stated that Sanders had "failed to prove" certain things. Loyola Law School Alarcon Advocacy Center Br. 18. Based on this, amici suggest that the court of appeals assumed that the California Supreme Court did weigh conflicting evidence and draw contested inferences. *Id.* In fact, amici's cited instances reflect the court of appeals' judgment that Sanders' claims of misconduct were not supported by the kind of particularized evidence needed to make the claim one of "'demonstrable reality and not a speculative matter,'" *Karis*, 46 Cal. 3d at 656, under the prima facie standard. *See, e.g.*, Pet. App. 39-41 (reasoning that "[w]hether Malloy's recollection was accurate or not, the fact that he later recalled being contacted by LAPD about attending the lineup does not come close to demonstrating that his trial testimony was false or that the prosecution knew, or should have known, that it was wrong" for him to say at trial that he did not "'recall'" whether a policeman asked him to go downtown for a lineup but "'believe[d] someone called me but [didn't] know when'"); *id.* at 59-60 (reasoning that the state court "could have reasonably concluded that Sanders failed to prove a *Brady* violation" where Sanders gave

b. Nor is there substance to Sanders' assertion that this Court's intervention would serve a more general purpose by "clear[ing] up the difference between alleging a prima facie case and proving the allegations." Pet. 27. Sanders contends that, until now, this Court has not considered California's prima facie review standard. *See* Pet. 28 ("When *Harrington v. Richter* reviewed the California Supreme Court's summary denial of a petition alleging ineffective assistance of counsel, this Court did not mention the words 'prima facie case' even once."); *id.* at 31 (stating that the briefing in *Sexton v. Beaudreaux*, 138 S. Ct. 2555 (2018), contained "no discussion by either party about California habeas procedure, much less ... about whether Beaudreaux alleged a prima facie case for relief"). In fact, this Court directly addressed the issue and accurately summarized California law in *Cullen v. Pinholster*, 563 U.S. 170 (2011):

> Under California law, the California Supreme Court's summary denial of a habeas petition on the merits reflects that court's determination that "the claims made in th[e] petition do not state a prima facie case entitling the petitioner to relief." *In re Clark*, 5 Cal. 4th 750, 770 (1993). It appears that the court generally assumes the allegations in the petition to be true, but does not

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no reason to believe that "the prosecution knew about Givens' mental health treatment"). In one instance, the court of appeals speculated about whether one witness was more credible than another—but only in the course of discussing other potential grounds for the state court decision that would not involve credibility judgments. *See, e.g.*, Pet. App. 53-54 (stating not only that "the state court could have reasonably decided to credit Deputy District Attorney Giss' sworn testimony that he did not use White as an agent over the testimony of a jailhouse informant who admitted to providing false evidence on numerous occasions," but also that the relevant witness' testimony was of minor importance and the defense's questioning at trial made clear that the prosecution had actually disclosed the pertinent evidence).

> accept wholly conclusory allegations, *People v. Duvall*, 9 Cal. 4th 464, 474 (1995), and will also "review the record of the trial ... to assess the merits of the petitioner's claims," *Clark, supra*, at 770.

563 U.S. at 188 n.12 (parallel citations omitted). Indeed, here the court of appeals quoted much of that passage in its own opinion. *See* Pet. App. 32.

There is similarly no support for Sanders' speculation that "the lower courts are confused as to the difference in addition to misapprehending California black letter habeas law." Pet. 27-28 (footnote omitted). To the contrary, Sanders seems to admit that federal habeas decisions examining California Supreme Court summary orders have been consistent with each other on the issue, with perhaps one 15-year-old exception. *Id.* at 27 n.12.[7]

2. Sanders next contends that the court of appeals "misconstrued the materiality test" of *Kyles v. Whitley*, 514 U.S. 419 (1995), by analyzing his "*Brady* claims 'in isolation rather than cumulatively.'" Pet. App. 33, 35

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[7] The purported exception, *Nunes v. Mueller*, 350 F.3d 1045 (9th Cir. 2003), does not pose any inconsistency. In *Nunes*, a state court determined that a petitioner had not made a prima facie case of prejudice for his ineffective-assistance claim where the petitioner stated that if he had been told of the prosecution's plea offer before his fourth trial then he would have accepted it. *Id.* at 1049-1050. The Ninth Circuit deemed that unreasonable because the state-court record made petitioner's assertion far from unsupported or conclusory. *See, e.g., id.* at 1055 (In his first three trials, the defendant's strategy "had always been to argue that he was guilty of voluntary manslaughter—how then can it be thought that [for his last retrial] he would prefer risking a guilty verdict on second-degree murder to pleading guilty to voluntary manslaughter?"). In any event, if *Nunes* were inconsistent with other Ninth Circuit cases, it would be "primarily the task of [the] Court of Appeals to reconcile its internal difficulties." *Wisniewski v. United States*, 353 U.S. 901, 902 (1957) (per curiam).

(capitalization altered). But the court of appeals (like the district court before it, *see supra*, p. 4) correctly recognized this Court's instructions to consider the materiality of *Brady* errors cumulatively. *See* Pet. App. 50 ("Suppressed evidence must be considered 'collectively, not item by item'" (quoting *Kyles*, 514 U.S. at 436)). Sanders' problem was that each court concluded that nothing exculpatory was withheld, so that there were no errors to accumulate. *See* pp. *supra*, pp. 4-5, 6-7 (discussing *Brady* claims); Pet. App. 78 ("Sanders is correct that 'prejudice may result from the cumulative impact of multiple deficiencies,' but Sanders has not shown that there were multiple deficiencies in his guilt-phase trial." (citations omitted)).

3. Finally, Sanders challenges the court of appeals' denial of a certificate of appealability on the claim that his "36 years on death row under the circumstances of this case violate the Eighth Amendment, requiring the death judgment to be set aside." Pet. 38; *see Lackey v. Texas*, 514 U.S. 1045 (1995) (memorandum of Stevens, J., respecting the denial of certiorari). This Court has repeatedly declined to review such claims.[8] Sanders provides no reason why the result should be different here.

Careful review after a defendant is sentenced to death provides "an important additional safeguard against arbitrariness and caprice." *Gregg v.*

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[8] *See, e.g.*, *Jordan v. Mississippi*, 138 S. Ct. 2567 (2018); *Boyer v. Davis*, 136 S. Ct. 1446 (2016); *Johnson v. Bredesen*, 558 U.S. 1067 (2009); *Foster v. Florida*, 537 U.S. 990 (2002); *Knight v. Florida*, 528 U.S. 990 (1999).

Georgia, 428 U.S. 153, 198 (1976) (plurality opinion). Indeed, a thorough and deliberate post-conviction review process "is a consequence of our evolving standards of decency, which prompt us to provide death row inmates with ample opportunities to contest their convictions and sentences." *McKenzie v. Day*, 57 F.3d 1461, 1467 (9th Cir. 1995), opinion adopted, 57 F.3d 1493 (9th Cir. 1995) (en banc); *see id.* (adherence to "the common law practice of imposing swift and certain executions" could itself "result in arbitrariness and error in carrying out the death penalty").

In Sanders' case, moreover, all state-court review was completed in 1996. *See* pp. 3-4, *supra*. Sanders attributes the delay since then to federal judicial processes that were largely out of the State's control. Pet. 38 ("The delays in [Sanders'] case are attributable in large measure to the revolving door of judges in the district court."). That time should not be charged to the State's account for purposes of constitutional analysis—and certainly cannot convert a valid state death sentence into an unconstitutional punishment.

CONCLUSION

The petition for a writ of certiorari should be denied.

Dated: December 5, 2018

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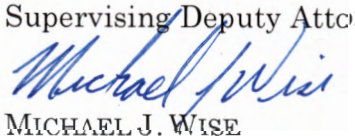

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