No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

IN RE GERALD ROSS PIZZUTO, JR.,

Petitioner,

PETITION FOR EXTRAORDINARY WRIT AND ORIGINAL PETITION FOR WRIT OF HABEAS CORPUS

THIS IS A CAPITAL CASE WITH AN EXECUTION SCHEDULED FOR JUNE 2, 2021

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CAPITAL CASE

QUESTION PRESENTED

1. As noted by Justice Betty Fletcher in her dissenting opinion, "[w]hen faced with the corruption of our legal system, we must start over. The first step is to allow [Mr.] Pizzuto to file a second petition for habeas corpus in the district court. Nothing more nor less is required of us." *Pizzuto v. Blades*, 673 F.3d 1003, 1013 (9th Cir. 2012) (dissenting opinion of Fletcher, J.). The question presented to the Court is whether Mr. Pizzuto is entitled to habeas relief or an extraordinary writ because the State suppressed evidence of a secret deal brokered by his trial judge promising a key witness a lenient sentence and then presented false testimony denying the agreement, all in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and *Napue v. Illinois*, 360 U.S. 264 (1959).

PARTIES TO THE PROCEEDINGS

This is an original habeas proceeding and a petition for an extraordinary writ. The petitioner is Gerald Ross Pizzuto, Jr. The respondent is Tyrell Davis, the Warden of the Idaho State Maximum Security Institution, which has custody over Mr. Pizzuto.

RELATED PROCEEDINGS

I. Federal Court

A. Supreme Court

1. *Pizzuto v. Yordy*, No. 19-8598, cert. denied Nov. 2, 2020
2. *Pizzuto v. Idaho*, No. 10-6377, cert. denied Jan. 18, 2011
3. *Pizzuto v. Idaho*, No. 06-11010, remanded Feb. 25, 2008
4. *Pizzuto v. Fisher*, No. 04-10640, cert. denied Oct. 31, 2005
5. *Pizzuto v. Idaho*, No. 91-5965, cert. denied Mar. 2, 1992

B. U.S. Court of Appeals for the Ninth Circuit

1. *Pizzuto v. Yordy*, No. 16-36082, affirmed Dec. 31, 2019
2. *Pizzuto v. Ramirez*, No. 13-35443, affirmed Apr. 22, 2015
3. *Pizzuto v. Blades*, No. 17-70623, motion denied Mar. 8, 2012
4. *Pizzuto v. Arave*, No. 97-99017, affirmed Feb. 6, 2002

C. U.S. District Court for the District of Idaho

1. *Pizzuto v. Blades*, No. 1:05-cv-516, denied Nov. 28, 2016

2. *Pizzuto v. Blades*, No. 1:92-cv-241, denied Mar. 22, 2013

II. Idaho State Court

A. Supreme Court

1. *Pizzuto v. State*, No. 47709, affirmed Feb. 3, 2021
2. *Pizzuto v. State*, No. 34845, affirmed Mar. 19, 2010
3. *Rhoades v. State*, No. 35187, affirmed Mar. 17, 2010
4. *Pizzuto v. State*, No. 32679, affirmed Feb. 22, 2008
5. *Pizzuto v. State*, No. 24802, affirmed Sept. 6, 2000
6. *Pizzuto v. State*, No. 21637, dismissed Aug. 3, 1995
7. *State v. Pizzuto*, Nos. 16489, 17534, affirmed Jan. 15, 1991

B. Idaho County District Court

1. *Pizzuto v. State*, CV-2003-34748, denied Jan. 6, 2020
2. *Pizzuto v. State*, CV-2006-5139, denied Oct. 31, 2007
3. *Pizzuto v. State*, CV-2002-33907, denied December 16, 2005
4. *Pizzuto v. State*, CV-1997-1837, denied May 26, 1998
5. *Pizzuto v. State*, CV-1994-961, denied March 19, 1997

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Supreme Court Opinions

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Petitioner Gerald Ross Pizzuto, Jr. respectfully submits this petition for an extraordinary writ and original petition for a writ of habeas corpus.

JURISIDICTIONAL STATEMENT

Mr. Pizzuto invokes the Court's jurisdiction under 28 U.S.C. §§ 1651 and 2241.

CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Eighth and Fourteenth Amendments to the United States Constitution, which read in pertinent part:

> Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const., amend. VIII.

> . . . nor shall any State deprive any person of life, liberty, or property, without due process of law.

U.S. Const., amend. XIV, § 1.

FEDERAL STATUTES INVOLVED

This petition involves 28 U.S.C. § 2244(b), which provides in relevant part:

(b)(1) A claim presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application shall be dismissed unless—

> (A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

> (B)(i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and
>
> (ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

STATE STATUTES INVOLVED

This petition also implicates Idaho Code § 19-2719, which provides in relevant part:

> (3) Within forty-two (42) days of the filing of the judgment imposing the punishment of death, and before the death warrant is filed, the defendant must file any legal or factual challenge to the sentence or conviction that is known or reasonably should be known . . . .
>
> (5) If the defendant fails to apply for relief as provided in this section and within the time limits specified, he shall be deemed to have waived such claims for relief as were known, or reasonably should have been known. The courts of Idaho shall have no power to consider any such claims for relief as have been so waived or grant any such relief.

STATEMENT OF THE CASE

On July 25, 1985, Del and Berta Herndon were murdered at Ruby Meadows, Idaho. *See State v. Pizzuto*, 810 P.2d 680, 686 (Idaho 1991). Four people were arrested for the crime: James Rice, William Odom, Lene Odom, and Mr. Pizzuto. *See id.* at 687. Mr. Rice and the Odoms were from California and will be referred to here as "the California defendants." Initially, all four entered pleas of not guilty. Shortly before trial, the State made deals with the California defendants, all of whom testified against Mr. Pizzuto. *See id.* Mr. Rice's testimony was the most damaging: he told the jury on March 22, 1986, that the robbery and murder were

Mr. Pizzuto's idea and that Mr. Pizzuto tied up the victims and struck them in the head with a hammer, creating a "bashing hollow sound." App. 25, 39–43. From the stand, Mr. Rice also stated that he faced the possibility of life in prison for his role in the murders. App. 85. In his closing argument, the prosecutor emphasized that Mr. Rice anticipated that "he may spend the rest of his natural life in prison." App. 202. The prosecutor asked the jury, rhetorically: "Got a great deal, didn't he?" App. 202. In their own testimony, neither of the other two California defendants spoke to how the victims died, since they claimed not to have been present. *See Pizzuto v. Arave*, 280 F.3d 949, 952 (9th Cir. 2002). The jury was then dismissed, and Mr. Pizzuto was sentenced to death on May 23, 1986, by Judge George Reinhardt, App. 220, who had also presided over the trial.

In the years that have followed since Mr. Pizzuto's sentencing, there has been extensive litigation in state and federal court. Here, he focuses on the litigation most relevant to the issues currently before this Court.

Following Mr. Pizzuto's sentencing, he initiated his first post-conviction action. *See Pizzuto*, 810 P.2d at 688. In accordance with Idaho law, his direct appeal was stayed while the post-conviction petition was litigated to its conclusion in the district court. *See id.* After the district judge denied the petition, his ruling was taken to the Idaho Supreme Court and consolidated with the direct appeal. *See id.* The conviction and sentence were then upheld by the Idaho Supreme Court in 1991, which also affirmed the denial of post-conviction relief. *See id.* at 716. This Court denied certiorari in 1992. *See Pizzuto v. Idaho*, 503 U.S. 908 (1992).

Mr. Pizzuto submitted his first federal habeas petition in 1992. It was denied by the district court and the Ninth Circuit affirmed in 2002. *See Pizzuto*, 280 F.3d 949. In 2005, this Court declined to review the case. *See Pizzuto v. Fisher*, 546 U.S. 976 (2005).

In September 2005, Mr. Rice finally admitted to Mr. Pizzuto's habeas investigator that the testimony he gave at trial was false. App. 223–26. In particular, Mr. Rice swore that he was told before testifying that he would be sentenced to twenty years, and would serve no more than fifteen. App. 223. Once this significant new revelation was made available to him, Mr. Pizzuto obtained the billing records of Mr. Rice's attorney. App. 227–232. The records indicated that the agreement was worked out between Mr. Rice's lawyer, the prosecutor, and Judge Reinhardt at a local restaurant over an hour-and-a-half meeting at 6:00 a.m. on January 16, 1986, about three months before Mr. Pizzuto's trial. App. 231. No official court record was made of this conversation and it was not disclosed by the State to Mr. Pizzuto's trial lawyers.

A week after the breakfast, on January 23, 1986, Mr. Rice pled guilty before Judge Reinhardt. App. 256. At his plea colloquy, Judge Reinhardt asked a series of questions about whether Mr. Rice had been promised a certain sentence, whether there had been any discussion of what punishment might be imposed, and so forth. App. 250– 52. Mr. Rice responded in the negative to all of the questions, with no correction from Judge Reinhardt. App. 250–51. Shortly thereafter, Judge Reinhardt went so far as to ask Mr. Rice if he understood that he might be

imprisoned until he died. App. 251. Judge Reinhardt closed out this exchange with a sweeping inquiry into whether "anyone" had made Mr. Rice "any promises, whatsoever, with reference to your treatment as a result" of pleading guilty. App. 252. Again, Mr. Rice denied it. App. 252. Despite being the very man who made such a promise, Judge Reinhardt moved on and accepted the plea. App. 252, 258.

Mr. Rice had his sentencing hearing on May 23, 1986, the day after Mr. Pizzuto received his death sentence. App. 291. At the sentencing, Mr. Rice received the guaranteed twenty-year term. App. 292. As it happened, Mr. Rice got even more than he had covertly bargained for, as he was discharged from the Idaho Department of Correction only twelve years later. App. 294.

Armed with this troubling new information, Mr. Pizzuto filed a petition for post-conviction relief in the state courts on November 25, 2005. Relief was denied at the trial level and, in 2010, at the Idaho Supreme Court. *See Pizzuto v. State*, 233 P.3d 86 (Idaho 2010). The Justices deemed the claims barred under Idaho Code § 19-2719(5) on the basis that they should have been known within forty-two days of Mr. Pizzuto's sentencing. *See id.* at 92–93. Mr. Pizzuto unsuccessfully sought certiorari review here. *See Pizzuto v. Idaho*, 562 U.S. 1182 (2011).

Having exhausted his state remedies, Mr. Pizzuto requested permission from the Ninth Circuit in 2011 to file a successive habeas petition in federal district court under 28 U.S.C. § 2244. App. 295. The contemplated petition would have asserted the *Brady* and *Napue* claims outlined here. App. 306. Over a dissent, the Ninth Circuit denied the motion. *See Pizzuto v. Blades*, 673 F.3d 1003 (9th Cir. 2012).

The majority determined that the claim fell short of the successive bar because it did not show that Mr. Pizzuto was actually innocent of either the crime or the death sentence. *See id.* at 1007–10. In a vigorous dissent, Judge Betty Fletcher wrote that she would have authorized the successive proceeding, reasoning that Mr. Pizzuto brought "serious claims of judicial and prosecutorial misconduct that were not presented in his prior habeas applications" and which "could not have been discovered previously even through the exercise of due diligence." *Id.* at 1011.[1] Judge Fletcher felt that the "claims, if proved, will establish such pervasive misconduct that no reasonable factfinder would have found Pizzuto guilty of the underlying offense." *Id.* In Judge Fletcher's view, "no fair legal system—and certainly not our American legal system—should allow a conviction and death sentence based in part on perjured testimony procured by the collusion of the judge, the prosecutor, and counsel for Pizzuto's co-defendant." *Id.* "When faced with the corruption of our legal system," Judge Fletcher concluded, "we must start over," and "[t]he first step is to allow Pizzuto to file a second petition for habeas corpus in the district court." *Id.* at 1013.

In the time that has lapsed since the Ninth Circuit's ruling, Mr. Pizzuto has pursued his remedies for other substantial constitutional claims in state and federal court, including that he is intellectually disabled and therefore immune from execution. *See, e.g.*, *Pizzuto v. Yordy*, 947 F.3d 510 (9th Cir. 2019) (per curiam),

[1] In this petition, unless otherwise noted, all internal quotation marks and citations are omitted and all emphasis is added.

cert. denied, 141 S. Ct. 661 (2020). However, the State is now actively attempting to execute him. Consequently, the present petition is necessary to ensure that Mr. Pizzuto is not killed by the State after it committed the serious violations set forth here.

Additional facts are presented below where relevant.

REASONS FOR GRANTING THE WRIT

I. Mr. Pizzuto is entitled to habeas relief because the State violated *Brady* and *Napue*.

The prosecutor and trial judge in Mr. Pizzuto's case secretly orchestrated a key witness's devastating testimony against him in return for an undisclosed promise to mete out a lenient sentence. That is a textbook transgression of *Brady* and *Napue*, and one which can now only be remedied here.

A. Relief Cannot Be Obtained Elsewhere.

Because Mr. Pizzuto has prosecuted his claim in every forum available to him to no avail, he has demonstrated that "adequate relief cannot be obtained in any other form or from any other court," S. Ct. R. 20.1, and it should be considered now.

As detailed above, Mr. Pizzuto raised the claim in a state post-conviction action shortly after Mr. Rice's sudden cooperation gave him the factual predicate for it. *See supra* at 4–5. He continued to argue the matter through the Idaho Supreme Court and then here, on certiorari, losing at every stage. *See supra* at 5–7.

Having run out of avenues in state court, Mr. Pizzuto invoked the only federal mechanism available to him and asked the Ninth Circuit to authorize a successive petition. *See supra* at 6–7. Mr. Pizzuto was prohibited by statute from

seeking either rehearing or certiorari off of the panel's adverse ruling. *See* 28 U.S.C. 2244(b)(2). The only place he could turn was to this Court's power "to entertain original habeas petitions," *Felker v. Turpin*, 518 U.S. 651, 658 (1996), which he has now done.

B. The Claim Is Not Procedurally Barred.

There are no procedural obstacles to this Court giving Mr. Pizzuto's claim the full and fair consideration that has so far eluded it.

First, the claim should not be denied as successive. When, as here, the State is responsible for the suppression of evidence in violation of *Brady*, it is improper to reward the government's misconduct by barring the claim on successiveness grounds. *See Douglas v. Workman*, 560 F.3d 1156, 1188–89 (10th Cir. 2009) (relying on *Panetti v. Quarterman*, 551 U.S. 930 (2007)).

Second, the claim is not barred as procedurally defaulted. As noted above, the Idaho Supreme Court rejected Mr. Pizzuto's claim as procedurally barred under state law because it felt the issue had not been raised with sufficient promptness. *See supra* at 5. A timeliness ruling along such lines constitutes a procedural default. *See Coleman v. Thompson*, 501 U.S. 722, 740 (1991). Procedural defaults can be excused for cause and prejudice. *See Edwards v. Carpenter*, 529 U.S. 446, 451 (2000). When a petitioner advances a *Brady* claim, as Mr. Pizzuto has here, cause and prejudice are satisfied by a showing on the merits. *See Strickler v. Greene*, 527 U.S. 263, 282 (1999). In other words, if Mr. Pizzuto's claim is

meritorious, the default falls away. Accordingly, the claim lives or dies on the merits, which the Court must consider and which Mr. Pizzuto turns to next.

C. The Claims Are Meritorious.

The prosecutorial misconduct that occurred in Mr. Pizzuto's case, involving a scheme to elicit pivotal and deceitful testimony so as to secure a conviction and death sentence, was "shocking." *Pizzuto*, 673 F.3d at 1013 (Fletcher, J., dissenting). A man should not go to his death based on such a rotten foundation, which will happen if this Court declines to intervene.

When, as here, a petitioner raises a constitutional claim to the state courts, and they decline to address it on the merits, the issue is reviewed de novo in federal habeas. *See Rompilla v. Beard*, 545 U.S. 374, 390 (2005). Exercising such review, Mr. Pizzuto's claim warrants habeas relief or at least an evidentiary hearing.

Mr. Pizzuto has two claims: one rooted in *Brady* and the other in *Napue*. He addresses each in turn, beginning with *Brady*.

1. Mr. Pizzuto's *Brady* Claim is Meritorious

"Under *Brady*, the State violates a defendant's right to due process if it withholds evidence that is favorable to the defense and material to the defendant's guilt or punishment." *Smith v. Cain*, 565 U.S. 73, 75 (2012). Here, those elements are all satisfied.

First, the State withholds evidence within the meaning of *Brady* when it purports to follow an "open file" policy whereby all exculpatory materials will be provided to the defense and then breaks its word. *See Strickler*, 527 U.S. at 283–85; *see also Banks v. Dretke*, 540 U.S. 668, 695 (2004) ("Our decisions lend no support to

the notion that defendants must scavenge for hints of undisclosed *Brady* material when the prosecution represents that all such material has been disclosed."). That is what happened here. The prosecutor claimed pretrial that all "potentially exculpatory material or information" would be made available to Mr. Pizzuto's counsel on a continuing basis. App. 359. Indeed, the State supplied in discovery information about the plea agreements entered into by the Odoms, the *other* co-defendants. App. 361, 363. Moreover, the State demonstrably—and correctly—regarded *other* evidence about Mr. Rice as appropriate for discovery since it shared a great deal of such material. *See, e.g.*, App. 364, 367. Clearly, a reasonable defense attorney would have expected under these circumstances to learn of the clandestine arrangement with Mr. Rice. Yet the State did not disclose the information, thereby suppressing it.

Second, the information was favorable and material. As recited earlier, the State failed to disclose evidence that its most essential guilt-phase witness—the only one who directly tied Mr. Pizzuto to the killing of the victims—was testifying pursuant to a surreptitious deal entered into with the prosecutor and under the judge's supervision. *See supra* at 4. Such evidence was plainly favorable to Mr. Pizzuto. It was also material. "Evidence qualifies as material" under *Brady* "when there is any reasonable likelihood it could have affected the judgment of the jury." *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (per curiam). That is doubtlessly true when new information casts doubt on the reliability of an indispensable state

witness. *See Smith*, 565 U.S. at 76 (finding new evidence material because it undermined the credibility of the State's sole eyewitness).

Even if the Court is unpersuaded on materiality as to guilt, it remains as to sentencing. "Residual doubt over the defendant's guilt is the most powerful mitigating fact" that can be presented at a capital sentencing. Stephen P. Garvey, *Aggravation and Mitigation in Capital Cases: What Do Juries Think?*, 98 Colum. L. Rev. 1538, 1563 (1998); *see State v. Hartman*, 42 S.W.3d 44, 59 (Tenn. 2001) (vacating a death sentence because evidence of residual doubt was excluded from the jury's consideration and observing that "recent studies have shown that in general residual doubt is one of the most compelling mitigating circumstances a capital defendant can establish to improve his chances of receiving a life sentence"). There is a reasonable likelihood that an objective sentencer would not have imposed the irrevocable penalty of death on Mr. Pizzuto had he known that the State's star witness was so heavily compromised. Consequently, even if materiality is unmet for guilt-phase purposes, the sentence should be set aside.

2. Mr. Pizzuto's *Napue* Claim is Meritorious

Segueing from *Brady* to *Napue*, that case makes it unconstitutional for a prosecutor to knowingly elicit—or fail to correct—false testimony. *See Napue*, 360 U.S. at 269–71. A *Napue* violation is present when 1) the testimony is false; 2) the prosecutor knew or should have known of its falsity; 3) the false testimony was material. All three criteria are satisfied here.

On March 22, 1986, Idaho County Prosecutor Henry R. Boomer conducted the direct examination of Mr. Rice at the Pizzuto trial. App. 1. At the close of his examination, Mr. Boomer asked Mr. Rice what his "understanding" was of "the maximum penalty" that he could receive for his role in the death of Ms. Herndon. App. 85. Mr. Rice responded that he "could spend the rest of [his] life in prison." App. 85. The routine was then repeated with respect to the death of Mr. Herndon, and Mr. Rice delivered the same answer. App. 85.

Applying the first *Napue* factor, these statements by Mr. Rice were false. In fact, he had been promised by his prosecutor and his judge in January 1986 that he would be given at most a punishment of twenty years, with actual incarceration lasting no longer than fifteen. *See supra* at 4. Mr. Rice himself put it best when he said in his later declaration that he told the jury he might die behind bars even though he "knew" he "was not going to get a life sentence." App. 224.

As for the second factor, the prosecutor here was certainly aware that Mr. Rice's testimony was dishonest. From the documentary evidence, it is clear that the prosecutor who elicited the deceptive statements from Mr. Rice was the very same man who entered into the hush-hush deal with him. The billing records prepared by Mr. Rice's attorney William Dee, the lawyer who helped work out the deal, show that the State representative he was dealing with in the case was Mr. Boomer. App. 231. Tellingly, Mr. Dee spoke with Mr. Boomer about the Rice case twice just a few days before the deal was struck. App. 231. The entry for the meeting itself indicates that "the prosecutor" was present. App. 231. When Mr. Rice entered his

plea on January 23, 1986, Mr. Boomer was the only lawyer in the room appearing for the State. App. 236. He played the same role at Mr. Rice's May 23, 1986 sentencing hearing. App. 291. Simply put, Mr. Boomer was the prosecutor in charge of the Rice case throughout the relevant timeframe. There can be no real debate that "the prosecutor" attending the off-record plea meeting with the judge was Mr. Boomer himself. In short, the prosecutor who arranged the secret deal was the one who got Mr. Rice to deny its existence under oath—he was more cognizant than anyone of the perjury, and the second prong of *Napue* is met.

Finally, a *Napue* violation is material when there is "*any* reasonable likelihood that the false testimony *could* have affected the judgment of the jury." *United States v. Bagley*, 473 U.S. 667, 678 (1985). Mr. Pizzuto hurdles that low standard with ease. At his trial, Mr. Rice lied on the stand about a fact that goes to the core of his credibility after he offered uniquely devastating testimony. If that was not enough to sow doubt in the verdict, Mr. Boomer himself ensured that the lie would infect the final result, insisting in his closing argument that Mr. Rice "may spend the rest of his natural life in prison" and dismissing the possibility of a negotiation affecting his testimony by asking: "Got a great deal, didn't he?" App. 202.

All three *Napue* prongs are checked off. Mr. Pizzuto's conviction must be set aside or, in the alternative, his sentence.

3. If Relief Is Not Granted, an Evidentiary Hearing Is Necessary

At a minimum, an evidentiary hearing is in order on the *Brady* and/or the *Napue* claim, and the Court should remand for one to take place. *See Cone v. Bell*, 556 U.S. 449, 474–75 (2009) (remanding for the lower courts to consider what impact *Brady* material would have had on the sentence). Such a hearing is allowed for original petitions. *See In re Davis*, 557 U.S. 952 (2009). It is also permitted under the Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") because the claims were found procedurally barred in state court, *see supra* at 5, rather than addressed on the merits, allowing Mr. Pizzuto to expand the record in federal habeas, *see Cullen v. Pinholster*, 563 U.S. 170, 187 (2011). At an evidentiary hearing, Mr. Pizzuto would anticipate calling a number of witnesses, including Mr. Boomer, Judge Reinhardt, and Mr. Rice. Undersigned counsel have confirmed that each of those individuals are still alive. Given the seriousness of Mr. Pizzuto's claims in this capital case, he should not be executed before a hearing takes place to fully flesh them out. *See Townsend v. Sain*, 372 U.S. 293, 312 (1963) ("It is the typical, not the rare, case in which constitutional claims turn on the resolution of contested factual issues."), *overruled in part by Keeney v. Tamayo-Reyes*, 504 U.S. 1, 11–12 (1992)[2]; *see also California v. Ramos*, 463 U.S. 992, 998–99 (1983) ("[T]he qualitative difference of death from all other punishments requires a

[2] Because AEDPA does not apply to Mr. Pizzuto's claims for the reasons noted above, the *Townsend* standard for evidentiary hearings is the controlling one, *see, e.g.*, *Conner v. Polk*, 407 F.3d 198, 208 (4th Cir. 2005); *Davis v. Lambert*, 388 F.3d 1052, 1061 (7th Cir. 2004).

correspondingly greater degree of scrutiny of the capital sentencing determination.").

CONCLUSION

The Court should grant habeas relief or an extraordinary writ and vacate Mr. Pizzuto's convictions and death sentence or remand for an evidentiary hearing.

Respectfully submitted this 10th day of May 2021.

Respectfully submitted,

/s/ Deborah A. Czuba

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