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DECLARATION (OF NON-SERVICE) PURSUANT TO 28 U.S.C.

Now Comes Petitioner, Lenwood Mason, pursuant to 28 U.S.C. § 1746, hereby affirming, under penalty of perjury that the foregoing Petition for Writ of Certiorari has been sent, on this date, via first class mail, postage prepaid and properly addressed to the clerk of the United States Supreme Court.

Petitioner, further affirms that the foregoing Petition for Writ of Certiorari has not been sent to a representative of the Commonwealth because during the District Court and Third Circuit Court proceedings below, the Commonwealth has not objected to, responded to, opposed, nor rebutted, in any way, any argument made in furtherance of Petitioner's efforts to have the court appoint new counsel. Therefore, they have waived any arguments they could have raised in this Court.¹



Lenwood Mason
CY-4048
SCI-Phoenix
1200 Mokychie Drive
Collegeville, Pa. 19426

Dated: August 28, 2022

¹Under Third Circuit precedence, a party that fails to argue a specific claim/point in the District Court is precluded from making, for the first time, argument in the Third Circuit. "[The appellant] failed to make the argument below . . . therefore, [he has] waived the only argument he raised on appeal." Williams v. LaCrosse, 179 Fed. Appx. 141, 142(3rd Cir. 2006).

This U.S. Supreme Court has an identical position for parties that fail to make an argument in a circuit court. "Because . . . the parties did not argue this particular matter below, we do not consider it here." Evans v. Chavis, 126 S.Ct 846, 546 U.S 189, 201(2006); also, see Medellin v. Dretke, 125 S. Ct. 2088, 544 U.S. 660, 679 (2005)("Thus, because Texas did not argue below that a treaty-based claim cannot support an application for a COA, it cannot raise the argument now").