

24-7040  
No.

In The  
Supreme Court of the United States

Neville McGarity  
Petitioner

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SUPREME COURT, U.S.**

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D. Sproul, Warden  
Respondent

On Petition For Writ of Certiorari To

UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT

Petition For Writ of Certiorari

5/26/2025

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Questions Presented

1. Does Jones v Hendrix, 599 U.S. 465 (2023), a recent Supreme Court holding which only addresses "[] a prisoner asserting an intervening change in interpretation of a criminal statute to circumvent the [AEDPA]" by filing a § 2241, overturn Bousley v United States, 523 U.S. 614 (1998), a case addressing a claim of "actual innocence" in a § 2241, where the Supreme Court found it appropriate to remand back to the District Court, permitting him to "make a showing of actual innocence"?
2. Does the holding in Jones v Hendrix, 599 U.S. 465 (2023) render § 2241(c)(3) invalid?
3. Was the Seventh Circuit Court of Appeals wrong by not recognizing a claim of "actual innocence", a claim separate and distinct from a claim of "legal innocence", as an exception under Bousley v United States?

List Of Parties

All parties appear in the caption of the case on the cover page.

Related Cases

Neville McGarity v D. Sproul, Warden  
United States District Court for the Southern District of Illinois  
Case No. 21-370-NJR

Neville McGarity v D. Sproul  
Seventh Circuit Court of Appeals  
Case No. 22-1269

United States v Neville McGarity  
United States District Court for the Northern District of Florida  
Case No. 3:08-cr-00022-LC-6

United States v Neville McGarity  
Eleventh Circuit Court of Appeals  
Case No. 09-12070-AA

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In The  
Supreme Court Of The United States

Petition For Writ Of Certiorari

The Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

Opinions Below

The opinion of the United States Court of Appeals appears at Appendix "A" of the petition and has been designated for publication but is not yet reported.

The opinion of the United States District Court appears at Appendix "B" and is reported at:

McGarity v Sproul, Warden, 2021 U.S. Dist. LEXIS 123048 (S.D. IL 2021)

Jurisdiction

The date on which the United States Court of Appeals decided my case was January 15, 2025.

A petition for rehearing was timely filed on January 30, 2025.

A timely filed motion for rehearing was denied by the United States Court of Appeals on the following date: February 21, 2025, and a copy of the order denying the rehearing appears at Appendix "C".

The Jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

Constitutional and Statutory Provisions Involved

28 U.S.C. § 2241(c)(3)

- (c) The writ of habeas corpus shall not extend to a prisoner unless -
  - (3) He is in custody in violation of the Constitution or laws or treaties of the United States;

28 U.S.C. § 2255(e)

- (e) An application for a writ of habeas corpus on behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

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### Statement of the Case

On February 29, 2008, Neville McGarity was arrested, along with 11 others for the following:

18 U.S.C. § 2252A(g) - Engaging in a Child Exploitation Enterprise  
18 U.S.C. 2251(e) & § 2251A(b) - Conspiracy  
18 U.S.C. § 2251(d)(1) & (2) - Advertising for child pornography  
18 U.S.C. § 2252(A)(2) & (2) - Transportation of child pornography  
18 U.S.C. § 2252A(a)(2) & (2) - Receipt of child pornography  
18 U.S.C. § 1515(c)(2) - Obstruction of Justice

He was extradited from Central Texas to the Northern District of Florida, and approximately three weeks after his arrest two others were added by superceding indictment, totaling 14.

Neville McGarity took his case to trial with six co-defendants on January 5, 2009. The trial lasted for 6 non-consecutive days, concluding on January 14, 2009 with verdicts of guilt for all six counts.

Neville McGarity appealed, resulting in Counts 2 (Conspiracy) and Count 40 (Obstruction of Justice) being vacated and the others affirmed on February 6, 2012. He filed for certiorari to the Supreme Court and was denied in October of 2012.

Neville McGarity filed an Ineffective Assistance of Counsel claim under 28 U.S.C. § 2255, and was ultimately denied on January 21, 2017. He filed for certiorari on his § 2255, and was denied review.

After filing multiple Freedom of Information requests, Neville McGarity filed a Habeas Corpus Actual Innocence Claim under 28 U.S.C. § 2241(c)(3) in the Seventh Circuit District Court, with supporting appendices and exhibits on April 1, 2021.

The District Court denied the habeas on July 1, 2021, and the petitioner filed a motion for reconsideration. This was denied and

the petitioner appealed to the Seventh Circuit Court of Appeals on April 1, 2022.

While under appeal, the Supreme Court overturned Seventh Circuit precedent.

The petitioner's appeal was denied on January 15, 2025, and a timely Petition for Rehearing was filed on January 30, 2025. This was denied on February 21, 2025.

Reasons For Granting the Petition  
Argument

Jones v Hendrix, <sup>I</sup> 599 U.S. 465 (2023)  
Only Addresses "Legal Innocence" Based on an  
Intervening Change in Interpretation of a  
Criminal Statute, and Fails to  
Address "Factual Innocence" As Defined In  
Bousley v United States, 523 U.S. 614 (1998)

In late 2005, an informant for the Queensland Police Service (QPS) in Brisbane Australia provided the agency with information concerning a group of individuals operating on Usenet and engaging in the trade of child pornography. The informant surrendered his online identity and the PGP encryption key pairs (PGP stands for "Pretty Good Privacy") utilized by group members to hide their activity from law enforcement. While monitoring the group's activities, Brenden Power, a Constable for QPS, discovered a number of the members were located in the United States. QPS notified the F.B.I. Innocent Images Unit based in Calverton, Maryland and invited them to come to Australia and observe the investigation first hand.

F.B.I. Special Agent Charles Wilder flew to Australia to view the investigation in August of 2006. A short time later, Brenden Power was invited by the F.B.I. to come to Calverton, Maryland to continue the investigation. From that point on, Brenden Power continued his role within the enterprise, assuming the online persona "Argus", the original inline identity of the Australian informant who had provided PGP access to the enterprise's activities. Brenden Power communicated regularly with enterprise members, by requesting specific child pornography from specific group members, acknowledging those who had provided him with it, and offering to fund the enterprise for the production of new child pornography. He continued with this activity until the investigation terminated on

February 29, 2008.

#### Relevant Facts

Neville McGarity, along with 11 others, was arrested on February 29, 2008, pursuant to a 40 count indictment for his alleged involvement in the enterprise. A superceding indictment was issued on March 18, and two others were added, totaling 14.

Neville McGarity, along with six co-defendants, took the case to trial and was convicted on all six counts on January 14, 2009, and sentenced to life on April 22, 2009. (See: Exhibit "1" Affidavit Of Neville McGarity");

Once his case was concluded in January of 2017, Neville McGarity began the process of filing multiple Freedom of Information requests with the F.B.I. in an attempt to gain access to any information or evidence which might link him to the activities of the enterprise and its members. This eventually led to a Civil Suit against the F.B.I., filed on September 17, 2018. (See: McGarity v F.B.I., Innocent Images Unit, Civil Docket No. 1:18-cv-02186(CRC)); This was dismissed for failure to exhaust administrative remedies before filing the suit. As a result of the suit, the F.B.I. provided him with thousands of pages of documentation, none of which was relevant or linked him in any way to the illegal activities of the enterprise or its members. (28 U.S.C. § 1983);

During the course of the petitioner's criminal trial, Constable Brenden Power of QPS described what PGP was and confirmed that secure communication between group members would not have been possible without those PGP key pairs exclusive only to group members. Without them, an individual could not have requested anything, offered anything, or decrypted anything offered to him by

its members. Hexadecimal values assigned to PGP key pairs are the same as hash values, and are uniquely assigned to each key pair upon their creation. (See: Appeal No. 11-1269, pg. 15-16); These values are synonymous with biological DNA because they identify each key pair hexadecimally, and no two pairs have the same value. It's a mathematical impossibility.

Identification of the group's keys was done through forensic analysis and comparison of the hexadecimal values for each defendant against the key pairs used by Constable Brenden Power. There was no individual outside the enterprise that had a copy of the key pairs, they were exclusive only to its members.

For the exception of Neville McGarity, these key pairs were found on every defendant's computer and/or digital media, and in several cases were found in printed hard copy form in their residences. "PGP encryption keys of the type used by Constable Power to access the pertinent newsgroup postings were found in possession of every defendant except Neville McGarity." United States v McGarity, 669 F.3d @ 1231 (11th Cir. 2012);

Since this time, the Eleventh Circuit District Court have ruled repeatedly that the relevant encryption keys were found on all the defendant's computers for the exception of Neville McGarity.

See:

United States v Freeman, 2016 U.S. Dist. LEXIS 129186 (N.D. Fla. 2016);  
United States v Castleman, 2017 U.S. Dist. LEXIS 50743 (N.D. Fla. 2017);  
United States v Ronald White, 2016 U.S. Dist. LEXIS 177604 (N.D. Fla. 2016);  
United States v Lakey, 2016 U.S. Dist. LEXIS 179346 (N.D. Fla. 2016);

United States v Mumpower, 2016 U.S. Dist. LEXIS 158867 (N.D. Fla. 2016);

There were no text messages, custom software, or PGP key pairs specific to the enterprise recovered from any piece of digital media seized from Neville McGarity's residence by the F.B.I., nor were there any hardcopy printouts. Their search of McGarity's residence did not yield any evidence linking Neville McGarity to the illegal activities of the enterprise or its members.

Neville McGarity was never a member of the enterprise, and he is innocent of engaging in a Child Exploitation Enterprise.

"Actual Innocence" is not "Legal Insufficiency"

Armed with this new information and the Eleventh Circuit District Court's findings regarding the presence of keys on each defendant's media excluding Neville McGarity, the petitioner filed a Habeas Corpus Actual Innocence Claim under 28 U.S.C. § 2241(c)(3) in the Seventh Circuit District Court, with supporting appendices and exhibits on April 1, 2021. (See: McGarity v D. Sproul, Warden, Case No. 21-370-NJR);

Without ordering the government to reply, the Seventh Circuit District Court denied his Actual Innocence Claim on July 1, 2021, applying Circuit precedent regarding claims of legal innocence due to intervening changes in law, despite the petitioner's claim of factual innocence which had nothing to do with an intervening change in law. (See: In Re Davenport, 147 F.3d 605 (7th Cir. 1998);

The petitioner filed an appeal with the the Seventh Circuit Court of Appeals, challenging the constitutionality of applying a case regarding an intervening change in law or statutory interpretation resulting in Legal Innocence to a case of Actual Innocence based on

provable facts, which satisfies the requirements under 28 U.S.C. § 2241(c)(3).

While under appeal, the Supreme Court overturned Davenport with Jones v Hendrix, 599 U.S. 465 (2023), where it was held:

"Section 2255(e) does not allow a prisoner asserting an intervening change in interpretation of a criminal statute to circumvent the Anti-terrorism Effective Death Penalty Act of 1996's (AEDPA) restrictions on second or successive § 2255 motions by filing a § 2241 petition."

Like Davenport, Jones addressed the issue of an inmate asserting a claim of legal innocence based on an intervening change in law. Unlike the petitioner's claim of actual innocence based on provable facts, similar to Bousley v United States, 523 U.S. 614 (1998), where this Court defined the difference between "factual innocence" and "legal innocence" based on legal insufficiency arising from an intervening change in law. Bousley @ 623.

Jones asserted a similar claim as that in Davenport, and like Davenport it is not applicable to a claim of factual innocence based on a provable claim, such as the petitioner's claim of actual innocence.

In this Court's holding in Jones, an "intervening change in interpretation of a criminal statute" is the controlling statement, and nowhere in Jones does it mention how it applies to a case of factual innocence based on provable facts. Jones only addresses the issue of a prisoner asserting a claim of legal innocence under § 2241.

Bousley specifically addresses the failure of a District Court to address a petitioner's actual innocence claims based on factual innocence:

"The District Court failed to address the petitioner's actual innocence, perhaps petitioner failed to raise it initially in

his § 2255 motion. However, the government does not contend that petitioner waived this claim by failing to raise it below. Accordingly, we believe it appropriate to remand this case to permit the petitioner to make a showing of actual innocence." 523 US @ 623;

The only difference here is that the petitioner in this case briefly raised this issue, in part in his original § 2255, but was unable to expand on it due to lack of access to the proper materials. The District Court for the Eleventh Circuit ignored it, and he was not permitted to "make a showing of actual innocence". Bousley @ 623.

Bousley went on to state:

"It is important to note in this regard, that 'actual innocence' means factual innocence, not mere legal insufficiency.";

Bousley specifically addressed the issue of a petitioner's claim of factual innocence, and this Court found it appropriate to remand the case back to the District Court to "permit petitioner to attempt to make a showing of actual innocence." Bousley @ 623;

"A petitioner challenging the validity of a guilty plea may raise the claim for the first time on habeas review if they can show actual innocence. See: Bousley @ 623-624 (defendant entitled to show actual innocence on procedurally defaulted claim). The Bousley Court defined 'actual innocence' as requiring factual innocence, not 'mere legal insufficiency'. Id. at 623." 49 Geo. L.J. Ann. Rev. Crim. Proc. 1141 (2020);

Justice Jackson mentions Bousley four times in her dissent in Jones v Hendrix, all in reference to the application of statutory claims, and she does not address the term "factual innocence", as specifically addressed in Bousley. (Jones, 501, 508, 516 & Footnote #9)(Jackson, dissenting); In Bousley, a petitioner was also denied by the District Court a claim of actual innocence using § 2241, and

also by the Appellate Court. This Court disagreed, and remanded it back for further review. Bousley did not address a claim of legal innocence due to "an intervening change in interpretation of a criminal statute", as the controlling precedent held in Jones demands. Due to this difference, Bousley is not overturned by Jones.

Like the District Court, the 7th Circuit Court of Appeals applied precedent which did not address the petitioner's issue of actual innocence, and denied the petition.

II

Jones v Hendrix Does Not Render  
28 U.S.C. § 2241(c)(3) Invalid, And Fails  
To Address Actual Innocence Claims Filed  
Under It

A habeas petitioner may use a claim of actual innocence to overcome the procedural bar of a defaulted and time-barred habeas claim, as a way to prevent a miscarriage of justice. See: McQuiggin v Perkins, 569 U.S. @ 383, 386 (2013); Allowing this gateway to a constitutional challenge balances concerns of finality and comity with the important "concern about the injustice that results from the conviction of an innocent person." Schlup v Delo, 513 U.S. @ 325 (1995); See also: House v Bell, 547 U.S. 518, 537 (2006)(procedural default excused in actual innocence claims to avoid manifest injustice only when "more likely than not" standard met and petitioner's case "extraordinary");

To establish that requisite probability, the petitioner must establish that it is more likely than not no reasonable juror would have convicted him in light of new evidence. "New evidence" in this context is not "newly discovered evidence", but rather any evidence not presented at trial. See: Dixon v William, 93 F.4th 394 (7th 2024); See also: Jones v Calloway, 842 F.3d 454, 461 (7th 2016);

This Court held in McQuiggin:

"Actual innocence, if proved, held to be [a] gateway through which [a] prisoner petitioning for federal habeas relief might pass, regardless of whether impeded by procedural bar or expiration of 28 U.S.C.S. § 2244(d)(1)'s limitation period." 185 L.Ed. 2d 1020;

In this case, the petitioner considered the impediment to be meeting the requirements of Davenport's three prong hurdle, which aside from the "miscarriage of justice" prong, he did not satisfy. Therefore, the actual innocence claim was filed under McQuiggin

because he can demonstrate Actual Innocence and prove the claim. He purposely did not file under Davenport because his claim was not one based on an intervening change in the law, as Davenport required.

Despite this, and ignoring Supreme Court precedent, the District Court applied Davenport anyway and denied the habeas because it failed to meet its requirements.

McQuiggin held that "a credible showing of actual innocence may allow a prisoner to pursue his constitutional claims on the merits notwithstanding the existence of a procedural bar to relief. This rule, or fundamental miscarriage of justice exception, is grounded in the equitable discretion of habeas courts to see that federal constitutional errors do not result in the incarceration of innocent persons." (Ginsburg, J. joined by Kennedy, Breyer, Sotomeyor, and Kagan, JJ.); 569 U.S. 383, L.Ed. HR5 (2013);

In Murray v Carrier, 477 U.S. @ 496 (1986), this Court held:

"In an extraordinary case, where a constitutional violation has probably resulted in the conviction of one who is actually innocent, a federal court may grant [a writ of habeas corpus] even in the absence of a showing of cause for the procedural default." 477 U.S. @ 496 (2013); "It [is] therefore proper to remand this case for further proceedings on the substance of the accused claims." @ 496;

Murray went on to state:

"[...]Accordingly, the statutory mandate to 'dispose of the matter as law and justice require' clearly requires at least some consideration of the character of the constitutional claim." @ 501.

The Court of Appeals for the Seventh Circuit fails to address or consider the merits of the petitioner's constitutional claims. This denial is in direct contradiction to the language in the codified language of Habeas Corpus under § 2241(c)(3), the reasons for its existence, and the "statutory mandate to 'dispose of the matter'"

with some consideration of the constitutional claim, as in Murray.

"In evaluating [a habeas claim], the court is to conduct a comprehensive assessment that takes into account any reliable evidence probative of [the] petitioner's innocence or guilt, even evidence that was previously excluded, the court is not bound by rules of evidence that would govern at trial." Arnold v Dittman, 901 F.3d @ 837 (7th, 2018)(citing Schlup v Delo, 513 U.S. @ 325 (1995));

To pass through this gateway, a petitioner must support his claim of actual innocence with reliable evidence, whether it's exculpatory scientific evidence, trustworthy eyewitness accounts, or critical physical evidence that was never presented at trial. (Schlup @ 324);

There was no "comprehensive assessment" made by either the 7th Circuit District Court, or the 7th Circuit Court of Appeals on any of the evidence the petitioner has presented for determination of its probative value or reliability towards a claim of actual innocence.

Instead, the claim was denied at the District Court level using circuit precedent which clearly did not apply to it. This was ultimately overturned by this Court with their holding in Jones.

Jones concerned a case of "legal innocence" based on an intervening change in the interpretation of law which would could render a prisoner's conviction invalid. Jones specifically addressed the question of whether a petitioner could bring the claim in a Habeas Corpus under § 2241. Jones held that, in a case of "legal innocence", a prisoner could not bring the claim at all. Jones does

not address claims of "actual innocence", based on provable facts which satisfy the requirements under § 2241(c)(3).

28 U.S.C. § 2241(c)(3) provides:

(c) The writ of habeas corpus shall not extend to a prisoner unless -

(3) He is in custody in violation of the Constitution or laws or treaties of the United States;

The petitioner is asserting a claim of actual innocence, based on facts gained through due diligence and provided to the Court which prove incontrovertibly that he is being held "in violation of the Constitution or laws or treaties of the United States." This is not a claim of legal innocence, based on an "intervening change in interpretation of a criminal statute" as the controlling statement in Jones v Hendrix stipulates.

There is nothing in Jones which prevents a prisoner from using § 2241(c)(3), as it is intended, for a claim of actual innocence, a claim separate and distinct from one of legal innocence.

The District Court, and the Appellate Court, are wrong.

This Court is the only authority that can overrule this misapplication and re-establish the correct precedent which aligns with the original intentions of what a Habeas Corpus stands for.

### III

#### The Seventh Circuit Court of Appeals Is Wrong for Refusing to Recognize The Distinct Differences Between a Claim Of "Actual Innocence" and a Claim Of "Legal Innocence"

Historically, the Supreme Court has well established the precedent for determining the distinct differences between a claim of "actual innocence", as opposed to one of "legal innocence"; the former being a claim based on provable facts which incontrovertibly prove a prisoner's innocence, and the latter as one of legal insufficiency. There is a distinction with a difference between a claim of legal deficiency and a claim of "actual innocence" of an underlying offense. See: Bousley v United States, 523 US 614 (1998) "To establish actual innocence, petitioner must demonstrate, that in light of all the evidence' it is more likely than not that no reasonable juror would have convicted him.";

During the course of the petitioner's criminal trial, PGP keys necessary to participate in the groups activities were provided for every single defendant, for the exception of Neville McGarity. Participation in the group's activities was impossible without these keys. This is not a theory, this is a mathematical fact.

In Sawyer v Whitley, 505 US 339-341 (1992) this Court found:

"In Smith v Murray, 477 US 527, 91 L.Ed. 2d 434 106 S.Ct. 2261 (1986) [] we emphasized miscarriage of justice exception is concerned with actual as compared to legal innocence, and acknowledged that actual innocence 'does not translate easily into the context of an alleged error at the sentencing phase []' we decided that the habeas petitioner in that case had failed to show actual innocence of the death penalty because 'the alleged constitutional error neither precluded the development of true facts or resulted in the admission of false ones." @ 340;

In defining the term "actual innocence", Sawyer went on to say:

"A prototypical example of 'actual innocence' in a colloquial sense is the case where the state has convicted the wrong person of the crime." Sawyer @ 341;

The petitioner, through due diligence, has left a paper trail in his pursuit of the truth. With the evidence he has gathered over the years from multiple FIOA requests, and a civil suit against the FBI, he can prove the government lacks the evidence necessary to connect him to any of the illegal activities of the child exploitation enterprise.

Contrary to Murray v Carrier, 477 U.S. @ 496 (1986), the District Court and the Court of Appeals refuse to offer "consideration of the character of the constitutional claim" the petitioner has brought. Instead, the petitioner's habeas is denied, first applying precedent inappropriate to the claim by the District Court, and then again by the Court of Appeals. The 7th Circuit Court of Appeals is wrong for refusing to recognize the distinct differences between a claim of "actual innocence" and that of "legal innocence", and in doing so, have limited the scope of protections under 28 U.S.C. § 2241(c)(3).

This Court is the only authority that can restore those protections.

## Conclusion

The Seventh Circuit District Court denied the petitioner's actual innocence claim under § 2241(c)(3) due to seventh circuit precedent, (See: In Re Davenport, 147 F.3d 605 (7th Cir. 1998); which was ultimately overturned by the Supreme Court with Jones v Hendrix, 599 U.S. 465 (2023). Jones asserted a similar claim as that in Davenport, and like Davenport, it is not applicable to a claim of actual innocence. In this Court's holding in Jones, an "intervening change in interpretation of a criminal statute" is the controlling statement, and nowhere in Jones, does it mention how it applies to a case of a prisoner asserting a claim of factual innocence based on provable facts. Jones only addresses the issue of a prisoner asserting a claim of legal innocence under § 2241.

In Bousley v United States it addresses the failure of a District Court to address a petitioner's claim of actual innocence claims based on factual innocence, also defining the difference between actual innocence and legal innocence, "It is important to note in this regard, that 'actual innocence' means factual innocence, not mere legal insufficiency." Bousley @ 623.

Jones only references Bousley in the context of "legal insufficiency", and does not address the term "factual innocence", as specifically addressed in Bousley. Bousley does not address a claim of legal innocence, and due to this difference is not overturned by Jones.

Both the District Court and Seventh Circuit Court of Appeals fail to address or consider the merits of the petitioner's constitutional claims. This denial is in direct contradiction to the language of Habeas Corpus under § 2241(c)(3), and the reasons

for its existence. It runs contrary to the "statutory mandate to 'dispose of the matter' with some consideration of the constitutional claim, as in Murray v Carrier, 477 U.S. @ 496 (1986), as well as Arnold v Ditmann, 901 F.3d @ 837 (7th, 2018), and Schlup v Delo, 513 U.S. @ 325 (1995); There was no "comprehensive assessment" made by either Court on any of the evidence the petitioner has presented for determination of its probative value towards a claim of actual innocence.

Nothing in the holding of Jones prevents a prisoner from asserting a claim of actual innocence under 28 U.S.C. § 2241(c)(3), as it is intended. This is a claim separate and distinct from a claim of legal innocence. The District Court, and the Appellate Court, are wrong.

During the course of the petitioner's criminal trial, PGP keys necessary to participate in the group's illegal activities were provided for every single defendant for the exception of Neville McGarity. Participation in the group's activities without these PGP keys is impossible. This is not a theory, it is a mathematical fact, and the petitioner can prove it.

Contrary to Murray v Carrier, the District Court and the Court of Appeals refuse to offer any "consideration of the character of the constitutional claim" the petitioner has brought. Instead, both Courts have denied the petitioner's habeas, first applying circuit precedent inappropriate to the claim by the District Court, and then again by the Court of Appeals. The Court of Appeals is wrong for refusing to recognize the distinct difference between a claim of "actual innocence", and one of "legal innocence", and in doing so,

have limited the scope of protections under 28 U.S.C. § 2241(c)(3).

This Court is the only authority that can reestablish those constitutional protections under this section.

The petitioner has brought a cognizable claim of actual innocence, not one of legal insufficiency, and is being unconstitutionally barred from presenting his claim.

Prayer For Relief

Whereas, for the foregoing reasons, the Petitioner asks this Honorable Court, or any Justice thereof, grant review or Certiorari of this Petition. Or, in the alternative, remand back to the District Court with instructions in accordance to this Court's Order. Or, any other relief this Court deems just and proper.

Respectfully,



Dated: 3/26/2025

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pro se

Declaration

The petitioner in the instant case, hereby certifies, declares and swears that the foregoing is true and correct under the penalty of perjury of the laws of the United States.



Dated 3/26/2025

Neville McGarity - 11774-280

Appendix "A"