No. _____

IN THE

Supreme Court of the United States

RAUL OTERO CAZARES,

Petitioner,

v.

JASON JOHNSON, DIRECTOR, DAPO,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioner Raul Otero Cazares was convicted of the rape of his long-time domestic partner ("Doe") in a trial where they told very different stories regarding the nature of their relationship, and their financial arrangements were central to both parties' cases. Nevertheless, the record reflects that Cazares's trial counsel was unreasonably unprepared to address several checks Doe wrote to Cazares during their relationship, leaving Cazares so blindsided by them that he professed that he was "having a hard time believing [him]self" on cross examination.

On habeas review, Cazares alleged ineffective assistance of counsel. Despite reviewing the claim de novo, the District Court denied the claim *and* denied a certificate of appealability ("COA") on the grounds that "any possible reason" for counsel's conduct insulated that conduct from review. The Ninth Circuit likewise denied a COA.

The question presented is thus whether the lower courts erred as a matter of federal law by holding, counter to this Court's precedent, that *any* imagined reason for counsel's conduct rendered said conduct so far beyond review that no reasonable jurist could disagree as to the District Court's resolution of Cazares's claim, even on de novo review and in light of the permissive standard for receiving a COA?

LIST OF PARTIES

All parties to this proceeding are listed in the caption.

RELATED PROCEEDINGS

1. *Cazares v. Brochu*, No. 23-3149 (9th Cir.), request for certificate of appealability denied January 24, 2025
2. *Cazares v. Brochu*, No. 5:18-cv-01191-DSF-MAA (C.D. Cal.), petition for writ of habeas corpus denied September 25, 2023
3. *Cazares (Raul Otero) On H.C.*, No. S260377 (Cal.), petition for writ of habeas corpus denied April 1, 2020
4. *In re Raul Otero Cazarez*, on Habeas Corpus, No. E073531 (Cal. Ct. App.), petition for writ of habeas corpus denied October 24, 2019
5. *In re Raul Otero Cazarez*, on Habeas Corpus, No. RIC1903394 (Riverside Cty. Super. Ct.), petition for writ of habeas corpus denied June 21, 2019
6. *Cazares (Raul Otero) On H.C.*, No. S244598 (Cal.), petition for writ of habeas corpus denied November 29, 2017
7. *In re Raul Cazares on Habeas Corpus*, No. E068820 (Cal. Ct. App.), petition for writ of habeas corpus denied August 18, 2017
8. *In re Raul Cazares on Habeas Corpus*, No. RIC1710222 (Riverside Cty. Super. Ct.), petition for writ of habeas corpus denied June 8, 2017
9. *People v. Raul Cazares*, No. E065250 (Cal. Ct. App.), judgment affirmed December 14, 2016

10. *People v. Raul Cazares*, No. RIF1403662 (Riverside Cty. Super. Ct.), judgment of conviction issued December 11, 2015

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TO THE UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

OPINIONS BELOW

Raul Otero Cazares ("Cazares" or "Petitioner") petitions for a writ of certiorari to review a judgment of the United States Court of Appeals for the Ninth Circuit. The Ninth Circuit's order denying Cazares's request for a certificate of appealability was unreported. (Petitioner's Appendix ("Pet. App.") A-1.) The district court's final judgment (Pet. App. B-2), order adopting the magistrate judge's amended report and recommendation, denying relief, and denying a certificate of appealability (Pet. App. C-3–8), and said amended report and recommendation (Pet. App. D-9–72) are unreported. The California Supreme Court's order denying Cazares's petition for writ of habeas corpus is unreported. (Pet. App. E-73.) The California Court of Appeal's order denying Cazares's petition for writ of habeas corpus was unreported. (Pet. App. F-74.) The California Superior Court, Riverside County's order denying Cazares's petition for writ of habeas corpus is unreported. (Pet. App. G-75.)

JURISDICTION

The Ninth Circuit's order denying Cazares's request for a certificate of appealability was filed on January 24, 2025. (Pet. App. A-1.) The district court had jurisdiction under 28 U.S.C. § 2241 and 28 U.S.C. § 2254. The Ninth Circuit had

jurisdiction pursuant to 28 U.S.C. § 1291 and 28 U.S.C. § 2253. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely filed under United States Supreme Court Rule 13.1.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

28 U.S.C. § 2254 (a)

The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

28 U.S.C. § 2254 (d)

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 determined 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.

STATEMENT OF THE CASE

A. Trial Proceedings

As noted above, Cazares stood accused of raping his long-time domestic partner. The prosecution's case was that Cazares and the victim-witness were merely long-time roommates whose intimate relationship had ended, and that the rape was retaliation for the victim-witness telling Cazares that he would not share in the proceeds of the sale of the home she owned and allowed him to live in rent-free. Cazares's defense was that the incident was one of consensual sex that was part of a long-time pattern of waves of affection and discord between the couple, but that they were, up until her accusation, still a true couple, and that the rape charges were part of a plot to negate any rights Cazares had to the sale proceeds.

1. Doe's Testimony

Though the alleged rape took place on September 17, 2014, Doe met Cazares approximately 16 years earlier, in 1998, and started an affair with him (including a sexual component) in 1999, when she was married to another man. (1 RT 34, 36,

84.)[1] Cazares was 28 or 29 years old, and Doe was 17 years his senior, about 46. (1 RT 182.) Doe moved in with Cazares beginning around 2001, where she testified that they "had a romance." (1 RT 36–37.) .) In 2003, she bought a house for them to live in. (1 RT 38–40.) She described them as "friends with occasional benefits," meaning they occasionally had sex. (1 RT 39.) Doe claimed that her sexual relationship with Cazares ended in 2006 because he allegedly became physically and verbally abusive, though she had no police reports or witnesses to corroborate these allegations. (1 RT 40, 47, 49, 83, 92.) She said that, in 2007, after he allegedly nearly choked her to death and threatened to burn her house down, she made him move into the guest house in the back, though she still did not make any reports, and he still had unfettered access to the house and moved in and out regularly. (1 RT 49–50.)

Moving now to the time of the rape, Cazares left for a work trip to Alaska in August 2014. (1 RT 52–53.) At the time, Doe described the relationship as "friendly," and said Cazares *gave Doe* a gun for her protection. (1 RT 53.) He returned at the end of August or beginning of September, and she alleged that, during a fight about the television, he touched the gun where she had left it on the table (but did not point it at her) and said he should put a bullet in her head. (1 RT 53–55.) She said this incident triggered her to get an application for a restraining order, though she did not complete or file it that day. (1 RT 53–55.) Two weeks

[1] "RT" refers to the Reporter's Transcripts of Cazares's trial, filed in its original three volumes in the District Court case at ECF Nos. 23-2 (Index), 23-3 (Vol. 1 of 2), and 23-4 (Vol. 2 of 2).

later, the day before the alleged rape, she said that they fought again, though there was no yelling, when Cazares told Doe he had spoken to a lawyer about his potential rights to a portion of the sale proceeds from the house. (1 RT 57–58.) She said that, that day, he made a shooting gesture at her with his hand, and she decided that day she would file the restraining order paperwork the next day. (1 RT 55, 57–58.) For the avoidance of doubt, there was no evidence or argument presented that Cazares knew anything about Doe's intention to get a restraining order.

Doe testified that the next day, on September 17, 2014, Cazares gave her a $100 check for the previously-agreed purchase of her car. (1 RT 64.) At that time, he allegedly pushed her onto her bed, pinned her down, undressed her, took off his pants and put his penis in her vagina over her protestations. (1 RT 68.) The "first thing" she did after he left the room, before getting dressed, was put a "panty shield" in her underwear. (1 RT 163.) She then got dressed and took her restraining order paperwork to the police station. (1 RT 71, 74.)

On cross examination, Doe said that every December, she and Cazares decorated the Riverside house they shared with Christmas lights. (1 RT 85.) Cazares did yard work at the house in return for room and board. (1 RT 89.) Between 2007 and 2014, she took him to the airport when she could when Cazares left town for work. (1 RT 93.) During this time, she occasionally called him to ask when he was going to be home so they could have dinner together. (1 RT 94.) She reiterated that, when he mentioned having rights to her house on September 16,

she told him that he was "not going to get anything from this property when" she sold it. (1 RT 103-105.) The house had appreciated in value over six-fold in ten years. (1 RT 104.) Regarding the alleged rape, Doe acknowledged that she filed two separate restraining orders - the one she did on her own the day of the rape, which did not mention the rape, and another one regarding "elder abuse" that the police had her fill out instead after she disclosed the rape. (1 RT 79–82, 119.)[2]

2. Cazares's Testimony

For his part, Cazares testified that he did not have "unconsented sex with [Jane Doe] on September 17th, 2014." (1 RT 177.) He testified that during his long relationship with Doe, i.e., since 1998, he never forced her to have sex with him, including on September 17. (1 RT 177, 184.) He said they had talked about marriage and Doe had asked him to marry her. (1 RT 194.) There was no time during their relationship when they broke up and saw other people. (1 RT 194.) Their sexual relationship continued over the years, including in the eight years before the alleged rape. (1 RT 195-196.) Doe never told him she no longer wanted to have sex with him. (1 RT 196.) Cazares authenticated tapes of numerous phone messages from Doe from January through September 2014 where she discussed such topics as plans for dinner and picking him up from the airport. (1 RT 201-207.) Cazares testified that Doe consented to having sex at the time of the alleged rape. (1 RT 221-224.)

[2] Note, though, that Doe also said she told Cazares he was engaging in "elder abuse" during an alleged incident well before the alleged rape, raising questions as to why she didn't select the proper paperwork in 2014. (1 RT 51.)

3. Testimony Regarding the "Rent" Checks from the Redondo Beach Apartment

After Doe testified on direct examination that she merely rented a room from Cazares while they were in Redondo Beach, Cazares's trial attorney questioned the existence of the checks. (1 RT 84–85.)

> Davitt: And you're saying you actually rented a room, like you had a rental agreement and you paid rent?
>
> Doe: I did. I paid $600 a month.
>
> Davitt: Do you have any receipts to show that?
>
> Doe: No.
>
> Mr. Beecham: Objection. Relevance.
>
> The Court: Overruled. Answer will stand.
>
> By Mr. Davitt: You have cancelled checks?
>
> Doe: Yes.
>
> Davitt: Do you have those today now with you?
>
> Doe: Not with me now.
>
> Davitt: In your effects somewhere?
>
> Doe: I'm sure I do.
>
> Davitt: $600 a month to Raul Cazares?
>
> Doe: Yes.

(1 RT 84–85.)

Then, during Davitt's direct examination of Cazares, he elicited testimony from Cazares that he did not charge Doe rent at the Redondo Beach apartment, to which Cazares responded that Doe offered money for incidentals. (1 RT 185).

The prosecution then blindsided Cazares with a series of *ten* checks written to him by Doe, each labeled rent and for $600, from the time they lived in the Redondo Beach apartment. (1 RT 246-51.) The prosecutor asked Cazares if Doe ever paid him "rent", to which he said no, then if Doe ever wrote a single check, to which he said she wrote some checks, but not for the entire time she lived with him. (1 RT 246–47.) The prosecutor then asked why she would write him checks at all if they were a couple, to which he responded that it was money she offered to support their relationship while he spent money entertaining and taking her out. (1 RT 246–47.) As the prosecutor continued to ask about specific months, years and amounts, it became apparent that the prosecutor knew something Cazares didn't. (1 RT 247.) The prosecutor asked yet again if Doe paid Cazares rent, and Cazares responded: "It looks that way, but it wasn't that way. And it's hard to believe. I'm sorry. Even I don't believe me right now. But when somebody puts rent down on a check, what else are they going to write? Payment for a car? This is for food? No." (1 RT 248.) The prosecutor then showed Cazares check after check for $600 labeled "rent" – quipping after the tenth check -- "I'm sorry. Did you say that you're having a hard time believing yourself right now?" (1 RT 248–49.)

4. Other Evidence Presented

The prosecution also presented evidence from a nurse who reviewed Doe's rape kit who identified external abrasions to her genitalia, what looked that

evidence of prior, but not immediate bleeding, and a bruise to her buttock. (1 RT 129–45.) They also presented recordings of two pre-text calls where an officer coached Doe to attempt to elicit a confession from Cazares. (1 RT 157–61.)

But they were not able to produce any evidence corroborating certain acts Doe claimed Cazares committed upon her or that she allegedly committed on him, like injuries to her neck from where she said he held her down, or bites or scratches on his body, despite saying on the pretext calls that she bit, scratched and kicked him during the alleged rape.

5. Deliberations

The jury deliberated for over one full day, from 11:49 a.m. on October 22, 2015 (CT 111) through 1:45 p.m. on October 23, 2015 (CT 115) -- which was nearly as long as the trial itself.[3] (*See* CT 75 (opening statements begin on October 20 at 10:50 a.m.); CT 110 (defense rests late in the afternoon of October 21, 2015).)

During deliberations, they asked four questions, all late on October 22: (1) for a readback of Doe's testimony regarding "the position of her feet during the alleged rape," (2) the height of the bed and the height of the bed skirt, (3) for copies of the transcripts of the pretext calls, and (4) for a readback of Cazares's testimony regarding the conversation he testified they had prior to the incident. (CT 113, 114, 117, 148). The jury still required past the break of the next day to render their verdict.

[3] "CT" refers to the Clerk's Transcripts of Cazares's trial, filed in the District Court case at ECF No. 23-1 (Vol. 1 of 1).

6. Verdict and Sentence

On the afternoon of October 23, 2015, the jury found Cazares guilty of raping Doe. The court sentenced him to the middle term of six years.

B. Direct Appeal

On direct appeal, Cazares's counsel raised no claims, and the court of appeal did an independent review of the record and affirmed the judgment. (Pet. App D-10.) No petition for review was filed. (Pet. App D-10.)

C. Habeas Proceedings

Cazares then filed a round of state habeas petitions that were all denied, after which he filed his federal habeas petition. (Pet. App. D-11.) Cazares's petition included unexhausted claims, including a claim that his trial counsel was ineffective for failing to prepare him to testify regarding the aforementioned rent checks, and the District Court granted him a stay to exhaust those claims. (Pet. App. D-11 (noting granting of stay); Pet. App. H-77–80 (rent checks IAC claim).) Cazares then presented that claim to each of the state courts, with the California Supreme Court ultimately denying the claim solely on procedural grounds. (Pet. App. G-75–76); Pet. App. F-74; Pet. App. E-73.)

Upon his return to federal court, the magistrate judge reviewed Cazares's ineffective assistance of counsel claim de novo because the state court had not ruled on its merits (Pet. App. D-22), and recommended denying the claim on both ineffective assistance prongs (Pet. App. D-33–35.) Regarding deficient performance, the magistrate judge speculated that "[t]rial counsel reasonably could have thought it was unnecessary to obtain the cancelled checks because, before Petitioner took

the witness stand, Doe had testified about keeping them," and "counsel had no reason to believe that obtaining physical copies of the actual checks was necessary to prevent Petitioner from giving testimony on the issue that would subject him to damaging impeachment." (Pet. App. D-34.) Answering directly Cazares's objection that this was post-hoc rationalization belied by the record, the court cited, inter alia, *Dunn v. Reeves*, 141 S. Ct. 2405, 2412 (2021), for the proposition that "a federal court is entitled to reject a claim of ineffective assistance if trial counsel had 'any possible reason' for proceeding as he did." (Pet. App. D-34.) The magistrate judge further suggested that Cazares did not show prejudice from trial counsel's conduct because Doe's testimony "was corroborated by the pretext calls and the physical evidence." (Pet. App. D. 35.)

The District Court adopted the report and recommendation with some additional explanation not relevant to the question presented here and denied a certificate of appealability. (Pet. App. C-3-8.) The Ninth Circuit likewise denied a certificate of appealability, stating that Cazares did "not made a 'substantial showing of the denial of a constitutional right.'" (Pet. App. A-1.)

REASONS FOR GRANTING THE WRIT

A. The federal courts' denial of a certificate of appealability based on the proposition that "any possible reason" for counsel's challenged conduct will defeat a claim of ineffective assistance of counsel, even on de novo review, contravenes this Court's important constitutional precedent.

This Court has held that, though "[a] state prisoner whose petition for a writ of habeas corpus is denied by a federal district court does not enjoy an absolute right to appeal," the only question as to whether a petitioner should be granted a

COA is "whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.'" *Buck v. Davis*, 580 U.S. 100, 115 (2017) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003)). Put another way, a court of appeals should ask "'*only* if the District Court's decision was debatable.'" *Buck*, 580 U.S. at 116 (emphasis added) (quoting *Miller-El*, 537 U. S. at 327)). "A claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Buck*, 580 U.S. at 117 (quoting *Miller–El*, 537 U.S. at 338) (cleaned up). It is against this petitioner-friendly backdrop that the District Court's and Ninth Circuit's denials of a COA must be weighed.

On top of that, Cazares's claim was being reviewed de novo, as opposed to under the strict deference to a state court merits decision required by 28 U.S.C. § 2254(d) because no state court had ruled on the merits of Cazares's claim. *See* 28 U.S.C. § 2254(d). Thus, the District Court was performing what one may call a "direct" review of Cazares's ineffective assistance claim, which asks only two questions: (1) whether counsel's challenged conduct "fell below an objective standard of reasonableness," and (2) whether "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984).

Taken together, the question the Ninth Circuit and District Court were to answer is whether any reasonable jurist could have disagreed with the District Court's basis for denying Cazares's ineffective assistance claim, and, if such a disagreement was possible, the courts should have *granted* Cazares's COA request. This Court's precedent shows, as follows, that the District Court's reasoning was indeed debatable, and that the lower federal courts therefore contravened this Court's precedent by denying Cazares a COA.

1. The District Court's imagined reason for counsel's failure to use the aforementioned checks to prepare Cazares to testify is not objectively reasonable considering all the circumstances.

This Court has held that "*Strickland* . . . calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind." *Harrington v. Richter*, 562 U. S. 86, 110 (2011). The court must then determine whether, in light of all the circumstances, the identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690. This is true"[e]ven assuming" that counsel acted "for strategic reasons," *Wiggins v. Smith*, 539 U. S. 510, 527 (2003), and even if counsel does not testify as to their reasons for the challenged conduct at a hearing. *Cf. Buck*, 580 U. S., at 119-20.

As noted above, the District Court denied Cazares's deficient performance prong by speculating that "[t]rial counsel reasonably could have thought it was unnecessary to obtain the cancelled checks because, before Petitioner took the witness stand, Doe had testified about keeping them," and "counsel had no reason to believe that obtaining physical copies of the actual checks was necessary to prevent

Petitioner from giving testimony on the issue that would subject him to damaging impeachment." (Pet. App. D-34.) In so suggesting, the court cited *Reeves*, 141 S. Ct. at 2412, for the proposition that "a federal court is entitled to reject a claim of ineffective assistance if trial counsel had 'any possible reason' for proceeding as he did." (Pet. App. D-34.)

But the totality of the circumstances negates not just the reasonableness, but the very possibility of this strategy having been employed at all. This is because the prosecution was obligated to turn over all "relevant real evidence seized or obtained as a part of the investigation of the offenses charged." Cal. Penal Code § 1054.1. This means that the checks should have been in the discovery produced to Cazares's counsel. Nevertheless, during his cross examination of Doe, Cazares's trial counsel's questioning regarding the checks clearly indicates that he does not believe the checks exist, and, when she insists they do, counsel does not inquire as to whether she gave them to the prosecution. And then, when Cazares is cross-examined and shown the checks by the prosecutor near the end of the trial, it is also clear that he was not prepared to testify about them *and* that trial counsel was not prepared to object to their late production.

There are thus only two reasonable conclusions to draw regarding trial counsel's awareness of these checks, both of which indicate deficient performance: (1) the checks were not among the discovery provided to trial counsel and he should have objected to their introduction at trial when seeing them there for the first time (*see Kimmelman v. Morrison*, 477 U.S. 365, 385 (1986) (counsel performed

deficiently where they failed to learn of a search and seizure until the day of trial, and thus failed to timely file a motion to suppress unlawfully obtained evidence, because they did not properly execute their discovery responsibilities)), or (2) the checks were among the discovery produced to trial counsel, but were overlooked by trial counsel.

The lower federal courts' failure to consider these circumstances in its review of the ineffective assistance claim in chief and in their COA review demonstrates an unreasonable interpretation of this Court's holding in *Reeves* and other ineffective assistance cases.

First, *Reeves* was a case where the federal court was reviewing the state court's reasoning with AEDPA deference, not reviewing the petitioner's claim de novo. *See Reeves*, 141 S. Ct. at 2407 (noting that its holding was with regard to the lower court's *Strickland* analysis under 28 U.S.C. § 2254(d)). Accordingly, whether "the Alabama court was entitled to reject Reeves' claim if trial counsel had any 'possible reaso[n] . . . for proceeding as they did'"—the fuller context of the language quoted by the District Court—has no bearing on whether the District Court rightfully rejected Cazares's ineffective assistance claim without discovery, an evidentiary hearing, or the chance to appeal that denial. *See Reeves*, 141 S. Ct. at 2412.

Second, the state court in *Reeves* denied his claim only after he was afforded an evidentiary hearing with the assistance of counsel, which makes the case further distinguishable from Cazares's case. *Reeves*, 141 S. Ct. at 2408–09.

Third, *Reeves*'s gloss on *Strickland* was cabined by *Cullen v. Pinholster*, 563 U.S. 170, 196 (2011), which, as Justice Sotomayor's dissent rightly pointed out, "did not hold that an IAC claim fails if a court can imagine any possible reason for counsel's actions" because "[n]o claim could ever survive such a standard." *Reeves*, 141 S. Ct. at 2420 (Sotomayor, J., dissenting). Instead, this Court's charge has been for courts to "'entertain the range of reasons' for counsel's actions *in light of the events and evidence actually established in the record*." *Id.* (emphasis added).

Reasonable jurists could thus disagree with the District Court's reason for finding that counsel did not perform deficiently when he failed to prepare Cazares to testify regarding the challenged rent checks because the court's analysis ignored relevant circumstances contradicting the court's proffered explanation for counsel's conduct.

2. The District Court's denial on prejudice grounds was also debatable.

The District Court also held that Cazares could not demonstrate prejudice from trial counsel's challenged conduct. (Pet. App. D-35; Pet. App. C-4, C-6.) This holding likewise contravenes this Court's precedent, particularly as justification for the denial of a COA, which requires the District Court's conclusion to be beyond reasonable debate.

As noted above, this Court has held that a petitioner demonstrates prejudice from counsel's deficient performance where, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 694.

This prejudice standard is rooted in the standard for *Brady*[4] materiality (*see id.*), which notably "'is not a sufficiency of the evidence test' under which a court sets aside the tainted evidence and assesses the sufficiency of what is left." *See, e.g., Clements v. Madden*, 112 F.4th 792, 804 (9th Cir. 2024).

The record shows that the prosecution's case was weak, highlighting the prejudice from counsel's deficient performance. *Strickland*, 466 U.S. at 696 ("a verdict or conclusion only weakly supported by the record is more likely to have been affected by errors than one with overwhelming record support"). As noted above, Doe's testimony regarding her relationship with Cazares was confusing, as she accused him of abuses she never reported and at the same time continued to treat him with affection, coordinating meals with him and picking him up from the airport. There was no evidence of any violence by Cazares toward Doe in the seven years preceding the alleged rape, and even before then, the only evidence were her uncorroborated allegations at the time of trial. The timing and preparation for Doe's claims were also suspicious, with her (1) saying to told Cazares he was committing "elder abuse" years before she sought a restraining order and the police told her of such an offense, (2 claiming she was raped the day after he asserted claims to her property, and (3) placing a pantyliner in her underwear immediately after the incident in preparation for reporting him (though it appears no evidence was produced from said pantyliner).

[4] *Brady v. Maryland*, 373 U. S. 83 (1963).

And while the pretext calls with Cazares were admittedly unflattering, they were also far from conclusive evidence that he was guilty. We know this because of how the jury handled the evidence. As noted above, they askED four questions, two about Doe's testimony regarding the alleged rape, one about Cazares's testimony about a conversation that took place just before the alleged rape, and one about the pretext calls. And, even after having all those questions answered, they deliberated for several more hours before reaching a conclusion after the break the following afternoon. Relevant juror questions and lengthy deliberations both weigh against findings of harmless error. *See United States v. Velarde-Gomez*, 269 F.3d 1023, 1036 (9th Cir. 2001) (en banc) ("Longer jury deliberations weigh against a finding of harmless error because lengthy deliberations suggest a difficult case."); *Mayfield v. Woodford*, 270 F.3d 915, 938 (9th Cir. 2001) (en banc).

On this record, the lower federal courts cannot reasonably have concluded that no reasonable jurist could debate the District Court's resolution of Cazares's ineffective assistance claim.

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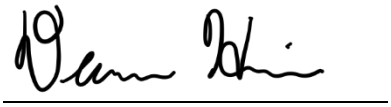
CONCLUSION

For the foregoing reasons, Petitioner Raul Otero Cazares respectfully requests that this Court grant his petition for writ of certiorari.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

Dated: April 24, 2025



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CERTIFICATE OF COMPLIANCE WITH PAGE COUNT LIMITATIONS

I hereby certify that the Petition for a Writ of Certiorari contains approximate 4,166 words, excluding the parts of the document exempted by Supreme Court Rule 33.1(d) and that it complies with the typeface requirement of Supreme Court rule 33.1(b), being prepared in Century Schoolbook 12-point font or the text and 10-point font for the footnotes.

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I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: April 24, 2025

DEVON L. HEIN
Deputy Federal Public Defender

Attorneys for Petitioner
RAUL OTERO CAZARES