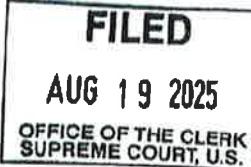


No. _____

ORIGINAL

25-5403

IN THE



SUPREME COURT OF THE UNITED STATES

In re Michael Jay Harris,

MICHAEL JAY HARRIS — PETITIONER,

vs.

K. SANTORO, WARDEN — RESPONDENT.

PETITION FOR WRIT OF HABEAS CORPUS

After Denial of 28 U.S.C. § 2244 Application

In The Ninth Circuit Court of Appeals

Case Nos. 25-665 and 25-741

BY: Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A1-148
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Petitioner Pro se

QUESTIONS PRESENTED

Petitioner Michael Jay Harris presents six exceptionally important questions which have divided the circuit courts below. Each and all of these questions have relevance to Mr. Harris and other similarly situated persons because they involve the balancing of limited judicial resources and a State's right to finality in its convictions, with the constitutional imperative that the Courts do all things law and justice require in its truth-seeking function.

Question No. 1 -

Should Mr. Harris be permitted to raise his claims of prosecutorial misconduct based on newly obtained and never before presented evidence to a court of proper jurisdiction based on the gateway claim of innocence presented to the Ninth Circuit Court of Appeals that was rejected procedurally, because Mr. Harris has presented a subsequent habeas petition rather than a successive petition ?

Question No. 2 -

Is Mr. Harris entitled to an evidentiary hearing and a determination of his federal claims made to the Ninth Circuit Court of Appeals that involve actual innocence and the deprivation of a fundamental constitutional right in the State court in order to develop the factual basis of his claims for relief prior to any review by the federal courts ?

Question No. 3 -

Whether transfer to the District Court for the Eastern District of California pursuant to this Court's original jurisdiction is warranted in this extraordinary case where petitioner has presented a substantial case for innocence, the Courts below have refused to consider petitioner's newly discovered and presented evidence even though petitioner specifically raised a claim of Actual Innocence - Miscarriage of Justice as a ground for relief in order to properly state a claim for relief under both House v. Bell and Herrera v. Collins, and no court has held an evidentiary hearing in order to examine his newly discovered and freshly presented evidence of actual innocence ?

Question No. 4 -

Is petitioner entitled to an evidentiary hearing in the District Court because he has made the compelling showing of actual innocence necessary to stating a gateway claim of actual innocence and because petitioner has presented newly discovered exculpatory evidence to the courts below, and because the State courts have refused to consider the newly discovered and freshly presented evidence while instead asserting procedural default findings of successiveness despite the subsequent nature of petitioner's claims for relief ?

Question No. 5 -

Does petitioner's showing of actual innocence under House v. Bell align sufficiently with his Napue claims to permit a court of proper jurisdiction to find that a miscarriage of justice has occurred notwithstanding any procedural default asserted by the State court ?

Question No. 6 -

(a) What constitutes "new evidence" in the context of 28 U.S.C. § 2244 (b)(2)(B) and 28 U.S.C. § 2254 (e)(2)(B) and what constitutes a "truly persuasive showing of actual innocence" when "new evidence" is used to demonstrate actual innocence ?

(b) Does the United States Constitution require habeas relief if petitioner makes a persuasive demonstration of actual innocence ?

PARTIES TO THE PROCEEDINGS BELOW

This petition stems from a habeas corpus proceeding in the United States Court of Appeals for the Ninth Circuit wherein petitioner Michael Jay Harris applied for permission to file a second habeas petition in the United States District Court for the Eastern District of California. Mr. Harris has been sentenced to a term of 285 years-to-life by the Mono County Superior Court in the State of California on April 9, 2010. He is in the custody of Kelly Santoro who is the Warden of the Salinas Valley State Prison.

PETITION FOR A WRIT OF HABEAS CORPUS

Petitioner Michael Jay Harris respectfully requests that this Court transfer for hearing and determination his application for habeas corpus to the United States District Court for the Eastern District of California in accordance with this Court's authority under 28 U.S.C. § 2241 (b), or to the California State Court in accordance with the opinion filed in Glossip v. Oklahoma. The petition is currently filed under seal in the Ninth Circuit .

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OPINION BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit is not published and is attached as Appendix B (Case Nos. 25-665 and 25-741) with the Docket Listings attached as Appendix A (Case Nos. 25-665 and 25-741).

STATEMENT OF JURISDICTION

The order of the court of appeals denying authorization to file a second habeas petition to the district court was entered on May 23, 2025. This Court's jurisdiction is invoked pursuant to 28 U.S.C. §§ 2241, 2254(a), 1651(a), and Article III of the U.S. Constitution.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The Fourteenth Amendment to the United States Constitution states, in relevant part: "Nor shall any State deprive any person of life, liberty, or property, without due process of law"

28 U.S.C. § 2241 (2025)-Appendix D

28 U.S.C. § 2244 (2025)-Appendix E

28 U.S.C. § 2254 (2025)-Appendix F

STATEMENT OF THE CASE

A. STATEMENT OF FACTS

The relevant facts of the case pertinent to the issues presented involve the structural integrity of the processes rather than the criminal elements leading to the convictions in the case. Petitioner Michael Jay Harris does however, ask this Court to incorporate by reference the facts in the light most favorable to the prosecution as found in the California Court of Appeal's unpublished decision found at 2012 Cal. App. Unpub. LEXIS 6659. Mr. Harris also asks this Court to incorporate by reference the Findings and Recommendations made by the Eastern District of California as found in Harris v. Gipson at 2015 U.S. Dist. LEXIS 138600. Finally, Mr. Harris asks this Court to incorporate by reference the alternative version of facts presented in the sealed petition filed in the Ninth Circuit under case number 25-665. These incorporated materials are not relied on herein but rather are presented in order to direct the Court's attention to the underlying factual issues already presented should a consideration of these facts become material here.

Mr. Harris was convicted of 19 counts of sexual abuse against a child alleged by three accusers while also being acquitted of six similar charges involving the same crimes and accusers. An additional count was dismissed on the prosecutor's own motion prior to the case being submitted to the jury. Mr. Harris, knowing that he was innocent and understanding only a limited portion of the investigative facts of the case, immediately sought to challenge the convictions by attacking both appointed attorneys on ineffectiveness grounds. This Court denied a petition for writ of certiorari on December 11, 2017 and a petition for rehearing on February 20, 2018 (Harris v. Gipson, No 17-6244).

B. PROCEDURAL HISTORY

Following this Court's denial of Mr. Harris' petitions for relief, he sought and eventually obtained postconviction discovery of exculpatory materials which he presented to the State courts asking for an evidentiary hearing. The State refused to consider his newly obtained and presented exculpatory evidence and asserted procedural default as adequate and independent state law grounds for its denials.

Mr. Harris was denied relief by the Mono County Superior Court (Appendix C, pp. 017-018 [EXHIBIT 1248-1249]). Mr. Harris sought mandamus relief in order to compel the trial court to issue a brief written statement as to its reasoning for denying the well federalized claims. This petition for writ of mandate was denied by the California Court of Appeal for the Third Appellate District (Appendix H, p. 067 [EXHIBIT 1269]). Mr. Harris then sought relief via habeas from the same court and once again asked for an evidentiary hearing to present his newly obtained evidence and the Third Appellate District Court of Appeal denied this petition and relied upon In re Clark 5 Cal. 4th 750, at 767-769, 797. This reliance was misplaced for reasons to be explained below. Of special importance is the granting of Mr. Harris' request for judicial notice of the entire file presented in the aforementioned mandamus proceeding. Mr. Harris then filed a petition for writ of habeas corpus in the California Supreme Court asking the court to take judicial notice of the file noticed by the appellate court. Mr. Harris also asked yet again for an evidentiary hearing. This petition was summarily denied and no mention was made in the denial order of the request for judicial notice and explanatory declaration filed with the petition (Appendix C, p. 015 [EXHIBIT 1277]).

This series of pleadings raised and denied in the State court permitted Mr. Harris to file an application to the Ninth Circuit Court of Appeals for permission to file a second federal habeas petition in the United States District Court for the Eastern District Court of California, which he did. Mr. Harris' application and proposed second habeas petition were filed separately. The Ninth Circuit Form 12 application was filed as Harris v. Bailey Case No. 25-741 while the proposed habeas petition and exhibits were filed as Harris v. Arce Case No. 25-665. The habeas petition was filed on January 31, 2025 and the Form 12 application for permission to file a second habeas petition was filed on February 4, 2025. (See Appendix A).

For some unknown reason these filings were not addressed within the requisite 30 days and eventually both were addressed on May 23, 2025. The application to file a second habeas petition in the district court was denied because the panel found that Mr. Harris had not made a *prima facie* showing under 28 U.S.C. § 2244(b)(2) (Appendix B, pp. 012-013). The proposed habeas petition sought to be filed in the district court was provisionally filed under seal because the court considered it to contain confidential information (id. at 013). In the panel's decision in case number 25-665, the panel sealed the file as confidential and referred to the decision in case no. 25-741 as dispositive as the reason for the denial of Mr. Harris' request for permission to file a second habeas petition in the district court.

The docket entries for both Ninth Circuit cases discussed here are contained within Appendix A.

REASONS FOR GRANTING THE WRIT

Preliminary Statement

This Court has been granted the power to grant extraordinary relief through 28 U.S.C. § 2241. Pursuant to this Court's Rule 20, Mr. Harris makes the following statement: regarding the demonstration of exceptional circumstances and how the writ will be in aid of the Court's appellate jurisdiction. Mr. Harris recognizes that habeas relief is not a matter of right, but of discretion sparingly exercised, and that the Court requires a showing that adequate relief cannot be obtained in any other form or from any other court.

Exceptional Circumstances.

Mr. Harris is asking for extraordinary relief because he has been falsely accused of horrendous crimes that have been proven to be false accusations. The issue involves the integrity of the truth-seeking function of the courts and the availability for postconviction relief which challenges that integrity. Mr. Harris' questions presented specifically discuss the circuit split between "newly presented evidence" and "newly discovered evidence", and address concerns important to many people.

Aid of Court's Appellate Jurisdiction.

Mr. Harris cannot obtain relief in any other court because he has exhausted his judicial remedies in the state court, and the state court is asserting procedural default based on state law and in conflict with the law of the circuit based on clearly established law as determined by this Court. Because the Ninth Circuit panel denied Mr. Harris' application under § 2244, and because Mr. Harris presented "new evidence" to the State courts without being granted an evidentiary hearing, and because there is a circuit split in regards to whether AEDPA requires

"newly presented evidence" or "newly discovered evidence"; Mr. Harris' issues can only reach this Court through the appellate and certiorari process if the Court acts and exercises its discretion to return the case to a court of proper jurisdiction in order to consider new evidence in support of an actual innocence claim, both as a gateway claim and as an absolute claim under House v. Bell and Herrera v. Collins.

Discretionary Power, Sparingly Used.

This courts power to grant an extraordinary writ as law and justice may require is nearly unlimited, however, it is seldom used except in exceptional cases in which an appeal is a clearly inadequate remedy. 28 U.S.C. § 2244(b)(3)(e) prevents this Court from reviewing the circuit court panel's order (Appendix B, pp. 010-013). Because of the prohibition preventing Mr. Harris from presenting claims for relief in any other court, Mr. Harris' last hope for any relief in any court lies in this Court.

Adequate Relief Unavailable Elsewhere.

The questions presented relate to the truth-seeking function of the courts in the context of new evidence and claims of actual innocence. There also exists an ancillary split among the circuits related to "Qualifying Error" and the "partial adjudication rule," the "alternative ground doctrine," and the "presumption of full adjudication." These questions can only be considered in this Court and resolved therein.

I. STATEMENT OF REASONS FOR NOT FILING IN THE DISTRICT COURT

As required by Rule 20.4 of this Court, as well as 28 U.S.C. §§ 2241 and 2242, Mr. Harris states that he has not applied to the district court because the circuit court prohibited such application (Appendix A and B). Mr. Harris

has exhausted all judicial remedies in the State courts and has presented new evidence warranting judicial review under AEDPA, yet because of the lack of direction by this Court involving "new evidence" and "qualifying error," the State of California has asserted a procedural bar based on a state law requirement that in order for new evidence to be considered in seeking habeas relief, the new evidence must be newly discovered. Mr. Harris is therefore asking this Court to exercise its extraordinary power and transfer his petition and exhibits, currently filed under seal in the Ninth Circuit court, case number 25-665, to a court of proper jurisdiction because Mr. Harris is unable to be heard at all regarding his demonstrable claims of actual innocence brought to the Court attached to a substantial constitutional error of a structural nature.

A. The Newly Obtained and Presented Evidence Proves the Knowing Presentation of False Evidence to The Jury.

This Court has held that "[a]ll perjured testimony is at war with justice, since it may produce a judgment not resting on truth." (In re Michael, 326 U.S. 224, 227 (1945)). Nothing from this holding has changed over the years, however, this Court's holdings have changed in response to the Anti-Terrorism and Effective Death Penalty Act of 1996 ("AEDPA"). Despite these changes, along with this Court's recent holding designed to bring habeas jurisprudence back into alignment with its historical purpose, the fundamental reasoning used throughout applies here.

It is axiomatic that a State can create adequate and independent laws to charge and convict criminals within the State itself, however, due process requires certain guarantees be provided to a person accused of crimes in the State courts that comply with this Court's holdings on such matters. This then is the material issue herein, to wit, can a State assert finality prior to a

full and fair analysis of all the evidence in a case whether, it be intrinsic or extrinsic. Mr. Harris claims that he has been thwarted in presenting new evidence which on one hand is the state's province to decide what is admissible or not, but on the other hand must be considered regardless, if it is exculpatory and tends to exonerate a person. Thus, Mr. Harris is asking this Court to answer a series of questions in the hope that he can prove his actual innocence to a proper court under Herrera v. Collins because he has made a standalone claim of factual innocence accompanied by a substantial claim of constitutional error while making an initial gateway claim of innocence under House v. Bell necessary to have his newly obtained, and presented evidence considered by a court capable of receiving the new evidence, and determining its materiality.

B. The Court of Appeals has Prevented a Full and Fair Consideration of Mr. Harris' Newly Obtained and Presented Exculpatory Evidence.

Mr. Harris contends that he has made the requisite gateway showing of actual innocence necessary to overcoming any procedural defaults asserted by any court against him. To this point, Mr. Harris adds that when the Ninth Circuit panel denied his application to file a second habeas petition, it forced him to proceed in this Court because a petition for rehearing en banc is not available pursuant to 28 U.S.C. § 2244(b)(3)(E).

Despite this restriction on the seeking of rehearing in the circuit court, the factors to be considered in a petition for rehearing are exceedingly relevant here because Mr. Harris is essentially asking this Court to transfer his petition to the district court on the same grounds as he would have presented, should a petition for rehearing en banc been entertained by the circuit court.

1. The Panel's Decision is Based on A Misapprehension of the Facts in the Case.

Mr. Harris expresses a belief based on his well researched and reasoned judgment, that the panel decision (Appendix B, pp. 012-013) is based on a misapprehension of the facts in this case. The circuit court overlooked the fact that one of the complaining witnesses in the case admitted to lying under oath multiple times in the case and the prosecutor knew of these lies. With this knowledge, the prosecutor attempted to manipulate the prevaricating witness into a better position for his case by asking leading questions that misstated previous answers admitting the multiple lies told under oath. Then, during the closing argument the prosecutor used the false evidence and misstatements of fact to his advantage to prove guilt, knowing full-well that the evidence being argued as proof of guilt had been repudiated by his own witness when she had admitted to lying previously under oath on multiple instances in the criminal proceedings at issue here. (See Appendix I).

The circuit court also overlooked the fact that Mr. Harris had difficulties filing his voluminous pleading in both the California Supreme Court as well as the Ninth Circuit Court of Appeals. Finally, the circuit court overlooked the fact there were a multitude of issues raised for the first time in Mr. Harris' subsequent petition for writ of habeas corpus to the court below and in the proposed petition which were neither successive nor based on previously available evidence. (see Appendix H).

2. The Panel's Decision is Erroneous as a Matter of Law.

The Form 12 application presented to the circuit court and attached hereto as Appendix G (missing the last few pages available on PACER under case no.

25-741) clearly articulates the subsequent nature of the petition being presented as a second petition and as such demonstrates compliance with 28 U.S.C. § 2244 (b)(2)(B)(i)-(ii). Mr. Harris not only described and identified the specific nature of the new evidence obtained after the decision of this Court previously, but described and identified the provenance of the newly obtained evidence sought to be considered. (See Appendix G, pp. 036, 041-042 [Form 12 Question #15]).

3. The Panel's Decision is Contrary to This Court's Holdings and Ninth Circuit Precedents.

Mr. Harris expresses a belief based on his well researched and reasoned judgment, that the panel decision (Appendix B, pp. 012-013) is contrary to the following decisions of this Court and the Ninth Circuit Court of Appeals.

Glossip v. Oklahoma

145 S. Ct. 612 (2025)

Napue v. Illinois

360 U.S. 264 (1959)

Catlin v. Broomfield

124 F.4th 702 (9th Cir. 2024)

Clements v. Madden

112 F.4th 792 (9th Cir. 2024)

Dickey v. Davis

69 F.4th 624 (9th Cir. 2023)

4. The Panel's Decision Failed to Address Aspects of the Application to File a Second Habeas Petition Which Involves a Question of Exceptional Importance.

The issue involved in the underlying petition is whether a duty exists that requires a prosecutor to investigate whether an accuser may be lying has

been impliedly decided in the other cases listed above, and because of this duty to know whether an accuser is lying requires the collecting of exculpatory evidence, or potential exculpatory evidence, the issue of false evidence being presented to a trier of fact in the absence of corroborating evidence is of exceptional importance in the context of child sexual abuse trials being the holy grail of hate-filled prosecutions, incentivized by funding of governmental entities based on reporting without any verification of the veracity of the claims being made.

II. THE COURT OF APPEALS ERRED IN BARRING MR. HARRIS' SECOND PETITION

When the court of appeals stated the Mr. Harris had "not made a *prima facie* showing under 28 U.S.C. § 2244(b)(2)," it is contended here that the court of appeals reached issues unreachable in the application review stage contemplated under AEDPA. Specifically, this Court wrote in dicta recently:

AEDPA contains several significant procedural barriers that strictly limit a court's ability to hear "claim[s] presented" in any "second or successive habeas corpus application." §§2244(b)(1),(2). [1] ... First, §2244 prohibits habeas applicants from filing a subsequent petition that relitigates the merits of previously denied claims ... Second, even if the subsequent petition presents a new claim, the second-in-time application can only proceed if it "falls within one of two narrow categories": The claim must "rel[y] on a new and retroactive rule of constitutional law" or "alleg[e] previously undiscoverable facts that would establish [the petitioner's] innocence." [Citations.] Additionally, a petitioner cannot bring a second or successive habeas petition directly to the district court. Instead, he must first go to the court of appeals and make a "*prima facie showing*" that the petition satisfies one of §2244(b)(2)'s exceptions, and that court has to grant authorization for the petitioner to proceed in district court. §2244(b)(3).

(Rivers v. Guerrero, 222 L. Ed. 93, 101 (2025)).

"An 'application' is 'a filing that "seeks an adjudication"' of one of those claims "'on the merits.'" [Citations.]" (Id. at 102). It is the mandate

within 28 U.S.C. § 2244(b)(3)(D) that Mr. Harris suggests warrants transferring of the habeas petition filed under seal in case no. 25-665. His contention is that first, the court of appeals clearly failed to abide section 2244(b)(3)(D) when it took over three months to rule on the matter; and second, Mr. Harris has clearly made a showing that a violation of clearly established federal law as determined by this Court in Napue and its progeny has occurred, but also that newly discovered and presented evidence has been ignored while assertions procedural default have ruled the day.

It is Mr. Harris further contention that as will be shown below, the newly obtained and presented evidence warrants an evidentiary hearing from which a *prima facie* determination can be made. This contention is based entirely on the fact that Mr. Harris' petition filed under seal in the circuit court does not present any claims previously made in any court and instead "alleg[es] previously undiscoverable facts that would establish [Mr. Harris'] innocence." (Id. at 101).

A. The Last Reasoned Opinion of the State Court Does Not Consider Mr. Harris' Federal Claims.

When looking through to the last reasoned state-court opinion in the case below (Appendix C, p. 016), the state-court relied on In re Clark (1993) 5 Cal. 4th 750, 767-769, 797. This California Supreme Court decision relates to the presentation of successive, untimely, and piecemeal claims which not only fails to address the subsequent nature of the newly presented claims based on newly obtained evidence, but fails entirely to consider clearly established federal law related to the truth-seeking function of the state-court processes.

But it is the language contained within Clark at 767 which demonstrates how the reference is misplaced, based on the current state of decisional law which binds the State courts. In discussing new evidence, the Clark Court affirmed its prior holdings by stating "[A] criminal judgment may be collaterally attacked on the basis of 'newly discovered' evidence only if the 'new' evidence casts fundamental doubt on the accuracy and reliability of the proceedings." (In re Clark, supra, at 766-767). The Clark Court adds: "Postconviction habeas corpus attack on the validity of a judgment of conviction is limited to challenges based on newly discovered evidence, claims going to the jurisdiction of the court, and claims of constitutional dimension. [Citations.]" (In re Clark, at 767).

This language highlights Mr. Harris' presented questions relating to what constitutes "new evidence." This is because there is currently a circuit split, which has been a neglected area of habeas jurisprudence by this Court, related to whether new evidence must be newly discovered or simply newly presented. This ancillary issue is presented in order to facilitate Mr. Harris' presentation of new evidence and to compel the State court to consider his newly presented evidence in the State court because the State has failed to abide the circuit precedent in the Ninth Circuit allowing newly presented evidence to form the basis of a gateway claim of innocence rather than the Clark Court's requirement that new evidence be newly discovered.

As for the last reasoned state-court opinion though, the apparent matter referenced in the State's denial of Mr. Harris' petition is one of Repetitious and Piecemeal Claims. But the reference relates to successiveness and ignores the subsequent nature of Mr. Harris' claim of actual innocence, and deprivation of a fundamental constitutional right which likely affected the verdicts in his case. At its core, the opinion stated by Justice Scalia in Wilson v. Sellers, 584 U.S. 122 (2018) is relevant here:

[W]here, as here, the last reasoned opinion on the claim explicitly imposes a procedural default, we will presume that a later decision rejecting the claim did not silently disregard that bar and consider the merits. [Ylst v. Nunnemaker, 501 U.S. 797], at 803, 111 S. Ct. 2590, 115 L. Ed. 2d 706 [(1991)] (citation omitted).

(Id. at 129).

This point is important because the last reasoned opinion to Mr. Harris' petition in the state-court was issued by the California Court of Appeal. Following this decision Mr. Harris presented his same claims to the California Supreme Court who issued a summary denial thus exhausting Mr. Harris' State remedies. (See Appendix C, p. 015). The dicta mentioned above in Wilson distinguished the holding in Harrington v. Richter, 562 U.S. 86 (2011) by stating:

Richter does not say the reasoning of Ylst does not apply in the context of an unexplained decision on the merits. To the contrary, the Court noted that it was setting forth a presumption which "may be overcome when there is reason to think some other explanation for the state court's decision is more likely." Richter, *supra*, at 99-100, 131 S. Ct. 770, 178 L. Ed. 2d 624. And it referred in support to Ylst, 501 U.S. at 803, 111 S. Ct. 2590, 115 L. Ed. 2d 706.

(Wilson v. Sellers, *supra*, 584 U.S. at 131).

Therefore, the State courts did not consider Mr. Harris' newly presented claims in any merits based review. Because his claims are based on newly obtained and newly presented evidence previously unavailable, and which was diligently pursued despite State actor interference, Mr. Harris contends he is entitled to an evidentiary hearing in the district court for a determination of his claims *de novo* in light of the flawed assertion of procedural default made by the State court.

B. The Panel's Decision is Contrary to the Holdings of This Court and the Holdings of the Ninth Circuit Itself.

The holdings of this Court and the Ninth Circuit intertwine in the recent case of Glossip v. Oklahoma, 145 S. Ct. 612 (2025). In a brief filed by current and former state and federal prosecutors as amici curiae in support of Petitioner Richard Glossip, the amici referenced Dickey v. Davis, 69 F.4th 624, 632-33 (9th Cir. 2023) at page 12 of the brief. Mr. Harris pointed directly to Dickey v. Davis when he applied to the Ninth Circuit for permission to present a second habeas petition to the district court because the case squarely followed this Court's holding in Napue v. Illinois, 360 U.S. 264 (1959) when it wrote:

For nearly ninety years, it has been established Supreme Court precedent that a conviction violates due process if it is obtained through knowing presentation of perjured testimony. [Citation.] ... Dickey's habeas petition specifically invokes Napue, in which the Supreme Court established that a conviction is invalid if the State is aware of a material falsity and fails to correct it, regardless of whether the State intentionally solicited the false evidence or testimony. See Napue, 360 U.S. at 269-70 ... "The principle that a State may not knowingly use false evidence, including false testimony, to obtain a tainted conviction ... does not cease to apply merely because the false testimony goes only to the credibility of the witness." Id. at 269.

(Dickey v. Davis, *supra*, 69 F.4th at 636; Cf. Appendix L, pp. 141-142).

It is this fundamental holding that false evidence defeats the truth-seeking function of the courts that renders the Ninth Circuit panel decision to deny Mr. Harris' application to present his new, reliable, and credible evidence to the district court a contrary decision. In House v. Bell, 547 U.S. 518 (2006), this Court held that "[t]o implement the general principle that 'comity and finality ... 'must yield to the imperative of correcting a fundamentally unjust incarceration,'" [citation], this Court has ruled that prisoners asserting innocence as a gateway to defaulted claims must establish that, in light of new evidence, 'it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.' [Citation.]" (Id. at 518).

Accordingly, when the Ninth Circuit panel stated that a *prima facie* showing had not been made, it was required to assess whether "new reliable evidence ... not presented at trial" demonstrated or failed to demonstrate that no reasonable ^{juror would have} convicted Mr. Harris. This is so, because to state otherwise is a summary denial that fails to address the matters presented in the Form 12 application for permission to present a second habeas petition to the district court.

Mr. Harris is fully aware of the pressures on the courts derived from the voluminous quantity of pleadings, many of which are frivolous, being presented to the courts on a daily basis. Despite this awareness, Mr. Harris has proceeded to this Court with this extraordinary pleading in an effort to float above the sea of irrelevancy and to not only exonerate himself, but perhaps compel the State of California to do more in its duty to preserve and protect the truth-seeking function of its Courts.

Therefore, because the State courts as well as the Ninth Circuit panel have failed to consider Mr. Harris' never before presented claims based on newly obtained and presented evidence of actual innocence, he contends that the holdings of this Court, followed consistently by the Ninth Circuit Court of Appeals in matters involving the presentation of false evidence at trial, warrants an order transferring the habeas petition filed under seal in case no. 25-665 in the court of appeals to a court of proper jurisdiction for a hearing and a determination as to the materiality of the new evidence *de novo*.

C. The Truth-Seeking Function of the Court Has Been Impaired.

Petitioner applied for leave to file a second habeas petition in the United States District Court for the Eastern District of California based on previously unavailable and newly obtained evidence. Justice Barrett, in her dissent to the majority opinion in Glossip v. Oklahoma, *supra*, 145 S. Ct. at 634 writes:

We lack jurisdiction to review a state court's adjudication of federal claims if the state court's decision "rests on a state law ground that is independent of the federal question and adequate to support the judgment." [Citation.] But when a state-law ground of decision is intertwined with analysis of a federal question, we will treat the decision as independent only if the state court "make[s] clear by plain statement" that its resolution of the state-law question does not depend on its resolution of the federal question. [Citation.]

(Ibid.)

Mr. Harris contends that it is possible the order of this Court should be to transfer his petition to the state court. He states this based on the fundamental principle of federalism and comity which requires the State of California to correct its errors related to interpretations of federal law. Take the dissent to Glossip further and consider the dissent by Justice Thomas, with whom Justice Alito joins, and with whom Justice Barrett joins in part. Here, the minority Justices express the following:

Even if the majority is correct that this Court has jurisdiction and that the OCCA misapplied Napue, the appropriate remedy is to remand for further proceedings. This Court has no authority to order a new trial. [¶] ... "It is beyond dispute that we do not hold a supervisory power over the courts of the several States." [Citation.] "Our only power over state judgments is to correct them to the extent that they incorrectly adjudicate federal rights." [Citation.] ... Thus, when a state court's judgment rests on an erroneous interpretation of federal law, this Court must "either render such judgment here as the State court should have rendered, or remand the case to that court, as the circumstances of the case may require." [Citation.]

(Glossip, 145 S. Ct. at 654).

Therefore, Mr. Harris must emphasize that he only seeks an evidentiary hearing in order to present his newly obtained evidence to a Court of proper jurisdiction. Mr. Harris' reading of Shinn v. Ramirez, 596 U.S. 366 (2022), leads him to the understanding that it is the province of the federal courts to review the state-court record, not create one for the States. This Court wrote in Shinn v. Ramirez:

"From the beginning of our country, criminal law enforcement has been primarily a responsibility of the States." [Citation.] The power to convict and punish criminals lies at the heart of the States' "residuary and inviolable sovereignty." [Citations.] Thus, "[t]he States possess primary authority for defining and enforcing the criminal law," [citation], and for adjudicating "constitutional challenges to state convictions," [citation.]

(Id. at 376).

Under Harrington v. Richter, 562 U.S. 86 (2011), this Court discussed at length the requirements under AEDPA that the federal courts only have jurisdiction to examine state court convictions that have not been decided on the merits in a state court proceeding. The Court wrote: "When a federal claim has been presented to a state court and the state court has denied relief, it may be presumed that the state court adjudicated the claim on the merits in the absence of any indication or state-law principles to the contrary. Cf. Harris v. Reed, 489 U.S. 255, 265 []." (Id. at 99).

The Court then went on to articulate how "Federal habeas review of state convictions frustrates both the States' sovereign power to punish offenders and their good faith attempts to honor constitutional rights." (Id. at 103). In the context of AEDPA, the Court decided that any presumption related to a state court's reasoning in a decision may be overcome when there is reason to think there is some other explanation for a state court's decision.

Mr. Harris contends that the merits of his claims of Actual Innocence - Miscarriage of Justice (Ground 1) and False Evidence - Prosecutorial Misconduct

(Ground 2) were never decided on their merits by the state courts. Because of this, Mr. Harris argues that he is entitled to a hearing and determination of his grounds for relief in a court of proper jurisdiction. It may be this Court's opinion that the State is required to permit Mr. Harris to develop the factual basis of his claims for relief in the State court so that the federal courts may then properly review the state court record as outlined in Shinn v. Ramirez. Alternatively, this Court may be of the opinion that the district court should conduct an evidentiary hearing and then determine whether Mr. Harris' fundamental constitutional rights were violated and that he is actually innocent in the case.

In Shinn v. Ramirez, this Court wrote on this subject:

Despite the many benefits of exhaustion and procedural default, and the substantial costs when those doctrines are not enforced, we have held that a federal court is not required to automatically deny unexhausted or procedurally defaulted claims. When a claim is unexhausted, the prisoner might have an opportunity to return to state court to adjudicate the claim. [Citation.] When a claim is procedurally defaulted, a federal court can forgive the default and adjudicate the claim if the prisoner provides an adequate excuse. Likewise, if the state-court record for that defaulted claim is undeveloped, the prisoner must show that the factual development in federal court is appropriate.

(Id. at 379).

It is for these very same reasons that Mr. Harris contends the court of appeals denial of his application to present a second habeas petition to the district court was in error. Mr. Harris is informed and believes that he has presented direct evidence of his actual innocence sufficient to have stated a gateway claim to a consideration of his habeas petition filed under seal in case no. 25-665. Mr. Harris is also informed and believes that the explanations and justifications included in the petition filed under seal are more than adequate to survive any cause and prejudice analysis. For these reasons, Mr. Harris asks this Court to transfer his habeas petition to a court of proper jurisdiction for an evidentiary hearing and a determination of the merits of his claims made therein.

III. THE EXCEPTIONAL CIRCUMSTANCES OF THE CASE WARRANT THE EXERCISE OF THIS COURT'S JURISDICTION

The exceptional circumstances of this case involve the confluence of malicious intent and professional negligence which have hindered the truth-seeking function of the State court which tried the matter before a jury. The malicious intent is reasonably inferred from the petition filed in the court of appeals under seal. The professional negligence component was initially brought to the federal courts as a boilerplate ineffective assistance of counsel claim. It was dispatched by the federal courts, including this Court, in short order. Mr. Harris apologizes for burdening the Court previously but explains that it had to be done in light of his absolute innocence.

What is truly exceptional in this case however, is that the State court has failed Mr. Harris while the People of the state of California have enacted laws to correct the failings of its criminal justice system. California fancies itself as a progressive state and to this end has enacted changes in state law to enable those who feel they have been wrongly convicted to petition the state courts for relief. The intent can be inferred to be an intent to abide the principles of federalism articulated by this Court repeatedly. Key amongst this principle is ensure to its citizenry that wrongful convictions are abhorrent and the wrongfully convicted have remedies available to them.

Amidst these changes in State law are the changes occurring in this Court's opinions towards a more State centered approach to habeas jurisprudence. There can be no mistaking the recent holdings of this Court that opine an originalist approach to habeas relief and its availability in the federal courts to state prisoners. Clearly, under principles of federalism and comity a State has a right to repose in its convictions. Adequate and independent State law grounds

should prohibit a state prisoner from petitioning the federal courts for relief.

Inherently though, the State of California has asserted finality in Mr. Harris' case before it even had the evidence of his actual innocence before it. The State actually asserted procedural default as soon as Mr. Harris claimed that his defense attorneys were negligent and ineffective. This was done before Mr. Harris had even been able to access the materials required to be provided to the court under state procedural law.

Because of this less than adequate, independently asserted procedural default, Mr. Harris has been forced to burden the federal courts over matters of which the State was responsible. It is for this reason, Mr. Harris is asking the Court to decide whether he is entitled to, and whether the State is required to, develop the factual basis of constitutional errors amounting to proof of actual innocence in a State court prior to any review in the federal courts of undeveloped claims caused by a State's assertion of finality before it has a right to do so.

A. Proof of Actual Innocence Must Be Considered.

On January 1, 2023, California amended its Penal Code statute related to the prosecution of habeas corpus petitions by state prisoners. Penal Code Section 1473 was amended to allow for the presentation of new evidence that is credible, material, and presented without substantial delay. Along with this new evidence was a statutory description of an aspect of new evidence involving scientific, forensic, or medical evidence that had emerged or had more fully developed than had been introduced at trial and contributed to the conviction, such that it would have more likely than not changed the outcome at trial. (Appendix M).

Mr. Harris is not asking this Court, or any other federal court to enforce State law. Rather, he is pointing out that the State, in failing to comply with clearly established federal laws as determined by this Court, has failed to consider Mr. Harris' proffered proof of his actual innocence. Mr. Harris would ask the Court to consider Penal Code section 1473, subd. (b)(3)(B) and its reference to "evidence that has been discovered after trial." This requirement is inconsistent with the law of the Ninth Circuit which is referred to as the "newly presented evidence rule."

Mr. Harris will illustrate the circuit court split related to "newly presented evidence" and "newly discovered evidence" below, but for the purpose of this section, he will now outline what proof exists of Mr. Harris' actual innocence.

At trial, the issue of physical evidence was hotly contested with the State's expert opining that there were physical injuries consistent with sexual abuse. Mr. Harris' expert testified that there was no physical evidence consistent with the sexual abuses described by the accusers. (See Petition filed under seal, Ninth Circuit Case No. 25-665 [hereinafter "EXHIBIT"] EXHIBIT(s) 1140-1154). Critical to this proof of innocence claim made here is the materiality of the proof itself and not the claim.

Certainly the materiality became self-evident when the jury foreman, who was deputy clerk in the same court as the trial court, spoke to Mr. Harris' defense attorney post-verdict and attempted to explain how there could be both convictions and acquittals in the same case based on the same evidence. This issue was presented to the Ninth Circuit in Mr. Harris' Form 12 application (Appendix G, pp. 045-047 [subsequent pages missing but are in the court of appeals possession]). This issue is also presented in the habeas petition filed under seal, and the exhibits demonstrate the structural defects within the truth-

seeking function of the trial court.

Specifically, Mr. Harris points to Appendix J attached hereto which contains an excerpt from defense counsel's sworn declaration filed in support of the motion for new trial based in part on juror misconduct. In this declaration, writes:

The juror stated that the jury "wasn't going to give the DA the rapes, since they had already given the DA the other felony charges against the Defendant." He also noted that although the jury had specifically requested to look at a DVD of [REDACTED] to ascertain if she had been examined on her side, when no device with which to review the DVD was immediately available, the jury rushed ahead, and disregarded this evidence.

(Appendix J, p. 127).

This statement reflects the statement made by Dr. Gabaeff, a Board certified physician who testified as a medical expert for Mr. Harris at trial. Dr. Gabaeff testified in response to defense counsel's showing of an image on the courtroom projection device, "This is the girl on her side so the pictures are not in the right orientation, because if you look at the video, the pictures are -- it's all sideways." (Appendix J, p. 145:8-10). The materiality evolves from Dr. Gabaeff's letter to whom it may concern, dated April 1, 2023. Dr. Gabaeff wrote this letter in response to Mr. Harris' request to him asking for assistance because of the change in the California habeas corpus law, Penal Code § 1473, and specifically subsections (b)(4) and (b)(4)(A)-(G).

Within this letter Dr. Gabaeff clearly states that there is emergent and more fully evolved evidence related to the physical findings that arguably were not even considered by the jury once the evidence they requested to view was deemed unavailable. (See Appendix J, pp. 109-118). And it is the sworn declaration filed post-verdict by the jury foreman related to the never before seen video DVD, that was presented to all of the courts below with nary one consideration given to it.

In the context of the Ninth Circuit panel's error in denying Mr. Harris' application to present a second habeas petition to the district court, this jury issue is where the materiality is demonstrated. And then there is also the argument Mr. Harris made to the court of appeals about the DVD itself.

I am informed and believe that the whole issue of jury tampering was proven by the jury foreman's own sworn declaration filed in the case. (See EXHIBIT(s) 162-168). But it is his statement that "when the DVD was made available" that really illustrates the tampering. This is because nowhere in the record of the case is there any mention of any interaction between the court and the jurors regarding this supposed availability.

(Appendix G, p. 047).

It wasn't until after the state of California amended Penal Code § 1054.9 to allow for Mr. Harris to obtain postconviction discovery that he discovered the issues presented in the instant petition filed under seal in the court below. This includes locating the only surviving copy of the DVD never before seen by court or jury. Because of this new evidence Mr. Harris asked the trial court to allow him to present the DVD evidence along with testimony from a medical expert in compliance with the newly amended Penal Code § 1473 (b)(4) and (b)(4)(A)-(G). The trial court denied the request (EXHIBIT 117, and EXHIBIT 1248 [Appendix C, p. 017]).

Therefore, Mr. Harris is asking this Court to order a court of proper jurisdiction to consider his proof of actual innocence and permit him to develop the factual basis of his claims so that a determination can be made as to his actual innocence in the case.

B. Proof of Constitutional Deprivations Must Be Considered.

The fundamental requirement of 28 U.S.C. § 2241 is that Mr. Harris must be in custody in violation of the Constitution or laws or treaties of the

United States. Laws of the United States can be clearly established through a determination by this Court. Thus, Mr. Harris is informed and believes that he is entitled to present his claims of constitutional magnitude to a court of proper jurisdiction which is the State court. It is not the duty of the federal courts to develop the factual basis of claims made by state prisoners related to constitutional errors.

When the state of California issued a procedural default order and denied Mr. Harris' claims related to false evidence and prosecutorial misconduct, it is argued here to have acted illegally according to clearly established federal law as determined by this Court. And the clearly established law is that a State may not deprive a person of a protected interest without due process of law. Mr. Harris has a protected liberty interest in a fair trial and when the State fails to correct an abusive governmental power exercised by the executive branch involving prosecutorial misconduct, it is complicit with and condones the abuse.

While it may be argued that the orderly administration of justice requires finality in a State's convictions, the Fourteenth Amendment to the United States Constitution guarantees all of the federal rights clearly determined by the Supreme Court of the United States to a State court defendant. Thus, when the prosecutor in the case elicited false testimony, knowingly, and then failed to correct it, Mr. Harris was deprived of a clearly established right to due process. When the State failed to correct it and asserted In re Clark as adequate and independent State law grounds to bar relief to Mr. Harris' Napue claim, it inherently became complicit with the deprivation. Because of this, an examination of the false evidence is in order to demonstrate the fundamental constitutional error complained of.

As presented to the courts below, the prosecutor in the case conducted an interview unbeknownst to Mr. Harris after the trial had began. Present were the prosecutor, Mr. Harris' defense attorney, and the prosecutor's investigator. The interview was conducted in the DA's conference room. (See Appendix I, p. 103:5-7). During this interview, three of the accuser's friends were questioned about their knowledge of the sexual abuse claims being made against Mr. Harris.

The three friends interviewed are [REDACTED] boyfriend), [REDACTED] boyfriend), and [REDACTED] (a friend of [REDACTED]). In short, during this interview which occurred after [REDACTED] had testified they never told their friends of any sexual abuses prior to their disclosures to the authorities, the friends said they had been told. The friends testified at trial in detail as to the things said below.

[REDACTED] told the interviewers at the November 6, 2009 interview in the DA's conference room that [REDACTED] had told him: "Mike -- Mike -- Mike raped me when I was real young." (Id. at p. 102:1-2). When pressed and asked "what did she say?" [REDACTED] replied "Mike used to rape me when I was real young." (Id. at p. 102:9-11). This is an important statement for two reasons. First, as will be demonstrated, [REDACTED] steadfastly denied this ever happened as [REDACTED] had said. Second, if [REDACTED] had been raped when she was "real young," then the physical findings would be demonstrable in the DVD SART exam at issue between Mr. Harris' expert and the State's.

[REDACTED] told the interviewers on November 6, 2009 that [REDACTED] had told him she had been raped and so had her sister [REDACTED] (See Appendix I, p. 104). Mr. Harris has spent a large part of his habeas petition currently filed under seal in the court of appeals on this issue of the November 6, 2009 interview but it is not necessary to recount all of the interview herein. Instead, the focus will be on the testimony elicited by the prosecutor that

went uncorrected and that was based on the specifics of the interview.

For example, [REDACTED] testified at the preliminary hearing that she had never told any of her friends of sexual abuse. (Appendix I, pp. 094-095). However, at trial, the prosecutor asked the following:

Q. You gave -- you have given statements, both here and to law enforcement, that you hadn't told friends about what Mike had done to you; correct?

A. Correct.

Q. And so is it fair to say that you did not tell the truth about telling your friends about what happened? Is that fair to say?

A. That is.

Q. Why did you not want to tell law enforcement or anybody else that you had disclosed to your friends?

A. Because it was embarrassing, you know, just having my friends know. And I didn't --

Q. What was it about -- when you were asked, did you tell any of your friends, why didn't you want us in law enforcement, in other words, Karen Smart or John Rutkowski, CPS to know that your friends knew?

A. I didn't want them to get involved -- my friends, to get involved in this. I didn't want them to have to be involved in all of this.

Q. Were you trying to protect your friends?

A. Yes.

(Appendix I, pp. 092-093).

Minutes later during the trial, the prosecutor asked [REDACTED] the following:

Q. Who were you hanging out with just before you ran away?

A. [REDACTED] and [REDACTED]

Q. And of those two, who did you tell about any kind of sexual abuse by Mr. Harris?

A. Neither of them at that time, until after I told [REDACTED]

Q. I just want to make sure we're clear. Did you tell any of your friends prior to June 26th of '07 about sexual abuse?

A. No.

Q. After you ran away, who was the first person that you told of

your friends about the sexual abuse?

A. [REDACTED]

(Id. at pp. 096:18 - 097:6).

There can be no mistaking the fact that [REDACTED] had just testified that she did not tell the truth in the previous proceedings when she had testified that she had not told any of her friends and now she has told the prosecutor mere minutes later that she had not told any of her friends prior to her making allegations of sexual abuse to the authorities. This who knew what, and when did they know it aspect of Mr. Harris' claims made in the petition filed under seal are also important to his claims of actual innocence, but they are not necessary to elaborate on at this juncture. But it goes on further, and [REDACTED] and the prosecutor get deeper into clear deception. The prosecutor then asks [REDACTED]

Q. Before [REDACTED] was [REDACTED] the only person you told about being sexually abused by Mike [Mr. Harris] other than the previous statements regarding your mother and sister?

A. No. There was no one else.

(Id. at p. 097:16-19).

This is why Mr. Harris felt it was necessary to raise ineffective assistance of counsel claims previously. On the one hand, counsel should have objected to this blatant misstatement of the evidence. On the other hand, the prosecutor has a duty to correct false evidence and false testimony whether it is intentional or not. The criteria is one of knowledge. Thus, Mr. Harris will now demonstrate the prosecutor's knowledge in order to prove the due process violation caused by prosecutorial misconduct.

After [REDACTED] initially made accusations against Mr. Harris involving allegations she had been sexually abused by him, she was interviewed in a follow-up interview by Detective Rutkowski. This interview was never disclosed in its entirety to Mr. Harris and it was only years later, in postconviction discovery proceedings that a transcript of this interview was provided to him. In this transcript, the following colloquy occurred between Detective

Rutkowski and [REDACTED]

Q. Who -- did you tell about Mike being a pervert or whatever before he was arrested?

A. I think I told [REDACTED]

Q. That's it?

A. I think so.

Q. No friends? Well, who was sending him the email, saying we know who this is, you --

A. Oh. I didn't -- I didn't tell that person that.

Q. Okay. Did you tell anybody?

A. No. I only told Alex [the social worker].

Q. Not even your mother?

A. No. Oh -- oh, I forgot about that. I thought you meant when [inaudible].

Q. Okay. So --

A. Yeah, I didn't --

Q. -- the only person you talked to about what Mike was doing to you was your mother?

A. Mm-hmm.

(Id. at pp. 098-099).

Following this, Detective Rutkowski asked further about [REDACTED] friends having knowledge of her sexual abuse prior to her accusations made to the authorities:

Q. Were you there when Mike got served the Restraining Orders, when you guys were walking on the sidewalk with a bunch of kids?

A. Oh, yeah, that was me.

Q. And -- and he -- okay. So didn't those kids know?

A. Hmm?

Q. Didn't those kids know?

A. No.

Q. You didn't say there's the pervert or --?

A. No.

Q. 'Cause I thought he yelled at you and accosted all you guys.

A. Yeah. He yelled at me, but they -- those boys that were with me, they didn't know anything that happened until like -- the only thing they

knew is he was [inaudible]. But they didn't know he --

Q. Any of the details.

A. Yeah.

(Id. at pp. 100-101).

Important to consider is that both the social worker and the prosecutor were fully aware that [REDACTED] had claimed she called Mr. Harris a child molester in front of all her friends during the encounter described above. During this same post-disclosure interview conducted by Detective Rutkowski in May of 2008, [REDACTED]

[REDACTED] was questioned separately and has been transcribed as follows:

Q. Did you tell anybody during the time you lived with Mr. Harris and your mom and he was fooling around with you guys, who -- did you tell anybody that he was doing anything?

A. My mom.

Q. Just your mom?

A. Yeah.

A bit further along in the interview Detective Rutkowski asked:

Q. After you were separated from Mr. Harris, did you tell -- who did you tell about what he was doing?

A. Nobody. Just Alex.

Q. Just Alex?

A. Yeah.

(Id. at pp. 105-106).

Mr. Harris contends through the presentation of these statements that it was readily apparent that more investigation needed to be conducted and yet Detective Rutkowski was prevented from conducting any investigation by the prosecutor himself. This aspect of the due process violation is detailed within the proposed habeas petition filed under seal in the court of appeals. As for the due process violation itself, the prosecutor, knowing full-well after the interviews with "those boys", conducted after the trial had begun, and [REDACTED] and [REDACTED] had reiterated their interview statements that they had never disclosed

sexual abuse to any of their friends during their testimony on direct examination, he then argued to the jury that there had been disclosures made to their friends.

In the beginning of the prosecutor's closing argument he began by stating: "Let's do a People's case overview ... We have the twins emotional disclosures to friends before the runaway by [REDACTED]" The prosecutor had examined [REDACTED] in front of the jury he was arguing to and elicited her testimony that she had not told her friends until after she ran away and told Alex Ellis first, before anyone else. The prosecutor also argued: "Look at the prior disclosures to friends. Now, with regard to [REDACTED] possibly [REDACTED] we have disclosures essentially about being raped and molested by Mike for a year maybe more prior to [REDACTED] running away. The girls were consistent that they -- or these witnesses were consistent that the girls said they were told not to tell anybody. (Id. at p. 089:5-10). Mr. Harris presented this very argument to the State court as detailed in his arguments contained in EXHIBIT(s) 1212-1224 [Cf. Appendix I, pp. 076-088]).

The implication of these contradictory statements and arguments is not only that false evidence was presented to the jury that could have affected the verdicts in the case, but that when Mr. Harris presented this evidence to the State court, it was newly presented evidence irrespective of its date of discovery. And while the discovery was in fact made by Mr. Harris years after his initial habeas efforts in this court, the procedural default used by the State in this instance was In re Clark, 5 Cal. 4th 750, 767-769, 797. This case is out of step with federal law, especially under the Ninth Circuit's decision in Griffin v. Johnson, 350 F.3d 956 which discusses the difference between newly presented evidence and newly discovered evidence.

In the case of In re Clark and under Penal Code section 1473, the State courts have relied on adequate and independent state-law grounds that are in

conflict and inconsistent with the newly presented evidence rule founded by the Ninth Circuit in Griffin v. Johnson.

For this reason, Mr. Harris has raised the specific question regarding the problem of "New" evidence in the context of the circuit split between the requirement that new evidence be "newly discovered" or whether it is required to only be "newly presented" as is the law of the Ninth Circuit. There currently is no definition from this court which can be relied upon as clearly established federal law and thus in the absence of definition by this Court, Mr. Harris contends he is entitled to present his, newly presented evidence to a court of proper jurisdiction in order to develop the factual basis of his claims of Actual Innocence - Miscarriage of Justice, and False Evidence - Prosecutorial Misconduct as alleged and demonstrated in his habeas petition currently filed under seal in the Ninth Circuit Court of Appeals, Case No. 25-665.

IV. MR. HARRIS' SECOND PETITION MEETS THE REQUIREMENTS OF 28 U.S.C. § 2254

A. Mr. Harris is Entitled to an Evidentiary Hearing.

If this Court transfers Mr. Harris' habeas petition currently filed under seal in the Ninth Circuit pursuant to Circuit Rule 27-13 in Case No. 25-665, Mr. Harris would be entitled to an evidentiary hearing pursuant to 28 U.S.C. § 2254(e)(2). Subject to the holdings of this Court and the requirements of § 2254, a federal evidentiary hearing is required "unless the state-court trier of fact has after a full hearing reliably found the relevant facts." (See Townsend v. Sain, 372 U.S. 293, 313 (1963); accord Cullen v. Pinholster, 563 U.S. 170, 186; Shinn v. Ramirez, 596 U.S. 366, 378).

B. Mr. Harris is Entitled to Develop The Factual Basis of His Claim in the State Court.

Mr. Harris is informed and believes that because the State is responsible for the errors alleged within his instant habeas petition, and because the State has hindered Mr. Harris' ability to fully and fairly develop the factual basis of his claims of actual innocence combined with his claim of fundamental constitutional error, he is entitled to an order remanding his case back to the State court so that he may be afforded an opportunity to be heard and to present his newly obtained evidence pursuant to this Court's opinion and dissenting opinions in Glossip v. Oklahoma. Mr. Harris is also informed and believes the State should be ordered to allow for newly presented evidence to be considered consistent with the Ninth Circuit's adoption of the "newly presented evidence rule" and thus disprove In re Clark to the extent it requires newly discovered evidence.

PRAYER FOR RELIEF

WHEREFORE, Mr. Harris prays judgment:

1. That his habeas petition currently filed under seal in the Ninth Circuit Court of Appeals in Case No. 25-665 be unsealed and transferred to the State trial court for an evidentiary hearing and determination of this federal claims of actual innocence and due process error; or
2. That his habeas petition currently filed under seal in the Ninth Circuit Court of Appeals in Case No. 25-665 be unsealed and transferred to the United States District Court for the Eastern District of California for

an evidentiary hearing and determination of his federal claims of actual innocence and due process error; and

3. That this Court order any other and such further relief as it deems just and proper.

Dated: July 16, 2025

Respectfully Submitted,



Michael Jay Harris CDCR# AD0793
Salinas Valley State Prison A1-148
PO BOX 1050
Soledad, California 93960

Petitioner Pro se

VERIFICATION

I, Michael Jay Harris, do hereby declare the foregoing to be true and correct under penalty of perjury under the laws of the United States. As to those things I have stated based upon belief, I believe them to be true. I have executed this verification this sixteenth day of July, 2025 at Salinas Valley State Prison in Soledad, Monterey County, California.



Michael Jay Harris