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No. _____

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IN THE

SUPREME COURT OF THE UNITED STATES

JUANITO MARSHALL – PETITIONER

vs.

WARDEN ROCHELLE MOORE – RESPONDENT

ON PETITION FOR WRIT OF CERTIORARI TO

THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Juanito Marshall A771-890
Pickaway Correctional Institution
11781 State Route 762
Orient, Ohio 43146

QUESTIONS PRESENTED

1. Whether a federal court violates the “party presentation principle” and exceeds its authority under *United States v. Sineneng-Smith*, 140 S. Ct. 1575 (2020), and *Wood v. Milyard*, 566 U.S. 463 (2012), by sua sponte invoking a procedural default defense that the State expressly waived by twice electing to litigate the merits of the petition in its responsive pleadings.

2. Whether a pro se habeas petitioner satisfies the “fair presentation” requirement under *Picard v. Connor*, 404 U.S. 270 (1971), and *Baldwin v. Reese*, 541 U.S. 27 (2004), by providing the “substantial equivalent” of a federal claim through reliance on state precedents that apply federal constitutional standards – specifically where the petitioner satisfies the multi-factor test established by the circuit court of appeals to guide such exhaustion.

3. Whether a federal court’s refusal to reach the merits of a habeas petition – despite a state-court error so “egregious” and “lacking in justification” that it defies fair-minded disagreement – constitutes a failure to prevent a manifest miscarriage of justice under *Harrington v. Richter*, 562 U.S. 86 (2011).

4. Whether a state court’s harmless-error determination is “unreasonable” under 28 U.S.C. § 2254(d)(1) and (d)(2) when the court (a) fails to conduct the mandatory “impact on the jury” analysis required by *Chapman v. California*, 386 U.S. 18 (1967), and (b) bases its “overwhelming evidence” finding on a factual record of conflicting and inconsistent testimony that was bolstered by the unconstitutional admission of “other acts” evidence.

LIST OF PARTIES

WARDEN ROCHELLE MOORE

RELATED CASES

State of Ohio v. Juanito Marshall, No. 109633, Eighth District Court of Appeals of Ohio – Direct Appeal Brief of Appellant filed August 26, 2020.

State of Ohio v. Juanito Marshall, No. 109633, Eighth District Court of Appeals of Ohio – Reply Brief of Appellant filed October 20, 2020.

State of Ohio v. Juanito Marshall, No. 109633, Eighth District Court of Appeals of Ohio – Decision and Opinion filed December 16, 2021.

State of Ohio v. Juanito Marshall, No. 109633, Eighth District Court of Appeals of Ohio – Motion for Reconsideration filed December 27, 2021.

State of Ohio v. Juanito Marshall, No. 109633, Eighth District Court of Appeals of Ohio – Reply Brief in Support of Motion for Reconsideration filed February 1, 2022.

State of Ohio v. Juanito Marshall, No. 109633, Eighth District Court of Appeals of Ohio – Journal Entry (Reconsideration) filed February 3, 2022.

State of Ohio v. Juanito Marshall, No. 2022-0294, Supreme Court of Ohio – Memorandum in Support of Jurisdiction filed March 21, 2022.

State of Ohio v. Juanito Marshall, No. 2022-0294, Supreme Court of Ohio – Decision accepting appeal and holding for decision in No. 2022-0099 filed June 7, 2022.

State of Ohio v. Juanito Marshall, No. 2022-0294, Supreme Court of Ohio – Entry dismissing appeal as having been improvidently accepted filed March 30, 2023.

State of Ohio v. Juanito Marshall, No. 2022-0294, Supreme Court of Ohio – Motion for Reconsideration filed April 10, 2023.

State of Ohio v. Juanito Marshall, No. 2022-0294, Supreme Court of Ohio – Entry Denying Motion for Reconsideration filed June 6, 2023.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Federal Habeas Corpus Petition filed December 20, 2023.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Respondent’s Return of Writ filed April 9, 2024.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Petitioner’s Reply Memorandum filed June 11, 2024.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Petitioner’s Amended Reply Memorandum filed June 25, 2024.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Respondent’s Sur Reply filed June 27, 2024.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Petitioner’s Sur Reply filed July 8, 2024.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Report and Recommendation filed December 16, 2024.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Objections to Report and Recommendation filed January 13, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Respondent’s Opposition to Objections to Report and Recommendations filed January 27, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Motion to Amend Objections filed February 4, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Order Granting Motion to Amend Objections, Adopting the R&R in its entirety, Dismissing the Petition and Declining to Issue a Certificate of Appealability filed February 11, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Petitioner’s Motion to Amend or Alter Judgment Pursuant to Fed. Rules of Civil Procedure 59(e) filed February 24, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 1:24-cv-00012, U.S. District Court for the Northern District of Ohio, Eastern Division – Entry Denying Motion to Amend or Alter Judgment filed March 14, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 25-3232, United States Court of Appeals for the Sixth Circuit – Petitioner’s Request for a Certificate of Appealability filed April 2, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 25-3232, United States Court of Appeals for the Sixth Circuit – Order/Judgment Denying application for a certificate of appealability, motion to proceed in forma pauperis and motion for appointment of counsel filed August 20, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 25-3232, United States Court of Appeals for the Sixth Circuit – Petition for Panel Rehearing Pursuant to Federal Rule of Appellate Procedure 40 filed September 5, 2025.

Juanito Marshall v. Warden Rochelle Moore, No. 25-3232, United States Court of Appeals for the Sixth Circuit – Order Denying Panel Rehearing filed November 6, 2025.

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issues to review the judgments below.

OPINIONS BELOW

The United States Court of Appeals for the Sixth Circuit's Order denying panel rehearing appears at Appendix A. The United States Court of Appeals for the Sixth Circuit's Order affirming the United States District Court of Ohio's judgment appears at Appendix B. The United States District Court for the Northern District of Ohio's order dismissing the habeas petition and declining to issue a certificate of appealability appears at Appendix C. The United States District Court for the Northern District of Ohio's report and recommendation appears at Appendix D.

JURISDICTION

The United States Court of Appeals for the Sixth Circuit issued its Order denying rehearing on November 6, 2025. A copy of that decision appears at Appendix A. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution, in pertinent parts, provides:

“No State shall * * * deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protections of the law.”

28 U.S.C. § 2254(b) provides, in relevant parts: “(1) 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 unless it appears that: (A) the applicant has exhausted the remedies available in the courts of the State;

“ . . . ;

“(3) A State shall not be deemed to have waived the exhaustion requirement or be estopped from reliance upon the requirement unless the State, through counsel, expressly waives the requirement.”

28 U.S.C. 2254(d) sets forth that: “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

On March 4, 2019, Petitioner Juanito Marshall was indicted by a Cuyahoga County, Ohio Grand Jury charging rape, kidnapping and child endangering involving a person under thirteen.

The indictment alleged that the ten charged offenses occurred during a time frame of June 1 through 30, 2009 and June 1 through July 31 2009. The complainant lodged the allegations during a heated argument with her mother on November 8, 2018 and provided that it occurred when she was seven and they were living in the house with Petitioner and four other individuals.

At the time of the alleged occurrences, Petitioner was engaged to and living with the complainant's aunt Tia Taylor. The prosecution filed a notice of intent to use 404(B) evidence informing defense counsel that it sought to use testimony from Ms. Taylor pertaining to sexual activity she experienced with Petitioner.

On February 10, 2020, through counsel Petitioner filed a motion *in limine* to exclude any evidence relating to specific instances of his sexual activity, as well as opinion and reputation testimony of his sexual activity, involving Ms. Taylor. On February 12, 2020, the State opposed.

On February 13, 2020, the trial court denied the motion *in limine*, finding that the other-act evidence was relevant, was allowed to show activity in conformity and for legitimate purpose, and the probative value of the other-acts evidence was substantially outweighed by the danger of unfair prejudice. (Doc. 16, PAGEID #: 1539).

At trial, the State's case rested almost exclusively on the testimony of the complainant who appeared first for the prosecution. Now eighteen, she provided that on one of the alleged encounters Petitioner "stuck his finger, his thumb in my butthole" over her underwear. (Doc. No. 7-4, PAGEID #: 876-877).

During her testimony, in pertinent part and defense counsel's overruled objection, Ms. Taylor provided that the detective revealing some of the details from complainant was "specially striking" to her. The striking detail "was him putting his finger in her rectum, his thumb in her

rectum.” She added that “[i]t’s what I experienced when I first began sexual relations with Mr. Marshall.” (Doc. NO. 7-5, PAGEID #: 1134-1135).

During closing arguments, furthering to bolster the complainant’s testimony, the prosecutor twice leveraged the “other acts” testimony to bridge gaps in the complainant’s inconsistent narrative, urging the jury to use the prior acts to credit the current allegations. Especially without a limiting instruction.

The prosecutor stated:

“When she tells her mother and when she tells the detective what happened, she makes a curiously specific allegation about something that Mr. Marshall did to her that he also did to Tia. How would she have had any idea what Mr. Marshall’s sexual proclivities are? How would she have known the possible significance of him wanting to put his thumb into her anus? These are the sorts of things when you’re evaluating witness credibility that I encourage you to focus on.” (Doc. No. 7-5, PAGEID #: 1326-1327).

“She told you Juanito took this thumb and put it inside her anus. This isn’t corroborated by Tia in the sense that she witnessed it. It’s corroborated in the sense that we know that it is a sexual fetish the Defendant has because he did the same thing to Tia.” (Doc. No. 7-5, PAGEID #: 1353-1354).

On direct appeal, the Eighth District Court of Appeals of Ohio held that “the state’s introduction of other acts to demonstrate modus operandi was a **subterfuge** in order to introduce otherwise prohibited behavioral evidence and must be rejected.” (Doc. No. 7-1, PAGEID #: 179).

Despite finding the constitutional error, the court affirmed the conviction. In its harmless-error analysis, the court focused solely on the “overwhelming” nature of the remaining evidence and entirely omitted the “impact on the jury” prong required by *Chapman v. California*, 386 U.S. 18 (1967).

Petitioner, through counsel, timely filed a Motion for Reconsideration in the appellate court and a Memorandum in Support of Jurisdiction to the Supreme Court of Ohio. In these filings,

Petitioner argued that the appellate court's failure to conduct the *Chapman* impact analysis violated his federal due process rights and a constitutionally fair trial.

Petitioner specifically relied on state precedents, such as *State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052, *State v. Ferguson*, 5 Ohio St.3d 160, 166 n. 5, 40 N.E.2d 265 (1983) and *State v. DeMarco*, 31 Ohio St.3d 191, 195, 509 N.E.2d 1256 (1987), which explicitly incorporate and apply the federal *Chapman* standard. (Doc. No. 7-1, PAGEID #: 189-197; 210-217; 269-285).

The state appellate court denied reconsideration relief (Doc. No. 7-1, PAGEID #: 218) and the Supreme Court of Ohio declined jurisdiction on March 30, 2023.

On December 20, 2023, Petitioner filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254 raising three claims for relief (ECF Doc. NO. 1). The State filed a Return of Writ on April 9, 2024 (ECF Doc NO. 7). Petitioner filed a Reply (Traverse) on June 11, 2024 and an amended Traverse on June 25, 2024 (ECF Doc. No. 11 & 12). The State filed a Sur-Reply on June 27, 2024 (ECF Doc. No. 13). Petitioner filed a Sur-Reply on July 8, 2024 (ECF Doc. NO. 14).

In both pleadings, the State bypassed any procedural default defenses and elected to litigate the merits of the *Chapman* error.

On December 16, 2024, the Magistrate Judge issued a Report and Recommendation. Despite the State's express waiver of procedural defenses by twice briefing the merits, the Magistrate Judge sua sponte invoked procedural default to recommend dismissal. The Magistrate Judge further concluded that Petitioner had not "fairly presented" his federal claims to the state courts, notwithstanding Petitioner's reliance on state cases employing federal constitutional standards and alleging facts well within the mainstream of constitutional law. (Doc. No. 16, PAGEID #: 1533-1561).

Petitioner timely filed Objections. (Doc. No. 19). Petitioner objected to the Magistrate Judge's determination that "Marshall's claims brought in state court reveals that he did not fairly present those claims in a manner sufficient to meet the fair presentation requirement."

And further objects to the Magistrate Judge's determination that Petitioner "does not raise these claims on the basis of federal constitutional error. Rather, his claims are based in evidentiary issues and supported by Ohio law." (Doc. No. 16, PAGEID #: 1553-1554).

Petitioner presented that his claim was not attacking the admission of 404(B) evidence but rather the state appellate court's harmless-error determination. Specifically, in his Motion for Reconsideration and subsequent Memorandum in Support of Jurisdiction, Petitioner argued that the appellate court failed to assess the impact of the erroneously admitted 404(B) evidence on the jury's verdict determination in violation of *Chapman v. California*.

In doing such, Petitioner supported his argument by citing state cases that incorporate the *Chapman* criteria in Ohio's harmless-error analysis, i.e., *State v. Morris*, 2014-Ohio-5052, P33.

In the supporting facts to Ground Two of the habeas corpus petition, Petitioner clearly provides that "[t]he court of appeals did not reasonabl[y] apply *Chapman v. California* by failing to fully assess what impact this erroneously admitted 404(b) evidence possibly had on the verdict." (Doc. No. 16, PAGEID #: 1544).

Petitioner's objection set forth that the Magistrate Judge's procedural default determination that the state court briefing "was not enough to put the state court on notice of alleged constitutional error" and Petitioner's citation of *Morris* (which cites to *Chapman*) alone is not sufficient to permit fair presentation was incorrect, when considering the second and fourth prongs established in *McMeans v. Brigano*, 228 F.3d 674, 681 (6th Cir. 2000) for demonstrating fair presentation. This

objection cites to *Blazer v. Brunsman*, 2013 U.S. Dist. LEXIS 186579, *16-*17 (N.D. Ohio) to support Petitioner's opposing argument. (Doc. No. 19).

On February 11, 2025, the District Court Judge issued an Order concluding that *Morris* cites *Chapman* only in passing and is "insufficient to place the state court on notice of a federal constitutional claim," adopting the R&R in its entirety, dismissing the petition, and certifying that an appeal from this decision could not be taken in good faith, and that there is no basis upon which to issue a certificate of appealability. (Doc. No. 23, PAGEID #: 1622-1623).

On February 24, 2025, Petitioner filed a Motion to Amend or Alter Judgement Pursuant to Fed. Rules of Civil Procedure 59(e). Petitioner argued that the District Judge's determination of *Morris* citing *Chapman* only in passing belies the Supreme Court of Ohio's three-prong analysis established in *Morris* that also cites two other Supreme Court cases, as follows:

First, there must be prejudice to the defendant as a result of the admission of the improper evidence at trial.

Second, an appellate court must declare a belief that the error was not harmless beyond a reasonable doubt. *Chapman v. California; Harrington v. California*, 395 U.S. 250, 89 S. Ct. 1726, 23 L. Ed. 2d 284 (1969).

("Error in the admission of other act testimony is harmless when there's no reasonable possibility that the testimony contributed to the accused's conviction.") *Strodes v. Ohio*, 438 U.S. 920, 98 S. Ct. 3135, 57 L. Ed. 2d 1154 (1978).

Third, in determining whether a new trial is required or the error is harmless beyond a reasonable doubt, the court must excise the improper evidence from the record and then look to the remaining evidence.

“Therefore, we hold that in determining whether to grant a new trial as a result of the erroneous admission of evidence under Evid. R. 404(B), an appellate court must consider **both** the impact of the offending evidence on the verdict and the strength of the remaining evidence after the tainted evidence is removed from the record.” *Morris* at P27-P29, P33. (Doc. No. 25).

Following the State’s opposition to Petitioner’s Rule 59(e) motion (Doc. No. 26), on March 14, 2025, the District Court issued a one sentence Order denying the motion, providing that: “Marshall has shown no error in the Court’s resolution of his objections.” (Doc. No. 27).

On April 2, 2025, Petitioner filed a Request for a Certificate of Appealability in the United States Court of Appeals for the Sixth Circuit.

On August 20, 2025, the United States Court of Appeals for the Sixth Circuit issued an Order denying Petitioner’s application for a COA, concluding that “reasonable jurists would agree that the Ohio Supreme Court’s incorporation of federal case law into the fashioning of its harmless-error standard for Rule 404(B) violations is insufficient to fairly present the underlying fair-trial claim in state court. To do that, he needed to fairly present the federal basis for the fair-trial claim, which he did not do.” (Appendix B).

Petitioner timely filed for Panel Rehearing Pursuant to Federal Rule of Appellate Procedure 40 in the United States Court of Appeals for the Sixth Circuit on September 5, 2025.

On November 6 2025, the United States Court of Appeals for the Sixth Circuit issued and Order denying Petitioner’s request for panel rehearing, concluding that the court did not overlook or misapprehend any point of law or fact in denying Petitioner’s motion for a certificate of appealability.

Petitioner’s reasons for being granted certiorari relief are presented below.

REASONS FOR GRANTING THE PETITION

I. THE MAGISTRATE JUDGE'S SUA SPONTE INVOCATION OF A WAIVED PROCEDURAL DEFENSE PRESENTS AN IMPORTANT QUESTION OF FEDERAL LAW THAT CONFLICTS WITH DECISIONS OF THIS COURT AND THE NINTH CIRCUIT.

A. The Magistrate Judge's action violated the Party Presentation Principle. The "party presentation principle" is fundamental to our adversarial system. *United States v. Sineneng-Smith*, 140 S. Ct. 1575, 1579 (2020). As this Court has held, "in our adversarial system, we rely on the parties to frame the issues for decision." *Id.* By searching the record to revive a procedural bar that the State chose to bypass, the Magistrate Judge abandoned the role of neutral arbiter and assumed the role of an advocate for the State.

B. The decision conflicts with *Wood v. Milyard* regarding the distinction between forfeiture and express waiver. Under *Wood v. Milyard*, 566 U.S. 463 (2012), while a court may occasionally notice a forfeited defense, it lacks the authority to resurrect a defense that the State has deliberately waived. In this case, the State's conduct constitutes an express waiver.

The State filed a Return of Writ and a Sur-reply, both of which addressed the merits via the *Chapman v. California*, 386 U.S. 18 (1967) harmless-error test and cited relevant state precedents like *State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052 and *State v. Crawford*, 32 Ohio St.2d 254, 255, 291 N.E.2d 450 (1972), (Doc7 Pg. Id 45), (Doc 13 Pg. Id1515). By doing so, the State signaled a calculated choice to litigate the merits – a choice the Magistrate Judge was not at liberty to override.

C. The Magistrate Judge's intervention deepens an existing Circuit Split with the Ninth Circuit. The Ninth Circuit has established a clear boundary against such judicial overreach. In *Vang v. Nevada*, 329 F.3d 1069, 1073 (9th Cir. 2003), the court held it is "inappropriate" for a federal court to raise procedural default sua sponte after the State has already filed a responsive

pleading and addressed the merits. The Magistrate Judge's decision here creates a direct conflict with *Vang*, resulting in the unequal administration of habeas corpus relief across different jurisdictions.

D. This case is an ideal vehicle to clarify the limits of judicial discretion in the wake of *Sineneng-Smith*. This petition offers the Court a clean opportunity to clarify that the party presentation principle applies with full force to habeas proceedings. Because the State's waiver was clear and documented across multiple merits-based filings, the record is free of the factual "muddying" that often prevents this Court from reaching the core legal question of judicial neutrality.

When a court "sallies forth" to develop arguments for the government, it undermines the integrity of the judicial process.

II. THE DECISION BELOW CONFLICTS WITH THIS COURT'S "FAIR PRESENTATION" JURISPRUDENCE AND CREATES INCONSISTENCY IN THE APPLICATION OF EXHAUSTION STANDARDS.

A. Petitioner satisfied the "Substantial Equivalent" test by meeting the criteria established in *McMeans v. Brigano*. This Court has held that a habeas petitioner satisfies the exhaustion requirement by providing state courts a "fair opportunity" to apply controlling legal principles to the facts of the case. *Picard v. Connor*, 404 U.S. 270 (1971). In the Sixth Circuit, *McMeans v. Brigano*, 228 F.3d 674 (6th Cir. 2000), provides a specific four-factor roadmap for petitioners to achieve this "fair presentation."

Under *McMeans*, a petitioner satisfies exhaustion by doing **one** of the following: (1) reliance upon federal cases employing constitutional analysis; (2) *reliance upon state cases employing federal constitutional analysis*; (3) phrasing the claim in terms of constitution law or in

terms sufficiently particular to allege a denial of a specific constitutional right; or (4) *alleging facts well within the mainstream of constitutional law. Id. at 681.*

Petitioner strictly followed this roadmap. By citing *State v. Ferguson*, 5 Ohio St.3d 160, 166 n. 5, 40 N.E.2d 265 (1983), *State v. Morris*, 141 Ohio St.3d 399, 2014-Ohio-5052, and *State v. DeMarco*, 31 Ohio St.3d 191, 195, 509 N.E.2d 1256 (1987) in his state-court motion for reconsideration, memorandum in support of jurisdiction and backed those citations by alleging facts well within the mainstream of constitutional law. Petitioner relied on state cases that expressly apply the federal *Chapman* harmless-error standard. Because these state cases are the “substantial equivalent” of federal constitutional analysis, Petitioner satisfied the second and fourth factor of *McMeans*. The Magistrate Judge’s refusal to recognize the presentation creates a standard of “hyper-exhaustion” that conflicts with *Baldwin v. Reese*, 541 U.S. 27 (2004).

B. The Magistrate Judge ignored “mainstream constitutional facts” that signaled a *Due Process* violation under the fourth *McMeans* factor. Even absent a direct citation to a federal case, a claim is fairly presented if the factual allegations are “well within the mainstream of constitutional litigation.” *McMeans*, 228 F.3d at 681. Petitioner’s state-court filings alleged that the appellate court skipped the mandatory *Chapman* impact analysis, allowed the State to use “other acts” evidence to bolster witness credibility in closing arguments, not providing a limiting instruction and shifted the burden of proving harmlessness to the defendant. (Doc 7-1Pg.Id 189-198,210-217,269-286)

These are not mere state-law evidentiary errors; they are foundational *Due Process* violations. By failing to acknowledge these “mainstream” constitutional facts, the Magistrate Judge disregarded the very factors the Sixth Circuit instructs petitioners to follow, creating an unpredictable and arbitrary barrier to federal review.

C. The court's failure to liberally construe the petition violates the mandate of *Haines v. Kerner*. Under *Haines v. Kerner*, 404 U.S. 519 (1972), pro se pleadings must be held to "less stringent standards" than those drafted by lawyers. The Magistrate Judge's sua sponte dismissal for procedural default failed to afford Petitioner the benefit of this liberal construction.

If a pro se petitioner identifies the specific state cases that use federal standards and allege facts well within the mainstream of constitutional law (as requested by *McMeans*), the court has a duty to connect those dots to the relevant constitutional right. To hold otherwise allows the district courts to "trap" pro se litigants who have followed the Circuit's own instructions on how to exhaust their claims. Certiorari is necessary to ensure that when a Circuit court establishes a test for fair presentation, it is bound to apply that test consistently and fairly. (See Appendix e)

III. THE COURT SHOULD GRANT THE WRIT TO CORRECT AN EGREGIOUS ERROR THAT UNDERMINES THE INTEGRITY OF HABEAS REVIEW.

A. The state court's failure to apply the *Chapman* impact test is an error beyond the possibility of fair-minded disagreement. Under *Harrington v. Richter*, 562 U.S. 86, 101 (2011), habeas relief is warranted when a state court decision is so lacking in justification that there was an "error well understood and comprehended in existing law beyond any possibility for fairminded disagreement."

In this case, *State v. Marshall*, 2021-Ohio-4434, at ¶ 58, the state appellate court acknowledged the admission of prejudicial "other acts" evidence as "a subterfuge in order to introduce otherwise prohibited behavioral evidence and must be rejected" but "skipped" the mandatory second step of the *Chapman* analysis: determining whether that evidence contributed to the verdict.

"But instead of determining how the inadmissible evidence might have impacted the jury, the state appellate court pretends it never happened: it simply excises that testimony and considers

only the remaining evidence. The state appellate court never engages in the analysis required by *DeMarco*, 31 Ohio St.3d 191 at 195: to ascertain that there is no reasonable possibility that the evidence may have contributed to the accused's conviction. The omission of this step is critical. It is not enough that a court determines that there is overwhelming evidence to support a verdict". (Doc 7-1Pg.Id 195)

By failing to consider the impact of the evidence – especially when the State used that evidence twice in closing arguments to bolster a witness's credibility, establish a link to the crime charged and did not provide a limiting instruction – the state court's decision became "fatally flawed." (Doc. No. 7-1, Pg.ID #: 195-197,214-217)

For a federal court to ignore such a clear constitutional bypass on procedural grounds is a departure from the "essential protection" habeas corpus is meant to provide.

B. Procedural default must yield to the prevention of a manifest miscarriage of justice. The Supreme Court has long maintained that procedural rules should not be applied "mechanistically" to defeat the ends of justice. When a petitioner demonstrates that a state court ignored federal constitutional mandates (like the *Chapman* standard), and the federal court subsequently uses sua sponte procedural bars to avoid correcting that error, the purpose of the writ is subverted.

Granting certiorari is necessary to clarify that the "fair-minded disagreement" standard of *Richter* serves as a backstop against the rigid application of procedural defaults in the face of egregious constitutional error.

IV. THE STATE COURT DECISION INVOLVED AN UNREASONABLE APPLICATION OF CLEARLY ESTABLISHED FEDERAL LAW AND AN UNREASONABLE DETERMINATION OF THE FACTS.

A. The state court decision was "contrary to" *Chapman v. California* under § 2254(d)(1) by omitting the "impact" analysis. Clearly established federal law requires that before a federal

constitutional error can be held harmless, the court must be able to declare a belief that it was harmless “beyond a reasonable doubt.” *Chapman*, 386 U.S. at 24 (1967). This requires an inquiry into whether there is a “reasonable possibility that the evidence complained of might have contributed to the conviction.” *Id.*

In this case, the state court acknowledged the error but performed a “fatally flawed” analysis. By focusing solely on the sufficiency of the remaining evidence and “skipping” the mandatory step of evaluating the impact of the inadmissible evidence on the jury, (Doc 7-1Pg.Id 189-197,212-217,269-286) the state court’s decision was “contrary to” the methodology mandated by *Chapman*.

Under § 2254(d)(1), habeas relief is necessary because the state court applied a standard that is inconsistent with this Court’s precedents.

B. The state court’s finding of “overwhelming evidence” was an unreasonable determination of the facts under § 2254(d)(2). Under § 2254(d)(2), a state court decision is not entitled to deference if it is based on an “unreasonable determination of the facts in light of the evidence presented.” Here, the state court justified the admission of prejudicial “other acts” evidence by claiming the remaining evidence of guilt was “overwhelming.”

However, the record demonstrates that the State’s case rested on inconsistent and conflicting statements. The evidence was only made to appear “overwhelming” because the State was permitted to use the “other acts” evidence twice in closing arguments to bridge the gaps in its inconsistent testimony and provide a “link” to the crime charged. A factual finding of “overwhelming evidence” that ignores the internal contradictions of the testimony and the bolstering effect of the error is an unreasonable determination of the facts.

C. This case presents a “Vehicle” to clarify the *Richter* standard in the context of “skipped” constitutional steps. While *Harrington v. Richter* requires deference to state court summaries, it does not permit a state court to bypass the core components of a constitutional test.

Certiorari is warranted to clarify that when a state court explicitly identified the *Chapman* standard but fails to apply its “impact” prong, the resulting decision is an “unreasonable application” that warrants federal intervention.

CONCLUSION

The petition for a writ of certiorari should be granted. This case represents a profound breakdown in the adversarial process. By sua sponte reviving a procedural defense that the State had twice expressly waived, the Magistrate Judge abandoned the role of neutral arbiter and acted as an advocate for the government. Such a departure from the “party presentation principle” violates the clear mandates of this Court in *Sineneng-Smith* and *Wood v. Milyard*.

Furthermore, the dismissal on procedural grounds served to insulate an “unreasonable” and “fatally flawed” state court decision from federal review. Petitioner followed the roadmap for exhaustion provided by the Sixth Circuit and this Court, yet he was met with a “procedural trap” that ignored the substance of his constitutional claims.

The state court’s failure to perform the mandatory “impact” analysis under *Chapman* – combined with an unreasonable factual determination of “overwhelming evidence” based on inconsistent testimony – resulted in a manifest miscarriage of justice. If the “Great Writ” is to remain an effective safeguard against constitutional error and extreme malfunctions, federal courts must not be permitted to “sally forth” and build procedural walls that the State itself chose to tear down.

For these reasons, the Court should grant the writ to resolve the circuit conflict, uphold the party presentation principle, fair presentation requirement and ensure that the merits of Petitioner's constitutional claims are finally addressed.

Respectfully submitted,



JUANITO MARSHALL A771-890
Pickaway Correctional Institution
11781 State Route 762
Orient, Ohio 43146

Petitioner, *pro se*

CERTIFICATE OF COMPLIANCE

No.

JUANITO MARSHALL,

Petitioner,

vs.

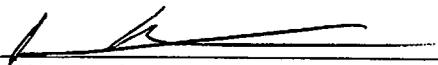
WARDEN ROCHELLE MOORE,

Respondent.

As required by Supreme Court Rule 33.2, I certify that the petition for writ of certiorari contains only 16 pages and limited to 4,500 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 22, 2026.



JUANITO MARSHALL A771-890
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Petitioner, *pro se*

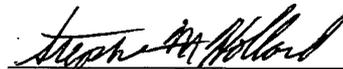
PETITIONER'S 28 U.S.C. § 1746 DECLARATION

I declare under the penalty of perjury that the foregoing petition for writ of certiorari was deposited in the prison legal mail system of Pickaway Correctional Institution, first-class postage prepaid, on January ___, 2026.


JUANITO MARSHALL A771-890

Petitioner, *pro se*

Sworn to, or affirmed, and subscribed in my presence, a Notary Public for the State of Ohio, Pickaway County, this 22 day of January 2026.


Notary Public

My Commission Expires: December 13, 2027



STEPHEN M HOLLAND
Notary Public
State of Ohio
My Comm. Expires
December 13, 2027