

No. **26 - 5625** **ORIGINAL**

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IN THE  
**Supreme Court of the United States**

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Supreme Court, U.S.  
FILED  
**AUG 24 2026**  
OFFICE OF THE CLERK

NICHOLAS JOSEPH AURELIO;  
*Petitioner,*

vs.

COLORADO,  
*Respondent.*

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ON PETITION FOR WRIT OF CERTIORARI TO THE  
COLORADO COURT OF APPEALS

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**PETITION FOR A WRIT OF CERTIORARI**

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\*\*\*\**Proceeding Pro se*\*\*\*\*

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## QUESTIONS PRESENTED

This petition presents the following questions:

1. Whether the Sixth Amendment and clearly established federal law, as determined by this Court, forbids attorneys, during plea negotiations, from misleading and lying to their client about their chances at trial, while simultaneously concealing the true terms and conditions of a favorable plea offer, so their client will reject that favorable plea offer and proceed to trial—all for financial gain?
2. Whether it is a violation of *Evitts v. Lucey*, 469 U.S. 387 (1985), the Fourteenth Amendment, or clearly established federal law, as determined by this Court—for a lower Court, during a postconviction evidentiary hearing, to ignore material evidence, release material witnesses, refuse to afford a *pro se* defendant an adequate opportunity to present his claims fairly to establish IAC during plea negotiations, in a state postconviction proceeding—after the Court forced that defendant to proceed *pro se*, without appointing conflict-free postconviction counsel?

## **PARTIES TO PROCEEDINGS**

There are no parties to the proceedings other than those listed in the caption. Petitioner, the defendant below, is Nicholas Joseph Aurelio. The Respondent, the plaintiff, is the People of the State of Colorado.

## STATEMENT OF RELATED PROCEEDINGS

This case arises from the following proceedings in the City and County of Denver District Court, the Colorado Court of Appeals Division II, and the Colorado Supreme Court: *People v. Aurelio*, Case No. 2013CR4662 (Colo. Cnty. Ct. Aug. 4, 2023); *People v. Aurelio*, Case No. 2023CA1416 (Colo. App. May 7, 2026); and *Aurelio v. People*, Case No. 2026SC362 (Colo. Aug. 17, 2026).

No other proceedings directly related to this case.

## TABLE OF CONTENTS

|                                                        | PAGE |
|--------------------------------------------------------|------|
| QUESTION PRESENTED .....                               | i    |
| PARTIES TO THE PROCEEDING .....                        | ii   |
| STATEMENT OF RELATED PROCEEDINGS .....                 | iii  |
| TABLE OF CONTENTS .....                                | iv   |
| TABLE OF AUTHORITIES .....                             | vii  |
| INDEX OF APPENDICES .....                              | x    |
| PETITION FOR A WRIT OF CERTIORARI .....                | 1    |
| OPINIONS BELOW .....                                   | 1    |
| JURISDICTION .....                                     | 1    |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... | 1    |
| INTRODUCTION .....                                     | 3    |
| STATEMENT OF CASE AND FACTS .....                      | 6    |
| A. Arrest and Pre-trial Proceedings .....              | 6    |
| B. Mr. Aurelio's Defense Counsel .....                 | 6    |
| C. Trial .....                                         | 9    |
| D. Posttrial .....                                     | 10   |
| E. Direct Appeal .....                                 | 11   |
| F. Postconviction Proceedings .....                    | 11   |

|     |                                                                                                                                                                                                                                                                                                                                                          |    |
|-----|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| G.  | Postconviction Evidentiary Hearing .....                                                                                                                                                                                                                                                                                                                 | 16 |
| 1.  | Rosalie Fazzone's Testimony .....                                                                                                                                                                                                                                                                                                                        | 16 |
| 2.  | Joseph Arseneau's Testimony .....                                                                                                                                                                                                                                                                                                                        | 17 |
| 3.  | Andrew Contiguglia's Testimony .....                                                                                                                                                                                                                                                                                                                     | 17 |
| 4.  | Nicholas Aurelio's Testimony .....                                                                                                                                                                                                                                                                                                                       | 18 |
| H.  | Post-Hearing Memorandums .....                                                                                                                                                                                                                                                                                                                           | 20 |
| I.  | The Postconviction Court's Denial of Aurelio's Claim .....                                                                                                                                                                                                                                                                                               | 20 |
| J.  | Aurelio's Appeal to the Colorado Court of Appeals .....                                                                                                                                                                                                                                                                                                  | 21 |
|     | REASONS TO GRANT THE PETITION .....                                                                                                                                                                                                                                                                                                                      | 22 |
| I.  | AURELIO'S LAWYER ENGAGED IN A PATTERN OF<br>DECEPTION, DISHONESTY AND LIES AND HIS<br>PERFORMANCE WAS DEFICIENT AS HE REPEATEDLY<br>MISLED AURELIO ABOUT HIS CHANCES AT TRIAL SO<br>AURELIO WOULD REJECT A FAVORABLE PLEA<br>OFFER—ALL FOR FINANCIAL GAIN .....                                                                                          | 22 |
| A.  | This Case Provides an Apt Vehicle for Revisiting<br><i>Strickland</i> , <i>Lafler</i> , <i>Frye</i> and <i>Lee</i> 's Application in the Plea<br>Context .....                                                                                                                                                                                           | 22 |
| B.  | Aurelio was Prejudiced Because he Would Have<br>Reasonably Accepted the Plea offer, if he Had Been<br>Properly Advised .....                                                                                                                                                                                                                             | 25 |
| II. | THE LOWER COURT DEPRIVED AURELIO OF<br>FUNDAMENTAL FAIRNESS AND DUE PROCESS OF<br>LAW—BY FORCING AURELIO TO PROCEED <i>PRO SE</i> ,<br>BY IGNORING MATERIAL EVIDENCE, BY<br>UNREASONABLY APPLYING THIS COURTS RULE, BY<br>RELEASING HIS KEY WITNESSES, AND BY FAILING<br>TO AFFORD AURELIO AN ADEQUATE OPPORTUNITY<br>TO PRESENT HIS CLAIMS FAIRLY ..... | 28 |

## TABLE OF AUTHORITIES

| CASES                                                           | Page(s)                 |
|-----------------------------------------------------------------|-------------------------|
| Aurelio v. People, 2018 Colo. LEXIS 610 .....                   | 11                      |
| Coleman v. Thompson, 501 U.S. 722 (1991) .....                  | 32                      |
| Conn. Bd. of Pardons v. Dumschat, 452 U.S. 458 (1981) .....     | 29                      |
| Dist. Att'y's Off. v. Osborne, 557 U.S. 52 (2009) .....         | 29, 30                  |
| Doe v. Dynamic Physical Therapy, LLC, 607 U. S. 11 (2025) ..... | 37                      |
| Douglas v. California, 372 U.S. 353 (1963) .....                | 30                      |
| Evitts v. Lucey, 469 U.S. 387 (1985) .....                      | 29                      |
| Gagnon v. Scarpelli, 411 U. S. 778 (1973) .....                 | 36                      |
| Hill v. Lockhart, 474 U.S. 52 (1985) .....                      | 23                      |
| Hinton v. Alabama, 571 U.S. 263 (2014) .....                    | 23, 24, 27, 37          |
| Lafler v. Cooper, 566 U.S. 156 (2012) .....                     | 5, 9, 18-24, 27, 28, 37 |
| Lee v. United States, 582 U.S. 357 (2017) .....                 | 5, 20, 21, 22, 25, 37   |
| Libretti v. United States, 516 U.S. 29 (1995) .....             | 23                      |
| Medina v. California, 505 U.S. 437 (1992) .....                 | 30                      |
| Missouri v. Frye, 132 S.Ct. 1399 (2012) .....                   | 5, 9, 17-22, 34, 27, 37 |
| Padilla v. Kentucky, 559 U.S. 356 (2010) .....                  | 23                      |
| Pennsylvania v. Finley, 481 U.S. 551 (1987) .....               | 30, 32                  |
| People v. Apodaca, 998 P.2d 25 (Colo. App. 1999) .....          | 32                      |
| People v. Arguello, 772 P.2d 87 (Colo. 1989) .....              | 32, 33                  |

|                                                                     |                                |
|---------------------------------------------------------------------|--------------------------------|
| People v. Aurelio, 2018 Colo. App. LEXIS 2499 .....                 | 6, 11                          |
| People v. Breaman, 939 P.2d 1348 (Colo. 1997) .....                 | 29, 32                         |
| People v. Schultheis, 638 P.2d 8 (Colo. 1981) .....                 | 32                             |
| People v. Valdez, 789 P.2d 406 (Colo. 1990) .....                   | 29                             |
| People v. Wiedemer, 852 P.2d 424 (Colo. 1993) .....                 | 28                             |
| Pitts v. Mississippi, 607 U. S. 1 (2025) .....                      | 37                             |
| Ross v. Moffitt, 417 U.S. 600 (1974) .....                          | 30                             |
| San Antonio Indep. Sch. Dist. v. Rodriguez, 411 U.S. 1 (1973) ..... | 30                             |
| Silva v. People, 156 P.3d 1164 (Colo. 2007) .....                   | 29, 32                         |
| Strickland v. Washington, 474 U.S. 52 (1985) .....                  | 3, 5, 9, 18-24, 27, 28, 32, 37 |
| Townsell v. People, 2026 CO 11 .....                                | 29                             |
| United States v. MacCollom, 426 U.S. 317 (1976) .....               | 30                             |
| Wearry v. Cain, 577 U.S. 385 (2016) .....                           | 37                             |

## CONSTITUTIONAL PROVISIONS

|                                  |       |
|----------------------------------|-------|
| Colo. Const. art. II, § 16 ..... | 29    |
| Colo. Const. art. II, § 25 ..... | 30    |
| U.S. Const. amend. VI .....      | 1, 29 |
| U.S. Const. amend. XIV .....     | 2, 30 |

## STATUTES AND RULES

|                                 |                |
|---------------------------------|----------------|
| 28 U.S.C. § 1257 .....          | 1              |
| Colo.Rev.Stat. § 18-1-410 ..... | 2, 4, 11, 28   |
| Crim.P. Rule 35(c) .....        | 11, 29, 32, 35 |

## INDEX OF APENDICE'S

|                      |                                                                                                                                                                  |              |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Appendix A<br>(AppA) | Decision of the Colorado Court of Appeals (COA), May 7, 2026, Order Rejecting Claim Under <i>Strickland v. Washington</i>                                        | App001a-033a |
| Appendix B<br>(AppB) | Denial of Writ of Certiorari to the Colorado Supreme Court, <i>Aurelio v. People</i> , No. 2026SC0362 (Colo. May 7, 2026)                                        | App034a      |
| Appendix C<br>(AppC) | State District Court's Findings of Fact and Conclusions of Law, August 4, 2023, Denying Defendant's Crim.P. 35(c) Petition under <i>Strickland v. Washington</i> | App035a-040a |
| Appendix D<br>(AppD) | Unopposed Motion for Enlargement of Time to File Motions and For Continuance of Motions Hearing                                                                  | App041a-043a |
| Appendix E<br>(AppE) | Defendant's Unopposed Motion to Continue Trial                                                                                                                   | Appa044-045a |
| Appendix F<br>(AppF) | Affidavit and Declaration of Joseph Arseneau                                                                                                                     | Appa046-049a |
| Appendix G<br>(AppG) | Affidavit of Joseph Arseneau                                                                                                                                     | App050a-051a |
| Appendix H<br>(AppH) | Affidavit of Jennifer Brown                                                                                                                                      | App052a-053a |
| Appendix I<br>(AppI) | December 4, 2013, Waiver of Preliminary Hearing and First Plea Offer                                                                                             | App054a      |
| Appendix J<br>(AppJ) | September 11, 2014, Second Plea Offer                                                                                                                            | App055a      |
| Appendix K<br>(AppK) | May 1, 2015, Third Plea Offer                                                                                                                                    | App056a      |

|                      |                                                                                                                                                                 |                |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Appendix L<br>(AppL) | Plaintiff's Complaint and Jury Demand,<br><i>Aurelio v. Contiguglia</i> , Case No. 17CV33495                                                                    | App057a-061a   |
| Appendix M<br>(AppM) | Letter's From John Palmeri and the<br>Disclosure of Contiguglia's Personal File                                                                                 | App062a-064a   |
| Appendix N<br>(AppN) | Unsigned May 5, 2015 Letter                                                                                                                                     | App065a-067a   |
| Appendix O<br>(AppO) | Affidavit of Attorney Margaret Teigen Steele                                                                                                                    | App068a-088a   |
| Appendix P<br>(AppP) | Brief in Support of Defendants Post-<br>Conviction Motion to Vacate and Set Aside<br>His Conviction Pursuant to Crim.P. 35(c) and<br>C.R.S. § 18-1-410          | App089a-092a   |
| Appendix Q<br>(AppQ) | Amended Supplement to Petitioner-<br>Defendant Nicholas Aurelio's Petition for<br>Postconviction Relief Pursuant to Crim.P.<br>35(c)                            | App093a-0101a  |
| Appendix R<br>(AppR) | Reply to Prosecution's Response to<br>Petitioner/Defendant Nicholas Aurelio's<br>Petition for Postconviction Relief and<br>Supplement Pursuant to Crim.P. 35(c) | App0102a-0108a |
| Appendix S<br>(AppS) | Ineffective Assistance of Counsel Evaluation<br>and Opinion, by Attorney Martin Stuart                                                                          | App0109a-0132a |
| Appendix T<br>(AppT) | January 18, 2022, Order Regarding<br>Defendant's Petition for Postconviction Relief<br>Pursuant to Crim.P. 35(c)                                                | App0133a-0136a |
| Appendix U<br>(AppU) | March 11, 2022, Status Conference<br>Transcripts                                                                                                                | App0137a-0147a |
| Appendix V<br>(AppV) | April 8, 2022, Order Regarding Defendant's<br>Amended Motion for Subpoena's                                                                                     | App0148a-0149a |

|                        |                                                                                                                                           |                |
|------------------------|-------------------------------------------------------------------------------------------------------------------------------------------|----------------|
| Appendix W<br>(AppW)   | Motion for Additional Subpoena's                                                                                                          | App0150a-0152a |
| Appendix X<br>(AppW)   | Order on Motion for Additional Subpoena's                                                                                                 | App0153a       |
| Appendix Y<br>(AppY)   | Mr. Aurelio's Motion for an Expert Witness                                                                                                | App0154a-0156a |
| Appendix Z<br>(AppZ)   | Order Denying Defendant's Motion for an Expert Witness                                                                                    | App0157a       |
| Appendix AA<br>(AppAA) | May 9, 2022, Status Conference Transcripts                                                                                                | App0158a-0181a |
| Appendix BB<br>(AppBB) | May 5, 2015, Signed Letter, Disclosed on May 9, 2022, by John Palmeri and Andrew Contiguglia                                              | App0182a-0184a |
| Appendix CC<br>(AppCC) | Mr. Aurelio's June 3, 2022, Motion for an Expert Witness Pursuant to Rule 702 and CRS § 18-1-403 and request for a criminal investigation | App0185a-0226a |
| Appendix DD<br>(AppDD) | Mr. Aurelio's Response to the Court's May 20, 2022 Order                                                                                  | App0227a-0235a |
| Appendix EE<br>(AppEE) | June 10, 2022, Hearing Transcripts                                                                                                        | App0236a-0250a |
| Appendix FF<br>(AppFF) | Mr. Aurelio's Motion for Reconsideration of its June 10, 2022 Order                                                                       | App0251a-0252a |
| Appendix GG<br>(AppGG) | July 12, 2022, Order on Mr. Aurelio's Motion for Reconsideration of its June 10, 2022 Order                                               | App0253a       |
| Appendix HH<br>(AppHH) | December 12, 2022, Evidentiary Hearing Transcripts                                                                                        | App0254a-0470a |

|                        |                                                                        |                |
|------------------------|------------------------------------------------------------------------|----------------|
| Appendix II<br>(AppII) | Petitioner's Post-Hearing Memorandum Filed<br>March 18, 2023           | App0471a-0540a |
| Appendix JJ<br>(AppJJ) | Mr. Aurelio's Reply to the People's Post-<br>Hearing Memorandum        | App0541a-0578a |
| Appendix KK<br>(AppKK) | Opening Brief of Defendant-Appellant                                   | App0579a-0635a |
| Appendix LL<br>(AppLL) | Reply Brief of Defendant-Appellant                                     | App0636a-0672a |
| Appendix MM<br>(AppMM) | Mr. Aurelio's Personal Letter's to Andrew J.<br>Contiguglia            | App0673a-0758a |
| Appendix NN<br>(AppNN) | Mr. Aurelio's Personal Letter's to the<br>prosecution (Lara J. Mullin) | App0759a-0787a |
| Appendix OO<br>(AppOO) | Sworn Statement of Attorney Scott Robinson                             | App0788a-0789a |

## **PETITION FOR A WRIT OF CERTIORARI**

Nicholas J. Aurelio ("Aurelio") respectfully petitions for a writ of certiorari to review the judgment of the Colorado Court of Appeals ("COA") in this case.

### **OPINIONS BELOW**

The COA's unpublished opinion is reproduced at Pet.AppA. 001a-033a. The Colorado Supreme Court's ("CSC") order denying Aurelio's petition for a writ of certiorari is reproduced at Pet.AppB. 034a. The Denver County District Court's unpublished order denying Aurelio postconviction relief is reproduced at Pet.AppC. 035a-040a.

### **JURISDICTION**

The COA issued its judgment on May 7, 2026, and the CSC denied Aurelio's timely petition for writ of certiorari on Aug 17, 2026. This Court has jurisdiction under 28 U.S.C. § 1257.

### **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

The U.S. Constitution's Sixth Amendment provides in relevant part:

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

The U.S. Constitution's Fourteenth Amendment provides in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Colorado Revised Statutes § 18-1-410(1)(2018) provides as relevant:

Notwithstanding the fact that no review of a conviction of crime was sought by appeal within the time prescribed therefor, or that a judgment of conviction was affirmed upon appeal, every person convicted of a crime is entitled as a matter of right to make applications for postconviction review. Except as otherwise required by subsection (1.5) of this section, an application for postconviction review must, in good faith, allege one or more of the following grounds to justify a hearing thereon:

(a) That the conviction was obtained or sentence imposed in violation of the constitution or laws of the United States or the constitution or laws of this state.

(g) Any grounds otherwise properly the basis for collateral attack upon a criminal judgment.

## INTRODUCTION

A defendant demonstrates *Strickland* prejudice when the contemporaneous corroborating evidence establishes that he would have accepted the plea offer, but for plea counsel's unprofessional errors.

Aurelio retained attorney Andrew J. Contiguglia in July 2014. Two months after retaining Contiguglia, Contiguglia informed Aurelio that he was diagnosed with Hodgkin's Lymphoma, a serious life threatening health issue. As a result of this diagnosis, Contiguglia informed Aurelio that he would need to continue his jury trial so he could "fully focus," on Aurelio's case. Contiguglia then filed two motions due to his health and problems with the discovery in the case. Pet.AppD. 041a-043a; AppE 044a-045a.

Between retaining Contiguglia and May 1, 2015, Contiguglia was dealing with numerous personal problems, health problems and office problems. During this relevant period in time, the prosecution offered Aurelio two different favorable plea offers, however Contiguglia: (1) encouraged Aurelio to reject the plea offers, (2) concealed the true terms and conditions of those plea offers and, (3) continued to inform Aurelio that he could never be convicted at any jury trial; advice that Aurelio's own private investigator Joseph Arseneau witnessed on several occasions. Pet.AppF. 046a-049a; AppG. 050a-051a. Aurelio was interested in accepting a Plea offer.

Had Aurelio accepted any plea offer, prior to the May 8, 2015 motions hearing, Contiguglia would have been required to return \$25,000.00 to Aurelio pursuant to

the fee agreement. Pet.AppMM. 0684a; 0715a (letters<sup>1</sup> to Contigugliai dated: 10/16/14 and 2/21/15). But Contiguglia continued to mislead and lie to Aurelio.

After being encouraged to reject the plea offers, Aurelio's case proceed to trial where Aurelio was convicted by a jury and sentenced to an indeterminate 77.5 years in the Colorado Department of Corrections. Pet.AppC. 035a.

Prior to trial and post-trial, Contiguglia engaged in a pattern of deception, dishonesty and lies—that both of Aurelio's private investigator's personally witnessed and experienced. Pet.AppF. 046a-049a; AppG. 050a-051a; AppH. 052a-053a.

After his direct appeal was affirmed, while proceeding *pro se*, Aurelio applied for postconviction relief pursuant to Colorado's postconviction relief statute. C.R.S. § 18-1-410. The lower Court appointed postconviction counsel to assist Aurelio, who then supplemented his *pro se* claims with additional arguments and claims.

The postconviction Court granted an evidentiary hearing on one claim, then after allowing postconviction counsel to withdraw due to a conflict, unreasonably forced Aurelio to proceed *pro se* prior to and during his one and only evidentiary hearing, without appointing conflict-free postconviction counsel.

Prior to Aurelio's evidentiary hearing, due to judicial bias, the postconviction Court refused to appoint an expert witness, after Aurelio's expert witness abandoned

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<sup>1</sup> Appendix MM was originally introduced in the lower court as Exhibit FF. These were all the letter's Aurelio wrote and sent to Contiguglia.

him and unreasonably released Aurelio's key witnesses who would have impeached Contiguglia and corroborated Aurelio's claims of unprofessional error. This was a violation of fundamental fairness and due process of law.

The postconviction Court had no intentions of treating Aurelio fairly due to its judicial bias and the Court blatantly ignored material evidence which proved Aurelio received ineffective assistance of counsel—during plea negotiations.

After the evidentiary hearing, the Court directed Aurelio and the prosecution to file post-hearing memorandums. Ultimately, the lower Court denied Aurelio relief while unreasonably applying *Strickland v. Washington*, 474 U.S. 52, 58 (1985), *Missouri v. Frye*, 132 S.Ct. 1399 (2012), *Lafler v. Cooper*, 566 U.S. 156 (2012) and *Lee v. United States*, 582 U.S. 357 (2017).

Additionally, the postconviction court made erroneous and incorrect conclusions, ignored and misconstrued evidence, and made manifestly unreasonable, unfair and unsupported findings, resulting in numerous due process violations.

Aurelio appealed to the COA, they too ignored the numerous due process violations, Aurelio's substantial material evidence supporting IAC and they too unreasonably applied *Strickland* and this Court's rule. The CSC denied review. The COA should be reversed, and Aurelio's petition should be granted.

## STATEMENT OF CASE AND FACTS

### A. Arrest and Pre-trial Proceedings

On September 17, 2013, in Denver District Court Case 2013CR4662, Aurelio was charged with 11 criminal counts, including sexual assault, kidnapping, and stalking. *People v. Aurelio*, 2018 Colo. App. LEXIS 2499, \*1. The charging document alleged that Aurelio kidnapped and sexually assaulted H.S., a former girlfriend, seven days earlier on September 10, 2013. The alleged victim for each count was H.S., Aurelio's former girlfriend. *Id* at 2.

H.S.'s allegations became very problematic for the prosecution due to her ever-changing stories and her numerous inconsistencies. There was no DNA evidence to support any sexual assault occurred, no gun of any color ever found and the entire case became a credibility contest—hinging on H.S.'s embattled credibility.

Aurelio was represented by the public defenders between September 10, 2013 and June 2014. On December 4, 2013, in exchange of waiving the preliminary hearing, the prosecution offered Aurelio their first plea offer. Pet.AppI. 054a. The public defenders directed Aurelio to reject this offer.

### B. Mr. Aurelio's Defense Counsel

In July 2014, Aurelio retained attorney Andrew J. Contiguglia through his law firm Contiguglia/Fazzone<sup>2</sup> P.C. Shortly after retaining Contiguglia, Contiguglia informed Aurelio that he was diagnosed with Hodgkin's Lymphoma. Contiguglia then

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<sup>2</sup> Andrew Contiguglia's business and law partner, at the time, was Roselia Fazzone.

filed two motions in the case related to his health and problems with the discovery. Pet.AppD. 041a-043a; Pet.AppE. 044a-045a.

Contiguglia had numerous problems in his office with staff members quitting, he had to take time away from the office, his business partner decided to leave the office shortly after he was diagnosed with Hodgkin's Lymphoma, and he was having personal problems with his paralegal. Pet.AppF. 046a-049a.

Additionally, Contiguglia was required to take medications and undergo chemotherapy and radiation therapy treatment which impaired him daily.

In September 2014, prior to having all the discovery in the case, the prosecution offered Aurelio another plea offer. This was their second plea offer, which the prosecution sent to Contiguglia by email which included the following terms for Aurelio to plead to:

“Attempted Sexual Assault (F4) - stipulate 8 years DOC sentence to run concurrently with Aggravated Intimidation of a Witness or Victim (original count#5) – stipulation 14 year sentence. This would make a total of 14 years DOC. We are prepared to leave it open as to consecutive or concurrent with his current sentence(s)”

Pet.AppJ. 055a.

While Contiguglia was away from the office due to his health issues, Contiguglia's law partner, Roselia Fazzone met with Aurelio at the Denver Detention Center where she informed Aurelio that the prosecution offer him a second concurrent plea offer. But this legal advice was erroneous. Pet.AppHH. 0280a-0282a. At the time, Aurelio was never provided with a copy of the plea offer. Thereafter,

during a telephone call, Contiguglia directed Aurelio to reject this plea offer; a conversation that Aurelio's private investigator Arseneau was witness to. Pet.AppHH. 0319a-0322a.

Between September 2014 and May 1, 2015, Aurelio was interested in a plea offer, however Contiguglia continued to overemphasize the strength of the case and impermissibly dissuaded Aurelio from accepting the plea offers because Contiguglia continued to inform Aurelio that he could never be convicted at a jury trial.

Aurelio wrote Contiguglia several letters about his desire to accept a specific plea deal despite Contiguglia's false and erroneous legal advice to keep the case moving forward. Pet.AppMM. 0673a-0758a (specifically letters dated 9/4/14; 10/16/14; 11/19/14; 12/15/14; 2/21/15; 2/29/15; 3/17/15; 3/25/15; 3/28/15; 4/23/15; 5/1/15; 5/2/15).

On April 23, 2015, despite Contiguglia's unprofessional errors, Aurelio was very worried about proceeding to trial and specifically asked Contiguglia in a letter:

"I really need to make sure I don't make any mistakes...I can't take chances with my life and we need to know for sure trial is best... I am really nervous and worried."

Pet.AppMM. 0749a.

Aurelio was worried about rejecting the next plea deal, but Contiguglia continued to conceal the terms and conditions of the plea deals and then, yet again, encouraged Aurelio to reject the May 1, 2015 plea deal.

On May 1, 2015, the prosecution offered Aurelio a third plea offer. The prosecution sent this offer to Contiguglia by email which included the following terms for Aurelio to plead to:

“Second Degree Burglary + Menacing (or other alternate charges)-with an agreement to 11 years open to the court as to consecutive or concurrent”

Pet.AppK. 056a.

Again, on May 1, 2015, while in prison, on telephone call with Contiguglia and Arseneau, without the benefit of seeing the actual plea offer/email, Contiguglia encouraged Aurelio to: (1) reject the offer; (2) misinformed Aurelio that the plea offer required Aurelio to serve violent prison time instead of nonviolent prison time; (3) concealed the fact Aurelio could have picked alternative charges to plead to; and (4) informed Aurelio that he “could never be convicted at any trial,” and to reject the offer. Aurelio’s private investigator Arseneau was witness to this telephone conversation. Pet.AppHH. 0322a-0325a; 0338a-0340a; 0346a-0347a.

This unprofessional conduct was a clear violation of *Strickland*, *Frye* and *Lafler*, as Contiguglia hid the true terms and conditions of the May 1, 2015 plea offer.

### **C. Trial**

After receiving false and erroneous legal advice from Contiguglia, Aurelio rejected the May 1, 2015 plea offer and his case proceed to a jury trial where he was ultimately convicted on all counts. The court sentenced Aurelio to 77.5 years in the Colorado Department of Corrections. Pet.AppC. 035a.

#### **D. Posttrial**

After sentencing and while Aurelio's case was on direct appeal, Aurelio's then attorney filed a lawsuit against Contiguglia in Denver District Court for Malpractice. Pet.AppL. 057a-061a. Thereafter, Aurelio received substantial civil discovery from Contiguglia's malpractice attorney, John Palmeri. Pet.AppM. 062a-064a.

In this civil discovery, Aurelio uncovered tens of thousands of pages of discovery from his criminal case, correspondence between Contiguglia and the prosecution, correspondence between Aurelio and Contiguglia, correspondence between Aurelio and the prosecution, documents Contiguglia forged and signed without Aurelio's authorization, the actual plea offers emailed to Contiguglia by the prosecution—which he concealed from Aurelio for some nefarious reason and, most importantly, the unsigned “May 5, letter,” that was never provided to Aurelio back in May of 2015. Pet.AppN. 065a-067a. Notably, Aurelio was never educated on his sentence exposure, if his case went to trial, nor was he educated on what an indeterminate prison sentence consisted of.

After receiving this civil discovery, Aurelio mailed a detailed letter to his attorney Margaret Steele, discussing in great detail the information Aurelio uncovered related to Contiguglia's unprofessional conduct, his erroneous and false plea advice, and information Contiguglia concealed from Aurelio related to the May 5, 2015 unsigned letter. Pet.AppO. 068a-088a. Mrs. Steele was a critical witness for Aurelio who was planning on testifying on Aurelio's behalf.

### **E. Direct Appeal**

On February 8, 2018, the COA affirmed Aurelio's direct appeal. *People v. Aurelio*, 2018 Colo. App. LEXIS 2499. Then on July 30, 2018, the CSC denied Aurelio's writ of certiorari. *Aurelio v. People*, 2018 Colo. LEXIS 610.

### **F. Postconviction proceedings**

After the CSC denied Aurelio's writ of certiorari, Aurelio filed a massive *pro se* postconviction motion on August 14, 2018, pursuant to Crim.P. 35(c) and C.R.S. § 18-1-410, in Denver District Court and requested conflict-free counsel. Aurelio raised a claim related to Contiguglia's erroneous and false legal advice. Pet.AppP. 089a-092a.

The district court appointed postconviction counsel, which "triggered" the statutory right to counsel in Colorado, and necessarily meant his *pro se* petitions raised claims of "arguable merit."

On September 18, 2019, postconviction counsel filed an amended supplement petition to Aurelio's *pro se* petitions that included a claim related to Contiguglia's erroneous and false legal advice. Pet.AppQ. 093a-0101a; Pet.AppR. 0102a-0108a.

Postconviction counsel also retained the assistance of an expert witness, attorney Martin Stuart. Stuart planned on testifying as to Contiguglia's deficient and prejudicial performance during plea negotiations. Pet.AppS. 0109a; 0126a-0129a; 0131a.

Thereafter, Aurelio filed several motions requesting conflict-free postconviction counsel due to a breakdown in communication. These motions were ignored.

On January 18, 2022, the Court issued its order granting in part Aurelio's petition and ordering an evidentiary hearing on his claim of ineffective assistance of counsel during plea negotiations. Pet.AppT. 0133a; 0135a-0136a.

On March 11, 2022, the Court conducted a hearing on the conflict-issue. Postconviction counsel advised the court that her relationship with Aurelio had "broken down to the point that it is irreconcilable" and that Aurelio should either represent himself or get another attorney. Pet.AppU. 0137a-0147a.

At the conclusion of the hearing, the Court permitted postconviction counsel to withdraw but refused to appoint substitute counsel—forcing Aurelio to proceed *pro se* at his upcoming evidentiary hearing, on a very complex Sixth Amendment issue involving plea negotiations. Pet.AppU. 0146a.

On March 21, 2022, Aurelio filed an amended motion for subpoenas. On April 8, 2022, the Court issued subpoenas, Pet.AppV. 0148a-0149a, on Aurelio's behalf, on several of his key witnesses (e.g. Scott Robinson, Andrew Contiguglia, Margaret Steele, Martin Stuart, Jennifer Brown and Jim Palestino), who Aurelio intended on calling during his evidentiary hearing to corroborate his claims and to further impeach and undermine Contiguglia.

On March 31, 2022, Aurelio requested to subpoena Contiguglia's malpractice attorney, John Palmeri, Pet.AppW. 0150a-0152a, but that request was unreasonably denied on April 13, 2022. Pet.AppX. 0153a.

Additionally, after Aurelio's expert witness informed him that he would no longer help him, Pet.AppY. 0154a-0156a, because he was forced to proceed *pro se*, Aurelio requested for the Court to appoint a new expert witness, however the Court unreasonably denied Aurelio's request. Pet.AppZ. 0157a.

On May 9, 2022, during a status conference, Pet.AppAA. 0158a-0181a, the Court direct Aurelio to provide the Court with a synopsis of what each of his witnesses would testify to. Pet.AppAA. 0171a-0172a. During this status conference, the prosecution also informed Aurelio and the Court that they recently received a letter from Contiguglia's attorney, John Palmeri, which Aurelio allegedly signed back in May of 2015. Pet.AppAA. 0175a-0181a.

This was a critical time for Contiguglia. The suspicious "signed May 5, 2015 letter," fell out of the sky, right before Aurelio's evidentiary hearing. Pet.AppBB. 0182a-0184a. Contiguglia knew his reputation was on the line and that Mrs. Brown, Mr. Arseneau, Mrs. Steele and Mr. Robinson would be testifying against him.

After receiving the suspicious "signed May 5, 2015 letter," Aurelio immediately filed a motion in response to this new information. Pet.AppCC. 0185a-0226a. But this motion was completely ignored by the lower Court. Had the lower Court read Aurelio's motion, the lower Court would have recognized that Aurelio was already

provided with a copy of the unsigned May 5, 2015 letter back in 2018 in civil discovery, that it only reappeared in May 2022 with what appears to have Aurelio's signature on it, that Contiguglia engaged in professional misconduct with Jennifer Brown and that Contiguglia signed a contract with Jennifer Brown without Aurelio's authorization, nearly accruing \$12,000.00 in debt.

This motion provided substantial evidence as to why the Court needed to hear evidence from attorney Margaret Steele, who wanted to testify. Pet.AppO. 068a-088a.

See, since 2018, Aurelio has had a copy of Contiguglia's entire personal file, discovery, etc., which included documents Aurelio recalled signing, documents Contiguglia forged and documents Aurelio uncovered for the first time. All of these documents were date-stamped. These documents were provided to Aurelio by Contiguglia's attorney John Palmeri in civil discovery in 2018. Pet.AppM 062a-064a.

Indeed, Aurelio has had a copy of the unsigned "May 5, 2015 letter," which he did not sign, Pet.AppN. 065a-067a, and it only reappeared in May 2022, several years later, with what appears to have Aurelio's signature on it. Pet.AppBB. 0182a-0184a.

It appears at the very least, the signed "May 5, 2015 letter" only reappeared in May 2022, with what appeared to be Aurelio's signature on it, likely manipulated or forged by Contiguglia, to protect his own reputation.

Without a doubt, the 2018 letter that Aurelio sent to attorney Margaret Steele and her knowledge of these events, was material evidence that the lower Court unreasonably ignored due to its judicial bias towards Aurelio. Pet.AppO. 068a-088a.

Mrs. Steele's testimony and this contemporaneous evidence would have corroborated Aurelio's version of events (that back in 2018, after receiving the civil discovery—Aurelio uncovered information about the two plea offers for the first time, that Contiguglia concealed the true terms and conditions of the May 1, 2015 plea offer and that Aurelio uncovered the unsigned "May 5, 2015 letter," back in 2018.)

On June 6, 2022, Aurelio filed his motion in response to the lower Court's order requesting Aurelio to provide the lower Court with a synopsis of what Joseph Arseneau, Jennifer Brown, Andrew Contiguglia, Martin Stuart, Scott Robinson, Margaret Steele, Lara J. Mullin and Roselia Fazzone would testify to. Pet.AppDD. 0227a-0235a. The Court ignored this critical information.

On June 10, 2022, during a status hearing, Pet.AppEE. 0236a-0250a, the lower Court decided to further its retaliation and punishment of Aurelio by releasing Mrs. Steele, Mrs. Brown and Mr. Robinson, under the guise that the Court didn't need to hear their testimony due to the limited scope of the hearing, despite information in the record that supported the complete opposite. Pet.AppEE. 0240a-0243a. This decision severally undermined the fairness of the proceedings and deprived Aurelio of an adequate opportunity to present his claims fairly to the Court.

Contiguglia's credibility was critical to Aurelio's claim, the Court impeded Aurelio's ability to impeach him with information that would have supported Contiguglia's pattern of misconduct, deception, dishonest and lies. The evidence clearly established that Contiguglia lied to Aurelio to keep the case moving forward.

On July 8, 2022, Aurelio filed a motion requesting the lower Court to reconsider its June 10, 2022 order releasing Aurelio's witnesses and Scott Robinson. Pet.AppFF. 0251a-0252a. On July 12, 2022, the lower Court denied Aurelio's motion for reconsideration. Pet.AppGG. 0253a.

### **G. Postconviction Evidentiary Hearing**

On December 12, 2022, the evidentiary hearing was held and the lower Court heard evidence and testimony from Roselia Fazzone, Joseph Arseneau, Andrew Contiguglia and Aurelio. Pet.AppHH. 0254a-470a. Despite being severely prejudiced by the lower Courts decision to unreasonably release nearly all of Aurelio's key witnesses, Aurelio was forced to proceed *pro se* at his one and only evidentiary hearing, where Aurelio was deprived of fundamental fairness and Due Process of law.

During this hearing, the lower Court informed Aurelio of the limited scope of hearing. The Court only wanted to hear limited information. Pet.AppHH. 0318a-0319a. This alone deprived Aurelio of fundamental fairness and Due Process of law.

#### **1. Roselia Fazzone's Testimony**

Aurelio impeached Mrs. Fazzone. Pet.AppHH. 0267a-0313a. Mrs. Fazzone attempted to conform her testimony for Contiguglia to protect him. Mrs. Fazzone falsely claimed she "read out loud," all the discovery to Aurelio during a visit, despite not having all the discovery in the case and Mrs. Fazzone even falsely claimed that Aurelio was never interested in a plea deal. Pet.AppMM. 0681a-0683a; 0687a.

## **2. Joseph Arseneau's Testimony**

Arseneau testified that he was present for conversations and several telephone calls where Mr. Contiguglia encouraged Aurelio to reject both plea offers because "Aurelio could never be convicted at any trial". Arseneau corroborated Aurelio's claims that Contiguglia provided Aurelio with inaccurate legal advice, that Aurelio believed the May 1, 2015 plea offer required violent sentencing, when it did not, and that Aurelio was willing to accept the May 1, 2015 plea offer, but for Contiguglia's unprofessional errors. Pet.AppHH. 0313a-0348a.

## **3. Andrew Contiguglia's Testimony**

Aurelio impeached Contiguglia. Aurelio established that Contiguglia provided Aurelio with inaccurate and false legal advice on two specific occasions and concealed the true terms and conditions of the plea offers in violations of Aurelio's Sixth Amendment right. Additionally, Contiguglia engaged in a pattern of unprofessional conduct.

First, Aurelio established that Contiguglia and Fazzzone both falsely claimed the September 21, 2014 plea offer did not call for a concurrent sentence, but required the sentencing to be open to the court. Pet.AppHH. 0363a-0367a.

Second, in violation of *Missouri v. Frye*, Aurelio established that Contiguglia withheld the true terms and conditions of the May 1, 2015 plea offer because Contiguglia never informed Aurelio that he could pick alternative charges to plead to. Pet.AppHH. 0395a-0398a.

Third, Aurelio established that on May 1, 2015, when Contiguglia conveyed the plea offer to Aurelio over the phone, Contiguglia deficiently informed Aurelio that the plea offer required Aurelio to serve violent time, legal advice that was clearly erroneous and false. Pet.AppHH. 0395a-0439a. A clear violation of *Strickland v. Washington*, *Missouri v. Frye* and *Lafler v. Cooper*.

Fourth, Aurelio established that Contiguglia signed a contract with private investigator Jennifer Brown, without Aurelio's permission, where Mrs. Brown accrued nearly \$12,000.00 in debt. When Mrs. Brown submitted her bill for payment, Contiguglia engaged in a pattern of unprofessional conduct, gave her the run-around, told her it was Aurelio's responsibility and even attempted to renegotiate the debt, despite this debt not being Aurelio's responsibility. Pet.AppHH. 0402a-0408a.

#### **4. Nicholas Aurelio's Testimony**

First, Aurelio testified that Contiguglia repeatedly informed him that he could never be convicted at any trial, which Arseneau corroborated. Pet.AppHH. 0454a; 0346a-0347a.

Second, Aurelio testified that Contiguglia presented Aurelio's case to a mock trial where Aurelio was found not-guilty and that Contiguglia continued to use this as leverage to convince Aurelio to reject the plea offers. Pet.AppHH. 0353a; 0445a-0447a.

Third, Aurelio testified that while on a telephone call with Contiguglia and Arseneau, Contiguglia informed Aurelio of the May 1, 2015 plea offer that required

him to serve violent prison time, legal advice that was false. During this telephone call, Contiguglia informed Aurelio to reject the plea offer because Aurelio could never be convicted at any trial, which Arseneau corroborated. Pet.AppHH. 0449a-0455a.

Forth, Contiguglia deficiently failed to inform Aurelio that he could have picked alternative charges or how this sentence would impact his current DOC sentences and parole. Pet.AppHH. 0390a; 0397a-0401a.

Fifth, Aurelio testified that Contiguglia had no business or authorization to engage in contracts with third parties or sign any legal documents or contracts on Aurelio's behalf or in his place. Pet.AppHH. 0402a-0408a; 0455a-0456a.

Sixth, Aurelio testified that he uncovered the unsigned May 1, 2015 letter in 2018 after receiving civil discovery from John Palmeri. Pet.AppHH. 0449a.

Seventh, Aurelio testified that he attempted to accept the May 1, 2015 plea offer on May 6, 2015 and May 8, 2015, after being brought to Denver on a writ, however Contiguglia erroneously claimed Aurelio could never be convicted at any trial and that he was found not guilty at the mock trial. Pet.AppHH. 0449a-0455a.

Ultimately, Aurelio rejected the May 1, 2015 plea offer because Contiguglia convinced Aurelio that he could never be convicted at a jury trial, while concealing the true terms and conditions of the May 1, 2015 plea offer, all for financial gain. A clear violation of *Strickland v. Washington*, 474 U.S. 52 (1985), *Missouri v. Frye*, 132 S.Ct. 1399 (2012), *Lafler v. Cooper*, 566 U.S. 156 (2012).

## **H. Post-Hearing Memorandums**

Aurelio filed his very detailed posthearing memorandums. Pet.AppII. 0471-0540; Pet.AppJJ. 0541-0578. Aurelio thoroughly argued that he was entitled to relief based on the rules established in *Strickland v. Washington*, 474 U.S. 52 (1985), *Missouri v. Frye*, 132 S.Ct. 1399 (2012), *Lafler v. Cooper*, 566 U.S. 156 (2012) and *Lee v. United States*, 582 U.S. 357 (2017). Aurelio established, without a doubt, that Contiguglia engaged in a pattern of misconduct, deception, dishonesty and lies, while representing Aurelio during plea negotiations.

## **I. The Postconviction Court's Denial of Aurelio's Claim**

On August 4, 2023, the lower Court issued its order denying Aurelio relief on his last surviving postconviction claim, while grossly side-stepping and ignoring Aurelio's contemporaneous corroborating evidence. Pet.AppC. 035a-040a.

IAC claims, the evidence supporting them, and the prejudice from counsel's errors must be assessed cumulatively. *Strickland*, 466 U.S. at 694-696.

The Court determined all of Aurelio's previous letters to Contiguglia and the suspicious signed "May 5, 2015 letter," which Aurelio did not sign, established that Contiguglia provided Aurelio with adequate plea advice. The lower Court placed significant weight on these facts, finding that Aurelio did not want to plead guilty.

That finding not only misconstrues the evidence, as well as its effect, but also ignores well-established IAC principles:

[Courts] must consider the totality of the evidence....Some...factual findings that were affected [by

counsel's errors] will have been affected in different ways. Some errors will have had a pervasive effect on the inferences to be drawn from the evidence, altering the entire evidentiary picture...

*Strickland*, 466 U.S. at 695-696 (emphasis added).

The lower Court went on to claim that Aurelio failed to establish either prong of the *Strickland* test, while grossly ignoring Aurelio's contemporaneous corroborating evidence. Pet.AppC. 038a-040a. Here, the lower Court: (1) unreasonably applied *Strickland*, *Lafler*, *Frye* and *Lee*; (2) unreasonably refused to hear testimony and evidence from Margaret Steele, Scott Robinson, Jennifer Brown and John Palmeri; and (3) made an unreasonable determination of the facts in light of the evidence Aurelio presented to the lower Court and the evidence he could have presented.

#### **J. Aurelio's Appeal to the Colorado Court of Appeals**

Aurelio then appealed to the COA. Pet.AppKK. 0579a-0635a; Pet.AppLL. 0636a-0673a. Again, Aurelio argued that the postconviction Court committed reversible error and violated Aurelio's Due Process rights by failing to hear evidence and testimony from Margaret Steele, Scott Robinson, Jennifer Brown and John Palmeri. Pet.AppKK. 0627a-0636a; Pet.AppLL. 0665a-0673a.

On May 7, 2026, the COA affirmed the denial of Aurelio's appeal while unreasonably applying and ignoring the Rule in *Strickland*, *Lafler* and *Frye*. Pet.AppA. 024-033. The COA too, claimed the errors were harmless, ignored and side-stepped Aurelio's contemporaneous corroborating evidence, the host of Due Process

violations by the postconviction Court and the material evidence that Jennifer Brown, Scott Robinson, Margaret Steele and John Palmeri could have presented at the evidentiary hearing, which would have grossly undermined Contiguglia's credibility.

The COA and the lower Court failed to recognize that the evidence from Margaret Steele and Jennifer Brown alone, would have further impeached Contiguglia's credibility, thus establishing a pattern of deception, dishonesty and lies, to further support Aurelio's claims.

It is from the COA's denial of his appeal that he files his Writ of Certiorari. Aurelio now asks this Court to issue a writ to review the opinion of the COA due to the complete lack of fundamental fairness and Due Process of law.

## **REASONS TO GRANT THE PETITION**

### **I. AURELIO'S LAWYER ENGAGED IN A PATTERN OF DECEPTION, DISHONESTY AND LIES AND HIS PERFORMANCE WAS DEFICIENT AS HE REPEATEDLY MISLED AURELIO ABOUT HIS CHANCES AT TRIAL SO AURELIO WOULD REJECT A FAVORABLE PLEA OFFER—ALL FOR FINANCIAL GAIN.**

#### **A. This Case Provides an Apt Vehicle for Revisiting *Strickland*, *Lafler*, *Frye* and *Lee*'s Application in the Plea Context.**

*Missouri v. Frye*, 132 S.Ct. 1399, 1407 (2012), explains that our criminal justice system is not one of trials, but of pleas. And, that as a general rule, defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused. For that reason, "negotiation of the plea bargain, rather than the unfolding of a trial, is almost always

the critical point for the defendant.” Ibid. Accordingly, a criminal defendant has a constitutional right to effective representation in plea negotiations. *Id.* at 1407-08; *Lafler v. Cooper*, 566 U.S. 156, 162 (2012). A defendant’s claim of ineffective assistance at the plea stage is evaluated under the familiar framework adopted in *Strickland v. Washington*, 474 U.S. 52, 58 (1985); *Hill v. Lockhart*, 474 U.S. 52 (1985).

A defendant must show that counsel’s performance was deficient and that the deficient performance prejudiced the defendant. *Strickland*, 466 U.S. at 687.

The deficient performance prong "is necessarily linked to the practice and expectations of the legal community" as well as the "prevailing norms of practice as reflected in American Bar Association standards and the like[.]" *Padilla v. Kentucky*, 559 U.S. 356, 366 (2010). In the context of plea agreements, counsel has a "critical obligation . . . to advise the client of 'the advantages and disadvantages of a plea agreement.'" *Id.* at 370 (quoting *Libretti v. United States*, 516 U.S. 29, 50-51 (1995)). And counsel's "ignorance of a point of law that is fundamental to his case combined with his failure to perform basic research on that point is a quintessential example of unreasonable performance under *Strickland*." *Hinton v. Alabama*, 571 U.S. 263, 274 (2014).

In September 2014, the prosecution extended a second plea offer to Aurelio. Pet.AppJ. 055a; Pet.AppMM 0678a-0680a. At the time, Aurelio was intentionally misinformed about the plea offer by Fazzone and Contiguglia, as they informed Aurelio the offer was a concurrent plea offer to his current DOC sentences.

Pet.AppHH. 0280a-0282a; 0444a-0445a. Arseneau was present during a telephone call when Contiguglia informed Aurelio, “that’s not really a good offer, we can win at trial, I would reject that offer and they’ll probably make a better one later.” Pet.AppHH 0322a.

Between July 2014 and December 2014, Aurelio was attempting to negotiate a plea deal and wanted to get a plea done by February 2015. Pet.AppMM. 0681a-0684a; 0687a; 0723a. But Contiguglia continued to lie to Aurelio.

On May 1, 2015, the prosecution offered Aurelio a third plea offer. Pet.AppK. 056. During a telephone call with Arseneau and Contiguglia, while Aurelio was in prison, Aurelio was informed by Contiguglia that the plea offer was violent and to reject the plea offer. Pet.AppHH. 0323a-326a; 0346a-0347a; 0449a-0454a.

Contiguglia never provided Aurelio with a copy of the May 1, 2015 plea offer, until 2018, nor did Contiguglia inform Aurelio that he could pick alternative charges, how the plea offer would impact his current DOC sentences, the fact the plea was non-violent or how this plea offer would impact Aurelio’s parole eligibility. This was deficient and prejudicial performance and a violation of *Strickland*, *Lafler*, *Frye* and *Hinton*. Notably, the COA and the lower Court ignored this material information.

The Application of the *Strickland* standard compels relief here.

**B. Aurelio was Prejudiced Because he Would Have Reasonably Accepted the Plea Offer, if he Had Been Properly Advised.**

Aurelio's contemporaneous evidence shows that he would not have rejected the May 1, 2015 plea offer had he been properly advised by Contiguglia. Thus, the only remaining issue is whether Aurelio can establish prejudice. He can.

"Courts should not upset a plea solely because of post hoc assertions from a defendant about how he would have pleaded but for his attorney's deficiencies. Judges should instead look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Lee v. United States*, 582 U.S. 357, 369 (2017). Aurelio's contemporaneous corroborating evidence shows:

- In September 2014, the prosecution extended a second plea offer to Aurelio. At the time, Aurelio was intentionally misinformed about the plea offer by Fazzone and Contiguglia, as they informed Aurelio the offer was a concurrent plea offer to his current DOC sentences;
- Arseneau was present during a telephone call when Contiguglia informed Aurelio, "that's not really a good offer, we can win at trial, I would reject that offer and they'll probably make a better one later;"
- In early July 2014, in Denver District Court Case Number 13CR03458, a separate criminal case, Aurelio was presented with a plea offer but he rejected the plea offer and ripped it up, mailed the plea offer back to the prosecution and demand trial. Pet.AppNN. 0763a-0765a. However, despite Aurelio's proclamations of innocence, he changed his mind a

couple days later and accepted the plea offer. Pet.AppDD. 0230a; Pet.AppOO. 0788a-0789a;

- Between July 2014 and December 2014, Aurelio was attempting to negotiate a plea deal and wanted to get a plea done by February 2015 and all of his letters to Contiguglia establish that. Pet.AppMM. 0673a-0758a. But Contiguglia continued to lie to him;
- Even though Fazzone attempted to commit misconduct and conform her testimony to Contiguglia's testimony, during the evidentiary hearing, Aurelio was able to impeach her with reliable evidence at the hearing. Pet.AppII. 0484a-0492a. Fazzone and Contiguglia failed to accurately inform Aurelio of the true terms and conditions of the September 2014 plea offer, to keep the case moving forward for financial gain;
- On May 1, 2015, the prosecution offered Aurelio a third plea offer. Pet.AppK. 056a. During a telephone call with Arseneau and Contiguglia, while Aurelio was in prison, Aurelio was informed by Contiguglia that the plea offer was violent and to reject the plea offer, truly false information;
- Contiguglia never provided Aurelio with a copy of the May 1, 2015 plea offer, nor did he inform Aurelio that he could pick alternative charges, or how the plea offer would impact his current DOC sentences, the fact the plea was non-violent or how this plea offer would impact Aurelio's

parole eligibility. This was deficient and prejudicial performance and a violation of *Strickland*, *Hinton*, *Lafler*, and *Frye*;

- When Aurelio was brought to Denver, he attempted to accept the plea offer, however, Contiguglia encouraged Aurelio to reject the plea offer based on erroneous and false legal advice “that he could not be convicted at trial,” and Arseneau corroborated Aurelio’s testimony;
- Between July 2014 and May 2, 2015, Aurelio wrote numerous letters to Contiguglia and the prosecution, expressing his desire to accept a plea offer, his dissatisfaction with prosecution and demands for a specific plea. Pet.AppMM. 0673a-0758a; Pet.AppNN. 0759a-0787a. These letters are truly irrelevant due to Contiguglia’s decision to inaccurately and falsely advise Aurelio of the true terms and conditions of the May 1, 2015 plea offer, considering Aurelio’s history of accepting plea offers;
- During this representation, Contiguglia forged/signed a contract with Jennifer Brown, one of Aurelio’s private investigator’s, without Aurelio’s permission. Mrs. Brown accrued nearly \$12,000.00 in debt. When Mrs. Brown attempted to get paid, Contiguglia gave her the run-around and engaged in deception, dishonesty and lies. Pet.AppH. 052a-053a.

To establish prejudice in the context of plea negotiations, the defendant must show a reasonable probability that “the outcome of the plea process would have been different with competent advice.” *Lafler*, 566 U.S. at 163. “A reasonable probability

is a probability sufficient to undermine confidence in the outcome," which is a standard "somewhat lower" than preponderance of the evidence. *Strickland*, 466 U.S. at 694.

A defendant can establish prejudice by showing a reasonable probability that, but for counsel's deficient advice, he would have accepted the offer, it would have been presented to and enforced by the court, and his sentence under the offer would have been less severe than the one imposed after the jury's guilty verdict. *Lafler*, 566 U.S. at 164.

As discussed above, Aurelio's contemporaneous corroborating evidence shows that he would not have rejected the May 1, 2015 plea offer had he been properly advised by Contiguglia. Aurelio would have accepted the offer, the offer would have been presented to the lower court and enforced by the Court and the sentence under the offer would have been less severe. Thus Aurelio is entitled to relief.

**II. THE LOWER COURT DEPRIVED AURELIO OF FUNDAMENTAL FAIRNESS AND DUE PROCESS OF LAW—BY FORCING AURELIO TO PROCEED *PRO SE*, BY IGNORING MATERIAL EVIDENCE, BY UNREASONABLY APPLYING THIS COURTS RULE, BY RELEASING HIS KEY WITNESSES, AND BY FAILING TO AFFORD AURELIO AN ADEQUATE OPPORTUNITY TO PRESENT HIS CLAIMS FAIRLY.**

Colorado has created a right to postconviction review in certain circumstances and a defendant is entitled to a meaningful opportunity to challenge the effective assistance of trial and appellate counsel. C.R.S. § 18-1-410; *People v. Wiedemer*, 852 P.2d 424, 441 (Colo. 1993)(noting "the overriding concern enunciated in *Germany* that

a defendant have the meaningful opportunity required by due process to challenge his conviction").

In Colorado, there is no constitutional right to postconviction counsel, but Crim. P. 35(c)(3)(IV) and (V) authorize a postconviction court to appoint counsel if the court concludes that the defendant's postconviction motion has arguable merit. *Townsell v. People*, 2026 CO 11, ¶24.

If appointed, postconviction counsel is constitutionally obligated to provide effective assistance. See U.S. Const. amend. VI; Colo. Const. art. II, § 16; *People v. Breaman*, 939 P.2d 1348, 1351-52 (Colo. 1997). Just like trial and appellate counsel, postconviction counsel must provide assistance that is at least "minimally effective" and "of sufficient quality to ensure that the process itself is fundamentally fair." *Silva v. People*, 156 P.3d 1164, 1169 (Colo. 2007)(quoting *People v. Valdez*, 789 P.2d 406, 410 (Colo. 1990)).

**A. Clearly Established Law Prohibited the Lower Court From Depriving Aurelio of Fundamental Fairness and Due Process of Law During His Evidentiary Hearing.**

When a state creates a right by statute or rule, the accompanying procedures must comport with a defendant's constitutional rights, including the right to due process. *Evitts v. Lucey*, 469 U.S. 387, 401 (1985); also *Dist. Att'y's Off. v. Osborne*, 557 U.S. 52, 68 (2009)(A "state-created right can, in some circumstances, beget yet other rights to procedures essential to the realization of the parent right." (quoting *Conn. Bd. of Pardons v. Dumschat*, 452 U.S. 458, 463 (1981))).

The Due Process Clause of the United States Constitution "imposes procedural limitations on a State's power to take away protected entitlements," *Osborne*, 557 U.S. at 67, but it doesn't dictate what form those procedures must take, *id.* at 69; accord *Pennsylvania v. Finley*, 481 U.S. 551, 559 (1987). See U.S. Const. amend. XIV; see also Colo. Const. art. II, § 25. And in the postconviction context, due process simply ensures that the procedures governing a state-created right don't "'offend[] some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental,' or 'transgress[] any recognized principle of fundamental fairness in operation.'" *Osborne*, 557 U.S. at 69 (quoting *Medina v. California*, 505 U.S. 437, 446-448 (1992)).

Accordingly, when the state creates a right, "[t]he State cannot adopt procedures which leave . . . indigent defendants merely a 'meaningless ritual' while others in better economic circumstances have a 'meaningful appeal.'" *Ross v. Moffitt*, 417 U.S. 600, 612 (1974)(quoting *Douglas v. California*, 372 U.S. 353, 358 (1963)).

Due process doesn't require "absolute equality or precisely equal advantages" in all contexts. *United States v. MacCollom*, 426 U.S. 317, 324 (1976)(quoting *San Antonio Indep. Sch. Dist. v. Rodriguez*, 411 U.S. 1, 24 (1973)). It requires only that indigent defendants have "an adequate opportunity to present their claims fairly." *Ross*, 417 U.S. at 612.

**1. Forcing Aurelio to Proceed *Pro-se* Was Fundamentally Unfair and a Violation of Due Process**

Lisa Polansky filed a conflict motion. Aurelio filed a *pro se* pleading in which he requested "appointment of conflict-free postconviction counsel.

The postconviction court conducted a hearing on the issue. Pet.AppU. 0139a-0140a. At the conclusion of the hearing, the court permitted Polansky to withdraw as counsel but refused to appoint substitute counsel forcing Aurelio to proceed *pro se*. Pet.AppU. 0146a.

On March 11, 2022, the district court conducted a hearing on the issue. Polansky advised the court that her relationship with Aurelio had "broken down to the point that it is irreconcilable" and that Aurelio should either represent himself or get another attorney. Pet.AppU. 0143a.

While the court granted Polansky's request to withdraw as counsel, Pet.AppU. 0146a, the court went on to note that his staff was "very familiar with your case and your appeals." Pet.AppU. 0146a.

The court continued:

"and it's just that there's just this pattern on blaming everybody else for every single thing that's ever happened to you, whether it's your original conviction, post-conviction relief, even - up to me, blaming me that I'm getting everything in error. And that's just what you do. And so what you're going to get now is because you only have a limited right to post-conviction counsel, you get to represent yourself."

Pet.AppU. 0146a.

While a defendant in a postconviction relief proceeding does not have a constitutional right to counsel under either the federal or state constitution, *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Coleman v. Thompson*, 501 U.S. 722, 752 (1991); *People v. Breaman*, 939 P.2d 1348, 1350 (Colo. 1997), there does exist a limited statutory right to appointment of counsel for meritorious Crim. P. 35(c) motions. *Silva v. People*, 156 P.3d 1164, 1168 (Colo. 2007).

In Colorado, once there is appointment of counsel, the standard for assessing the effectiveness of postconviction counsel is the *Strickland* standard. *Silva*, 156 P.3d at 1168-1169.

"When an indigent criminal defendant voices objections to court appointed counsel, the trial court must inquire into the reasons for dissatisfaction. If the defendant establishes good cause, such as a conflict of interest or a complete breakdown of communication, the court must appoint substitute counsel. *People v. Arguello*, 772 P.2d 87 (Colo. 1989). Conversely, if the court has a reasonable basis for concluding that the attorney-client relationship has not deteriorated to the point where counsel is unable to give effective assistance, the court is justified in refusing to appoint new counsel. *People v. Schultheis*, 638 P.2d 8 (Colo. 1981)."

*People v. Apodaca*, 998 P.2d 25, 28 (Colo. App. 1999)

Among the factors which the court may consider assessing is whether substitution of counsel is warranted are: the timing of the motion, the inconvenience to witnesses, and the possibility that any new counsel will face similar difficulties. *Apodaca*, 998 P.2d at 28. "If the court determines that substitution is not warranted,

it may insist that the defendant choose between continued representation by existing counsel or appearing pro se. *People v. Arguello*, supra." *Id.*

First and foremost, Polansky told the postconviction court, "I believe that the communication, the relationship has broken down to the point that it is irreconcilable and Aurelio should either represent himself or get another attorney." Pet.AppU. 0146a. Aurelio agreed with Polansky that there was a breakdown in communication. Pet.AppU. 0145-0146.

The court then allowed Polansky to withdraw as counsel but rejected Aurelio's requested for appointment of new counsel. Pet.AppU. 0146a.

But a complete breakdown in communications between counsel and client is precisely one of the circumstances under which a defendant is entitled to appointment of substitute counsel.

Second, none of the factors cited in *Apodaca* was present in this case. In fact, the undisputed facts indicate that Aurelio should have been given substitute counsel. The motion was not filed on the eve of trial or on the eve of an evidentiary hearing. No witness had yet been served with a subpoena. In fact, no hearing date had been set. Both Aurelio and Polansky told the court that there had been a complete breakdown in communications which is one of the grounds for appointing substitute counsel. In fact, Polansky told the court that Aurelio should either get another attorney or go *pro se*. Pet.AppU. 0143a (It is unclear whether Polansky meant that Aurelio should get a new court-appointed attorney or that he should be permitted to

retain private counsel. But inasmuch as Aurelio qualified financially for appointment of counsel, if he could not afford to hire someone, he was entitled to appointed counsel.)

Finally and perhaps most significantly, the court relied upon inappropriate considerations in exercising its discretion. The court noted that some unnamed staff members were "very familiar" with Aurelio's case and his appeals. Pet.AppU. 0146a.

The court then accused Aurelio of "blaming everybody else for every single thing that's ever happened" to him and that since there is only a limited right to appointed counsel on postconviction matters, Aurelio would have to represent himself. Pet.AppU. 0146a.

The lower court and its staff clearly were frustrated and angry with the voluminous pleadings which Aurelio had filed on a *pro se* basis in initiating the postconviction proceedings. There was an original petition and supporting documents which exceeded 100 pages in length. There were two supplemental petitions which Aurelio filed which were also lengthy and included numerous claims.

But Aurelio had no choice but to include every possible claim in his initial pleadings so that when postconviction counsel was appointed to investigate, postconviction counsel could winnow out some of the stronger claims.

The lower court should not have punished Aurelio for doing that which the court rules required him to do. To the extent that Aurelio "blamed everyone for

everything that had happened to him," he did so because the Colorado Rules of Criminal Procedure and the case law construing Rule 35(c) required nothing less.

The complete deprivation of post-conviction counsel was not harmless either as Aurelio can demonstrate harm. Polansky had endorsed Martin Stuart as an expert who was prepared to testify on inter alia counsel's ineffectiveness in plea negotiations. Pet.AppS. 0109a; 0126a-0129a; 0131a.

But once Polansky withdrew as counsel and the court refused to appoint substitute counsel for Aurelio, Stuart refused to appear and testify as an expert because he would not work with *pro se* litigants. Pet.AppY. 0154a-0156a.

And when Aurelio sought to secure a substitute expert, the court denied the request as unnecessary "due to the limited scope of the issue" on which the court granted a hearing. Pet.AppZ. 0157a. As such, the deprivation of the right to counsel cost Aurelio his right to present testimony from a criminal practice standards expert and several other witnesses.

The deprivation of postconviction counsel also resulted in the disorganized and scattershot presentation at the evidentiary hearing on the issues surrounding trial counsel's mishandling of plea negotiations. *Pro se* litigants who are not experienced litigation attorneys rarely present their cases effectively. (Even experienced litigation attorneys often fail to present their cases effectively.) The record of the proceedings in this case after Polansky was permitted to withdraw without the court appointing substitute counsel for Aurelio demonstrates this.

## **2. The Excluded Witnesses Deprived Aurelio of Fundamental Fairness and Due Process of Law**

The erroneous exclusion of Jennifer Brown, Margaret Steele, Scott Robinson and John Palmeri, from testifying and presenting evidence, further undermined the reliability of Aurelio's postconviction evidentiary hearing as it was not full and fair and a clear violation of due process. See *Gagnon v. Scarpelli*, 411 U. S. 778, 786 (1973)(noting that the "minimum requirements of due process" include an "opportunity to be heard in person and to present witnesses and documentary evidence").

Additionally, by failing to appoint a new expert witness or allow Aurelio's volunteer expert to testify—deprived Aurelio of fundamental fairness and due process of law.

Their testimony would have offered a powerful counter to Contiguglia's claims and further would have undermined his credibility. To hold that that excluding that evidence was harmless, particularly in a case where credibility was essential to understanding Aurelio's claims against Contiguglia, was unreasonable.

Excluding their testimony, on its own, rendered Aurelio's postconviction evidentiary hearing fundamentally unfair, the hearing was not full and fair, violating the Due Process Clause.

### **3. The Cumulative Errors Warrants Summary Reversal**

The “slew” of errors identified above warrant reversal. Individually and cumulatively, the errors in this case demand reversal. In light of the stakes, even error correction is an appropriate use of this Court’s authority.

### **4. Summary Reversal is Warranted**

Summary reversal is warranted. This Court has increasingly granted summary relief in certain cases based on lower court errors. *Pitts v. Mississippi*, 607 U. S. 1 (2025)(per curiam)(granting summary vacatur for man who sexually abused his daughter); *Doe v. Dynamic Physical Therapy, LLC*, 607 U. S. 11 (2025)(per curiam)(granting summary vacatur). And, this Court has “not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law.” *Wearry v. Cain*, 577 U.S. 385, 395 (2016)(summarily deciding that a capital defendant’s due process rights were violated). The Court should do so here.

The stakes here could not be higher. Aurelio was convicted and sentenced to a total effective indeterminate sentence of 77.5 years to life in the department of corrections after receiving erroneous and false legal advice. The lower Courts failed to reverse, even as it was obvious the lower Court ignored material evidence, testimony from key witnesses and unreasonably applied *Strickland*, *Hinton*, *Lafler*, *Frye* and *Lee*. This Court should demand more. Summary reversal would also right this wrongful conviction.

## CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted August 18, 2026.

*Nick Aurelio*

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