No. 26-6016

ORIGINAL

SUPREME COURT OF THE UNITED STATES

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JUN 22 2026
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SUPREME COURT, U.S.

Marcus T. Govan, Sr.,

*Petitioner,*

Vs.

Warden Brian English,

*Respondent.*

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

**PETITION FOR A WRIT OF CERTIORARI**

Marcus T. Govan, Sr.
Petitioner, *Pro Se*
IDOC #160567
Miami Correctional Facility
3038 West 850 South
Bunker Hill, Indiana 46914

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## Questions Presented

1. Whether Petitioner's conviction violates the Due Process Clause where DNA recovered from a sexual assault kit allegedly matched Petitioner's later-obtained buccal swab at a statistical probability of one in a trillion, while the same evidentiary sample failed to match Petitioner's preexisting DNA profile stored in CODIS.
2. Whether the prosecution violated Brady v. Maryland by suppressing a forensic report documenting the absence of a CODIS match and failing to disclose that report to the defense before trial.
3. Whether DNA evidence satisfies constitutional standards of reliability and sufficiency where contradictory forensic testing produced both a purportedly conclusive statistical match and an exclusion from the defendant's CODIS profile.
4. Whether Petitioner was denied effective assistance of counsel under Strickland v. Washington where trial counsel failed to lay the proper evidentiary foundation necessary to impeach a key prosecution witness.

## PARTIES

The parties to the proceedings are:

Petitioner, pro se, Marcus T. Govan, Sr. IDOC #160567 Miami Correctional Facility, 3038 West 850 South Bunker Hill, Indiana 46914.

For Respondent Warden English:

Indiana Attorney General Todd Rokitta, 302 W. Washington St. IGC South, Fifth Floor, Indianapolis, Indiana, 46204

## PRIOR OPINIONS AND ORDERS

June 5, 2019: Conviction, Rape, Attempt Rape, Domestic Battery, and Strangulation; Allen county IN.; 02D05-1809-F3-56.

February 26, 2020: Direct Appeal, affirmed; Govan v. State, 2020 Ind. App. Unpub. LEXIS 241.

May 14, 2020: Transfer denied; Govan v. State, 2020 Ind. LEXIS 427.

June 11, 2021: Post-conviction denied; Allen County, In.02D06-2007-PC-24.

January 26, 2022: Post-conviction appeal affirmed the denial; Govan v. State, Ind. App. Unpub. LEXIS 77.

March 31, 2022: Transfer denied; Govan v. State, Ind. LEXIS 195.

November 15, 2022: Petition for Writ of Habeas Corpus denied; Govan v. Warden, 2022 U.S. Dist. LEXIS 206899.

April 30, 2026: Petition for Certificate of Appealability denied.

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## OPINIONS BELOW

The opinion of the United States District Court for the Northern District of Indian, South Bend Division, is reported as Govan v. Warden, 2022 U.S. Dist. LEXIS 206899.

## JURISDICTION

The judgment below was entered on November 15, 2022. Jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fifth, Sixth, and Fourteenth Amendments to the United States Constitution.

The Fifth Amendment provides in relevant part:

- "No person shall be deprived of life, liberty, or property, without due process of law."

The Sixth Amendment provides in relevant part:

- "In all criminal prosecutions, the accused shall enjoy the right…to have the Assistance of Counsel for his defense."

The Fourteenth Amendment provides in relevant part"

- "No State shall…deprive any person of life, liberty, or property, without due process of law."

## STATE OF THE FACTS

Petitioner Marcus T. Govan, Sr., was convicted in Indiana state court of offenses arising from an alleged sexual assault.

The prosecution's case relied heavily upon DNA evidence recovered from a sexual assault kit. At trial, the State presented testimony asserting that DNA recovered from the sexual assault kit matched Petitioner's later-obtained buccal swab and that the DNA profile was "one in a trillion times more likely" to have originated from Petitioner than from an unrelated individual.

However, before the later buccal swab comparison was performed, petitioner already possessed a DNA profile stored within the Combined DNA Index System ('CODIS"). The same evidentiary DNA sample recovered from the sexual assault kit reportedly failed to match Petitioner's CODIS profile.

The prosecution failed to disclose a forensic report documenting the absence of a CODIS match. The report was never introduced into evidence at trial and was not meaningfully disclosed to the defense before conviction.

The suppressed forensic report directly contradicted the prosecution's theory identifying Petitioner as the source of the DNA recovered from the sexual assault kit.

Trial counsel further rendered ineffective assistance by failing to properly impeach a key prosecution witness. Counsel attempted impeachment without first laying the evidentiary foundation required under applicable evidentiary rules because counsel failed to ask the witness the predicate question necessary for impeachment.

As a result, the jury was prevented from hearing evidence bearing directly upon witness credibility and the reliability of the prosecution's case.

Petitioner subsequently sought federal habeas corpus relief pursuant to 28 U.S.C. § 2254 in the United States District Court for the Northern District of Indian, South Bend Division. The district court denied relief.

This petition follows.

## REASONS FOR GRANTING THE WRIT

### I. THE CASE PRESENTS IMPORTANT QUESTIONS CONCERNING ACTUAL INNOCENCE AND CONTRADICTORY DNA EVIDENCE.

This case presents extraordinary forensic contradictions warranting this Court's review. The prosecution argued that Petitioner's later-obtained buccal swab conclusively matched DNA recovered from a sexual assault kit with a statistical probability of one in a trillion. Yet the same evidentiary sample reportedly failed to match Petitioner's previously existing DNA profile stored in CODIS.

These contradictory results raise substantial questions regarding:

- Laboratory reliability;
- Chain of custody;
- Statistical interpretation;
- Mixed-source DNA analysis; and
- Constitutional sufficiency of forensic evidence.

This Court has reportedly recognized that compelling evidence of actual innocence may permit review of otherwise procedurally defaulted constitutional claims. See *Schlup v. Delo*; *House v. Bell*.

The decision below conflicts with those principles by failing to adequately address whether materially contradictory DNA evidence undermines confidence in the verdict.

## II. THE PROSECUTION'S SUPPRESSION OF THE CODIS NON-MATCH REPORT VIOLATED BRADY v. MARYLAND.

Under *Brady v. Maryland*, the prosecution is constitutionally required to disclose materially exculpatory evidence.

The forensic report was material because identity constituted the central issue at trial. Had the jurors learned that Petitioner's preexisting CODIS profile did not match the evidentiary sample, there exists a reasonable probability that at least one juror would have harbored reasonable doubt.

Suppression of the report deprived petitioner of the opportunity to;

- Challenge the reliability of the forensic analysis;
- Cross-examine prosecution experts regarding contradictory results;
- Present independent forensic testimony; and
- Argue that the State's DNA evidence lacked constitutional reliability.

This Court's intervention is necessary to reaffirm that exculpatory forensic reports fall squarely within *Brady's* disclosure requirements.

## III. THE CASE PRESENTS AN IMPORTANT QUESTION REGARDING THE CONSTITUTIONAL RELIABILITY OF DNA EVIDENCE.

DNA evidence possesses uniquely persuasive force before juries and is frequently viewed as scientifically infallible.

Where the State simultaneously possesses evidence excluding a defendant through CODIS while presenting a later statistical inclusion based upon the same evidentiary sample, due process become acute. The lower courts failed to adequately examine whether contradictory DNA findings may constitutionally support conviction beyond reasonable doubt.

This issue is exceptionally important because DNA evidence increasingly serves as the foundation for criminal prosecutions nationwide.

Review by this Court is necessary to ensure constitutional safeguards governing the use of forensic science in criminal trials.

## IV. PETITIONER WAS DENIED EFFECTIVE ASSISTANCE OF COUNSEL.

The Sixth Amendment guarantees criminal defendants effective assistance of counsel. Under *Strickland v. Washington*, counsel performs deficiently where representation falls below objective standards of reasonableness and prejudices the defense.

Trial counsel failed to properly impeach a key witness because counsel neglected to ask the predicate question necessary to lay the evidentiary foundation required for impeachment. As a result, critical impeachment evidence was excluded from the jury's consideration. Counsel's omission cannot reasonably be characterized as sound trial strategy.

Given the contradictory DNA evidence and the central importance of witness credibility, there exists a reasonable probability that competent representation would have altered the outcome of trial.

## CONCLUSION

This case presents exceptionally important constitutional questions concerning actual innocence, suppression of exculpatory forensic evidence, reliability of DNA evidence, and effective assistance of counsel.

The decision below permits a conviction to stand despite materially contradictory forensic evidence and suppression of exculpatory information undermining confidence in the verdict.

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

Respectfully submitted,

Marcus T. Govan, Sr.



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Date: June 19, 2026