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IN THE.

SUPREME COURT OF THE UNITED STATES

RUBEN CASILLAS BRITO - PETITIONER

VS.

RYAN THORNELL, EDWARD CODAY, ET AL.
ATTORNEY GENERAL OF THE STATE OF ARIZONA

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

PETITION FOR WRIT OF CERTIORARI

RUBEN CASILLAS BRITO
#313183
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QUESTIONS PRESENTED

1) Did the Panel of the Ninth Circuit err by deciding the merit of an appeal not properly before the court to justify the denial of a certificate of appealability?

2) Is the Ninth circuits determination on Mr. Brito's motion to reconsider and/or reconsider en banc in contradiction to the Ninth circuit Rule 27-10?

3) Are the issues presented to the Ninth Circuit Court of Appeals not what the Panel needed explained to issue a C.O.A. to Mr. Brito? Why?

4) Did the courts overlook or disregard all federal claims brought up by Mr. Brito?

5) Is it possible that a prisoner with such a credible wrongful conviction claim have no recourse?

LIST OF PARTIES

EDWARD CODAY, WARDEN
RYAN THORNELL, D.O.C. DIRECTOR
KRIS MAYES, ATTORNEY GENERAL OF THE STATE OF ARIZONA
JACQUELINE RATEAU, MAGISTRATE JUDGE
R. NELSON, CIRCUIT JUDGE
SUNG, CIRCUIT JUDGE
CANBY, CIRCUIT JUDGE
HURWITZ, CIRCUIT JUDGE

DISCLOSURE OF CORPORATE AFFILIATIONS AND FINANCIAL INTEREST

PURSUANT TO SUPREME COURT RULE 29.6, RUBEN CASILLAS BRITO MAKES THE FOLLOWING DISCLOSURE:

1. MR. BRITO IS NOT A SUBSIDIARY OR AFFILIATE OF A PUBLICLY OWNED CORPORATION.

2. THERE IS NO PUBLICLY OWNED CORPORATION THAT IS PARTY TO THE APPEAL OR HAS A FINANCIAL INTEREST IN THE OUTCOME OF THIS CASE.

BY: Ruben C Brito

RUBEN CASILLAS BRITO, PRO SE
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TUCSON, AZ 85756

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner Ruben Casillas Brito respectfully requests that the court grant a Writ of Certiorari. He seeks review of the decision of the Ninth Circuit Court of Appeals, denying his motion for a certificate of appealability. Mr. Brito respectfully petitions the Supreme Court to issue a Writ of Certiorari to the Ninth Circuit of the United States Court of Appeals. He asks this court to order the Ninth Circuit to provide its honest service, to fulfill its duty and to follow the Constitution by not allowing to let Ineffective Assistance of Counsel, Prosecutorial Misconduct, and Abuse of Discretion; Lies, fraud, and deceit dictate an unlawful win for the State and the Court's.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit, and the DISTRICT COURT of the United States for District of Arizona, Tucson Division are made part of the Appendix. Unknown if they have been designated for Publication or not yet reported.

JURISDICTIONAL STATEMENT

Pursuant to Rule 10(a) Mr. Brito invokes this courts jurisdiction to Grant the petition for a writ of Certiorari, to the Ninth Circuit of the United States Court of Appeals, on the basis of 28 U.S.C. § 1254 (1). The Court of Appeals denied Mr. Brito's motion for the issuance of a certificate of appealability on February 25, 2026. Mr. Brito filed a Petition for Panel rehearing and/or rehearing en banc, seven day's after the C.O.A. was denied. This Petition is timely filed in accordance with the Rules of the Supreme Court, Rule 13.1.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

The questions presented implicate the following provisions of the Constitution of the United States and the United States Code:

THE FIFTH AMENDMENT - No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury except in cases arising in the land or naval forces, or in the militia, when in actual service in the time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

THE SIXTH AMENDMENT - 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 witness against him; to have compulsory process for obtaining witnesses in his favor and to have the assistance of counsel for his defense.

THE FOURTEENTH AMENDMENT - All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priveledges 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.

28 U.S.C. § 1254 (1)- By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree.

28 U.S.C. § 2243-Holds in part that when the writ or order is returned, A day shall be set for hearing, not more than five days after the return unless for good additional time is allowed.

28 U.S.C. § 2253 (c)(1)(B)- Unless a circuit justice issues a Certificate of Appealability, an appeal may not be taken to the Court of Appeals... the final order in a proceeding under § 2254.

28 U.S.C. § 2254 (a)- Provides that the district court shall entertain an application for writ of habeas corpus in behalf of a person in custody in violation of the Constitution or Laws or Treaties of the United States.

STATEMENT OF THE CASE

On or about January 24, 2024, Mr. Brito submitted a petition for writ of Habeas Corpus by a person in State custody pursuant to 28 U.S.C. § 2254. His primary claims- although poorly particularized because of his ignorance of law- were based on four events: 1) Mr. Brito was prejudiced when the Arizona Court of Appeals, Division Two, made an erroneous conclusion of law resulting in a miscarriage of justice violating the Fifth Amendment when his petition for review was dismissed/denied before it was received and reviewed; 2) Mr. Brito's Rule 33 Post-Conviction for Relief was summarily dismissed on May 16, 2023 without an evidentiary hearing or conducting the Strickland Standard or Cronic Standard Procedure of Review resulting in an Abuse of Discretion by the Court; 3) Counsel's errors were so fundamental that the error went to the inception of the case violating Mr. Brito's substantial and Due Process rights being stripped from him; 4) Counsel's errors made

it impossible that Mr. Brito would not have had a fair trial because counsel was so egregously ineffective that Mr. Brito was duressed to plead guilty by undue influence. Unable to locate Writ for Habeas Corpus to make part of Appendix.

After eleven months, a motion for extension of time to file Answer to Petition for Habeas Corpus was submitted on December 5, 2024 By Kristin Mayes, Attorney General of Arizona and Amy Pignatella, Assistant AG of Arizona. App.-Q. Made part of corresponding Appendix.

On January 18, 2025, Mr. Brito received the limited answer to Petition for Writ of Habeas Corpus. App.-R. The reply to the limited answer to Petition for Writ of Habeas Corpus was submitted on or about January 28, 2025. .An order stating a document contains sensitive information and should be sealed. App.-G. All made part of the Corresponding Appendix.

On or about April 24, 2025, a Report and Recommendation was filed by the Honorable Magistrate Judge Jacqueline Rateau, where she recommends that the district court dismiss the Petition for being untimely. App.-C. On or about May 7, 2025, Mr. Brito filed a motion for Extension of time Pursuant to Federal Rules of Civil Procedure, Rule 72 (b)(2), for reason that R&R was received on May 2, 2025, due to the R&R being sent to the wrong Prison facility. App.-S. On or about May 20, 2025, Mr. Brito filed Petitioner's Objection to Magistrate's R&R. App.-J. On or about May 30, 2025, a response to Petitioners Objection was filed. App.-L. On or about June 10, 2025, he submitted a supplement titled addition to reply to response. .Around August 21, 2025, a seven page order was filed denying as moot and dismissing the Petition as untimely Adopting the Magistrate's recommendation. App.-N. All made part of corresponding Appendix.

On or about August 26, 2025, Mr. Brito filed a notice of appeal to the United States Court of Appeals for the Ninth Circuit from the United States District Court, Southern District of Arizona, Tucson Division. App.-O. On or about September 2, 2025, Mr. Brito filed his motion for Issuance of Certificate of Appealability in the Ninth Circuit of the Ninth Circuit of the United States Court of Appeals. Within his motion to the Court of appeals, Mr. Brito notified the court of the long standing Mandate in Clisby v. Jones, 960 F.2d 925 (1992)(en banc), requiring

the courts of Appeals to vacate and remand for consideration all grounds for Habeas relief. App.-P. When a district court has overlooked a claim, our practice is to vacate the judgment without prejudice and remand the case for consideration of the claim. Clisby. On or about February 25, 2026, an order is filed denying the Certificate of Appealability. App.-A. All made part of the corresponding Appendix.

On or about March 4, 2026, Mr. Brito filed a petition for Panel rehearing and/or rehearing en banc (Motion to Reconsider). He brought up two issues being: 1) The Panel was in error when it failed to grant Certificate of Appealability based on the courts Clisby error; 2.) The Panel was in error when it denied Brito's motion overlooking the unreasonable determination of his ineffective assistance of counsel claim. . On or about March 30, 2026 the motion for reconsideration and/or reconsideration en banc is denied. App.-E. All made part of the corresponding Appendix.

REASON TO GRANT WRIT

Indigent defendants pursuing first-tier review in a § 2254 proceeding are generally ill equipped to represent themselves, for (a) a first-tier review application forced to act in pro-se, would face a record unreviewed by Appellate counsel; and (b) without Guides Keyed to a court of review. A pro se movant's entitlement to seek relief from ineffective assistance of counsel might be more formality than a right, because navigating the criminal appeal and collateral process without a lawyer's assistance is a perilous endeavor for a layperson and well beyond the competence of individuals afforded only twelve months to learn the process involved and may still not ever get it right: In the average case, the most common claim of Constitutional error is ineffective assistance of counsel. In Mr. Brito's case, it is the Ninth Circuit and not the United States Congress that elected to change the reach of the United States law that granted a defendant the right to appeal his sentence when the sentence was in violation of the laws, See 18 U.S.C. § 3006 A.

Both, the U.S. District Court and Ninth Circuit Court of Appeals in Mr. Brito's case,

disregarded the intent of Congress by defying the mandate in Clisby v. Jones, Supra. The Court's denied Mr. Brito's Petitions reviewing but not addressing the Wrongful conviction, the lies, fraud, Ineffective assistance of counsel, Prosecutorial Misconduct and abuse of discretion.

1) Did the Panel of the Ninth Circuit err by deciding the merit of an appeal not properly before the court to Justify the denial of a Certificate of Appealability?

A) The Panel improperly sidestepped the C.O.A. process by denying to overturn the conviction based on its narratwe that that appellant, Mr. Brito, had not shown that "Jurists of reason would find it debatable whether the Petition states a valid claim of the denial of a Constitutional Right and that Jurists of reason would find it debatable whether the district court was correct in its Procedural ruling." . A copy of the Panel's Judgment is made Part of the Appendix.

In reviewing the facts and circumstances of Mr. Brito's case, the Ninth Circuit Panel "paid lip Service to the Principles guiding issuance of a C.O.A." Tenard v. Dretke, 542 U.S. 274, 283 (2004), but in actuality the Panel held Mr. Brito to a far more stringent standard. Specifically, the Ninth Circuit Panel sidestepped the threshold C.O.A. process by first not deciding on the merits of Mr. Brito's appeal and then Justifying its denial of a C.O.A. based on the fact that the State and the Court want to Preserve the finality of his wrongful conviction. The Court, and its personnel - i.e., clerks, Prosecutors, Defense Counsel, and staff attorneys - use the rules governing these Proceedings to delay a winning argument until the sentence is served. But because Mr. Brito's case is an alleged Sex Offense, it should be considered a life sentence. In Arizona having to register is for life even if you are innocent of the accusations. Miller-El v. Cockrell, 537 U.S. 322 at 336-37 (2003) "in essence deciding an appeal without Jurisdiction."

As the Supreme Court held in Miller-El, the threshold nature of the Certificate of Appealability inquiry "would mean very little if appellate review were denied because the prisoner did not convince a Judge or, for that matter, three Judges, that he would Prevail." Miller-El, 537 U.S. 322 at 337.

Mr. Brito filed a motion in the Ninth Circuit seeking a Certificate of Appealability, so that he may appeal the district court's denial of his § 2254 motion. The Panel however, did not look into the ineffectiveness of counsel claim or merits of his case. Thus, concluding that the merits of the case were not acknowledged but sidestepped and ignored throughout the whole appeal process. App.-A. Made part of the Corresponding Appendix.

2) Is the Ninth circuits determination on Mr. Brito's Motion to Reconsider and/or Reconsider en banc in contridiction to the 9th Circuit Rule 27-10?

A) Mr. Brito filed his motion to reconsider and/or reconsider en banc on March 4, 2026, seven days After the Ninth Circuit issued its order to deny Mr. Brito's petition seeking a certificate of appealability on February 25, 2026.

The law and controlling Precedent indicates that Mr. Brito is due his requested relief. It's unfortunate for Mr. Brito, And thousands of Prisoners around the country because of lies and fraud uses by the State, and the courts have the latitude to hold them for years before they decide to grant what is due under the law and the Constitution. In most cases relief is witheld until the end of the Prisoner's sentence, when the delay of Justice constitutes the denial of Justice.

One of the most concerning civil rights issues, of our modern times, is the mass-incarceration of American Citizens. According to a report issued by the National Association of Criminal Defense lawyers, titled the Trial Penalty - The most aggravating elements of the Mass-incarceration issue is that a number of innocent people are coerced to Plead Guilty every day. The conviction of the innocent, is propagated by the Government's broad charging discretion, see Yates V. U.S., 574 U.S. (2015); U.S. V. Theodore Stevens, U.S. Dist., Washington D.C., 593 F.Supp. 2d 177 (2009); U.S. V. Arthur Anderson LLP., 544 U.S. 695 (2005); and U.S. V. FedEx, U.S. Dist., Northern District of California, Lexis 36383 (2016). Mass incarceration is further aggravated by inadequate Defense Lawyers who virtually eliminate the option of taking a case to trial. On a more human level, for some Defense Lawyers, there cannot be a more

heart-wrenching task than to have to explain to a client, who very likely may be innocent, that they must seriously consider Pleading Guilty or risk the absolute devastation of the remainder of his or her life locked away, that includes the unimaginable impact to their families. To further perpetuate mass-incarceration, and pertinent to this Petition, the lower courts around the Country - including the thirteen circuits of the courts of appeals - delay, deny, and/or ignore nearly all meaningful Constitutional claims that warrant Post-Conviction relief.

The first issue brought up for the Ninth Circuit in the Motion for Reconsideration And Reconsideration en banc was: The Panel was in error when it failed to grant a Certificate of Appealability based on the District Courts Clisby error.

In Clisby v. Jones, 960 F.2d at 936, "accordingly in an effort to streamline habeas Procedure, we exercise our supervisory authority and instructed district courts to resolve all claims for relief raised in a Petition for a writ of habeas corpus pursuant to § 2254, 'regardless of whether habeas relief is granted or denied.' We have defined a 'claim for relief' as 'any allegation of a Constitutional violation.'"

Mr. Brito, in his § 2254 motion, claimed that the court lacked substance when the district court denied his motion without making a merits determination. He then filed a motion for C.O.A. claiming that the district courts was in violation of the courts order of Clisby v. Jones, 960 F.2d 925, 936 (1992) (en banc), directing district courts to resolve All claims for relief raised in a Petition for a writ of habeas corpus Prior to granting or denying relief.

Mr. Brito was induced to Plead Guilty based on false Pretenses. By defense counsel and the State. Defense Counsel did not familiarize himself with the law and facts of the case. See U.S. v. Cavitt, 550 F.3d 430, 440-41 (2008); Mason v. Balcom, 531 F.2d 717, 725 (1976); McCarthy v. U.S., 394 U.S. 459, 89 S.Ct. 1166, 22 L.Ed. 2d 418 (1969).

In Mr. Brito's criminal case, the State failed to disclose criminal history, Pre-sentence report and investigation report which contain false elements which were used to wrongfully sentence and convict him: 1) a crime he did not commit on December 16, 2003 Where elements

of that crime were used in the Pre-sentence report; 2) A false second Prior felony conviction out of Santa Cruz County, Arizona. App's-T-U. Made part of corresponding Appendix.

The Supreme Court of the United States established the essential elements of actionable fraud as follows: 1) A false representation or concealment of a material fact; 2) Reasonably calculated to deceive; 3) Made with intent to deceive; 4) does in fact deceive; 5) To the hurt of the insured party.

To wit: In the Incident/investigation report (official report) - case no.: 131226046 66, Page 3 of 3, Date: 2/5/14 - Reporting officer: Dallas Wilson (39791) fraudulently entered Mr. Brito's name in the report which was falsely used in the PSR. The State did not disclose this or remove it from the record. The Court allowed it and defense Counsel did not suppress or investigate. App.- V. Made part of the corresponding Appendix.

As with the false second prior felony conviction, no one bothered to fact check it. Mr. Brito through due diligence was able to obtain an affidavit from the clerk of the Superior Court of Santa Cruz County in Arizona Stating that no records for Mr. Brito have been found. App.-U.

It is the mandate of the Eleventh Circuit Court of Appeals that was made to require district courts to resolve all claims for relief in habeas proceedings, regardless of whether relief is granted or denied. See Clisby v. Jones, 960 F.2d 925, 936 (1992) (en banc); See also Rhode v. U.S., 583 F.3d 1289, 1291 (2009) (applying Clisby). A claim is any allegation of a constitutional violation. Clisby, 960 F.2d at 936. Two claims may be distinct even if both allegations arise from the same alleged set of operative facts. When a district court fails to address all of the claims, we "will vacate the district court's judgment without prejudice and remand the case for consideration of all remaining claims..." Id. at 938. Ineffective assistance of counsel constitutes a violation of a defendant's sixth Amendment right, and thus, a claim of a constitutional violation. Strickland v. Washington, 466 U.S. 668, 684-86, 104 S.Ct. 2052, 2063-64, 80 L.Ed.2d 674 (1984).

These mandates, particularized by rule and law, were enacted to protect the public's interest in the speedy resolution in criminal cases and the prompt termination of unlawful incarceration. These federal court rules and statutes, particularized here, do not specify

or provide for tolerence of inordinate delay. The district court's deviation and violation of these mandates constitutes a violation of Mr. Brito's Constitutional right "to petition for redress of grievances."

In Mr. Brito's § 2254 motion, there exists several constitutional claims, especially defense counsels ineffectiveness, that are not addressed in the court's decision and are clearly set out in the court's record.

The second issue brought up for the Ninth Circuit in Mr. Brito's motion for Reconsideration and Reconsideration en banc was: The Panel was in error when it denied his motion based on its unreasonable determination of his ineffective assistance of counsel claim. He also brings up that the Panel denied Mr. Brito's motion for C.O.A. not on any merits but because "appellant has not shown that 'jurists of reason would find it debatable whether the district court was correct in its procedural ruling.'" Slack V. Mcdaniel, 529 U.S. 473, 484 (2000); Gonzalez V. Thaler, 565 U.S. 134, 140-41 (2012). See also 28 U.S.C. § 2253(c)(2).

Under 28 U.S.C. § 2253(c)(2), it states that a C.O.A. will be granted only if the petitioner makes "a substantial showing of the denial of a Constitutional right." Mr. Brito has shown he has been denied his Fifth, Sixth, and Fourteenth Amendment rights. Yet all courts are sidestepping the rule of law to conduct an evidentiary hearing creating a miscarriage of justice.

Mr. Brito declares that the Panel's decision is in error because it is in contrary to U.S. Supreme Court precedent mainly in the case of Buck V. Davis, 137 S.Ct. 759, 590 U.S. ___, 197 L.Ed.2d 1 (2017), where "The Supreme Court held that the Fifth circuit exceeds the limited scope of the C.O.A. analysis, the Certificate of Appealability statute sets forth a two step process: 1) An initial determination whether a claim is reasonably debatable; and 2) Then if it is, an appeal in the normal course.

How could the Ninth Circuit claim that "no jurist of reason" would find the district court's decision by not acknowledging the merits of the Constitutional claims debatable? Because of the fraud, deceit and outright lies, there is no doubt that a jurist of reason would find find so otherwise.

3) Are the issues presented to the Ninth Circuit Court of Appeals not what the panel needed explained to issue A C.O.A. to Mr. Brito? Why?

A) The issues presented in the motion seeking C.O.A. will be presented here verbatim to show this court that Mr. Brito did and what he explained, with your permission of course? Because of his ignorance and unfamiliarity in the science of law and his PTSD, he is unable to particularize a perfect argument.

A C.O.A. will be granted only if the Petitioner makes "a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253 (c)(2). In order to make a substantial showing, a Petitioner must demonstrate that a "reasonable jurist would find the district court's assessment of the constitutional claim debatable or wrong." Slack v. McDaniel, 529 U.S 473, 484, 120 S.Ct. 1595, 146 L.Ed.2d 542 (2000). When the district court has denied a claim on procedural grounds, the petitioner must demonstrate that a "jurist of reason would find it debatable whether the district court was correct in its procedural ruling." Id. As the Supreme Court indicated in its decision in Miller-El v. Cockrell, 537 U.S. 322, 123 S.Ct. 1029, 1039, 154 L.Ed.2d 931 (2003), A C.O.A. is a "jurisdictional prerequisite," and "until a C.O.A. has been issued, the Federal courts of Appeals jurisdiction to rule on the merits of appeals from habeas petitioners." When considering a request for a C.O.A.," the question is the debatability of the underlying constitutional claim, not the resolution of that debate." Id at 1042.

With the foregoing legal standard presented for the courts consideration as the standard for issuance of a certificate of appealability, Mr. Brito shows to this court his constitutional claims and how they are debatable among jurists of reason.

ISSUE ONE - The district court currently deprives Mr. Brito of his constitutionally protected right to "redress of grievances." Mr. Brito a citizen of the United States of America, has an undeniable right to access the court. The first Amendment to the U.S. Constitution holds in pertinent part that, "congress shall make no law... abridging the freedom... to petition... for redress of grievance." The district court knowingly and willingly deprives Mr. Brito review in his habeas case, by refusing to comply with the statutory mandates of 28 U.S.C §§ 2243 and 2254.

28 U.S.C. § 2243 holds in part that: "When the writ or order is returned, a day shall be set for hearing, not more than five days after the return unless for good additional time is allowed."

28 U.S.C. § 2254 (a) holds in part that: "the Supreme Court, a Justice thereof, a circuit judge, or district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a state court only on the ground that he is in custody in violation of the constitution or laws or treaties of the U.S." This was carried out on November 5, 2024, where the district court granted application for writ of habeas corpus in Mr. Brito's case.

28 U.S.C. § 2254 (d) holds in pertinent part 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 U.S.; 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.

Due to the fact that the district court overlooked all matters pertaining the constitutional claims brought forth in Mr. Brito's § 2254 motion and failed to address them an abuse of of discretion is upon the district court allowing a miscarriage of justice to continue.

According to the precedential rulings of the Supreme Court of the U.S., the district court has abused its discretion by determining its jurisdiction without an understanding of, and correctly applying the governing law and that there is no precedent to procedural default ruling of the covid-19 Pandemic due in part that this was the deadliest pandemic to hit the world and every facility dealt with the situation differently.

In its attempt to refine the boundaries of the judge-made doctrine of procedural default, the court has lost sight of the basic reason why the "writ of habeas corpus indisputably holds an honored position in our jurisprudence." ... Habeas corpus is, and has for

centuries been, "a bullwark against convictions that violate fundamental fairness."

These mandates, particularized by rule and law, were enacted to protect the Public's interest in the speedy resolution in criminal cases and the prompt termination of unlawful incarceration. These federal court rules and statutes, particularized here, do not specify or provide for tolerance of inordinate delay. The district court deviation and violation of these mandates constitute a violation of Mr. Brito's constitutional right "to petition Government for redress of grievances."

Mr. Brito Avers that reasonable Jurists would find the district court's assessment of this constitutional claim debatable or wrong. He Avers that the district court's "order coupled with its inordinate delay warrants the issuance of a certificate of appealability premised on the following court decisions: Williams V. Stephens, 620 Fed. Appx. 348 (2015)." Relevant to the instant case, such exceptional circumstances exist 'when the state system inordinately, and unjustifiably delays review of a petitioner's claims so as to impinge upon his due process rights.'"

In Mr. Brito's §2254 motion, there exist several constitutional claims, such as the ineffective assistance of counsel, that are not addressed in the court's order, and are clearly set out in the court's record. In Fontaine V. U.S., 411 U.S. 213, 215, 93 S.Ct. 1461, 36 L. Ed. 2d 169 (1973), the court said "on this record, we cannot conclude with the assurance required by the statutory standard 'conclusively show' that under no circumstances could the Petitioner establish facts warranting relief under §2255."

These are examples of reasonable Jurists who have found the impingements upon Due Process rights are debatable or wrong, to include but not Limited to inordinate delay.

ISSUE TWO- Mr. Brito was deprived of his constitutionally protected right that is particularized by the Fifth Amendment in the U.S. Constituton, to wit: "no person shall be... deprived of life, liberty or property, without due Process of law."

The Supreme Court defined due process as long ago as 1884 as, "any legal proceeding enforced by Public authority, whether sanctioned by age and custom, or newly devised in the discretion of the Legislative power, in furtherance of the General Public Good, which regards and Preserves these principles of liberty and Justice, must be held to be due Process of the law."

Mr. Brito, being "prejudiced" when the Arizona court of Appeals, Division II made an erroneous conclusion of law" resulting in a "miscarriage of justice" violating the Fifth Amendment when his Petition for Review was dismissed and denied before it was received and reviewed.

While complying with the order filed June 9, 2023, where Mr. Brito was granted leave to re-file his petition for review on or before July 7, 2023. He filed a motion for an extension of time to file his petition. The motion was granted and the deadline was moved per court order granting extension of time to file petition for review which was filed on June 16, 2023, readjusting the deadline from July 7, 2023 to August 7, 2023. The Court dismissed the Petition on July 17, 2023 Which was not yet sent out by Mr. Brito. The true Petition was just getting to the copy Room at the time he received the order dismissing the Petition. That order was filed July 17, 2023. Mr. Brito still proceeded to file his petition for review, mailed out on July 21, 2023 with 17 days left until the Granted deadline of August 7, 2023.

Mr. Brito then filed a motion for reconsideration filed July 31, 2023. The very next day on August 1, 2023, the motion for reconsideration was denied without an ample review of that motion, an obvious abuse of discretion. The court had the specific duty to address the merits of the Superior Court's decision, and should have reviewed for an abuse of discretion, instead, conducted an abuse of discretion in on itself. The rules of deference to factual findings along with bifurcated review model and the denovo review of legal conclusions in reviewing the the superior court's decision in denying relief fauld miserably by Prematurely dismissing Mr. Brito's Petition for review.

ISSUE THREE- The court's deviated and violated the Fifth Amendment to the U.S. Constitution and the mandates of the Federal Rules of criminal Procedure, to wit: The court's violated Rule 11(b)(1)(G) and Az. R. Crim. P. 17.2 (a)(1), by failing and refusing to advise Mr. Brito of "the nature of each charge to which the defendant is Pleading."

Mr. Brito's Rule 33 Post-Conviction for relief was summarily dismissed on May 16, 2023, adjudicated On the merits without an evidentiary hearing or conducting the Strickland standard of review in "contrary to" Strickland v. Washington, resulting in an "abuse of discretion" and "miscarriage of Justice" by the court.

Mr. Brito brought up the existence of newly discovered material by due diligence in his Post-Conviction relief Petition. The matter was claimed as new because it had never been disclosed to him, violating the Brady clause. It was mentioned in the investigative reports by his Accuser and her mother. Mr. Brito Paid no attention to this because it did not Pertain to him or his case until he he discovered, somehow, Detective Dallas Wilson claimed that it was tied to Mr. Brito without evidence even when a description of the Perpatrator did not fit Mr. Brito's. Plus the Perpatrator was said to have been a Robert Wilson.

Mr. Brito found that this crime that occurred on December 16, 2003, happened to the Ayala family was illegally and fraudulently used against him in the Pre-sentence report Part-one to enhance his sentence, conviction, Plea and Probation terms, Mr. Brito insists he is actually innocent of this crime and of the accusations made against him.

The Honorable Judge Fell claimed that the state, Court, and counsel's were all familiar with it Per the May 16, 2023 ruling. If this, being true, is Proof of Mr. Brito's claims of ineffective assistance of counsel, Prosecutorial misconduct, and abuse of discretion leading to a miscarriage of justice "contrary to": 18 U.S.C. § 3552(d); Fed. R. Crim. P., R. 32(e)(2); U.S. V. Coppenger; and Brady V. Maryland.

ISSUE FOUR - Mr. Brito Particularized throughout that counsel Provided ineffective assistance of counsel. Defense Counsel, at the outset of his representation showed a "conflict of interest" when at first meeting, he did not greet Mr. Brito as to whom he was, but rather just said "you are going to Prison to die" leading to the beginning of his Sixth Amendment Right to effective counsel.

Counsel's errors were so fundamentally egregious that they went to the inception of the case violating Mr. Brito's Substantial and due Process rights. Counsel's errors Prejudiced Mr. Brito making a fair trial an impossibility. He was denied Procedural opportunities that a fair trial detrimentally affected the ascertainment of truth to which he would have been entitled, contrary to: U.S. V. Cronic; U.S. V. Ex Rel. Thomas V. O'Leary; and Pierce V. U.S.

ISSUE FIVE - Mr. Brito avers that all court-appointed attorneys Provided ineffective assistance of counsel. In all supporting facts. Defense Counsel - John O'Brien - is the only name

to appear the most then the most than Kimberly Sweeney. O'Brien failed to consult the record in Mr. Brito's case to Ascertain that any defense was available. Moreover, the long list of deficiencies that follow are issues that have not been mentioned by any court nor in any way resolved.

Counsel's cumulative but fundamental errors go to the inception of the case which violate Mr. Brito's substantial and due process rights wherewith there was no possible way Mr. Brito would have had a fair trial because O'Brien was so egregiously ineffective that Mr. Brito was duressed to plead guilty by undue influence.

Counsel's failure was "complete." His performance subjected Mr. Brito to prejudice which deprived him of a fair trial. The cumulative errors caused Mr. Brito much duress as to plead guilty unknowingly of the illegal case used for enhancements and after requesting to go to trial for two years. The following is the list of deficiencies of court appointed counsel's:

1) counsel failed to motion for hearing to challenge admissibility of accuser statements;
2) counsel failed to move for hearing to whether the accuser's claims of sexual abuse, molestation was fabricated or exaggerated;
3) counsel failed to consult or hire experts;
4) counsel failed to challenge that there was no physical evidence;
5) counsel failed to prepare for trial;
6) counsel failed to create any work product;
7) counsel failed to challenge the use of a false second prior felony conviction;
8) counsel ineffective for allowing defendent to plea to an unlawful sentence. See James V. Ryan, 733 F.3d 911 (2013);
9) counsel fauld to investigate rendering any resulting strategy unreasonable;
10) counsel failed to be responsible of conducting appropriate investigations, both factual and legal, to determine if matters of defense can be developed. See U.S. V. Mooney, 497 F.3d 397, 404 (2007);
11) counsel adamant Mr. Brito take the plea which he did no investigations which is unreasonable. See Woodard V. Collins, 898 F.2d 1027, 1029 (1990);
12) counsel failed his duties to independently investigate the charges against Mr. Brito;
13) counsel failed to actively advocate Mr. Brito's cause in preparation for trial;
14) counsel failed to have any defense theory whatsoever and faild to conduct any meaningful adversarial challenge;
15) counsel failed to advise Mr. Brito of viable defenses to the charges against him;
16) counsel failed to motion to suppress inadmissible letter written to accusers;
17) counsel failed to raise an important, obvious defense without any imaginable strategic or

tactical reason for the omission, shows to prove his performance fell below the standard of proficient representation that the constitution demands;

18) counsel failed to object to multiplicious indictment;

19) counsel failed to pursue any strategy or tactic because of conflict of interest. See U.S. v. Gambino, 864 F.2d 1064, 1070 (1984);

20) counsel failed to conform to the degree of skill, care, and diligence of a reasonable competent attorney. See Pierce v. U.S., 686 F.3d 529, 531 (2012);

21) counsel failed to follow up on the claim that Mr. Brito was not read his Miranda rights;

22) counsel failed to object to the pre-sentence report.

ISSUE SIX- it has been demonstrated over the years Mr. Brito has been incarcerated that none of the courts' including the district court provided a single word to contest Mr. Britos' actual innocence or his wrongful conviction. It is for this reason that Mr. Brito raises this, his final claim as a violation of the thirteenth amendment of the U.S. Constitution, which states in pertinent that: "neither slavery nor involuntary servitude except as a punishment for crime whereof the party shall have been duly convicted, shall exist: within the U.S., or any place subject to their jurisdiction."

After some search, Mr. Brito is unable to find any clause excluding the territory of the Ninth Circuit from the mandates of the thirteenth amendment.

It is also an identified fact that the Department of Justice receives an 80 million dollar annual budget from which each of the 94 judicial districts compete for their portion. The distribution of funds is determined by convictions in each district.

In 2006, our society marked a significant decline in the number of drug conspiracy cases because it was found to be socially unacceptable to lock up drug users as drug conspirators. As a significant return of the pendulum, the D.O.J. began Project Safe childhood later that year, to keep bodies in the prisons. The D.O.J. has dedicated significantly increased resources to create child exploitation cases. As a result, the number of Federal and state prosecutions for child exploitation crimes has increased dramatically.

4). Did the courts overlook or disregard all federal claims brought up by Mr. Brito? Federal courts must independenclently review the record "where... the state court

Gives no reasoned explanation for its decision on a petitioner's federal claim, but where no factual account is provided by the state court, the federal court must itself review the state court record to ascertain the relevant facts in order to determine whether the States court's merits adjudication was objectively reasonable under § 2254(d)(1). Greene V. Lambert, 288 F.3d 1081, 1089 (2002).

Numerous circuit courts have concluded that where the state court does not provide a reasoned decision, the federal court must conduct an independent review of the record to determine whether the state court erred in its application of controlling federal law, while continuing to apply § 2254(d)(1)'s deferential review standard.

When the state court relies solely upon the recorded evidence, and denies both the claim itself and an evidentiary hearing on the proffered non-record evidence without any alternative holding based upon the proffered evidence, there is no adjudication on the merits that warrants defferential review.

If facts are not developed despite petitioner's due diligence in state proceedings then the petitioner is not deemed to have "failed to develop" the facts and will be entitled to an evidentiary hearing in district court.

If state court denied relief soley on state law grounds, no deference under § 2254(d)(1) as to federal claim. This is significant in the post-AEDPA era because the deferential review standard of 28 U.S.C. § 2254(d)(1), by its terms, only if the state court adjudicated the federal claims of the merits. Danner V. Motley, 448 F.3d 372, 376, 2006 Fed. App. 0159 (2006).

Mr. Brito particularizes the following with distinctness, to wit: If the adjudication of the ineffectiveness of counsel was not applied unreasonably in contrary to strickland or cronic, there wouldn't be an argument having to prove the extraordinary circumstance beyond Mr. Brito's control, Being the covid-19 pandemic, the worlds deadliest since the Spanish flu. Most of the country, the WORLD was locked down and quarantined. Businesses were lost, JOBS were lost, and loved ones were lost. Did the Magistrate forget how dark the times were? Did we all forget? If this is not a circumstance beyond anyone's control, much less Mr. Brito's, then what is?

Mr. Brito was confined with tens of other inmates in a pod, four pods to a building. Evening

Kitchen workers were put in building one, trash workers were put in building two, Morning Kitchen workers were put in building three, ACI workers were in building four, the elderly and those with existing health problems in building five. All other non-essentials were mixed in to conduct Pod Porter positions, etc.

In the beginning of the lockdowns, the staff at the central Arizona Correctional Facility was working the kitchen until Admin. figured out how to make a functional schedule. Breakfast, Lunch and dinner were delivered to the inmates in their pods. Medical made house calls in the day rooms, CO's conducted count in hazmat suits and med's were delivered after meals. Rec was given for one hour with A and B pods from one building on one side of the yard and C and D pods from same building on the other side of the yard. Inmates from inmates from different buildings were not allowed to cross paths or interact with each other. No movement on the yard unless you were on your way to work or staff.

So for Mr. Brito to be able to get his documents from the other inmate who was helping him with his case during this time, or to be able to keep working his case on his own without any of his case file/documents in his possession is Absurd to say the least. The inmate being in building one and Mr. Brito residing in building three, and to give answer to the Magistrate where she states that litigants had been able to file pleadings with the court is reason being they may have had their case file and documents in their possession or had an attorney. Being indigent, and with no one to help him from beyond the walls, receiving any material through the mail to help Mr. Brito to with his case was difficult but not impossible. Meaning, Mr. Brito did enroll with Blackstone Career Institute and started a two year correspondence course in Legal Assistant/Paralegal which he completed in 2023. Mr. Brito was able to read law books that were floating around in the pod, many outdated. So to speculate that he was not being diligent he was doing what he could with what was available at the time.

A person in the position of a Magistrate Judge should know that making decisions, assumptions that are clearly speculation can be an abuse of discretion especially if there is no evidentiary hearing held on the factual basis promulgated or what goes on or doesn't go on behind closed doors.

5). Is it possible that a prisoner with such a credible wrongful conviction claim could have no recourse?

A) It is a disturbing precedent that is taking place in this country where a persons rights are being violated and are being prejudiced by prosecutorial misconduct due to lies, fraud, deceit, and misleading information or evidence being used to to keep wrongfully incarcerated persons locked up or from having their convictions overturned because laws, statutes and regulations are arbitrarily being manufactured every time a petitioner argues the factual basis and merits of his claims. The injustice caused by overlooking the proferred evidence by an explanation of untimeliness is a ploy from accepting accountability that the government is wrong is unacceptable.

Dismissing petitions as untimely is the go to for 95% of all Post-Conviction Petitions. They believe that to deny or dismiss without giving an explanation or be accountable for the egregious errors the smaller courts conducted - They think their mistakes will just be overlooked without an evidentiary hearing to set forth the basis of the decisions of the Judges or comments on the factual evidence.

Prisoner's seeking to prove they're wrongfully convicted after conviction often rely on free services provided by entities like Second look. But most services won't look into a case unless you have DNA TO Prove your case.

It's not just that legal procedure is a crucial tool we can use to fight for the innocent. It's that the rule regime is stacked against those wrongfully convicted, contrary to the popular belief that the Post-Conviction Process is full of escape hatches from prison, those imaginary "technicalities" that let the people loose. The wrongfully convicted don't always go free. You can have evidence - and no one willing to hear it.

If you can't draw on the correct legal procedure to ensure access to the courts or to influential executive branch officials, there's no way to alert anyone in a position of power about a substantive problem in a case. Procedure is the door that allows entry to the corridors of power, where people with the capacity to determine a criminal defendant's fate

reside. Without entry there's no chance of justice.

The reason why so many wrongfully convicted prisoners remain behind bars is that proving they are wrongfully convicted after a conviction is a daunting task. Every state gives criminal defendants a guaranteed right to appeal their convictions to a higher court once and once only. Obviously known as the direct appeal, and a defendant may use it to attack the evidence and rulings in the proceedings. The legal issues that may be raised on direct appeal are limited; they're restricted to what happened in the lower courts, nothing outside the record is recognized. If your conviction is affirmed on appeal, you may solicit a higher court, even the U.S. Supreme Court, to look at your case.

The remedy of filing a habeas corpus petition, which was inherited from england, asks government officials to justify why they "have the body" in custody. Historically, it has served to correct jurisdictional or constitutional defects in a case, not to grapple with untimeliness.

In short, the system values finality and efficiency over accuracy. The certainty generated by a fixed end point achieved rapidly over the ambiguity of robust procedures to look at cases anew. Finality and efficiency serve to reinforce one another. Closing cases in short order preserves government resources, which is efficient for the system as a whole. Processing cases efficiently also makes it easier to close them; there are simply fewer ends to tie up. The system runs like a conveyor belt in a factory. A conviction manufactured at the level of the lower courts before it travels up the assembly line. Judges and prosecutors quickly check its components at various workstations before putting a lid on the case for good and dispatching it to the annals of case law.

Finality and efficiency are not the only explanations for the unforgiving nature of appellate and post-conviction procedures. Judges and executive branch officials often defer to decisions made at trial as an expression of respect for their peers in the system and out of a belief that a trial, with its vetting of evidence in open court, is the best forum for resolving the fundamental question of a defendant's guilt or innocence.

If exploring other rationals, note that finality and efficiency are the main justifications for the procedural regime. Important considerations, but not as important as correcting the

ultimate injustice: the wrongful conviction of a person. Every case where a wrongfully convicted prisoner is deprived of freedom through the appellate and post-conviction process represents an individual injustice and national disgrace.

In State V. Sanford, 844 N.W. 2d 725, 725 (2014). A case in which illustrates some of the hazards of the plea bargaining process for innocent criminal defendants, they face enormous pressure to accept a plea deal or else receive a much worse outcome if they lose at trial. If they take the plea and and seek to prove their wrongful conviction down the road, they encounter hurdles in the appellate and post-conviction process.

The national registry of exoneration lists 549 cases where people took guilty pleas and were later proven wrongfully convicted. See "detailed view", National Registry of Exonerations, accessed August 14, 2021 www.law.umich.edu/special/exoneration/pages/browse.aspx. A previous report produced by that organization noted that approximately 15% of documented exonerations (261 of 1,702) involve guilty pleas. Innocents who Plead Guilty (National Registry of Exonerations, Nov. 24, 2015), www.law.umich.edu/special/documents/NRE_Guilty_Plea_article1.pdf.

It's hard enough to overturn wrongful convictions when the defendant has maintained innocence all along without the added burden of an admission of guilt at a plea hearing. For that reason, innocence projects prefer to take cases from prisoners who went to trial over those who pled guilty. Daniel S. Medwed, "Actual Innocents: Considerations in selecting new cases for a new innocence project," 81 Nebraska law review 1097 (2003).

Innocent and wrongfully convicted prisoners know that lawyers seldom fight to exonerate people after they've pled guilty. That's partly why some of them go to trial and put their freedom on the line.

Guilty pleas streamline the litigation process and suit the needs of prosecutors obsessed with conviction rates, overworked defense attorneys, risk-averse defendants, and neglectful judges tasked with managing jam-packed dockets. Defense lawyers and prosecutors tend to negotiate pleas quickly, in courthouse vestibules and local watering holes, lives and liberty bartered away by hurried attorneys speaking in hushed tones.

Prosecutors often demand that to get a plea deal, defendants must not only forsake their right to trial, but also waive their right to challenge any underlying legal issues in their case later on in an Appellate Tribunal.

The defendant then appears in court to ratify the deal. At the hearing the defendant admits guilt, testifies about facts of the crime, and claims he knows what he's doing in entering the agreement and giving up his rights. A Judge accepts the guilty plea and imposes the negotiated sentence, which is typically a fraction of the maximum sentence facing the defendant if the case went to trial. Justice signed, sealed, and delivered in a matter of minutes.

Plea bargains seem like a win-win for all key players. Daniel S. Medwed, "Prosecution complex: America's race to convict and its impact on the innocent" (New York: New York University Press, 2012), 52-68. A prosecutor can secure a conviction without the time, expense, and full-blown trial, and spare crime victims the agony of testifying. A defendant can lock in a sentence that's preferable to what he'd likely receive after being found guilty at trial. A defense lawyer can cut her caseload while feeling that she benefitted her client. Judges profit from this arrangement too, as they rarely inspect pleas before approving them. This keeps the wheels of Justice spinning without getting mired in lengthy proceedings, much less risking reversal on appeal.

Approximately 95% of criminal cases are resolved through plea bargaining. A percentage that's gone up since the "tough-on-crime" era of the 1980's. Lindsey Devers, "Plea and charge bargaining" (Bureau of Justice Assistance, Department of Justice, January 2011). The criminal trial is not just endangered, it's practically extinct.

The purported advantages of plea bargains wither on closer examination, especially for the wrongfully convicted. Prosecutors, not Judges and Juries, dictate the outcomes of cases by crafting plea offers on their own that effectively determine defendant's fates. This creates a terrible quandry for defendants. Take the deal and sacrifice your rights to trial, or roll the dice and potentially receive a much stiffer punishment. What's gained in this process is efficiency and finality. What's lost is a public reckoning and a thorough

accounting of the facts in an open forum, and what's unknown is whether the defendant is actually guilty.

In People V. Schulz, 829 N.E. 2d 1192 (2005), reveals the main drawbacks to a case-processing system that relies so heavily on guilty pleas: the pressure on the innocent to take a deal, and the severe consequences that might flow from a refusal to do so.

Incentives had to be calibrated to scare defendants into taking the deals, and prosecutors possessed the discretion to achieve this by choosing what sentence to offer and often what crime to charge. The main incentive for defendants to strike plea bargains lies in the descrepency between the sentence included in a plea offer and the one they may get if convicted after trial. The greater the descrepency, the greater the pressure to take a plea. A mobster tactic, if you may?

A differential was on display in the Schulz case: a pretrial guarantee of three in prison vs. a post-trial risk of more than a decade. Critics of this practice call the differential a "trial tax," a levy imposed on defendants who exercise their right to a jury trial, as Schulz did. Advocates term it a "plea discount," a deal afforded to defendants who don't clot the docket.

The nature of the plea offer may fluctuate based on strength of the case. If the prosecutor has ample evidence against defendant-and therefore a high chance of getting a conviction at trial- then the differential reflected in the plea might be slight. If the prosecution is unsure about its trial prospects, then the gulf between the offer and the defendants exposure at trial might be wider. Josh Bowers, "Punishing the Innocent," 156 University of Pennsylvania Law Review 1117, 1152-53, n. 182 (2008) A study taken more than fifty years ago asked prosecutors which factors might spur them to plead out a case. The only factor they could all agree on was having a weak case. Put another way, weak cases often yield lavish plea offers. This may prove enticing to defendants unaware of the frailty of the evidence - and who may be innocent.

Regardless of whether you take the tax or the discount view of the plea bargaining, the whole system might be more justifiable if defendants had access to adequate information about the strength of the case against them.

Prosecutors have the police reports, the names of potential witnesses, and the physical evidence. They're not obligated to disclose much of this to the defendant prior to trial. In lots of states, prosecutors need not even turn over their witness lists. An unfair justice system from the start. George C. Thomas III, "Two Windows into Innocence," 7 Ohio State Journal of Criminal Law 575, 591 (2010). Based on a 1963 Supreme Court case, Brady v. Maryland, prosecutors must disclose certain things to the defense before trial, so-called exculpatory evidence that is favorable to the accused and material to guilt or punishment. Yet, even some Brady evidence that must be turned over prior to trial may stay hidden before the entry of a guilty plea. U.S. v. Ruiz, 536 U.S. 622 (2002). Many defendants have attorneys who make their living through a volume business of resolving cases in large quantities swiftly, and who lack investigative resources to dredge up this evidence on their own. Negotiating in such a vacuum may prompt defendants, especially those who are risk-averse, to underestimate their odds of success at trial and overestimate the strength of the government's case.

Trial judges could stop the plea machine or simply slow it down. But they don't; the formal entry of a defendant's guilty plea is a brief affair, endorsing a plea without painstaking examination allows trial judges to plow through their own dockets at a rapid clip. Court administrators and outside evaluators often asses judges based on their "disposition rate", the speed with which they dispose of cases. Those evaluations may affect a judges ability to earn a promotion or just hang on to their job in states that elect judges or subject them to retention votes. Judges can also rationalize the cursory plea process with classic diffusion-of-responsibility thinking.

Another branch of the judiciary - Appellate Judges - could scrutinize pleas to protect against miscarriages of justice. Despite their distance from the daily grind, appellate judges suffer some of the same pressures to churn through their dockets as their lower court colleagues. These pressures deter them from dismantling guilty pleas and restructuring the available evidence to see whether justice was served.

Even if appellate judges were inclined to be vigilant in reviewing plea cases, there are procedural impediments to doing so: 1) There are restrictions on formally withdrawing a

guilty plea; 2) many defendants are asked to waive their right to appeal any issues in their case as a condition of their plea agreement. Robert K. Calhoun, "Waiver of the rights to appeal," 23 Hastings Constitutional Law Quarterly 127 (1995). These waivers generally weather constitutional challenges on the grounds that they are just one of numerous rights that defendants must forego to get the benefit of a plea. Appeal waivers have become a key element of the plea bargaining "game", to the consternation of some observers. People v. Thomas, 34 N.Y. 3d 545, 587 (2019). A direct consequence of these waivers is that many pleas reach an appellate tribunal for review.

Often, a court file amounts to a thin transcript from the plea proceeding in which the defendant owes up to his misdeeds and admits to the so-called facts. Sometimes the file includes evidence from a suppression hearing that preceded it and that conce a fourth and fifth amendment issue. There might be vague arrest reports, trumped up prior convictions, use of crimes not committed by the defendant, a complete miscarriage of justice, prosecutorial misconduct and abuse of discretion that goes unchecked.

Some defendants get a "good deal". But what's lost is priceless for the guilty and innocent alike. No vetting of the facts, no transparency, no jury verdict. In a sense, no justice. The constitution twice guarantees the right to a criminal trial... but does not guarantee the right to an appeal at all.

If major legal issues are preserved for review, appellate courts are reluctant to question the decisions made at trial. The end product of this deferential attitude is to maintain the the status quo and keep convictions in place even when there are hints an injustice has occurred.

Appeals courts have, time and time again, treated horrendous defense attorneys behavior as acceptable. It's virtually impossible to show on direct appeal that a conviction is based on "legally insufficient evidence" because of supreme court precedent that protects and lauds... for their efforts to applying law to fact fact.

The justifications for deferential standards of appellate review conceal a troubling reality. Trial judges get it wrong. Those errors can and do harm innocent defendants. The absence of a robust appellate mechanism to correct those errors may prolong the

imprisonment of the wrongfully convicted and perhaps foil any chance at freedom.

Instead of reversing evidentiary decisions only when the trial judge "abused" her decision, appellate courts should take a less deferential and more skeptical stance when reviewing these choices. They should take a stance that accounts for the substance of trial decisions, not just the process through which they derived.

Appeals judges also give deference to the tactical choices made by criminal defense attorneys at all proceedings, choices that can hurt their clients and contribute to wrongful convictions.

In 1970, the Supreme Court ruled in McMann v. Richardson, 397 U.S. 759, 771 (1970), that felony defendants deserve more than a warm body with a license to practice law; they "are entitled to effective assistance of competent counsel."

Appellate courts ordinarily treat decisions as valid tactical choices - even when it contributed to a wrongful conviction.

Appellate courts in some states possess the power to reverse a conviction - regardless of any preservation issues - if they find that the verdict went against the "weight" of the evidence. People v. Bleakley, 508 N.E. 2d 672 (1987). This is a somewhat more forgiving standard that comes in handy for many defendants, especially if their trial attorney failed to preserve the legal sufficiency claim. This is rarely ever heard of in Arizona.

It is the duty of the prosecutors not to prosecute the innocent. As the U.S. Supreme court has recognized, the government's "interest... in a criminal prosecution is not that it shall win a case, but that justice shall be done." Kyles V. Whitley, 514 U.S. 419, 439 (1995).

Much too often prosecutors get caught up in the adversarial process and forget their duty to see justice done. In their zeal to obtain convictions, prosecutors have committed all manner of improper conduct, including withholding evidence favorable to the defense, presenting false or perjured testimoney or evidence, making improper and inflammatory comments to juries, and even preventing disfavored groups participating as jurors in the first place.

Criminal charges for prosecutorial misconduct are virtually non-existent, and prosecuting attorneys enjoy immunity from federal civil rights lawsuits for their actions that are part of the

Judicial Process. Imbler V. Pachtman, 424 U.S. 409, 429 (1976). Further in many places misconduct is unlikely to result in any kind of professional discipline to the offending attorney. See e.g., Kathlee M. Ridolfi, Preventable error: A report on prosecutorial misconduct in california 1997-2009 P.3; Shawn Musgrave, Scant discipline follows prosecutors' impropriety in Massachussetts, New England Center for Investigative Reporting (Mar. 6, 2017). When bad behavior carries no consequences, it will continue to happen.

Unsurprisingly, withholding exculpatory evidence and other misconduct leads to the incarceration of innocent people. The national registry of exonerations lists over 2400 people whose convictions have been overturned; more than half included official misconduct as a contributing factor. www.law.umich.edu/special/exoneration/pages/exonerationscontribfactorsbycrime.aspx.

The challenges of overturning a conviction based on prosecutorial misconduct can be daunting. Courts are reluctant to reopen cases that have already been decided, and would rather spend limited resources on new matters. Prosecutors fight vigorously against any allegations that they may have done anything wrong. Fundamental tenets of due process require that criminal defendants be given a fair hearing in court.

When prosecutors undermine the administration of justice by hiding evidence of innocence, or by asking a jury to convict based on something other than the evidence in the case, or by otherwise improperly putting their thumb on the scales of justice to the detriment of defendants, there must be a remedy. Only when such abuses are reversed will the supreme court's ideal be realized: "society wins not only when the guilty are convicted but when criminal trials are fair." Brady, 373 U.S. at 87.

"There are no ethics charges against them, no criminal charges, no one is fired and now, according to the Supreme Court, no one can be sued." John Thompson, The prosecution rests, but I can't; The New York Times (April 9, 2011).

In the landmark 1803 decision, Marbury V. Madison, The Supreme Court laid down some Grand language: The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives injury. One of the first duties of government of the U.S. has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal

right... can it be imagined that the law furnishes to the injured person no remedy? it is not believed that any person whatever would attempt to maintain such a proposition. Marbury V. Madison, 5 U.S. 137, 163, 165 (1803).

The Supreme Court ruled that prosecutors have a constitutional duty to turn over evidence that might show a defendant is innocent or impeach the credibility of any witness. Brady V. Maryland, 373 U.S. 83 (1963).

In Imbler, the prosecutor knowingly used false testimony to convict and imprison an innocent man for nearly a decade. Imbler V. Pachtman, 424 U.S. 409 (1976). "The Imbler rule provides a state prosecuting attorney who acts within the scope of his duties in initiating and pursuing a criminal prosecution and in presenting the state's case absolute immunity from a civil suit for damages under the civil rights act of 1871." This, in spite of the court recognizing "to be sure, this immunity does leave the genuinely wronged defendant without civil redress against a prosecutor whose malicious or dishonest action deprives him of liberty."

Section 1983 is simple, small, and seemingly clear. The heart of the law states that "every person" who is acting under color of law who causes a "deprivation of any rights... secured by the constitution and laws, shall be liable to the party injured."

The court's rationale for affording prosecutors absolute immunity was "concern that harassment by unfounded litigation would cause a deflection of the prosecutors energies from his public duties, and the possibility that he would shade his decisions instead of exercising the independence of judgment required by his public trust." Imbler, at 423.

Having the court say..."we don't want every day living under the fear that he's going to be sued, but it's okay that they injure innocent people as long as he doesn't have fear of prosecuting the case." Remnick, note 1. The court has protected the prosecutor from fear of being sued over the defendant's right to protection under the constitution. We allow prosecutors to intentionally send innocent people to their death.

In 1940, former prosecutor Robert Jackson said, "The prosecutor has more control over life, liberty, and reputation than any other person in America." The Federal Prosecutor, 24 J. Am Judicature Soc'y 18, 18 (1940). Since then, more and more power has shifted to prosecutors when it comes to who, what and when to charge, and whether or not to offer a plea deal. These are

decisions made with no external review.

Trial by jury is a dwindling right with the existence of the "trial penalty" or "trial tax" where sentences for people who go to trial are often much harsher than those who take a plea, as mentioned before. Michelle Alexander, Go to Trial: Crash the Justice system, The New York Times (Mar. 10, 2012). You face more time for rejecting an offer to plead, but yet you might not know all the cards the state is holding - a terrible bargaining position.

With increasing leverage to extraxt a plea using threats of more serious or additional charges, even ones that cannot be sustained, prosecutors force suspects into a high-risk analysis. Richard A. Oppel Jr., Sentencing Shifts Give new leverage to Prosecutors, The New York Times, (Sep. 25, 2011). Take a plea resulting in a one-year sentence, maybe even probation, or risk a trial that might give you decades? Reject a "deal" and risk only guilty but also a liar. Witches in Salem who clung to their claims of innocence were hung. As Kafka recognized "you can't defend yourself... all you can do is confess." Frank Kafka, The Trial (1925).

Powerful prosecutors can bring the hammer down, stacking multiple charges per offense, each supported by a lengthy mandated sentence. This is not a fair contest between the state and the defendant; Yet in spite of a playing field skewed to their advantage, we know prosecutors cheat. As in Mr. Brito's case in point.

"19 out of 20 felony convictions are now obtained by a plea bargain." Emily Yoffe, Innocence is irrelevant; The Atlantic (Sep. 2017). In 1977, Federal District Courts saw four pleas taken for every case that went to trial. By 2010, that ratio was almost 32:1. Oppel Jr., Supra, note 45. Historian Howard Zinn called these cases "disposed of by deals made under duress." Howard Zinn, A people's history of the United States (1980). Duress invalidates a contract, but these "deals" somehow pass muster.

In appellate or post-conviction review, prosecutorial misconduct has become further watered down by the coldly termed "harmless error" analysis, which shifts the burden back to the defendant to show a different outcome would have been possible. Courts cite the "importance" of the finality of a verdict as something valuable to society. A prosecutors duty to justice is supposed to transcend his or her desire to convict. The U.S. Attorney is the representative not

of an ordinary party to a controversy, but a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done. As such, he is peculiar and very definite sense the servant of the law, the two fold aim of which is that of guilt shall not escape or innocence suffer. Berger V. U.S., 295 U.S. 78, 88 (1935).

Prosecutors have demonstrated they are not in it for the truth. Free from personal responsibility as agents of justice, prosecutors are willing to play dirty pool, deprive a person of a fair trial, and then continue to cling to ther convictions unimpeded by evidence that it was wrongful.

Prosecutorial misconduct has become a legal sore in plain sight... a polluted river. Michal Powell, Misconduct by Prosecutors, Once again, The New York Times (Aug. 13, 2012). One of the most powerful positions in public service - a position that carries with it the authority not only to ruin lives, but in many cases the power to end them - is one of the positions most shielded from liability and accountability, and the freedom to push ahead free of consequences has created a zealous conviction culture. Balko, Note 10.

John Thompson once stated in an interview, "it's about a system that is void of integrity. Mistakes can happen, but if you don't do anything to stop them from happening again, you can't keep calling them mistakes. Connick V. Thompson.

Government misconduct is a leading cause of wrongful incarceration. Time Magazine Special Edition, Innocent: The fight against wrongful convictions (2017). There is ample evidence that the honor system the court advocates has not proved a viable option for the training and discipline of prosecutors. It is well documented that prosecutorial misconduct, prominently including the violation of Brady obligations, is... All too common... Susan Bandes, The Lone Miscreant, The self-training prosecutor, and other fictions: A comment on Connick V. Thompson, Fordham Law Review at 728 (2011).

You know there is a problem - when a former prosecutor writes: Government misconduct is more prevalent than we had assumed... instances of corruption; unlawful tactics; misplaced motivations, arrogance; and abuses of power by district attorneys... law enforcement and judicial process can be inconsistent with fairness, decency and due process. Jim Pietro, False Justice: Eight myths that convict the innocent. (2010).

Many prosecutors latch onto their preferred suspect and will not be deterred. After all, "... charges are never made frivously, and the court, once it brings a charge, is convinced of the guilt of the accused, and it is difficult to sway them from this conviction... at least for the moment, your guilt is assumed proved." Kafka, note 46.

"We are constantly confronted with wrongful convictions rooted in a prosecutors belief that winning a case is more important than seeking justice... sometimes the criminals our justice system most needs to confront are actually running it." Brandon Buskey, How to prosecute abusive prosecutors, The New York Times (Nov. 27, 2015).

Prosecutorial misconduct violations persist because there is no accountability. Rarely has any prosecutor suffered because of it. Sadly, to the contrary, many of these "winning" prosecutors go on to higher offices and salaries.

Prosecutors use a cloud of misunderstanding surrounding prosecutorial misconduct to justify a flagrant miscarriage of justice.

In Brady, the court points out that "society wins not only when the guilty are convicted but when criminal trials [proceedings] are fair; our system of the administration of justice suffers when any accused is treated unfairly." Brady, 373 U.S. at 87. In both Imbler and Thompson, the court gives prosecutors too much credit for an ability to self-resulate, relying on the moral and ethical compass of individuals to do the right thing when facing perverse incentives is not working.

Finality is not important when innocent people are convicted, especially since the guilty are still out there. "In a substantial number of wrongful conviction cases, the exculpatory material that prosecutors did not disclose at trial would have provided important leads to the true perpetrator of the crime." Innocence Project report, Note 33. As John Thompson suggested, "start showing the faces of the people, the real murderer kills later, and then let's point out that when prosecutors conspire to convict the wrong man, they're aiding and abetting those later crimes." Busky, note 66. Courts should address that as part of their "harmless error" analysis, Society is not winning.

A group of three Justices "disagree with any implication that the absolute immunity extends to suits charging unconstitutional suppression of evidence." Imbler, at 441. "The judicial process will by definition be ignorant of the violation when it occurs; and it is reasonable to suspect that most

such violations never surface." Brady, at 443-44. Prosecutors must be compelled to take their constitutionally mandated obligations seriously.

Criminal prosecutions of law-breaking prosecutors might seem like a solution if it were not for the fact that it requires a prosecutor to indict another prosecutor. Even their so-called adversaries, criminal defense attorneys do not report violations for fear of losing future plea-bargaining considerations others collude with them. There is simply no one holding prosecutors accountable.

"The function of the prosecutor under the federal constitution is not to rack as many skins of victims as possible to the wall. His function is to vindicate the right of people as expressed in the laws and give those accused of crime a fair trial." Donnelly v. DeChristoforo, 416 U.S. 637, 648-49, 94 S.Ct. 1868, 1874, 40 L.Ed. 2d 431, 440 (1974).

Under any theory of justice, the state should be charged. But because the state cannot be dragged into the criminal court and charged, should it be allowed to charge the victim. The State is the villian. The man is the victim. The heroes in this case will be the jurors who will surely see the injustice of the state's demand for the life of the man. How can the facts be be argued so as to reach those psychic places that lie tender and waiting in all of us, that, when touched, respond in our own sense of justice?

The argument is an argument, the reasoning that supports justice, the creation of the whole aura of rightness that shines down on our case. But there can be no demand for justice until you yourself feel the ethical anger, the pain, the loss, the righteous indignation. You can never restore the dignity, the lost peace of mind, and the permanently damaged psyche that those wrongfully convicted experience.

Under the due process clause of the fifth amendment, the prosecution must prove beyond a reasonable doubt every element necessary to constitute the crime with which the defendant is charged. But, that which is reasonable doubt to the accused is just so much lawyer talk to the prosecution. The prosecution sees reasonable doubt as a stew of unreasonable arguments meant to mislead. To the defense, reasonable doubt is supposed to be the safeguard provided every citizen to protect against the conviction of the innocent. More often than not, as in Mr. Brito's case this does not happen.

I wonder why our founders protected us with reasonable doubt? Why isn't it enough that we should trust the prosecutors who sit comfortably in their seats? They are honorable men and women, or at least some are. Why should we demand that they prove any case beyond a reasonable doubt?

Prosecutors have their jobs, and they have their personal agendas. They want to win, as do most defense attorneys. But winning for them is quite different then for the defendant. Winning for them is just another victory in long careers of countless victories. If they win they can go home to the comfort of their family and their home and the security of the law protecting them. But if the defense loses, the defendant goes back to where fear and lonliness are his only companion and his terror of what will become of him, his family, and his very life. He will go back to constant harrassment and punishment from the guards, mistreatment from medical or no treatment at all, foul food and evil men for company.

Prosecutors have all the power and the wrongfully convicted can never prove the negative. Few can ever prove innocence. How many have watched the prosecutor take innocent acts and turn them into evil acts? No innocent act, no innocent statement is immune from an evil connotation attributed to it by the prosecutor.

The way the prosecutor sees things tells us more about the prosecutor than the defendant. And our founders knew this. As a consequence, proof beyond a reasonable doubt became a part of our system of justice. The Constitution says prove your case, Mr. Prosecutor. Do not make those clever arguments by which you turn innocent conduct into premeditated maliciousness. Prove your case by hard, irrefutable facts. And prove not just one fact or a dozen. Prove all the facts, so no reasonable doubt remains."

The right that is bestowed upon us, that protects us from the clever and persuasive arguments of the prosecutor - that the state must prove its case beyond a reasonable doubt - was given to each of us. This is a right that belongs in the family vault, if we had a vault and could put it there. It is the most precious right of all. If it is swept over lightly, if it is ignored even in part, if every element of the case is not proven beyond a reasonable doubt - We have opened up the family vault of each of us, yours, your children's, and their children's to come, and it is not right to ignore reasonable doubt - not even a little bit. When we do that, the right is stolen, and case by case it becomes less and less able to protect us, until we give it only lipservice and

innocent people are sent to prison.

The problem we face is an insidious one. None of you believe that you or any of your loved ones will ever have to call upon reasonable doubt to protect you, because none of you or your loved ones will ever be in such a situation as the defendant is in. We don't believe we will ever get cancer or will ever have a heart attack; in fact, some believe we will never die. If we lived life every day in fear of death to the same extent that we may fear it when faced with a terminal illness, we could not live our lives. We are constituted as human beings to believe that the bad luck, the tragedies always happen to someone other than ourselves. So we will never be charged with a major crime. It will only happen to the bad in the world. Not us. And we are not so careful in protecting the sacred right of proof beyond a reasonable doubt. But remember: when we don't afford its protection to the poor and the helpless, we will find one day that that right is no longer available in its full and beautiful power to protect you. When you protect the defendant with reasonable doubt, you protect us all." Simply put, We cannot Guess the defendant into the penitentiary."

When an innocent defendant is represented, we need to discover why the prosecution is is trying to convict a wrongfully accused. Even if a defendant was guilty, why did they seek life imprisonment? Why did the prosecution choose this defendant, but fail to charge others who are guilty of even worse crimes? The motivation for the prosecutions decisions in any given case needs to be carefully examined and, if appropriate, fully revealed.

Justice in America is a myth. Much too often justice is not delivered to the deserving. Much too often it is a dream, a hope, an ideal from which we are rudely awakened when our time comes to seek it. What we see is not the blindfolded justice holding her scales, awaiting the time when right out balances wrong, But instead a vision of the same woman with her back turned to us.

Truth be told, the failure of Justice in America lies at the feet of those who are responsible to deliver it, from the politicians, the judges and lawyers, to the corporate overlords and their minions who exercise power over the daily lives of their workers. The responsibility to seek justice also belongs to those who suffer its failure.

Whenever our rights are trampled by power there will always be those who courageously step forward to fight for justice, lawyers for the people and, yes, the people themselves. Yet

ther goals are often stymied by their inability to communicate effectively and to present their cases in a winning way.

Those who've attempted and continue to seek justice as Pro se litigants experience bias and discrimination contrary to the constitution and equal protection law.

Pro se litigants, who are indigent and lack adequate representation, find themselves tangled up in what's known as the "Judicial Web." During the habeas corpus and supreme court appeal stages, the prisoner becomes a pro se litigant, even during his post-conviction relief stage, he is left to challenge the conviction on their own because the courts rarely appoint counsel after the PCR has been denied. This poses a problem because 95% of prisoners have no experience or education in criminal law sometimes making their motions, briefs, or petitions untimely.

When an individual challenges their conviction with the courts as pro se, 99.6% of the time the claims are denied. What society and the Media doesn't know is that the pro se litigants have to become their own private investigators and Attorney.

Once the prisoner files a state habeas with the district court the pro se litigant faces a heavy burden and obstacles, because only the judge and the Attorney General are present during all counsel status hearings. So the claims filed by the litigant will be denied and unjustly justified.

It's these kinds of denial responses and excuses from the courts when denying pro se cases that have become what's known as common practices. The courts will unjustly deny the claims to escape accountability for the state. That is why it is so much easier to ask for dismissal than to review "de Novo". This is a topic Nobody wants to cover in the media.

To conclude, Mr. Brito's claims are the factual evidence. The decisions of the state and all courts thereof, were unreasonable, committing a miscarriage of justice by prosecutorial misconduct, an abuse of discretion and defense counsel's were ineffective. Many constitutional violations were made and these errors strike at the heart of fairness, factual accuracy, and procedural integrity. Also "res judicata is not a bar to considerations of claims in a federal habeas action." Davis V. Lambert, 388 F.3d 1052, 1057-1058 (2003)

CONCLUSION

Mr. Brito filed for POST-Conviction relief pursuant to 28 U.S.C. § 2254, in which he raised claims that are undeniably due relief. His claims have been left unresolved. Mr. Brito now Petitions the Supreme Court of the United States to issue a Writ of Certiorari; not only for resolution of his own constitutional claims, but also to set a standard for all courts to follow in subsequent cases.

Respectfully Submitted on this 4 day of MAY, 2026.

Ruben Casillas Brito, In Pro Se

PROOF OF SERVICE

I, Ruben Casillas Brito, do declare on MAY 4, 2026, pursuant to 28 U.S.C. § 1746; I have served the enclosed petition for leave to proceed in forma pauperis and petition for writ of certiorari on the clerk of this honorable court.

Submitted this 4 day of MAY, 2026.

Ruben Casillas Brito, In Pro Se