No. 16-7730

IN THE

Supreme Court of the United States

MARK CHRISTESON,

Petitioner,

v.

DON ROPER,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF OF NATIONAL ASSOCIATION FOR PUBLIC DEFENSE, NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS, NATIONAL LEGAL AID & DEFENDER ASSOCIATION, AND RODERICK & SOLANGE MACARTHUR JUSTICE CENTER AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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BRIEF OF *AMICI CURIAE*[1]

Amici curiae respectfully submit this brief in support of petitioner Mark Christeson.

INTEREST OF THE *AMICI*

Undersigned *amici* are non-profit groups who work to improve criminal legal systems and share a strong interest in ensuring that petitioners in capital federal habeas proceedings receive robust enforcement of their right to counsel. Death row inmates seeking federal habeas review are entitled not just to a body at counsel table, but to competent and meaningful representation. Nowhere is this right more critical than in capital cases, where prosecutors have chosen to seek execution instead of alternative punishments. *Amici* believe the District Court's order here, and the Eighth Circuit's decision affirming it, foreclose meaningful representation and set dangerous precedent. Should those rulings stand, capital post-conviction counsel would be precluded from supplying the vigorous advocacy their clients need by the very judiciary that acts as the last mainstay for constitutional review before possible execution.

National Association for Public Defense. The National Association for Public Defense (NAPD) is an association of more than 14,000 professionals who deliver the right to counsel throughout all U.S. states and territories. NAPD members include attorneys, investigators, social workers, administrators, and other

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[1] Pursuant to Rule 37.6, *amici* certify that no party's counsel authored this brief in whole or in part and that no person or entity other than *amici* or their counsel has made a monetary contribution to the preparation or submission of this brief. Both parties consented to the filing of this brief.

support staff who are responsible for executing the constitutional right to effective assistance of counsel, including regularly researching and providing advice to clients in death penalty cases. NAPD's members are the advocates in jails, in courtrooms, and in communities and are experts in not only theoretical best practices, but also in the practical, day-to-day delivery of services. Their collective expertise represents state, county, and local systems through full-time, contract, and assigned counsel delivery mechanisms, dedicated juvenile, capital and appellate offices, and through a diversity of traditional and holistic practice models. NAPD provides webinar-based and other training to its members, including training on the utmost importance of providing vigorous defense advocacy in all phases of capital litigation. Accordingly, NAPD has a strong interest in the issue raised in this case.

The Roderick and Solange MacArthur Justice Center at St. Louis. The Roderick and Solange MacArthur Justice Center at St. Louis (MJC-STL) is a non-profit, public interest law firm that advocates positive reform of the criminal justice system. MJC-STL is the newest office of the Roderick and Solange MacArthur Justice Center, which also has offices in Chicago (at the Northwestern Pritzker School of Law), New Orleans, and at the University of Mississippi Law School. The Roderick and Solange MacArthur Justice Center was founded in 1985 by the family of J. Roderick MacArthur to advocate for human rights and social justice through litigation. It has led battles against myriad civil rights injustices, including police misconduct, fighting for the rights of the indigent in the criminal justice system, and pursuing compensation for the wrongfully convicted.

National Association of Criminal Defense Lawyers. The National Association of Criminal Defense Lawyers (NACDL) is a nonprofit voluntary professional bar association that works on behalf of criminal defense

attorneys to ensure justice and due process for those accused of crime or misconduct. NACDL was founded in 1958. It has a nationwide membership of many thousands of direct members, and up to 40,000 with affiliates. NACDL's members include private criminal defense lawyers, public defenders, military defense counsel, law professors, and judges. NACDL is the only nationwide professional bar association for public defenders and private criminal defense lawyers. NACDL is dedicated to advancing the proper, efficient, and just administration of justice. NACDL files numerous amicus briefs each year in the U.S. Supreme Court and other federal and state courts, seeking to provide amicus assistance in cases that present issues of broad importance to criminal defendants, criminal defense lawyers, and the criminal justice system as a whole. NACDL has a particular interest in this case, having participated throughout the proceedings.

National Legal Aid & Defender Association. The National Legal Aid & Defender Association (NLADA), founded in 1911, is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. For 100 years, NLADA has pioneered access to justice and right to counsel at the national, state, and local level. NLADA serves as a collective voice for our country's public defense providers and civil legal aid attorneys and provides advocacy, training, and technical assistance to further its goal of securing equal justice. The Association pays particular attention to procedures and policies that affect the constitutional rights of the accused, both adults and youth.

SUMMARY OF ARGUMENT

This case involves federal courts doubling down on the effective denial of counsel to a severely mentally impaired capital habeas petitioner on the eve of his

execution, thereby preventing the full and fair litigation of an issue that demands this Court's attention: the role played by a petitioner's mental impairment in determining whether equitable tolling applies to the statute of limitations for filing a habeas petition. This Court should grant the petition to address whether the denial of adequate funding in this case constituted a constructive denial of the right to counsel required by the capital representation statute, 18 U.S.C. § 3599, the Constitution, and this Court's decisions—including the previous decision in this very case. It did, and the issue matters not only in this case, but in every case where attorneys represent indigent clients with budgets subject to judicial control.

The issue is of heightened importance where, as here, federal habeas relief is the last, best hope for state prisoners to correct constitutional defects in their convictions. Robust federal review is especially critical in capital cases to prevent the execution of the innocent and to ensure fairness in sentencing. The process is so important, and so complex, that Congress codified the right to counsel in such proceedings in Section 3599.

That right includes not only the right to experienced attorneys, but also to non-attorney members of the defense team such as investigators and experts. The right becomes meaningless if counsel cannot retain that assistance in order to take basic steps necessary for providing adequate representation. In Mr. Christeson's case, those basic, necessary steps include retaining non-attorney team members to assist in the investigation, evaluation, and presentation of new and complex mental health evidence regarding the "severe cognitive disabilities that lead him to rely entirely on his attorneys" to his detriment. *Christeson v. Roper,* 135 S.Ct. 891 (2015). That evidence is critical to a full and fair hearing on how a prisoner's mental impairments affect the balancing of the equities under

Holland v. Florida, 560 U.S. 631 (2010), in determining whether the deadline for filing a habeas petition should be tolled—including where, as here, original habeas counsel unconscionably allows that deadline to lapse by 117 days before ever visiting their client.

Federal habeas counsel cannot conscript the non-attorney team members required to assist in the investigation, evaluation, and presentation of such critically important evidence. Absent government funding, section 3599 counsel also are powerless to hire those critical members of the defense team. The absurdly low and unjustified budget order in this case denied the resources necessary to retain that assistance and constituted the effective denial of counsel. Such orders are dangerous not only because they put at risk the fair, accurate resolution of issues in capital cases; they also create unnecessary conflicts of interest by forcing counsel to choose between working on capital cases for no remuneration or focusing their energy on privately paid cases. Indeed, inadequate funding can be even more dangerous than the failure to appoint counsel altogether, because it gives the false impression that attorneys are working for the client, when in fact those attorneys cannot do their jobs.

This Court's precedents stress the importance of providing adequate counsel and adequate resources in capital cases—especially when, as here, the client is severely impaired and unable to contribute meaningfully to his own defense. This Court's prior decision in this case thus acknowledged that the appointment of substitute counsel was required under the statute. The proceedings below flouted that order by effectively denying substitute counsel the opportunity to investigate, evaluate, and present the evidence necessary for a full and fair hearing on the central issues in the case. This Court should grant the petition for certiorari, reverse the decision below, and

remand for new proceedings in which counsel receives the resources necessary to achieve that full, fair hearing.

ARGUMENT

The arbitrarily allocation of $10,000 for the litigation of the Rule 60(b) motion in this case, when Mr. Christeson's attorneys had reasonably requested $161,000 to support the investigation and presentation of mental health evidence directly relevant to central issue of equitable tolling, constituted the effective denial of the statutory right to federal habeas counsel. This Court should grant certiorari to hold that courts must provide sufficient resources for capital defense counsel to perform the tasks required of them.

I. Section 3599 Requires, In Addition To The Appointment Of Counsel, The Allocation Of Adequate Resources To Litigate Capital Cases.

In creating a mandatory statutory right to appointed counsel in capital habeas proceedings in Section 3599, Congress underscored the important role such proceedings play in "promoting fundamental fairness in the imposition of the death penalty." *McFarland v. Scott,* 512 U.S. 849, 859 (1994); *see also Slack v. McDaniel*, 529 U.S. 473, 483 (2000). This "right to counsel necessarily includes a right for that counsel meaningfully to research and present a defendant's habeas claims." *McFarland*, 512 U.S. at 858; *see also Martel v. Clair*, 132 S.Ct. 1276, 1285 (2012).

Beyond this, Section 3599 expressly provides protections to ensure representation by highly qualified and effective defense teams in capital post-conviction proceedings. For instance, attorney members of the post-conviction team must have significant past experience in both serious felonies and appellate practice. *See* 18 U.S.C. § 3599(c). Such experience should not be compensated at

the rate of an intern or an entry-level attorney with no habeas experience.

Section 3599 additionally embodies the idea that post-conviction representation requires significant fact and mitigation investigation beyond that conducted by prior counsel at the trial or direct appeal stages. *See* 18 U.S.C. § 3599(g)(2). Since counsel cannot conscript the assistance necessary to undertake such investigations, the statute also expressly contemplates the provision of funds necessary for retaining services of experts, such as forensic psychologists, medical professionals, and trauma specialists. *Id.*

At an absolute minimum, Congress contemplated that attorneys appointed to represent capital defendants both before and after conviction would abide by professional norms. This Court has long referred to the ABA's Guidelines as "well-defined norms" for capital defense teams and "guides to determining what is reasonable." *Wiggins v. Smith*, 539 U.S. 510, 522, 524 (2003); *see also Rompilla v. Beard*, 545 U.S. 374 (2005).

The ABA's guidance establishes without a doubt that adequate funding is a necessary prerequisite to effective representation. Competent evaluation of potential habeas claims requires counsel to review voluminous court records, often spanning years if not decades, and to be well-versed in what has been described as "some of the most complicated, dynamic, and at times inconsistent bodies of law that exist." Michael Millemann, *Capital Post-Conviction Petitioners' Right to Counsel: Integrating Access to Court Doctrine and Due Process Principles*, 48 Md. L. Rev. 455, 487 (1989); Commentary to Guideline 10.15.1, *ABA Guidelines for the Appointment and Performance of Capital Counsel in Death Penalty Cases*, 31 Hofstra L. Rev. 913, 1085 (2003) ("ABA Capital Counsel Guidelines") ("providing high quality legal representation in collateral review

proceedings in capital cases requires enormous amounts of time, energy and knowledge"); Model Rules of Professional Conduct ("Model Rules"), r. 1.1 cmt. These heightened duties necessarily include not only advocacy, but also investigation, aided by appropriate professionals and experts.

Mitigation specialists in particular, like the ones requested by counsel here, are critical members of capital post-conviction defense teams. *See* Guideline 4.1, *ABA Capital Counsel Guidelines*, 31 Hofstra L. Rev. at 952; Mark E. Olive & Russell Stetler, *Using the Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases to Change the Picture in Post-Conviction*, 36 Hofstra L. Rev. 1067, 1076-77 (2008); Emily Hughes, *Mitigating Death*, 18 Cornell J. L. & Pub. Pol'y 337 (June 2009). Thus their retention is not a mere suggestion—it is the professional norm by which counsel's effectiveness and reasonableness is measured. *Rompilla*, 545 U.S. at 387. Their assistance is especially important where, as here, counsel enters late after prior counsel's abandonment of the client, and new evidence reveals the need to investigate, evaluate, and litigate complex mental health issues.

Indeed, where a capital defendant's mental health or intellectual capacity is at issue, the use of medical and scientific experts is essential. *See, e.g., Brumfield v. Cain*, 135 S. Ct. 2269, 2275-79 (2015) (relying heavily on hard science, including medical evidence and expert reports, in remanding for hearing on capital petitioner's intellectual functioning); *Hall v. Florida*, 134 S. Ct. 1986, 1993 (2014) ("That this Court, state courts, and state legislatures consult and are informed by the work of medical experts in determining intellectual disability is unsurprising . . . In determining who qualifies as intellectually disabled, it is proper to consult the medical community's opinions."); *see also Rompilla*, 545 U.S. at 381. Given this necessity, the

ABA Guidelines mandate that one member of the defense team *must* have specialized training on various mental health and psychological issues. Olive & Stetler, *Supplementary Guidelines*, 36 Hofstra L. Rev. at 683 (Guideline 5.1).

At the same time that counsel must meet heightened investigative and forensic demands presented by capital post-conviction cases, they owe a continuing ethical duty to provide competent representation to clients. *See* Model Rules, r. 1.1 (competent representation), r. 1.3 (diligence) and r. 1.4 (communication with client) (AM. BAR ASS'N 2002). Lawyers are subject to disciplinary action should they fail to meet this obligation, and they are responsible for making reasonable efforts to ensure that the conduct of non-lawyer defense team members conforms with the professional rules. *See* Model Rules, r. 5.3.

Without the requisite funds, counsel cannot afford to satisfy their obligations to conduct an extensive capital mitigation investigation required by this Court's precedents and ABA guidelines. At the same time, they cannot afford *not* to meet those unambiguous professional and ethical obligations. Thus, inadequate budget orders can create dangerous conflicts of interest that force counsel to choose between working on a low-paying or nonpaying case versus working on a paid case, with the possibility of covering overhead and keeping a practice afloat weighing in the balance. *See* Lawrence Fox, *Capital Guidelines and Ethical Duties: Mutually Reinforcing Responsibilities*, 36 Hofstra L. Rev. 775, 780-81 (2008).

The foregoing rules stem from a practical understanding of the importance of representation in capital cases. Indeed, federal habeas relief is particularly crucial to ensure compliance with core constitutional guarantees in states where public defense systems are at risk. Missouri is such a state. The public defender system

is ranked 49th in the country for funding, its director filed suit to obtain funds withheld by the executive branch, and the Governor himself was conscripted to represent an indigent defendant. Matt Ford, *A Governor Ordered to Serve as a Public Defender*, THE ATLANTIC, Aug. 4, 2016, http://www.theatlantic.com/politics/archive/2016/08/when-thegovernor-is-your-lawyer/494453/. Thus, Missouri is near the top of the list for states whose capital cases fall through the cracks—creating a real risk that the innocent or undeserving will be executed. Without robust federal review, necessarily including capable counsel with adequate resources, that risk becomes both unconstitutional and, as a matter of policy, intolerable.

II. The Lower Courts Arbitrarily And Unlawfully Denied Christeson Adequate Funding To Prepare His Motion.

In this case, Mr. Christeson's attorneys presented a proposed budget of $161,000 to the district court, which included funds for their investigation as well as for the time of non-attorney professionals including an investigator, a neuropsychologist, a neuroimaging analyst, and a disabilities specialist. The budget explained how the money would be used and why it was necessary. The district court denied it as excessive and allocated instead a total budget of $10,000, including any fees for necessary experts. *See* Dkt.#122, at 2. That number seems to have been chosen arbitrarily; certainly the district court provided no reasoned basis for choosing the number it did.

That figure also was absurdly low in light of the stakes of the case and the amount of work required to prepare the motion. First, on a simple back-of-the-envelope basis, the budget would have paid for 55 attorney hours at the

prevailing Missouri rate of $180 per hour.[2] There simply is no way that attorneys could review the voluminous case record,[3] conduct the necessary additional investigation, and then prepare and file the motion in such a short time period. Even accounting for the fact that the attorneys had done some of this work prior to their appointment (in connection with the motion to substitute counsel), the budget would have been insufficient—whether or not the attorneys attempted to hire a single outside expert to assist them.

But outside expertise was critical to the full and fair development, presentation, and hearing of new evidence that substitute counsel unearthed in this case. That evidence indicates that Mark Christeson's severe mental health impairments warrant equitable tolling because they inhibited his ability to act in his own behalf by "pursuing his rights diligently" when prior habeas counsel failed to do so and because they contributed to the "extraordinary circumstance(s)" that prevented timely filing of the habeas petition in this case. *Holland v. Florida*, 560 U.S. 631, 649 (2010). Thus, the new evidence in this case raises extremely complicated questions of both fact and law regarding the effect of mental illness on the attorney-client relationship. Those questions include the appropriate allocation of responsibility under *Holland* for counsel's

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[2] This is calculated from the rate of compensation in death penalty cases as of March 2015 (when the budgeting briefing was submitted to the District Court): $180 per hour. *See* http://www.ca8.uscourts.gov/cjainformation (last visited 8/3/2016).

[3] Included in the record were 20 boxes of documents from the state trial and post-conviction proceedings that contained hundreds of pages of motions and transcripts from the seven-day trial as well as police reports, dozens of witness interviews and depositions, DNA and other lab reports, and appellate briefs. Tpp. 16, 20.

failures to investigate a mentally impaired client's case, to communicate with that client, and to act on binding precedent that was literally right in front of their faces instead of blowing the deadline for challenging the constitutionality of that client's impending execution. *See* Jonathan Atkins et al., *The Inequities of AEDPA Equitable Tolling: A Misapplication of Agency Law*, 68 Stan. L. Rev. 427, 450-459 (2016) (addressing appropriate balancing of equities).

To state the obvious, accurate resolution of the equitable tolling issue under *Holland* is impossible without full and fair development and presentation of evidence on Mr. Christensen's mental impairments because there is a reciprocal relationship between the severity of those impairments and the injustice of forcing him to bear responsibility for counsel's misconduct. In the flexible, fact-specific inquiry mandated by *Holland*, more severe impairments should lighten the duty of diligence. *See*, *e.g.*, *Bills v. Clark*, 628 F.3d 1092, 1099-1100 (9th Cir. 2010). Conversely, there is little dispute that disabled clients impose higher standards of responsibility on counsel, which increase the extraordinary nature of misconduct involving such clients. *See* Alabama Ethics Opinion RO-95-03 ("every degree that … testimony and evidence proved a [client's] less than normal mental and functional capacity … raises[s] by an equivalent degree the standard of conduct which the Court must require … in [counsel's] dealings with the client."); *see also* American Bar Association Criminal Justice Standards for the Defense Function, Standard 4-3.1(c); Mo. R. Prof. Cond. 1.14, *Client with Diminished Capacity*.

The budget order in this case ensured that accurate resolution of those critical issues would be impossible because that order prevented current counsel from hiring the trained investigator and mental health and disability experts required to develop and present the necessary

evidence.[4] To be sure, every refusal to pay for an investigator or expert is not a constructive denial of counsel. At minimum, however, a district court should have to explain why a proposed budget is excessive or why an alternative budget reasonably allows counsel to undertake the investigation and presentation of evidence necessary for full, fair, and accurate resolution of the central issue in the case.

The courts below did neither. The district court's budget order was not just conclusory; it attempted to recast a funding order that effectively denied Mr. Christensen his statutory right to counsel as a mere "dispute" about the approved amount. *See* Dkt.#122, at 2 (quoting *Rojem v. Workman*, 655 F.3d 1199, 1202 (10th Cir. 2011)). The district court then sought to shield the budget order from appellate review. *See* Dkt.#122, at 2 (citing *In re Carlyle*, 644 F.3d 694, 699-700 (8th Cir. 2011) (Riley, C.J., in chambers)). The Eighth Circuit panel's cursory review ignored both the denial of counsel and the resulting structural flaw that permeates these proceedings and creates the risk of wrongful execution.

The panel then added insult to injury by asserting that "no lawyer is entitled to full compensation for services for the public good." Op. 7 (citing *Carlyle*, 644 F.3d at 699-700). This observation ignores the fact that Missouri banned conscription of counsel decades ago. *State v. Green,* 475 S.W.2d 571, 573 (Mo. 1971). It also wrongfully equates Mr. Christeson's right of counsel with his attorneys' request to be paid, thereby ignoring the consequences to the client that result from underfunding a

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[4] Presumptive fees for such services are $85-100 per hour for mitigation investigators and $200-375 per hour for mental health experts. *See, e.g.*, United States Court of Appeals for the Second Circuit CJA Policy and Procedure Manual Appendix E (2015).

capital habeas investigation. Moreover, even if one were to entertain the notion that courts can conscript lawyers into public service, lawyers cannot conscript investigators and other experts necessary to develop complex mental health evidence in a capital habeas case. By denying counsel the resources required to hire those non-legal members of the defense team, the lower courts effectively denied Mark Christeson a statutory right to counsel that implicates the constitutional rights to due process and a fair hearing. 18 U.S.C. § 3599; *see* Celestine Richards McConville, *The Right to Effective Assistance of Capital Counsel: Constitutional Implications of Statutory Grants of Capital Counsel*, 2003 WIS. L. REV. 31 (2003).

III. This Issue Is Critically Important And Warrants This Court's Immediate Review.

The issue of funding for federal capital habeas cases is critically important and warrants this Court's immediate review. There is an ongoing crisis in the capital defense bar due to a lack of qualified counsel. *See, e.g.*,Welsh S. White, *Litigating in the Shadow of Death: Defense Attorneys in Capital Cases* 4-10 (2006). Indeed, "[t]he lack of adequate counsel to represent capital defendants is likely the gravest of the problems that render the death penalty, as currently administered, arbitrary, unfair, and fraught with serious error—including the real possibility of executing an innocent person." The Constitution Project, *Mandatory Justice: The Death Penalty Revisited* 1 (2005).

The result is that the quality of death penalty defense and our system of justice are both suffering. *Id.* Capital attorneys are not taking the most basic steps necessary for effective advocacy. White, *supra.* Mr. Christeson's original habeas counsel provide a vivid illustration of this phenomenon. The lower court rulings in this case will further chill quality capital representation by sending a clear message that courts can, with impunity, deny the

resources that are required to develop and present evidence in post-conviction cases. The same message can only dissuade experienced and qualified attorneys from entering or remaining in this field.

Decades ago, the ABA warned about this phenomenon its 1989 Capital Counsel Guidelines:

> Unreasonably low fees not only deny the defendant the right to effective representation . . . . They also place an unfair burden on skilled criminal defense lawyers, especially those skilled in the highly specialized capital area. These attorneys are forced to work for next to nothing after assuming the responsibility of representing someone who faces a possible sentence of death. Failure to provide appropriate compensation discourages experienced criminal defense practitioners from accepting assignments in capital cases (which require counsel to expend substantial amounts of time and effort).

Commentary to Guideline 10.1, *ABA Capital Counsel Guidelines* (1989), http://www.americanbar.org/content/dam/aba/migrated/2011_build/death_penalty_representation/1989guidelines.authcheckdam.pdf.

Studies have proved those warnings prescient. For example, the ABA Capital Counsel Guidelines cited several studies which demonstrated an increasing reluctance by experienced counsel to take on capital cases in light of cost concerns. *See* Commentary to Guideline 9.1, *ABA Capital Counsel Guidelines*, 31 Hofstra L. Rev. at 986. One of those studies, out of Texas, showed that, "more and more experienced private criminal attorneys" were refusing to accept appointments in capital cases at least in part because of "the lack of compensation for counsel fees and experts/expenses and the enormous

pressure that they feel in handling these cases." *Id*. (citing The Spangenberg Group, *A Study of Representation in Capital Cases in Texas* (1993)).

Similarly, a survey of Mississippi attorneys appointed to represent indigent capital defendants found that 82% would "either refuse or be very reluctant to accept another appointment because of financial considerations." Commentary to Guideline 9.1, *ABA Capital Counsel Guidelines*, 31 Hofstra L. Rev. at 986 (citing Ruth E. Friedman & Bryan A. Stevenson, *Solving Alabama's Capital Defense Problems: It's a Dollars and Sense Thing*, 44 Ala. L. Rev. 1, 31 n.148 (1992)); *see also* Fox, *Capital Guidelines and Ethical Duties*, 36 Hofstra L. Rev. at 779-80 (under-compensating lawyers and non-lawyers would impede ability to secure their services, "leaving only those desperate for work—but unqualified to handle it – willing to accept these engagements.").

The inevitable result of this thinning of the capital defense bar is that innocent people will be executed because they lack minimally competent representation at all levels of the judicial system. Currently, rates of exoneration among capital defendants are far higher than for any other category of criminal convictions due in large part to the greater attention and resources devoted to death penalty cases before *and after* conviction. Samuel R. Gross, et al., *Rate of false conviction of criminal defendants who are sentenced to death*, 111 PNAS, no. 20, May 20, 2014, at 7230-7235 (estimating that 4.1% of defendants sentenced to death from 1973 through 2004 were the result of erroneous convictions). But as the strength of the post-conviction review process fades, the risk of erroneous execution rises.

This case provides an ideal vehicle to address precisely this issue. By granting certiorari and reversing the lower court rulings, this Court can send a clear signal that

federal courts must allocate appropriate budgets for federal capital defense efforts, and renew the bar's incentives to take up this critically important work.

CONCLUSION

For these reasons, as well as those stated in the Petition, certiorari should be granted.

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APPENDIX A

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