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12 **UNITED STATES DISTRICT COURT**  
13 **NORTHERN DISTRICT OF CALIFORNIA**  
14 **SAN FRANCISCO DIVISION**

15 JARVIS J. MASTERS,

16 Petitioner

17 v.

18 RON BROOMFIELD, Acting Warden,  
California State Prison at San Quentin,

19 Respondent.  
20

CASE NO.

**PETITION FOR WRIT OF HABEAS  
CORPUS**

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## INTRODUCTION

1  
2 1. Petitioner Jarvis Jay Masters is an innocent man sentenced to death after a trial lacking  
3 fundamental due process protections. A California jury sentenced Masters to death in 1990 based on  
4 allegations that he participated in planning the murder of San Quentin corrections officer Sergeant Howell  
5 Burchfield and fabricated and supplied the murder weapon to the killer. But that jury did not hear critical  
6 exonerating testimony or other evidence casting doubt on the State’s case, which rested primarily on two  
7 witnesses who have since entirely recanted their testimony. Indeed, although the California Supreme  
8 Court denied Masters’s request for the grant of habeas corpus, Justice Liu (joined by Justice Cuéllar)  
9 observed that they were not claiming that they could “be confident of the verdict beyond a reasonable  
10 doubt.” *In re Masters*, 7 Cal. 5th 1054, 1090 (2019).

11 2. Masters remains in State custody today because of unreasonable decisions by the trial court  
12 and California Supreme Court that are contrary to clearly established United States Supreme Court  
13 precedent. **First**, despite the United States Supreme Court’s clear directive in *Chambers v. Mississippi*,  
14 410 U.S. 284 (1973), that courts cannot abridge a criminal defendant’s right to put on a defense through a  
15 mechanical application of state evidentiary rules, the California Supreme Court affirmed the trial court’s  
16 decision to exclude exonerating evidence offered by Masters. Masters’s fellow inmate, Harold  
17 Richardson, had repeatedly confessed to playing the very roles in Sergeant Burchfield’s murder that the  
18 prosecution attributed to Masters. And it was Richardson—not Masters—who fit the physical description  
19 provided by the State’s star witness, Rufus Willis, of one of the planners of the murder. The jury never  
20 heard this critical information, because the trial court excluded evidence about Richardson’s confessions.  
21 The trial court’s decision and the California Supreme Court’s affirmation thereof violated Masters’s rights  
22 and were “unreasonable application[s] . . . of clearly established Federal law, as determined by the  
23 Supreme Court of the United States.” *See* 28 U.S.C. § 2254(d)(1). For this reason alone, consistent with  
24 United States Supreme Court and Ninth Circuit precedent in analogous cases, Masters’s petition for a writ  
25 of habeas corpus should be granted.

26 3. **Second**, the California Supreme Court again unreasonably applied *Chambers* and its  
27 progeny by affirming the trial court’s decision to exclude exonerating evidence offered by Masters about  
28 fellow inmate Charles Drume. Drume has repeatedly confessed that he, not Masters, manufactured the

1 weapon used to kill Sergeant Burchfield—indeed, he has since sworn to this under penalty of perjury in  
2 an affidavit. Drume had a long history of manufacturing weapons, and San Quentin officers found weapon  
3 stock in his cell soon after Sergeant Burchfield’s murder. The jury never heard this exonerating evidence.  
4 This, too, is sufficient reason for this Court to grant Masters’s petition for writ of habeas corpus, as it  
5 constituted an “unreasonable application . . . of clearly established federal law, as determined by the  
6 Supreme Court of the United States.” *See* 28 U.S.C. § 2254(d)(1).

7 4. **Third**, the State failed to disclose critical impeachment evidence about Bobby Evans, a key  
8 prosecution witness, to Masters before his trial, in violation of the clearly established requirements  
9 imposed by the Supreme Court in *Brady v. Maryland*, 373 U.S. 83 (1963). Specifically, the State did not  
10 disclose: (i) that Evans, a repeat informant, had provided the State false information in the past; (ii) that  
11 Evans and Parole Officer James Hahn had a pre-existing, ongoing working relationship, which included  
12 Hahn referring Evans to other government agencies for paid informant work; (iii) that Officer Hahn had  
13 promised Evans he would help postpone Evans’s sentencing hearing on his most recent conviction in  
14 exchange for Evans’s testimony; and (iv) that, at the time of Masters’s trial, Evans was a suspect in the  
15 unsolved San Francisco murder of James Beasley, Sr., creating substantial incentive for Evans to testify  
16 for the State in exchange for a deal. If the jury had been aware of this information, Evans’s credibility  
17 would have been decreased in the jury’s eyes. The cumulative effect of the State’s decision not to disclose  
18 this impeachment evidence was material: there is a reasonable probability that its disclosure to Masters  
19 and use at trial to impeach Evans’s credibility would have changed the verdict. The California Supreme  
20 Court’s decision otherwise was an “unreasonable application . . . of clearly established federal law, as  
21 determined by the Supreme Court of the United States.” 28 U.S.C. § 2254(d)(1).

22 5. **Fourth**, prosecutors violated Masters’s due process rights in violation of the Supreme  
23 Court’s decision in *Napue v. Illinois*, 360 U.S. 264, 269 (1959) by presenting evidence from Bobby Evans  
24 they knew or should have known to be false, and by failing to correct the falsehoods. Substantial evidence  
25 shows that prosecutors knew about Evans’s long working relationship with Officer Hahn and history of  
26 serving as a paid government informant who often provided false testimony. In spite of these red flags  
27 suggesting Evans was not telling the truth, the prosecutors and the trial court allowed Evans to testify. At  
28 trial, Evans lied about his relationship with Officer Hahn and about not receiving any benefit in exchange

1 for his testimony. Evans’s testimony was material and may have contributed to Masters’s conviction.  
2 Accordingly, the California Supreme Court’s rejection of this claim was an “unreasonable application  
3 . . . of clearly established federal law, as determined by the Supreme Court of the United States.” 28  
4 U.S.C. § 2254(d)(1).

5 6. The injustice of Masters’s incarceration has garnered national attention, including the  
6 recently published book, The Buddhist on Death Row: How One Man Found Light in the Darkest Place  
7 by New York Times bestselling author David Sheff, and the “Dear Governor” podcast series. That  
8 Masters has spent more than thirty years on Death Row is made even worse by the fact that he is innocent.  
9 Masters’s convictions for murder and conspiracy rested on three categories of evidence: (i) the testimony  
10 of inmate Rufus Willis implicating Masters in the murder; (ii) two handwritten letters (known as “kites”)  
11 about the attack that were attributed to Masters; and (iii) the testimony of inmate Bobby Evans, who  
12 claimed that Masters later confessed involvement in the attack. In post-conviction proceedings, Masters  
13 presented sworn statements from Willis and Evans recanting their trial testimony. Willis also admitted  
14 that, at the urging of an investigator in the District Attorney’s office, he told Masters what to write in the  
15 kites. This was corroborated through expert analysis that Masters handwrote but did not author the kites.  
16 The primary evidence presented against Masters at trial has been shown to be false or determined to be  
17 unreliable. Analysis of the United States Supreme Court’s decision demonstrates that the opinions of a  
18 majority of the Justices have clearly established that an innocent person on death row is entitled to relief  
19 upon a showing of actual innocence. The California Supreme Court’s refusal to grant relief was  
20 unreasonable and would allow the execution of a demonstrably innocent man, in violation of the  
21 Constitution and laws of the United States as clearly established by the United States Supreme Court.

22 7. In this case, no objective factfinder could review the record and determine with confidence  
23 that Masters’s convictions are constitutionally sound. The California Supreme Court’s decisions do not  
24 dispel the serious doubts about the evidence that was presented against Masters and the procedural  
25 unfairness that infected his trial. After waiting more than fifteen years for the state habeas proceedings to  
26 run their course, and more than thirty years since his trial, this case presents a model example of why  
27 federal habeas review is indispensable to prevent injustice in the administration of capital punishment.  
28

1 Without this Court's intervention, an innocent man will die either by lethal injection or while languishing  
2 on death row.

3 **JURISDICTION**

4 8. Masters brings this petition on the grounds that he is presently incarcerated and facing  
5 execution in violation of the Constitution and the laws of the United States. Masters is being held in  
6 custody pursuant to a judgment of a State court. Jurisdiction is proper under 28 U.S.C. §§ 2241 and 2254.

7 **VENUE**

8 9. Masters was convicted and sentenced to death in the Superior Court of California, County  
9 of Marin, Case No. 10467. Masters is presently incarcerated at San Quentin State Prison in Marin County,  
10 California. Venue is proper in this District under 28 U.S.C. § 1391 and Habeas L.R. 2254-22.

11 **EXHAUSTION**

12 10. Masters filed a brief directly appealing his conviction before the Supreme Court of  
13 California on December 7, 2001. The California Supreme Court affirmed the trial court judgment on  
14 February 22, 2016. On January 7, 2005, while his direct appeal was pending in the California Supreme  
15 Court, Masters brought a Petition for Writ of Habeas Corpus in that Court. After reference of the matter  
16 to a Referee, the California Supreme Court entered an order denying relief on some of the issues on August  
17 12, 2019. The California Supreme Court then denied a timely motion for rehearing regarding those issues  
18 on October 23, 2019. The California Supreme Court later entered an order denying all claims on their  
19 merits on November 20, 2019. As further discussed below, Masters has exhausted the remedies available  
20 in the California courts. Masters has satisfied the requirements of exhaustion under 28 U.S.C. § 2254(b).

21 **PARTIES**

22 11. Masters is an individual currently in the custody of San Quentin State Prison and facing a  
23 sentence of death pursuant to a judgment of the State courts of California.

24 12. Respondent Ron Broomfield is the Acting Warden of San Quentin State Prison.  
25 Broomfield is the State official who currently holds Masters in custody.

**FACTS AND PROCEDURAL HISTORY<sup>1</sup>**

13. It is uncontested that on June 8, 1985, inmate Andre Johnson fatally stabbed Correctional Sergeant Howell Burchfield with a prison-made weapon. The weapon used to kill Sergeant Burchfield was never recovered. The stabbing occurred on Tier 2 in the Carson Section of San Quentin State Prison. Those housed in the Carson Section included members of the Black Guerilla Family (“BGF”), a prison gang. Johnson was a soldier in the BGF. *See* 42 RT 11349.<sup>2</sup>

14. Inmate Rufus Willis was one of the two BGF leaders in the Carson Section. *See* 54 RT 13008. After the killing, Willis came forward to offer information about the murder to state investigators. *See* 52 RT 12779–80; 53 RT 12881–83. Willis told Investigator Charles Numark of the Marin County District Attorney’s Office that inmate Lawrence Woodard was the leader of the BGF in the Carson Section, and was responsible for ordering Sergeant Burchfield’s murder. *See* 54 RT 13061–62. Willis implicated Johnson as the inmate who conducted the killing. *See* 52 RT 12763–64, 12770–71. Willis also accused Masters of being part of the BGF leadership in the Carson Section that planned the murder and of having sharpened the prison-made weapon that Johnson used to stab Sergeant Burchfield. *See* 52 RT 12763–64.

15. Numark initially promised Willis release on parole in exchange for testimony against Masters. *See Masters*, 7 Cal. 5th at 1058. Deputy District Attorneys Edward Berberian and Paula Kamena

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<sup>1</sup> Significant additional facts are presented in causes of action set forth *infra*. Facts presented in any paragraph or claim are incorporated into every other paragraph and claim for the Court’s consideration when reviewing the petition. Further, Masters hereby incorporates by reference the record of the previous proceedings in the California state courts as if fully set forth herein.

<sup>2</sup> Citations to the record herein use the following abbreviations:

1. “RHRT”: refers to the Reference Hearing Reporter’s Transcript.
2. “Trial Ex.”: refers to trial exhibits. The trial exhibits identified also include a reference to the party who offered the exhibit.
3. “RH Pet. Ex.”: refers to Petitioner’s California Supreme Court Reference Hearing exhibits.
4. “CT”: refers to the Clerk’s Transcript in Masters’s California State appeal.
5. “RT”: refers to the Reporter’s Transcript in Masters’s state appeal.
6. “PHRT”: to the Preliminary Hearing Reporter’s Transcript in Masters’s California State appeal.
7. A dated transcript (e.g., “1-10-88 RT”) refers to a separately bound reporter’s transcript in Masters’s California State appeal, unless otherwise noted.
8. “AOB”: refers to Appellant’s Opening Brief in Masters’s direct California State appeal.
9. “HC Pet. Ex.”: refers to Petitioner’s Habeas Petition exhibits.

1 later changed the terms of the offer: in exchange for testifying against Masters, the prosecution would  
2 grant Willis immunity for all the crimes he committed in prison (including Burchfield's murder), notify  
3 the parole board of his cooperation, and move Willis to an out-of-state prison. *See id.* at 1058–59. Willis  
4 accepted the deal. *See id.* at 1059.

5 16. On June 20, 1985, Numark told Willis that the authorities did not have enough evidence to  
6 implicate Masters in the killing. *See* 9 PHRT 8657–58, 8680:8–10; 10 PHRT 8805:19–23. Using his  
7 authority as a leader of the BGF in the Carson Section to issue and enforce orders against lower ranked  
8 BGF members, Willis ordered Masters to copy in Masters's own handwriting two letters (known as  
9 "kites") indicating Masters's involvement in the murder. *See* 9 PHRT 8658:14–15; 54 RT 13088–90.  
10 Upon receiving these kites, Berberian charged Masters with first-degree murder and conspiracy. *See* 1  
11 CT 2.

12 17. Masters, Johnson, and Woodard were tried simultaneously before two separate juries. *See*  
13 *People v. Masters*, 62 Cal. 4th 1019, 1027 (2016). The prosecution's case against Masters rested upon  
14 three categories of evidence: (i) Willis's testimony inculcating Masters; (ii) the two kites that Masters had  
15 written at Willis's direction; and (iii) the incriminating testimony of inmate Bobby Evans. *Masters*, 7 Cal.  
16 5th. at 1059.

17 18. **First**, Willis testified that Masters was one of the four members of the BGF leadership  
18 group in the Carson Section who planned and approved the attack on Burchfield. *See* 52 RT 12740, 12747,  
19 12758–60. Willis claimed that Masters was the architect of the plan. *See id.* at 12735, 12740–41. Willis  
20 testified that Masters obtained a piece of metal from another BGF member, sharpened it, and then passed  
21 it to Johnson for the attack. *See Masters*, 62 Cal. 4th at 1028. Johnson carried out the attack on the second  
22 tier of the Carson Section. *See id.* Masters was housed in a cell on the fourth tier at the time. *See id.* at  
23 1029. It is unknown whether the murder weapon was ever found; the authorities recovered a sharpened  
24 piece of metal (which had no blood on it) on the floor of the first tier in the Carson section shortly after  
25 Burchfield's death. *See id.* Authorities subsequently found "other pieces of metal that came from the  
26 same bed, as well as many other prisoner-made weapons." *Id.* But authorities did not preserve these  
27 materials. *See id.*

1           19. Willis has since fully and repeatedly recanted his trial testimony. He has provided three  
2 sworn declarations, between 2001 and 2010, admitting that his trial testimony against Masters was false;  
3 in fact, Masters “had nothing to do with planning the killing of Sgt. Burchfield,” and “did not play any  
4 part in the death of Sgt. Burchfield.” 11 RHRT 594–95 (February 8, 2001 handwritten declaration); *id.*  
5 603–04 (February 23, 2001 typed declaration); 10 RHRT 534–43 (May 12, 2010 declaration); HC Pet.  
6 Ex. 1 ¶¶ 6, 20, 22, 31. Willis said he spoke to Masters “once before the Burchfield killing and he told me  
7 he did not agree with doing this hit. He told me ‘I’m not with this.’” HC Pet. Ex. 1 ¶ 18. “Masters had a  
8 lot to prove” to the BGF and “was constantly criticized”; “[t]his was one of the reasons Masters would  
9 not have been involved in the manufacture of the murder knife. He was not fully trusted and not  
10 considered reliable.” Pet. Ex. 1, ¶ 1. This was corroborated by the sworn statement of Woodard about  
11 Master’s non-involvement in Sergeant Burchfield’s death, including that “Jarvis Masters was not the knife  
12 sharpener. He was not good at sharpening metal, and he was not trusted with any part in the Burchfield  
13 killing.” HC Pet. Ex. 2 ¶ 9; *see also* HC Pet. Ex. 3 (Declaration of Andre Johnson), *id.* ¶ 3 (“To my  
14 knowledge, Jarvis Masters had no knowledge of any involvement in the killing of Sgt. Burchfield.”).

15           20. **Second**, Willis presented evidence at trial concerning the two kites. The prosecution’s case  
16 described the BGF as a highly ordered and disciplined gang with a well-defined hierarchical structure.  
17 Willis translated the terms and names in the notes for the jury. *See Masters*, 62 Cal. 4th at 1030. The  
18 BGF required members to write and possess various documents, such as daily reports of their activities,  
19 using various codes and Swahili words. *Id.* at 1029–30. Thus, Willis “translated” the kites for the jury.  
20 *Id.* at 1030. In the first kite, according to Willis, the author discussed having sharpened a piece of metal.  
21 *Id.* In the second kite, which was titled “Usalama Report,” the author identified Masters as someone who  
22 was involved in the planning and approval of the attack on Sergeant Burchfield. *See id.* According to  
23 Willis, the Usalama Report claimed that Burchfield had been communicating with members of the rival  
24 Aryan Brotherhood and supplying them with weapons. *See id.* This second kite stated that Johnson had  
25 been successful in his attack against Burchfield and asserted that only BGF members knew that Johnson  
26 was the killer. *See id.* The note was signed by the BGF code-name assigned to Masters, and the  
27 prosecution put forward handwriting analysts who determined Masters had written the kites. *Id.*

1           21.     There is considerable evidence that while Masters handwrote the kites, he was not their  
2 author. In his post-trial sworn declarations, Willis explained that he used his power within the BGF to  
3 direct Masters to copy the kites. *See* HC Pet. Ex. 1 ¶¶ 10–12, 14–15; *see infra* ¶ 187. This was  
4 corroborated by the unrebutted analyses of two forensic linguists who concluded that the kites were not  
5 authored by Masters—they did not share common authorship with other kites that actually were authored  
6 by Masters. *See* RH Pet. Ex. 72 at 13, Attach. 1–5; 18 RHRT 984, 1014-16. It is further corroborated by  
7 the statements of other BGF members, including the sworn statement by Woodard that “kites were  
8 frequently written by BGF leaders and then re-copied, under orders, by inmates lower in the hierarchy,”  
9 and that he believed Masters was “motivated to obey Willis [by copying the kite] in order to ingratiate  
10 himself with the BGF in general and with me in particular.” HC Pet. Ex. 2 ¶ 8.

11           22.     ***Third***, the prosecution put forward the testimony of inmate Bobby Evans. Evans stated  
12 that he was an “enforcer” on the BGF main central committee. *See Masters*, 7 Cal. 5th at 1063. Although  
13 Evans did not profess to know about the attack on Burchfield when it occurred, Evans claimed that Masters  
14 confessed “around” September 1985 to have voted in favor of the attack. *See id.* at 1059. Evans testified  
15 that he and Masters were both located at the San Quentin Adjustment Center “around” August 1985. *See*  
16 *id.* The jury requested a “readback” of Evans’s testimony during their deliberations, shortly before  
17 reaching its guilty verdict. *See* 78 RT 16906; 79 RT 17082, 17093; 17 CT 5098.

18           23.     Evans has since entirely recanted his testimony. In post-conviction proceedings, he  
19 testified that he did not know Masters in 1985, and in fact had never spoken to or met Masters. RH Pet.  
20 Ex. at 41–42. This is corroborated by evidence from the California Department of Corrections and  
21 Rehabilitation showing that Masters was not present with Evans at the Adjustment Center in September  
22 1985. *See* 5 RHRT 281. The recantation is further corroborated by the post-conviction testimony of  
23 Michael Rhinehart, who testified that he shared a cell with Evans, and Evans did not know anything about  
24 the attack on Burchfield until Rhinehart told him about it in 1987. *See* 6 RHRT 331, 333–34.

25           24.     Thus, the State was able to present its case against Masters, however flawed, to the jury.  
26 Masters, however, was not able to do the same, as the trial court repeatedly excluded evidence critical to  
27 Masters’s defense. The trial judge refused to admit evidence of another inmate—Harold Richardson’s—  
28 confessions of his involvement in Sergeant Burchfield’s murder on the grounds that those confessions

1 were not sufficiently reliable. 12-13-88 RT 7; *see also* 2-15-89 RT 25. In an August 21, 1986 interview  
2 conducted by San Quentin Program Administrator Jean S. Ballatore of inmate Harold Richardson,  
3 Richardson admitted he was a member of the BGF hit squad and admitted to having been one of the four  
4 BGF members who planned Sergeant Burchfield’s murder and having sharpened the knife that ultimately  
5 was used to kill Sergeant Burchfield. *See Mot. to Delay Submission of the Case for Further Development*  
6 *of the Record*, Case No. S130495, Ex. 54-A (“Ex. 54-A”) at 000007–8. According to a memorandum  
7 drafted by Ballatore reflecting her discussion with Richardson, Richardson indicated he knew “all the  
8 details about the Burchfield murder,” identified Willis, Woodard, and Johnson as the other planners,  
9 identified ten individual members of the BGF who participated in the attack, and described their respective  
10 roles. *See id.* Despite this exhaustive list, Richardson never suggested Masters played any kind of role in  
11 Sergeant Burchfield’s murder. *See id.*

12 25. Similarly, the trial judge also excluded as unreliable hearsay Richardson’s confessions in  
13 a letter Richardson wrote to Ballatore after a judge explicitly informed Richardson that his confessions  
14 could be used against him. *See* 9 CT 2430, 2436, 2647; Ex. 54-A at 000013–16.

15 26. The trial judge also excluded testimony about and contemporaneous written evidence from  
16 a December 23, 1987 interview by prosecutors of inmate Charles Drume. 12-13-88 RT 7. Drume  
17 approached prosecutors as a BGF member who wanted to leave the organization. *See* 7 CT 1912. He told  
18 the prosecutors that he was the BGF “Chief of Security in Carson Section” as of June 1985, which was a  
19 position that Willis had ascribed to Masters at trial. *See id.* at 1912, 1914; 17 CT 5045. Drume told  
20 investigators that he was fully involved with the plan to kill Burchfield, and he identified Willis and  
21 Woodard as other planners. *See* 7 CT 1912, 1914. Like Richardson, Drume did not suggest that Masters  
22 was one of the planners, and told the prosecutors that he (and therefore not Masters) had fabricated the  
23 weapon used in the attack on Burchfield. *See id.* Drume explained that he cut the metal from his bed  
24 brace, sharpened it, and then passed it to an inmate named Wallace on the second tier so that Johnson  
25 could use the weapon in the attack. *See id.* The judge excluded the evidence about Drume’s confessions  
26 as not sufficiently reliable hearsay. *See* 12-13-88 RT 7.

27 27. The trial judge also excluded evidence that Evans, the corroborating witness against  
28 Masters, had received a reduced sentence in exchange for testifying against Masters. *See* 79 RT 17046,

1 17090–92. On January 4, 1990, while the jury was deliberating Masters’s guilt, defense counsel learned  
2 for the first time that Evans had secured an early release from a 16-month state prison sentence he was  
3 serving for violating probation. *See* 78 RT 16878–79. During a hearing held outside of the presence of  
4 the jury, Officer Hahn testified that he had promised Evans to delay a sentencing hearing for as long as  
5 possible, to avoid Evans’s return to state prison. *See* 79 RT 17014. Officer Hahn’s testimony contradicted  
6 a memorandum that the prosecution had provided in discovery stating that Evans had not received any  
7 consideration in exchange for testifying against Masters. *See* Trial Ex. 1230. The trial judge nevertheless  
8 denied Masters’s motion to reopen the case, finding that enough information had been disclosed for the  
9 defense to make an “inference” that a promise had been made. *See* 79 RT 17090–92.

10 28. On January 8, 1990, the jury returned a verdict of guilty against Masters, and he was later  
11 sentenced to death. 18 CT 5126–27. The Judgment of Death issued July 30, 1990. Masters initiated a  
12 direct appeal before the California Supreme Court, Case No. S016883, challenging numerous state and  
13 federal constitutional errors during the guilt and penalty phases before the trial court, including but not  
14 limited to: (i) that Masters was denied a fair opportunity to prove his principal defense that the State had  
15 the wrong man because the trial court, *inter alia*, excluded reliable evidence that Harold Richardson and  
16 Charles Drume confessed to participating in the Burchfield murder in roles attributed to Masters and did  
17 not include Masters on the list of participants; (ii) that the State failed to disclose evidence of inmate  
18 Evans’s bias and extensive relationship with Officer Hahn, including evidence of promises to Evans in  
19 exchange for his testimony against Masters; (iii) that Masters should have been afforded a pre-trial lineup  
20 during the preliminary hearing to test Rufus Willis’s wrongful identification of Masters as the fourth BGF  
21 member who planned the Burchfield murder; (iv) that Masters should have been afforded an opportunity  
22 to question Willis regarding Richardson’s identity after learning of Richardson’s confessions; and (v) that  
23 Masters’s trial should have been severed from his co-defendant’s because Masters intended to introduce  
24 the Richardson confessions, which exculpated Masters but inculpated his co-defendant. *See generally*  
25 AOB.

26 29. On February 22, 2016, the California Supreme Court affirmed the verdict and Judgment of  
27 Death, finding, *inter alia*, that Masters’s trial was fair and consistent with due process, and that even if  
28

1 there were errors below, those errors were harmless. *See generally People v. Masters*, 62 Cal. 4th 1019  
2 (2016).

3 30. Concurrently with his direct appeal, Masters filed a petition for writ of habeas corpus on  
4 January 7, 2005, raising claims of actual innocence and pointing out the serious constitutional problems  
5 with his trial and sentencing. *See generally In re Masters*, No. S130495, *Pet. for Writ of Habeas Corpus*  
6 (Cal. Sup. Ct. Jan. 7, 2005). In support of his petition, Masters submitted a detailed sworn statement by  
7 Rufus Willis, the State’s principal witness at trial, recanting his testimony against Masters. *See HC Pet*  
8 *Ex. 1*. Masters also presented evidence that Bobby Evans had recanted his trial testimony against Masters.  
9 *See RH Pet. Ex. 58* at 41–42. And Masters offered sworn statements by co-defendants Lawrence Woodard  
10 and Andre Johnson acknowledging their own roles in the killing of Sergeant Burchfield and testifying that  
11 Masters was not involved. *See HC Pet. Exs. 2, 3*. Masters also offered a sworn statement by Charles  
12 Drume concerning Drume’s role in fabricating the weapon used to attack Richardson. *HC Pet. Ex. 4*.  
13 Masters presented this and other evidence in support of his showing that false evidence was presented  
14 against him at trial, and he raised constitutional claims that his conviction and sentence violated the United  
15 States Constitution. *See In re Masters*, Case No. 130495, *Pet. for Writ of Habeas Corpus* ¶¶ 139–262.

16 31. The Supreme Court of California found that Masters had stated a *prima facie* claim for  
17 relief and appointed a special referee to address questions presented by the petition. *See Masters*, 7 Cal.  
18 5th at 1061. After an evidentiary hearing, the referee found “as a general matter, that it was likely that  
19 some false testimony was offered at Masters’s trial” and that “every BGF member who testified at the  
20 reference hearing had lied during Masters’s trial, th[e] proceeding, or both.” *Id.* at 1065–66. Because she  
21 questioned the credibility of the witnesses—notwithstanding that two of these individuals, Evans and  
22 Willis were the *prosecution’s principal witnesses*—the referee discounted the import of much of the  
23 evidence provided during the hearing. *See id.* The California Supreme Court ultimately accepted the  
24 referee’s findings, discharged the show cause order, and denied habeas corpus relief. *See id.* at 1058,  
25 1089.

26 32. Justice Liu authored the decision denying habeas corpus relief. But Justice Liu also issued  
27 an extraordinary concurring opinion, joined by Justice Cuéllar, disclaiming any view “whether, in light of  
28 the trial evidence as well as the reference hearing and findings, we can be confident of the verdict beyond

1 a reasonable doubt.” *Id.* at 1090. Although the judgment against Masters was entitled to a presumption  
2 of finality, the concurrence considered it “understandable why Masters finds the referee’s report  
3 unsettling.” *Id.*

4 33. This petition follows.

5 **CLAIMS FOR RELIEF**

6 **FIRST CAUSE OF ACTION**  
7 **EXCLUSION OF RICHARDSON’S CONFESSIONS**  
8 **(*CHAMBERS v. MISSISSIPPI*)**

9 34. The “right of an accused in a criminal trial to due process is, in essence, the right to a fair  
10 opportunity to defend against the State’s accusations.” *Chambers v. Mississippi*, 410 U.S. 284, 294  
11 (1973). That right means more than simply confronting and cross-examining the State’s witnesses;  
12 “essential to due process” is the right “to call witnesses in one’s own behalf” and present one’s own  
13 defense. *Id.* Indeed, the “opportunity to be heard in his defense—a right to his day in court—[is] basic in  
14 our system of jurisprudence,” and a “minimum essential[] of a fair trial.” *Id.* (quoting *In re Oliver*, 333  
15 U.S. 257, 273 (1948)).

16 35. The Supreme Court has long recognized, and clearly established, that the exclusion of  
17 evidence critical to the defense pursuant to state evidentiary rules may violate those well-established,  
18 fundamental rights. *Chambers*, 410 U.S. at 302. Specifically, where an excluded statement bears  
19 “persuasive assurances of trustworthiness” and is critical to the defense, *i.e.*, “where constitutional rights  
20 directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied  
21 mechanistically to defeat the ends of justice.” *Id.*; *see also Cudjo v. Ayers*, 698 F.3d 752, 767-68 (9th Cir.  
22 2012) (exclusion of testimony crucial to defense theory under state hearsay rules was contrary to well-  
23 established Supreme Court precedent regarding due process and Sixth Amendment right to present  
24 defense); *Chia v. Cambra*, 360 F.3d 997, 1003 (9th Cir. 2004) (finding state court’s exclusion of reliable  
25 material evidence of Chia’s innocence an objectively unreasonable application of clearly-established  
26 Supreme Court precedent).

27 36. In this case, the trial judge excluded reliable, material evidence of Masters’s innocence in  
28 violation of Masters’s clearly established rights under the Fifth, Sixth, and Fourteenth Amendments, and

1 the California Supreme Court twice upheld the trial court's exclusion based on unreasonable application  
2 of clearly established United States Supreme Court precedent. *See* 12-13-88 RT 7; 2-15-89 RT 25.

3 37. From the start of Masters's case, the thrust of his defense was that the State—that accused  
4 Masters of planning the hit on Sergeant Burchfield and sharpening the murder weapon—had the wrong  
5 man. *See* 11 RHRT 594–95, 603–04. In support of this defense, Masters sought to introduce, among  
6 other evidence, confessions by inmate Harold Richardson—an uncharged co-conspirator—reflected in a  
7 memorandum prepared by correctional officer Jean Ballatore following a debriefing interview of  
8 Richardson. *See* 12-13-88 RT 7; 2-15-89 RT 25. During his debriefing from the BGF, Richardson  
9 confessed to Ballatore that (i) he, along with Rufus Willis, Andre Johnson, and Lawrence Woodard, were  
10 the four BGF members who planned the hit on Sergeant Burchfield, and (ii) he sharpened the knife  
11 ultimately used in the attack. *See* Ex. 54-A at 000007 (the "Richardson Confession").

12 38. Masters also offered a letter written by Richardson to Ballatore—after a judge warned  
13 Richardson his statements could be used against him—in which Richardson re-affirmed his prior  
14 confessions and role in the Burchfield murder (the "Richardson Letter," and together with the Richardson  
15 Confession, the "Richardson Confessions"). *See* Ex. 54-A at 000013-16.

16 39. The Richardson Confessions were consistent with substantial evidence offered by the State,  
17 including testimony from the State's primary witness identifying an inmate who looked like Richardson  
18 and nothing like Masters as the fourth BGF member who planned the Burchfield murder, and the State's  
19 list of and roles attributed to ten co-conspirators in the attack. *See* 8 PHRT 8383–87, 8389. The  
20 Richardson Confessions are further corroborated by Richardson's admission to another inmate—  
21 Broderick Adams—that he "cleaned up [his] tracks and they got some other motherfuckers for [the  
22 murder]." 71 RT 15773.

23 40. As discussed further below, additional evidence further enhancing the Richardson  
24 Confessions' reliability, including that Richardson repeatedly agreed to polygraph examinations and that  
25 information he had provided already had proven true. *See* Ex. 54-A at 000001, 2, 8, 12. Troublingly,  
26 some of the State's evidence further bolstering Richardson's credibility was not discovered by Masters  
27 until over a decade after his trial concluded, and thus was not available to Masters in opposing the State's  
28

1 efforts to exclude the Richardson Confessions. *See Motion to Delay Submission of the Case for Further*  
2 *Development of the Record*, Case No. S130495.

3 41. The Richardson Confessions should have been admitted as a matter of due process and  
4 fundamental fairness, as his statements were reliable and trustworthy, and critical to Masters's defense at  
5 trial. But the trial judge excluded that critical evidence as inadmissible. *See* 64 RT 14718–19. As a result  
6 of these rulings, not only was Masters precluded from introducing the Richardson Confessions, but he  
7 also was barred from calling several additional witnesses, including but not limited to Ballatore,  
8 Lieutenant Spangler, and Lieutenant Echeverria. *See id.* Had they been called, they would have testified  
9 as to the content of and circumstances surrounding the Richardson Confessions, Richardson's demeanor  
10 during his debriefing interviews, and that additional information regarding other BGF criminal activity  
11 provided by Richardson during his debriefing interviews had been corroborated by independent sources,  
12 all of which would have led the jury to believe that the Richardson Confessions were true. The trial  
13 judge's decision effectively deprived Masters of his ability to present this powerful defense in violation  
14 of clearly established federal constitutional law as determined by the Supreme Court of the United States.

15 42. On direct appeal, Masters challenged the trial court's exclusionary orders under several  
16 grounds, including *Chambers v. Mississippi*, but the California Supreme Court affirmed. Specifically, the  
17 California Supreme Court held that, although the statements were against Richardson's penal interest, the  
18 Richardson Confessions were not sufficiently reliable because they were made more than a year after the  
19 Burchfield murder. *See Masters*, 62 Cal. 4th at 1057.

20 43. In denying Masters's petition for writ of habeas corpus, the California Supreme Court  
21 reaffirmed that ruling. *In re Masters*, 7 Cal. 5th at 1069. The Court also held that Masters had not shown  
22 that the Richardson Confessions would more likely than not have changed the verdict. *Id.* at 1084–85.

23 44. The decisions by the trial court and California Supreme Court were contrary to, and  
24 unreasonable applications of, clearly established federal law, providing that where an excluded statement  
25 bears "persuasive assurances of trustworthiness" and is critical to the defense, *i.e.* "where constitutional  
26 rights directly affecting the ascertainment of guilt are implicated, the hearsay rule may not be applied  
27 mechanistically to defeat the ends of justice." *Chambers*, 410 U.S. at 302. *See also Cudjo*, 698 F.3d at  
28 767-68; *Chia*, 360 F.3d at 1003. On its own and when viewed in conjunction with significant additional

1 constitutional errors that deprived Masters of his clearly-established rights to present his defense and a  
2 fair trial, the error was not harmless, and Masters's conviction must be overturned.

3 **A. Richardson Implicated Himself In The Burchfield Conspiracy In The Exact Roles**  
4 **The Prosecution Ascribed To Masters.**

5 1. Richardson Admitted to Prison Officials that He Planned the Burchfield murder  
6 and Sharpened the Murder Weapon.

7 45. In August 1986, Ballatore, then Legal Affairs Coordinator at San Quentin, learned that  
8 Richardson, an inmate at San Quentin and member of the BGF, wanted to debrief from the BGF.<sup>3</sup> 9 CT  
9 2519. To that end, Ballatore met with Richardson on several occasions beginning August 19, 1986 to  
10 interview Richardson, after which she prepared typewritten memoranda reflecting what Richardson had  
11 said. *See* 9 CT 2517–24.

12 46. After two interviews on August 19 and 20, 1986, during which Richardson offered to  
13 disclose information relating to BGF criminal activity and offered to take a polygraph exam, *see* Ex. 54-  
14 A at 000001 to 2; 9 CT 2519. Ballatore commenced a third debriefing interview on August 21, 1986.  
15 This time, Investigative Lieutenant James Spangler, who also led the investigation into Burchfield's  
16 murder, accompanied Ballatore in the interview. *See* 1 CT 237. At the outset of that interview, Ballatore  
17 again informed Richardson that the purpose of the interview was to talk about the BGF and assess the  
18 sincerity of his desire to drop out of the gang. *See* 9 CT 2519–20. Neither Ballatore nor Spangler read  
19 Richardson his *Miranda* rights, and they assured Richardson that they would keep his statements  
20 confidential and not use those statements against him in criminal proceedings. *Id.* at 240. Further, there  
21 is no indication in the memoranda reflecting that interview that Richardson was ever required to divulge  
22 information specifically about the Burchfield murder to satisfy the authorities regarding his debriefing.

23 47. Ballatore's memorandum reflecting her and Spangler's interview of Richardson, which  
24 Ballatore typed up the next day with the benefit of her notes from the meeting, *see* 9 CT at 2522–23, 2527,  
25 states that Richardson indicated that he knows "all the details" about the Burchfield murder. 9 CT 238.

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26 <sup>3</sup> Debriefing requires an inmate to admit that he is a gang member, identify other gang affiliates, and  
27 reveal sufficient verifiable information about the gang's activities and organization structure so as to  
28 provide assurance that the gang member's desire to drop out is genuine and that the gang would no  
longer accept the debriefing member back into the gang. *See Madrid v. Gomez*, 889 F. Supp. 1146,  
1241 (N.D. Cal. 1995). By contrast, reporting false information renders an inmate ineligible for these  
(potentially life-saving) benefits.

1 According to Richardson, four inmates planned the Burchfield murder: Willis, Johnson, Woodard, and  
2 Richardson:

3 Birchfield [sic] was killed because he was bringing hacksaw blades and bullets into the  
4 [Aryan Brotherhood]. It was Richardson's job to monitor Birchfield's activities.  
5 REDMOND B55567 ordered the hit on Birchfield. . . . The hit took about two weeks to  
6 plan. The hit was planned by WILLIS C71184, Johnson C71184, WOODARD C21690,  
7 and himself on the Carson Section yard.

8 *Id.*

9 48. The initial plan called for two weapons:

10 The initial plan was for RICHARDSON to spear Birchfield and for JOHNSON C71184 to  
11 use a zip gun. JOHNSON C71184 was afraid of the zip gun and asked to use the spear.  
12 RICHARDSON was then to use the zip gun. RICHARDSON did not use the zip gun  
13 because the BGF lost their gun powder during a search.

14 *Id.*

15 49. Richardson admitted that the knife used to kill Sergeant Burchfield came from another  
16 inmate's bed frame, which was sent to Richardson for sharpening, and was then passed down the line,  
17 ultimately to inmate Johnson, who murdered Sergeant Burchfield, without mentioning Masters as  
18 participating in the knife sharpening in any way:

19 CARRUTHER's C20634, cut the bed frame and sent it down to RICHARDSON to  
20 sharpen. RICHARDSON sent the metal to INGRAM B95647 to cut. One piece was sent  
21 to Cisco GOMEZ C20891, on the third tier of Carson Section. The other piece was sent to  
22 JOHNSON C71184 on the second tier of Carson Section. If JOHNSON C71184 was  
23 unable to make the hit on the second tier, GOMEZ C20891 was to do the hit on the third  
24 tier.

25 *Id.*

26 50. Richardson further described how Inmate Vaughn lured Sergeant Burchfield to Johnson's  
27 cell and that Johnson stabbed Sergeant Burchfield:

28 VAUGHN C30853 sent JOHNSON C71184 a note through Sergeant Birchfield to lure  
29 Birchfield to JOHNSON's cell. They knew they could keep Birchfield on the tier because  
30 in the past, he had stayed on the tier talking to the [Aryan Brotherhood]. JOHNSON  
31 C71184 speared Birchfield . . . .

32 *Id.*

33 2. After the Magistrate Informed Richardson His Confessions Could be Used  
34 Against Him, Richardson Confirmed His Involvement in the Attack.

35 51. Richardson's attempt to leave the BGF and implicate several high-ranking BGF members  
36 in a conspiracy to murder Burchfield (and other plans to attack correctional officers and staff) violated

1 Richardson's blood oath to the BGF and placed him and his families' lives at danger. *See* 7 CT 1913; 17  
2 CT 5057; 6-27-88 RT 26:18–20. For that reason, at the outset of his meetings with Ballatore, Richardson  
3 elicited assurances from Ballatore and Spangler that his statements would not be disclosed to the  
4 defendants or otherwise used against him in criminal proceedings. *See* 1 CT 240. As discussed below,  
5 Richardson later learned Ballatore and Spangler had been wrong.

6 52. Richardson testified at an *in camera* hearing pursuant to section 1041 of the California  
7 Evidence Code to determine whether the State was required to disclose to Richardson's identity to Masters  
8 as an informant and to disclose the Richardson Confession reflected in the memorandum reflecting  
9 Richardson's August 21, 1986 interview. *See* 9 CT 2507. In ordering that Richardson's identity and the  
10 information he provided relating to Sergeant Burchfield's murder had to be disclosed to Masters in  
11 redacted form, the Magistrate also admonished Richardson that contrary to previous representations from  
12 Ballatore and Spangler, his statements could, in fact, be used against him and that he could be charged as  
13 a co-conspirator in the case. *See* 1 CT 240; 9 CT 2507.

14 53. After the magistrate ordered Richardson's statements released in redacted form to  
15 defendants, Richardson, by petition for writ, sought and obtained review in the superior court of the  
16 Magistrate's decision. That review ultimately proved unsuccessful. *See* 50 PHRT 14669, 14678, 14686–  
17 92.

18 54. On August 8, 1987, after the Magistrate informed Richardson his statements would be  
19 provided to the defense and could be used against him, Richardson wrote a letter to Ballatore, which also  
20 was provided to Masters in redacted form. *See* 1 CT 240–43; 9 CT 2531. Masters did not receive an  
21 unredacted version of the Richardson Letter until after his trial.

22 55. In the Richardson Letter, Richardson provided additional details to Ballatore regarding the  
23 attack on Sergeant Burchfield, corrected certain portions of Ballatore's memorandum reflecting her  
24 interview of Richardson, and reaffirmed his involvement. Specifically, he wrote:

25 I recall telling you that my role was to hit officer Burchfield first & the other individual  
26 (Johnson) was to have zip gunned officer Morris. But I told you that Johnson was worried  
27 of the zip gun backfiring & therefore chose the spear & his target changed to SGT  
28 Burchfield. As soon as he hit Burchfield I was to zip gun officer Morris the following day.  
The gun powder was taken so that cancelled officer Morris. You left this out of my  
statement. All you wrote was I was supposed to use a zip gun but the powder was lost.  
This leaves the indication that I was supposed to zip SGT Burchfield which never was the

1 intended target of the Zip Gun. If you reflect back, I'm sure you would be able to remember  
2 this. Further I recall [sic] telling you that after Burchfield was hit the knife was given to  
3 Daly to give to Ingram to bend under the door & break & then flush. But Daly panicked  
& threw it off the tier. I further told you that Gomez AKA Cisco was supposed to have hit  
Burchfield if he went up to the 3rd tier, But he never made it that far.

4 1 CT 240–41, 243.

5 56. Richardson also reiterated his grave concerns that he and his family were in danger as a  
6 result of his statements. *Id.*

7 3. Richardson Continued Providing Reliable Information About the BGF to Prison  
8 Officials.

9 57. On December 13, 1986, Lieutenant Echeverria, Criminal Activities Coordinator, continued  
10 debriefing Richardson pursuant to Richardson's request, during which Richardson provided additional  
11 information about BGF criminal activity and organizational structure, and reiterated willingness to take a  
12 polygraph. *See Ex. 54-A at 000009–12.* Lieutenant Echeverria also corroborated from distinct sources  
13 that the information Richardson had previously provided regarding BGF activity was accurate. *Id.*

14 58. None of the memoranda reflecting Richardson's interviews with corrections officers on  
15 August 19 or 20, 1986, or December 17, 1986, or the unredacted version of the memorandum reflecting  
16 the August 21, 1986 interview, were not available to Masters until years after his trial. *See Mot. to Delay*  
17 *Submission of the Case for Further Development of the Record*, Case No. S130495. Prior to trial, Masters  
18 had only received a redacted version of the memorandum reflecting Ballatore and Spangler's August 21,  
19 1986 interview, a copy of which appears at 1 CT 237–39.

20 **B. The Trial Court Refused To Allow Masters To Present The Richardson Confessions**  
**To The Jury.**

21 1. The Trial Judge Excluded the Richardson Confessions.

22 59. Masters filed a pre-trial motion to sever his case from Woodard's on the ground that  
23 Masters intended to introduce, among other evidence, Ballatore's account of her August 21, 1986  
24 interview with Richardson during which Richardson confessed to his role in Sergeant Burchfield's  
25 murder. 15 CT 4275. His confessions in that interview implicated Woodard in planning and participating  
26 in the Burchfield murder, but exculpated Masters by excluding him from the participants and planners of  
27 the murder altogether, and explaining that it was another person entirely who sharpened the knife (the act  
28 the State later attributed to Masters). *See 7 CT 1842.* During argument on the motion on December 13,

1 1988, the trial judge acknowledged that the Richardson Confession was “a statement against interest,” but  
2 indicated that the Richardson Confession was unreliable due to the fact that it was made more than a year  
3 after the attack on Sergeant Burchfield, and tentatively deemed the statements inadmissible and denied  
4 the severance motion. *See* 12-13-88 RT 7; 9 CT 2457. On December 19, 1988, Masters moved for  
5 reconsideration of the order denying his severance motion, which the trial court denied. 01-09-89 RT 4.  
6 The case ultimately proceeded to trial. *See* 16 CT 4540.

7 60. At trial, the State elicited testimony from Willis that was consistent with the Richardson  
8 Confessions, with the singular exception that Richardson had admitted that he did the acts the State (and  
9 at that time, Willis) were attributing to Masters. *See* PHRT 8383–87, 8389. Just prior to commencement  
10 of Masters’s case-in-chief, the State moved to preclude introduction of the Richardson Confessions into  
11 evidence. *See* 17 CT 4947; *see also id.* at 4868, 4880, 4949. The State called Richardson in connection  
12 with that hearing, during which Richardson invoked the Fifth Amendment and refused to answer questions  
13 relating to the Burchfield murder. *See* 64 RT 14697–708. The trial court upheld Richardson’s invocation  
14 of the privilege against self-incrimination, and indicated it would not grant judicial use immunity to  
15 Richardson to permit Masters to secure Richardson’s testimony. *Id.* at 14709.

16 61. Given the showing of Richardson’s unavailability, the trial court then turned to the  
17 admissibility of the Richardson Confessions. Masters argued that the Richardson Confessions, consistent  
18 with precedent set forth in *Chambers v. Mississippi*, were admissible as reliable statements against penal  
19 interest. *See* 17 CT 4949–64. The trial court disagreed, finding that the Richardson Confession to  
20 Ballatore and Spangler was not against his penal interest under section 1230 of the California Evidence  
21 Code because he was advised that his statements would not be used against him. *See* 64 RT 14717.<sup>4</sup> The  
22 trial court never addressed Masters’s argument that the Richardson Confession was separately admissible  
23

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24  
25 <sup>4</sup> The trial court’s ruling directly contradicts the Magistrate’s at the Preliminary Hearing. Specifically,  
26 in response to a hearsay objection from the State during Richardson’s testimony at the Preliminary  
27 Hearing, the Magistrate ruled, “it does appear that a reasonable man in Mr. Richardson’s position  
28 would not have made the statement unless he believed it to be true. So I’ll overrule the objection. I  
do find the rest of the requirements under Section 1230 have been met.” 52 PHRT 14892. At the time  
of this hearing, Masters was not aware that Richardson had previously offered to take a polygraph  
exam on multiple occasions, or that information Richardson had provided to prison officials had been  
independently verified. *See supra* ¶¶ 40, 46, 57, 69, 88, 93.

1 under that section of the Evidence Code because his statements created a risk of hatred, ridicule, or social  
2 disgrace within the BGF community. *See* 17 CT 4949–64; 64 RT 14717.

3 62. With respect to the Richardson Letter—which Richardson wrote to Ballatore after the  
4 Magistrate informed Richardson that his confessions could be used against him—the trial court ruled that  
5 because Richardson did not explicitly tell Ballatore that Masters was not involved in the conspiracy, the  
6 Richardson Letter was “a non-statement,” and therefore inadmissible as a “statement” against interest.

7 It’s a non-statement. It is a non-statement, period, and I don’t see how it comes in under  
8 1230 unless he denied that Masters was there, asked and denied. Then of course it would  
9 be different. In this case he wasn’t asked and Masters’ name apparently was never  
10 mentioned

11 . . .

12 I’m going to deny, under 352<sup>5</sup>, as well as the fact that it doesn’t fit under 1230 because it’s  
13 a non-statement. It’s not a statement.” *Id.* at 14717–18.

14 63. Later during trial, and outside of the jury’s presence, Masters proffered that, sometime in  
15 August 1988, Richardson told inmate Broderick Adams that the “K-9’s [the prison guards] have me on a  
16 hot one trying to accuse me of that thing on a K-9 [prison guard] in ’85. I cleaned up my tracks and they  
17 got some other motherfuckers for it.” 71 RT 15773. The trial court did not rule on Masters’s proffer, and  
18 the jury did not receive any evidence about this statement. *See* 71 RT 15773–79.

19 2. On Direct Appeal, Masters Challenged the Trial Court’s Exclusionary Orders  
20 Under *Chambers v. Mississippi*.

21 64. On Direct Appeal, and still without the benefit of the complete, unredacted set of  
22 memoranda reflecting Richardson’s interviews and the Richardson Letter, Masters asserted, among other  
23 things, that the trial court’s orders excluding the Richardson Confessions violated Masters’s federal,  
24 constitutional rights to present a defense and to a fair trial, as clearly established in *Chambers v.*  
25 *Mississippi*, 410 U.S. 284 (1973). *See* 1 AOB 130. Specifically, Masters contended that the trial court  
26 inappropriately applied State evidentiary rules in a manner that denied Masters the heart of his defense—  
27 that he was not the person Willis identified as the fourth planner of the Burchfield murder and knife

28 <sup>5</sup> Section 352 of the California Evidence Code provides: “The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.” Cal. Evid. Code § 352.

1 sharpener. *See id.* at 151–54. The California Supreme Court rejected this claim and affirmed the trial  
2 court’s exclusion of the Richardson Confessions, holding that the Richardson Confessions were “properly  
3 excluded on the ground that they were insufficiently trustworthy and therefore unreliable,” due to the  
4 passage of time between the Burchfield murder and when Richardson made his statements. *Masters*, 62  
5 Cal. 4th at 1057.

6 The significant passage of time is a relevant circumstance to be considered when  
7 determining a statement’s reliability. In fact, Richardson did not make his statements until  
8 after these charges had been filed. . . . As the trial court noted, ‘Every prisoner who’s  
9 testified has said they heard about the crime within hours or days of the crime itself and it  
10 went around the prison like wildfire which one would expect would happen.’ Yet  
11 Richardson waited for over a year to make these statements to prison authorities. Thus,  
12 Richardson’s statements did not necessarily show his personal knowledge of the crime, as  
13 he had ample opportunity to learn the details from other inmates.

14 *Id.*

15 65. And despite that several of the State’s witnesses against *Masters*, including the State’s star  
16 witness Rufus Willis, were convicted felons, the California Supreme Court speculated that Richardson’s  
17 “status as a convicted felon was another possible factor upon which the trial court could have relied upon”  
18 in finding the statements were not reliable. *Id.*

19 66. The California Supreme Court also rejected *Masters*’s contention that excluding the  
20 Richardson Confessions had the effect of precluding him from pursuing the defense that he was wrongly  
21 accused. Specifically, the court held that although *Masters* could not admit the Richardson Confessions,  
22 *Masters* still had the opportunity to cross-examine Willis regarding his misidentification of *Masters*, and  
23 evidence was introduced implicating a rival gang in the Burchfield murder, including testimony from  
24 Willis that a rival gang expressed a desire to murder a correctional officer as revenge for a member’s  
25 death, and that the stabbing occurred outside a rival gang member’s cell. *See id.* at 1079.

26 3. On Petition for Writ of Habeas Corpus, the California Supreme Court Found that  
27 Richardson’s Discussions with Prison Officials Likely Would Not Have Changed  
28 the Verdict.

67. As discussed above, on January 7, 2005, while his Direct Appeal was pending, *Masters*  
filed a Petition for Writ of *Habeas Corpus* before the California Supreme Court. *Masters*’s first claim for  
relief asserted that he was denied a meaningful opportunity to present his defense as a result of erroneous  
rulings, including, *inter alia*, the trial court’s exclusion of the Richardson Confessions. *See In re Masters*,

1 Case No. S130495, *Petition for Writ of Habeas Corpus* ¶¶ 61–67 (Cal. Sup. Ct. Jan. 7, 2005). Masters  
2 also asserted that the Richardson Confessions demonstrate that false evidence was presented at trial. *See*  
3 *In re Masters*, 7 Cal. 5th 1054, 1084 (2019).

4 68. At the evidentiary hearing before Judge Duryee, serving as a referee pursuant to the  
5 California Supreme Court’s order to show cause issued on February 14, 2007, the parties stipulated that  
6 the unredacted Richardson Confessions would be admitted into evidence, and no objections on hearsay or  
7 other grounds were made. *See* 14 RHRT 730–31. The memoranda reflecting Richardson’s August 19,  
8 20, and December 17, 1986 debriefing interviews with prison officials were not known to Masters at the  
9 time of the reference hearing, and therefore were not provided to Judge Duryee for consideration. Upon  
10 their discovery, Masters provided the California Supreme Court with unredacted versions of those  
11 memoranda. *See Mot. to Delay Submission of the Case for Further Development of the Record*, Case No.  
12 S130495, Ex. 54-A.

13 69. As discussed above, these documents had been previously redacted or not provided in any  
14 form to Masters and, therefore, were unavailable to Masters at the time of trial. *See id.*; *In re Masters*,  
15 7 Cal. 5th at 1084. The previously undisclosed portions of Richardson’s interviews with corrections  
16 officers reveal that Richardson provided prison officials with yet further substantial, reliable information  
17 regarding the BGF. For instance, the memoranda indicate Richardson provided detail of the BGF’s  
18 organizational structure, including the identity of BGF members and their ranks, how a BGF member can  
19 progress from one rank to the next, and provided details surrounding BGF activity, such as other plans to  
20 assault corrections staff at San Quentin. *See generally* Ex. 54-A. These previously redacted portions,  
21 while not directly related to the details of the Burchfield murder, further demonstrated Richardson’s  
22 credibility. For example, the newly revealed portions of the memoranda show that Richardson agreed on  
23 several occasions to a polygraph to test the veracity of the information he was providing to Ballatore and  
24 other officials. *See, e.g.*, Ex. 54-A at 000001; *id.* at 000002; *id.* at 000008. They also revealed that  
25 Lieutenant Echeverria had corroborated through distinct sources the accuracy of the information provided  
26 by Richardson. *Id.* at 000012.

27 70. The California Supreme Court rejected Masters’s claims premised on evidence relating to  
28 Richardson. Specifically, it held that while the previously redacted portions of the interview memoranda

1 were new evidence, they only slightly boost Richardson's credibility and would not have altered the  
2 outcome at trial:

3 Masters now presents no new information from Richardson about Burchfield's murder;  
4 instead, he relies on additional, generalized information from others about Richardson that,  
5 at most, somewhat bolsters Richardson's credibility. In light of the totality of the evidence  
6 at trial, Masters has not shown that this additional information from the reports concerning  
7 Richardson's debriefing, even if somehow admissible at his trial, would have more likely  
8 than not changed its outcome.

9 *In re Masters*, 7 Cal. 5th at 1085.

10 71. The California Supreme Court also reiterated its prior ruling that the trial court did not  
11 abuse its discretion in excluding the Richardson Confessions as unreliable because of the timing of  
12 Richardson's interview:

13 As the trial court observed, Richardson did not speak to prison officials about Burchfield's  
14 murder until more than a year after the attack had occurred. Richardson thus had ample  
15 opportunity to glean the relevant details from others and then pass them off to prison  
16 officials as his own personal knowledge.

17 *Id.* at 1084–85; *see also id.* at 1069.

18 72. Finally, the California Supreme Court found it was “not now persuaded by Masters's  
19 contention that Richardson's unreliable hearsay statements indicate that false evidence was presented at  
20 trial.” *Id.* at 1069.

21 **C. Exclusion Of The Richardson Confessions Was Contrary To And An Unreasonable  
22 Application Of Clearly Established Federal Law.**

23 73. At the 1989 trial, Rufus Willis testified that four BGF members were principally involved  
24 in the Burchfield murder: himself, Woodard, Johnson, and a fourth co-conspirator whom Willis claimed  
25 was Masters. *See* 52 RT 12740–41, 12748–49, 12761; 53 RT 12891; 54 RT 12946–47. Masters's defense  
26 was that he was not the person described by Willis as one of the planners of the Burchfield murder or the  
27 knife sharpener. *See* 1 AOB 151–54. Reliable, trustworthy evidence bore that out, establishing that  
28 Richardson, not Masters, was the person Willis identified as the fourth co-conspirator and knife sharpener.  
But Masters was not permitted to present that evidence to the jury, in violation of Masters's Fifth, Sixth,  
and Fourteenth Amendment rights clearly established by United States Supreme Court precedent.

1           1.       The United States Supreme Court Has Clearly Established that the United States  
2                    Constitution Guarantees a Fair Trial and a Meaningful Opportunity to Present a  
3                    Complete Defense.

4           74.       Federal law, as determined by the United States Supreme Court, has long been clear that  
5           the “minimum essentials of a fair trial” include a “fair opportunity to defend against the State’s  
6           accusations” and the right “to be heard in [one’s] defense.” *Chambers v. Mississippi*, 410 U.S. 284, 294  
7           (1973) (reversing judgment on the ground that hearsay statement denied Chambers a trial in accord with  
8           traditional and fundamental standards of due process). More than an opportunity to be heard in one’s  
9           defense, the opportunity guaranteed by the Constitution is a “meaningful opportunity to present a *complete*  
10          defense.” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (emphasis added). That means more than simply  
11          a right to cross-examine the State’s witnesses, but to put on one’s own defense. *See Chia v. Cambra*,  
12          360 F.3d 997 at 1005 (“Inherent within the Constitution’s promise of due process lies the cardinal  
13          principle that no criminal defendant will be deprived of his liberty absent a full and fair opportunity to  
14          present evidence in his defense.”).

15          75.       Although a State may legitimately place some limits on evidence a defendant can introduce  
16          in his own defense, the Supreme Court has “clearly established” that hearsay evidence, while prohibited  
17          under evidentiary rules, must be admitted if its exclusion would “defeat the ends of justice.” *Chambers*,  
18          410 U.S. at 302; *see also Chia*, 360 F.3d at 1004 (“State rules [of evidence] are designed not to frustrate  
19          justice, but to promote it”). When “a hearsay statement bears persuasive assurances of trustworthiness  
20          and is critical to the defense, the exclusion of that statement may rise to the level of a due process  
21          violation.” *Chia*, 360 F.3d at 1003 (reversing denial of writ of habeas corpus because exclusion of out-  
22          of-court statements exonerating defendant violated due process rights and was an unreasonable application  
23          of Supreme Court precedent) (citing *Chambers*, 410 U.S. at 302); *see also DePetris v. Kuykendall*, 239  
24          F.3d 1057, 1062 (9th Cir. 2001) (“The Supreme Court has made clear that the erroneous exclusion of  
25          critical, corroborative defense evidence may violate both the Fifth Amendment due process right to a fair  
26          trial and the Sixth Amendment right to present a defense.”) (citing *Chambers*, 410 U.S. at 294). Indeed,  
27          the Constitution’s guarantee of due process “would ring hollow if a criminal defendant such as [Masters]  
28          were prevented from presenting reliable, material evidence of his innocence at trial, when such evidence  
                lies at the heart of his defense.” *Chia*, 360 F.3d at 1005.

1           76. In *Cudjo*, in granting the petition for habeas corpus, the Ninth Circuit noted the similarities  
2 between the petitioner's case and relevant precedent:

3           Here, as in *Chambers* (as well as *Green* and *Lunbery*), the evidence at trial pointed to a  
4 single person committing murder, and the issue of the case was the identity of the  
5 perpetrator. As in *Chambers*, Petitioner 'endeavored to develop two grounds of defense':  
6 that he did not kill the victim, but that an identifiable other person did. In both cases, the  
7 alternate suspect had allegedly previously confessed to the crime; the defense was  
8 prevented from cross-examining the alternate suspect at trial; and the trial court's  
9 application of the hearsay rules prevented the defendant's witness from testifying to the  
10 alternate suspect's confession.

11           *Cudjo*, 698 F.3d at 765–66 (citations omitted). These are the essential circumstances before the Court in  
12 this case. As discussed below, the Richardson Confessions were critical to Masters's defense of being  
13 wrongfully accused, and were inherently reliable. The exclusion of that reliable, material evidence of  
14 Masters's actual innocence constitutes an objectively unreasonable application of clearly established  
15 federal law.

16           2.       Richardson's Statements Were Critical to the Defense.

17           77. From the outset of the Preliminary Hearing, Masters made clear that the case would be  
18 about his being misidentified as involved in the conspiracy. *See* 8 PHRT 8329. To that end, before Rufus  
19 Willis testified at the Preliminary Hearing, Masters requested that the defendants be removed from the  
20 courtroom during Willis's testimony until he identified the individuals purportedly involved in the  
21 Burchfield murder. *See id.* That way, Willis could not see the defendants when he was asked to describe  
22 them, and each defendant could meaningfully test Willis's descriptions of the co-conspirators on cross-  
23 examination. The Magistrate granted that request and Willis's testimony commenced without defendants  
24 present. *See id.* at 8345, 8362.

25           78. Willis testified that he had known each of the defendants since his arrival at Carson Section  
26 in 1985 and had seen them on multiple occasions at various locations in San Quentin. *See, e.g.*, 8 PHRT  
27 8367–68, 8377–79. Willis and Masters were housed on the fourth tier at Carson Section, with Masters in  
28 cell 2 and Willis in cell 21. *See id.* at 8377. Willis testified he would see Masters walk by Willis's cell  
toward the showers, as well as on the exercise yard twice a week for a few months, and they were  
sometimes only a few cells away from each other. *Id.* at 8379–80. While Willis claimed to have seen  
Masters on a number of occasions, Willis admitted that Masters never actually identified himself to Willis

1 as Masters or any of Masters's Swahili nicknames; rather, Masters only identified himself as "Askari,"  
2 *see id.* at 8388–89, a designation used by several other BGF members in Carson Section as well as a large  
3 portion of San Quentin's black prison population in 1985, *see* 59 RT 13916; 65 RT 14802. Therefore,  
4 Willis did not know Masters by either his name or his nicknames.

5 79. On cross-examination, still without Masters in the courtroom, Masters's counsel asked  
6 Willis several questions regarding physical characteristics of the person Willis believed to be the fourth  
7 planner of the murder besides Woodard, Johnson, and himself. In response, Willis gave several  
8 contradictory and inaccurate descriptions of Masters: his height was 5 feet, 7 inches; his weight was 140-  
9 160 pounds; he had no tattoos on his face; he wore eyeglasses; he had short hair; he was in his early  
10 thirties; he was bald-headed; he was chubby, husky, or heavy-like; he was 175-180 pounds; or he was  
11 bald, in the sense of keeping his head shaved. *See* 8 PHRT 8383–91. None of the conflicting descriptions  
12 given by Willis of the fourth co-conspirator he claimed to be Masters actually matched Masters's  
13 appearance. Rather, at the time of the Burchfield murder, Masters was: slim; six feet, one-inch tall; 22-  
14 23 years old; wore a mustache and goatee; had a distinctive tattoo on his left cheek that no one in close  
15 proximity could miss;<sup>6</sup> had short hair; and did not wear glasses. *See* 41 RT 11055–57; 54 RT 13097; 95  
16 RT 21551.

17 80. Following Willis's plainly inaccurate identification testimony, Masters moved for a pre-  
18 trial lineup in which Masters could participate to further test Willis's identification of Masters as the fourth  
19 BGF member who planned the Burchfield murder. *See* 8 PHRT 8404. Despite knowing that Richardson  
20 had confessed to being that fourth planner and to sharpening the knife used to kill Sergeant Burchfield,  
21 and benefitting from not having yet turned over that information to the defense, the State opposed the  
22 motion for a lineup on the ground that it was not timely. *Id.* at 8406–07. The Magistrate denied Masters's  
23 request based on Willis's testimony "as to the number of times that he's met [Masters] on the yard and so  
24 forth." *Id.* at 8407–08. Willis was then permitted to see Masters at counsel's table, eliminating the  
25 likelihood that Willis would further misidentify Masters, and providing Willis the opportunity to clean up  
26 his identification testimony at trial. 8 PHRT 8409–10.

27  
28 <sup>6</sup> Petitioner's face tattoo is so distinctive that Willis was able to see it from a distance of approximately  
20 feet later during the Preliminary Hearing. 11 PHRT 9109:2–4.

1           81. Later during the Preliminary Hearing, when the State finally revealed the Richardson  
2 Confessions (in redacted form) to Masters’s counsel, it became apparent that the person Willis described  
3 in his testimony was Richardson. Accordingly, the defense called Richardson as a witness; but Richardson  
4 asserted his constitutional privilege against self-incrimination in response to several questions asked by  
5 the State and by Masters’s counsel relating to the murder. 52 PHRT 14186–14820. Masters then  
6 requested that the State grant Richardson immunity and, in the alternative, requested that the Magistrate  
7 grant Richardson immunity so that Richardson could testify, which the Magistrate denied. *Id.* at 14832,  
8 14883. Masters also moved to recall Willis for further cross-examination and to show Richardson to  
9 Willis to conclusively establish Willis’s wrongful identification, but the Magistrate denied that motion  
10 too. *See id.* at 14841–43.

11           82. Without a grant of immunity enabling Richardson to testify, and without the Richardson  
12 Confessions in evidence, Masters was limited to cross-examining Willis to try to develop Masters’s false  
13 identification defense. By contrast, had the trial gone forward with the Richardson Confessions in  
14 evidence, Masters would have shown the jury not only that Willis’s initial description of the fourth co-  
15 conspirator did not match Masters, but that the person Willis identified:

- 16           • was a BGF lieutenant and member of the BGF hit squad;
- 17           • admitted to planning the conspiracy with Woodard, Johnson and Willis;
- 18           • knew all the details about the Burchfield murder;
- 19           • identified ten Carson Section BGF members as having been involved in the hit that matched  
20 the prosecution’s allegations regarding the identity of other co-conspirators;
- 21           • admitted that he, not Masters, sharpened and passed the knife; and
- 22           • did not mention Masters in any of the roles ascribed to Masters at trial—as one of the planners  
23 and the knife sharpener—or even as one of the ten individuals who played some sort of role  
24 whatsoever in the Burchfield murder.

25           83. For these reasons, the Trial Court acknowledged that the Richardson Confessions were  
26 “extremely significant” to Masters. 08-08-88 RT 57 (“If you were Mr. Masters, I think you would consider  
27 them extremely significant”).

28           84. By excluding the Richardson Confessions, Masters also was denied the opportunity to call  
several additional highly credible witnesses to discuss the circumstances surrounding the Richardson

1 Confessions, including Jeanne Ballatore, Lieutenant Spangler, and Lieutenant Echeverria. Each of them  
2 interviewed Richardson and could attest to his demeanor, and at least Lieutenant Echeverria would have  
3 testified to the critical fact that information provided by Richardson regarding BGF criminal activity had  
4 been verified by other distinct sources. *See* Ex. 54-A at 000012. Further, a fellow inmate, Broderick  
5 Adams, would have testified that Richardson separately confessed his involvement in the Burchfield  
6 murder to him. 71 RT 15773. All of that testimony would have led the jury to believe that the Richardson  
7 Confessions were true.

8 3. The Richardson Confessions Were Reliable.

9 85. The Richardson Confessions are inherently reliable and corroborated by significant  
10 evidence, including considerable evidence offered by the State. *First*, the Richardson Confessions were  
11 against Richardson’s penal interest, and also subjected Richardson to hatred, ridicule, and social disgrace,  
12 and therefore were inherently reliable. *See Williamson v. United States*, 512 U.S. 594, 599 (1994)  
13 (“[R]easonable people, even reasonable people who are not especially honest, tend not to make self-  
14 inculpatory statements unless they believe them to be true.”); *Chia*, 360 F.3d at 1004–05 (citing Fed. R.  
15 Evid. 904(b)(3) (“Self-inculpatory statements have long been recognized as bearing strong indicia of  
16 reliability.”). By speaking with prison officials and sending the Richardson Letter to Ballatore *after the*  
17 *Magistrate warned Richardson his statements could be used against him*, and by divulging significant  
18 details not just about the Burchfield murder, but about the inner workings of the BGF and other BGF  
19 activity at San Quentin, Richardson was explicitly implicating himself in the Burchfield murder and  
20 multiple other conspiracies. As a result, he was potentially subjecting himself to capital prosecution,  
21 violating the blood oath he took when he was indoctrinated into the BGF, and potentially subjecting him  
22 and his family to death or other violence. 17 CT 5057; *see also* 16 CT 4707 (“The BGF is known to kill  
23 those members who become witnesses for the state.”).

24 86. Conditions at San Quentin at the time of his statements made these severe risks all the more  
25 extreme. For instance, guards and prison officials could not be trusted, as they often worked for or with  
26 the BGF, including by providing gang members with inmates’ private files, and placing inmates where  
27 gang members desired. Indeed, the prosecution described Richardson as being “at grave risk. Because  
28 everybody already knows he has already having snitched.” 06-27-88 RT 26:18–20. And the trial court

1 acknowledged “there is danger to every inmate in Mr. Richardson’s position. There is no doubt.” *Id.* at  
2 33:11–12.

3 87. That the Richardson Confession was made during a debriefing made his confession even  
4 more reliable. Ballatore made clear to Richardson at the outset of the debriefing process that the debriefing  
5 would only go forward if Richardson provided truthful information. *See* 9 CT 2519. If Richardson were  
6 found to be lying, he would face the worst of all worlds as a snitch without the protection of protective  
7 custody. For all of these reasons, as the Magistrate made clear at the Preliminary Hearing, “a reasonable  
8 man in Mr. Richardson’s position would not have made the statement unless he believed it to be true.” 52  
9 PHRT 7710.

10 88. **Second**, Richardson’s conduct and demeanor throughout his interviews also demonstrate  
11 his reliability. Richardson offered to take a polygraph multiple times, and Lieutenant Echeverria verified  
12 information already provided by Richardson. *See* Ex. 54-A at 000001, 2, 8, and 12.

13 89. **Third**, Richardson’s account of the events leading up to the Burchfield murder correspond  
14 to substantial evidence in the record. For example, both Willis and Richardson claimed there were four  
15 principal planners of the Burchfield murder—they disagreed only as to the identity of the fourth planner.  
16 Although Willis purported to identify Masters as the fourth planner, Willis’s description of that individual  
17 before seeing Masters in court matched Richardson’s appearance, not Masters’s. And Richardson  
18 admitted he was one of the four members of the planning team along with Willis, Woodard, and Johnson.  
19 *See supra* ¶ 82. Indeed, the trial court acknowledged that Willis “certainly didn’t describe Mr. Masters  
20 before Masters was brought in for identification. So that in its way, Willis’s testimony was corroborative  
21 of Richardson’s statement to Ballatore.” 1988-08-08 RT 56:26–57:1. The trial court indicated that it  
22 “would consider [the discrepancies] extremely significant.” *Id.* at 57:18–19.

23 90. Richardson’s account of the Burchfield murder also implicated a laundry list of BGF co-  
24 conspirators, conspicuously leaving Masters off the list. *See* Ex. 54-A at 00007–8. And the accuracy of  
25 that list was corroborated by the State’s allegations of who from the BGF participated in the conspiracy  
26 and in what roles they participated, *see* 40 RT 10831–32; 73 RT 16034. The testimony of another inmate,  
27 Michael Rhinehart, provided further corroboration, testifying that he was present at a meeting where  
28 Masters affirmatively **voted against the plan to kill Sergeant Burchfield**. *See* 5 RHRT 319. Indeed,

1 Rhinehart testified that he heard about the plan *from Richardson*, and that Richardson was present at the  
2 meeting where Masters voted against the Burchfield murder. *Id.* at 317–19.

3 91. That Richardson—who was housed on the second tier of Carson Section—sharpened and  
4 passed the knife is corroborated by testimony from multiple other inmates that passing a knife from the  
5 fourth tier—where Masters’s cell was located—was not the plan, would not have made sense, and would  
6 have breached BGF security protocols. For example, Woodard testified that he did not, and would not  
7 have had the weapon go back and forth between the second tier and the fourth tier. *See* 4 RHRT 234:12–  
8 26. Another inmate, Welvie Johnson corroborated Woodard’s assessment, stating that passing the weapon  
9 from two tiers up would have been a breach of BGF security protocols. 7 RHRT 378:11–21. And  
10 Rhinehart, whose cell was located in the center of the block where the Burchfield murder occurred,  
11 testified as to how the metal went from Carruthers’s cell to Johnson’s—both of which were on the second  
12 tier. 5 RHRT 320:27–321:7; 52 RT 12748, 12761–62.

13 92. The Richardson Confessions also are consistent with statements from Charles Drume,  
14 another inmate who admitted his role in the conspiracy to authorities, including that he was the Chief of  
15 Security of the BGF, the role the State attributed to Masters. *See* 7 CT 1921–13. Drume likewise left  
16 Masters out of the planning group entirely in his confession. *Id.*; *see also* 17 CT 5046.

17 93. **Fourth**, none of the speculative reasons offered by the California Supreme Court for  
18 finding the Richardson Confessions unreliable are supported by the evidence. The California Supreme  
19 Court found that Richardson could have decided to provide false information to prison officials “in  
20 exchange for a benefit, to weaken the prosecutor’s case against his fellow gang members by spreading  
21 disinformation, or because he thought the statements would convince the prison authorities about his  
22 desire to leave the BGF.” *People v. Masters*, 62 Cal. 4th at 1057. None of these reasons carries water.  
23 As an initial matter, the only benefit Richardson sought in connection with his debriefing was protection  
24 from his fellow inmates, and that benefit was **expressly conditioned on passing a polygraph** based on the  
25 information provided. *See* Ex. 54-A at 000001. After making this request, Ballatore informed him no  
26 promises could be made, and told Richardson he needed to be truthful in the debriefing process. *Id.* Thus,  
27 any assertion that Richardson was providing **false** statements in exchange for protection, when he could  
28 only receive protection if his statements **proved** to be **truthful**, is unreasonable. The California Supreme

1 Court's reasoning also ignores that the only reason Richardson required protection in the first place was  
2 because he was choosing to debrief from the BGF, and that Richardson was not required to divulge  
3 anything about the Burchfield murder specifically to complete his debriefing. Had he not chosen to come  
4 forward and speak to Ballatore at all, he would not have needed the protection he sought. So any assertion  
5 that he made false statements for the purpose of receiving protection defies common sense. He could have  
6 stayed silent, and been in a safer position.

7 94. The California Supreme Court's speculation that Richardson came forward in an effort to  
8 undermine the State's case against the BGF likewise flies in the face of substantial evidence and common  
9 sense. At the outset of his debriefing, Richardson sought assurances from Ballatore that his statements  
10 would not be released to anyone, including the defendants, and took significant steps, including a secret  
11 writ to the Magistrate, to prevent his statements from being released. *See* 1 CT 240; 50 PHRT 7494, 7503,  
12 7511–17. And rather than undermine the State's case, his statements are largely consistent with the State's  
13 evidence and implicate several BGF members in numerous other conspiracies. Accordingly, there was no  
14 basis to speculate that the Richardson Confessions were part of a collusive effort to undermine the cases  
15 against fellow BGF members.

16 **D. The Error Was Not Harmless.**

17 95. The crux of the State's case against Masters was based on the allegations that Masters  
18 fashioned the knife used to kill Sergeant Burchfield, and voted for and planned the Burchfield murder.  
19 Had the jury come to understand that (i) the man identified by Willis as the fourth BGF member who  
20 planned the Burchfield murder was actually Richardson, (ii) Richardson admitted to prison officials that  
21 he, not Masters, planned the Burchfield murder with Willis, Woodard and Johnson, (iii) Richardson  
22 admitted to prison officials that he, not Masters, sharpened and passed the knife that ultimately killed  
23 Sergeant Burchfield, (iv) the prison officials had confirmed that what Richardson was saying on various  
24 other subjects was true, (v) Richardson confirmed his involvement to another inmate, (vi) Richardson was  
25 present at the meeting where Masters voted against the Burchfield murder, and (vii) several employees of  
26 the State who interviewed Richardson believed him to be trustworthy and sincere, the jury likely would  
27 have developed reasonable doubts about Masters's guilt and the verdict would have been different.  
28 Indeed, even the District Attorney prosecuting the case against Masters believed that if Richardson

1 established that Masters was not part of the conspiracy, he would have dismissed the case against Masters.  
 2 *See* 52 PHRT 14865 (“[I]f I believed that Mr. Richardson established, through corroborated evidence, that  
 3 Mr. Masters was not a part of this conspiracy . . . I would dismiss the case against Mr. Masters.”). Thus,  
 4 exclusion of the Richardson Confessions had substantial and injurious effects or influence in determining  
 5 the jury’s verdict—which it rendered after nine days of deliberations—and the error was prejudicial  
 6 beyond any reasonable doubt.

7  
 8 **SECOND CAUSE OF ACTION**  
**EXCLUSION OF DRUME’S STATEMENTS**  
**(*CHAMBERS v. MISSISSIPPI*)**

9 96. As with the exclusion of the Richardson Confessions, the trial judge improperly prevented  
 10 the jury from hearing powerful defense evidence in the form of a detailed confession from inmate Charles  
 11 Drume. The trial court’s decision to exclude evidence about Drume’s confession denied Masters his  
 12 constitutional right to present a defense: “California was allowed to present, through its [] witness, the  
 13 Government’s theory of the case to the jury. [The defendant] should have been afforded a similar  
 14 opportunity.” *Chia*, 360 F.3d at 1005. As a matter of constitutional law, the trial judge’s determination  
 15 that the confession was “hearsay” should not have deprived Masters of his fundamental right to present  
 16 this exculpatory evidence to the jury.

17 **A. Drume Confessed to Manufacturing the Weapon Used to Kill Sergeant Burchfield.**

18 97. Charles Drume, a prisoner in San Quentin and member of the BGF at the time of Sergeant  
 19 Burchfield’s murder, has repeatedly and consistently confessed to manufacturing the weapon used to kill  
 20 Sergeant Burchfield—the very act the State alleges Masters committed. 55 RT 13181–82.

21 98. In June 1985, Drume was an inmate in San Quentin, housed in Carson Section, third tier.  
 22 17 CT 4946. According to Drume, he was then the Chief of Security, or *Usalama*, of the BGF. 7 CT  
 23 1912, 1914; 17 CT 5045. Drume had been caught manufacturing weapons on numerous occasions,  
 24 including in March 1985, just months before Sergeant Burchfield’s death on June 8, 1985. 17 CT 5089.  
 25 On June 26, 1985, Drume contacted Lieutenant Amos in Carson Section. 17 CT 5047. Among other  
 26 things, Drume reported to Lieutenant Amos that the BGF planned to attack another guard, in an attack  
 27 related to Sergeant Burchfield’s death. HC Pet. Ex. 4 ¶ 5. During that meeting, Drume turned over  
 28 additional weapons to Lieutenant Amos. *Id.*

1           99.     On December 9, 1987, Drume contacted the Marin County clerk to report that he had  
2 additional information about Sergeant Burchfield’s murder. 17 CT 5044, 5052. As a result, on December  
3 23, 1987, Captain F. H. Everly, Inspector David L. Gasser, and Lieutenant H.E. Watkins interviewed  
4 Drume. Shortly thereafter, each of the three interviewers drafted memoranda quoting and/or summarizing  
5 Drume’s statements during the interview. Specifically, Inspector Gasser drafted a memo to file (“Gasser  
6 Memo”), Lieutenant Watkins drafted a memo to Captain Everly (“Watkins Memo”), and Captain Everly  
7 drafted a memo to Deputy District Attorney Edward Berberian (“Everly Memo”). 7 CT 1912–15; 17 CT  
8 5044–45.

9           100.    The three memoranda tell a consistent story: at the interview, Drume, who was “tired of  
10 being used by the BGF,” confessed to his role in the Burchfield murder, roles wrongly attributed to  
11 Masters at trial. 7 CT 1912–15. Specifically, Drume said that he was fully involved in the planning of  
12 the attack, along with three other inmates. Drume said, “I made the knife.” 7 CT 1916. When asked to  
13 clarify, Drume said: “I cut the knife out of my bed brace, sharpened it on the floor, and sent it down.” 7  
14 CT 1916. Drume said he sent the sharpened knife to a man named Anthony Wallace, who in turn sent the  
15 knife to a man Drume referred to as “Drake.” CT 1914. Drume explained that Drake was “the one you  
16 got now. The short one of the three,” Andre Johnson. 7 CT 1915. Drume also discussed his participation  
17 in the BGF. Drume explained that he had been a member of the BGF since 1981, and that he was the  
18 BGF Captain of Security at the time of Burchfield’s murder. Drume recited the BGF’s blood oath to prove  
19 his affiliation. 7 CT 1912.

20           101.    Drume subsequently met with a private investigator, to whom he provided the same  
21 information. On February 23, 1988, investigator Barry Simon interviewed Drume. 17 CT 5046. Drume  
22 confirmed that he was in charge of security in Carson Section; that “Woodie” (*i.e.*, Lawrence Woodard)  
23 ordered him to make a knife; that the planning meeting for the murder included himself and three other  
24 prisoners; that he made the knife from his bedframe; and passed the knife to Wallace to pass along to  
25 “Drake.” *Id.* Drume confirmed that the authorities did not make any promises to him in connection with  
26 his admissions. *Id.* at 5046–48.

27           102.    Collectively, Drume’s statements to Gasser, Everly, Watkins, and Simon are referred to  
28 herein as the “Drume Evidence.”

1           **B.     The Drume Evidence was Reliable.**

2           103.     Drume’s statements to Gasser, Watkins, Everly, and Simon carried numerous indicia of  
3 reliability. First, his admissions were plainly against his penal interest. The fact that a statement amounts  
4 to a confession of crime is a factor especially important to the determination of reliability. *United States*  
5 *v. Layton*, 720 F.2d 548, 559 (9th Cir. 1983), *overruled on other grounds by United States v. W.R. Grace*,  
6 526 F.3d 499 (9th Cir. 2008); *United States v. Candoli*, 870 F.2d 496, 509 (9th Cir. 1989). “Self-  
7 inculpatory statements have long been recognized as bearing strong indicia of reliability.” *Chia*, 360 F.3d  
8 at 1004–05 (citing Fed. R. Evid. 904(b)(3); *Williamson v. United States*, 512 U.S. 594, 599 (1994)  
9 (“[R]easonable people, even reasonable people who are not especially honest, tend not to make self-  
10 inculpatory statements unless they believe them to be true.”)).

11           104.     Drume freely admitted to the crime for which Masters has been awaiting execution for  
12 more than 30 years. 7 CT 1912, 1914, 1916. Indeed, his vulnerability to incarceration and even execution  
13 based on his statement is the very reason that Drume was “unavailable” to testify, thus calling upon the  
14 trial court to make a preliminary assessment of the hearsay statements, rather than leaving that the jury.  
15 If Masters had the State’s power to grant immunity to his witnesses, then the jury could have heard from  
16 his witnesses directly, too. Instead, when Masters called Drume to testify at trial, Drume predictably  
17 invoked the Fifth Amendment and refused to testify. Drume’s counsel explained why, based on the  
18 representations of the State, Drume would not even testify as to whether he was in fact “Mr. Drume”:

19           Based upon the reports provided to me by the clerk, it appears that an inmate by the name  
20 of Charles Drume with the number C-31661 made certain statements that incriminated  
21 himself and it appears that if this gentleman identifies himself as Mr. Drume, he would  
22 identify himself as the person who made those particular statements.

23           *As Mr. Berberian has candidly told me, those statements could place the gentleman in*  
24 *the gas chamber* so on that basis, I think this witness providing his name would be a link  
25 in the chain proving his guilt with regard to the matters made in the statements so on that  
26 basis, we would assert his right under the Fifth Amendment, Article One, Section 13 and  
27 Evidence Code Section 940.

28           68 RT 15311 (emphasis added).

          105.     Drume made these confessions freely and voluntarily, without any promises in exchange.

          106.     Drume’s statements were also against his social interest. At the time he made these  
statements, Drume was a member of the BGF and an inmate in San Quentin. There was great detriment

1 to his social standing to “snitch” to the authorities. Indeed, a fellow BGF member stabbed Drume in his  
2 eye in February 1988, shortly after his admissions to the investigators. HC Pet. Ex. 4 ¶ 7.

3 107. There was also substantial corroborating evidence for Drume’s statements. Drume was  
4 caught on numerous occasions making or possessing weapons. For example, in March 1985, shortly  
5 before Sergeant Burchfield’s death, San Quentin authorities found weapon stock in Drume’s cell. 17 CT  
6 5089. And when Drume confessed to the authorities soon after Sergeant Burchfield’s death that he was  
7 involved in another planned attack against a second guard, Drume had additional weapons, which he  
8 turned over to the authorities. HC Pet. Ex. 4 ¶ 5.

9 108. It is noteworthy that Drume’s story has been remarkably consistent over time. After his  
10 December 1997 confession to authorities, Drume met with private investigators in February 1988 and  
11 March 1988, each time repeating that he had fabricated the weapon and that Masters did not participate in  
12 the planning or killing of Burchfield. *See* CT 1912, 1914, 5045–47. In February 2001, Drume signed a  
13 declaration under penalty of perjury: “I received an order from Lawrence Woodard to make the weapon  
14 that was used to stab Sgt. Burchfield, and I made the weapon as instructed. . . . Because I was a participant,  
15 I know that masters [sic] was not involved in either the planning or carrying out of the attack on Sgt.  
16 Burchfield.” HC Pet. Ex. 4 ¶¶ 2–3.

17 **C. The Trial Court Excluded the Drume Evidence.**

18 109. Masters sought to sever his trial from his two co-defendants on the basis that, *inter alia*, he  
19 intended to introduce the Drume Evidence, which implicated Johnson in the planning and participation of  
20 the Burchfield murder, but exculpated Masters. 7 CT 1842–97. During oral argument on the motion for  
21 severance, in discussion of the Richardson Confessions and the Drume Evidence, the trial court  
22 acknowledged “it was a statement against interest,” but said “the time element” caused the “reliability” to  
23 be “questionable.” 12-13-88 RT 7:16–8:5. The trial court accordingly denied Masters’s motion to sever.  
24 *See* 9 CT 2457.

25 110. At trial, Defendants called Drume to testify. On the advice of counsel, Drume invoked the  
26 Fifth Amendment and declined to answer any questions. 68 RT 15310–314. In light of Mr. Drume’s  
27 unavailability, Masters sought the admission of the Drume Evidence, including the testimony of Captain  
28

1 Everly, Inspector Gasser, Lieutenant Watkins, and investigator Barry Simon, who interviewed Drume and  
2 drafted the Drume Evidence. 22 CT 6393–414; 68 RT 15330–45.

3 111. The trial court again acknowledged Drume’s statements to the investigators were against  
4 his interest, but decided they were unreliable because they were counter to other evidence in the case:

5 THE COURT: The real question is, is it inherently reliable. By one indicia it may be  
6 because of the fact that it’s a statement made against interests. By all other measures, it’s  
unreliable because it runs counter to all the evidence in the case.

7 68 RT 15339.

8 112. Of course, this was the very reason that Masters sought to offer the Drume Evidence in the  
9 first place: to refute the testimony from the State’s witnesses. Where a court excludes a defendant’s  
10 evidence on the basis that it contradicts the State’s case, the defendant’s right to present his case has no  
11 meaning at all.

12 113. The trial court ultimately concluded that it would not admit the Drume Evidence “both  
13 because of the time lapse between the admission and the actual crime and, two, under 352.” 68 RT 15345.

14 **D. On Appeal, The California Supreme Court Held Exclusion of Drume’s Statements**  
15 **Was Not Error.**

16 114. On Direct Appeal from the trial court judgment, Masters argued that the trial court’s  
17 exclusion of the Drume Evidence, in light of the numerous indicia of reliability and importance to the  
18 defense, resulted in the denial of Masters’s constitutional rights to due process, to call witnesses, and to a  
19 fair trial. 1 AOB 47.

20 115. The California Supreme Court summarily rejected Masters’s arguments regarding Drume’s  
21 Statements:

22 The parties do not dispute Drume’s unavailability at trial or that his statements were against  
23 his penal interest. For substantially the same reasons as apply to Richardson’s statements,  
24 however, the trial court did not abuse its discretion in finding Drume’s statements lacked  
25 sufficient trustworthiness. Like Richardson, Drume could have been motivated to make  
the statements to curry favor with law enforcement, or to enhance his reputation among  
other prisoners. In additional, Drume had even more time than Richardson to glean  
information about the conspiracy before giving his version of events.

26 *People v. Masters*, 62 Cal. 4th 1019, 1058 (2016).

1           **E.     The California Supreme Court Did Not Address the Exclusion of Drume’s Statements**  
2           **in Denying His Petition For Writ of Habeas Corpus.**

3           116.   As with the Richardson Confessions, in his Petition for Writ of Habeas Corpus before the  
4 California Supreme Court, Masters sought relief based on exclusion of the Drume Evidence. Specifically,  
5 Masters contended that the exclusion violated Masters’s Fifth, Sixth, and Fourteenth Amendment rights  
6 to due process and a fair trial, and that Drume’s Statements were evidence of actual innocence. *Petition*  
7 *for Writ of Habeas Corpus* ¶¶ 68–81, 120–21. The California Supreme Court did not address the trial  
8 court’s exclusion of the Drume Evidence in its opinion discharging the order to show cause, *see In re*  
9 *Masters*, 7 Cal. 5th 1054 (2019), or its order denying Masters’s Petition for Writ of Habeas Corpus.

10           **F.     In Excluding The Drume Evidence, The California Courts Acted Unreasonably, In**  
11           **Violation of Masters’s Constitutional Rights, As Clearly Established By Supreme**  
12           **Court Precedent.**

13           117.   “[T]he Constitution guarantees criminal defendants ‘a meaningful opportunity to present a  
14 complete defense.’” *Crane v. Kentucky*, 476 U.S. 683, 690 (1986) (quoting *California v. Trombetta*, 467  
15 U.S. 479, 485 (1984). “‘A person’s right to . . . an opportunity to be heard in his defense—a right to his  
16 day in court—are basic in our system of jurisprudence . . . .’” *Chambers*, 410 U.S. at 294 (quoting *In re*  
17 *Oliver*, 333 U.S. 257, 273 (1948)).

18           118.   The Supreme Court has found constitutional error when a state court has excluded evidence  
19 about a hearsay statement that bears persuasive assurances of trustworthiness and is critical to the defense.  
20 *Chambers*, 410 U.S. at 302 (finding constitutional error where a trial court excluded as hearsay testimony  
21 from witnesses to whom a third party confessed to having committed the same crime of which the  
22 defendant was accused).

23           119.   Courts have repeatedly granted habeas corpus relief when trial courts excluded such critical  
24 hearsay evidence. *See, e.g., Chia*, 360 F.3d at 1003 (exclusion of testimony about a third party’s testimony  
25 that inculpated the third party and exculpated the defendant violated defendant’s due process rights);  
26 *Cudjo*, 698 F.3d at at 765–66 (exclusion of testimony that another individual, who was unavailable  
27 because he invoked the Fifth Amendment, had confessed to the crimes allegedly committed by the  
28 defendant was constitutional error); *Lunbery v. Hornbeak*, 605 F.3d 754, 761–62 (9th Cir. 2010) (granting  
petition for habeas corpus based on trial court’s exclusion of hearsay evidence about a third party’s

1 confession). *See generally Green v. Georgia*, 442 U.S. 95, 97 (1979) (per curiam) (exclusion of proffered  
2 testimony that a second defendant confessed he had killed the victim denied defendant a fair trial).

3 120. This case aligns closely with the fact pattern described by the Ninth Circuit in *Cudjo*:

4 Here, as in *Chambers* (as well as *Green* and *Lunbery*), the evidence at trial pointed to a  
5 single person committing murder, and the issue of the case was the identity of the  
6 perpetrator. As in *Chambers*, petitioner ‘endeavored to develop two grounds of defense’:  
7 that he did not kill the victim, but that an identifiable other person did. In both cases, the  
8 alternate suspect had allegedly previously confessed to the crime; the defense was  
prevented from cross-examining the alternate suspect at trial; and the trial court’s  
application of the hearsay rules prevented the defendant’s witness from testifying to the  
alternate suspect’s confession.

9 *Cudjo*, 698 F.3d at 765–66 (citations omitted).

10 121. These are the circumstances before the Court in this case. A key question here is whether  
11 Masters manufactured the weapon used to kill Sgt. Burchfield. Masters’s defense was that someone other  
12 than himself manufactured the weapon. Drume confessed to doing exactly that. 7 CT 1912, 1914. The  
13 trial court’s application of the hearsay rules prevented witnesses from testifying to Drume’s confession.  
14 12-13-88 RT 7. Just as the trial courts’ application of hearsay rules in *Chambers*, *Cudjo*, *Green*, *Lunbery*,  
15 *Chia* violated those defendants’ constitutional rights, the trial court’s exclusion of the Drume Evidence  
16 unreasonably violated Masters’s clearly established constitutional rights. The California Supreme Court’s  
17 affirmance of the trial court’s decision was contrary to, and an unreasonable application of, clearly  
18 established Supreme Court precedent.

19 **THIRD CAUSE OF ACTION**  
20 **WITHHOLDING EVIDENCE**  
21 **(BRADY v. MARYLAND)**

22 122. In *Brady v. Maryland*, 373 U.S. 83 (1963), the United States Supreme Court held that the  
23 government violates the Constitution’s Due Process Clause “if it withholds evidence that is favorable to  
24 the defense and material to the defendant’s guilt or punishment.” *Smith v. Cain*, 565 U.S. 73, 75 (2012).  
25 This includes evidence that impeaches government witnesses. *See Giglio v. United States*, 405 U.S. 150,  
26 154 (1972). The duty to turn over evidence “exists regardless of whether the defense made any request  
27 of the prosecution; the prosecution is required to provide material, favorable information even ‘where the  
28 defendant does not make a *Brady* request.’” *Amado v. Gonzalez*, 758 F.3d 1119, 1134 (9th Cir. 2014)  
(citing *United States v. Bagley*, 473 U.S. 667, 680-82 (1985)).

1           123. Moreover, the prosecutor’s personal knowledge does not define the limits of constitutional  
 2 liability: “*Brady* suppression occurs when the government fails to turn over even evidence that is ‘known  
 3 only to police investigators and not to the prosecutor.’” *Youngblood v. West Virginia*, 547 U.S. 867, 869–  
 4 70 (2006) (citing *Kyles v. Whitley*, 514 U.S. 419 (1995)).

5           124. The State in this case failed to disclose several pieces of critical impeachment evidence, in  
 6 violation of the requirements imposed by the Supreme Court in *Brady v. Maryland*, including, but not  
 7 limited to: (i) that Bobby Evans, a repeat informant, had repeatedly and quite consistently provided the  
 8 State false information in the past; (ii) that Evans and Parole Officer James Hahn had a pre-existing,  
 9 ongoing working relationship, which included Officer Hahn referring Evans to other government agencies  
 10 for paid informant work, and that the extent of this relationship was greater than what was described at  
 11 Masters’s trial; (iii) that, contrary to Evans’s testimony otherwise, Officer Hahn had promised Evans he  
 12 would postpone Evans’s sentencing for an unrelated conviction in exchange for his testimony against  
 13 Masters; and (iv) that, at the time of Masters’s trial, Evans was one of few suspects in the unsolved San  
 14 Francisco murder of James Beasley, Sr. (thus giving him additional incentive to testify in return for a  
 15 beneficial deal). *See* 8 RHRT 433–34, 448–49, 453–54, 460–61; 79 RT 17014–15, 17021; 3 RHRT 172,  
 16 181–92. Each of these pieces of information meets the *Brady* and *Giglio* requirements and, as a result,  
 17 should have been disclosed. Accordingly, the California Supreme Court’s decision rejecting Masters’s  
 18 *Brady* claims was contrary to, and an unreasonable application of, clearly established Federal law as  
 19 established by the Supreme Court of the United States. This Court should grant the writ of habeas corpus.

20           **A. Bobby Evans’s Testimony for the Prosecution Was Crucial to Its Case Against**  
 21           **Masters.**

22           125. At Masters’s trial, Evans served as a key witness against Masters, claiming that Masters  
 23 confessed to Evans that he sanctioned the attack on Burchfield. Evans was a convicted felon housed in  
 24 San Quentin at the time of Sergeant Burchfield’s murder in June 1985, and he testified that in July 1985  
 25 he was moved to the Adjustment Center of San Quentin,<sup>7</sup> where he remained from that date until  
 26 September 1986. 58 RT 13714–15. He stated that BGF meetings took place in the Adjustment Center  
 27 “every day that [they] had exercise,” which was “three times a week.” *Id.* at 13721. Evans testified that

28           <sup>7</sup> The Adjustment Center is one of three death row units at San Quentin.

1 at one of these meetings, Woodard was present and told Evans that he had given the “order” “with regard  
2 to the death of” Sergeant Burchfield. *Id.* at 13723.

3 126. Evans further testified that Masters came to the Adjustment Center sometime in August,  
4 which was after Evans had been transferred to the Adjustment Center. *Id.* at 13725. Evans said that  
5 “around September,” Masters attended a BGF meeting in the Adjustment Center and was “asked questions  
6 with respect to what happened regarding the death of” Sergeant Burchfield. *Id.* at 13724–25. Evans  
7 testified that, when asked about the crime, Masters said that “he was part of the [BGF] commission in  
8 Carson Section at the time” and “he sat on the commission and voted towards killing the officer.” *Id.* at  
9 13726. Evans’s testimony at trial was “damning.” Referee Report at 5.

10 127. At Masters’s trial, the trial judge qualified Evans as an “expert on B.G.F. activities.” 58  
11 RT 13711. Over the course of the trial, Evans served as an expert witness on the BGF. He testified that  
12 while in San Quentin State Prison in 1985, he was a member of the BGF and had been a member since  
13 1976. *See* 58 RT 13661, 13673–74. Evans testified regarding the activities and requirements necessary  
14 to maintain membership within the BGF. *Id.* at 13674–78, 13680–81.

15 128. Evans testified that he had stabbed “about five or six” people while in San Quentin around  
16 1981. *Id.* at 13696–97. In 1982, to gain the position of “commander of the Black Guerrilla Family” on  
17 the “streets,” he testified that he had to “stab many people” and “g[i]ve a lot of money to the Black  
18 Guerrilla Family from robbing banks.” *Id.* at 1397–98. When asked how many people he stabbed, he  
19 testified that he could not recall, “but it was a whole lot of different people.” *Id.* at 13698.

20 129. Evans testified that he later became an “enforcer” in the BGF. *Id.* at 13684. To be an  
21 enforcer meant “to enforce the policies of the [BGF], carry out the programs, to enforce the line, to make  
22 sure the following of the [BGF] is being filled.” *Id.* at 13699. To gain that position, he had to commit  
23 “stabblings” and “shootings,” but asserted that none of those were fatal. *Id.* at 13705–06. Once he was an  
24 enforcer, part of his role was to give orders to commit stabblings on behalf of the BGF. *Id.* at 13710–11.

25 **B. At Trial, The Jury Heard Some, But Far From All, Impeachment Evidence Against**  
26 **Evans.**

27 130. Before the jury, Evans’s interactions with Officer Hahn were described as sporadic and  
28 confrontational. 14 RHRT 741–48; 58 RT 13794–800. But, as revealed much later in Officer Hahn’s

1 testimony at Masters’s Reference Hearing, Evans actually worked closely with Officer Hahn as a regular  
 2 government informant. Working in that capacity as an informant for both Officer Hahn and several other  
 3 government agencies, Evans had provided false information many times in the past—just as often as he  
 4 told the truth. RH Pet. Ex. at 51, 53. As Officer Hahn was aware, Evans quite clearly knew how to work  
 5 the system to get what he wanted, *regardless of whether he lied in doing so*. See generally 8 RHRT 431–  
 6 80. Moreover, Officer Hahn had promised Evans tangible benefits in exchange for his testimony against  
 7 Masters. 79 RT 17014-15. Officer Hahn also knew that the San Francisco Police Department had been  
 8 investigating Evans as a suspect in the murder of James Beasley, Sr. (*i.e.*, that Evans had a strong incentive  
 9 to find a reason to cooperate with the authorities as a snitch). See *id.* at 474–75. The prosecution disclosed  
 10 none of this to Masters prior to trial.

11 1. The Jury Learned Only That Evans Had a Handful of Interactions with Officer  
 12 Hahn, and that Evans Had Not Been Promised Anything from Officer Hahn in  
Exchange for His Testimony.

13 131. Evans testified at trial regarding his interactions with Officer Hahn. Officer Hahn was an  
 14 investigator in the Special Services Unit (“SSU”) of the California Department of Corrections.<sup>8</sup> See 58  
 15 RT 13800; 59 RT 13913. Evans first met Officer Hahn the day Evans was released from prison on or  
 16 around December 17, 1986, when Officer Hahn “kicked in [Evans’s] mother’s door” with 15 other SSU  
 17 officers and local police. 58 RT 13800–01, 13836–37. Officer Hahn introduced himself to Evans as  
 18 “being SSU.” *Id.* at 13837.

19 132. Evans testified to meeting Officer Hahn a second time in January 1987, when Evans was  
 20 arrested for possession of a gun, and a third time in March or April 1988. *Id.* at 13800–02. Evans testified  
 21 that he also communicated with Officer Hahn on only three specific occasions to give Officer Hahn  
 22 incriminating information about certain individuals. *Id.* 13794–98; see also *id.* at 13834–37.

23 133. Evans testified that after he pleaded guilty to attempted robbery in May 1989—Evans’s  
 24 most recent conviction—Evans asked his parole officer to “put in a call to have Mr. Hahn come” because

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25  
 26 <sup>8</sup> The Special Services Unit (“SSU”), a sub-unit of the Office of Correctional Safety, conducts “major  
 27 criminal investigations and prosecutions, [conducts] criminal apprehension efforts of prison escapees  
 28 and parolees wanted for serious and violent felonies, [is the] primary departmental gang management  
 unit, conducts complex gang related investigations of inmates and parolees suspected of criminal gang  
 activity[,] and [is the] administrative investigative and law enforcement liaison unit.” See  
<https://www.cdcr.ca.gov/office-of-correctional-safety/>.

1 he “had something [he] wanted to talk to him about.” 59 RT 13863–64. At this meeting with Officer  
2 Hahn, which took place in an interview room on or around June 12, 1989, Evans asked whether Officer  
3 Hahn could give him “any type of assistance as far as protection wise,” including whether he could “be  
4 relocated out of the state,” which he had “been trying to do ... ever since [he] paroled out of state prison.”  
5 58 RT 13799, 13827; 59 RT 13864.

6 134. Evans testified that he told Officer Hahn that he was “concerned about going back to state  
7 prison” because his “life ha[d] been threatened” by the “leadership of the Black Guerrilla Family.” 59 RT  
8 13864-65. He testified that he told Officer Hahn that he “had some information about the Burchfield case”  
9 he wished to exchange for “protection” and “immunity.” *Id.* at 13865. Evans had never mentioned the  
10 Burchfield case to Officer Hahn before, despite their apparent informant relationship. Indeed, June  
11 1989—four years after allegedly learning of Masters’s involvement in the case at the San Quentin  
12 Adjustment Center in August 1985—was the “*first time* [Evans] said anything to anybody from the  
13 Department of Corrections or any other law enforcement agency about the Burchfield case.” *Id.* at 13865–  
14 66 (emphasis added).

15 135. Evans testified that when he first met with the District Attorney, he again requested both  
16 immunity for himself and “protection for [himself and his] family,” *id.* at 13794, because his life was in  
17 danger both “on the streets” and “inside the prison” as a result of his extortion activities. 58 RT 13813–  
18 14. Though he had initially told prosecutors he would only testify if he was “rewarded” for his testimony,  
19 he ultimately testified at trial that he *had not been given a grant of immunity or “been promised*  
20 *anything” in exchange for testifying against Masters.* 58 RT 13672–73; 59 RT 13883. Evans denied  
21 “discuss[ing] with anyone ... whether they be a police officer or a parole officer ... about any type of  
22 reduction” in his sentence. 58 RT 13672. He said he did not have “any type of anticipation of getting  
23 something for [his] testimony.” *Id.* Evans testified that he did not recall whether the District Attorney  
24 had told him that his testimony in court wouldn’t be used against him. 58 RT 13826. Evans told the jury  
25 that though he had not been paid to testify against Masters, his mother had been promised “security bars”  
26 around her house, to be “paid for by the District Attorney’s office.” *Id.* at 13792–93. On cross  
27 examination, Evans stated that when he had given information about the Sergeant Burchfield case to  
28 Officer Hahn, Officer Hahn had told Evans that he would “see what he could do for [Evans]” about

1 providing him “protection,” but that there were “no guarantees.” *Id.* at 13814–15. Evans further testified  
2 that Officer Hahn made him no assurances regarding his protection. *Id.* Evans said that, though he  
3 expected to be “protected,” he had *no expectation* that he would be relocated or released. *Id.* Indeed,  
4 when certain letters written by Evans were also entered into evidence on cross examination, indicating  
5 that in July 1989 Evans had expected to be released from prison the next month, he testified that he had  
6 been “fabricating” that information in the letters. *Id.* at 13816–17, 13821–22.

7 2. At Trial, the Jury Heard Only About Evans’s Criminal History, Not Any Current  
8 Criminal Investigations Implicating Him.

9 136. Evans revealed during the course of his testimony that he had been convicted of “about  
10 five” felonies, which were “all burglaries” of businesses (not homes) and “one attempted robbery.” 58  
11 RT 13669, 13811. He robbed “about 15 or 20” banks in 1980. *Id.* at 13695–96. When he was out of  
12 prison between 1986 and 1989, Evans testified that he “moved on” from committing burglaries and  
13 robberies, instead “extorting money from drug dealers” and “selling drugs” on behalf of BGF, including  
14 a failed extortion attempt in which he was shot. *Id.* at 13811–13; *see also id.* at 13841–42. Evans testified  
15 that, by 1989, he no longer wanted to take part in certain things ordered by the BGF, such as “killing  
16 D.A.’s, attorneys.” 59 RT 13854–55.

17 137. At the time of his testimony in Masters’s case, Evans had pleaded guilty to attempted  
18 robbery and was awaiting sentencing on that conviction. 58 RT 13671. His sentencing hearing had been  
19 continued three times, from July to September to October to November 1989. *Id.* at 13809–10; *see also*  
20 59 RT 13882–83.

21 3. During Closing Argument, Defense Counsel Argued that Evans’s Credibility Was  
22 a Fatal Defect in the Prosecution’s Case.

23 138. During closing argument, defense counsel sought to persuade the jury that Evans’s  
24 credibility was a “fatal defect” in the prosecution’s evidence, and that Evans would “do anything to protect  
25 himself.” *See* 73 RT 16153; 74 RT 16202. Counsel emphasized that Evans’s willingness to testify  
26 demonstrated that he had likely been comforted by some kind of promise from the prosecution, despite  
27 Evans’s denial of any such promise of immunity. *See* 74 RT 16201–205.

28 139. Counsel also emphasized that Evans was a “violent criminal and an animal,” and a “very  
frightening kind of person.” 73 RT 16166, 16178. Counsel pointed the jury to the “character and quality”

1 of Evans’s testimony; namely, that he testified regarding an overwhelming number of “stabblings and  
2 shootings and extortions.” *Id.* at 16178. He further highlighted Evans’s poor “character, his disposition  
3 to commit crimes, [and] his viciousness,” stressing that Evans was “a very, very dangerous, very scary  
4 human being.” 74 RT 16201. *See also* Referee’s Report at 12–13 (summarizing defense counsel’s closing  
5 argument regarding Evans).

6 140. Defense counsel did not focus on Evans’s relationship with Officer Hahn and other  
7 government agencies during closing, because the nature and extent of those relationships had not been  
8 disclosed to Masters and, thus, did not come out during trial. *See* 73 RT 16087–188; 74 RT 16189–16260.

9 141. After nine days of deliberation, the jury reached its verdict of guilt with respect to Masters  
10 *only after requesting a “readback” of Evans’ testimony.* 78 RT 16906; 79 RT 17082, 17093; 17 CT  
11 5098.

12 **C. The Prosecution Did Not Disclose To Masters The Full Extent of Evans’s Relationship**  
13 **with Officer Hahn; His History of Lying to Officer Hahn; Officer Hahn’s Promises**  
14 **To Evans; Evans’s Role as a Government Informant; and His Status as a Murder**  
15 **Suspect.**

16 1. Officer Hahn Had Promised Evans that He Would Delay Evans’s Sentencing In  
17 Exchange for Evans’s Testimony Against Masters.

18 142. On January 4, 1990, while the jury was deliberating guilt, Masters’s defense counsel  
19 learned that Evans had been released from custody early. 78 RT 16878–80. Counsel immediately moved  
20 to reopen the case. *Id.* During the hearing on Masters’s motion to reopen, held outside of the presence of  
21 the jury that same day, Officer Hahn testified that he indeed had promised Evans that he would delay  
22 Evans’s sentencing hearing on his most recent conviction for as long as possible, to avoid Evans’s return  
23 to state prison. 79 RT 17014–15, 17018–19. Specifically, Officer Hahn had told Evans “probably once  
24 or twice” that Officer Hahn “would make efforts to have the Alameda County Superior Court sentencing  
25 postponed so that [Evans] would not be committed to state prison.” *Id.* at 17014–15. Evans “would call  
26 [Officer Hahn] to tell [Officer Hahn] he was up for sentencing, and [then Officer Hahn] contacted the  
27 Alameda D.A. and asked him to put [the sentencing] off.” *Id.* Officer Hahn also had generally “told Mr.  
28 Evans that [he] would do what [he] could to keep [Evans] out of state prison.” *Id.* at 17021. Officer  
Hahn’s testimony directly contradicted an August 7, 1989 memorandum that the prosecution had provided  
to Masters in discovery in which Officer Hahn wrote that though he had told Evans he would “take care

1 of [Evans’s] safety and security if need arises,” Officer Hahn had “emphasized” to Evans “the fact that  
2 [Officer Hahn] *will not and cannot make any promises o[r] favors in exchange for [Evans’s] testimony.*”  
3 Pet. Ex. 12 at 3. (emphasis added). HC Pet. Ex. 12 at 4. Officer Hahn’s testimony at the January 4, 1990  
4 hearing also contradicted Evans’s testimony at trial: though Evans had indicated to the jury that he hoped  
5 to put off his sentencing as long as possible, he had denied that it was a favor he thought Officer Hahn  
6 would help him with. 59 RT 13982–83.

7 143. The trial court denied the motion to reopen the case, finding that even if Officer Hahn had  
8 not completely disclosed an explicit “promise” to help Evans with his sentencing, an “inference” of such  
9 a promise could have been made from Evans’s testimony that he thought Officer Hahn would keep him  
10 safe. 79 RT 17090–92.

11 2. Officer Hahn Had Extensive Contacts with Evans and Was Aware that Evans was  
12 a Regular Government Informant Who Often Provided False Information.

13 144. On January 7, 2005, while Masters’s direct appeal was still pending, Masters filed a petition  
14 in the California Supreme Court seeking a writ of habeas corpus. *See generally In re Masters*, Case No.  
15 130495, *Pet. for Writ of Habeas Corpus* (Cal. Sup. Ct. Jan. 7, 2005). His petition raised, among other  
16 claims, repeated instances of prosecutorial misconduct. *See id.* ¶¶ 136–138. The court subsequently  
17 appointed a referee to provide recommended findings relating to several questions the court ordered  
18 addressed in the order to show cause.

19 145. At the reference hearing, Officer Hahn testified that he first came into contact with Evans  
20 in the mid- to late-eighties. 8 RHRT 431. He revealed that he “had many, many contacts with Bobby  
21 Evans during the time as early as ’86, up until the time he gave [Officer Hahn] information about the  
22 Burchfield case,” and that Evans had been “giving [Officer Hahn] information long before the Burchfield  
23 case.” *Id.* at 433–34. Officer Hahn confirmed that “from at least as early as ’86 until sometime in 1989,”  
24 Evans never “said anything to [Officer Hahn] about any knowledge that he had about the Burchfield  
25 murder,” and then “sometime in June of 1989, he [came] forward and gave [Officer Hahn] some  
26 information.” *Id.* at 435. Hahn testified that during the course of his relationship with Evans, Evans  
27 provided Hahn information on “[h]alf a dozen” or more cases, significantly more than the three cases  
28 about which Evans testified informing on. 8 RHRT 448–49. Hahn admitted that during that period, Evans

1 gave Hahn “*more false information than true information.*” *Id.* at 449 (emphasis added). He also  
2 testified that he was aware that Evans also “was snitching ... for a lot of Oakland police officers,” for the  
3 Bureau of Narcotic Enforcement (“BNE”), and for the Department of Justice. *Id.* at 450–51. Hahn  
4 “sometimes” served as an intermediary, receiving information from Evans then sharing those facts with  
5 the BNE directly. *Id.* at 452. Hahn testified that he “probably” disclosed to the district attorney’s office  
6 that Evans worked with the BNE. *Id.*

7 146. Raymond Robert Conner, a former sergeant unit commander for the robbery, homicide,  
8 and intelligence sections of the Oakland Police Department, testified at the Reference Hearing that Evans  
9 “was an informant that was *developed* by Jim Hahn and/or Jim Moore,” a different sergeant in the  
10 intelligence section. 3 RHRT 165–66 (emphasis added).

11 147. Jim Moore, a former investigator for the Oakland Police Department, also testified at the  
12 Reference Hearing. *See* 3 RHRT 189–90. Moore had worked with Officer Hahn, “provid[ing]  
13 information back and forth between each other,” and Moore had interacted with Evans during his tenure  
14 as an investigator, including because Evans had acted as an informant for both him and Officer Hahn. *Id.*  
15 at 191–93. There were “occasions” where Moore and Officer Hahn met in person with Evans for meetings  
16 and discussions. *Id.* at 193. Over the course of a two-year period prior to 1990, Moore testified that he  
17 had had “30 or more” contacts with Evans and that, “[f]or the most part,” Moore had been “accompanied  
18 by Mr. Hahn” at those meetings with Evans. *Id.* Evans’s role was to provide “information on criminal  
19 suspects, narcotics, robberies, ... [and] who’s doing what, when, and how.” *Id.* at 196–97. Evans’s  
20 provision of such information was a “fairly ongoing” role, for which Evans often was paid, though Moore  
21 said he was *not always a reliable informant.* *Id.* at 197, 200.

22 148. The nature of Evans’s contacts with law enforcement and role as a government informant  
23 that Officer Hahn, Moore, and Connor revealed during the Reference Hearing was much more extensive  
24 contact than what the State disclosed before (or during) trial. *See* Referee Report at 11.

1           3.     Evans was a Suspect in a Murder Case at the Time He Came Forward with Alleged  
2                    Information Against Masters.

3           149.   Connor testified at the Reference Hearing that Officer Hahn “assisted [Connor] in  
4 investigations involving ... violent parolees in the City of Oakland.” 3 RHRT 165. Connor had been in  
5 contact with Hahn “[a]lmost on a daily basis.” *Id.* at 160-61, 164.

6           150.   Connor testified that James Beasley, Sr. was a man who was killed in August 1988,  
7 approximately a year prior to Masters’s trial. *See* 8 RHRT 454; 3 RHRT 171. The murder had been “all  
8 over the newspapers” and “everybody was talking about it in the Oakland [Police Department].” 8 RHRT  
9 454. “At some point” between August 17th and August 22nd, Connor “receive[d] information from a  
10 source that Bobby Evans might have killed James Beasley, Sr.” 3 RHRT 168, 170–71. Connor then  
11 transferred that information to the San Francisco Police Department (“SFPD”). *Id.* at 170. Over the course  
12 of the murder investigation, Connor spoke to his source “several times,” each time to “gather[] information  
13 about the Beasley murder” and “forward[] that information to SFPD.” *Id.* at 188.

14           151.   Connor testified that he had “discussed the fact that Bobby Evans was a suspect in the  
15 James Beasley murder case with Mr. Hahn” sometime “between the 18th and the 22nd of August, 1988.”  
16 *Id.* at 172. Connor was confident that he told Officer Hahn about Evans’s status as a suspect, testifying:  
17 “I’m sure that I told Jim Hahn that [Evans] has been named as a suspect in a murder.” *Id.* at 181–92. Both  
18 Connor and Officer Hahn “knew of and had met Bobby Evans prior to getting information about the  
19 Beasley, Sr.[] murder.” *Id.* at 166. Evans remained a suspect in the Beasley murder, with Connors “still  
20 providing information to SFPD about Bobby Evans as late as May of ’89.” *Id.* at 178.

21           152.   Officer Hahn testified at the Reference Hearing that he had been aware that Evans was a  
22 suspect in the murder of James Beasley, Sr., and did not dismiss the possibility that he had been informed  
23 of this fact prior to Masters’s trial. *See* 8 RHRT 453–54, 460–61. He affirmed that that, upon bringing  
24 Evans to the Marin County District Attorney as a possible witness in the Burchfield case, “it would be  
25 natural for [him] to inform the DA about” the fact that Evans was a suspect in the Beasley, Sr. murder  
26 investigation. *Id.* at 460–61.

1           153.    However, this piece of information—that Evans was a suspect in the Beasley murder case,  
2 and thus had a strong incentive to seek a deal with the State in exchange for leniency—was not in fact  
3 disclosed to Masters before trial. *See* Referee Report at 11.

4           **D.     Evans Recanted His Testimony Against Masters.**

5           154.    Evans was deposed prior to the Reference Hearing, and a transcript of his testimony was  
6 received as an exhibit in the hearing. *See* Referee Report at 3. In his deposition, Evans testified not only  
7 that Masters “never told him” he was involved in Sgt. Burchfield’s murder, but also that he had never in  
8 fact spoken to Masters “at all.” *Id.* at 5 n.2. Evans, in fact, “did not know anything that linked Masters to  
9 the Burchfield murder.” *Id.* at 5.

10           **E.     The California Supreme Court Denied Masters’s *Brady* Claim After Finding the**  
11           **Undisclosed Evidence Was Not Material.**

12           155.    In its August 12, 2019 opinion, the California Supreme Court addressed the three categories  
13 of information that prosecutors had failed to disclose about Evans:

14                   (1) the prosecutors threatened Evans with a lengthy incarceration if he did not implicate  
15 Masters; (2) Evans was a suspect in Beasley's killing, with the implication that he was not  
16 prosecuted for that homicide in exchange for his testimony against Masters; and (3) Evans  
and Hahn had a pre-existing, ongoing working relationship, which included Hahn referring  
Evans to other government agencies for paid informant work, and that the extent of this  
relationship was greater than what was described at Masters's trial.

17 *In re Masters*, 7 Cal. 5th 1054, 1087 (2019).

18           156.    As an initial matter, the court held that Officer Hahn was a member of the prosecution  
19 team, finding that “the prosecutors’ investigators knew at least some information about Evans, and they  
20 undoubtedly were members of the prosecution team. Thus, for *Brady* purposes, we consider the  
21 information about Evans to have been in the prosecutors’ possession.” *Id.*

22           157.    Regarding the first category, the California Supreme Court accepted the referee’s finding  
23 that “even assuming the agreement between Evans and Officer Hahn contained any threats (or otherwise  
24 was coercive),” the “coercion or threats were already disclosed or discovered at Masters’s trial and  
25 therefore not suppressed.” *Id.* at 1087–88. The Referee spent little time on this issue in her report, though,  
26 finding only that there was “no evidence presented at the hearing that Deputy District Attorneys Berberian  
27 and Kamena or their Investigator Numark made an[y] promises or threats to Evans.” *See* Referee Report  
28 at 17.

1           158. Regarding Evans’s status as a suspect in the Beasley killing, which Masters could have  
2 used to implicate Evans’s credibility, the court expressed doubt that such possible involvement in a  
3 homicide case was “by itself exculpatory for Masters,” ultimately holding that “[e]ven if Evans’s possible  
4 involvement in Beasley’s killing was favorable to Masters and therefore should have been disclosed, it  
5 was not material under *Brady* because the jury was aware of Evans’s extensive and violent criminal  
6 history.” *In re Masters*, 7 Cal. 5th at 1088. The court found that it was “not reasonably probable that  
7 information concerning Evans’s possible involvement in Beasley’s killing would have altered the jury’s  
8 assessment of his credibility or the weight to place on his testimony to such an extent that it would have  
9 produced a different trial outcome.” *Id.*

10           159. Finally, with respect to Evans’s relationship with Officer Hahn, the court “agreed with  
11 [Masters] that the prosecutor disclosed incomplete information about the extent of the agreement  
12 concerning the benefits Evans received to testify[,]” but held that the additional information would not  
13 have been material to the jury’s determination:

14           [T]he jury knew that Evans had testified in exchange for measures to protect his safety and  
15 that the undisclosed details of the arrangement were not material because there was no  
16 reasonable probability of a different result had the full extent of the agreement been  
17 disclosed. In addition, the jury was aware of Evans’s negative character. And, as we have  
18 explained, the additional evidence of Evans and Hahn’s pre-existing, ongoing relationship  
19 presented during the reference hearing does not materially alter the calculus.

18 *Id.*

19           160. With respect to the additional evidence of contacts between Evans and Officer Hahn, the  
20 court came to a similar conclusion, holding that knowledge of the broader relationship between the two  
21 would not have affected the jury’s consideration of Evans’s credibility or the weight to place on his  
22 testimony:

23           Initially, we doubt that Evans’s expectations regarding future assignments as an informant  
24 induced him to testify against Masters; Evans appeared to have been motivated primarily  
25 by his desire to avoid being sent to state prison, as he feared the BGF would retaliate against  
26 him for providing information about its members to law enforcement. Even if we were to  
27 agree that Evans’s testimony might have been motivated partially by his desire for future  
28 assignments, such additional motivation was not material under *Brady* because the jury  
already knew that Evans provided Hahn information in exchange for measures to protect  
his safety. It is not reasonably probable that this additional expectation of future benefits  
(not otherwise inferable from the evidence that was presented at trial) would have affected  
the jury’s determination of Evans’s credibility or the weight to place on his testimony to  
such an extent that it would have produced a different trial outcome.

1 *Id.* at 1088–89.

2 **F. The California Supreme Court’s Decision Regarding Masters’s *Brady* Claim Was**  
3 **Contrary To, and an Unreasonable Application of, Masters’s Constitutional Rights,**  
4 **as Clearly Established by the Supreme Court of the United States.**

5 161. The California Supreme Court’s determination was contrary to, and an unreasonable  
6 application of Masters’s constitutional right as clearly established by the Supreme Court of the United  
7 States. The three components of a “true *Brady* violation” are where undisclosed evidence is “favorable to  
8 the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been  
9 suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.” *Strickler v.*  
10 *Greene*, 527 U.S. 263, 281–82 (1999); *see also Bagley*, 473 U.S. at 676 (“Impeachment evidence,  
11 however, as well as exculpatory evidence, falls within the *Brady* rule.”). Withheld evidence is material if  
12 there is a “reasonable probability that, had the evidence been disclosed to the defense, the result of the  
13 proceeding would have been different.” *Id.* at 473 U.S. at 682. “A reasonable probability does not mean  
14 that the defendant ‘would more likely than not have received a different verdict with the evidence,’ only  
15 that the likelihood of a different result is great enough to ‘undermine[ ] confidence in the outcome of the  
16 trial.’” *Smith*, 565 U.S. at 75 (citing *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). Here, the evidence  
17 suppressed by the State meets these three requirements, and the California Supreme Court’s decision  
18 otherwise was unreasonable.

19 162. **First**, the information withheld from Masters was “known” to the State for purposes of  
20 *Brady*. The undisclosed information about Evans—his extensive relationship as an informant for Officer  
21 Hahn (including that Evans had provided more false information than true during their relationship) and  
22 other government entities, the promises Evans received in exchange for his testimony, and his status as a  
23 suspect in the Beasley murder—was known at least to Officer Hahn, who the court “assumed under these  
24 circumstances . . . was part of the prosecution team,” and one of the “prosecutors’ investigators,” who  
25 “undoubtedly were members of the prosecution team.” *See In re Masters*, 7 Cal. 5th at 1087 (“[F]or *Brady*  
26 purposes, we consider the information about Evans to have been in the prosecutors’ possession.”); *see*  
27 *also Amado*, 758 F.3d at 1134 (“[P]rosecutors . . . ha[ve] ‘a duty to learn of any favorable evidence known  
28 to the others acting on the government’s behalf in the case, including the police.’” (citing *Kyles*, 514 U.S.  
at 437)); *Carriger v. Stewart*, 132 F.3d 463, 480 (9th Cir. 1997) (en banc) (“Because the prosecution is in

1 a unique position to obtain information known to other agents of the government, it may not be excused  
2 from disclosing what it does not know but could have learned.”). The Office of Correctional Safety, of  
3 which the SSU (Officer Hahn’s unit) is a sub-unit, is the “primary departmental link with allied law  
4 enforcement agencies” and serves as the major investigatory body of the office.<sup>9</sup> Officer Hahn’s position  
5 as an investigatory government agent connected with law enforcement agencies and his role in supplying  
6 Evans to the prosecution both support that his actions were performed on behalf of the prosecution. *See*  
7 *Carriger*, 132 F.3d at 480 (finding that prosecution was obligated to turn over “witness’s criminal record,  
8 including prison records” and information “known by police”). As a result, the prosecution’s obligation  
9 to turn over all exculpatory and impeachment evidence extended to Officer Hahn and, as such, to any  
10 information about Officer Hahn’s relationship with Evans—even if unknown to the prosecutors. *United*  
11 *States v. Blanco*, 392 F.3d 382, 394 (9th Cir. 2004) (“The government has *not* discharged its obligation if  
12 the AUSA (‘Government counsel’) has exercised due diligence by asking the DEA for all *Brady* and  
13 *Giglio* material, and the DEA has refused to provide such information in its possession.”).

14 163. There can be no dispute that the prosecution had an obligation to disclose all material  
15 information bearing on a witness’s credibility that it or any member of its team knew about Evans, and  
16 yet did not make the required disclosures. *See* Referee’s Report at 11 (noting that “Evans had more  
17 extensive contact with law enforcement than was disclosed at trial” and “that Evans was a suspect in the  
18 ‘Beasley Senior’ case [was] ‘new information’ for the purpose of the habeas proceeding”). The  
19 prosecution relied on the testimony of Evans as a critical witness. “When the state decides to rely on the  
20 testimony of . . . a witness [known by police and prosecutors to be a career [criminal], it is the state’s  
21 obligation to turn over all information bearing on that witness’s credibility.” *Carriger*, 132 F.3d at 480  
22 (finding that petitioner was “denied a fair trial” because of the prosecution’s failure to turn over material  
23 impeachment evidence known to government officials). The prosecution failed to do so in this case with  
24 respect to the pieces of evidence that Masters challenges here.

25 164. **Second**, the undisclosed information about Evans was favorable to Masters. “Favorable  
26 evidence includes that which impeaches a prosecution witness,” including, but not limited to, “evidence

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27  
28 <sup>9</sup> *See* <https://www.cdcr.ca.gov/office-of-correctional-safety/>.

1 of any understanding or agreement as to a future prosecution.” *Amado*, 758 F.3d at 1134 (citing *Giglio v.*  
2 *United States*, 405 U.S. 150, 154 (1972)). When the “reliability of a given witness may well be  
3 determinative of guilt or innocence, nondisclosure of evidence affecting his credibility falls within the  
4 general rule of *Brady*.” *Bagley*, 473 U.S. at 677 (internal citations omitted); *see also United States v.*  
5 *Brumel-Alvarez*, 991 F.2d 1452, 1461 (9th Cir. 1993) (“*Brady* information includes material that bears on  
6 the credibility of a significant witness in the case.” (internal citations omitted)). In this case, the facts of  
7 (i) Evans’s history of frequently providing false information as an informant; (ii) Evans’s extensive  
8 working relationship with Officer Hahn, including Officer Hahn’s knowledge that Evans regularly served  
9 as an informant for multiple government agencies; (iii) Evans’s receipt of promises from Officer Hahn  
10 that he would postpone Evans’s sentencing; and (iv) Evans’s status as a suspect in a pending murder  
11 investigation (and corresponding incentive to strike a deal with the prosecution) could all have been used  
12 by the defense to impeach Evans’s credibility before the jury. As a result, each of these pieces of evidence  
13 is favorable to Masters. *See Comstock v. Humphries*, 786 F.3d 701, 708 (9th Cir. 2015) (“[E]vidence that  
14 has any . . . impeachment value is, by definition, favorable.”).

15 165. **Third**, the California Supreme Court’s decision that the withheld impeachment evidence  
16 about Evans was not material was contrary to, and an unreasonable application of Masters’s constitutional  
17 right as clearly established by the Supreme Court of the United States. “In cases in which the witness is  
18 central to the prosecution’s case, the defendant’s conviction indicates that in all likelihood the  
19 impeachment evidence introduced at trial was insufficient to persuade a jury that the witness lacked  
20 credibility.” *Benn v. Lambert*, 283 F.3d 1040, 1055 (9th Cir. 2002). Here, Evans was a key witness—  
21 deemed an expert by the court—who provided corroborating evidence of guilt (which he later recanted).  
22 The importance the role Evans’s testimony played in convicting Masters, and the closely balanced nature  
23 of the case, is highlighted by the jury’s request for a “readback” of Evans’s testimony after they had  
24 already been deliberating for nine days, shortly after which they came to a verdict. 78 RT 16906; 79 RT  
25 17082, 17093; 17 CT 5098. As Officer Hahn wrote in a December 14, 1989 memorandum he sent to the  
26 Department of Corrections requesting rescission of Evans’s parole hold after he had testified against  
27 Masters: “EVANS’[s] testimony obviously caused damage to the defense and the trial appeared to have  
28

1 turned in favor of the prosecution. In fact, it may be the crucial factor in the outcome of the trial.” HC  
2 Pet. Ex. 11.

3 166. Looking at each piece of impeachment evidence in turn, the State’s failure to disclose the  
4 full extent of Evans’s contacts with Officer Hahn, including and most importantly that *Evans had provided*  
5 *Officer Hahn with more false information than true during their relationship* (something about which  
6 the jury did not even have a hint), unfairly prejudiced Masters at trial, and thus was material for *Brady*  
7 purposes. Evans’s interactions with Officer Hahn as shown to the jury appeared to be adversarial and  
8 episodic, with Evans providing information to Officer Hahn only about three specific individuals over the  
9 course of several years. *See* 14 RHRT 741–48; 58 RT 13794–800. In contrast, Officer Hahn and Moore’s  
10 testimony at Masters’s Reference Hearing revealed that Evans was a regular government informant—for  
11 both Officer Hahn and multiple other government agencies—who *knew how to work the system to get*  
12 *what he wanted, regardless of whether he lied in doing so*. *See* 8 RHRT 448–51. Officer Hahn described  
13 Evans as a “[p]rofessional liar” and a “bullshitter,” stated that he was not reliable, and testified that Evans  
14 shared bad, or inaccurate, information with him “as many times” as he shared good information. 8 RHRT  
15 432–33. It ought to be unthinkable that the jury that convicted Masters and sentenced him to death *had*  
16 *no idea that Evans was a serial-lying informant*, whose account of Masters’s alleged involvement in  
17 Sergeant Burchfield’s murder was utterly unworthy of believing.

18 167. Further, the jury heard only that Officer Hahn had had a few contacts with Evans related  
19 to informing on three individuals; the *full, undisclosed picture* was that Evans had “had many, many  
20 contacts” with Officer Hahn, *id.* at 433, likely more than 30 times, *see* 3 RHRT 193, and had given false  
21 information to Officer Hahn in the past, *see* 8 RHRT 433. The jury also heard only that Evans vaguely  
22 expected protection from the State, not that Officer Hahn had explicitly promised to assist Evans with  
23 postponing his sentencing hearing. *See* 79 RT 17014-15, 17018-19. None of this qualifying information  
24 regarding Evans’s character for truthfulness; his regular, paid role as a government informant; or the  
25 promises he was made in exchange for his testimony was brought to light at trial, nor was it disclosed to  
26 Masters prior to trial. If that information had been disclosed, Masters’s defense counsel could have  
27 presented a compelling argument that Evans regularly worked closely with government officials to  
28 provide them information *that more often than not was fabricated* and, oftentimes, *including in this case*,

1 received beneficial treatment from the government in exchange. 8 RHRT 449. This argument surely  
2 would have detracted from, if not destroyed, Evans' credibility. *See Carriger*, 132 F.3d at 479  
3 (“[C]riminals who are rewarded by the government for their testimony are inherently untrustworthy.”).  
4 Given the crucial role that Evans's testimony played at trial, there is a reasonable probability that the  
5 absence of this powerful impeachment evidences undermines confidence in the verdict as a whole. The  
6 prosecution's failure to disclose the full nature of Evans's government relationships thus was material,  
7 and the California Supreme Court's decision otherwise was objectively unreasonable. *Amado*, 758 F.3d  
8 at 1140 (“The standard is not whether there is sufficient evidence for conviction, but whether there is a  
9 ‘reasonable probability’ that the outcome would have been different, meaning that ‘the favorable evidence  
10 could reasonably be taken to put the whole case in such a different light as to undermine confidence in the  
11 verdict.” (quoting *Kyles*, 514 U.S. at 435)).

12 168. The California Supreme Court also erred in finding that Evans's status as a suspect in a  
13 murder case at the time he came forward with alleged information about Sergeant Burchfield's murder  
14 (four years after the fact) was not material. The court found the undisclosed information not material  
15 because it would not have altered the jury's calculus given the other information of his criminal history  
16 that had been revealed at trial. *See In re Masters*, 7 Cal. 5th at 1088. But knowledge of Evans's status as  
17 a suspect in a murder case, in tandem with the additional undisclosed evidence regarding his known history  
18 of providing false information as an informant, would have brought to Masters's attention the powerful  
19 incentives informing Evans's desire to testify. The California Supreme Court's finding that such  
20 information was immaterial was also objectively unreasonable.

21 169. **Finally**, “[i]n deciding whether the withheld evidence satisfied [the materiality] standard,”  
22 the California Supreme Court was supposed to “evaluate its effect cumulatively, not item-by-item.”  
23 *Carriger*, 132 F.3d at 480. “When there are multiple *Brady* claims, the Supreme Court instructs that we  
24 consider materiality ‘collectively’” by “imagin[ing] that every piece of suppressed evidence had been  
25 disclosed, and then ask[ing] whether, assuming those disclosures, there is a reasonable probability that the  
26 jury would have reached a different result.” *Browning v. Baker*, 875 F.3d 444, 464 (9th Cir. 2017)

27 170. Though each piece of evidence detailed above is individually material to Masters's trial  
28 defenses, the court's failure to assess the cumulative harm also warrants relief. The court's opinion simply

1 walks through and dismisses the evidence piecemeal, finding that each was not material and would not  
2 have affected the jury's determination of Evans's credibility. *See In re Masters*, 7 Cal. 5th at 1088–89.  
3 Nowhere does the court evaluate and make a decision regarding whether, had the jury known all of the  
4 undisclosed evidence, the jury might well have made a different determination regarding Evans's  
5 credibility. *See id.* Importantly here, where Evans's credibility had already been attacked at trial and the  
6 relative importance of his testimony was demonstrated through the jury's "readback" request, there is a  
7 reasonable probability that this undisclosed impeachment evidence, cumulatively, and in tandem with the  
8 weakness of the other evidence put forward against Masters, as described *supra*, would have undermined  
9 confidence in the outcome. *See United States v. Agurs*, 427 U.S. 97, 113 (1976) ("[I]f the verdict is already  
10 of questionable validity, additional evidence of relatively minor importance might be sufficient to create  
11 a reasonable doubt.").

12 171. As *Agurs* makes clear, it is not reasonable to find that because the defense had managed to  
13 accomplish some impeachment, there is no reasonable chance further impeachment would have made a  
14 difference. To the contrary, the fact that some impeaching evidence was presented at trial makes it all the  
15 more likely that any additional evidence would have led the jury to conclude that the impeachment  
16 evidence was strong enough to justify discarding Evans's testimony in its entirety; after all, adding just  
17 two more degrees to water that is already at 210 degrees is what makes the water boil. This error alone  
18 was objectively unreasonable under clearly established federal law. *See Kyles*, 514 U.S. at 440–41  
19 (holding that because the Court of Appeals' opinion "contain[ed] repeated references dismissing particular  
20 items of evidence as immaterial" showed that the "result reached by the Fifth Circuit's majority [was]  
21 compatible with a *series of independent materiality evaluations*, rather than the cumulative evaluation  
22 required by *Bagley*" (emphasis added)); *Agurs*, 427 U.S. at 112 ("[T]he omission must be evaluated in the  
23 context of the entire record."); *United States v. Shaffer*, 789 F.2d 682, 688–89 (9th Cir. 1986) (analyzing  
24 collectively the prejudice resulting from the state's suppression of four different pieces of impeachment  
25 material).

26 172. Accordingly, because the undisclosed impeachment evidence about Evans is "strong  
27 enough to cast a cloud of doubt over [Evans'] testimony" and thus undermine confidence in the outcome  
28 of Masters's trial, this Court should find that the California Supreme Court unreasonably applied settled

1 Supreme Court of the United States decisions when it refused to recognize a *Brady* violation has been  
2 established. *See Amado*, 758 F.3d at 1140; *Kyles*, 514 U.S. at 441.

3 **FOURTH CAUSE OF ACTION**  
4 **KNOWING PRESENTATION OF FALSE EVIDENCE**  
5 **(*NAPUE V. ILLINOIS*)**

6 173. Due process prohibits prosecutors from knowingly presenting false evidence or failing to  
7 correct false evidence. *See Napue v. Illinois*, 360 U.S. 264, 269 (1959); *see also Strickler v. Greene*, 527  
8 U.S. 263, 281 (1999); *Jacobs v. Scott*, 513 U.S. 1067, 1068 (1995). To establish a due process violation  
9 based on the presentation of false evidence, a defendant must show that (1) the prosecutors presented or  
10 failed to correct testimony that was false; (2) the prosecutors knew or should have known of the falsehood;  
11 and (3) there is a reasonable probability that the testimony could have affected the outcome of the trial.  
12 *Agurs*, 427 U.S. at 103; *Hayes v. Brown*, 399 F.3d 972, 984 (9th Cir. 2005). The prosecutors in Masters’s  
13 case violated Masters’s right to due process because they presented false evidence regarding Evans’s  
14 relationship with Officer Hahn and the benefits Evans received in exchange for his testimony against  
15 Masters. The prosecutors did not correct that false testimony and knew or should have known that it was  
16 false, and there is a reasonable probability that the testimony could have affected the outcome of Masters’s  
17 trial.

18 174. Evans’s testimony that he had a sporadic, limited, and confrontational relationship with  
19 Officer Hahn and that he received no benefits in exchange for his testimony was false. Indeed, the Referee  
20 found that Evans had more extensive contact with law enforcement than was disclosed at trial. Referee  
21 Report at 11. The Referee found that Evans was “utterly lacking in credibility,” that he was “spectacularly  
22 unreliable,” and that “there is little doubt that he lied at trial.” Referee Report at 8, 10.

23 175. The Supreme Court’s decision in *Napue* requires only that the prosecutors should have  
24 known that the evidence was false. *Hayes*, 399 F.3d at 984. The prosecution in this case knew or should  
25 have known that Evans was providing false testimony about his relationship with Officer Hahn and the  
26 lack of benefits that he received for his testimony. In fact, there is substantial evidence in the record here  
27 that prosecutors knew of Evans’s relationship with Officer Hahn and Evans’s status as a career  
28 government informant who often provided false information. *See supra* ¶¶ 142–53. Officer Hahn also  
has admitted that in the half dozen or so cases he worked on with Evans, Evans gave Officer Hahn “more

1 false information than true information.” 8 RHRT 449. This history gave prosecutors sufficient notice  
2 that Evans’s testimony was false. But instead of investigating the red flags that suggested Evans could be  
3 lying, the prosecutors put him on the witness stand.

4 176. The presentation of false evidence in this case was material to the outcome of the trial. To  
5 demonstrate a violation of *Napue*, a defendant need only demonstrate there is “any reasonable likelihood  
6 that the false testimony *could* have affected the judgment of the jury.” *Agurs*, 427 U.S. at 103; *Jackson*,  
7 513 F.3d at 1076. The burden of proof is lower than what is required to establish a *Brady* violation. *See*  
8 *id.* (*Brady* violation is material when “there is a reasonable probability that . . . the result of the proceeding  
9 *would* have been different.”). Accordingly, because the false evidence is material under the *Brady*  
10 standard, it meets the *Napue* test and could have affected the outcome of the trial. Indeed, there is objective  
11 evidence of the importance of Evans’s testimony to the jury’s deliberation.

12 177. First, the jury deliberated for nine days, and it did not reach its verdict until shortly after it  
13 requested that Evans’s testimony be read back. *See* 78 RT 16906; 79 RT 17082, 17093; 17 CT 5098. The  
14 short timeframe between the verdict and the review of Evans’s testimony demonstrates that the evidence  
15 was closely balanced and that this testimony played a role in the jury finally reaching its guilty verdict.

16 178. Second, the Referee acknowledged the importance of Evans’s testimony to the  
17 prosecution’s case and stated, “Evans’ [testimony at the Reference Hearing] was likewise significant,  
18 because he had corroborated Willis’ trial testimony against Masters with the damning testimony that  
19 Masters appeared before the BGF Commission and admitted guilt.” Referee Report at 5.

20 179. Third, after Masters’s trial, Officer Hahn wrote a memorandum about the trial dated  
21 December 14, 1989, which summarized Evans’s testimony during Master’s trial. Officer Hahn noted  
22 “EVANS’ testimony obviously caused damage to the defense and the trial appeared to have turned in  
23 favor of the prosecution. In fact, it may be the crucial factor in the outcome of the trial.” HC Pet. Ex. 11.  
24 As a parole officer, Officer Hahn has ample experience with criminal trials and has seen how juries react  
25 to certain evidence. With this experience, Officer Hahn observed that Evans’s testimony was critical to  
26 the prosecution’s case.

27 180. On their own, each of these reasons demonstrates that Evans’s testimony was material and  
28 could have affected the outcome of the trial because of its crucial nature to the prosecution’s case. Taken

1 together, these reasons even more powerfully demonstrate that the evidence not only could, but likely  
2 would, have affected the outcome of Masters’s trial. The California Supreme Court’s decision otherwise  
3 was contrary to, and an unreasonable application of Masters’s constitutional right as clearly established  
4 by the Supreme Court of the United States.

5 **FIFTH CAUSE OF ACTION**  
6 **ACTUAL INNOCENCE**  
7 **(28 U.S.C. § 2254(d)(2); *HERRERA V. COLLINS*; *SCHLUP V. DELO*)**

8 181. It is a fundamental legal principle that ignoring a showing of innocence by a death row  
9 inmate is inconsistent with the Constitution and an “intolerable event.” *Herrera v. Collins*, 506 U.S. 390,  
10 419 (J. O’Connor, concurring). *See also id.* at 419 (O’Connor J., with Kennedy J., concurring); *id.* at 429  
11 (White, J., concurring in the judgment); *id.* at 430 (Blackmun, J., with Stevens and Souter, JJ. dissenting).  
12 It is Masters’s position that this is a clearly established principle, and neither the Supreme Court nor the  
13 Ninth Circuit have rejected this position. *See McQuiggin v. Perkins*, 569 U.S. 383, 392 (2013) (“We have  
14 not yet resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual  
15 innocence.”); *Gimenez v. Ochoa*, 821 F.3d 1136, 1145 (9th Cir. 2016). This Court should so hold, once  
16 and for all. Indeed, the Ninth Circuit has assumed, without holding, that petitioner may bring such a  
17 freestanding innocence claim if “he can affirmatively prove that he is probably innocent.” *Gimenez*, 821  
18 F.3d at 1145. The United States Supreme Court also clearly established that actual innocence serves as a  
19 gateway to overcome procedural or other barriers to habeas relief, because execution of the innocent would  
20 be a miscarriage of justice. *See Schlup v. Delo*, 513 U.S. 298 (1995).

21 182. The overwhelming evidence, some of which only became available after Masters’s trial,  
22 establishes that Masters is actually innocent. The State’s case against Masters rested on three categories  
23 of evidence: (i) the testimony of Rufus Willis; (ii) the “kites” purportedly written by Masters; and (iii) the  
24 corroborating testimony of Bobby Evans. Substantial evidence now shows that none of those were true:  
25 (i) Willis has recanted his testimony; (ii) Willis admitted that he directed Masters to write the kites and  
26 provided the content; and (iii) Evans recanted his testimony. *See* 11 RHRT 594–95; RH Pet. Ex. 58 at  
27 41–42; *see id.* at 603–04; 10 RHRT 534–43. To be clear, this is not merely impeachment evidence, nor  
28 evidence that casts doubt upon the testimony presented against Masters at trial. The State’s two key

1 witnesses against Masters, Willis and Evans, have both provided detailed accounts about how and why  
2 they testified falsely against Masters at trial.

3 183. Their recantations are corroborated by the sworn statements from those who *were* involved  
4 in the killing of Sergeant Burchfield. The accounts of these witnesses—Michael Rhinehart, Lawrence  
5 Woodard, Harold Richardson, Charles Drume—confirm that Masters played no role in the planning of  
6 Sergeant Burchfield’s murder nor in the manufacture of the murder weapon. *See supra* ¶¶ 19–24. To the  
7 contrary, Masters learned of and disagreed with the plan to kill Sergeant Burchfield, and was punished by  
8 the BGF as a result. *See* 5 RHRT 319, 324.

9 184. In the face of this evidence, which the jury never heard, it is “more likely than not that no  
10 reasonable juror would have convicted him in the light of the new evidence,” entitling masters to relief.  
11 *See McQuiggin*, 569 U.S. at 385; *see also Sundberg v. Oreol*, 803 F. App’x 148 (9th Cir. 2020). In  
12 addition, to the extent Respondent may somehow contend Masters is not entitled to the relief he seeks due  
13 to procedural or other technical bars, the overwhelming evidence of Masters’s actual innocence allows  
14 Masters to pursue habeas relief in this Court. *Schlup*, 513 U.S. 298.

15 **A. Willis Recanted His Trial Testimony Implicating Masters.**

16 185. With regard to Willis’s trial testimony, Willis submitted three sworn declarations recanting  
17 his statements against Masters. The first, With regard to Willis’s trial testimony, Willis submitted three  
18 sworn declarations recanting his statements against Masters. The first, drafted after an interview with  
19 private investigator Melody Ermachild, was signed by Willis on February 8, 2001. *See* 11 RHRT 594–  
20 95. The second declaration, signed February 23, 2001, was a slightly revised, typewritten version of his  
21 first declaration. *See id.* at 603–04. The third declaration, signed May 12, 2010, affirmed the accuracy of  
22 his earlier declarations, with slight revisions that are not relevant to Masters’s guilt or innocence. *See* 10  
23 RHRT 534–43. In each of these declarations, Willis admitted that his trial testimony against Masters was  
24 false, and that Masters “had nothing to do with the planning of the Burchfield killing,” HC Pet. Ex. 1 ¶¶  
25 6, 20; “wasn’t involved” in the killing of Sgt. Burchfield, *id.* ¶ 5; and “did not play any role in the death  
26 of Sgt. Burchfield,” *id.* ¶¶ 22, 31. Willis explained that Masters was not involved in fabricating the weapon  
27 used against Burchfield, and Masters would not have been involved in making weapons. *See id.* ¶¶ 13,  
28 14. Willis also disclosed that he did not initially implicate Masters in the attack, but Investigator Charles

1 Numark of the Marin County District Attorney’s Office wanted evidence on Masters specifically. *Id.* ¶¶  
2 5, 10.

3 186. Willis’s testimony is corroborated by sworn statements from others. For example,  
4 Lawrence Woodard agreed that Masters would not have been involved in making weapons: “Jarvis  
5 Masters was not the knife sharpener. He was not good at sharpening metal, and he was not trusted with  
6 any part in the Burchfield killing.” HC Pet. Ex. 2 ¶ 9. Andre Johnson agreed: “I am sure the blade was  
7 not made above or near me, as I would have been sure to hear it being sharpened, and officers also would  
8 have heard the sound of scraping on the cement floor. Masters was housed two tiers up, directly above  
9 my cell.” HC Pet. Ex. 3 ¶ 5.

10 **B. Masters Did Not Author The Kites That Were Used Against Him.**

11 187. With regard to the two kites that were handwritten, but not authored, by Masters, it is now  
12 clear that these notes were not admissions of involvement in the attack on Burchfield. Willis’s  
13 declarations explain that the two kites were written by Masters under orders from Willis, a leader of the  
14 BGF, at the direction of investigator Numark. HC Pet. Ex. 1 ¶¶ 10–12. 14–15. This was common practice.  
15 In a sworn statement, Lawrence Woodard explained that “kites were frequently written by BGF leaders  
16 and then re-copied, under orders, by inmates lower in the hierarchy, to conceal who had written them.”  
17 HC Pet. Ex. 2 ¶ 8. Masters was particularly incentivized to follow the orders from Willis to draft the kites  
18 because he was not in good standing with the BGF. According to Willis, “Masters had a lot to prove, as  
19 he was constantly criticized by Woodard. . . I was always getting kites from Woodard about how I needed  
20 to watch Masters, how I needed to watch Masters, and complaining about Masters.” HC Pet. Ex. 1 ¶ 13.  
21 Willis told Masters the kite would improve his standing with the BGF: “I knew Masters was in trouble  
22 with Woodard for being incompetent and insubordinate. . . . I told Masters that I would keister the report  
23 to the BFG leadership, and that the report was designed to give him a role to put him in good standing,  
24 but it couldn’t be in my handwriting.” *Id.* ¶ 15. Woodard agreed: “[Masters] was much more interested  
25 in playing basketball than in obeying any kind of orders, or practicing the discipline required by the group  
26 in those days. As a result of his indiscipline and his disagreement with the plans, I demoted him within  
27 the hierarchy, and took away his responsibilities. . . . Masters was motivated to give Willis a kite that  
28 would exonerate him with the BGF because it was dangerous for Masters to be out of favor with the BGF.

1 . . . It is my opinion that this ‘Usalama’ kite was written by Willis and copied, because Masters had no  
2 knowledge of the attack on Sgt. Burchfield. Masters was motivated to obey Willis in order to ingratiate  
3 himself with the BFG in general and with me in particular.” HC Pet. Ex. 2 ¶¶ 4, 6, 8.

4 188. Masters copied the first kite, at least in part, from a kite that was actually authored by co-  
5 defendant Woodard. HC Pet. Ex. 1 ¶ 12. The second kite, the Usalama Report, was copied by Masters  
6 from Willis’s own writings. *Id.* ¶ 15. The information in the Usalama Report came from Willis and  
7 Woodard, and not from Masters’s own personal knowledge. *Id.* Indeed, Willis sent a letter to Masters’s  
8 defense counsel on May 22, 2005 suggesting that the original letters that were copied by Masters could  
9 have been found inside of a portable television that Willis owned at San Quentin. *See* RH Pet. Ex. D (“PS  
10 Why Masters’ lawyers never looked through my property in San Quentin – Hint Hint.”). Willis’s sworn  
11 statements about the kites are also consistent with the sworn testimony of Andre Johnson, who stated that  
12 Willis also directed him to copy kites about Sergeant Burchfield’s death: “After the killing of Sgt.  
13 Burchfield, Rufus Willis forced me to write notes about it. He ordered me to do it, again under threat of  
14 death if I were to disobey orders. Willis dictated the notes I wrote. Willis wrote out the questions and  
15 also the answers for the notes, then I copied them.” HC Pet. Ex. 3 ¶ 8.

16 189. The reference hearing confirmed through expert analysis that Masters did not author the  
17 kites that were presented as evidence of his guilt. Forensic linguist Dr. Robert Leonard concluded that  
18 the two kites attributed to Masters at trial did not share common authorship with other kites that actually  
19 had been authored by Masters. Pet. Ex. 72 at 13; 18 RHRT 984, 1014-16. Leonard’s conclusions were  
20 supported by the analysis of forensic linguist Dr. Roger Shuy, who noted that the writing style in the two  
21 kites attributed to Masters was noticeably different from that in kites that Masters had written. Pet. Ex.  
22 72, Attach. 1–5; 18 RHRT 984, 1014-16. The State did not refute this expert analysis. At the end of the  
23 day, there remains no evidence supporting the argument that the two kites attributed to Masters at his trial  
24 provide any indication of culpability by Masters.

25 **C. Evans Recanted His Trial Testimony Against Masters.**

26 190. With regard to Evans’s trial testimony against Masters, the witness has recanted not only  
27 his claim that Masters had confessed to him, but that he ever knew Masters at all. Evans stated at trial  
28 that, at a meeting at the San Quentin Adjustment Center around September 1985, Masters told him about

1 his vote in support of the plan to attack Sergeant Burchfield. 58 RT 13725–26. Evans gave sworn  
2 testimony to the referee that his testimony against Masters was false. *See* RH Pet. Ex. 58 at 41–42. Evans  
3 admitted that he did not know Masters in 1985. *Id.* at 36. In fact, he had never spoken to Masters. *Id.* at  
4 41. This was supported by corroborating evidence from the California Department of Corrections and  
5 Rehabilitation showing that Masters was not present with Evans at the Adjustment Center in September  
6 1985. *See* 5 RHRT 283.

7 **D. Masters Offered Other Sworn Testimony Corroborating the Recantations.**

8 191. Masters presented other sworn statements to the California Supreme Court that further  
9 corroborated his claims of innocence. Inmate Michael Rhinehart testified before the referee. Rhinehart  
10 was a BGF member who stated that he was present at a meeting where Masters voted against a proposal  
11 to attack a prison guard. 5 RHRT 319. Rhinehart explained that BGF leadership went forward with the  
12 plan to attack Sergeant Burchfield notwithstanding Masters’s opposition. *See id.* Rhinehart had shared a  
13 cell with Evans. *Id.* at 333. Rhinehart stated that Evans did not know about the attack on Burchfield  
14 before learning about it from Rhinehart in the spring of 1987. *Id.* at 333–34.

15 192. Co-defendant Lawrence Woodard also provided testimony that contradicted the case  
16 against Masters at trial. Woodard stated, like Rhinehart, that Masters had opposed the plan to attack a  
17 prison guard. 4 RHRT 223. Woodard stated that Richardson, not Masters, was involved in planning the  
18 attack. *Id.* at 227. In fact, Woodard testified that Masters was disciplined by the BGF for his unwillingness  
19 to go along with the plan to attack a guard. *Id.* at 223.

20 193. Co-defendant Andre Johnson similarly admitted to his role and exonerated Masters: “To  
21 my knowledge, Jarvis Masters had no knowledge of any involvement in the killing of Sgt. Burchfield. He  
22 did not participate in making plans or in telling me what to do in regards to attempting to attack Sgt.  
23 Burchfield or any other officer. Masters did not communicate with me via note or kite, or verbally or any  
24 other way about this crime, nor did other inmates tell me that Masters was involved in any way.” HC Pet.  
25 Ex. 3 ¶ 3.

26 194. Inmate Charles Drume submitted a sworn statement admitting that he, not Masters,  
27 received an order from Woodard to fabricate a weapon for the attack. HC Pet. Ex. 4. Drume stated  
28 explicitly that Masters is innocent of the attack on Burchfield: “Jarvis Masters was wrongly convicted and

1 sentenced to death. Because I was a participant, I know that Masters was not involved in either the  
2 planning or carrying out of the attack on Sergeant Burchfield.” *Id.* ¶ 3.

3 195. There is a lack of credible evidence supporting the idea that Masters played any role  
4 whatsoever in Sergeant Burchfield’s death, and a plethora of evidence explicitly confirming he did not do  
5 so. In light of the evidence now available, “no reasonable juror would have convicted him.” *See*  
6 *McQuiggin*, 569 U.S. at 385. Masters should be granted habeas corpus relief on the ground that he is  
7 actually innocent of the crime for which he has been convicted. Moreover, to the extent Respondent may  
8 contend Masters is not entitled to the relief he seeks due to procedural or other technical bars to relief, the  
9 overwhelming evidence of Masters’s actual innocence allows Masters to pursue habeas relief in this Court.  
10 *Schlup* 513 U.S. 298.

11 **PRAYER FOR RELIEF**

12 196. For the foregoing reasons, Masters requests an order granting the writ of habeas corpus and  
13 vacating the criminal judgment and sentence entered against him, as they involved objectively  
14 unreasonable application of clearly established federal law, along with such other relief as the Court deems  
15 appropriate. To the extent the Court believes that any determination of the facts is necessary, Masters  
16 requests an evidentiary hearing with access to discovery allowed by the Rules Governing Section 2254  
17 Cases in the United States District Courts and other applicable law or rules, to be established after a  
18 conference with counsel for the Warden, and pursuant to this Court’s scheduling order.

1 DATED: November 20, 2020

Respectfully submitted,  
KIRKLAND & ELLIS LLP

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**VERIFICATION**

I am submitting this verification on behalf of Petitioner Jarvis J. Masters pursuant to 28 U.S.C. § 2242. I am an attorney at Kirkland & Ellis LLP, and we are counsel to Mr. Masters. We have discussed this Petition for Writ of Habeas Corpus and the facts contained herein with Mr. Masters. On the basis of these discussions, I hereby verify that the statements made in this Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: November 20, 2020

/s/ Ashley E. Littlefield  
Ashley E. Littlefield  
Attorney for Petitioner

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