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

15 JARVIS J. MASTERS,  
 16 Petitioner,

17 v.

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

CASE NO. 4:20-cv-08206

**PETITIONER’S TRAVERSE**

Petition filed: November 20, 2020

Judge: Hon. Haywood S. Gilliam, Jr.

**TABLE OF CONTENTS**

	<u>Page</u>
INTRODUCTION .....	1
ARGUMENT.....	4
I. CLAIM 1 – THE CALIFORNIA SUPREME COURT APPLIED A STANDARD CONTRARY TO <i>CHAMBERS V. MISSISSIPPI</i> AND UNREASONABLY APPLIED <i>CHAMBERS</i> AND CLEARLY-ESTABLISHED DUE PROCESS RIGHTS BY EXCLUDING HAROLD RICHARDSON’S CONFESSION.....	4
A. The State’s Arguments That the Richardson Confessions Were Unreliable Are Meritless. ....	5
1. The State’s Attacks on the Richardson Confessions Are Meritless.....	6
2. The California Supreme Court’s Opinion Acknowledges the Potential Truth in the Richardson Confessions, and Therefore Its Decision Usurped the Role of the Jury. ....	9
B. There Can Be No Serious Dispute That the Richardson Confessions Were Critical to Masters’s Defense. ....	10
II. CLAIM 2 – THE CALIFORNIA SUPREME COURT APPLIED A STANDARD CONTRARY TO <i>CHAMBERS V. MISSISSIPPI</i> AND UNREASONABLY APPLIED <i>CHAMBERS</i> AND CLEARLY-ESTABLISHED DUE PROCESS RIGHTS BY EXCLUDING CHARLES DRUME’S CONFESSION .....	11
III. CLAIM 3 – THE CALIFORNIA SUPREME COURT’S FINDING THAT EVIDENCE WITHHELD FROM MASTERS WAS NOT MATERIAL UNREASONABLY APPLIED <i>BRADY V. MARYLAND</i> AND ITS PROGENY.....	13
A. It Is Undisputed That the State Withheld Exculpatory Information to Masters’s Defense Regarding Evans’s Motivations to Lie for the State. ....	14
B. Evans’s Motivation to Lie for the State Was Material. ....	14
1. Evans Was Critically Important to the State’s Case Against Masters. ....	14
2. The Cross Examination of Evans at Masters’s Trial Did Not Reduce the Materiality of the Withheld Evidence.....	15
3. The State Improperly Fails to Assess the Collective Impact of the Suppressed Evidence. ....	16
IV. CLAIM 4 – THE CALIFORNIA SUPREME COURT UNREASONABLY APPLIED <i>NAPUE V. ILLINOIS</i> BY DENYING RELIEF DESPITE THE INTRODUCTION OF EVIDENCE THAT PROSECUTORS SHOULD HAVE KNOWN TO BE FALSE .....	17
A. The California Supreme Court Unreasonably Applied <i>Napue</i> Because Prosecutors Should Have Known Evans’s Testimony Was False. ....	18
B. The California Supreme Court Unreasonably Applied <i>Napue</i> Because the False Testimony Was Material. ....	18

**TABLE OF CONTENTS (CONT'D)**

**Page**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

V. CLAIM 5 – MASTERS IS THE RARE PERSON ENTITLED TO HABEAS RELIEF ON THE GROUNDS THAT HE IS ACTUALLY INNOCENT ..... 19

A. The State Ignores Crucial Indicators of Masters’s Innocence. .... 20

B. The State Relies on Inapposite Cases in its Efforts to Refute the Corroborated Recantations of its Key Trial Witnesses and Statements from Several Supporting Witnesses..... 21

1. The State’s Remaining Arguments Against Masters’s Innocence Ignore Key Facts. .... 23

CONCLUSION..... 25

**TABLE OF AUTHORITIES**

	<b><u>Page(s)</u></b>
<b>Cases</b>	
<i>Arizona v. Fulminante</i> , 499 U.S. 279 (1991) .....	10
<i>Banks v. Dretke</i> , 540 U.S. 668 (2004) .....	14, 15
<i>Benn v. Lambert</i> , 283 F.3d 1040 (9th Cir. 2002) .....	14
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963) .....	<i>passim</i>
<i>Chambers v. Mississippi</i> , 410 U.S. 284 (1973) .....	<i>passim</i>
<i>Chia v. Cambra</i> , 360 F.3d 997 (9th Cir. 2004) .....	<i>passim</i>
<i>Cudjo v. Ayers</i> , 698 F.3d 752 (9th Cir. 2012) .....	9, 13
<i>Farmer v. Ratelle</i> , 131 F.3d 146 (9th Cir. 1997) .....	10
<i>Gonzalez v. Wong</i> , 667 F.3d 965 (9th Cir. 2011) .....	15
<i>Green v. Bock Laundry Mach. Co.</i> , 490 U.S. 504 (1989) .....	16
<i>Green v. Georgia</i> , 442 U.S. 95 (1979) .....	5, 8
<i>Hayes v. Brown</i> , 399 F.3d 972 (9th Cir. 2005) .....	3, 18
<i>Herrera v. Collins</i> , 506 U.S. 390 (1993) .....	19, 20, 21, 22
<i>Horton v. Mayle</i> , 408 F.3d 570 (9th Cir. 2005) .....	15
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995) .....	2, 15, 16

**TABLE OF AUTHORITIES (CONT'D)**

	<b><u>Page(s)</u></b>
1 <i>Lunbery v. Hornbreak,</i> 2 605 F.3d 754 (9th Cir. 2010) .....	5, 8
3 <i>In re Masters,</i> 4 7 Cal. 5th 1054 (2019).....	<i>passim</i>
5 <i>Napue v. Illinois,</i> 6 360 U.S. 264 (1959) .....	3, 17, 18, 19
7 <i>People v. Castro,</i> 8 38 Cal. 3d 301 (1985).....	16
9 <i>People v. Federico,</i> 10 127 Cal. App. 3d 20 (1981) .....	16
11 <i>People v. Masters,</i> 12 62 Cal. 4th 1019 (2016).....	4, 7, 10, 12, 17
13 <i>People v. Moore,</i> 14 176 Cal. App. 4th 687 (2009) .....	24
15 <i>In re Roberts,</i> 16 29 Cal. 4th 726 (2003).....	21, 22
17 <i>United States v. Agurs,</i> 18 427 U.S. 97 (1976).....	17, 18
19 <i>United States v. Bagley,</i> 20 473 U.S. 667 (1985).....	14, 18
21 <i>United States v. Foster,</i> 22 711 F.2d 871 (9th Cir. 1983) .....	9
23 <i>United States v. Sepulveda,</i> 24 937 F.2d 614, 1991 WL 127652 (9th Cir. 1991) .....	9
25 <i>Wearry v. Cain,</i> 26 577 U.S. 385 (2016) (per curiam) .....	16
27 <i>Williamson v. United States,</i> 28 512 U.S. 594 (1994) .....	6, 12, 24
<b>Statutes</b>	
28 U.S.C. § 2254(d) .....	1, 10
<b>Rules</b>	
FED. R. EVID. 904(b)(3).....	7, 12

## INTRODUCTION

1  
2 In its Answer, the State demonstrates that the California Supreme Court’s decisions were contrary  
3 to, and unreasonably applied, “clearly established Federal law, as determined by the Supreme Court of the  
4 United States,” and relied on “unreasonable determination[s] of the facts” in light of the record before it.  
5 *See* 28 U.S.C. § 2254(d). At this point, Masters has spent more than thirty years incarcerated on death  
6 row for a crime he did not commit, after a trial tainted by multiple violations of his clearly-established  
7 federal constitutional rights. His death sentence rests on testimony, since recanted, from witnesses whom  
8 even the State acknowledges were “professional” liars. Yet even as the State presented its testimony in  
9 its death-penalty case against Masters, it kept the jury from hearing evidence that exonerated Masters,  
10 including testimony that other inmates had confessed to their own roles in the crime the State attributed  
11 to Masters. It would be a miscarriage of justice to execute Masters on this evidentiary record, with these  
12 fundamental procedural flaws. That State’s Answer hardly defends this case. Like the California Supreme  
13 Court’s and trial court’s decisions in Masters’s case, the Answer ignores key precedent of the Supreme  
14 Court of the United States, contravenes precedent of the United States Court of Appeals for the Ninth  
15 Circuit, disregards critical facts, and ignores the material prejudice to Masters’s trial defense.

16 ***First***, the arguments that the State raises in its Answer cannot justify the trial court’s unreasonable  
17 decisions to exclude the Richardson or Drume Confessions<sup>1</sup> in violation of Masters’s federal due process  
18 and jury trial rights. In *Chambers v. Mississippi*, 410 U.S. 284 (1973), the United States Supreme Court  
19 established that state evidentiary rules cannot abridge a criminal defendants’ due process right to put on a  
20 defense. This is especially so for evidence of confessions by individuals other than defendants, which are  
21 among the most compelling and critical types of evidence that can be offered. To admit such evidence,  
22 *Chambers* instructs that confessions need only some indicia of reliability, not that those confessions be

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<sup>1</sup> The Richardson Confessions includes (a) confessions by Harold Richardson—an unindicted co-conspirator—exculpating Masters, reflected in a memorandum prepared by correctional officer Jean Ballatore and a letter written by Richardson to Ballatore after a judge warned Richardson his statements could be used against him, and (b) testimony from Ballatore, Lieutenant Spangler, and Lieutenant Echeverria regarding the contents of and circumstances surrounding the Richardson confessions (collectively, “Richardson Confessions”). Pet. for Writ of Habeas Corpus (“Pet.”) ¶¶ 37–38, 41. And the Drume Confessions includes (a) a memorandum memorializing a meeting between Drume and prosecution investigators, which included statements exculpating Masters, and (b) consistent exculpatory statements made to a defense investigator (collectively, “Drume Confessions”). *Id.* ¶ 99–101. Other capitalized terms not defined herein have the same meaning given in Masters’s Petition for Writ of Habeas Corpus (“Petition”).

1 deemed credible or truthful by the trial court before the jury can hear them. Indeed, clearly-established  
2 federal law mandates that factual questions of credibility and truthfulness, especially in capital trials, are  
3 for the jury, and are not within the trial court’s purview to resolve. The California Supreme Court’s  
4 decision affirming exclusion of the Richardson and Drume Confessions demonstrates that open factual  
5 questions existed regarding Richardson’s Confessions, yet the trial court and California Supreme Court  
6 unconstitutionally invaded the province of the jury by making unreasonable, speculative—and baseless—  
7 findings that those confessions were not believable. In defending those unreasonable rulings, the State  
8 hypocritically argues that the lapse in time between the crime and the confessions is reason enough to find  
9 the confessions unreliable, yet one of the State’s own primary witnesses came forward with information  
10 about the crime *years after* the excluded confessions were made. The State also ignores key facts  
11 demonstrating the reliability of those confessions, and the criticality of those confessions to Masters’s  
12 defense. Masters is therefore entitled to habeas relief under *Chambers*.

13 ***Second***, the State’s arguments confirm that the California Supreme Court unreasonably applied  
14 *Brady v. Maryland*, 373 U.S. 83 (1963), in holding that the suppression of key facts at Masters’s trial—  
15 including that a key witness linking Masters to the conspiracy to kill Sergeant Burchfield was a  
16 “professional liar”—did not prejudice Masters’s defense. The State does not dispute that the facts,  
17 including significantly exculpatory evidence, detailed in the Petition were suppressed by the trial  
18 prosecution team, or that these facts were favorable to Masters’s defense. But, like the California Supreme  
19 Court, the State considers each type of suppressed evidence individually and in isolation, arguing that  
20 each piece of particular evidence might be immaterial standing alone. Those conclusions are wrong on  
21 their own terms. They are also fundamentally wrong, though, because they fail to assess the materiality  
22 of the suppressed evidence on the cumulative basis required by clearly-established United States Supreme  
23 Court precedent. *See Kyles v. Whitley*, 514 U.S. 419, 436–37 (1995). The State’s contentions regarding  
24 materiality of this evidence are baseless. The State exaggerates the strength of Masters’s efforts to cross  
25 examine the State’s witnesses at trial and downplays the importance of evidence of a key witness’s history  
26 of providing false information to law enforcement when it suited his interests. These arguments cannot  
27 refute Masters’s claim for relief under *Brady*.

1           **Third**, both the State and the California Supreme Court’s opinions misapply the United States  
2 Supreme Court’s decision in *Napue v. Illinois*, 360 U.S. 264 (1959). The State emphasizes its position  
3 that the prosecutors here had no actual knowledge of false information presented against Masters at trial,  
4 but the State ignores that *Napue* also bars the introduction of testimony that prosecutors **should know** to  
5 be false. *See Hayes v. Brown*, 399 F.3d 972, 984 (9th Cir. 2005). The Petition makes clear that prosecutors  
6 were on notice and should have known that one of their key witnesses was presenting false information  
7 against Masters. This includes false claims that the witness had not received any benefits in exchange for  
8 his testimony and had only limited contacts with a law enforcement officer who, in reality, regularly used  
9 the witness as an informant. Indeed, the prosecution specifically promised the witness a sentencing  
10 postponement for an unrelated conviction in exchange for testimony against Masters. As a result, this  
11 Court should grant *habeas* relief under *Napue*.

12           **Fourth**, contrary to the State’s assertions, the Petition demonstrates Masters’s innocence, and such  
13 innocence warrants *habeas* relief. The State argues that this Court may not retroactively apply a new rule  
14 recognizing actual innocence claims to Masters’s case, but this argument ignores that substantive  
15 constitutional rules apply retroactively on federal collateral review. Recognition of such a rule would be  
16 appropriate in this case. For three decades, the State has deprived Jarvis Jay Masters of his freedom.  
17 Jarvis Jay Masters is many things—an internationally published author, a mentor, a friend, a man who has  
18 overcome a difficult childhood—but he is not a murderer. The overwhelming evidence shows that  
19 Masters’s conviction was based on false testimony and rests on unreasonable factual and legal  
20 determinations by the California Supreme Court. Both of the State’s witnesses who directly testified about  
21 Masters’s alleged role have recanted. Moreover, several witnesses have now confirmed that Masters did  
22 not in fact author the two notes allegedly linking him to the conspiracy. Other individuals have confessed  
23 to the very roles attributed to Masters in the conspiracy. At bottom, in the face of the evidence that Masters  
24 did not commit the crime for which he is sentenced to death, the State argues that the continued deprivation  
25 of Masters’s freedom and, eventually, his life, is of no constitutional significance for this Court.

26           The State’s arguments against Masters’s innocence are equally unpersuasive. The State dismisses  
27 record evidence made in support of Masters’s *habeas* claims as “11th hour statements . . . appropriately  
28 viewed with suspicion,” Answer at 41, but ignores that Richardson and Drume confessed to playing



1 various roles in the Burchfield murder attributed to Masters well before one of the State’s own key trial  
 2 witnesses, Bobby Evans, ever came forward. The State also emphasizes that the testimony of Rufus  
 3 Willis, its other key trial witness, was corroborated by other evidence, *id.* at 2, but asks this Court to ignore  
 4 that his subsequent recantation was forcefully corroborated by several witnesses. Finally—and  
 5 remarkably—the State’s Answer even attacks the credibility of its own trial witnesses by relying on the  
 6 referee’s conclusion in Masters’s state habeas case that Evans was a “chronic liar,” *id.* at 33, and that  
 7 Willis’s recantation was “unbelievable” due to his “lack of credibility.” *Id.* at 37 (quoting *In re Masters*,  
 8 7 Cal. 5th 1054, 1067 (2019)). The State’s inconsistent arguments further show that the deprivation of  
 9 fundamental due process protections has led to the conviction of an innocent man. On this record,  
 10 including the record of constitutional deficiencies in Masters’s trial, the Court should grant relief.

### 11 ARGUMENT

#### 12 **I. CLAIM 1 – THE CALIFORNIA SUPREME COURT APPLIED A STANDARD** 13 **CONTRARY TO *CHAMBERS V. MISSISSIPPI* AND UNREASONABLY APPLIED** 14 ***CHAMBERS* AND CLEARLY-ESTABLISHED DUE PROCESS RIGHTS BY** 15 **EXCLUDING HAROLD RICHARDSON’S CONFESSION**

16 Masters is entitled to habeas corpus relief because excluding evidence regarding the involvement  
 17 of Harold Richardson—an unindicted co-conspirator—in Sergeant Burchfield’s murder violated clearly-  
 18 established law under *Chambers v. Mississippi*, 410 U.S. 284 (1973), and the California Supreme Court  
 19 was unreasonable to find otherwise. The excluded evidence included (a) confessions by Richardson,  
 20 exculpating Masters, reflected in a memorandum prepared by correctional officer Jean Ballatore and in a  
 21 letter written by Richardson to Ballatore after a judge warned Richardson his statements could be used  
 22 against him, and (b) testimony from Ballatore, Lieutenant Spangler, and Lieutenant Echeverria regarding  
 23 the contents of, and circumstances surrounding, the Richardson confessions. Pet. ¶¶ 37–38, 41.

24 In its Answer, the State argues that the trial court’s exclusion of the Richardson Confessions was  
 25 not a *Chambers* violation because the evidence regarding his involvement in the murder was “unreliable”  
 26 and the other admitted evidence “did not completely preclude [Masters] from pursuing the defense that he  
 27 was wrongly accused.” See Answer at 20 (quoting *People v. Masters*, 62 Cal. 4th 1019, 1079 (2016)). The  
 28 State also argues that Masters’s ability to present evidence suggesting alternative suspects demonstrates

1 that the Richardson Confessions were not critical to Masters’s defense. *See id.* at 20, 22. Each of these  
2 arguments are meritless; the record demonstrates the fundamental constitutional errors below.

3 Contrary to the State’s assertions, the Richardson Confessions bore numerous indicia of reliability,  
4 and, before his life is taken, Masters has a constitutional right to have a *jury* determine whether those  
5 confessions are ultimately believable. Further, there can be no serious dispute that the confessions were  
6 critical to Masters’s defense, as the United States Supreme Court has made clear that there is no evidence  
7 more powerful than a confession, and the trial court itself in this case acknowledged that such evidence  
8 would be extremely significant to Masters. Accordingly, the Court should grant Masters’s petition for  
9 writ of habeas corpus on his first claim.

10 **A. The State’s Arguments That the Richardson Confessions Were Unreliable Are**  
11 **Meritless.**

12 In *Chambers*, the defendant “sought to introduce the testimony of three individuals to whom a  
13 third party had confessed to committing the murder for which [the defendant] was on trial.” *Lunbery v.*  
14 *Hornbreak*, 605 F.3d 754, 760 (9th Cir. 2010); *see also Chambers*, 410 U.S. at 300–01. The *Chambers*  
15 court found this testimony sufficiently reliable so as to necessitate jury consideration because it (1) was  
16 made spontaneously shortly after the murder; (2) was corroborated by some other evidence in the case;  
17 (3) was self-incriminatory; and (4) the third party who had confessed was available for cross-examination.  
18 *See* 410 U.S. at 300–01. Although courts consider these factors when deciding whether excluding  
19 evidence violated *Chambers*, the evidence need not meet all of these factors to require allowing the  
20 defendant to put it before the jury. *See, e.g., Green v. Georgia*, 442 U.S. 95, 96–97 (1979) (reversing a  
21 conviction because a confession by a third party witness was excluded); *Lunbery*, 605 F.3d at 761–62  
22 (same); *Chia v. Cambra*, 360 F.3d 997, 1001–02, 1004 (9th Cir. 2004) (same).

23 The State argues that the Richardson Confessions are unreliable because Richardson was not  
24 available for the State to cross-examine; there was a time lag between the murder and the Richardson  
25 Confessions; several notes (“kites”) relating to the murder were written by the three co-defendants—  
26 Masters, Lawrence Woodard, and Andre Johnson—but not by Richardson; and Masters’s affirmative  
27 evidence at the reference hearing for his state habeas petition “does little to bolster Richardson’s  
28 credibility.” *See Answer* at 19, 22–23. Upon review of the totality of the evidence, each of these

1 arguments is meritless and ignores the substantial indicia of reliability of the Richardson Confessions.  
2 Even the California Supreme Court acknowledged the potential truth of the Richardson Confessions. Its  
3 decision to affirm the trial court's exclusion of the Richardson Confessions thus went far beyond its  
4 constitutionally permissible role, and usurped the jury's role to determine the credibility of a witness.

5 **1. The State's Attacks on the Richardson Confessions Are Meritless.**

6 *First*, the crux of the State's argument against reliability is that Richardson did not confess to the  
7 crime until August 1986, just over a year after the murder of Sergeant Burchfield and after murder charges  
8 had been filed against Masters and his co-conspirators. *See id.* at 19. While the passage of time between  
9 a confession and the crime is a factor courts consider when assessing reliability under *Chambers*, it is just  
10 one consideration and is by no means dispositive here because of the substantial indicia of reliability that  
11 exist.

12 The Richardson Confessions have significant indicia of reliability, all of which are ignored by the  
13 State (and the California Supreme Court). The Richardson Confessions were consistent with substantial  
14 evidence offered by the State, including testimony from the State's primary witness identifying an  
15 individual who looked like Richardson and nothing like Masters as the fourth Black Guerilla Family  
16 ("BGF") member who planned the Burchfield murder, and whose statements were consistent with the  
17 State's list of and roles attributed to ten co-conspirators in the attack. Pet. ¶ 39 (citing 8 PHRT 8383–87,  
18 8389). The Richardson Confessions are further corroborated by Richardson's admission to another  
19 inmate—Broderick Adams—that he "cleaned up [his] tracks and they got some other motherfuckers for  
20 [the murder]." *Id.* (citing 71 RT 15773). All of this corroboration favors finding that the Richardson  
21 Confessions are sufficiently reliable as to require that a jury have had the opportunity to consider them.  
22 *See Chia*, 360 F.3d at 1006 ("When a defendant seeks to introduce an out-of-court statement, the  
23 corroboration of the contents of that statement with other evidence is a factor weighing in favor of its  
24 reliability." (citing *Chambers*, 410 U.S. at 300)).

25 The Richardson Confessions were also inherently reliable because they were against Richardson's  
26 penal interest and subjected him to hatred, ridicule, and social disgrace. *See Williamson v. United States*,  
27 512 U.S. 594, 599 (1994) ("[R]easonable people, even reasonable people who are not especially honest,  
28 tend not to make self-inculpatory statements unless they believe them to be true."); *Chia*, 360 F.3d at

1 1004–05 (citing Fed. R. Evid. 904(b)(3)) (“Self-inculpatory statements have long been recognized as  
2 bearing strong indicia of reliability.”). On direct appeal, the California Supreme Court *agreed* that the  
3 Richardson Confessions qualified as statements against penal interest. *People v. Masters*, 62 Cal. 4th at  
4 1056; *see also* Answer at 19. Yet, it ignored the significance of that determination.

5 Critically, after Richardson was warned he was at risk of prosecution in the case (which he knew  
6 had led to a death sentence) by making statements regarding the murder, he doubled down and confirmed  
7 the confessions. Pet. ¶¶ 52–56. Although investigators initially told Richardson that his statements  
8 regarding the murder would not be used against him, at an *in camera* hearing pursuant to section 1041 of  
9 the California Evidence Code, the Magistrate Judge explicitly admonished Richardson that contrary to  
10 previous representations, his statements could be used against him and he could be charged as a co-  
11 conspirator in the case. *Id.* ¶ 52 (citing 1 CT 240; 9 CT 2507). Nonetheless, after receiving this  
12 information, Richardson wrote a letter to Ballatore that reaffirmed his involvement in Sergeant  
13 Burchfield’s murder, provided additional details regarding the murder and corrected portions of  
14 Ballatore’s memorandum. *Id.* ¶ 55. Richardson also offered on multiple occasions to take a polygraph  
15 examination. *Id.* ¶ 69 (citing Pet. Ex. 54-A at 000001, 2, 8, 12). These indicia sufficiently demonstrate  
16 that the Richardson Confessions bore sufficient assurances of reliability under *Chambers*.

17 The State’s position that Richardson’s confession came too late to be reliable defies reason, given  
18 that one of the State’s primary witnesses, Bobby Evans, did not come forward until long after charges  
19 were filed against Masters—*four years* after the murder and almost *three years* after Richardson  
20 confessed—and after being sentenced for a different crime. *See id.* ¶¶ 45, 134. The hypocrisy of the  
21 State’s ability to rely upon Evans, while Masters could not even present the Richardson Confessions,  
22 further underscores why the exclusion of the Richardson Confessions cannot stand. It is fundamentally  
23 unjust—and unconstitutional—to allow the State to secure a conviction based on testimony no more  
24 reliable than that which the defendant was barred from presenting. The California Supreme Court was  
25 unreasonable to conclude otherwise.

26 **Second**, the State contends the Richardson Confessions lacked indicia of reliability because  
27 Richardson was unavailable to testify. *See* Answer at 22. But courts, including the United States Supreme  
28 Court, consistently find *Chambers* violations involving excluded confessions of unavailable witnesses.

1 *See, e.g., Green*, 442 U.S. at 96–97 (holding that a state court violated *Chambers* when it excluded  
2 previous testimony by an unavailable third party who had reported that an individual other than the  
3 defendant had confessed to the murder); *Lunbery*, 605 F.3d at 761–62 (granting habeas corpus relief  
4 because the state court unreasonably applied *Chambers* when it excluded a report of a statement made by  
5 an unavailable third party that his partners, alternate suspects, committed the murder); *Chia*, 360 F.3d at  
6 1001–02, 1004 (granting habeas corpus relief because the state court unreasonably applied *Chambers*  
7 when it excluded evidence of four statements made by an unavailable third party confessing to the crime,  
8 and exculpating the defendant). Notably, the State fails to address *Green*, *Lunbery*, and *Chia*, which  
9 involved excluded statements that, like the Richardson Confessions, were corroborated by other evidence  
10 provided by the State. Accordingly, it was unreasonable for the California Supreme Court to fail to  
11 recognize that the Richardson Confessions bore sufficient assurances of reliability under *Chambers*.

12 **Third**, the State contends that Masters’s affirmative evidence at the reference hearing for his state  
13 habeas petition did “little to bolster Richardson’s credibility.” *See Answer* at 22–23. According to the  
14 State, none of the kites at issue were written by Richardson, and they were identified as being written by  
15 the three co-defendants. *See id.* at 22. This is of no consequence. Willis’s own sworn declaration explains  
16 that the kites copied by Masters were inaccurate and were copied at his order because of the murder  
17 investigation. *See Pet.* ¶ 187 (citing HC Pet. Ex. 1 ¶¶ 10–12, 14–15). This was corroborated through  
18 expert analysis that Masters handwrote but did not author the kites. *Id.* ¶ 189. Willis’s declaration also  
19 explains that it was common practice for BGF members to copy kites that they did not actually author.  
20 *Id.* ¶ 187. Thus, the accuracy and reliability of the kites is speculative.

21 The State also notes that Richardson’s failure to mention Charles Drume and Michael Rhinehart,  
22 who testified about passing notes regarding the murder, cuts against Richardson’s credibility. *Answer* at  
23 22–23. But the Richardson Confessions included all of the planners of the conspiracy. *See id.* ¶¶ 46–51,  
24 55. There is a material difference between being a participant in a conspiracy and one of the planners of  
25 that conspiracy, and it is clear that Drume and Rhinehart were mere participants (as both were ordered,  
26 rather than affirmatively choosing, to play roles in it). *See id.* ¶¶ 90–91, 101; 52 RT 12766 (AG026889).  
27 Accordingly, the exclusion of Drume and Richardson from the Richardson Confession does not cut against  
28 Richardson’s credibility.

1           **Finally**, the State fails to address directly applicable precedent of the Ninth Circuit in *Cudjo v.*  
 2 *Ayers*, 698 F.3d 752 (9th Cir. 2012). Like *Masters*, the petitioner in *Cudjo* had been convicted of murder  
 3 after the exclusion of evidence that another person had confessed to the crime. *Id.* at 756-57. In finding  
 4 that the California Supreme Court’s decision affirming the conviction was contrary to clearly-established  
 5 United States Supreme Court precedent, the Ninth Circuit emphasized that *Cudjo* was materially  
 6 indistinguishable from the United States Supreme Court’s decision in *Chambers*, as “[i]n both cases, the  
 7 alternate suspect had allegedly previously confessed to the crime; the defense was prevented from cross-  
 8 examining the alternate suspect at trial; and the trial court's application of the hearsay rules prevented the  
 9 defendant's witness from testifying to the alternate suspect's confession.” *Id.* at 765-66. Each of these  
 10 factors is similarly present in *Masters*’s case: Richardson confessed to playing *Masters*’s role in the  
 11 Burchfield killing and was unavailable for cross-examination due to his invocation of the Fifth  
 12 Amendment, and *Masters* could not introduce other evidence of his confession due to the hearsay rule.  
 13 *See* Pet. ¶¶ 60-61, 64. Moreover, while the California Supreme Court had expressly found that the  
 14 confession in *Cudjo* was reliable, for the reasons stated above its finding to the contrary in this case was  
 15 unreasonable. *See Cudjo*, 698 F.3d at 758; *supra* at 7-8. Accordingly, the Ninth Circuit’s decision in  
 16 *Cudjo* governs and requires an identical result in *Masters*’s case.

17           **2. The California Supreme Court’s Opinion Acknowledges the Potential Truth**  
 18           **in the Richardson Confessions, and Therefore Its Decision Usurped the Role**  
 19           **of the Jury.**

20           While *Chambers* requires that courts analyze indicia of trustworthiness of excluded evidence, this  
 21 is limited to “general observations” of trustworthiness, such as when evidence is demonstrably false, *e.g.*,  
 22 when a witness has repeatedly contradicted the proffered testimony. *See United States v. Sepulveda*, 937  
 23 F.2d 614, 1991 WL 127652, at \*4 (9th Cir. 1991) (Table). It does not allow courts to usurp the role of the  
 24 jury by making the ultimate decision on credibility when there is no evidence of demonstrable falsity. *See*  
 25 *Cudjo*, 698 F.3d at 763; *cf. United States v. Foster*, 711 F.2d 871, 882 (9th Cir. 1983) (“Credibility  
 26 determinations, however, are matters for the jury.” (citing *Brady*, 579 F.2d at 1127)). Here, there is no  
 27 such evidence. To the contrary, the California Supreme Court acknowledged there was evidence  
 28 supporting the conclusion that Richardson could have had personal knowledge and no motive to fabricate  
 the Richardson Confessions, and therefore, improperly acted as a factfinder as opposed to a gatekeeper

1 for reliability. The California Supreme Court’s rejection of the testimony because it *could have* been false  
2 applied a standard that is “contrary to” and an “unreasonable application” of clearly-established United  
3 States Supreme Court precedents. 28 U.S.C. § 2254(d)(1). This alone is sufficient to demonstrate the  
4 California Supreme Court’s unreasonable application of well-established federal law, and to grant Masters  
5 habeas corpus relief.

6 **B. There Can Be No Serious Dispute That the Richardson Confessions Were Critical to**  
7 **Masters’s Defense.**

8 Far from supporting the rejection of Masters’s Petition, the State’s Answer demonstrates that the  
9 California Supreme Court’s analysis of whether the Richardson Confessions were critical to Masters’s  
10 defense was flawed. *See* Answer at 20. Nobody can seriously dispute that the Richardson Confessions  
11 were critical to Masters’s defense; the trial court even acknowledged their significance. *See* Pet. ¶ 83 (the  
12 trial court stated “[i]f you were Mr. Masters, I think you would consider them extremely significant”  
13 (quoting 08-08-88 RT 57)). In fact, courts have repeatedly acknowledged the power and importance of  
14 confessions. *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) (noting “[a] confession is like no other  
15 evidence” and “[c]ertainly, confessions have profound impact on the jury, so much so that we may  
16 justifiably doubt its ability to put them out of mind even if told to do so”). Indeed, the Ninth Circuit, in  
17 holding that an attorney’s refusal to present a third party confession constituted ineffective assistance of  
18 counsel, noted that third party confessions are the “most powerful exculpatory evidence available to a  
19 defense attorney representing a client in a capital murder case . . . .” *Farmer v. Ratelle*, 131 F.3d 146 (9th  
20 Cir. 1997).

21 The State contends that Masters had the ability to impeach the State’s witnesses and present  
22 evidence that others may have conspired to murder Sergeant Burchfield, and thus, the Richardson  
23 Confessions were not critical to Masters’s defense because “the trial court’s rulings *did not completely*  
24 *preclude him* from pursuing the defense that he was wrongly accused.” *People v. Masters*, 62 Cal. 4th at  
25 1079 (emphasis added); *see* Answer at 20. In other words, the State is arguing that unless a court renders  
26 the defendant “completely” unable to defend himself, there is no violation. But clearly-established  
27 constitutional law requires fundamental fairness, *i.e.*, “a full and fair opportunity to present evidence in  
28 his defense.” *See Chia*, 360 F.3d at 1005; *Chambers*, 410 U.S. at 294. A State cannot meet its burden of

1 fundamental fairness by justifying the exclusion of powerful defense evidence on the ground that the  
 2 defendant was allowed to partially put on a defense. This is especially so when the defense presented was  
 3 weaker than the defense evidence excluded.

4 Indeed, in *Chambers*, the United States Supreme Court held that the defendant’s inability to  
 5 present witnesses to discredit an alternate suspect and his repudiation of his previous confessions to the  
 6 crime violated the Constitution. *See* 410 U.S. at 294. Even though the defendant was able to “chip[] away  
 7 at the fringes of [that alternate suspect’s] story by introducing admissible testimony from other sources,”  
 8 the defendant’s “defense was *far less persuasive* than it might have been had he been given an opportunity  
 9 to subject [the alternate suspect’s] statements to cross-examination or had the other confessions been  
 10 admitted.” *Id.* (emphasis added). Thus, *Chambers* itself demonstrates the extent to which the California  
 11 Supreme Court misconstrued and misapplied *the clearly-established law*.

12 **II. CLAIM 2 – THE CALIFORNIA SUPREME COURT APPLIED A STANDARD**  
 13 **CONTRARY TO *CHAMBERS V. MISSISSIPPI* AND UNREASONABLY APPLIED**  
 14 ***CHAMBERS* AND CLEARLY-ESTABLISHED DUE PROCESS RIGHTS BY**  
 15 **EXCLUDING CHARLES DRUME’S CONFESSION**

16 As with the Richardson Confessions, Masters is entitled to habeas corpus relief because the  
 17 California Supreme Court acted contrary to and unreasonably applied *Chambers v. Mississippi* when it  
 18 upheld the exclusion of evidence from Drume—another unindicted co-conspirator—regarding his  
 19 involvement in Sergeant Burchfield’s murder. This evidence included (a) a memorandum memorializing  
 20 a meeting between Drume and prosecution investigators, which included statements inculcating himself  
 21 and exculpating Masters, and (b) consistent exculpatory statements made to a defense investigator. Pet. ¶  
 22 99–101. The State’s arguments that the California Supreme Court properly affirmed the trial court’s  
 23 decisions to exclude the Drume Confessions are identical to its arguments in favor of excluding the  
 24 Richardson Confessions. *See* Answer at 24–25. And, just as with the Richardson Confessions, *see supra*  
 25 Section I, the State’s arguments as to the Drume Confessions misconstrue and misapply United States  
 26 Supreme Court jurisprudence.

27 *First*, as with the Richardson Confessions, the fact that Drume confessed two and a half years after  
 28 the murder does not indicate unreliability, *see* Answer at 24, both because of the Drume Confessions’



1 multiple other existing indicia of reliability, and especially given the State’s heavy reliance on a witness  
2 (Evans) who came forward almost *two years* after Drume. *See supra* at 7.

3 In its Answer, the State simply ignores the Drume Confessions’ numerous indicia of reliability.  
4 As the California Supreme Court noted, the Drume Confessions are statements against penal interest. *See*  
5 *People v. Masters*, 62 Cal. 4th at 1058 (“The parties do not dispute Drume’s . . . statements were against  
6 his penal interest.”); *see also* Pet. ¶ 104; *Williamson*, 512 U.S. at 599 (“[R]easonable people, even  
7 reasonable people who are not especially honest, tend not to make self-inculpatory statements unless they  
8 believe them to be true.”); *Chia*, 360 F.3d at 1004–05 (citing Fed. R. Evid. 904(b)(3)) (“Self-inculpatory  
9 statements have long been recognized as bearing strong indicia of reliability.”). Drume has repeatedly  
10 and consistently confessed that he, not Masters, manufactured the weapon used to kill Sergeant Burchfield,  
11 Pet. ¶ 97, and has even sworn to this under penalty of perjury in an affidavit, *id.* ¶ 108.

12 The State also ignores the other evidence corroborating the Drume Confessions. *See Chia*, 360  
13 F.3d at 1006 (“When a defendant seeks to introduce an out-of-court statement, the corroboration of the  
14 contents of that statement with other evidence is a factor weighing in favor of its reliability.” (citing  
15 *Chambers*, 410 U.S. at 300)). For example, Drume was caught on numerous occasions making or  
16 possessing weapons like the ones he confesses to having made for Sergeant Burchfield’s murder. In  
17 March 1985, shortly before Sergeant Burchfield’s death, San Quentin authorities found weapon stock in  
18 Drume’s cell. Pet. ¶ 107 (citing 17 CT 5089). And when Drume confessed to the authorities soon after  
19 Sergeant Burchfield’s death that he was involved in another planned attack against a second guard, Drume  
20 had additional weapons, which he turned over to the authorities. *Id.* (citing HC Pet. Ex. 4 ¶ 5).

21 **Second**, as with the Richardson Confessions, the alleged inconsistencies between the Richardson  
22 Confessions and the Drume Confessions, as well as between the Drume Confessions and Masters’s other  
23 affirmative evidence, is not dispositive. Significantly, both the Richardson and Drume Confessions  
24 mentioned only the key planners of the murder. Leaving out other participants in the murder did not,  
25 therefore, demonstrate that the confessions were false. And, the Drume Confessions’ possible conflict  
26 with BGF protocol prohibiting the passing of weapons between tiers (which may or may not have been  
27 adhered to that night) does not undermine all the existing indicia of reliability, and does not show that the  
28 Drume Confessions are demonstrably false to the point that Masters had no right to present his exculpatory

1 evidence to the jury. Thus, because these inconsistencies do not demonstrate that the Drume Confessions  
2 were false, and because of their multiple indicia of reliability, they should have been weighed by the jury.  
3 *See Cudjo*, 698 F.3d at 763; *supra* Section IA.

4 ***Third***, similar to Richardson, the unavailability of Drume for cross-examination does not render  
5 the Drume Confessions unreliable; many courts, including the United States Supreme Court, have found  
6 *Chambers* violations involving excluded confessions of unavailable witnesses. *See supra* Section IA.

7 ***Finally***, as with Richardson, it was unreasonable to find that the confession was not critical to the  
8 defense on the ground that Masters was allowed to defend himself through impeachment efforts and  
9 through his own testimony. Those tools are far cries from actual evidence about the person who was  
10 involved in the murder and exculpated Masters. *See supra* Section IB. This is by no means harmless  
11 error. Therefore, excluding the Drume Confessions constituted a decision that was contrary to, and was  
12 an unreasonable application of, *Chambers*.

13 **III. CLAIM 3 – THE CALIFORNIA SUPREME COURT’S FINDING THAT EVIDENCE**  
14 **WITHHELD FROM MASTERS WAS NOT MATERIAL UNREASONABLY APPLIED**  
15 ***BRADY V. MARYLAND* AND ITS PROGENY**

16 Masters is also entitled to habeas relief because the California Supreme Court unreasonably  
17 applied federal law clearly established by the Supreme Court of the United States in *Brady v. Maryland*,  
18 373 U.S. 83 (1963), and its progeny. In its Answer, the State does not dispute that four critical facts  
19 identified in the Petition were suppressed by the government or that they were favorable to Masters’s  
20 defense. Instead, the State relies on the California Supreme Court’s finding that each of these facts, on its  
21 own, was not material. On their own terms, these conclusions are indefensible. But more generally, the  
22 court’s analysis ignores *Brady*’s requirement that the materiality of suppressed evidence be considered  
23 ***cumulatively***, not on an item-by-item basis. The State also fails to address the fact that the suppressed  
24 evidence impeached one of its key trial witnesses, and its reliance on Masters’s cross-examination ignores  
25 the fact that the suppressed evidence—which included the fact that the witness was a “professional liar”  
26 who often provided false information to law enforcement—was far more damaging to the witness’s  
27 credibility than the limited evidence available to the defense that was introduced in the cross-examination.  
28 Following the required approach of cumulative review leaves no doubt that a *Brady* violation occurred,

1 and the California Supreme Court decision to the contrary was unreasonable under well-established  
2 federal law determined by the Supreme Court of the United States.

3 **A. It Is Undisputed That the State Withheld Exculpatory Information to Masters’s**  
4 **Defense Regarding Evans’s Motivations to Lie for the State.**

5 The State does not dispute that it withheld evidence favorable to Masters. Masters’s *Brady* claims  
6 are based on four withheld facts: (i) that Bobby Evans, a key government witness, had consistently  
7 provided false information to the State; (ii) that Evans had an extensive relationship with a State Parole  
8 Officer, James Hahn, that led to Officer Hahn referring Evans for paid informant work to other law  
9 enforcement agencies; (iii) that Officer Hahn expressly promised to postpone Evans’s sentencing in an  
10 unrelated case to obtain Evans’s testimony against Masters; and (iv) that Evans was a suspect in the murder  
11 of James Beasley, Sr. when he testified at Masters’s trial. Pet. ¶ 124. The State acknowledges that the  
12 referee in Masters’s state habeas proceedings “found that the state did not fully disclose the extent of  
13 Evans’s relationship with Hahn.” Answer at 32. It also acknowledges that Evans was a “professional  
14 liar” who had “provided inaccurate information on multiple occasions,” that Evans received express  
15 promises of sentencing postponements in exchange for his testimony, and that Evans was a suspect in the  
16 murder of James Beasley, Sr., Answer at 27, 29, 30, and does not contend that these facts were disclosed  
17 to Masters. Moreover, the State does not dispute that the undisclosed evidence could have been used to  
18 impeach Evans’s testimony at trial, and accordingly the withheld evidence was favorable to the defense.  
19 *See United States v. Bagley*, 473 U.S. 667, 676 (1985) (“Impeachment evidence, however, as well as  
20 exculpatory evidence, falls within the *Brady* rule.”). Therefore, the only element of a *Brady* violation that  
21 remains at issue is the prejudice, or materiality, element. *See Benn v. Lambert*, 283 F.3d 1040, 1053 n.9  
22 (9th Cir. 2002) (“The terms ‘material’ and ‘prejudicial’ are used interchangeably in *Brady* cases.”).

23 **B. Evans’s Motivation to Lie for the State Was Material.**

24 **1. Evans Was Critically Important to the State’s Case Against Masters.**

25 The State, like the California Supreme Court, ignores clearly-established precedent on the  
26 materiality of suppressed evidence. The United States Supreme Court has repeatedly found *Brady*  
27 materiality in cases involving key government witnesses. *See, e.g., Banks v. Dretke*, 540 U.S. 668, 701  
28 (2004) (involving a witness whose “testimony was the centerpiece of [the] prosecution's penalty-phase

1 case”); *Kyles*, 514 U.S. at 441 (“The State rated [one of the witnesses at issue in the *Brady* claim] as its  
2 best witness.”); *see also Horton v. Mayle*, 408 F.3d 570, 581 (9th Cir. 2005) (noting this “recurrent theme”  
3 in the United States Supreme Court’s cases on *Brady* materiality). Here, Evans was one of the most crucial  
4 government witnesses against Masters; as the State explains, Evans and Willis were the only two witnesses  
5 who could specifically testify about Masters’s alleged role in the conspiracy to kill Sergeant Burchfield.  
6 *See generally* Answer at 4–10. Furthermore, while the State attempts to characterize Evans’s testimony  
7 as merely corroborating Willis’s testimony, *id.* at 2–3, it fails to mention that the jury specifically  
8 requested a “readback” of Evans’s testimony during deliberations. 78 RT 16906:3–10 (AG030917). In  
9 contrast, the jury did not similarly show interest in rehearing the testimony of any other witness, including  
10 Willis, during the guilt phase. Similarly, the State does not address the fact that Officer Hahn later wrote  
11 an official memorandum reporting that Evans’s testimony “obviously caused damage to the defense” and  
12 may have been “*the crucial factor* in the outcome of the trial.” HC Pet. Ex. 11 at 2 (AG046248) (emphasis  
13 added). Evans was undeniably one of the key witnesses against Masters, and impeachment evidence  
14 against him—especially the fact that he was a “professional liar” and a “bullshitter”—was of critical  
15 importance to the defense. 8 RHRT 432:21–433:8 (AG052031–32).

16 **2. The Cross Examination of Evans at Masters’s Trial Did Not Reduce the**  
17 **Materiality of the Withheld Evidence.**

18 The State argues that the withheld impeachment evidence against Evans is not material under  
19 *Brady* because “the jury heard about numerous other offenses committed by Evans.” Answer at 32. It  
20 also argues this shows that evidence of “some more interactions” with law enforcement would not have  
21 been reasonably likely to lead to a different outcome. *Id.* But this argument ignores two key concerns.  
22 First, “courts have repeatedly held that withheld impeachment evidence does not become immaterial  
23 merely because there is some other impeachment of the witness at trial.” *Gonzalez v. Wong*, 667 F.3d  
24 965, 984 (9th Cir. 2011); *see also Banks*, 540 U.S. at 702 (2004) (finding *Brady* materiality in spite of the  
25 State’s argument that the witness in question was “heavily impeached” at trial). Second, the suppressed  
26 evidence was far more helpful to the defense than the evidence introduced at Evans’s cross-examination.  
27 Evans’s cross-examination demonstrated that he was “a violent drug dealer and extortionist,” Answer at  
28 12, but the withheld evidence indicated that Evans was not merely a violent criminal, but also a

1 “professional liar” who provided “more false information than true information” to Officer Hahn. *In re*  
2 *Masters*, 7 Cal. 5th at 1062; 8 RHRT 449:15–20 (AG052048). This is an important distinction, as a matter  
3 of common sense and as a matter of law. From a common sense perspective, what jury would ever rely  
4 on the uncorroborated account of a witness who is known to *provide false information to the police more*  
5 *often than truthful information?* And as a matter of law, California courts recognize this when they hold  
6 that a dishonest character bears more directly on a witness’s credibility than does a violent or generally  
7 criminal character. *People v. Castro*, 38 Cal. 3d 301, 315 (1985) (“Obviously it is easier to infer that a  
8 witness is lying if the felony of which he has been convicted involves dishonesty as a necessary element  
9 than when it merely indicates a ‘bad character’ and ‘general readiness to do evil.’”); *People v. Federico*,  
10 127 Cal. App. 3d 20, 30 (1981) (affirming the exclusion of evidence that would portray a witness as “a  
11 violent person, rather than an untrustworthy witness”); *see also Green v. Bock Laundry Mach. Co.*, 490  
12 U.S. 504, 524 (1989) (noting the “[p]rodigious scholarship highlighting the irrationality and unfairness of  
13 impeaching credibility with evidence of felonies unrelated to veracity”). Accordingly, the State’s reliance  
14 on the impeachment evidence introduced at Evans’s cross-examination is misplaced.

15 **3. The State Improperly Fails to Assess the Collective Impact of the Suppressed**  
16 **Evidence.**

17 The State, like the California Supreme Court before it, also unreasonably fails to analyze the  
18 cumulative impact of the suppressed evidence. Under United States Supreme Court precedent, the  
19 materiality of *Brady* violations “turns on the cumulative effect of all such evidence suppressed by the  
20 government.” *Kyles*, 514 U.S. at 421; *see also Weary v. Cain*, 577 U.S. 385, 394 (2016) (per curiam)  
21 (noting that “the state postconviction court improperly evaluated the materiality of each piece of evidence  
22 in isolation rather than cumulatively”). In this case, the State and the California Supreme Court relied on  
23 the same item-by-item analysis that *Kyles* held to be improper. The California Supreme Court’s opinion  
24 addresses each withheld fact in turn and does not discuss the obvious reality that multiple suppressed facts  
25 have a greater cumulative effect. *In re Masters*, 7 Cal. 5th at 1088–89. Likewise, the State reviews each  
26 suppressed fact in turn but does not analyze their collective impact. *See Answer* at 29–32. As a result,  
27 the California Supreme Court’s decision is contrary to *Kyles*’s requirement that the *Brady* materiality of  
28 multiple suppressed facts should be “considered collectively, not item by item.” *Kyles*, 514 U.S. at 436.

1 Applying the proper collective standard to the suppressed facts confirms their materiality. The  
2 California Supreme Court acknowledged that Evans was able to maintain an “ongoing working  
3 relationship” with Officer Hahn that involved referrals to other law enforcement agencies for additional  
4 informant work. *In re Masters*, 7 Cal. 5th at 1087. When combined with Evans’s history of providing  
5 “more false information than true information,” 8 RHRT 449:15–20 (AG052048), the withheld  
6 information shows that Evans was willing and able to use false information to obtain benefits from law  
7 enforcement. Moreover, in light of their working relationship, Evans had obvious reason to credit Officer  
8 Hahn’s specific promises of sentencing postponements, *see People v. Masters*, 62 Cal. 4th at 1067–68,  
9 and accordingly had strong reason to believe that he would receive favorable treatment in exchange for  
10 testifying against Masters. Similarly, Evans’s relationship with Officer Hahn further shows that Evans  
11 could reasonably have expected leniency in connection with the Beasley murder, even in the absence of  
12 an explicit promise. In contrast, the jury merely heard that Evans had generally “asked for protection after  
13 giving the information,” Answer at 12, and not that Evans’s history with Hahn gave him reason to believe  
14 that he could expect such protection even in exchange for *false* information. Such specific information is  
15 far more indicative of falsehood than a generalized hope for protection, and the California Supreme Court  
16 unreasonably applied *Brady*’s materiality standard when it held that presenting it to a jury “would not  
17 have further undermined [Evans’s] credibility.” Answer at 32.

18 **IV. CLAIM 4 – THE CALIFORNIA SUPREME COURT UNREASONABLY APPLIED**  
19 ***NAPUE V. ILLINOIS* BY DENYING RELIEF DESPITE THE INTRODUCTION OF**  
20 **EVIDENCE THAT PROSECUTORS SHOULD HAVE KNOWN TO BE FALSE**

21 Masters is also entitled to habeas corpus relief because of the California Supreme Court’s  
22 unreasonable application of clearly-established federal law regarding the presentation of false evidence  
23 under *Napue v. Illinois*, 360 U.S. 264, 269 (1959). A due process violation based on the presentation of  
24 false evidence occurs when (1) the prosecutors presented or failed to correct testimony that was false; (2)  
25 the prosecutors knew or should have known of the falsehood; and (3) there is a reasonable probability that  
26 the testimony could have affected the outcome of the trial. *United States v. Agurs*, 427 U.S. 97, 103  
27 (1976). Masters’s *Napue* claims are based on the prosecution’s presentation of false evidence regarding  
28 Evans’s relationship with Officer Hahn and the benefits Evans received in exchange for his testimony  
against Masters. Pet. ¶ 173. In its Answer, the State does not dispute that Officer Hahn’s own knowledge

1 and the knowledge of other investigators imputes knowledge to the prosecution. The relationship between  
2 Hahn and Evans therefore gave prosecutors sufficient notice that Evans’s testimony was false. *Id.* ¶ 175.  
3 In addition to that error, the California Supreme Court wrongly held that the presentation of the false  
4 evidence was not material to Masters’s case. This conclusion unreasonably disregarded key facts that  
5 demonstrate the importance of the suppressed evidence. Accordingly, the California Supreme Court  
6 unreasonably applied *Napue*, and Masters is entitled to habeas relief on this claim.

7 **A. The California Supreme Court Unreasonably Applied *Napue* Because Prosecutors**  
8 **Should Have Known Evans’s Testimony Was False.**

9 The State’s argument that Masters cannot establish the knowledge element of *Napue* because he  
10 acknowledges that “the prosecutors did not *knowingly* present false evidence” is unavailing. Answer at  
11 34 (emphasis added). A *Napue* claim requires only that the prosecutors *should have known* that the  
12 evidence was false. See *Hayes v. Brown*, 399 F.3d 972, 984 (9th Cir. 2005). As described in the Petition,  
13 there is substantial evidence in the record that prosecutors should have known of Evans’s relationship with  
14 Officer Hahn and Evans’s status as a career government informant who often provided false information.  
15 See Pet. ¶¶ 142–153. Additionally, Officer Hahn also has admitted that in the half dozen or so cases he  
16 worked on with Evans, Evans gave Officer Hahn “more false information than true information.” 8 RHRT  
17 449:15–20 (AG052048). As the State notes in its answer, the California Supreme Court imputed  
18 knowledge of false evidence to the prosecution based on Officer Hahn and other investigators’ knowledge  
19 of Evans, see Answer at 34, and thus, the California Supreme Court unreasonably applied *Napue* when it  
20 required evidence of *actual* knowledge.

21 **B. The California Supreme Court Unreasonably Applied *Napue* Because the False**  
22 **Testimony Was Material.**

23 In the Answer, the State asserts that the jury “had ample evidence that Evans was a ‘snitch’ who,  
24 himself had committed multiple violent crimes with no fear of prosecution or punishment,” and thus,  
25 “[t]he addition of some interactions” would not create a reasonable likelihood of a different outcome in  
26 Masters’s trial. Answer at 34. Not so. To demonstrate a violation of *Napue*, a defendant need only  
27 demonstrate there is “any reasonable likelihood that the false testimony could have affected the judgment  
28 of the jury.” *Agurs*, 427 U.S. at 103. This burden of proof is lower than what is required to establish a  
*Brady* violation (which Masters has also established). See *Bagley*, 473 U.S. at 682 (*Brady* violation is

1 material when “there is a reasonable probability that . . . the result of the proceeding would have been  
2 different.”). *Brady* does not require that the defendant show it is more likely than not that withheld  
3 exculpatory material affected the outcome. *Napue* requires even less.

4 Here, there is a reasonable likelihood that the false testimony could have affected the judgment of  
5 a jury. For example, the deafening power of the testimony that in his capacity as an informant, Evans  
6 gave the police more false accounts than true ones, is uniquely probative of whether to believe his account.  
7 And the importance of Evans’s testimony is further demonstrated by the fact that the jury did not reach its  
8 verdict until shortly after it requested that Evans’s testimony be read back. *See* Pet. ¶ 177. Indeed, both  
9 the California Supreme Court Referee and Officer Hahn himself acknowledged the importance of Evans’s  
10 testimony. *See id.* ¶ 178 (“Evans’ [testimony at the Reference Hearing] was likewise significant, because  
11 he had corroborated Willis’ trial testimony against Masters with the damning testimony that Masters  
12 appeared before the BGF Commission and admitted guilt.” (quoting Referee Report at 5)); *id.* ¶ 179  
13 (“EVANS’ testimony obviously caused damage to the defense and the trial appeared to have turned in  
14 favor of the prosecution. In fact, it may be the crucial factor in the outcome of the trial.” (citing HC Pet.  
15 Ex. 11 at 2 (AG046248))). Accordingly, because the false evidence is material under the *Napue* standard,  
16 and the existing evidence introduced on the cross-examination of Evans was not cumulative and did not  
17 diminish the false testimony’s impact, it meets the *Napue* test and could easily have affected the outcome  
18 of the trial. *See supra* Section IIIB.

19 **V. CLAIM 5 – MASTERS IS THE RARE PERSON ENTITLED TO HABEAS RELIEF ON**  
20 **THE GROUNDS THAT HE IS ACTUALLY INNOCENT**

21 Finally, habeas relief is warranted because Masters has made a “truly persuasive” showing that he  
22 is actually innocent of the crimes for which he was convicted. *Herrera v. Collins*, 506 U.S. 390, 417  
23 (1993). A counting of the Justices’ votes in *Herrera* shows that the Court established the principle that  
24 an execution of an actually innocent person would be a “constitutionally intolerable event,” *id.* at 419  
25 (O’Connor, J., concurring), regardless of whether the person’s conviction was tainted by any  
26 unconstitutional procedural errors. The State’s attacks on the credibility of the witnesses supporting  
27 Masters’s innocence—including both of the key trial witnesses who tied Masters to the conspiracy to kill  
28 Sergeant Burchfield—ignore the fact that every witness with direct knowledge of the conspiracy who has



1 come forward in this case has affirmed that Masters was not involved, often by incriminating themselves.  
2 To withhold relief in this case will present the constitutionally intolerable condition of subjecting an  
3 innocent man to execution.

4 **A. The State Ignores Crucial Indicators of Masters’s Innocence.**

5 It is true that Masters must satisfy an “extraordinarily high” threshold showing of actual innocence  
6 to obtain habeas relief. He has done so. The plain truth is that both of the State’s key trial witnesses have  
7 recanted their testimony regarding the role that Masters played in the conspiracy to kill Sergeant  
8 Burchfield, and every participant in the alleged conspiracy who has come forward denies that Masters  
9 played any role in the killing.

10 Masters has shown that he is actually innocent, even under the heightened standard set forth in  
11 *Herrera* and its progeny. *Every single witness* who came forward in this case and claimed personal  
12 knowledge of the conspiracy to kill Sergeant Burchfield is now stating that Masters was not involved.  
13 Chief among these are Rufus Willis and Bobby Evans—the State’s key witnesses at trial. Willis has made  
14 clear that “Masters had nothing to do with the planning of the Burchfield killing.” HC Pet. Ex. 1 ¶ 6  
15 (AG046186); *see also id.* at ¶¶ 5, 8 (AG046186-87). Evans has similarly testified that he did not “know  
16 anything specific about Mr. Masters that linked him to the Burchfield murder” when he approached State  
17 investigators and in fact had never spoken to Masters at all. RH Pet. Ex. 58 at 41:3-12, 66:1-4 (AG050432,  
18 AG050457). Willis further explained that several notes allegedly linking Masters to the conspiracy were  
19 in fact copied, on his orders as a high-ranking member of the BGF, from materials that he sent to Masters,  
20 and were not based on Masters’s “personal knowledge.” HC Pet. Ex. 1 ¶ 15 (AG046191).

21 Each of these points is corroborated by statements from other witnesses. For example, the  
22 witnesses in this case broadly agree that Masters did not participate in the planning of the Burchfield  
23 murder, and in fact voted against the plan to assault a prison guard. *See, e.g.,* HC Pet. Ex. 3 ¶ 3  
24 (AG046204) (Andre Johnson); HC Pet. Ex. 4 ¶ 3 (AG046208) (Charles Drume); 4 RHRT 222:27-223:12  
25 (AG051820-21) (Lawrence Woodard); 5 RHRT 318:21-319:7; 320:19-22 (AG051916-18) (Michael  
26 Rhinehart). There is a similar consensus that Masters did not make the weapon used to kill Sergeant  
27 Burchfield. *See, e.g.,* HC Pet. Ex. 1 ¶ 14 (AG046190) (Rufus Willis); HC Pet. Ex. 2 ¶ 4 (AG046200)  
28 (Lawrence Woodard); HC Pet. Ex. 3 ¶ 11 (AG046206) (Andre Johnson). In short, the essence of the

1 State's evidence linking Masters to the conspiracy to kill Sergeant Burchfield has been shown to be false.  
2 Masters is actually innocent, and can satisfy any heightened standard required by United States Supreme  
3 Court precedent.

4 **B. The State Relies on Inapposite Cases in its Efforts to Refute the Corroborated**  
5 **Recantations of its Key Trial Witnesses and Statements from Several Supporting**  
6 **Witnesses.**

7 The State attempts to counter the recantation of both of its key trial witnesses linking Masters to  
8 the conspiracy and the corroborating statements from numerous other witnesses with generalized concerns  
9 about recantations and new witnesses in death penalty cases. Both the State and the California Supreme  
10 Court have improperly analogized this case to prior death penalty cases that expressed "suspicion" and  
11 "skepticism" of witness recantations and newly discovered testimony. *See In re Masters*, 7 Cal. 5th at  
12 1067 (quoting *In re Roberts*, 29 Cal. 4th 726, 742 (2003)); Answer at 37 (citing *Herrera*, 506 U.S. at 423  
13 (O'Connor, J., concurring)). However, for the reasons stated below, the evidence supporting Masters's  
14 innocence is far more reliable than the evidence at issue in these other death penalty cases. These cases  
15 are inapposite, and do not bar habeas relief.

16 First, unlike the petitioner in *Herrera* who was ultimately denied relief based on the weakness of  
17 his showing of purported innocence, Masters's innocence is supported by substantial contemporaneous  
18 evidence. The State relies on *Herrera* for the proposition that "11th hour statements" produced long after  
19 trial in capital cases are suspect. Answer at 41. Specifically, *Herrera* emphasized that the statements  
20 supporting the petitioner's innocence were produced years after the events in question, and were therefore  
21 less credible. 506 U.S. at 417–18 ("No satisfactory explanation has been given as to why the affiants  
22 waited until the 11th hour . . . to make their statements."); *see also id.* at 423 (O'Connor, J., concurring)  
23 (noting that the new witness statements were "suspect, produced as they were at the 11th hour with no  
24 reasonable explanation for the nearly decade-long delay."). But much of the evidence supporting Masters  
25 in this case was either produced soon after the killing of Sergeant Burchfield or was based on statements  
26 made at that time. When Evans first began providing information to the State about the Burchfield murder  
27 in 1989, both Charles Drume and Harold Richardson had already admitted to filling the roles that Masters  
28 was later convicted of playing. *Compare* 7 CT 1908–09 (AG002003–04) (Richardson came forward in  
1986) *and* 17 CT 5051–52 (AG005162–63) (Drume came forward in 1987) *with* 8 RHRT 435:11–19

1 (AG052034) (Evans came forward in 1989). Moreover, Evans’s recantation was supported by  
2 contemporaneous prison records, which establish that he and Masters were not imprisoned together in the  
3 San Quentin Adjustment Center when Masters allegedly confessed in September 1985. *See* 58 RT  
4 13724:23–28 (AG027843); 5 RHRT 283:22–25 (AG051881). These are not mere “11th hour statements;”  
5 they are based on information memorialized soon after the killing of Sergeant Burchfield.

6 Second, the State cannot point to any independent evidence of Masters’s alleged role in the  
7 conspiracy to counter the recanting witnesses. In downplaying the importance of witness recantations and  
8 new evidence, the cases cited by the State, and the California Supreme Court’s opinion, emphasized that  
9 the convictions in question were supported by independent evidence that had not been called into question  
10 by the recantations. *Herrera*, 506 U.S. at 418 (“[T]he affidavits must be considered in light of the proof  
11 of petitioner's guilt at trial-proof which included two eyewitness identifications, numerous pieces of  
12 circumstantial evidence, and a handwritten letter in which petitioner apologized for killing the officers  
13 and offered to turn himself in under certain conditions.”); *Roberts*, 29 Cal. 4th at 743 (“Had this evidence  
14 not been admitted, the jury still would have heard the testimony of Long, Hayes, and Cade that they saw  
15 petitioner stab Gardner, and Cade's further testimony that petitioner later confessed to the murder.  
16 Yacotis's recantation of portions of his testimony does not undermine our confidence in the judgment of  
17 conviction.”). Here, by contrast, the State relied on two witnesses, Willis and Evans, to supply direct  
18 knowledge about Masters’s role in the conspiracy to kill Sergeant Burchfield, as well as kites copied by  
19 Masters. *See generally* Answer at 4–10. Both Willis and Evans have now recanted, and Willis has  
20 explained that he ordered Masters to write the kites using writings from other BGF members as a reference.  
21 HC Pet. Ex. 1 ¶ 6, 12, 15 (AG046186, AG046188–89; AG046190–91); RH Pet. Ex. 58 at 41:3–18  
22 (AG050432). Thus, *all* of the State’s evidence directly linking Masters to the conspiracy has been refuted.  
23 The evidence supporting Masters’s actual innocence is far stronger than the evidence introduced in the  
24 cases cited by the Answer and the California Supreme Court, and should overcome any “skepticism” that  
25 these cases counsel.

1                   **1. The State’s Remaining Arguments Against Masters’s Innocence Ignore Key**  
2                   **Facts.**

3                   The State’s remaining arguments against Masters’s innocence are not supported by the record.  
4                   Both the State and the California Supreme Court relied on the state habeas referee’s finding that the BGF  
5                   members testifying in support of Masters had a motive to protect Masters due to their allegiance to the  
6                   BGF. *In re Masters*, 7 Cal. 5th at 1066, 1068-69 (“All of them, as members of the same prison gang, have  
7                   a motive now to give testimony favorable to Masters.”); *see also* Answer at 37. But such reliance ignores  
8                   several key facts in the record. For starters, many of the witnesses who provided statements in support of  
9                   Masters’s innocence were no longer active BGF members at the time of their statements. For example, at  
10                  the same interview in which he confessed to playing Masters’s role in the conspiracy, Drume told  
11                  investigators that he was “tired of being in the BGF” and “tired of being used” by the BGF. 7 CT 1912  
12                  (AG002007); *see also* HC Pet. Ex. 4 ¶ 8 (AG046209) (“I have been trying to dis-affiliate from the BGF  
13                  and de-brief since 1988.”). Similarly, Richardson confessed to playing Masters’s role in the conspiracy  
14                  during a meeting that occurred after he “indicated that he wanted to drop out of the BGF.” 9 CT 2519:13-  
15                  20 (AG002618). And by the time of his declaration in Masters’s state habeas petition, Johnson “no longer  
16                  considered [himself] a gang member” and provided information to California Department of Corrections  
17                  investigators to “show the CDC that [he] had indeed left the gang.” HC Pet. Ex. 3 ¶ 10 (AG046206).  
18                  Furthermore, the BGF’s treatment of many of the witnesses was unlikely to inspire loyalty: Drume was  
19                  “attacked on a number of occasions” due to his support for Masters, including one incident in which he  
20                  was “stabbed in the eye,” HC Pet. Ex. 4 ¶ 7 (AG046209), and Officer Hahn reported that the BGF “put  
21                  out a contract on [Evans’s] life” and may have threatened his mother and son after he provided information  
22                  to law enforcement. HC Pet. Ex. 11 at 2 (AG046248). Thus, there is no reasonable basis to conclude that  
23                  the witnesses supporting Masters retained enough loyalty to lie to protect a member of the BGF (or that  
24                  the BGF wanted Masters protected in the first place).

25                  In addition, the conduct of the BGF members in this case undermines any notion that they were  
26                  motivated by a desire to protect another BGF member. We know, for example, that the purported motive  
27                  to lie in order to protect Masters was not strong enough to keep Willis and Evans from testifying at trial  
28                  that Masters and his two co-defendants, Lawrence Woodard and Andre Johnson—their fellow BGF

1 members—murdered a prison guard. *See* Answer at 5, 10. Nor was it strong enough to keep Richardson  
2 and Drume from implicating other BGF members, including Woodard and Johnson, in the plot to kill  
3 Sergeant Burchfield in their statements to law enforcement. *See, e.g.*, 7 CT 1909 (AG002004) (Richardson  
4 discussed the conspiracy to kill Sergeant Burchfield); 17 CT 5054 (AG005165) (Drume told an  
5 investigator that he met with Woodard to plan the killing).

6 Given that numerous BGF members have either testified against or otherwise implicated other  
7 BGF members in this very case, it is unreasonable to speculate that a motive to protect a fellow gang  
8 member would be so strong as to induce every member of the BGF who has given a statement in this case  
9 to now lie to protect Masters. Yet, as noted above, every single one of the BGF members to have come  
10 forward has supported Masters’s innocence. *See supra* at 20. Neither the State nor the California Supreme  
11 Court’s opinion attempts to explain why the BGF witnesses would seek to protect Masters while  
12 incriminating many other BGF members, or why Willis and Evans would now lie to exonerate Masters  
13 when their trial testimony contributed to his conviction in the first place. For this reason, the California  
14 Supreme Court unreasonably declined to credit these witnesses’ testimony.

15 Moreover, the purported motive to protect other BGF members would need to be strong enough  
16 to overcome “the commonsense notion that reasonable people, even reasonable people who are not  
17 especially honest, tend not to make self-inculpatory statements unless they believe them to be true.”  
18 *Williamson*, 512 U.S. at 599. Many of the witnesses supporting Masters placed themselves at real risk of  
19 prosecution with their statements. For example, Richardson continued to state that he, and not Masters,  
20 helped to plan the Burchfield murder and sharpen the weapon used to kill Sergeant Burchfield, even after  
21 he was warned that his statements could be used against him. *See* RH Pet. Ex. 54 at 1–2 (AG050379–  
22 80).<sup>2</sup> Furthermore, at his deposition relating to Masters’s state habeas petition, Evans testified that he had  
23 knowingly lied under oath when he testified at Masters’s trial, even though he had already been released

24  
25 <sup>2</sup> The weapon used to kill Sergeant Burchfield was never made available to Masters’s defense team or  
26 introduced at trial. After Sergeant Burchfield’s death, San Quentin personnel found many stabbing  
27 instruments throughout Carson section in the prison. *See* RT 11592 (AG025681), 11598–11600  
28 (AG025687–89), 11613 (AG025702), 13031 (AG027156), 13038–39 (AG027163–64), 13188  
(AG027314), 13412 (AG027534). But they destroyed the instruments which they could not tie to a  
particular person or cell. *See* RT 15286–93 (AG029420–27), 15640–42 (AG029780–82). Accordingly,  
Masters never had access to the potentially exonerating evidence of the actual weapon, and it is possible  
prison personnel collected but destroyed that evidence.

1 on parole at the time of the deposition and could have been prosecuted for perjury and returned to prison.  
2 See RH Pet. Ex. 58 at 29:1–7, 69:17–23 (AG050420, AG050460); see also *People v. Moore*, 176 Cal.  
3 App. 4th 687, 692 (2009) (noting that the statute of limitations for perjury begins to run upon discovery  
4 of the offense). In light of these facts, it was unreasonable for the California Supreme Court to find that  
5 the BGF witnesses’ motive to protect their fellow gang member made their testimony incredible.

6 Similarly, the California Supreme Court and the State’s reliance on inconsistent testimony by the  
7 witnesses supporting Masters is unpersuasive. Each of the witnesses with direct knowledge of the  
8 conspiracy to kill Sergeant Burchfield was consistent on the key fact of Masters’s innocence. Moreover,  
9 many of the witnesses supporting Masters have testified consistently over time. Drume, for example,  
10 stated in a 1988 meeting with law enforcement officers and again in a 2001 declaration provided to  
11 Masters’s defense team that he had made the weapon that was used to kill Burchfield and that Masters  
12 was not involved in the killing. 7 CT 1912 (AG002007); HC Pet. Ex. 4 ¶ 2–3 (AG046208). In addition,  
13 while Willis recanted his trial testimony against Masters, his recantation has remained consistent in all  
14 material respects. See 10 RHRT 534–43 (AG052135–44) (largely reaffirming a 2001 declaration in 2010).  
15 Thus, the California Supreme Court unreasonably determined that all of the witnesses supporting Masters  
16 in his state habeas petition were not credible, and Masters is therefore entitled to habeas relief on his actual  
17 innocence claim.

### 18 CONCLUSION

19 For the foregoing reasons, Masters respectfully requests that this Court enter an order granting the  
20 writ of habeas corpus and vacating the criminal judgment and sentence entered against him, as they were  
21 contrary to, and an unreasonable application of clearly established federal law. He also asks that the Court  
22 provide such other relief as the Court may deem to be appropriate in this case.  
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1 DATED: October 20, 2021

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

On October 20, 2021, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system which will send a notice of electronic filing to all persons registered for ECF. All copies of documents required to be served by Fed. R. Civ. P. 5(a) and L.R. 5-1 have been so served.

*/s/ Ashley E. Littlefield*

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Ashley E. Littlefield

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