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15 **UNITED STATES DISTRICT COURT**  
16 **NORTHERN DISTRICT OF CALIFORNIA**  
17 **SAN FRANCISCO DIVISION**

18 JARVIS J. MASTERS, )  
19 )  
Petitioner, )  
20 v. ) **PETITIONER’S NOTICE OF**  
**MOTION AND MOTION FOR**  
**JUDGMENT ON THE PLEADINGS**  
21 )  
RON BROOMFIELD, Acting Warden, )  
California State Prison at San Quentin, )  
22 )  
Respondent. )  
23 )  
24 )  
25 )  
26 )  
27 )  
28 )  
Hearing Date: August 10, 2022  
Judge: Hon. Haywood S. Gilliam, Jr.  
Hearing Date: December 15, 2022 at 2:00p.m.

**NOTICE OF MOTION**

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on December 15, 2022, or as soon thereafter as counsel may be heard, Petitioner Jarvis J. Masters (“Masters”) will move this Court, before the Hon. Haywood S. Gilliam, Jr., at the Oakland Courthouse, Courtroom 2, 1301 Clay Street, Oakland, CA 94612, for Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c), based on the Federal Rules of Civil Procedure, this Memorandum of Points and Authorities, the pleadings and documents on file in this case, argument presented at the hearing on this motion, and any matters of which the Court takes judicial notice.

Masters moves the Court to grant the writ of habeas corpus and vacate the criminal judgment and sentence entered against him.

DATED: August 10, 2022

Respectfully submitted,  
KIRKLAND & ELLIS LLP

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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Jarvis Masters has been on death row for more than 30 years for a crime he did not commit. Masters's capital trial was marred by the unjustified exclusion of exculpatory evidence and other violations of Masters's clearly established federal rights. The pleadings filed in this Court set forth undisputed facts demonstrating that Masters is entitled to habeas relief based upon fundamental errors committed by the California Supreme Court relating to (1) the exclusion of Harold Richardson's confessions; (2) the exclusion of Charles Drume's confession; (3) the finding that evidence withheld from Masters by the prosecution relating to a key State witness was not material; and (4) the decision to deny Masters relief based on the prosecution's withholding of material evidence.

In making these errors, the California Supreme Court contravened and unreasonably applied federal law. Moreover, Masters is entitled to relief for a reason even more fundamental to our legal system's ideals of fairness and the pursuit of justice: he is innocent. Masters respectfully asks this Court to grant the writ, to correct the injustice that Masters has suffered, and to set him free.

**II. BACKGROUND****A. The Murder of Howell Burchfield**

On June 8, 1985, inmate Andre Johnson, a soldier of the Black Guerilla Family ("BGF") prison gang, fatally stabbed Correctional Sergeant Howell Burchfield with a prison-made weapon on Tier 2 in the Carson Section of San Quentin State Prison. It is unknown whether the murder weapon was ever found; authorities recovered a sharpened piece of metal, but it was not preserved. Dkt. No. 1 ("Pet.") ¶¶ 13, 18. After the killing, inmate Rufus Willis, one of the two BGF leaders in the Carson Section, told Investigator Charles Numark of the Marin County District Attorney's Office that Lawrence Woodard, the other BGF leader in the Carson Section, ordered Burchfield's murder. *Id.* ¶ 14. Willis implicated Johnson as the inmate who stabbed Burchfield, and Willis accused Masters of having helped plan the murder and of sharpening the murder weapon. *Id.*

In exchange for Willis's testimony against Masters, Deputy District Attorneys Edward Berberian and Paula Kamena offered to grant Willis immunity for all the crimes he committed in

1 prison (including Burchfield’s murder), to notify the parole board of his cooperation, and to move  
2 Willis to an out-of-state prison. Willis accepted the deal. *See id.* ¶ 15. Later, Numark told Willis that  
3 the authorities did not have enough evidence to implicate Masters in the killing. *Id.* ¶ 16. Using his  
4 authority as a leader of the BGF, Willis ordered Masters to copy two letters (known as “kites”)  
5 indicating Masters’s involvement in the murder. *Id.* Upon receiving these kites, Berberian charged  
6 Masters with first-degree murder and conspiracy. *Id.*

7 **B. Masters’s State Trial Court Proceedings**

8 Masters, Johnson, and Woodard were tried simultaneously before two separate juries. *Id.*  
9 ¶ 17. The prosecution’s case against Masters rested upon three categories of evidence: (1) Willis’s  
10 testimony inculcating Masters; (2) the kites that Masters had written at Willis’s direction; and (3) the  
11 incriminating testimony of inmate Bobby Evans. *Id.*

12 Willis testified that Masters approved and planned the attack, and sharpened the weapon that  
13 Johnson used for the attack on Burchfield. *See id.* ¶ 18. But Willis’s description of Masters (whom  
14 Willis had not seen in court) matched another inmate, Harold Richardson, not Masters *Id.* ¶ 89.  
15 Willis also testified regarding kites that discussed the Burchfield murder. *Id.* ¶ 20. While Willis  
16 testified that Masters handwrote the kites, Willis later conceded that Masters was not their author. In  
17 his post-trial sworn declarations, Willis explained that he directed Masters to copy the kites at his  
18 direction. *Id.* ¶ 21. This was corroborated by the unrebutted analyses of two forensic linguists who  
19 concluded that the kites were not authored by Masters and by the statements of other BGF members,  
20 including a sworn statement by Woodard that “kites were frequently written by BGF leaders and  
21 then re-copied, under orders, by inmates lower in the hierarchy,” and that he believed Masters was  
22 “motivated to obey Willis [by copying the kite] in order to ingratiate himself with the BGF in  
23 general and with me in particular.” *Id.*

24 Willis has since recanted his trial testimony in multiple sworn declarations, stating that  
25 Masters “had nothing to do with planning the killing of Sgt. Burchfield,” and “did not play any part  
26 in the death of Sgt. Burchfield.” *See id.* ¶ 19. Willis said he spoke to Masters “once before the  
27 Burchfield killing and he told me he did not agree with doing this hit. He told me ‘I’m not with  
28 this.’” *Id.* “Masters had a lot to prove” to the BGF and “was constantly criticized”; “[t]his was one of



1 the reasons Masters would not have been involved in the manufacture of the murder knife. He was  
2 not fully trusted and not considered reliable.” *Id.* This was corroborated by Woodard’s sworn  
3 statement, which stated that “Jarvis Masters was not the knife sharpener. He was not good at  
4 sharpening metal, and he was not trusted with any part in the Burchfield killing.” *Id.*

5 The prosecution also relied upon the testimony of inmate Bobby Evans, a BGF “enforcer.”  
6 *Id.* ¶¶ 22–23. At the time of Masters’s trial, Evans was awaiting sentencing for a robbery for which  
7 he had pleaded guilty. *Id.* ¶ 137. Evans did not know about the Burchfield attack when it occurred  
8 but claimed that he and Masters were both located at the San Quentin Adjustment Center “around”  
9 August 1985 and that Masters confessed “around” September 1985 to have voted in favor of the  
10 attack. *Id.* at 22. During trial, Evans testified that he had a limited relationship with Parole Officer  
11 James Hahn and denied that Hahn granted him any favors in exchange for his testimony. *Id.* ¶¶ 130,  
12 142.

13 Like Willis, Evans has since entirely recanted his testimony. In post-conviction proceedings,  
14 he testified that he did not know Masters in 1985, and in fact had never spoken to or met Masters. *Id.*  
15 at 23. Indeed, records from the California Department of Corrections and Rehabilitation show that  
16 Masters was not present with Evans at the Adjustment Center in September 1985 and Michael  
17 Rhinehart, who testified post-conviction that he shared a cell with Evans, and stated that Evans did  
18 not know anything about the attack on Burchfield until Rhinehart told him about it in 1987. *Id.*  
19 Rhinehart testified that he heard about the plan from Richardson, and that Richardson was present at  
20 the meeting where Masters voted against the murder. *Id.* ¶ 90. He also heard that Redmond ordered  
21 Richardson to “retaliate” after a guard assaulted a prisoner. 5 RHRT 317:26–318:17.

22 While the State was able to present its case against Masters, however flawed, to the jury,  
23 Masters could not do the same, as the trial court repeatedly excluded evidence critical to his defense.  
24 Pet. ¶ 24. **First**, the trial judge refused to admit confessions of Harold Richardson and associated  
25 testimony (hereinafter, the “Richardson Confessions”). **Second**, the trial judge excluded testimony  
26 about and contemporaneous written evidence from a December 23, 1987 interview by prosecutors of  
27 inmate Charles Drume (hereinafter, the “Drume Confessions”). *Id.* ¶¶ 24–26. **Third**, the trial judge  
28

1 excluded evidence that Bobby Evans, a key witness, had received a reduced sentence in exchange  
2 for testifying against Masters. *Id.* ¶ 27.

3 The Richardson Confessions are based on a series of interviews conducted by San Quentin  
4 Program Administrator Jean S. Ballatore in August 1986 of Richardson, an inmate and member of  
5 BGF who wanted to leave the organization. *Id.* ¶¶ 45–46. Ballatore interviewed Richardson on  
6 several occasions, including on August 19 and 20, 1986, after which she prepared typewritten  
7 memoranda reflecting what Richardson had said. *Id.* On August 21, 1986, Ballatore, accompanied by  
8 Investigative Lieutenant James Spangler, interviewed Richardson for the third time. Like the other  
9 meetings, Richardson was informed that the purpose of the interview was to discuss BGF and assess  
10 the sincerity of his desire to leave the gang. He was not read his *Miranda* rights, and Ballatore and  
11 Spangler assured him that they would keep his statements confidential. *Id.* ¶ 46. During the  
12 interview, Richardson admitted he was a member of the BGF “hit squad,” and admitted to having  
13 been one of the four members who planned Burchfield’s murder. *Id.* ¶ 24. He also admitted to  
14 having sharpened the knife that ultimately was used to kill Burchfield. *Id.* According to Ballatore’s  
15 memorandum, Richardson indicated he knew “all the details about the Burchfield murder,”  
16 identified Willis, Woodard, and Johnson as the other planners, identified 10 individual members of  
17 the BGF who participated in the attack, and described their respective roles. *Id.* ¶¶ 47–50. For  
18 example, Richardson identified Rhinehart as a member of the “hit squad” and identified both Drume  
19 and Rhinehart as BGF members. *See Mot. to Delay Submission of the Case for Further Development*  
20 *of the Record*, Case No. S130495, Ex. 54-A (“Ex. 54-A”) at 3, 10–11. Despite this detailed account,  
21 Richardson never suggested Masters played any kind of role in Burchfield’s murder. *Pet.* ¶¶ 47–50.  
22 Ballatore also wrote that Richardson “appeared sincere and truthful.” Ex. 54-A at 4, 12. Richardson  
23 offered to take a polygraph multiple times. *See id.* at 1–2, 8.

24 Richardson later testified at an *in camera* hearing to determine whether the State was  
25 required to disclose to Richardson’s identity to Masters as an informant and to disclose his  
26 confession reflected in the memorandum reflecting Richardson’s August 21, 1986 interview. The  
27 Court ordered the disclosure of Richardson’s identity in redacted form, and admonished Richardson  
28 that, contrary to previous representations from Ballatore and Spangler, his statements could, in fact,

1 be used against him and that he could be charged as a co-conspirator in the case. Pet. ¶ 52. After the  
2 court informed Richardson of this, he wrote a letter to Ballatore, which was also provided to Masters  
3 in redacted form, providing additional details to Ballatore regarding the Burchfield attack, correcting  
4 certain portions of Ballatore’s memorandum of her Richardson interview, and reaffirming his  
5 involvement in the murder. *Id.* ¶¶ 54–55; *see also* Ex. 54-A at 14–16 (telling Ballatore that although  
6 he previously “summarized the Burchfield murder,” he knew “way more intricate details” than he  
7 gave Ballatore, and writing, “I still trust you . . . I sort of view you as a friend.”). Richardson  
8 repeated his grave concerns that he and his family were in danger as a result of his statements and  
9 refused to disclose some information out of fear. Pet. ¶ 56; Ex. 54-A at 14.

10 At the time, “[t]he BGF [was] known to kill those members who become witnesses for the  
11 state.” Pet. ¶ 85. The prosecution described Richardson as being “at grave risk. Because everybody  
12 already knows he has already having snitched.” *Id.* ¶ 86. In fact, Richardson had to be moved into  
13 protective housing. 12-13-88 RT 10 (AG016611). Additionally, in August 1988, Richardson told  
14 inmate Broderick Adams that the “K-9’s [the prison guards] have me on a hot one trying to accuse  
15 me of that thing on a K-9 [prison guard] in ’85. I cleaned up my tracks and they got some other  
16 motherfuckers for it.” Pet. ¶ 63. Nevertheless, the trial judge excluded Richardson’s letter and all  
17 other Richardson Confessions as unreliable hearsay. *Id.* ¶ 25.

18 The Drume Confessions arise from similar circumstances. Drume approached prosecutors as  
19 a BGF member who wanted to leave the organization and told them that he was the BGF “Chief of  
20 Security in Carson Section” as of June 1985, a position that Willis had ascribed to Masters at trial.  
21 *Id.* ¶ 26. Drume had been caught manufacturing weapons on numerous occasions, including in  
22 March 1985, just months before Burchfield’s death. *Id.* ¶ 98. On June 26, 1985, Drume contacted  
23 Lieutenant Amos in Carson Section. *Id.* Among other things, Drume reported to Amos that the BGF  
24 planned to attack another guard, in an attack related to Burchfield’s death. *Id.* During that meeting,  
25 Drume turned over additional weapons to Lieutenant Amos. *Id.*

26 Drume told investigators that he was involved in the plan to kill Burchfield, and identified  
27 Woodard as another planner. *Id.* ¶¶ 99–101. Like Richardson, Drume did not identify Masters as a  
28 planner. In fact, he told the prosecutors that he (and therefore not Masters) had fabricated the

1 weapon used in the attack on Burchfield. *Id.* Drume explained that he cut the metal from his bed  
2 brace, sharpened it, and then passed it to an inmate named Wallace on the second tier so that  
3 Johnson could use the weapon in the attack. *Id.* Drume’s story has been remarkably consistent over  
4 time. Indeed, he repeated the same story in February 1988 and March 1988. *Id.* ¶ 108. In February  
5 2001, Drume signed a declaration under penalty of perjury: “I received an order from Lawrence  
6 Woodard to make the weapon that was used to stab Sgt. Burchfield, and I made the weapon as  
7 instructed. . . . Because I was a participant, I know that masters [sic] was not involved in either the  
8 planning or carrying out of the attack on Sgt. Burchfield.” *Id.*

9         The trial judge also excluded critical evidence regarding the credibility of Bobby Evans, a  
10 key prosecution witness. On January 4, 1990, while the jury was deliberating Masters’s guilt,  
11 defense counsel learned for the first time that Evans had secured an early release from a 16-month  
12 state prison sentence Evans was serving. *Id.* ¶ 27. During a hearing held outside of the presence of  
13 the jury, Hahn testified that he had promised Evans to delay a sentencing hearing for as long as  
14 possible, to avoid Evans’s return to state prison. *Id.* Hahn’s testimony contradicted a memorandum  
15 that the prosecution had provided in discovery stating that Evans had not received any consideration  
16 in exchange for testifying against Masters. *Id.* Hahn specified that he told Evans “probably once or  
17 twice” that he was helping delay Evans’s sentencing, and that Evans would call Hahn when he was  
18 up for sentencing, and that Hahn would then contact the District Attorney and ask him to put the  
19 sentencing off. *Id.* ¶ 142. Hahn wrote a memorandum following the trial, dated December 14, 1989,  
20 in which he stated that “EVANS’ testimony obviously caused damage to the defense and the trial  
21 appeared to have turned in favor of the prosecution. In fact, it may be the crucial factor in the  
22 outcome of the trial.” Pet. ¶ 165; HC Pet. Ex. 11 at 53 (AG046248). The trial judge nevertheless  
23 denied Masters’s motion to reopen the case, finding that enough information had been disclosed for  
24 the defense to make an “inference” that a promise had been made. *Id.* ¶ 27. On January 8, 1990, the  
25 jury returned a verdict of guilty against Masters, and he was later sentenced to death. *Id.* ¶ 28. The  
26 Judgment of Death was issued July 30, 1990. *Id.*

1           **C. Masters’s Appellate and State Habeas Proceedings**

2           Masters initiated a direct appeal before the California Supreme Court, Case No. S016883,  
3 challenging numerous state and federal constitutional errors during the guilt and penalty phases of  
4 his trial. *Id.* On February 22, 2016, the California Supreme Court affirmed the verdict and Judgment  
5 of Death, finding, inter alia, that Masters’s trial was fair and consistent with due process, and that  
6 even if there were errors below, those errors were harmless. *See generally People v. Masters*, 62 Cal.  
7 4th 1019 (2016).

8           Masters also filed a petition for writ of habeas corpus raising claims of actual innocence and  
9 pointing out the serious constitutional problems with his trial and sentencing while his petition was  
10 pending. *See generally In re Masters*, No. S130495, Pet. for Writ of Habeas Corpus (Cal. Jan. 7,  
11 2005). In support of his petition, Masters submitted detailed sworn statements by Willis and Evans  
12 recanting their trial testimony. Pet. ¶ 30. Masters offered sworn statements by co-defendants  
13 Woodard and Johnson acknowledging their own roles in the murder and testifying that Masters was  
14 not involved, as well as one from Drume concerning his role in fabricating the murder weapon. *Id.*  
15 Moreover, at the reference hearing, it was revealed that Evans actually had an ongoing and close  
16 working relationship with Hahn, in sharp contrast with the limited relationship described at trial, and  
17 that at the time of Masters’s trial, Evans was a suspect in the murder of James Beasley, which was  
18 being investigated by the San Francisco Police Department. Pet. ¶¶ 130, 174.

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

1 Justice Liu authored the decision denying habeas corpus relief. But Justice Liu also issued an  
2 extraordinary concurring opinion, joined by Justice Cuéllar, disclaiming any view “whether, in light  
3 of the trial evidence as well as the reference hearing and findings, we can be confident of the verdict  
4 beyond a reasonable doubt.” *Masters*, 7 Cal. 5th at 1090. Although the judgment against Masters  
5 was entitled to a presumption of finality, the concurrence considered it “understandable why Masters  
6 finds the referee’s report unsettling.” *Id.*

#### 7 **D. Procedural History in This Action**

8 On November 20, 2020, Masters filed his petition for habeas corpus in this Court. *See*  
9 *generally* Pet. Master seeks five claims for relief: (1) the California Supreme Court applied a  
10 standard contrary to *Chambers v. Mississippi* and unreasonably applied *Chambers* and clearly  
11 established due process rights by excluding the Richardson Confessions; (2) the California Supreme  
12 Court applied a standard contrary to *Chambers v. Mississippi* and unreasonably applied *Chambers*  
13 and clearly established due process rights by excluding the Drume Confessions; (3) the California  
14 Supreme Court’s finding that evidence withheld from Masters was not material unreasonably applied  
15 *Brady v. Maryland* and its progeny; (4) the California Supreme Court unreasonably applied *Napue v.*  
16 *Illinois* by denying relief despite the introduction of evidence that prosecutors should have known to  
17 be false; and (5) Masters is entitled to habeas relief on the grounds that he is actually innocent. *See*  
18 *id.* ¶¶ 34–195. The State filed its answer to Masters’s Petition on August 6, 2021. *See* Dkt. No. 30  
19 (“Answer”). Masters filed his traverse on October 20, 2021. Dkt. No. 40 (“Traverse”).

### 20 **III. LEGAL STANDARD**

21 The Federal Rules of Civil Procedure apply to a habeas corpus proceeding unless they are  
22 contradicted by the statutory enactment. Rule 12, Rules Governing § 2254 Cases; *see* 28 U.S.C.  
23 § 2254. Under Rule 12(c), a party may move for judgment on the pleadings “after the pleadings are  
24 closed—but early enough not to delay trial.” Fed. R. Civ. P. 12. Motions for judgment on the  
25 pleadings are “functionally identical” to motions to dismiss for failure to state a claim under  
26 Rule 12(b)(6). *Webb v. Trader Joe’s Co.*, 999 F.3d 1196, 1201 (9th Cir. 2021). “A district court must  
27 grant a motion for judgment on the pleadings when there is no issue of material fact, and the moving  
28 party is entitled to judgment as a matter of law.” *Unite Here Local 30 v. Sycuan Band of the*

1 *Kumeyaay Nation*, 35 F.4th 695, 700 (9th Cir. 2022) (citing *Fleming v. Pickard*, 581 F.3d 922, 925  
2 (9th Cir. 2009)). The Court considers “the complaint in its entirety as well as other sources courts  
3 ordinarily examine when ruling on Rule 12(b)(6) motions . . . in particular, documents incorporated  
4 into the complaint by reference, and matters of which a court may take judicial notice.” *Tellabs, Inc.*  
5 *v. Makor Issues & Rights, Ltd.* 551 U.S. 308, 322 (2007).

6 Masters seeks judgment on the pleadings for the reasons set forth in his federal habeas  
7 petition (ECF No. 1, hereinafter, “petition” or “Pet.”) and traverse. A federal court may grant a  
8 petitioner habeas relief where a state court acted in a manner “contrary to” or involving an  
9 “unreasonable application of” clearly established federal law. 28 U.S.C. § 2254(d)(1). Alternatively,  
10 a federal court may grant a habeas petition where a state court ruling “resulted in a decision that was  
11 based on an unreasonable determination of the facts in light of the evidence presented in the State  
12 court proceeding.” 28 U.S.C. § 2254(d)(2). When the undisputed facts set forth in the pleadings  
13 indicate that either of these violations occurred, habeas relief is warranted.

#### 14 **IV. ARGUMENT**

##### 15 **A. The California Supreme Court’s Exclusion of the Richardson Confessions Was** 16 **Contrary to and an Unreasonable Application of *Chambers v. Mississippi* and** **Clearly Established Due Process Rights (Claim 1)**

17 The undisputed facts set forth in the pleadings demonstrate that Masters is entitled to relief  
18 because the California Supreme Court improperly excluded the Richardson Confessions in a manner  
19 contrary to or involving an unreasonable application of clearly established law. Under *Chambers v.*  
20 *Mississippi*, a trial court cannot exclude evidence bearing significant indicia of credibility that is  
21 critical to a defendant’s defense. 410 U.S. 284 (1973). Courts have repeatedly granted habeas relief  
22 when trial courts excluded such critical hearsay evidence. *See, e.g., Chia v. Cambra*, 360 F.3d 997,  
23 1003 (9th Cir. 2004) (exclusion of testimony about a third party that inculpated the third party and  
24 exculpated the defendant violated defendant’s due process rights); *Cudjo v. Ayers*, 698 F.3d 752,  
25 765–66 (9th Cir. 2012) (exclusion of testimony that an unavailable individual had confessed to the  
26 crimes allegedly committed by the defendant was constitutional error); *Lunbery v. Hornbeak*, 605  
27 F.3d 754, 761–62 (9th Cir. 2010) (granting petition for habeas corpus based on exclusion of hearsay  
28 evidence about a third party’s confession). *See generally Green v. Georgia*, 442 U.S. 95, 97 (1979)

1 (per curium) (exclusion of proffered testimony that a second defendant confessed he had killed the  
2 victim denied defendant a fair trial). Richardson’s repeated and detailed confessions were statements  
3 against interest corroborated by other evidence and bearing numerous other indicia of reliability. The  
4 statements—which *exonerate* Masters—were critical to Masters’s defense. Yet the trial court,  
5 harping on the fact Richardson’s statements were made just over a year after the murder, excluded  
6 them as hearsay. The California Supreme Court unreasonably affirmed. The exclusion of the  
7 Richardson Confessions precluded Masters from putting on a full defense and a fair fight for his life.

### 8 **1. The Richardson Confessions Are Reliable**

9 Statements against penal interest are inherently trustworthy, given that “reasonable people,  
10 even reasonable people who are not especially honest, tend not to make self-inculpatory statements  
11 unless they believe them to be true.” *Williamson v. United States*, 512 U.S. 594, 599 (1994). A  
12 potentially incriminatory statement “must be examined in context, to see whether as a matter of  
13 common sense the portion at issue was against interest and would not have been made by a  
14 reasonable person unless he believed it to be true.” *United States v. Paguio*, 114 F.3d 928, 934 (9th  
15 Cir. 1997). Both the California Supreme Court on direct appeal and the magistrate judge during trial  
16 acknowledged that Richardson’s statements were against his penal interest. Answer at 19; 12-13-88  
17 RT 7; *People v. Masters*, 62 Cal. 4th 1019, 1056 (2016). In doing so, the California Supreme Court  
18 pointed out that declarations against penal interest which are “spoken in confidence in the  
19 expectation they would not be repeated to the authorities” are “more trustworthy.” 62 Cal. 4th at  
20 1056 (citing *United States v. Badalamenti*, 626 F. Supp. 656, 666–67 (S.D.N.Y. 1986)).

21 The State does not—and cannot—now argue that the Richardson Confessions do not qualify  
22 as statements against his interest. Richardson provided Ballatore and Spangler a full account of his  
23 involvement in the murder. Pet. ¶¶ 45–50. And critically, Richardson did not retract his statements or  
24 minimize his involvement *after* he learned that the statements would almost certainly be used against  
25 him; instead, he doubled down, telling Ballatore that although he previously “summarized the  
26 Burchfield murder,” he knew “way more intricate details” than he gave Ballatore during their prior  
27 encounters. Ex 54-A at 16; *see also* Pet. ¶ 85. Richardson wrote to Ballatore, “I trust you . . . I sort of  
28 view you as a friend.” Ex. 54-A at 14–15.



1           The undisputed facts set forth in the pleadings demonstrate that Richardson would only make  
2 statements implicating himself in the murder if those statements were true, especially given the  
3 grave risk that Richardson faced for making such statements. Richardson indicated to Ballatore that  
4 he was concerned about his family’s safety and his housing, and refused to disclose some  
5 information out of fear of retaliation. Pet. ¶ 56; Ex. 54-A at 4. At the time, the BGF was “known to  
6 kill those members who become witnesses for the state” and Richardson was, in fact, moved to  
7 protective housing as a result of his statements. Pet. ¶¶ 85, 87; 16 CT 4707; 12-13-88 RT 10. Even  
8 the prosecution recognized that Richardson was in danger because he “snitched.” Pet. ¶ 86; 06-27-88  
9 RT 26:18–20.

10           The State nonetheless contends that the California Supreme Court reasonably excluded the  
11 Richardson Confessions as unreliable because they were made more than a year after Burchfield’s  
12 murder. Answer at 23. This reasoning fails for several reasons. **First**, under *Chambers* and its  
13 progeny, there is no requirement that the exculpatory confession be made soon after the crime  
14 committed, as the State suggests. In actuality, timing is but one factor that courts may consider.  
15 **Second**, there is a reasonable explanation as to why Richardson did not immediately inform prison  
16 officials of his involvement in Burchfield’s murder: Richardson contacted authorities when he  
17 desired to drop out of the BGF. Pet. ¶¶ 45, 46; *Masters*, 62 Cal. 4th at 1054. Prior to that point, there  
18 was no reason for him to speak with the authorities and implicate himself in a crime for which he  
19 was not suspected. **Third**, the Court admitted statements made **four years** after Burchfield’s murder  
20 by one of the prosecution’s key witnesses, Evans. Pet. ¶ 134; Traverse at 7. Essentially, the State  
21 suggests that the element of time is detrimental to the credibility of Masters’s witnesses but not its  
22 own. This ruling unreasonably deprived Masters of the opportunity to be heard. *See Chia*, 360 F.3d  
23 at 1005 (“It was unfair for the trial court to permit California to present evidence as to its theory  
24 behind [Defendant’s] actions, but to deny [Defendant] the same opportunity and right.”).

25           In actuality, the Richardson Confessions are reliable because they are corroborated by  
26 evidence presented throughout Masters’s trial and appeal. For instance, it is undisputed and set forth  
27 in the pleadings that (1) the physical description provided by Willis of the individual involved in the  
28 murder matched a physical description of Richardson, not Masters. Pet. ¶¶ 2, 79, 89; 8 PHRT 8383–

1 87, 8389 (AG008513–16, AG008519); (2) Willis’s testimony regarding the commission of the  
2 murder was consistent with Richardson’s statements, except that Richardson admitted to the role in  
3 Burchfield’s murder that Willis attributed to Masters. Pet. ¶¶ 60, 89; 8 PHRT 8383–87, 8389  
4 (AG008513–16, AG008519); (3) Woodard testified that Richardson was involved in the plan to kill  
5 Burchfield, and that Masters was not. Pet. ¶¶ 19, 192; RHRT 227:13–228:5; (4) Richardson’s  
6 lengthy list of BGF co-conspirators involved in Burchfield’s murder aligned with and was  
7 corroborated by the State’s list of involved individuals but did not include Masters. Pet. ¶ 90; Ex. 54-  
8 A at 7–8; 73 RT 16034; (5) Richardson’s exclusion of Masters from his list of co-conspirators was  
9 consistent with the testimony of both Rhinehart, who said that Masters voted against the plan to  
10 murder Burchfield, and Drume, who likewise excluded Masters from his account of the group  
11 involved in the killing. Pet. ¶ 92; 5 RHRT 319; 7 CT 1912–13; 17 CT 5046; (6) Rhinehart said that  
12 he heard about the plan to kill Burchfield from Richardson, and specifically that Redmond ordered  
13 Richardson to “retaliate” after a guard assaulted a prisoner. 5 RHRT 317:26–318:17; and (7)  
14 Woodard and Johnson both testified that the BGF would not pass a weapon from the second tier to  
15 the fourth tier (where Masters was housed), corroborating the account that Richardson (who was  
16 housed on the second tier) sharpened the knife. Pet. ¶ 91; 4 RHRT 234:12–19. Courts often find  
17 *Chambers* violations on the basis of excluded statements corroborated by other evidence. *See also*  
18 *Chia*, 360 F.3d at 1006 (exclusion of statements violated *Chambers* where statements were  
19 corroborated by and consistent with evidence submitted by the prosecution); *Green*, 442 U.S. 97  
20 (finding *Chambers* violation where evidence corroborating the excluded statement was “ample”).  
21 Given the weight of the corroborative evidence presented here, it was unreasonable for the  
22 California Supreme Court to find otherwise.

23 Richardson’s statements also bear numerous other indicia of reliability. For one, Richardson  
24 reiterated his involvement multiple times: in his original interview with Ballatore, in a follow-up  
25 conversation the next day, in a separate conversation with Ballatore and Spangler, in his letter to  
26 Ballatore, and when he told Adams that he “cleaned up [his] tracks and they got some other  
27 motherfuckers for it.” Pet ¶¶ 45–56, 63; Ex. 54-A at 1–4, 13–15; 71 RT 15773. Moreover,  
28 Richardson’s listed over 50 BGF members, including nicknames, and described the operations of the

1 BGF in great detail. Ex. 54-A at 9–12. The California Supreme Court even admitted that these  
2 details bolster his credibility. *In re Masters*, 7 Cal. 5th at 1084–85. Additionally, the officers who  
3 spoke with Richardson believed him to be truthful and/or knew some of the statements he made to  
4 be true. Specifically, Echeverria noted that information provided by Richardson was “already proved  
5 true” or could be corroborated, and Ballatore wrote that Richardson “appeared sincere and truthful.”  
6 *See* Ex. 54-A at 4, 12; Pet ¶ 88. And Richardson agreed to polygraph tests multiple times, a clear  
7 indication that he believed the veracity of his statements. Ex. 54-A at 2, 4, 8; Pet ¶ 88. The California  
8 Supreme Court ignored that these indicia of reliability, taken together, are more than sufficient to  
9 demonstrate that the exclusion of the Richardson Confessions was contrary to or an unreasonable  
10 application of *Chambers*, as applied by the Ninth Circuit in *Chia* and *Cudjo*.

11 **2. There Is No Serious Question That the Richardson Confessions Are**  
12 **Critically Important to Masters’s Defense**

13 There can be no serious dispute that the Richardson Confessions are critical to Masters’s  
14 defense. Courts in this Circuit and elsewhere recognize the power of confessions. *See, e.g., Arizona*  
15 *v. Fulminante*, 499 U.S. 279, 296 (1991); *Farmer v. Ratelle*, 131 F.3d 146 (9th Cir. 1997). And as the  
16 Ninth Circuit has recognized, the probative value of a statement that exonerates the excused “cannot  
17 be called into serious question.” *Chia*, 360 F.3d at 1004. Richardson’s statements effectively  
18 exonerate Masters because Richardson contends that *he* committed the crimes for which Masters  
19 was convicted. *See* Ex. 54-A; Pet. ¶¶ 37–38. It is also undisputed that Spangler, Ballatore, and  
20 Echeverria were prohibited from testifying to the circumstances surrounding Richardson’s  
21 confessions. Pet ¶ 41; Traverse at 4. Nonetheless, the State argues that it was reasonable for the  
22 California Supreme Court to exclude the statements given that other evidence “remained available.”  
23 Answer at 23. This argument is unavailing in light of the Court’s decision in *Chambers*.

24 In *Chambers*, the Court determined that statements made by a third party, Gable McDonald,  
25 against his interest were critical to Chamber’s defense, even though Chambers elicited testimony at  
26 trial that McDonald was the actual perpetrator of the murder. The evidence introduced by Chambers  
27 at trial included testimony relevant to McDonald’s credibility. *See Chambers*, 410 U.S. at 292, 294.  
28 Here, the State contends that the Richardson Confessions were not critical to Masters’s defense  
because Masters elicited evidence at trial in the form of “questioning Rufus Willis during the trial

1 regarding his description of the other conspirator” and “attack[ing] the credibility of Rufus Willis[.]”  
2 Answer at 20. In other words, the State argues that because Masters was able to introduce *some*  
3 evidence at trial potentially implicating Richardson, Richardson’s own confessions were  
4 unnecessary. The trial court already addressed this argument, recognizing that the Richardson  
5 Confessions were “extremely significant” to Masters, despite the inclusion of Willis’s testimony.  
6 Pet. ¶ 89.

7 **B. The California Supreme Court Applied a Standard Contrary to *Chambers v.***  
8 ***Mississippi* and Unreasonably Applied *Chambers* and Clearly Established Due**  
9 **Process Rights by Excluding the Drume Confessions (Claim 2)**

10 As with exclusion of the Richardson Confessions, *see* § III.A, Masters is entitled to habeas  
11 corpus relief because the California Supreme Court acted contrary to and unreasonably applied  
12 *Chambers v. Mississippi* when it upheld the exclusion of the powerful and detailed confession from  
13 Drume regarding his involvement in Burchfield’s murder. Like the Richardson Confessions, the  
14 decision to exclude the Drume Confessions denied Masters his constitutional right to present a  
15 defense because the Drume Confessions bear indicia of reliability and were critical to Masters’s  
16 defense. *See Chia*, 360 F.3d at 1005 (“California was allowed to present, through its [] witness, the  
17 Government’s theory of the case to the jury. [The defendant] should have been afforded a similar  
18 opportunity.”); *see also Chambers*, 410 U.S. at 294 (“A person’s right to . . . an opportunity to be  
19 heard in his defense—a right to his day in court—are basic in our system of jurisprudence.”)  
20 (quoting *In re Oliver*, 333 U.S. 257, 273 (1948)). Additionally, the State’s arguments that the  
21 California Supreme Court properly affirmed the trial court’s decision to exclude the Drume  
22 Confessions are identical to its arguments in favor of excluding the Richardson Confessions, and  
23 thus do not establish any dispute of material fact that the Supreme Court unreasonably applied  
24 *Chambers*. *See* Answer at 24–25; Traverse at 12. Accordingly, the undisputed facts in the pleadings  
25 demonstrate that the Court should grant Masters habeas relief.

26 **1. The Drume Confessions Are Reliable**

27 The Drume Confessions contain numerous indicia of reliability. *First*, as the California  
28 Supreme Court noted, it is undisputed that the Drume Confessions are statements against penal  
interest. *See Masters*, 62 Cal. 4th at 1058 (“The parties do not dispute Drume’s . . . statements were

1 against his penal interest.”); *see also* Pet. ¶ 104. “Self-inculpatory statements have long been  
2 recognized as bearing strong indicia of reliability.” *Chia*, 360 F.3d at 1004–05 (citing Fed. R. Evid.  
3 904(b)(3)); *Williamson*, 512 U.S. at 599 (“[R]easonable people, even reasonable people who are not  
4 especially honest, tend not to make self-inculpatory statements unless they believe them to be  
5 true.”). **Second**, Drume repeatedly and consistently confessed that he—not Masters—manufactured  
6 the weapon used to kill Burchfield. Pet. ¶ 97; Traverse at 12. And **third**, Drume confessed in an  
7 affidavit signed under penalty of perjury. Pet. ¶ 108; Traverse at 12. Tellingly, the State’s Answer  
8 simply ignores these indicia of reliability.

9 Other evidence corroborated the Drume Confessions, which strengthens these indicia of  
10 reliability. *See Chia*, 360 F.3d at 1006 (“When a defendant seeks to introduce an out-of-court  
11 statement, the corroboration of the contents of that statement with other evidence is a factor  
12 weighing in favor of its reliability.” (citing *Chambers*, 410 U.S. at 300)). For example, Drume was  
13 caught on numerous occasions making or possessing weapons like the ones he confesses to having  
14 made for Burchfield’s murder. *See* Pet ¶ 107 (in March 1985, authorities found weapon stock in  
15 Drume’s cell); *id.* (soon after Burchfield’s death, Richardson confessed to another planned attack  
16 and turned over weapons to authorities); *see also* Traverse at 12. Like with the indicia of reliability,  
17 the Answer remains silent and does not dispute this evidence corroborating the Drume Confessions.

18 None of the State’s arguments create a dispute regarding the reliability of the Drume  
19 Confessions. **First**, the fact that Drume confessed two and a half years after the murder does not  
20 indicate unreliability, *see* Answer at 24. Indeed, the Drume Confessions contained multiple other  
21 existing indicia of reliability, and especially given the State heavily relied on a witness (Evans) who  
22 came forward almost **two years** after Drume. *See supra* § II.B.

23 **Second**, the alleged inconsistencies between the Richardson Confessions and the Drume  
24 Confessions, as well as between the Drume Confessions and Masters’s other affirmative evidence,  
25 are not dispositive. Significantly, both the Richardson and Drume Confessions mentioned only the  
26 key planners of the murder. Leaving out other participants in the murder did not, therefore,  
27 demonstrate that the confessions were false. And, the Drume Confessions’ possible conflict with  
28 BGF protocol prohibiting the passing of weapons between tiers (which may or may not have been

1 adhered to that night) does not undermine all the existing indicia of reliability, and does not show  
2 that the Drume Confessions are demonstrably false to the point that Masters had no right to present  
3 his exculpatory evidence to the jury. Thus, because these inconsistencies do not demonstrate that the  
4 Drume Confessions were false, and because of their multiple indicia of reliability, they should have  
5 been weighed by the jury. *See Cudjo*, 698 F.3d at 763; *supra* § IV.A; Traverse at 12–13. **Third**, the  
6 unavailability of Drume for cross-examination does not render the Drume Confessions unreliable;  
7 many courts, including the United States Supreme Court, have found *Chambers* violations involving  
8 excluded confessions of unavailable witnesses. *See supra* § II.D; Traverse at 13.

## 9                   2.        **The Drume Confessions Were Critical to Masters’s Defense**

10           As with the Richardson Confessions, it was unreasonable to find that the confession was not  
11 critical to the defense on the ground that Masters was allowed to defend himself through  
12 impeachment efforts and his own testimony. Those tools are far cries from actual evidence about the  
13 person who was involved in the murder and exculpated Masters. *See supra* § II.B. This is by no  
14 means harmless error. Therefore, excluding the Drume Confessions constituted a decision that was  
15 contrary to, and was an unreasonable application of, *Chambers*. *See* Traverse at 13.

16           Moreover, this case aligns closely with the fact pattern described by the Ninth Circuit in  
17 *Cudjo*. In *Cudjo*, as well as in *Chambers*, “the issue of the case was the identity of the perpetrator”  
18 and the defendant “‘endeavored to develop two grounds of defense’: that he did not kill the victim,  
19 but that an identifiable other person did.” And “the alternate suspect had allegedly previously  
20 confessed to the crime; the defense was prevented from cross-examining the alternate suspect at  
21 trial; and the trial court’s application of the hearsay rules prevented the defendant’s witness from  
22 testifying to the alternate suspect’s confession” in violation of the Constitution. *See Cudjo*, 698 F.3d  
23 at 765–66 (citations omitted). These are the circumstances presently before the Court. A key  
24 question here is whether Masters manufactured the weapon used to kill Burchfield. Masters’s  
25 defense was that someone other than himself manufactured the weapon. Drume confessed to doing  
26 exactly that. Thus, the Drume Confessions go to the heart of Masters’s defense, and the California  
27 Supreme Court’s affirmance of the trial court’s decision was contrary to, and an unreasonable  
28 application of, clearly established precedent. *See* Pet. ¶ 121.

1           **C. The California Supreme Court’s Finding That Evidence Withheld from Masters**  
2           **Was Not Material Unreasonably Applied *Brady v. Maryland* and Its Progeny**  
3           **(Claim 3)**

4           In *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court held that the government  
5           violates a defendant’s Constitutional due process rights “if it withholds evidence that is favorable to  
6           the defense and material to the defendant’s guilt or punishment.” *Smith v. Cain*, 565 U.S. 73, 75  
7           (2012). This includes evidence that impeaches government witnesses. *See Giglio v. United States*,  
8           405 U.S. 150, 154–155 (1972). The duty to turn over evidence “exists regardless of whether the  
9           defense made any request of the prosecution; the prosecution is required to provide material,  
10          favorable information even ‘where the defendant does not make a *Brady* request.’” *Amado v.*  
11          *Gonzalez*, 758 F.3d 1119, 1134 (9th Cir. 2014) (citing *United States v. Bagley*, 473 U.S. 667, 680–82  
12          (1985)).

13          Here, the State failed to disclose several pieces of critical impeachment evidence, including,  
14          but not limited to, that (1) Evans, a habitual informant, had repeatedly and consistently provided the  
15          State false information in the past; (2) Evans and Hahn had a pre-existing, ongoing working  
16          relationship, which included Hahn referring Evans to other government agencies for paid informant  
17          work, and that the extent of this relationship was greater than what was described at Masters’s trial;  
18          (3) contrary to Evans’s testimony otherwise, Hahn had promised Evans he would postpone Evans’s  
19          sentencing for an unrelated conviction in exchange for his testimony against Masters; and (4) at the  
20          time of Masters’s trial, Evans was one of few suspects in the unsolved San Francisco murder of  
21          James Beasley, Sr. (thus giving him additional incentive to testify in return for a beneficial deal). *See*  
22          Pet. ¶¶ 125–129, 131–135, 142–153; 8 RHRT 433–34, 448–49, 453–54, 460–61; 79 RT 17014–15,  
23          17021; 3 RHRT 172, 181–92. Each of these pieces of information meets the *Brady* and *Giglio*  
24          requirements and, as a result, should have been disclosed. Accordingly, the California Supreme  
25          Court’s decision rejecting Masters’s *Brady* claims was contrary to, and an unreasonable application  
26          of, clearly established Federal law as established by the Supreme Court of the United States.  
27  
28

1                   **1. Evans’s Testimony for the Prosecution Was Crucial to Its Case Against**  
2                   **Masters and the Defense Was Not Able to Completely Impeach Evans**  
3                   **Because the Prosecution Withheld Evidence**

4                   At Masters’s trial, Evans served as a key witness against Masters, claiming that Masters  
5                   confessed to Evans that he sanctioned the attack on Burchfield. The California Supreme Court  
6                   considered Evans’s testimony at trial “damning.” Referee Report at 5. After nine days of  
7                   deliberation, the jury reached its verdict of guilt with respect to Masters *only after requesting a*  
8                   *“readback” of Evans’s testimony.* 78 RT 16906 (AG030917); 79 RT 17082, 17093. But critical  
9                   evidence was withheld. Specifically, Evans worked closely with Hahn as a government informant,  
10                  often lying to benefit his own situation. *See generally* 8 RHRT 431–80. Moreover, Hahn had  
11                  promised Evans tangible benefits in exchange for his testimony against Masters. 79 RT 17014–15.  
12                  The prosecution did not disclose the extent of Evans’s relationship with Hahn, Evans’s status as a  
13                  murder suspect, or Evans’s long history as a government informant.

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

19                   **2. The California Supreme Court Unreasonably Denied Masters’s Brady**  
20                   **Claim After Finding the Undisclosed Evidence Was Not Material.**

21                  In its August 12, 2019 opinion, the California Supreme Court found that the prosecution  
22                  withheld evidence about Evans but that withholding this evidence was not material to the jury’s  
23                  decision. In doing so, the Court addressed the three categories of information that prosecutors had  
24                  failed to disclose: (1) the prosecutors threatened Evans with a lengthy incarceration if he did not  
25                  implicate Masters; (2) Evans was a suspect in Beasley’s killing, with the implication that he was not  
26                  prosecuted for that homicide in exchange for his testimony against Masters; and (3) Evans and Hahn  
27                  had a pre-existing, ongoing working relationship. *In re Masters*, 7 Cal. 5th at 1087.

28                  The California Supreme Court’s determination was contrary to, and an unreasonable  
application of, Masters’s constitutional right as clearly established by the Supreme Court. Withheld  
evidence is material if there is a “reasonable probability that, had the evidence been disclosed to the



1 defense, the result of the proceeding would have been different.” *United States v. Bagley*, 473 U.S.  
2 667, 682 (1985). “A reasonable probability does not mean that the defendant ‘would more likely  
3 than not have received a different verdict with the evidence,’ only that the likelihood of a different  
4 result is great enough to ‘undermine[ ] confidence in the outcome of the trial.’” *Smith*, 565 U.S. at 75  
5 (citing *Kyles v. Whitley*, 514 U.S. 419, 434 (1995)). The undisputed facts set forth in the pleadings  
6 demonstrate that the State’s failure to disclose the full extent of Evans’s contacts with Officer Hahn,  
7 including and most importantly that ***Evans had provided Hahn with more false information than***  
8 ***true*** during their relationship (something about which the jury did not even have a hint), unfairly  
9 prejudiced Masters. Given the crucial role that Evans’s testimony played at trial, there is a  
10 *reasonable probability* that the absence of this powerful impeachment evidence undermines  
11 confidence in the verdict as a whole. *See* Pet. ¶ 167. The prosecution’s failure to disclose the full  
12 nature of Evans’s government relationships thus was material, and the California Supreme Court’s  
13 decision otherwise was objectively unreasonable.

14       Though each piece of undisputed evidence detailed above is individually material to  
15 Masters’s defense, the Court’s failure to assess the cumulative harm also warrants relief. The  
16 California Supreme Court analyzed and dismissed the evidence in a piecemeal manner, finding that  
17 each piece of evidence, in isolation, was not material. *See In re Masters*, 7 Cal. 5th at 1088–89.  
18 Nowhere did the Court evaluate whether, had the jury known *all* of the undisclosed evidence, the  
19 jury might well have made a different determination regarding Evans’s credibility. *See id.*  
20 Importantly, because Evans’s credibility had already been attacked at trial and the relative  
21 importance of his testimony was demonstrated through the jury’s “readback” request, there is a  
22 reasonable probability that this undisclosed impeachment evidence, cumulatively, and in tandem  
23 with the weakness of the other evidence put forward, would have undermined confidence in the  
24 outcome. *See United States v. Agurs*, 427 U.S. 97, 113 (1976) (“[I]f the verdict is already of  
25 questionable validity, additional evidence of relatively minor importance might be sufficient to  
26 create a reasonable doubt.”). As *Agurs* makes clear, it is not reasonable to find that because the  
27 defense had managed to accomplish some impeachment, there is no reasonable chance further  
28 impeachment would have made a difference. To the contrary, the fact that some impeaching

1 evidence was presented at trial makes it all the *more* likely that any additional evidence would have  
 2 led the jury to conclude that the impeachment evidence was strong enough to justify discarding  
 3 Evans’s testimony in its entirety. This error alone was objectively unreasonable under clearly  
 4 established federal law. *See Kyles*, 514 U.S. at 440–41 (holding that the Court of Appeals improperly  
 5 made “a *series of independent materiality evaluations*, rather than the cumulative evaluation  
 6 required by *Bagley*” where the Court of Appeals’ opinion “contain[ed] repeated references  
 7 dismissing particular items of evidence as immaterial” (emphasis added)); *Agurs*, 427 U.S. at 112  
 8 (“[T]he omission must be evaluated in the context of the entire record.”); *United States v. Shaffer*,  
 9 789 F.2d 682, 688–89 (9th Cir. 1986) (analyzing collectively the prejudice resulting from the State’s  
 10 suppression of four different pieces of impeachment material). For these reasons, this Court should  
 11 find that the California Supreme Court unreasonably applied settled precedent when it refused to  
 12 recognize a *Brady* violation had been established. *See Amado*, 758 F.3d at 1140; *Kyles*, 514 U.S. at  
 13 440-41.

14 **D. The California Supreme Court Unreasonably Applied *Napue v. Illinois* by**  
 15 **Denying Relief Despite the Introduction of Evidence That Prosecutors Should**  
 16 **Have Known to be False (Claim 4)**

17 “One of the bedrock principles of our democracy, ‘implicit in any concept of ordered liberty,’  
 18 is that the State may not use false evidence to obtain a criminal conviction.” *Hayes v. Brown*, 399  
 19 F.3d 972, 978 (9th Cir. 2005) (citations omitted); *see also Napue v. Illinois*, 360 U.S. 264, 269  
 20 (1959). “[A] conviction obtained through use of false evidence, known to be such by representatives  
 21 of the State, must fall under the Fourteenth Amendment.” *Napue*, 360 U.S. at 269. A Due Process  
 22 violation is established upon a showing that (1) the prosecutors presented or failed to correct false  
 23 testimony; (2) the prosecutors knew or should have known of the falsehood; and (3) the false  
 24 evidence was material. *Agurs*, 427 U.S. at 113; *Hayes*, 399 F.3d at 984. Prosecutors violated  
 25 Masters’s due process rights by presenting false evidence regarding Evans’s relationship with Hahn  
 26 and the benefits Evans received in exchange for his testimony against Masters.

26 **1. Prosecutors Knew or Should Have Known That Their Witnesses**  
 27 **Presented False Testimony**

28 The Supreme Court’s decision in *Napue* requires only that the prosecutors should have  
 known that the evidence they presented was false. *Hayes*, 399 F.3d at 984. Prosecutors have an

1 “obligation to investigate whether the police have evidence favorable to the defendant” and therefore  
2 “‘should know’ when a witness testifies falsely about such evidence.” *Jackson v. Brown*, 513 F.3d  
3 1057, 1075 (9th Cir. 2008) (prosecutors should have known that law enforcement promised more  
4 than mere protection to a State witness and therefore had an obligation to correct false testimony as  
5 to the promises made). At Masters’s trial, prosecutors knew or reasonably should have known that  
6 Evans gave false testimony as to his relationship with law enforcement and the benefits he received  
7 for serving as an informant, and they failed to correct it.

8 The undisputed facts indicate that Evans lied on the stand. During trial, Evans testified that  
9 he had a sporadic, limited, and confrontational relationship with Hahn. Pet. ¶¶ 130, 174; 14 RHRT  
10 741–48; 58 RT 13794–800. What is more, Evans failed to disclose that he would receive benefits in  
11 exchange for the information he provided to Hahn. Pet. ¶¶ 124, 130–142; Traverse at 17. In reality,  
12 Evans had repeatedly served as an informant to Hahn, and when he provided information related to  
13 Masters, Hahn agreed to do a favor for Evans down the line in exchange. Pet. ¶¶ 124, 130. Indeed,  
14 when Evans provided information to Hahn against Masters, for example, Evans also told Hahn that  
15 he was awaiting sentencing in Alameda County. *Id.* ¶ 142; 79 RT 17014–15. Hahn subsequently  
16 called Alameda County prosecutors at least twice, requesting that Evans’s sentencing hearings be  
17 delayed. *Id.* Additionally, Hahn arranged to have Evans released from custody early and placed on  
18 parole in Texas. *In re Masters*, 7 Cal. 5th 1054 at 1062. Thus not only did Evans lie about the nature  
19 of his relationship with Hahn, he also lied about the conditions under which he provided the State  
20 with key inculpatory evidence.

21 The Attorney General himself “conced[ed] that Evans did lie at Masters’s trial about the  
22 number of meetings he had with Hahn.” *Id.* at 1068. Similarly, the Referee appointed by the  
23 California Supreme Court agreed that Evans “had more extensive contact with law enforcement that  
24 was disclosed at trial.” Referee Report at 11; Pet. ¶ 148. Further, the Referee found that Evans was a  
25 “spectacularly unreliable” witness who admitted himself that he “would say or do anything to protect  
26 himself, help himself, and avoid returning to prison.” Referee Report at 8, 10; Pet. ¶ 174.

27 Evans’s deceit, specifically as it concerned his relationship with Hahn and the benefits he  
28 received in exchange for information against Masters, should have been no secret to the prosecution

1 either. The California Supreme Court, for its part, found both that Hahn was part of the prosecution  
2 team and that “the prosecutors’ investigators knew at least some information about Evans, and they  
3 undoubtedly were members of the prosecution team.” *In re Masters*, 7 Cal. 5th at 1087. The Court  
4 noted that “a prosecutor has a duty to learn of any possible inducements made by law enforcement  
5 officers or other agents of the state, provided that these agents are acting on the prosecutor’s behalf  
6 in the case.” *In re Masters*, 7 Cal. 5th at 1087. Similarly, in *Jackson*, the Ninth Circuit held that  
7 prosecutors should have known of the promises made by law enforcement to a State witness in  
8 exchange for information because law enforcement is a “representative[] of the State.” 513 F.3d at  
9 1075. Here, the undisputed facts make clear that prosecutors should have discovered the extent of  
10 Hahn’s relationship with Evans because, (1) as in *Jackson*, Hahn is a representative of the State; and  
11 (2) a most basic inquiry into Hahn’s relationship with Evans would have revealed the facts Evans’s  
12 testimony concealed.

13 **2. Evans’s False Testimony That the Prosecution Failed to Correct Was**  
14 **Material to the Outcome of the Trial**

15 Where *Napue* violations are material to the verdict, a jury’s finding should be overturned.  
16 *Jackson*, 513 F.3d at 1075–76. Materiality, in turn, turns on whether there is “any reasonable  
17 likelihood that the false testimony could have affected the judgment of the jury.” *Hayes*, 399 F.3d at  
18 984; *Agurs*, 427 U.S. at 103; *Jackson*, 513 F.3d at 1076. The Ninth Circuit has “gone so far as to say  
19 that ‘if it is established that the government knowingly permitted the introduction of false testimony  
20 reversal is virtually automatic.’” *Jackson*, 513 F.3d at 1076 (citations omitted). The burden is lower  
21 than required to establish a *Brady* violation. *See id.* (*Brady* violation is material when “there is a  
22 reasonable probability that . . . the result of the proceeding *would* have been different”). Importantly,  
23 “[t]he principle that a State may not knowingly use false evidence, including false testimony, to  
24 obtain a tainted conviction, implicit in any concept of ordered liberty, does not cease to apply merely  
25 because the false testimony goes only to the credibility of the witness.” *Napue*, 360 U.S. at 269.  
26 Indeed, a “jury’s estimate of the truthfulness and reliability of a given witness may well be  
27 determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the  
28 witness in testifying falsely that a defendant’s life or liberty may depend.” *Id.*

1 Evans's testimony was material to the prosecution's case. After deliberating for nine days,  
2 the jury only reached its verdict *after* requesting a read-back of Evans's testimony. *See* Pet. ¶ 165; 78  
3 RT 16906 (AG030917); 79 RT 17082, 17093. This demonstrates that the evidence was closely  
4 balanced, and Evans's testimony may have been the tie-breaking factor. Further, in Hahn's  
5 memorandum about the trial, he noted that Evans's testimony "obviously caused damage" and "may  
6 be the crucial factor in the outcome of the trial." Pet. ¶ 165; HC Pet. Ex. 11 at 53 (AG046248). In  
7 other words, drawing upon his extensive experience with criminal trials and observations of jury  
8 reactions to particular evidence, Hahn himself concluded that Evans's testimony was the "crucial  
9 factor in the outcome of the trial." Pet. ¶ 165. The Referee agreed that Evans's testimony played a  
10 "significant" role in the trial. Referee Report at 5.

### 11 **3. The California Supreme Court's Analysis of Evans's Testimony Was 12 Flawed**

13 While the Court acknowledged that Evans lied on the stand, it nonetheless held that these lies  
14 were immaterial because they went to Evans's credibility, and Masters had "provided the jury ample  
15 knowledge about Evans for purposes of assessing his credibility." *In re Masters*, 7 Cal. 5th at 1079.  
16 But the fact that the defense introduced other evidence to call Evans's credibility into question does  
17 not inoculate the significance of the information the jury did not know. *See Jackson*, 513 F.3d at  
18 1077. The Ninth Circuit has emphasized that the knowledge that a witness lied on the stand is of  
19 significant value to juries. *See, e.g., id.* As here, *Jackson* involved a witness who lied on the stand  
20 about the promises prosecutors made to him in exchange for his testimony. *See id.* The Ninth Circuit  
21 rejected the State's argument that the false evidence was immaterial to the outcome of the trial,  
22 explaining, "that [the witness] was willing to perjure himself in order to cover up [the prosecutor's]  
23 promise would surely have called into question the truth of all of his testimony." *Id.* The jury's  
24 assessment of Evans's credibility likewise depended on having a fully accurate picture of who Evans  
25 was, what his motivations for testifying against Masters were, and the extent of his untruthful  
26 testimony. Had the jury known the full truth about the circumstances of Evans testimony, there is a  
27 reasonable likelihood their reaction to his testimony would have been different.  
28

1           **E. Masters Is the Rare Person Entitled to Habeas Relief on the Grounds That He Is**  
2           **Actually Innocent**

3           Executing Masters would also be unconstitutional for a more fundamental reason: he is  
4 actually innocent. The Court should therefore confirm that executing the actually innocent is a  
5 “constitutionally intolerable event,” *Schlup v. Delo*, 513 U.S. 298, 314 (1995), because the evidence  
6 supporting Masters’s innocence can easily satisfy even the most heightened standard of persuasion.  
7 The State’s generic concerns about eleventh-hour recantations cannot override the fact that every  
8 witness with firsthand knowledge about the plan to kill Burchfield—from Masters’s co-defendants to  
9 the State’s key trial witnesses—now admits that Masters was not involved. Moreover, recognizing  
10 this prohibition for the first time in this case is appropriate, as the principle would apply retroactively  
11 to Masters as a new substantive rule, and AEDPA cannot constitutionally bar such retroactive  
12 application. Thus, the Court should grant habeas relief on these grounds.

13           Masters is entitled to habeas relief because he has made a “truly persuasive” showing of his  
14 innocence. *Herrera v. Collins*, 506 U.S. 390, 417 (1993). Every witness with firsthand knowledge of  
15 the conspiracy to kill Burchfield has now explained that Masters did not play a role. Traverse at 20–  
16 21. Willis, a key trial witness whose testimony was extensively discussed in the State’s Answer,  
17 Answer at 4–6, has explained that “Masters had nothing to do with the planning of the Burchfield  
18 killing” and that “he wasn’t involved.” H.C. Pet. Ex. 1 ¶¶ 5–6 (AG046186). Evans, the State’s only  
19 other trial witness who claimed firsthand knowledge of Masters’s alleged role, has explained that he  
20 had never even spoken to or communicated with Masters. RH Pet. Ex. 58 at 41:3–12 (AG050432).  
21 And as noted above, Richardson and Drume have confessed multiple times to playing the role in the  
22 conspiracy that the State attributed to Masters. *See generally supra* § II.B; *see also* H.C. Pet. Ex. 4  
23 ¶¶ 2–3 (AG046208) (Drume). Even Masters’s co-defendants, Woodard and Johnson, have stated that  
24 “Masters had no knowledge of the attack on Sgt. Burchfield.” H.C. Pet. Ex. 2 ¶ 8 (AG046201)  
25 (Woodard); *see also* H.C. Pet. Ex. 3 ¶ 3 (AG046204) (Willis stated that “Jarvis Masters had no  
26 knowledge of any involvement in the killing of Sgt. Burchfield”). These statements not only  
27 establish Masters’s innocence but also corroborate each other. *See* Traverse at 20–21. Accordingly,  
28 Masters has satisfied even the most heightened requirements for an actual innocence claim.

1 **V. CONCLUSION**

2 For the foregoing reasons, Masters respectfully requests that this Court enter an order  
3 granting the writ of habeas corpus and vacating the criminal judgment and sentence entered against  
4 him, as they were contrary to, and an unreasonable application of clearly established federal law.  
5 Alternatively, he requests a hearing on this motion. He also asks that the Court provide such other  
6 relief as the Court may deem to be appropriate in this case.

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1 DATED: August 10, 2022

2 Respectfully submitted,  
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**CERTIFICATE OF SERVICE**

On August 10, 2022, I electronically filed the foregoing with the Clerk of this 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/ Kathryn Panish  
Kathryn Panish

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