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SUPREME COURT NO.

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN RE JACK WAYNE FRIEND,	) Court of Appeal
	) No. A155955
On Habeas Corpus.	)
	) (Alameda
	) Superior Court
	) No. 81254A)
	)

FROM THE SUPERIOR COURT OF ALAMEDA COUNTY

Honorable C. Don Clay, Judge Presiding

PETITION FOR REVIEW

AFTER A DECISION BY THE COURT OF APPEAL
FIRST APPELLATE DISTRICT, DIVISION THREE CASE No. A155955

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TO: THE CHIEF JUSTICE, AND TO THE ASSOCIATE JUSTICES OF THE CALIFORNIA SUPREME COURT:

The Court of Appeal denied Friend a certificate of appealability on any of his issues pursuant to Penal Code section 1509.1. Petitioner and Appellant Jack Wayne Friend respectfully requests this Court grant review and either address the issues presented herein on the merits, or transfer the matter to the Court of Appeal with directions to grant certificates of appealability as to the issues Friend has raised.

ISSUES PRESENTED FOR REVIEW

1. Does the definition of a "successive" petition used in this Court's jurisprudence, as well as exceptions to the bar on successive petitions, continue to apply following the implementation of California Penal Code Section 1509, subsection (d)?

2. If a petition is successive within the meaning of Section 1509, should the court apply the federal standard to determine whether a certificate of appealability should issue under section 1509.1(c)?

3. Did the Court of Appeal misapply the correct standard for issuing a certificate of appealability when it denied a certificate as to each issue or claim Friend raised?

STATEMENT OF CASE AND FACTS

On January 12, 1989, Friend was found guilty of robbery and first degree murder. (6 CT 1448.) The jury was unable to reach a unanimous verdict on the special circumstance, and a mistrial was declared. (6 CT 1466-67.) The prosecution's case-in-chief in the special circumstances retrial began on March 2, 1992. (12 CT 3090.) On March 20, 1992, the jury reached its verdict, finding the special circumstance allegation to be true. (13 CT 3192.) The jury reached its verdict sentencing Friend to death on April 17, 1992. (13 CT 3244-45.) Judgment was imposed on June 19, 1992. (13 CT 3313.)

On June 10, 2004, Friend filed his opening brief on automatic appeal. (Appellant's Opening Br., *People v. Friend,* No. S012943 (Cal., June 10, 2004)), which the California Supreme Court denied on July 20, 2009. (Opinion, *People v. Friend,* No. S012943 (Cal., July 20, 2009).)

On February 13, 2007, Friend timely filed a state habeas corpus petition. (Pet. for Writ of Habeas Corpus, *In re Jack Wayne Friend*, No. S150208 (Cal., Feb. 13, 2007).) This Court summarily denied Friend's petition on July 29, 2015. (Order, *In re Jack Wayne Friend,* No. S150208 (Cal., July 29, 2015).)

On July 28, 2016, Friend filed his initial federal petition for writ of habeas corpus, and on March 27, 2017, he filed an amended petition. (Fed. ECF Nos. 25, 35.) The district court subsequently granted Friend's motion to stay federal proceedings to allow Friend to return to state court to exhaust certain claims. (Fed. ECF No. 59.) Friend filed a petition for writ of habeas corpus and accompanying exhibits in the Alameda County Superior Court on June 28, 2018. (Pet. for Writ of Habeas Corpus, *People v. Friend*, No. 81254A (Cal. Super. Ct., June 29, 2018) (hereinafter "2018 Pet.").) On October 24, 2018, the Superior Court denied Friend's petition and denied a certificate of appealability. (Order, *People v. Friend,* No. 81254A (Cal. Super. Ct., Oct. 24, 2018) (hereinafter "Super. Ct. Order").) On November 20, 2018, Friend filed a notice of appeal (Notice of Appeal, *People v. Friend,* No. 81254A (Cal. Super. Ct., Nov. 20, 2018), and requested a stay pending the implementation of post-Proposition 66 rules of appellate procedure. (Unopposed Request to Stay and Hold Case in Abeyance, *People v. Friend,* No. 81254A (Cal. Super. Ct., Nov. 21, 2018); Motion to Stay and Hold Case in Abeyance, *People v. Friend,* No. A155955 (Cal. Ct. App., Dec. 20, 2018).)

On January 9, 2018, the Court of Appeal granted Friend's stay motion. (Order, *In re Friend*, No. A155955 (Cal. Ct. App., Jan. 9, 2019).) On June 26, 2019, Friend filed a Request for Certificate of Appealability ("COA") in the Court of Appeal. (Req. for COA, *People v. Friend*, No. A155955 (Cal. Ct. App., June 26, 2019).)[1] The State filed a response on July 1, 2019. (*In re Friend*, No. A155955 (Cal. Ct. App., July 1, 2019).) The Court of Appeal denied a COA on July 5, 2019 (Appendix A).

NECESSITY FOR REVIEW

This case involves the first decision addressing whether a COA should issue in a capital habeas corpus case following the passage of Proposition 66. The Court of Appeal failed to address whether this Court's decision in *In re Clark*, 855 P.2d 729 (Cal. 1993), defining a "successive" petition and establishing exceptions to the bar on such petitions, still applies following the passage of Proposition 66; and the proper standard for issuing a COA.

Petitioner respectfully urges the Court to address the continuing applicability of *Clark* and the appropriate standard for issuing a COA in a capital habeas case in the wake of the passage of Proposition 66. A grant of review in this case is important to settle these questions and provide guidance

[1] In filing the request for COA, Friend did not concede that his 2018 habeas petition meets the definition of "successive" under section 1509.1. *See* Issue I, *infra*. Friend maintains that his 2018 petition did not fall within the definition of "successive," as defined by this Court. *See In re Clark*, 855 P.2d 729, 740 (1993).

to the lower courts confronting similar questions in the numerous other pending capital habeas corpus cases. Alternatively, Petitioner asks this Court to grant review and transfer the case to the Court of Appeal with instructions to grant certificates of appealability with respect to the issues Friend raises.

ARGUMENT

I

THIS COURT SHOULD GRANT REVIEW TO SETTLE THE IMPORTANT QUESTION WHETHER THIS COURT'S DEFINITION OF A "SUCCESSIVE" PETITION AND THE EXCEPTIONS TO THE BAR ON SUCCESSIVE PETITIONS DISCUSSED IN THE COURT'S JURISPRUDENCE CONTINUE TO APPLY FOLLOWING THE IMPLEMENTATION OF CALIFORNIA PENAL CODE SECTION 1509(D)

The fundamental question presented in this case is how the term "successive" should be defined under California Penal Code Section 1509. Section 1509(d) states that a petition that is "successive" should be dismissed unless the petitioner is "actually innocent of the crime" or "is ineligible for the sentence." Cal. Penal Code § 1509(d). However nowhere in the text of the statute, or in Proposition 66, is the term "successive petition" defined. Thus, the term "successive" in the statute should be construed to retain its meaning as defined by this Court in prior cases, and to retain the Court's judicially created exceptions to successive petitions. Furthermore, this Court should find that Friend's habeas petition is not "successive," as defined by this Court's jurisprudence. If the Court determines the petition is "successive," the Court should find that the fundamental miscarriage of

justice exceptions described in the Court's prior decisions apply here to permit merits review of Friend's claims.

A. This Court's Definition of Successive, as Outlined in *In re Clark*, Should Apply under Section 1509

Where the language of a statute uses terms that have been judicially construed, "the presumption is almost irresistible that the terms have been used in the precise and technical sense which had been placed upon them by the courts. This principle applies to legislation adopted through the initiative process." *People v. Weidert*, 705 P.2d 380, 385 (Cal. 1985) (internal quotation marks and citations omitted). In *In re Clark*, 855 P.2d 729 (Cal. 1993), this Court defined successive petitions as those "presenting claims previously rejected" and those raising "grounds for relief which were known to the petitioner at the time of a prior collateral attack on the judgment."[2] *Id.* at 740 (footnotes and citations omitted). Similarly, in *In re Robbins*, 959 P.2d 311 (Cal. 1998), the Court noted that "claims presented in a 'subsequent' petition that *should have been* presented in an earlier filed petition will be barred as 'successive' unless the petitioner 'adequately explains' his or her failure to present *all* claims in the earlier filed petition." *Id*. at 322 n.9

[2] This Court observed in *Briggs* that "[s]ection 1509.1, subdivision (a)'s use of the term 'successive petition' is inconsistent with this Court's terminology." *Briggs*, 400 P.3d 29, 43 n.14 (Cal. 2017). Although the Court did not directly address the use of the term in section 1509(d), at a minimum the Court's statement renders the term ambiguous.

(quoting *In re Horowitz*, 203 P.2d 513, 521-22 (Cal. 1949)) (emphasis in *Robbins*).

Ineffective assistance of counsel in an initial petition for writ of habeas corpus may provide one such adequate explanation for a petitioner's failure to present his claims in a previous petition. In *Clark* the Court noted,

> If [] counsel failed to afford adequate representation in a prior habeas corpus application, that failure may be offered in explanation and justification of the need to file another petition. The petitioner must, however, allege with specificity the facts underlying the claim that the inadequate presentation of an issue or omission of any issue reflects incompetence of counsel, i.e., that the issue is one which would have entitled the petitioner to relief had it been raised and adequately presented in the initial petition, and that counsel's failure to do so reflects a standard of representation falling below that to be expected from an attorney engaged in the representation of criminal defendants.

Clark, 855 P.2d at 748.

Thus, under caselaw existing at the time that Proposition 66 was passed, when a petitioner files a second-in-time or subsequent petition, the Court first must determine whether the claims in the petition were, or should have been, presented in a previously filed petition. If the answer to both questions is no, the petition is not "successive." Similarly, if prior counsel "failed to afford adequate representation in a prior habeas corpus application," such a failure on the part of counsel may explain the need to file a subsequent petition and such a petition would not be considered "successive." *See Clark*, 855 P.2d at 748; *In re Reno*, 283 P.3d 1181, 1234

(Cal. 2012) ("A claim of ineffective assistance of prior habeas corpus counsel may also excuse compliance with the *Miller* rule.").

If the court finds that the petitioner's claims were or should have been raised previously and the failure to raise these claims was not the result of ineffective assistance of counsel, then the petition is "successive." The petition is then barred, unless the petitioner can establish a "fundamental miscarriage of justice." *Clark*, 855 P.2d at 734. A fundamental miscarriage of justice can be established by showing

> (1) that error of constitutional magnitude led to a trial that was so fundamentally unfair that absent the error no reasonable judge or jury would have convicted the petitioner; (2) that the petitioner is actually innocent of the crime or crimes of which he was convicted; (3) that the death penalty was imposed by a sentencing authority which had such a grossly misleading profile of the petitioner before it that absent the error or omission no reasonable judge or jury would have imposed a sentence of death; or (4) that the petitioner was convicted under an invalid statute.

Id. If a petitioner can satisfy one of these four requirements, there is an exception to the bar on successive habeas petitions.

Because section 1509 does not define "successive" or otherwise suggest an intent to supplant the Court's construction of the term, voters are presumed to have used the term "successive" in the manner in which the Court has construed it. Furthermore, as the Court noted in *Briggs*, "section 1509, subdivision (f) begins with a provision calling for proceedings to 'be conducted as expeditiously as possible, *consistent with a fair adjudication*.'"

Briggs v. Brown, 400 P.3d at 60 (emphasis in *Briggs*). The Court further noted, "As in *Engram*, 'the statute explicitly recognizes a court's fundamental and overriding obligation to administer the proceedings that are pending before it in a manner that is consistent with the ends of justice.'" *Id*. Therefore, if the provisions of the statute "are not 'consistent with a fair adjudication,' as the statute requires, the voters signaled that the interest of fairness must prevail." *Id*.

Additional rules of interpretation weigh in favor of Friend's interpretation of the statute. First, statutes should be construed to avoid absurd results. *See, e.g.*, *People v. Ledesma*, 939 P.2d 1310, 1312-13 (Cal. 1997). Respondent's interpretation—requiring dismissal of any non-initial petition unless it alleges factual innocence or ineligibility for the death penalty—would leave no avenue for petitioners to litigate meritorious claims that may be uncovered later through no fault of their own but which do not prove innocence or ineligibility. For example, many meritorious claims of *Batson* or *Brady* violations do not demonstrate factual innocence or ineligibility for the death penalty. Diligent petitioners might not discover such claims prior to filing their initial petition, however, due to their inability to access prosecution files or to the intentional concealment of relevant information by bad actors. *See, e.g., Foster v. Chatman*, 136 S. Ct. 1737 (2016) (reversing denial of habeas relief where, after state habeas petition had been filed, petitioner uncovered documents from prosecution file

supporting claim that the prosecution violated *Batson*). Respondent's interpretation of 1509(d) would lead to an absurd result wherein diligent petitioners would, through no fault of their own, be unable to vindicate their constitutional rights in California courts while bad actors would be rewarded for concealing constitutional errors.

Second "ambiguities in penal statutes *must* be construed in favor of the offender, not the prosecution." *In re Jeanice D.*, 617 P.2d 1087, 1091 (Cal. 1980) (emphasis added). The offender is "entitled to the benefit of every reasonable doubt as to the true interpretation of words or the construction of language used in a statute." *Id.* (quoting *People v. Smith*, 279 P.2d 33, 34 (Cal. 1955)). Courts have applied this canon of interpretation to penal statutes that set forth procedure, in addition to statutes that set penalties and criminalize behavior. In *People v. Renko*, 52 Cal. Rptr. 2d 45, 51 (Cal. Ct. App. 1996), the court applied the canon to interpret a statute governing fitness hearings in juvenile court, specifically whether the court must make an explicit finding of fitness or whether such a finding may be implied. In *Hale v. Morgan*, 584 P.2d 512 (Cal. 1978), the Court applied the canon in a case involving civil penalties assessed on a landlord for willfully depriving a tenant of utility services. *Id.* at 522-23; *see also In re Fain*, 145 Cal. App. 3d 540, 550 (Cal. Ct. App. 1983) (applying canon to administrative proceeding involving revocation of grant of parole). Although other rules of interpretation discussed above are permissive or create presumptions, this

one is mandatory. Thus, to the extent that the interpretation of "successive" petition is unclear, the interpretation advocated here by Friend and applied by the Court in prior decisions should be adopted.

B. Friend's Habeas Petition is Not Successive Within the Meaning of the Court's prior decisions and Section 1509

Friend's habeas petition is not "successive" within the meaning of *Clark* or section 1509 because the claims therein were omitted from his initial petition for writ of habeas corpus as a result of ineffective assistance of counsel. As discussed above, this Court has held that ineffective assistance of counsel in a petitioner's initial habeas proceedings "may be offered in explanation and justification of the need to file another petition." *Clark*, 855 P.2d at 748. To satisfy this standard, a petitioner must show "that the issue is one which would have entitled the petitioner to relief had it been raised and adequately presented in the initial petition, and that counsel's failure to do so reflects a standard of representation falling below that to be expected from an attorney engaged in the representation of criminal defendants." *Id*.; *see also Reno*, 283 P.3d at 1209-10 (noting that the *Strickland* standard applies in assessing the performance of habeas counsel).

1. Claims 1 and 2.B

In Claim 1 of his petition, Friend alleged that the prosecution violated *Batson v. Kentucky*, 476 U.S. 79 (1986), and *People v. Wheeler*, 583 P.2d 748 (Cal. 1978), when it struck jurors on the basis of race, gender, ethnicity,

and religion at Friend's first trial and at the retrial on the special circumstance and penalty phase. (*See* 2018 Pet. at 7-18.) At Friend's first trial, the prosecutor exercised at least seven peremptory strikes on the basis of race. (2018 Pet. at 10.) The prosecution's discriminatory use of peremptory strikes resulted in a jury with only one non-white member. (2018 Pet. at 9-10.) Although current counsel has conducted investigation to confirm that the struck jurors were members of a protected class, there was sufficient information on the face of the record that prior counsel should have flagged the issue and investigated further. (*See*, *e.g.*, RT 1060, 5711.)

The prosecution's discriminatory use of peremptory strikes at Friend's second trial was similarly notable. Of the 19 peremptory strikes exercised by the prosecutor, 12 were used to excuse women from the jury, at least four were exercised on the basis of race, and two were exercised on the basis of ethnicity and religion.[3] (RT2 2802-19; CT 6368, CT 6518.)

Because many of the prosecution's impermissible peremptory strikes were apparent from the face of the record, it also should have been apparent to counsel in Friend's initial habeas corpus proceedings that trial counsel were ineffective in failing to make an objection. By the time of Friend's first trial in 1988, *Batson* and *Wheeler* were clearly established precedents with which trial counsel had an obligation to be familiar. (*See* 2018 Pet. at 38-40.)

[3] Prospective juror Lois M. was both female and Jewish.

Similarly, counsel in Friend's state habeas corpus proceedings had an obligation to be familiar with *Batson* and its progeny and review the record and make appropriate investigations to determine whether a *Batson* violation had occurred.

The failure of trial, appellate, and state habeas counsel to raise these issues to the California courts is particularly troubling in this case because at the time of Friend's trials the entire Alameda County District Attorney's Office, and prosecutor Ted Landswick in particular, were engaged in a systemic practice of exercising peremptory strikes in a discriminatory manner. (*See* 2018 Pet. at 13-16.) Furthermore, just two years after Friend's trials, and well before his initial habeas petition was filed in state court, Landswick was heard in the courtroom using racial epithets to describe two African-American men. (*See* 2018 Pet. Ex. 13 at DA56-64.) This incident was well publicized in the area, and should have raised a red flag for state habeas counsel. Members of Friend's legal team in his state habeas corpus proceedings knew or should have known about this ongoing practice, and of Landswick's history in particular, but still failed to raise the issue in Friend's case. Counsel in Friend's direct appeal and state habeas proceedings has admitted that she had no strategic reason not to include a *Batson* claim or a claim that trial counsel were ineffective for failing to make a *Batson* challenge. (2018 Pet. Ex. 1.)

Had prior counsel raised the issue, there is a reasonable probability that Friend would have obtained relief. *See Strickland v. Washington*, 466 U.S. 668, 694 (1984). In the context of ineffective assistance of counsel for failing to make a *Batson/Wheeler* objection, relief is warranted if there is a reasonable probability that the prosecutor would not have been able to justify at least one of his strikes. *Mitcham v. Davis*, 103 F. Supp. 3d 1091, 1120 (N.D. Cal. 2015). A comparative juror analysis demonstrates that several of the struck jurors were in fact more pro-prosecution or pro-death penalty than jurors who were seated. (*See* 2018 Pet. at 10-13, 42.) Thus, there is at least a reasonable probability that had counsel raised the issue at trial, on appeal, or in Friend's initial habeas proceedings, Friend would have obtained relief.

2. Claim 2.A

Claim 2.A of Friend's habeas petition alleged that counsel at Friend's second trial unreasonably failed to rehabilitate prospective jurors who were erroneously struck on the basis of their views about the death penalty. (2018 Pet. at 20-38.) Four of these jurors were dismissed after indicating they did not think death was an appropriate punishment based on a simplified version of the facts of Friend's case, in direct contravention of *Witherspoon v. Illinois*. *See* 391 U.S. 510, 522 n.21 (1968) ("[V]eniremen . . . cannot be excluded for cause simply because they indicate that there are some kinds of cases in which they would refuse to recommend capital punishment. And a prospective juror cannot be expected to say in advance of trial whether he

would in fact vote for the extreme penalty in the case before him."). In several instances defense counsel did not ask a single question of the prospective jurors before they were excused. (*See, e.g.*, RT2 220, 278, 302, 675, 996, 1406, 1682, 2209.) In fact, in only two instances did trial counsel question the improperly struck jurors at all, and then only minimally. Trial counsel's errors were apparent from the face of the record. Direct appeal counsel, who also represented Friend in his initial habeas proceedings in state court, did argue that the trial court improperly struck the jurors, so it is clear that counsel understood the issue was important. Counsel nonetheless failed to raise the issue of trial counsel's ineffective assistance in failing to even attempt to rehabilitate jurors in Friend's initial petition for habeas corpus. Had counsel raised this claim, there is a reasonable probability he would have obtained relief.

3. Claims 2.C and 2.D

Claims 2.C and 2.D alleged that trial counsel were ineffective in failing to investigate and present evidence that Friend suffers from organic brain damage and fetal alcohol spectrum disorder (FASD). Counsel in Friend's initial state habeas proceedings similarly failed to present these claims in Friend's initial state habeas petition. State habeas counsel were on notice that Friend had suffered several severe head injuries, at least one requiring hospitalization; that he had used alcohol, inhalants, and other drugs extensively starting at a young age; and that there were significant indications

that Friend was exposed to alcohol in utero. (*See* 2018 Pet. at 42-43 and exhibits cited therein.) State habeas counsel had obtained a neuropsychological evaluation of Friend, consistent with more recent testing, that indicates that Friend suffers from impairment in several areas, and that his impairments are consistent with FASD. (*See* 2018 Pet. Ex. 3.) Given the extensive history of head trauma, substance abuse, and potential prenatal alcohol exposure, counsel's failure to conduct additional testing or to raise a claim regarding Friend's brain damage in his petition was unreasonable.

Had counsel conducted additional testing, it would have shown the presence of significant impairment in the right frontal and midline frontal regions, which control judgment, planning, and problem solving. Furthermore, the damage to Friend's brain is largely bilateral, symmetrical, and in the midline, indicating that it occurred in the developmental period. (*See* 2018 Pet. at 46-67.) Testing indicates that Friend also suffers from brain damage caused by traumatic brain injury (TBI). (2018 Pet. at 47-48.)

The Supreme Court has recognized that evidence of brain damage can have a significant influence on jurors in a capital case. *See, e.g., Sears v. Upton*, 561 U.S. 945, 955-56 (2010) (counsel ineffective for failing to investigate and present evidence of significant frontal lobe brain damage); *Porter v. McCollum*, 558 U.S. 30, 40-41 (2009) (counsel ineffective for failing to investigate and present neuropsychological evidence of brain damage); *Jefferson v. Upton*, 560 U.S. 284 (2010) (remanding for

determination of whether state court fact-finding denying ineffectiveness claim was entitled to deference, when counsel failed to present uncontroverted expert testimony indicating petitioner had permanent brain damage that causes abnormal behavior, including "impulsiveness," "restless or aggressive characteristics," and "impaired social judgment"); *Abdul-Kabir v. Quarterman*, 550 U.S. 233, 234, 241, 262 (2007) (finding court's instructions "prevented jurors from giving meaningful consideration to constitutionally relevant mitigating evidence," including, inter alia, "possible neurological damage" and that the "strength [of the defendant's] mitigation case was its tendency to prove that his violent propensities were caused by factors beyond his control—namely, neurological damage and childhood neglect and abandonment"); *Rompilla v. Beard,* 545 U.S. 374, 392 (2005) (noting petitioner "suffers from organic brain damage, an extreme mental disturbance significantly impairing several of his cognitive functions"). Given the universally understood importance of evidence of brain damage in capital cases, had counsel investigated and presented evidence of Friend's organic brain damage and symptoms consistent with FASD, there is a reasonable probability that Friend would have obtained relief on this claim.

4. Claim 2.E

Claim 2.E alleges that trial counsel were ineffective in failing to conduct investigation regarding impeachment evidence for penalty-phase witness Amanda Van Meter, who provided arguably the most damaging

testimony against Friend in the penalty phase. (*See* 2018 Pet. at 57-60.) The failure of initial habeas counsel to raise this claim was objectively unreasonable. That trial counsel was ill-prepared and had failed to conduct any investigation of Van Meter was apparent from the record. (*See* RT2 4116, 4130-31, 4166-67; 2018 Pet. at 58-59.) Although much of the information about Van Meter is unavailable without a court order, many records, including police and court records, would have been available to counsel without court assistance. Had counsel obtained these records, they would have learned that Van Meter has a significant history of substance abuse and other criminal charges. (*See* 2018 Pet. at 59, Ex. 12, Ex. 12A.) Furthermore, counsel could have requested discovery and an evidentiary hearing to further develop factual support for this claim. Had state habeas counsel conducted an adequate investigation, they could have demonstrated that Van Meter was an impeachable witness. Counsel's failure to investigate and present evidence that would have rebutted damaging evidence of prior violent conduct undermines confidence in the decisions that the jurors reached without that information. *See Porter*, 558 U.S. at 42-44 (citing *Strickland*, 466 U.S. at 693-94).

5. Claim 3

In Claim 3, Friend argues that the imposition of the death penalty on a person suffering from organic brain damage violates the Eighth Amendment's prohibition on cruel and unusual punishment. As discussed

above, Friend suffers from significant organic brain impairment that occurred during the developmental period. As is the case in people with intellectual disability, those suffering from organic brain impairment have "diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Atkins v. Virginia*, 536 U.S. 304, 318 (2002). Counsel should have been aware that the unconstitutionality of executing those with organic brain impairment was a timely and relevant issue in the litigation of capital cases, and raised this claim in Friend's initial state habeas petition. *See, e.g.*, *People v. Poggi*, 753 P.2d 1082, 1108 (Cal. 1988) (defendant argued death penalty constituted cruel and unusual punishment in part due to his organic brain damage); *Odle v. Vasquez*, 754 F. Supp. 749, 762 (N.D. Cal. 1990) (petitioner argued brain damage reduced blameworthiness so as to make death penalty unconstitutional punishment); *People v. Beeler*, 891 P.2d 153, 178 (Cal. 1995) (defendant argued brain damage rendered punishment disproportionate in violation of the Eighth Amendment); *Martinez Ramirez v. Schriro*, No. CV 97-1331-PHX-JAT, 2007 WL 864415, *7 (D. Ariz. Mar. 20, 2007) (petitioner argued brain damage and other impairments rendered him ineligible for the death penalty on the same grounds *Atkins* found intellectual disability precluded imposition of the death penalty).

6. Claim 4

Friend alleged in Claim 4 of his petition that his rights were violated when two justices of the Court who were previously members of the Alameda County District Attorney's Office failed to recuse themselves in Friend's direct appeal and/or state habeas proceedings. (2018 Pet. at 65-68.) Justice Carol Corrigan did not recuse herself from Friend's direct appeal, but did recuse herself from his state habeas corpus case. Justice Ming Chin did not recuse himself from any part of Friend's case, but did recuse himself in another capital case out of Alameda County from approximately the same time period as Friend's, and handled by the same lead prosecutor. *See In re Mark Schmeck*, No. Sl31678 (Cal. Nov. 13, 2013). Both justices were previously employed by the Alameda County District Attorney's Office and Justice Corrigan worked in the office during part of the time in which Friend's case was pending. (2018 Pet. at 66.) Supreme Court precedent is clear that in addressing a claim of judicial bias, courts must look to "whether there is an unconstitutional 'potential for bias.'" *Williams v. Pennsylvania*, 136 S. Ct. 1899, 1905 (2016) (quoting *Caperton v. A.T. Massey Coal Co., Inc.*, 556 U.S. 868, 881 (2009)). In these circumstances, it was unreasonable for counsel not to raise a claim regarding Justice Corrigan's failure to recuse herself in Friend's direct appeal, and Justice Chin's failure to recuse himself in Friend's case, despite doing so in Schmeck's case. The justices' affiliation with the Alameda County District Attorney's Office is public information.

See http://www.courts.ca.gov/5762.htm, last visited July 9, 2019; http://www.courts.ca.gov/5766.htm, last visited July 9, 2019. Counsel knew or reasonably should have known of this affiliation. Counsel's failure to raise this issue in Friend's initial habeas proceedings was objectively unreasonable. Had counsel raised the issue there is a reasonable probability that Friend would have obtained relief in his initial habeas proceedings.

7. Claims 5 and 6

Claims 5 and 6 allege that Friend's rights under *Miranda v. Arizona*, 384 U.S. 436 (1966), were violated and appellate counsel was ineffective in failing to raise this issue on appeal. Neither direct appeal nor state habeas counsel presented the issue for review by the state court, despite the fact that the issue was preserved at trial. The trial court's ruling was contrary to clearly established Supreme Court precedent. (*See* 2018 Pet. at 70-71 (citing *Edwards v. Arizona*, 451 U.S. 477, 484 (1981); *Miranda*, 384 U.S. at 474).) It was objectively unreasonable for counsel in direct appeal and state habeas corpus proceedings to fail to raise this meritorious claim. Had counsel raised it, there is a reasonable probability that the state court would have granted relief, applying the principles set forth by the Supreme Court in *Edwards*.

C. Proposition 66 Did Not Eliminate the Fundamental Miscarriage of Justice Exceptions Established in *In re Clark* and Friend Can Establish a Fundamental Miscarriage of Justice for Several of His Claims

As discussed above, under *Clark* a habeas petition that is deemed "successive" may nonetheless be considered if the petitioner can demonstrate that there has been a fundamental miscarriage of justice. *Clark*, 855 P.2d at 734; *see also Robbins*, 959 P.2d at 317-18; *Reno*, 283 P.3d at 1216. This Court should find that the fundamental miscarriage of justice exceptions continues to apply following the adoption of section 1509.

1. The Fundamental Miscarriage of Justice Exceptions Are Constitutionally Required

In *Briggs*, the Court considered whether section 1509(d) violated the separation of powers doctrine. The Court held that it did not, noting that the Court's power to regulate habeas corpus petitions is not "exclusive," and therefore legislative action on the subject is not inherently precluded. *Briggs*, 400 P.3d at 51. The Court did not, however, address whether the restrictions in section 1509(d) eliminated the fundamental miscarriage of justice exceptions established in *Clark*, or whether doing so would violate the Eighth and Fourteenth Amendments of the United States Constitution and Article I, § 17 and § 7 of the California Constitution.[4]

[4] The Court specifically declined to address any issue relating to the application of section 1509(d) in individual cases, stating that "[g]oing forward, prisoners may seek to challenge such limitations in the context of their individual cases. We express no view on their prospects for relief,

In *Clark*, the Court indicated that the fundamental miscarriage of justice exceptions are constitutionally required. The Court found that the exceptions were necessary due to the "magnitude and gravity of the penalty of death." *Clark*, 855 P.2d at 760; *see also Reno*, 283 P.3d at 1216. The court noted that a refusal to consider a claim of factual innocence "would be constitutionally suspect in a capital case," and that "claims that mitigating evidence that was not presented to the jury warrants relief from a judgment" is of similar importance and "will be considered notwithstanding the petitioner's failure to justify delay or presentation in a successive petition." *Clark*, 855 P.2d at 759-60. Elimination of the *Clark* exceptions would violate the Eighth and Fourteenth Amendments of the United States Constitution and Article I, § 17 and § 7 of the California Constitution. *Cf. People v. Superior Court* (*Engert)*, 647 P.2d 76, 81 (Cal. 1982) (Art. I, § 27 does not insulate the statute against other constitutional attacks).

2. Friend Can Establish a Fundamental Miscarriage of Justice for Several of His Claims

Friend can establish a fundamental miscarriage of justice for several of the claims in his petition. Claims 1, 2.A, and 2.B establish that Friend received a fundamentally unfair trial. The Supreme Court has held that "the Constitution forbids striking even a single prospective juror for a

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holding only that the modifications imposed by section 1509 do not materially impair the functioning of the courts." *Briggs*, 400 P.3d at 52.

discriminatory purpose." *Snyder v. Louisiana*, 552 U.S. 472, 478 (2008) (quoting *United States v. Vasquez-Lopez*, 22 F.3d 900, 902 (9th Cir. 1994)). Because of this, the Supreme Court has held that a *Batson* violation is structural error, requiring reversal without any showing of prejudice. *Gray v. Mississippi*, 481 U.S. 648, 668 (1987). A defendant's conviction must be vacated if even one of the prosecutor's strikes was motivated by a discriminatory intent. *Batson*, 476 U.S. at 95-96; *Kesser v. Cambra*, 465 F.3d 351, 369 (9th Cir. 2006) (noting "just one racial strike calls for a retrial"); *Castellanos v. Small*, 766 F.3d 1137 (9th Cir. 2014) (same). Similarly, the erroneous exclusion of even one juror because of his or her opposition to the death penalty is reversible error per se. *Gray*, 481 U.S. at 666-68; *Davis v. Georgia*, 429 U.S. 122, 123 (1976). The right to an impartial jury "goes to the very integrity of the legal system" and is "'so basic to a fair trial that [its] infraction can never be treated as harmless error.'" *Gray*, 481 U.S. at 668 (quoting *Chapman v. California*, 386 U.S. 18, 23 (1967)). Thus, under Supreme Court precedent these errors are precisely the type of error that render a trial "fundamentally unfair."

In addition, Claims 2.C and 2.D establish that the jury that sentenced Friend to death was presented with "such a grossly misleading profile" of Friend that, absent counsel's errors, no jury would have sentenced him to death. *Clark*, 855 P.2d at 734. As noted above, the Supreme Court has recognized that brain damage is a vital mitigating factor that may drastically

alter how jurors perceive a defendant. Evidence of brain damage is particularly compelling because of "its tendency to prove that [a defendant's] violent propensities were caused by factors beyond his control." *Abdul-Kabir*, 550 U.S. at 241; *cf. Caro v. Woodford,* 280 F.3d 1247, 1258 (9th Cir. 2002) ("Because it has been established that Caro suffers from brain damage, the delicate balance between his moral culpability and the value of his life would certainly teeter toward life."). Because of counsel's deficient performance, jurors were not aware that Friend suffers from significant brain impairment in areas that control judgment, planning, and problem solving. Instead, jurors heard testimony that there was "no evidence of [Friend] having organic brain injury," which was fundamentally untrue. (RT2 4540.) Absent information that Friend suffers from organic brain damage, and that the damage is consistent with FASD, jurors were unable to accurately assess Friend's moral culpability and the appropriateness of a death sentence. *See Enmund v. Florida,* 458 U.S. 785, 801 (1982); *Atkins*, 536 U.S. at 318. As a result, jurors were presented with a "grossly misleading profile" of Friend. Had counsel presented available evidence that Friend in fact suffered from significant brain impairment, impacting his ability to reason, plan, and make decisions, no reasonable juror would have sentenced him to death.

II

THIS COURT SHOULD GRANT REVIEW TO SETTLE THE IMPORTANT QUESTION OF WHAT STANDARD COURTS SHOULD APPLY TO DETERMINE WHETHER A CERTIFICATE OF APPEALABILITY SHOULD ISSUE UNDER SECTION 1509.1(C) AND IT SHOULD ADOPT THE FEDERAL COURT STANDARD

California Penal Code section 1509.1 provides that following a decision from a Superior Court on a capital habeas petition, either party may appeal to the Court of Appeal. *See* Cal. Penal Code § 1509.1(a). If the petition is "successive," a petitioner must obtain a COA from either the Superior Court or the Court of Appeal in order to appeal. A COA may issue "only if the petitioner has shown both a substantial claim for relief" and a substantial claim that the requirements of section 1509(d) have been met. Cal. Penal Code § 1509.1(c). Neither section 1509.1 nor the rules of appellate procedure provide guidance as to what amounts to a "substantial claim" sufficient to obtain a COA. Because, to counsel's knowledge, Friend's COA request was the first such request since Proposition 66 became effective, no other court has yet had an opportunity to review or define the "substantial claim" standard set forth in section 1509.1(c).

When the "objectives and relevant wording" of a federal statute are similar to state law, California courts "often look to federal decisions" for assistance in interpreting this state's legislation. *Richards v. CH2M Hill, Inc.*, 29 P.3d 175, 183 (Cal. 2001); *Reno v. Baird*, 957 P.2d 1333, 1337 (Cal.

1998). Section 1509.1's requirement of "a substantial claim" tracks the language of 28 U.S.C. § 2253, the federal statue governing requests for COA in federal habeas cases. Like section 1509.1(c), the federal statute requires a "substantial showing" that a petitioner's constitutional right has been denied.

This Court has looked to federal law for guidance interpreting California statutes in other contexts. *See, e.g.*, *Bldg. Material & Constr. Teamsters' Union v. Farrell*, 715 P.2d 648, 651 (Cal. 1986) ("Federal decisions have frequently guided our interpretation of state labor provisions the language of which parallels that of federal statutes."). Federal law is particularly instructive here, where there is no controlling state authority because the issue has not yet been presented to the California courts. *See Fierro v. Landry's Rest. Inc.*, 244 Cal. Rptr. 3d 1, 12 (Cal. Ct. App. 2019) ("Initially, in the absence of controlling state authority, we look to the federal courts' application of class action law[.]"). Friend submits that federal law governing requests for COAs and the applicable standard should guide the Court's review of his request.

In reviewing COA requests, federal courts apply the standard set forth in *Barefoot v. Estelle*, 463 U.S. 880 (1983), and codified in 28 U.S.C. § 2253(c), to determine whether a COA should issue. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). As the United States Supreme Court stated in *Slack*:

> To obtain a COA under [28 U.S.C.] § 2253, a habeas prisoner must make a substantial showing of the denial of a constitutional right, a demonstration that, under *Barefoot*, includes showing that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.

Id. at 483-84 (internal quotations and citations omitted). "In requiring a question of some substance, or a substantial showing of the denial of [a] federal right, obviously the petitioner need not show that he should prevail on the merits. He has already failed in that endeavor." *Barefoot*, 463 U.S. at 893 n.4 (internal quotations omitted). As the Supreme Court later noted, "The holding in *Slack* would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail." *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). The "threshold inquiry" involved in a COA determination therefore "does not require full consideration of the factual or legal bases adduced in support of the claims." *Id.* at 336.

To show his claims are "substantial," a petitioner must only demonstrate that they have some merit. *Miller-El*, 537 U.S. 322. He is not required to demonstrate that he would prevail on the merits, nor is he compelled to show that the lower court's rulings were incorrect. Instead, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Slack*, 529 U.S. at 484; *Barefoot*, 463 U.S. at 893 n.4. The COA standard is

intended to screen out only clearly frivolous claims. "Although not dispositive," a death sentence "is a proper consideration" in deciding whether to issue a COA. (quoting *Barefoot*, 463 U.S. at 893). Stated another way, a COA must issue if the claim has any arguable merit "even though every jurist of reason might agree . . . that petitioner will not prevail." *Miller-El*, 537 U.S. at 338; *Id*. at 337 (stressing that a "court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief").

III

THE LOWER COURTS ERRED IN APPLYING THE STANDARD FOR ISSUING A CERTIFICATE OF APPEALABILITY

Neither the Court of Appeal nor the Superior Court addressed the appropriate standard for determining whether a COA should be granted on a particular claim or issue. In denying a COA on any of Friend's issues, the Superior Court stated only, "[B]ecause Petitioner has failed to show a substantial claim that the requirements of Penal Code section 1509, subdivision (d) have been met, this court denies a certificate of appealability." (Super. Ct. Order at 7.) The Court of Appeal similarly found, "Petitioner fails to make the requisite showing under Penal Code section 1509.1, subdivision (c), that he has both a substantial claim for relief and a substantial claim that the requirements of subdivision (d) of the Penal Code section 1509 have been met." (Order at 1, *In re Friend*, No. A155955 (Cal.

Ct. App., July 5, 2019).) Neither court commented on what standard it applied to determine whether a COA should issue or defined a "substantial" claim.

As discussed above, the appropriate standard is not whether a petitioner can demonstrate that he is entitled to relief. *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983). Rather, a petitioner need only show that "jurists of reason could disagree with the [lower] court's resolution of his constitutional claims[.]" *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003); *see also id.* 336 ("When a Court of Appeals sidesteps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.")

Neither the Superior Court nor the Court of Appeal addressed the issue of whether a COA should issue on Friend's claim that his petition is not "successive," as defined by the Court's jurisprudence. The statute is unclear as to whether Friend needs a COA to obtain review of the lower courts' determination that the petition is "successive" in this Court. Section 1509.1(c) requires a COA in order to appeal the denial of any petition or claim that is successive. But the statute is silent as to whether a COA is required to appeal the threshold questions of whether the petition is "successive" at all and whether the exceptions articulated in prior cases like *Reno* and *Clark* continue to have force. Given the statute's ambiguity, Friend

submits that a COA is not required for this Court to review these threshold issues.

If the Court disagrees, and Friend must obtain a COA to seek the Court's review of these threshold questions, then the lower courts erred in failing to issue one. Whether Friend's petition is successive, subject to the exceptions articulated by the Court in prior cases including *Reno* and *Clark*, is debatable among jurists of reason because the meaning of the term "successive" is not defined in the statute, and this Court has not yet had the opportunity to determine what definition applies. Because this case is the first to go through the new process implemented by Proposition 66 and involves an issues of first impression, it is inherently debatable among jurists of reason.

The Superior Court relied on a footnote from *Briggs* to determine that "the instant Petition is successive within the meaning of Penal Code section 1509, subdivision (d)." (Super. Ct. Order at 4.) However, the footnote from *Briggs* stated only, "We have used 'successive petition' to refer to one raising claims that could have been presented in a previous petition." (Super. Ct. Order at 7 (citing *Briggs v. Brown*, 400 P.3d 29, 43 n. 14 (2017)).) This alone does not contradict Friend's argument. The footnote in *Briggs* cites to this Court's earlier decisions in *Robbins* and *Clark*, from which Friend also derives the definition of "successive petition." *See* Issue I, *supra*; *Briggs*, 400

P.3d at 43 n. 14 (citing *In re Robbins*, 959 P.2d 311 (Cal. 1998); *In re Clark*, 855 P.2d 729, 741-42 (Cal. 1993)). However, the Court in *Clark* also held:

> Regardless of whether a constitutional right to counsel exists, a petitioner who *is* represented by counsel when a petition for writ of habeas corpus is filed has a right to assume that counsel is competent and is presenting all potentially meritorious claims. If, therefore, counsel failed to afford adequate representation in a prior habeas corpus application, that failure may be offered in explanation and justification of the need to file another petition.

Clark, 855 P.2d at 749 (emphasis in original). That the Court did not address this aspect of *Clark*, particularly where it was not directly relevant to resolving the issues presented in *Briggs*, is not a sufficient basis to conclude that the Court intended to overrule the remainder of its decision in *Clark*. At a minimum, such a reading of the *Briggs* footnote would be debatable among jurists of reason.

The Superior Court also found that the fundamental miscarriage of justice exceptions no longer apply because in *Briggs* this Court noted that section 1509(d) was a "substantial revision of the policy established in *Clark*." *Briggs*, 400 P.3d at 47. This aspect of the Superior Court's decision is also debatable among jurists of reason. First, the issue addressed in *Briggs* was whether section 1509(d) violated the Equal Protection Clause because it treated capital and non-capital petitioners differently. This Court found that the distinction did not violate Equal Protection, but specifically noted that its holding "poses no bar to other constitutional challenges to section 1509[.]"

Id. at 50. Whether section 1509(d) overturned the fundamental miscarriage of justice exceptions, and whether such an action would be constitutional, *see* Issue I.C.1, *supra*, was not addressed by the Court. Thus, both of these issues remain debatable among jurists of reason and warrant COAs.

Even if the Court determines that no reasonable jurists could debate that this petition is not successive or that the fundamental miscarriage of justice exceptions still apply, reasonable jurists could debate whether Friend satisfies the requirement that he is ineligible for the death penalty under section 1509(d). As discussed in Issue I.B.3 and I.B.5, *supra*, and in Claims 2.C, 2.D, and 3 of his 2018 petition, (2018 Pet. at 42-57, 61-65), Friend suffers from organic brain damage, with symptoms consistent with FASD. The impacts of Friend's impairments are virtually indistinguishable from those with intellectual disability. (*See* 2018 Pet. at 61-65.) Thus, the rationale of *Atkins v. Virginia*, 536 U.S. 304 (2002), prohibits the execution of individuals with organic brain impairment, and therefore it is debatable among jurists of reason whether Friend satisfies the ineligibility requirement of section 1509.1(c).

In addition, Friend has established that his underlying claims are meritorious, as discussed in Issue I. *See* Issue I.B, incorporated herein by reference. Reasonable jurists could therefore debate whether his underlying claims for relief are substantial. Cal. Penal Code § 1509.1(c); *Miller-El*, 537 U.S. at 323-24; *cf. Martinez v. Ryan*, 566 U.S. 1, 14 (2012) (equating

"substantial" claim in context of ineffective-assistance-of-postconviction-counsel argument with one that has "some merit," as that phrase is used in articulating the COA standard).

Because reasonable jurists could debate both questions, the lower courts must have employed a more demanding standard when they concluded that Friend had not established *either* a substantial claim for relief *or* a substantial claim that he is ineligible for a death sentence. The lower courts therefore erred in not issuing a COA on these claims.

CONCLUSION

For the foregoing reasons, Friend respectfully requests that this Court grant review and determine whether the definition of "successive petition" in the Court's jurisprudence applies following the implementation of sections 1509 and 1509.1 of the California Penal Code, whether the fundamental miscarriage of justice exceptions to the bar on successive petitions established in *Clark* continue to apply, and if so, whether Friend has satisfied these standards. Friend further requests that the Court determine the appropriate standard for lower courts to apply in deciding whether to issue a COA and review whether the lower courts erred in denying a COA here. Alternatively, Friend requests that this Court grant review and transfer the matter to the Court of Appeal with directions to vacate its order dated July 5, 2019, and grant COAs on the issues presented herein.

DATED: July 15, 2019

Respectfully submitted,
By: s/Stan Molever
Attorney for Appellant

Certificate of Word Count

Cal. Rules of Court, rule 8.504(d)(1)

I certify that the attached brief contains 8,187 words, as tabulated by the word processing program used to prepare the brief.

Dated: July 15, 2019

/s/: Stan Molever
Stan Molever

APPENDIX A: COURT OF APPEAL OPINION

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re JACK WAYNE FRIEND
on Habeas Corpus

A155955

(Alameda County
Super. Ct. No. 81254A)

BY THE COURT:

Petitioner Jack Wayne Friend's request for a certificate of appealability, filed June 26, 2019, is denied. Petitioner fails to make the requisite showing under Penal Code section 1509.1, subdivision (c), that he has both a substantial claim for relief and a substantial claim that the requirements of subdivision (d) of Penal Code section 1509 have been met. With regard to the requirements of subdivision (d) of Penal Code section 1509, petitioner fails to show he has a substantial claim of his actual innocence of the crime of which he was convicted or his ineligibility for the sentence of death.

In light of the foregoing, petitioner's motion to appoint counsel, filed June 28, 2019, is denied as moot.

Dated: JUL 05 2019

Siggins, P.J. P.J.

(Siggins, P.J., Fujisaki, J., Petrou, J.)

DECLARATION OF SERVICE

I, Kat Esparza, declare as follows:

I am over the age of eighteen (18), a citizen of the United States, am employed in the County of Maricopa, and not a party to the within action. My business address is 850 West Adams Street, Suite 201. Phoenix, Arizona, 85007. I further declare that I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service.

On this 15th day of July, 2019, I caused to be served the following:

PETITION FOR REVIEW

of which a true and correct copy of the document(s) filed in the cause is affixed, by placing a copy thereof in a separate sealed envelope, with postage fully prepaid, for each addressee named hereafter, addressed to each such addressee respectively as follows:

Alameda County Superior Court
1225 Fallon Street
Oakland, California 94612
(Attn: Hon. C. Don Clay)

Alameda County District
Attorney's Office
Melissa Dooher
1225 Fallon St. St. 9FL
Oakland, California 94612

First District Court of Appeal
Division Three
Served via TrueFiling

Alice Lustre
Served via TrueFiling

Office of the Attorney General
Served via TrueFiling

Gregg Zywicke
Served via TrueFiling

Jack Wayne Friend, #H39500
San Quentin State Prison
CSP-San Quentin #3-EB-103L
San Quentin, California 94974

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on July 15, 2019, Phoenix, Arizona.

/s/ Kat Esparza
Kat Esparza

STATE OF CALIFORNIA
Supreme Court of California

PROOF OF SERVICE

STATE OF CALIFORNIA
Supreme Court of California

Case Name: **Jack Wayne Friend On Habeas Corpus**
Case Number: **TEMP-56EK3QPR**
Lower Court Case Number:

1. At the time of service I was at least 18 years of age and not a party to this legal action.

2. My email address used to e-serve: **stan_molever@fd.org**

3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
PETITION FOR REVIEW	Petition for Review

Service Recipients:

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Stan Molever Federal Public Defender - District of Arizona 298218	stan_molever@fd.org	e-Service	7/15/2019 7:27:52 PM
Alice Lustre Additional Service Recipients	alice.lustre@doj.ca.gov	e-Service	7/15/2019 7:27:52 PM
Gregg Zywicke Additional Service Recipients	gregg.zywicke@doj.ca.gov	e-Service	7/15/2019 7:27:52 PM
Office of the Attorney General Becerra Additional Service Recipients	sfagdocketing@doj.ca.gov	e-Service	7/15/2019 7:27:52 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

7/15/2019
Date

/s/Stan Molever
Signature

Molever , Stan (298218)
Last Name, First Name (PNum)

Federal Public Defender - District of Arizona
Law Firm