No. 15-5040

IN THE

Supreme Court of the United States

TERRANCE WILLIAMS,

Petitioner,

—v.—

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

BRIEF *AMICUS CURIAE* OF THE AMERICAN CIVIL LIBERTIES UNION AND THE ACLU OF PENNSYLVANIA IN SUPPORT OF PETITIONER

Mary Catherine Roper
AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102

Witold J. Walczak
AMERICAN CIVIL LIBERTIES
FOUNDATION OF PENNSYLVANIA
247 Fort Pitt Boulevard
Pittsburgh, PA 15222

Anna Arceneaux
Counsel of Record
Cassandra Stubbs
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
201 W. Main Street, Suite 402
Durham, NC 27701
(919) 682-5659
aarceneaux@aclu.org

Steven R. Shapiro
AMERICAN CIVIL LIBERTIES
UNION FOUNDATION
125 Broad Street
New York, NY 10004

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTION & STATUTES

OTHER AUTHORITIES

RULES

INTEREST OF *AMICI*[1]

The American Civil Liberties Union (ACLU) is a nationwide, nonprofit, nonpartisan organization with approximately 500,000 members dedicated to the principles of liberty and equality embodied in the Constitution and the nation's civil rights laws. The ACLU of Pennsylvania is one of its statewide affiliates. *Amici* respectfully submit this brief to assist the Court in considering the constitutionality of the presiding Chief Justice's participation in the appellate review of this capital case by the Pennsylvania Supreme Court when he had previously authorized the seeking of the death penalty against Petitioner in his former role as the Philadelphia County District Attorney. Given the ACLU's longstanding interest in the protections contained in the Constitution, including the Eighth Amendment's prohibition against cruel and unusual punishment, the proper resolution of this case is a matter of substantial importance to the ACLU and its members.

STATEMENT OF THE CASE

Three months past his eighteenth birthday, Terry Williams, along with Marc Draper, killed Amos Norwood in a Philadelphia cemetery in June 1984. Newly-elected Philadelphia County District Attorney Ronald Castille authorized his assistants to seek the death penalty against Williams. JA 426a.

---

[1] Letters of consent from the parties have been submitted to the Clerk of the Court. No counsel for a party has authored this brief in whole or in part, and no one has made a monetary contribution intended to fund the preparation or submission of this brief, other than *amici*, its members, and its counsel.

Terry Williams met his trial attorney Nicholas Panarella for the first time the day before jury selection began, though he had been appointed 18 months earlier. Trial Tr. 15, 17-18, 22, 1/6/1986.[2] The entire sentencing phase of the trial took little more than an hour, completed hastily in the late afternoon following the jury's guilt phase verdict. Panarella presented three witnesses on Williams's behalf at sentencing: his mother and two other witnesses she had brought with her to the courtroom. Panarella made a weak plea for mercy, emphasizing Williams's youth, his family's support, and the difficulty of prison life. Finding no mitigating circumstances, the jury returned a death verdict.

At trial, Assistant District Attorney Andrea Foulkes painted a convincing picture for the jury that Williams killed Norwood for "no other reason" than to rob a kind church volunteer. Trial Tr. 1873, 2/3/1986. She did not share with the jury, or defense counsel, the contrary evidence that Norwood, almost 40 years Williams's senior, had sexually exploited young men for years, including Williams. She kept to herself the reports by Rev. Charles Poindexter, the minister at Norwood's church and a key prosecution witness at trial, that a member of the congregation

---

[2] Transcripts from the trial proceedings are cited as "Trial Tr." Transcripts from post-conviction proceedings under the Pennsylvania Post-Conviction Relief Act are cited as "PCRA Tr." Declarations included in the Appendix to the Petition for Post-Conviction Relief filed in *Commonwealth v. Williams*, Nos. 2362-2367 in the Philadelphia County Court of Common Pleas on July 16, 2012, and in the Supplemental Appendix filed on July 27, 2012, are cited as "PC Appendix." Exhibits filed in the same court on February 24, 1997 during post-conviction proceedings in 1998 are cited as "PC Ex."

had reported to him that had Norwood sexually assaulted her 16-year old son, and that there were possibly other incidents. She didn't disclose that the victim's own wife, Mamie Norwood, another key prosecution witness, had told law enforcement and the prosecutor a bizarre story about awaking to find her husband with a "young, slim male" in their home in the middle of the night one night, that her husband asked for money and then left with the young man, returning many hours later. Upon his return the next morning, Norwood explained to his wife that he had been abducted but was able to escape from his kidnappers using "psychology" and urged her not to involve the police. Foulkes sanitized the witness statements she did produce in discovery to omit entirely these references to Norwood's illicit sexual exploits with young men.

Foulkes also kept from the jury and defense counsel the fact that co-defendant Marc Draper – the only other person besides Williams who could describe the circumstances surrounding Norwood's death – had told the prosecutor that on the night of Norwood's murder, Williams had snapped, and that he killed Norwood based on their prior sexual relationship. Foulkes hid from the jury the fact that she and law enforcement had pressured Draper to stick with the story that the case was about a robbery and nothing more. She also kept from the jury that, in addition to his plea agreement to life, Draper had been given another promise for his testimony against Williams: the prosecutor would write a letter to the parole board on his behalf. She stood by in silence as Draper testified falsely that no promises were made to him beyond his plea agreement to a life sentence. JA 155a-56a.

For more than 25 years, throughout Williams's trial and appellate proceedings,[3] the prosecution insisted that it had no evidence of any illicit sexual activity by Norwood and vigorously fought Williams's counsel's efforts to obtain and present any evidence along these lines. It did so despite the irrefutable evidence tucked away in the prosecution's own files, including several notes written by Foulkes herself. For decades, Williams had argued unsuccessfully in state post-conviction proceedings that his trial counsel had been ineffective in failing to investigate and present a wealth of evidence in mitigation, including evidence of Norwood's sexual molestation of teenage boys. In federal habeas proceedings, the courts agreed that counsel's performance had been deficient, but found that the state courts' determination that counsel's deficiency had not prejudiced Williams was not unreasonable, relying heavily on the State's claim that the only source of evidence of Norwood's illicit sexual behavior was Williams's motivated family and friend witnesses.

The truth did not come to light until 2012, as Williams neared the end of his federal habeas corpus proceedings, and counsel started preparing for an execution date. Counsel made a last-ditch attempt to speak with Draper, though he had never been willing to talk before. Given Williams's impending execution, Draper agreed to meet with Williams's team. At the meeting, he disclosed that he had told law enforcement and the prosecutor that the reason

---

[3] Still in his capacity as District Attorney, Ronald Castille also appeared as counsel, with others in his office, in the response to Williams's direct appeal brief before the Pennsylvania Supreme Court. JA 206a-207a.

for the Norwood killing was not robbery at all, but Norwood's prior sexual abuse of Williams. Both the prosecution and law enforcement had pressured him to testify that the motive was robbery.

Equipped with these new revelations from Draper, counsel filed a successor post-conviction petition in state court. In connection with the proceedings that followed, counsel was finally able to obtain a discovery order for the prosecution and law enforcement files – discovery it had sought unsuccessfully for decades. It was then that counsel obtained the previously undisclosed records and the full, un-sanitized statements of Mamie Norwood and Rev. Poindexter. Counsel filed a new post-conviction petition in state court, alleging that the prosecution's failure to disclose the evidence in its possession violated *Brady v. Maryland,* 373 U.S. 83 (1963). After an extensive evidentiary hearing, the state habeas judge found that the prosecution had suppressed the evidence and engaged in gamesmanship in an effort to secure a conviction and death sentence against Williams. The court ordered a new sentencing hearing.

The State appealed to the Pennsylvania Supreme Court, where former Philadelphia County District Attorney Ronald Castille was now serving as Chief Justice. Chief Justice Castille refused to recuse himself or to refer the recusal motion to the full court, despite his prior role in Williams's case. JA 171a. As a result, the same District Attorney to authorize the death penalty against Williams had now become a key decision maker in his appeal. Presented with damning findings by the trial court, Chief Justice Castille was now called to consider the

integrity of the very office he ran and the very employees he supervised.

Led by Chief Justice Castille in its deliberation and decision, the Pennsylvania Supreme Court reversed the trial court's grant of sentencing phase relief. JA 36a. Chief Justice Castille joined the majority opinion and also filed a separate concurrence. He devoted a substantial portion of his opinion to lambasting Williams's post-conviction counsel and the judge who presided over the habeas case. JA 38a-63a. Williams thus never had the benefit of a fully dispassionate appellate court to review the trial court's grant of sentencing relief.

SUMMARY OF ARGUMENT

Petitioner's brief persuasively addresses why this Court must remand to the Pennsylvania Supreme Court for reconsideration of the habeas court's grant of sentencing phase relief, in light of Chief Justice Castille's prior personal involvement in the case as Philadelphia's elected District Attorney.

On any record, this patent conflict of interest would require reversal of the decision below. The importance of preserving both the fact and appearance of judicial impartiality, however, is highlighted by this record, which reveals a death sentence tainted from the outset by prosecutorial misconduct and constitutionally inadequate representation. Put simply, the prosecutor did not fulfill her role, defense counsel did not fulfill his role, and Chief Justice Castille assumed a role that he should not have played by adjudicating a case that he had previously prosecuted. The Constitution requires more before someone can be sentenced to

death. The prosecution's failure to disclose evidence regarding Norwood's inappropriate sexual activity with boys, including Williams, blindfolded the jury to the real motive behind Norwood's murder and his true character. Had this evidence been available to the jury, there is more than a reasonable probability that it would not have imposed a death sentence based on subsequent affirmations to that effect by five jurors. *See* p. 17, *infra*. Having withheld this critical evidence from the jury, the prosecution then continued to withhold it from both state and federal habeas courts for decades.

The prosecution's conduct is sufficient to require reversal, but it was magnified in this case by defense counsel's own failure to uncover or present the extraordinary terror, violence, and neglect Williams suffered at home at the hands of his mother and step-father and the sexual violence he endured throughout his young life by older men, including Norwood.

Given the facts of this case and Chief Justice Castille's role in reviewing them, this Court cannot have confidence that Williams's serious allegations of constitutional error – allegations that were sufficient to earn him sentencing relief and a stay of execution from the lower court – were adjudicated with the heightened reliability demanded by the Eighth Amendment.

Due process, by definition, requires impartial justice. This is especially true in capital cases, where the Eighth Amendment mandates enhanced reliability in capital sentencing. This requirement both protects the rights of the accused and promotes

public confidence that the ultimate punishment is not meted out in an arbitrary manner.

Here, Chief Justice Castille deliberated with his fellow justices in assessing whether attorneys he supervised had violated the rights of a criminal defendant in a death penalty proceeding he authorized. The notion of enhanced reliability under the Eighth Amendment cannot be squared with a rule that allows a biased judge to hear a capital appeal so long as he does not cast the deciding vote.

ARGUMENT

In capital cases, this Court has relied on the need for heightened reliability in the imposition of a death sentence. "The fundamental respect for humanity underlying the Eighth Amendment's prohibition against cruel and unusual punishment gives rise to a special 'need for reliability in the determination that death is the appropriate punishment' in any capital case." *Johnson v. Mississippi,* 486 U.S. 578, 584 (1988) (quoting *Gardner v. Florida,* 430 U.S. 349, 363 (1977) (White, J., concurring in judgment) and *Woodson v. North Carolina,* 428 U.S. 280, 305 (1976)). *See also Caldwell v. Mississippi*, 472 U.S. 320, 329 (1985) ("[M]any of the limits that this Court has placed on the imposition of capital punishment are rooted in a concern that the sentencing process should facilitate the responsible and reliable exercise of sentencing discretion."). The death sentence against Terry Williams, tainted by prosecutorial misconduct and abysmal trial representation, does not withstand appropriate scrutiny under the Eighth Amendment, which it did not and could not receive from the court

below given the involvement of Chief Justice Castille in the deliberations and decision.

I. The Prosecution Secured And Retained A Death Sentence Against Terry Williams By Suppressing Critical Evidence about Norwood's Sexual Predation Of Young Men, Including Williams.

A prosecutor is "the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest, therefore, in a criminal prosecution is not that it shall win a case, but that justice shall be done." *Berger v. United States*, 295 U.S. 78, 88 (1935). *See also Brady v. Maryland*, 373 U.S. 83, 87 (1963) ("Society wins not only when the guilty are convicted but when criminal trials are fair.").

For nearly 25 years, the prosecution violated its duty to seek justice in this case by concealing critical evidence that would have cast the crime and Terry Williams in an entirely different light than the one presented to the jury, and deprived Williams of his constitutional right to due process. *Brady*, 373 U.S. at 86; *Kyles v. Whitley*, 514 U.S. 419, 432 (1995). The State withheld the truth about the crime and Norwood's true character from the jury and defense counsel, and failed to correct false testimony by a critical witness. By allowing the jury to rely on "materially inaccurate" evidence, the State rendered Williams's death sentence wholly unreliable under the Eighth Amendment. *See Johnson,* 486 U.S. at 590.

At the start of the case, the trial judge ordered Assistant District Attorney Foulkes to disclose any favorable evidence to the defense, and in light of the serious charges against Williams, asked her to construe her discovery obligations "liberally, even peripherally so." Trial Tr. 105, 1/6/1986. Foulkes flouted the court's order and her constitutional obligations and concealed evidence in the State's possession that Norwood had sexually abused young men, including Williams.

Foulkes had already tested similar evidence in a previous murder case against Williams and knew its power for his defense. Just the year before, Foulkes had vigorously sought a death sentence against Williams, a juvenile at the time, for the murder of Herbert Hamilton.[4] Like Norwood, Hamilton was an older man who had sexually exploited Williams, and the homicide against Hamilton was similarly brutal to Norwood's. But in the Hamilton case, with Williams represented by different counsel, the jury heard evidence about Hamilton's sexual predation against him and others. The jury returned a verdict of third-degree murder. Years later, Foulkes attributed the Hamilton verdict to the evidence of "sexual overtones and relationships and what have-you." PCRA Tr. 80, 9/20/2012 (A.M.).

Foulkes determined to get a different result in this case. In preparation for the Norwood trial, she scrubbed all references to Norwood's sexual exploits

[4] Williams was 17 years old when he killed Hamilton. A 17-year old capital defendant was still eligible for the death penalty under the Eighth Amendment at that time. *See Stanford v. Kentucky*, 492 U.S. 361, 380 (1989).

of young boys in the disclosures she did make to defense counsel, and failed to disclose other evidence entirely. At sentencing, she presented evidence of Williams's conviction for the Hamilton murder as an aggravating circumstance, ensured that the jury had no knowledge of Williams's relationship with Hamilton, and insisted that Williams had taken "two innocent lives of persons who were older . . . ." Trial Tr. 1876-77, 2/3/1986. Though Foulkes later admitted she suspected a sexual relationship between Norwood and Williams at the time she prosecuted his case, PCRA Tr. 110, 9/20/2012 (A.M.), at trial she "made certain that the jury did not see that sexual connection." JA 149a.

With the evidence concealed, Foulkes was allowed to present an unchallenged portrait of Norwood as a kind church volunteer who was generous of his time with underprivileged youth in the community.[5] Trial Tr. 157-58, 166-67, 172-74, 1/19/86. She urged the jury to consider Norwood's "innocent" nature in considering the appropriate sentence for Williams. Trial Tr. 1876-77, 2/3/1986. She argued that Williams killed Norwood "for no other reason but that a kind man offered him a ride home." Trial Tr. 1873, 2/3/1986.

With the evidence concealed, the prosecution was able to elicit unimpeached character testimony from Rev. Charles Poindexter that Norwood had "special responsibility in the church regarding

[5] She did so, despite her affirmative constitutional and ethical duties to correct before a tribunal testimony which she knows, or should know, to be false or highly misleading. *Napue v. Illinois*, 360 U.S. 264, 269 (1959); Pa. R. Prof. Conduct 3.3(a)(3).

youth;" that he worked for many years with acolytes; that he had founded a youth fellowship program for children between the ages of 7 and 18; that he "frequently" "transport[ed] young people from the church activities to their homes" and other locations, often at night; and that he was involved in outreach efforts with non-member youth in the community. Trial Tr. 166-72, 1/14/1986. When defense counsel vaguely asked Poindexter about Norwood having a "problem in the past," Foulkes immediately cut him off. Trial Tr. 172-74, 1/14/1986.

With the evidence concealed, Foulkes was also able to elicit unimpeached testimony from Norwood's wife, Mamie Norwood, that he was helping out young people in the community. Mamie testified that Norwood would "take young people back and forth from time to time in his car," that he would do this "every week," that he would "chauffeur young people from one point to another," taking them home. Trial Tr. 157-58, 1/14/1986. She would sometimes "see evidence of that chauffeuring process by things left in the car." *Id*.

For more than twenty years of post-conviction proceedings, in an effort to establish trial counsel's ineffectiveness in failing to investigate and present mitigating evidence, defense counsel fought to uncover evidence of Norwood's sexual history while the prosecution steadfastly opposed these efforts. Throughout these appellate proceedings, the prosecution maintained there was no evidence about Norwood's sexual exploits that had not been turned over to the defense and consistently attacked defense counsel's evidence suggesting otherwise as suspect.

During the initial state-post conviction hearing, as Williams's counsel sought to establish that Norwood had been sexually abusive towards young boys, including Williams, counsel questioned defense witness James Villarreal about his knowledge of Norwood's reputation for sexually abusing young boys. It was met with great skepticism and hostility from the judge – the same judge who had presided over the trial. He interrupted counsel's direct examination and grilled Villarreal about the source of his knowledge. PCRA Tr. 225-235, 4/8/1998. He demanded specifics from Villarreal, "[b]ecause that did never come up in the trial and the way this trial was conducted, there was nothing in it about that." *Id*. at 235. He found Villarreal's testimony that the jury may not have known the whole truth – that the murder was not in fact motivated by a robbery – to be "an insult to the jurors who heard this case." *Id*. at 236.

The judge asked the prosecution specifically if there was anything "in the case involving Norwood's homosexuality or violation of young boys." PCRA Tr. 237, 4/8/1998. The prosecution answered no. *Id*. Later in the same hearing, counsel again sought to elicit information about Norwood's sexual behavior through another defense witness Donald Fisher, one of Williams's childhood friends who also had dealings with Norwood. Trial Tr. 602-605, 4/13/1998. The prosecution objected repeatedly, maintaining that Fisher had not established a basis for his knowledge. *Id*. at 599, 602, 603. The judge allowed Fisher's testimony to continue for the record, but made very clear that it had limited probative value in his mind. *Id*. at 599-600, 602-605.

The court ultimately ruled against Williams and found that his trial counsel was not ineffective in failing to investigate and present evidence of Norwood's sexual abuse of others, including Williams, as mitigation. The Pennsylvania Supreme Court affirmed on appeal, though it acknowledged that the mitigation presentation had not been powerful. *Commonwealth v. Williams*, 863 A.2d 505, 520 (Pa. 2004). Two dissenting justices found "that the record paints a fairly stark picture of penalty-phase ineffectiveness of counsel." *Id.* at 535 (Saylor, J., dissenting).

As the case entered federal habeas corpus proceedings, counsel once more attempted to present evidence of Norwood's sexual abuse of Williams and others, in an effort to establish that Williams's counsel had been ineffective in his failure to investigate and present mitigating evidence in the case. The State continued to insist that the allegations lacked credibility. *See, e.g.*, Response to Penalty-Phase Claims in the Petition for Writ of Habeas Corpus at 89, *Williams v. Beard*, No. 05-cv-3486 (E.D. Pa. October 20, 2006) (dismissing testimony about sexual abuse by Norwood as unsupported "gossip"); Memorandum at 76, *Williams v. Beard*, No. 05-cv-3486 (E.D. Pa. May 8, 2007) ("Respondents suggest that the 'evidence' of physical and sexual abuse presented to the PCRA court is tainted because it is based on the reports of biased family members and friends."). The lack of support for the allegations of sexual misconduct was a determining factor in the denial of Williams's federal habeas corpus claim. Disagreeing with the state court, the federal district court found that trial counsel had in fact been deficient in his failure to

uncover and present evidence of Williams's life history. *Id*. at 92. But the court held that the state court's finding that Williams had not been prejudiced by the constitutionally deficient trial court representation he received was not unreasonable. *Id*. at 101. The Third Circuit affirmed, relying heavily on the State's attacks on the credibility of the sexual abuse evidence. *Williams v. Beard*, 637 F.3d 195, 230 n.26 (3d Cir. 2011) (finding the State's argument that the evidence of Norwood's sexual misconduct lacked reliability to be "well taken and factor[ing] it into our prejudice analysis accordingly").

At the subsequent state post-conviction hearing in 2012, Foulkes admitted that she suspected a sexual connection between Norwood and Williams and that "of course" it had occurred to her that their relationship factored into the killing. PCRA Tr. 109-110, 9/20/2012 (P.M.). Still, she maintained that it was merely her suspicion, that she did not have a "scintilla" of evidence suggesting a homosexual connection between Williams and Norwood, and that all witnesses who were asked if they knew of any sexual abuse by Mr. Norwood "all said no." PCRA Tr. 135, 9/20/2012 (A.M.); *Id*. at 99, 9/20/2012 (P.M.).

Based on the evidence to the contrary in the State's own file, including notes written by Foulkes herself, the state habeas court found that Foulkes was not credible. JA 147a. In order to obtain a conviction and death sentence against Williams, the court found, Foulkes "engaged in 'gamesmanship,'" and "knowingly suppress[ed] evidence" concerning Norwood's sexual exploits. JA 75a. The court found that she had played "fast and loose" with the truth,

"took unfair measures to win," and "had no problem disregarding her ethical obligations." PCRA Tr. 37, 39, 45, 9/28/2012.

The evidence of Norwood's inappropriate sexual behavior would have undoubtedly had an impact on the Norwood trial, and would likely have saved Williams's life, as it had in the Hamilton trial. Had Williams's trial counsel known about the evidence of Norwood's illicit sexual activity with other young men in the State's possession, he could have presented it in the penalty phase as mitigating "circumstances of his offense." 42 Pa. Cons. Stat. § 9711(e)(8). With Rev. Poindexter's complete, un-sanitized statement, counsel could have credibly challenged Rev. Poindexter's characterization of Norwood's dealings with the church youth as purely benevolent. He could have questioned Rev. Poindexter about the complaint he had received about Norwood in the past regarding teenager Ronald House, and his suspicions that Norwood was having inappropriate relationships with other young men. With her complete, un-sanitized statement, defense counsel could have questioned Mamie Norwood about the strange scene she had shared with the prosecution, when her husband had brought a young man into their home in the middle of the night, drove away with the young man, and did not return until the next morning. Counsel could have called Ronald House as a penalty phase witness, to describe his own sexual victimization at Norwood's hands. These revelations would have also led counsel to investigate Norwood's other potential victims. Without the evidence in the State's possession, as the habeas court realized, "any allegation or insinuation from appellee that he had a sexual encounter with

Mr. Norwood . . . would have merely seemed like an attempt by appellee to sling mud on the victim's character," JA 112a, as it had for decades in post-conviction proceedings.

The evidence would have been a bombshell to the jurors who were only told that Williams had killed Norwood "for no other reason but that a kind man offered him a ride home." Trial Tr. 1873, 2/3/1986. The constitutional test for penalty-phase prejudice is whether there is "a "reasonable probability that at least one juror would have struck a different balance." *Wiggins v. Smith,* 539 U.S. 510, 537 (2003). Here, that test is unquestionably met. Indeed, at least *five* jurors who served in this case later affirmed that they would have voted for a sentence less than death had they known about Norwood's victimization of Williams. *See* Sturgis Decl. ¶ 2, PC Appendix, Tab 22. ("If I had known those circumstances at that time – what had led him down that path – that definitely would have been a factor and my decision would have been different than the death sentence."); Moss Decl. ¶ 2, PC Appendix, Tab 21 ("If I had known about the sexual abuse and how it related to the crime, it would have changed my mindset. I would have voted for a life sentence."); Brown Decl. ¶ 4, PC Appendix, Tab 20 ("If I had known that Terrance Williams had a sexual relationship with the older male victim, that definitely would have made a difference. That would have been shocking. I certainly think he would not have been sentenced to death."); Pagano Decl. ¶ 5, PC Appendix, Tab 19 ("If I had known that [Williams was sexually abused by Norwood], it would have impacted my decision. Hopefully there would have been a choice where he would have been in jail and

would have gotten psychological counseling. My choice would have been life without parole if my only two choices were that or the death penalty."); Maisenhelder Decl. ¶ 2, PC Appendix, Tab 23 ("Now that I know that he was a victim of sexual abuse by Mr. Norwood, I would have voted for life without parole instead of the death sentence.").[6]

In concealing the *Brady* evidence, the prosecution kept the truth from the jury, defense counsel, and the many courts that reviewed this case through federal habeas corpus proceedings. Had the prosecution fulfilled its obligations, the evidence would have almost certainly saved Williams's life. Its concealment instead sent Terry Williams to death row and thwarted post-conviction counsel's efforts to establish trial counsel's ineffectiveness in failing to investigate and present evidence of Norwood's sexual exploits against young boys, including Williams. Its concealment has also led Williams to spend an agonizing, nearly three-decade incarceration on Pennsylvania's death row in solitary confinement, under threat of execution. *See Glossip v. Gross*, 135 S. Ct. 2726, 2769-70 (2015) (Breyer, J., dissenting).

"When a defendant's life is at stake, the Court has been particularly sensitive to insure that every safeguard is observed." *Gregg v. Georgia*, 428 U.S. 153, 187 (1976) (plurality opinion). Despite this Court's historical focus on reliability in capital sentencing, the type of prosecutorial misconduct that occurred here is more likely to occur in death penalty cases, as Justice Breyer pointed out last term. *See*

---

[6] Had even one juror voted for life, Terry Williams would have been sentenced to life imprisonment. *See* 42 Pa. Cons. Stat. § 9711(c)(v).

Glossip, 135 S. Ct. at 2757-58 (Breyer, J., dissenting). That is because "the crimes at issue in capital cases are typically horrendous murders, and thus accompanied by intense community pressure on police, prosecutors, and jurors." *Id.* at 2757. In Williams's case, the prosecution was subject not only to these pressures, but the added pressure of having failed to secure a first-degree murder conviction in the Hamilton trial after the jury learned of his sexual exploitation of Williams. The prosecution responded to these pressures by concealing the truth. The prosecution's misconduct shattered safeguards at Williams's trial and shattered the safeguard of appellate review for decades. These gross due process violations, then reviewed by the very person who authorized the death penalty proceedings in the first place, cannot withstand scrutiny under the Eighth Amendment. *See Johnson*, 486 U.S. at 584.

II. Terry Williams's Trial Counsel Failed To Investigate And Present Extraordinarily Compelling Evidence In Mitigation.

Beyond the prosecution's concealment of evidence, the jury's death sentence against Terry Williams depends in no small part on the deplorable representation he received at trial.[7] Williams's trial

[7] Unfortunately, in capital cases, this is all too common. *See generally* Stephen B. Bright, *Counsel for the Poor: The Death Sentence Not for the Worse Crime but for the Worst Lawyer*, 103 YALE L.J. 1835 (May 1994). *See also* American Bar Association, EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS: THE PENNSYLVANIA DEATH PENALTY ASSESSMENT REPORT 112 (Oct. 2007) ("Defense counsel competency is perhaps the most critical factor determining whether an individual will receive the death penalty.").

attorney failed to conduct any investigation into Williams's life history to present at the sentencing phase, in violation of his constitutional right to the effective assistance of counsel. *Porter v. McCollum*, 558 U.S. 30, 39 (2009) (citing *Williams v. Taylor*, 529 U.S. 362, 396 (2000)); *Wiggins*, 539 U.S. at 524; *Rompilla v. Beard*, 545 U.S. 374, 393 (2005).

Here, too, the decades-long quest by the prosecution to hide the full picture of the offense and Norwood had an impact. In state-post conviction proceedings the Pennsylvania Supreme Court recognized that the limited evidence presented by defense counsel was "not compelling." *Williams*, 863 A.2d at 520. It nonetheless failed to find any constitutional violation because post-conviction counsel had not met his burden of demonstrating a reasonable probability that Williams would have received a life sentence. *Id*. As shown below, the uncovered but readily available evidence of Williams's brutal childhood standing alone should have entitled him to sentencing phase relief. *See, e.g., Wiggins*, 539 U.S. at 535-36 (defense counsel's failure to uncover capital defendant's troubled background, including years of sexual molestation, warranted penalty phase reversal). But it is beyond question that the state courts would have viewed this evidence differently had it been combined with the hidden circumstances of the offense and Norwood's history of sexual violence. The State's concealment at trial denied Williams a fair trial, and its concealment throughout post-conviction proceedings denied him meaningful review in post-conviction. *Cf. Martinez v. Ryan*, 132 S. Ct. 1309, 1317 (2012) ("A prisoner's inability to present a claim of trial error is of

particular concern when the claim is one of ineffective assistance of counsel.").

Terry Williams met his sole trial attorney Nicholas Panarella for the first time the day before jury selection began.[8] Trial Tr. 15-16, 1/6/1986. The judge authorized $150 *total* for an investigator to assist him, but Panarella failed to make use of this paltry amount. Trial Tr. 33, 1/6/1986. He never retained any investigator to assist him in preparing for trial.[9]

---

[8] Though Williams was housed out of county in order to segregate him from his co-defendant Marc Draper, the court arranged for Williams to be returned to the local jail for a 10-week period in the months before trial so that he could have more contact with counsel. It made no difference. Panarella still did not visit a single time. Trial Tr. 30, 1/6/1986.

[9] Panarella's poor representation is partly explained by the systemic crisis in capital representation in Philadelphia at the time of Williams's trial. At the time, Philadelphia capital defendants were almost always represented by a single attorney. Michael Kroll, Death Penalty Information Center, *Justice on the Cheap: the Philadelphia Story* (May 1992), *available at* http://www.deathpenaltyinfo.org/justice-on-the-cheap. Court-appointed attorneys were paid $40 an hour for out-of-court time, and $50 an hour for in-court time. *Id*. Even years after Williams's trial, the average total fee received by capital trial attorneys was a paltry $6,339. Fredric Tulsky, *What Price Justice? Poor Defendants Pay the Cost as Courts Save on Murder Trials*, PHILA. INQUIRER, Sept. 13, 1992. If a second chair was appointed – a rare occurrence – he or she would receive a $500 flat fee. *Id*. In a review of capital cases over a two-year period, the *Philadelphia Inquirer* found that investigators were not hired in the majority of cases, and the courts paid for psychologists in only two cases. *Id*. Over the same period, the District Attorney's office, under Ronald Castille's leadership, was ramping up its capital prosecutions. Kroll, *Justice on the Cheap*, *supra*. Indeed, in seeking a

Panarella had never tried a capital case to penalty before. Trial Tr. 15, 4/24/1987. He conducted effectively no investigation into the facts of the crime or into Williams's life history in preparation for the penalty phase, though he believed all along that Williams would be found guilty. Trial Tr. 20-21, 1/6/1986. His investigation into Williams's background consisted solely of speaking with Williams[10] and his mother Patricia Kemp. He relied on Kemp to bring in character witnesses and put

---

judgeship on the Pennsylvania Supreme Court, Castille campaigned on his tough-on-crime record of sending 45 capital defendants to death row as Philadelphia's District Attorney, including Terry Williams. *See, e.g.*, Katharine Seelye, *Castille Keeps Cool in Court Run*, PHILA. INQUIRER, Apr. 30, 1993. As a result, Philadelphia defendants comprised more than 50% of the State's death row, though the county only accounted for 15% of the population. Kroll, *Justice on the Cheap*, *supra*. These gross systemic problems have led to the reversal of dozens of capital cases from Philadelphia. Nancy Phillips, *In Life and Death Cases, Costly Mistakes*, PHILA. INQUIRER, Oct. 23, 2011.

[10] While Williams of course knew of his own past dealings with Norwood and other men, it is no surprise that he would not have disclosed such deeply intimate and traumatic events to an attorney he barely knew. Even among trusting relationships, "young male victims of older male sexual abuse typically do not report such behavior and find it extremely difficult and painful to talk about it," as the state habeas court observed. JA 111a, n.50. Even current Philadelphia District Attorney Seth Williams has recently acknowledged this fact: "it is extremely difficult for sexual abuse victims to admit that the assault happened, and then to actually report the abuse to authorities can be even harder for them." Carl Rotenberg, *Former Upper Merion Priest Arrested*, KING OF PRUSSIA COURIER (Pa.), July 27, 2012. This is especially true for male victims. Matthew Mendel, THE MALE SURVIVOR: THE IMPACT OF SEXUAL ABUSE 6-7 (1995).

"everyone that came forward . . . on the stand." Trial Tr. 26, 4/24/1987.

Panarella offered only three witnesses on Williams's behalf: Williams's mother Patricia Kemp, his girlfriend Marlene Rogers, and his cousin Willie James. The sentencing phase was over in an afternoon.[11]

Panarella's poor preparation was evident in his questions to Kemp. Though Williams had been a star athlete, she could not remember what position he played (quarterback) or what year he graduated from high school. Trial Tr. 1848, 2/3/1986. Answering only Panarella's limited questions, Kemp offered the jury a cursory view of Williams's childhood: she had raised him and his two older half-siblings as a single mother. Panarella spent more time parading Williams's athletic trophies to the jury during her testimony. Trial Tr. 1848-52, 2/3/1986. Only on cross did it come out that Williams's stepfather had been abusive to Williams, his older sister, and herself, including one occasion where he pushed Williams down a flight of stairs. *Id.* at 1856-58.

In a direct examination constituting two pages in the record, Marlene Rogers testified simply that she loved Williams, that he supported her and was a sweet person, and that they have a child together. Trial Tr. 1859-61, 2/3/1986. Panarella appeared more concerned with making sure the jury had a chance to glimpse Rogers and Williams's child, rather than any

[11] The entirety of defense testimony at sentencing, including cross-examination, spans less than 25 pages in the record. Trial Tr. 1846-70, 2/3/1986.

substance of her testimony. *Id*. at 1861-62, 1865-66, 2/3/1986.

Finally, his cousin Willie James gave a "rambling narrative, peppered with Biblical references," *Williams*, 863 A.2d at 520 n.11, about his experiences on the football team with Williams at Cheyney College during Williams's short stint there and ended his testimony by telling the jury that they should not kill Williams, else "Blood will be on your hands." Trial Tr. 1867-71, 2/3/1986. Even the Pennsylvania Supreme Court agreed Panarella's mitigation presentation was "not compelling." *Williams*, 863 A.2d at 520.

Panarella closed by reminding the jury of Williams's age (without giving them any reason why his youth mattered), emphasizing that he had a supportive family and a young child, and informing them that prison life would be brutal. Trial Tr. 1877-81, 2/3/1986. He had nothing to counter the prosecution's claims that Williams "had all kinds of advantages," and "could have made whatever he wanted out of his life" *Id*. at 1874-76.

His weak plea for mercy failed. The jury did not find a single mitigating circumstance in the case, not even Williams's youth. The jury returned the only available verdict to it when at least one aggravating circumstance and no mitigating circumstances are found: death. *See* 42 Pa. Cons. Stat. § 9711(c)(1)(iv).

In post-conviction proceedings, readily available evidence showed that Panarella never even scratched the surface of Williams's tragic childhood. Terry Williams never knew his father and was raised

by his mother on her own, in an environment of violence, terror, control, and humiliation. In wild fits of rage, Williams's mother would beat him and his older siblings with belts, her fists, extension cords, switches – anything she could get her hands on – for even the smallest transgression, or for no reason at all. PCRA Tr. 298, 4/9/1998. When Patricia would beat young Williams, he recalled, her face would go blank, "like she didn't know who you was or who she was." Lisak Decl. ¶ 19, PC Appendix, Tab 12. Williams's sister Theresa recalled some of the violence she experienced at her mother's hands:

> One time my mother poured hot boiling water on me when I was a toddler. I remember being in the hospital after my mother burnt me. The nurses would put white towels on the floor and try to help me walk. I would look behind me and see my own bloody footprints on the towels. For a long time after I got out of the hospital, layers of skin would peel off of my feet when my mother bathed me.

Fields Decl. ¶ 3, PC Ex. 3. Still, the hospital returned Theresa to live with her mother. Patricia's violence was accompanied by emotional abuse. She would tell Williams that he was going to turn out to be a "fucking faggot" like his father. Rahaman Decl. ¶ 7, PC Appendix, Tab 7.

Patricia was not deterred in public. On one occasion, after a meeting at school, Williams told his mother that the teacher had lied about something. Patricia flew into a rage, chasing Williams down a flight of stairs, "wailing on him as hard as she could,

. . . beating him on the head and back as he tried to get away from her." *Id.* at ¶ 4. Williams "had his harms over his head trying to protect himself and begging her to stop." *Id.* His classmate recalls: "I think the most horrifying part of this was the trail of blood that was following Terry." *Id.*

On another occasion, a teacher called Patricia to school because Williams had talked back to her. Lisak Decl. ¶ 16, PC Appendix, Tab 12. After the teacher told Patricia what had happened, Patricia started punching Williams in the face. She bruised his face and bloodied his nose. Patricia only stopped after Williams's teacher began screaming in horror. Williams's teacher promised him the next day that she would never call his mother to school again. *Id.*

The violence in the home escalated when Patricia married Ernest Kemp, a violent alcoholic, when Williams was 10 years old. Williams's older siblings were able to flee the family home not long after Ernest arrived, but younger Terry had no escape. Patricia and Ernest fought violently and constantly. They would beat each other with baseball bats and tire irons. Patricia recalled that "[t]he fighting was so bad that the kids never wanted to stay home. . . . My children and I had to be on guard every second. . . . After years of abuse, I finally learned to protect myself with a bat. I kept the bat by my bed at all times to protect myself." Kemp Decl. ¶ 11, PC Ex. 2. One time, Patricia ended up in the hospital, after Ernest beat her on the head with the tire iron. She needed 12 stitches. When she returned from the hospital, she "smashed a frozen steak into Ernest's head, knocking out two teeth." *Id.*; Lisak Decl. ¶ 26, PC Appendix, Tab 12.

Patricia would often leave the home for weeks at a time, leaving Williams alone to Ernest's violent rage. Ernest would attack Williams if he tried to intervene to help his mother. But he would also attack Williams in his mother's absence. Williams would try to hide in his room, but Ernest would break down the door. On one occasion, Ernest pointed a rifle at Williams's head and threatened to kill him. Lisak Decl. ¶ 25, PC Appendix, Tab 12.

Patricia's – and later Ernest's – extreme violence[12] against Williams left him emotionally scarred and humiliated. Tragically, it also made him vulnerable to sexual predators.[13] When he was only 6 years old, he was sodomized by his neighbor Peter Robinson, who Terry considered an older brother. Robinson had lured Williams to his house, with the promise of watching cartoons and making food for him.

Williams came home crying, telling his mother that "his behind hurt," and that Robinson had hurt him. PCRA Tr. 193-94, 4/8/1998. Williams was

---

[12] One psychologist who later evaluated Terry described the violence against him as "truly some of the most harsh that [she'd] ever seen," even among the thousands of victims of abuse she had interacted with throughout her career. PCRA Tr. 323, 4/9/1998.

[13] *See, e.g.,* Stop It Now!, *Understanding What Makes Kids Vulnerable to Sexual Abuse*, available at http://www.stopitnow.org/ohc-content/understanding-what-makes-kids-vulnerable-to-being-sexually-abused (last visited December 2, 2015) (listing risk factors such as the child being a victim of physical or emotional abuse; domestic violence in the home; a weak or absent ongoing connection to a trusted safe adult; child feeling emotionally isolated or neglected; alcohol abuse in the home).

bleeding from the rectum, yet Patricia failed to seek medical treatment, or counseling, for him. Robinson raped Williams once more, after luring him to his house to eat cupcakes. Williams avoided being alone with Robinson after the second time, but these experiences left him "profoundly scarred, not only by the painful and violent rape, not only by the assault on his fragile sense of himself as a boy, but also because he had trusted Robinson and his trust had been cruelly betrayed." Lisak Decl. ¶ 41, PC Appendix, Tab 12.

The sexual violence continued against Williams when he was in middle school. His teacher, Timothy Johnson, sensed that Williams had a difficult home life and offered to help him. Lisak Decl. ¶ 49, PC Appendix, Tab 12. He began to shower William with gifts and attention. Williams thought that Johnson was the adult male figure he craved, but instead Johnson began to sexually abuse him. Williams was uncomfortable at first but then began to think he owed Johnson for all of his assistance. Lisak Decl. ¶ 51, PC Appendix, Tab 12. As the abuse continued, Johnson would tell Williams how much he loved him and that he would give Williams anything he needed. Around this time, friends and neighbors began to sense that something was severely wrong with Williams. Rogers Decl. ¶¶ 2, 4, 5, PC Ex. 8. He seemed damaged, confused, and extremely paranoid. *Id*. at ¶ 7; Cruse Decl. ¶ 11, PC Ex. 5; Robinson Decl. ¶ 10, PC Ex. 7.

The sexual violence against Williams continued when he was ordered to a juvenile detention center as a result of his involvement in a

burglary. Lisak Decl. ¶ 61, PC Appendix, Tab 12. At the center, he was gang-raped by two older males. *Id.*

The extensive trauma Williams experienced throughout his young life from an early age had a devastating impact on him. It left him confused, ashamed, and alone. It destroyed his sense of self-worth and manhood. To numb his pain, Williams started self-medicating with alcohol and drugs. He also began to hurt himself. On one occasion, Patricia found her son banging his head repeatedly against a wall saying, "I'm tired, I don't want to be here no more." PCRA Tr. 204, 4/8/1998. His high school girlfriend also witnessed another incident of self-mutilation:

> Terry completely lost control and started to bang his head against the wall and off the concrete outside. He banged his head violently against the wall. He banged his head so hard that he was taken to the hospital . . . The doctor told [Terry's mother] Pat that Terry needed psychiatric help but Pat never followed through with the doctors [sic] instructions.

Cruse Decl. ¶ 14, PC Ex. 5.

Amos Norwood was a middle-aged sexual predator who preyed on teenage boys like Terry Williams. PCRA Tr. 227-33, 4/8/1998; *Id.* at 602-604. 4/13/1998; Poindexter Decl. ¶¶ 6, 7, 12, 13, 15, PC Appendix, Tab 10; Lisak Decl. ¶ 76, PC Appendix, Tab 12. *See also* JA 92a, n.41. In exchange for sex, he would give the boys money, food, housing, and other gifts. Williams first met Norwood as a young

teenager, about 13 years old. Norwood approached Williams at a deli and told him he owned a modeling business and could get Williams some jobs. Lisak Decl. ¶ 90, PC Appendix, Tab 12. When Williams met privately with Norwood two days later, he learned that there were no modeling jobs. Norwood offered him money for sex instead. Williams obliged. *Id*. The next time Norwood encountered Williams, he again paid him for sex. But this time, Norwood took out a whip and started to beat Williams. Norwood continued to attack Williams, even as pleaded with him to stop. *Id*. at ¶ 94. The violence intensified as their meetings continued. Norwood would give Williams extra money when their encounters became especially violent. *Id*. at ¶ 96.

In the months before Norwood's murder, Williams's anger against Norwood, Hamilton, Johnson, Robinson and all the men who had raped, assaulted, and exploited him over the years was intensifying. On the night before Norwood was killed, Norwood drove Williams to an unlit parking lot surrounded by woods for another sexual encounter.

> He made me lean against his car and he penetrated me from behind . . . . I felt hurt and mad because he was rough with me that night. He forced himself into me. I told him to stop. He kept on. I was clenching my anus so tight trying to stop him but he wouldn't stop and it hurt so bad I screamed.

Id. at ¶ 98. Williams saw blood stains on his underwear that night and was still in pain the next day. *Id*. In his next encounter with Norwood, the following day, Williams could not take it anymore

and "snapped." *Id.*; Draper Decl. ¶ 3, PC Appendix, Tab 14.

All of this information was at trial counsel's fingertips. Had counsel bothered to conduct even a minimal investigation into Williams's background, he would have discovered a wealth of information to use in mitigation. Records from his previous juvenile trials would have led counsel to discover that Ernest Kemp was a "heavy drinker' who would "smack Terrance's mother around in years past, something that, of course, angered young Terrance." Memorandum at 76, *Williams*, No. 05-cv-3486 (E.D. Pa. May 8, 2007) (quoting Respondents' Exhibit II). Williams's juvenile records would have likewise detailed Ernest Kemp's drunken beatings against Williams's mother. *Id.*

Most notably, readily available court records from the Hamilton trial would have alerted counsel to Williams's deteriorating mental state and Hamilton's sexual exploitation of Williams. *See, e.g., State v. Williams,* Nos. 797-801 (Sept. term 1984), Philadelphia County Court of Common Pleas, Trial Tr. 30, 2/14/1985; 156, 186-87, 2/15/1985. A court-ordered mental health examination conducted prior to trial by psychologist Dr. Edwin Camiel noted, among other things, that Terry "appeared to be developing a paranoid delusional system," sleep disturbances, anxiety, impulsivity, and "somewhat impaired" judgment. Dr. Camiel found that "the clinical picture is consistent with a diagnosis of Schizophreniform Disorder or a briefly active psychosis second to the stress of his present incarceration." Dr. Edward Camiel Report, PC

Appendix, Tab 1. Dr. Camiel recommended immediate mental health treatment. *Id.*

Counsel's failure to obtain these records was inexcusable and constitutionally ineffective. *Rompilla*, 545 U.S. at 389-90 (counsel's performance was deficient when he had failed to obtain the defendant's prior conviction records that could have led to numerous leads on mitigation evidence).

What's more, Panarella failed to make use of the information he did have. For instance, in his sentencing closing argument, Panarella glossed over Williams's youth – an extremely compelling mitigating circumstance that was completely lost on the jury. *See* Stephen Garvey, *Aggravation and Mitigation in Capital Cases: What Do Jurors Think?*, 98 Colum. L. Rev. 1538, 1564 (1998) (a defendant's youth is "significantly mitigating" to capital jurors); *see also Roberts v. Louisiana*, 431 U.S. 633, 637 (1977) (a defendant's youth is an example of a mitigating factor). Terry turned 18 years old on February 27, 1966, a mere three months before Norwood's murder. Counsel made no attempt to explain why Williams's youth meant that he was more likely to react with impulsivity and recklessness in response to the horrific trauma and sexual exploitation he suffered. *Cf. Roper v. Simmons*, 543 U.S. 551, 569-70 (2005) (explaining that juveniles' immaturity, susceptibility to peer pressure, and still unformed character place them outside the worst offenders . . . striking death penalty as unconstitutional sentence for those under

18 years old due, in part, to their lessened culpability).[14]

As discussed *supra*, had Williams's jury known about his victimization at Norwood's hands, there is a reasonable probability it would have not have returned a death sentence against him. Here, in fact, there is far more than a reasonable probability, but a near certainty: at least five jurors would have voted for life if they had known that Terry had been the victim of Norwood's sexual predation, the horrific sexual abuse he suffered as a child, and the psychological impact on him.[15] Juror Decls., PC Appendix, Tabs 19-23.

No decision maker in this case before 2012 had the full picture of Terry William's history of physical and sexual violence, and its direct link to the offense. The mitigation evidence never investigated or presented by trial counsel, when combined with the mitigating circumstances of the crime, would have cast both the crime and the serious prior homicide aggravator in a different light and presented a powerful basis for jurors to choose life. Terry Williams was never able to establish counsel's horrendous performance in this capital case because the prosecution suppressed for more than 20 years

---

[14] Of course, these "qualities that distinguish juveniles from adults do not disappear when an individual turns 18." *Roper*, 543 U.S. at 574.

[15] Several jurors mistakenly believed that a life sentence meant that Williams would later become eligible for release on parole. These jurors would have voted for life had they known that a life sentence meant life without the possibility of parole. Pagano Decl. ¶ 6, Brown Decl. ¶ 2, Moss Decl. ¶ 2, PC Appendix, Tabs 19- 21.

evidence that would have wholly changed the outcome of his capital proceedings – a prosecution authorized in the first instance by District Attorney Ronald Castille and a prosecution Castille boastfully touted in seeking election to the Pennsylvania Supreme Court. Chief Justice Castille's subsequent participation as a jurist in Williams's appeal thus cannot meet the rigorous demands of heightened reliability required under the Eighth Amendment. *Johnson,* 486 U.S. at 584.

CONCLUSION

For the reasons stated above and in Petitioner's brief, this Court should vacate the judgment of the Pennsylvania Supreme Court and remand the case to that Court to conduct a *de novo* review without the participation of Chief Justice Castille.

Respectfully Submitted,

Anna Arceneaux
Counsel of Record
Cassandra Stubbs
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
201 W. Main Street,
Suite 402
Durham, NC 27701
(919) 682-5659
aarceneaux@aclu.org

Steven R. Shapiro
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street
New York, NY 10004

Mary Catherine Roper
AMERICAN CIVIL LIBERTIES FOUNDATION OF PENNSYLVANIA
P.O. Box 60173
Philadelphia, PA 19102

Witold J. Walczak
AMERICAN CIVIL LIBERTIES
FOUNDATION OF
PENNSYLVANIA
247 Fort Pitt Boulevard
Pittsburgh, PA 15222

Dated: December 7, 2015