No. 127952

IN THE SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, v. WAYNE WASHINGTON, Petitioner-Appellant.	)	There heard on appeal from the Appellate Court of Illinois, First Judicial District, No. 1-16-3024 There heard on Appeal from the Circuit Court of Cook County, Illinois, No. 93 CR 14676 The Honorable Domenica Stephenson, *Judge Presiding*.

BRIEF OF PERSONS CONCERNED ABOUT THE ILLINOIS CRIMINAL JUSTICE SYSTEM AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT

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INTEREST OF THE *AMICI CURIAE*

Amici have diverse professional experiences and include a former judge as well as leaders of law firms, professional organizations, and legal clinics. They share an interest in the integrity of our criminal justice system, and they specifically recognize the ongoing need for victims of Jon Burge's torture regime to receive meaningful opportunities for relief. Since the first Burge-era case reached the Illinois Supreme Court, this Court has recognized that physical abuse by police cannot constitute harmless error. In the same vein, *amici* urge this Court to reject the holding by the Illinois Appellate Court, First District, that Petitioner is not entitled to relief despite his exoneration and substantial evidence that the detectives that interrogated him engaged in systemic abuse and coerced him to falsely confess. Petitioner is entitled to a certificate of innocence.

Amici are[1]:

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INTRODUCTION

The disgraced Chicago police commander Jon Burge and officers under his command, including Kenneth Boudreau and John Halloran, have been implicated in a pattern of horrific abuse spanning many years. As one of hundreds of victims of these Burge-related tactics, Petitioner-Appellant Wayne Washington ("Petitioner") has been exonerated after being incarcerated for 14 years based on a confession he made following alleged physical and verbal abuse over the course of a two-day interrogation by Boudreau and Halloran. Petitioner now seeks a certificate of innocence to clear his name fully and reclaim his life.

The Illinois Appellate Court, First District, affirmed the circuit court's denial of Petitioner's request, however, relying on evidence outside the record to hold that Petitioner confessed voluntarily, thus bringing about his own conviction. That determination was in error. Denying Petitioner a certificate of innocence in this case flies in the face of decades of Illinois Supreme Court precedent and Illinois courts' laudable efforts to remedy a history of abuse by Burge and officers working under him, as well as the core values of our criminal justice system.

ARGUMENT

I. As This Court Has Long Recognized, Courts Must Continue To Offer An Opportunity For Victims Of Burge-Related Torture To Seek Relief.

Petitioner's case cannot be viewed in isolation. It emerges from one of the darkest chapters in Chicago history—the decades of torture by Commander

Burge and officers under his command to elicit confessions from criminal suspects. Starting in the early 1970s, more than 100 people—all Black and Latinx Chicagoans, some children—have alleged that Burge and his officers beat, burned, suffocated, and electrocuted them, and that to stop the torture, they confessed to crimes.[2] For many, this meant confessing to crimes they did not commit.[3]

Burge was terminated from the Chicago Police Department and later convicted of perjury and obstruction of justice for statements denying the acts of torture he and others under his supervision committed. The State of Illinois established a Torture Inquiry and Relief Commission[4] and paid more than $100 million to Burge torture victims,[5] while the Chicago Public Schools instituted a curriculum to teach students about these horrifying events as part of larger reparations legislation for Burge torture survivors and their families.[6]

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[2] G. Flint Taylor, *Three Chicago Torture Victims Exonerated, Another Granted a New Trial*, Police Misconduct & Civil Rights Law Report, Mar./Apr. 2010, https://peopleslawoffice.com/wp-content/uploads/2012/02/2010.Vol-9-No.-14.-March-April-.PMCRLR.Three-Torture-Victims-exonerated.-GFT..pdf.

[3] *Id.*

[4] *See* State of Illinois Torture Inquiry and Relief Commission, https://www2.illinois.gov/sites/tirc/Pages/default.aspx.

[5] Elvia Malagon, *4 things: The cost of Jon Burge's police torture legacy*, Chi. Trib., Sep. 21, 2018, https://www.chicagotribune.com/news/breaking/ct-met-four-things-jon-burge-torture-chicago-police-20180921-story.html.

[6] Jeremy Gorner, *CPS to teach 8th, 10th graders about Jon Burge legacy as part of reparations,* Chi. Trib., Aug. 28, 2017, https://www.chicagotribune.com/news/breaking/ct-cps-burge-curriculum-

The legal impact of Burge-era torture continues to ripple through our courts. It has been nearly half a century since the initial allegations surfaced, but victims of Burge's regime—including Petitioner—are still seeking justice.

A. Decades Of Evidence Show A Pattern And Practice Of Torture By Burge And His Officers.

Fourteen years after Anthony Holmes first detailed abuse by Burge and another officer,[7] allegations of Burge-related torture first reached this Court. In 1987, the Court heard the appeal of Andrew Wilson, who described electrocution, suffocation, and beatings at the hands of Burge and his officers. *People v. Wilson*, 116 Ill. 2d 29, 35–41 (1987). After he confessed, Wilson was taken to the hospital, where a doctor identified 15 separate injuries, including two cuts requiring stitches, bruises, blistering wounds, and second-degree burns. *Id.* at 36–37. A physician began treating Wilson's injuries, but when a Chicago police officer refused to holster his gun in the treatment room, the doctor would not continue, and Wilson ultimately left the hospital, escorted by police, against medical advice. *Id.* This Court remanded the case for a new trial and established a clear rule: "[U]se of a defendant's coerced confession as substantive evidence of his guilt is never harmless error." *Id.* at 41.

20170828-story.html; Chicago City Council Resolution, May 6, 2015, *available at* https://chicago.legistar.com/LegislationDetail.aspx?ID=2262499&GUID=6DCDD51B-2234-4713-93FC-26D647905536&Options=Advanced&Search=.

[7] *See* Chicago Torture Justice Memorials, *Anthony Holmes*, https://chicagotorture.org/project/survivor-2/ (last visited Jan. 20, 2022).

Two years later, the Illinois Appellate Court reversed the conviction of Gregory Banks, who described being kicked and beaten with a flashlight by two of Burge's officers after one put a gun in his mouth and threatened to pull the trigger. *See People v. Banks*, 192 Ill. App. 3d 986, 987–88 (1st Dist. 1989). When Banks refused to confess, the officers put a plastic bag over his head and continued beating him. *Id.* at 988. The court observed that, "while we no longer see cases involving the use of the rack and thumbscrew to obtain confessions, we are seeing cases, like the present case, involving punching, kicking and placing a plastic bag over a suspect's head to obtain confessions." *Id.* at 993. The court followed this observation with an unambiguous directive: "When trial judges do not courageously and forthrightly exercise their responsibility to suppress confessions obtained by such means, they pervert our criminal justice system as much as the few misguided law enforcement officers who obtain confessions in utter disregard of the rights guaranteed to every citizen—including criminal suspects—by our constitution." *Id.*

In 1990, the *Chicago Reader* published a detailed account of Wilson's torture and a civil suit he pressed against Burge, bringing to light allegations from several more men describing electric shocks to their feet, thighs, and testicles with electrical devices or cattle prods, painting a picture of systematic abuse by Burge and officers under him at Area 2 on Chicago's South Side.[8]

[8] John Conroy, *House of Screams*, Chi. Reader, Jan 25, 1990, https://www.chicagoreader.com/chicago/house-of-screams/Content?oid=875107.

Spurred by these reports, the Chicago Police Department's Office of Professional Standards, led by Michael Goldston, investigated allegations of torture by Burge and his officers. The resulting Goldston Report concluded that "abuse did occur," "that it was systematic," and that it "was not limited to the usual beating, but went into such esoteric areas as psychological techniques and planned torture."[9] The Goldston Report was made public by court order in 1992,[10] and the Chicago Police Board terminated Burge the following year.[11]

By the end of the decade, it had become "common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions." *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094–95 (N.D. Ill. 1999) (granting evidentiary hearing and discovery to Burge victim). "Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established

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[9] Michael Goldston & Francine Sanders, Chicago Office of Professional Standards, *Special Project Conclusion Report* 3 (Sept. 28, 1990), https://peopleslawoffice.com/wp-content/uploads/2012/02/Goldston-Report-with-11.2.90-Coversheet.pdf.

[10] *See* Chip Mitchell, *Investigator Headed to Court To Defend Key Report on Burge Torture*, WBEZ, July 12, 2016, https://www.wbez.org/stories/investigator-headed-to-court-to-defend-key-report-on-burge-torture/82f3f53a-a8d1-435d-8811-d031106121d3.

[11] Text of Gov. George Ryan's Jan. 10, 2003 DePaul College of Law Speech that Pardoned Four on Death Row, http://wdat.is.depaul.edu/newsroom/year_2003/932.html.

practice, not just on an isolated basis." *Id.* at 1094; *see also Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring) ("a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department").

In 2003, Governor Ryan pardoned four Illinois death row inmates who were tortured by Burge's officers and confessed to crimes they did not commit. Governor Ryan described a "category of horrors [that] was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. . . . Here we have four more men who were wrongfully convicted and sentenced to die by the state for crimes the courts should have seen they did not commit. We have evidence from four men who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provide[d]."[12]

Three years after Governor Ryan's commutations, a Special Prosecutor appointed by the Chief Judge of the Criminal Division of the Circuit Court of Cook County concluded that Burge was "guilty" of abusing people in his custody, and that it "necessarily follows that a number of those serving under his command recognized that, if their commander could abuse persons with impunity, so could they."[13]

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[12] Text of Gov. George Ryan's Jan. 10, 2003 DePaul College of Law Speech that Pardoned Four on Death Row, http://wdat.is.depaul.edu/newsroom/year_2003/932.html.

[13] Edward J. Egan & Robert D. Boyle, *Report of the Special State's Attorney* 16 (2006), http://www.aele.org/law/2006LROCT/chicagoreport.pdf.

Then, in 2011, more than 35 years after Holmes' original allegations, Burge was convicted of perjury and obstruction of justice—based on statements that he neither knew of, nor participated in, torture and abuse—and he was sentenced to four-and-a-half years in prison. *United States v. Burge*, No. 08 CR 846, 2011 WL 13471 (N.D. Ill. Jan. 3, 2011); *see also United States v. Burge*, No. 08 CR 846, Sentencing Hr'g Tr. (Jan. 21, 2011). Affirming his conviction, the Seventh Circuit wrote that Burge "presided over an interrogation regime where suspects were suffocated with plastic bags, electrocuted until they lost consciousness, held down against radiators, and had loaded guns pointed at their heads during rounds of Russian roulette. The use of this kind of torture was designed to inflict pain and instill fear while leaving minimal marks." *United States v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013). The court described "a record of decades of abuse that is unquestionably horrific" and cited testimony showing not only that Burge lied about the abuse, but also that "he bragged in the 1980s about how suspects were beaten in order to extract confessions." *Id.* at 808.

B. Illinois Courts Consistently Have Offered The Chance For Burge-Related Torture Victims To Seek Meaningful Relief.

As the nature and scope of Burge's conduct came to light, Illinois courts issued a series of decisions reversing convictions obtained through Burge-related torture. Often, these decisions specifically acknowledged the need for a full evidentiary hearing into the alleged abuse. *See, e.g., Wilson*,116 Ill. 2d at 41–42 (remanding for new trial); *People v. Patterson*, 192 Ill. 2d 93, 141-45

(2000) (remanding for hearing to consider evidence of pattern and practice of torture at Area 2); *People v. King*, 192 Ill. 2d 189, 198-99 (2000) (same); *People v. Banks*, 192 Ill. App. 3d at 997 (reversing conviction and remanding for new trial); *People v. Bates*, 267 Ill. App. 3d 503, 504–07 (1st Dist. 1994) (same); *People v. Cannon*, 293 Ill. App. 3d 634, 640–43 (1st Dist. 1997) (vacating conviction and remanding for suppression hearing).

In 2012, the Illinois Supreme Court reaffirmed its ruling from 15 years earlier in *Wilson*: "[U]se of a defendant's *physically* coerced confession as substantive evidence of his guilt is never harmless error." *People v. Wrice*, 2012 IL 111860, ¶ 71. In so doing, the Court cited Judge Wood's concurrence in *Hinton*, which "found it 'somewhat disturbing,' given the gravity of the problem of police abuse at Area 2," even "to use the label of 'harmless error.'" *Id.* ¶ 82 (internal citations omitted). This Court made clear that, not only was the pattern and practice of torture by Burge and other officers undeniable, but such abhorrent practices were anathema to the rights and values at the heart of our criminal justice system. *Id.* ¶ 73.

C. Overwhelming Evidence Shows That Boudreau And Halloran Tortured People To Secure Confessions.

Boudreau and Halloran worked under Burge's supervision in the early 1990s.[14] Courts and administrative bodies have repeatedly found credible a

[14] *See e.g., In re: Claim of George Ellis Anderson,* TIRC Claim No. 2011.016-A (Mar. 24, 2014) at 3, *available at:* https://tirc.aem-int.illinois.gov/content/dam/soi/en/web/tirc/documents/decisions/ANDERSON%20amended%20determination%20without%20markup.1.0.pdf.

wide array of evidence indicating that both detectives engaged in a practice of brutally interrogating and coercing confessions out of dozens of suspects, often working together to do so. *See, e.g.*, *People v. Plummer*, 2021 IL App (1st) 200299, ¶ 90 (discussing Illinois Torture Inquiry and Relief Commission findings regarding George Anderson that "there was sufficient credible evidence in his case to warrant further review," where Boudreau, Halloran, and another detective had "subjected [Anderson] to beatings which includ[ed] being kicked in the wrist that was handcuffed to the wall"). As the former Chicago Superintendent of Police Richard Brzeczek has acknowledged, Boudreau and Halloran "have been previously identified as engaging in patterns of . . . coercive conduct." Op. ¶ 37.

The Illinois Torture Inquiry and Relief Commission ("TIRC") has noted that Boudreau specifically "has been accused of abuse and coercion by over 35 individuals." *In re: Claim of George Ellis Anderson*, TIRC Claim No. 2011.016-A, at 2. The TIRC also has noted that Boudreau has repeatedly obtained confessions in cases where the individual was in jail at the time of the offense to which he confessed, in cases later undermined by DNA evidence, and in cases involving mentally disabled children. *Id.*

As just one example, Johnny Plummer alleged that Boudreau and another detective physically and psychologically abused him into confessing to murder when he was just 15 years old. *Plummer*, 2021 IL App (1st) 200299, ¶¶ 5, 12. Boudreau and another detective purportedly hit and punched Plummer

in the face, pulled his hair, and struck him on the diaphragm with a flashlight. *Id*. ¶¶ 12, 13. Reversing the circuit court, the First District recently granted Plummer's request for a third-stage evidentiary hearing after finding significant evidence of a pattern and practice of abuse by the same two officers. *Id*. ¶¶ 88–92, 131.

Likewise, the TIRC has noted that Halloran "has been accused of abuse and coercion by over 35 individuals." *In re: Claim of George Ellis Anderson*, TIRC Claim No. 2011.016-A, at 3. Halloran has been implicated in many other allegations of coercive conduct as well. For example, in *People v. Peoples*, Peoples presented evidence of more than sixteen instances of abuse involving Halloran, including evidence that he beat suspects, threatened harm to them and to their family members, and deprived them of food, sleep, and use of a toilet. 2020 IL App (1st) 161068, ¶ 9. Many of his victims then falsely confessed to crimes they did not commit, and one victim, Reginald Cole, was even "shot dead inside police headquarters during an interrogation." *Id.* Other evidence indicated that Halloran also beat Abel Quinones and instructed him to sign a false statement that Halloran dictated, and in yet another homicide investigation, Halloran threatened a witness by saying that he would have the Department of Children and Family Services take her children unless she made the identifications he sought. *Id.* ¶ 11. The Appellate Court found that the evidence presented there, "along with evidence adduced in a number of other cases involving officers working under the direction of Commander Jon

Burge at Area 2 and Area 3 police headquarters, support the conclusion that Burge and some of the officers he directed formed a violent criminal gang . . . to obtain criminal convictions against their victims," and that "Halloran participated in the gang's criminal activities." *Id.* ¶ 16.

II. There Is Substantial Evidence That Petitioner's Confession Was Coerced.

A. Petitioner's Allegations Of Abuse Are Strikingly Similar To Allegations Raised By Other Victims Of Boudreau And Halloran.

Petitioner has long alleged that his confession resulted from torture by Boudreau and Halloran. Similar to other victims of Burge-era abuse, Petitioner has described being interrogated for two days while handcuffed to a chair, being beaten, and having his chair kicked over repeatedly. C. 920–21, 937–65; R. U53–56. Twenty years old at the time, Petitioner eventually signed a written statement falsely confessing to the murder of Marshall Morgan, Jr. based on information that the detectives fed him, after he could no longer stand the beatings and the detectives promised that he could go home after confessing. CCSAO 13084; C. 920; R. U59.

B. The First District Erred In Affirming The Circuit Court's Finding That Petitioner's Allegations of Abuse Were Unsupported.

Even though it did not question Petitioner's innocence, the Appellate Court affirmed the circuit court's denial of a certificate of innocence for Petitioner based in part on the circuit court's conclusion that Petitioner voluntarily confessed and thereby caused his own conviction. Op. ¶ 26. This

was error. The circuit court not only failed to account for key evidence in the record, but also expressly considered evidence outside of the record—two independent grounds for reversal. Contrary to the circuit court's determination, substantial evidence indicates that Petitioner's confession resulted from police torture.

First, the Appellate Court emphasized that "[c]ritically, the only testimony the circuit court heard on the issue of police coercion came from the petitioner." Op. ¶ 26. That was not the case, however. Additional evidence overlooked by the circuit court included: testimony from Petitioner's equally innocent and wrongfully convicted co-defendant, Tyrone Hood, who testified to the police abuse he experienced to coerce a false confession; the affidavit of Jody Rogers, who swore that police threatened him with physical harm and a murder charge unless he testified falsely against Petitioner; and the affidavit of Michael Rogers, who testified that police paid him to testify falsely against Petitioner. *Id.* ¶ 36 (Walker, J., dissenting). In assessing a section 2-702 petition, a court must consider evidence introduced by the petitioner. *People v. Fields*, 2011 IL App (1st) 100169, ¶ 19 (holding that court erred in failing to consider materials attached to defendant's petition in support of his innocence claim).

Furthermore, Halloran repeatedly invoked his Fifth Amendment right against self-incrimination in response to questions regarding not only his physical abuse of Petitioner in seeking to coerce Petitioner's confession, but

also his physical abuse of and threats against Tyrone Hood, Jody Rogers, and Michael Rogers in seeking to coerce false testimony against Petitioner. *Id.* ¶ 38 (Walker, J., dissenting). This invocation is strong evidence corroborating their allegations of abuse. *Id.* ¶ 40.

In fact, the circuit court's failure to draw an adverse inference from Halloran's invocation of the Fifth Amendment alone may constitute reversible error if there was "no good reason why the inference should not have been drawn." *People v. Gibson*, 2018 IL App (1st) 162177, ¶¶ 1, 86, 104–05 ("it was error for the trial court not to draw the adverse inference that [three detectives working under the Burge command] physically abused defendant prior to his inculpatory statement"). Courts generally must give particular weight to a law enforcement officer's invocation of the Fifth Amendment, for an officer's "first obligation is not to arrest people or secure confessions but to see that justice shall be done." *Id.* ¶¶ 105, 108 (internal quotation marks omitted). Here, however, the circuit court failed to discuss or even mention Halloran's invocation of the Fifth Amendment, to which it should have "len[t] special significance." *See id.* ¶ 105. Indeed, because "the State produced no evidence to rebut the evidence of torture and abuse by [Halloran], . . . [his] invocation of his fifth amendment rights is significant and a negative inference should have been drawn." *People v. Whirl*, 2015 IL App (1st) 111483, ¶ 107; *see* Op. 18 (State did not participate in circuit court or appellate court proceedings for petition for certificate of innocence).

Second, rather than consider the significant body of evidence that Petitioner's confession was coerced, the Appellate Court relied heavily on the circuit court's "finding that [Petitioner] was not credible," an assessment based solely on his testimony from a hearing in August 1995. Op. ¶¶ 26, 41. Specifically, the circuit court had deemed it "[m]ost significant" that Petitioner testified only that "he was slapped once in the face and the chair that he was sitting in was pushed," and that he had not "testified that the police provided the information to put in his statement." *People v. Washington*, 2016 WL 11752849, at *3 (Ill. Cir. Ct. Oct. 31, 2016). But the circuit court in the current proceedings improperly considered such extra-record evidence.

As the Appellate Court held in *People v. Hood*, reversing the circuit court's denial of a petition for a certificate of innocence by Petitioner's co-defendant, a court may not rely on evidence outside the record to determine whether a petitioner "caused his own conviction" within the meaning of 735 ILCS 5/2-702(a). 2021 IL App (1st) 162964, ¶ 32. That is because a petitioner is entitled to the opportunity to "counter[] the evidence, object[] to it being admitted, and cross-examine[] the State's potential witnesses." *People v. Simon*, 2017 IL App (1st) 152173, ¶ 25. When the court "reli[es] on prior sworn testimony" that "was not offered or placed in evidence," it deprives a petitioner of that opportunity. *Hood*, 2021 IL App (1st) 162964, ¶ 32. As a result, the Appellate Court in *Hood* held that the circuit court erred when it determined that Hood "lacked credibility because he initially told the police versions of his

whereabouts . . . that differed from his testimony at the hearing," where "the circuit court could only [have] reach[ed] this conclusion if it had obtained Hood's earlier statements to the police from an external source because nothing offered by Hood in [the current] proceeding dealt with any alleged statement he may or may not have made to the investigators." *Id.* ¶ 35; *see also id.* ¶ 43 (finding that "[n]o conflicting evidence was offered to rebut Hood's testimony" at hearing on petition for certificate of innocence).

Similarly, here, as Justice Walker explained in dissent, "no party made the August 1995 hearing transcript a part of the circuit court's record, and the transcript is not included in the record on appeal." Op. ¶ 41. The State did not oppose the petition for a certificate of innocence, did not take a position on whether Petitioner caused his own conviction (*Washington*, 2016 WL 11752849, at *2), and did not even participate in either the circuit court or appellate proceedings (Op. ¶ 18). The circuit court pointed to the August 1995 statement *on its own*, and thus improperly deprived Petitioner of any meaningful opportunity to respond to that evidence. *Id.* ¶ 42.

As Justice Walker correctly concluded, "[t]he record contains overwhelming evidence that police coercion led to the wrongful conviction of [Petitioner]." *Id.* ¶ 40. And as courts in Illinois have repeatedly held, this record evidence, as well as the other evidence discussed above of systemic abuse by Burge and officers under his command—including officers involved in

Petitioner's interrogation—is more than sufficient to find that Petitioner's confession was coerced.

III. A Coerced Confession Resulting From Police Abuse Cannot Form A Basis For Denying Relief To Petitioner.

The First District's order affirming the circuit court's denial of Petitioner's request for relief not only minimizes the legacy of police torture under the Burge regime, but it also stands as an outlier, contravening decades of effort by Illinois courts, including this Court, to remedy the effects of this extraordinary misconduct. Consistent with these efforts, and recognizing the violence and intensity of Burge-era abuse generally and as credibly alleged in this case, Petitioner should not be precluded from seeking a certificate of innocence because of his confession.

As noted above, Illinois courts facing Burge-related claims have recognized that the use of police violence to obtain confessions is so abhorrent to our system of justice that it cannot ever be "harmless." *See, e.g.*, *Wrice*, 2012 IL 111860, ¶ 71. This follows from the more fundamental principle that—even where a coerced confession is independently "reliable"—"a free society cannot condone police methods that outrage the rights and dignity of a person[,] whether they include physical brutality or psychological coercion." *People v. Escobedo*, 28 Ill. 2d 41, 47 (1963), *overruled on other grounds*, 378 U.S. 478 (1964). It is the "'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will.'"

Jackson v. Denno, 378 U.S. 368, 386 (1964) (quoting *Blackburn v. Alabama*, 361 U.S. 199, 206-07 (1960)); *see id.* at 376 (It is "axiomatic" that a criminal defendant "is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession.").

In step with these bedrock principles, Illinois courts have repeatedly granted motions to suppress, new trials, and other relief in response to post-conviction petitions raising Burge-related coerced-confession claims, including those involving allegations of abuse by the two detectives at issue here. *See, e.g.*, *People v. Jakes*, 2013 IL App (1st) 113057, ¶¶ 1–2, 8 (remanding for evidentiary hearing on petitioner's allegations that Boudreau and another detective beat him and threatened his family to extract a false confession, notwithstanding petitioner's signed statement averring that police treated him well); *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 163–86 (remanding for evidentiary hearing where petitioner "detail[ed] dozen[s] of cases that demonstrate a longstanding pattern of systemic abuse by" detectives that interrogated him, including Boudreau and Halloran); *People v. Pittman*, 2015 IL App (1st) 132727-U, ¶¶ 22, 29 (remanding for evidentiary hearing where defendant consistently claimed confession was a product of physical coercion by Halloran and another detective and defendant's allegations of abuse were "strikingly similar to other claims of abuse involving officers supervised by former Commander Jon Burge").

Similarly, Illinois courts must offer an opportunity for victims that confessed as a result of Burge-era torture to obtain a certificate of innocence. As this Court has declared, "[a] confession obtained by force or brutality is not voluntary." *People v. Davis*, 35 Ill.2d 202, 205 (1966) (holding that admission of confession was error because it resulted from police abuse). Accordingly, a confession stemming from abuse can never be considered a "voluntary" act bringing about one's own conviction. This is especially important where the abuse was at the hands of law enforcement: "It is no overstatement to say that the integrity of our justice system is dependent on the integrity of our police officers. We depend on them complying with the law and the Constitution when doing their jobs." *Gibson*, 2018 IL App (1st) 162177, ¶ 105.

It is intolerable that anyone—much less someone who has been indisputably exonerated as Petitioner has been—should be prevented from clearing their name and reclaiming their life as a result of a conviction tainted even remotely by a confession extracted by the violent and demeaning tactics used by Burge and his officers. Just as Illinois courts have long recognized that such extreme abuse can never amount to harmless error, amici urge this Court to hold that, in light of the overwhelming evidence of systemic abuse, Petitioner is entitled to seek a certificate of innocence. Too much is at stake for Petitioner, and too much is at stake for our system of justice.

CONCLUSION

For these reasons and those set forth by Petitioner, the judgment of the Appellate Court should be reversed.

Dated: June 9, 2022

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 21 pages.

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