No. 15-3706

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Glenn Patrick Bradford,

Petitioner-Appellant,

v.

Richard Brown, Superintendent,

Respondent-Appellee.

Appeal from the United States District Court for the
Southern District of Indiana, Terre Haute Division
No. 2:13-cv-00410-JMS-WGH — Jane E. Magnus-Stinson, *Judge*

MOTION OF THE INNOCENCE NETWORK FOR LEAVE TO FILE AN *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER-APPELLANT'S PETITION FOR REHEARING *EN BANC*

Gabriel A. Fuentes
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, Illinois 60654-3456
(312) 222-9350

Counsel for Amicus Curiae

August 17, 2016

The Innocence Network respectfully requests leave from the Court to file the attached *amicus curiae* brief in support of Petitioner-Appellant Glenn Patrick Bradford's petition for rehearing *en banc*, filed on August 17, 2016 (the "Petition"). In the Petition, Mr. Bradford seeks a rehearing *en banc* of an August 4, 2016 decision, by which a 2-1 panel of this Court upheld the district court's denial of Mr. Bradford's habeas corpus petition despite the existence of objective evidence establishing Mr. Bradford's innocence of the murder and arson for which he has been convicted and has already served over 22 years in prison. Mr. Bradford's case presents this Court with the opportunity to recognize freestanding innocence claims in federal habeas corpus litigation, and this Court should review and consider his freestanding innocence claim.

Pursuant to Federal Rule of Appellate Procedure 29(c)(5): (i) neither party's counsel authored this brief in whole or in part; (ii) neither party's counsel contributed money that was intended to fund preparing or submitting the brief; and (iii) no person – other than the *amicus curiae*, its members, or its counsel – contributed money that was intended to fund preparing or submitting the brief.

The Innocence Network's interest in the outcome of this case is strong, since the Innocence Network is an association of organizations that are dedicated to providing pro bono legal and investigative services to prisoners, whose actual innocence may be proved through post-conviction evidence. The

approximately seventy members[1] of the Innocence Network represent hundreds of prisoners with innocence claims in all 50 states and the District of Columbia and internationally. The Innocence Network and its members are dedicated to improving the reliability of the criminal justice system and preventing wrongful convictions by researching their causes and pursuing legislative and administrative reforms to enhance the truth-seeking functions of the criminal justice system. The Innocence Network seeks to raise issues concerning the

[1] The member organizations include: Actual Innocence Clinic at the University of Texas School of Law, After Innocence, Alaska Innocence Project, Arizona Justice Project, Boston College Innocence Program, California Innocence Project, Center on Wrongful Convictions, Committee for Public Counsel Services Innocence Program, Connecticut Innocence Project/Post-conviction Unit, Duke Center for Criminal Justice & Professional Responsibility, Exoneration Initiative, George C. Cochran Mississippi Innocence Project, Griffith University Innocence Project, Hawai'i Innocence Project, Idaho Innocence Project, Illinois Innocence Project, Innocence Canada, Innocence & Justice Project at the University of New Mexico School of Law, Innocence Project, Innocence Project Argentina, Innocence Project at UVA School of Law, Innocence Project London, Innocence Project of Minnesota, Innocence Project New Orleans, Innocence Project New Zealand, Innocence Project Northwest, Innocence Project of Florida, Innocence Project of Iowa, Innocence Project of Texas, Irish Innocence Project at Griffith College, Italy Innocence Project, Justicia Reinvindicada – Puerto Rico Innocence Project, Kentucky Innocence Project, Knoops' Innocence Project, Life After Innocence, Loyola Law School Project for the Innocent, Michigan Innocence Clinic, Michigan State Appellate Defender Office – Wrongful Convictions Units, Mid-Atlantic Innocence Project, Midwest Innocence Project, Montana Innocence Project, Nebraska Innocence Project, New England Innocence Project, New York Law School Post-Conviction Innocence Clinic, North Carolina Center on Actual Innocence, Northern California Innocence Project, Office of the Ohio Public Defender – Wrongful Conviction Project, Ohio Innocence Project, Oklahoma Innocence Project, Oregon Innocence Project, Pennsylvania Innocence Project, Reinvestigation Project, Resurrection After Exoneration, Rocky Mountain Innocence Center, Sellenger Centre Criminal Justice Review Project, Taiwan Association for Innocence, The Israeli Public Defender, Thurgood Marshall School of Law Innocence Project, University of Baltimore Innocence Project Clinic, University of British Columbia Innocence Project at the Allard School of Law, University of Miami Law Innocence Clinic, Wake Forest University Law School Innocence and Justice Clinic, West Virginia Innocence Project, Western Michigan University Cooley Law School Innocence Project, Wisconsin Innocence Project, Witness to Innocence, Wrongful Conviction Clinic at Indiana University.

actual innocence of Mr. Bradford in the hope that the risk of wrongful conviction in this and future cases will be minimized.

The *amicus* brief of the Innocence Network, attached hereto, is desirable, and the matters asserted within it are relevant to the disposition of the case. If rehearing *en banc* is not granted in this case, there is a serious risk that an innocent person, who has come forward with unrebutted scientific evidence proving his innocence, will spend the rest of his life in prison. Mr. Bradford argues that scientific evidence establishes conclusively that he could not have possibly committed the crime for which he was sentenced. Mr. Bradford's case, in which a judge dissenting from this Court's panel opinion concluded that Mr. Bradford is "almost certainly" innocent presents this Court with the right case in which to hold that Mr. Bradford's freestanding innocence claim is cognizable and warrants a habeas corpus grant based on actual innocence. The *amicus* brief also is desirable and relevant in that it explains that while the U.S. Supreme Court has left open the question of whether a freestanding innocence claim states a claim for federal habeas corpus relief, Mr. Bradford's case presents such a claim, the litigation of which will make an important contribution to the development of the law of habeas corpus.

The imprisonment of an innocent person undeniably qualifies as a matter of "exceptional importance" that warrants rehearing *en banc*. *See* Fed. R. App. Proc. 35(a)(2) (rehearing may be ordered when "the proceeding involves a question of exceptional importance"). The Supreme Court has repeatedly recognized that "principles of comity and finality … must yield to the imperative

of correcting a fundamentally unjust incarceration." *House v. Bell*, 547 U.S. 518, 536 (2006) (internal quotation marks omitted). Innocent persons should be able to petition the federal courts of the United States of America for habeas corpus relief based on their freestanding innocence claims.

CONCLUSION

For the foregoing reasons, the Innocence Network respectfully requests that this motion be granted and that it be permitted to file the attached brief as *amicus curiae* in support of Mr. Bradford's Petition.

Dated: August 17, 2016

Respectfully submitted,

THE INNOCENCE NETWORK, as *amicus curiae*

By: *s/ Gabriel A. Fuentes*
Its Attorney

Gabriel A. Fuentes
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
(312) 222-9350

CERTIFICATE OF SERVICE

I hereby certify that on August 17, 2016, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will cause an electronic copy to be served on counsel of record, who are listed below:

Henry A. Flores, Jr.
INDIANA ATTORNEY GENERAL
302 West Washington Street,
Indiana Government Center South
Fifth Floor
Indianapolis, Indiana 46204
Phone: 317-233-1665
Email: henry.flores@atg.in.gov

Ronald S. Safer
Deborah Ann Bone
RILEY SAFER HOLMES & CANCILA LLP
Three First National Plaza
70 West Madison St., Suite 2900
Chicago, Illinois 60602
Phone: (312) 471-8700
Email: rsafer@rshc-law.com

Dated: August 17, 2016

By: *s/ Gabriel A. Fuentes*

Gabriel A. Fuentes
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
(312) 222-9350

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BRIEF OF THE INNOCENCE NETWORK AS *AMICUS CURIAE* IN SUPPORT OF REHEARING *EN BANC*

Gabriel A. Fuentes
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, Illinois 60654-3456
(312) 222-9350

Counsel for Amicus Curiae

August 17, 2016

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

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To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non governmental party or amicus curiae, or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statement be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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The Innocence Network

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Jenner & Block LLP

(3) If the party or amicus is a corporation:

i) Identify all its parent corporations, if any; and

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N/A

Attorney's Signature: s/Gabriel A. Fuentes Date: August 17, 2016

Attorney's Printed Name: Gabriel A. Fuentes

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). **Yes** ____ **No** X

Address: Jenner & Block, LLP
353 N. Clark Street, Chicago, Illinois 60654-3456

Phone Number: 312-222-9350 Fax Number: 312-527- 0484

E-Mail Address: gfuentes@jenner.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

INTEREST AND IDENTITY OF *AMICUS CURIAE* 1

ARGUMENT 1

I. *Herrera* Left Open the Question of Whether a Freestanding Innocence Claim Is Cognizable on Federal Habeas Corpus 2

II. Mr. Bradford's Freestanding Innocence Claim Has a Substantial Constitutional Basis in the Fourteenth and Eighth Amendments 4

III. Mr. Bradford's Compelling Innocence Claims Make His Case the "Right" One for Presentation and Consideration of a Freestanding Innocence Claim 7

IV. Justice Blackmun Articulated an Appropriate Standard for Judicial Consideration of Freestanding Innocence Claims 10

CONCLUSION 11

TABLE OF AUTHORITIES

Page(s)

CASES

Boyde v. Brown,
404 F.3d 1159 (9th Cir. 2005) 10

Brown v. Mississippi,
297 U.S. 278 (1936) 5

Calder v. Bull,
3 U.S. 386 (1798) 7

District Attorney's Office for the Third Judical District v. Osborne,
557 U.S. 52 (2009) 3

Graham v. Florida,
560 U.S. 48 (2010) 6

Herrera v. Collins,
506 U.S. 390 (1993) 1, 2, 4, 6, 10, 11

House v. Bell,
547 U.S. 518 (2006) 3

In re Davis,
557 U.S. 952 (2009) 3

McQuiggin v. Perkins,
133 S. Ct. 1924 (2013) 3

Mooney v. Holohan,
294 U.S. 103 (1935) 6

Robinson v. California,
370 U.S. 660 (1962) 6

Rochin v. California,
342 U.S. 165 (1952) 5

Rowe v. Gibson,
798 F.3d 622 (7th Cir. 2015) (Hamilton, J., dissenting)..... 9

Rowe v. Gibson,
No. 14-3316, 2015 WL 10767326 (7th Cir. Dec. 7, 2015)..... 9

Schlup v. Delo,
513 U.S. 298 (1995) 3

Thompson v. City of Louisville,
362 U.S. 199 (1960) 6

Trop v. Dulles,
356 U.S. 86 (1958) 6

United States v. Herrera,
704 F.3d 480 (7th Cir. 2013) 9

United States v. United States Coin & Currency,
401 U.S. 715 (1971) (Brennan, J., concurring)..... 6

STATUTES

28 U.S.C. § 2241(c)(3) 4

28 U.S.C. § 2254(a) 4

OTHER AUTHORITIES

Bernard A. Williams, *Guilty Until Proven Innocent: The Tragedy of Habeas Capital Appeals*, 18 J.L. & Pol. 773, 776 (2002)..... 5

Brief of *Amici Curiae* Interested Scientists and Scholars in Support of Petition for Writ of Certiorari, *Herrera v. United States*, 134 S. Ct. 175 (2013) (No. 12-1461), 2013 WL 3773550 9

Larry May & Nancy Viner, *Actual Innocence and Manifest Injustice*, 49 St. Louis U. L.J. 481, 482 (2005) 5

Paige Kaneb, *Innocence Presumed: A New Analysis of Innocence as a Constitutional Claim*, 50 Cal. W. L. Rev. 171, 178-200 (Spring 2014) 4

Sarah A. Mourer, *Gateway to Justice: Constitutional Claims to Actual Innocence*, 64 U. Miami L. Rev. 1279, 1281 (2010) 5

U.S. Const. amend. VIII..... 2, 5, 7, 10

U.S. Const. amend. XIV 2, 5, 7, 10

INTEREST AND IDENTITY OF *AMICUS CURIAE*

The Innocence Network is an association of about seventy organizations[1] that provide pro bono legal and investigative services to prisoners who are seeking to prove their actual innocence through post-conviction evidence. The Innocence Network organizations' clients number in the hundreds and come from all 50 states, the District of Columbia, and some foreign countries. Many of the Innocence Network's prisoner clients have actual innocence claims, or are trying to assert innocence claims, in a post-conviction posture in the state and federal courts of the United States. Accordingly, the Innocence Network has a keen interest in whether Glenn Patrick Bradford, or any similarly situated prisoner, can obtain federal habeas corpus relief based on a freestanding innocence claim, a question left open by the United States Supreme Court in *Herrera v. Collins*, 506 U.S. 390 (1993). The Innocence Network has an interest in establishing that such a freestanding claim is cognizable on federal habeas corpus, in the interest of providing wrongfully convicted, innocent prisoners with an avenue to pursue their actual innocence claims in the federal courts, and in the interest of minimizing the risk of wrongful convictions in this and future cases.

ARGUMENT

The Innocence Network, as *amicus curiae*, files this brief in support of *en banc* rehearing in this matter, in which Judge Hamilton dissented from the majority's affirmance of the district court's denial of habeas relief for Glenn

[1] The member organizations are identified in the Innocence Network's accompanying motion for leave to file this *amicus curiae* brief.

Patrick Bradford by stating that "Bradford has shown that he is probably, in fact almost certainly, innocent" and that this case is "appropriate for an actual innocence grant of habeas corpus." *Bradford v. Brown*, No. 15-3706, slip op. at 32 n.7, 37 (7th Cir. Aug. 4, 2016). Innocent persons should be able to petition the federal courts of the United States of America for habeas corpus relief based on their freestanding innocence claims. Mr. Bradford's case presents this Court with the opportunity to recognize freestanding innocence claims in federal habeas corpus litigation, and this Court should review and consider Mr. Bradford's freestanding innocence claim. Such freestanding innocence claims are cognizable under the Fourteenth and Eighth Amendments, and should be reviewed under a standard granting federal habeas corpus relief upon a showing that the petitioner was "probably" innocent. *See Herrera*, 506 U.S. at 442-44 (Blackmun, J., dissenting).

I. *Herrera* Left Open the Question of Whether a Freestanding Innocence Claim Is Cognizable on Federal Habeas Corpus.

In *Herrera*, the Supreme Court left the door open for "truly persuasive" innocence claims to receive federal habeas relief:

> We may assume, for the sake of argument in deciding this case, that in a capital case a truly persuasive demonstration of "actual innocence" made after trial would render the execution of a defendant unconstitutional, and warrant federal habeas relief if there were no state avenue open to process such a claim.

Herrera, 506 U.S. at 417. As Justice O'Connor noted in her concurrence, "[n]owhere does the Court state that the Constitution permits the execution of an actually innocent person." *Herrera*, 506 U.S. at 427 (O'Connor, J., concurring). Even where a prisoner's innocence claim is procedurally defaulted,

the Supreme Court has allowed that innocence claims may proceed where new evidence shows that "'it is more likely than not that no reasonable juror would have found petitioner guilty beyond a reasonable doubt.'" *House v. Bell*, 547 U.S. 518, 537 (2006) (quoting *Schlup v. Delo*, 513 U.S. 298, 327 (1995)).

Importantly, in *House*, decided 13 years after *Herrera*, the Court noted that the petitioner advanced a freestanding innocence claim and "urge[d] the Court to answer *the question left open* in *Herrera* and hold not only that freestanding innocence claims are possible but also that he has established one." *House*, 547 U.S. at 554-55 (emphasis added). The Court responded to that argument by specifically declining to resolve that issue, determining that the petitioner's innocence claim was enough to cast doubt on his guilt but lacked "more convincing proof" of innocence, along the lines of what *Herrera* had suggested could be cognizable. *Id.* at 555. *House* therefore declined to reach the freestanding innocence claim, which *Herrera* did not foreclose. In short, the Supreme Court has indicated since *Herrera* that if presented with the proper case, the Court would recognize a freestanding innocence claim in a habeas matter. *Dist. Att'y's Office for the Third Jud. Dist. v. Osborne*, 557 U.S. 52, 71-72 (2009); *In re Davis*, 557 U.S. 952, 952 (2009). As recently as 2013, the Court reaffirmed that it has "not resolved whether a prisoner may be entitled to habeas relief based on a freestanding claim of actual innocence." *McQuiggin v. Perkins*, 133 S. Ct. 1924, 1931 (2013).

II. Mr. Bradford's Freestanding Innocence Claim Has a Substantial Constitutional Basis in the Fourteenth and Eighth Amendments.

The Congress has provided that where an individual's confinement violates the Constitution, that person is entitled to habeas corpus relief. *See* 28 U.S.C. §§ 2241(c)(3), 2254(a). As a preliminary matter, six justices in *Herrera* indicated that the Constitution would not permit the execution of an innocent person, so that a freestanding innocence claim is at least cognizable on federal habeas grounds. *See Herrera*, 506 U.S. at 419 (O'Connor, J., joined by Kennedy, J.), 429-30 (White, J., concurring), and 430-37 (Blackmun, J., dissenting, joined in part by Stevens & Souter, JJ, dissenting); Paige Kaneb, *Innocence Presumed: A New Analysis of Innocence as a Constitutional Claim*, 50 Cal. W. L. Rev. 171, 178-200 (Spring 2014). Mr. Bradford's freestanding innocence claim lies in the Fourteenth Amendment's substantive due process guarantee and the Eighth Amendment's bar against cruel and unusual punishment. Justice Blackmun articulated those arguments well in his dissent in *Herrera*.

The Fourteenth Amendment prohibits government action that "'shocks the conscience,"' and Justice Blackmun found that nothing could be more shocking to the conscience than the execution of an innocent person. *Herrera*, 506 U.S. at 435-37 (citation omitted). While Justice Blackmun's Fourteenth Amendment analysis focused on the capital nature of the case, the *Herrera* majority recognized that constitutional due process protections extend beyond the death penalty to wrongful incarceration. *See id.* at 398, 405 (majority opinion) ("It would be a rather strange jurisprudence, in these circumstances,

which held that under our Constitution he could not be executed, but that he could spend the rest of his life in prison.") If the Constitution provides a substantive due process protection against the execution of innocents, it must also prohibit the incarceration of innocents; this ought not to be a controversial proposition, and indeed, the *Herrera* majority affirms that it is not. Depriving persons of their liberty in the name of the State, in a criminal prosecution in which the defendants are actually innocent, offends Fourteenth Amendment due process and violates the Constitution. *See* U.S. Const. amend. XIV; *Rochin v. California*, 342 U.S. 165, 172-73 (1952); *Brown v. Mississippi*, 297 U.S. 278, 285-86 (1936). *See also* Larry May & Nancy Viner, *Actual Innocence and Manifest Injustice*, 49 St. Louis U. L.J. 481, 482 (2005) ("[D]enying actual innocence claims is a paradigmatic example of manifest injustice and a denial of substantive due process."); Sarah A. Mourer, *Gateway to Justice: Constitutional Claims to Actual Innocence*, 64 U. Miami L. Rev. 1279, 1281 (2010) ("To execute a person with a compelling claim to innocence would also shock the conscience sufficiently to violate substantive due process."); Bernard A. Williams, *Guilty Until Proven Innocent: The Tragedy of Habeas Capital Appeals*, 18 J.L. & Pol. 773, 776 (2002) ("[E]vidence of actual innocence discovered post-conviction establishes a prima facie Fourteenth Amendment substantive due process violation.").

The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. amend. VIII. These protections are intended to protect

"the dignity of man," recognizing that the State's power to punish must be confined to "the limits of civilized standards." *Trop v. Dulles*, 356 U.S. 86, 100 (1958). Our Supreme Court has held that when guided by its own "'understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose," a federal court must "determine[] in the exercise of its own independent judgment whether the punishment in question violates the Constitution."' *Graham v. Florida*, 560 U.S. 48, 61 (2010) (citations omitted).

The punishment of innocent persons should fall well within any court's judgment as an unconscionable punishment that should never be imposed. Justice Blackmun suggested that while capital punishment is "different" than ordinary incarceration, the wrongful incarceration of an innocent person for even one day is a cruel and unusual punishment. *Herrera*, 506 U.S. at 432 n.2 (Blackmun, J., dissenting). Ample and longstanding authority supports the proposition that the Eighth Amendment prohibits the wrongful incarceration of an innocent person, and that this proposition also should not be controversial in a civilized society. *See United States v. United States Coin & Currency*, 401 U.S. 715, 726 (1971) (Brennan, J., concurring) ("[T]he government has no legitimate interest in punishing those innocent of wrongdoing ...."); *Robinson v. California*, 370 U.S. 660, 667 (1962) ("Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold."); *Thompson v. City of Louisville*, 362 U.S. 199, 206 (1960) (considering whether it is "a violation of due process to convict and punish a man without evidence of his guilt."); *Mooney v. Holohan*, 294 U.S. 103, 112-13 (1935) (holding that where

defendant asserted his innocence and a wrongful conviction due to perjured testimony and improperly suppressed evidence, habeas courts must hear the claim); *Calder v. Bull*, 3 U.S. 386, 388 (1798) ("The Legislature may ... declare new crimes ... but they cannot change innocence into guilt; or punish innocence as a crime ....").

Mr. Bradford, or any person deprived of his or her liberty in the face of having a compelling innocence claim, has Fourteenth and Eighth Amendment claims that ought to be heard – if a federal court would simply hear them. The federal courts should hear Mr. Bradford's claims, because as set forth below, the claims are compelling enough to place front and center the undeniable proposition that our Constitution must not allow innocence to suffer.

III. Mr. Bradford's Compelling Innocence Claims Make His Case the "Right" One for Presentation and Consideration of a Freestanding Innocence Claim.

As noted above in Part I, our Supreme Court's jurisprudence on actual innocence in habeas claims thus far has been to suggest that while some case might come along to trigger federal habeas review of a freestanding innocence claim, the Supreme Court has yet to see precisely that case. Mr. Bradford's case is the one: His actual innocence claims are powerful and warrant federal judicial review that is consistent not only with the federal habeas corpus statute allowing a remedy for unconstitutional confinement, but also with any commonly held conception of justice in a free and democratic society. A free and democratic society, and the one we have in the United States of America, does not stand by and do nothing while innocence suffers. Minimally, it

provides an avenue for an innocent person to bring compelling claims of innocence before a duly authorized court to have them adjudicated, as a basic bulwark against depriving innocent people of their liberty, in violation of the Constitution.

In this *amicus* brief, the Innocence Network will not repeat the substantial aspects of the record that spell out Mr. Bradford's innocence claims, but a brief summary underscores just how compelling those claims are. Importantly, as the distinguished Judge Hamilton explained in his dissent from the panel opinion in this matter, Mr. Bradford's guilt or innocence at his trial turned largely on expert testimony about the duration of the fatal fire at issue in the case. But Mr. Bradford's defense presented an expert who "was unable to offer a credible expert opinion on the one question that mattered the most: whether it was physically possible for Bradford to have set the fire." *Bradford*, slip op. at 28. Judge Hamilton reasoned that the defense expert "was equivalent to no expert at all . . . ." *Id.* at 29. The testimony of Douglas Carpenter, a renowned fire protection engineer and member of the National Fire Protection Association ("NFPA"), left no doubt that it was impossible for Mr. Bradford to have started the fire. If the fire started before 6:34 a.m. that morning, i.e., if it lasted for more than eight minutes, Mr. Bradford did not light it. Mr. Carpenter provided scientific evidence including controlled experiments and well-recognized studies to establish that the fire had to have lasted at least thirty minutes, thereby excluding Mr. Bradford as the arsonist, and thus the murderer. The Majority cites independent, non-record research to challenge

Mr. Carpenter's opinion. But Mr. Carpenter had no opportunity to respond to those challenges and this extra-record evidence should be ignored.[2] Indeed, the only reason why Judge Hamilton hedged at all in his assessment of Mr. Bradford's "almost certain[]" innocence was that Judge Hamilton himself, like the Majority, is not a fire expert and has not seen any testing of the expert analysis of Mr. Bradford's post-conviction fire expert. *Bradford*, slip op. at 31-32 n.7. Thus, Judge Hamilton concluded not only that defense counsel's failure to present the "critical" expert evidence was constitutionally ineffective, but that "[i]n the alternative, I would treat this case as *appropriate for an actual innocence grant of habeas corpus*." *Id.* at 37 (emphasis added).

Judge Hamilton's analysis demonstrates that Mr. Bradford has a compelling innocence claim to advance, arguably more compelling than those

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[2] The Majority's opinion in this matter marks another troubling example of this Court's embarking upon independent research on substantive issues addressed or not addressed by experts, and outside the record, in a manner that may not present litigants with an adequate opportunity to challenge such independent research or the conclusions that courts draw from it. *See*, *e.g.*, *Rowe v. Gibson*, 798 F.3d 622, 643 (7th Cir. 2015) (Hamilton, J., dissenting) ("The internet is an extraordinary resource, but it cannot turn judges into competent substitutes for experts . . . . The majority's instruction to the contrary will cause problems in our judicial system more serious than those it is trying to solve in this case."); *Rowe v. Gibson*, No. 14-3316, 2015 WL 10767326, at *1 (7th Cir. Dec. 7, 2015) (asserting, on a tie vote denying rehearing, that "any factual research conducted by the panel majority was unnecessary to that outcome [reached by the panel majority]"); *United States v. Herrera*, 704 F.3d 480, 486-87 (7th Cir. 2013) (citing independent research, not contained in the district court record, in support of the Court's conclusions that fingerprint experts may reliably "match[]" latent fingerprints to an individual source, and that "errors in fingerprint matching by expert examiners appear to be very rare"); Brief of *Amici Curiae* Interested Scientists and Scholars in Support of Petition for Writ of Certiorari, *Herrera v. United States,* 134 S. Ct. 175 (2013) (No. 12-1461), 2013 WL 3773550, at *15-20 (argument by 24 scientists, scholars, and attorneys familiar with evidence law and scientific literature concerning forensic science and fingerprint identification that the opinion of this Court in *United States v. Herrera* misinterpreted the independent research upon which it relied to hold that certain fingerprint "matching" testimony is reliable and that fingerprint matching errors are rare).

in *Herrera* or *House*, and certainly strong enough to allow Mr. Bradford to pursue a freestanding claim of actual innocence as a ground for habeas corpus relief. Mr. Bradford's right to make that claim is supported in the jurisprudence surrounding *Herrera*, the Fourteenth and Eighth Amendments, the federal habeas statute, and the irrefutable truth that such compelling innocence claims arising from state court prosecutions demand the serious attention and review of federal courts. Freestanding innocence claims demand federal judicial review and consideration because we live in a society that rejects entirely the punishment of innocent persons. Innocent persons must have their day in federal court, if the Fourteenth and Eighth Amendments are to mean anything, particularly when the Congress, through the habeas statute, has explicitly provided them with access to the federal courts to pursue claims that their incarceration has violated the Constitution. This Court should recognize Mr. Bradford's ability to assert his freestanding innocence claim, and it should consider that claim and determine whether a case for innocence as compelling as his sets forth a constitutional violation for which the habeas statute provides a federal judicial remedy.

IV. Justice Blackmun Articulated an Appropriate Standard for Judicial Consideration of Freestanding Innocence Claims.

In his *Herrera* dissent, Justice Blackmun reasoned that a habeas petitioner asserting a freestanding innocence claim should be required to prove that he is "probably" innocent. *Herrera*, 506 U.S. at 442-44 (Blackmun, J., dissenting). This standard has been described as "'extraordinarily high.'" *Boyde v. Brown*, 404 F.3d 1159, 1168 (9th Cir. 2005) (citations omitted). But it

is consistent with the Supreme Court majority's concern in *Herrera* that review of freestanding innocence claims ought to be reserved for "truly persuasive" innocence claims. *Herrera*, 506 U.S. at 417. Mr. Bradford has such a "truly persuasive" freestanding claim that he is "probably" innocent, and in the interest of justice, that claim ought to be heard by a federal court.

CONCLUSION

Upon reconsideration of the panel opinion *en banc*, this Court should hold that Mr. Bradford may assert a freestanding innocence claim as grounds for federal habeas relief, and this Court should consider that claim.

Dated: August 17, 2016

Respectfully submitted,

THE INNOCENCE NETWORK, as *amicus curiae*

By: *s/ Gabriel A. Fuentes*
Its Attorney

Gabriel A. Fuentes
JENNER & BLOCK LLP
353 N. Clark Street
Chicago, IL 60654-3456
(312) 222-9350

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

1. This Brief complies with the type-volume limitation of Rule 29(d) of the Federal Rules of Appellate Procedure because, according to the "word count" function of Microsoft Office Word 2013, the Brief contains 2,910 words, no more than one-half the maximum length authorized by the rules for the petition in support of rehearing.

2. This Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and Circuit Rule 32 and the typestyle requirements of Fed. R. App. P. 32(a)(6)because this Brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 2013 in 12 point Bookman Old Style font for the main text and 11 point Bookman Old Style font for the footnotes.

Dated: August 17, 2016

/s/ Gabriel Fuentes
Gabriel Fuentes

CERTIFICATE OF SERVICE

I, Gabriel A. Fuentes, an attorney, hereby certify that on August 17, 2016, I caused the foregoing **Brief Of The Innocence Network As *Amicus Curiae* In Support Of Rehearing *En Banc*** to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Pursuant to ECF Procedure (h)(2) and Circuit Rule 31(b), and upon notice of this Court's acceptance of the electronic brief for filing, I certify that I will cause 15 copies of the above named filing to be transmitted to the Court via hand delivery and two copies of the above named filing to be served upon the party listed below via UPS overnight delivery within 7 days of that notice date.

Ronald S. Safer
Deborah Ann Bone
RILEY SAFER HOLMES & CANCILA LLP
70 W. Madison Street, Suite 2900
Chicago, IL 60602

Henry A. Flores, Jr., Attorney
OFFICE OF THE ATTORNEY GENERAL
Indiana Government Center South
302 W. Washington St., Fifth Floor
Indianapolis, IN 46204-2770

/s/ Gabriel Fuentes
Gabriel Fuentes