No. S267391

In the Supreme Court of the State of California

IN RE JASMINE JENKINS,
ON HABEAS CORPUS.

Second Appellate District, Case No. B301638
Los Angeles County Superior Court, Case No. BA467828
The Honorable Lisa B. Lench, Judge

ANSWER BRIEF ON THE MERITS

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November 5, 2021

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ISSUE PRESENTED

When a habeas petitioner claims not to have received a fair trial because the district attorney failed to disclose material evidence in violation of *Brady v. Maryland* (1963) 373 U.S. 83—and when the Attorney General has knowledge of, or is in actual or constructive possession of, such evidence—what duty, if any, does the Attorney General have to acknowledge or disclose that evidence to the petitioner? Would any such duty be triggered only upon issuance of an order to show cause?

INTRODUCTION

Petitioner Jenkins filed an original petition for a writ of habeas corpus in the Court of Appeal accusing the Office of the Los Angeles County District Attorney of violating its discovery obligations by not disclosing that the victim and the victim's sister—a prosecution witness—had been adjudicated as wards of the court following their arrests in 2006. Petitioner supported her claim by proffering, among other things, an unreported appellate opinion affirming the judgments against similarly named sisters. Petitioner argued that the prior juvenile adjudications would have supported her theory that the victim was the aggressor and that the victim's sister was willing to commit perjury. The Court of Appeal issued an order to show cause but ultimately denied the claim because there was no reasonable probability the juvenile adjudications would have changed the trial outcome. Not only were the 2006 events remote in time compared to more recent incidents in which the victim had been violent against petitioner, but trial evidence clearly

showed that the victim behaved aggressively toward petitioner before being stabbed to death. Nor would impeaching the victim's sister with a juvenile prior have materially affected the prosecution's case, continued the court.

In granting review, this Court did not ask the parties to address the Court of Appeal's holding that the juvenile adjudications alleged in the habeas petition would not have been material at trial. Instead, this Court directed the parties to address only antecedent procedural issues related to the fact that the Attorney General, despite having access to the juvenile court record informing the unpublished opinion provided by petitioner, did not acknowledge or disclose whether the juveniles referenced in the opinion were the victim and her sister in the instant case, and contested the sufficiency of petitioner's evidence of those facts in both the informal response and return.

When a habeas petitioner alleges that a *Brady* violation occurred at trial, there are several circumstances under which the Attorney General may have a duty to acknowledge or disclose evidence that forms the basis of the claim. Whether disclosing the evidence or acknowledging its existence—or neither—is merited will depend upon both the procedural posture of the case and the nature of the evidence.

In this case, under established rules of habeas procedure the Attorney General bore no obligation to acknowledge or disclose the alleged juvenile adjudications as part of the informal response; in fact, doing so would have violated statutory confidentiality protections for juvenile court records. At that

stage of the proceedings, facts alleged in the petition are presumed true for purposes of determining a prima facie showing for relief. Moreover, given the multitude of habeas petitions filed annually, it would be unrealistic to expect the Attorney General to conduct the investigation necessary to make an informed admission or denial in every instance. But, when the Attorney General has ready access to information that would confirm or dispel the accuracy of petitioner's factual claims, the Attorney General should not contest the sufficiency of evidence provided by petitioner without providing factual clarification—or identifying a statutory inability to do so. Thus, the Attorney General's informal response in this case did not represent best practices.

Once the Court of Appeal issued the order to show cause in this case, the Attorney General was required to either admit the alleged facts, offer a good faith reason for disputing them, or indicate that statutory confidentiality protections precluded doing either. The Attorney General's return was deficient on this score because it again argued (in part) that petitioner had not provided sufficient proof of the alleged juvenile adjudications, yet did not provide clarifying materials or plead an inability to do so. The Attorney General also asserted, however, that the juvenile adjudications, if true, would not have been material to the trial outcome within the meaning of *Brady*. The Court of Appeal denied relief on the latter ground. Accordingly, petitioner suffered no prejudice from deficiencies in the return.

Given the shortcomings of the Attorney General's responses to the habeas petition in this case, we recognize that it might be

useful to reiterate best practices. But that task is complicated here by the nature of the evidence at issue. When a *Brady* claim relates to evidence that is privileged, sealed, statutorily confidential (as is the case with records of juvenile court proceedings), or subject to other disclosure restrictions, the Attorney General's duty to acknowledge or disclose that evidence will be circumscribed. In this case, the Attorney General's informal response and return to the order to show cause would have better served the court by pointing to statutory restrictions on pleading facts related to confidential juvenile court records.

LEGAL BACKGROUND

This case involves a petition for a writ of habeas corpus premised on an alleged violation of the principles set forth in *Brady*, *supra*, 373 U.S. 83. "The right to a fair trial, guaranteed to state criminal defendants by the Due Process Clause of the Fourteenth Amendment, imposes on States certain duties consistent with their sovereign obligation to ensure 'that "justice shall be done"' in all criminal prosecutions." (*Cone v. Bell* (2009) 556 U.S. 449, 451.) One of those duties is disclosure of "evidence favorable to an accused that is material to guilt or to punishment." (*Brady*, *supra*, 373 U.S. at p. 487.) A *Brady* violation has three components: "The evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued." (*Strickler v. Greene* (1999) 527 U.S. 263, 281-282.)

A *Brady* violation may form the basis for issuance of a writ of habeas corpus. (*In re Bacigalupo* (2012) 55 Cal.4th 312, 333, 336.) The writ of habeas corpus is an "extraordinary, limited remedy against a presumptively fair and valid final judgment." (*People v. Gonzalez* (1990) 51 Cal.3d 1179, 1260.) "Because a petition for a writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them." (*People v. Duvall* (1999) 9 Cal.4th 464, 474.)

A habeas petition must state "fully and with particularity the facts on which relief is sought" and include "copies of reasonably available documentary evidence supporting the claim." (*Duvall*, *supra*, 9 Cal.4th at p. 474.) The initial task for the court is to "determine whether the petition states a prima facie case for relief—that is, whether it states facts that, if true, entitle the petitioner to relief." (*People v. Romero* (1994) 8 Cal.4th 728, 737.)

Initially, the court "may request an informal response from the petitioner's custodian or the real party in interest" in order to "assist the court in determining the petition's sufficiency." (*Romero*, *supra*, 8 Cal.4th at p. 737.) That response "is not a pleading, does not frame or join issues, and does not establish a 'cause' in which a court may grant relief." (*Id.* at p. 741.) The informal response can serve a screening function, however, by providing facts and legal authority sufficient to show that the habeas corpus petition lacks merit and may be summarily

rejected. (*Id.* at p. 742.)[1] If the court agrees, it will summarily deny the petition, "without requiring formal pleadings . . . or conducting an evidentiary hearing." (*Ibid.*)

If the petition establishes a prima facie case for relief, the court will issue an order to show cause (OSC). (*Duvall*, *supra*, 9 Cal.4th at p. 475.) "Issuance of an OSC . . . indicates the issuing court's *preliminary* assessment that the petitioner would be entitled to relief if his factual allegations are proved." (*Ibid.*) In response to the OSC, the respondent files a return justifying the confinement by alleging facts responsive to the petition's allegations and tending to establish that the petitioner is lawfully incarcerated. (*Id.* at p. 476.) "In addition to stating facts, the return should also, 'where appropriate, . . . provide such documentary evidence, affidavits, or other materials as will enable the court to determine which issues are truly disputed.'" (*Ibid.*)

The petitioner then files a traverse. (*Duvall*, *supra*, 9 Cal.4th at p. 476.) The traverse either admits or disputes facts set forth in the return, "and this interplay frames the factual issues that the court must decide." (*Id.* at p. 477.) Based on the pleadings following issuance of an OSC, "[w]here there are no disputed factual questions as to matters outside the trial record, the merits of a habeas corpus petition can be decided without an evidentiary hearing." (*People v. Karis* (1988) 46 Cal.3d 612, 656;

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[1] The informal response is analogous, in some respects, to a demurrer in a civil action. (*Romero*, *supra*, 8 Cal.4th at p. 742, fn. 9.)

see *In re Figueroa* (2018) 4 Cal.5th 576, 587.) Alternatively, resulting litigation may involve discovery and evidentiary hearings to resolve questions of fact. (*In re Scott* (2003) 29 Cal.4th 783, 813-814.)

STATEMENT OF THE CASE

A. The crime and the trial

On January 19, 2018, petitioner stabbed Brittneeh Williams to death during a confrontation at a Los Angeles gas station. (Opinion 2-3.) The two women were in a relationship triangle of sorts with Kayuan Mitchell; he was the father of Williams's daughter but was dating petitioner at the time, with whom he also had a child. (Opn. 2.) The gas station confrontation flowed from an earlier incident in which Mitchell assaulted Williams. (Opn. 2-3.) Ultimately, "[a]fter back and forth scuffles between Mitchell and Williams, [petitioner] exited her car with a large kitchen knife and stabbed Williams three times, killing her just as [Williams's sister] Sade Williams arrived." (Opn. 3.)

Pretrial, the prosecution notified the defense "that in 2015 and 2016 Brittneeh had committed battery on [petitioner] herself." (Opn. 12.) The prosecution also disclosed that Sade Williams was arrested as a juvenile in Long Beach on October 31, 2006, for robbery (Pen. Code, § 212.5), assault with deadly weapon or by force likely to produce great bodily injury (Pen. Code, § 245), commission of hate crimes (Pen. Code, § 422.7), and battery (Pen. Code, § 242). (Petn. Writ of Habeas Corpus, Exh. B, Attachment A (PWH).) In relation to that arrest, the prosecutor wrote to defense counsel, "[N]o dispo[sition] stated or charges

filed[.]" (*Ibid*.) The prosecution also disclosed a prior grand theft conviction for Sade Williams. (*Ibid*.)

At trial, "Sade Williams testified that [petitioner] stabbed her sister while Mitchell held her in a bear hug." (Opn. 4.) The prosecution presented eyewitness testimony from an uninvolved citizen and security camera footage of events at the gas station. (Opn. 3-4.) Petitioner argued that she acted in self-defense. (Opn. 4.) A Los Angeles County jury convicted petitioner of voluntary manslaughter. (Opn. 4.) The trial court imposed an 11-year prison sentence. (Opn. 4.)

B. Habeas proceedings

Petitioner's postconviction counsel contacted her trial attorney and asked whether he "was aware that Ms. Williams and Sade had in fact been successfully prosecuted by the Los Angeles County District Attorney for three counts of aggravated assault with two great-bodily injury and two hate-crime enhancements." (PWH, Exh. B, Attachment A 4.) Postconviction counsel provided trial counsel "with a copy of the Court of Appeal opinion in that case." (*Ibid*.) The opinion, *People v. Emerald R.* (Mar. 4, 2010, B196643) (nonpub. opn.), involved the juvenile adjudications of nine juveniles, including "Brit. W." and "Sade W." for three assaults on October 31, 2006, in Long Beach. (PWH, Exh. B, Attachment B 1-2.) The juvenile court made true findings on hate crime and great bodily injury allegations as to Brit. W. and Sade W. (PWH, Exh. B, Attachment B 1-2.)

While her direct appeal was pending, petitioner filed a petition for writ of habeas corpus in the Court of Appeal. She alleged the district attorney violated *Brady*, *supra*, 373 U.S. 83 in

two regards. Petitioner claimed the prosecutor had "suppressed material evidence by failing to disclose the criminal history of Brittneeh Williams," which "showed that Brittneeh had been successfully prosecuted by the Los Angeles County District Attorney's Office for three counts of aggravated assault, along with hate-crime and great-bodily injury enhancements." (PWH 8, citations omitted.) Petitioner also alleged suppression of evidence of Sade's criminal history that could have been used to impeach her testimony. (PWH 18.)

The Attorney General's informal response argued that petitioner had not stated a prima facie case for relief because (1) there was "no competent evidence" that Brittneeh or Sade Williams were the minors referenced in the *Emerald R.* decision; (2) even if Brittneeh or Sade Williams were those minors, petitioner's showing that the prosecutor suppressed that information was, at best, ambiguous; and (3) assuming that Brittneeh and Sade Williams were the subjects of the *Emerald R.* decision, their juvenile adjudications were immaterial to the trial outcome and thus fell outside the bounds of *Brady*. (IHC 15-20.)

The Court of Appeal issued an order to show cause. In terms of factual allegations and denials on the *Brady* issue, the Attorney General's Return stated, "Respondent alleges that petitioner is not entitled to relief because the prosecutor did not violate *Brady v. Maryland* (1963) 373 U.S. 83, by failing to disclose Williams's and a witness's purported prior juvenile adjudications for an incident that occurred in 2006 because she did not suppress such evidence and such evidence was not

material[.]" (Return to Order to Show Cause (RSC) 7.) In the supporting Memorandum of Points and Authorities, the return argued that "there was no *Brady* violation because petitioner has offered no competent evidence that either Williams or the witness suffered the adjudications petitioner cites, petitioner offers no evidence that the prosecutor failed to disclose them, and petitioner has not demonstrated that these prior adjudications were material or favorable to her." (RSC 9.)

The Court of Appeal denied habeas relief. (Opn. 2.)[2] For purposes of its analysis, the court assumed that the Williams sisters were the juveniles referred to as "Brit. W." and "Sade W." in *Emerald R.*, while observing that the Attorney General's assertion that the opinion failed to establish those identities was a "fair point." (Opn. 11, fn. 1.)[3]

The Court of Appeal concluded "there is no reasonable probability that disclosure of the 2006 adjudication[s] would have altered the outcome of trial." (Opn. 13.) Brittneeh's juvenile adjudication demonstrated "that she had been violent 12 years earlier," whereas her "2015 and 2016 offenses, of which

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[2] The court also affirmed the judgment. (Opn. 2.)

[3] The Court of Appeal also assumed "solely for purposes of these proceedings that the prosecutor should have disclosed the [juvenile] adjudications, a matter that is in no way certain . . . ." (Opn. 13.) If the court made that assumption under *Brady*, there was no need for it because there is no *Brady* duty to disclose unless the evidence is favorable and material (*People v. Salazar* (2005) 35 Cal.4th 1031, 1043, 1048-1049), and the evidence here was not material.

[petitioner] was aware, indicated that Brittneeh had recently been violent *against her*. Moreover, the circumstances of the instant crime, and the video evidence, both showed that Brittneeh was an aggressor here. She chased Jenkins in her car, and was shown on video attacking her at the gas station. The jury thus already knew that Brittneeh had a penchant for violence against Jenkins." (Opn. 13.) And Sade's "juvenile adjudication could have been used only to impeach her testimony. But the only material part of Sade's testimony was to the effect that Jenkins was not acting in self-defense when she stabbed Williams. This fact was corroborated by A.V., who testified Jenkins followed Williams to the bus stop to stab her." (Opn. 14.)

This Court denied review of petitioner's challenges to the merits of the Court of Appeal's decision, but granted review on the rephrased question presented set forth above. Consequently, the lower court's determination that the identified evidence was not material under *Brady* is not at issue in this proceeding. Rather, what is at issue before this Court are the Attorney General's obligations to "acknowledge or disclose" evidence within the Attorney General's knowledge in response to a claim of a *Brady* violation raised in a habeas petition based on that evidence.

ARGUMENT

I. BEFORE AN ORDER TO SHOW CAUSE ISSUES, THE ATTORNEY GENERAL HAS NO CATEGORICAL DUTY TO ACKNOWLEDGE OR DISCLOSE ALLEGED *BRADY* EVIDENCE

The mere filing of a habeas petition alleging a *Brady* violation does not trigger a requirement that the Attorney

General, as the respondent, disclose the alleged *Brady* evidence to the petitioner. But, as "the chief law officer of the State" (Cal. Const., art. V, § 13) and the representative of the People, the Attorney General may have an independent legal obligation under some circumstances to proactively provide what would have been *Brady* evidence at trial.

A. When the Attorney General disagrees that a *Brady* violation occurred

If a habeas petition alleges that certain evidence exists and should have been provided to the defense at trial pursuant to *Brady* but the Attorney General, while possessing the evidence, disagrees that it fell within the scope of *Brady* at trial, the Attorney General is not obligated to acknowledge or disclose it in conjunction with an informal response to a habeas petition. The Attorney General's decision to neither confirm nor dispute the existence of alleged *Brady* evidence in an informal response will not prejudice a petitioner's attempt to obtain habeas relief because a petitioner's burden at that juncture is merely one of pleading, not proof. (*Duvall*, *supra*, 9 Cal.4th at p. 474 ["petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them"].) An order to show cause will issue "[i]f the court determines that the petition states a prima facie case for relief on a claim that is not procedurally defective." (*Ibid.*; see Cal. Rules of Court, rules 4.551(c)(1), 8.385(d).) The habeas court will assess whether a prima facie case was stated under the assumption that its factual allegations, if unrefuted, are true. (*Maas v. Superior Court* (2016) 1 Cal.5th 962, 974.)

That preliminary procedural structure is consistent with the general rule that "discovery will not lie in habeas corpus with respect to issues upon which the petition fails to state a prima facie case for relief." (*Gonzalez*, *supra*, 51 Cal.3d at p. 1261; accord, *People v. Superior Court* (*Morales*) (2017) 2 Cal.5th 523, 528; *McGinnis v. Superior Court* (2017) 7 Cal.App.5th 1240, 1245) It is also in keeping with *Romero*'s holding that the informal response is not a substitute for the return. (*Romero*, *supra*, 8 Cal.4th at p. 741.) The return, not the informal response, commences the stage of habeas proceedings focused on framing issues and developing relevant facts for judicial determination. (*In re Serrano* (1995) 10 Cal.4th 447, 456.)

Accordingly, in an informal response to a *Brady* claim the Attorney General may properly argue that the information at issue, *assuming its existence*, was not *Brady* evidence in hindsight—if that is the Attorney General's reasoned position. The Attorney General's informal response in the present case adopted that approach, in part. (IHC 17-19.)

Alternatively, an informal response may dispute the factual basis of one or more claims in the petition by offering materials that refute factual allegations raised in the petition. (*Romero*, *supra*, 8 Cal.4th at p. 742; see Cal. Rules of Court, rule 4.551(b)(2).) If the court credits the Attorney General's contrary factual showing, it may reject the petitioner's allegations on credibility grounds and summarily deny those claims. (*Romero*, at p. 742.)

Or, in an informal response the Attorney General may point out pleading deficiencies in a habeas petition, for example, the petitioner's failure to attach key supporting documentary evidence such as a declaration. The Attorney General's informal response in this case employed this approach as well by asserting that petitioner "already failed to show a prima facie case for relief" because she had "not provided sufficient evidence to show Brittneeh or Sade were the minors named" in the appellate opinion. (IHC 15.) While accurate, our statement may have created the appearance of inattention because there did not appear to be a good faith reason to question the credibility of petitioner's assertions that the juveniles referenced in the unpublished appellate opinion were the Williams sisters. The informal response as formulated should have included the qualification that statutory confidentiality restrictions precluded the Attorney General from acknowledging or disclosing facts derived from juvenile court records (Welf. & Inst. Code, § 827, subd. (a)(4), (5)) without a court order from the juvenile court (*id.*, § 827, subd. (a)(2)(A)).

Section 827 of the Welfare and Institutions Code provides for the confidentiality of juvenile records and designates the juvenile court as the sole entity with authority to decide whether and to what extent third parties may gain access to those records. (*People v. Nieves* (2021) 11 Cal.5th 404, 432; *In re Gina S.* (2005) 133 Cal.App.4th 1074, 1081-1082.) Prosecutors may not provide juvenile case records to a defendant as discovery in a separate

proceeding. (Welf. & Inst. Code, § 827, subd. (a)(4);[4] see *People v. Stewart* (2020) 55 Cal.App.5th 755, 773, 776.) Any knowledge that the Attorney General had that Brittneeh or Sade Williams had suffered the juvenile adjudications would have had to remain (indeed, still must remain) confidential and could not be used to agree in the informal response the petition's allegations that Brittneeh and Sade Williams had been "successfully prosecuted."

Petitioner, however, to more fully discharge her pleading burden, could have petitioned the juvenile court for information she deemed relevant to a habeas petition. Welfare and Institutions Code section 827 authorizes a third party to seek records of juvenile proceedings by filing a petition with the juvenile court. (Welf. & Inst. Code, § 827, subd. (a)(1)(Q); Cal. Rules of Court, rule 5.552; see *People v. Thurston* (2016) 244 Cal.App.4th 644, 672.) Indeed, the section 827 petition process is available to criminal defendants seeking *Brady* evidence before trial: "[W]hen a petitioner files a section 827 petition requesting that the court review a confidential juvenile file and provides a reasonable basis to support its claim that the file contains *Brady* exculpatory or impeachment material, the juvenile court is

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[4] "A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to a person or agency, other than a person or agency authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court . . . ." (Welf. & Inst. Code, § 827, subd. (a)(4).)

required to conduct an in camera review." (*J.E. v. Superior Court* (2014) 223 Cal.App.4th 1329, 1333.) Proceeding in such a manner "eliminates the need for the prosecution to request court permission for disclosure after its *Brady* review, and forestalls litigation brought by the defense over whether the prosecution has complied with its *Brady* obligations." (*Id.* at p. 1339; see *Stewart*, *supra*, 55 Cal.App.5th at p. 773 ["section 827 procedures should apply to a *Brady* request involving information contained in juvenile records"]; cf. *People v. Superior Court* (*Johnson*) (2015) 61 Cal.4th 696, 717 [endorsing in camera review of police personnel files pursuant to a motion by the defendant as means of effectuating *Brady*]; *Pennsylvania v. Ritchie* (1987) 480 U.S. 39, 58, 60 [in camera inspection of otherwise privileged state agency records for potential disclosure of *Brady* material is an appropriate means of effectuating due process right to a fair trial].)

The established protocol for accessing juvenile court records has plain implications in this case. Once petitioner suspected that Brittneeh and Sade Williams had been the subjects of juvenile court proceedings (PWH, Exh. B, Attachment A 4), she possessed ample information with which to petition the juvenile court pursuant to Welfare and Institutions Code section 827 to obtain information, if any, about their juvenile adjudications. The juvenile court would have had the discretion to release records related to the Williams sisters if petitioner showed "by a preponderance of the evidence that the records requested are necessary and have substantial relevance to [a] legitimate need."

(Cal. Rules of Court, rule 5.552(d)(6).) In fact, because Brittneeh Williams is deceased a statutory presumption favors release of her juvenile records. (Welf. & Inst. Code, § 827, subd. (a)(2)(B).)

Petitioner could have used resulting information to satisfy her obligation to plead "fully and with particularity the facts on which relief is sought" (*Duvall*, *supra*, 9 Cal.4th at p. 474) and to "include copies of reasonably available documentary evidence supporting the claim" (*ibid.*), filed in accordance with any protective order and the rules of court governing confidentiality (e.g., Cal. Rules of Court, rule 8.45(c)(1) [obligation to preserve confidentiality of documents supporting petition for writ of habeas corpus]). Those obligations are necessarily predicated on a petitioner's (or her attorney's) investigation of her claim, including by using mechanisms the law makes available for accessing court information. Accordingly, petitioner's protestation that she "did not have access to official records of the Williams sisters' criminal history" (OBM 19) is not correct.

B. When the Attorney General agrees that a *Brady* violation occurred

Finally, although not applicable in this case, the Attorney General may have an independent legal obligation under some circumstances to proactively provide what would have been *Brady* evidence at trial. Those legal obligations are addressed below. Regardless, as a policy decision, if the Attorney General possesses information that was not provided to petitioner at trial but in retrospect would have been both favorable and material within the meaning of *Brady* as alleged in a habeas petition, then the Attorney General will provide that material to the petitioner

directly and proactively if it is not privileged, sealed, statutorily confidential, or otherwise subject to disclosure restrictions. If the favorable, material, information is privileged, sealed, statutorily confidential, or subject to other disclosure restrictions, the Attorney General will provide notice to the habeas petitioner sufficient to permit petitioner to seek in camera review and court-ordered disclosure. (See *Johnson*, *supra*, 61 Cal.4th at p. 717; *Pennsylvania v. Ritchie*, *supra*, 480 U.S. at pp. 58-61.)

In other words, when appropriate in a habeas proceeding, the Attorney General will take steps "to set the record straight" before issuance of a notice to show cause. (Cf. *Banks v. Dretke* (2004) 540 U.S. 668, 675-676 ["When police or prosecutors conceal significant exculpatory or impeaching material in the State's possession, it is ordinarily incumbent on the State to set the record straight"].) Doing so furthers the state's "interest in the fair and accurate adjudication of criminal cases." (*Ake v. Oklahoma* (1985) 470 U.S. 68, 79.) The Attorney General's stated approach in this regard furthers the sovereign's "overriding interest that 'justice shall be done,'" consistent with due process of law. (*United States v. Agurs* (1976) 427 U.S. 97, 111; accord, *Cone v. Bell* (2009) 556 U.S. 449, 451; *Kyles v. Whitley*, *supra*, 514 U.S. at p. 439; *Association for Los Angeles Deputy Sheriffs v. Superior Court* (2019) 8 Cal.5th 28, 39; *People v. Seaton* (2001) 26 Cal.4th 598, 649-650.)[5]

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[5] The question presented in this case does not encompass a situation in which *no* petition for a writ of habeas corpus has been filed alleging a *Brady* violation but the Attorney General

(continued…)

II. THE ATTORNEY GENERAL MAY BE REQUIRED TO ACKNOWLEDGE ALLEGED *BRADY* EVIDENCE IN THE RETURN TO AN ORDER TO SHOW CAUSE

Following issuance of an order to show cause, the Attorney General's return must plead facts justifying petitioner's confinement where it is possible to do so. (*Duvall*, *supra*, 9 Cal.4th at p. 476.) Those facts should be responsive to the basis for the petitioner's claim of unlawful confinement. (*Ibid.*)[6] "[T]he return should also, 'where appropriate, . . . provide such documentary evidence, affidavits, or other materials as will enable the court to determine which issues are truly disputed.' [Citation.]" (*Ibid.*) This obligation to allege facts would ordinarily include acknowledging the existence of alleged *Brady* evidence known to or possessed by the Attorney General.

For example, if a habeas petitioner alleges that a prosecution witness had an undisclosed prior felony conviction for

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(…continued)

becomes aware of evidence that should have been disclosed at trial pursuant to *Brady*. Respondent thus does not discuss what, if any, legal or ethical obligations would control the Attorney General's conduct in that instance. (See *Brown v. USA Taekwondo* (2021) 11 Cal.5th 204, 213, fn. 4 [only the merits of issues falling within the scope of the question presented will be considered].)

[6] *Duvall* recognized that the return may "'effectively admit[] the material factual allegations of the petition and traverse by not disputing them.'" (9 Cal.4th at p. 479.) For present purposes, respondent does not further distinguish between a return that affirmatively admits a material factual allegation in a petition and a return that "'effectively admits'" such an allegation by not disputing it.

a crime of moral turpitude (Evid. Code, § 788; *People v. Wheeler* (1992) 4 Cal.4th 284; see *Strickler*, *supra*, 527 U.S. at p. 280 [*Brady* "duty encompasses impeachment evidence"]), the Attorney General would typically be in a position to admit the existence of the prior conviction or plead contradictory facts (e.g., that the conviction was for a different crime that lacked moral turpitude).

But this case did not involve criminal convictions. Rather, petitioner alleged Brittneeh and Sade Williams had been "successfully prosecuted" by the district attorney's office (PWH 8, 18) and implied (by referring to the attached *Emerald R.* opinion) that the prosecutions occurred in juvenile court. Thus, the petition sought an admission from respondent as to the potential contents of a juvenile record, which are confidential, and which respondent is precluded from disclosing without a court order as discussed *ante*. (Welf. & Inst. Code, § 827; see *T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 778; *In re Keisha T.* (1995) 38 Cal.App.4th 220, 230.)

The Attorney General should not have persisted with the argument that "petitioner has offered no competent evidence that either Williams or the witness suffered the adjudications petitioner cites." (Return to Order to Show Cause (RSC) 9; see also RSC 15.) The Attorney General's memorandum would have been more accurate, and would have more fully performed its function, had it pleaded with respect to the claims regarding the prior adjudications and the attached opinion that, to the extent petitioner was asserting that the "successful[] prosecut[ions]"

were juvenile adjudications, respondent could not plead facts about whether Brittneeh Williams and Sade Williams had suffered those adjudications because juvenile records are confidential under Welfare and Institutions Code section 827. Doing so would have been better aligned with *Duvall*'s demand that the return set forth with specificity "why information is not readily available." (*Duvall*, *supra*, 9 Cal.4th at p. 485.)[7]

Pleading the existence of a statutory bar that prevents alleging particular facts fits within *Duvall*'s rationale. The Court recognized that "the modern expansion of the availability of relief on habeas corpus . . . justify [*sic*] a clarification of the pleading rules applicable to such petitions." (*Duvall*, *supra*, 9 Cal.4th at p. 470.) So too here. That modern expansion—going beyond facts that addressed "a claim that the petitioner was confined pursuant to the judgment of a court that lacked jurisdiction" (*id.* at pp. 475-476)—encompasses not only claims like those in *Duvall*—where the respondent does not have the facts and cannot with reasonable diligence obtain them—but also claims that turn

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[7] On the other hand, even though the return should have been pleaded with greater precision, it was not so deficient as to cause petitioner to "except to the sufficiency" of the return (Pen. Code, § 1484; see *Duvall*, *supra*, 9 Cal.4th at p. 477) or the Court of Appeal to order an amended return (*Duvall*, at pp. 482-483), notwithstanding petitioner's observation that the court could do so (Traverse 13). That court, moreover, understood the following facts or mixed questions of law and fact were at issue: the existence of the impeaching evidence in light of questions about identity (Opn. 11, fn. 1), suppression by the district attorney (Opn. 13), and materiality (Opn. 13).

on facts the respondent may have but is legally barred from revealing. The Attorney General cannot be required to choose between a duty to plead facts and a duty to maintain confidentiality. Rather, the respondent should be able to plead the legal bar to pleading facts, thereby satisfying both duties to the extent possible.

In sum, the Attorney General has a duty in the return: (1) to acknowledge the existence of alleged *Brady* evidence by admitting properly pleaded factual allegations in the petition; (2) to plead contradictory facts about the alleged *Brady* evidence; (3) to plead an inability to plead facts about the alleged *Brady* evidence after due diligence (the *Duvall* clarification); or (4) to plead an inability to plead facts about the alleged *Brady* evidence because of statutory or other bars to revealing information (the clarification the Attorney General asks this Court to adopt here to ratify the better practice discussed above). Exercising the fourth approach would give the petitioner a full and fair opportunity to satisfy his or her burden of proof by seeking in camera review and disclosure of the alleged *Brady* evidence. (See *Duvall*, *supra*, 9 Cal.4th at p. 474 ["Because a petition for a writ of habeas corpus seeks to collaterally attack a presumptively final criminal judgment, the petitioner bears a heavy burden initially to *plead* sufficient grounds for relief, and then later to *prove* them"].)

The Attorney General's pleading in this case should have made explicit that it could neither admit nor contradict the petition's central factual allegation due to the statutory bar

against such an admission for juvenile adjudications. The Attorney General's pleading in this case also obviated this problem, however, by assuming the truth of the factual allegation and addressing the merits.

III. THE ATTORNEY GENERAL MAY HAVE A DISCLOSURE DUTY IF A COURT ORDERS DISCOVERY OF ALLEGED *BRADY* EVIDENCE

Although no postconviction discovery was sought or ordered with respect to petitioner's habeas petition in this case, to address fully the questions posed by the Court we also set out the Attorney General's disclosure duties in response to postconviction discovery sought by a habeas petitioner.

A convicted person may seek an order for discovery from a habeas court following an order to show cause or, if serving a sufficiently long sentence, an order from the court that tried the criminal case pursuant to Penal Code section 1054.9. Discovery ordered in either context could create a duty of disclosure on the part of the Attorney General. In general, though, a convicted person enjoys few opportunities to seek postconviction discovery by court order: "[N]othing in cases addressing the right to pretrial discovery [citations] suggests that similar rights continue after the opportunity for defense has been provided, the conviction has been entered, and the presumption of innocence has been overcome." (*Gonzalez*, *supra*, 51 Cal.3d at p. 1258.)

Nonetheless, following an order to show cause the habeas court may require discovery and may conduct evidentiary hearings pursuant to its responsibility to "hear such proof as may be produced against such imprisonment or detention" and its

authority to "compel the attendance of witnesses, by process or subpoena and attachment, and to do and perform all other acts and things necessary to a full and fair hearing and determination of the case." (Pen. Code, § 1484; *In re Cook* (2019) 7 Cal.5th 439, 457 [evidentiary hearings may be ordered to "make findings of fact . . . necessary to adjudicate the petition"]; *In re Avena* (1996) 12 Cal.4th 694, 703 ["discovery may be available in a habeas corpus proceeding if . . . an order to show cause has issued"]; *Gonzalez*, *supra*, 51 Cal.3d at p. 1261 ["discovery will not lie in habeas corpus with respect to issues upon which the petition fails to state a prima facie case for relief"].) Discovery and factfinding conducted following an OSC may involve evidence related to a *Brady* claim, and consequently could create a disclosure duty for the Attorney General. (See, e.g., *Eulloqui v. Superior Court* (2010) 181 Cal.App.4th 1055, 1068 [habeas petitioner properly sought discovery related to *Brady* claim].)

The other primary means of obtaining postconviction discovery is Penal Code section 1054.9.[8] That section provides that those serving sentences of 15 years or more who are pursuing "a postconviction writ of habeas corpus or a motion to vacate a judgment" with the opportunity to obtain "materials in

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[8] Penal Code section 1405 also grants an opportunity for a convicted person to acquire new evidence bearing on his or her case. It allows for postconviction DNA testing of biological evidence retained by the government if statutory criteria are satisfied. (Pen. Code, § 1405, subd. (g).) Testing of that sort typically seeks to develop new evidence of actual innocence, not to substantiate a *Brady* claim.

the possession of the prosecution and law enforcement authorities to which the same defendant would have been entitled at time of trial." (Pen. Code, § 1054.9, subds. (a), (c); see *Satele v. Superior Court* (2019) 7 Cal.5th 852, 858.)[9] Typically, the district attorney who prosecuted the case is the responsive party in section 1054.9 litigation, but it is plausible the Attorney General would be involved—for example, when the Attorney General served as the trial prosecutor, when the Department of Justice performed an investigating agency role, or when the district attorney is no longer in possession of material subject to a discovery order but the Attorney General is.

A prisoner may invoke Penal Code section 1054.9 to seek *Brady* material the inmate was entitled to receive at trial but did not. (*In re Steele* (2004) 32 Cal.4th 682, 695, 697; see *Kennedy v. Superior Court* (2006) 145 Cal.App.4th 359, 369.) Habeas petitioners seeking discovery under section 1054.9 "must show a reasonable basis to believe that specific requested materials actually exist. But they do not additionally have to show that they are material within the meaning of *Brady* . . . and its progeny." (*Barnett v. Superior Court* (2010) 50 Cal.4th 890, 894.)

As neither mechanism for discovery was used in this case, the Attorney General had no discovery-based duty to disclose the alleged *Brady* evidence to petitioner.

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[9] Because petitioner is serving an 11-year sentence, she is ineligible for discovery pursuant to Penal Code section 1054.9.

IV. NO LEGAL OR ETHICAL PRINCIPLES REQUIRE DEVIATION FROM ESTABLISHED HABEAS CORPUS PROCEDURES

As noted at the outset, the focus of the inquiry in this case is the Attorney General's obligations to "acknowledge or disclose" evidence within the People's knowledge in response to a claim of a *Brady* violation raised in a habeas petition based on that evidence. In that context, established habeas procedures provide all necessary due process protections. No *additional* legal or ethical obligations require providing discovery of evidence based on an asserted *claim* of a *Brady* violation in a petition for writ of habeas corpus, when the People have otherwise concluded the identified evidence is not material.

As discussed, habeas proceedings are governed by a settled body of procedural rules that dictate whether, when, and how the State must acknowledge or disclose information in its possession relevant to claims advanced by a convicted person. Petitioner's entire argument, however, appears premised on the notion that those rules simply do not apply to a *Brady* claim in a habeas petition. She argues that federal and state due process protections and prosecutorial ethics require that the Attorney General proactively—presumably as soon as the writ petition is filed—disclose "exculpatory evidence directly relevant" to a habeas petitioner's *Brady* claim. (OMB 20; see also OBM 25 [arguing that the Attorney General should have disclosed confidential juvenile court records "in response to [petitioner's] verified allegations"].) Those arguments are uniformly incorrect.

A. Due process does not categorically require disclosure of alleged *Brady* evidence merely in response to a habeas petition's *Brady* claim

There is no due process requirement that compels the Attorney General to disclose *alleged Brady* evidence at the outset of habeas litigation merely because a habeas petition raises a *Brady* claim. The central flaw in petitioner's argument is its implicit premise presupposing that any *Brady* habeas claim is meritorious from the outset, such that the mere filing of the petition triggers an immediate disclosure duty independent of the habeas action and before the claim is even litigated. Petitioner contends that "due process . . . requires that material exculpatory evidence be disclosed *after* trial, particularly in response to a habeas petitioner's verified allegations that her conviction was obtained in violation of *Brady*." (OBM 24.) But the act of filing a habeas petition alleging a *Brady* violation does not by itself prove that the challenged evidence is material, exculpatory, or was withheld, as required for finding a *Brady* violation.

This case is illustrative. Although petitioner claimed that favorable material evidence was suppressed at trial, the habeas court concluded that the supposedly suppressed evidence was not actually material. Under settled rules of habeas litigation, the court was empowered to resolve legal and factual questions in a manner sufficient to render judgment. Nothing about habeas procedures suggest that, in addition, a rule of extrajudicial discovery is required when a *Brady* claim is alleged by a petitioner.

Another fallacious rationale is petitioner's argument that the established due process disclosure obligations of the Attorney General in a postconviction habeas context are indistinguishable from those trial prosecutors must observe. (AOB 22-23.) Not so. Compliance with *Brady* is a safeguard of the right to a fair trial. (*United States v. Bagley* (1985) 473 U.S. 667, 675.) When a trial is over, *Brady*'s disclosure command lacks purpose and dissipates. It would be incongruous to graft *Brady*, a trial principle of constitutional criminal procedure, onto a postconviction civil proceeding with its own comprehensive procedural structure. Habeas corpus proceedings "are properly viewed as civil actions designed to overturn presumptively valid criminal judgments and not as part of the criminal process itself." (*In re Barnett* (2003) 31 Cal.4th 466, 478, fn. 10.) Because collateral proceedings are not part of the criminal trial, the due process clause does not require the same process as in the trial. (E.g. *Pennsylvania v. Finley* (1987) 481 U.S. 551, 557 [noting collateral and civil nature of proceeding and concluding, "States have no obligation to provide this avenue of relief [citation], and when they do, the fundamental fairness mandated by the Due Process Clause does not require that the State supply a lawyer as well"].)

The United States Supreme Court recognized as much in the *Brady* context in *District Attorney's Office for Third Judicial Dist. v. Osborne* (2009) 557 U.S. 52, 67-69, where it explained "that nothing in our precedents suggest[] that [*Brady*'s] disclosure obligation continue[s] after the defendant [is] convicted and the

case [is] closed." (*Id*. at p. 68.) Any right to due process possessed by those seeking postconviction relief "is not parallel to a trial right, but rather must be analyzed in light of the fact that he has already been found guilty at a fair trial, and has only a limited interest in postconviction relief. *Brady* is the wrong framework." (*Id*. at p. 69; accord, *Kennedy*, *supra*, 145 Cal.App.4th at p. 369 [*Brady* does not confer an independent means for a habeas petitioner to acquire discovery to assist in prosecuting a habeas corpus petition].)

The proper framework for assessing whether a state's postconviction relief procedures violate due process is, instead, to determine whether "they are fundamentally inadequate to vindicate the substantive rights provided." (*Osborne*, *supra*, 557 U.S. at p. 69; see *Medina v. California* (1992) 505 U.S. 437, 446, 448.) Petitioner advances no credible argument that California's habeas corpus procedures are fundamentally inadequate to challenge the lawfulness of her confinement. To the contrary, "[t]he writ of habeas corpus affords an efficacious means of vindicating an individual's fundamental rights." (*In re Crow* (1971) 4 Cal.3d 613, 623.) State law guarantees habeas petitioners a "full and fair hearing" on prima facie claims of unlawful confinement. (Pen. Code, § 1484.)

It is for this reason too that petitioner's reliance on *People v. Garcia* (1993) 17 Cal.App.4th 1169 (OBM 22-23) is unhelpful. The Court of Appeal's critique of the Attorney General in that case ("the Attorney General wrongfully deprived Garcia of exculpatory evidence") was based on the Attorney General's

nondisclosure of evidence during negotiations to settle Garcia's appeal—*before* a petition for writ of habeas corpus was filed. (17 Cal.App.4th at p. 1180.) The instant case, on the other hand, involves the Attorney General's disclosure obligations *after* habeas proceedings commence. Nor, for that matter, does this case involve material exculpatory evidence as *Garcia* did (*ibid.*) that was unprotected by statutory confidentiality provisions.

Further, regardless of the applicability of *Brady* postconviction, as a matter of both logic and practicality no *ongoing Brady* violation exists once a person files a habeas petition claiming a *Brady* violation.[10] The very allegation that given information was suppressed means that the petitioner is now aware of the evidence, which is no longer suppressed. The convicted person either has it or knows enough to seek it. Ways to seek the information include: applying for an order pursuant to Penal Code section 1054.9 (even before issuance of an order to show cause); availing herself of other processes for in camera review and disclosure (such as a *Pitchess*[11] motion or, as in a case

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[10] Once again, the issues in this case are presented in the context of the Attorney General's duty to disclose *after* a habeas petition has been filed asserting a *Brady* claim based on evidence identified by the petitioner.

[11] *Pitchess v. Superior Court* (1974) 11 Cal.3d 531. In *In re Avena*, *supra*, 12 Cal.4th 694, this Court suggested that a habeas petitioner could file a *Pitchess* motion with the habeas court as a means of pursuing discovery following issuance of an OSC. (*Id.* at p. 730.) A posttrial *Pitchess* motion may also be filed under the auspices of Penal Code section 1054.9 in order to gather support

(continued…)

such as this, a Welfare and Institutions Code section 827 petition); or by pleading sufficient facts in the petition and traverse (see *Romero*, *supra*, 8 Cal.4th at pp. 739-740) and requesting a discovery order following issuance of an order to show cause.

In a criminal case, evidence "available to a defendant through the exercise of due diligence" is not suppressed for *Brady* purposes. (*Salazar*, *supra*, 35 Cal.4th at p. 1049.) In contrast, "[a] *Brady* violation, by its nature, causes suppression of evidence beyond the defendant's capacity to ferret out." (*Connick v. Thompson* (2011) 563 U.S. 51, 106 (dis. opn. of Ginsburg, J.).) Thus, there is no ongoing suppression if the habeas petitioner has sufficient evidence to make the *Brady* claim, and she has no lesser duty than a criminal defendant to use the methods the law provides to obtain the evidence. And available habeas procedures, including the respondent's obligation to admit or contradict allegations following the issuance of an order to show cause, are sufficient to fully protect and vindicate any meritorious claim.

(…continued)

for a habeas corpus petition. (*Hurd v. Superior Court* (2006) 144 Cal.App.4th 1100, 1111.)

B. Ethical standards do not categorically require disclosure of alleged *Brady* evidence merely in response to a habeas petition's *Brady* claim

Petitioner argues that professional ethics likewise require proactive disclosure by the Attorney General of any and all evidence in his possession that a habeas petitioner *claims* fell within the scope of *Brady* at trial. (OBM 25-26.) This argument lacks merit as well. No ethical rule would have required the Attorney General in this case to disclose records the Attorney General did not consider material to the trial outcome—let alone records that were confidential as a matter of law.

Petitioner points to rule 3.8(d) of the Rules of Professional Conduct as the operative ethical standard for the situation presented in this case. (OBM 26.) That provision requires a prosecutor "make timely disclosure to the defense of all evidence or information known to the prosecutor that the prosecutor knows or reasonably should know tends to negate the guilt of the accused, mitigate the offense, or mitigate the sentence, except when the prosecutor is relieved of this responsibility by a protective order of the tribunal . . . ." (Rules Prof. Conduct of State Bar, rule 3.8(d), * omitted; see also *In re Lawley* (2008) 42 Cal.4th 1231, 1246; *People v. Gonzalez*, *supra*, 51 Cal.3d at p. 1261.) Rule 3.8(d) did not apply under the circumstances presented below, for several reasons.

First, rule 3.8(d) of the Rules of Professional Conduct does not alter prosecutorial disclosure obligations already governed by law. Comment [3] to that rule clarifies that it should not "be applied in a manner inconsistent with statutory and

constitutional provisions governing discovery in California courts." (Rules Prof. Conduct, rule 3.8, com. [3].) As discussed, in any habeas proceeding involving a *Brady* claim the respondent is obligated to plead facts in the return responsive to that claim (*Duvall*, *supra*, 9 Cal.4th at p. 476) and to provide discovery as ordered, unless disclosure restrictions prevent doing so. Particularly in a case such as this, where the Attorney General contests the merits of the petitioner's *Brady* claim, no ethical rule should be viewed as imposing a duty of disclosure independent of settled habeas procedures establishing a duty on the part of the Attorney General to acknowledge and potentially disclose the evidence at issue. Those settled procedures maintain a proper allocation of the burdens of pleading and proof in habeas litigation, and their operation is consistent with the circumscribed availability of writ relief to collaterally attack a presumptively fair and final criminal judgment.

Second, the drafters of rule 3.8(d) of the Rules of Professional Conduct also specified that the rule "does not require disclosure of information protected from disclosure by federal or California laws and rules." (Rules Prof. Conduct, rule 3.8, com. [3].) Accordingly, rule 3.8(d) would not compel disclosure of juvenile court records in a case such as this one because those records are shielded from dissemination by Welfare and Institutions Code section 827.

Third, nothing about rule 3.8(d) of the Rules of Professional Conduct suggests that it applies in any postconviction scenario. To the contrary, its language suggests exclusively pretrial

application: The rule references "the accused," yet after trial, when a defendant has been convicted, he or she is no longer "accused" of committing an offense; that fact has been established. "[T]imely" disclosure is no longer possible because the time for use of the evidence to "to negate the guilt of the accused, mitigate the offense, or mitigate the sentence" has lapsed. "[T]he defense" is no longer operative as the convicted person (although perhaps sometime referred to as "the defendant" for convenience) must become the initiating party to further litigation, whether by prosecuting an appeal or petitioning for a writ of habeas corpus. That rule 3.8(d) applies to the trial (including its pretrial and sentencing phases) and not postconviction is further evidenced by the inclusion of rules that expressly do apply postconviction. (Rules of Prof. Conduct, rule 3.8(f) & (g) [discussing prosecutors' obligations to disclose new and credible evidence of innocence following conviction and to remedy wrongful convictions].)

C. The Attorney General may disclose information to a habeas petitioner as a matter of discretion

The preceding discussions are not intended to suggest that the Attorney General lacks the discretion to proactively choose to provide to a habeas petitioner evidence or information that is not confidential related to a habeas *Brady* claim before being required to do so as a matter of pleading or proof. The Attorney General retains such discretion.

Although a habeas proceeding is a civil proceeding in which the custodian is the respondent (Pen. Code, § 1477), the People

are essentially the real party in interest because it is the People in whose name the underlying criminal case was prosecuted (Pen. Code, § 684). As "the chief law officer of the State" (Cal. Const., art. V, § 13) and the representative of the People, the Attorney General "possesses not only extensive statutory powers but also broad powers derived from the common law relative to the protection of the public interest" (*D'Amico v. Board of Medical Examiners* (1974) 11 Cal.3d 1, 14; cf. *People v. Eubanks* (1996) 14 Cal.4th 580, 589 [discussing the executive branch's discretionary powers over the conduct of criminal proceedings]). The assessment of the public's interest may lead to the disclosure of nonconfidential information related to a habeas petitioner's *Brady* claim. Exercise of that discretion in a given case will frequently follow assessment of the alleged *Brady* evidence in light of evidence received at trial; the question of materiality will often be a central consideration. (See *Agurs*, *supra*, 427 U.S. at p. 108 [discussing the "significant practical difference" between pre- and posttrial evaluations of materiality]; accord, *United States v. Garrett* (5th Cir. 2000) 238 F.3d 293, 304 ["materiality can be judged only in hindsight, in the context of all the evidence presented"].)

Here, however, there was no reasonable basis for the Attorney General to have proactively disclosed any evidence: The Attorney General elected to contest the *Brady* claim, including its materiality element, and the Attorney General was statutorily precluded from disclosing any juvenile court information. The Court of Appeal ultimately held that the juvenile adjudications

claimed to have been suffered by the victim and her sister were not material to the trial's outcome. (Opn. 13 ["[T]here is no reasonable probability that disclosure of the 2006 adjudication would have altered the outcome of trial"]; see also Opn. 14.) Given those circumstances, there is no basis for petitioner to assert that the Attorney General should nonetheless have made the discretionary decision to proactively disclose information related to her claim.

D. The California Constitution does not impose additional disclosure requirements in a habeas proceeding

Petitioner suggests in a perfunctory manner that this Court look to article I, section 7 of the California Constitution, "[t]o the extent necessary," as a source of authority governing disclosures by the respondent in habeas proceedings. (OBM 28.) There is no reason to invoke the state Constitution to implicitly modify or supplement existing habeas procedures. Those procedures "are not without limits, . . . [but] they are not inconsistent with the 'traditions and conscience of our people' or with 'any recognized principle of fundamental fairness.' [Citation.]" (*Osborne*, *supra*, 557 U.S. at p. 70.)

Nor is there support for petitioner's implicit suggestion that analysis under the California Constitution would diverge from a federal constitutional approach. (Cf. *Johnson v. Department of Justice* (2015) 60 Cal.4th 871, 881.) This Court observed that "[i]n light of the virtually identical language of the federal and state guarantees, we have looked to the United States Supreme Court's precedents for guidance in interpreting the contours of

our own due process clause and have treated the state clause's prescriptions as substantially overlapping those of the federal Constitution." (*Today's Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 212.) For the reasons discussed above, that guidance leads to the conclusion that the state due process clause does not require more disclosure or acknowledgement of claimed *Brady* evidence by the habeas respondent than is called for by existing habeas practice and procedures.

CONCLUSION

The judgment should be affirmed.

Respectfully submitted,

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November 5, 2021

CERTIFICATE OF COMPLIANCE

I certify that the attached ANSWER BRIEF ON THE MERITS uses a 13-point Century Schoolbook font and contains 9,289 words.

ROB BONTA
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November 5, 2021

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DECLARATION OF ELECTRONIC SERVICE AND SERVICE BY U.S. MAIL

Case Name: ***In re Jasmine Jenkins on Habeas Corpus***

No.: **S267391**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter. I am familiar with the business practice at the Office of the Attorney General for collecting and processing electronic and physical correspondence. In accordance with that practice, correspondence placed in the internal mail collection system at the Office of the Attorney General is deposited with the United States Postal Service with postage thereon fully prepaid that same day in the ordinary course of business. Correspondence that is submitted electronically is transmitted using the TrueFiling electronic filing system. Participants who are registered with TrueFiling will be served electronically. Participants in this case who are not registered with TrueFiling will receive hard copies of said correspondence through the mail via the United States Postal Service or a commercial carrier.

On November 5, 2021, I electronically served the attached **ANSWER BRIEF ON THE MERITS** by transmitting a true copy via this Court's TrueFiling system. Because one or more of the participants in this case have not registered with the Court's TrueFiling system or are unable to receive electronic correspondence, on November 5, 2021, I placed a true copy thereof enclosed in a sealed envelope in the internal mail collection system at the Office of the Attorney General at 455 Golden Gate Avenue, Suite 11000, San Francisco, CA 94102-7004, addressed as follows:

Rudolph J. Alejo Attorney at Law Law Office of Rudolph J. Alejo Email: Rudolph.AlejoEsq@gmail.com **(Via TrueFiling)**	CAP - LA California Appellate Project (LA) Email: CapDocs@lacap.com **(Via TrueFiling)**

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I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 5, 2021, at San Francisco, California.

S. Chiang	/s/ S. Chiang
Declarant	Signature

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