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Thomas D. Palella
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APPELLATE COURT 1ST DISTRICT

No. 1-20-1256

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	There heard on appeal from
	)	the Circuit Court of Cook
	)	County, Illinois,
Respondent-Appellee,	)	No. 92 CR 25596
	)	
v.	)	
	)	
CLAYBORN SMITH,	)	The Honorable
	)	Alfredo Maldonado,
Petitioner-Appellant.	)	*Judge Presiding*.

MOTION OF PERSONS CONCERNED ABOUT THE ILLINOIS CRIMINAL JUSTICE SYSTEM FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT

Pursuant to Illinois Supreme Court Rule 345(a), the Persons Concerned About the Illinois Criminal Justice System (hereinafter, "*Amici*") respectfully move this court for leave to file the attached brief as *amici curiae* in support of the Petitioner-Appellant, Clayborn Smith ("Petitioner"), in the above-captioned appeal. A copy of the brief is attached to this motion as Exhibit A. In support of this motion, *Amici* state as follows.

1. *Amici* are a diverse group of individuals concerned about the integrity of the Illinois criminal justice system. *Amici* have diverse professional experiences and include a law firm, a government official, law professors, and leaders of law firms and professional organizations.

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2. This case arises from the decades of systematic torture and abuse of criminal suspects at the hands of former Chicago police commander Jon Burge and officers under his command. Petitioner is one of the Burge regime's hundreds of victims, convicted of murder based on a confession that, as he has consistently maintained, Burge subordinates extracted through torture. The circuit court denied Petitioner's request for a new suppression hearing to substantiate his allegations or for suppression of his confession. Despite finding the allegation of abuse against the detectives that interrogated Petitioner to be "numerous and disconcerting," and the settlements by these detectives on claims of abuse to be "troubling," the court concluded that there was insufficient evidence to establish "conclusively" that these detectives engaged in systemic abuse and that the outcome of Petitioner's suppression hearing would change as a result of new evidence regarding Burge-era torture.

3. *Amici* have a compelling interest in proper resolution of the issue on appeal, namely, whether extensive evidence regarding systemic abuse by the detectives that interrogated Petitioner—including numerous judicial and administrative findings of abuse and many cases where confessions were later proven false—entitles Petitioner to a new suppression hearing on the coercive effect of Burge-era abuse on his confession. As leaders in the legal and political community, *Amici* are deeply concerned about the adverse effects of Burge-era torture and recognize the need for Illinois' criminal justice system to offer meaningful remedies for its victims. This case bears directly and significantly on the availability of such remedies.

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4. The proposed *amicus* brief offers a broad perspective on the history and scope of the systematic torture and abuse perpetrated by Burge and his officers, including those who interrogated Petitioner. The brief further demonstrates that decades of Illinois Supreme Court precedent and Illinois courts' laudable efforts to remedy this abuse, in tandem with the fundamental values underlying our criminal justice system, demand an opportunity for Petitioner and other Burge-era victims to seek relief. Just as the Illinois Supreme Court has long recognized that physical abuse by police is never "harmless error," *Amici* urge this Court to hold that requiring the Petitioner to "conclusively" establish systemic abuse by the detectives that interrogated him does not block Petitioner's opportunity to introduce evidence in a new suppression hearing that these detectives coerced his confession.

5. The proposed *amicus* brief does not merely duplicate arguments made by Petitioner. *See* Order, *Kinkel v. Cingular Wireless, LLC*, No. 100925 (Ill. Jan. 10, 2006). Because it provides a broader context for both the procedural and substantive issues before the Court in this case, allowing the filing of the brief would assist the Court in evaluating the merits of the appeal.

WHEREFORE, for the foregoing reasons, *Amici* respectfully ask this Court to grant them leave to file instanter the proposed *amicus* brief submitted with this motion in support of Petitioner.

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Dated: June 25, 2021

Respectfully submitted,

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Exhibit A

(Proposed *Amicus* Brief)

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PEOPLE OF THE STATE OF ILLINOIS,	)	There heard on appeal from
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CLAYBORN SMITH,	)	The Honorable
	)	Alfredo Maldonado,
Petitioner-Appellant.	)	*Judge Presiding*.

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

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INTEREST OF THE *AMICI CURIAE*

Amici have diverse professional experiences and include a law firm, a government official, law professors, and leaders of law firms and professional organizations. Most of the *amici* have no opinion regarding the guilt or innocence of Petitioner-Appellant Clayborn Smith ("Petitioner"). But they share an interest in the integrity of our criminal justice system, and they specifically recognize the ongoing need for victims of Jon Burge-related torture to receive meaningful opportunities for relief. Since the first Burge-era case reached our state Supreme Court, that Court has recognized that physical abuse by police cannot constitute harmless error. In the same vein, *amici* urge this Court to reject the Circuit Court's holding that Petitioner is not entitled to relief after consistently claiming excruciating abuse at the hands of Burge's men. Petitioner has sufficiently demonstrated not only that the three detectives that interrogated him may have engaged in systemic abuse, but also that this new evidence on abuse would likely have changed the outcome of his suppression hearing. Petitioner is entitled to the opportunity to substantiate his allegations at a new suppression hearing.

Amici are[1]:

Loevy & Loevy

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[1] All individuals listed join this brief as *amici* solely in their individual capacities. This list provides their past or present organizational affiliations only for identification purposes. They do not purport to speak on behalf of those organizations.

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INTRODUCTION

The disgraced Chicago police commander Jon Burge and officers under his command, including Kenneth Boudreau, John Halloran, and James O'Brien, have been implicated in a pattern of horrific abuse spanning many years. As one of hundreds of victims of these Burge-related tactics, Petitioner-Appellant Clayborn Smith remains incarcerated after nearly 30 years—convicted based on a confession he made following alleged physical and verbal abuse over the course of a 39-hour interrogation by Boudreau, Halloran, and O'Brien. Petitioner awaits his day in court to show that he was a victim of Burge-related torture, and that this abuse coerced his confession.

The Circuit Court denied Petitioner's request for a new suppression hearing or for suppression of his confession on the ground that there was insufficient evidence to establish "conclusively" that Boudreau, Halloran, and O'Brien engaged in systemic abuse and that the outcome of Petitioner's suppression hearing would change as a result of this new evidence regarding Burge-era torture. That determination was error. At a minimum, Petitioner has more than shown that he is entitled to a new hearing, where he will have the opportunity to show that he was tortured, that the abuse compelled him to confess, and that his confession should be suppressed. To deny Petitioner even the opportunity to make that showing flies in the teeth of decades of Illinois Supreme Court precedent and Illinois courts' laudable efforts to remedy a history of abuse by Burge and officers working under him. More basically,

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denying Petitioner his opportunity to make this showing would run contrary to the fundamental values of our criminal justice system.

ARGUMENT

I. Courts Must Continue To Offer An Opportunity For Victims Of Burge-Related Torture To Seek Relief.

Petitioner's case cannot be viewed in isolation. It emerges from one of the darkest chapters in Chicago history—the decades of torture by Commander Burge and officers under his command to elicit confessions from criminal suspects.

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

Burge was terminated from the Chicago Police Department and later convicted of perjury and obstruction of justice for statements denying the acts of torture he and others under his supervision committed. The State of Illinois

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

[3] *Id.*

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established a Torture Inquiry and Relief Commission[4] and paid more than $100 million to Burge torture victims,[5] while the Chicago Public Schools instituted a curriculum to teach students about these horrifying events as part of larger reparations legislation for Burge torture survivors and their families.[6]

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

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

Fourteen years after Anthony Holmes first detailed abuse by Burge and another officer,[7] allegations of Burge-related torture first reached the Illinois Supreme Court. In 1987, the Court heard the appeal of Andrew Wilson, who

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

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

[6] Jeremy Gorner, *CPS to teach 8th, 10th graders about Jon Burge legacy as part of reparations,* CHI. TRIB., Aug. 28, 2017, https://www.chicagotribune.com/news/breaking/ct-cps-burge-curriculum-20170828-story.html; Chicago City Council Resolution, May 6, 2015, *available at* https://chicago.legistar.com/LegislationDetail.aspx?ID=2262499&GUID=6DCDD51B-2234-4713-93FC-26D647905536&Options=Advanced&Search=.

[7] *See* Chicago Torture Justice Memorials, *Anthony Holmes*, https://chicagotorture.org/project/survivor-2/.

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

Two years later, this Court reversed the conviction of Gregory Banks, who described being kicked and beaten with a flashlight by two of Burge's officers after one put a gun in his mouth and threatened to pull the trigger. *See People v. Banks*, 192 Ill. App. 3d 986, 987-88 (1st Dist. 1989). When Banks refused to confess, the officers put a plastic bag over his head and continued beating him. *Id*. at 988. This Court observed that, "while we no longer see cases involving the use of the rack and thumbscrew to obtain confessions, we are seeing cases, like the present case, involving punching, kicking and placing a plastic bag over a suspect's head to obtain confessions." *Id.* at 993. The Court followed this observation with an unambiguous directive: "When trial judges do not courageously and forthrightly exercise their responsibility to suppress

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confessions obtained by such means, they pervert our criminal justice system as much as the few misguided law enforcement officers who obtain confessions in utter disregard of the rights guaranteed to every citizen—including criminal suspects—by our constitution." *Id.*

In 1990, the *Chicago Reader* published a detailed account of Wilson's torture and a civil suit he pressed against Burge, bringing to light allegations from several more men describing electric shocks to their feet, thighs, and testicles with electrical devices or cattle prods, painting a picture of systematic abuse by Burge and officers under him at Area 2 on Chicago's South Side.[8] Spurred by these reports, the Chicago Police Department's Office of Professional Standards, led by Michael Goldston, investigated allegations of torture by Burge and his officers. The resulting Goldston Report concluded that "abuse did occur," "that it was systematic," and that it "was not limited to the usual beating, but went into such esoteric areas as psychological techniques

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

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and planned torture."[9] The Goldston Report was made public by court order in 1992,[10] and the Chicago Police Board terminated Burge the following year.[11]

By the end of the decade, it had become "common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions." *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094-95 (N.D. Ill. 1999) (granting evidentiary hearing and discovery to Burge victim). "Both internal police accounts and numerous lawsuits and appeals brought by suspects alleging such abuse substantiate that those beatings and other means of torture occurred as an established practice, not just on an isolated basis." *Id.*; *see also Hinton v. Uchtman*, 395 F.3d 810, 822 (7th Cir. 2005) (Wood, J., concurring) ("a mountain of evidence indicates that torture was an ordinary occurrence at the Area Two station of the Chicago Police Department").

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

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

11 *See* Sharman Stein, *Police Board Fires Burge For Brutality*, CHI. TRIB., Feb. 11, 1993, https://www.chicagotribune.com/news/ct-xpm-1993-02-11-9303177820-story.html.

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

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

Then, in 2010, more than 35 years after Holmes' original allegations, Burge was convicted of perjury and obstruction of justice—based on statements that he neither knew of, nor participated, in torture and abuse—and he was sentenced to four-and-a-half years in prison. *United States v. Burge*, No. 08 CR

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

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

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846, 2011 WL 13471 (N.D. Ill. Jan. 3, 2011); *see also United States v. Burge*, No. 08 CR 846, Sentencing Hr'g Tr. (Jan. 21, 2011). Affirming his conviction, the Seventh Circuit wrote that Burge "presided over an interrogation regime where suspects were suffocated with plastic bags, electrocuted until they lost consciousness, held down against radiators, and had loaded guns pointed at their heads during rounds of Russian roulette. The use of this kind of torture was designed to inflict pain and instill fear while leaving minimal marks." *United States v. Burge*, 711 F.3d 803, 806 (7th Cir. 2013). The court described "a record of decades of abuse that is unquestionably horrific" and cited testimony showing not only that Burge lied about the abuse, but also that "he bragged in the 1980s about how suspects were beaten in order to extract confessions." *Id*. at 808.

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

As the nature and scope of Burge's conduct came to light, Illinois courts issued a series of decisions reversing convictions obtained through Burge-related torture. Often, these decisions specifically acknowledged the need for a full evidentiary hearing into the alleged abuse. *See, e.g.*, *People v. Wilson*,116 Ill. 2d at 41-42 (remanding for new trial); *People v. Patterson*, 192 Ill. 2d 93, 141-45 (2000) (remanding for hearing to consider evidence of pattern and practice of torture at Area 2); *People v. King,* 192 Ill. 2d 189, 198-99 (2000) (same); *People v. Banks*, 192 Ill. App. 3d at 997 (reversing conviction and remanding for new trial); *People v. Bates*, 267 Ill. App. 3d 503, 504-07 (1st Dist.

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1994) (same); *People v. Cannon*, 293 Ill. App. 3d 634, 640-43 (1st Dist. 1997) (vacating conviction and remanding for suppression hearing).

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

II. Consistent With Petitioner's Allegations, Overwhelming Evidence Shows That Boudreau, Halloran, And O'Brien Engaged In Torture To Secure Confessions.

A. Petitioner Has Consistently Explained That He Confessed Because Of Torture By Boudreau, Halloran, And O'Brien.

As Petitioner details in his brief, he was interrogated in 1992 by Detectives Boudreau, Halloran, and O'Brien about the murders of Petitioner's grandfather Miller Tims and great aunt Ruby Bivens, as well as the attempted murder of his great uncle Herbert Tims. *See* C1016, C1029. Over the course of a 39-hour interrogation, Petitioner contends that those detectives not only physically and psychologically abused him, but also threatened his pregnant girlfriend, Karen Tate, and his unborn child. C1013, C1016-22. The detectives

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allegedly told Petitioner that Tate was also in custody, crying, and wishing to return home, and the detectives threatened that, if Petitioner did not confess, Tate would go to jail and they would lose custody of their baby. C1015, C1017. Petitioner further contends that, when he told the detectives that he knew nothing about the murders, they threatened him directly, telling him that he could answer questions at the police station or the hospital. C1016. And when Petitioner still refused to answer questions, the detectives beat him. C1016-19. Petitioner describes O'Brien pulling his fingers back, O'Brien and Halloran punching him, and Halloran pulling his hair and continuing to threaten his girlfriend and unborn child. *Id.*

According to Petitioner, Boudreau and Halloran engaged in a "good cop, bad cop" routine throughout the interrogation. Halloran grabbed Petitioner's braids and punched him in the head multiple times. C1018. Then between beatings, Boudreau professed a willingness to "help" Petitioner, telling him they would get Petitioner off if he fabricated his answers and "told a good story." C1019. Boudreau said he "knew" the killings were not premeditated—that they constituted "self defense or manslaughter instead of first degree murder." *Id.* At another point, Boudreau allegedly told Petitioner to say that the killings resulted from a spontaneous fight to avoid a first degree murder charge. C1018-19. Eventually, Petitioner signed an inculpatory statement, made up of answers Boudreau coached Petitioner to provide and material that Boudreau offered directly to the ASA. C1021.

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From the beginning, Petitioner has consistently explained that he confessed only because of the hours of abuse and threats, because he thought it would keep his girlfriend and unborn child safe, and because the detectives promised him leniency if he admitted to the crimes. Pet. Ex. 1 at D133; *see also* C1030 (circuit court order describing Petitioner's testimony during evidentiary hearing as "consistent with his testimony in 1994 in the hearing on his motion to suppress"). As Petitioner has testified, he could no longer endure the hitting and kicking and just wanted to leave the police station. C1019.

B. Boudreau, Halloran, And O'Brien Have Been Accused Of Abuse In Dozens Of Cases.

All three detectives worked under the supervision of Jon Burge in the early 1990s. Pet. Attachment E at 1; SUP C 85-100 (collecting allegations against Halloran, Boudreau, and O'Brien). And evidence supports the conclusion that the three often worked together to coerce confessions during this period. In 1991, for example, a year before Petitioner was arrested, O'Brien, Halloran, and Boudreau reportedly beat and kicked George Anderson, while he was handcuffed, until he confessed. *Id.* The Illinois Torture Inquiry and Relief Commission ("TIRC") found Anderson's torture claim credible and referred it for judicial review, noting that: (1) "Boudreau has been accused of abuse and coercion by over 35 individuals" and had "obtained confessions in cases where the individual was in jail at the time of the offense to which he confessed (Peter Williams), cases which were later undermined by DNA evidence (Derrick Flewellen), and several cases involving mentally retarded

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juveniles (Alfonzia Neal, Fred Ewing, and Darnel Stokes)"; (2) "Halloran has been accused of abuse and coercion by over 35 individuals" and was involved in both the Williams and Flewellen cases with Boudreau; and (3) "O'Brien has been accused by over 30 individuals of physical abuse and coercion" and "has pled the 5th Amendment protection against self-incrimination when questioned about physically abusing detainees." *Id*. at 2-3.

The TIRC referred another case for judicial review based on the "pattern and practice evidence" against the detectives in that case, "especially Detective O'Brien," noting that at least 12 of 36 complaints against O'Brien alleged physical abuse in an attempt to force a confession. Pet. Attachment F at 22, 27. In that case, Ivan Smith alleged that O'Brien slapped him in the head, a claim that the TIRC found "disturbingly similar to the allegations raised by Robert Wilson, a man who confessed to aggravated battery in O'Brien['s] presence, but was later exonerated." *Id*. at 27.

Likewise, Cortez Brown was threatened and physically abused by multiple detectives, including O'Brien. Pet. Ex. 46 at 622-24. The detectives slapped, punched, and hit Brown with a flashlight, threatened him with the death penalty, and told him that they would find and beat up his brothers. *Id*. Fearing for his family's safety and terrified that he would receive the death penalty for a crime he did not commit, Brown told the detectives he would say whatever they wanted and ultimately offered an inculpatory statement. *Id*. at

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626-27. The court, describing the evidence of the detectives' abusive behavior as "staggering" and "damning," granted Brown a new trial. Pet. Ex. 11 at 209.

On top of the many judicial and administrative findings that Boudreau, Halloran, and O'Brien abused suspects to obtain confessions, the City of Chicago paid reparations in nine additional cases based on alleged abuse by O'Brien and Boudreau: Curtis Milsap, Enrique Valdez, Clinton Welton, Marcus Wiggins, Jesse Clemon, Damoni Clemon, Iamari Clemon, Diyez Owens, and Tremaine Greene. Pet. Attachments B at 131-34, D at 1-3, H at 1, J at 1, 3, 7, 11-12, 15, 18-23, 25-26, 31, 35-36, K at 2, L at 17 & M at 2; Pet. Ex. 4 at 227, 229; Pet. Ex. 77 at 218-20.

And at least six more people who reported abuse by Boudreau, Halloran, and O'Brien gave confessions that were later determined to be false. Peter Williams falsely confessed after Boudreau and Halloran beat him, but the charges against him were dropped when it became clear that he was incarcerated at the time of the crime and could not have been involved. Pet. Ex. 50 at 757-59; R 9/4/18 at 52, 54. Harold Hill falsely confessed after being tortured by Halloran and Boudreau, but was later exonerated by DNA evidence. Pet. Ex. 12 at 271, 278; Pet. Ex. 80 at 1; Pet. Attachment A at 9. And four men who falsely confessed following torture by Halloran, Boudreau, and O'Brien – Oscar Gomez, Eric Gomez, Abel Quinones, and Alfonzia Neal – were acquitted at trial. Pet. Ex. 51 at 790-92, 794-95, 803-04; R. 7/18/18 at 45, 49;

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Pet. Ex. 52 at 331-37, 342-44; Pet. Ex. 85 at 110, 113-14, 116, 119-20; R. 9/4/18 at 142.

C. Other Victims Have Described Torture By Boudreau, Halloran, And O'Brien That Matches Petitioner's Claims.

Many who have reported abuse by Boudreau, Halloran, and O'Brien have described torture nearly identical to the abuse that Petitioner has consistently alleged.

Just as Petitioner described being hit while handcuffed to a ring on the wall, Kilroy Watkins contends he signed an incriminating statement only after being handcuffed to a metal ring, beaten, and interrogated for 30 hours by Boudreau and Halloran. Pet. Ex. 34 at 248. Similarly, Antoine Word was handcuffed to a bench and beaten by Boudreau. Pet. Attachment A, ¶ 60(i). And just as Boudreau offered to "help" Petitioner, Boudreau reportedly told Word that he had been placed at the scene of the crime and that Boudreau would let him go home and help him if he signed a confession. *Id.* ¶ 60(i).

Moreover, in step with Petitioner's allegations that the detectives threatened harm to his pregnant girlfriend and unborn child, other victims reported that the detectives threatened their families. Nicholas Escamilla testified not only that Boudreau, Halloran, and O'Brien handcuffed him to a ring in the wall while they "punch[ed]" and "slap[ped]" him, but also that Boudreau threatened to send Escamilla's pregnant wife to jail. Pet. Ex. 17 at 295, 297; Pet. Attachment A, at ¶ 60(r). Likewise, Alfonzia Neal testified that Boudreau threatened to incarcerate his wife and put his children in state

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custody. Pet. Ex. 88 at 240, 245-46; Pet. Ex. 85 at 119-20. Joseph Jackson also alleged that Boudreau threatened to harm his fiancée and charge her with crimes if he did not cooperate. Pet. Ex. 42 at 468-70.

Just as Petitioner described, Boudreau played the "good cop" in the interrogation of Richard Malek, uncuffing him and giving him a McDonald's hamburger after he had been starved for an extended period of time. Pet. Attachment A at ¶ 60(o).

III. At A Minimum, Petitioner Is Entitled To A Suppression Hearing On His Coerced-Confession Claim.

Given the overwhelming evidence of systemic abuse by Burge and officers under his command, it is not surprising that the Circuit Court found the allegations of abuse against Boudreau, Halloran, and O'Brien to be "numerous and disconcerting" and the settlements involving these detectives to be "troubling." C1045, C1057. Yet the Circuit Court denied Petitioner a suppression hearing on his coercion claim. The court found that "the pattern and practice evidence . . . while numerous, is largely ambiguous and not of substantial character to establish *conclusively* that the officers involved in [Petitioner's] interrogation participated in systemic abuse." *Id.* at C1049 (emphasis added). Nor was the court persuaded that "the numerous allegations against these detectives is sufficient to conclude the outcome of [Petitioner's] suppression hearing would differ." *Id.* at C1056. These conclusions not only misapplied Illinois law, but also minimized the brutality and violence that

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characterized the Burge regime and the pattern reported against Boudreau, Halloran, and O'Brien, specifically.

A. The Circuit Court Misapplied Illinois Law.

To obtain a new suppression hearing at this stage of proceedings under the Torture Inquiry and Relief Commission Act, 775 ILCS 40/1 *et seq*. ("TIRC Act"), similar to a third-stage evidentiary hearing under the Post-Conviction Hearing Act, "a petitioner's initial burden does not require him to prove that his confession actually resulted from coercion"—that "ultimate issue" is not before the court. *People v. Wilson*, 2019 IL App (1st) 181486, ¶¶ 51–52. Rather, a petitioner must show "only that newly discovered evidence *would likely have* altered the result of a suppression hearing." *Id.* ¶ 52.

Specifically, assessing whether the outcome of a suppression hearing "would have been different if [the officers who denied using physical coercion] had been subject to impeachment based on [the petitioner's] evidence" requires a court to consider: "(1) whether any of the officers who interrogated [the petitioner] *may* have participated in systemic and methodical interrogation abuse" and "(2) whether those officers' credibility at [the] suppression hearing or at trial *might* have been impeached as a result." *People v. Galvan*, 2019 IL App (1st) 170150, ¶¶ 67–68, 74 (emphasis added), *reh'g denied* (July 11, 2019), *appeal denied*, 135 N.E.3d 562 (Ill. 2019). Thus, contrary to the Circuit Court's requirement that Petitioner "conclusively" establish a pattern and practice of abuse by his interrogators (C1049), the Illinois Supreme Court has held that "[p]robability, not certainty, is the key." *People v. Coleman*, 2013 IL 113307,

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¶ 97; *see also Galvan*, 2019 IL App (1st) 170150, ¶ 67; *People v. Harris*, 2021 IL App (1st) 182172, ¶ 57. Indeed, "[e]ven one incident of similar misconduct by the same detectives can be sufficient to show intent, plan, motive, and could impeach the officers' credibility." *People v. Tyler*, 2015 IL App (1st) 123470, ¶ 186.

Illinois courts thus have held that a petitioner met his burden where, as here, he consistently alleged that his confession was coerced by officers who were accused by others of similar abuse. For example, in *Galvan*, the petitioner "consistently argued that his confession was coerced at both his suppression hearing and at his trial," and he "presented testimony from various witnesses who had been interrogated" by the same detective and included similar allegations of torture. 2019 IL App (1st) 170150, ¶¶ 69–71. This was sufficient for a new suppression hearing (and if necessary, a new trial), the Appellate Court held, rejecting the trial court's findings that none of the witnesses presented by the petitioner was credible because "[t]hey have all been adjudicated guilty of murder" and "none have secured any ruling from the Circuit Court or the Appellate Court that their purported confessions were the product of coercion." *Id.* ¶¶ 73–74; *see also People v. Almendarez*, 2020 IL App (1st) 170028, ¶ 76 (granting new suppression hearing where evidence that petitioner consistently alleged torture and that detective who interrogated him engaged in pattern of abusive behavior in other interrogations "was conclusive

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enough that the outcome of the suppression hearing likely would have been different if [the detective] had been subject to impeachment").

Moreover, in declining to credit Petitioner's testimony and other significant evidence supporting his coercion claim as not "conclusive," the Circuit Court relied in part on testimony from the very detectives accused of abuse. *See, e.g.*, C1051 ("[Petitioner's] allegations that his braids were pulled was *refuted by Detective Halloran* and ASA Lambur who testified he was playing with his hair.") (emphasis added); C1052 ("[Petitioner's] contentions about the statement—that Boudreau was interjecting and feeding him what to say and that he denied involvement when he first spoke to ASA Lambur . . . were . . . *refuted by Boudreau* and Lambur's testimony to the contrary") (emphasis added). This was error in its own right. As the Illinois Appellate Court held in *Harris*, the trial court there was wrong to credit the testimony of a detective accused of torture simply "because his testimony was corroborated by the facts and by the testimony of other officers" who were also the subject of abuse-related allegations. 2021 IL App (1st) 182172, ¶ 51.

In fact, *Harris* is on all fours with this case. The petitioner there "consistently alleged that his confessions were coerced," claiming that two detectives "handcuffed [him] to a loop," "punched," "smacked," and "choked" him, and then threatened to arrest his girlfriend, while another detective, in between these beatings and threats, asked the petitioner questions and offered help if he confessed. 2021 IL App (1st) 182172, ¶¶ 30–34, 58. The petitioner in

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Harris also presented evidence of a pattern of abuse by the detectives, including findings by the TIRC that one of the detectives was the subject of 13 similar complaints and that a claim involving the detective was credible even though, by the time of that abuse, Burge himself had transferred to a different location. *Id.* ¶ 36. Finding the petitioner's evidence to be "of such character that the outcome of the suppression hearing would likely have changed if [the accused detective's] testimony, and the testimony of other officers, had been subject to impeachment," the court granted a new suppression hearing. *Id.* ¶¶ 57, 60, 64.

Post-conviction relief is equally warranted here. Again, Petitioner has consistently alleged that he confessed only because Boudreau, Halloran, and O'Brien tortured him. Nearly a dozen judicial and administrative findings of abuse by these detectives offer powerful corroboration of Petitioner's account. And the nature of the abuse alleged in those and other cases involving these detectives is strikingly similar to Petitioner's allegations here. In short, Petitioner has shown the required "probability" that the outcome of a new suppression hearing would be different. *See, e.g.*, *id.* ¶¶ 57–60. Nothing more is required to receive a new hearing.

B. The Circuit Court's Ruling Wrongly Denies Petitioner An Opportunity To Show Coercion.

The Circuit Court's order dismissing Petitioner's coercion claim not only minimizes the legacy of police torture under the Burge regime, but it also stands as an outlier, contravening decades of effort by Illinois courts to remedy

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the effects of this extraordinary misconduct. Consistent with these efforts, and recognizing the violence and intensity of Burge-era abuse generally and as credibly alleged in this case, at a minimum Petitioner is entitled to a new suppression hearing.

As noted above, Illinois courts facing Burge-related claims have recognized that the use of police violence to obtain confessions is so abhorrent to our system of justice that it cannot ever be "harmless." *See, e.g.*, *Wrice*, 2012 IL 111860, ¶ 71. This follows from the more fundamental principle that—even where a coerced confession is independently "reliable"—"a free society cannot condone police methods that outrage the rights and dignity of a person whether they include physical brutality or psychological coercion." *People v. Escobedo*, 28 Ill. 2d 41, 47 (1963), *overruled on other grounds*, 378 U.S. 478 (1964). It is the "'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will.'" *Jackson v. Denno*, 378 U.S. 368, 386 (1964); *see id.* at 376 (It is "axiomatic" that a criminal defendant "is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession.").

In step with these bedrock principles, Illinois courts have repeatedly granted motions to suppress, new trials, and other relief in response to post-conviction petitions raising Burge-related coerced-confession claims. *See, e.g.*, *People v. Jakes*, 2013 Ill. App (1st) 113057, ¶¶ 1-2, 8 (remanding for evidentiary

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hearing on petitioner's allegations that Boudreau and another detective beat him and threatened his family to extract a false confession, notwithstanding petitioner's signed statement averring that police treated him well); *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 163–86 (remanding for evidentiary hearing where petitioner "detail[ed] dozen[s] of cases that demonstrate a longstanding pattern of systemic abuse by" detectives that interrogated him, including Boudreau, Halloran, and O'Brien).

It is intolerable that anyone should languish in prison as a result of a conviction tainted even remotely by a confession extracted by the violent and demeaning tactics used by Burge and his officers. Just as Illinois courts have long recognized that such extreme abuse can never amount to harmless error, amici urge this Court to hold that, in light of the overwhelming evidence of systemic abuse, Petitioner is entitled to demonstrate the coercive effect of Burge-era abuse on his confession in a new suppression hearing. Too much is at stake for Petitioner, and too much is at stake for our system of justice.

CONCLUSION

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

Dated: June 25, 2021

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 24 pages.

/s/ Michael A. Scodro
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Mayer Brown LLP

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No. 1-20-1256

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	There heard on appeal from
	)	the Circuit Court of Cook
	)	County, Illinois,
Respondent-Appellee,	)	No. 92 CR 25596
	)	
v.	)	
	)	
CLAYBORN SMITH,	)	The Honorable
	)	Alfredo Maldonado,
Petitioner-Appellant.	)	*Judge Presiding*.

[PROPOSED] ORDER

This cause having come to be heard on the MOTION OF PERSONS CONCERNED ABOUT THE ILLINOIS CRIMINAL JUSTICE SYSTEM FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT CLAYBORN SMITH, proper notice having been served, and the Court being fully advised in the premises,

IT IS HEREBY ORDERED THAT the MOTION is ALLOWED / DENIED.

ENTERED:___________________

Prepared by:
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No. 1-20-1256

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	There heard on appeal from
	)	the Circuit Court of Cook
	)	County, Illinois,
Respondent-Appellee,	)	No. 92 CR 25596
	)	
v.	)	
	)	
CLAYBORN SMITH,	)	The Honorable
	)	Alfredo Maldonado,
Petitioner-Appellant.	)	*Judge Presiding*.

NOTICE OF FILING

TO: ALL COUNSEL OF RECORD

PLEASE TAKE NOTICE that on June 25, 2021, the undersigned electronically filed the foregoing MOTION OF PERSONS CONCERNED ABOUT THE ILLINOIS CRIMINAL JUSTICE SYSTEM FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT CLAYBORN SMITH and PROPOSED ORDER with the Clerk of the Illinois Appellate Court, First District, copies of which are hereby served upon you.

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Dated: June 25, 2021

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CERTIFICATE OF SERVICE

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

The undersigned hereby certifies that he is one of the attorneys for Proposed *Amici* Persons Concerned About the Illinois Criminal Justice System and that he served the foregoing NOTICE OF FILING, MOTION OF PERSONS CONCERNED ABOUT THE ILLINOIS CRIMINAL JUSTICE SYSTEM FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT CLAYBORN SMITH and PROPOSED ORDER on all counsel of record by causing a copy thereof to be sent via the Odyssey electronic filing system on June 25, 2021 to the below-named counsel of record.

/s/ *Michael A. Scodro*
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