No. 127952

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IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS,	Appeal from the Appellate Court of Illinois, First Judicial District
Respondent-Appellee,	Case No. 1-16-0014
v.	There on appeal from the Circuit Court of Cook County
WAYNE WASHINGTON,	No. 93-CR-14676
Petitioner-Appellant	Hon. Domenica Stephenson, Judge, presiding

MOTION FOR LEAVE TO FILE *INSTANTER*
BRIEF OF PUBLIC INTEREST ORGANIZATIONS AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER-APPELLANT

Pursuant to Illinois Supreme Court Rule 345(a), The Chicago Torture Justice Center, First Defense Legal Aid, Legal Action Chicago, The Law Office of the Cook County Public Defender, The Shriver Center on Poverty Law, Chicago Alliance Against Racist and Political Repression, The Westside Justice Center, Brighton Park Neighborhood Council, Teamwork Englewood, National Lawyers Guild Chicago, The Pilsen Alliance, Logan Square Neighborhood Association, Precious Blood Ministry of Reconciliation, American Friends Service Committee Chicago, and Chicago DSA (hereafter "Public Interest Organizations"), hereby move for leave to file *instanter* a brief as *amici curiae* in this action, in support of Petitioner-Appellant Wayne Washington. In support of this motion, the Public Interest Organizations state as follows.

1. Rule 345 provides this Court with discretion to permit an *amicus* brief when it will assist the Court in the resolution of an appeal. This Court has cited criteria set out by the United States Court of Appeals for the Seventh Circuit as "a useful guide" for determining whether to allow an *amicus* brief. *Kinkel v. Cingular Wireless, LLC*, No. 1000925 (Ill. Jan. 11, 2006) (Order at 3) (citing *Nat'l Organization of Women v. Scheidler*, 223 F.3d 615, 617 (7th Cir. 2000)). *See also City of Chicago v. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 20, *rev'd on other grounds City of Chicago v. City of Kankakee*, 2019 IL 122878 (Supreme Court's order in *Kinkel* sets out the criteria for accepting an *amicus* brief).

2. Specifically, a court "will normally grant permission to file an *amicus* brief only (1) when a party is not competently represented or not represented at all, … (2) when the would-be *amicus* has a direct interest in another case, and the case in which he seeks permission to file an *amicus curiae* brief may, by operation of *stare decisis* or *res judicata*, materially affect that interest; or (3) when the *amicus* has a unique perspective, or information, that can assist the court beyond the help that the lawyers for parties are able to provide." *Kinkel* (order at 3). As to the third category, this may include *amicus* briefs that provide "insights into the merits of this case beyond those provided by the" parties. *Cf. City of Kankakee*, 2017 IL App (1st) 153531, ¶ 20.

3. Here, the Public Interest Organizations' brief will assist the Court by presenting it with "ideas, arguments. [and] insights helpful to resolution of the case that [are] not addressed by the litigants themselves." *Kinkel* (order at 2). In particular, the Public Interest Organizations hope to offer a critical history of the Jon Burge era of torture within the Chicago Police Department, and to assist the Court by contextualizing

Mr. Washington's torture and plea bargain. The Public Interest Organizations also seek to explain the importance of Certificates of Innocence; to provide background context on the legislative history and purpose of the Certificate of Innocence statute, 735 ILCS 2-702(g)(4); and explain how Certificates of Innocence provide myriad benefits to recipients. Further, as organizations working, operating, and residing in Chicago, and largely in the heart of Chicago's Black and Brown communities in particular, the Public Interest Organizations have a particular and unique perspective on these issues. Indeed, many of the Organizations (and individuals that comprise them) not only lived through the Burge era, but also witnessed firsthand how the Illinois court system treated torture claimants in years past. This perspective will provide critical background context to the circuit court's decision in this case.

4. Finally, the Public Interest Organizations' attached, proposed *amicus* brief presents none of the red flags identified in *Kinkel*. The Public Interest Organizations' brief was not sponsored by the parties. And importantly, the Public Interest Organizations intend to present different arguments and authorities than Petitioner, so their brief is not an attempted end-run around word limits. *Id.* Rather, the social and historical context—as well as the examination of the Certificate of Innocence's collateral benefits—laid out in the Public Interest Organizations' brief stands independent of the arguments presented in the merits brief.

5. A copy of the Declaration of Daniel Massoglia in support of this Motion is attached hereto as Exhibit A. A copy of the Community Organizations' proposed brief is attached hereto as Exhibit B, which will also be filed in a separate transaction per

instruction of the Clerk of the Supreme Court. A copy of the Notice of Filing is attached hereto as Exhibit C. A copy of the Certificate of Service is attached hereto as Exhibit D.

WHEREFORE, the Community Organizations respectfully request that this Court grant them leave to file *instanter* the attached brief of *amici curiae*.

Dated: June 7, 2022

Respectfully submitted,

/s/ Daniel Massoglia

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No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *Respondent-Appellee*, v. **WAYNE WASHINGTON,** *Petitioner-Appellant*	Appeal from the Appellate Court of Illinois, First Judicial District Case No. 1-16-0014 There on appeal from the Circuit Court of Cook County No. 93-CR-14676 Hon. Domenica Stephenson, Judge, presiding

ORDER

This cause having come before the Court on the Motion for Leave to File *Instanter* Brief of *Amici Curiae* Community Organizations in Support of Petitioner-Appellant, IT IS HEREBY ORDERED THAT:

The motion is ALLOWED / DENIED.

ENTERED:

Justice Date

Justice Date

Justice Date

EXHIBIT A

No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *Plaintiff-Appellee*, v. **WAYNE WASHINGTON,** *Defendant-Appellant*	Appeal from the Appellate Court of Illinois, First Judicial District Case No. 1-16-0014 There on appeal from the Circuit Court of Cook County No. 93-CR-14676 Hon. Domenica Stephenson, Judge, presiding

DECLARATION OF DANIEL MASSOGLIA

Under penalties as provided by law pursuant to 735 ILCS 5/1-109, the undersigned certifies that the statements set forth herein are true and correct:

1. I am an attorney licensed to practice law in Illinois.

2. I represent the organizations listed in the Motion to which this declaration is attached as an Exhibit.

3. I certify that the statements made in the Motion For Leave To File *Instanter* Brief Of *Amici Curiae* Community Organizations In Support Of Appellant are true and correct.

Executed this 7th day of June, 2022 in Chicago, Illinois.

/s/ Daniel Massoglia
Daniel Massoglia (#6317393)
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EXHIBIT B

Case No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *Respondent-Appellee*, v. **WAYNE WASHINGTON,** *Petitioner-Appellant.*	Appeal from the Appellate Court of Illinois, First Judicial District Case No. 1-16-0014 There on appeal from the Circuit Court of Cook County No. 93-CR-14676 Hon. Domenica Stephenson, Judge, presiding

BRIEF OF PUBLIC INTEREST ORGANIZATIONS CONCERNED ABOUT POLICE VIOLENCE AND THE EFFECTS OF WRONGFUL CONVICTIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONER-APPELLANT

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Dated: June 7, 2022

POINTS AND AUTHORITIES

STATEMENT OF INTEREST OF AMICI CURIAE

In 1993, Wayne Washington was abused by Jon Burge-trained Chicago Police Department detectives Kenneth Boudreau and James Halloran, and forced to sign a confession that he did not write and that was not true. He was wrongfully charged with a murder, but his trial resulted in a hung jury. After seeing a co-defendant sentenced to 75 years' imprisonment after a trial, while awaiting retrial Mr. Washington plead guilty and accepted a sentence of 25 years to avoid spending the rest of his life in prison.

The Cook County State's Attorney vacated Mr. Washington's conviction in 2015 after an investigation into the matter, and he thereafter sought a Certificate of Innocence ("COI")—a definitive acknowledgment by the State of Illinois that he did not commit the crime for which he spent more than a decade in prison. Though many courts have refused to exclude innocent individuals who plead guilty as a matter of circumstance from the COI process, the Circuit Court and First District Appellate Court took a drastically different approach in this case. They concluded that, despite the evidence presented of police torture, Wayne Washington was responsible for his conviction because of his plea bargain, and thus was not eligible for a COI.

In doing so, the Appellate Court erected a categorical, extra-statutory bar to obtaining a COI for anyone who pleads guilty, ignoring the conduct of Detectives Boudreau and Halloran, contravening the purposes of the statute, and without referencing the important role COIs play in repairing lives derailed by wrongful convictions. [1] Mr.

[1] Notably, and unlike some other states, Illinois Certificate of Innocence Statute does *not* categorically exclude individuals who have plead guilty from its protections. *Compare* 735 ILCS 5/2-702 (lacking any language regarding guilty pleas) *with* Iowa Code § 663A.1(1)(b) (requiring that the petitioner "did not plead guilty to the public offense charged"); Mass. Gen. Laws. ch. 258D, § 1(c)(iii) (requiring that the petitioner "did not

Washington's case is not unique, and is of critical interest to Amici, all of whom are concerned with the deep and disgraceful stains of police torture and wrongful convictions on the City of Chicago. Amici further believe that the Appellate Court's limits on innocent individuals seeking COIs will perpetuate a social harm, causing further disenfranchisement and misery.

In this brief, Amici provide detailed history of police misconduct during the Jon Burge era (including as perpetuated by Detectives Boudreau and Halloran), explain the purposes of the COI statute, and identify the benefits of being declared innocent by a court, beyond the modest compensation the law allows. Amici, listed below, represent a coalition of groups intimately familiar with the patterns of police abuse within CPD, the consequences of incarceration, and the difficulties of re-entry. They share a common interest in ending police violence and achieving justice for its victims, and ensuring that our courts do justice for those same victims. Amici do not ask this Court to use this case as a vehicle to solve all of the legal system's problems—they only seek to provide the proper context for Mr. Washington's meritorious appeal.

As federal district Judge Lefkow noted when sentencing torturer-in-chief Jon Burge during his criminal trial, "When [torture] becomes widespread ... the administration of justice is undermined irreparably." Tr. of Proceedings at 7, *United*

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plead guilty to the offense charged"); Ohio Rev. Code Ann. § 2743.48(A)(2) (requiring that the petitioner "did not plead guilty to, the particular charge or a lesser-included offense"); Okla. Stat. Ann. 51, § 154(B)(2) (requiring that the petitioner "did not plead guilty to the offense charged"); D.C. Code § 2-425 (requiring that the petitioner's conviction did not result "from his entering a plea of guilty unless that plea was pursuant to *North Carolina v. Alford*, 400 U.S. 25 (1970).").

States v. Burge, No. 08 CR 846 (N.D. Ill. Jan. 21, 2011). This case presents an opportunity to ensure that the administration of justice is not further undermined by the Appellate Court's needless and unjustified choice to place a technical obstacle in front of innocent individuals trying to clear their names. As such, Amici ask this Court to reverse the Appellate Court's decision, hold that a plea bargain under these conditions is not a categorical bar to a COI, and remand for further proceedings consistent with this holding.

Amici are:

The Chicago Torture Justice Center, a Chicago-based and -focused organization that seeks to address the traumas of police violence and institutionalized racism through access to healing and wellness services, trauma-informed resources, and community connection. The Chicago Torture Justice Center is a community center for Chicago police torture survivors. The Chicago Torture Justice Center was established as a result of a historic Reparations Ordinance passed by the Chicago City Council in May 2015. The Reparations Ordinance provides redress for racially motivated police torture orchestrated by Chicago Police Department Commander Jon Burge between 1972-1991. Chicago Torture Justice Memorials, a Chicago-based organization that works to honor and to seek justice for the survivors of Chicago police torture, their family members and the communities affected by the torture.

First Defense Legal Aid, which mobilizes lawyers and over-policed community members to fill gaps in public defense and create, protect, and engage replicable alternatives to the criminal system, starting with its entry points.

Legal Action Chicago, which addresses problems stemming from and exacerbated by racial inequities, challenges policies that harm those living in poverty, and

promotes policies that enhance such individuals' quality of life and economic mobility. Recognizing that police misconduct creates barriers to economic and social well-being, and that police misconduct disproportionately affects communities of color, Legal Action Chicago supports efforts to achieve justice for victims of such misconduct.

The Law Office of the Cook County Public Defender, one of the largest criminal defense firms in the United States, with more than 450 attorneys and more than 600 employees overall. Each year the office represents tens of thousands of Cook County residents charged with every type of criminal offense and child protection violation. The Public Defender has an annual budget of approximately $85 million and the responsibility to staff courtrooms throughout the Circuit Court of Cook County.

The Shriver Center on Poverty Law, which fights for economic and racial justice. Over its 50-year history, the Shriver Center has secured hundreds of victories with and for people living in poverty in Illinois and across the country, including for people leaving incarceration and returning to our communities.

Chicago Alliance Against Racist and Political Repression (CAARPR), which defends the civil liberties of workers, activists, and prisoners. Since 1973, when it was born from the movement to free Angela Davis and all political prisoners, CAARPR has defended the rights of oppressed people in Illinois and around the world. CAARPR struggles against white supremacy, the prison industrial complex, and state violence, and demands community control of the police and full representation for Black people and other poor and oppressed people at all levels of government.

The Westside Justice Center, a community-centered organization that promotes a holistic approach to justice by: (1) facilitating legal literacy to reduce recidivism; (2)

providing legal and quasi-legal assistance to individuals; and (3) establishing and nurturing community trust through participatory deliberations and restorative justice practices, to collaboratively mitigate the consequences of incarceration on criminalized communities.

Brighton Park Neighborhood Council (BPNC), a grassroots organization on Chicago's southwest side, a predominantly Latinx and immigrant community. Since 1997, BPNC has worked to empower its community and build its capacity by providing school and community-based services and programs. BPNC also engages leaders in social justice organizing campaigns.

Teamwork Englewood, a south side of Chicago-based organization that works to improve the quality of life of the residents and stakeholders of Englewood by facilitating economic, educational, and social opportunities. Teamwork Englewood builds community capacity by collaborating with local and potential stakeholders to create an environment that fosters the tenants for a healthy and vibrant Englewood, and is a catalyst for positive community change, focused on safety, services to special needs populations, and the promotion of healthy lifestyles for all residents.

National Lawyers Guild Chicago, the Chicago branch of the National Lawyers Guild, a non-profit federation of lawyers, legal workers, and law students that has been using the law to advance social justice since 1937.

The Pilsen Alliance, a social justice organization committed to developing grassroots leadership in Pilsen and neighboring working class, immigrant communities in Chicago's Lower West Side. The Pilsen Alliance uses community education tools and programs, direct action organizing campaigns, and advocacy initiatives reflecting the

popular education philosophy of building social consciousness for personal and social collective transformation.

Logan Square Neighborhood Association, a community-based organization advancing diversity, leader development, and models for engagement as the catalysts for social justice.

Precious Blood Ministry of Reconciliation, a south side of Chicago-based ministry that, rooted in the spirituality of the Precious Blood, restores human dignity through hospitality, hope and healing. It works as an agent of reconciliation to: build relationships among youth and families impacted by violence and/or conflict; create safe spaces where people can experience radical hospitality, hope, and healing; and promote a restorative justice approach to conflict and build a sense of community.

American Friends Service Committee Chicago, a Chicago-based Quaker organization devoted to service, development, and the promotion of peace in Chicago and throughout the world. Its work is based on the belief in the worth of every person, and faith in the power of love to overcome violence and injustice. They have frequently worked on issues related to policing and criminal justice.

Chicago DSA, a democratic grassroots organization committed to fighting for economic and racial justice through greater democracy in Cook County, and throughout our society.

THE BURGE TORTURE SCANDAL AND ITS AFTERMATH

A group of CPD officers under the command of Chicago Police Commander Jon Burge systematically tortured confessions from men and women arrested on Chicago's south side for decades. This criminal gang included Detectives Boudreau and Halloran, whose

treatment of Petitioner is integral to the matter at hand. The widespread use of torture by Chicago police is not a matter of speculation or debate, but an established fact binding the parties to this case and this Court.[2] It is supported by an indestructible constellation of court and administrative rulings, government investigations, journalism, and, of course, the countless stories—and sworn testimony—of those who survived the era.[3] And it provides crucial context for reversing the Appellate Court's decision in this matter.

CPD's pattern of abusing of people of color has been well-documented since at least the 1972 report issued by Congressman Ralph Metcalfe's blue-ribbon commission.[4] The next year, 1973, Burge was responsible for the torture of Anthony Holmes, who was coerced into confessing to a murder after having a bag placed over his head and tightened, and then having electric current run through wires attached to the handcuffs locked around his wrists and ankles.[5] The pattern of abuse and torture continued unabated through the 1980s and into the 1990s.

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[2] See, *e.g.*, *People v. Wilson*, 2019 IL App (1st) 181486, ¶ 76 n.8; *People v. Wilson*, 116 Ill. 2d 29, 35-41, 506 N.E.2d 571 (1987) (reversing conviction of Andrew Wilson, who was tortured by Burge and associates via beatings, electric shock, and suffocation).

[3] See, *e.g.*, Chi. Trib. Staff, *Jon Burge and Chicago's Legacy of Police Torture*, Chi. Trib., https://bit.ly/3fEogCu (Sept. 19, 2018); *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1093 (N.D. Ill. 1999) ("It is now common knowledge that in the early to mid-1980s [CPD] Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions."); Michael Goldston, et al., *Special Project Conclusion Reports (The Burge Investigation)*, https://bit.ly/3kmKVXM (Nov. 1990); John Conroy, *House of Screams*, Chi. Reader, https://bit.ly/3kTRIIL (Jan. 25, 1990).

[4] *The Misuse of Police Authority in Chicago*, https://bit.ly/3kd5k1p (1972) ("There can be no dispute that [Chicago] police mistreatment of citizens occurs. Even Superintendent James B. Conlisk, Jr., has agreed that the use of excessive force is a reality.")

[5] Tr. of Proceedings at 5-6, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. Jan. 21, 2011).

The matter did not fully rear its head for much of the public until *People v. Andrew Wilson*. 116 Ill. 2d 29. In a 1987 appeal, this Court declared that "[t]he use of a defendant's coerced confession as substantive evidence of his guilt is *never* harmless error." *Id.* at 41 (emphasis added). In that case, Andrew Wilson was shocked, suffocated, and beaten into confessing to a crime. The *Chicago Reader* later documented how his experience was not at all unique in an article describing "a parade of men [who] also claimed that they had been interrogated by electrical means, or had plastic bags put over their heads, or had their fingers put in bolt cutters, or were threatened with being thrown off a roof[.]"[6]

For its part, CPD officially acknowledged the systematic torture campaign of Burge and his associates in 1990, with the Office of Professional Standards reporting that "physical abuse," including "planned torture," was "systematic" under Burge. Worse yet, it noted that "[p]articular command members [of CPD] were aware of the systematic abuse and participated in it either by actively participating in same or failing to take any action to bring it to an end."[7] In 1993, Burge was terminated due to his misconduct.

By this time, however, it was far too late for far too many: scores of other torture victims, including Petitioner, were wrongfully incarcerated. In January 2003, then-Governor George H. Ryan pardoned four death row prisoners whose convictions rested in large part on confessions elicited by Burge and his associates through torture. As Governor Ryan observed:

> "The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it ... We have

[6] John Conroy, *House of Screams*, Chi. Reader, https://bit.ly/3kTRIIL (Jan. 25, 1990).

[7] Michael Goldston, et al., *Special Project Conclusion Reports (The Burge Investigation)*, https://bit.ly/3kmKVXM (Nov. 1990).

> 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 provided. They are perfect examples of what is so terribly broken about our system. These cases call out for someone to act. They call out for justice[.]"

Gov. George H. Ryan, Statement at DePaul University College of Law (Jan. 10, 2003). Notably, all four of these men's convictions had been upheld on direct appeal, with the lower courts and this Court repeatedly believing the officers' torture denials over the victims' pleas for mercy.[8]

Eventually, a court-appointed special prosecutor would investigate more than 140 of these torture cases and conclude in a July 2006 report that "many" claimants had credible torture claims. *United States v. Burge*, 2009 U.S. Dist. LEXIS 65732, at *10 (N.D. Ill. July 29, 2009). The victims were predominately Black men from Cook County, as is Petitioner. Months before that, in May 2006, the United Nations Committee Against Torture would express "concern" over the scandal, including "the limited investigation and lack of prosecution in respect of the allegations of torture[.]" See U.N. Committee Against Torture, *Conclusions and Recommendations of the Committee Against Torture: United States of America*, ¶ 25, U.N. Doc. CAT/C/USA/CO/2 (July 25, 2006). These "allegations of impunity of ... law-enforcement personnel in respect of acts of torture" merited government entities' "promptly, thoroughly, and impartially investigat[ing] all allegations of acts of torture ... and bring[ing the] perpetrators to justice." *Id.*

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[8] *People v. Orange*, 195 Ill. 2d 437, 749 N.E.2d 932 (2001); *People v. Hobley*, 182 Ill. 2d 404, 696 N.E.2d 313 (1998); *People v. Howard*, 147 Ill. 2d 103, 588 N.E. 2d 1044 (1991). In the fourth case, while the Illinois Supreme Court originally disbelieved the victim's claims of torture, *People v. Patterson*, 154 Ill. 2d 414, 610 N.E.2d 16 (1992), it later directed the circuit court to conduct a third stage post-conviction hearing on the matter, *People v. Patterson*, 192 Ill. 2d 93, 735 N.E.2d 616 (2000).

In 2008, seventeen years after his dismissal from the CPD, Jon Burge was indicted for perjury and obstruction of justice based on sworn denials that he knew of or participated in torture. Burge was convicted by a jury and sentenced to 4.5 years in prison. U.S. District Judge Lefkow, the sentencing judge, noted conspicuously at the time that "[w]hen [torture] becomes widespread ... the administration of justice is undermined irreparably." Tr. of Proceedings at 7, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. Jan. 21, 2011). Nevertheless, in all of the years before and since, not *one* Burge associate was prosecuted for his role in these crimes, let alone disciplined.[9]

Meanwhile, in the past two decades Illinois courts have issued a string of decisions in cases involving allegations of torture by Burge and his men. Many acknowledged the need for a full evidentiary hearing in order to determine the merits of the defendant-appellant's torture allegations, and the effects of torture on their convictions. *See Patterson*, 192 Ill. 2d at 141-45 (remand for evidentiary hearing on whether petitioner's torture was a part of a systematic pattern); *People v. King*, 192 Ill. 2d 189, 198-99, 735 N.E.2d 569 (2000) (same); *People v. Cannon*, 293 Ill. App. 3d 634, 640-42, 688 N.E.2d 693 (1st Dist. 1997) (remand for new suppression hearing where defendant could present evidence of systematic police torture); *People v. Brown*, 377 Ill. App.3d 1139, 953 N.E.2d 81, No. 1-05-0928 (Ill. App. Ct. 2007) (table) (unpublished

[9] Even after the disclosure of an FBI report describing CPD detectives' involvement in eliciting prepared testimony from suspects, sometimes with the knowledge of local prosecutors, no action was taken. *See* FBI 302 Report, Terence Johnson (Mar. 14, 2012); *see also* Jason Meisner & Dan Hinkel, *Ex-Prosecutor: Chicago Police, Prosecutors Colluded in Englewood 4 Wrongful Conviction*, Chi. Trib., https://bit.ly/3zPWIFD (July 20, 2017).

order). On remand in the last case, *Brown,* Judge Crane found the evidence of torture to be "staggering" and "damning[.]"[10]

This new era of acknowledging the systemic use of torture within CPD also shed light on two key perpetrators at issue in the present case: Detectives Kenneth Boudreau and John Halloran.[11] The actions of these detectives has come up repeatedly, in case after case. *See e.g., People v. Peoples*, 2020 IL App (1st) 161068-U, ¶ 16 (Describing Burge and his acolytes as a "violent criminal gang" and noting that "[t]he allegations in the petition, along with evidence in a number of cases, indicate that Halloran participated in the gang's criminal activities"); *People v. Jakes*, 2013 IL App (1st) 113057, ¶ 1 ("Jakes testified that he signed [a confession] because [Detective Michael] Kill beat him and threatened him while Boudreau watched."); *People v. Tyler*, 2015 IL App (1st) 123470, ¶¶ 161 165, 168 (describing beatings by Halloran, Boudreau, and others; subsequent confession, conviction, and later exoneration of Harold Hill by DNA evidence; and reversing denial of request for evidentiary hearing); *People v. Gardner*, 2013 IL App (1st) 110341-U, ¶ 37 (describing sworn affidavit by Nicholas Escamilla attesting to torture by Halloran, Boudreau, and a third detective; sworn affidavit by Andre Brown attesting to torture by Halloran and Boudreau; sworn affidavit by Malik Taylor attesting to torture by Halloran and others; sworn affidavit by Arnold Day attesting to torture by Boudreau and another detective; sworn affidavit attesting to torture by Halloran,

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[10] Matthew Walberg, *New Trial Granted in Burge-Tainted Case*, Chi. Trib., https://bit.ly/3l2NyhV (May 23, 2009).

[11] Former CPD Detective James O'Brien also appears to have been involved in the Hood-Washington cases. O'Brien, like Halloran and Boudreau, has a well-known history of abusing suspects in custody and was—like them—a key Burge acolyte. *See, e.g., Tyler*, 2015 IL App (1st) 123470, ¶ 161, 165, 168, 183-85; *Gardner*, 2013 IL App (1st) 110341-U, ¶ 37.

Boudreau, and a third detective; sworn affidavit by Jason Miller attesting to torture by Halloran, Boudreau, and a third detective).

In the years since Mr. Washington's arrest, Detectives Boudreau and Halloran have also been the subject of dozens of complaints to the Illinois Torture Inquiry and Review Commission ("TIRC"), a public body established by the Illinois legislature in 2009 in response to demands of Chicago activists. 775 ILCS 40/1, *et seq.* They were also accused of torture in numerous civil lawsuits. Many of their victims have been exonerated or acquitted, and some were granted reparations pursuant to a Chicago ordinance passed in 2015, which was accompanied by a resolution formally apologizing for the torture perpetrated by these and other officers. *See Scott v. City of Chicago*, No. 15 C 8864, 2016 U.S. Dist. LEXIS 123577, *3–6 (N.D. Ill. Sept. 8, 2016).

Despite gains through exonerations in the Circuit Court and the operation of the TIRC, this progress has unfortunately been cabined. Efforts to obtain a just resolution of torture claims through the courts have met significant challenges, with a remarkable number of courts repeatedly applying improper legal standards to claimants' post-conviction claims. The process of getting those decisions overturned on appeal—a not infrequent activity for the Appellate Court—has naturally pushed the resolution of these cases back by years.[12] (For instance, in Antonio Nicholas's case the Appellate Court

[12] *See, e.g.*, *People v. Harris*, 2021 IL App (1st) 182172-U; *People v. Peoples*, 2020 IL App (1st) 161068-U; *People v. Mahaffey*, 2020 IL App (1st) 170229-U; *People v. Robertson*, 2020 IL App (1st) 171935-U; *People v. Lundy*, 2020 IL App (1st) 180255-U; *People v. Galvan*, 2019 IL App (1st) 170150; *People v. Nicholas*, 2017 IL App (1st) 160229-U; *People v. Pittman*, 2015 IL App (1st) 132727-U; *People v. Weathers*, 2015 IL App (1st) 133264; *People v. Brown*, 2015 IL App (1st) 131752-U; *People v. Whirl*, 2015 IL App (1st) 111483, 39 N.E.3d 114; *People v. Crawford*, 2015 IL App (1st) 123134-U; *People v. Nicholas*, 2013 IL App (1st) 103202, 987 N.E.2d 482; *People v. Gardner*, 2013

reversed the circuit court twice in the same case, and ultimately removed the circuit court judge from the matter. *Nicholas*, 2017 IL App (1st) 160229-U; *Nicholas*, 2013 IL App (1st) 103202.)

When the courts of this state routinely fail in their most basic duty—to faithfully apply the law to the facts of a given case—the entire criminal legal system strains and loses credibility. The same is true when a court denies an undeniably innocent person a COI, having previously accepted that person's guilty plea in the face of entirely false evidence. That is precisely what happened to Mr. Washington.

PROCEDURAL AND FACTUAL BACKGROUND

Police arrested Mr. Washington in 1993 along with Tyrone Hood for the murder of Marshall Morgan, Jr. Mr. Washington was handcuffed to a chair while Detectives Halloran, Boudreau, and others beat and interrogated him. After a lengthy time in this environment, and after being told he could go home if he told Detectives what they wanted to hear, Mr. Washington provided a false confession to the murder of Marshall Morgan, Jr. and signed a statement to this effect.

The State tried Mr. Washington, but a hung jury resulted. Upon retrial—and after speaking with Tyrone Hood, who had gone to trial and received a 75-year sentence—Mr. Washington decided to take a plea deal to obtain a 25-year sentence. As he later testified at the evidentiary hearing in this case, he believed he could not spend three-quarters of a century behind bars.

IL App (1st) 110341-U; *People v. Jackson*, 2013 IL App (1st) 110883-U; *People v. Gaston*, 2012 IL App (1st) 091647-U.

All of this happened despite fundamental proof of Mr. Washington's innocence, which later came to light. Per the First District (which granted Tyrone Hood a Certificate of Innocence on appeal, but not Mr. Washington), Marshall Morgan, Jr.'s father almost certainly killed him. *People v. Hood*, 2021 IL App (1st) 162964, ¶ 8. Indeed, the father has since "confessed to murdering another girlfriend in 2001," and others, including for money. *Id.* ¶¶ 8-9.

Given this evidence, in 2014 Governor Pat Quinn commuted Mr. Hood's sentence, and in 2015 the State did not oppose efforts to vacate his and Mr. Washington's convictions, grant a new trial, and dismiss the charges against them. But, when Mr. Washington filed a petition for a COI with the Circuit Court—without the State opposing the request—the Court denied the request *sua sponte*. Mr. Washington requested that the Circuit Court reconsider its opinion and hold an evidentiary hearing, which it did.

At the hearing, the State presented no evidence whatsoever. Mr. Washington testified to his innocence, presented evidence of the Detectives' illicit conduct in this case and others, and provided evidence of Marshall Morgan, Sr.'s guilt. Despite the manifest evidence of Mr. Washington's torture and innocence, the Circuit Court refused to grant him a COI based on 735 ILCS 5/2-702(g)(4), which prohibits granting a COI where the petitioner "by his or her own conduct voluntarily cause[s] or bring[s] about his or her conviction." This decision rested in part on a conclusion that Mr. Washington was not credible, based on a comparison of his 1995 testimony to his present testimony. That 1995 testimony was not submitted to the Circuit Court as evidence by any party.

On appeal, the Appellate Court upheld this interpretation of the law. It adopted a universal rule that prohibits the issuance of a COI whenever a party entered a guilty plea

in their case, no matter the circumstances. *People v. Washington*, 2020 IL App (1st) 163204, ¶ 25. Further, the First District went so far as to say that Mr. Washington's conviction was not only caused by his guilty plea, but that "his confession" also brought about his conviction. *Id.* ¶ 29.

ARGUMENT

The Circuit Court heard substantial and unrebutted evidence of Mr. Washington's innocence, and that he was beaten into falsely confessing to murder. It did not disagree that he was innocent as a matter of fact. Yet, it still held that he could not receive a document confirming his innocence because he plead guilty—no matter the circumstances. The Appellate Court doubled-down on these errors, suggesting that by confessing to a crime, Mr. Washington caused his own conviction. It, too, denied his request for a COI.

In issuing these opinions, the lower courts undermined the COI statute by barring relief in cases where a person, faced with their own tortured confession, made a coerced but logical decision to plead guilty. The Appellate Court also misunderstood the importance of a COI, and its role in allowing falsely convicted individuals to move on with their lives and remove the stigma of conviction. Mr. Washington is one such person, but others will surely come. Whether framed as giving substance to the concept of voluntariness, or a common-sense and fact-bound limitation to the COI statute, the result in this case should be the same: this Court should reverse the Appellate Court.

I. TORTURED PERSONS WHO PLEAD GUILTY DO NOT "VOLUNTARILY CAUSE" THEIR CONVICTIONS.

The crux of Mr. Washington's appeal rests on whether this Court believes—as the Circuit and Appellate Courts did—that Mr. Washington's guilty plea was "voluntar[y]."

735 ILCS 5/2-702(g)(4) ("In order to obtain a certificate of innocence petitioner must prove by a preponderance of evidence that [….] the petitioner did not by his or her own conduct voluntarily cause or bring about his or her conviction.") His former co-defendant Tyrone Hood has already received a COI—the key difference between this case and Mr. Hood's is that Mr. Hood did not plead guilty. *Hood*, 2021 IL App (1st) 162964, ¶ 3. Appellant's brief may address the broader question whether the COI statute accommodates all situations where a person has pleaded guilty. Amici, however, will focus on this specific situation and attempt to answer the question: Which aspects of Mr. Washington's guilty plea were truly voluntary, such that he "cause[d] … his … conviction[?]" 735 ILCs 5/2-702(g)(4).

The record shows that Mr. Washington's pleading decision was nothing close to voluntary. When he entered his guilty plea, he had already experienced a hung jury at trial, showing him that his available evidence of innocence was hardly foolproof. Mr. Washington thus reasonably inferred that at least *some* people would believe the State's evidence—whatever its falsity—beyond a reasonable doubt. Further, he had seen what happened to Mr. Hood, who was sentenced to 75 years' imprisonment after choosing to 'roll the dice' at a trial. *Hood*, 2021 IL App (1st) 162964, ¶ 3. With his coerced confession set to play a lead role at a second trial, and threatened with 75 years behind bars, Mr. Washington was deprived of any opportunity to make a meaningful choice about whether to take his chances at trial.

Believing—as the Appellate Court did—that Mr. Washington caused his conviction in this case due to his confession requires ignoring the evidence submitted at the evidentiary hearing. It also contravenes a fundamental principal of criminal law: a

conviction based on a confession obtained through torture is "*never* harmless error." *Wilson*, 116 Ill. 2d at 41 (emphasis added); *accord People v. Woods*, 184 Ill. 2d 130, 150, 703 N.E.2d 35 (1998); *People v. Wrice*, 2012 IL 111860, ¶ 61. In the context of a criminal trial, there is rarely a more persuasive piece of evidence in a prosecutor's arsenal than the accused's signed admission of guilt. *People v. Robinson*, 2020 IL 123849, ¶ 144 (citing and quoting *Arizona v. Fulminante*, 499 U.S. 279, 296 (1991) ("A confession is like no other evidence. Indeed, the defendant's own confession is probably the most probative and damaging evidence that can be admitted against him.") (internal quotations omitted)). The State's strong track record of convictions in other Burge-era cases featuring a false confession demonstrates as much.[13] Thus, in this matter, the false confession created a lose-lose proposition for Mr. Washington, as he would have known from Mr. Hood's conviction. Even though Mr. Washington knew the truth, he also knew that there was no way stop a jury from seeing prejudicial and false evidence of his guilt. The lack of voluntariness here was as harmful in the plea context as it would have been at Mr. Washington's second trial. *Wrice*, 2012 IL 111860, ¶ 61.

The Circuit and Appellate Courts found that Mr. Washington's decision to confess in order to stop Detectives Boudreau and Halloran from beating him was voluntary, and contributed to his conviction—despite *no* evidence presented by the State to this effect. This harkens back to a dark chapter in Illinois history, where the court system refused to grant relief to torture victims unless confronted with smoking gun-level evidence. *See, e.g., People v. Kidd*, 175 Ill. 2d 1, 26, 675 N.E.2d 910 (1996); *People v.*

[13] See, *e.g., Kidd*, 175 Ill. At 26; *Mahaffey*, 165 Ill. 2d at 464; *Maxwell*, 173 Ill. 2d at 1232; *Orange*, 195 Ill. 2d at 452.

Mahaffey, 165 Ill. 445, 464, 651 N.E.2d 174 (1995); *People v. Maxwell*, 173 Ill. 2d at 123; *Orange*, 195 Ill. 2d at 452. In fact, this situation is worse in many ways, as the Circuit Court's ruling was partially based on evidence not submitted for review (which would have given Mr. Washington an opportunity to explain any purported discrepancies). The *only* evidence proper for consideration in this case was the parties' submissions at Mr. Washington's evidentiary hearing, and anything subject to judicial notice.

The original case against Mr. Washington was essentially a sham, underlining why his guilty plea was not truly voluntary. Consider the evidence of Mr. Washington's "guilt." There was his coerced confession, of course. There was a witness against him who recanted his testimony. and claimed that Boudreau and Halloran abused him into giving it. And there was Boudreau and Halloran, who stood ready to testify to Mr. Washington's guilt at his second trial. Yet, in the mid-1990s, these Detectives had not yet been the subject of decades' worth of court decisions, journalism, and independent government reports demonstrating their pattern of torturing confessions out of individuals in custody. How can Mr. Washington have acted of his own free will by pleading guilty in this context?

To accept this would stretch the concept of individual will to an absurd breaking point. The only aspect of Mr. Washington's conviction that he played any role was his plea, which cannot logically be divorced from the false confession and pressure to plead guilty based on this and other inflammatory, illegal evidence. Holding otherwise would countenance the logic of a schoolyard bully who, having grabbed and started to pummel someone with their own hand, sarcastically advises the victim to 'stop hitting yourself.'

Only here, the "bully" was Jon Burge's torture machine, and the stakes are far higher for Mr. Washington than lost lunch money. (As Amici explain below, a COI can play a critical role in reintegration into society.)

In the end, this Court may decide that Mr. Washington's conviction was not obtained through his voluntary actions in at least one of two ways. First, the Court can and should hold that a person does not voluntarily cause their conviction within the meaning of 735 ILCS 5/2-702(g)(4) simply by pleading guilty through no fault of their own. This would include a situation, as here, where a person pleads guilty after having a confession coerced from them through abuse.[14] Second, the Court may decide that the facts of this case—involving both a coerced confession, recanted testimony, a hung jury, and a co-defendant who received a life sentence after taking their case to trial—do not make the circumstances of Mr. Washington's confession voluntary. Justice and equity demand that the result be the same in either case: reversing the Appellate Court and awarding Mr. Washington a COI.

II. THE APPELLATE COURT UNDERMINED THE PURPOSES AND EFFECTIVENESS OF THE CERTIFICATE OF INNOCENCE STATUTE.

A wrongful criminal conviction, particularly for a serious crime like murder, is an event that follows a person through life like an ominous cloud, persisting after the person has served their sentence by making re-integration and reentry an arduous and often impossible process. Convictions do not occur in a time-bound vacuum that begins and ends with a person's term of incarceration. They persist on criminal records and other

[14] Notably, this is not a situation where someone "took the fall," *i.e.,* pleaded guilty by misleading authorities to cover up wrongdoing by a third party.

public documents, creating significant challenges to health and personal dignity, housing, and employment. The Appellate Court's opinion is contrary to the purposes of state law and damages wrongfully convicted individuals' ability to safely, productively, and fruitfully re-enter society following wrongful incarceration.

A. The Purposes of the Certificate of Innocence Statute Indicate that it was Designed to Benefit Individuals like Wayne Washington

Recognizing the array of negative consequences that accompany a wrongful criminal conviction, even one that has been vacated, the Illinois General Assembly created a procedure for wrongfully accused and convicted individuals to petition for official, affirmative confirmation from the state that they are innocent, and that their conviction was a miscarriage of justice. This statute contains four requirements, and as Petitioner will ably argue, it is evident that Mr. Washington meets each requirement and should be afforded the relief that a COI offers. However, an examination of the legislative history of the statute further buttresses the conclusion that the instant denial is contrary to the intent of the legislature.

Simply put, the purpose of the COI law is to remove the stain and consequences of a conviction that never should have been entered. As Representative Mary Flowers powerfully noted of the dilemma facing innocent individuals without COIs, during debate on the bill: "…technically they're still incarcerated because their name is not clear. […] These are innocent men and women, innocent, Ladies and Gentlemen of the House. Innocent." 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 7, 13. Their conviction follows them, unrebutted, signaling to the world a fundamental untruth and injustice.

The Illinois Second District Appellate Court, for its part, has noted that the legislative history of the bill indicates its purpose is "to benefit 'men and women that have been falsely incarcerated through no fault of their own.'" *People v. Dumas*, 2013 IL App (2d) 120561, ¶¶ 18-19 (quoting 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 12 (statements of Rep. Flowers)). Mr. Washington, like many others, was not at fault when he was beaten by Chicago Police Department detectives and charged with a crime that would have kept him in prison for life, absent a plea.

Ultimately, a plea is not a cause, but rather a consequence of a system that operates in large part based on "'horse trading [between prosecutor and defense counsel to determine] who goes to jail and for how long.'" *Missouri v. Frye*, 566 U.S. 134, 144 (2012) (quoting Robert E. Scott & William J. Stuntz, *Plea Bargaining as Contract*, 101 Yale L.J. 1909, 1912 (1992)). This Court has recognized the limitations and deficiencies of plea bargaining, which is inextricably intertwined with COIs and the COI statute's purposes. For example, in 2020, this Court wrote:

> The plea system encourages defendants to engage in a cost-benefit assessment where, after evaluating the State's evidence of guilt compared to the evidence available for his defense, a defendant may choose to plead guilty in hopes of a more lenient punishment than that imposed upon a defendant who disputes the overwhelming evidence of guilt at trial. [Citation.] As such, it is well accepted that the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt.

People v. Reed, 2020 IL 124940, ¶ 33. In acknowledgment of the Legislature's intent of helping people who "never should have been in jail in the first place clear their names and return as equal members of society," and given the tragic fact that plea bargains often do not equal guilt, this Court should not allow a wholesale bar on COIs due to causes

beyond an individual's control. 95th Ill. Gen. Assem., House Proceedings, May 18, 2007, at 7; *see also Reed*, 2020 IL 124940, ¶ 33 (*"*…the decision to plead guilty may be based on factors that have nothing to do with defendant's guilt.").

Lower courts appear to have recognized this. Until recent decisions, a guilty plea has not been an obstacle to judicial recognition that a person is innocent under the law.[15] This Court should recognize the same.

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[15] By means of example, a partial list, since 2016, of individuals who pled guilty and later received Certificates of Innocence in Cook County follows. It is a certainty that this list does not reflect all who were eligible. Demetrius Adams, 04CR17784, Chauncy Ali, 07CR421(03), Landon Allen, 04CR 5700(01), George Almond, 06CR19708(01), Ben Baker, 06CR810(01), Deandre Bell, 06CR22073(01) & 07CR11499(01), Harvey Blair, 04CR18641, Antwan Bradley, 08CR8917(01), Darron Byrd, 07CR10335(02), Raynard Carter, 07CR10335(01) & 06CR6565(02), Bobby Coleman, 03CR2644(01), Jermaine Coleman, 06CR12908(01), Craig Colvin, 04CR14263(01), Milton Delaney, 07CR6264(01), Gregory Dobbins, 04CR8728(01), Christopher Farris, 04CR18418(01), Robert Forney, 07CR3834, Marcus Gibbs, 07CR3741(01), Marc Giles, 03CR02644(04), Leonard Gipson, 03CR2644, 03CR12414 & 07CR20496, Clarissa Glenn, 06 CR 810(02), Cleon Glover, 06CR15063(01), Stefon Harrison, 06CR24269(01) & 07CR421(02), Sydney Harvey, 06CR25232(01), Eveless Harris, 07CR10335(03), Rickey Henderson, 02CR19048, 03CR21058, 05CR7952 & 06CR18229, Tyrone Herron, 07CR00421(04), Kenneth Hicks, 07CR22690(01), David Holmes, 07CR12171(01), Brian Hunt, 08CR5302(01), Allen Jackson, 06CR3375(01), Shaun James, 04CR10615(01), Goleather Jefferson, 06CR23620, Thomas Jefferson, 05CR14701, Zarice Johnson, 06CR18526(01) & 08CR4969(01), Derrick Lewis, 04CR17856 & 07CR22093(01), Robert Lindsey, 09CR20361(02), Larry Lomax, 03CR2644(06), Derrick Mapp, No. 06CR10364(01), Willie Martin, 06CR23620(02), David Mayberry, 06CR9651(03), Octayvia McDonald, 05CR21111(01), Gregory Mollette, 06CR22931(01), James Moore, 05CR28783(01), Jermaine Morris, 05CR2186(01) & 06CR8697(02), Terrence Moye, 08CR15102, Lloyd Newman, 06CR22250(01), Jajuan Nile, 07CR24156(02), George Ollie, 03CR2644(05), Bryant Patrick, 05CR01587(01), 07CR8410(01), Cordero Payne, 05CR28782(01), Mister Pearson, 07CR24156(02), Hasaan Potts, 03CR8635(01), Bruce Powell, 09CR14547, Lee Rainey, 03CR17007(01) & 05CR147, Clifford Roberts, 03CR02644(02), Calvin Robinson, 07CR3834(03), Jamell Sanders, 06CR14950(01), Frank Saunders, 07CR8562(01), Chris Scott, 06CR9651(01), Angelo Shenault, Jr., 06CR9651(02), 08CR6802, 09CR14548, Angelo Shenault, Sr., 04CR28832 & 07CR418, Germain Sims, 09CR20361(01), Taurus Smith, 04CR10615(02), Jabal Stokes, 06CR12908(02), Henry Thomas, 03CR4666(01) & 07CR421(01), Nephus Thomas, 08CR6109, Lapon Thompson, 06CR13950(01), Alvin Waddy, 07CR9386, Gregory Warren, 06CR8697(01), Isaac Weekly, 07CR18861(01), Lionel White, Sr., 06CR12092, Lionel White, Jr.,

B. Contrary to the Appellate Court's Considerations, a Certificate of Innocence Provides Myriad Social Benefits

Though financial compensation may be a component of the certificate of innocence process through the availability of modest monetary relief through the Illinois Court of Claims, COIs play a far broader social role of particular interest to Amici and of critical importance to this Court's deliberation. The benefits of COIs to tortured and wrongfully convicted individuals like Mr. Washington are evident with regard to human dignity and health, housing, and employment. The Appellate Court failed to recognize these critically important benefits of a COI, but this Court should consider them.

1. A Certificate of Innocence Would Help Mr. Washington Regain Health and Dignity

A principal function of COIs is repairing the dignitary harm of a wrongful conviction and recuperating the health and well-being of a person who, like Mr. Washington, was innocent but nonetheless was convicted and served time. A criminal record in the United States is, right or wrong, an enduring judgment against that person—you are marked to yourself and others as a line on a RAP sheet, an entry on a criminal history report, and a decision of a criminal court. Being so defined by these factors—and here, entirely wrongfully—takes an enormous toll on a person's well-being.

A criminal conviction is linked with negative impacts on a person's emotional and physical health. April Fernandez, *How Far Up the River? Criminal Justice Contact and Health Outcomes*, Social Currents Vol. 7(1) 29, 36-38 (2020). The existence of a criminal conviction has a "negative and significant impact on self-reported health" as it relates to a

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06CR19188, Kim Wilbourn, 06CR22542(01), Vondell Wilbourn, 04CR20636 & 05CR222312(02), Deon Willis, 02CR82903 & 08CR16767, Martez Wise, 06CR27677.

physical well-being. *Id.* at 37. The negative emotional and physical impacts of a conviction are not limited to the initial stages of involvement with the criminal process. Indeed, being released from prison can be more stressful than being in prison itself, with A person's release marked by reintegration challenges including housing, social support, and employment. Michael Massoglia and Brianna Remster, *Linkages Between Incarceration and Health*, Pub. Health Rep. Vol. 134(1_suppl) 8S, 9S-10S (2019). Re-integration challenges (like challenges to housing and employment, discussed *infra*) can cause people to experience chronic stress that contributes to related illnesses like hypertension and heart disease. *Id* at 10S. These "invisible punishments" associated with a conviction impact mental and physical well-being, and this Court has the power to correct improve the impact of these additional punishments for a man whose innocence is uncontested.

Though Mr. Washington's conviction was vacated in 2015 and the case dismissed, he lacks the recognition that society—through its judicial system—considers him actually innocent. He lacks an authoritative recognition that he is not the person he was claimed to be. He is without an affirmative statement by the courts, in their role as a critical guidepost of societal determinations of culpability, that yes, the legal process went drastically and grievously wrong, through no fault of his own, and that the actions of notorious bad actors like Detectives Boudreau and Halloran are not to be tolerated and are not his fault.

This Court should acknowledge the dignitary, emotional, and physical toll of being wrongfully viewed as a convicted murderer, and reject the consequences and reasoning of the Appellate Court's decision in this matter. Failure to do so would

represent an unacceptable second sentence against Mr. Washington, this time to living the rest of his years on earth knowing that despite his torture, despite his innocence, despite *everything*, the courts are still not willing to recognize him as an innocent person.

2. The Lower Courts' Reasoning Constructs Barriers to Housing

Even though Mr. Washington's criminal charges were vacated and dismissed decades after the fact, the presence of a conviction for murder will nonetheless follow him through his life without court action, particularly in the context of seeking housing and employment. An extra-statutory bar such as that imposed by the Circuit and Appellate Courts—that a person who was tortured and pleads guilty can never be recognized as innocent via a COI—would create vast negative impacts for anyone who pleads guilty after a perversion of the criminal process like the one that occurred here.

The Illinois statute addressing COIs contains in its provisions procedures to mitigate the consequences of a conviction being on one's record. Subsection (h) of the law sets forth procedures to ensure that a record of arrest is expunged from the official records of the arresting authority, and that records of the clerk of the circuit court and the Illinois State Police are sealed. 735 ILCS 5/2-702(h). The law additionally instructs that the name of an exonerated defendant be "obliterated from the official index" kept by the circuit court clerk in connection with the arrest and conviction. 735 ILCS 5/2-702(h). These affirmative requirements of the law demonstrate legislative recognition of the important role of COIs in safeguarding individual privacy and future life pursuits.

In the context of housing, a Certificate of Innocence could help wrongfully convicted individuals as they seek places to live. As a vast body of academic literature demonstrates, returning citizens face challenges in the realms of housing, reducing

opportunities to find safe and stable housing as they attempt to regain control of their lives. *See, e.g.,* Hensleigh Crowell, *A Home of One's Own: The Fight Against Illegal Housing Discrimination Based on Criminal Convictions, and Those Who Are Still Left Behind*, 95 Tex. L. Rev. 1103 (2017); *see also* Metropolitan Planning Council, *Re-Entry Housing Issues in Illinois*, at 7-8 (last accessed May 18, 2022), https://perma.cc/U9DC-PCWM (noting Illinois does not provide housing resources for decarcerated individuals, who often have few financial resources; that referral networks are "limited at best[,]"that landlords are "often hostile to housing" returning citizens; and that public housing authorities have "rules that make it difficult" to house such persons).

The contemporary private housing market is marked by vast, secretive databases kept by tenant screening and background check companies and used by property managers to assess which potential tenants are eligible to obtain housing. Applicants are assigned "tenant scores," surprisingly detailed records ranging from everything from past late payments to criminal convictions to the number of phone numbers that a person has. Kavah Waddell, *How Tenant Screening Reports Make It Hard for People to Bounce Back From Tough Times*, Consumer Reports, https://bit.ly/3PBWh9N (Mar. 11, 2021); Erin Smith and Heather Vogell, *How Your Shadow Credit Score Could Decide Whether You Get an Apartment*, ProPublica, https://bit.ly/3yMHzHd (Mar. 29, 2022). The COI process can ameliorate the pernicious effects of black box algorithms used to make significant decisions on questions as basic as whether a person can find a place to live.

In the Section 8 context, for example, applicants undergo rigorous screening and eligibility requirements, including reporting of criminal convictions. Where an arrest and conviction would remain on a person's record without a COI, such information could be

used against them as they attempt to seek housing assistance. Similarly, a person faced with a requirement to report a prior conviction (often a confusing decision for a given individual due to ambiguities in the operation of expungement and sealing with regard to self-reporting requirements) would, in the case of a granted COI petition, be able to affirmatively demonstrate the nullity of that conviction and negate its impact.

A 2019 decision of the Connecticut District Court illuminates the dangers of tenant screening. In *CT Fair Housing Center v. CoreLogic Rental Property Solutions LLC*, a court considered the operation of tenant screening conducted by CoreLogic Rental Property Solutions, one of many companies active in this area. 369 F. Supp. 3d 362 (D. Conn. 2019). CoreLogic provides CrimSAFE and CrimCHECK products to landlords, which offer generalized information about prior criminal offenses, and do not as a matter of course contain information about criminal dispositions. *Id.* at 367. *Id.* CoreLogic offers recommendations to rental companies, which the plaintiff there alleged does not occur on an individualized basis nor with transparency, removing the ability for a rejected applicant to challenge or even understand why they were denied housing. *Id.* at 367-368.

In a world where wrongfully convicted individuals are subjected to opaque rental screening—increasingly commonplace in housing decisions—that person has no way of determining whether a rejection was due to a conviction that never should have been entered in the first place. In response, however, a person can proactively submit a COI at the application stage, addressing the potential hurdle before it became insurmountable.

Thus, even though Mr. Washington or others may have seen their convictions vacated as a result of police misconduct, for the world, they will forever be portrayed as guilty. Unless, of course, this Court acts.

3. The Lower Court's Reasoning Erects Barriers to Employment Resources

Part of the COI process is the availability of employment resources to exonerated individuals. "Other statutes provide that persons granted certificates of innocence have rights to mental health services, job search and job placement services, and other assistance. *People v. Glenn*, 2018 IL App (1st) 161331, ¶ 20 (Neville, J.) (citing 20 ILCS 1015/2; 20 ILCS 1710/1710-125: 730 ILCS 5/3-1-2(o)). The statutory offerings include job training and preparation resources to COI recipients. 20 ILCS 1015/2.

In the context of re-entry, the possibility of resources like these is essential—incarcerated individuals face significant barriers to rejoining the workforce, and research shows that criminal records are a moving factor in these difficulties. *See, e.g.*, Michael Carlin & Ellen Frick, *Criminal Records, Collateral Consequences, and Employment: The FCRA and Title VII in Discrimination Against Persons With Criminal Records*, 12 Seattle J. for Soc. Just. 109, 112–13 (2013) ("As of late 2012, the American Bar Association has catalogued over 38,000 statutes that impose collateral consequences on people convicted of crimes … Over half of these laws involve the denial of employment opportunities."). A COI can ameliorate these difficulties, too.

CONCLUSION

Mr. Washington has been freed from prison and his conviction vacated. The State's Attorney is not trying to stop him from obtaining vindication, in the form of judicial recognition of what he has said for years, and no party disputes: that he is innocent. The only entity standing in Mr. Washington's way thus far has been the Illinois court system, which has refused to grant him relief based on a sclerotic reading of a statute meant to aid people just like him. This Court should not approve of these

decisions or ignore the substantial evidence of torture Mr. Washington has put forward. Instead, this Court should reverse the lower courts and grant Mr. Washington the closure he asks for and deserves.

Respectfully submitted,

Dated: June 7, 2022

/s/ Daniel Massoglia

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b), and Rule 345. The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 29 pages.

Dated: June 7, 2022 /s/ Daniel Massoglia

EXHIBIT C

No. 127952

IN THE
SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *Respondent-Appellee*, v. **WAYNE WASHINGTON,** *Petitioner-Appellant*	Appeal from the Appellate Court of Illinois, First Judicial District Case No. 1:16-0014 There on appeal from the Circuit Court of Cook County No. 93-CR-14676 Hon. Domenica Stephenson, Judge, presiding

NOTICE OF FILING

PLEASE TAKE NOTICE that the The Chicago Torture Justice Center, First Defense Legal Aid, Legal Action Chicago, The Law Office of the Cook County Public Defender, The Shriver Center on Poverty Law, Chicago Alliance Against Racist and Political Repression, The Westside Justice Center, Brighton Park Neighborhood Council, Teamwork Englewood, National Lawyers Guild Chicago, The Pilsen Alliance, Logan Square Neighborhood Association, Precious Blood Ministry of Reconciliation, American Friends Service Committee Chicago, and Chicago DSA filed their **MOTION FOR LEAVE TO FILE *INSTANTER* BRIEF OF *AMICI CURIAE* PUBLIC INTEREST ORGANIZATIONS IN SUPPORT OF PETITIONER-APPELLANT** and **BRIEF OF *AMICI CURIAE* PUBLIC INTEREST ORGANIZATIONS IN SUPPORT OF PETITIONER-APPELLANT** in the above-captioned matter on June 7, 2022.

Dated: June 7, 2022

Respectfully submitted,

/s/ Daniel Massoglia

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EXHIBIT D

CERTIFICATE OF SERVICE

I, Daniel Massoglia, an attorney, certify that on June 7, 2022, I caused the foregoing **Motion For Leave To File *Instanter* Brief Of *Amici Curiae* Public Interest Organizations In Support Of Appellant**, as well as **Brief of *Amici Curiae* Public Interest Organizations In Support of Petitioner-Appellant**, to be submitted to the Clerk of the Supreme Court of Illinois by filing said documents using the Odyssey eFileIL system.

I further certify that on June 7, 2022, I caused a copy of the above-named motion, its exhibits, and brief to be served upon counsel listed below through the filing manager, Odyssey EfileIL, and via electronic mail:

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Pursuant to Rule of Court, and upon any Order granting this Motion, and acceptance of the brief for filing, I certify that I will cause thirteen copies of the file-stamped **Brief Of *Amici Curiae* Community Organizations In Support of Appellant** to be transmitted to the Court within five days of electronic notice of acceptance.

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.

/s/ Daniel Massoglia
Daniel Massoglia

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