

IN THE CIRCUIT COURT FOR THE TWENTY-THIRD JUDICIAL CIRCUIT
DEKALB COUNTY, ILLINOIS

JACK D. MCCULLOUGH,

Petitioner,

v.

PEOPLE OF THE STATE OF
ILLINOIS,

Respondent.

No. 11 CF 454

Honorable Chief Judge
Robbin J. Stuckert, presiding

NOTICE OF MOTION AND PROOF OF SERVICE

TO: Richard Schmack
State's Attorney
133 West State Street
Sycamore, IL 60178

Lisa Madigan
Office of the Illinois Attorney General
100 West Randolph
Chicago, IL 60601

Please take notice that on October 20, 2016 at 1:00pm or as soon thereafter as we can be heard, I will appear in Courtroom 220 in the Circuit Court of Dekalb County, 133 West State Street, Sycamore, IL 60178, and present the attached Petition for a Certificate of Innocence Pursuant to 735 ILCS 5/2-702, a copy of which hereby served on you.

Respectfully Submitted,



Attorney for Jack McCullough

Jon Loevy
Russell Ainsworth
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23rd JUDICIAL CIRCUIT
CIRCUIT CLERK
MAUREEN JOSH
2016 OCT 11 PM 3:45
DEKALB COUNTY, IL

CERTIFICATE OF SERVICE

I, Russell Ainsworth, an attorney, hereby certify that I served the attached **Petition for a Certificate of Innocence Pursuant to 735 ILCS 5/2-702** to the above-named counsel via U.S. first class mail on October 6, 2016.

A handwritten signature in black ink, appearing to read 'Russell Ainsworth', written in a cursive style.

Russell Ainsworth

**PETITION OF JACK MCCULLOUGH
FOR A CERTIFICATE OF INNOCENCE**

Petitioner, JACK MCCULLOUGH, through his attorneys, respectfully requests that this Honorable Court, pursuant to 735 ILCS 5/2-702, grant him a Certificate of Innocence. In support of this petition, Mr. McCullough states as follows:

I. INTRODUCTION

Jack McCullough was wrongfully convicted in 2012 of the 1957 murder of 7-year-old Maria Ridulph in Sycamore. This was a crime that Mr. McCullough did not commit: the jury that convicted him were not allowed to hear evidence establishing his alibi, based on reports from independent military personnel and telephone operators placing Petitioner in Rockford at the time of the crime, nor were they provided new evidence from an eyewitness expert casting even more doubt on Kathy Sigman's fifty-three year-old false identification. Evidence of Mr. McCullough's innocence was so overwhelming that the State took the extraordinary step in joining Mr. McCullough's request that the Court set aside his conviction.

Having spent nearly five years in prison for a crime that he did not commit, Mr. McCullough now petitions this Court for a Certificate of Innocence. For the reasons explained below, Mr. McCullough meets each of the requirements for a Certificate of Innocence and therefore this Court should grant him such relief.¹

II. FACTUAL BACKGROUND

A. The Crime

On December 3, 1957, seven-year-old Maria Ridulph and her friend Kathy Sigman were playing near the corner of Archie Place and Center Cross Street in Sycamore, Illinois. Trial Transcript, *People v. McCullough*, 11 CF 454 at 20 (Sept. 10, 2012) [hereinafter "Trial

¹ Though Petitioner seeks to clear his name for a murder that he did not commit, he does so with the utmost respect for the Ridulph family, and with heartfelt sympathy for their loss. All murders are tragic in their own right, but the murder of a child is even more so. Petitioner cannot begin to fathom the decades of pain and the sense of loss experienced by the Ridulph family as they continue to seek justice for Maria.

Transcript”]. Around 6:30 p.m., they were approached by a stranger who spoke to the girls and gave them piggyback rides. *Id.* This stranger identified himself as “Johnny.” *Id.* After playing with the stranger for a little while, Maria retrieved a doll from her home, and shortly thereafter Kathy decided to go home to get her mittens because her hands were cold. *Id.* When Kathy returned to Archie Street shortly before 7 p.m., both Maria and “Johnny” were gone. *Id.*

Maria’s disappearance set off a massive search within the community, with the Federal Bureau of Investigation (FBI) assuming jurisdiction over the disappearance on December 4, 1957. People’s Answer to Defendant’s Pro Se Petition, *People v. McCullough*, 11 CF 454 at 4 (March 24, 2016) [hereinafter “People’s Answer”]. Maria’s body was discovered on April 26, 1958, in a heavily forested area off Highway 20 between Woodbine and Stockton, Illinois. Trial Transcript (Sept. 10, 2012) at 22.

B. Mr. McCullough Had Nothing to Do With the Crime

Mr. McCullough had absolutely nothing to do with the abduction and murder of Maria Ridulph. Indeed, there was absolutely no physical evidence tying Mr. McCullough to this crime: none of his fingerprints or DNA, nor any other incriminating evidence of any kind, was found at the crime scene, at his house, or in his possession. What is more, the existing evidence demonstrates that it would have been a physical impossibility for Mr. McCullough to commit this crime because at the time of Maria’s abduction he was more than thirty miles away in Rockford, Illinois. Despite the foregoing, Mr. McCullough’s arrest and conviction were based primarily on: 1) an unreliable identification from Kathy Sigman made over fifty years after the crime; and 2) testimony from jailhouse incentivized accusers whose testimony is contradicted by the forensic evidence, and at least two of whom have alleged they were promised undisclosed benefits in exchange for their testimony.

C. Mr. McCullough Was Over 30 Miles Away at the Time of the Crime

The exhaustive FBI investigation into Maria Ridulph's murder – an investigation that included interviewing dozens of individuals in the days immediately following Maria's abduction – demonstrates that it would have been physically impossible for Mr. McCullough to have committed this crime. In short, the FBI determined that Maria was abducted between 6:45 and 7:00 p.m. on December 3, 1957. The FBI also determined that during that same time period Mr. McCullough was in Rockford, Illinois. This was based on the fact that at 6:57 p.m. that same evening, Mr. McCullough phoned his parents from a pay phone in the lobby of the U.S. Post Office located at 401 Main Street in Rockford, Illinois, and that, shortly thereafter – at some point between 7:15 and 7:30 p.m. – Mr. McCullough spoke with Air Force Reserve Officer Theodore Liebovich, Tech Sergeant John Froom, and Staff Sergeant Jon Oswald in that same building, leaving, at Staff Sergeant Oswald's direction, recruitment paperwork with Tech Sergeant Froom. Depending on the route taken, the U.S. Post Office in Rockford is located between 34 and 42 miles away from Sycamore, making it an absolute physical impossibility for Mr. McCullough, or anyone else for that matter, to have both placed the collect call from the Rockford Post Office at 6:57 p.m. and to have participated in the abduction of Maria Ridulph.

Since the People's Answer to Mr. McCullough's pro se petition for post-conviction relief, incorporated here as Exhibit 1, lays out in extreme detail the evidence supporting the timeline described above, the following will only highlight certain key portions of that evidence:

1. Maria Ridulph Disappeared Between 6:45 and 7:00 p.m.

In the ten days immediately following Maria Ridulph's abduction, the FBI interviewed dozens of individuals in connection with her murder, including twenty family members, friends, or neighbors who indicated that they had either seen or heard Maria and her friend Kathy after

6:00 p.m. on December 3, 1957. For example, Tom Braddy, Frances Ridulph, Kay Ridulph, Kenny Davy, Bobby Roy Peifer, Martha Ann Peifer, and others, told the FBI that they all witnessed Maria and Kathy playing alone together between 6:00 p.m. and 6:30 p.m. that evening. FBI Report 2.10.58 at SAO 2703, 2719, 2777-78, 2786-87.

The first individual to see Kathy and Maria interacting with an unknown adult man was Mrs. Stanley Wells, who told the FBI that she saw the three of them together sometime after 6:30 p.m. *Id.* at 2791. Kathy also told the FBI that she went to play with Maria at 6:02 p.m., and that she and Maria played for “about one-half hour” before an unknown man approached them. *Id.* at SAO 2689; FBI Report at SAO 2999 (Dec. 11, 1957) [hereinafter “FBI Report 12.11.57”].

Similarly, Maria’s mother, Frances Ridulph, told the FBI on December 7, 1957 that Maria came into their home around 6:40 p.m. in order to bring one of her dolls outside. FBI Report 2.10.58 at SAO 2703-04. Both Michael Ridulph, Maria’s father, and Charles Ridulph, Maria’s brother, confirmed that Maria came home around this time to get a doll. *Id.* at SAO 2710, 2723. Thus, Maria was seen playing outside alone with Kathy between 6:00 and 6:30 p.m., and seen inside her home retrieving a doll to play with at approximately 6:40 p.m.

Kathy told the FBI on December 4, 1957 that after Maria returned with her doll (again, at some point after 6:40 p.m.), “Johnny” gave Maria another piggyback ride. FBI Report 12.11.57 at SAO 3000. Kathy told Maria her hands were cold and that she was going to go inside to get her mittens, but Maria declined to go with her. *Id.* Before she left to get her mittens, Kathy asked “Johnny” what time it was and, after looking at his watch, “Johnny” said it was 7:00 p.m. *Id.* When Kathy returned from getting her mittens, both Maria and “Johnny” were gone. *Id.*

Charles Ridulph told the FBI on December 4, 1957 that he recalled Kathy coming to their house “shortly before 7:00pm” to report that Maria was missing. *Id.* at SAO 2722. For her part,

Frances Ridulph told the FBI in her interview that Kathy came to the Ridulph's at 6:55pm to inquire where Maria had gone, *Id.* at SAO 2988, but a few days later, she told the FBI Kathy came at 6:45pm. FBI Report 2.10.58 at SAO 2704. Both Frances and Michael Ridulph stated that they went out searching for Maria at 7:00pm. FBI Report 12.11.57 at SAO 2989. The timing of Maria's disappearance comports with Mrs. Wells' statement to the FBI that she heard a shriek at 7:00pm, and did not see Maria or Kathy playing when she subsequently looked out her window. FBI Report 2.10.58 at 2791.

The Ridulphs searched the neighborhood for Maria from 7:00pm until about 7:50pm. FBI Report 12.11.57 at SAO 2989. Around 8:00pm, Frances and Patricia Ridulph, Maria's sister, went to the Sycamore police station to report Maria's disappearance. FBI Report 2.10.58 at SAO 2706. When they arrived at the police station, they spoke with the Sycamore Chief of Police William Hindenburg. *Id.* at SAO 2680. Chief Hindenburg told the FBI on December 4, 1957 that the Ridulphs arrived at the police station "around 8:10pm." *Id.* In the Sheriff's Office "Report of Calls," which the department used to document Maria's disappearance, the call was listed as having been made at 8:10pm. Sheriff's Office Report of Calls at SAO 15. Thus, the local police were not aware of Maria's disappearance until 8:10pm, and, as will be discussed in more detail below, no police-led search for Maria could have taken place until after 8:10pm.

2. Mr. McCullough was in Rockford at the Time of the Abduction

The FBI interviewed Mr. McCullough and his parents on December 8, 1957. All three told the FBI that Mr. McCullough was in Rockford at the time of Maria's abduction on December 3, 1957. These statements are supported by the fact that: 1) Mr. McCullough called his parents' home from a pay phone located in the Rockford Post Office at 6:57 p.m. that same evening; and 2) that after the phone call Mr. McCullough spoke with Air Force Reserve Officer

Theodore Liebovich, Tech Sergeant John Froom, and Staff Sergeant Jon Oswald in that same building at some point between 7:00 and 7:15 p.m.

In regard to the 6:57 p.m. phone call, phone records indicate that a collect call was placed on telephone number 2-9297 to telephone number 3257, which was the number listed for Ralph Tessier, Mr. McCullough's step-father, in Sycamore. Office Memorandum, United States Government at 4, SAO 3154 (Dec. 18, 1957) [hereinafter "Office Memorandum"]. The operator listed the person who had made the collect call as "John S. Tassier," Mr. McCullough's name at the time.² FBI Report at SAO 3071. This call was accepted by Mr. McCullough's family in Sycamore, and it lasted until 6:59 p.m. *Id.* at 4, SAO 3154. The call was confirmed by the FBI in an interview with Dan Schaeffer on December 9, 1957, the day after they had interviewed Mr. McCullough and his parents. *Id.* at 1-4, SAO 3151-54.

Furthermore, in an effort to conclusively determine the location on December 3, 1957 of the phone bearing the number 2-9297, the State's Attorney's Office issued a subpoena duces tecum on December 22, 2015 to the Illinois Bell Telephone Company d/b/a AT&T Illinois ("Illinois Bell"), the land line provider for Rockford, Illinois. People's Answer at 10. In response to the subpoena, Illinois Bell provided conclusive proof that this number (2-9297) was assigned to the pay phone located in the lobby of the building at 401 South Main Street in Rockford, Illinois, which, from at least 1976 through 2001, was the address for the U.S. Post Office in Rockford. Bell Telephone Response to SAO Subpoena 003579.

Moreover, Mr. McCullough reported on December 8, 1957 that his step-father did not pick him up in Rockford until 8:00pm and that he did not return to Sycamore until 9:20pm. FBI Report 12.18.57 at SAO 3073. While Mr. McCullough waited for his step-father at the Post

² The general manager of the Sycamore-Ogle Telephone Company, Dan Schaefer, believed that the last name was simply misspelled and should have been indicated as "Tessier" *Id.* at 4, SAO 3154,

Office Building, he spoke with an Air Force Officer, Colonel Theodore Liebovich, who pointed him in the direction of Technical Sergeant John Froom, whose office was located on the third floor of the Post Office building. *Id.* at SAO 3072, 3076. Mr. McCullough explained to Tech Sergeant Froom that he was seeking an Air Force recruiter, and he was directed to call Staff Sergeant Jon Oswald, which Mr. McCullough did from Sergeant Froom's office. *Id.* at SAO 3072. Staff Sergeant Oswald directed Mr. McCullough to leave completed recruitment paperwork at the office with Sergeant Froom. *Id.* Mr. McCoullough left the recruitment paperwork with Sergeant Froom that very night, as part of his plan to enlist in the Air Force. *Id.* Indeed, ten days later, Mr. McCullough did exactly that.

FBI Special Agent John Roberts, Jr. interviewed Staff Sergeant Oswald on December 10, 1957 via telephone. *Id.* at SAO 3075-77. Oswald confirmed to the agent that Mr. McCullough had spoken with both Colonel Liebovich and Tech Sergeant Froom between 7:15pm and 7:30pm on December 3, 1957. *Id.* at SAO 3076. Furthermore, Oswald confirmed that Mr. McCullough had left paperwork for him with Sergeant Froom on December 3rd. *Id.*

In short, based on an extensive investigation by the FBI, and on all of the evidence gathered pursuant to that investigation, it would have been physically impossible for Mr. McCullough to have committed the crime. Not surprisingly, Mr. McCullough was not considered a suspect by the FBI in 1957 or at any time thereafter, and never should have been considered as a suspect in the first place.

D. The State's 2009 Theory of the Case Is Patently Inaccurate and Misleading

Despite all of the evidence to the contrary, Illinois State Police ["ISP"] investigators assigned to the Ridulph case in 2008 erroneously posited that Maria was abducted between 6:15 and 6:30 p.m., rather than 6:45 and 7:00 p.m. as determined by the FBI in 1957. Again, because

the People's Answer to Mr. McCullough's petition for post-conviction relief, attached here as Exhibit 1, describes in great detail both how ISP investigators came to this conclusion, as well as the many problems with it, this Petition will focus only on describing a few key examples of how exculpatory evidence was completely ignored and/or manipulated in order to indict and/or convict Mr. McCullough despite his airtight alibi.

1. The ISP Ignored Evidence of the Exact Location of the McCullough Phone Call

As indicated above, on the night that Maria Ridulph was kidnapped, Mr. McCullough placed a phone call to his parents in Sycamore, Illinois at 6:57 p.m. from a pay phone in the lobby of the U.S. Post Office located at 401 South Main Street, Rockford, Illinois. People's Answer at 2, ¶¶ 7-8. Based on the location and the time of the call, as indicated above, the FBI concluded that it was "an absolute physical impossibility" for Mr. McCullough to have placed this call and also participate in the abduction of Maria Ridulph. *Id.* at 2, ¶ 10.

However, without proof of the location of the pay phone, and assuming that the call came from some unknown location on the south side of the city, there would have been a very improbable, but perhaps not impossible, chance that someone placing that 6:57 p.m. phone call in Rockford could have abducted Maria Ridulph in Sycamore and then driven to Rockford in time to place that call. In other words, once it was determined that the call came from the post office in downtown Rockford, there would have been no way for Mr. McCullough to have been involved in the crime. Knowing this to be true, the ISP completely ignored all evidence related to the location of the pay phone, including information from the Rockford Park District, the owners of the former post office building, that established that there had been a payphone in the post office building during the relevant timeframe. Even worse, while ISP investigators indicated that they were never able to determine the phone number for that pay phone, Rockford

Park District employees have unequivocally stated that they provided that number to the ISP. People's Answer at 10. In short, ISP investigators knew that there was a pay phone in the Rockford post office in 1957, and were provided with the number for that pay phone that matched the number from which Mr. McCullough placed that 6:57 p.m. call on December 3, 1957, establishing an airtight alibi for Mr. McCullough, but chose to ignore this evidence, even excluding it from their reports, because it did not fit with their theory of the crime.

2. ISP Investigators Misconstrued 1958 FBI Report from Troopers Fraker and Bales

During the second investigation, reports indicate that investigators misconstrued the 1958 memorandum from Troopers Fraker and Bales. People's Answer at 13. This misconstrued information was used to support the theory that Maria Ridulph was abducted earlier than the timeline created by the FBI during their initial interviews. *Id.* However, the memo does not support this. The statement that was used to support this theory read: "That it was known that a man was with Maria at a much earlier time than was indicated by previous reports." *Id.* This statement was not meant to indicate that there was a man with Maria before 6:30-6:45 p.m., but only that adults may have been *alerted* to the fact that there was a man with Maria earlier than the FBI agents initially thought. *Id.*

Taken in context, this statement referred to a phone call that took place between Mr. Tom Braddy and Mrs. Aldena Cliffe, who received a delivery of oil from Mr. Braddy on the evening of December 3, 1957. Shortly after the abduction, Mrs. Cliffe called Mr. Braddy and asked him whether he saw Maria and Kathy playing with a stranger when he delivered the oil to her home near the scene of the abduction. SAO 741. Mr. Braddy told Mrs. Cliffe that he had seen two girls playing together, but did not see a man playing with them. *Id.*

Mr. Braddy was questioned twice about this phone call. Both times, Mr. Braddy related

the same events: that he saw two girls playing together at approximately 6:15 p.m. when he delivered oil to Mrs. Cliffe's house. SAO 741; SAO 2781. Initially, on December 6, 1957, the FBI reported that this call occurred between 7:45 p.m. and 8:00 p.m. SAO 2781. During a subsequent ISP interview on July 27, 1958, however, Mr. Braddy stated that he had this conversation at approximately 7:10 p.m. SAO 741. Thus, in July 1958, when Troopers Fraker and Bales reported that "it was known that a man was with Maria at a much earlier time than was indicated by previous reports," they were referring to the fact that because Mrs. Cliffe asked Mr. Braddy about a strange man, she must have known by the time of the call that a strange man had been with Maria. When investigators learned in July 1958 that Mrs. Cliffe's call occurred at 7:10 p.m., as opposed to 7:45 p.m., that became the earliest recorded evidence of when adults in the community learned that a strange man had interacted with Maria. SAO 741. Only by taking the report out of context could one contend that this single report, in contrast to the numerous reports establishing that Maria was abducted shortly before 7 p.m., supported an argument that the abduction happened as early as 6 p.m.

Unfortunately, this flawed and/or manipulated evidence was the basis for ISP investigators conducting a photo lineup with Kathy Sigman in 2010 that that led to her false identification. As described below, the procedures used to conduct this lineup were highly suggestive, and are one of the primary factors discrediting the Sigman identification.

E. Social Science Research and Expert Testimony Debunk Kathy Sigman's Identification of Mr. McCullough

As stated above, despite being innocent, Ms. Sigman somehow erroneously selected Mr. McCullough's photograph from a photo array. That misidentification was then used to secure Mr. McCullough's conviction. The misidentification is obviously unreliable – the perpetrator was a stranger, while Mr. McCullough was a long-time resident of the small town, living just

two blocks away from Ms. Sigman – but Petitioner’s expert, Dr. Nancy Steblay, provides a lengthy report detailing how Ms. Sigman could have falsely implicated Mr. McCullough.

Dr. Steblay’s report focuses on three primary areas explaining how Ms. Sigman’s unreliable identification of Mr. McCullough came to be: 1) the identification came fifty-two years after the abduction, making it exceedingly unlikely that Ms. Sigman could accurately identify the perpetrator; 2) the photo array was biased against Mr. McCullough, making it more likely that Ms. Sigman would select his photograph despite his innocence; and 3) because Ms. Sigman was so young at the time of the abduction, her identification is suspect due to the inherent fallibility and unreliability of children as eyewitnesses. *See Exhibit 2, Steblay Report.*

Kathy Sigman was only 8 years old at the time that Maria Ridulph was abducted. As Dr. Steblay explains, children have limitations in their ability to pay attention, think about, and organize memory events. *Steblay Report at 6.* More important, because of their limited knowledge and cognitive skills, as well as their histories of socialization, specifically cooperating with and pleasing adults, children are extremely vulnerable to suggestion in interviews with authority figures. *Id.* Indeed, research on facial recognition suggests that children are significantly more likely to make lineup identification errors, whether the culprit is present in the lineup or not, suggesting that children are less likely to have effectively encoded a face at the time of the event but that they are nevertheless willing to make a lineup pick at the time of the lineup. *Id.* This is especially true, where, as here, the face to be encoded by the child is the face of a stranger (Ms. Sigman reported in 1957 that “Johnny” was unknown to her), and the amount of encoding time (the amount of time spent looking at the face in question) is limited. *Id.*

These childhood cognitive and memory deficits are demonstrated by Ms. Sigman’s ever changing descriptions of “Johnny” in 1957. For example, Ms. Sigman first described “Johnny”

to police on December 3, 1957 – the night of Maria Ridulph’s abduction. On that date, Ms. Sigman described “Johnny” as 6 feet tall, about 180 pounds, with blond, wavy hair that fell into his face. FBI Report 12.3.1957 at SAO 2681. She indicated further that “Johnny” was wearing a green, blue, and yellow sweater, a gray hat, and no coat. *Id.* One day later, on December 4, 1957, Ms. Sigman provided a substantially different description of “Johnny” to FBI Special Agent Francis Duffin. FBI Report 12.11.57 at SAO 3003. On December 4, Ms. Sigman described “Johnny” as a white male, approximately 5’8” in height, very thin and between the ages of 25 to 35. *Id.* She stated further that “Johnny” had light brown curly hair with even teeth except for his upper right eyetooth which was missing. *Id.* According to Ms. Sigman, “Johnny” had no distinguishable characteristics like tattoos, glasses or facial hair, nor did he speak with any accent. *Id.* at SAO 3003-04. Finally, Ms. Sigman indicated that “Johnny” was wearing a gray felt hat, blue jeans, a “green, blue and yellow” sweater, and a wristwatch. *Id.*

On December 22, 1957 Ms. Sigman viewed a lineup at the Dane County Jail in Madison, Wisconsin and identified Thomas Joseph Rivard as being “identical” to “Johnny.” FBI Report at SAO 3679 (March 3, 1958) [hereinafter “FBI Report 3.3.58”]. This was a false identification as Rivard was a “filler” in the lineup, not an actual suspect, and the FBI quickly confirmed that his alibi prohibited him from being Maria’s killer. *Id.* at SAO 3679-81. The FBI described Mr. Rivard as 35 years of age, 5 foot 4.5 inches tall, 156 pounds, with dark blond, wavy and/or bushy hair. In addition to Rivard, Ms. Sigman also indicated that William Crego, an individual she observed in a separate lineup in 1957, as being “very similar” to “Johnny”, telling an FBI Special Agent that the disparity between “Johnny” and Mr. Crego was more in voice than appearance. The FBI described Crego as 30 years old, 5 foot 6 inches tall, with medium to long light brown hair. In short, Ms. Sigman’s memory was demonstrated to be unreliable in 1957, changing

significantly across time. Furthermore, the false identification of Rivard demonstrates not only that Ms. Sigman's memory of "Johnny's" face was not detailed or strong enough to avoid a misidentification, but that she was willing to make an identification even though her memory could not have matched the lineup member she identified. Steblay Report at 11.

Unfortunately, during Mr. McCullough's trial in 2012, not only did Ms. Sigman not recall that false identification of Mr. Rivard, but Mr. McCullough's public defender was unable to: 1) introduce into evidence the extreme dissimilarity between these falsely identified individuals and Mr. McCullough, who, for example, stood six inches taller and was 17 years younger than Rivard; or 2) impeach, with the FBI reports, the credibility of Ms. Sigman when she denied ever falsely identifying Rivard because the FBI reports (reports that detail that very identification) had been wrongly declared inadmissible.

Instead, the jury was presented with evidence of Ms. Sigman's 2010 identification of Mr. McCullough – an identification that was highly suspect. Indeed, as indicated above, Dr. Steblay challenges the reliability of this identification because it occurred fifty-two years after the crime, and because of the highly suggestive photo array/lineup procedures used by investigators to gain that identification.

As Dr. Steblay explains, substantial memory deterioration over time is expected. This is especially true for Ms. Sigman, whose description of the culprit in 2010 was significantly vaguer than her initial description 52 years prior. This new description omitted details about clothing and appearance, such as the missing tooth, hair texture, and age.

Furthermore, Dr. Steblay reports that lineup members must meet the physical description provided by the witness when the crime occurred or the lineup becomes suggestive and biased against the suspect. Steblay Report at 4 and 15. However, instead of choosing a lineup that

matched the initial description of the culprit, the police selected a lineup that was composed of young men who “marginally matched...their *suspect*.” *Id.* at 16.

In the 2010 lineup, all six of the photos were from the approximate timeframe of the incident, all were in black and white, and all included young white men; however, none included anyone that fit Ms. Sigman’s initial description. None of the pictures included men between 24-25, none had a visible missing right upper eyetooth, and only one photo included someone whose hair would be long enough to fall in his face. *Id.* The lineup was even more suggestive because Mr. McCullough’s photo stood out from the other photos: the other photos were all taken from a yearbook; Mr. McCullough was the only person looking directly at the camera; and only Mr. McCullough’s photo was cropped, with a dark background, and featuring an informally posed subject. *Id.* See Exhibit 3, photo array from 2010. Of all the photos, only two would fit the description of “tall, slender face, sandy blonde hair,” unjustly putting Mr. McCullough at significant risk of being falsely identified from the suggestive lineup.

The method in which the photo array was displayed to Ms. Sigman was also biased against Mr. McCullough.. *Id.* at 17. According to Dr. Steblay, ideally the witness would be shown the photographs one time, and each photo would be displayed one at a time. *Id.* at 10. Indeed, accurate identifications are typically obtained quickly, without the need for side-by-side comparison of photographs to determine which one looks most like the perpetrator. The lineup should only be viewed a second time if the witness requests it, and this must be documented because subsequent viewings increase the likelihood of false identification. *Id.* Viewing photos individually also decreases the likelihood of false identification as compared to simultaneous lineups where multiple photographs are displayed to a witness at the same time. *Id.* In this case, however, Ms. Sigman viewed the photographs numerous times and compared three of them side-

by-side to identify Mr. McCullough through the process of elimination. *Id.* at 16-17. As a result, Ms. Sigman's identification was less reliable because of the manner in which it was obtained, and should not have been relied upon to prosecute Mr. McCullough in the first place.

F. Allegations of State "Promises" and "Deals" with Prison Informants in Exchange for False Testimony Against Mr. McCullough

As part of their case-in-chief during Mr. McCullough's trial, the State relied on the testimony of three DeKalb County Jail inmates who claimed that they had either spoken directly with Mr. McCullough, or had overheard Mr. McCullough discuss his involvement with Maria Ridulph's disappearance while he was awaiting trial at the DeKalb County Jail. Trial Transcript (Sept. 12, 2012) at 5-40, 132-163; Trial Transcript (Sept. 13, 2012) at 15-44. One incentivized accuser, Christopher Diaz, was being held in the jail for aggravated criminal sexual abuse, and has numerous prior convictions. Trial Transcript (Sept. 12, 2012) at 5-7. "John Doe," who was granted the ability to testify without revealing his identity, had a prior conviction for murder, which resulted in a life sentence, in addition to prior convictions for home invasion, criminal damage to property, and unlawful possession of a weapon by a felon. *Id.* at 132-33, 153. Finally, Kirk Swaggerty had been convicted of murder in 2011, which resulted in a 33 year sentence, in addition to a prior felony drug offense, from which had been paroled when he committed the home invasion and murder. Trial Transcript (Sept. 13, 2012) at 16, 30-32.

All three testified, to some varying degree, that Mr. McCullough gave Maria a piggy-back ride, Maria fell off his back and started screaming, Mr. McCullough then suffocated her, strangled her with wire and hit her on the head before bringing her into his family's house. Trial Transcript (Sept. 12, 2012) at 10-12, 141-144; Trial Transcript (Sept. 13, 2012) at 25. Forensic evidence, however, completely contradicted this testimony. Dr. Latham testified that she examined Maria's body in her role as a forensic anthropologist. She exhumed Maria's remains

and, based on her analysis, determined that unexplained and pronounced cuts to Maria's bones suggested that Maria had been stabbed. Trial Transcript (Sept. 12, 2012) at 79-80. Dr. Latham discovered no evidence of strangulation or any other injury to Maria's body that would corroborate the incentivized accusers' testimony. *Id.* at 94-5. Moreover, no one observed any blood on Mr. McCullough's person, clothing, or in his home shortly after the abduction. Trial Transcript (Sept. 14, 2012) at 27.

At the time of Mr. McCullough's trial, both Doe and Swaggerty had petitions before a trial court to either reconsider their sentence, or vacate their convictions, partly in light of their cooperation in Mr. McCullough's case. Trial Transcript (Sept. 12, 2012) at 157-58; Trial Transcript (Sept. 13, 2012) at 32-34. Importantly, all three jailhouse incentivized accusers testified at Mr. McCullough's trial that they were not offered anything by the State's Attorney's Office in return for their testimony, and that no deals or promises had been made. Trial Transcript (Sept. 12, 2012) at 23-24, 152; Trial Transcript (Sept. 13, 2012) at 29-30.

Yet, the testimony that no "deals" or "promises" were made to these inmates has come into question since the filing of federal civil rights lawsuits by Doe and Swaggerty. Complaint, *John Doe v. Brion Hanley, et. al.*, 16-50175 [hereinafter "Doe Complaint"]. Doe has alleged in his complaint that on September 7, 2012, just days before Mr. McCullough's trial, he was approached by Special Agent Brion Hanley at Stateville Correctional Center seeking information on Doe's conversation with Mr. McCullough while at the DeKalb County Jail. Doe Complaint at ¶ 3. Doe alleges that at that meeting an agreement was struck – Doe would testify pursuant to a gag-order to prevent his identity from being revealed, and in exchange, the State would waive its "un-timeliness" defense to Doe's post-conviction petition, as well as attempt to reduce Doe's security classification so he could be transferred to Dixon Correctional with his family. *Id.* at ¶

7. According to Doe, on September 12, prior to Doe's testimony against Mr. McCullough, Agent Hanley reaffirmed their "agreement," but advised Doe "that [Doe] could not use the words 'deal' or 'promises'" at trial since they would undermine his testimony. *Id.* at ¶ 12. Doe also asserted he met with Assistant State's Attorney Julie Trevarthen who acknowledged that she was aware of the agreement and would contact Doe's public defender in his post-conviction hearing to make him aware of the agreement. *Id.* at ¶ 11. During the same meeting, Doe states that Agent Hanley also promised to "personally speak to Illinois Department of Correction Administrator's" to reduce Doe's security classification so that he could be transferred to another prison to be with an elderly family member. *Id.* at ¶ 12.

Following Doe's testimony against Mr. McCullough, Doe has alleged that the State did not fully follow through on their "agreement." On November 30, 2012, Doe met with Agent Hanley at Stateville. Shockingly, Hanley used a covert-name, "Quinn Brady," in order to hide his contact with Doe, going so far as to list a fictitious address and falsely claiming that he was there as Doe's "friend." *Id.* at ¶ 27, Attachment K.³ Agent Hanley informed Doe that he was still working on the "promises" and "concessions," in addition to arranging with prison officials. *Id.* By January, 2013, Doe had his security classification lowered. *Id.* at ¶ 32-34. By October of 2013, Doe, who had still not been transferred to Dixon, met with Detective Hoffman of the Sycamore Police Department who explained that he would contact Agent Hanley and the new State's Attorney's about the "agreement" in order to get Doe to Dixon. *Id.* at ¶ 44. On March 5, 2014, during Doe's post-conviction hearing, his public defender made reference to the "agreement," but was unable to fully disclose the details to the court because he had not been involved in discussions surrounding the "agreement." *Id.* at ¶ 47, Attachment R. Regardless, the

³ When using his fake name, Brady Quinn, Hanley listed his address as 501 County Road, Wheaton, Illinois. Exhibit K. No such address exists. The Dupage County Sheriff's Department, however, is located at 501 County Farm Road, Wheaton, Illinois.

State's Attorney argued that Doe's post-conviction petition was not timely, telling the court there was no "agreement." *Id.* at Attachment R.

Like Doe, Swaggerty also asserts that there was a deal between himself and State's Attorney Trevarthen. Complaint, *Kirk Swaggerty v. Julie Trevarthen, et. al.*, 16-50276, at 4 [hereinafter "Swaggerty Complaint"]. In meetings with State's Attorneys Trevarthen and Escarcida, between September 10, 2012 and September 13, 2012, Swaggerty was convinced to testify against Mr. McCullough. *Id.* Swaggerty alleges that State's Attorney Trevarthen told him that if he testified against Mr. McCullough, she would testify on Swaggerty's behalf in his pending motion to reconsider sentence hearing. *Id.* On September 13, 2012, Swaggerty testified against Mr. McCullough, fulfilling his promise to the State's Attorneys. *Id.* However, Swaggerty asserts that State's Attorney Trevarthen did not testify at the hearing on his motion to reconsider on August 27, 2014. *Id.*

The allegations raised in Swaggerty and Doe's complaints provide further evidence undermining the credibility of the three jailhouse incentivized witnesses. That evidence, however, was hidden from Mr. McCullough's jury.

G. The State Withheld and Misconstrued Testimony from Mr. McCullough

On June 29, 2011, Detective Irene Lau interviewed Mr. McCullough about Maria Ridulph's disappearance. Trial Transcript (Sept. 10, 2012) at 88. During direct examination, Detective Lau testified about Mr. McCullough's demeanor during the interview, indicating that there was a marked change when discussing Maria Ridulph. *Id.* at 90. Although the interview was recorded, at the time of the trial, Detective Lau's testimony was the only evidence presented about this interview. In fact, State's Attorney Trevarthen went so far as to inform the Court that the video recording of the interview did not exist. Trial Transcript (Aug. 14, 2012) at 26.

However, this video not only exists, but was finally made available to Mr. McCullough on August 17, 2016. *See* Exhibit 4, REL Lau Video Illinois Homicide, <https://youtube/ABme98pRW3c> [hereinafter “Lau Video”].

During her testimony, Detective Lau attempted to falsely portray Mr. McCullough as unnaturally fixated on Maria. Her entire testimony consisted of her recounting her interview with Mr. McCullough in Seattle. At trial, Detective Lau claimed that Mr. McCullough “described [Maria Ridulph] as being very stunningly beautiful with big brown eyes and he stated that she was ‘lovely, lovely, lovely’.” *Id.* at 90. This was completely false. As the video of the interview bears out, it was Detective Lau who called Maria beautiful, not Mr. McCullough, and Mr. McCullough said nothing about Maria’s appearance until Lau tried to goad him by saying “bi-racial” couples “make the most beautiful kids,” in reference to the fact that Maria had multi-ethnic parents. Lau Video at 9:22. Mr. McCullough simply agreed with Lau that Maria was adorable with big brown eyes. *Id.* At trial, Detective Lau omitted her precursor statements about Maria’s appearance and falsely reported Mr. McCullough’s statements. Further, Detective Lau suggested that Mr. McCullough’s (fabricated) statements were even more incriminating because of his demeanor when he made them. According to Detective Lau’s trial testimony, when Mr. McCullough discussed Maria Ridulph, his “entire face changed. It softened and...he had just totally relaxed at this point.” Trial Transcript (Sept. 10, 2012) at 91. Driving the point further, Detective Lau claimed that Mr. McCullough “was pretty angry” and “alternated between rage and calm” *id.* at 89, during his interview, but when he discussed Maria he became eerily calm. *Id.* at 91. The video demonstrates that there was no significant change in Mr. McCullough’s volume, posture, or demeanor when he mentioned Maria, nor was there any indication that Mr. McCullough was angry or enraged during the interview. Lau Video.

Sadly, Mr. McCullough did not have the video of the interview to impeach Lau's testimony and present the true picture of what happened. To compound the injustice, the State relied on this false evidence in closing, contending that Lau's fabricated account of Mr. McCullough's supposed demeanor while discussing Maria actually corroborated the incentivized accusers' testimony. The evidence was false, of course, but Mr. McCullough had no way to prove that at trial without the video evidence. Trial Transcript (Sept. 14, 2012) at 45-46.

II. ARGUMENT

Mr. McCullough's conviction for the murder of Maria Ridulph has been vacated and the charges against him have been dismissed, but his record still reflects his erroneous conviction in 2012 for the same crime. Mr. McCullough has suffered the injustice of a wrongful conviction and spent nearly 5 years in prison for a crime he did not commit. His conviction became national news and people across the country have been left with the erroneous belief that Mr. McCullough is guilty. Although he has been released from prison, Mr. McCullough still suffers from that injustice: indeed, the crime for which Mr. McCullough was convicted, a kidnapping and murder of a 7 year-old girl nearly 60 years ago, has already and will continue to prove especially stigmatizing. Mr. McCullough deserves to have this injustice corrected and the opportunity to seek the statutory compensation and job training provided by the statute.

Section 5/2-702 of the Illinois Code of Civil Procedure (hereinafter, "Section 702") provides for such a remedy: It establishes a process whereby wrongfully convicted individuals may petition the circuit court for a Certificate of Innocence. 725 ILCS 5/2-702.

A. Legal Standard

Section 702 is designed to simplify the process for a wrongfully convicted individual to seek redress for his injustice. In the face of "frustrat[ion] with the technical obstacles" facing

those attempting to establish their innocence, the General Assembly created the Certificate of Innocence mechanism. 735 ILCS 5/2-702(a). Under Section 702, a wrongfully convicted individual whose conviction has been overturned is entitled to a Certificate of Innocence if he can prove, by a preponderance of evidence, that:

1. He was convicted of a felony in Illinois and served all or part of a term of imprisonment as a result of that conviction;
2. His conviction has been vacated and the indictment/information has been dismissed;
3. He is “innocent of the offenses charged”; and
4. He did not by his “own conduct voluntarily cause or bring about [his] or her conviction.”

735 ILCS 5/2-702(g).

The petition must “state facts in sufficient detail to permit the court to find that petitioner is likely to succeed at trial in proving that the petitioner is innocent of the offenses charged.”

735 ILCS 52-702(d). The petition must be verified, filed in the same circuit court where the petitioner was convicted and served on the Attorney General and the State’s Attorney’s Office. 735 ILCS 5/2-702(e).

There is no requirement of proving any element of the petition beyond a reasonable doubt. To the contrary, the “more likely than not” preponderance standard is all that must be met. 735 ILCS 5/2-702(g). When evaluating such claims, the Court is permitted to take judicial notice of prior sworn testimony or evidence admitted in the proceedings. 735 ILCS 5/2-702(f).

B. Mr. McCullough Satisfied The Test Set Forth In Section 702

Mr. McCullough’s case is exactly the type of case the legislature had in mind when it enacted Section 702. Evidence gathered by the FBI in 1957, based on statements from unbiased military personnel and telephone operators, clearly demonstrates that Mr. McCullough was in

Rockford at the time that Maria Ridulph was abducted in Sycamore. This evidence was verified by the State's Attorney's Office in 2015 through a subpoena on AT&T Illinois, and formed the basis for the State's Attorney's Office to support Mr. McCullough's petition for post-conviction relief, urging the Court to vacate his conviction and to dismiss the charges against him. This alibi evidence alone meets the requirements of Section 702 and demonstrates that Mr. McCullough is deserving of relief under the statute.

1. Mr. McCullough Meets Section 702's Procedural Requirements

Section 702 contains certain procedural requirements. Mr. McCullough has satisfied each of them. First, Mr. McCullough was convicted of a felony in this Circuit Court. He was sentenced to natural life in prison for the murder and kidnapping of Maria Ridulph. Mr. McCullough served nearly 5 years in prison solely for those charges before his conviction was vacated, at the State's Attorney's request, and the charges against him were dismissed.

Second, on April 15, 2016, Mr. McCullough's conviction and life sentence were vacated by the trial court judge following the State's Attorney's answer to Mr. McCullough's petition. On April 22, the State's Attorney's Office dismissed all charges against Mr. McCullough.

Third, Mr. McCullough's claim is not time-barred. A petitioner has two years to file a petition for a Certificate of Innocence following the dismissal or vacation of his conviction. 735 ILCS 5/2-702(i). Mr. McCullough's conviction was vacated on April 22, 2016 and he now files this Petition well within the time allotted.

Fourth, this Petition is verified, has been filed in the Circuit Court of Cook County, and copies of this Petition have been served on the State's Attorney and the Attorney General, as demonstrated by the attached Certificate of Service. As such, Mr. McCullough has satisfied each of the procedural prerequisites for a Certificate of Innocence.

2. Mr. McCullough Has Demonstrated His Innocence By A Preponderance Of The Evidence

Mr. McCullough has likewise satisfied the substantive requirement that he demonstrate his innocence by a preponderance of the evidence. Mr. McCullough has repeatedly asserted his innocence for nearly 60 years, from the day he was interviewed by FBI agents in 1957 through his 2012 trial, and his post-conviction petitions. By verifying this petition, Mr. McCullough has reaffirmed his innocence in these proceedings. Mr. McCullough was not involved in any way in this crime, and there is no evidence whatsoever that he was Maria's abductor, "Johnny." His steadfast assertion of innocence, in conjunction with the evidence and timeline of events established by the FBI in 1957, is more than enough to grant Mr. McCullough's Certificate of Innocence petition.

Indeed, the 1957 FBI reports, which are easily the most reliable pieces of evidence given their proximity to the crime, clearly show that Mr. McCullough was in Rockford when Maria disappeared. Maria was seen by numerous individuals playing with Kathy, and then "Johnny," between 6:00pm and 6:40pm. In numerous interview with the FBI shortly after Maria's disappearance, her family confirmed that she had come into their home between 6:40pm and 6:45pm to get a doll, and that between 6:55pm and 7:00pm Kathy returned to their home to inquire about Maria's whereabouts. Meanwhile, Mr. McCullough had arrived by train in Rockford, somewhere between 34 to 42 miles away from Sycamore, shortly before Maria disappeared. During the timeframe of Maria's disappearance, there is conclusive proof that Mr. McCullough was in Rockford: (1) the 6:57pm telephone call from the Rockford Post Office to his step-father in Sycamore; and (2) Staff Sergeant Jon Oswald's interview with the FBI that confirms that Mr. McCullough was in the Rockford Post Office speaking with members of the Air Force recruiting office.

As a result of this overwhelming evidence in the 1957 FBI reports, the State admitted in its Answer that “Maria Ridulph was abducted . . . between 6:45pm and 7:00pm on December 3, 1957.” People’s Answer at 1, ¶ 4. Additionally, the State admitted that “there is no reasonable basis to claim that [the Rockford phone] call was not made or that it was made by someone other than [Mr. McCullough],” and that he had met with the Air Force officers between 7:15pm and 7:30pm in the Rockford Post Office. *Id.* at 2, ¶ 9, 11. Thus, the State admitted that the FBI accurately concluded that “it is an absolute physical impossibility” for Mr. McCullough to have been in Rockford placing phone calls while simultaneously participating in Maria’s abduction, and “that there was nothing incorrect about their conclusion that [Mr. McCullough] was not involved.” *Id.* at 2, ¶ 10.

The State relied on two pieces of evidence in order to secure its conviction: (1) Kathy Sigman’s erroneous identification of Mr. McCullough fifty-two years after the crime; and (2) the testimony of the three jailhouse incentivized witnesses who testified that Mr. McCullough admitted to the crime in ways that are contradicted by the forensic evidence. As described above, and as detailed in the State’s Attorney’s Answer to Mr. McCullough’s petition which directly led to his conviction being vacated, there are serious issues with all of this evidence.

First, Kathy Sigman’s identification of Mr. McCullough was both suggestive and biased. Given the passage of 52 years, the deterioration of her memory of Maria’s abduction, and the photos used in the police lineup, Ms. Sigman’s identification of Mr. McCullough was not only unreliable, it failed to follow the best practices for identification evidence. Steblay Report at 9.

Second, it is well-established that testimony from incarcerated incentivized witnesses is inherently unreliable. See e.g., *People v. Belknap*, 2014 IL 117094, ¶ 55, 23 N.E.3d 325, 338 (“testimony of jailhouse informants must be viewed with caution”); *People v. Lockett*, 2014 IL

App (4th) 4120440-U (indicating that federal courts have found the use of paid informants raises credibility concerns (*On Lee v. United States*, 343 U.S. 747, 757 (1952))), and this inherent unreliability of informant testimony has compelled several federal circuit courts to hold an “informant instruction” is always mandatory (*United States v. Luck*, 611 F.3d 183, 187 (4th Cir.2010)); The Justice Project, Jailhouse Snitch Testimony: A Policy Review 1 (2007), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/wwwpewtrustsorg/reports/death_penalty_reform/Jailhouse20snitch20testimony20policy20br (stating that “snitch testimony is widely regarded as the least reliable testimony encountered in the criminal justice system”); Hugo Adam Bedau & Michael L. Radelet, *Miscarriages of Justice in Potentially Capital Cases*, 40 Stan. L. Rev. 21, 57 (1987) (reporting that jailhouse informants testified falsely in 117 of the 350 wrongful convictions studied); Russell D. Covey, *Abolishing Jailhouse Snitch Testimony*, 49 Wake Forest L. Rev. 1375, 1377 (2014) (concluding that the testimony of incarcerated incentivized witnesses is intrinsically untrustworthy and the single greatest cause of wrongful convictions); Alexandra Natapoff, *Snitching: Criminal Informants and the Erosion of American Justice* 6 (2009).

Here, the testimony of the three jailhouse incentivized witnesses is demonstrably false based on the forensic evidence, and their credibility is even more suspect based on the possibility that they may have been promised undisclosed benefits in exchange for their testimony.

C. Mr. McCullough Did Not Contribute To Or Cause His Wrongful Conviction

Mr. McCullough did not contribute to or cause his wrongful conviction. To the contrary, he has been steadfast for nearly 60 years in his assertions of innocence and his efforts to overturn his wrongful conviction.

D. Mr. McCullough's Need For Relief Under Section 702

Mr. McCullough desires relief under Section 702 in order to clear his name of the heinous crime for which he was wrongfully convicted and obtain the benefits afforded to him by the statute. Mr. McCullough, at age 76, has been forced to readjust to the outside world at a very old age. He had been working in security in the Seattle area before his arrest and wrongful conviction. He would be well-served by being eligible for employment assistance, such as job and placement services, available to those who have been granted a Certificate of Innocence.

Finally, the Certificate of Innocence would potentially entitle Mr. McCullough to statutory compensation which the Illinois legislature has made available to innocent individuals who were incarcerated for crimes they did not commit. This compensation is awarded to those wrongfully convicted individuals who are determined innocent. The maximum amount of compensation available to Mr. McCullough is relatively small, given the magnitude of his loss, but significant for a man who left prison with very few assets to his name. In short, the statutory compensation will help Mr. McCullough readjust to living as a free man at age 76.

CONCLUSION

Mr. McCullough did not commit the horrible crime for which he spent nearly 5 years of his life in prison. Due to his steadfast determination to prove his innocence, and an exhaustive FBI investigation in 1957 and 1958 that proves that innocence, Mr. McCullough was able to have his conviction overturned and the charges against him dismissed. Mr. McCullough desires to move on with his life and to leave this conviction and its terrible consequences behind him. For the foregoing reasons, he respectfully requests that this Honorable Court grant his Petition for a Certificate of Innocence pursuant to 735 ILCS 5/2-702.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Jon Loevy". The signature is fluid and cursive, with the first name "Jon" being more prominent than the last name "Loevy".

Attorneys for Jack McCullough
October 6, 2016

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VERIFICATION BY CERTIFICATION

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, 735 ILCS 5/1-109, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Date: 28 SEPT. 2016


Signature of Petitioner