

IN THE  
APPELLATE COURT OF MARYLAND

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Case No. CSA-REG-1291-2022

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YOUNG LEE, AS VICTIM'S REPRESENTATIVE,

*Appellant,*

v.

STATE OF MARYLAND  
and ADNAN SYED,

*Appellees.*

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Appeal from the Circuit Court of Baltimore County  
Case No. 199103042 (Hon. Melissa Phinn)

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**BRIEF OF THE INNOCENCE PROJECT  
AND THE CENTER ON WRONGFUL CONVICTIONS  
AS AMICI CURIAE IN SUPPORT OF APPELLEES**

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## IDENTITY AND INTEREST OF *AMICI CURIAE*<sup>1</sup>

The Innocence Project is an organization dedicated primarily to providing pro bono legal and investigative services to indigent prisoners whose actual innocence may be established through post-conviction evidence. It has a specific focus on exonerating long-incarcerated individuals through use of DNA evidence. It also seeks to prevent future wrongful convictions by researching their causes and pursuing legislative and administrative reform initiatives designed to enhance the truth-seeking functions of the criminal justice system—including identifying those who actually committed crimes for which others were wrongfully convicted. As perhaps the nation’s leading authority on wrongful convictions, the Innocence Project is regularly consulted by officials at the state, local, and federal levels. To date, the Innocence Project has helped exonerate 241 wrongly convicted people nationwide. Of the four exonerations secured by the Innocence Project in 2022, three of the cases were wrongful convictions that resulted from the suppression of *Brady* evidence.

Part of Northwestern University Pritzker School of Law, the Center on Wrongful Convictions (the “Center”) has worked to exonerate and free

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<sup>1</sup> The parties have consented to the Innocence Project and the Center on Wrongful Convictions filing this brief. *Amici* state that no money intended to fund preparing or submitting this brief was contributed by a party or party’s counsel or anyone other than *amici*, their members, or their counsel. See Md. Rule 8-511(b)(1)(E).

individuals who have been wrongfully convicted since its founding in 1999. Dedicated to identifying and rectifying wrongful convictions and other serious miscarriages of justice, the Center has exonerated more than 50 innocent individuals across the country, with a special focus on individuals convicted when children or teenagers. The Center also has a well-established tradition of generating influential scholarship about the prevalence, causes, and social costs of wrongful convictions, and of contributing that expertise to legislative and policy-making bodies tasked with improving the accuracy and fairness of the criminal justice system.

In the course of righting wrongful convictions, the Innocence Project and the Center have long histories of working closely and respectfully with crime victims and their families whenever possible.

The Innocence Project and the Center (together and separately) regularly file *amicus* briefs in cases raising substantial issues relating to criminal law, including in cases implicating the constitutional protections afforded by *Brady v. Maryland*, 373 U.S. 83 (1963). In *amici's* experience, violations of *Brady* can and repeatedly have contributed to wrongful prosecutions and/or wrongful convictions. *Amici's* appearance in this case is prompted by their belief that all reliable criminal convictions must comport with *Brady's* constitutional mandates, and that any

violations thereof should be corrected to ensure the fair administration of criminal justice.

### SUMMARY OF ARGUMENT

Twenty-three years ago, Maryland teenager Adnan Syed was convicted of the 1999 murder of his former girlfriend, Hae Min Lee. Daniel Victor, *Timeline: The Adnan Syed Case*, N.Y. Times (Oct. 11, 2022), <https://www.nytimes.com/article/adnan-syed-serial-timeline-serial.html>. In March 2022, the State of Maryland agreed that post-conviction DNA testing utilizing advances in forensic technology was warranted. *Id.* That testing yielded a DNA sample capable of comparison on one item of evidence, and that DNA profile excluded Mr. Syed. *Id.*

On September 14, 2022, the State of Maryland announced that a nearly year-long investigation had revealed that, prior to Mr. Syed's 2000 trial, the State failed to turn over to the defense information related to third-party guilt, including written notes reflecting a threat made against the victim by someone other than Mr. Syed. Based on this *Brady* violation and the discovery of numerous other investigative deficiencies, the State moved to vacate Mr. Syed's conviction. *Id.* The court granted the State's motion and released Mr. Syed. *Id.* Charges against Mr. Syed were subsequently dismissed. Mr. Syed is now employed and living safely in the community. See Nick Anderson & Omari Daniels, *Georgetown Hires Adnan Syed after Court Tossed His Murder Conviction*, Wash. Post (Dec. 23, 2022),

<https://www.washingtonpost.com/education/2022/12/23/adnan-syed-georgetown-hire-conviction/>.

*Amici's* experience, confirmed by academic studies, is that wrongful convictions are frequently caused by *Brady* violations, particularly where the non-disclosed evidence relates to alternative perpetrators, as in Mr. Syed's case. Vacatur of a conviction upon the discovery of a *Brady* violation, accordingly, is a normal and indeed appropriate result that has taken place in over a thousand similar cases around the country. While crime victims enjoy certain rights of notice and attendance under federal and state statutes, and under certain circumstances help to inform legal-judicial outcomes, that is not the case where the determination at issue is whether U.S. constitutional protections guaranteed to criminal defendants have been violated. If there were to arise a conflict between a right conferred upon a victim by state statute and a violation of a defendant's federal constitutional right, such as the suppression of material exculpatory evidence in violation of a defendant's due process rights, the Supremacy Clause of the U.S. Constitution would require the court to remedy the constitutional violation.

## ARGUMENT

### I. ***Brady* Protections Are Critical To A Criminal Trial’s Truth-Seeking Function And Serve An Important Purpose In Protecting Against Wrongful Conviction.**

A state’s obligation to disclose exculpatory evidence is governed by U.S. constitutional doctrine emanating from *Brady v. Maryland*, 373 U.S. at 87, and its progeny. See, e.g., *Turner v. United States*, 137 S. Ct. 1885, 1893 (2017); *Connick v. Thompson*, 563 U.S. 51, 71-72 (2011); *Arizona v. Youngblood*, 488 U.S. 51, 57-58 (1988). In *Brady*, the Supreme Court ruled that withholding material evidence favorable to a defendant violates a defendant’s constitutional rights under the Fourteenth Amendment’s Due Process Clause. 373 U.S. at 87-88. *Brady* requires prosecutors to share with the defense any evidence that is potentially exculpatory and material to either guilt or punishment, including evidence regarding alternative suspects. *Id.*; see also, e.g., *Kyles v. Whitley*, 514 U.S. 419 (1995) (finding a *Brady* violation where undisclosed evidence pointed to an alternative suspect); *Faulkner v. State*, 468 Md. 418, 468, 227 A.3d 584, 613 (2020) (“[S]trong alternate perpetrator evidence can be very powerful in the defense of a person accused of a crime where the primary issue in dispute is identity.”).

*Brady* violations have important ramifications for the criminal justice system. Of the 3,355 known exonerations in the United States since 1989, a staggering 1,627 (or over 48%) involved undisclosed exculpatory evidence. See *National Registry of*

*Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/detailist.aspx> (last accessed Jan. 9, 2023).<sup>2</sup> Moreover, given the difficulty of uncovering a *Brady* violation, the problem is likely understated. See Margaret Z. Johns, *Unsupportable and Unjustified: A Critique of Absolute Prosecutorial Immunity*, 80 *Fordham L. Rev.* 509, 513 (2011) (“The failure to discover prosecutorial misconduct is especially likely in cases of *Brady* violations.”); Brandon L. Garrett, *Judging Innocence*, 108 *Colum. L. Rev.* 55, 111 (2008) (*Brady* violations “may be far higher than just those who brought *Brady* claims, because improper concealment of evidence may often avoid detection even after an exoneration.”). Indeed, it is the recent uptick in the creation of Conviction Integrity Units (“CIUs”) or similar units within prosecutors’ offices around the country, which re-investigate cases to determine if wrongful convictions occurred, that has resulted in the recent discovery of many *Brady* violations.<sup>3</sup> Such units have been instrumental, through

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<sup>2</sup> As of January 9, 2023, the database has recorded 3,355 exonerations since 1989. Filtering the database for cases involving withheld exculpatory evidence returns 1,627 total cases.

<sup>3</sup> Many state and local governments have created CIUs to re-examine questionable convictions, including those that involved *Brady* violations, and to guard against future error. CIUs are public agencies housed as divisions in prosecutorial offices that work to “prevent, identify, and remedy false convictions.” *Nat’l Registry of Exonerations*, <https://www.law.umich.edu/special/exoneration/Pages/Conviction-Integrity-Units.aspx>. “CIUs have a unique opportunity to identify, rectify, and prevent the most serious violations: they have unique access to the prosecutor’s files, which often makes the claim relatively simple to prove, and aids the investigative staff in uncovering what occurred, sometimes decades earlier.”

open-file discovery and joint re-investigations, in unearthing previously-suppressed *Brady* evidence.

As the National Registry of Exonerations' data shows, *Brady* is one of our criminal justice system's key protections for the wrongfully convicted. Indeed, the purpose of the *Brady* rule is to address the inherent information imbalance between the government and the defense, the correction of which is critical to afford the accused a fair opportunity to present a complete defense at trial. *Brady*, 373 U.S. at 87. This need is particularly acute in the context of alternative-perpetrator evidence, the suppression of which can render both the guilt and sentencing phase of a trial unfair to the accused and which can also ultimately distort the trial process' search for truth. *Id.* at 87-88.

Considering how important disclosure of exculpatory information is to the reliability of convictions, it is unsurprising that studies have shown *Brady* violations to be a statistically significant predictor of a wrongful conviction. For example, scholars Jon B. Gould, Julia Carrano, Richard A. Leo, and Joseph Young

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Lissa Griffin & Daisy Mason, *The Prosecutor in the Mirror: Conviction Integrity Units and Brady Claims*, 55 Loy. L.A. L. Rev. 1005, 1050-51 (2022). As of February 2022, there were 93 CIUs in the United States, including Maryland's. *Id.* at 1012. The Innocence Project has issued a set of guidelines entitled, "Conviction Integrity Unit Best Practices," that seeks to ensure that these units operate effectively. Innocence Project, *Conviction Integrity Unit Best Practices* (Oct. 15, 2015), <https://www.innocenceproject.org/wp-content/uploads/2016/09/Conviction-Integrity-Unit.pdf>.

conducted an extensive study that compared wrongful convictions with cases involving “near misses” – that is, cases in which individuals were charged but not convicted. Jon B. Gould et al., *Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice* at ii-iii, xv-xvii (2012), <https://www.ncjrs.gov/pdffiles1/nij/grants/241389.pdf>. By comparing these sets of cases, the researchers identified factors uniquely present in cases involving wrongful convictions, but not present in cases involving acquittal or the dismissal of charges. *Id.* at xviii-xxiii; Jon B. Gould et al., *Predicting Erroneous Convictions*, 99 Iowa L. Rev. 471, 488-94 (2014).

One such factor was the withholding of exculpatory evidence. Using bivariate and logistic regression techniques, Gould and his colleagues concluded that *Brady* violations are statistically significant predictors of the conviction of innocent individuals, “severely harm[ing] the system’s ability to self-correct from initial errors” that resulted in indictments of innocent people. Jon B. Gould et al., *Predicting Erroneous Convictions*, 99 Iowa L. Rev. at 501; see also *Predicting Erroneous Convictions: A Social Science Approach to Miscarriages of Justice*, *supra* at 89-90. Other studies have reached the same conclusion. See, e.g., James S. Liebman et al., *Capital Attrition: Error Rates in Capital Cases, 1973-1995*, 78 Tex. L. Rev. 1839, 1844, 1850, 1864 & n.79 (2000) (finding after reviewing capital sentences that *Brady* violations

were one of “the two most common errors” leading to reversals of death sentences and accounted for 16% of state post-conviction reversals).

Unfortunately, although it is well-recognized that “precise estimates are impossible,” it is “widely agree[d] that *Brady* violations are not uncommon.” Jon B. Gould et al., *Mapping the Path of Brady Violations: Typologies, Causes & Consequences in Erroneous Conviction Cases*, 71 *Syracuse L. Rev.* 1061, 1071 (2021); see Bennett L. Gershman, *Reflections on Brady v. Maryland*, 47 *S. Tex. L. Rev.* 685, 686 & n.8 (2006) (surveying sources finding that “hundreds of convictions have been reversed because of the prosecutor’s suppression of exculpatory evidence”).<sup>4</sup> The instant case, in short, is no unicorn; rather, it is one in a long line of cases involving the post-conviction discovery and disclosure of previously unknown evidence that casts into fresh doubt the ability of a decades-earlier trial to find the truth.

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<sup>4</sup> For additional sources, see Kathleen M. Ridolfi & Maurice Possley, *Preventable Error: A Report on Prosecutorial Misconduct in California 1997-2009* at 36-37 (2010); Hadar Aviram, *Legally Blind: Hyperadversarialism, Brady Violations, and the Prosecutorial Organizational Culture*, 87 *St. John’s L. Rev.* 1, 4-5 (2013); Peter A. Joy, *The Relationship Between Prosecutorial Misconduct and Wrongful Convictions: Shaping Remedies for a Broken System*, 2006 *Wis. L. Rev.* 399, 421-22 (2006).

## II. **Victims' Rights Laws Provide Important Protections But Cannot Defeat The Constitutional Imperative To Remedy Violations Of A Defendant's Constitutional Rights.**

Victims in Maryland enjoy certain limited statutory rights. State law confers to a victim or her representative the right to receive notice of “any proceeding in which the right to appear has been granted to a defendant,” but only “[i]f practicable.” Md. Code Ann., Crim. Proc. § 11-102. It guarantees notice of post-conviction proceedings, *id.* § 11-503, but not participation in those proceedings. And the victim is permitted to address the court or have a victim-impact statement read by the court at sentencing or a hearing to alter a sentence—but that right applies only in sentencing and sentencing-related proceedings. *See, e.g.,* Md. Code Ann., Crim. Proc. §§ 11-402, 11-403(b); Md. Rule 4-345(e)(3).

In short, Maryland victims' rights statutes do not provide victims with party status. Md. Code Ann., Crim. Proc. § 11-103(b); *see also Griffin v. Lindsey*, 444 Md. 278, 281, 119 A.3d 753, 754 (2015) (“In Maryland, a victim is not a party to a criminal prosecution.”). And because a victim is not a party, he or she has no right to litigate the case and has only limited rights to attend proceedings. *See generally Maryland Restorative Just. Initiative v. Hogan*, 316 F.R.D. 106, 114 (D. Md. 2016) (explaining that Maryland's victims' rights statutes provide a right “to notice and to be heard at criminal proceedings” but “do not confer party status on victims”) *Cf. Erin C. Blondel, Victims' Rights in an Adversary System*, 58 Duke L.J. 237, 260

(2008) (under the federal victims' right statute, "victims remain nonparties to criminal proceedings with no right to litigate the merits of a criminal case").

Even if Maryland's victims' rights statutes were broader, those statutes would not, and could not, induce a court to overlook a reversible violation of a defendant's federal constitutional right in a criminal case. The Fifth and Fourteenth Amendments to the U. S. Constitution require the provision of due process, which includes the right to timely receive material exculpatory evidence. *See infra*. In the event of conflict with state law, pursuant to the Supremacy Clause, *see* U.S. const. art. VI, cl. 2, a right guaranteed by the U.S. constitution would prevail. *See generally* Robert C. Black, *Forgotten Penological Purposes: A Critique of Victim Participation in Sentencing*, 39 Am. J. Juris. 225, 227 (1994) ("Victims' rights bestowed by statute are necessarily subordinate to defendants' constitutional rights in case of conflict.").

In short, *amici* recognize the importance of victim participation in criminal proceedings and are ever mindful of and deeply sympathetic to the heavy impact of the dismissal of a conviction, and the renewal of an investigation, on a victim's family members. *See* Nat'l Inst. Justice, *Just Wrong: The Aftermath of Wrongful Convictions* (2017), <https://nij.ojp.gov/media/video/23546> ("The consequences of a wrongful conviction are far-reaching for the wrongfully convicted and the survivors and victims of the original crimes."). But the victim's family's pain in

this case is due in part to the State's 22-year-long failure to disclose *Brady* material, rather than the vacatur of Mr. Syed's conviction. Moreover, the constitutional imperative to remedy a violation of a defendant's right to a fair trial is a bedrock principle. Even if a victim's rights were not adequately accounted for during trial court proceedings, the remedy would not be to convict or detain a defendant unlawfully. Just as the Supremacy Clause would prohibit enforcement of a state law less protective of due process than *Brady* requires, it also would prohibit enforcement of a statutory right conferred upon a victim in a manner that precludes a court from remedying a *Brady* violation.

### CONCLUSION

Because Mr. Syed's conviction was vacated based on the State's suppression of favorable evidence in violation of *Brady*, even if the victim's rights were violated, the outcome of the vacatur proceeding could not be any different. For these reasons, *amici* respectfully request that this Court affirm the judgment of the court below.

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**CERTIFICATION OF WORD COUNT AND  
COMPLIANCE WITH RULE 8-112**

1. This brief contains 2,636 words, excluding the parts of the brief exempted from the word count by Rule 8-503.
  
2. This brief complies with the requirements stated in Rule 8-112.

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## CERTIFICATE OF SERVICE

I, Jessica Ring Amunson, an attorney hereby certify that on January 9, 2023, I caused the **Brief of The Innocence Project and the Center on Wrongful Convictions as *Amici Curiae* in Support of Appellees** to be filed with the Court and served electronically to registered users via the Court's MDEC system.

I further certify that on January 10, 2023, I will cause two copies of the above named brief to be served on each of the parties on the attached service list via UPS overnight delivery, delivery charge prepaid. In addition, on January 10, 2023, eight copies of the above named brief will be sent via UPS overnight delivery, delivery charge prepaid, to the Clerk of the Court.

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