IN THE SUPREME COURT OF UTAH

No. 20240171-SC

STATE OF UTAH,
Plaintiff/Petitioner,

v.

WILLIAM ALLEN UPTAIN,
Defendants/Respondent.

Appeal from the Seventh Judicial District Court, Emery County, before the Honorable Jeremiah Humes.

BRIEF OF AMICI CURIAE AMERICAN CIVIL LIBERTIES UNION OF UTAH and ROCKY MOUNTAIN INNOCENCE CENTER IN SUPPORT OF RESPONDENT

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INTRODUCTION AND SUMMARY OF THE ARGUMENT

An appellate court on direct appeal may not have all the information it needs from the trial record to determine whether a defense attorney rendered ineffective assistance of counsel. This, however, is not one of those cases. Here, trial counsel had a forced move to avoid checkmate at trial and failed to make it.

The trial record shows that the ***only*** evidence the State had against Mr. William Allen Uptain was a confession elicited in the jail's booking area. But only until halfway through Uptain's custodial interrogation, after he had already made incriminating statements, did law enforcement issue *Miranda* warnings. Further, there was no break in the interrogation between the pre-*Miranda* and post-*Miranda* statements. Consequently, all of Uptain's statements were susceptible to a suppression challenge. Without those incriminating statements, the State would have no case. With those statements, however, Mr. Uptain would have no viable defense. The only conceivable option for trial counsel to avoid a conviction at trial was to file a motion to suppress the statements due to an insufficient *Miranda* warning. That motion was never filed.

This failure to file a suppression motion was inexplicable. Competent defense counsel would move to suppress a confession obtained in violation *Miranda* where there is otherwise no plausible means to contest the confession at trial and there is any chance of the motion prevailing. The record here shows

that the State planned to introduce the confession and trial counsel did not have a meaningful plan defend against it, which ultimately resulted in Uptain's conviction.

The State misapprehends what must be shown to demonstrate ineffective assistance of counsel when trial counsel fails to file a dispositive suppression motion. According to the State, Uptain should have supplemented the record through a Rule 23B hearing. While there are cases where the accused cannot demonstrate ineffective assistance of counsel based solely on the trial record, that is not the case here. Moreover, endorsing the State's argument to require Rule 23B proceedings even in cases where counsel is obviously ineffective based on the trial record will create unnecessary hurdles that will delay proceedings and waste judicial and litigant resources alike.

The State's argument, if accepted, would also undermine the right to effective assistance of counsel by encouraging defense lawyers to not even bother to file potentially dispositive motions, so long that there is some chance that those motions might be denied. For example, the State argues that because law enforcement only recorded the interrogation after the *Miranda* warnings were given it is unknown what the officers would claim they said to Uptain during the unrecorded portion. As a result, the officer claims could weaken the suppression motion by, for example, bolstering the argument that Uptain was not in "custody." That argument misunderstands the question before the Court. It is not whether trial counsel was ineffective for failing to

file a successful suppression motion, it is whether trial counsel was ineffective for *not even trying to win* a suppression motion that could have removed the only incriminating evidence that State had against Uptain from the case.

INTEREST OF AMICUS CURIAE[1]

A. American Civil Liberties Union of Utah ("ACLU UT")

The American Civil Liberties Union ("ACLU") is a nationwide, non-profit, non-partisan organization with approximately 1.6 million members. The ACLU is dedicated to defending and preserving the individual rights and liberties guaranteed by the national and state Constitutions. Consistent with that mission, the ACLU uses impact litigation and advocacy to protect the rights of individuals involved in the criminal legal system. The ACLU of Utah is a statewide affiliate of the national ACLU and is dedicated to these same principles. The ACLU of Utah has undertaken considerable efforts to advocate for the rights of people in the criminal legal system in Utah through litigation and policy means.

B. Rocky Mountain Innocence Center ("RMIC")

The Rocky Mountain Innocence Center ("RMIC") is a non-profit organization dedicated to correcting and preventing wrongful convictions in Utah, Nevada, and Wyoming. RMIC is also a founding member of The Innocence Network, an international affiliation of more than 70 organizations

[1] Counsel for all parties received timely notice of the filing of this brief and consented thereto pursuant to Rule 25(a) and (b)(2). No party or counsel authored this brief in whole or in part, and neither they nor anyone else contributed any money intended to fund its preparation or submission.

located in 37 states and territories and eleven countries dedicated to providing pro bono legal and investigative services to individuals seeking to prove their innocence of crimes for which they have been convicted.[2] Drawing on the lessons from cases in which the criminal legal system convicted innocent people, The Innocence Network also promotes study and reform designed to enhance the truth-seeking functions of the criminal legal system to ensure that future wrongful convictions are prevented.

The issues presented to this Court center on whether the Utah Court of Appeals erred in determining that William Allen Uptain received constitutionally ineffective assistance of trial counsel and is entitled to a new trial. RMIC has a direct interest in ensuring that criminal defendants are afforded effective assistance of counsel at trial and that courts apply the proper standards to evaluate claims of ineffective assistance of trial counsel so as to reduce the likelihood of wrongful convictions.

ARGUMENT

The United States Constitution guarantees the right to counsel in criminal cases. U.S. Const. amend. VI. This right means a right to the "*effective* assistance of counsel" to ensure a fair trial. *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984) (emphasis added) (quoting *McMann v. Richardson*, 397 U.S. 759, 771 n.14 (1970)). To show ineffective assistance of counsel, the accused

[2] *See Network Member Organization Locator and Directory*, THE INNOCENCE NETWORK, https://innocencenetwork.org/directory (last visited Sept. 10, 2025).

must satisfy *Strickland*'s two-prong test. The accused must show both that their attorney's performance "fell below the objective standard of reasonableness" and that the there is a "reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id*. at 687–88, 694. The Court of Appeals' determination that Uptain's trial counsel was ineffective should be affirmed because, based on the trial record alone, trial counsel's failure to file a dispositive pre-trial suppression motion was objectively unreasonable and prejudiced Uptain at trial.

I. UPTAIN'S TRIAL COUNSEL WAS INEFFECTIVE AND TO HOLD OTHERWISE WOULD THREATEN TWO MAJOR EROSIONS OF THE RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

Uptain's trial counsel was ineffective for failing to file a motion to suppress statements made in violation of *Miranda* where those statements were the only evidence used to convict him at trial. The Court of Appeals correctly stated that "the record is in no way silent as to the Counsel's deficiency," and listed eight specific facts in the record that "objectively establish[ed]" deficient performance. *State v. Uptain*, 2023 UT App 149, ¶ 35. Together, those facts demonstrated that the detective interrogating Uptain did not provide *Miranda* warnings before asking about a home invasion, Uptain subsequently confessed to the crime, the detective then read him the *Miranda* warnings only after that

confession occurred, Uptain provided additional details about the crime, and trial counsel did not file any suppression motion. *Id.*

Competent and effective trial counsel would have understood that filing a suppression motion in this case would be nonfrivolous and potentially dispositive, and that there was no affirmative reason whatsoever to forgo that chance to win the client's case. After all, "there was no evidence—apart from his confession—tying Uptain to the crime." *Id.* at ¶ 38. Trial counsel had only one realistic move to avoid checkmate at trial: to file a motion to suppress Uptain's incriminating statements. Counsel failed to make this move.

What is more, the trial record affirmatively rules out any possibility that trial counsel chose to forgo filing a motion to suppress based on some grand strategy to secure an acquittal at trial. Trial counsel admitted in closing argument that the "case boiled down to Uptain's confession to the home invasion." *Id.* at ¶ 12. And trial counsel also argued that Uptain made that confession after the officer said he "wouldn't 'hang him up,'" and that he "was 'saying whatever' he needed to say to get into drug treatment." *Id.* But if trial counsel understood that the case boiled down to the confession, and if trial counsel was prepared to argue *to the jury* that Uptain essentially did not understand his *Miranda* rights—i.e., he did not know that his confession could "hang him up"—then trial counsel's failure to make that argument *to the court*, via a motion to suppress, is all the more inexplicable. Given trial counsel's on-

the-record arguments at trial, new evidence is simply not capable of justifying the failure to file a motion to suppress.

A. The State confuses the question of whether defense counsel should have *filed* a motion to suppress that could succeed with the question of whether the court would have *granted* that motion.

The State argues that, to establish that his counsel was ineffective for failing to move to suppress his confession, "Uptain had to prove that had counsel moved to suppress the confession, the trial court would have granted the motion." Pet'r's Br. 42. As a matter of law, that cannot be right.

The State's argument hinges on the word "meritorious" in *Kimmelman v. Morrison*, in which the U.S. Supreme Court stated that "Where defense counsel's failure to litigate a Fourth Amendment claim competently is the principal allegation of ineffectiveness, the defendant must also prove that his Fourth Amendment claim is meritorious and that there is a reasonable probability that the verdict would have been different absent the excludable evidence in order to demonstrate actual prejudice." 477 U.S. 365, 375 (1986); *see* Pet'r's Br. 41. As other courts have discussed, nowhere in *Kimmelman* is "meritorious" defined. *See, e.g.*, *State v. Medina*, No. A-1390-19, 2021 WL 3520516, at *4 (N.J. Super. Ct. App. Div. Aug. 11, 2021). That is, *Kimmelman* does not say exactly how certain a reviewing court must be that a motion to suppress would have been granted before concluding that a defense lawyer was unconstitutionally ineffective for failing to file it.

But Utah cases, as well as the decisions of other state courts, shed meaningful light on that question. *See, e.g.*, *State v. Martinez-Castellanos*, 2018 UT 46, ¶¶ 51-53. These decisions indicate that, to establish that a pretrial motion was sufficiently "meritorious" to make failing to file it unreasonable, a defendant need not prove that the motion necessarily would have been granted. Instead, the defendant need only show that a motion could have been successful and, if granted, would have had a reasonable probability of changing the outcome of trial.

In Utah, "[m]eritorious" has been interpreted to mean the motion "would *likely* have been successful" to be "consistent with the straightforward application of *Strickland*'s outcome-determinative test for prejudice." *State v. Beames*, 2022 UT App 61, ¶ 13 (emphasis original) (citation modified). But likelihood of success is a broad concept. *Beames* elucidated that a likelihood of success in suppression cases is similar to determining if an exception to Utah's Post-Convict Remedies Act procedural requirement is met by demonstrating a meritorious defense. *Id.* at ¶ 14. There, "the defendant does not bear the additional burden to prove that the defense certainly would have succeeded, but rather the defendant simply had to prove both that he received deficient performance from his trial counsel, and that this deficient performance prejudiced the outcome of his trial." *Id.* (citation modified). In other words, "it does not mean a sure winner but only something with a solid basis in the facts and law." *Id.* at ¶ 15. This understanding is not dissimilar from other state

court interpretations of what is required under *Strickland* to demonstrate prejudice from failing to file a dispositive motion to suppress evidence.

In Wyoming, prejudice can be shown through a "more general, time-honored standard that an appellant must show a reasonable probability that, but for counsel's errors, the outcome of the trial would have been different." *Mills v. State*, 2020 WY 14, ¶ 30 (Wyo. 2020) (citation modified). In *Mills*, trial counsel was found ineffective because the suppression motion would have precluded all evidence and "the State could not have proved its case." *Id.* at ¶ 32.

The Superior Court of New Jersey's Appellate Division reached the same conclusion where trial counsel failed to file a motion to suppress crucial evidence seized in violation of the Fourth Amendment without "strategic considerations" and "contrary to professional norms." *State v. Johnson*, 365 N.J. Super. 27, 36 (N.J. Super. Ct. App. Div. 2003). The court considered that under the "facts and circumstances, given the dispositive significance of the evidence defendant claims should have been suppressed, such a lapse figures prominently in our assessment of counsel's performance." *Id.* at 35. The court held the accused had a "meritorious Fourth Amendment claim" but "intimate[d] no view as to whether a motion to suppress, if properly made, would have ultimately been successful." *Id.* at 37. (citation modified).

The Court of Appeals of Ohio only requires that the accused "prove that there was a basis for suppression of the evidence in question" rather than

proving a motion for suppression would be successful as long as the motion would not have been futile. *State v. Blatchford*, 2016-Ohio-8456, ¶ 60. In *Blatchford*, the court found ineffective assistance of counsel for failing to file a suppression motion where law enforcement did not honor the accused's invocation of his right to counsel. *Id*. at ¶ 62. Trial counsel's "failure to seek exclusion of appellant's statements to [law enforcement] precluded appellant from asserting violations of his constitutional rights," which was not part of a sound trial strategy. *Id*. This failure prejudiced the accused because the jury relied on those statements to find him guilty. *Id*. at ¶¶ 63-64.

As in the aforementioned state cases, Utah courts have found both *Strickland* prongs met without specifically concluding that a motion to suppress would have been granted. The three cases where the courts reached this outcome all found deficient performance where trial counsel failed to file or missed a deadline to file a motion to suppress and where there was no conceivable trial tactic to forgo filing the motion. See *State v. Snyder*, 860 P.2d 351, 359 (Utah Ct. App. 1993) (finding deficient performance where trial counsel filed an untimely motion to suppress incriminating statements made without *Miranda* warnings); *State v. Gallegos*, 967 P.2d 973, 977 (Utah Ct. App. 1998) (finding deficient performance where trial counsel failed to renew motion to suppress drug possession evidence); *State v. Millett*, 2015 UT App 187, ¶ 19 (finding deficient performance where trial counsel failed to file

motion to suppress incriminating statements with inadequate *Miranda* warnings).

Snyder, Gallegos, and Millett all determined *Strickland*'s second prong was met without specifically determining that the court would have granted the dispositive suppression motion. Common to all three cases is that the suppressed evidence was either the only evidence or it was the most substantial evidence against the accused.

In *Snyder*, the court held "that defendant was subjected to custodial interrogation" and was "entitled to proper *Miranda* warnings." 860 P.2d at 357. The court determined prejudice—without finding a suppression motion would have been granted—by considering "if a reasonable probability exist[ed] that the jury's verdict would have been more favorable to defendant had the information from the interview been suppressed." *Id.* at 359. The court found the "statements made in the interview and recounted during trial testimony undoubtedly swayed the jury's perception of the defendant—and not for the better" and determined that failing to file the motion to suppress substantially prejudiced the accused's case. *Id.* at 360.

In *Gallegos*, the court determined it was "obviously prejudicial to the defendant" when counsel failed to renew a pretrial motion to suppress "the only substantive evidence" found during an unreasonable search that was essential to supporting the State's case at trial. 967 P.2d at 981. The court found that

trial counsel was ineffective and remanded the case to determine whether the defendant had standing to challenge the search in a suppression motion. *Id*.

In *Millett*, the court considered whether "there [was] a reasonable probability that, absent the errors, the factfinder would have had a reasonable doubt respecting guilt" without determining if a motion to suppress Millett's statements would have been granted. 2015 UT App 187 at ¶ 21 (citation modified). The court reasoned that "the evidence that should have been suppressed provided the crucial evidence to convict Millett" and concluded that "trial counsel's failure to move to suppress the interview statements on [inadequate *Miranda* warnings] constituted ineffective assistance of counsel. *Id*. at ¶ 29.

Uptain's case is most similar to the facts in *Millett*. In *Millett*, the accused was subject to a custodial interrogation at a county jail. 2015 UT App 187 at ¶ 3. Inadequate *Miranda* warnings were given and the accused made incriminating statements. *Id*. at ¶¶ 3-4. Trial counsel did not file a motion to suppress the statements based on the improper *Miranda* warnings and instead attempted to preclude the statements through a motion in limine, which was granted in part but allowed some incriminating statements to be played at trial. *Id*. at ¶5. The court determined that the trial record alone demonstrated trial counsel's deficiency because it could "conceive of no legitimate trial tactic underlying trial counsel's failure to file a motion to suppress based on the inadequate *Miranda* warnings here." *Id*. at ¶ 15. This determination was made

in light of the State's arguments that it was a trial tactic because trial counsel used the contents of the interrogation as part of the defense at trial, but the court found that the contents were only used because the motion in limine to preclude the interrogation was denied. *Id.* at ¶ 18. The court reasoned that if the interrogation had been completely suppressed, then there would be no need to discuss the contents at all. *Id*.

Contrasted with *Millett*, Uptain's trial counsel did ***even less*** to combat the confession obtained with improper *Miranda* warnings. No motion was filed at all regarding the unconstitutional interrogation. As in *Millett*, Uptain's trial counsel would have had no need to address the interrogation at trial at all had the evidence been suppressed, and very likely there would have been no trial at all. There was no conceivable trial tactic for Uptain's trial counsel to forgo filing a pretrial motion to suppress statements obtained in violation of *Miranda* that would have likely led to dismissal of the case. Because the unsuppressed evidence was the only evidence that led to his conviction, Uptain was unquestionably prejudiced by trial counsel's failure to file the motion. As a result, the Court of Appeals decision should be affirmed.

B. On the facts of this case, requiring a defendant to produce additional evidence in a Rule 23B proceeding would tend to punish defendants whose attorney made truly indefensible decisions.

The State argues that the Court of Appeals could not, as a matter of law, have found ineffective assistance of counsel based on the trial record alone in

this case. Pet'r's Br. 15. The State contends that the court impermissibly came to its conclusion finding deficient performance despite "gaps in the record," which speculate that Uptain's counsel could have had some reason for failing to file a motion to suppress. *Id.* The State also argues that Uptain failed to properly supplement the record to address the record's purported gaps by not seeking a hearing pursuant to Utah Rule of Appellate Procedure 23B. *Id.* at 34. The State's proposed use of Rule 23B mischaracterizes both the defendant's burden and the scope of Sixth Amendment protections. To the extent the State seeks to use Rule 23B to demand more than what *Strickland* requires in this case—such as requiring affirmative evidence where deficiency is clear from the record—it cannot do so.

Rule 23B was designed to help the accused produce an adequate record when necessary. *See State v. Litherland*, 2000 UT 76, ¶ 16. This Court has made clear that the fact-finding mechanism is not required for all cases. Rather, "if the facts necessary for an ineffective assistance of counsel determination are apparent on the record, there is no need for a remand for additional findings, and the [Rule 23B] motion should be denied." *State v. Griffin*, 2015 UT 18, ¶ 18, (citing *State v. Alinas*, 2007 UT 83, ¶¶ 38–42 (affirming that defendant "was not entitled to remand because the alleged omissions [were] apparent from the record") (citation modified)). Thus, Rule 23B was not meant as an hinderance to defendants or disprove any conceivable reasoning for counsel's deficient performance.

The State has taken the position that it can identify any hypothetical tactical reasons for counsel's actions and point to Rule 23B for the argument that the defendant should have produced affirmative evidence to negate said hypothetical tactical reasons. And while there will of course be cases where information beyond the trial record is helpful or necessary, there will also be cases like this one where the deficiency is evident from the trial record alone. The State cannot warp Rule 23B to work against defendants by arguing that the record is inadequate and the defendant should have made a Rule 23B motion even when trial counsel's deficiencies are evident from the record. To do so would be to punish defendants with a mechanism that was created to help them.

And practically speaking, it would not be possible for defendants at the outset of their appeal to submit a clairvoyant Rule 23B motion that would negate every possible hypothetical reason for counsel's decision that the State could later concoct. This Court has made clear that "Rule 23B is not an invitation to fish for facts," *State v. Gallegos*, 2020 UT 19, ¶ 40, yet the State appears to argue that it can be just that. Stated differently, the State proposes that it is permitted to speculate about why trial counsel did or did not act, while defendants are not permitted to speculate in their Rule 23B motions. *Id.* ("A motion that merely speculates about what a remand might uncover will not suffice."); Utah R. App. P. Rule 23B ("The motion will be available *only* upon a nonspeculative allegation of facts. . .") (emphasis added). Limiting Rule 23B in

this way is logical considering the court's concern with "a floodgate of incomplete and fragmented ineffective assistance claims on direct appeal." *Gallegos*, 2020 UT at ¶ 40. But the practical result of this limitation is that Rule 23B cannot serve to negate every hypothetical reason for trial counsel's decision the State puts forward. That is not the purpose of Rule 23B nor is it the burden placed on defendants under *Strickland*.

Specifically, the State wants to throw several strands of spaghetti at the wall to see if one of them sticks in a Rule 23B hearing to show Uptain's trial counsel could have been effective in its failure to file the suppression motion. The State speculates police could have said some unknown statements to Uptain before the recorded interrogation started that dissuaded him from pursuing the motion, Pet'r's Br. 26-27, that Uptain would rather have a speedy trial than pursue a dispositive suppression motion, Pet'r's Br. 27, that Uptain withdrew his pro se motion after the trial judge "would only consider motions if there were endorsed by trial counsel," indicating that Uptain made some "deliberate decision" to go to trial rather than pursue a suppression motion, Pet'r's Br. 30-31, and, finally, that trial counsel did not believe Uptain's *Miranda* rights were violated, Pet'r's Br. 36-40.

None of the State's speculative scenarios stick because the court was able to make a proper ineffective assistance of counsel determination based on the trial record ***alone***. Even if there were some facts outside the record that were relevant to the strength of the suppression motion, as unlikely as that may be,

it would still be ineffective for trial counsel to forgo filing an otherwise meritorious motion. As conceded in the State's own briefing, the *Strickland* standard has never prohibited findings of ineffective assistance of counsel based on the trial record alone when the deficiency is readily apparent, nor has it ever required affirmative evidence for these situations. *See* Pet'r's Br. 33; *United States v. Gordon*, 4 F.3d 1567, 1570 (10th Cir. 1993) ("There are rare instances, however, when we will entertain an ineffective assistance of counsel claim on direct appeal, including, inter alia, where the record is sufficient."). To the contrary, this Court has found ineffective assistance of counsel in a number of cases, many of which contained hypothetical tactical reasons for counsel's performance presented by the State that were rejected by this Court. *See, e.g.*, *State v. Barela*, 2015 UT 22; *State v. Maestas*, 1999 UT 32; *State v. Larrabee*, 2013 UT 70; *Gregg v. State*, 2012 UT 32; *State v. J.A.L.*, 2011 UT 27; *State v. Templin*, 805 P.2d 182 (Utah 1990); *Housekeeper v. State*, 2008 UT 78; *State v. Hales*, 2007 UT 14.

Moreover, the *Strickland* standard considers the objective standards of professional norms when determining if trial counsel provided ineffective assistance of counsel. "The *Strickland* inquiry is objective, not subjective." *State v. Gallegos*, 2020 UT 19, ¶ 47. A trial attorney's "subjective reasoning is not the critical component of the *Strickland* inquiry." *Id.* "[W]here a defendant can show that there was no conceivable legitimate tactical basis for counsel's deficient actions, the first prong of Strickland is satisfied." *State v. Snyder*, 860

P.2d 351, 359 (Utah Ct. App. 1993) (citing *State v. Tennyson*, 850 P.2d 461, 468 (Utah App.1993)).

Here, trial counsel's deficiency is readily apparent from the record. Trial counsel failed to file a potentially dispositive motion to prevent the jury from hearing Uptain's incriminating statements, which were the only basis for his conviction. There is no sound tactical reason in this case to forgo filing a dispositive pretrial motion based in law and fact. It is unfathomable that trial counsel would proceed only on an at best threadbare reasonable doubt defense rather than first filing a potential knock-down-drag-out suppression motion. Speculation as to why Uptain withdrew his pro se motions, what was said prior to the interrogation recording, and why counsel failed to file the suppression motion does not change this reality.

Far from being incomplete, the trial record affirmatively establishes that counsel's choice to forgo filing a motion to suppress was incompetent. At trial, counsel was unarmed and defenseless. Trial counsel did not dispute that Uptain's statements to police were incriminating, other than the statements were "rambling" and potentially inaccurate. Pet'r's Br. 12; *Uptain*, 2023 UT App 149, ¶ 12. Nor did trial counsel present some alibi or other fact capable of blunting the impact of that confession. Instead, trial counsel seemed only to argue that the confession was made under duress or based on a belief that the confession would not "hang" Uptain, which are *Miranda*-style arguments

better suited to a motion to suppress than to a trial. *See Uptain*, 2023 UT App 149, ¶ 12.

Strickland considers the professional norms applied to defense counsel, not what a trial attorney might do if a client wants to present a poor defense at trial. In *Kimmelman*, the Court dismissed the idea that a "reasonable lawyer would forgo competent litigation of meritorious, possibly decisive claims" in order to get a favorable outcome in a federal habeas proceeding. 477 U.S. at 382, n.7 (1986). Here, it would be even more absurd for a trial lawyer to forgo litigating a meritorious claim for the opportunity to present a poor defense at trial.

Moreover, requiring a Rule 23B hearing in a case with these facts in order to find ineffective assistance of counsel would unnecessarily delay an inevitable outcome and waste both judicial and litigant resources along the way. It would limit the court's ability to make findings of ineffective counsel when they are otherwise obvious from the trial record. Many of the defendants filing these claims are indigent and already face low success rate of about 3%.[3] Importantly, it puts defendants with similar facts in a position where finding ineffective assistance of counsel would hinge on trial counsel admitting on the record that they were ineffective. Defense attorneys may be especially unlikely to cooperate by providing such an admission when, as here, there is no

[3] DANIEL S. MEDWED, BARRED: WHY THE INNOCENT CAN'T GET OUT OF PRISON 63 (2022).

conceivable strategic reasoning for their decisions. As such, the Court of Appeals should be affirmed.

II. ADOPTING THE STATE'S APPROACH TO INEFFECTIVE ASSISTANCE CLAIMS COULD FURTHER PREVENT THE CORRECTION OF WRONGFUL CONVICTIONS IN UTAH

As has been addressed in robust fashion by Uptain's principal brief (*see* Resp't's Br. at 11-20), the State continues in this case its crusade to increase the number and height of the hurdles facing criminal defendants raising ineffective assistance claims beyond the hurdles which actually govern such claims. Beyond being contradictory to binding legal precedent, the State's suggested ineffective assistance "standards," if accepted by this Court, could likely prevent future innocent individuals from correcting their wrongful convictions when ineffective assistance was a contributing factor to those convictions.

The wrongful conviction of innocent people caused, in part, by ineffective assistance of counsel remains a serious and well-documented failure of the United States criminal legal system. "The study of wrongful convictions has identified not only the types of evidence that frequently contribute to wrongful convictions, but also the types of errors committed in the trial process that often lead to erroneous conviction of the innocent." Keith A. Findley, *Innocence Protection in the Appellate Process*, 93 MARQ. L. REV. 591, 599 (2009). And, according to the National Registry of Exonerations, of the 3,730 known exonerations in the United State since 1989, 1,039 have included an

inadequate legal defense as one of the errors contributing to those wrongful conviction.[4] And of the 147 recorded exonerations last year alone, 33% included inadequate legal defense as a contributing factor.[5] And "[s]ometimes, claims of innocence are premised on constitutional errors that prevented the discovery or presentation of significant evidence of innocence. Most frequently, these claims arise in the context of claims of ineffective assistance of counsel or Brady violations." Keith A. Findley, *Defining Innocence*, 74 ALB. L. REV. 1157, 1194 (2010). The interrogation, confession, and *Miranda* components of this case only further highlight the need for this Court to avoid adopting additional barriers to ineffective assistance claims. Alarmingly, 12% of recognized exonerations since 1989 have involved false confessions.[6] While *Miranda*'s protections have been inadequate in preventing innocent people from confessing to crimes they know they did not commit, providing *Miranda* warnings prior to the start of custodial interrogations may allow an innocent suspect to avoid the inherent pressures of police interrogation and obtain the advice of counsel.

If *Miranda* is not properly administered, counsel can seek to remedy the constitutional violation by filing a motion to suppress any incriminating

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[4] *Explore Exonerations*, NAT'L REGISTRY EXONERATIONS, https://exonerationregistry.org/cases (last visited Sept. 10, 2025).
[5] NAT'L REGISTRY EXONERATIONS, 2024 Annal Report, available at https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/2024_Annual_Report.pdf.
[6] *Age and Mental Status of Exonerated Defendants Who Confessed*, NAT'L REGISTRY EXONERATIONS (Apr. 10, 2022), accessible at https://exonerationregistry.org/sites/exonerationregistry.org/files/documents/Age_and_Mental_Status_FINAL_CHART.pdf.

statements. Indeed, in addition to proper police conduct, it is defense counsel's duty to uphold *Miranda*'s protections by seeking suppression of statements made in violation of *Miranda*. But just as in this case, counsel may fail to do so, and their client may ultimately be convicted based upon the client's incriminating statements made in violation of *Miranda*. And if that failure is later held to be reasonable under *Strickland* on appeal, not only has the system failed to uphold the Sixth Amendment's promise of effective assistance of counsel to the defendant, but it has also failed to effectuate the protections of the Fifth Amendment and *Miranda*. In false confession cases, this means failing to remedy the wrongful conviction and imprisonment of innocent people.

What's more, despite the clear, empirically demonstrated impacts that ineffective assistance of counsel has on convicting the innocent, it also remains one of the most difficult claims to establish under the governing standards. "The test enunciated in *Strickland* is so onerous that for years few claimants prevailed in bringing an ineffective assistance of counsel claim." Meredith J. Duncan, *"Lucky" Adnan Syed: Comprehensive Changes to Improve Criminal Defense Lawyering and Better Protect Defendants' Sixth Amendment Rights*, 82 Brook. L. Rev. 1651, 1681 (2017); *see also* John H. Blume & Stacey D. Neumann, *"It's Like Deja Vu All Over Again":* Williams v. Taylor, Wiggins v. Smith, Rompilla v. Beard *and a (Partial) Return to the Guidelines Approach to the Effective Assistance of Counsel*, 34 Am. J. Crim. L. 127, 134 (2007) (explaining the *Strickland* standard as "virtually impossible" for petitioners to

meet). "Over the last thirty years, this standard has proven so difficult that even in the most egregious of cases, a criminal defendant has little chance of success in constitutionally challenging the poor legal representation he or she received." Duncan, *supra*, at 1681-82. Further, "the legal standard to reverse a conviction based on ineffective assistance of counsel set forth in *Strickland* shields many defense attorneys from scrutiny" because, "[i]n practice, the prejudice prong of *Strickland* fails to take into account that if defense counsel were, in fact, ineffective, the trial record may suggest the inevitability of a guilty outcome—but only because of the attorney's poor performance."[7]

Thus, it comes as no surprise that the *Strickland* standard has been widely criticized for its seemingly excessive difficulty and propensity to produce divergent results. *See, e.g.*, Blume & Neumann, *supra*, 142 (observing that "[a]lmost all representation was found to be within *Strickland*'s 'wide range of professionally competent assistance'" (quoting *Strickland*, 466 U.S. at 690, 104 S. Ct. at 2066)); Elizabeth Gable & Tyler Green, Wiggins v. Smith: *The Ineffective Assistance of Counsel Standard Applied Twenty Years After* Strickland, 17 GEO. J. LEGAL ETHICS 755, 764-65 (2004) ("Since the establishment of the *Strickland* standard in 1984, there has been a significant amount of criticism regarding its application."); Meredith J. Duncan, *The (So-Called) Liability of Criminal Defense Attorneys: A System in Need of Reform*,

[7] ELLEN YAROSHEFSKY & LAURA SCHAEFER, DEFENSE LAWYERING AND WRONGFUL CONVICTIONS 127, *in*, EXAMINING WRONGFUL CONVICTIONS: STEPPING BACK, MOVING FORWARD (Allison D. Redlich, et al., eds., 2014).

2002 BYU L. REV. 1, 19–28 (2002) (finding *Strickland* affords "little, if any, constitutional protection from bad lawyering"); Martin C. Calhoun, *How to Thread the Needle: Toward a Checklist-Based Standard for Evaluating Ineffective Assistance of Counsel Claims*, 77 GEO. L.J. 413, 455 (1988) (critiquing the *Strickland* test, finding it "virtually insurmountable," and noting the need for a "predictable and objective categorical approach").

The weight of this difficult standard—and any standard that would make these claims harder—is most likely to fall on indigent defendants who most need the Sixth Amendment's protection.

> In most places in this country, poor people accused of committing crimes do not receive professional assistance from a full-time public defender who is directly employed by the government and paid an annual salary for their legal services. Public defenders are often the exception rather than the rule, even though approximately 80% of the people accused of committing crimes in this country cannot afford to hire counsel. For many indigent defendants, if they get representation at all, it comes from assigned counsel or flat-fee contract lawyers who may not have much criminal defense experience and who often have financial incentives to get rid of assigned criminal cases as quickly as possible.

Eve Brensike Primus, *The Problematic Structure of Indigent Defense Delivery*, 122 MICH. L. REV. 207, 209-10 (2023) (citations omitted). Thus, those indigent defendants are double burdened, first by being highly likely to have counsel

who is not financially incentivized or able to provide competent counsel and then again by having to face the near insurmountable burden of *Strickland*.

Pointing out the immense difficulty for defendants in prevailing on an ineffective assistance of counsel claim is not a request for this Court to lower the burden for these claims—this Court, of course, can do no such thing. But what this Court can and must do is affirm the Court of Appeals and reject the State's continued attempts to make a criminal defendant's burden to establish that their counsel rendered constitutionally ineffective representation even higher than it already is. If the State's position is adopted in this case, even abundantly clear instances of ineffective assistance could be disregarded if defendants fail at the impossible task of finding affirmative evidence to address all spurious hypotheticals concocted by the State as to why counsel was effective. This, in turn, could very well further erode the already slim odds that innocent individuals have to remedy their wrongful convictions on appeal and in post-conviction.

Thus, in the absence of binding direction from the United States Supreme Court, Amici urges this Court to avoid injecting additional and needless barriers for defendants bringing ineffective assistance of counsel claims that would make it harder to vindicate constitutional rights and remedy wrongful convictions. Maintaining a fair and accessible process for challenging convictions is essential, particularly in a legal system that far too often gets things drastically wrong with the most severe of consequences on people's lives.

CONCLUSION

For the foregoing reasons, Amici respectfully request that this Court reaffirm the Court of Appeals.

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CERTIFICATE OF COMPLIANCE

I certify that this brief complies with Utah Rule of Appellate Procedure 25(f) because it contains 6,211 words as calculated by Microsoft Word. I further certify that it complies with Rule 21 as it contains no non-public information.

DATED this 12th of September, 2025.

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that, on the 12th day of September, 2025, I electronically filed the foregoing BRIEF OF AMICI CURIAE IN SUPPORT OF RESPONDENT, which served all counsel of record.

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