

No. 18-13524

IN THE
United States Court of Appeals for the Eleventh Circuit

CROSLEY ALEXANDER GREEN,
Petitioner-Appellee,
v.

SECRETARY, DEPARTMENT OF CORRECTIONS,
ATTORNEY GENERAL, STATE OF FLORIDA
Respondents-
Appellants.

**MOTION FOR LEAVE TO FILE AMICUS
BRIEF**

JON GREENBAUM
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**CERTIFICATE OF INTERESTED PERSONS AND CORPORATE
DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and 11th Cir. R. 26.1, *amicus curiae* Lawyers' Committee for Civil Rights Under the Law certifies that the following is a list of persons and entities that have an interest in the outcome of this case:

Aiken, Benjamin F., Counsel for *amicus curiae*

Ago, Arthur, Counsel for *amicus curiae*

Anstead, Harry Lee, Judge

Antoon, John II, Senior United States District Judge

Baker, Hon. David A., United States Magistrate Judge

Baker, Shane, Warden, Hardee Correctional Institution

Bell, Kenneth B., Judge

Bondi, Pam, Attorney General, State of Florida

Cantero, Raoul G., Judge

Cohen, Jay P., Judge

Conway, Anne C., Judge

Crowell & Moring LLP, for Petitioner-Appellee/Cross-Appellant

Dalton, Hon. Roy B. Jr., United States District Judge

Davis, Barbara C., Assistant Attorney General

Dixon, Ricky D., Secretary, Florida Department of Corrections

Doss, D. Todd, Attorney for Petitioner at Resentencing

Dugan, W. David, Judge

Galluzzo, Vincent J., Esq., for Petitioner-Appellee/Cross-Appellant

Gaylord, Daphney E., Esq.,

Green, Crosley Alexander, Petitioner-Appellee/Cross-Appellant

Greenbaum, Jonathan, Counsel for amicus curiae

Grimes, Stephen H., Judge

Gruber, Mark, Esq.

Harding, Major B., Judge

Harrison, Keith J., Attorney for Petitioner-Appellee/Cross-Appellant

Henry, David, Esq.

Holmes, R. Wayne, Assistant State Attorney

Jacobus, Hon. Bruce, United States District Judge

Jones, Julie, Secretary, Florida Department of Corrections

Kogan, Gerald, Judge

Lamb, Travis, Warden, Hardee Correctional Institution

Landers, Kim, as Included in State's previous CIP

Lawson, C. Alan, Judge

Lawyers' Committee for Civil Rights Under Law, *amicus curiae*

Leavins, Donald A., Warden, Hardee Correctional Institution

Lewis, R. Fred, Judge

Lieberman, Stacie B., Esq.

McDonald, Parker Lee, Judge

Moody, Ashley, Attorney General

Nielan, Kellie Anne, Assistant Attorney General

Nunnelly, Kenneth S., Assistant Attorney General

Olive, Mark E., Attorney for Petitioner-Appellee/Cross-Appellant

Orfinger, Richard B., Judge

Overton, Ben F., Judge

Palmer, William D., Judge

Pariente, Barbara J., Judge

Parker, John Roberson, Esq., Attorney for Petitioner at Trial

Paulken, Linda, as Included in State's previous CIP

Quince, Peggy A., Judge

Rhoad, Robert T., Attorney for Petitioner-Appellee/Cross-Appellant

Rush, Judy Taylor, Assistant Attorney General

Shaw, Leander J., Jr., Judge

Smith, Robin, Warden, Calhoun Correctional Institution

Thomas, Jeane A., Attorney for Petitioner-Appellee/Cross-Appellant

Wells, Charles T., Judge

White, Christopher R., Assistant State Attorney

Williams, Philip B., Assistant State Attorney

No publicly traded company or corporation has an interest in the outcome of this case or appeal.

Date: April 28, 2022

Respectfully submitted,

/s/ Benjamin F. Aiken

Counsel for Amicus Curiae

MOTION FOR LEAVE TO FILE AMICUS BRIEF

Pursuant to Eleventh Circuit Rule 29-3, the Lawyers' Committee for Civil Rights Under Law respectfully moves this Court for leave to file the attached amicus brief in support of the petition for rehearing en banc. Counsel for Petitioner-Appellee Crosley Green consents to this motion. Counsel for Respondent-Appellant the State of Florida has informed counsel for Petitioner-Appellee that the State opposes the filing of amicus briefs in this case. In support of this motion, proposed *amicus curiae* states as follows:

1. The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization formed in 1963 at the request of President John F. Kennedy to enlist the private bar's leadership and resources in combating racial discrimination and the resulting inequality of opportunity—work that continues to be vital today. The Lawyers' Committee uses legal advocacy to achieve racial justice, fighting inside and outside the courts to ensure that Black people and other people of color have voice, opportunity, and power to make the promises of our democracy real. Much of the Lawyers' Committee's work involves combatting racial inequities in the criminal justice

system through litigation, public policy advocacy, and serving as amicus curiae.

2. Amicus have an interest in protecting the constitutional safeguards described in the Supreme Court's decision in *Brady v. United States*, 397 U.S. 83 (1963) and its progeny. That issue is central to this case. As explained in the proposed brief, Black Americans are disproportionately the victims of wrongful convictions in the United States, and the *Brady* line of cases is an important bulwark against that unfortunate trend.

3. The proposed brief makes three core arguments. First, the brief respectfully suggests that the panel took an overly narrow view of *Brady* that is an unreasonable application of Supreme Court precedent. *Brady* applies even to inadmissible evidence, especially when, as here, that evidence could have been used to aid defense preparation or on cross-examination of witnesses. Second, the proposed brief argues that the panel overestimated the strength of the State's case against Petitioner. As the brief explains, nearly all of the evidence against Petitioner falls into categories that frequently lead to wrongful convictions. And third, the proposed brief highlights that the United

States in general and Florida specifically have an unfortunate history of convicting Black men for crimes they did not commit. Many features of this case suggest that it may be another in this long line of cases.

3. The proposed brief provides the Court with a unique perspective, backed by sources and research that is not the focus of the parties' briefs and that lends important context to understanding one of the core legal issues in this case. *Amicus curiae* has avoided rehashing the arguments that the parties themselves have focused on and believes the brief will aid the full court's disposition of the case. *Amicus curiae* therefore believes that the proposed brief satisfies Fed. R. App. P. 29(a)(3)(B).

For these reasons, the Court should grant leave to file the attached amicus brief.

Date: April 28, 2022

Respectfully submitted,

/s/ Benjamin F. Aiken

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system on April 28, 2022.

I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

/s/ Benjamin F. Aiken

Counsel for Amicus Curiae