IN THE CIRCUIT COURT OF COOK COUNTY
COUNTY DEPARTMENT, CRIMINAL DIVISION

PEOPLE OF THE STATE OF ILLINOIS, Respondent, v. JOHNNIE PLUMMER and VINCENT WADE, individually and as representatives of the class of still-incarcerated victims of Jon Burge and Burge's detectives, Petitioners.	)	Nos. 92 CR 2023601 84 C 01010801

NOTICE OF HEARING

TO: See Parties Listed on attached Service List

PLEASE TAKE NOTICE that on Monday, October 29, 2012 at 9:00 a.m., we will appear before The Honorable Paul P. Biebel, in courtroom 101, at the Circuit Court of Cook County, Criminal Division, and will then and there present the attached ***Class Action Petition for Relief Under the Post-Conviction Hearing Act.***

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PEOPLE OF THE STATE OF ILLINOIS, Respondent, v. JOHNNIE PLUMMER and VINCENT WADE, individually and as representatives of the class of still-incarcerated victims of Jon Burge and Burge's detectives, Petitioners.	)	Nos. 91 CR 21451 84 C 01010801

CLASS ACTION PETITION FOR RELIEF UNDER
THE ILLINOIS POST-CONVICTION HEARING ACT

Petitioners Johnnie Plummer and Vincent Wade (sometimes hereinafter referred to collectively as the "Petitioners"), by their undersigned attorneys, submit this Petition under the Illinois Post-Conviction Hearing Act, 725 ILCS 5/122-1, on their own behalf and as representatives of the class of still-incarcerated persons who were coerced into confessing to serious crimes by former Chicago Police Lt. Jon Burge, former Chicago Police Sgt. John Byrne (Burge's principal subordinate) and/or Chicago Police officers working under their command and/or supervision, and were convicted and sentenced to prison based on those coerced confessions. Petitioners allege as follows:

INTRODUCTION

1. For close to four decades, the Illinois criminal justice system has struggled with the reality that a group of Chicago Police officers, acting under the command of disgraced former Chicago Police Lt. Jon Burge and former Chicago Police Sgt. John Byrne (Burge's key subordinate), systematically tortured confessions from African American men whom they arrested on the south and west sides of Chicago. The Burge scandal has tarnished the reputation

of the Chicago Police Department, cost City and County taxpayers more than $50 million and profoundly shaken public confidence in the Illinois criminal justice system.

2. Chicago Mayor Rahm Emanuel and the editorial boards of the *Chicago Tribune* and the *Chicago Sun-Times* have all called for closure to this scandal. *See* Fran Spielman, *Mayor Urges End to Burge Chapter*, Chi. Sun-Times, Aug. 16, 2011, at 3 (attached as Ex. 1); Editorial, *Since When Is Torture Just Harmless Error?*, Chi. Sun-Times, Aug. 16, 2011, at 18 (Ex. 2); Editorial, *How to Scrub the Stain of the Burge Era*, Chi. Trib., Aug. 18, 2011 (Ex. 3).

3. Many members of the public—like the editorial boards of the *Tribune* and the *Sun-Times*—recognize that this closure will not be achieved until the Illinois criminal justice system provides appropriate relief to every one of the African American men who continues to languish in the Illinois Department of Corrections after having been convicted of a crime to which he may have confessed under torture. *Id.; see also* Editorial, *Review Cases of Tortured Suspects,* Chi. Sun-Times, Feb. 7, 2011, at 24 (Ex. 4); Editorial, *Everybody Pays,* Chi. Trib., Feb. 14, 2011, at 14 (Ex. 5).

4. Earlier this year, the Illinois Supreme Court emphatically and unequivocally reaffirmed the time-honored principle that *no conviction in the State of Illinois can rest in whole or in part on a confession that was the product of torture or other physical coercion. People v. Wrice*, 2012 IL 111860, 962 N.E.2d 934 (2012). In the words of the highest court of this State: "harmless-error analysis is inapplicable to [a] defendant's post-conviction claim that his confession was the product of physical coercion by police officers at Area 2 headquarters"; the "use of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error." *Id.* at ¶ 84. There is an obvious corollary to this holding, which is applicable to every one of the still-incarcerated Burge victims: if that individual's claim to have been tortured

or otherwise physically coerced into confessing is true, then his conviction—whether it is based in whole or even in part on that confession—must be thrown out.

5. No reasonable person could doubt that the claims of the Burge victims are credible enough to warrant a full and fair evidentiary hearing into whether the incarcerated victim's conviction rests on a tortured confession. When suppression hearings were conducted prior to trial in these cases, the courts disbelieved the victims' allegations and credited the self-serving denials of Jon Burge, John Byrne and their detectives. Given all that has come out over the course of the past 23 years regarding Burge and his practices, the detectives' denials can no longer be presumed to be honest. There is a mountain of new evidence—culminating in Burge's federal court conviction—showing that torture and physical coercion was a routine and accepted occurrence under the command and supervision of Jon Burge and John Byrne. The cases of every alleged victim must be re-examined with fresh eyes in light of Burge's conviction and this mountain of evidence. Unless the Illinois criminal justice system affords this necessary relief to this class of men, Burge's legacy will never be eradicated. This Petition affords this court the opportunity to do what justice requires.

6. This Petition may also be the last resort for the incarcerated Burge victims. The Illinois Torture Inquiry and Relief Commission Act, 775 ILCS 40/1 *et seq.*, was intended to provide a possible avenue of relief for incarcerated Burge torture victims, entitling them to petition the Torture Inquiry and Relief Commission (the "TIRC") for review of their cases and possible referral to the Chief Judge for action—but with no guarantee that the referral to the Chief Judge would result in a hearing. In June of this year, however, state funding for the TIRC was cut off. *See* Steve Mills, *State Torture Panel Faces an Abrupt Ending*, Chi. Trib., June 4, 2012 (Ex. 6). The TIRC will continue to operate using funding recently provided by the Illinois

Criminal Justice Information Authority, but the TIRC's future is uncertain. Because of the questions about funding and the TIRC's limited statutory mandate, the TIRC cannot provide Burge torture victims with the relief sought here.

7. Unless this Court grants the relief requested in this Petition, many victims of Burge and his men will likely be relegated to seeking hearings via individual *pro se* post-conviction petitions (some of which, without doubt, will be inartfully worded, will be met with procedural objections and therefore will face long odds) or simply languishing in prison, silently accepting their fate. This egregiously harmful scandal would continue indefinitely, and justice would elude us all.

8. Decisive action on the cases of the incarcerated Burge and Byrne victims is long overdue. Other jurisdictions faced with analogous problems have not hesitated to abandon prosecutions or vacate convictions tainted by the work of corrupt law enforcement personnel. For example:

a. Confronted with evidence that a forensic scientist named Fred Zain, who was employed by the West Virginia Department of Public Safety, had falsified reports and provided erroneous and misleading testimony in a number of cases, the Supreme Court of West Virginia, after ordering a review of every criminal case in which Fred Zain had been involved, issued a series of opinions establishing a conclusive presumption that all serology evidence Zain and his subordinates prepared was invalid, waiving procedural defaults for all convicted persons against whom Zain-tainted evidence had been received and directing the lower courts to hold evidentiary hearings in all such cases. *See In re Investigation of the W. Va. State Police Crime Lab., Serology Div.*, 438 S.E.2d

501, 504 (W. Va. 1993); *In re Renewed Investigation of the State Police Crime Lab., Serology Div.*, 633 S.E.2d 762, 769-70 (W. Va. 2006).

b. In Los Angeles, the Police Department's Community Resources Against Street Hoodlums Unit (the "CRASH Unit") was exposed as massively corrupt: over 70 officers were accused of unprovoked shootings and physical abuse, falsifying reports, planting evidence and otherwise framing individuals, stealing narcotics and even participating in a bank robbery. A number of officers were fired, suspended or resigned. The Los Angeles County District Attorney conducted an internal review of *all* criminal prosecutions involving suspected CRASH officers and agreed to vacate at least 100 tainted convictions. *See Report of the Rampart Independent Review Panel: A Report to the Los Angeles Board of Police Commissioners Concerning the Operations, Policies, and Procedures of the Los Angeles Police Department in the Wake of the Rampart Scandal*, Chapter 1 (overview) (2000) ("[T]he District Attorney 'lost confidence' in the evidence supporting the convictions of more than 100 people, and either initiated or joined in writs of habeas corpus filed by those defendants to dismiss their cases.") (Ex. 7); Blue Ribbon Rampart Review Panel, *Rampart Reconsidered: The Search for Real Reform Seven Years Later* (2006) (highlighting the extent of officer corruption and the exonerations that resulted) (Ex. 8); L.A. Police Dep't, *Board of Inquiry into the Rampart Area Corruption Incident*, Introduction, 1-6 (2000) (outlining the list of unlawful conduct performed by the CRASH Unit) (Ex. 9).

c. In 1995 in Philadelphia, five officers from the 5th Squad of the Philadelphia Police Department's 39th District pled guilty to federal charges arising from illegal searches, the detention of individuals without probable cause, theft of money and property from individuals under investigation, and physical brutality. *United States v. Baird*, 109 F.3d 856, 859 (3d Cir. 1997). After the scandal broke, a special judge was appointed to preside over all pending criminal cases involving the corrupt police unit. Prosecutors ultimately moved to drop scores of tainted cases. Mark Fazlollah, *11 More Cleared Due to Scandal*, Phila. Inquirer, Mar. 25, 1997, at B01 (stating that 293 cases had been dropped in the previous two years due to the "perjury and other misconduct by the crooked Philadelphia police") (Ex. 10); Howard Goodman, *Police Corruption Panel Appointed*, Phila. Inquirer, Jan. 9, 1997, at B01 (Ex. 11); Richard Jones, *Police Scandal in Philadelphia Yields More Dismissals*, Phila. Inquirer, Jan. 11, 1997, at B01 (reporting that a dozen more petitions filed by the District Attorney's Office to drop prosecutions had been granted) (Ex. 12).

d. In New York City, in the years between 1993 and 1997, a total of thirty three officers from the 30th Precinct of the New York Police Department were convicted of robbery, narcotic sales and perjury. In the aftermath, prosecutors concluded that they must abandon 125 cases against 98 individuals out of concern that the prosecution was tainted by police officer perjury. *See* David Kocieniewski, *New York Pays a High Price for Police Lies*, N.Y. Times, Jan. 5, 1997, at 1 (Ex. 13); Opinion, *Corruption in the 'Dirty 30,'* N.Y. Times, Oct. 1,

1994, at 22 (noting the charges against the police officers and crediting the Manhattan District Attorney for breaking the scandal) (Ex. 14).

e. In Tulia, Texas in 2003, a Swisher County Deputy Sheriff who had conducted an undercover sting operation leading to the mass arrest of 46 men and women (39 of whom were African American) for allegedly selling crack cocaine was charged with perjury in testimony he provided in the course of the investigation. The Governor of Texas pardoned 35 of the arrestees and others had their convictions overturned in the courts after spending more than three years in prison. *See* Adam Liptak, *Texas Governor Pardons 35 Arrested in Tainted Sting*, N.Y. Times, Aug. 23, 2003, at 7 (Ex. 15); *see also* Kevin R. Johnson, *Taking the "Garbage" Out of Tulia, Texas: The Taboo on Black-White Romance and Racial Profiling in the "War on Drugs,"* 2007 Wis. L. Rev. 283, 286-91 (providing a more detailed factual account of the sting operation) (Ex. 16).

f. Most recently, in Massachusetts, as many as 34,000 drug convictions have come into question as a result of evidence that Department of Public Health chemist Annie Dookhan may have manipulated evidence in an unknown number of cases. On October 10, 2012, the *Boston Globe* quoted the Mayor of Boston as saying that "the District Attorney has been talking about 500 to 700 individuals being released from incarceration" as a result of Dookhan's alleged misconduct. John Ellement, *Chemist Pleads Fifth in Drug Case,* Boston Globe, Oct. 10, 2012 (Ex. 17).

9. The relief sought in this Petition is quite limited in comparison to the steps that were taken in other jurisdictions faced with analogous corruption and misconduct. This Petition merely seeks the establishment of a procedure to assure that every one of the still-incarcerated persons who has a credible claim that Burge, Byrne or their men physically coerced him into confessing to the crime for which he was convicted is provided with a full and fair hearing into that allegation. Though limited in scope, the relief sought here is absolutely necessary if the shadow of Burge's misconduct is ever to be lifted from the Illinois criminal justice system.

THE PETITIONER CLASS REPRESENTATIVES

Johnnie Plummer

10. Johnnie Plummer was interrogated on August 19, 1991 by Area 3 Detectives Michael Kill and Kenneth Boudreau, working under Burge's command and supervision, regarding a murder and other crimes. Plummer, who was then only 15 years of age, was forced to confess after one or more of the interrogating detectives threatened him, hit him in his side with a flashlight multiple times, struck him in the face and pulled his hair. A copy of Mr. Plummer's sworn testimony describing this coercion is attached as Ex. 18.

a. Plummer challenged the admission of the confession at a suppression hearing, but his motion to suppress was denied because the court did not believe Mr. Plummer's allegations and found the officers' denials to be credible. No evidence concerning the pattern and practice of torture under Burge was introduced at that hearing. Plummer's confession was subsequently used by the prosecution to convict him of the murder and other crimes. *People v. Plummer*, No. 91CR21451, 1995 WL 17853953 (Cir. Ct. Ck. Cty. June 25, 1995).

b. Plummer's conviction was affirmed on appeal, the Appellate Court concluding that the Circuit Court's finding that the confession was voluntary was not against the manifest weight of the evidence. *People v. Plummer*, 306 Ill. App. 3d 574 (1999). Plummer filed a *pro se* post-conviction petition, alleging, among other things, that his confession was extracted by psychological and physical coercion. The Circuit Court dismissed the petition, but the Appellate Court reversed and remanded to give Plummer an opportunity to present his arguments in proper legal form. *People v. Plummer*, No. 1-01-0130 (Ill. App. Ct. Dec. 31, 2003) (unpublished order). On remand, Plummer's post-conviction counsel filed a supplemental post-conviction petition, which the Circuit Court again dismissed without an evidentiary hearing. The Appellate Court affirmed this dismissal. *People v. Plummer*, No. 1-06-1552 (Ill. App. Ct. June 10, 2009) (unpublished order). In so doing, the court applied the doctrine of *res judicata* and followed the ruling in Plummer's direct appeal that Plummer's confession was voluntary. The Illinois Supreme Court denied leave to appeal. Plummer thereafter filed a federal habeas petition, which was also denied. *Plummer v. Rednour*, No. 10 C 6225, 2011 WL 3876908 (N.D. Ill. Sept. 1, 2011). No further proceedings have occurred in his case.

c. Plummer remains incarcerated in Menard Correctional Center without ever having had a full and fair hearing into his claim that his conviction rests in part on a confession that was physically coerced by detectives under Burge's command.

Vincent Wade

11. Vincent Wade was arrested and interrogated on August 13, 1984 by Area 2 Detectives John Paladino and George Karl and Sergeant Michael Hoke, all of whom were then under the command of Jon Burge, regarding a murder and other crimes. Wade was forced to confess to the crimes after one or more of the interrogating officers smacked him on the nose with a flash light, kneed him in the groin, punched him in the eye, and beat him on his chest with a baton and phonebook while his arms and legs were pinned down.

a. Wade challenged the admissibility of his coerced confession at a suppression hearing, but his motion to suppress was denied because the court did not believe Mr. Wade's allegations and found the officers' denials to be credible. No evidence concerning the pattern and practice of torture under Burge was introduced at that hearing. Wade's confession was subsequently used by the prosecution to convict him of murder, home invasion, and armed robbery.

b. Wade's conviction was affirmed on appeal in 1989. *People v. Wade*, 185 Ill. App. 3d 898 (1st Dist. 1989). In November 2009, Wade filed a Petition for Relief from a Void Judgment and/or Order under 735 ILCS 5/2-1401, as well as a "Motion for an Innocence Claim Inquiry". Both petitions were denied by the Circuit Court. *People v. Wade*, No. 84 C 01010801 (Ck. Cty. Cir. Ct. Jan. 8, 2010). On January 22, 2010, Wade filed a motion for reconsideration of the dismissal, which was denied by the court on January 29, 2010. There is an appeal arising from that dismissal, which is pending.

c. Wade remains incarcerated in Pontiac Correctional Center without ever having had a full and fair hearing into his claim that his conviction rests in

part on a confession that was physically coerced by Jon Burge and detectives under Burge's command.

CLASS ACTION ALLEGATIONS

12. The above-listed Petitioners bring this Petition on their own behalf and as the representatives, pursuant to 735 ILCS 5/2-801, of the class of persons who are still incarcerated and who were coerced into confessing to serious crimes by Jon Burge, John Byrne and/or Chicago Police officers working under their supervision and command, and were convicted and sentenced to prison based in whole or in part on those coerced confessions.

13. The class of persons described in the preceding paragraph is so numerous that joinder of all members is impracticable. In addition to the class representatives themselves, the class includes at least the following identified individuals: George Anderson, Tony Anderson, Franklin Burchette, Aldorianus Burton, Javan Deloney, Grayland Johnson, Jerry Mahaffey, Reginald Mahaffey, Gerald Reed, Ivan Smith, Robert Smith, Demond Weston, Jackie Wilson and some or all of the 110 applicants to the Torture Inquiry and Relief Commission. The class also includes a number of individuals who are not yet known to the Petitioners' counsel.[1]

14. There are questions of law or fact common to the class that predominate over any questions affecting only individual members. With the Illinois Supreme Court's decision in *People v. Wrice*, it is now settled law in Illinois that no conviction may rest in whole or in part on a confession that was coerced by torture or other physical abuse. This Petition presents the single, predominating question of how to afford a full and fair hearing to the remaining incarcerated victims of Burge and his men and what additional steps should be taken in those

[1] The TIRC received applications for assistance from numerous individuals who were not known to Petitioners' counsel, despite the long involvement of those counsel in representing Burge victims in court and advocating on behalf of the Burge victims in other ways. Thus, in addition to those who have come forward so far, there are certainly other incarcerated persons who are members of the class and have not yet been identified by counsel or the previously appointed Special Prosecutors.

cases in which it can be shown that the conviction rests in whole or in part on a confession elicited through torture or physical coercion. Individual questions concerning the facts and circumstances of each class member's interrogation and abuse can and should be addressed in separate individual hearings in each class member's individual case after the predominating issue common to the class has been resolved.

15. The Petitioner-class representatives will fairly and adequately protect the interest of the class. Each Petitioner and each member of the class was subjected to racially motivated physical abuse—including electric shock, mock execution, suffocation with a plastic bag and beating—that caused him to inculpate himself involuntarily in a crime. The physical coercion that each Petitioner suffered was perpetrated either by Jon Burge and John Byrne themselves or by detectives who were working under the command and supervision of Burge and/or Byrne at the time of the abuse. Each Petitioner and each member of the class was convicted based in whole or in part on his involuntary confession and each remains incarcerated in an Illinois prison. Thus, each Petitioner's claim is identical to the claims of the other members of the class.

16. The counsel acting on behalf of the class will advocate aggressively and tenaciously on behalf of all class members in this case. These counsel have been committed for many years to representing the victims of Jon Burge in court and to advocating on behalf of all victims:

a. The People's Law Office ("PLO") represented Andrew Wilson, one of the earliest identified Burge victims, for many years, through appeals and multiple, hard-fought trials in the federal court. The PLO has also advocated for Burge's victims in community meetings, in hearings before the Chicago City Council, the Cook County Board, the U.S. Congress, the United Nations Committee Against Torture and the Inter-American Commission for Human Rights. All

told, over the past 25 years, the PLO has represented 13 victims of Burge torture in criminal and post-conviction proceedings, civil rights lawsuits or other proceedings. The scope and extent of the Burge scandal would not even be known to the public were it not for the commitment of the PLO's lawyers. There is no firm of lawyers anywhere more knowledgeable about the history of the Burge scandal, the identities of the victims and the nature of their individual abuse, and the rights of those victims.

b. The Roderick MacArthur Justice Center was the principal counsel in the petition to appoint a Special Cook County Prosecutor to investigate Burge and his men. Justice Center attorneys have also advocated for Burge's victims in the media, in legislative hearings, and in post-conviction cases and civil rights cases for more than a decade. In the course of this work, the Justice Center attorneys have also become knowledgeable concerning the complex history of the Burge scandal and the legal ramifications of that scandal for the victims and for the Illinois criminal justice system.

c. The lawyers in the People's Law Office and the Roderick MacArthur Justice Center are both experienced in class action litigation and well-versed in the procedural and legal complexities of such litigation. Collectively the undersigned lawyers have been the principal counsel in a number of complex class action cases in federal and state court, including *Palmer v. City of Chicago*, 83 C 2630 (N.D. Ill.) (class action that brought the Chicago Police Department's "street files" policy to light); *Mason v. Cook County,* No. 06 C 3449 (N.D. Ill.) (class action challenge to the use of closed circuit video to

conduct bond hearings); *United States ex rel. Green v. Washington,* No. 93 C 7300 (N.D. Ill.) (class action *habeas corpus* petition on behalf of prisoners whose appeals were delayed as a result of understaffing in the Office of the State Appellate Defender); *Vodak v. City of Chicago,* No. 03 C 2463 (N.D. Ill.) (class action on behalf of persons arrested or detained by the Chicago Police at an anti-war demonstration against the Iraq War on March 20, 2003).

17. The class action is an appropriate method for the fair and efficient adjudication of this controversy. Use of the class action mechanism in this post-conviction proceeding, while unusual, will reduce the strain on the Circuit Court that would occur if the remaining incarcerated Burge victims were to litigate their claims individually in cases that could well become protracted and would almost certainly result in non-uniform decisions—thereby prolonging the unseemly aftermath of Burge's torture. The class action will enable the Court to focus on the systemic concerns presented by the fact that Burge victims remain in prison without a full and fair hearing and will enable the Court to fully and completely resolve this scandal.

ALLEGATIONS OF FACT

Systematic Police Abuse and Torture under Burge and Byrne

18. Jon Burge joined the Chicago Police Department in 1970 at the age of 22 after he returned from active duty as a Military Police officer in Vietnam. In May of 1972, two years after joining the force, Burge was promoted to the rank of detective and assigned to the robbery unit at Area 2 Police Headquarters. He remained in that assignment for two years until he was transferred to the Organized Crime Division in June of 1974. *Wilson v. City of Chicago,* No. 86

CV 2360, Tr. of Proceedings at 13-14, Testimony of Jon Burge (N.D. Ill. Mar. 13, 1989) (Ex. 19).

19. Three years later, in 1977, Burge returned to the Area 2 robbery unit as the supervising sergeant, and he remained in this unit until he was promoted to the rank of lieutenant and transferred to the 12th District in July or August of 1980. *Id.* at 15.

20. In October of 1981, Burge again returned to Area 2 Police Headquarters where he served as the Commanding Lieutenant responsible for supervising 50 to 55 detectives and six to seven sergeants who were assigned to the Violent Crimes unit. *Id.* at 16-17. Burge remained in Area 2 Violent Crimes for the next five years, until August of 1986, when he was promoted to the rank of Commander and assigned to the Bomb and Arson Unit at Police Headquarters at 11th and State. *Id.* at 17-18.

21. In January of 1988, Burge was transferred to Area 3 Police Headquarters where he served as the Commander. As the Area 3 Commander, he supervised 120 detectives and 16 to 18 supervisors. He was in charge of the Area 3 Headquarters for the next three years until he was suspended from the Chicago Police Department in October of 1991 based on allegations that he led the torture and abuse of Andrew Wilson. *Id.* at 19; Press Release, U.S. Dep't of Justice, U.S. Indicts Former Chicago Police Cmdr. on Perjury, Obstruction of Justice Charges Related to Alleged Torture and Physical Abuse (Oct. 21, 2008) (Ex. 20) (stating that Burge was suspended in 1991 and fired in 1993).

22. John Byrne was a Chicago Police Sergeant of detectives who served from 1982 to 1986 under Burge's direct command while Burge was the Violent Crimes Lieutenant at Area 2. Byrne then transferred to the Bomb and Arson Unit. In 1988 he moved to Area 3 as a Violent Crimes Sergeant, at Burge's request. At each of these locations, Byrne most frequently worked

midnights under Burge's supervision and command. Byrne has described himself as Burge's "right hand man." Byrne remained at Area 3 until 1993, when he resigned from the Chicago Police Department. John Byrne Dep. Tr. in *People v. Patterson*, 86 CR 6091 (March 1, 2001) (Ex. 21) at 13, 16, 24-24, 59, 71-72, 76, 160.[2]

23. A judicially appointed Cook County Special Assistant State's Attorney conducted an independent investigation of more than 140 allegations—all made by African American men—that they had been subjected to torture or other extreme forms of physical coercion in the course of interrogations conducted by Burge, Byrne and detectives under their command while Burge or Byrne (or both) were stationed at Area 2 or Area 3. The Special Prosecutor's report, made public in July 2006, concluded that "many" of the allegations had merit and that Burge and members of his Midnight Crew abused suspects with "impunity." *See* Edward Egan and Robert Boyle, *Report of the Cook County Special State's Attorney* 16 (July 19, 2006) (Ex. 22). Lawyers at the PLO have compiled a list of 117 alleged victims of torture and abuse by Burge, Byrne and their detectives occurring from 1972 to 1991 at Area 2 and 3 Police Headquarters. *See* People's Law Office Chart of 117 Documented Burge Area 2 and 3 Torture Victims, 1972–1991. (Ex. 23).

24. United States District Judge Milton I. Shadur (writing some five years following the conclusion of the trial-level proceedings in the most recent class members' cases) has found: "It

[2] John Byrne went on to become a licensed Illinois attorney. On November 26, 1996 he was disbarred. The disbarment was based on eleven separate counts of attorney misconduct which substantially harmed eleven separate clients. The ARDC found that Byrne had engaged in actions that "defeated the administration of justice and brought the legal system into disrepute" on seven occasions; that he "committed dishonesty, fraud, deceit or misrepresentation" on four occasions; and that he "made statements of material fact or law to a tribunal which he knew or reasonably should have known were false" on one occasion. At his deposition, Byrne admitted to the allegations in each of the 11 Counts brought by the ARDC. *Id.* at 175; ARDC Findings (Ex. 4 to the deposition transcript).

is now common knowledge that in the early to mid-1980s Chicago Police Commander Jon Burge and many officers working under him regularly engaged in the physical abuse and torture of prisoners to extract confessions." *United States ex rel. Maxwell v. Gilmore*, 37 F. Supp. 2d 1078, 1094 (N.D. Ill. 1999).

EACH CLASS MEMBER IS ENTITLED TO AN EVIDENTIARY HEARING ON HIS CLAIM THAT HIS CONVICTION RESTS IN WHOLE OR IN PART ON A CONFESSION THAT WAS ELICITED THROUGH TORTURE

25. The extraction of a confession through torture or physical coercion and the use of that confession to secure a person's conviction and imprisonment have no place in civilized society—and certainly not in the State of Illinois. The Supreme Court of the United States long ago held that "the Fourteenth Amendment forbids the use of involuntary confessions not only because of the probable unreliability of confessions that are obtained in a manner deemed coercive, but also because of the 'strongly felt attitude of our society that important human values are sacrificed where an agency of the government, in the course of securing a conviction, wrings a confession out of an accused against his will,' and because of 'the deep-rooted feeling that the police must obey the law while enforcing the law; that in the end life and liberty can be as much endangered from illegal methods used to convict those thought to be criminals as from the actual criminals themselves.'" *Jackson v. Denno*, 378 U.S. 368, 385-86 (1964) (quoting *Blackburn v. Alabama*, 361 U.S. 199, 206-07 (1960) and *Spano v. New York*, 360 U.S. 315, 320-21 (1959)).

26. As a result of a wealth of new evidence and developments corroborating his claim that his confession was extracted by physical coercion (set forth below in paragraph 29), each of the class members is now in a position to show a "substantial denial of his . . . rights under the Constitution of the United States [and] of the State of Illinois" in the proceeding that resulted in

his conviction. 725 ILCS 5/122-1 *et seq.* Specifically, the Petitioners and the members of the class were deprived of rights secured to them under the Fifth and Fourteenth Amendments of the United States Constitution and under Article I, Section 10 of the Illinois Constitution of 1970.

27. At suppression hearings conducted in some or all of the class members' cases, the Burge-connected detectives denied under oath that the class members were physically coerced or abused in any way, testifying instead that the confessions of these class members were given freely and voluntarily.

28. The original trial-level proceedings in the cases of each class member were all concluded long prior to the development and public disclosure of new information showing that Burge, Byrne and their men were implicated in physically coercing statements from scores of African American men in their custody from the early 1970s until the time of Burge's separation from the Chicago Police Department in 1991 and Byrne's departure from Area 3 in 1993. Thus, none of the class members had the opportunity, during the original trial-level proceedings in their cases, to present evidence that would have corroborated his claim and undermined the apparent credibility of the Burge detectives.

29. In the years following the conclusion of the original trial-level proceedings in the class members' cases, new information has come to light making it abundantly clear that, during the years when the class members were interrogated, it was an accepted and common practice for Burge, Byrne and the detectives who worked for them to use torture and physical coercion to elicit confessions from African American citizens they suspected of committing crimes. The new information includes, but is not limited to the following:

a. In February 1993, the Chicago Police Board rendered a decision terminating Burge from the Department for using electric shock and other torture techniques

to torture a confession from Andrew Wilson during a February 1982 interrogation. *In the Matter of Charges Filed against Respondents Jon Burge, John Yucaitis and Patrick O'Hara*, Nos. 1856-58 (Police Board of the City of Chicago, Feb. 11, 1993). The Circuit Court of Cook County affirmed the Police Board's order. *Burge v. Police Bd. of the City of Chicago*, Nos. 1-94-999, 1-94-2462, and 1-94-2475 (consolidated) (Cir. Ct. Cook Co. Feb. 10, 1994). The Appellate Court also affirmed. *Burge v. Police Bd. of the City of Chicago*, Nos. 1-94-999, 1-94-2462, and 1-94-2475 (consolidated) (Ill. App. Ct. Dec. 15, 1995). Copies of these decisions are attached as Ex. 24 and 25.

b. In January 2003, the day before announcing the commutation of every death sentence in the State, Illinois Governor George H. Ryan granted pardons on the ground of innocence to four Illinois Death Row prisoners whose convictions and death sentences rested in part on confessions that Burge and his confederates had elicited through torture. In his statement pardoning Madison Hobley, Stanley Howard, Leroy Orange, and Aaron Patterson, Governor Ryan said: "The category of horrors was hard to believe. If I hadn't reviewed the cases myself, I wouldn't believe it. . . . We have evidence from four men, who did not know each other, all getting beaten and tortured and convicted on the basis of the confessions they allegedly provided. They are perfect examples of what is so terribly broken about our system. These cases call out for someone to act. They call out for justice, they cry out for reform." Governor George H. Ryan, Statement at DePaul University College of Law (Jan. 10, 2003). A copy of the Ryan Statement is attached as Ex. 26.

c. Eight months earlier, in April 2002, the Circuit Court of Cook County had appointed a Special Prosecutor to investigate the allegations of police torture and abuse committed by Burge and officers acting under his command. *See In re Appointment of Special Prosecutor*, No. 2001 Misc. 4 (Cir. Ct. Cook Co. Apr. 24, 2002) (Biebel, J.). A copy of the order is attached as Ex. 27.

d. On July 19, 2006, after a lengthy investigation, the Office of the Special Prosecutor released a Report summarizing its findings based on its review of over 140 cases of alleged torture and physical abuse by Burge and detectives under Burge's command. The Special Prosecutor concluded that there were "many cases" in which it was reasonable to believe that African American men had been abused by Burge and officers under his command. Edward Egan and Robert Boyle, *Report of the Special State's Attorney* 16 (July 19, 2006). The Special Prosecutor specifically concluded that Burge himself was "guilty [of] . . . abus[ing] persons with impunity." *Id.* The Prosecutor went on to find that it "necessarily follows" that, if Burge, as a commanding officer, could abuse with impunity, then those serving under his command could likewise engage in abuse without fear of retribution. *Id.* A copy of the Special Prosecutor's Report is attached as Ex. 22.

e. Since the issuance of the Special Prosecutor's Report, no fewer than six of the Burge torture victims have been awarded new trials as a result either of prosecutorial consent or judicial findings that their convictions could not stand in light of the evidence that their confessions were coerced through torture. The released victims are: James Andrews, Cortez Brown, Eric Caine, David

Fauntleroy, Ronald Kitchen and Michael Tillman. Mr. Caine, Mr. Kitchen and Mr. Tillman have also been granted Certificates of Innocence—official recognition that they were innocent of the crimes to which they confessed under torture. Copies of the orders in the Andrews, Brown, Caine, Kitchen and Tillman cases are attached as Group Ex. 28.[3]

f. In the years since Petitioners' suppression hearings, the Illinois Appellate Court and the Illinois Supreme Court have issued a number of opinions acknowledging in specific cases that allegations of Burge torture necessitated additional judicial proceedings. *People v. Patterson*, 192 Ill. 2d 93 (2000); *People v. King*, 192 Ill. 2d 198 (2000); *People v. Wrice*, 962 N.E.2d 934 (Ill. 2012); *People v. Wrice*, 406 Ill. App. 3d 43 (1st Dist. 2010); *People v. Bates*, 267 Ill. App. 3d 503 (1st Dist. 1994); *People v. Cannon*, 293 Ill. App. 3d 634 (1st Dist. 1997).

g. In May 2006, the United Nations Committee Against Torture (UN CAT) issued findings and recommendations regarding the use of torture and other cruel, inhuman or degrading treatment in the United States. The UN CAT Report included an expression of "concern" about the Burge torture in Chicago, including, in particular, "the limited investigation and lack of prosecution in respect of the allegations of torture perpetrated in areas 2 and 3 of the Chicago Police Department." *See* Consideration of Reports Submitted by States Parties under Article 19 of the Convention Against Torture ¶ 25 (May 18, 2006) (Ex. 29). The UN CAT stated that the United States government "should promptly,

[3] Petitioners were not able to obtain a copy of the dismissal order in David Fauntleroy's case. They will move to supplement the Petition with a copy of that order when they obtain it.

thoroughly and impartially investigate all allegations of acts of torture or cruel, inhuman or degrading treatment or punishment" by Burge and his men and "bring the perpetrators to justice." *Id.*

h. In October 2008, the United States Attorney in Chicago indicted Jon Burge on three counts of perjury and obstruction of justice, based upon his sworn denials that he knew of or had participated in abuse and torture while a Chicago police officer. On June 28, 2010, Burge was convicted by a jury on these charges. In January 2011, he was sentenced to 4½ years in prison. In imposing that sentence, Judge Lefkow pointedly remarked: "If others, such as the United States Attorney and the State's Attorney, had given heed long ago, so much pain could have been avoided." Tr. of Proceedings at 10, *United States v. Jon Burge,* No. 08 CR 846 (N.D. Ill. Jan. 21, 2011) (*see* Group Ex. 30, which also includes Burge's indictment and the jury verdict).

30. The findings and events listed in the preceding paragraph were not and could not have been known to any of the participants in the trial-level proceedings in any of the class members' individual cases. Thus, when each of the class members was convicted, based in whole or in part on his confession, defense counsel and the Circuit Court did not have the benefit of a vast body of evidence that dramatically impeaches the credibility of the detectives' denials that the class members were physically abused; significantly corroborates the class members' torture claims; and supports a finding that the class members were physically coerced into their confessions.

DOCTRINES OF PROCEDURAL DEFAULT DO NOT BAR THIS PETITION

31. Some of the class members have previously initiated post-conviction proceedings relating to their convictions in which they did not raise some or all of the evidence presented here. Those prior proceedings do not bar the present petition. The class members were impeded from raising this new information by objective factors external to their defense—*i.e.*, information pertaining to the pattern and practice of torture under Burge and Byrne had not been released and many of the developments inculpating Chicago detectives in this torture had not yet occurred at the time of the earlier post-conviction proceedings. Thus, there is "cause" for the class members' not having raised these matters earlier. *See* 725 ILCS 5/122-1(f)(1); *People v. Wrice,* 406 Ill. App. 3d 43, 51-52 (1st Dist. 2010).

32. Each and every one of the class members was prejudiced as a result of the use of evidence procured through physical coercion against him at trial. Earlier this year, the Illinois Supreme Court re-affirmed that "harmless-error analysis is inapplicable to [a] defendant's post-conviction claim that his confession was the product of physical coercion by police officers at Area 2 headquarters"; the "use of a defendant's physically coerced confession as substantive evidence of his guilt is never harmless error." *People v. Wrice*, 2012 IL 111860, ¶ 84. In other words, the use of evidence obtained by torture so infects the trial that any resulting conviction or sentence cannot stand consistent with due process of law. *See* 725 ILCS 5/122-1(f)(2).

33. Therefore, consistent with the demands of fundamental fairness and the procedural requirements of the Post-Conviction Hearing Act, this Court should enter an order directing that a stage three evidentiary hearing take place with respect to each of the class members' claims that he was physically coerced by Jon Burge, John Byrne and/or detectives working under their command into confessing to the crime for which he was convicted. At that hearing, each class

member should have the opportunity to present evidence regarding the pattern and practice of torture and physical coercion by Burge, Byrne and their detectives.

HEARINGS ARE NECESSARY IN EACH OF THESE CASES IN ORDER TO CORRECT A MANIFEST INJUSTICE

34. The Burge cases confront the Illinois criminal justice system with officially acknowledged systemic torture—an occurrence that is not only unique to this State, but a blatant violation of human rights. This extraordinary circumstance demands the intervention of this court in the most forceful possible way, so that the Burge scandal can finally be laid to rest and so that, going forward, this kind of disgraceful police conduct will not be repeated in our State. The court should exercise its inherent power to correct a manifest injustice.

35. Official denials of the now-proven torture—made over a period of many years — have deeply alienated many in the African American community. Burge's pattern and practice of racially motivated torture and physical coercion has complicated and prolonged many criminal cases. But it has cast a wider shadow, undermining confidence in the integrity of the entire Illinois criminal justice system. United States District Judge Joan Humphrey Lefkow emphasized this point when she sentenced Burge to prison after his conviction of perjury and obstruction of justice: "When [the coercion of confessions] becomes widespread, as [can be inferred in the Burge cases], the administration of justice is undermined irreparably." Tr. of Proceedings at 7, *United States v. Burge*, No. 08 CR 846 (N.D. Ill. Jan. 21, 2011).

36. In other states, when the judiciary was confronted with scandals of similar magnitude, the courts have used their inherent authority to eradicate the consequences of systemic official wrongdoing. A number of examples are listed in paragraph 8 above. The actions of the West Virginia Supreme Court are particularly instructive. Confronted with proof that serologist Fred Zain had prepared fraudulent forensic reports, that court issued a series of

opinions establishing a conclusive presumption that all serology evidence Zain and his subordinates prepared was invalid, waiving procedural defaults for all convicted persons against whom Zain-tainted evidence had been received and directing the lower courts to hold evidentiary hearings in all such cases. *See In re Investigation of the W. Va. State Police Crime Lab., Serology Div.*, 438 S.E.2d 501, 504 (W. Va. 1993); *In re Renewed Investigation of the State Police Crime Lab., Serology Div.*, 633 S.E.2d 762, 769-70 (W. Va. 2006).

37. Elsewhere, where there has been a breakdown in the indigent defense system, the courts have taken steps to ensure that procedural technicalities would not prevent the adjudication of meritorious post-conviction claims. *See, e.g., State v. Peart*, 621 So. 2d 780, 790-91 (La. 1993) (creating a rebuttable presumption of ineffective counsel for a class of indigent defendants who were particularly affected by underfunding of the indigent defense system); *In re Order on Prosecution of Criminal Appeals by the Tenth Judicial Circuit Pub. Defender*, 561 So. 2d 1130, 1138-39 (Fla. 1990) (tailoring the habeas procedure for indigents with meritorious petitions in face of a substantial backlog in the indigent appeals system).

38. This Petition does not seek a presumption in any case that any class member was tortured by Burge, Byrne and their detectives and it does not ask for the vacation of any conviction without a full and proper hearing. The class representative Petitioners merely ask that the Court authorize a hearing in each of the class members' cases to determine whether certain Burge-connected confessions were in fact coerced by torture. Only with a finding, after a full and proper hearing, that a class member more probably than not was physically coerced into confessing should further steps be taken.

39. Without hearings in each and every one of the Burge-tainted cases, it will be impossible to remove from the history of Illinois the stain of Burge and his cohorts' misconduct.

The Mayor of Chicago has rightly declared that "it is time we end" the Burge scandal. That end will not come unless and until there has been a full and fair hearing in every one of the class members' cases.

PRAYER FOR RELIEF

Petitioners pray that this Court afford the following relief:

1. Entry of an Order pursuant to 735 ILCS 5/2-801 certifying this case as a class action.

2. Entry of such further Orders as may be necessary to provide notice to all potential class members of the pendency of this action and the opportunity to seek relief.

3. Entry of a further Order directing that each class member be granted a stage three evidentiary hearing concerning his claim that a confession used to secure his conviction and sentence was the involuntary product of torture or physical coercion.

4. Entry of such Orders as may be necessary to ensure that each class member has able counsel to represent him at such a hearing.

5. In each case in which a class member shows by a preponderance of the evidence that his confession was the involuntary product of torture, entry of an Order vacating the Petitioner's conviction.

6. Such further and additional relief as may be just and proper.

Respectfully submitted,

JOHNNIE PLUMMER
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Individually and as class representatives

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CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he served the foregoing Class Action Petition for Relief Under the Post-Conviction Hearing Act by hand delivery before the hour of 5:00 p.m. on Tuesday, October 16, 2012 upon:

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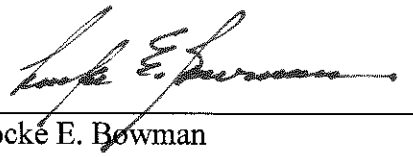

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