No. _____

In the Supreme Court of the United States

KYLE JAMES MOESCH,
Petitioner,

v.

THE STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari to the Texas Court of Criminal Appeals

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

In *Douglas v. California*, 372 U.S. 353, 357 (1963), this Court held that prisoners are entitled to counsel on their as-of-right direct appeal because "where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel… an unconstitutional line has been drawn between rich and poor." Six years ago, this Court recognized that collateral proceedings that provide the first occasion to raise a claim of ineffective assistance at trial are "in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim." *Martinez v. Ryan*, 566 U.S. 1, 11–13 (2012). Is a prisoner who raises a claim of ineffective assistance of trial counsel in initial-review collateral proceedings thus entitled to the assistance of counsel?

LIST OF PARTIES

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Petitioner Kyle James Moesch respectfully petitions for a writ of certiorari to review the judgment of the Texas Court of Criminal Appeals.

OPINIONS BELOW

The Texas Court of Criminal Appeals's September 19, 2018, order denying Moesch's application for a writ of habeas corpus is unpublished but included as Appendix A.

JURISDICTION

The Texas Court of Criminal Appeals, the highest court of Texas in which a decision could be had, denied Moesch's application for a writ of habeas corpus alleging, among other things, several facially valid claims that trial counsel did not provide the effective assistance guaranteed by the Sixth Amendment, incorporated to state prosecutions by the Fourteenth Amendment. Appendix A. This Court thus has jurisdiction pursuant to 28 U.S.C. § 1257(a).

RELEVANT CONSTITUTIONAL PROVISIONS

The Sixth Amendment to the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right to… have the Assistance of Counsel for his defence." U.S. Const. amend VI.

The Fourteenth Amendment to the United States Constitution provides that "[n]o State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

STATEMENT OF THE CASE

In April of 2011, in Bell County, Texas, Moesch was tried alongside co-defendants John Valdez, Jr., and Kathryn Briggs with the murder-for-hire of Ryan Sullivan. *See Briggs v. State*, 03-11-00275-CR, 2012 WL 3629811, at *1 (Tex. App.—Austin Aug. 24, 2012, no pet.). Moesch and Valdez had been medics in Sullivan's Army unit; at the time of Sullivan's murder, all three remained stationed at Texas's Fort Hood. *Id.* at *4. Briggs once dated Sullivan, and she remained the beneficiary of his life-insurance policy. *Id.* at *1. "The State's theory at trial was that Valdez had killed Sullivan, that Moesch had assisted Valdez in the crime, and that Briggs, who had been in a past romantic relationship with Sullivan, had orchestrated the killing in order to recover [the] proceeds from Sullivan's life insurance policy." *Id.*

The evidence at trial showed that Moesch was a comparatively minor participant, acting at the direction of Valdez, Moesch's commanding officer. *Id.* And Moesch contested whether he knew his actions were designed to assist Valdez in killing Sullivan. The jury found Moesch guilty, though, and pursuant to Texas law, the trial court imposed an automatic sentence of life without parole. Appendix B; *see* Tex. Pen. Code § 12.31(a)(2) ("An individual adjudged guilty of a capital felony in a case in which the state does not seek the death penalty shall be punished by imprisonment in the Texas Department of Criminal

Justice for… life without parole, if the individual committed the offense when 18 years of age or older.").

Moesch appealed to Texas's Third Court of Appeals, arguing that the trial court abused its discretion in denying his motion to sever his trial from his co-defendants' and reversibly erred in failing to sua sponte instruct the jury that the evidence pertaining to each defendant should be considered separately and independently. *Moesch v. State*, 03-11-00267-CR, 2012 WL 3629847, at *1 (Tex. App.—Austin Aug. 24, 2012, pet. ref'd). The court of appeals affirmed the judgment, and the Texas Court of Criminal Appeals then refused Moesch's petition for discretionary review. *Id.*

In October of 2017, Moesch then filed pro se in the trial court an application for a writ of habeas corpus under Article 11.07 of the Texas Code of Criminal Procedure. Appendix C. In the application, Moesch argued (among other things) that, in seven different respects, his trial attorney provided ineffective assistance:

1) failing to interview potential alibi witnesses;

2) failing to recover exculpatory text messages;

3) failing to inform Moesch of his right to a speedy trial;

4) failing to object to the State's violation of the witness-sequestration rule;

5) failing to impeach State's witnesses with inconsistent statements;

6) failing to present witnesses in favor of Moesch; and

7) failing to discuss the case with Moesch.

Appendix C.

Moesch filed an extensive memorandum setting out his arguments in support of his grounds, providing supportive affidavits and other documents. Moesch also asked the court to set his application for an evidentiary hearing.

The trial court didn't. Nor did it appoint an attorney to assist with Moesch's habeas application. Instead, the trial court ordered Moesch's trial and appellate attorneys to file affidavits addressing Moesch's issues, and, as soon as they did, the trial court forwarded the writ record to the Court of Criminal Appeals for a final ruling. The trial court did not include findings of fact or conclusions of law, as required by Article 11.07 of the Texas Code of Criminal Procedure. *See* Tex. Code Crim. Proc. art. 11.07. On September 19, 2018, the Texas Court of Criminal Appeals then denied Moesch's application without written order. Appendix A.

REASONS FOR GRANTING THE WRIT

In holding that there is no constitutional right to counsel past an initial direct appeal, this Court has reasoned that because further review amounts to a duplicative review of claims already raised on direct appeal with the assistance of counsel, and pro se petitioners will have access to the trial and direct-appeal records, no unconstitutional line has been drawn between the rich and poor. *Ross v. Moffitt*, 417 U.S. 600, 616 (1974); *Pennsylvania v. Finley*, 481 U.S. 551, 556-57 (1987); *cf. Douglas v. California*, 372 U.S. 372 U.S. 353, 357 (1963) (holding prisoners entitled to counsel on first appeal because "where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel... an unconstitutional line has been drawn between rich and poor."). When it comes to claims of ineffective assistance of trial counsel that can only be raised in collateral proceedings, however, none of that's true. And indeed, this Court in *Coleman v. Thompson* "left open" the question of "whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial"—"initial-review collateral proceedings." *Martinez v. Ryan*, 566 U.S. 1, 8–9 (2012) (citing 501 U.S. 722, 755 (1991)). Because, as this Court has since recognized in *Martinez*, an initial-review collateral proceeding raising a claim of ineffective assistance of trial counsel is the equivalent of a first appeal, not duplicative of one, *see id.* at 11, and because it requires the assistance of counsel, Moesch urges this Court to grant this petition, hold that a prisoner has a right to assistance of counsel when raising in initial-review collateral proceedings a claim of ineffective

assistance of trial counsel, vacate the Texas Court of Criminal Appeals's judgment, and remand this case to that court to appoint counsel.

I. This Court's recognition of the right to counsel.

A. The right to counsel on direct appeal is grounded in due process and equal-protection principles.

Overruling this Court's earlier decision in *Betts v. Brady*, 316 U.S. 455 (1942), this Court held in *Gideon v. Wainwright*, 372 U.S. 335 (1963), that the Sixth and Fourteenth Amendments to the Constitution assure an indigent defendant the right to counsel at the trial stage of a criminal proceeding. The same day, this Court held in *Douglas* that states must provide counsel to indigent defendants for their "first appeal, granted as a matter of right." 372 U.S. at 366. *Douglas* did not create a right to appeal, though. "Grounded in both due process and equal protection principles, with an emphasis on the latter," *Douglas* "stand[s] for the proposition that when states choose to grant criminal defendants a right to appeal, they must provide counsel as well." Ty Alper, *Toward A Right to Litigate Ineffective Assistance of Counsel*, 70 Wash. & Lee L. Rev. 839, 852 (2013). In short, "where the merits of the one and only appeal an indigent has as of right are decided without benefit of counsel… an unconstitutional line has been drawn between rich and poor.'" *Douglas*, 372 U.S. at 357; *see also Ross*, 417 U.S. at 608-09 (noting that it is not clear whether *Douglas* was grounded in equal protection or due process principles); *id*. at 621 (Douglas, J., dissenting)

("*Douglas v. California* was grounded on concepts of fairness and equality.").

This Court has not gone any further. In *Ross v. Moffitt*, this Court held that neither the Due Process Clause nor the Equal Protection Clause require states to provide counsel beyond the first appeal as of right. 417 U.S. at 609-16. As to due process, this Court emphasized the differences between the trial and appellate stages of a criminal proceeding:

> [I]t is ordinarily the defendant, rather than the State, who initiates the appellate process, seeking not to fend off the efforts of the State's prosecutor but rather to overturn a finding of guilt made by a judge or a jury below. The defendant needs an attorney on appeal not as a shield to protect him against being "haled into court" by the State and stripped of his presumption of innocence, but rather as a sword to upset the prior determination of guilt.

Id. at 610. And because the right to an appeal is not constitutionally guaranteed, the Court held that there can be no violation of due process when the state refuses to provide counsel "at every stage" of the appellate process. *Id.* at 611.

Of course, "this reasoning could just as easily govern" the right to counsel in an initial direct appeal, and this Court in *Ross* "moved on to analyze the claim under an equal protection analysis." Alper, 70 Wash. & Lee L. Rev. at 853–54 (citing *id.*). As to that issue, this Court reasoned "that an uncounseled, indigent defendant seeking discretionary review in a state's highest court, when he has received counsel for his first

appeal as of right (to the state's intermediate appellate court), is not so much worse off than a defendant with the resources to hire appellate counsel." *Id.* (citing *Ross*, 417 U.S. at 616). While an indigent defendant might not have a lawyer, this Court reasoned, he will have at his disposal "a transcript or other record of the trial proceedings, a brief on his behalf filed in the Court of Appeals setting forth his claims of error, and in many cases an opinion by the Court of Appeals disposing of his case." *Ross*, 417 U.S. at 615. This material, along with whatever the indigent defendant can come up with on his own, provides the state supreme court "with an adequate basis for its decision to grant or deny review." *Id.*

Pointing to *Ross*, this Court in *Finley* then held that neither the Due Process Clause nor the equal protection guarantee entitled indigent prisoners to the effective assistance of counsel in seeking state postconviction relief. 481 U.S. 551. Because "[p]ostconviction relief is even further removed from the criminal trial than is discretionary direct review," this Court held that while Pennsylvania had made the "valid choice" to provide postconviction counsel, it was not constitutionally required to have done so. *Id.* at 556–557.

B. This Court has recognized that an initial-review collateral proceeding raising a claim of ineffective assistance of trial counsel, unlike other proceedings beyond a prisoner's initial appeal, might implicate equal-protection principles.

In *Coleman v. Thompson*, this Court considered whether an attorney's error in a state collateral proceeding constituted cause to excuse procedural default in a subsequent federal habeas proceeding. 501 U.S. at 752. Citing *Finley*, this Court held that it didn't because there is no constitutional right to counsel in state collateral proceedings. *Id.* at 752 (citing *Finley*, 481 U.S. 551). But *Coleman* "left open" "whether a prisoner has a right to effective counsel in collateral proceedings which provide the first occasion to raise a claim of ineffective assistance at trial"—"initial-review collateral proceedings." *Martinez*, 566 U.S. at 8–9. And in fact *Coleman* suggested that the Constitution may require States to provide counsel in initial-review collateral proceedings after all: "in [these] cases state collateral review is the first place a prisoner can present a challenge to his conviction"—it's a prisoner's "one and only appeal" as to an ineffective-assistance claim. *Id*. at 755-76.

Six years ago, this Court had the opportunity to answer that question left open. In *Martinez v. Ryan*, this Court considered a federal habeas petitioner who raised "substantial" claims of ineffective assistance of trial counsel that his original state habeas attorney had missed. *Martinez*, 566 U.S. 1. This Court passed. Instead, this Court "reframed the question as whether

ineffective assistance of postconviction counsel may provide cause to excuse a procedural default in federal habeas review"—"an equitable, as opposed to constitutional, determination." Alper, 70 Wash. & Lee L. Rev. at 864–68. But with the explicit aim of "protect[ing] prisoners with a potentially legitimate claim of ineffective assistance of trial counsel," this Court held in a 7-2 opinion by Justice Kennedy that ineffective assistance of postconviction counsel could provide cause. *Martinez*, 566 U.S. at 9.

II. An uncounseled, indigent prisoner who alleges in an initial-review collateral proceeding that he received ineffective assistance of trial counsel is not similarly situated to a prisoner with the resources to hire counsel.

In sum, then, this Court has held that prisoners are entitled to counsel in their initial as-of-right appeals but not in collateral proceedings because counsel is not as necessary in the latter. "[C]ollateral review amounts to a duplicative review of claims already raised on direct appeal with the assistance of counsel," this Court has reasoned, and "pro se petitioners have access to the trial and direct-appeal records." 48 Mary Dewey, *Martinez v. Ryan*: A Shift Toward Broadening Access to Federal Habeas Corpus, 90 Denv. U.L. Rev. 269, 275 (2012) (citing *Ross*, 417 U.S. at 614-16).

But an initial-review collateral proceeding raising claims of ineffective assistance of trial counsel is not a duplicative review of claims already raised on direct appeal with the assistance of counsel. And trial and direct-appeal records are generally insufficient to meaningfully assert claims of ineffective assistance of

counsel. The conclusion is thus "inescapable": if, in *Douglas*, this Court held "that an unconstitutional line has been drawn between rich and poor when the former is entitled to a lawyer on appeal but the latter is not," the same is true in initial-review collateral proceedings raising claims of ineffective assistance of trial counsel. Alper, 70 Wash. & Lee L. Rev. at 880.

First, and as this Court recognized in *Martinez*, where (as in Texas[1]) "the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim."[2] *Martinez*, 566 U.S. at 11. "This is because the state habeas court 'looks to the merits of the clai[m]' of ineffective assistance, no other

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[1] In *Trevino v. Thaler*, this Court concluded that the "structure and design of the Texas system in actual operation" makes it "'virtually impossible' for an ineffective assistance claim to be presented on direct review." 569 U.S. 413, 417 (2013) (quoting *Robinson v. State*, 16 S.W.3d 808, 810 (Tex. Crim. App. 2000)).

[2] There's nothing wrong, of course, with requiring ineffectiveness claims to be raised postconviction. *See Martinez*, 566 U.S. at 13. As set forth in the preceding section, "[i]neffective-assistance claims often depend on evidence outside the trial record," and "[d]irect appeals, without evidentiary hearings, may not be as effective as other proceedings for developing the factual basis for the claim." *Id.* Moreover, "[a]bbreviated deadlines to expand the record on direct appeal may not allow adequate time for an attorney to investigate the ineffective-assistance claim." *Id.* But "[b]y deliberately choosing to move trial-ineffectiveness claims outside of the direct-appeal process, where counsel is constitutionally guaranteed, the State significantly diminishes prisoners' ability to file such claims." *Id.*

court has addressed the claim," and, as set forth more fully in the next paragraph, "'defendants pursuing first-tier review... are generally ill equipped to represent themselves' because they do not have a brief from counsel or an opinion of the court addressing their claim of error." *Id.* (quoting *Halbert v. Michigan*, 545 U.S. 605, 617 (2005)). Thus, "[w]hen an attorney errs in initial-review collateral proceedings, it is likely that no state court at any level will hear the prisoner's claim." *Id.* at 10. Indeed, this Court in *Martinez* "place[d] ineffectiveness claims on par with, if not more important than, other trial errors that would typically be raised by appellate counsel (to which all indigent defendants are constitutionally entitled)." Alper, 70 Wash. & Lee L. Rev. at 871-73. This Court's "assertion that a prisoner's inability to present a claim of trial error is 'of particular concern' when the claim is one of ineffective assistance of trial counsel echoed… the 'bedrock' principles enshrined in *Gideon*." *Id.* (citing *Martinez*, 566 U.S. at 12).

Relatedly (and again as this Court recognized in *Martinez*), trial and direct-appeal records are generally insufficient to meaningfully assert claims of ineffective assistance of counsel. "Claims of ineffective assistance at trial often require investigative work and an understanding of trial strategy." *Martinez*, 566 U.S. at 11; *see also Massaro v. United States*, 538 U.S. 500, 505 (2003) (explaining that most ineffective assistance of counsel claims require "additional factual development" beyond what is contained in the trial record). "While confined to prison," then, "the prisoner is in no position to develop the evidentiary basis for a claim of ineffective assistance, which often turns on evidence outside the trial record." *Id.* at 12. Further, where (as

in Texas) "the issue cannot be raised on direct review," "a prisoner asserting an ineffective-assistance-of-trial-counsel claim in an initial-review collateral proceeding cannot rely on a court opinion or the prior work of an attorney addressing that claim." *Id.* at 11-12. And what's more, a "prisoner, unlearned in the law, may not comply with the State's procedural rules or may misapprehend the substantive details of federal constitutional law." *Id.* at 12. "To present a claim of ineffective assistance at trial in accordance with the State's procedures, then, a prisoner likely needs an effective attorney." *Id.*; *see also* Eve Brensike Primus, *The Illusory Right to Counsel*, 37 Ohio N.U. L. Rev. 597, 609 (2011) (noting that it is very difficult, if not impossible, for a prison inmate without counsel to gather extra-record evidence sufficient to establish prejudice under the ineffective assistance of counsel standard); Clive A. Stafford Smith & Remy Voisin Starns, *Folly by Fiat: Pretending that Death Row Inmates Can Represent Themselves in State Capital Post-Conviction Proceedings*, 45 Loy. L. Rev. 55, 88-100 (1999) (establishing the many ways in which indigent prisoners are ill-equipped to develop and raise claims of ineffective assistance of counsel).

Initial-review collateral proceedings raising claims of ineffective assistance of trial counsel are thus nothing like the discretionary appeal at issue in *Moffitt*. As in *Douglas*, denying counsel in initial-review collateral proceedings raising claims of ineffective assistance of trial counsel draws an unconstitutional line between the rich and poor.

III. Recognizing a right to counsel in initial-review collateral proceedings raising claims of ineffective assistance of trial counsel will impose small, worthwhile costs.

Of course, this Court should consider the systemic costs of holding that there is a constitutional right to counsel in initial-review collateral proceedings raising claims of ineffective assistance of trial counsel. *See Davila v. Davis*, 137 S. Ct. 2058, 2068 (2017) (considering the systemic costs of extending *Martinez* to claims of ineffective assistance of appellate counsel). But in Justice Scalia's *Martinez* dissent, he explained how the Court's holding would have "precisely the same" result as holding that there is a constitutional right to counsel in initial-review state habeas proceedings. *Martinez*, 566 U.S. at 19 (Scalia, J., dissenting); *see also id.* at 20 ("…it would have essentially the same practical consequences as a holding that collateral-review counsel is constitutionally required."). This Court should not worry now, then, about imposing significant systemic costs. They've already been imposed.

Justice Scalia in *Martinez* also observed that ineffective-assistance-of-trial-counsel claims are not the only claims typically considered first on collateral review—so are "claims of 'newly discovered' prosecutorial misconduct, for example, claims based on 'newly discovered' exculpatory evidence or 'newly discovered' impeachment of prosecutorial witnesses, and claims asserting ineffective assistance of appellate counsel." *Martinez*, 566 U.S. at 19 (Scalia, J., dissenting) (internal citations omitted). *Martinez*'s

"soothing assertion" that it addressed only claims of ineffective assistance of trial counsel, Justice Scalia opined, thus "insults the reader's intelligence." *Id.*

But ineffective-assistance-of-trial-counsel claims are unique. "The right to the effective assistance of counsel at trial is a bedrock principle in our justice system"—"[i]ndeed," it "is the foundation for our adversary system." *Davila*, 137 S. Ct. at 2066–67. "It is deemed as an 'obvious truth' the idea that 'any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.'" *Martinez*, 566 U.S. at 12 (quoting *Gideon,* 372 U.S. at 344); *see also Powell v. Alabama*, 287 U.S. 45, 68–69 (1932)). "Defense counsel tests the prosecution's case to ensure that the proceedings serve the function of adjudicating guilt or innocence," "protect[s] the rights of the person charged," and "preserves claims to be considered on appeal and in federal habeas proceedings." *Martinez*, 566 U.S. at 12 (internal citations omitted). "It is consequently not surprising," then, as this Court recognized in *Luis v. United States*, "that this Court's opinions often refer to the right to counsel as fundamental"; "that commentators describe the right as a great engine by which an innocent man can make the truth of his innocence visible"; that this Court has "understood the right to require that the Government provide counsel for an indigent defendant accused of all but the least serious crimes"; and that this Court has "considered the wrongful deprivation of the right to counsel a 'structural' error that so affects the framework within which the trial proceeds that courts may not even ask whether the error harmed the defendant." 136 S. Ct. 1083, 1088–89 (2016) (internal citations and quotations omitted). In short, claims of

ineffective assistance of trial counsel are not the same as claims based on newly discovered exculpatory or impeachment evidence and claims asserting ineffective assistance of appellate counsel. *See Davila*, 137 S. Ct. 2058.

Regardless, any costs are worth it. As discussed above, this Court recognized in *Martinez* that "[t]o present a claim of ineffective assistance at trial," "a prisoner likely needs an effective attorney." *Martinez*, 566 U.S. at 12. And claims of ineffective assistance at trial need to be heard. As the Innocence Network explained in its amicus brief in *Martinez*, ineffective assistance at trial is a leading cause of wrongful convictions. *See* Brief for the Innocence Network as Amici Curiae Supporting Petitioner at 4-10, *Martinez v. Ryan*, 566 U.S. 1 (2012). Indeed, "[t]he risk that deficient trial counsel will cause wrongful convictions is widely recognized." *Id.* at 4. The American Bar Association, for example, "has noted that '[a]lthough there undoubtedly are a variety of causes of wrongful conviction… inadequate representation often is cited as a significant contributing factor.'" *Id.* (quoting A.B.A. Standing Comm. on Legal Aid and Indigent Defs., Gideon's Broken Promise: America's Continuing Quest for Equal Justice 3 (Dec. 2004), available at http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings_authcheckdam.pdf. In just the seven years spanning 2000 to 2006, "criminal defendants brought 330 successful ineffective assistance of counsel claims in state court and an additional 122 successful claims in federal court." *Id.* (citing 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 Effective Assistance of Counsel, 34 Am. J. Crim. L. 127, 156 (2007)). And considering "the particularized legal standard set forth in *Strickland v. Washington* to establish unconstitutional ineffectiveness, and the fact that many claims are raised by incarcerated defendants acting pro se, it is likely that many more defendants have been convicted in trials in which they were served by unconstitutionally ineffective trial counsel." *Id.* Remedying this is worth whatever minor costs, if any, would be imposed by recognizing a right to counsel in initial-review collateral proceedings raising claims of ineffective assistance of trial counsel.

CONCLUSION

"Where, as here, the initial-review collateral proceeding is the first designated proceeding for a prisoner to raise a claim of ineffective assistance at trial, the collateral proceeding is in many ways the equivalent of a prisoner's direct appeal as to the ineffective-assistance claim." *Martinez*, 566 U.S. at 11. If an unconstitutional line has been drawn between rich and poor when the former is entitled to a lawyer on appeal but the latter is not, the same is true in initial-review collateral proceedings raising claims of ineffective assistance of trial counsel. Accordingly, Moesch urges this Court to grant this petition, hold that a prisoner has a right to assistance of counsel when raising in initial-review collateral proceedings a claim of ineffective assistance of trial counsel, vacate the Texas Court of Criminal Appeals's judgment, and remand this case to that court to appoint counsel. *See, e.g., Moore v. Texas*, 137 S. Ct. 1039, 1053 (2017)

(vacating the Texas Court of Criminal Appeals's judgment where, in considering a state habeas application, the court violated the Eighth Amendment).

Respectfully submitted,

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