No. 19-35

In the Supreme Court of the United States

BRANDON LEE MOJICA, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether aiding and abetting armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2, is a "crime of violence" under 18 U.S.C. 924(c)(3).

2. Whether the district court was required to hold an evidentiary hearing before denying petitioner's motion under 28 U.S.C. 2255 for postconviction relief.

ADDITIONAL RELATED PROCEEDINGS

United States District Court (M.D. Fla.):

United States v. *Mojica*, No. 16-cr-239 (Apr. 28, 2017)

Mojica v. *United States*, No. 17-cv-2122 (Nov. 19, 2018)

United States Court of Appeals (11th Cir.):

Mojica v. *United States*, No. 19-10198 (Apr. 3, 2019)

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1) is unreported. The order of the district court (Pet. App. 2-13) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 3, 2019. The petition for a writ of certiorari was filed on July 2, 2019. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

Following a guilty plea in the United States District Court for the Middle District of Florida, petitioner was convicted of aiding and abetting armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2; and aiding and abetting brandishing a firearm during and in relation to a crime of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Judgment 1. The district court

sentenced petitioner to 120 months of imprisonment, to be followed by three years of supervised release. Judgment 2-3. Petitioner did not appeal. In 2018, petitioner filed an amended motion for postconviction relief under 28 U.S.C. 2255. 17-cv-2122 D. Ct. Doc. 10 (May 15, 2018) (Amended 2255 Motion). The court denied that motion and denied petitioner's request for a certificate of appealability (COA). Pet. App. 2-13. The court of appeals likewise denied a COA. *Id.* at 1.

1. In 2016, petitioner and an accomplice, Ricardo Rodriguez, Jr., began hatching a plan to rob a branch of Wells Fargo Bank where petitioner was employed as a teller. Plea Agreement 17-20; see Presentence Investigation Report (PSR) ¶¶ 19-24. Petitioner provided Rodriguez with information about the bank, including the names and work schedules of bank employees, the codes to the bank vault, and outlines of various ways in which the bank could be robbed. Plea Agreement 18-19. Petitioner specifically discussed with Rodriguez the need to brandish a firearm "for purposes of intimidation" during the robbery. *Id.* at 20. Before the robbery, petitioner inspected a .32 caliber pistol that Rodriguez intended to use during the robbery, and he instructed Rodriguez to "bring the firearm without a round loaded in the chamber" in order to prevent it from accidentally discharging. *Ibid.*; see PSR ¶¶ 19-20, 23.

In November 2016, petitioner told Rodriguez that petitioner would be opening the bank the next morning "with one other person," and petitioner and Rodriguez decided that Rodriguez would carry out the robbery then. Plea Agreement 19-20. Petitioner provided Rodriguez with detailed information about the other person who would be with petitioner—the bank's manager—

including that she had four young children and a husband who worked at a local prison. *Id.* at 18-19. Petitioner also confirmed that Rodriguez "was going to use a firearm" during the robbery. *Id.* at 20.

Early the next morning, as petitioner and the manager were opening the bank, Rodriguez approached them, brandished the .32 caliber pistol, and demanded that they open the safe. Plea Agreement 17-18. Rodriguez removed $296,600 from the safe and stuffed it into a backpack. *Id.* at 18. He then bound the bank manager and petitioner with zip ties, doused the safe and teller stations with bleach, and fled on a bicycle. *Ibid.*

Police officers found Rodriguez a short while later. PSR ¶ 14. As the officers approached, Rodriguez threw his backpack to the ground and drove off in a white Pontiac. *Ibid.* Rodriguez led police on a high-speed chase—during which he crashed into other cars and injured several people—before he was finally stopped. PSR ¶¶ 14-16. A search of Rodriguez's pockets revealed (among other things) several handwritten notes containing information about the bank, including the names of employees who were scheduled to work that day and plans for the robbery. PSR ¶ 17. Police found the stolen money and the .32 pistol in the backpack that Rodriguez had discarded. PSR ¶ 15.

Rodriguez subsequently confessed to his role in the robbery and identified petitioner as his accomplice. PSR ¶¶ 18-20. Petitioner was arrested and likewise confessed to having participated in the robbery scheme. PSR ¶¶ 21-24.

2. A federal grand jury charged petitioner with aiding and abetting armed bank robbery, in violation of 18 U.S.C. 2113(a) and (d), and 2; and aiding and abetting brandishing a firearm during and in relation to a crime

of violence, in violation of 18 U.S.C. 924(c)(1)(A)(ii) and 2. Indictment 1-2. The Section 924(c) count identified armed bank robbery as the predicate crime of violence. Indictment 2.

Petitioner pleaded guilty to both offenses. Plea Agreement 1, 2-4; see 16-cr-239 Tr. 21-22, 34 (Jan. 26, 2017) (1/26/17 Tr.). The district court sentenced petitioner to 120 months of imprisonment, consisting of 36 months of imprisonment on the armed bank robbery count and a consecutive term of 84 months of imprisonment on the Section 924(c) count. Judgment 2. Petitioner did not appeal.

3. In 2018, petitioner filed an amended motion for postconviction relief under 28 U.S.C. 2255. See Amended 2255 Motion 4-7. Petitioner raised two principal arguments in support of that motion. First, petitioner contended that his trial counsel had rendered ineffective assistance by failing to file a motion to suppress his confession. *Id.* at 4. Petitioner alleged that he had requested a lawyer as soon as he was taken into custody, but that the police had ignored that request and coerced him into signing a confession. *Ibid.*; see 17-cv-2122 D. Ct. Doc. 15, at 7-11 (June 29, 2018) (Memorandum in Support of Amended 2255 Motion). Petitioner also requested an evidentiary hearing on that claim. Memorandum in Support of Amended 2255 Motion 13-14.

Second, petitioner contended that aiding and abetting armed bank robbery does not qualify as a crime of violence under Section 924(c), and that his guilty plea to the Section 924(c) offense was therefore not knowing and voluntary. Amended 2255 Motion 5-6; see Memorandum in Support of Amended 2255 Motion 12-13. Section 924(c)(3) defines a "crime of violence" as a felony offense that either "has as an element the use, attempted

use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), or, "by its nature, involves a substantial risk that physical force against the person or property of another may be used in the course of committing the offense," 18 U.S.C. 924(c)(3)(B). Petitioner argued that aiding and abetting armed bank robbery does not qualify as a crime of violence under Section 924(c)(3)(A), and that Section 924(c)(3)(B) was unconstitutionally vague in light of *Sessions* v. *Dimaya*, 138 S. Ct. 1204 (2018), in which this Court held that the nearly identical definition of a "crime of violence" in 18 U.S.C. 16(b) is void for vagueness. Amended 2255 Motion 5-6; see Memorandum in Support of Amended 2255 Motion 12-13.

The district court denied petitioner's motion. Pet. App. 2-13. The court found that petitioner's admissions during his plea colloquy—which petitioner had not challenged—directly contradicted the factual assertions that petitioner made in support of his ineffective-assistance claim. *Id.* at 6-9. The court noted, for example, that petitioner had stated under oath during the plea colloquy that he had committed the charged offenses, that no one had coerced or intimidated him into admitting his role in the robbery, and that he had fully discussed the underlying facts with his attorney and "had no complaints whatsoever" about trial counsel's performance. *Id.* at 7; see *id.* at 7-8. The court further observed that although petitioner by his own account had "fully explained" to trial counsel "the facts and circumstances" surrounding his arrest and interrogation, he had "said nothing during the plea hearing to indicate he had concerns about his confession." *Id.* at 9 (citation omitted). The court additionally found that, in any event, petitioner could not establish prejudice in

light of the other evidence of his guilt, including Rodriguez's confession and Rodriguez's possession of detailed information about the bank and its employees that petitioner had given him. *Id.* at 9-10. The court therefore determined that petitioner had failed to demonstrate ineffective assistance of counsel. *Id.* at 9, 11.

As for petitioner's challenge to his Section 924(c) conviction, the district court reasoned both that aiding and abetting armed bank robbery is a crime of violence under Section 924(c)(3)(A) and that Section 924(c)(3)(B) was not unconstitutionally vague. Pet. App. 11-12. The court therefore determined that petitioner could not demonstrate that his Section 924(c) conviction was invalid. *Ibid.*

4. The district court denied a COA on the ground that petitioner had "fail[ed] to make a substantial showing of the denial of a constitutional right." Pet. App. 12 (citing 28 U.S.C. 2253(c)(2)). The court of appeals likewise denied a COA. *Id.* at 1.

ARGUMENT

Petitioner contends (Pet. 5-7) that this Court should grant his petition for a writ of certiorari, vacate the court of appeals' judgment, and remand for further consideration in light of *United States* v. *Davis*, 139 S. Ct. 2319 (2019), in which this Court held that the definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B) is unconstitutionally vague. Petitioner's conviction under 18 U.S.C. 924(c), however, is predicated on aiding and abetting armed bank robbery, which qualifies as a "crime of violence" under the alternative definition of that term in 18 U.S.C. 924(c)(3)(A). *Davis* does not affect the validity of Section 924(c)(3)(A). Petitioner further asserts (Pet. 7-11) that the district court erred

in rejecting his ineffective-assistance claim without conducting an evidentiary hearing. That factbound assertion does not conflict with any decision of this Court or implicate any division of authority among the courts of appeals. The petition for a writ of certiorari should be denied.

1. a. A conviction for armed bank robbery requires proof that the defendant (1) took or attempted to take money from the custody or control of a bank "by force and violence, or by intimidation," 18 U.S.C. 2113(a); and (2) either committed an "assault[]" or endangered "the life of any person by the use of a dangerous weapon or device" while committing the robbery, 18 U.S.C. 2113(d). For the reasons stated in the government's brief in opposition to the petition for a writ of certiorari in *Lloyd* v. *United States*, No. 18-6269 (Jan. 9, 2019), cert. denied, 139 S. Ct. 1167 (2019), armed bank robbery qualifies as a crime of violence under Section 924(c) because it "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A). See Br. in Opp. at 6-13, *Lloyd*, *supra* (No. 18-6269).[1] Every court of appeals to have considered the question, including the court below, has so held. See *id.* at 8-9. This Court has recently and repeatedly denied petitions for a writ of certiorari challenging the circuits' consensus on the application of Section 924(c)(3)(A)—and similarly worded federal statutes and provisions of the Sentencing Guidelines—to bank robbery and armed bank robbery.[2]

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[1] We have served petitioner with a copy of the government's brief in opposition in *Lloyd*.

[2] See, *e.g.*, *Lockwood* v. *United States*, 139 S. Ct. 2648 (2019) (No. 18-8799) (armed bank robbery); *Cirino* v. *United States*,

Because armed bank robbery qualifies as a crime of violence under Section 924(c)(3)(A), aiding and abetting armed bank robbery also qualifies as a crime of violence. When the government prosecutes a defendant based on aiding-and-abetting liability, the government must prove that either the defendant or one of his confederates committed each of the elements of the underlying offense and that the defendant was "punishable as a principal" for that offense because he took active and intentional steps to facilitate the crime. 18 U.S.C. 2(a); see *Rosemond* v. *United States*, 572 U.S. 65, 70-74 & n.6 (2014). If the substantive crime "has as an element the use, attempted use, or threatened use of physical force against the person or property of another," 18 U.S.C. 924(c)(3)(A), a conviction for aiding and abetting that crime necessarily includes proof of that force element. Thus, during petitioner's plea colloquy, he acknowledged that the government would need to establish each

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139 S. Ct. 2012 (2019) (No. 18-7680) (armed bank robbery); *Winston* v. *United States*, 139 S. Ct. 1637 (2019) (No. 18-8525) (armed bank robbery); *Hearn* v. *United States*, 139 S. Ct. 1620 (2019) (No. 18-7573) (armed bank robbery); *Landingham* v. *United States*, 139 S. Ct. 1620 (2019) (No. 18-7543) (armed bank robbery); *Scott* v. *United States*, 139 S. Ct. 1612 (2019) (No. 18-8536) (armed bank robbery); *Lloyd*, *supra* (No. 18-6269) (armed bank robbery); *Johnson* v. *United States*, 139 S. Ct. 647 (2018) (No. 18-6499) (bank robbery); *Faurisma* v. *United States*, 139 S. Ct. 578 (2018) (No. 18-6360) (armed bank robbery); *Cadena* v. *United States*, 139 S. Ct. 436 (2018) (No. 18-6069) (bank robbery); *Patterson* v. *United States*, 139 S. Ct. 291 (2018) (No. 18-5685) (bank robbery); *Watson* v. *United States*, 139 S. Ct. 203 (2018) (No. 18-5022) (armed bank robbery); *Perry* v. *United States*, 138 S. Ct. 1439 (2018) (No. 17-6611) (armed bank robbery); *Schneider* v. *United States*, 138 S. Ct. 638 (2018) (No. 17-5477) (bank robbery); *Castillo* v. *United States*, 138 S. Ct. 638 (2018) (No. 17-5471) (bank robbery); *Stephens* v. *United States*, 138 S. Ct. 502 (2017) (No. 17-5186) (armed bank robbery).

element of armed bank robbery in order to convict him of aiding and abetting that offense, see 1/26/17 Tr. 13-14, and he admitted the force element of that crime by admitting that he "participate[d] in the taking of money from the bank * * * by using force, violence, or by intimidating people," that he was responsible for "assault[ing] someone or put somebody's life in jeopardy by using a dangerous weapon while that money was being stolen," and that he "ha[d] advance knowledge that a firearm would be used and that it would be displayed and that it would be used for purposes of intimidating people," *id.* at 29-30.

Every court of appeals to have considered the question has determined that aiding and abetting a crime that has a requisite element of the use of force under Section 924(c)(3)(A) and similar provisions qualifies as a crime of violence. See, *e.g.*, *Kidd* v. *United States*, 929 F.3d 578, 581 (8th Cir. 2019) (per curiam) (aiding and abetting armed robbery involving controlled substances), petition for cert. pending, No. 19-6108 (filed Sept. 27, 2019); *United States* v. *García-Ortiz*, 904 F.3d 102, 109 (1st Cir. 2018) (aiding and abetting robbery in violation of the Hobbs Act), cert. denied, 139 S. Ct. 1208 (2019); *United States* v. *Deiter*, 890 F.3d 1203, 1214-1216 (10th Cir.) (aiding and abetting bank robbery), cert. denied, 139 S. Ct. 647 (2018); *In re Colon*, 826 F.3d 1301, 1305 (11th Cir. 2016) (aiding and abetting robbery in violation of the Hobbs Act); *United States* v. *McGill*, 815 F.3d 846, 944 (D.C. Cir. 2016) (per curiam) (aiding and abetting murder), cert. denied, 138 S. Ct. 57, and 138 S. Ct. 58 (2017); cf. *Ortiz-Magana* v. *Mukasey*, 542 F.3d 653, 659 (9th Cir. 2008) ("[T]here is no material distinction between an aider and abettor and principals in any jurisdiction of the United States[.] * * * [A]iding

and abetting [a crime of violence] is the functional equivalent of personally committing that offense."). This Court has previously denied review of that issue. See, *e.g.*, *Deiter* v. *United States*, 139 S. Ct. 647 (2018) (No. 18-6424); *Ragland* v. *United States*, 138 S. Ct. 1987 (2018) (No. 17-7248); *Stephens* v. *United States*, 138 S. Ct. 502 (2017) (No. 17-5186). The same result is appropriate here.

b. Notwithstanding the uniform authority establishing that aiding and abetting a crime of violence is itself a crime of violence, including binding authority within the Eleventh Circuit, petitioner contends that he was entitled to a COA. He notes (Pet. 6-7) that a dissenting judge in *Colon*, *supra*, suggested that aiding and abetting a robbery might not categorically qualify as a crime of violence under Section 924(c)(3)(A) because it "seems plausible that a defendant could aid and abet a robbery without ever using, threatening, or attempting any force." 826 F.3d at 1306 (Martin, J., dissenting). Petitioner therefore asserts (Pet. 7) that his claim that aiding and abetting armed bank robbery is not a crime of violence "is debatable among jurists of reason."

As the other judges on the *Colon* panel recognized, however, aiding and abetting a robbery *does* qualify as a crime of violence. 826 F.3d at 1305. The court explained that the dissent's reasoning—which was premised on the suggestion that a defendant could be convicted of aiding and abetting without proof of the substantive offense—was inconsistent with basic principles of accomplice liability. See *ibid.* ("Aiding and abetting * * * 'is not a separate federal crime, but rather an alternative charge that permits one to be found guilty as a principal for aiding or procuring someone else to commit the offense.'") (citation omitted); see also, *e.g.*,

Deiter, 890 F.3d at 1214 ("[I]t is well established that aiding and abetting is not an independent crime under 18 U.S.C. § 2; it simply abolishes the common-law distinction between principal and accessory.") (citation omitted). That result is consistent with the holdings of every other court of appeals that has considered the question. Accordingly, the court of appeals did not err in finding that petitioner had failed to "ma[k]e a substantial showing of the denial of a constitutional right," 28 U.S.C. 2253(c)(2), as he must to obtain a COA. Pet. App. 1.

c. Because petitioner aided and abetted an armed bank robbery, his Section 924(c) conviction is valid under 18 U.S.C. 924(c)(3)(A) regardless of the alternative definition of a "crime of violence" in 18 U.S.C. 924(c)(3)(B). This Court's decision in *Davis* concerned only the definition of a "crime of violence" in Section 924(c)(3)(B), so no reason exists to remand this case to the court of appeals in light of that decision.

2. Petitioner also contends (Pet. 7-11) that the district court erred in rejecting his ineffective-assistance claim without holding an evidentiary hearing. That factbound contention does not warrant this Court's review.

a. In a proceeding under 28 U.S.C. 2255, a defendant has a statutory right to a "prompt hearing" on the merits of his claims "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief." 28 U.S.C. 2255(b); accord Rules Governing Section 2255 Proceedings 8(a) ("If the motion is not dismissed, the judge must review the answer, any transcripts and records of prior proceedings, and any materials submitted under Rule 7 to determine

whether an evidentiary hearing is warranted."). An evidentiary hearing is not required if the defendant's claims do not raise a bona fide factual dispute, the trial record refutes his claim, or his arguments are clearly without merit. See, *e.g.*, *Sanders* v. *United States*, 373 U.S. 1, 15 (1963); *Machibroda* v. *United States*, 368 U.S. 487, 494 (1962); *Walker* v. *Johnston*, 312 U.S. 275, 284 (1941). A court's denial of an evidentiary hearing is reviewed only for an abuse of discretion. *Schriro* v. *Landrigan*, 550 U.S. 465, 468-469 (2007).

The district court did not abuse its discretion in finding that an evidentiary hearing was not required in the circumstances of this case. "[T]he representations of the defendant" in connection with a guilty plea "constitute a formidable barrier in any subsequent collateral proceedings" and "carry a strong presumption of verity." *Blackledge* v. *Allison*, 431 U.S. 63, 73-74 (1977). Absent a showing that those representations were not knowing and voluntary, a court is generally entitled to rely on them and to treat "[t]he subsequent presentation of conclusory allegations" to the contrary as "subject to summary dismissal" without holding an evidentiary hearing. *Id.* at 74.

The district court applied that principle here in finding that petitioner had failed to establish a factual dispute sufficient to warrant an evidentiary hearing. Pet. App. 6-9. As the court explained, petitioner's assertion that the police coerced him into confessing his role in the robbery was inconsistent with his knowing and voluntary admission to the facts underlying his confession in connection with his plea. *Id.* at 7-9. Indeed, petitioner repeatedly stated under oath at the plea hearing that he had *not* been coerced into admitting his guilt and that he had thoroughly discussed the facts of his crime

with trial counsel and was satisfied with counsel's performance. *Ibid.*; see *id.* at 9 ("Petitioner said nothing during the plea hearing to indicate he had concerns about his confession."). Moreover, the court determined that petitioner had not alleged facts sufficient to establish that trial counsel's failure to file a motion to suppress his confession was prejudicial in light of the other evidence of petitioner's guilt, including Rodriguez's detailed confession and the other evidence linking petitioner to the crime. *Id.* at 9-10; cf. *Strickland* v. *Washington*, 466 U.S. 668, 687 (1984) (a defendant claiming ineffective assistance of counsel must establish "that counsel's performance was deficient" and "that the deficient performance prejudiced the defense").

Under the circumstances here, the district court correctly found no bona fide factual dispute that could result in a decision in petitioner's favor following an evidentiary hearing. Pet. App. 9-11; see, *e.g.*, *Landrigan*, 550 U.S. at 474 ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."). That fact-bound determination does not warrant review.

b. Petitioner contends that this Court should nonetheless grant review "to resolve a growing split among the lower courts" regarding the standard for obtaining an evidentiary hearing. Pet. 7 (capitalization altered). Petitioner does not, however, identify any disagreement among the courts of appeals. In *United States* v. *Lemaster*, 403 F.3d 216 (2005) (cited at Pet. 9-10), the Fourth Circuit explained, restating this Court's holding in *Blackledge*, that "allegations in a § 2255 motion that directly contradict the petitioner's sworn statements

made during a properly conducted [plea] colloquy" may ordinarily be disregarded without the need for an evidentiary hearing, *id.* at 221. In *United States* v. *Patterson*, 739 F.2d 191 (1984) (cited at Pet. 10), the Fifth Circuit determined that a prisoner was not entitled to an evidentiary hearing on whether his guilty plea had been knowing and voluntary where the allegations supporting his claim were "affirmatively contradicted by the record" and, even if true, would not have established prejudice. *Id.* at 195 (citation omitted). That standard fully comports with this Court's decisions. See, *e.g.*, *Landrigan*, 550 U.S. at 474; *Sanders*, 373 U.S. at 15. And in *United States* v. *Weeks*, 653 F.3d 1188 (2011) (cited at Pet. 10), the Tenth Circuit acknowledged "that a district court is not required to conduct an evidentiary hearing when a [prisoner's] allegations merely contradict his earlier sworn statements," *id.* at 1205, but determined that an evidentiary hearing was required in that case because the prisoner's claim was not inconsistent with his plea or otherwise "contradicted by evidence in the record," *ibid.* The decision to require an evidentiary hearing in *Weeks* does not suggest that the same course was required on the distinct facts of this case.

c. In any event, the denial of an evidentiary hearing under Section 2255 is not independently reviewable in postconviction proceedings. As explained, a district court's denial of a prisoner's motion for postconviction relief under Section 2255 is not reviewable unless the prisoner first obtains a COA. 28 U.S.C. 2253(c)(1)(B). To obtain a COA, the prisoner must make "a substantial showing of the denial of a *constitutional* right." 28 U.S.C. 2253(c)(2) (emphasis added). No provision of the Consti-

tution requires a court to grant a prisoner an evidentiary hearing on a claim for collateral relief. Cf. *Landrigan*, 550 U.S. at 474. To obtain a COA, therefore, petitioner must demonstrate that reasonable jurists could debate the merits of his underlying constitutional claim, not simply the district court's procedural decision to resolve that claim without holding a hearing. Cf. *Slack* v. *McDaniel*, 529 U.S. 473, 484 (2000) (holding that a court's denial of a postconviction claim on procedural grounds, rather than on the merits, does not warrant a COA unless the prisoner shows "that jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right *and* that jurists of reason would find it debatable whether the district court was correct in its procedural ruling") (emphasis added). The court of appeals was therefore permitted to deny the COA requested by petitioner based on either its view of his entitlement to an evidentiary hearing or its view of the merits of his ineffective-assistance claim. No reason exists to disturb the court of appeals' determination that petitioner was not entitled to a COA.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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