

No. 19-7127

IN THE SUPREME COURT OF THE UNITED STATES
October Term 2019

PHILLIP WAYNE TOMLIN,
Petitioner,

v.

TONY PATTERSON, WARDEN, HOLMAN CORRECTIONAL
FACILITY,
Respondent.

On Petition for Writ of Certiorari to the United States Court of
Appeals for the Eleventh Circuit

REPLY APPENDIX

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May 13, 2020

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MR. VALESKA: I have no objection, Judge.

THE COURT: And, Mr. Clausen, is it my understanding the jury says it's all right?

BAILIFF: Yes, sir.

THE COURT: Now, before we bring the jury in, I know there's an awful lot of emotion in this case on both sides. I have absolutely no idea what this verdict of this jury is or even if it is a verdict, but I want it understood from everyone in this courtroom that whatever the jury's verdict is that it will be accepted in silence. In the event anyone thinks that they cannot do that I suggest that he or she leave this courtroom right now, because whatever the verdict is, I want it as silent as a church in here. Bring the jury in.

(Whereupon, the jury returned to the jury box, at which time the following occurred:)

THE COURT: All right, Mr. McPeck, you have been elected as foreman of the jury, is that correct, sir?

FOREMAN: Yes, sir.

THE COURT: Has the jury reached a unanimous verdict?

FOREMAN: Yes, sir.

THE COURT: I want the Defendant to stand and face the jury. Now, Mr. McPeck, I want you to stand and read the unanimous verdict of the jury into the record.

FOREMAN: We, the jury, find the Defendant guilty of murder as charged in the indictment and fix his punishment at death.

THE COURT: Under our legal procedure, as the attorneys know and the jury did not know until now, there will be another hearing in this matter, what we call a mitigation and aggrava-

ting circumstances hearing,' and I set that hearing for May 30, in this courtroom at 9:30 in the morning.

* * * * *

MAY 26, 1978

(Whereupon, the Defendant being present with his attorney, Mr. James Atchison, and the Assistant District Attorney, Mr. Donald Valeska, the following proceedings were had and done before the Honorable Ferrill D. McRae:)

MR. ATCHISON: Judge, the Defendant filed a motion for discovery based on a -- and Your Honor heard it, as a result of a statement made by the district attorney to counsel a number of times before this trial ...

THE COURT: I've already denied all those.

MR. ATCHISON: Well, I've got to get the background, that he had a big surprise witness, that testimony was going to come in, and wouldn't reveal it. Your Honor heard this, Mr. Haas was present and Mr. Valeska, we went over it as a result thereof on the Friday afternoon of the 17th of March, Mr. Valeska delivered to me a list of the State's witnesses as you required. On there, and it set out that it was all of the State's witnesses that would be called as you ordered and the docket sheet which is in this motion shows this order to that effect. Then during the trial on the Wednesday, the third day of the trial, Mr. Valeska brought in a witness, Eddie Hebison, who, one, was not included on the list of State's witnesses, he turned out to be a officer, a State narcotics officer from Texas and when he was put on the stand you granted me or I asked for conference at the bench. As we

VOLUME No. 5

Circuit Court No. CG77 001396 Criminal Appeals Court No. _____

APPEAL

TO

Court of Criminal Appeals
of Alabama

FROM

CIRCUIT COURT OF MOBILE COUNTY.

PHILLIP WAYNE TOMLIN

Appellant

vs.

STATE OF ALABAMA

FOR THE STATE (APPELLEE)
Honorable Charles Praddick
Attorney General of Alabama
Montgomery, Alabama. 36130

Appellee
FOR THE DEFENDANT (APPELLANT)
Honorable James Atchison
Attorney at Law
P.O. Box 1706
Mobile, Alabama. 36601

Appendix R-B

JURY AND VERDICT OF GUILTY AND JURY FIXED PUNISHMENT AT DEATH
MITIGATION AND AGGRAVATING HEARING SET

SATURDAY, MARCH 25th, 1978

State of Alabama) Capital Murder -
McRae -vs- CC77 001396) Jury and verdict of guilty and jury
Phillip Wayne Tomlin) fixed punishment at Death - Mitigation
(White Male-Age)) and aggravating hearing set for May
DC77 2054-2055-2056) 30th, 1978, at 9:30 A.M. - Defendant's
B.D. 3/28/54) attorney, James Atchison, in court.

This day in open court came the State of Alabama by its District Attorney and the defendant in his own proper person and with his attorney, James Atchison, and thereupon in open court on this the 25th day of March, 1978, at 9:00 A.M., the Court in the presence of the District Attorney, defendant's attorney and defendant, and the jury selected for the trial of this case proceeded with the trial of this case.

And thereupon in open court on this day in the presence of the District Attorney, defendant's attorney, and defendant, came a jury of good and lawful men and women, to-wit:-Harley I. McPeek, Jr., and eleven others, who were selected for the trial of this case, and who, having been duly empaneled and sworn according to law, and who, having heard the evidence and the charge of the court, upon their oaths in open court on this day, do say; ["We, the Jury find the defendant guilty of Murder as charged in ghe Indictment and fix his punishment at Death"]

It is ordered and adjudged by the court that this case be and the same is hereby re-set for May 30th, 1978, at 9:30A.M., for Mitigation and Aggravating hearing set for May 30th, 1978,

Thereupon in open court on this day, defendant's attorney, James Atchison, was in court.

VOLUME No. **1**

Circuit Court No. CC77 001396, Criminal Appeals Court No. _____

APPEAL

TO

Court of Criminal Appeals of Alabama

FROM

CIRCUIT COURT OF MOBILE COUNTY.

COPY

PHILLIP WAYNE TOMLIN

Appellant

vs.

STATE OF ALABAMA

FOR THE STATE (APPELLEE)
Honorable Charles Graddick
Attorney General of Alabama
Montgomery, Alabama. 36130

Appellee
FOR THE DEFENDANT (APPELLANT)
Honorable James Atchison
Attorney at Law
P.O. Box 1706
Mobile, Alabama. 36601

COPY
Volume 1

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Appendix R-C

Certificates of Appealability as Rubber Stamps

Luis Angel Valle¹

INTRODUCTION

In 1997, Duane Buck was convicted of murdering his girlfriend and one of her friends.² During the sentencing phase of the trial, the jury—pursuant to the Texas Code of Criminal Procedure—could impose the death penalty only if it found Buck was “likely to commit acts of violence in the future.”³ Buck’s attorney retained psychologist Dr. Walter Quijano, who produced a report that stated race was relevant to predicting Buck’s future dangerousness.⁴ Defense counsel nonetheless called Dr. Quijano to testify during the penalty phase of the proceeding, and, on cross-examination, Quijano reaffirmed his conclusion that because he was Black, Buck was more likely to act violently in the future.⁵ The jury sentenced Buck to death.⁶

After unsuccessfully attacking his conviction and sentence through a direct appeal and petitions for state collateral review, Buck filed a federal habeas corpus petition pursuant to 28 U.S.C. § 2254 alleging, inter alia, that his trial counsel had rendered ineffective assistance by introducing Quijano’s testimony regarding race as an indicator of future dangerousness. Because Buck had not raised this claim in his first state habeas petition, the district court found it was procedurally defaulted.⁷ Ten years later, Buck, citing recent changes in the law that provided an

¹ Columbia Law School, Class of 2021.

² *Buck v. Davis*, 137 S. Ct. 759, 769 (2017).

³ *Id.* at 767--68 (citing Tex. Code Crim. Proc. Ann. Art. 37.071, § 2(b)(1) (Vernon 1998)).

⁴ Brief for Petitioner at 5, *Buck*, 137 S. Ct. 759 (No. 15-8049), 2016 WL 4073689.

⁵ *Buck*, 137 S. Ct. at 769.

⁶ *Id.*

⁷ *Id.* at 771.

excuse for this procedural default,⁸ filed a motion to reopen the district court's judgment pursuant to Federal Rule of Civil Procedure 60(b)(6).⁹ The district court denied it.

As a federal habeas petitioner, Buck had no appeal as of right; instead, he needed to obtain a Certificate of Appealability ("COA"),¹⁰ which requires making a "substantial showing of the denial of a constitutional right."¹¹ The Supreme Court has interpreted this language to require that a petitioner "show that reasonable jurists could debate whether . . . [his] petition should have been resolved in a different manner . . ."¹² Either the district court or the circuit court may issue a COA. Both declined to do so in Buck's case.¹³

The Supreme Court reversed the Fifth Circuit,¹⁴ criticizing it for reaching the underlying issue¹⁵ at the COA stage, which should "not [be] coextensive with a merits analysis."¹⁶ Instead, the court of appeals should merely have asked whether the district court's decision was

⁸ In 2004, when Buck filed his [first] federal habeas petition, Supreme Court precedent did not consider ineffective assistance an excuse to procedural default. *Coleman v. Thompson*, 501 U.S. 722, 752-53 (1991). By 2014, two cases in the previous two terms had relaxed this bar, allowing ineffective assistance to constitute an excuse to a procedural default under certain circumstances. *Trevino v. Thaler*, 133 S. Ct. 1911, 1921 (2013); *Martinez v. Ryan*, 566 U.S. 1, 9 (2012).

⁹ *Id.* at 767. This Rule allows a court to relieve a party of the effect of a judgment for certain specific reasons, Fed. R. Civ. P. 60(b)(1)-(5), or for "any other reason that justifies relief," Fed. R. Civ. P. 60(b)(6). The Court has interpreted subsection (6) to require a party demonstrate "extraordinary circumstances" in order to obtain relief. See *Gonzalez v. Crosby*, 545 U.S. 524, 535 (2005).

¹⁰ See 28 U.S.C. § 2253(c)(1) (2012).

¹¹ See 28 U.S.C. § 2253(c)(2) (2012).

¹² *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). Justice Scalia argued the debatability standard was distinct from the substantial showing one, and that the latter was thus a necessary but not sufficient condition of issuing a COA. See Section III.C.I.

¹³ *Buck*, 137 S. Ct. at 771.

¹⁴ *Id.* at 770. As Section I.C.3 discusses, the Court did not merely order the circuit court to issue a COA and consider the merits of whether the district court wrongly denied Buck's Rule 60(b)(6) motion. The Court itself assessed the merits of this claim, finding that Buck was entitled to Rule 60(b)(6) relief. *Id.* at 777-80.

¹⁵ In this case, whether Buck had shown extraordinary circumstances so that the district court's denial of Rule 60(b)(6) relief was thus an abuse of discretion.

¹⁶ *Id.* ("This threshold question should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" (citing *Miller-El*, 537 U.S. at 336)).

debatable—the standard for whether to issue a COA.¹⁷ The Court cautioned that “[w]hen a reviewing court . . . inverts the statutory order of operations and ‘first decid[es] the merits of an appeal, . . . then justif[ies] its denial of a COA based on its adjudication of the actual merits,’ it has placed too heavy a burden on the prisoner at the COA stage.”¹⁸

The proper standard with which to analyze COA requests has generated controversy¹⁹ and litigation²⁰ since the mechanism was introduced in the Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”).²¹ The Supreme Court has consistently reminded lower courts “not to unduly restrict . . . appellate review”²² at this stage, but circuit courts continue to grant COAs at a low rate,²³ calling into question the integrity of the writ of habeas corpus. While the general demise of the writ has prompted vast academic discussion,²⁴ little scholarship has

¹⁷ *Buck*, 137 S. Ct. at 774 (citing *Miller El*, 537 U.S. at 348).

¹⁸ *Id.* (citing *Miller–El*, 537 U.S. at 326, 336–37).

¹⁹ See, e.g., Ryan Hagglund, Review and Vacatur of Certificates of Appealability Issued After the Denial of Habeas Corpus Petitions, 72 U. Chi. L. Rev. 989 (2005) (arguing that the fact that half of circuit courts review the merits of COAs, even when granted improvidently, creates unfairness to defendants, is contrary to what Congress has expressly excluded from such review, and misallocates resources at different stages of the habeas appellate process); Margaret A. Upshaw, The Unappealing State of Certificates of Appealability, 82 U. Chi. L. Rev. 1609 (2015) (arguing that circuit courts should be allowed neither to review COAs *sua sponte* nor to accept defective COAs while ignoring party challenges).

²⁰ *Tharpe v. Sellers*, 138 S. Ct. 545 (2018); *Buck*, 137 S. Ct. 759; *Miller-El*, 537 U.S. 322; *Slack v. McDaniel*, 529 U.S. 473 (2000).

²¹ Pub. L. No. 104-132, 110 Stat. 1214.

²² *McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019); see, e.g., *Tharpe*, 138 S. Ct. 545; *Buck*, 137 S. Ct. 759; *Miller-El*, 537 U.S. 322; *Slack*, 529 U.S. 473.

²³ See, e.g., Nancy J. King, Non-Capital Habeas Cases After Appellate Review: An Empirical Analysis, 24 Fed. Sent’g Rep. 308, 308 (2012) (noting that in a study of 2,384 randomly selected noncapital habeas cases, circuit courts as a whole granted only 7.52% of COAs).

²⁴ See, e.g., Stephen R. Reinhardt, The Demise of Habeas Corpus and the Rise of Qualified Immunity: The Court’s Ever Increasing Limitations on the Development and Enforcement of Constitutional Rights and Some Particularly Unfortunate Consequences, 113 Mich. L. Rev. 1219, 1219 (2015) (“Once hailed as the Great Writ, and still feted with all the standard rhetorical flourishes, habeas corpus has been transformed over the past two decades from a vital guarantor of liberty into an instrument for ratifying the power of state courts to disregard the protections of the Constitution.”); Lincoln Caplan, The Destruction of Defendants’ Rights, *New Yorker* (June 21, 2015), <https://www.newyorker.com/news/news-desk/the-destruction-of-defendants-rights> (noting that AEDPA “gutted the federal writ of habeas corpus” and that the “reversal rate of state courts in death penalty cases has been reduced by about forty per cent”).

focused on the question of the COA process in general and circuit-court grant rates of COAs in particular, and how this question sheds light on the current state of habeas corpus.²⁵

This article argues that in the COA context—especially in the Supreme Court cases evaluating COA denials—a tension arises between the formality of the law and substantive justice. In analyzing the rates at which courts of appeals deny COAs and the ways the Supreme Court reacts to such denials, we can begin to evaluate to what extent our legal system uses the “COA standard of review [as] a rubber stamp”²⁶ that effectively precludes meaningful appellate review and promotes a logic of detention while still paying lip service to the ideals judges reflect.²⁷

Part I of this article contextualizes COAs, by sketching a history of habeas corpus, describing the statutory regime that created and governs COAs, and detailing the standard of review the Supreme Court has developed. Part II presents the results of empirical research conducted in support of this article, making limited empirical claims regarding the extremely disparate rates at which the Eleventh Circuit and Fifth Circuit grant COAs. It then provides two

²⁵ But see David Goodwin, *An Appealing Choice: An Analysis of and a Proposal for Certificates of Appealability in Procedural Habeas Appeals*, 68 N.Y.U. Ann. Surv. Am. L. 791 (2012) (exploring the standards federal appellate courts appear to be using when making a COA determination following the Supreme Court decisions in *Slack* and *Miller-El* and proposing a more lenient standard at the COA stage); Jonah J. Horwitz, *Certifiable: Certificates of Appealability, Habeas Corpus, and the Perils of Self-Judging*, 17 Roger Williams U. L. Rev. 695 (2012) (proposing that district court judges not be allowed to make a COA determination after having already ruled on the merits and suggesting that similar self-judging elsewhere in the judicial system should be eliminated).

²⁶ *McGee v. McFadden* 139 S. Ct. 2608, 2608 (2019) (Sotomayor, J., dissenting from the denial of certiorari).

²⁷ In an article titled “Habeas Corpus: From England to Empire,” Professor Paul Halliday argues that the value of examining the development of habeas corpus law is not necessarily to “seek analogies . . . across time,” but rather to observe the dynamic between two competing tendencies of legal systems that employ the writ: the “logic of detention” and the “persistent judge.” See Paul D. Halliday, *Habeas Corpus: From England to Empire* 309 (2010). The former produces a system in which exceptional “classificatory approach[es] to detention” gradually subsume the determination of the propriety of detention in individual cases. *Id.* at 311. The latter embodies the innate sense that justice requires judges have the ability to provide individual prisoners with equitable relief.

potential explanations for this disparity, ultimately concluding that the disparity results from circuit courts' continued misapplication of the COA standard of review. Part III uses two recent Supreme Court cases involving COAs—*Tharpe v. Sellers*²⁸ and *McGee v. McFadden*²⁹—to demonstrate how COAs operate as rubber stamps. Finally, Part III assesses a potential doctrinal shift—namely, granting COAs upon a substantial showing of a denial of a constitutional right without incorporating AEDPA deference—that could lead to more uniform application of the COA standard and increased COA grant rates in circuit courts, thereby creating more space for substantive justice.

I. THE WRIT OF HABEAS CORPUS AND AEDPA

A. Brief History of the Writ of Habeas Corpus

The writ of habeas corpus can be traced to the time of Henry VI, when it was “a means of relief from private restraint.”³⁰ Use of the writ “became more frequent, and in the time of Charles I[], it was held an admitted constitutional remedy.”³¹ The writ was “well known to and used in

²⁸ 138 S. Ct. 545, 546 (2018).

²⁹ 139 S. Ct. 2608 (2019) (Sotomayor, J., dissenting from the denial of certiorari).

³⁰ Rollin C. Hurd, *Treatise on the Right of Personal Liberty, and on the Writ of Habeas Corpus and the Practice Connected with It: With a View of the Law of Extradition of Fugitives* 145 (Albany, W.C. Little 1876); see also Nancy J. King & Joseph L. Hoffman, *Habeas for the Twenty-First Century: Uses, Abuses and the Future of the Great Writ* 5 (2011) (“Habeas corpus was employed by judges in England possibly as early as the fourteenth century and was well developed by the seventeenth century.”).

³¹ King and Hoffman, *supra* note 31, at 5; see also 17B Charles A. Wright et al., *Federal Practice and Procedure* § 4261 (3d ed. 2019) (“After a checkered career in which it was involved in the struggles between the common law courts and the Courts of Chancery and the Star Chamber, as well as in the conflicts between Parliament and the crown, the protection of the writ was firmly written into English law by the Habeas Corpus Act of 1679.”).

the Colonies . . . at least as early as 1692.”³² By 1787, all thirteen colonies and even the Northwest Territory enjoyed the benefits of the common-law writ of habeas corpus.³³

The writ was not merely an inheritance of the English common law, but achieved great popularity in the colonies even “before the rest of England’s legal traditions” caught on.³⁴ Furthermore, “it was the liberating power rather than the centralizing structure that inspired the colonists and motivated them to incorporate the writ into their legal order.”³⁵ The colonists “adopted habeas in their own way, copying portions of the Habeas Act word for word, incorporating it into their common law, or affirming it through practice and legislation.”³⁶ Anthony Gregory describes this process as the “Americanization of Habeas”---a process that resulted in a “decentralized, anti-royal, revolutionary conception of habeas corpus.”³⁷ Key to this Americanization was the “reject[ion] [of] the British government’s authority to define and circumscribe this right.”³⁸

Ultimately, the Constitution preserved the writ, providing that “[t]he Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the

³² James F. Johnston, *The Suspending Power and the Writ of Habeas Corpus* 22 (Philadelphia, Hansebooks 1862) (noting also that the privilege of the writ of habeas corpus was known and used in England “nearly one hundred years before . . . [the] Constitution was made”); *Postconviction Remedies* § 1:4 (2019) (noting that the writ of habeas corpus was “omitted from early state constitutions precisely because it was thought to be too fundamental to be questioned”).

³³ William F. Duker, *A Constitutional History of Habeas Corpus* 115 (1980).

³⁴ Anthony Gregory, *The Power of Habeas Corpus in America, From the King’s Prerogative to the War on Terror* 50 (2013).

³⁵ Gregory, *supra* note 36, at 49--50 (noting that American colonists used the writ at a time when they were indifferent to the common law, suggesting “it was habeas corpus that facilitated the partial reception of the common law, and not vice versa” (quoting Badshah Mian, *American Habeas Corpus* 39 (1984))).

³⁶ *Id.* at 52

³⁷ *Id.* at 56--57

³⁸ *Id.* at 56 (“First demanding English rights while using English law as cover, then insisting on English rights under American law, then seeing those rights less in terms of the British legacy but rather in terms of their own national identity and . . . as a function of their status as human beings, the American colonists claimed their independence.”).

public Safety may require it.”³⁹ The Judiciary Act of 1789 further enshrined the writ, authorizing its use by the federal judiciary.⁴⁰

In 1867, Congress expanded the “range of cognizable [habeas] claims from those drawing upon due process notions to constitutional claims of all sorts.”⁴¹ The next year, Chief Justice Chase, in *Ex parte Yerger* explained that “the great spirit and genius of our institution has tended to the widening and enlarging of the habeas corpus jurisdiction of the courts and judges of the United States.”⁴²

While the habeas corpus statutes were recodified several times after the 1867 Act, the “scope of the writ, insofar as the statutory language [i]s concerned, [was] not . . . altered substantially between 1867 and 1996, when Congress adopted the Antiterrorism and Effective Death Penalty Act of 1996 [AEDPA].”⁴³ Although the history of habeas corpus has been the “subject of intense, even bitter, debate,”⁴⁴ there is consensus that “[t]he Framers viewed freedom

³⁹ U.S. Const. Art. 1, § 9, cl. 2.

⁴⁰ Wright et al., supra note 32, § 4261.

⁴¹ 1 Federal Habeas Corpus Practice and Procedure § 2.4(c) (2019); see also King and Hoffman, supra note 32, at 9 (noting that the 1867 act “empowered the lower federal courts to protect federal officials and the newly freed slaves from abusive imprisonment by the defeated Confederate states”). But see 1 Federal Habeas Corpus Practice and Procedure, supra, § 2.4(c) (“[The Habeas Corpus Act of 1867] had little effect because of the Court’s adoption . . . of a *Catch 22* preclusion doctrine . . . [E]xhaustion of state remedies doctrine required state prisoners to [first] challenge unconstitutional incarceration in state . . . courts . . . but then made the state courts’ resolution of the issues *res judicata* in subsequent habeas corpus proceedings unless the detaining court lacked jurisdiction, had convicted the petitioner under an unconstitutional statute, or had imposed an unconstitutional sentence.” (citing *Ex parte Royall*, 117 U.S. 241, 241 (1886))).

⁴² Duker, supra note 34, at 6 (quoting *Ex parte Yerger*, 75 U.S. 85, 95 (1868)).

⁴³ Wright et al., supra note 32, § 4261 (citing Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, title I, 110 Stat. 1214) (“[AEDPA] includes multiple important limitations on the availability of habeas relief in postconviction cases.”). For an overview of the amendments to the habeas corpus statutes prior to AEDPA, see Limin Zheng, Note, Actual Innocence as a Gateway Through the Statute-of-Limitations Bar on the Filing of Federal Habeas Corpus Petitions, 90 Calif. L. Rev. 2101, 2109--10 (2002). For a discussion of the changes AEDPA made to federal habeas corpus procedures, see infra Section I.B.

⁴⁴ For a description of the two competing standard descriptions of the writ, see generally 1 Federal Habeas Corpus Practice and Procedure § 2.3(c). See also Wright et al, supra note 32, § 4261 n.8 (describing a historical debate between Justices of the Supreme Court regarding the history of the writ).

from unlawful restraint as a fundamental precept of liberty, and they understood the writ of habeas corpus as a vital instrument to secure that freedom.”⁴⁵

The history of habeas corpus provides two key insights. First, as Nancy King and Joseph Hoffman suggest, an analysis of habeas law must primarily rely on Supreme Court decisions because “the Court largely controls the ultimate interpretation of both the habeas statutes and the United States Constitution.”⁴⁶ Indeed, although Congress initially defines the “role that habeas plays in contemporary America” through various statutes, the writ’s “scope and applicability are controlled ultimately by the Supreme Court through interpretation of those statutes as well as of the Suspension Clause.”⁴⁷ Second, although it relies on the “court’s prevailing consensus about habeas history as the starting point for [its] theoretical and normative analyses,”⁴⁸ “[t]he constitutional importance of the writ of habeas corpus is in its function,” and therefore, a consideration of the history in this section⁴⁹ may be instructive in deciding modern habeas cases.⁵⁰

⁴⁵ 1 Federal Habeas Corpus Practice and Procedure § 2.3 (quoting *Boumediene v. Bush*, 553 U.S. 723, 739--740 (2008)). The Court has pointed to both “the care taken to specify the limited grounds for . . . suspension” and the ratification debates as “evidence that the Framers deemed the writ . . . an essential mechanism in the separation-of-powers scheme.” *Boumediene*, 553 U.S. at 743.

⁴⁶ King and Hoffman, *supra* note 31, at x.

⁴⁷ *Id.* at 8. Because the statutory language did not change substantially between 1867 and 1996, the Supreme Court cases interpreting habeas law post-AEDPA will be most important to this Note’s COA analyses. See *supra* note xx and accompanying text; see also Zheng, *supra* note 44, at 2103, 2114 (“[T]he Court has taken the lead in developing the modern writ. Until the enactment of the AEDPA, statutory amendments of federal habeas corpus law had largely been codifications of Supreme Court decisions. In sum, it is the interplay between federal statutes and common-law equitable principles that has defined the scope of federal habeas corpus review.”).

⁴⁸ King and Hoffman, *supra* note 31, at x.

⁴⁹ See *supra* note 28--42 and accompanying text.

⁵⁰ Eric M. Freedman, *Making Habeas Work: A Legal History* 3.

B. Antiterrorism and Effective Death Penalty Act of 1996

1. *Legislative History*

The Antiterrorism and Effective Death Penalty Act of 1996 (“AEDPA”) was signed into law by President Clinton on April 24, 1996.⁵¹ President Clinton claimed AEDPA did not make “substantive changes in the standards for granting the writ,” maintaining that the statute would not “undercut . . . meaningful Federal habeas corpus review.”⁵² Yet AEDPA made major changes to federal habeas statutes for both state and federal prisoners, as well as to the Federal Rules of Appellate Procedure 22.⁵³

James Liebman notes that AEDPA began as a proposal by Congress to cut federal habeas review of capital and noncapital criminal convictions.⁵⁴ The proposal moved slowly through Congress until Timothy McVeigh bombed the Murrah Federal Building in Oklahoma City, resulting in 168 deaths.⁵⁵ It only took a couple of weeks for Congress to attach “the Effective Death Penalty Act to a version of a Clinton administration proposal for an Antiterrorism Act.”⁵⁶ It soon became a bipartisan effort, and AEDPA received enough support to pass.⁵⁷ AEDPA’s

⁵¹ 1 Federal Habeas Corpus Practice and Procedure, *supra* note 42, § 3.2.

⁵² *Id.* (quoting Statement of the President of the United States upon Signing the Antiterrorism Bill (available in LEXIS, 32 Weekly Comp. Pres. Doc. 719 (White House, Apr. 24, 1996))). But see John H. Blume, AEDPA: The “Hype” and the “Bite,” 91 Cornell L. Rev. 259, 259 & n.2 (2006) (noting that President Clinton made no attempt to derail AEDPA, but instead encouraged Democrats to vote for it, paying lip service to “meaningful federal court review of state court convictions” in his signing statement); James Liebman, An “Effective Death Penalty”? AEDPA and Error Detection in Capital Cases, 67 Brook. L. Rev. 412, 413 (2001) (arguing that President Clinton “demanded [AEDPA’s] passage” after it encountered resistance in the House).

⁵³ Liebman, *supra* note 53, at 413.; Goodwin, *supra* note 24, at 807--08.

⁵⁴ Liebman, *supra* note 53, at 412.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.* at 413 (“AEDPA, thus, was the product of the bizarre alignment of three ill-starred events: Timothy McVeigh’s twisted patriotism and disdain for ‘collateral damage,’ the Gingrich Revolution in its heyday, and the Clinton Presidency at the furthest point of its most rightward triangulation.”).

habeas provisions have been analyzed extensively;⁵⁸ nonetheless, it is worth considering AEDPA's restrictions to better understand how, and to what extent, they altered the writ of habeas corpus.

2. *Relevant AEDPA Provisions*

i. Statute of Limitation

One of the most substantial changes came in the form of AEDPA's one-year statute of limitations for habeas petitions.⁵⁹ Before AEDPA, no such time limit existed;⁶⁰ instead, "the Supreme Court had declared that 'habeas corpus provides a remedy for jurisdictional and constitutional errors at the trial, without limit of time.'"⁶¹ According to Liebman, this statute of limitations, in combination with the state-remedy exhaustion requirement,⁶² posed notable dangers for state prisoners because "states [could] easily lure prisoners into missing the time bar simply by withholding lawyers from them at the state post-conviction stage of review."⁶³ The complexity of AEDPA's scheme further contributes to the risk a state prisoner will inadvertently miss this deadline. Due to the exhaustion requirement, the statute of limitations is tolled while the petitioner makes his way through state court—but only during the period that a *properly filed*

⁵⁸ See, e.g., Liebman, *supra* note 53; Mark Tushnet & Larry Yackle, *Symbolic Statutes and Real Laws: The Pathologies of the Antiterrorism and Effective Death Penalty Act and the Prison Litigation Reform Act*, 47 *Duke L.J.* 1 (1997); Larry W. Yackle, *A Primer on the New Habeas Corpus Statute*, 44 *Buff. L. Rev.* 381 (1996); see also Blume, *supra* note 53, at 270 n.63 (collecting sources).

⁵⁹ 28 U.S.C. § 2244(d) (2012); 28 U.S.C. § 2255(f) (2012); see also Liebman, *supra* note 53, at 416 (arguing that the statute of limitations was "unprecedented in the history of habeas corpus").

⁶⁰ Blume, *supra* note 53, at 270 (noting that prior to AEDPA, there was no time limit on habeas petitions).

⁶¹ Zheng, *supra* note 44, at 2127 (quoting *United States v. Smith*, 331 U.S. 469, 475 (1947)).

⁶² For a federal court to have jurisdiction over a state prisoner's habeas petition, the petitioner must have exhausted state remedies, generally by raising his claims in a state post-conviction petition. 28 U.S.C. § 2254(b)--(c) (2012); Liebman, *supra* note 53, at 417. Only claims that were raised in the state petition may be considered on federal habeas review. 28 U.S.C. § 2244(b)--(c) (2012); Liebman, *supra* note 53, at 417.

⁶³ Liebman, *supra* note 53, at 416.

state post-conviction petition is actually pending.⁶⁴ Furthermore, AEDPA prohibits successive federal habeas petitions,⁶⁵ incentivizing state prisoners to wait as long as possible to file their petitions, but not so long that they miss the one-year deadline. Thus, although not a change of the writ's substance, AEDPA's statute of limitations serves to profoundly limit access to federal habeas review.

ii. Unreasonable Application of Law Standard

Section 2254(d), widely considered the “centerpiece of AEDPA,”⁶⁶ allows a federal judge to grant a state prisoner's habeas petition only if he finds that the state-court adjudication:

(1) resulted in a decision that was *contrary to*, or involved an *unreasonable application* of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an *unreasonable determination* of the facts in light of the evidence presented in the State court proceeding.⁶⁷

Section 2254(d), unlike other habeas statutes,⁶⁸ did not derive “from any Supreme Court decision . . . nor was it part of any previous habeas reform proposal offered by Congress or a habeas scholar.”⁶⁹ Moreover, AEDPA's legislative history provides little guidance regarding this provision, leaving to federal courts the responsibility of elucidating its meaning.⁷⁰ The Supreme Court has decided that a state court decision is contrary to federal law if it “contradicts the governing law set forth in our cases, or if it confronts a set of facts that [are] materially

⁶⁴ 28 U.S.C. § 2244(d)(2) (2012) . The chances that such a petition may be improperly filed are not insignificant, especially since habeas petitioner usually complete this process without the help of a lawyer. Liebman, *supra* note 53, at 417.

⁶⁵ 28 U.S.C. § 2244(b).

⁶⁶ Blume, *supra* note 53, at 272 & n.84.

⁶⁷ 28 U.S.C. § 2254(d) (2012) (emphasis added).

⁶⁸ See, e.g., *Slack v. McDaniel* 529 U.S. 473, 483 (2000) (“Except for substituting the word “constitutional” for the word “federal,” § 2253 is a codification of the CPC standard announced in *Barefoot v. Estelle*.”).

⁶⁹ Blume, *supra* note 53, at 272--73.

⁷⁰ *Id.* at 273.

indistinguishable from a decision of this Court but reaches a different result.”⁷¹ A finding of “unreasonable application,” on the other hand, is appropriate if the state court applied Supreme Court “precedents to the facts in an objectively unreasonable manner.”⁷² Liebman observes that this interpretation could produce the peculiar result of a court finding that the state court “decision violated supreme federal law,” but nonetheless “be[ing] required to give legal effect to that illegal decision, including where the effect is a human being’s execution.”⁷³

The Court has further interpreted § 2254(d) to restrict review “to the record that was before the state court that adjudicated the claim on the merits.”⁷⁴ Samuel Wiseman argues that in eliminating prior safeguards such as allowing federal courts discretion to order “additional discovery, hold hearings, or supplement the record,” the *Pinholster* decision “significantly exacerbates” the problems created by AEDPA.⁷⁵ Specifically, Wiseman highlights the fact that AEDPA not only “expanded the deference that federal courts must give to state court fact development and . . . interpretation of federal law,” but also “remov[ed] the pre-AEDPA requirement that state postconviction review hearings be ‘full and fair’ before receiving deference.”⁷⁶ The result of this deference in combination with the Supreme Court’s decision in

⁷¹ Id. at 274 (quoting *Brown v. Payton*, 544 U.S. 133, 141 (2005)).

⁷² Id. at 274 (quoting *Brown*, 544 U.S. at 141 (citations omitted)).

⁷³ Liebman, *supra* note 53, at 418. See also *id.* at 419--20 (“[I]n . . . *Williams v. Taylor*, the Supreme Court indeed interpreted § 2254(d) to limit habeas corpus relief to only “unreasonable” constitutional violations . . .”). Liebman further argues that such an interpretation of § 2254(d) is unconstitutional because it appears to deny Article III judges “‘effectual power to restrain or correct’ state court ‘infractions’ of federal law . . . thereby [preventing them from] enforc[ing] the Supremacy Clause of the Constitution.” *Id.* at 420--21.

⁷⁴ *Cullen v. Pinholster*, 563 U.S. 170, 180 (2011). Just as in the statute-of-limitations context, the state-exhaustion requirement contributed to the severity of this result; the Court’s decision rested on the notion that “[i]t would be contrary to that [requirement’s] purpose to allow a petitioner to overcome an adverse state-court decision with new evidence introduced in a federal habeas court . . .” *Id.* at 182.

⁷⁵ Samuel R. Wiseman, *Habeas After Pinholster*, 53 B.C. L. Rev. 953, 972 (2012).

⁷⁶ *Id.*

Pinholster, Wiseman argues, is that a habeas petitioner with a deficient factual record before the state court “will have little chance of success in obtaining relief.”⁷⁷

iii. Certificate of Appealability Replaces Certificate of Probable Cause

Most centrally to this article, AEDPA amended the habeas appeal procedure set forth in 28 U.S.C. § 2253, by providing that both § 2254 and § 2255 petitioners must obtain a COA before an appeal may be taken to the court of appeals.⁷⁸ Prior to AEDPA, a habeas petitioner had to obtain a “certificate of probable cause” (CPC) in order to appeal, by “mak[ing] a substantial showing of the denial of [a] federal right” so that the court was convinced the appeal consisted of “something more than the absence of frivolity.”⁷⁹ Some courts, echoing the sentiment of the Conference Committee Report, have argued that the COA requirement similarly prevents “frivolous appeals.”⁸⁰

Once a district court “enters the ‘final order adverse to the applicant,’ it ‘must issue or deny a certificate of appealability.’”⁸¹ If the district court grants a COA, the court must specify which issues satisfy § 2253(c)(2)’s requirement of a substantial showing of the denial of a constitutional right.⁸² If, however, the district court denies a COA, the petitioner must apply for one to a circuit judge or the court of appeals.⁸³ Appellate Rule 22(b) provides that “[i]f no express request for a certificate [of appealability] is filed, the notice of appeal constitutes a

⁷⁷ *Id.*

⁷⁸ 28 U.S.C. § 2253(c)(1) (2012).

⁷⁹ *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983) (quoting Harry A. Blackmun, *Allowance of in Forma Pauperis Appeals in S 2255 and Habeas Corpus Cases.*, 43 F.R.D. 343, 352 (1968)).

⁸⁰ *Wright et al.*, *supra* note 32, § 3968.1 (citing *Sengenberger v. Townsend*, 473 F.3d 914, 915 (9th Cir. 2006)).

⁸¹ 2 *Federal Habeas Corpus Practice and Procedure*, *supra* note 42, § 35.4 (first quoting Rule 11(a) of the Rules Governing Section 2254 Cases in the United States District Courts; then quoting Rule 11(a) of the Rules Governing Section 2255 Proceedings for the United States District Courts). Before entering such final order, a district court may also request that parties brief the COA issue. See *id.*

⁸² *Id.*

⁸³ *Id.*

request addressed to the judges of the court of appeals.”⁸⁴ If a circuit court denies a COA, the petitioner can appeal such decision via certiorari to the Supreme Court.⁸⁵ In addition to these procedures, circuit courts “may have their own local rules for COA applications.”⁸⁶

The procedural steps for seeking a COA are not dissimilar from those for obtaining a CPC.⁸⁷ “Indeed, except for substituting the word ‘constitutional’ for the word ‘federal,’ § 2253 is a codification of the CPC standard”⁸⁸ the Supreme Court had articulated. Despite the facial similarities between the CPC and COA mechanisms, however, the ways in which the Court has refined the standard for issuing COAs has altered the role this threshold inquiry plays in regulating access to habeas review.

C. *Slack* and its Progeny: The Court Defines the COA Standard

1. *Slack v. McDaniel*

The Supreme Court has, on numerous occasions, attempted to clarify the proper COA standard.⁸⁹ The Court’s first major decision concerning COAs was *Slack v. McDaniel*. Convicted of second-degree murder in state court, Slack sought a writ of habeas corpus in federal

⁸⁴ Id. (internal quotation marks omitted) (quoting Fed. R. App. 22(b)(2)).

⁸⁵ Id.

⁸⁶ Id. For example, in the Fifth Circuit, all COA applications and responses must conform to the formatting requirements and the length limitations of Fed. R. App. P. 32(a), and 5th Cir. R. 32. Pro se habeas petitioners are given a deadline to file a COA, “filing any briefs, for paying fees, or for complying with other directives of the court. Federal Rules of Appellate Procedure with Fifth Circuit Rules and Internal Operating Procedures 42-1 (2018). If pro se prisoners do not meet the deadline established, or timely request an extension of time, the clerk will dismiss the appeal without further notice, 15 days after the deadline date.” Id.

⁸⁷ 1 Federal Habeas Corpus Practice and Procedure, supra note 42, § 3.2 (noting that the requirements of a COA are similar to those of the CPC, but noting that a COA “must indicate not only that the case as a whole, but also that a specific issue or issues satisfy the requisite standard”).

⁸⁸ *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The CPC standard, set forth in *Barefoot v. Estelle*, required a petitioner to make “a substantial showing of the denial of a federal right.” 463 U.S. 880, 893 (1983).

⁸⁹ See supra note 19.

court, which the district court dismissed on procedural grounds.⁹⁰ After finding that the post-AEDPA version of § 2253—that is, the COA rather than the CPC mechanism—applied to the petitioner,⁹¹ the Court proceeded to lay out the proper standard for evaluating COA requests.⁹²

The State argued that § 2253 only allowed appeal of constitutional rulings and thus Slack should not receive a COA since the district court did not address the merits of his constitutional claims in dismissing his petition. The Court rejected this argument, noting that “[t]he writ of habeas corpus plays a vital role in protecting constitutional rights” and that Congress “expressed no intention to allow [district] court procedural error to bar vindication of substantial constitutional rights on appeal.”⁹³

In order to “make [the] substantial showing of the denial of a constitutional right” required to obtain a COA, a petitioner must show that “reasonable jurists could debate whether . . . the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’”⁹⁴ That is, a petitioner has to show that “reasonable jurists” would find debatable the district court’s decision, regardless of whether it rested on an assessment of the petitioner’s constitutional claims or on a procedural ruling.⁹⁵ In the latter case, the court of appeals must find debatable not only of the correctness of the procedural ruling, but also of “whether the petition states a valid claim of the denial of a

⁹⁰ *Slack*, 529 U.S. at 478--79. Slack had previously filed a petition containing claims he had not raised in state court, which the district court dismissed without prejudice so that he could exhaust his state remedies. When Slack returned to federal court, he raised additional claims he had not included in his first federal petition. The district court dismissed as successive these Slack’s claims on the grounds that they constituted a successive petition barred by 28 U.S.C. § 2244(b). *Id.* at 479.

⁹¹ Though Slack filed his federal habeas petition before AEDPA, he did not seek appellate review until two years after AEDPA’s effective date. *Id.* at 482.

⁹² *Id.* at 481.

⁹³ *Id.* at 483.

⁹⁴ *Id.* at 483--84 (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983)).

⁹⁵ *Id.* at 484.

constitutional right.”⁹⁶ Though it does not matter the order in which a court assesses these issues and “a court may find that it can dispose of the application in a fair and prompt manner if it proceeds first to resolve the issue whose answer is more apparent,” constitutional avoidance counsels resolving the procedural question first.⁹⁷ Finally, the Court explained, in cases where a “plain procedural bar is present” and properly invoked, by definition “a reasonable jurist could not conclude either that the district court erred in dismissing the petition or that the petitioner should be allowed to proceed further.”⁹⁸

Because Slack did not address the debatability of whether his petition raised a valid constitutional claim before the Supreme Court—he only challenged the district court’s procedural ruling—the Court only undertook the procedural inquiry, ultimately finding that the district court improperly concluded Slack’s petition was successive. Therefore, “reasonable jurists could conclude that the District Court’s . . . holding was wrong.”⁹⁹ Accordingly, the Court reversed the court of appeals judgment and remanded the case for a determination of whether Slack satisfied the other component necessary to obtain a COA of a procedural denial: that jurists of reason would at least find it debatable whether his petition stated a valid constitutional claim.¹⁰⁰

⁹⁶ Id. at 484--485.

⁹⁷ Id. at 485.

⁹⁸ Id. at 484.

⁹⁹ Id. at 486--489 (explaining that a petition filed after dismissal of an initial petition “for failure to exhaust state remedies is not a second or successive petition”). Central to this conclusion were two previously decided cases, *Stewart v. Martinez-Villareal*, 523 U.S. 637 (1988); and *Rose v. Lundy*, 466 U.S. 510 (1982), that clearly contemplated allowing state prisoners to file a valid federal habeas petition after initially filing one that raised unexhausted claims.. Id.

¹⁰⁰ Id. at 484, 490.

Scalia joined the majority's opinion with the exception of the parts discussing whether Slack's petition was successive.¹⁰¹ Scalia argued that Slack was thus not entitled to a COA and that the Court should affirm the court of appeals's decision.¹⁰² Because Scalia did not explicitly disagree with the COA standard of review, as articulated by the majority opinion it is not clear how he could have reached that conclusion. That is, the fact that Scalia disagreed with the majority opinion's holding—that the District Court's abuse of the writ holding was wrong—demonstrates that reasonable jurists would find this issue *debateable*.

2. *Miller-El v. Cockrell*

The Court again took up the issue of whether a circuit court improperly denied a COA in *Miller-El v. Cockrell*. Miller-El raised in his habeas petition an Equal Protection claim stemming from the prosecution's allegedly racially discriminatory use of preemptory strikes during jury selection.¹⁰³ After assessing the merits of this claim, the district court denied relief. Miller-El then sought a COA from the court of appeals. Though the circuit court correctly stated the COA standard (as announced in *Slack*),¹⁰⁴ it based its decision to deny a COA on the grounds that the state court's resolution of Miller-El's claim was not "unreasonable" and that Miller-El did not present "clear and convincing evidence" otherwise.¹⁰⁵ Importantly, this language comes not from § 2253—which structures the appeal process, including the COA mechanism—but from § 2254—which governs federal courts' resolution of the *merits* of state prisoners' habeas

¹⁰¹ Id. at 490 (Scalia, J., concurring in part and dissenting in part). According to Scalia, "neither the holdings nor even the language of [the] opinions" cited by the majority supported the proposition that "a prisoner whose federal petition is dismissed to allow exhaustion may return to federal court without having his later petition treated as second or successive." Id. at 491.

¹⁰² Id. at 493.

¹⁰³ *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003).

¹⁰⁴ Id. at 330.

¹⁰⁵ Id. at 330-31.

petitions and prescribes the level of deference they must accord state courts in this process.¹⁰⁶

The case thus required the Court to explore the roles merits review and deference play when a circuit court makes a COA determination.¹⁰⁷

The Court reiterated that the COA inquiry does “not occasion . . . a ruling on the merits of petitioner’s claim,”¹⁰⁸ but nonetheless requires “a general assessment” of them.¹⁰⁹ The Court emphasized, however, that “[t]his threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it.”¹¹⁰ Indeed, the COA “determination is a separate proceeding, one distinct from the underlying merits.”¹¹¹ The Court clarified that though the COA standard should not be interpreted as always requiring a COA to issue, nor does it “require a showing that the appeal will succeed.”¹¹² This discussion

¹⁰⁶ In the broader habeas literature, decisions such as the circuit court’s in *Miller-El*’s may be described as procedural, rather than as an assessment of the merits; the adjudication of whether *Miller-El* presented clear and convincing evidence that a state court’s factual determination was wrong does not resolve the ultimate issue of whether he was denied equal protection of the law. By contrast, in the COA context, §§ 2254(d) and (e) are not procedural because they relate to the ultimate issue of whether a petitioner is entitled to relief, as opposed to the procedural issue of whether he is entitled to a COA.

¹⁰⁷ *Id.* at 327, 340-41.

¹⁰⁸ *Id.* at 331.

¹⁰⁹ *Id.* at 336. Interestingly, the Court itself nonetheless devotes an entire subsection of its discussion of the facts to the evidence supporting petitioner’s equal protection claim, see *id.* at 331-35, and another five pages to a “preliminary, though not definitive consideration of [the meaning of these facts under] the three-step framework mandated by *Batson*,” see *id.* at 3338, 42-47. For example, the Court noted that all but one of the black jurors was excluded by peremptory strike, *id.* at 331; that “the manner in which members of the venire were questioned varied by race,” *id.* at 332; that the prosecution requested jury shuffling “when there were a predominant number of African-Americans in the front of the panel, *id.* at 334; that a district judge who had served in the District Attorney’s office that prosecuted petitioner testified that he was warned that he would be fired if any black people were to serve on a jury, *id.*; and that a jury manual from that DA’s office adopted a “formal policy to exclude minorities from jury service,” *id.* at 334--335. This review of the record included testimony from judges and prosecutors who observed the prosecutor in petitioner’s case systematically exclude African-Americans from juries.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² *Id.* at 337 (“By enacting AEDPA, using the specific standards the Court had elaborated earlier for the threshold test, Congress confirmed the necessity and the requirement of differential treatment for those appeals deserving of attention from those that plainly do not.”); *id.* at 337-38 (“The holding in *Slack* would mean very little if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail. . . . [A] claim can be debatable even though

reflects the Court’s particular concern that a court of appeals would judge a habeas petition on the merits and then justify its COA decision based on such analysis---doing so would be “deciding an appeal without jurisdiction.”¹¹³

Turning to deference, the Court first acknowledged its centrality to § 2254, noting that, “[i]n the interest of finality, AEDPA constrains a federal court’s power to disturb state-court convictions.”¹¹⁴ Nonetheless, the majority found that the court of appeals had erected “too demanding a standard” by merging the “independent requirements” of two separate AEDPA deference provisions: § 2254(d) and § 2254(e)(1).¹¹⁵ That is, a petitioner does not have to prove by clear and convincing evidence that the lower court’s *decision* was unreasonable.¹¹⁶ Further, subsection (d)(2)’s unreasonable requirement “applies to the *granting of habeas relief* rather than to the granting of a COA.”¹¹⁷ Thus, the circuit court’s conflation of these two provisions was erroneous not only because it misunderstood the clear-and-convincing-evidence provision,¹¹⁸ but

every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail.”).

¹¹³ Id. at 342.

¹¹⁴ Id. at 326. See also id. at 324 (“When 28 U.S.C. § 2254 applies, our habeas jurisprudence embodies this deference. Factual determinations by state courts are presumed correct absent clear and convincing evidence to the contrary, § 2254(e)(1), and a decision adjudicated on the merits in a state court and based on a factual determination will not be overturned on factual grounds unless objectively unreasonable in light of the evidence presented in the state-court proceeding, § 2254(d)(2).”) For a general discussion of AEDPA deference, see Section I.B.2.b.

¹¹⁵ *Miller-El*, 537 U.S. at 341. The former prevents federal judges from granting habeas relief to state prisoners on claims previously adjudicated on the merits by the state (which means virtually all claims given the state-exhaustion requirement) unless the state-court *decision* was contrary to or involved an unreasonable application of federal law or was based on an unreasonable determination of the facts. The latter establishes a presumption of correctness for state-court *determinations* of factual issues, which the petitioner can rebut by clear and convincing evidence.

¹¹⁶ Id. at 341--42 (“The clear and convincing evidence standard is found in § 2254(e)(1), but that subsection pertains only to state-court determinations of factual issues, rather than decisions. Subsection (d)(2) contains the unreasonable requirement . . .”).

¹¹⁷ Id. at 342 (emphasis added).

¹¹⁸ Id. at 341 (noting that the court of appeals incorrectly interpreted § 2254 as “requiring petitioner to prove that the state-court decision was objectively unreasonable by clear and convincing evidence”).

also because it allowed the court to reach the merits of Miller-El's constitutional claim at the COA stage.¹¹⁹ Instead of determining “whether the District Court’s application of AEDPA deference, as stated in §§ 2254(d)(2) and (e)(1), to petitioner’s *Batson* claim was debatable amongst jurists of reason,” the circuit court analyzed “whether the trial court’s determination of [this claim] was objectively unreasonable and has been rebutted by clear and convincing evidence to the contrary.”¹²⁰

The Court then applied the COA standard of review as articulated in *Slack* to petitioner’s application¹²¹ and concluded that a COA should have issued.¹²² The Court noted that the “statistical evidence alone”—the prosecutor had used ten of his fourteen peremptory strikes on African Americans—was sufficient to “raise some debate” as to whether the prosecutor excluded jurors based on race.¹²³

Justice Thomas, dissenting, argued that § 2254(e)(1) applies at the COA stage because the provision “draws no distinction between the merits appeal and the COA.”¹²⁴ Indeed, § 2254(e)(1) applied to the CPC, the COA’s predecessor.¹²⁵ Because this section “establishes a presumption of correctness,” and because AEDPA does not “create exceptions to factual deference for procedural infirmities,” Justice Thomas concluded that Miller-El was required, and failed, to “demonstrat[e] by clear and convincing evidence that even one of the preemptory

¹¹⁹ Id. at 342 (“The question is the debatability of the underlying constitutional claim, not the resolution of that debate.”).

¹²⁰ Id. at 341.

¹²¹ Id. at 327 (“A petitioner satisfies [the § 2253(c)(2)] standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further.”).

¹²² Id. at 334--35.

¹²³ Id. at 342.

¹²⁴ Id. at 356 (Thomas, J., dissenting). See also id. at 355 (“Instead of presuming the state court’s factfindings to be correct, as § 2254(e)(1) requires, the Court holds that petitioner need only show that reasonable jurists could disagree as to whether he can provide clear and convincing evidence that the finding was erroneous.”);

¹²⁵ Id. at 356--57.

strikes at issue was the result of racial discrimination.”¹²⁶ He thus would have affirmed the denial of a COA.¹²⁷

3. *Buck v. Davis*

In *Buck v. Davis*, the petitioner sought a writ of habeas corpus claiming ineffective assistance of counsel.¹²⁸ In its denial of a COA, the Fifth Circuit held that Buck’s claims were “unremarkable as far as . . . claims go” and that he had not “shown extraordinary circumstances that would permit relief.”¹²⁹ The Court criticized this framing, explaining that the “[q]uestion for the Fifth Circuit was not whether Buck had ‘shown extraordinary circumstances’ or ‘shown why [Texas’s broken promise] would justify relief from the judgment.’”¹³⁰ Instead, the court of appeals should have asked whether the district court’s decision that Buck had not demonstrated such circumstances was debatable.¹³¹

The respondent argued that because the Fifth Circuit conducts extensive briefing and occasionally hears oral arguments at the COA stage, it properly made a determination on the merits of Buck’s claim.¹³² The Court rejected this claim, merely using it as yet more evidence that the court of appeals’s inquiry was too broad for the COA stage.¹³³

¹²⁶ Id. at 358, 359-60, 370 (“[R]easonable jurists could debate whether a *Batson* violation occurred only if petitioner first meets his burden under § 2254(e)(1).”).

¹²⁷ Id. at 370.

¹²⁸ *Buck v. Davis*, 137 S. Ct. 759, 767 (2017). For a more detailed discussion of the facts underlying the case, see the Introduction.

¹²⁹ Id. at 773 (citing *Buck v. Stephens*, 623 F. App’x 668, 673 (5th Cir. 2015)). Buck had moved pursuant to Fed. R. Civ. P. 60(b)(6) to reopen the district court’s denial of his habeas petition, which requires demonstrating extraordinary circumstances. See supra note 8 and accompanying text.

¹³⁰ Id. (citing *Stephens*, 623 F. App’x at 669, 774).

¹³¹ Id.

¹³² Id. (“Indeed, in one recent case, it ‘received nearly 200 pages of initial briefing, permitted a reply brief, considered the parties’ supplemental authorities, invited supplemental letter briefs from both sides, and heard oral argument before denying the request for a COA.’” (quoting Brief for Respondent at 50--51)).

¹³³ Id. at 774.

After issuing these rebukes, the Court noted that § 2253 does not “limit the scope of [its own] consideration of the underlying merits” and decided to “meet the decision below . . . on [its] own terms” by considering the merits of Buck’s ineffective assistance of counsel and Rule 60(b)(6) claims.¹³⁴ The Court found that petitioner demonstrated both that he had received ineffective counsel and that he was entitled to relief under Rule 60(b)(6).¹³⁵ Because the court made such a finding, it reasoned that the circuit court necessarily “erred in denying Buck the COA required to pursue these claims on appeal.”¹³⁶

Justice Thomas dissented, arguing that while the majority correctly identified the COA standard articulated in *Slack* and *Miller-El*, it “wrongly criticize[d]” the Fifth Circuit for holding that petitioner “ha[d] not shown extraordinary circumstances” and therefore could not be eligible for Rule 60(b)(6) relief.¹³⁷ Justice Thomas urged that a court, in denying a COA, must “necessarily find” a petition meritless.¹³⁸ Under the Court’s COA standard, Justice Thomas argued, *no* petition could be denied—a result contrary to 28 U.S.C. § 2253(c)(2).¹³⁹ Justice Thomas observed the irony that the Court performed its own merits analysis—even deciding the ineffective assistance of counsel claim which had not been considered by the Fifth Circuit—in justifying its reversal of the Fifth Circuit on the grounds it had improperly reached the merits.¹⁴⁰

¹³⁴ Id. at 775--80.

¹³⁵ Id. at 780.

¹³⁶ Id.

¹³⁷ Id. at 781 (Thomas, J., dissenting) (quoting majority opinion at 773).

¹³⁸ Id. (“A reviewing court cannot determine that a claim is indisputably meritless (that is, nondebatable) without first deciding that it is meritless.”).

¹³⁹ Id. at 782.

¹⁴⁰ Id. at 782. (“The majority also has things just backwards. It criticizes the Fifth Circuit for undertaking a merits inquiry to deny a COA (when such an inquiry is required) and then it conducts a merits inquiry to decide that petitioner's claim is debatable (when such an inquiry is inappropriate).”).

II. COA STUDY

Buck’s counsel appended to his petition for certiorari a study that measured the rates at which district courts and courts of appeals within the Eleventh, Fifth, and Fourth Circuits granted COAs in capital cases.¹⁴¹ This study revealed that while courts in the Eleventh and Fourth Circuit granted COAs in nearly all capital cases, those in the Fifth Circuit granted COAs in only 41% of capital cases.¹⁴² The *Buck* court did not mention these statistics in its opinion, but Justice Kagan questioned the respondent about this discrepancy during oral arguments.¹⁴³ Justice Kagan noted that although the Fifth Circuit and the Eleventh Circuit are “roughly similar circuits,” COAs are “denied in capital cases ten times more in the Fifth Circuit” suggesting that “one of these two circuits is doing something wrong.”¹⁴⁴

This article, like the *Buck* study, focuses on the Fifth and Eleventh Circuits. The Supreme Court’s most recent COA jurisprudence is a product of COA judgments from these circuits.¹⁴⁵ Moreover, the dramatic difference between the Fifth and Eleventh Circuit in capital COA grants urges examining whether this trend persists in noncapital cases.

A. Methodology

The results of the Eleventh Circuit are taken from a study I helped design and to which I provided research support and supervision.¹⁴⁶ I conducted a separate study to obtain the results of

¹⁴¹ Petition for Writ of Certiorari at i, *Buck*, 137 S. Ct. 759 (No. 15-8049), 2016 WL 3162257; see also Brief for Petitioner, supra note 3, at i.

¹⁴² Brief for Petitioner, supra note 3, at i. The Fourth Circuit granted 100%, the Eleventh Circuit 93.7%, and the Fifth Circuit 41% of their respective COA applications in capital cases. See Brief for Petitioner at 4a, 19a, & 34a, *Buck v. Davis*, 137 S. Ct. 759 (2017) (No. 15-8049).

¹⁴³ Oral Argument Transcript at 38, *Buck*, 137 S. Ct. 759 (No. 15-8049), https://www.supremecourt.gov/oral_arguments/argument_transcripts/2016/15-8049_4f15.pdf.

¹⁴⁴ *Id.* at 38.

¹⁴⁵ See, e.g., *Tharpe v. Sellers*, 138 S. Ct. 545 (2018); *Buck*, 137 S. Ct. 759; *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

¹⁴⁶ See Julia Udell, *Certificates of Appealability in Habeas Cases in the United States Court of Appeals for the Eleventh Circuit: A Study* (December 24, 2019), <https://ssrn.com/abstract=3506320> (on file with author).

the Fifth Circuit. Both studies used the same methodology: the search term—(c.o.a. (cert! /2 appeal!) /7 deny! denied denial grant!) /20 2018 2019—was entered into Westlaw’s docket search function to identify all cases involving a certificate of appealability in each respective circuit court.¹⁴⁷ The study is limited to cases between January 2018 and September 2019. The range was limited to those specific dates because petitions during this time period occurred after the Court’s opinions in *Buck v. Davis* and *Tharpe v. Sellers*. The search term yields about 1,400 results for the Eleventh Circuit and about 350 results for the Fifth Circuit. For each case, the COA determination, date, and judge’s initials were recorded.

This study also reviewed all COA orders available on Westlaw in the Fifth Circuit and Eleventh Circuit from January 2018 to September 2019. To obtain these orders, the search term “28 U.S.C. 2253” was entered into Westlaw; then the cases citing this statute were filtered by date and jurisdiction. A search within these results for “certificate #of appealability” or “COA” further narrowed the results. For each COA order, the following was recorded: whether the habeas petition was made pursuant to 28 U.S.C. § 2254 or §2255, whether the petition was granted, the length of the order granting or denying the COA,¹⁴⁸ the COA standard cited, the language used to justify the COA determination, and whether the petitioner was pro se.

¹⁴⁷ See id. at 4--5. These studies, unlike that in *Buck*, did not include COA determinations by district courts.

¹⁴⁸ Any decision shorter than three full paragraphs was labeled “short”; every other decision was labeled “long.”

B. Results

1. *Declining grant rates in capital cases in the Fifth and Eleventh Circuits*

Of the cases reviewed by the Eleventh Circuit, 1,091 contained a COA determination.¹⁴⁹ The grant rate for capital cases was 58.3%.¹⁵⁰ Of the cases reviewed in the Fifth Circuit, 259 contained a COA determination.¹⁵¹ The grant rate for capital cases was only 13.33%.¹⁵² The grant rate in capital cases appears to have decreased sharply in both circuits, with rates dropping from 41% to 13.33% in the Fifth Circuit and from 93.7% to 58.3% in the Eleventh. Despite the drastic decrease in the Eleventh Circuit, the circuit split identified in the *Buck* study persists.

Udell's study also notes that the grant rate among individual judges in the Eleventh Circuit varies widely; one judge granted 25.81% of the ninety-three COA applications before him, while another granted only 5.49% of the ninety-one applications he heard.¹⁵³ Justice Kagan's criticism of the discrepancy between grant rates in the Fifth and Eleventh circuit applies with equal force to the variation in grant rates between judges *within* the Eleventh circuit; "one of these two [judges] is doing something wrong."¹⁵⁴

¹⁴⁹ Other cases were excluded for a variety of reasons including, for example, a COA request still pending in the circuit court or the circuit court making a COA determination outside the designated date range.

¹⁵⁰ See Udell, *supra* note 148, at 7.

¹⁵¹ See Certificates of Appealability as Rubber Stamps Data Set, on file with author. Other cases were excluded for a variety of reasons including, for example, a COA request is still pending in the circuit court or the circuit court made a COA determination outside the designated date range. Around 30% of the excluded cases were not included because they did not meet the Fifth Circuit Rules and Internal Operating Procedures' COA requirements. See Federal Rules of Appellate Procedure with Fifth Circuit Rules and Internal Operating Procedures, <http://www.ca5.uscourts.gov/docs/default-source/forms-and-documents---clerks-office/rules/federalrulesofappellateprocedure.pdf>. These dismissals are discussed further in Section II.B.2.iii.

¹⁵² *Id.*

¹⁵³ Udell, *supra* note 148, at 10.

¹⁵⁴ Oral Argument Transcript, *supra* note 145, at 38.

2. Why are COAs being Denied?

The second part of the study provides critical insight into the standard being used to resolve and the reasons for denying these applications. This part of the study reviewed all COA orders available on Westlaw for the prescribed date range,¹⁵⁵ which included 258 cases in the Eleventh Circuit and 95 cases in the Fifth Circuit.¹⁵⁶

i. Overview

The study demonstrates that a large portion of the COA orders—43% in the Eleventh Circuit and 47.3% in the Fifth Circuit—are fewer than three paragraphs long.¹⁵⁷ In the Eleventh Circuit, 70% of the orders cite only *Slack*, 18% cite the statutory language¹⁵⁸ alone, and the remaining 3% solely cite *Miller-El*.¹⁵⁹ By contrast, in the Fifth Circuit, a combination of cases is more likely to be cited: 58% of COA orders cite *Slack*, 44% *Miller-El*, and 18.9% *Buck*.¹⁶⁰ In both circuits, COA-application decisions typically consist of a citation to § 2253, the *Slack/Miller-El* standard of review, a brief procedural history, and a conclusory sentence stating that the petitioner failed to meet his burden or that reasonable jurists would not disagree with the district court’s decision.¹⁶¹ Twelve percent of orders in the Eleventh Circuit and 21% percent in the Fifth Circuit were explicitly decided on procedural grounds.¹⁶² The prevalence of short orders

¹⁵⁵ See methodology in Section II.A.

¹⁵⁶ See Certificates of Appealability as Rubber Stamps Data Set, on file with author. For a list of reasons certain cases were excluded see supra note 148.

¹⁵⁷ See Certificates of Appealability as Rubber Stamps Data Set, on file with author. Any COA order fewer than three paragraphs was labeled as “short”.

¹⁵⁸ See 28 U.S.C. § 2253(c)(2) (“Substantial showing of the denial of a constitutional right.”).

¹⁵⁹ See Certificates of Appealability as Rubber Stamps Data Set, on file with author.

¹⁶⁰ See *id.*

¹⁶¹ See, e.g., *Bell v. USA*, No. 19-12465-A, 2019 WL 4755712 (11th Cir. Sept. 26, 2019); *LeBlanc v. Davis*, No. 19-40244, 2019 WL 4467094, at *1 (5th Cir. Aug. 30, 2019); *Kinney v. Attorney Gen., Fla.*, No. 19-10728-B, 2019 WL 4034421, at *1 (11th Cir. Aug. 26, 2019); *United States v. Martinez*, 768 F. App’x 285 (5th Cir. 2019).

¹⁶² Procedural grounds in this context means that the habeas claims were either defaulted and not subject to an exception or not exhausted in lower courts. Because a large percentage of orders are decided

containing very limited information makes it difficult in many instances to determine why the judge denied a COA.

ii. The Role of AEDPA Deference in COA Determinations

Two trends emerge in the data that are arguably a product of AEDPA deference: the tendency for courts to interpret §§ 2254(d) and (e) as calling for merits analysis at the COA stage and the tendency for courts to issue brief COA orders that rely principally on deference to lower court findings.

Miller-El demonstrated the confusion AEDPA's deference provisions can insert into COA determinations.¹⁶³ Despite the Supreme Court's instruction in that case that, at the COA stage, a circuit court should ask whether the "District Court's application of AEDPA deference, as stated in §§ 2254(d)(2) and (e)(1), to petitioner's . . . claim was debatable amongst jurists of reason,"¹⁶⁴ this study reveals the extent to which judges continue to struggle to understand the role §§ 2254(d)(2) and (e)(1) play at the COA level under *Slack* and its progeny.

Slater v. Davis, a Fifth Circuit death penalty case, best illustrates the difficulty of incorporating AEDPA deference into the COA analysis. The habeas petitioner sought a COA from the Fifth Circuit after his claim that his trial counsel rendered ineffective assistance by, inter alia, failing to request a jury instruction on the lesser-included offense of murder failed.¹⁶⁵

with vague language (e.g., the petitioner has not made requisite showing), it is not clear how many other orders were decided on these grounds.

¹⁶³ See Section I.C.2.

¹⁶⁴ *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003). The Court also explained that Subsection (d)(2) only applies to the granting of habeas relief, not the granting of a COA, *id.* at 341--42, cautioning that even if the merits of the case will turn on agreement or disagreement with the state court's factual findings, a circuit court need not make a definitive inquiry into these findings because "a COA determination is a separate proceeding, one distinct from the underlying merits." *Id.* (citing *Slack v. McDaniel*, 529 U.S. 473, 481 (2000)). To the extent that a habeas petition does turn on such findings, "the clear and convincing evidence and objective unreasonableness standards will apply. See *id.* at 342.

¹⁶⁵ *Slater v. Davis*, 717 F. App'x 432, 435 (5th Cir.), cert. denied, 139 S. Ct. 99 (2018).

Petitioner’s trial attorney submitted an affidavit stating that this decision was made at the petitioner’s request, which the petitioner disputed.¹⁶⁶ In denying the COA, the Fifth Circuit judge explained that “Slater has not presented clear and convincing evidence that would rebut the state court’s finding that [his lawyer’s] affidavit was reliable and Slater’s was not credible.”¹⁶⁷ The judge then concluded that the petitioner also failed to show that “the district court’s finding under [ineffective-assistance-of-counsel caselaw] is debatable among jurists of reason.”¹⁶⁸ Even assuming the court meant to cite to § 2254(e)(1), it still appears that it is no longer merely deciding the threshold inquiry—the debatability of the underlying constitutional claim—but instead resolving that debate.¹⁶⁹ That is, it appears as though the court has decided the merits of the ineffective assistance of counsel claim and then used this determination to justify its denial of a COA.¹⁷⁰

Such overreach repeats itself in the Fifth Circuit cases the study reviewed. In *Batiste v. Davis*, another death penalty case, the court acknowledges that the COA inquiry is a limited one that avoids using “the merits of the appeal as a means to justify a denial of a COA.”¹⁷¹ However, the court proceeded to list the requirements of § 2254d(1) and (2).¹⁷² While incorporating this standard is not technically incorrect,¹⁷³ the court’s holding¹⁷⁴ suggests that its invocation of

¹⁶⁶ Id.

¹⁶⁷ Id. (citing 28 U.S.C. § 2254(d)(1)). Note that the clear-and-convincing-evidence requirement is actually contained in § 2254(e)(1).

¹⁶⁸ Id.

¹⁶⁹ See *Miller-El*, 537 U.S. at 342.

¹⁷⁰ *Buck v. Davis*, 137 S. Ct. 759, 774 (2017) (citing *Miller-El*, 537 U.S. at 326, 336--37).

¹⁷¹ *Batiste v. Davis*, 747 F. App'x 189, 193 (5th Cir. 2018), cert. denied, 139 S. Ct. 1601, 203 L. Ed. 2d 757 (2019).

¹⁷² Id.

¹⁷³ See *infra* note 265.

¹⁷⁴ *Batiste*, 747 F. App'x at 194–195 (“The district court found the state court habeas resolution of this issue to be reasonable, and we agree without reaching the issue of prejudice. . . . *Batiste*’s trial counsel acted in an objectively reasonable manner in investigating, selecting and presenting mitigation evidence.”).

AEDPA deference allowed it to reach the merits of the case, instead of merely to evaluate the debatability of the district court's determination. In *Thompson v. Davis*, for example, the Court held that where a petitioner "seeks a COA on claims denied on the merits by the state habeas court" he must meet the substantive requirements of §2254(d).¹⁷⁵ *Milam v. Davis* similarly discusses at length the level of deference § 2254d(1) and (2) afford state courts before accepting the district court's conclusion that the petitioner "failed to show that his ineffective-assistance-of-trial-counsel claim has any merit sufficient to overcome the . . . hurdle [posed by ineffective-assistance-of-counsel caselaw]."¹⁷⁶ Based on this finding, the circuit court concluded the petitioner's claims did not satisfy the COA debatability requirement.¹⁷⁷

The Eleventh Circuit is also replete with examples in which the circuit court appears to surpass the threshold COA inquiry of debatability. In fact, the data suggest that judges who write short orders are likely surpassing the threshold COA inquiry of debatability. Consider, for instance, *Winslow v. Secretary, Department of Corrections*, where the circuit court explained that "[a]pplying deference, the state court's denial of relief was not contrary to federal law or based on an unreasonable determination of the facts."¹⁷⁸ Or *Campana v. Secretary, Department of Corrections*, which held that, "[t]o succeed on an ineffective-assistance claim . . . , a [§ 2254] petitioner must establish that the relevant state court decision was contrary to, or an unreasonable

¹⁷⁵ *Thompson v. Davis*, 916 F.3d 444, 453 (5th Cir. 2019) ("Thompson's petition is 'also subject to the deferential standards of AEDPA.' . . . [H]e must show that the state court's decision was 'contrary to' or 'involved an unreasonable application of' clearly established federal law, or that it 'was based on an unreasonable determination of the facts' given the record before the state court." (first quoting *Charles v. Stephens*, 736 F.3d 380, 387 (5th Cir. 2013) (per curiam), then quoting *Harrington v. Richter*, 562 U.S. 86, 100 (2011))). In *Thompson*, the court held that "[g]iven the deferential AEDPA review standards, jurists of reason would not debate the state court's denial of relief in light of the lack of factual support for this contention." *Id.* at 454.

¹⁷⁶ 733 F. App'x 781, 785 (5th Cir.), cert. denied, 139 S. Ct. 335 (2018).

¹⁷⁷ *Id.*

¹⁷⁸ *Winslow v. Sec'y, Dep't of Corr.*, No. 18-13525-K, 2019 WL 948355, at *1 (11th Cir. Jan. 24, 2019).

application of, *Strickland v. Washington*.”¹⁷⁹ After evaluating the merits of both *Strickland* factors, the order concluded “the state court’s denial of these claims was not contrary to, or an unreasonable application of, *Strickland*, and no COA should issue”¹⁸⁰

Similarly, the court in *Coleman v. Florida Department of Corrections* explained, “Because [the petitioner] has not established that the state court either unreasonably applied clearly established federal law or made an unreasonable determination of the facts, his motion for a COA is denied.”¹⁸¹

Compounding this overreach is the brevity of most COA orders, which makes it difficult to determine the extent to which a circuit court has gone beyond the threshold inquiry and “place[d] too heavy a burden on the prisoner at the COA stage.”¹⁸²

iii. Pro Se Petitioners

¹⁷⁹ *Campana v. Sec’y, Dep’t of Corr.*, No. 18-13236-K, 2019 WL 3545591, at *1 (11th Cir. Jan. 31, 2019). *Strickland*, the backbone of ineffective-assistance jurisprudence, lays out a two-prong test: did counsel’s performance fall below an objective standard of reasonableness and if so, did this ineffective performance prejudiced the petitioner’s defense. 466 U.S. 668, 687 (1984).

¹⁸⁰ *Campana*, 2019 WL 3545591, at *1.

¹⁸¹ *Coleman v. Fla. Dep’t of Corr.*, No. 18-11358-B, 2018 WL 7954623, at *2 (11th Cir. Sept. 5, 2018) (capitalization altered).

¹⁸² See, e.g., *Woodruff v. Davis*, No. 18-10133, 2018 WL 9815191, at *1 (5th Cir. Sept. 20, 2018), cert. denied, 140 S. Ct. 108 (2019) (“This court looks to the district court’s application of the Antiterrorism and Effective Death Penalty Act in making that determination.” (first citing *Miller-El*, 537 U.S. at 336; then citing 28 U.S.C. § 2254(d) (2012)). For other examples in which the Eleventh Circuit appears to surpass the threshold COA inquiry see *Mollica v. United States*, No. 18-14100-J, 2019 WL 4784788, at * 2 (11th Cir. Mar. 14, 2019) (noting that the petitioner “failed to show how counsel’s performance was deficient or how she was prejudiced by counsel’s alleged deficiency in this regard” and, on this basis, concluding that a COA was not warranted); *Fortune v. Sec’y, Dep’t of Corr.*, No. 18-13813-E, 2019 WL 1163849, at *2 (11th Cir. Feb. 12, 2019) (“The state post-conviction court’s decision was not contrary to, or an unreasonable application of, *Strickland* Fortune was not prejudiced by his counsel’s failure to consult an expert witness, more thoroughly cross-examine the state’s expert, or object to the prosecutor’s statements during closing argument” (citing *Strickland v. Washington*, 466 U.S. 668, 687 (1984); 28 U.S.C. § 2254(d)(1) (2012))); *Milling v. Sec’y, Dep’t of Corr.*, No. 17-15095-B, 2018 WL 2254674, at *1 (11th Cir. Mar. 21, 2018) (“The state habeas court did not unreasonably apply clearly established federal law or make an unreasonable determination of the facts in denying [petitioner’s] claim No COA is warranted on this claim.”); *Ramos v. Sec’y, Fla. Dep’t of Corr.*, No. 18-12078-G, 2018 WL 6131829, at *1 (11th Cir. Nov. 15, 2018) (“The state court’s denial of Ramos’s ineffective-assistance claim was neither contrary to, nor did it involve an unreasonable application of, clearly established federal law”).

Importantly, around 82.4%¹⁸³ of the applications for a COA in the Eleventh Circuit cases and 67.3%¹⁸⁴ of those in the Fifth Circuit cases were filed pro se. Notably, although § 2254 contemplates an initial screening to be performed by a judge,¹⁸⁵ some local procedures delegate this task to “nonjudicial pro se staff.”¹⁸⁶ This second-hand treatment is reminiscent of that in cases attacking criminal convictions or asserting prisoners’ rights, especially those that involve pro se litigants.¹⁸⁷ In the Third Circuit, for example, “in any habeas case requiring a certificate of appealability . . . and any other civil matter in which one of the parties is proceeding pro se,” it is court staff-attorneys who first assess a case’s merits in “a memorandum and proposed order.”¹⁸⁸ Moreover, pro se petitioners face insurmountable resource constraints and lack the expertise needed to navigate AEDPA’s framework.¹⁸⁹ Given that COA applicants are overwhelmingly pro

¹⁸³ See Certificates of Appealability as Rubber Stamps Data Set, on file with author. Of the 257 noncapital petitions, 83% were filed pro se. The only capital petition in the dataset was not. *Id.*

¹⁸⁴ See *id.* Ten percent of capital petitions and 94% of noncapital ones were filed pro se. *Id.*

¹⁸⁵ 28 U.S.C. § 2254(a) (2012) (“The *Supreme Court*, a *Justice* thereof, a circuit *judge*, or a *district court* shall entertain an application for a writ of habeas corpus” (emphasis added)).

¹⁸⁶ Katherine A. Macfarlane, *Shadow Judges: Staff Attorney Adjudication of Prisoner Claims*, 95 *Or. L. Rev.* 97, 119–20 (2016)

¹⁸⁷ William M. Richman & William L. Reynolds, *Injustice on Appeal: The United States Courts of Appeals in Crisis* (2013) (citing an interview with a Senior Member of the Staff Attorney Office in the U.S. Court of Appeals for the Third Circuit); see also, Macfarlane, *supra* note 186, at 107 (“The District of Colorado’s local rules refer to a ‘judicial officer designated by the Chief Judge’ who ‘shall review the pleadings of a prisoner . . . to determine whether the pleadings should be dismissed summarily’ for several reasons, including ‘challenging prison conditions’ or ‘asserting claims pertinent to his or her conviction or sentence.’”).

¹⁸⁸ Marin K. Levy, *The Mechanics of Federal Appeals: Uniformity and Case Management in the Circuit Courts*, 61 *Duke L.J.* 315, 391 (2011).

¹⁸⁹ See Emily Garcia Uhrig, “The Sacrifice of Unarmed Prisoners to Gladiators: The Post-AEDPA Access-to-the-Courts Demand for a Constitutional Right to Counsel in Federal Habeas Corpus,” 14 *U. Pa. J. Const. L.* 1219, 1273 (2012) (“But once the procedural barricade of AEDPA was erected and pro se inmates were required to navigate the intricacies of a short statute of limitations, together with the exhaustion and procedural default doctrines and the new bar on successive petitions, the courthouse doors in effect slammed shut.”).

se, AEDPA’s one-year statute of limitations, strict exhaustion requirement, and intricate procedural default doctrines “ha[ve] erected an impenetrable barrier to federal habeas review.”¹⁹⁰

In addition to the obstacles imposed by AEDPA, the docket in the Fifth Circuit reveals further barriers facing pro-se COA petitioners.¹⁹¹ Around 30% of the cases that were excluded from the data set—35 in total—were disposed of administratively for failure to comply with local Fifth Circuit rules concerning COAs, such as filing deadlines and fee schedules.¹⁹² The rules further provide that failure to comply within 15 days of these deadlines will result in dismissal of the COA application (and thus the appeal) *without further notice*.¹⁹³ Therefore, a pro se petitioner may be under the impression his COA application is pending only to find out it has been dismissed for failure to pay a filing fee, since which time AEDPA’s statute-of-limitations clock has been running.

III. COAS AS RUBBER STAMPS

In one sense, the results of these studies are not surprising; the difficulty of receiving a COA may at first seem like just another way in which the writ of habeas corpus has weakened over time. But a deeper meaning is evident if one heeds Paul Halliday’s advice and views the studies’ purpose as demonstrating “how . . . the conflict between two principles persist[s].”¹⁹⁴ On the one hand is the principle of public safety, which “generate[s] a persistent logic of detention, a logic by which people, regardless of the many factual circumstances that distinguish[] them,

¹⁹⁰ Id. Uhrig also proposes recognizing a limited right to counsel to “ensure the indigent state inmate’s constitutional right of access to the courts in federal habeas proceedings.”

¹⁹¹ See Certificates of Appealability as Rubber Stamps Data Set, on file with author.

¹⁹² See e.g., Clerk Order Dismissing Appeal Pursuant to 5th Circuit Rule 42, *United States v. Clifton*, 19-60038, 9098790-2; Clerk Order Dismissing Appeal Pursuant to 5th Circuit Rule 42, *United States v. Dignam*, 18-30416 (“CLERK ORDER DISMISSING APPEAL PURSUANT TO 5TH CIRCUIT RULE 42 FOR FAILURE TO COMPLY WITH THE COURT’S NOTICE OF 06/18/2018.”).

¹⁹³ Federal Rules of Appellate Procedure with Fifth Circuit Rules and Internal Operating Procedures 42-1 (2018).

¹⁹⁴ Halliday, *supra* note 25, at 309.

[are] gathered together in the same broad category in order to contain them, legally and literally.”¹⁹⁵ On the other is the principle of “judicial supremacy, by which the sighs of individual prisoners might be heard and their prayers answered by an equitable majesty.”¹⁹⁶ Halliday argues that “[t]he history of habeas corpus traces an ongoing tension between the logic of detention and the persistent judge: between what is in our law and what we would like to be in it.”¹⁹⁷ This tension is further complicated by the fact that even those who have “trumpeted the writ’s virtues have comforted themselves as they bound the judge and muffled the prisoner’s sigh.”¹⁹⁸

The Supreme Court’s opinion in *Tharpe v. Sellers*, Justice Sotomayor’s statement respecting the denial of certiorari in *Tharpe v. Ford*, and her dissent in *McGee v. McFadden* illuminate a tension similar to the one identified by Halliday: high rates of COA denials, and the summary manner in which they are issued, indicate the overwhelming grip of the logic of detention in the habeas context. This section considers these cases and then proposes a potential doctrinal shift that would resolve the problems the studies in Part II identified and, in so doing, counteract the power of the logic of detention.

A. The Detention of Logic Prevails: *Tharpe I & II*

The saga of Keith Tharpe—whose application for a COA the Supreme Court remanded to the Fifth Circuit in *Tharpe v. Sellers* only to deny his second petition for certiorari in *Tharpe v. Ford*—deserves more attention, as it demonstrates the extent to which the logic of detention has become entrenched in the habeas corpus context.

The district court denied Tharpe’s Rule 60(b) motion to reopen his federal habeas petition, on the grounds that Tharpe’s claim that a racist juror had affected the verdict in favor of

¹⁹⁵ Id.

¹⁹⁶ Id.

¹⁹⁷ Id. at 316.

¹⁹⁸ Id. (“Perhaps, by understanding this history better, we will be able to hear those sighs again.”).

the death penalty was procedurally defaulted in state court.¹⁹⁹ In order to overcome this procedural default, Tharpe would have to produce clear and convincing evidence contradicting the state court's determination that the juror's presence did not prejudice him; the district court noted that Tharpe had not met this burden.²⁰⁰ The Eleventh Circuit declined to issue a COA, determining that reasonable jurists could not debate the accuracy of the district court's procedural ruling.²⁰¹

The Supreme Court reversed, but did not actually grant the COA, instead remanding to the circuit court for a final determination of whether one should issue.²⁰² In the majority's view, the COA denial rested "solely on [the] conclusion, rooted in the state court's factfinding" that Tharpe had not shown prejudice.²⁰³ After independently reviewing the record,²⁰⁴ the Court reached a different conclusion, holding that "jurists of reason could debate whether Tharpe ha[d] shown by clear and convincing evidence that the state court's factual [prejudice] determination was wrong."²⁰⁵ The Court thus remanded for consideration of whether "jurists of reason could

¹⁹⁹ *Tharpe v. Sellers*, 138 S. Ct. 545, 545 (2018). The claim was defaulted at the state level because Tharpe had not raised it on direct appeal. *Tharpe v. Warden*, No. 17-14027, 2017 WL 4250413, at *1 (11th Cir. Sept. 21, 2017). A federal court cannot review a claim procedurally defaulted under state law "unless the petitioner can show cause for failure to properly present the claim and actual prejudice." *Tharpe v. Warden*, 898 F.3d 1342, 1346 (11th Cir. 2018) (citing *Wainwright v. Sykes*, 432 U.S. 72, 87 (1977)).

²⁰⁰ *Tharpe*, 138 S. Ct. at 545.

²⁰¹ *Id.* at 546.

²⁰² *Id.* at 546—47.

²⁰³ *Id.* at 546.

²⁰⁴ *Id.* Specifically, the Court pointed to a signed affidavit by the juror in question, which stated, "[T]here are two types of black people: 1. Black folks and 2. Niggers"; that Tharpe, "who wasn't in the 'good' black folks category in my book, should get the electric chair for what he did." (citing App. B to Petition for Certiorari at 15–16 (internal quotation marks omitted)). In the Court's view, this affidavit "present[ed] a strong factual basis for the argument that Tharpe's race affected [the juror's] vote for a death verdict"—in other words, that Tharpe suffered prejudice. *Id.*

²⁰⁵ *Id.*

disagree whether the District Court abused its discretion in denying [Tharpe’s Rule 60(b)(6)] motion.”²⁰⁶

Justice Thomas, joined by Justices Alito and Gorsuch, dissented, calling the majority’s interpretation of the Eleventh Circuit’s decision as resting solely on Tharpe’s failure to present clear and convincing evidence of prejudice a “misreading.”²⁰⁷ Even if this issue *were* the sole basis of the COA denial, the Court’s analysis disregarded “the deference that federal habeas courts must give to state courts’ factual findings.”²⁰⁸

Most interesting is the dissent’s assessment of the futility of the Court’s remand. As even the majority acknowledged, “[i]t may be that, at the end of the day, Tharpe should not receive a COA.”²⁰⁹ Conceding that reasonable jurists could debate prejudice “says little about how a court of appeals could ever rule in Tharpe’s favor on the merits of that question.”²¹⁰ In Justice Thomas’s mind, the remand “merely delay[ed] Tharpe’s inevitable execution.”²¹¹ Worse, it resulted from the Court overstepping its assigned role as “a policeman of self-evidently fixed jurisdictional boundaries” to adopt that of a “judge of behavior within those bounds.”²¹² Rather than abiding by the “considered judgments about the balance of competing interests” embodied in the law, the majority “ben[t] the rules . . . to show its concern for a black capital inmate.”²¹³ In Halliday’s terms, the majority acted as a persistent judge, attempting to disrupt the logic of detention.

²⁰⁶ Id. at 546--47. The Court took this step, instead of simply issuing a COA, to allow the circuit court to address the reasons other than prejudice for the district court’s denial. Id.

²⁰⁷ Id. at 551 (Thomas, J., dissenting).

²⁰⁸ Id. (citing 28 U.S.C. § 2254(e)(1) (2012)).

²⁰⁹ Id. at 546 (majority opinion).

²¹⁰ Id. at 553 (Thomas, J., dissenting).

²¹¹ Id.

²¹² Halliday, *supra* note 25 at 315.

²¹³ *Tharpe*, 138 S. Ct. at 547 (Thomas, J., dissenting).

Its success in doing so was only temporary, as Justice Thomas’s predictions regarding the ultimate COA determination proved right. On remand, the court of appeals found Tharpe had not shown “cause to overcome his procedural default.”²¹⁴ The Supreme Court denied certiorari.²¹⁵

Justice Sotomayor, though concurring in the Court’s denial of certiorari, took the unusual step of issuing a statement, in order to comment on “the magnitude of the potential injustice that procedural barriers are shielding from judicial review.”²¹⁶ Justice Sotomayor acknowledged the slim “likelihood that [the Court] would reverse the Court of Appeals’ factbound conclusion,” but nonetheless lamented the fact that “[t]o this day, Tharpe’s racial-bias claim has never been adjudicated on the merits.”²¹⁷ Ultimately, however, despite the “truly striking evidence of juror bias” that “suggest[ed] an appalling risk that racial bias swayed Tharpe’s sentencing,” Justice Sotomayor did not contest the conclusion that the Court could offer Tharpe no relief.²¹⁸ While this statement may strike some as an important acknowledgment of the justice system’s racism, at the end of the day it is hard to see Justice Sotomayor as accomplishing anything other than “comfort[ing] [herself] as [she] . . . muffled the prisoner’s sigh.”²¹⁹

B. AEDPA Deference and Hasty Decisions: *McGee v. McFadden*

In 2006, Shannon McGee was charged and indicted with sexually abusing his stepdaughter.²²⁰ At trial, the prosecution relied on the testimony of two witnesses: the alleged victim—who testified that she had contacted McGee’s trial counsel, after her mother pressured

²¹⁴ Tharpe v. Warden, 898 F.3d 1342, 1344 (11th Cir. 2018).

²¹⁵ Tharpe v. Ford, 139 S. Ct. 911 (2019).

²¹⁶ Id. at 913.

²¹⁷ Id. at 913; id. at 912.

²¹⁸ Id. at 913.

²¹⁹ Halliday, supra note 25, at xx.

²²⁰ McGee v. McFadden, No. CV 1:16-3866, 2017 WL 8794894, at *1--2 (D.S.C. Oct. 3, 2017), report and recommendation adopted, No. 1:16-CV-3866, 2018 WL 797532 (D.S.C. Feb. 9, 2018), appeal dismissed, 733 F. App'x 134 (4th Cir. 2018), cert. denied, 139 S. Ct. 2608 (2019).

her to do so, and informed him that she “lied about the sexual abuse out of revenge and spite”²²¹—and a jailhouse informant named Aaron Kinloch, who testified that McGee confessed to him, while the two men were in county jail.²²² Kinloch claimed he was motivated to share this conversation with the prosecutor because “if whatever [McGee] did took place, that’s nasty to me, me myself. I’ve got kids of my own.”²²³ In his closing, the prosecutor emphasized Kinloch’s supposed altruism in his closing argument.²²⁴

McGee was convicted of sexually abusing his stepdaughter and sentenced to life without parole.²²⁵ Soon after the trial, the prosecutor turned over a previously undisclosed letter from Kinloch “in which [he] volunteered his testimony in exchange for the prosecutor’s ‘help’ with pending charges.”²²⁶ McGee subsequently appealed, but was denied relief “on both direct and postconviction review.”²²⁷ McGee then filed a § 2254²²⁸ habeas petition in the district court, which denied both his petition and a COA.²²⁹ The court of appeals similarly denied a COA. On June 28, 2019, the Supreme Court denied Shannon McGee’s pro se petition for a writ of certiorari.²³⁰

Justice Sotomayor, dissenting from denial of certiorari, argued that because at the COA stage the circuit court need only find that the district court’s decision was “debatable,” the case

²²¹ *Id.*; *id.* at *2 (“Victim stated her mother told her if she did not tell Petitioner’s counsel that Petitioner had not molested her, that her mother would go to jail and her sisters would go to foster care.”).

²²² *McGee*, 139 S. Ct. at 2608 (Sotomayor, J., dissenting from the denial of certiorari).

²²³ *Id.* (citing ECF Nos. 16-1 at 113).

²²⁴ *McGee*, 139 S. Ct. at 2608 (Sotomayor, J., dissenting from the denial of certiorari) (“Normally you will hear a . . . defense lawyer get up here and scream about a deal . . . or . . . some kind of expectation of reward for this lie, but . . . I don’t know what motive [Kinloch] would have to come in here and fabricate this awful story.” (quoting App. at 152--53, *McGee v. State*, No. 2014–000297 (D.S.C.))).

²²⁵ *Id.*

²²⁶ *Id.* (“Kinloch wrote: ‘I’m willing to help, if you are cause I do need your help.... P.S. If Need Be I WILL Testify!’” (quoting App. at 524, *McGee*, No. 2014–000297)).

²²⁷ *Id.*

²²⁸ 28 U.S.C. § 2254 (2012).

²²⁹ *McGee*, 139 S. Ct. at 2608--09.

²³⁰ *Id.*

“should have gone to a merits panel of the Fourth Circuit for closer review.”²³¹ She cautioned that “[u]nless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down.”²³² If judges do not approach this inquiry properly, “the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a *rubber stamp*, especially for *pro se* litigants.”²³³ *McGee*, in Justice Sotomayor’s view, illustrates the danger of conducting a “hasty” COA review: the question of whether the petitioner is “in custody in violation of the Constitution” remains unexplored.²³⁴

In other words, in *McGee*, Sotomayor argued that had the Court accepted the case and required the circuit court to redo the COA inquiry in the proper manner,²³⁵ thus allowing the appeal to proceed to a merits panel, the petitioner’s constitutional claims would have received adequate attention.²³⁶ This conflicts with her position in *Tharpe v. Ford*, where she expressed concern that the petitioner’s claims were never fully considered on the merits, even upon remand of the COA issue to the Eleventh Circuit.²³⁷ Justice Sotomayor missed an opportunity in *McGee* to extend her criticism to the deference § 2254(d) mandates, as she did when she acknowledged in *Tharpe* the potential injustices that procedural barriers “shield from judicial review,” even when courts conduct the COA inquiry with an open mind.²³⁸ If the COA inquiry is to be “more

²³¹ *Id.* at 2611.

²³² *Id.*

²³³ *Id.* (emphasis added).

²³⁴ *Id.* (citing 28 U.S.C. § 2254(a) (2012)).

²³⁵ Justice Sotomayor assumes that this analysis would lead to a COA grant.

²³⁶ See *supra* text accompanying note 285.

²³⁷ See *supra* note 270 and accompanying text.

²³⁸ *Id.*

limited and forgiving than ‘adjudication of the actual merits,’”²³⁹ then the Court should reconsider § 2254(d)’s role at this stage.

C. Return of the Persistent Judge: A Potential Doctrinal Solution

1. *AEDPA Deference as a Distinct Inquiry*

In his concurring opinion in *Miller-El*, Justice Scalia noted that it was not clear from the majority’s opinion why a circuit justice should look to the “*District Court’s application of AEDPA* to [a habeas petition’s] constitutional claims and ask whether *that resolution* was debatable amongst jurists of reason.”²⁴⁰ Justice Scalia observed that “[h]ow the district court applied AEDPA has nothing to do with whether a COA applicant has made “a substantial showing of the denial of a constitutional right, . . . so the AEDPA standard should seemingly have no role in the COA inquiry.”²⁴¹ However, he proceeded to explain that under § 2253(c)(2), a substantial showing of the denial of a constitutional right is a necessary condition of a COA, but not a sufficient one.²⁴² Therefore, § 2253(c)(2) does not preclude a judge from “imposing additional requirements.”²⁴³

Justice Scalia argued that the Court in *Miller-El* again imposed an additional requirement: “A circuit justice or judge must deny a COA, even when the habeas petitioner has made a substantial showing that his constitutional rights were violated, if all reasonable jurists would conclude that a substantive provision of” AEDPA—namely, its deference requirements—“bars

²³⁹ *McGee*, 139 S. Ct. at 2609 (citing *Buck v. Davis*, 137 S. Ct. 759, 773 (2017)).

²⁴⁰ *Miller-El v. Cockrell*, 537 U.S. 322, 349 (2003) (Scalia, J., concurring) (quoting majority opinion at 336).

²⁴¹ *Id.*

²⁴² *Id.* (“Section 2253(c)(2), however, provides that “[a] certificate of appealability *may issue ... only if* the applicant has made a substantial showing of the denial of a constitutional right.” (Emphasis added).”).

²⁴³ *Id.* Indeed, Scalia notes that the Court in *Slack* required the petitioner to prove both a “substantial showing of the denial of a constitutional right” and also to “demonstrate that jurists of reason would find it debatable whether the district court was correct in its procedural ruling.” See *id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)).

relief.”²⁴⁴ Therefore, in *Miller-El*, the circuit court had to resolve two questions: First, did the petitioner make a substantial showing of a *Batson* violation, and second, could the petitioner demonstrate that reasonable jurists would find debatable his ability to “obtain habeas relief in light of AEDPA.”²⁴⁵ Justice Scalia concluded that when *Miller-El*’s *Batson* claims are evaluated through *AEDPA deference*,²⁴⁶ the case for granting a COA becomes “close, rather than . . . clear”²⁴⁷

In conceptualizing the COA standard of review as two *distinct*—albeit related—inquiries, Justice Scalia illuminates a potential doctrinal shift: removing AEDPA deference from the COA inquiry. This shift could ameliorate both of the problematic tendencies courts exhibit when evaluating COA applications: misinterpreting AEDPA’s deference provisions as requiring a full review of the merits of the appeal at this stage, on the one hand, and using AEDPA deference to block any meaningful consideration of a case’s individual merit.

2. *Substantial Showing: A Sufficient Condition of Granting a COA*

Given the circuit courts’ struggles applying §§ 2254(d) and (e)(1) at the COA stage,²⁴⁸ the Court should consider making § 2253(c)’s substantial showing requirement a sufficient condition of granting a COA.²⁴⁹ Under this approach, an appellate court would not be bound by AEDPA deference when making the initial determination of whether the district court’s decision was

²⁴⁴ *Id.* at 350. Scalia explains that under this requirement, a state prisoner who presents a “constitutional claim that reasonable jurists might find debatable” would be denied a COA if he is, for example, “unable to find any ‘clearly established’ Supreme Court precedent in support of that claim (which was previously rejected on the merits in state-court proceedings).” That is, “all reasonable jurists would agree that habeas relief is impossible to obtain under § 2254(d).” See *id.*

²⁴⁵ *Id.*

²⁴⁶ *Id.* Scalia identifies AEDPA deference as including §§ 2254(e)(1) and 2254(d). For instance, 2254(e)(1) requires “that state-court factual determinations can be overcome only by clear and convincing evidence to the contrary.” See *id.*

²⁴⁷ *Id.*

²⁴⁸ See Part II.B.2.ii.

²⁴⁹ 28 U.S.C. § 2254(d)(2)(i) (2012).

debatable (that is, whether a substantial showing has been made). The proposed standard would look very similar to the current one: a circuit court would ask whether the petitioner has “made a substantial showing of the denial of a constitutional right”²⁵⁰ by demonstrating that “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.”²⁵¹ However, it would explicitly prohibit incorporating AEDPA deference²⁵² into the COA analysis.²⁵³

This change provides the doctrinal language to achieve the more limited COA inquiry Justice Sotomayor envisioned in *McGee* as a means of allowing further consideration of potential constitutional violations.²⁵⁴ David Goodwin articulated a similar approach in an essay that proposed granting a COA when an applicant whose petition the district court *denied on procedural grounds* “facially alleges the deprivation of a constitutional right.”²⁵⁵ For reasons set forth below, this framework should be expanded to encompass all COA requests, including those involving petitions whose constitutional claims the district court analyzed on the merits and denied.²⁵⁶

²⁵⁰ 28 U.S.C. § 2253(c)(2) (2012).

²⁵¹ *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

²⁵² *Miller-El*, 537 U.S. at 336 (“We look to the District Court’s application of AEDPA to petitioner’s constitutional claims and ask whether that resolution was debatable amongst jurists of reason.”).

²⁵³ See *infra* tbl.1.

²⁵⁴ See *supra* notes 285--287 and accompanying text.

²⁵⁵ Goodwin, *supra* note 24, at 829. In his Note, Goodwin argued that “the permissive approach-- taking only the briefest look at the merits of a petition before granting a COA on procedural grounds . . . most accurately follow[s] the letter of *Slack* and the spirit of *Miller-El*” and is thus the one courts should employ. See *id.* However, it is not clear that this approach is in fact the most doctrinally consistent. Importantly, Goodwin’s proposal does not account for the Court’s requirement that, in addition to making a substantial showing of a constitutional claim under § 2253(c), the petitioner also demonstrate that the district court’s application of AEDPA to this constitutional claim was debatable. To be fair, Goodwin did not have the benefit of the Court’s insight in *Buck* and *Tharpe* when writing his Note. Nonetheless, his proposed change is best described as a *deviation* from the Court’s intended COA standard as articulated in *Slack* and its progeny. See Section I.C.

²⁵⁶ Goodwin argues that habeas petitions not resolved on procedural grounds have already been “afforded one full look at the merits” and that their claims are therefore properly “subject[ed] to a higher

Circuit courts have struggled to apply § 2254(d) and/or (e) in the COA inquiry²⁵⁷ without fully considering the “factual or legal bases adduced in support of the [petitioner’s] claims,”²⁵⁸ both when evaluating district courts’ resolutions of a constitutional claim²⁵⁹ and when evaluating district courts’ procedural rulings.²⁶⁰ Such a searching COA inquiry especially disadvantages petitioners where the record is underdeveloped.²⁶¹

Moreover, even when cases, unlike those discussed in Part II.B.2.ii, do not explicitly apply § 2254(d) and (e)(1) at the COA stage, AEDPA deference may still prevent further exploration of constitutional claims. For example, in *Wardlow v. Davis*, the Fifth Circuit explained that “deference to the state court factfinding that our caselaw and AEDPA requires is a big part of why [the petitioner] cannot meet the COA threshold on his substantive claims.”²⁶² The court further noted that it could not find debatable the district court’s resolution of such claims debatable, “[e]ssentially for the reasons the district court provided when analyzing the merits” of [petitioner]’s claims under that deferential lens.”²⁶³ While § 2254(d) or (e)(1) was cited in only

standard of scrutiny before being granted a COA.” Goodwin, *supra* note 24, at 834. However, the reasons for adopting a more permissive standard for COA applications are equally applicable to those petitions resolved on the merits of their constitutional claims.

²⁵⁷ *Miller-El*, 537 U.S. at 338 (whether “reasonable jurists would find the district court’s assessment of the constitutional claims debatable or wrong.” (quoting *Slack v. McDaniel* 529 U.S. 473, 484 (2000)).

²⁵⁸ That is, making a definitive assessment of the merits. *Id.* at 336.

²⁵⁹ See, e.g., *id.* at 336 (criticizing circuit court determination of COA application challenging a non-procedural dismissal).

²⁶⁰ See, e.g., *Buck v. Davis*, 137 S. Ct. 759, 774 (2017) (observing that when the circuit court, in a COA application challenging a procedural dismissal, “‘first decid[es] the merits of an appeal, . . . then justif[ies] its denial of a COA based on its adjudication of the actual merits,’ it has placed too heavy a burden on the prisoner at the COA stage.” (quoting *Miller-El*, 537 U.S. at 336–337)).

²⁶¹ Goodwin, *supra* note 24, at 832.

²⁶² *Wardlow v. Davis*, 750 F. App’x 374, 378 (5th Cir. 2018), cert. denied, No. 18-9273, 2019 WL 5150494 (Oct. 15, 2019).

²⁶³ *Id.*

19.4% of orders in the Fifth Circuit and 7.2% in the Eleventh Circuit, the brevity of most COA orders²⁶⁴ likely obscures the full effects of AEDPA deference at the COA stage.²⁶⁵

In contrast to this pattern of exceeding the COA inquiry's scope, courts can also conduct COA proceedings too hastily.²⁶⁶ Consider, for example, the circuit court's COA order in *McGee*.²⁶⁷ In two paragraphs, the court purported to “independently review[] the record” and find that the petitioner had not made the “requisite showing” to obtain a COA.²⁶⁸ In her dissent, Justice Sotomayor noted that the magistrate judge's report and recommendation—which the district court adopted despite acknowledging the petition had a strong *Brady* claim—merely recited the state court's reasoning.²⁶⁹ Moreover, neither the state court, the magistrate judge, nor the district court discussed any evidence against the petitioner aside from the testimony of a jailhouse snitch whose credibility likely would have been impeached absent the complained-of *Brady* violation.²⁷⁰

Despite this apparent tension, both the overly searching inquiries and the hasty decisions are a product of invoking AEDPA deference at the COA stage. Put another way, a searching inquiry would be less troubling if AEDPA deference did not apply at the COA stage; it would allow a more robust review of the record—benefitting pro se petitioners—without offering the temptation of denying the petition because it does not meet § 2254(d) or (e)'s more demanding

²⁶⁴ See supra note 164 and accompanying text.

²⁶⁵ See, e.g., *Stewart v. Sec'y, Fla. Dep't of Corr.*, No. 18-13679-A, 2019 WL 1025040, at *1 (11th Cir. Feb. 1, 2019) (citing only § 2253(c)'s substantial showing requirement, but finding that the state court's decision was not contrary to, or an unreasonable application of established law); *Winslow v. Sec'y, Dep't of Corr.*, No. 18-13525-K, 2019 WL 948355, at *2 (11th Cir. Jan. 24, 2019) (same). See also *Goodwin*, supra note 24, at 797 (“COA orders are generally unreported, . . . rarely carry the weight of precedent, and provide few indications as to the extent of the court's reasoning.”).

²⁶⁶ *McGee v. McFadden*, 139 S. Ct. 2608, 2609 (2019).

²⁶⁷ *McGee v. McFadden*, 733 F. App'x 134 (4th Cir. 2018), cert. denied, 139 S. Ct. 2608, reh'g denied, 140 S. Ct. 318 (2019).

²⁶⁸ *Id.*

²⁶⁹ *McGee*, 139 S. Ct. at 2610.

²⁷⁰ *Id.* Indeed the district court did not conduct a careful review of the trial court record.

standard. A clear consequence of this doctrinal shift is that courts would have to invest more resources and energy at the COA stage.²⁷¹ But the Court has acknowledged that such commitment is necessary to preserve the protections of the writ of habeas corpus.²⁷² Moreover, since eliminating AEDPA deference at the COA stage will allow judges to be more “vigilant and independent in reviewing petitions for the writ,” these resources would not be “diminished and misspent,” as they are when courts “disregard . . . established principles” and misapply § 2254 (d) and (e).²⁷³ Rather, this increase would be fully consistent with the Court’s vision of a limited COA inquiry.

CONCLUSION

While the COA standard, in theory, is supposed to weed out frivolous cases, in practice it has effectively served as a rubber stamp in habeas appellate review. The practice reinforces a logic of detention, by simultaneously promoting a false sense of protection for constitutional rights and the notion that the vast majority of habeas claims are not meritorious. While there is no assurance that more habeas petitioners will ultimately obtain relief if more COAs are granted, my proposed change will, at a minimum, lead to further exploration of potential constitutional violations. Indeed, it may turn out that eliminating AEDPA’s influence at the COA stage will, as Justice Thomas put it, “merely delay[] [the] . . . inevitable.”²⁷⁴ But, such a result would reveal a more critical flaw in the current statutory scheme: even deserving habeas petitioners cannot obtain relief because § 2254(d) and (e) are too demanding. The Court would then be forced to confront a more disturbing fact: AEDPA has transformed habeas corpus into a system of classificatory detention.

²⁷¹ See Goodwin, *supra* note 24, at 837.

²⁷² *Harrington v. Richter*, 562 U.S. 86, 91 (2011).

²⁷³ *Id.* at 91--92.

²⁷⁴ *Tharpe v. Sellers*, 138 S. Ct. 545, 553 (2018) (Thomas, J., dissenting).

**Certificate of Appealability Inquiry Under Proposed Standard
Table 1**

Case Name	Issue Under Current Standard Whether reasonable jurists could debate. . .	Issue Under Revised Standard Whether reasonable jurists could debate. . .
<i>Miller-El v. Cockrell</i>	. . . the district court's application of AEDPA deference to petitioner's <i>Batson</i> claim.	. . . the district court's assessment of petitioner's <i>Batson</i> claim.
<i>Tharpe v. Sellers</i>	. . . the district court's application of AEDPA deference in holding that the petitioner had not produced clear and convincing evidence contradicting the state court's factual determination that the presence of a racist juror did not unconstitutionally prejudice him.	. . . the district court's determination that the presence of a racist juror did not unconstitutionally prejudice the petitioner.
<i>McGee v. McFadden</i>	. . . the district court's application of AEDPA deference in holding that the state court did not unreasonably apply clearly established federal law or unreasonably determine facts in denying petitioner's <i>Brady</i> claim.	. . . district court's determination that undisclosed favorable evidence did not undermine confidence in petitioner's verdict, and thus no merit to the <i>Brady</i> claim.
<p>Definitions: AEDPA Deference: deference to the district court's conclusion that the state court's decision was not (1) an unreasonable application of clearly established federal law or (2) was not based upon an unreasonable determination of the facts in light of the evidence presented; and that (3) the petitioner did not rebut the presumption of correctness of state-court determinations of factual issues by clear and convincing evidence.</p>		

APPENDIX: COA DATA

Any questions about the data can be directed to Luis Angel Valle at valle.luis@columbia.edu

11th Circuit COA Orders

All COA orders available on Westlaw in the Eleventh Circuit from January 2018 to September 2019. **Note all cases reviewed in this section resulted in a COA denial except for one which listed first and highlighted.**

Case Citation	Short/Long	Cases/Standard	Decision Language	Judge(s)	Initials	Counsel v. Pro Se (C/P)
Griffin v. Sec'y, Dep't of Corr., No. 18-13193-C, 2019 WL 367694, at *1 (11th Cir. Jan. 7, 2019)	Short	28 USC 2253(c) (2)	Griffin's petition states a facially valid ineffective assistance of counsel claim, Griffin's motion for a COA is GRANTED on the following issue only	S. Marcus	P	
Steven Wayne Pratt v. Secretary, Florida Department of Corrections, No. 18-14120-A, 2019 WL 4858244 (11th Cir. July 24, 2019)	Long	28 USC 2253(c) (2); Slack	reasonable jurists would not debate the state court's denial of Pratt's first claim because he could not show prejudice	?	P	
Darrin J. Bell v. United States, No. 19-12465-A, 2019 WL 4755712 (11th Cir. Sept. 26, 2019)	Short	Slack	"Because Bell has failed to satisfy the Slack test for his claims, his motion for a COA is DENIED."	C. Wilson	C	
Carter v. Dep't of Corr., No. 19-12200-H, 2019 WL 6699695, at *1 (11th Cir. Sept. 26, 2019)	Long	28 USC 2253(c) (2); Slack	Reasonable jurists would not debate the district court's dismissal of Carter's § 2254 petition as untimely	K. Newsom	P	
Hinson v. United States, No. 19-12218-H, 2019 WL 6909584, at *1 (11th Cir. Sept. 26, 2019)	Short	28 USC 2253(c) (2); Slack	failed to satisfy the Slack test for his claims	C. Wilson	C	
Bradley v. Sec'y, Dep't of Corr., No. 19-12577-F, 2019 WL 5079542, at *1 (11th Cir. Sept. 24, 2019)	Long	28 USC 2253(c) (2); Slack	reasonable jurists would not debate the district court's determination that Bradley was not entitled to equitable tolling; time barred	R. Rosenbaum	P	
Collando-Pena v. Sec'y, Fla. Dep't of Corr., No. 19-11753-G, 2019 WL 5730780, at *1 (11th Cir. Sept. 9, 2019)	Short	28 USC 2253(c) (2)	failed to make "a substantial showing of the denial of a constitutional right."		P	
Joyner v. Inch, No. 19-11814-D, 2019 WL 5869749, at *1 (11th Cir. Sept. 5, 2019)	Short	28 USC 2253(c) (2); Slack	"failed to make the requisite showing"	?	P	
Kinney v. Attorney Gen., State of Fla., No. 19-10728-B, 2019 WL 4034421, at *1 (11th Cir. Aug. 26, 2019)	Short	Slack	"failed to make requisite showing"	S. Marcus	P	

KARA SINGLETON ADAMS, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee., No. 19-11068-C, 2019 WL 4643730, at *1 (11th Cir. Aug. 20, 2019)	Long	Slack; 28 U.S.C. § 2253(c)(2)	"reasonable jurists would not debate the district court's..."	A. Jordan	P			
Luzula v. United States of Am., No. 19-11029-F, 2019 WL 4467091, at *1 (11th Cir. Aug. 6, 2019)	Short	Slack	"failed to make the requisite showing"	C. Wilson	P			
Gee v. Fla. Dep't of Corr. Sec'y, No. 19-10539-C, 2019 WL 3886879, at *1 (11th Cir. Aug. 2, 2019)	Short	Slack	"failed to make the requisite showing"	W. Pryor	P			
Strattan v. Sec'y, Dept of Corr., No. 19-10417-H, 2019 WL 3714566 (11th Cir. July 30, 2019)	Short	Slack	"failed to make the requisite showing"	G. Tjoflat	P			
Persinger v. Warden, No. 19-11774-D, 2019 WL 3714568, at *1 (11th Cir. July 30, 2019)	Short	Slack	"failed to make the requisite showing"	G. Tjoflat	P			
Parrish v. Warden, Attorney Gen. State of Alabama, No. 19-10307-H, 2019 WL 3406608, at *1 (11th Cir. July 25, 2019)	Long	Slack; 28 U.S.C. § 2254(d)(1), (2).	"Reasonable jurists would not debate the district court's determination that" "Nonetheless, he is not entitled to a COA on the matter because he failed to state a valid claim of a denial of a constitutional right, as he failed to establish that the prosecutor's questioning was improper and the court's curative instructions stymied any prejudice that might have resulted."	J. Pryor	P			
Benjamin v. Dep't of Corr., No. 19-10594-C, 2019 WL 3941159 (11th Cir. July 25, 2019)	Long	Slack; 28 U.S.C. § 2253(c)(2); 28 U.S.C. § 2254(d)(1), (2).	"failed to show that... counsel was deficient, prejudiced by counsel's motion"	J. Pryor	P			
McConico v. Warden, No. 19-11993-D, 2019 WL 3976432 (11th Cir. July 23, 2019)	Long	Slack	"The claim asserted in Mr. McConico's petition...did not challenge the legality of his confinement nor did it challenge the fact or duration of confinement." "Moreover, even if this challenge was successful, it would not result in Mr. McConico's speedier release from prison, a necessary prerequisite for habeas corpus relief" "Therefore, Mr. McConico's motion for a COA is DENIED and his motion for IFP status is DENIED AS MOOT."	J. Pryor	P			
ANTONIO MACLI, Petitioner-Appellant, v. UNITED STATES OF AMERICA, Respondent-Appellee., No. 19-11174-K, 2019 WL 4747995 (11th Cir. July 19, 2019)	Short	Slack	"failed to satisfy this standard, and his motion for a COA is DENIED."	W. Pryor	C			
Uyanna v. United States, No. 19-10294-B, 2019 WL 3406529 (11th Cir. July 9, 2019)	Short	28 USC 2253(c)(2)	"His motion is DENIED because he has failed to make a substantial showing of the denial of a constitutional right."	S. Marcus	P			

Bell v. United States, No. 19-10612-H, 2019 WL 3941161 (11th Cir. July 9, 2019)	Short	Slack	"failed to make the requisite showing"	E. Branch	P			
MICHAEL LEON HALL, Petitioner-Appellant, v. SECRETARY, DEPARTMENT OF CORRECTIONS, ATTORNEY GENERAL, STATE OF FLORIDA, Respondents-Appellees., No. 18-14058-C, 2019 WL 4858238 (11th Cir. July 9, 2019)	Short	28 USC 2253(c)(2); Slack	"failed to make the requisite showing"	S. Marucs	P			
DARRYL RUTH, Petitioner-Appellant, v. SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS, Respondent-Appellee., No. 19-11153-E, 2019 WL 4860643 (11th Cir. July 9, 2019)	Long	28 USC 2253(c)(2); Slack	has not satisfied the Slack test for his claims	R. Rosenbaum	C			
Wait v. Sec'y, Fla. Dep't of Corr., No. 19-10956-J, 2019 WL 4409997 (11th Cir. July 5, 2019)	Short	28 USC 2253(c)(2)	"failed to make a substantial showing of the denial of a constitutional right"	B. Grant	C			
Oates v. United States, No. 19-11014-J, 2019 WL 4467089 (11th Cir. July 5, 2019)	Short	28 USC 2253(c)(2)	"DENIED because he has not made a substantial showing of the denial of a constitutional right"	E. Branch	P			
Kelly v. United States, No. 19- 10794-F, 2019 WL 4138402, at *1 (11th Cir. July 2, 2019)	Short	Slack	IAC, gov misconduct	E. Branch	P			
Massey v. Alabama Bd. of Pardons & Paroles, No. 19-11336-C, 2019 WL 3072580, at *1 (11th Cir. June 27, 2019)	Long	Slack; 28 U.S. C. § 2253(c)(2)	Because there is no constitutional violation shown from this interpretation, reasonable jurists would not debate the state court's interpretation of its own parole scheme//In his equal protection claim, Massey has not shown: (1) any other similar inmates who received the more favorable treatment under § 15-22-28(e); (2) a discriminatory purpose or intent by the Parole Board in applying the 85% or 15 year rule to him; or (3) that his treatment was discriminatory and based on a constitutionally protected interes	K. Newsom	P			
Spitalieri v. Sec'y, Dep't of Corr., No. 19-11384-F, 2019 WL 3072579, at *1 (11th Cir. June 27, 2019)	Long	Slack; 28 U.S. C. § 2253(c)(2)	Reasonable jurists would not debate the denial of his claims of trial court error because they are procedurally defaulted on federal habeas review . . . Reasonable jurists also would not debate his other claim, that counsel was ineffective for not objecting to the jury instruction on manslaughter. Counsel was not deficient, and Spitalieri has not shown prejudice in this claim	K. Newsom	C			
Averett v. Attorney Gen., No. 18-13399-B, 2019 WL 3887369, at *5 (11th Cir. June 19, 2019)	Long	Slack; 28 U.S. C. § 2253(c)(2)	reasonable jurists would not debate the District Court's finding that, absent statutory or equitable tolling, Mr. Averett was required to file his § 2254 petition by April 18, 2016.	B. Martin	P			

Karr v. Stewart, No. 19-10622-J, 2019 WL 3940946, at *1 (11th Cir. June 19, 2019)	Long	Slack; 28 U.S.C. § 2253(c)(2)	Reasonable jurists would not debate the denial of his sufficiency of the evidence claim because the state court, on direct appeal, did not unreasonably apply federal law, Jackson v. Virginia, 443 U.S. 307, 319 (1979), or make unreasonable determinations of fact The state court did not unreasonably apply federal law in determining that its statutes involved proof of different facts, and so Karr's convictions did not violate double jeopardy under Blockburger v. United States, 284 U.S. 299 (1932).	A. Jordan	P			
Djenasevic v. United States, No. 18-12680-H, 2019 WL 2881260 (11th Cir. June 6, 2019)	Long	Slack	"failed to show that reasonable jurists would debate both the district court's procedural rulings and its denial of his constitutional claims."	J. Pryor	P			
Eloi v. United States, No. 19-10288-B, 2019 WL 3406664 (11th Cir. June 5, 2019)	Long	Slack	"Reasonable jurists would not debate the district court's denial of Mr. Eloi's § 2255 motion. "Mr. Eloi has not shown the substantial denial of a constitutional right on any of his claims."	J. Pryor	P			
Mendelson v. Fla. Dep't of Corr., No. 19-10130-J, 2019 WL 3206630 (11th Cir. May 30, 2019)	Long	Slack	"Reasonable jurists would not debate that Mr. Mendelson's § 2254 petition failed to show the substantial denial of a constitutional right. "	J. Pryor	C			
Anderson v. Fla. Dep't of Corr., No. 19-10611-C, 2019 WL 3941162 (11th Cir. May 30, 2019)	Long	Slack	"Here, reasonable jurists would not debate the state court's denial of this claim."	E. Branch	P			
White v. United States, No. 19-10725-E, 2019 WL 4010175 (11th Cir. May 30, 2019)	Long	Slack	"Reasonable jurists would not debate the denial of Claims"	E. Branch	P			
Early v. United States, No. 19-10687-J, 2019 WL 4013318 (11th Cir. May 30, 2019)	Short	Slack	"failed to make the requisite showing"	C. Wilson	P			
Terrell Pope v. Dunn, No. 18-12404-E, 2019 WL 2461697 (11th Cir. May 29, 2019)	Short	Slack	"failed to make the requisite showing"	C. Wilson	P			
Davis v. Warden, No. 19-11000-E, 2019 WL 2544250 (11th Cir. May 29, 2019)	Short	Slack	"failed to make the requisite showing"	C. Wilson	P			
Shaffer v. Sec'y, Fla. Dep't of Corr., No. 19-10747-D, 2019 WL 4034326 (11th Cir. May 29, 2019)	Short	Slack	"failed to make the requisite showing"	C. Wilson	P			
Lucy v. Cooks, No. 19-10005-B, 2019 WL 2912202 (11th Cir. May 23, 2019)	Short	Slack	"failed to make the requisite showing" ... "he failed to fully exhaust his state postconviction remedies, as required prior to seeking federal habeas review."	B. Grant	P			
Murray v. Sec'y, Dep't of Corr., No. 19-10487-B, 2019 WL 3776045 (11th Cir. May 23, 2019)	Short	Slack	"failed to make the requisite showing"	B. Grant	P			

Mack v. United States, No. 19-11138-H, 2019 WL 2725846 (11th Cir. May 22, 2019)	Long	Slack	"Reasonable jurists would not debate the district court's denial of Mack's § 2255 motion."	R. Rosenbaum	C			
Munayco v. United States, No. 19-10634-K, 2019 WL 2285470 (11th Cir. May 21, 2019)	Long	Slack	"Reasonable jurists would not debate the denial of Munayco's motion."	R. Rosenbaum	P			
Kircus v. United States, No. 19-10206-C, 2019 WL 3284845 (11th Cir. May 17, 2019)	Long	Slack	"failed to make the requisite showing"	A. Jordan	P			
Thomas v. United States, No. 19-11235-E, 2019 WL 2897778 (11th Cir. May 16, 2019)	Short	Slack	"failed to make the requisite showing"	W. Pryor	P			
Abrams v. Sec'y, Dep't of Corr., No. 19-10723-A, 2019 WL 4010133 (11th Cir. May 16, 2019)	Short	Slack	"failed to make the requisite showing"	G. Tjoflat	P			
McCarthan v. United States, No. 19-10710-H, 2019 WL 4034279 (11th Cir. May 16, 2019)	Short	Slack	"failed to satisfy the Slack test for his claims"	G. Tjoflat	C			
Terry v. United States, No. 18-13587-C, 2019 WL 4138400 (11th Cir. May 15, 2019)	Long	Slack: "reasonable jurists would debate (1) whether the motion states a valid claim of the denial of a constitutional right and (2) whether the district court was correct in its procedural ruling."	"Here, reasonable jurists would not debate the denial of Terry's claims. "... "reasonable jurists would not debate the district court's denial of Terry's § 2255 motion"	R. Rosenbaum	P			

Adams v. Sec'y, Dep't of Corr., No. 18-14763-B, 2019 WL 2183801 (11th Cir. May 15, 2019)	Long	Slack: "reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the District Court was correct in its procedural ruling." ... "If the petitioner fails to satisfy either prong of this two-part test, this Court will deny a COA.'	"Reasonable jurists would not dispute this procedural ruling."	B. Martin	P			
Crayton v. Sec'y, Dep't of Corr., No. 17-15290-C, 2019 WL 2374452 (11th Cir. May 15, 2019)	Long	Slack: "reasonable jurists would debate (1) whether the petition states a valid claim of the denial of a constitutional right, and (2) whether the District Court was correct in its procedural ruling." ... "If the petitioner fails to satisfy either prong of this two-part test, this Court will deny a COA.'	"No COA is warranted on Claim _." "Mr. Crayton did not show that reasonable jurists would find debatable the denial of his § 2254 petition"	B. Martin	P			
Tomlin v. Patterson, No. 19-10494-HH, 2019 WL 2142889 (11th Cir. May 8, 2019)	Short	28 USC 2253(c)(2)	"failed to make a substantial showing of the denial of a constitutional right"	C. Wilson	C			
Dennis v. Warden, No. 19-10143-B, 2019 WL 3073941 (11th Cir. May 8, 2019)	Long	Slack	"reasonable jurists would not debate the district court's dismissal of Mr. Dennis's § 2254 petition"	J. Pryor	P			
Shropshire v. Sec'y, Dep't of Corr., No. 19-10203-F, 2019 WL 3216851 (11th Cir. May 8, 2019)	Short	Slack	"failed to make the requisite showing"	S. Marcus	P			
Brown v. United States, No. 19-10617-B, 2019 WL 3941160 (11th Cir. May 7, 2019)	Short	Slack	"failed to make the requisite showing"	B. Grant	P			

Smith v. Warden, No. 19-10272-B, 2019 WL 3318541 (11th Cir. May 6, 2019)	Long	Slack	"No COA is warranted for the denial of this claim." "No COA is warranted for the dismissal of any of these claims."	E. Branch	P			
Yisrael v. Sec'y, Dep't of Corr., No. 18-14791-B, 2019 WL 2183722 (11th Cir. May 6, 2019)	Long	Slack	"No COA is warranted for the denial of this claim."	E. Branch	C			
Merilien v. Warden, No. 17-13117-H, 2019 WL 3079386 (11th Cir. May 3, 2019)	Long	Slack	"Because Merilien has not made the requisite showing under Slack, 529 U.S. at 484, his motion for a COA is DENIED."	R. Rosenbaum	P			
Anzalone v. United States, No. 18-11959-J, 2019 WL 2108062 (11th Cir. Apr. 30, 2019)	Long	Slack	"Reasonable jurists would not debate the District Court's decision" ... "Mr. Anzalone is therefore not entitled to a COA on this claim."... "Because Mr. Anzalone has not shown that reasonable jurists would find the denial of his § 2255 motion debatable, his motion for a COA is DENIED."	B. Martin	C			
O'Brien v. Fla., No. 18-15054-D, 2019 WL 2416761 (11th Cir. Apr. 25, 2019)	Long	Slack	"O'Brien's claims do not entitle him to relief because Florida's post-conviction courts reasonably applied federal law in its denial of each claim." ... "Reasonable jurists would not debate that any of the above explanation were reasonable bases on which the state court could find that counsel was not ineffective"... "Because O'Brien has not satisfied the Slack test for any of his claims, his motion for a COA is DENIED."	K. Newsom	P			
Purvis v. Sec'y Dep't of Corr., No. 18-15077-C, 2019 WL 2452719 (11th Cir. Apr. 25, 2019)	Long	Slack	"Because Purvis has not satisfied the Slack test for any of his claims, his motion for a COA is DENIED."	K. Newsom	C			
Collins v. Sec'y, Dep't of Corr., No. 18-12925-D, 2019 WL 3079370 (11th Cir. Apr. 25, 2019)	Long	Slack:	"The Court concludes Mr. Collins is not entitled to a COA to appeal the District Court's dismissal of his petition."	B. Martin	P			
Ramirez v. Sec'y, Fla. Dep't of Corr., No. 19-10293-D, 2019 WL 3406514 (11th Cir. Apr. 18, 2019)	Short	Slack	"failed to make the requisite showing"	W. Pryor	P			
Price v. Warden, No. 18-13756-H, 2019 WL 4298196 (11th Cir. Apr. 8, 2019)	Short	28 USC 2253(c)(2)	"failed to make a substantial showing of the denial of a constitutional right."	G. Tjoflat	P			
Morrow v. Warden, No. 18-14254-H, 2019 WL 1649724 (11th Cir. Apr. 5, 2019)	Long	Slack	"Reasonable jurists would not debate that Mr. Morrow is not entitled to federal habeas relief on this claim" ... "Based on the foregoing, Morrow's motion for a COA is DENIED."	R. Rosenbaum	P			
Joseph v. Sec'y, Dep't of Corr., No. 18-14848-C, 2019 WL 2256382 (11th Cir. Apr. 5, 2019)	Short	Slack	"failed to make the requisite showing."	C. Wilson	P			
Toliver v. Sec'y, Dep't of Corr., No. 18-15278-A, 2019 WL 2613182 (11th Cir. Apr. 4, 2019)	Short	Slack	"failed to make the requisite showing"	S. Marcus	C			

Miles v. Sec'y, Fla. Dep't of Corr., No. 18-13241-C, 2019 WL 3714551 (11th Cir. Apr. 3, 2019)	Short	Slack	"failed to make the requisite showing"	S. Marcus	P			
Howard v. Warden, No. 18-14571-B, 2019 WL 1931866 (11th Cir. Mar. 29, 2019)	Long	Slack	"Reasonable jurists would not debate the district court's determination that Claims 1 through 4 were procedurally defaulted under state law. The state postconviction court held that these claims were procedurally defaulted because Howard did not raise them in his motion to withdraw his guilty plea."	A. Jordan	P			
Melillo v. United States, No. 18-14643-C, 2019 WL 1995539 (11th Cir. Mar. 28, 2019)	Long	Slack	"Melillo has not shown that reasonable jurists would find debatable the denial of his § 2255 motion"	K. Newsom	P			
Lee v. United States, No. 18-14565-E, 2019 WL 1931867 (11th Cir. Mar. 27, 2019)	Long	Slack	"Reasonable jurists would not debate the district court's determination that Lee's § 2255 motion was untimely under § 2255(f)(1)."	J. Pryor	P			
Porter v. United States, No. 18-15082-F, 2019 WL 2452772 (11th Cir. Mar. 27, 2019)	Long	Slack	"reasonable jurists would not debate the district court's denial of Porter's claim" ... "Because Porter has not shown that reasonable jurists would find debatable the denial of his § 2255 motion, for the reasons stated above, his motion for a COA is DENIED."	K. Newsom	C			
Barnes v. Sec'y, Fla. Dep't of Corr., No. 18-15273-E, 2019 WL 1472977 (11th Cir. Mar. 27, 2019)	Long	Slack	"reasonable jurists would not debate the district court's denial of this claim."	J. Pryor	P			
Lee v. United States, No. 18-14464-J, 2019 WL 1856407 (11th Cir. Mar. 22, 2019)	Long	Miller-EI; Slack	"Reasonable jurists would not debate the District Court's dismissal of Mr. Lee's § 2255 motion"	B. Martin	P			
<u>Netting v. State, No. 18-14052-D, 2019 WL 1377024 (11th Cir. Mar. 20, 2019)</u>	Short	28 USC 2253(c) (2)	"To merit a COA, Netting must make a substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2). He has not met this standard, and his motion for a COA is DENIED. "	C. Wilson	P			
Sloppy v. Sec'y, Dep't of Corr., No. 18-14024-K, 2019 WL 1380178 (11th Cir. Mar. 20, 2019)	Long	Slack	"Reasonable jurists would not debate the district court's determination that Sloppy's original and amended § 2254 petitions were time-barred." ... "Accordingly, Sloppy's motion for a COA is DENIED."	J. Pryor	P			
Mollica v. United States, No. 18-14100-J, 2019 WL 4784788 (11th Cir. Mar. 14, 2019)	Long	Slack	"No COA is warranted for the denial of these claims." "The denial of these claims does not merit a COA."	E. Branch	P			
Allen v. Sec'y, Fla. Dep't of Corr., No. 18-12732-B, 2019 WL 2881389 (11th Cir. Mar. 13, 2019)	Short	Slack	"failed to make the requisite showing"	B. Grant	P			
Mar. v. United States, No. 18-13546-F, 2019 WL 4061493 (11th Cir. Mar. 13, 2019)	Short	Slack	"failed to make the requisite showing"	B. Grant	P			
Hinson v. Fla. Dep't of Corr. Sec'y, No. 18-15129-H, 2019 WL 2525014 (11th Cir. Mar. 12, 2019)	Long	Slack	"reasonable jurists would not debate whether the district court abused its discretion in denying Hinson's motion for an evidentiary hearing"	C. Wilson, W. Pryor	P			

Benzant v. Sec'y, Fla. Dep't of Corr., No. 18-11137-A, 2019 WL 4580529 (11th Cir. Mar. 5, 2019)	Long	Slack	"Accordingly, there is no issue on which reasonable jurists would debate"	K. Newsom	C			
Plunkett v. FCI Tallahassee Warden, No. 18-13634-E, 2019 WL 4138401 (11th Cir. Mar. 4, 2019)	Short	28 USC 2253(c)(2)	"failed to make a substantial showing of the denial of a constitutional right"	S. Marcus	P			
Ali v. State, No. 18-12628-J, 2019 WL 2635710 (11th Cir. Mar. 1, 2019)	Short	29 USC 2253(c)(2)	"failed to make a substantial showing of the denial of a constitutional right."	W. Pryor	P			
Holifield v. Stewart, No. 18-13974-E, 2019 WL 4785528 (11th Cir. Feb. 28, 2019)	Short	Slack	"failed to make the requisite showing"	W. Pryor	P			
McDonald v. United States, No. 18-14737-K, 2019 WL 2219697 (11th Cir. Feb. 28, 2019)	Short	Slack	"failed to make the requisite showing"	G. Tjoflat	P			
Washington v. Sec'y, Dep't of Corr., No. 18-14855-E, 2019 WL 2285469 (11th Cir. Feb. 27, 2019)	Short	Slack	"failed to make the requisite showing"	G. Tjoflat	P			
Barnes v. United States, No. 18-12687-E, 2019 WL 2881405 (11th Cir. Feb. 27, 2019)	Short	Slack	"failed to show that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong, or that the issues deserve encouragement to proceed further."	G. Tjoflat	P			
Miller v. United States, No. 18-13565-F, 2019 WL 4061496 (11th Cir. Feb. 27, 2019)	Long	Slack	"Reasonable jurists would not debate the district court's denial of Miller's motion, as he had at least three qualifying prior convictions for either violent felonies or serious drug offenses."	A. Jordan	C			
Fields v. United States, No. 18-14466-F, 2019 WL 3526490, at *1 (11th Cir. Feb. 21, 2019)	Long	28 USC 2253(c)(2)	The district court determined that several of Fields's ineffective-assistance claims were either too vague and conclusory to support relief or were clearly unsupported by the record. Reasonable jurists would not debate this determination. Moreover, a review of the record does not indicate that the district court acted inappropriately.	B. Grant	P			
Intakanok v. United States, No. 18-13575-C, 2019 WL 978772 (11th Cir. Feb. 20, 2019)	Long	28 USC 2253(c)(2); Slack	counsel properly advised Intakanok about his exposure under the Adam Walsh Act; Johnson v. United States, 135 S. Ct. 2551 (2015), did not render § 2422 (b) unconstitutionally void for vagueness.	R. Rosenbaum	P			
Griffin v. United States, No. 17-15763-D, 2019 WL 2744723, at *1 (11th Cir. Feb. 19, 2019)	Long	28 USC 2253(c)(2); Slack	Any argument that Mr. Griffin's convictions for violations of § 893.13(1) do not constitute a serious drug offense under either the ACCA or § 4B1.1 of the Guidelines has been foreclosed by this Court's precedent and therefore does not merit a COA. Reasonable jurists would not debate the District Court's denial of this claim.	B. Martin	P			
Patterson v. Fla. Dep't of Corr. Sec'y, No. 18-12961-K, 2019 WL 3284794, at *1 (11th Cir. Feb. 14, 2019)	Long	28 USC 2253(c)(2)	Here, the state court reasonably concluded that a mistrial was not warranted and would not have been granted; Patterson does not show prejudice, as, even if counsel had filed such a motion, the State would have been able to show that it was entitled to a recapture window pursuant to Rule 3.191(p)(3).	E. Branch	P			

Graves v. United States, No. 18-13070-E, 2019 WL 3318012, at *1 (11th Cir. Feb. 14, 2019)	Long	Miller-el; Slack	Reasonable jurists would not debate the District Court's resolution of Mr. Graves's claims	B. Martin	P			
Baker v. Attorney Gen., No. 18-12880-H, 2019 WL 3216850, at *1 (11th Cir. Feb. 13, 2019)	Long	28 USC 2253(c)(2)	The district court considered his constitutional claims on their merits, and, as discussed above, they were meritless. Accordingly, Baker did not adequately plead an actual injury for which the federal courts may grant relief.	E. Branch	P			
Miller v. Sec'y, Dep't of Corr., No. 18-13208-K, 2019 WL 3543089, at *1 (11th Cir. Feb. 13, 2019)	Long	28 USC 2253(c)(2)	the record supported the state court's rejection of this claim, as Miller did not clearly indicate that he did not understand his rights, and counsel reasonably could have concluded that his statement was voluntarily given; The state court's rejection of this claim was consistent with federal law	E. Branch	P			
Fortune v. Sec'y, Dep't of Corr., No. 18-13813-E, 2019 WL 1163849, at *1 (11th Cir. Feb. 12, 2019)	Long	28 U.S.C. § 2253(c)(2); Slack	Reasonable jurists would not debate the district court's determination that the Williams Rule claim was procedurally defaulted. The state post-conviction court's decision was not contrary to, or an unreasonable application of, Strickland	R. Rosenbaum	P			
Reed v. Warden, No. 18-14394-B, 2019 WL 1772491, at *1 (11th Cir. Feb. 11, 2019)	Short	Slack	failed to make the requisite showing,	S. Marcus	P			
Seward v. Sloan, No. 18-13678-J, 2019 WL 1024938, at *1 (11th Cir. Feb. 6, 2019)	Short	Slack	failed to make the requisite showing	G. Tjoflat	P			
Reed v. Sec'y, Fla. Dep't of Corr., No. 18-14288-H, 2019 WL 1749222, at *1 (11th Cir. Feb. 6, 2019)	Long	28 USC 2253(c)(2); Slack	Reed has not shown by clear and convincing evidence that the state obtained the denial of his § 2254 petition by fraud;	R. Rosenbaum	P			
Stewart v. Sec'y, Fla. Dep't of Corr., No. 18-13679-A, 2019 WL 1025040, at *1 (11th Cir. Feb. 1, 2019)	Long	28 USC 2253(c)(2); Slack	Mr. Stewart failed to establish that counsel's performance was deficient. Accordingly, the state post-conviction court's decision was not contrary to, or an unreasonable application of, Strickland,	J. Pryor	P			
Campana v. Sec'y, Dep't of Corr., No. 18-13236-K, 2019 WL 3545591, at *2 (11th Cir. Jan. 31, 2019)	Long	28 USC 2253(c)(2); Slack	To succeed on an ineffective-assistance claim in a § 2254 petition, a petitioner must establish that the relevant state court decision was contrary to, or an unreasonable application of, Strickland;	J. Pryor	P			
Winslow v. Sec'y, Dep't of Corr., No. 18-13525-K, 2019 WL 948355, at *2 (11th Cir. Jan. 24, 2019)	Long	28 USC 2253(c)(2); Slack	Applying deference, the state court's denial of relief was not contrary to federal law or based on an unreasonable determination of the facts; Thus, applying deference, the state court reasonably concluded that Winslow was competent when he entered his guilty plea based on Drs. Mhatre's and Neidigh's reports, and the postconviction court's denial of relief was not contrary to, or an unreasonable application of Strickland	E. Branch	C			
Peoples v. Sec'y, Dep't of Corr., No. 18-13573-D, 2019 WL 948788, at *1 (11th Cir. Jan. 23, 2019), cert. denied sub nom. Peoples v. Inch, 139 S. Ct. 1613, 203 L. Ed. 2d 764 (2019)	Short	Slack	Peoples's petition is plainly barred by § 2254's one-year statute of limitations and he has not shown that he is entitled to equitable tolling, he has failed to satisfy the second prong of Slack's test	C. Wilson	P			

Mohd v. Sec'y, Fla. Dep't of Corr., No. 18-12312-F, 2019 WL 2406943, at *1 (11th Cir. Jan. 23, 2019)	Short	28 USC 2253(c)(2)	appellant has failed to make the requisite showing	W. Pryor	P			
Wilcox v. United States, No. 18-11984-K, 2019 WL 2152737, at *1 (11th Cir. Jan. 16, 2019)	Short	Slack	failed to satisfy the Slack test for his claims	C. Wilson	P			
Boone v. Warden, No. 18-13097-E, 2019 WL 309870, at *1 (11th Cir. Jan. 10, 2019)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the district court's conclusion that it lacked jurisdiction to consider Mr. Boone's § 2254 petition challenging his drug-possession conviction.	J. Pryor	P			
Lane v. United States, No. 18-12712-C, 2019 WL 2881377, at *1 (11th Cir. Jan. 9, 2019)	Short	28 USC 2253(c)(2)	motion is DENIED because he has failed to make a substantial showing of the denial of a constitutional right.	G. Tjoflat	P			
Walker v. Bolling, No. 18-13429-E, 2019 WL 549564, at *1 (11th Cir. Jan. 7, 2019)	Short	Slack	failed to make the requisite showing.	G. Tjoflat	P			
Griffin v. Sec'y, Dep't of Corr., No. 18-13193-C, 2019 WL 367694, at *1 (11th Cir. Jan. 7, 2019)	Short	28 USC 2253(c)(2)	Griffin's petition states a facially valid ineffective assistance of counsel claim, Griffin's motion for a COA is GRANTED on the following issue only	S. Marcus	P			
Nestor v. United States, No. 18-13626-C, 2019 WL 989415, at *1 (11th Cir. Jan. 7, 2019)	Short	28 USC 2253(c)(2)	has not made a substantial showing of the denial of a constitutional right	S. Marcus	P			
Brown v. Blackwood, No. 18-14005-E, 2018 WL 7825752, at *1 (11th Cir. Dec. 27, 2018)	Short	Slack	failed to make the requisite showing,	W. Pryor	P			
Morman v. United States, No. 18-13593-A, 2018 WL 9490361, at *1 (11th Cir. Dec. 11, 2018)	Long	28 USC 2253(c)(2); Slack	The district court did not err by denying Morman's § 2255 motion because he did not meet his burden of showing that the sentencing court relied solely on the residual clause. here was no case in this Circuit, at the time, holding that Alabama third-degree robbery qualified as a violent felony only under the ACCA's residual clause.	K. Newsom	C			
Bruce v. Sec'y, Fla. Dep't of Corr., No. 18-13361-G, 2018 WL 7286079, at *1 (11th Cir. Dec. 6, 2018)	Long	28 USC 2253(c)(2); Slack	he failed to exhaust these claims and he is procedurally barred from pursuing federal habeas review on them; the record shows that Bruce's trial counsel moved for a judgment of acquittal and that the outcome at trial came down to a credibility determination, which was within the province of the jury. T	K. Newsom	P			
Kraft v. Stewart, No. 18-10355-C, 2018 WL 8918477, at *1 (11th Cir. Nov. 28, 2018)	Long	28 USC 2253(c)(2); Slack	The district court correctly concluded that the petition was untimely.//the district court correctly concluded that he did not demonstrate that he was entitled to equitable tolling.	J. Carnes	P			
Estupinan-Gonzalez v. United States, No. 17-15586-J, 2018 WL 6919305, at *1 (11th Cir. Nov. 28, 2018)	Long	Slack	Estupinan-Gonzalez cannot show deficient performance with respect to any of the assertions that he makes under Claim 3. He cannot show that counsel performed deficiently by failing to discuss the right to appeal.	J. Carnes	P			

Roberson v. United States, No. 18-13288-G, 2018 WL 7201491, at *1 (11th Cir. Nov. 19, 2018)	Short	28 U.S.C. § 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			
Preston v. Sec'y, Dep't of Corr., No. 17-14618-H, 2018 WL 8061783, at *1 (11th Cir. Nov. 16, 2018)	Long	28 U.S.C. § 2253(c)(2); Slack	The state court's denial of these claims was not contrary to, and did not involve an unreasonable application of, Strickland, nor was it based on an unreasonable determination of the facts.		P			
Ramos v. Sec'y, Fla. Dep't of Corr., No. 18-12078-G, 2018 WL 6131829, at *1 (11th Cir. Nov. 15, 2018)	Long	28 USC 2253(c)(2); Slack	A rational jury could find Ramos guilty based on the evidence submitted at trial; The trial court did not err in allowing a defense witness to testify about the wrongful-death lawsuit he had filed against the apartment complex for Nathan's death; he state court's denial of Ramos's ineffective-assistance claim was neither contrary to, nor did it involve an unreasonable application of	R. Rosenbaum	P			
Mosley v. Jones, No. 17-13114-E, 2018 WL 6982924, at *1 (11th Cir. Nov. 15, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate that there is no double-jeopardy violation; the Florida courts' rejection of Mosley's ineffective-assistance-of-counsel claim was not contrary to federal law or based on an unreasonable determination of fact.	J. Carnes	P			
Kirksey v. Sec'y, Fla. Dep't of Corr., No. 17-13369-A, 2018 WL 7139263, at *1 (11th Cir. Nov. 15, 2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate whether the state court misapplied Strickland in denying Kirksey's Claim 2. Because Kirksey has not shown a reasonable probability that the outcome of his trial would have been different, he has not shown that he was prejudiced by any deficient performance, and therefore, the First DCA's denial of this claim was not an unreasonable application of Strickland.	J. Carnes	P			
McCormick v. Attorney Gen., Alabama, No. 18-13335-J, 2018 WL 6047592, at *1 (11th Cir. Nov. 9, 2018)	Short	Slack	failed to satisfy the Slack test for any of his claims	W. Pryor	P			
Tannehill v. United States, No. 18-12646-J, 2018 WL 8667009 (11th Cir. Nov. 6, 2018)	Long	28 U.S.C. § 2253(c)(2); Slack	As reasonable jurists would not debate the dismissal of Tannehill's § 2255 motion, his motion for a COA is DENIED.	A. Jordan	C			
Spence v. United States, No. 18-12372-K, 2018 WL 6523998 (11th Cir. Nov. 6, 2018)	Long	28 U.S.C. § 2253(c)(2); Slack	reasonable jurists would not debate the district court's denial of Spence's § 2255 motion because he failed to make the requisite showings of deficient performance and prejudice necessary for a successful claim of ineffective assistance of counsel.	A. Jordan	P			
Lockett v. Warden, No. 17-13480-B, 2018 WL 7201555, at *3 (11th Cir. Nov. 1, 2018)	Long	28 USC 2253(c)(2); Slack	not contrary to federal law or based on unreasonable factual determinations; As there is no evidence to support Lockett's characterization of the plea agreement	J. Carnes	P			
Farley v. United States, No. 17-13250-F, 2018 WL 7050478 (11th Cir. Nov. 1, 2018)	Long	28 U.S.C. § 2253(c)(2); Slack	Because Farley has not shown that jurists of reason would debate the district court's denial of his authorized, successive § 2255 motion and his motion for reconsideration, it is recommended that this Court deny a COA	J. Carnes	P			
Borghini v. Attorney Gen., No. 17-13197-F, 2018 WL 7050482 (11th Cir. Nov. 1, 2018)	Long	28 U.S.C. § 2253(c)(2); Slack	Because reasonable jurists would not find debatable the district court's denial of Borghini's § 2254petition, his motion for a COA is DENIED.	J. Carnes	P			
Frazier v. United States, No. 17-12151-G, 2018 WL 6046417 (11th Cir. Oct. 31, 2018), cert. denied, 139 S. Ct. 1399, 203 L. Ed. 2d 629 (2019)	Long	28 USC 2253(c)(1)(B); Slack	Reasonable jurists would not debate that Frazier cannot show that counsel performed deficiently. He cannot succeed with Claim 7 and is not entitled to a COA on the claim...Reasonable jurists would not debate that the district court's properly denied Frazier's § 2255 motion.	J. Carnes	P			

Lloyd v. United States, No. 17-13276-K, 2018 WL 7108249 (11th Cir. Oct. 31, 2018)	Long	28 USC 2253(c)(1)(B); 2253(c)(2); Slack	reasonable jurists would not debate the district court's assessment of the three claims that Lloyd raised in his § 2255 motion. See Slack, 529 U.S. at 484.	J. Carnes	P			
Holmes v. United States, No. 18-10608-F, 2018 WL 7364872 (11th Cir. Oct. 29, 2018), cert. denied, 139 S. Ct. 1580, 203 L. Ed. 2d 738 (2019)	Long	28 USC 2253(c)(2); Miller-EI	Reasonable jurists would not debate that conclusion, because there was no valid objection to make.	B. Martin	P			
Cooper v. United States, No. 18-12962-K, 2018 WL 7046610 (11th Cir. Oct. 22, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Broomfield v. United States, No. 18-12405-H; 2018 WL 6504083 (C.A.11 (Fla.))	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not find debatable or wrong the District Court's denial of Mr. Broomfield's § 2255 motion	B. Martin	P			
O'Kelley v. Fountain CF Warden, No. 18-12471-J, 2018 WL 8619731 (11th Cir. Oct. 17, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate that this conclusion does not constitute an unreasonable finding of fact, nor is it contrary to the Supreme Court's decision in Santobello, which involved an undisputed breach ... reasonable jurists would not debate that O'Kelley has failed to establish that the state court's conclusion was "so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement."	E. Branch	C			
Carter v. United States, No. 18-12723-B, 2018 WL 8667010 (11th Cir. Oct. 12, 2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the district court's denial of Carter's first claim that his counsel was ineffective at the pretrial stage.	R. Rosenbaum	P			
Thompson v. Sec'y, Dep't of Corr., No. 18-10623-H, 2018 WL 7436522 (11th Cir. Oct. 2, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	S. Marcus	P			
Smith v. Sec'y, Dep't of Corr., No. 17-14357-C, 2018 WL 4846910 (11th Cir. Sept. 26, 2018), cert. denied sub nom. Smith v. Inch, 139 S. Ct. 1570, 203 L. Ed. 2d 732 (2019)	Long	28 USC 2253(c)(2); Slack	Although Mr. Smith may be able to maintain an actual-innocence claim, a COA is DENIED because reasonable jurists would not debate whether he can show a separate valid claim of the denial of an underlying constitutional right. (Mr. Smith's actual-innocence claim is only half of the inquiry. Because this circuit does not recognize stand-alone claims of actual innocence, see Cunningham v. Dist. Att'y's Office for Escambia Cty., 592 F.3d 1237, 1272 (11th Cir. 2010), he must also separately show "a valid claim of the denial of a constitutional right.")	B. Martin	C			
Artica-Romero v. United States, No. 18-13638-J, 2018 WL 7503916 (11th Cir. Sept. 24, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	G. Tjoflat	C			
Hawkins v. Sec'y, Fla. Dep't of Corr., No. 18-10577-G, 2018 WL 7364871 (11th Cir. Sept. 19, 2018), cert. denied sub nom. Hawkins v. Inch, 139 S. Ct. 1305, 203 L. Ed. 2d 416 (2019)	Long	28 USC 2253(c)(2); Slack	because Hawkins has waived the challenge he seeks to assert on appeal, his motion for a COA is DENIED. Moreover, even assuming that Hawkins did not waive any challenge to the district court's order, he still has not shown that he is entitled to a COA. Although reasonable jurists could debate whether the district court was correct in its procedural ruling that the state courts rejected Hawkins's public-trial-violation claim on adequate and independent state procedural grounds, where no state court ever "clearly and expressly" applied a procedural bar to his claim, reasonable jurists would not debate the merits of Hawkins's underlying constitutional claim.	K. Newsom	C			

Timmons v. Sec'y, Dep't of Corr., No. 17-14604-J, 2018 WL 5306395 (11th Cir. Sept. 14, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the District Court's denial of these claims.	B. Martin	C			
Porter v. United States, No. 17-13743-F, 2018 WL 7458652 (11th Cir. Sept. 13, 2018)	Long	28 USC 2253(c)(2); Slack	Because the District Court was correct in its rulings that Mr. Porter's § 2255 motion was untimely, that his claims were procedurally defaulted, and that his claims lacked merit, Mr. Porter has not made a substantial showing of the denial of a constitutional right.	B. Martin	P			
Wilson v. United States, No. 17-14204-J, 2018 WL 4676492 (11th Cir. Sept. 13, 2018)	Long	28 USC 2253(c)(2)	His Rule 60(b) motion was simply an attempt to reargue claims that he had raised in his § 2255 motion and that had already been rejected by this Court on direct appeal. Accordingly, Mr. Wilson is not entitled to a COA on the denial of his Rule 60(b) motion.	B. Martin	P			
Chi v. United States, No. 17-15233-F, 2018 WL 6264060 (11th Cir. Sept. 13, 2018)	Long	28 USC 2253(c)(2); Slack	has not shown that reasonable jurists would find the denial of her § 2255 motion debatable	B. Martin	C			
Briner v. Sec'y, Dep't of Corr., No. 18-10793-F, 2018 WL 7508611 (11th Cir. Sept. 13, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	G. Tjoflat	P			
Duong Thanh Ho v. Sec'y, Fla. Dep't of Corr., No. 17-14447-D, 2018 WL 4871094 (11th Cir. Sept. 12, 2018)	Long	28 USC 2253(c)(2); Slack	has not made a substantial showing of the denial of a constitutional right on any of his Claims.	B. Martin	P			
Hughes v. Sec'y, Dep't of Corr., No. 18-11941-D, 2018 WL 5821715 (11th Cir. Sept. 12, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			
Lawrence v. Sec'y, Dep't of Corr., No. 18-12523-B, 2018 WL 4511858 (11th Cir. Sept. 11, 2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the denial of Lawrence's first claim because he failed to rebut by clear and convincing evidence the state court's finding that he did not invoke his right to counsel... Reasonable jurists also would not debate the district court's ruling that the claim of ineffective assistance of appellate counsel was procedurally defaulted because the state appellate court dismissed as untimely both his petition for a writ of habeas corpus raising the claim, and his amended Fed. R. Crim. P. 3.850 motion to the extent that it raised the claim.	R. Rosenbaum	P			
Cobb v. Sec'y, Fla. Dep't of Corr., No. 18-12603-A, 2018 WL 4587098 (11th Cir. Sept. 11, 2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the district court's conclusion that Cobb's claim was procedurally defaulted.	R. Rosenbaum	P			
Jackson v. Sec'y, Dep't of Corr., No. 18-11514-E, 2018 WL 4988607 (11th Cir. Sept. 11, 2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the state court's merits denials on Claims 1 through 8 because its rejections of these claims were not contrary to federal law or based on unreasonable factual determinations. ... Reasonable jurists also would not debate the district court's denial of Claim 2 in part and Claims 9 through 12 as procedurally defaulted.	R. Rosenbaum	P			
Bing v. Sec'y, Fla. Dep't of Corr., No. 16-16827-D, 2018 WL 5503154 (11th Cir. Sept. 11, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the District Court's ruling.	B. Martin	P			

Cowan v. United States, No. 17-12702-D, 2018 WL 6919887 (11th Cir. Sept. 11, 2018)	Long	28 USC 2253(c)(2); Slack	has not shown that reasonable jurists would find debatable both the District Court's rulings and the denial of his constitutional claims, his motion for a COA is DENIED.	B. Martin	C			
Borgwald v. Sec'y, Fla. Dep't of Corr., No. 17-13168-H, 2018 WL 7108247 (11th Cir. Sept. 6, 2018)	Long	28 USC 2253(c)(2); Slack (We will deny a COA if the petitioner fails to satisfy either prong of this two-part test.)	reasonable jurists would not debate the District Court's dismissal of Mr. Borgwald's § 2254 petition, his motion for a COA is DENIED.	B. Martin	P			
Earner v. Sec'y, Dep't of Corr., No. 18-11747-E, 2018 WL 5473006 (11th Cir. Sept. 5, 2018)	Long	28 USC 2253(c)(2); Slack	Because Barner has not shown that reasonable jurists would find debatable the district court's dismissal of his § 2254 petition as untimely and procedurally defaulted, his motion for a COA is DENIED	A. Jordan	P			
Coleman v. Fla. Dep't of Corr., No. 18-11358-B, 2018 WL 7954623, at *1 (11th Cir. Sept. 5, 2018)	Long	28 USC 2253(c)(2); Slack	Coleman did not allege or establish cause and prejudice, or a fundamental miscarriage of justice, to excuse his procedural default. The state postconviction court did not unreasonably apply clearly established federal law or make an unreasonable determination of the facts by denying this claim.	A. Jordan	P			
Morris v. Warden, No. 18-12966-K, 2018 WL 5284086, at *1 (11th Cir. Sept. 4, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			
McDavid v. Fla. Dep't of Corr., No. 18-11073-D, 2018 WL 4510433, at *1 (11th Cir. Aug. 31, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			
Roberts v. Sec'y, Dep't of Corr., No. 18-12410-B, 2018 WL 4352792, at *1 (11th Cir. Aug. 29, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the district court's dismissal of Roberts's § 2254 petition as time barred. Roberts did not make the requisite showing to justify equitable tolling because he did not show due diligence or that extraordinary circumstances prevented timely filing.	K. Newsom	P			
Crews v. United States, No. 18-12262-C, 2018 WL 4203388, at *1 (11th Cir. Aug. 29, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make requisite showing	S. Marcus	P			
Wilmore v. United States, No. 18-11653-J, 2018 WL 5295886, at *1 (11th Cir. Aug. 28, 2018), cert. denied, 139 S. Ct. 833, 202 L. Ed. 2d 606 (2019), reh'g denied, 139 S. Ct. 1310, 203 L. Ed. 2d 431 (2019)	Long	28 USC 2253(c)(2); Slack	Wilmore's argument that his counsel was ineffective for failing to argue constructive amendment based on post office box numbers is meritless	K. Newsom	P			
Newell v. United States, No. 18-12072-D, 2018 WL 6047642, at *1 (11th Cir. Aug. 22, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make requisite showing	W. Pryor	P			

Matias v. United States, No. 18-11819-H, 2018 WL 5819638, at *1 (11th Cir. Aug. 21, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	S. Marcus	C			
Dewitt v. Fla., No. 17-15211-E, 2018 WL 6324757, at *1 (11th Cir. Aug. 20, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2), Strickland	Mr. Dewitt did not show that counsel's performance was deficient, and the state court decision was not contrary to, or an unreasonable application of Strickland.	B. Martin	P			
Belser v. Warden, No. 18-10256-B, 2018 WL 7135390, at *1 (11th Cir. Aug. 16, 2018)B	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the District Court's conclusion that Mr. Belser's § 2254 petition was untimely; The District Court did not err in its conclusion that Mr. Belser's § 2254 petition was untimely.	B. Martin	P			
Simmons v. Sec'y, Fla. Dep't of Corr., No. 18-11058-H, 2018 WL 4599681, at *1 (11th Cir. Aug. 15, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	C			
Mekowulu v. United States, No. 18-11255-C, 2018 WL 4739946, at *1 (11th Cir. Aug. 14, 2018), cert. denied, 139 S. Ct. 1296, 203 L. Ed. 2d 415 (2019)	Long	28 USC 2253(c)(2); Slack	Here, reasonable jurists would not dispute the district court's decision that Mekowulu's claims were procedurally barred because he did not raise them on direct appeal.	R. Rosenbaum	C			
Riquene v. United States, No. 18-11821-D, 2018 WL 5734221, at *1 (11th Cir. Aug. 10, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make a substantial showing of the denial of a constitutional right	G. Tjoflat	P			
Miller v. Alabama, No. 18-10766-C, 2018 WL 7503907, at *1 (11th Cir. Aug. 3, 2018), cert. denied, 139 S. Ct. 1642, 203 L. Ed. 2d 916 (2019)	Long	28 USC 2253(c)(2); Slack	Miller cannot avail himself of any exception to the statute of limitations because he has not shown that extraordinary circumstances prevented him from timely filing his petition or that he has new, reliable evidence that he was actually innocent.	A. Jordan	P			
McCloud v. Sec'y, Fla. Dep't of Corr., No. 18-11411-H, 2018 WL 4871123, at *1 (11th Cir. Aug. 3, 2018), cert. denied sub nom. McCloud v. Jones, 139 S. Ct. 927, 202 L. Ed. 2d 654 (2019)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2).	McCloud cannot show that the state court's denial of his first and third claims was contrary to or a misapplication of law or an unreasonable determination of fact because he cannot make the requisite showing of deficient performance and prejudice for Claims One and Three	A. Jordan	P			
Maldonado v. Sec'y, Dep't of Corr., No. 17-15746-H, 2018 WL 6918942, at *1 (11th Cir. Aug. 1, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	S. Marcus	P			
Mack v. State, No. 18-11781-F, 2018 WL 5617112, at *1 (11th Cir. July 31, 2018)	Short	28 USC 2253(c)(2)	has not met this standard	S. Marcus	P			

Petit v. State, No. 18-10802-A, 2018 WL 4205668, at *1 (11th Cir. July 31, 2018)	Short	28 USC 2253(c)(2)	has not met this standard	S. Marcus	C			
Freeman v. United States, No. 16-17185-J, 2018 WL 6318358, at *1 (11th Cir. July 31, 2018), cert. denied, 139 S. Ct. 1352, 203 L. Ed. 2d 589 (2019)	Long	28 USC 2253(c)(2); Slack	The government's failure to disclose such evidence does not amount to a Brady violation, given that the photos would not exculpate Freeman; Accordingly, these claims have no merit.	J. Carnes	P			
Edmondson v. Sec'y, Fla. Dep't of Corr., No. 17-13029-H, 2018 WL 6983477, at *1 (11th Cir. July 31, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2).	Here, the state court's denial of Edmondson's ineffective-assistance claim was not contrary to, or an unreasonable application of, Strickland, or based on an unreasonable determination of the facts.	J. Carnes	P			
Riggs v. United States, No. 18-12111-F, 2018 WL 4030641, at *1 (11th Cir. July 20, 2018)	Short	28 USC 2253(c)(2); Slack	not shown that reasonable jurists would find the denial of his § 2255 motion debatable	C. Wilson	P			
Johnson v. Fla. Dep't of Corr., No. 18-11743-F, 2018 WL 5503155, at *1 (11th Cir. July 20, 2018)	Short	28 USC 2253(c)(2)	failed to make the requisite showing	C. Wilson	P			
Washington v. Crews, No. 18-10670-J, 2018 WL 7499807, at *1 (11th Cir. July 19, 2018)	Long	28 USC 2253(c)(2); Slack	Even if it were not procedurally defaulted, however, Mr. Washington's fourth claim is not cognizable in a federal habeas corpus proceeding because it involves an issue of purely state law	J. Pryor	C			
Crump v. United States, No. 18-10480-G, 2018 WL 3869607, at *1 (11th Cir. July 17, 2018)	Long	28 USC 2253(c)(2); Slack	Mr. Crump also cannot succeed on his conclusory claims of ineffective assistance of trial and appellate counsel because he cannot make the requisite showings of prejudice	J. Pryor	P			
Monsegue v. United States, No. 17-13054-C, 2018 WL 6979305, at *1 (11th Cir. July 17, 2018), cert. denied, 139 S. Ct. 1360, 203 L. Ed. 2d 595 (2019), reh'g denied, 139 S. Ct. 2048, 204 L. Ed. 2d 251 (2019)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the district court's finding that Monsegue voluntarily entered a guilty plea because all three of the core concerns of Rule 11 were addressed in the plea colloquy. Monsegue's claim that the summons for his bank records violated his privacy rights would have failed as a matter of law, and, thus, counsel was not ineffective for failing to raise that objection,	J. Carnes	P			
Oden v. United States, No. 18-10187-E, 2018 WL 7131991, at *1 (11th Cir. July 6, 2018), cert. denied, 139 S. Ct. 491, 202 L. Ed. 2d 385 (2018)	Long	28 USC 2253(c)(2); Slack; [N]o COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law. 793 F.3d 1261	his argument that his Georgia burglary convictions do not constitute violent felonies is foreclosed by binding precedent.	J. Pryor	C			

Horvatt v. Sec'y, Dep't of Corr., No. 18-11246-F, 2018 WL 4678821 (11th Cir. July 6, 2018), cert. denied sub nom. Horvatt v. Jones, 139 S. Ct. 1343, 203 L. Ed. 2d 584 (2019)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2).	Reasonable jurists would not debate whether Claim 3(a) was procedurally defaulted.; Reasonable jurists would not debate whether the state court's denial of Claim 3(b) was based on an unreasonable application of Strickland, as the state court correctly noted that the court inquired whether any members of the jury pool had heard anything about the case, and none of the jurors who indicated that they had heard about the case were selected for the jury; Reasonable jurists would not debate whether the state court unreasonably applied Strickland in denying Claim 4.	A. Jordan	P			
Galeana-Gonzalez v. Warden, No. 18-11485-E, 2018 WL 4904758, at *1 (11th Cir. July 2, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Pearson v. Sec'y, Dep't of Corr., No. 17-10357-B, 2018 WL 3636456, at *1 (11th Cir. June 29, 2018)	Long	28 USC 2253(c)(2); Slack	because he failed to appeal the denial of his claims, he has failed to exhaust his state court remedies. Although he asserts that these documents were forged, he points to no facts to support his claim other than the alterations made on the face of the documents. T	B. Martin	P			
West v. Sec'y, Fla. Dep't of Corr., No. 18-10561-E, 2018 WL 3933730, at *1 (11th Cir. June 21, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	W. Pryor	P			
Dixon v. United States, No. 18-11493-C, 2018 WL 3545909, at *1 (11th Cir. June 20, 2018), cert. denied, No. 18-9760, 2019 WL 4922380 (U.S. Oct. 7, 2019)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Ferrell v. Sec'y, Fla. Dep't of Corr., No. 18-11550-G, 2018 WL 3491719, at *1 (11th Cir. June 15, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	C. Wilson	C			
Rood v. Fla. Dep't of Corr., No. 18-11453-B, 2018 WL 3374920, at *1 (11th Cir. June 13, 2018)	Long	28 USC 2253(c)(2); Slack	did not demonstrate that the alleged governmental action actually prevented him from exercising his right of access to courts to attack his convictions, as required under § 2244(d)(1)(B); has not shown that the absence of transcripts or recordings of the trial proceedings prevented him from timely filing his § 2254 petition prior to February 8, 2016	K. Newsom	P			
Danielsgale v. United States, No. 18-10054-J, 2018 WL 3381323, at *1 (11th Cir. June 13, 2018)	Long	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	S. Marcus	P			
Ferry v. Sec'y, Dep't of Corr., No. 17-13714-C, 2018 WL 4042893, at *1 (11th Cir. June 12, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2).; § 2254(e)(1)	reasonable jurists would not debate the district court's denial of the ineffective-assistance sub-claim. The record supports the state post-conviction court's denial of this sub-claim on the basis that counsel did not err in declining to investigate further as to the prospective jurors' discussions because counsel had no reason to move for a mistrial	J. Pryor	P			
Bailem v. Fla., No. 17-13550-E, 2018 WL 3814298, at *1 (11th Cir. June 7, 2018)	Short	28 USC 2253(c)(2)	failed to make the requisite showing	S. Marcus	P			

Walker v. United States, No. 18-10942-F, 2018 WL 4334057, at *1 (11th Cir. June 6, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	S. Marcus	P			
Tiszai v. Sec'y, Dep't of Corr., No. 18-10233-A, 2018 WL 7135530, at *1 (11th Cir. June 6, 2018), cert. denied sub nom. Tiszai v. Inch, 139 S. Ct. 2030, 204 L. Ed. 2d 231 (2019)	Short	28 USC 2253(c)(2)	failed to make the requisite showing	S. Marcus	P			
Anderson v. United States, No. 17-12670-K, 2018 WL 6621884, at *1 (11th Cir. June 5, 2018)	Long	28 USC 2253(c)(2); Slack; Hamilton	The Supreme Court made clear in Johnson that its decision about the ACCA's residual clause did "not call into question application of the [ACCA] to the four enumerated offenses, or the remainder of the [ACCA's] definition of a violent felony."	B. Martin	P			
Edwards v. United States, No. 17-10322-D, 2018 WL 3586866, at *1 (11th Cir. June 4, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not find debatable the district court's denial of this claim, as in his plea agreement, Edwards acknowledged that, if he had 3 previous convictions for a violent felony	A. Jordan	P			
Harris v. Sec'y, Fla. Dep't of Corr., No. 17-14953-J, 2018 WL 6016873, at *1 (11th Cir. June 4, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	S. Marcus	P			
Shilstone v. Sec'y, Fla. Dep't of Corr., No. 18-10215-G, 2018 WL 3545907, at *1 (11th Cir. June 1, 2018)	Long	28 USC 2253(c)(2); Slack	The state court reasonably denied this claim as the record demonstrates that he acknowledged that it was his decision alone to testify.	A. Jordan	P			
Wallace v. Sec'y, Fla. Dep't of Corr., No. 17-14368-G, 2018 WL 4847017, at *1 (11th Cir. June 1, 2018)	Long	28 USC 2253(c)(2); Slack	has not demonstrated that his claims fit within the exceptions articulated in Lackawanna County; no new evidence that he was actually innocent	B. Martin	P			
Cummings v. Sec'y, Dep't of Corr., No. 17-12798-A, 2018 WL 3105714, at *1 (11th Cir. May 25, 2018)	Long	28 USC 2253(c)(2); Slack	We see no way for reasonable jurists to disagree that the Florida court's determinations were reasonable on this point; Nothing Cummings said before the district court explained how the post-conviction trial court's determination was erroneous, nor does he present any elaboration to us of how reasonable jurists might agree with him on this point.	A. Jordan	P			
Warren v. Sec'y, Fla. Dep't of Corr., No. 18-10219-C, 2018 WL 3633725, at *1 (11th Cir. May 23, 2018)	Long	28 USC 2253(c)(2); Slack	Here, reasonable jurists would not debate the district court's denial of Warren's § 2254 petition because his only claim raised in his petition was procedurally defaulted.	A. Jordan	P			
Watts v. Comm'r, Alabama Dep't of Corr., No. 18-10248-G, 2018 WL 7135528, at *1 (11th Cir. May 22, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the district court's denial of Watts' § 2254 petition as time-barred.	A. Jordan	P			

Rawls v. Sec'y, Fla. Dep't of Corr., No. 18-11056-G, 2018 WL 3090815, at *1 (11th Cir. May 22, 2018)	Long	28 USC 2253(c)(2); Slack	Rawls has not demonstrated that reasonable jurists would debate the district court's conclusion that his § 2254 petition is time-barred; Rawls also did not show that reasonable jurists would debate the district court's conclusion that he was not entitled to equitable tolling, because his assertion that he was without his legal documents for twenty days did not rise to the level of extraordinary circumstances	R. Rosenbaum	P			
Puente v. Attorney Gen., Fla., No. 17-13834-B, 2018 WL 7458651, at *1 (11th Cir. May 21, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			
Woodson v. Sec'y, Fla. Dep't of Corr., No. 17-15557-H, 2018 WL 3036468, at *1 (11th Cir. May 16, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate that the state courts' rejections of these two claims were not contrary to federal law or based on unreasonable factual determinations. See 28 U.S.C. § 2254(d) (providing the circumstances in which a federal court should grant a § 2254 petition after a state court's adjudication of a claim's merits). Reasonable jurists would not debate that the state courts' rejections of these two claims were not contrary to federal law or based on unreasonable factual determinations.	R. Rosenbaum	P			
Smith v. United States, No. 17-15686-G, 2018 WL 3199346, at *1 (11th Cir. May 16, 2018), cert. denied, 139 S. Ct. 1258, 203 L. Ed. 2d 281 (2019)	Long	28 USC 2253(c)(2); Slack	Although Vail–Bailon concerned whether Florida felony battery qualified as a crime of violence under U.S.S.G. § 2L1.2(b)(1)(A)(ii), the decision utilized the definition of "physical force" and analysis from United States v. Johnson, 559 U.S. 133, 140 (2010) ("Curtis Johnson"), which was an ACCA cas	A. Jordan	P			
Lingebach v. Sec'y, Dep't of Corr., No. 18-10236-B, 2018 WL 3548701, at *1 (11th Cir. May 15, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate that the Florida First District Court of Appeal's rejection of this claim was not contrary to federal law or based on unreasonable factual determinations.	R. Rosenbaum	P			
Palumbo v. Sec'y, Fla. Dep't of Corr., No. 18-10186-C, 2018 WL 3633867, at *1 (11th Cir. May 11, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate that the state courts' rejection of this claim was not contrary to federal law or based on unreasonable factual determinations.	R. Rosenbaum	C			
Fails v. Sec'y, Fla. Dep't of Corr., No. 18-10675-G, 2018 WL 7495335, at *1 (11th Cir. May 11, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Swindle v. United States, No. 17-15234-E, 2018 WL 6324758, at *1 (11th Cir. May 10, 2018)	Long	28 USC 2253(c)(2); Slack	The record demonstrates that a factual basis supported his pleas, as the stipulation, which Swindle initialed and signed, stated that a computer forensic examination of his laptop revealed 75 videos of child pornography,	A. Jordan	P			
Davis v. Sec'y, Fla. Dep't of Corr., No. 17-15163-G, 2018 WL 2717252, at *1 (11th Cir. May 10, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make requisite showing	S. Marcus	P			
Thomas v. United States, No. 17-14497-G, 2018 WL 6318054, at *1 (11th Cir. May 10, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	S. Marcus	P			

Ortega v. Attorney Gen., Fla., No. 17-15676-G, 2018 WL 3198903, at *1 (11th Cir. May 9, 2018), cert. denied sub nom. Ortega v. Bondi, 139 S. Ct. 924, 202 L. Ed. 2d 652 (2019)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	P			
O'Quinn v. Sec'y, Fla. Dep't of Corr., No. 17-13497-H, 2018 WL 3816780, at *1 (11th Cir. May 3, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	G. Tjoflat	P			
Jordan v. United States, No. 18-10615-K, 2018 WL 2328179, at *1 (11th Cir. Apr. 19, 2018)	Long	28 USC 2253(c)(2); Slack	any claim by Jordan that his plea was not voluntary or knowing was rebutted by the record because he testified at the plea hearing that he understood he was likely to receive a career-offender enhancement and that he faced up to a statutory term of life imprisonment;	K. Newsom	C			
Ashley v. Sec'y, Dep't of Corr., No. 17-15504-F, 2018 WL 3032977, at *1 (11th Cir. Apr. 18, 2018), cert. denied sub nom. Ashley v. Jones, 139 S. Ct. 1215, 203 L. Ed. 2d 236 (2019)	Long	28 USC 2253(c)(2); Slack	Because the state post-conviction court did not unreasonably apply Strickland v. Washington, 466 U.S. 668 (1984), no COA is warranted for this claim.	K. Newsom	P			
McGee v. United States, No. 18-10531-J, 2018 WL 2246597, at *1 (11th Cir. Apr. 17, 2018), cert. denied, 139 S. Ct. 414, 202 L. Ed. 2d 320 (2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	C			
Sailor v. United States, No. 18-10656-K, 2018 WL 2338410, at *1 (11th Cir. Apr. 16, 2018), cert. denied, 139 S. Ct. 414, 202 L. Ed. 2d 320 (2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	C			
Candler v. Sec'y, Dept of Corr., No. 17-15633-H, 2018 WL 3199190, at *1 (11th Cir. Apr. 11, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2).	Therefore, the state's denial of Candler's argument that the evidence should have been suppressed was not contrary to or an unreasonable application of federal law or an unreasonable determination of fact, and the district court did not err in denying the claim	R. Rosenbaum	P			
Harris v. Deal, No. 17-15088-J, 2018 WL 2317545, at *1 (11th Cir. Apr. 11, 2018), cert. denied, 139 S. Ct. 1301, 203 L. Ed. 2d 422 (2019)	Long	28 USC 2253(c)(2); Slack	The district court correctly determined that Harris's § 2254 petition was time-barred, his rebuttal motion was meritless.	R. Rosenbaum	P			

Morris v. State, No. 18-10087-D, 2018 WL 3390245, at *1 (11th Cir. Apr. 9, 2018), cert. denied sub nom. Morris v. Jones, 139 S. Ct. 388, 202 L. Ed. 2d 296 (2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Welch v. Sec'y, Fla. Dep't of Corr., No. 17-13891-H, 2018 WL 4205419, at *1 (11th Cir. Apr. 4, 2018), cert. denied sub nom. Welch v. Jones, 139 S. Ct. 386, 202 L. Ed. 2d 295 (2018)	Long	Slack	Reasonable jurists would not debate the district court's determination that this claim lacked merit, as Welch's score sheet reflected an extensive criminal history, and Welch failed to show that the trial court improperly relied on any false statements. reasonable jurists would not debate the district court's determination that the state court's denial of Welch's various ineffective-assistance claims was not contrary to, nor did it involve an unreasonable application of, Strickland.	K. Newsom	P			
Bradley v. Sec'y, Fla. Dep't of Corr., No. 17-12926-K, 2018 WL 3238836, at *1 (11th Cir. Apr. 2, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2)	For an ineffective-assistance claim raised in a § 2254 petition, the inquiry turns upon whether the relevant state court decision was contrary to, or an unreasonable application of, Strickland; the district court properly determined that the state court's adjudication of Ground 1 was not contrary to, or an unreasonable application of, clearly established federal law, and was not based on an unreasonable determination of the facts in light of the evidence presented	J. Pryor	P			
Tirado v. Sec'y, Dep't of Corr., No. 17-14791-D, 2018 WL 5778983, at *1 (11th Cir. Apr. 2, 2018)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate the district court's determination that the petition was time-barred	K. Newsom	C			
United States v. Faurisma, 716 F. App'x 932 (11th Cir.), cert. denied, 139 S. Ct. 578, 202 L. Ed. 2d 412 (2018)	Long	28 USC 2253(c)(2); Slack	this Court recently held that "Johnson's void-for-vagueness ruling does not apply to or invalidate the 'risk-of-force' clause in § 924(c)(3)(B). [u]nder the prior precedent rule, we are bound to follow a prior binding precedent 'unless and until it is overruled by this court en banc or by the Supreme Court.'	G. Tjoflat, K. Nev	C			
McLeod v. Sec'y, Dep't of Corr., No. 17-15509-D, 2018 WL 3000485, at *1 (11th Cir. Mar. 28, 2018)	Long	28 USC 2253(c)(2); Slack	The state habeas court did not unreasonably apply federal law or make an unreasonable determination of the facts by determining that, based on the totality of the circumstances, Deputy Johnson had a valid reason for conducting a protective sweep of the apartment.	R. Rosenbaum	P			
Greeson v. Sec'y, Fla. Dep't of Corr., No. 17-13450-E, 2018 WL 3689659, at *1 (11th Cir. Mar. 26, 2018)	Long	28 USC 2253(c)(2); Slack	In this case, reasonable jurists would not debate the District Court's conclusion that Mr. Greeson's § 2254 motion was untimely.	B. Martin	P			
Blackburn v. United States, No. 17-13268-D, 2018 WL 3617814, at *1 (11th Cir. Mar. 23, 2018), cert. denied, 139 S. Ct. 1393, 203 L. Ed. 2d 624 (2019)	Long	28 USC 2253(c)(2); Slack	Again, the Magistrate Judge's credibility determinations are not inconsistent or improbable and are given substantial deference. See Rivers, 777 F.3d at 1316-17. Because Ms. Blackburn cannot show that she was prejudiced, reasonable jurists would not debate the District Court's rejection of her claim that Mr. Haas provided ineffective assistance	B. Martin	P			
Milling v. Sec'y, Dep't of Corr., No. 17-15095-B, 2018 WL 2254674, at *1 (11th Cir. Mar. 21, 2018)	Long	28 USC 2253(c)(2); Slack	Because Milling has not established that the state court either unreasonably applied federal law or made an unreasonable determination of the facts, his motion for a COA is DENIED	R. Rosenbaum	P			

Brand v. United States, No. 17-12227-E, 2018 WL 2338817 (11th Cir. Mar. 21, 2018), cert. denied, 139 S. Ct. 577, 202 L. Ed. 2d 411 (2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the district court's denial of this claim	R. Rosenbaum	P			
Williams v. Morales, No. 17-15345-K, 2018 WL 6428203, at *1 (11th Cir. Mar. 21, 2018)	Long	28 USC 2253(c)(2); Slack	procedural default. The state court did not unreasonably apply clearly established federal law or make an unreasonable determination of the facts in denying this claim.	R. Rosenbaum	P			
Whitehead v. Warden, No. 17-14715-E, 2018 WL 1915540, at *1 (11th Cir. Mar. 16, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2)	this Court reviews the district court's decision de novo, but reviews the state habeas court's decision with deference; has not demonstrated that jurists of reason would debate the district court's denial of Claim 3	J. Pryor	C			
Paulcin v. Warden, No. 17-14985-J, 2018 WL 2214057, at *1 (11th Cir. Mar. 16, 2018)	Short	28 USC 2253(c)(2)	has failed to make a substantial showing of the denial of a constitutional right	C. Wilson	P			
Bell v. Sec'y, Dep't of Corr., No. 17-15461-A, 2018 WL 2973145, at *1 (11th Cir. Mar. 16, 2018)	Long	28 USC 2253(c)(2); Slack	did not establish that he was entitled to equitable tolling; reasonable jurists would not debate whether Bell's § 2254 petition was time-barred	a. Jordan	P			
Keel v. Attorney Gen., Fla., No. 17-14782-B, 2018 WL 2041513, at *1 (11th Cir. Mar. 15, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	P			
Jones v. Hetzel, No. 17-15096-F, 2018 WL 2246586, at *1 (11th Cir. Mar. 14, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	C. Wilson	P			
Arnold v. Sec'y, Fla. Dep't of Corr., No. 17-14717-K, 2018 WL 1916185, at *1 (11th Cir. Mar. 14, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Slocum v. Sec'y, Fla. Dep't of Corr., No. 17-15055-C, 2018 WL 2317546, at *1 (11th Cir. Mar. 14, 2018)	Short	28 USC 2253(c)(2); Slack	petition plainly is barred by § 2254's one-year statute of limitations, he has failed to satisfy the second prong of Slack's test.	W. Pryor	P			
Clark v. Warden, Johnson State Prison, No. 17-15227-D, 2018 WL 6264810, at *1 (11th Cir. Mar. 14, 2018), cert. denied sub nom. Clark v. Berry, 139 S. Ct. 294, 202 L. Ed. 2d 193 (2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	P			
Redford v. Warden, No. 17-14592-D, 2018 WL 1863465, at *1 (11th Cir. Mar. 13, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			

Toyer v. United States, No. 17-12760-G, 2018 WL 3199209, at *1 (11th Cir. Mar. 12, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	G. Tjoflat	P			
McMillian v. Peters, No. 17-14166-B, 2018 WL 4599653, at *1 (11th Cir. Mar. 7, 2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate the district court's conclusion that Mr. McMillian's habeas petition was untimely filed; has not shown that he is entitled to equitable tolling; time barred		P			
Stoddart v. Sec'y, Dep't of Corr., No. 17-11954-D, 2018 WL 2065588, at *1 (11th Cir. Mar. 7, 2018)	Short	28 USC 2253(c)(2); Slack	has not shown that reasonable jurists would find debatable both (1) the merits of an underlying claim and (2) the procedural issues he seeks to raise	G. Tjoflat	P			
Faulkner v. Warden, Georgia Dep't of Corr., No. 17-14974-A, 2018 WL 2121539, at *1 (11th Cir. Feb. 27, 2018)	Short	28 USC 2253(c)(2)	has not met this standard,	S. Marcus	P			
Anthony v. Warden, 724 F. App'x 903, 904 (11th Cir. 2018), cert. denied sub nom. Anthony v. Boyd, 139 S. Ct. 1328, 203 L. Ed. 2d 574 (2019), reh'g denied, 140 S. Ct. 11, 204 L. Ed. 2d 1165 (2019)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not debate that his petition does not state a valid claim of the denial of a constitutional right	K. Newsom	P			
Brown v. United States, No. 17-14215-C, 2018 WL 1474898, at *1 (11th Cir. Feb. 21, 2018), cert. denied, 139 S. Ct. 226, 202 L. Ed. 2d 153 (2018), reh'g denied, 139 S. Ct. 624, 202 L. Ed. 2d 450 (2018)	Long	28 USC 2253(c)(2)	as not made a substantial showing of the denial of a constitutional right	K. Newsom	P			
Burke v. United States, No. 17-12071-A, 2018 WL 2181152, at *1 (11th Cir. Feb. 21, 2018)	Long	28 USC 2253(c)(2)	Burke cannot show that there is a reasonable probability that he would not have pled guilty had trial counsel provided such advice	K. Newsom	P			
Ford v. United States, No. 17-14239-K, 2018 WL 7018045, at *1 (11th Cir. Feb. 21, 2018), cert. denied, 139 S. Ct. 1228, 203 L. Ed. 2d 243 (2019)	Long	28 USC 2253(c)(2); Slack	Reasonable jurists would not debate that the district court acted within its discretion by declining to consider the ineffective-assistance-of-counsel claims as a result	K. Newsom	P			
Riascos v. United States, No. 17-15073-D, 2018 WL 935602, at *1 (11th Cir. Feb. 13, 2018), cert. denied, 139 S. Ct. 205, 202 L. Ed. 2d 141 (2018)	Short	28 USC 2253(c)(2)	has failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			

Defreitas v. United States, No. 17-14590-A, 2018 WL 1863316, at *1 (11th Cir. Feb. 13, 2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	W. Pryor	P			
Johnson v. United States, No. 17-14760-K, 2018 WL 1990217, at *1 (11th Cir. Feb. 13, 2018)	Long	28 USC 2253(c)(2); Slack	has not made the requisite showing under Slack	R. Rosenbaum	P			
Mitchell v. Sec'y, Fla. Dep't of Corr., No. 17-15139-A, 2018 WL 2324212, at *1 (11th Cir. Feb. 9, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	S. Marcus	P			
Johnson v. State, No. 17-12485-B, 2018 WL 2734864, at *1 (11th Cir. Feb. 6, 2018), cert. denied sub nom. Johnson v. Fla., 139 S. Ct. 195, 202 L. Ed. 2d 121 (2018)	Short	28 USC 2253(c)(2); Slack	appellant has failed to satisfy Slack's test	W. Pryor	P			
Gomez v. Sec'y, Dep't of Corr., No. 17-14000-H, 2018 WL 1277071, at *1 (11th Cir. Jan. 31, 2018)	Long	28 USC 2253(c)(2); Slack	The state court reasonably concluded that Gomez failed to demonstrate ineffective assistance of counsel; Gomez failed to demonstrate that the state court's adjudication of this claim was based upon an unreasonable determination of the facts or that it was contrary to or an unreasonable application of, Strickland. Gomez v. Sec'y, Dep't of Corr., No. 17-14000-H, 2018 WL 1277071, at *1 (11th Cir. Jan. 31, 2018)	R. Rosenbaum	P			
Tibbs v. United States, No. 17-14060-F, 2018 WL 1282415, at *1 (11th Cir. Jan. 30, 2018)	Long	28 USC 2253(c)(2); Slack	procedural default; This claim is too conclusory to warrant habeas relief. T	R. Rosenbaum	P			
DePriest v. Att'y Gen., Fla., No. 17-13504-A, 2018 WL 705645, at *1 (11th Cir. Jan. 30, 2018), cert. denied sub nom. DePriest v. Bondi, 139 S. Ct. 296, 202 L. Ed. 2d 195 (2018)	Long	28 USC 2253(c)(2)	reasonable jurists would not find debatable whether the district court correctly denied DePriest's § 2254 motion	A. Jordan	P			
Gubanic v. United States, No. 17-14430-K, 2018 WL 1635999, at *1 (11th Cir. Jan. 30, 2018), cert. denied, 139 S. Ct. 77, 202 L. Ed. 2d 52 (2018)	Long	28 USC 2253(c)(2); Slack	reasonable jurists would not find debatable whether the district court correctly denied his § 2255 motion.	R. Rosenbaum	C			
Johnson v. Calhoun SP Warden, No. 17-11805-B, 2018 WL 1974963, at *1 (11th Cir. Jan. 26, 2018)	Long	28 USC 2253(c)(2); Slack; 28 U.S.C. § 2254(d)(1), (2); 28 U.S.C. § 2254(e)(1)	The state court reasonably denied this claim	B. Martin	C			

King v. United States, No. 17-11506-J, 2018 WL 1725604, at *1 (11th Cir. Jan. 9, 2018), cert. denied, 139 S. Ct. 60, 202 L. Ed. 2d 43 (2018)	Short	28 USC 2253(c)(2)	failed to make the requisite showing	W. Pryor	C			
Bonner v. Warden, No. 17-14428-J, 2018 WL 1638734, at *1 (11th Cir. Jan. 9, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	S. Marcus	P			
Pelto v. Sec'y, Dep't of Corr., No. 17-12735-E, 2018 WL 3064558, at *1 (11th Cir. Jan. 5, 2018), cert. denied sub nom. Pelto v. Jones, 139 S. Ct. 279, 202 L. Ed. 2d 184 (2018)	Short	28 USC 2253(c)(2)	failed to make a substantial showing of the denial of a constitutional right	S. Marcus	C			
Mackey v. Sec'y, Dep't of Corr., No. 17-14624-F, 2018 WL 1863469, at *1 (11th Cir. Jan. 4, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	P			
McCray v. United States, No. 17-13548-F, 2018 WL 732390, at *1 (11th Cir. Jan. 4, 2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	C. Wilson	P			
Atkins v. Sec'y, Dep't of Corr., No. 17-14362-F, 2018 WL 1627816, at *1 (11th Cir. Jan. 3, 2018), cert. denied sub nom. Atkins v. Jones, 139 S. Ct. 269, 202 L. Ed. 2d 179 (2018)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			
Taylor v. Sec'y, Fla. Dep't of Corr., No. 17-12685-H, 2018 WL 3199210, at *1 (11th Cir. Jan. 2, 2018), cert. denied sub nom. Taylor v. Jones, 139 S. Ct. 104, 202 L. Ed. 2d 66 (2018), reh'g denied, 139 S. Ct. 866, 202 L. Ed. 2d 633 (2019)	Short	28 USC 2253(c)(2); Slack	failed to make the requisite showing	G. Tjoflat	P			

11th Circuit Excluded Cases

Case Name	Reason for Excluding							
Adams v. United States	date range							
Weeks v. United States, 930 F.3d 1263 (11th Cir. 2019)	previous grant							
United States v. Palmer, 773 F. App'x 576 (11th Cir. 2019)	COA not required							

Thomas v. United States, 760 F. App'x 722, 723 (11th Cir. 2019)										
	lacked jurisdiction									
United States v. St. Hubert, 918 F.3d 1174 (11th Cir. 2019)										
	en banc request									
United States v. Florence, 766 F. App'x 864 (11th Cir. 2019)										
	COA not required									
Baine v. Mitchum, 745 F. App'x 143, 144 (11th Cir. 2018)										
	previous denial									
Pena v. United States, 749 F. App'x 958 (11th Cir. 2018)										
	previous grant									
Bivins v. United States, 747 F. App'x 765, 768 (11th Cir. 2018), cert. denied, 139 S. Ct. 856, 202 L. Ed. 2d 620 (2019)										
	district court grant									
Wilson v. Warden, Georgia Diagnostic Prison, 898 F.3d 1314, 1324 (11th Cir. 2018), cert. denied sub nom. Wilson v. Ford, 139 S. Ct. 2639, 204 L. Ed. 2d 287 (2019)										
	district court grant									
In re Williams, 898 F.3d 1098, 1099 (11th Cir. 2018)										
	date range									
United States v. Kelly, 735 F. App'x 1022, 1028 (11th Cir. 2018)										
	remanded caseas 2255 petition									
Bush v. Sec'y, Fla. Dep't of Corr., 888 F.3d 1188, 1190 (11th Cir. 2018), cert. denied sub nom. Bush v. Inch, 139 S. Ct. 1625, 203 L. Ed. 2d 906 (2019)										
	date range									
Hutto v. Lawrence Cty., Alabama, 717 F. App'x 960 (11th Cir. 2018)										
	no COA required									
Robinson v. Sec'y, Fla. Dep't of Corr., No. 17-13462-G, 2018 WL 3854024, at *1 (11th Cir. Mar. 29, 2018)										
	not section 2254/5									
Cole v. Sec'y, Fla. Dep't of Corr., No. 17-12632-JJ, 2018 WL 3000484, at *1 (11th Cir. May 9, 2018)										
	not section 2254/5									

Ford v. Sec'y, Fla. Dep't of Corr., 725 F. App'x 785, 786 (11th Cir. 2018), cert. denied sub nom. Ford v. Jones, 139 S. Ct. 1225, 203 L. Ed. 2d 241 (2019), reh'g denied, 140 S. Ct. 11, 204 L. Ed. 2d 1165 (2019)	date range							
Jenkins v. Comm'r, Alabama Dep't of Corr., No. 17-12524, 2019 WL 4123501, at *1 (11th Cir. Aug. 30, 2019)	date range							

Fifth Circuit COA Orders

All COA orders available on Westlaw in the Fifth Circuit from January 2018 to September 2019. **Note all highlighted case names are death penalty cases.**

Case Citation	Granted, by what court?	Short/Long	Decision Language	Cases/Standard cited	Judge(s)	Counsel v. Pro Se		
Clark v. Davis, No. 19-20214, 2019 WL 4877642 (5th Cir. Sept. 24, 2019)	Denied	Short	Clark has not met this standard	Slack; Miller-El; § 2253(c)(2)	Elrod	Pro se		
United States v. Summons, No. 19-50306, 2019 WL 5067291, at *1 (5th Cir. Sept. 17, 2019)	Denied	Short	failed to make the required showing	Slack; § 2253(c)(2)	Engelhardt	Pro se		
Lowery v. Davis, No. 19-10330, 2019 WL 4668571, at *1 (5th Cir. Sept. 5, 2019)	Denied	Short	failed to make the requisite showing	Slack; Miller-el; § 2253(c)(2)	Costa	Pro se		
Green v. Errington, No. 19-60219, 2019 WL 4876449, at *1 (5th Cir. Aug. 30, 2019)	Denied	Short	has not shown that reasonable jurists would debate the district court's determination that his § 2254 petition was time barred	Slack; § 2253(c)(2)	Higginson	Pro se		
JESS LEE GREEN, Petitioner-Appellant v. JOE ERRINGTON, Superintendent, Respondent-Appellee, No. 18-60846, 2019 WL 7187334, at *1 (5th Cir. Aug. 30, 2019)	Denied	Short	time barred	Slack; § 2253(c)(2)	Higginson	Pro se		
LeBlanc v. Davis, No. 19-40244, 2019 WL 4467094, at *1 (5th Cir. Aug. 30, 2019)	Denied	Short	instant § 2254 petition was therefore an unauthorized successive petition	Miller-el; § 2253(c)(2)	Haynes	Pro se		
Hardin v. Davis, No. 19-10342, 2019 WL 4668570, at *1 (5th Cir. Aug. 26, 2019)	Denied	Short	has not made the requisite showing	Slack; § 2253(c)(2)	Jones	Pro se		

Copeland v. Davis, 774 F. App'x 215 (5th Cir. 2019)	Denied	Short	failed to make this showing	Slack; § 2253(c)(2)	Higginbotham, Southwick, Willett	Pro se		
Moseley v. Davis, No. 19-10139, 2019 WL 3568650, at *1 (5th Cir. July 31, 2019)	Denied	Short	jurists of reason would find it debatable whether the district court was correct in its procedural ruling	Slack; § 2253(c)(2)	Ho	Pro se		
Houston v. Davis, No. 19-40046, 2019 WL 3297465, at *1 (5th Cir. July 22, 2019)	Denied	Short	fails to address the threshold timeliness issue	Slack; § 2253(c)(2)	Costa	Pro se		
United States v. Smadi, No. 18-11523, 2019 WL 5152771, at *1 (5th Cir. July 2, 2019), cert. denied, No. 19-5778, 2019 WL 5150659 (U. S. Oct. 15, 2019)	Denied	Short	reasonable jurists would not debate the district court's dismissal of the motion	Slack	Jones	Pro se		
Hill v. Davis, 772 F. App'x 148 (5th Cir. 2019)	Denied	Short	denied b/c COA unnecessary	§ 2253(c)(1)(A)	Jones, Elrod, Engelhardt	Pro se		
Tutson v. Davis, No. 18-11587, 2019 WL 2462691, at *1 (5th Cir. June 4, 2019)	Denied	Short	does not show that "jurists of reason would find it debatable whether the district court was correct in its procedural ruling (time-barred)	Slack; § 2253(c)(2)	Smith	Pro se		
United States v. Martinez, 768 F. App'x 285 (5th Cir. 2019)	Denied	Short	fails to make the showing required for a COA	Slack; Miller-el, § 2253(c)(2)	Southwick, Haynes, Ho	Pro se		
Tellez v. Davis, No. 18-50240, 2019 WL 2588399, at *1 (5th Cir. Feb. 28, 2019), cert. denied, 139 S. Ct. 2751, 204 L. Ed. 2d 1141 (2019)	Denied	Short	failed to make the requisite showing	Slack; § 2253(c)(2)	Higginson	Pro se		
United States v. Strecker, No. 18-10261, 2018 WL 8519721, at *1 (5th Cir. Dec. 20, 2018), cert. denied, 139 S. Ct. 2704, 204 L. Ed. 2d 1099 (2019)	Denied	Short	has not made the requisite showing.	Slack; § 2253(c)(2)	Owen	Pro se		
Mason v. Vannoy, No. 18-30351, 2018 WL 8018339, at *1 (5th Cir. Dec. 3, 2018), cert. denied, 139 S. Ct. 1552, 203 L. Ed. 2d 720 (2019)	Denied	Short	has not made the requisite showing	Slack; Miller-el, § 2253(c)(2)	Ho	Pro se		
Sinceno v. Vannoy, No. 17-30799, 2018 WL 9815257, at *1 (5th Cir. Nov. 1, 2018)	Denied	Short	fails to make the requisite showing	Slack; § 2253(c)(2)	Owen	Pro se		

Johnson v. Vannoy, No. 17-30933, 2018 WL 7020134, at *1 (5th Cir. Oct. 31, 2018), cert. denied, 139 S. Ct. 1226, 203 L. Ed. 2d 241 (2019)	Denied	Short	has not made the requisite showing	Miller-el, § 2253(c)(2)	Elrod	Pro se		
Canales v. Davis, 740 F. App'x 432 (5th Cir. 2018)	Granted	Short	Canales has made a sufficient showing that jurists of reason could debate the district court's conclusion that Canales failed to show prejudice to overcome a default of his Wiggins claim and his entitlement to relief	Buck; § 2253(c)(2)	Higginbotham, Southwick, Haynes	C		
George v. Kent, No. 17-30973, 2018 WL 7458660, at *1 (5th Cir. Sept. 25, 2018), cert. denied, 139 S. Ct. 1276, 203 L. Ed. 2d 289 (2019)	Denied	Short	has not made the requisite showing	Slack; § 2253(c)(2)	Costa	Pro se		
Woodruff v. Davis, No. 18-10133, 2018 WL 9815191, at *1 (5th Cir. Sept. 20, 2018), cert. denied, 140 S. Ct. 108, 205 L. Ed. 2d 31 (2019)	Denied	Short	has not made the requisite showing	Miller-el, § 2253(c)(2); § 2254(d)	Smith	C		
United States v. Rojas-Cisneros, No. 17-40316, 2018 WL 6977485, at *1 (5th Cir. Sept. 17, 2018), cert. denied, 139 S. Ct. 1217, 203 L. Ed. 2d 237 (2019)	Denied	Short	new motion was timely only if it relied on new evidence or a right recently recognized by the Supreme Court	Slack; § 2253(c)(2)	Dennis, Graves, Costa	Pro se		
Jones v. LeBlanc, No. 17-30894, 2018 WL 7347668, at *1 (5th Cir. Sept. 4, 2018), cert. denied, 139 S. Ct. 1388, 203 L. Ed. 2d 621 (2019)	Denied	Short	has not made the requisite showing	Miller-el, § 2253(c)(2)	Graves	Pro se		
Watts v. Davis, No. 18-10332, 2018 WL 4388387, at *1 (5th Cir. Aug. 29, 2018)	Denied	Short	has not met this standard	Slack; § 2253(c)(2)	Jones	Pro se		
United States v. Ramirez, 736 F. App'x 76 (5th Cir. 2018)	Grant	Short	reasonable jurists would debate whether the district court erred in dismissing his § 2255 motion without prejudice as premature based on a finding that he had a pending direct appeal. Reasonable jurists would also debate whether he states a valid claim of the denial of a constitutional right concerning whether his trial counsel was ineffective	Slack; Miller-el, § 2253(c)(2)	Jones, Haynes, Engelhardt	Pro se		
United States v. Looman, No. 17-11424, 2018 WL 7347669, at *1 (5th Cir. Aug. 20, 2018), cert. denied, 139 S. Ct. 1364, 203 L. Ed. 2d 598 (2019)	Denied	Short	Looman has abandoned his claims, however, by not adequately briefing them	Slack; Miller-el, § 2253(c)(2)	Willett	Pro se		

United States v. Garcia Licon, No. 17-10679, 2018 WL 6524002, at *1 (5th Cir. July 24, 2018), cert. denied sub nom. Licon v. United States, 139 S. Ct. 856, 202 L. Ed. 2d 620 (2019)	Denied	Short	jurists of reason could not debate the propriety of the district court's dismissal for lack of jurisdiction	Slack; § 2253(c)(2)	Haynes	C		
Porter v. Texas, 729 F. App'x 358 (5th Cir. 2018), cert. denied, 140 S. Ct. 107, 205 L. Ed. 2d 31 (2019)	Denied	Short	Even if the district court had made the determination in the first instance, we would still deny a COA because Porter has not made the required showing	Slack; Miller-el, § 2253(c)(2)	Dennis, Southwick, Higginson	Pro se		
Chambers v. Davis, No. 17-11175, 2018 WL 7017745, at *1 (5th Cir. June 28, 2018), cert. denied, 139 S. Ct. 1335, 203 L. Ed. 2d 579 (2019)	Denied	Short	failed to demonstrate that jurists of reason would debate the correctness of the district court's denial of his § 2254 petition	Slack; § 2253(c)(2)	Ho	Pro se		
Weisner v. Davis, No. 17-10722, 2018 WL 3868960, at *1 (5th Cir. June 4, 2018), cert. denied, 139 S. Ct. 380, 202 L. Ed. 2d 291 (2018), reh'g denied, 139 S. Ct. 952, 203 L. Ed. 2d 142 (2019)	Denied	Short	has not made the requisite showing; time barred	Slack; § 2253(c)(2)	Higginbotham	Pro se		
Barton v. Davis, No. 17-20534, 2018 WL 8018340, at *1 (5th Cir. May 15, 2018), cert. denied, 139 S. Ct. 1553, 203 L. Ed. 2d 721 (2019)	Denied	Short	has not made the showing required to obtain a COA	Slack; Miller-el, § 2253(c)(2)	Davis	Pro se		
Milton v. Davis, 721 F. App'x 386 (5th Cir. 2018)	Denied	Short	failed to make such a showing	Slack; § 2253(c)(2)	Higginbotham, Jones, Costa	Pro se		
Lomax v. Vannoy, No. 17-30706, 2018 WL 3726986, at *1 (5th Cir. May 3, 2018), cert. denied, 139 S. Ct. 328, 202 L. Ed. 2d 230 (2018)	Denied	Short	fail to make the required showing	Slack; Miller-el, § 2253(c)(2)	Haynes	Pro se		
Robinson v. Shaw, No. 17-60323, 2018 WL 6016876, at *1 (5th Cir. Mar. 28, 2018), cert. denied, 139 S. Ct. 217, 202 L. Ed. 2d 147 (2018)	Denied	Short	fails to make "a substantial showing of the denial of a constitutional right.	Slack; Miller-el, § 2253(c)(2)	Ho	Pro se		

Jackson v. Davis, No. 17-10445, 2018 WL 4898568, at *1 (5th Cir. Mar. 23, 2018), cert. denied, 139 S. Ct. 333, 202 L. Ed. 2d 233 (2018)	Denied	Short	has not made the required showing	Slack; Miller-el, § 2253(c)(2)	Higginbotham	Pro se		
Damond v. Vannoy, No. 16-31058, 2018 WL 3243994, at *1 (5th Cir. Mar. 12, 2018)	Denied	Short	has not met this standard	Slack; § 2253(c)(2)	Southwick	Pro se		
Barnes v. Landry, No. 17-30542, 2018 WL 3868747, at *1 (5th Cir. Feb. 28, 2018), cert. denied, 139 S. Ct. 280, 202 L. Ed. 2d 185 (2018)	Denied	Short	Slack; § 2253(c)(2)	Slack; § 2253(c)(2)	Elrod	Pro se		
Bruton v. Davis, No. 17-40472, 2018 WL 4959780, at *1 (5th Cir. Feb. 28, 2018), cert. denied, 139 S. Ct. 379, 202 L. Ed. 2d 291 (2018)	Denied	Short	has not made the required showing	Miller-el, § 2253(c)(2)	Owen	Pro se		
Lewis v. Hedgemon, No. 17-30372, 2018 WL 3702482, at *1 (5th Cir. Feb. 21, 2018), cert. denied, 139 S. Ct. 327, 202 L. Ed. 2d 229 (2018), reh'g denied, 139 S. Ct. 869, 202 L. Ed. 2d 636 (2019)	Denied	Short	has failed to make a substantial showing of the denial of a constitutional right	Miller-el, § 2253(c)(2)	Higginbotham	Pro se		
United States v. Boutte, No. 17-40415, 2018 WL 3014635, at *1 (5th Cir. Feb. 12, 2018), cert. denied, 138 S. Ct. 2667, 201 L. Ed. 2d 1053 (2018)	Denied	Short	has not made the required showing on his claims	Slack; Miller-el, § 2253(c)(2)		C		
Mitchell v. Davis, No. 17-40262, 2018 WL 5920409, at *1 (5th Cir. Feb. 1, 2018), cert. denied, 139 S. Ct. 162, 202 L. Ed. 2d 100 (2018), reh'g denied, 139 S. Ct. 1242, 203 L. Ed. 2d 262 (2019)	Denied	Short	has not made the required showing	Slack; Miller-el, § 2253(c)(2)	Costa	Pro se		
Mejia v. Davis, No. 17-40400, 2018 WL 3825701, at *1 (5th Cir. Jan. 25, 2018), cert. denied, 139 S. Ct. 235, 202 L. Ed. 2d 159 (2018)	Denied	Short	has not made the required showing concerning the above claims	Slack; Miller-el, § 2253(c)(2)	Costa	Pro se		

Brown v. Davis, No. 16-50481, 2018 WL 732389, at *1 (5th Cir. Jan. 23, 2018)	Denied	Short	has not made the requisite showing	Slack; § 2253(c)(2)	Prado	Pro se		
United States v. Howard, No. 16-41661, 2018 WL 7458661, at *1 (5th Cir. Jan. 18, 2018), cert. denied, 139 S. Ct. 1280, 203 L. Ed. 2d 291 (2019)	Denied	Short	has not made the required showing	Slack; § 2253(c)(2)	Haynes	Pro se		
Perry v. Davis, Texas Dep't of Criminal Justice, Corr. Institutions Div., No. 16-11581, 2018 WL 692821, at *1 (5th Cir. Jan. 16, 2018)	Denied	Short	failed to show that reasonable jurists would debate whether the district court erred in its procedural ruling that his petition was time barred.	Slack; Miller-el, § 2253(c)(2)	Prado	Pro se		
Gonzales v. Davis, No. 18-70024, 2019 WL 4455078 (5th Cir. Sept. 17, 2019)	Granted in part	Long	district court erred in determining that Gonzales's Rule 60(b) motion was a successive petition	Buck (relief under Rule 60(b)(6) is available only in extraordinary circumstances)	Higginbotham, Dennis, Graves	C		
United States v. Mungia, 776 F. App'x 256 (5th Cir. 2019)	Denied	Long	has not made the requisite showing for a COA	Miller-el	Dennis, Haynes, Duncan	Pro se		
Crutsinger v. Davis, 936 F.3d 265 (5th Cir.), cert. denied, 140 S. Ct. 2, 204 L. Ed. 2d 1188 (2019)	Denied	Long	reasonable jurists would not debate whether the district court abused its discretion in denying his Rule 60(b) motion	§ 2253(c)(2); Buck;	Smith, Owen, Graves (dissenting)	C		
In re Johnson, 935 F. 3d 284 (5th Cir. 2019), as revised (Aug. 15, 2019)	Denied	Long	Jurists of reason would not conclude that the district court abused its discretion	Buck (relief under Rule 60(b)(6) is available only in extraordinary circumstances)	Southwick, Graves, Higginson	C		
United States v. Castaneda Palacio, No. 19-50224, 2019 WL 4318498, at *1 (5th Cir. Aug. 13, 2019)	Denied	Long	as not made the requisite showing	Slack; § 2253(c)(2)	Elrod	Pro se		
Gamboa v. Davis, 782 F. App'x 297, 298 (5th Cir. 2019)	Denied	Long	reasonable jurists would not debate the district court's holding that his Rule 60(b) motion was an unauthorized successive habeas petition	Buck (relief under Rule 60(b)(6) is available only in extraordinary circumstances)	Jones, Smith, Dennis	Pro se		
United States v. Gallardo, 773 F. App'x 798, 799 (5th Cir. 2019)	Denied	Long	cannot show that the district court's dismissal of his § 2255 motion as successive and unauthorized was debatable or incorrect	Slack	Jones, Higginson, Oldham	Pro se		
United States v. Tolliver, 772 F. App'x 144, 145 (5th Cir. 2019)	Denied	Long	reasonable jurists could not debate the district court's procedural ruling	Slack; § 2253(c)(2)	Oldham	Pro se		

Gardner v. Davis, 779 F. App'x 187 (5th Cir. 2019)	Denied	Long	Reasonable jurists would not debate the propriety of granting a COA on this issue	Buck; § 2253(c)(2)	Dennis, Southwick, Higginson	Pro se		
United States v. Parker, 927 F.3d 374, 376 (5th Cir. 2019)	Denied	Long	Reasonable jurists would all agree that the district court lacked jurisdiction because Parker had not received authorization to file a successive § 2255 motion.	Buck; § 2253(c)(1)	Haynes, Graves, Ho	C		
Willoughby v. Davis, 772 F. App'x 128 (5th Cir. 2019)	Denied	Long	has not made the requisite showing	Miller-el; § 2253(c)(2)	Smith, Higginson, Duncan	Pro se		
Gonzales v. Davis, 924 F.3d 236, 239 (5th Cir. 2019)	Denied	Long	Gonzales's claims are procedurally defaulted. Alternatively, the claims lack merit	Miller-el; § 2253(c)(1)	Jones, Southwick, Willet	C		
United States v. Sauzo, 768 F. App'x 284 (5th Cir. 2019)	Granted	Long	failing to require a Government response or hold an evidentiary hearing before dismissing his § 2255 motion; Reasonable jurists would debate the correctness of the district court's denial of relief on Sauzo's claims of ineffective assistance of counsel in connection with the decision to plead guilty without a response from his trial attorney and an evidentiary hearing.	Miller-el; § 2253(c)(2)	Southwick, Haynes, Ho	Pro se		
Robertson v. Davis, 763 F. App'x 378, 380 (5th Cir. 2019), cert. denied, No. 19-6181, 2019 WL 6689751 (U.S. Dec. 9, 2019)	Denied	Long	no jurist of reason would disagree with the district court's conclusion that Robertson's amended petition represents a successive filing	§ 2253(c)	Smith, Clement, Higginson	C		
Thompson v. Davis, 916 F.3d 444 (5th Cir. 2019)	Granted in part	Long	district court thus found that the state habeas court was not unreasonable to reject this claim. We agree that jurists of reason could not debate this conclusion; We GRANT a COA as to whether Thompson has established a Brady violation in the State's non-disclosure of a past relationship with Rhodes,	28 U.S.C. § 2254(d)(1)-(2)	Higginbotham	C		
Hopes v. Davis, 761 F. App'x 307 (5th Cir. 2019)	Denied	Long	But reasonable jurists still could not question the district court's procedural ruling dismissing the petition for failure to exhaust	Slack; § 2253(c)(2)	Owen, Willett, Oldham	Pro se		
Northup v. Davis, No. 18-40633, 2018 WL 6877736, at *1 (5th Cir. Dec. 31, 2018)	Denied	Long	has not met this standard	Slack; § 2253(c)(2)	Southwick	Pro se		
Halprin v. Davis, 911 F.3d 247 (5th Cir. 2018), cert. denied, 140 S. Ct. 167, 205 L. Ed. 2d 104 (2019)	Denied	Long	Jurists of reason could not disagree with the district court's conclusion	Miller-el; § 2253(c)(2); § 2254(d)(1)-(2)	Smith, Dennis, Haynes	Pro se		
Jackson v. Davis, 756 F. App'x 418 (5th Cir. 2018), cert. denied, No. 19-5430, 2019 WL 5686522 (U.S. Nov. 4, 2019)	Denied	Long	Jackson has not shown any reasonable probability of a different result at sentencing	Slack; § 2253(c)(2); § 2254(d)(1)-(2)	Clement, Owen, Graves	C		
Sparks v. Davis, 756 F. App'x 397 (5th Cir. 2018), cert. denied, 140 S. Ct. 6, 204 L. Ed. 2d 1192 (2019)	Denied	Long	reasonable jurists could not debate the district court's refusal to grant Sparks a cause-and-prejudice exception to surmount the procedural bar,	Slack; Miller-el, § 2253(c)(2); § 2254(d)(1)-(2)	Higginbotham, Jones, Costa	C		
Hummel v. Davis, 908 F.3d 987 (5th Cir. 2018), cert. denied, 140 S. Ct. 160, 205 L. Ed. 2d 51 (2019)	Denied	Long	has not shown that jurists of reason could debate whether the district court erred in denying his petition; Reasonable jurists cannot debate the reasonableness of the district court's conclusion that Hummel failed to clear this high bar	Buck; § 2253(c)(2); § 2254(d)(1)-(2)	Higginbotham, Jones, Costa	C		

Beatty v. Davis, 755 F. App'x 343 (5th Cir. 2018), cert. denied, 140 S. Ct. 54, 205 L. Ed. 2d 49 (2019)	Denied	Long	Reasonable jurists would not debate the conclusion that the district court did not abuse its discretion in concluding that this motion is untimely	Slack	Owen, Elrod, Haynes	C?		
Raby v. Davis, 907 F. 3d 880 (5th Cir. 2018), cert. denied, 139 S. Ct. 2693, 204 L. Ed. 2d 1093 (2019), reh'g denied, 140 S. Ct. 19, 204 L. Ed. 2d 1175 (2019)	Denied	Long	Because there are no extraordinary circumstances meriting Rule 60(b)(6) relief, Raby's application for a COA is DENIED.	Miller-el, § 2253(c)(2)	Smith, Clement, Duncan	C		
Hernandez v. Davis, 750 F. App'x 378 (5th Cir. 2018), cert. denied, 140 S. Ct. 136, 205 L. Ed. 2d 49 (2019)	Denied	Long	we conclude that no reasonable jurist could debate the district court's determination that the TCCA did not unreasonably apply Strickland to this claim	Slack; § 2253(c)(2); § 2254(d)(1)-(2)	Clement, Graves, Higginson	C		
Wardlow v. Davis, 750 F. App'x 374 (5th Cir. 2018), cert. denied, No. 18-9273, 2019 WL 5150494 (U.S. Oct. 15, 2019)	Denied	Long	district court's procedural dismissal is not debatable; Because the Court of Criminal Appeals' procedural dismissal of Wardlow's application did not cast any doubt on the trial court's factual findings, we must accept them unless Wardlow can rebut them by "clear and convincing evidence.	Slack; 2254(e)(1)	Higginbotham, Jones, Costa	C		
United States v. Mungia, 740 F. App'x 407, 408 (5th Cir. 2018)	Denied	Long	has not made the requisite showing for a COA	Miller-el	Smith, Higginson, Duncan	Pro se		
Ochoa v. Davis, 750 F. App'x 365 (5th Cir. 2018), cert. denied, 140 S. Ct. 161, 205 L. Ed. 2d 52 (2019)	Denied	Long	no reasonable jurist would debate whether this claim is unexhausted and procedurally defaulted; no reasonable jurist would disagree that Ochoa cannot overcome the procedural default	Miller-el; Bucks, § 2253(c)(2)	Elrod, Graves, Willett	C		
United States v. Fisher, 740 F. App'x 77 (5th Cir. 2018), cert. denied, 139 S. Ct. 2653, 204 L. Ed. 2d 295 (2019), reh'g denied, 140 S. Ct. 22, 204 L. Ed. 2d 1178 (2019)	Denied	Long	jurists of reason would not debate the district court's denial of those claims.	Slack; § 2253(c)(2)	Smith, Higginson, Duncan			
United States v. Delgado, No. 17-40448, 2018 WL 9801771, at *1 (5th Cir. Oct. 3, 2018), cert. denied, 140 S. Ct. 277, 205 L. Ed. 2d 192 (2019)	Denied	Long	has not met these standards	Slack; Miller-el, § 2253(c)(2)	Jones	Pro se		
McCreary v. Davis, 738 F. App'x 334 (5th Cir. 2018), cert. denied, 139 S. Ct. 2015, 204 L. Ed. 2d 222 (2019)	Denied	Long	we DISMISS this appeal for lack of jurisdiction. To the extent a COA is required, we also DENY the COA motion.	Slack; § 2253(c)(2)	Smith, Higginson, Duncan	Pro se		
Soliz v. Davis, 750 F. App'x 282 (5th Cir. 2018), cert. denied, 139 S. Ct. 1447, 203 L. Ed. 2d 685 (2019)	Denied	Long	reasonable jurists would not debate the district court's conclusion	Slack; § 2253(c)(2); § 2254(d)	Dennis, Southwick, Higginson	C		

United States v. Vialva, 904 F.3d 356 (5th Cir. 2018)	Denied	Long	the question here is whether reasonable jurists could disagree with the district court's determination that Bernard's and Vialva's Rule 60(b) motions were successive habeas petitions under Section 2255. We conclude that the issue is not reasonably debatable	Buck	Higginbotham, Jones, Dennis	C		
Runnels v. Davis, 746 F. App'x 308 (5th Cir. 2018), cert. denied, 139 S. Ct. 2747, 204 L. Ed. 2d 1148 (2019)	Denied	Long	it is beyond debate that Runnels's Rule 60(b) motion is a second-or-successive habeas petition	Buck; Miller-el, § 2253(c)(2)	Graves, Higginson, Costa	C		
Freeney v. Davis, 737 F. App'x 198 (5th Cir. 2018), cert. denied, 139 S. Ct. 2632, 204 L. Ed. 2d 268 (2019)	Denied	Long	no reasonable jurist could debate the merits of this claim, no reasonable jurist could debate that the state habeas court's disposition of Freeney's Strickland claim was based on an unreasonable finding of fact	Buck; § 2253(c)(2)	Higginbotham, Smith, Owen	C		
United States v. Williams, 897 F.3d 660, 662 (5th Cir.), cert. denied, 139 S. Ct. 655, 202 L. Ed. 2d 502 (2018)	Denied	Long	jurists of reason would not find it debatable that the district court was correct in its procedural ruling	Buck; Miller-el, § 2253(c)(2)	Elrod, Graves, Ho	Pro se		
Kott v. Vannoy, No. 17-30824, 2018 WL 7458659, at *1 (5th Cir. July 12, 2018), cert. denied, 139 S. Ct. 1275, 203 L. Ed. 2d 288 (2019)	Denied	Long	By failing to brief any challenge to the reasons for the district court's denial of habeas relief, Kott has abandoned the only grounds for appeal	Slack; Miller-el, § 2253(c)(2)	Southwick	Pro se		
Schaefer v. Davis, No. 17-50839, 2018 WL 6267659, at *1 (5th Cir. July 11, 2018), cert. denied, 139 S. Ct. 944, 203 L. Ed. 2d 135 (2019)	Denied	Long	failed to make the required showing to obtain a COA	Slack; Miller-el, § 2253(c)(2)	Graves	Pro se		
Batiste v. Davis, 747 F. App'x 189, 192 (5th Cir. 2018), cert. denied, 139 S. Ct. 1601, 203 L. Ed. 2d 757 (2019)	Denied	Long	The district court found the state court habeas resolution of this issue to be reasonable, and we agree without reaching the issue of prejudice	Buck; Miller-el, § 2253(c)(2); § 2254(d)	Dennis, Southwick, Higginson	C		
United States v. Drew, 728 F. App'x 366 (5th Cir. 2018)	Denied	Long	has not made the requisite showing	Miller-el, Gonzalez	Dennis, Southwick, Higginson	Pro se		
Ibarra v. Davis, 738 F. App'x 814 (5th Cir. 2018), cert. denied, 139 S. Ct. 939, 203 L. Ed. 2d 133 (2019)	Granted	Long	At this stage, we only consider whether Ibarra's claim is debatable. See id. at 774. We find that it is. Dissent	Miller-El; Buck	Jones, Haynes, Graves	C		
Murphy v. Davis, 737 F. App'x 693 (5th Cir.), cert. denied, 139 S. Ct. 568, 202 L. Ed. 2d 407 (2018)	Denied	Long	We ultimately conclude that all three are undebatably procedurally barred	Buck; § 2253(c)(2)	King, Elrod, Higginson	C		
Milam v. Davis, 733 F. App'x 781 (5th Cir.), cert. denied, 139 S. Ct. 335, 202 L. Ed. 2d 234 (2018)	Denied	Long	We agree with the district court that Milam has failed to show that his ineffective-assistance-of-trial-counsel claim has any merit sufficient to overcome the Martinez hurdle, and thus, he has failed to make the showing of debatability required for issuance of a COA	Buck; Miller-el, § 2253(c)(2); § 2254(d)	Elrod, Graves, Higginson	C		

Fratta v. Davis, 889 F. 3d 225 (5th Cir. 2018), cert. denied, 139 S. Ct. 803, 202 L. Ed. 2d 590 (2019), reh'g denied, 139 S. Ct. 1288, 203 L. Ed. 2d 299 (2019)	Denied	Long	claims are procedurally defaulted; does not show that reasonable jurists would disagree with the district court's ruling that his claims are procedurally defaulted; No reasonable jurist would disagree that Fratta fails to prove actual innocence	Slack; § 2253(c)(2)	Smith, Dennis, Clement	C		
Sanchez v. Davis, 888 F.3d 746 (5th Cir. 2018)	Granted	Long	COA is therefore GRANTED as to the Strickland claim focused on counsel's failure to object when a witness was asked whether Sanchez was here "illegally."	Miller-el, § 2253(c)(2); § 2254(d)	Costa	Pro se		
Murphy v. Davis, 732 F. App'x 249 (5th Cir. 2018)	Granted	Long	Reasonable jurists could debate whether it was reasonable for counsel not to intervene and whether such intervention had a reasonable probability of causing a different outcome	Buck; § 2253(c)(2)	King, Dennis, Costa	C		
United States v. Alipizar, 718 F. App'x 305, 306 (5th Cir. 2018)	Denied	Long	has not met that standard	Miller-el, § 2253(c)(2)	Smith, Haynes, Willet	Pro se		
United States v. Woods, 714 F. App'x 455, 456 (5th Cir. 2018)	Denied	Long	We deny that request on its merits	§ 2253(c)	Wiener, Dennis, Southwick	Pro se		
Slater v. Davis, 717 F. App'x 432 (5th Cir.), cert. denied, 139 S. Ct. 99, 202 L. Ed. 2d 63 (2018)	Denied	Long	Slater has not presented clear and convincing evidence that would rebut the state court's finding that Freeman's affidavit was reliable and Slater's was not credible. See 28 U.S.C. § 2254(d)(1). Nor has he shown that the district court's finding under Washington is debatable among jurists of reason.	§ 2253(c)(2)	Jones, Smith, Dennis	C		
Devoe v. Davis, 717 F. App'x 419 (5th Cir. 2018)	Denied	Long	Brady claim is unexhausted, Jurists of reason could not disagree with the district court's determination that Devoe is not entitled to a certificate of appealability on the issue of whether he was prejudiced	Slack; Miller-el, Slack, § 2253(c)(2)	Owen, Elrod, Costa	C		

5th Circuit Orders Excluded cases

Case Name	Reason for Excluding							
Webb v. Davis, 940 F. 3d 892, 895 (5th Cir. 2019)	Lower Court							
Smith v. Davis, 927 F. 3d 313, 340 (5th Cir. 2019)	No COA needed for state							
Cardona v. Davis, 770 F. App'x 179 (5th Cir. 2019)	previous ct app grant							
Schillereff v. Davis, 766 F. App'x 146, 150 (5th Cir. 2019)	previous ct app grant							
Parker v. Davis, 914 F. 3d 996, 998 (5th Cir. 2019)	previous ct app grant							
United States v. Rodriguez, 747 F. App'x 972 (5th Cir. 2019)	No COA needed							

Holmes v. Davis, 745 F. App'x 244, 245 (5th Cir. 2018)	dismissed for lack of jurisdiction								
Blackman v. Davis, 909 F.3d 772 (5th Cir. 2018), as revised (Dec. 26, 2018), cert. denied, 139 S. Ct. 1215, 203 L. Ed. 2d 236 (2019)	lower Court								
Black v. Davis, 902 F. 3d 541, 548 (5th Cir. 2018)	lack of jurisdiction								
Trimble v. Vannoy, 736 F. App'x 482, 484 (5th Cir. 2018), cert. denied, 139 S. Ct. 836, 202 L. Ed. 2d 607 (2019)	previous ct app grant								
United States v. Fleming, 734 F. App'x 298 (5th Cir. 2018)	unnecessary								
United States v. Hill, 733 F. App'x 201, 202 (5th Cir. 2018)	no jurisdiction								
United States v. Wiese, 896 F.3d 720, 722 (5th Cir. 2018), as revised (Aug. 14, 2018), cert. denied, 139 S. Ct. 1328, 203 L. Ed. 2d 574 (2019)	previous ct app grant								
Horttor v. Livingston, 729 F. App'x 363, 364 (5th Cir. 2018)	COA not applicable to s1983 claim								
Taylor v. Vannoy, 715 F. App'x 418, 419 (5th Cir.), cert. denied, 139 S. Ct. 271, 202 L. Ed. 2d 180 (2018)	lower Court								
Runnels v. Bordelon, 715 F. App'x 409 (5th Cir.), cert. denied, 139 S. Ct. 222, 202 L. Ed. 2d 151 (2018), reh'g denied, 139 S. Ct. 869, 202 L. Ed. 2d 636 (2019)	lower court did not make COA determination								
United States v. Brumfield, 713 F. App'x 395 (5th Cir. 2018)	lower court								
United States v. Randall, 712 F. App'x 443 (5th Cir. 2018)	lower court								
Watson v. Goodwin, 709 F. App'x 311, 312 (5th Cir. 2018)	no final order in D court								

United States v. Denman, 709 F. App'x 282, 283 (5th Cir. 2018)	no final order in D court								
Johnson v. Davis, 707 F. App'x 829 (5th Cir. 2018)	lower court								
Luna v. Davis, No. 19-70002, 2019 WL 5468851 (5th Cir. Oct. 24, 2019)	Date range								
Ramey v. Davis, 942 F.3d 241 (5th Cir. 2019)	date range								
United States v. Byrd, 781 F. App'x 364 (5th Cir. 2019)	date range								

Fifth Circuit Docket Capital Cases

the search term—(c.o.a. (cert! /2 appeal!) /7 deny! denied denial grant!) /20 2018 2019—was entered into Westlaw's docket search function to identify all cases involving a certificate of appealability

Case Name, Case Number	Capital or Non-Capital	COA result (granted/denied)	COA result date (entered, not filed)	Judge(s) initials
BILLY CRUTSINGER V.	Capital	Denied	08/26/2019	JES, PRO, JEG
CHARLES RABY V. LOF	Capital	Denied	10/31/2018	JES, EBC, SKD
CHARLES THOMPSON	Capital	Granting in part	02/18/2019	PEH, CH, JEG
DEXTER JOHNSON V.	Capital	Denied	08/24/2018	LHS, JEG, SAH
IN RE: JOSEPH GARCI	Capital	Denied	12/04/2018	JLD, JWE, SAH
JOHN RAMIREZ V. LOF	Capital	Denied	06/26/2019	CDK, JLD, PRO
MARK ROBERTSON V.	Capital	Denied	04/03/2019	JES, EBC, SAH
MARK SOLIZ V. LORIE	Capital	Denied	09/18/2019	JLD, LHS, SAH
MELISSA LUCIO V. LOF	Capital	Granting in part	10/17/2018	PEH, CH, JEG
PAUL DEVOE, III V. LOI	Capital	Denied	01/09/2018	PRO, JWE, GJC
RAY FREENEY V. LORI	Capital	Denied	08/03/2018	PEH, JES, PRO
ROBERT SPARKS V. LI	Capital	Denied	12/04/2018	PEH, EHJ, GJC
STEVEN BUTLER V. LC	Capital	Denied	08/14/2018	PRO, CH, GJC
TRAVIS RUNNELS V. L	Capital	Denied	08/14/2018	JEG, SAH, GJC
BILLY WARDLOW V. LC	Capital	Denied	10/22/2018	PEH, EHJ, GJC