No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

PHILLIP DWAYNE LOYD,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

On Petition for Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. The district court denied Petitioner's application for a writ of habeas corpus without an evidentiary hearing because Petitioner's factual allegations are "contradicted by the guilty plea." 28 U.S.C. § 2255 clearly states that "[u]nless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall…grant a prompt hearing…, determine the issue and make findings of fact." May a district court deny habeas corpus petitions solely because a petitioner's plausible factual allegations contradict a guilty plea? At minimum, must a court grant an evidentiary hearing when the credible allegations, if true, would entitle the petitioner to relief?

II. As *Buck v. Davis* holds, at "the [Certificate of Appealability] stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims.'" The Eighth Circuit's *Simmons v. United States* decision holds that "it must be assumed upon appeal that the factual allegations of the petition are true" when a trial court dismisses a petition for a writ of habeas corpus without a hearing. The district court acknowledged that Petitioner's allegations, if true, indicate Petitioner is actually innocent, yet nonetheless dismissed his petition for a writ of habeas corpus without an evidentiary hearing. Did the Eighth Circuit commit legal error in denying Petitioner's application for COA?

PARTIES TO THE PROCEEDINGS

All parties appear in the caption of the case on the cover page.

RELATED CASES

1. Civil Cases

A. U.S. Court of Appeals for the Eighth Circuit

Docket number: 20-2575

Phillip Dwayne Loyd
v.
United States of America

Judgment was entered on the request for a Certificate of Appealability on October 15, 2020. Judgment was entered on the petition for rehearing en banc on December 21, 2020.

B. U.S. District Court for the District of Minnesota

Docket number: 0:19-cv-02137-JRT

Phillip Dwayne Loyd
v.
United States of America

Judgment was entered on the petition for a writ of habeas corpus on July 6, 2020 (the decision was reissued in identical form for an unknown reason on July 13, 2020). The district court preemptively denied a Certificate of Appealability on the same day in the same order.

2. Criminal Cases

A. U.S. Court of Appeals for the Eighth Circuit

Docket number: 16-4150

United States of America

v.

Phillip Dwayne Loyd

Judgment was entered on the appeal on March 29, 2018. Judgment was entered on the petition for rehearing en banc on May 9, 2019.

B. U.S. District Court for the District of Minnesota

Docket number: 0:15-cr-00142-JRT-1

United States of America

v.

Phillip Dwayne Loyd

A plea of guilty was entered on January 25, 2016. Sentencing was completed on October 24, 2016.

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The published memorandum opinion of the United States Court of Appeals for the Eighth Circuit affirming the criminal conviction is reported at *United States v. Loyd*, 886 F.3d 686 (8th Cir. 2018). The order denying Petitioner's petition for rehearing his *criminal* appeal en banc is unreported. The district court's memorandum opinion denying Petitioner's Motion to Vacate is unpublished. App. 2-10. The judgment of the United States Court of Appeals for the Eighth Circuit in Petitioner's postconviction proceedings is unreported. App. 1. The order denying Petitioner's petition for rehearing of that judgment is also unreported. App. 49.

JURISDICTION

The Court of Appeals entered judgment in Petitioner's postconviction proceedings on October 15, 2020. App. 1. A petition for rehearing was denied on December 21, 2020. App. 49. The jurisdiction of this Court rests upon 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent provisions are provided below:

28 U.S.C. § 2255

This statutory subsection provides, in relevant part, the conditions under which a prisoner is entitled to a writ of habeas corpus:

> (a) A prisoner in custody under a sentence of a court established by Act of Congress claiming the right to be released upon the ground that

> the sentence was imposed in violation of the Constitution or laws of the United States… may move the court which imposed the sentence to vacate, set aside or correct the sentence.
>
> (b) Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the United States attorney, grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law with respect thereto. If the court finds that… there has been such a denial or infringement of the constitutional rights of the prisoner so as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner or resentence him or grant a new trial or correct the sentence as may appear appropriate.
>
> …

28 U.S.C. § 2253

This statutory subsection provides, in relevant part, the standards and procedures relevant to an application for certificate of appealability in a habeas corpus proceeding:

> (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> …
>
> (b)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> > (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
> >
> > (B) the final order in a proceeding under section 2255.
>
> (2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> …

18 U.S.C. § 1591 (Jan. 23, 2015)

This statute is a federal-law offense under which Petitioner was convicted. It states, in relevant part:

(a) Whoever knowingly—

> (1) in or affecting interstate or foreign commerce, or within the special maritime and territorial jurisdiction of the United States, recruits, entices, harbors, transports, provides, obtains, or maintains by any means a person; or
>
> (2) benefits, financially or by receiving anything of value, from participation in a venture which has engaged in an act described in violation of paragraph (1),

knowing, or in reckless disregard of the fact, that means of force, threats of force, fraud, coercion described in subsection (e)(2), or any combination of such means will be used to cause the person to engage in a commercial sex act, or that the person has not attained the age of 18 years and will be caused to engage in a commercial sex act, shall be punished as provided in subsection (b).

(b) The punishment for an offense under subsection (a) is--

> (1) if the offense was effected by means of force, threats of force, fraud, or coercion described in subsection (e)(2), or by any combination of such means, or if the person recruited, enticed, harbored, transported, provided, or obtained had not attained the age of 14 years at the time

of such offense, by a fine under this title and imprisonment for any term of years not less than 15 or for life; or

(2) if the offense was not so effected, and the person recruited, enticed, harbored, transported, provided, or obtained had attained the age of 14 years but had not attained the age of 18 years at the time of such offense, by a fine under this title and imprisonment for not less than 10 years or for life.

(c) In a prosecution under subsection (a)(1) in which the defendant had a reasonable opportunity to observe the person so recruited, enticed, harbored, transported, provided, obtained or maintained, the Government need not prove that the defendant knew that the person had not attained the age of 18 years.

(d) Whoever obstructs, attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be fined under this title, imprisoned for a term not to exceed 20 years, or both.

(e) In this section:

(1) The term "abuse or threatened abuse of law or legal process" means the use or threatened use of a law or legal process, whether administrative, civil, or criminal, in any

manner or for any purpose for which the law was not designed, in order to exert pressure on another person to cause that person to take some action or refrain from taking some action.

(2) The term "coercion" means--

(A) threats of serious harm to or physical restraint against any person;

(B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(C) the abuse or threatened abuse of law or the legal process.

(3) The term "commercial sex act" means any sex act, on account of which anything of value is given to or received by any person.

(4) The term "serious harm" means any harm, whether physical or nonphysical, including psychological, financial, or reputational harm, that is sufficiently serious, under all the surrounding circumstances, to compel a reasonable person of the same background and in the same circumstances to perform or to continue performing commercial sexual activity in order to avoid incurring that harm.

> (5) The term "venture" means any group of two or more individuals associated in fact, whether or not a legal entity.

18 U.S.C. § 2251 (Jan. 24, 2015)

This statute is a federal-law offense under which Petitioner was convicted. It states, in relevant part:

> (a) Any person who employs, uses, persuades, induces, entices, or coerces any minor to engage in… any sexually explicit conduct for the purpose of producing any visual depiction of such conduct…shall be punished as provided under subsection (e), if such person knows or has reason to know that such visual depiction will be transported or transmitted using any means or facility of interstate or foreign commerce or in or affecting interstate commerce or mailed, if that visual depiction was produced or transmitted using materials that have been mailed, shipped, or transported in or affecting interstate or foreign commerce by any means, including by computer, or if such visual depiction has actually been transported or transmitted….
>
> …
>
> (e) Any individual who violates, or attempts or conspires to violate, this section shall be fined

under this title and imprisoned not less than 15 years nor more than 30 years, but if such person has one prior conviction under this chapter, section 1591, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, abusive sexual contact involving a minor or ward, or sex trafficking of children, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 25 years nor more than 50 years, but if such person has 2 or more prior convictions under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to the sexual exploitation of children, such person shall be fined under this title and imprisoned not less than 35 years nor more than life. Any organization that violates, or attempts or conspires to violate, this section shall be fined under this title. Whoever, in the course of an offense under this section, engages in conduct that results in the death of a person, shall be punished by death or imprisoned for not less than 30 years or for life.

INTRODUCTION

This case involves the circumstances under which a district court may reject a petition for writ of habeas corpus without first granting an evidentiary hearing. Specifically, it asks whether a guilty plea and plea colloquy, without more, wholly eliminate a petitioner's eligibility for habeas corpus relief under 28 U.S.C. § 2255. This petition also addresses the appropriate threshold for granting a certificate of appealability ("COA") under 28 U.S.C. § 2253.

Pursuant to 28 U.S.C. § 2255, a motion to vacate (*i.e.*, a petition for writ of habeas corpus) may be filed when a petitioner's sentence was imposed in violation of the Constitution or laws of the United States. Upon such a motion, a district court "*shall*… grant a prompt hearing thereon, determine the issues and make findings of fact and conclusions of law" unless it is conclusively shown that the petitioner is not entitled to relief. 28 U.S.C. § 2255(b) (emphasis added).

This Court has repeatedly emphasized the importance of a petitioner's opportunity to present his case through the mechanism of an evidentiary hearing. *See Schriro v. Landrigan*, 550 U.S. 465, 474 (2007) ("In deciding whether to grant an evidentiary hearing, a federal court must consider whether such a hearing could enable an applicant to prove the petition's factual allegations, which, if true, would entitle the applicant to federal habeas relief."); *Machibroda v. United States*, 368 U.S. 487, 496 (1962) ("If the allegations are true, the petitioner is clearly entitled to relief. Accordingly, we think the function of 28 U.S.C. § 2255 […] can be served in this case only

by affording the hearing which its provisions require.").

The Eighth Circuit, too, has unambiguously stated that "[e]videntiary hearings on 28 U.S.C. § 2255 are preferred, and the general rule is that a hearing is necessary prior to the motion's disposition if a factual dispute exists." *Thomas v. United States*, 737 F.3d 1202, 1206 (8th Cir. 2013), *cert. denied*, 572 U.S. 1128 (2014).

A court of appeals may only review a final order in a proceeding under 28 U.S.C. § 2255 after the issuance of a certificate of appealability. *See* 28 U.S.C. § 2253. "At the COA stage, the *only* question is whether the applicant has shown 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.'" *Buck v. Davis*, 137 S. Ct. 759, 773 (2017) (emphasis added) (citation omitted); *see also Slack v. McDaniel*, 529 U.S. 473, 484 (2000) ("Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims is debatable.").

Petitioner pleaded guilty to two criminal counts and was sentenced to 324 months in prison. *E.g.*, App. 3. He later filed a Motion to Vacate his sentence under 28 U.S.C. § 2255. The district court acknowledged that the factual allegations in the petition, if true, would cast doubt on Petitioner's guilt and potentially entitle him to relief. App. 8. Despite this acknowledgment,

the district court denied Petitioner's Motion to Vacate without holding an evidentiary hearing because the court determined that Petitioner's allegations contradicted his guilty plea. The district court also preemptively declined to issue a COA.

The district court's decision relied heavily on a disputed assumption that Petitioner's guilty plea was knowing and voluntary. App. 9. Though the court disagreed with Petitioner's factual contention that his guilty plea was not knowing and voluntary, the district court erred by refusing to credit this allegation when disposing of Petitioner's petition without first holding an evidentiary hearing because it is well established that when a district court denies a petition for a writ of habeas corpus without first holding an evidentiary hearing, the factual allegations of the petitioner must be presumed to be true. *Conaway v. Polk*, 453 F.3d 567, 582 (4th Cir. 2006) ("In assessing whether a federal habeas corpus petition was properly dismissed without an evidentiary hearing or discovery, we must evaluate the petition under the standards governing motions to dismiss made pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure."); *Wolfe v. Johnson*, 565 F.3d 140, 169 (4th Cir. 2009) ("In assessing whether a federal habeas petition was properly dismissed without an evidentiary hearing… the court is obliged to assume all facts pleaded… to be true.") (internal citations omitted).

By refusing to grant even a preliminary evidentiary hearing under the facts of Petitioner's case, the district court deprived Petitioner of his constitutional rights. Even more alarming, however, is the example the district court set. In its decision,

the district court endorsed the idea that cases involving a guilty plea are effectively excluded from relief under 28 U.S.C. § 2255.

Petitioner sought review of the erroneous decision by requesting a COA from the Eighth Circuit Court of Appeals after the district court preemptively declined to grant a COA. The Eighth Circuit rejected Petitioner's COA application, as well as a petition to rehear Petitioner's request for a COA. App. 1, 49. In so acting, the Eighth Circuit ignored this Court's precedent in *Buck v. Davis*, committed important errors of law, and condoned the district court's abuse of discretion.

The Eighth Circuit's decision is legally unsound, constitutionally problematic, and warrants further review. It conflicts with other circuits' holdings and is inconsistent with this Court's precedents concerning the minimum thresholds for evidentiary hearings in habeas petitions and grants of COAs.

The outcome of this appeal—and Petitioner's access to relief afforded to him under the laws and Constitution of the United States—turn plainly on the questions presented.

STATEMENT OF THE CASE

1. Petitioner's Criminal Proceedings

On January 25, 2016, Petitioner pleaded guilty to two criminal counts under 18 U.S.C. § 1591 and 18 U.S.C. § 2251. *United States v. Loyd*, No. 0:15-cr-00142-JRT-SER (D. Minn. Jan. 25, 2016). Petitioner was subsequently sentenced to 324 months in prison.

The Eighth Circuit Court of Appeals affirmed this sentence. *United States v. Loyd*, 886 F.3d 686, 687 (8th Cir. 2018). Petitioner then timely filed a Motion to Vacate his sentence under 28 U.S.C. § 2255.

2. Petitioner's Motion to Vacate

In support of his Motion to Vacate, Petitioner submitted an affidavit signed under penalty of perjury. App. 51-68. This affidavit expounded multiple factual allegations that, if true, would entitle Petitioner to relief. App. 51-69; App. 8. Petitioner alleged that his trial counsel was ineffective and that his trial counsel's ineffectiveness prejudiced Petitioner. Petitioner's affidavit also credibly alleged that his guilty plea was not knowing and voluntary and numerous material facts that supported Petitioner's dispositive claims.

Petitioner's affidavit recounts several ways in which his trial counsel was ineffective. App. 59-66. These include his trial counsel's refusal to object to inaccurate allegations by the prosecution, encouraging Petitioner not to dispute material facts, stating on the record that "[Petitioner] clearly is…guilty," and refusing to allow Petitioner to review the video that was the foundation of the conviction under 18 U.S.C. § 2251. App. 62, ¶¶ 63, 66; App. 63, ¶ 67; App. 64, ¶ 73; App. 65, ¶¶ 77-80.

Petitioner's affidavit states that his attorney pressured him to plead guilty. App. 51, ¶ 4; App. 54, ¶ 24; App. 55, ¶ 26; App. 61, ¶ 59; App. 67, ¶ 85. Petitioner also lists multiple instances in which, prior to pleading guilty, he lacked certain legal knowledge that was a necessary requisite for entering a knowing

and voluntary plea of guilt (such as understanding the elements of the crime(s)). App. 61, ¶¶ 57, 60-61; App. 62, ¶ 65; App. 63, ¶ 70.

Petitioner's affidavit also sets forth a variety of factual allegations that, if true, show that Petitioner is *actually innocent* of the crimes of which he was convicted. *See* App. 51-59.

The only evidence in the record supporting Petitioner's guilty plea is the plea colloquy that provided the factual basis for Petitioner's plea. App. 3; App. 19-33. Outside of the plea colloquy, at the trial stage, the district court made no findings of fact. *See generally* Plea Hr'g Tr., *United States v. Loyd*, No. 0:15-cr-00142-JRT-SER (D. Minn. Jan. 25, 2016); App. 34-48 (copy of Plea Hr'g Tr.). Outside of the indictment and Petitioner's plea colloquy, neither Petitioner nor the United States made any factual offerings capable of corroborating the facts Petitioner testified to during his change of plea hearing. *Id.* The district court accepted no evidence from either party, other than Petitioner's testimony at his change of plea hearing, that established Petitioner's guilt. *Id.* In other words, the only evidence capable of supporting Petitioner's guilty plea was Petitioner's testimony at his change of plea hearing.

Petitioner's affidavit, submitted in support of his Motion to Vacate, included allegations that cast doubt on his testimony at his change of plea hearing. *See, e.g.*, App. 54 ¶ 24. The affidavit partially contradicted his prior testimony, provided new facts not contradicted by his prior testimony, and provided plausible and coherent explanations for any contradictions between the testimony in his affidavit

and the testimony at his change of plea hearing. *See* App. 59 ¶ 49. Most or all of Petitioner's contradictory statements were reconciled by detailed expositions in Petitioner's affidavit that satisfactorily explained the reason for any inconsistencies between his testimony and further explained why the explanation provided in his affidavit should be credited over conflicting statements from Petitioner's change of plea testimony. *E.g.*, App. 58 ¶¶ 41-42.

Unless a petitioner's allegations "*conclusively* show that the prisoner is entitled to no relief," a district court must grant an evidentiary hearing. 28 U.S.C. § 2255 (emphasis added); *see also Schriro*, 550 U.S. at 474 (determining that a petitioner should be granted an evidentiary hearing where the petition's allegations, if true, entitle him to relief).

Without first holding an evidentiary hearing, the district court denied Petitioner's Motion to Vacate on July 6, 2020. App. 2-10. In its decision, the district court stated:

> ***There are a number of alleged facts that if not contradicted by the guilty plea, would cast some uncertainty over [Petitioner]'s guilt to Counts 1 and 5.*** *For example,* ***[Petitioner] points out the unreliability of A.J. as an informant, facts which decrease the sexually explicit nature of his video of A.J., and issues concerning the actual age of A.J. and what [Petitioner] knew A.J.'s age to be.***

App. 8-9 (emphasis added). The district court further noted that if Petitioner's allegations were accepted as true, he might be entitled to relief.

The court nonetheless rejected Petitioner's request for relief without first holding an evidentiary hearing after determining that the allegations were "contradicted by the record, inherently incredible, or conclusory." App. 9. The court relied almost entirely on the fact that Petitioner pleaded guilty, stating, "[b]ut, because [Petitioner] unequivocally pled guilty to Counts 1 and 5, including the factual basis for both Counts, much more is required to overturn the strong presumption of the truthfulness of a guilty plea." App. 9. At no point did the district court find that any of Petitioner's allegations were inherently incredible or otherwise unbelievable. *See generally* App. 2-10.

By placing undue emphasis on Petitioner's change of plea hearing testimony at the exclusion of Petitioner's testimony provided by his affidavit, the district court functionally adopted the exact sort of per se rule—"excluding all possibility that a defendant's representations on the record at the time his guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation by others as to make the guilty plea a constitutionally inadequate basis for imprisonment"—rejected by this Court's *Blackledge v. Allison* decision. *Blackledge v. Allison*, 431 U.S. 63, 75 (1977).

Like the allegations in *Blackledge*, those in Petitioner's case "were not in themselves so 'vague (or) conclusory,' as to warrant dismissal for that reason

alone." *Id.* at 75 (citation omitted). Similarly, the district court did not find that the factual allegations in Petitioner's affidavit were inherently incredible or patently frivolous or false. Like the petition at issue in *Blackledge*, Petitioner's "petition should not have been summarily dismissed." *Id.* at 76.

To be entitled to an evidentiary hearing on a guilty plea challenge based on ineffective assistance of counsel, a petitioner need only allege facts that would satisfy the *Strickland* test. *Hill v. Lockhart*, 474 U.S. 52 (1985) (referencing *Strickland v. Washington*, 466 U.S. 668 (1984)). To satisfy the *Strickland* test, Petitioner's allegations, if true, must demonstrate that prior counsel's representation "fell below an objective standard of reasonableness," and that, but for counsel's errors, there is a "reasonable probability" that the outcome would have been different. *Strickland*, 466 U.S. at 686, 694.

A guilty plea waives a constitutional right to a jury trial and thus must be a "knowing, intelligent act" that is "the voluntary expression of [the defendant's] own choice." *Heiser v. Ryan*, 951 F.2d 559, 561 (3d Cir. 1991) (quoting *Brady v. United States*, 397 U.S. 742, 748 (1970)).

Whether a plea is voluntarily made is a question of fact. *Jackson v. Denno*, 378 U.S. 368, 377 (1964). Because the district court did not hold an evidentiary hearing on Petitioner's petition for a writ of habeas corpus, the record does not conclusively show whether trial counsel provided Petitioner with the information necessary to make a knowing and voluntary guilty plea. *See Gaylord v. United States*, 829 F.3d 500, 508-09 (7th Cir. 2018). However,

Petitioner's sworn statements in his affidavit set forth numerous facts that, if true, establish beyond a doubt that Petitioner's plea was not knowing and voluntary. App. 61, ¶¶ 57, 60-61; App. 62, ¶ 65; App. 63, ¶ 70. Under these circumstances, a district court unambiguously commits legal error if the district court summarily dismisses the petition for a writ of habeas corpus without first holding an evidentiary hearing.

Contradictions between Petitioner's factual averments in his Motion to Vacate and the factual basis supporting Petitioner's guilty plea cannot alone support the district court's decision to dispose of Petitioner's application without first holding an evidentiary hearing in this case. Regardless of whether a petitioner's "allegations are improbable and unbelievable," this alone "cannot serve to deny him an opportunity to support them by evidence." *Machibroda*, 368 U.S. at 495.[1] "Only an evidentiary hearing can resolve what actually occurred." *Smith v. Albaugh*, 921 F.3d 1261, 1273 (10th Cir. 2019); *see also United States v. Benboe*, 157 F.3d 1181 (9th Cir. 1998) (rejecting the government's contention that "a guilty plea is treated with greater finality").

Despite the district court's contention that Petitioner's factual allegations were "contradicted by the guilty plea," no other evidence in the record that contradicts the allegations in Petitioner's affidavit. App. 8. Moreover, Petitioner provided outside evidence supporting his petition; this supplemental evidence buttressed the material factual claims made

[1] Petitioner's allegations are not improbable or unbelievable. *See generally* App. 51-67.

by Petitioner in his affidavit. App. 73 ("A witness statement indicates that at least one third-party also believed the alleged victim was at least 18 years old."; App. 86-90 (showing trial counsel's time records);[2] App. 86, 93 (showing that trial counsel unilaterally waived Petitioner's ability to file any pretrial motions on August 17, 2015 despite having only reviewed the discovery disclosures for a measly two hours).

The district court erred in determining that: (1) Petitioner was not entitled to an evidentiary hearing and (2) declining to issue a COA. App. 10.

3. Petitioner's Application for a COA

On July 30, 2020, Petitioner filed a notice of appeal and an application for a COA. Petitioner's counsel filed a sixty-six-page memorandum detailing how the district court's decision denying Petitioner's postconviction petition had deprived Petitioner of his constitutional rights. On October 15, 2020, the Eighth Circuit Court of Appeals issued a decision denying the application for a COA. App. 1.

The Eighth Circuit did not explain its denial of Petitioner's application for a COA; the Eighth Circuit's entire decision is as follows:

> This appeal comes before the court on appellant's application for a certificate of

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[2] These records demonstrate that trial counsel reviewed the voluminous discovery in Petitioner's criminal case, consisting of multiple audio recordings of hour-long witness statements, tons of police reports, and thousands of other material documents *for just two hours* before unilaterally deciding to waive Petitioner's ability to file any pretrial motions.

> reviewability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

App. 1. Petitioner filed a petition for the Eighth Circuit to rehear his application for a COA en banc. The Eighth Circuit denied that petition on December 21, 2020.

To obtain a COA, Petitioner was required to "make a substantial showing of the denial of a constitutional right, a demonstration that… includes showing that reasonable jurists could debate" whether the petition should have been resolved differently or that the issues presented were "adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 483-484; *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983).

Under *Buck v. Davis*, "the *only* question" the Eighth Circuit need address at the COA stage is whether Petitioner showed that "jurists of reason" *could* conclude that he was entitled to an evidentiary hearing and thus disagree with the district court's decision. 137 S. Ct. at 773 (emphasis added). The Eighth Circuit's precedent, too, "assume[s] upon appeal that the factual allegations of the petition are true" when a petition for a writ of habeas corpus is denied without a hearing. *Simmons v. United States*, 253 F.2d 909, 911 (1958). If assumed to be true, the allegations in Petitioner's affidavit, by the district court's admission, cast serious doubt on Petitioner's guilt. The allegations also sufficiently alleged

ineffective assistance of counsel and an involuntary guilty plea.

The Eighth Circuit's decision to deny a COA deprived Petitioner of his constitutional rights to fundamental fairness and procedural due process. The district court denied Petitioner's Motion to Vacate without first scheduling an evidentiary hearing, despite acknowledging that the facts submitted in Petitioner's affidavit, if true, support Petitioner's claims of innocence. App. 8. This was an abuse of discretion, which the Eighth Circuit should have recognized and remedied by granting Petitioner's COA and determining whether Petitioner's case should be remanded to the district court for an evidentiary hearing. The Eighth Circuit's refusal to grant Petitioner's application for a COA is manifestly unreasonable and constitutes an abuse of discretion. The lower courts' cumulative errors have weighty and lasting consequences for Petitioner (*i.e.*, a 27-year prison sentence).

REASONS FOR GRANTING THE PETITION

This Court has already determined that when counsel's deficient performance leads a petitioner to accept a guilty plea rather than go to trial, courts do not ask "whether, had he gone to trial, the result of that trial 'would have been different' than the result of the plea bargain." *Lee v. United States*, 137 S. Ct. 1958, 1965 (2017). Instead, courts consider "whether there was an adequate showing that the defendant, properly advised, would have opted to go to trial." *Id.* This Court has yet to decide, however, whether an evidentiary hearing may be denied outright simply

because facts in a guilty plea contradict those alleged in a petition for habeas corpus. *But see Blackledge*, 431 U.S. at 75 ("In administering the writ of habeas corpus and its [§] 2255 counterpart, the federal courts cannot fairly adopt a per se rule excluding all possibility that a defendant's representations at the time his guilty plea was accepted were so much the product of such factors as misunderstanding, duress, or misrepresentation by others as to make the guilty plea a constitutionally inadequate basis for imprisonment.") (footnote omitted).

1. The Questions Presented are Manifestly Important

"The writ of habeas corpus plays a vital role in protecting constitutional rights." *Slack*, 529 U.S. at 483. If this Court allows the Eighth Circuit's and district court's decisions to stand, 28 U.S.C. § 2255 will be rendered nugatory for all prisoners serving a sentence after entering a guilty plea.

Guilty pleas are no more foolproof than a full trial. Accordingly, the courts must "take great precautions against unsound results." *Brady*, 397 U.S. at 753. "Ignorance, incomprehension, coercion… might be a perfect cover-up of unconstitutionality." *Heiser v. Ryan*, 951 F.2d at 561 (quoting *Boykin v. Alabama*, 368 U.S. 238, 242 (1969)). It is manifestly important that the safeguards against the imprisonment of individuals who receive ineffective assistance from their counsel and who are actually innocent remain in place irrespective of whether the incarceration results from a guilty plea or trial.

Since 1996, the rate of success for habeas relief has seen a "stark drop."[3] A study funded by the Department of Justice in 2007 found that habeas relief was granted in district courts in only 0.53% of non-capital cases.[4] Since 1996, courts have been left to interpret the statutory provisions of federal habeas corpus relief, "often confusing and self-contradictory provisions," with little guidance.[5] Legal scholars have argued that the federal habeas system has been catapulted "into a state of chaos."[6]

Petitioner's case presents a prime example of this phenomenon. When unclear guidelines and muddied case law lead a district court to conclude that an evidentiary hearing need not be granted, despite detailed factual allegations that plainly entitle a petitioner to relief, it is no wonder that success rates for habeas relief have plummeted.

By granting Petitioner's request for a writ of certiorari, this Court can assist lower courts by providing clear guidance regarding the necessity for evidentiary hearings and clarifying the standards governing the adjudication of applications for certificates of appealability. Alternatively, by granting Petitioner's secondary request for a summary decision reversing the Eighth Circuit's denial of Petitioner's application for a certificate of appealability, this Court can quickly and easily

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[3] Justin Marceau, *Challenging the Habeas Process Rather than the Result*, 69 WASH. & LEE L. REV. 85, 103 (2012).
[4] *Id.*
[5] Stephanie Roberts Hartung, *Habeas Corpus for the Innocent*, 19 U. PA. J. L. & SOC. CHANGE 1, 6 (2016).
[6] *Id.*

convey to the Eighth Circuit that this Court's prior case law governing certificates of appealability still binds the circuit courts of appeals.

By granting Petitioner's request for relief, this Court will ensure that postconviction habeas corpus review remains a viable protection against unlawful imprisonment; by denying Petitioner's request for relief, this Court will emphatically signal that the writ of habeas corpus is a dead letter.

2. The Decisions of the Lower Courts Conflict with the Precedents of the Supreme Court and Other Circuit Courts of Appeals

The district court's decision conflicts with precedent set forth by several other circuit courts of appeals involving the application of habeas corpus to guilty pleas. *See Paredes v. Atherton*, 224 F.3d 1160, 1161 (10th Cir. 2000) ("[The] petition alleges ineffective assistance of counsel in connection with entry of a guilty plea. On its face, the petition alleges the denial of a constitutional right."); *Berry v. Beto*, 410 F.2d 503, 504 (5th Cir. 1969) (holding that petitioner, who alleged denial of effective assistance of counsel and invalidity of his guilty plea, was entitled to an evidentiary hearing); *Johnson v. Wilson*, 371 F.2d 911, 912 (9th Cir. 1967) (holding that whether the guilty plea was a voluntary choice involved questions of fact "which could only be determined after an evidentiary hearing").

The Eighth Circuit's refusal to issue a COA also directly conflicts with this Court's precedents and other binding precedents in the Eighth Circuit holding that a Petitioner is entitled to a COA so long as jurists

of reason could disagree with the outcome of the petition. *See Buck v. Davis*, 137 S. Ct. at 773; *Thomas v. United States*, 737 F.3d 1202 (8th Cir. 2013); *Garrett v. United States*, 211 F.3d 1075 (8th Cir. 2005).

In the present case, Petitioner believes that it is indubitably true that jurists of reason could: (1) disagree with the district court's decision to deny Petitioner's application for a writ of habeas corpus without first holding an evidentiary hearing and (2) disagree with the Eighth Circuit's apparent conclusion that Petitioner failed to make a substantial showing that he was denied a constitutional right. *See, e.g.*, *Buck*, 137 S. Ct. at 773; *Thomas*, 737 F.3d at 1202; *Garrett*, 211 F.3d at 1075; *Paredes*, 224 F.3d at 1161; *Berry*, 410 F.2d at 503; *Johnson v. Wilson*, 371 F.2d at 911. The fact that reasonable jurists could disagree with the district court's decision appears inescapable in light of the cases cited by Petitioner which show that other courts, including this Court, typically require district courts to hold evidentiary hearings to address material factual allegations contained in a petition for a writ of habeas corpus before dismissing those petitions. *E.g.*, *Schriro*, 550 U.S. at 474 (2007); *Machibroda*, 368 U.S. at 496 (1962); *Smith v. Albaugh*, 921 F.3d at 1273 (10th Cir. 2019).

3. This Is an Optimal Vehicle for Review

This case presents a uniquely suitable vehicle for resolving the questions presented. The outcome of this appeal and Petitioner's access to constitutional

protections and the writ of habeas corpus turn on the questions presented.

The trial court already determined that the facts alleged in Petitioner's affidavit cast serious doubt as to his guilt and would entitle him to relief. App. 8. As such, no in-depth analysis of the factual record is necessary; the Court need only determine whether: (1) Petitioner's change of plea testimony, by itself, allowed the district court to deny Petitioner the benefit of an evidentiary hearing normally afforded to habeas corpus applicants alleging constitutional violations and actual innocence in postconviction proceedings before denying Petitioner's application for a writ of habeas corpus, and (2) the Eighth Circuit abused its discretion by denying Petitioner's application for a COA.

The issues presented will not become moot, and Petitioner has exhausted all remedies. There are no impediments to this Court's review of this case.

4. The Eighth Circuit's Ruling is Wrong

The district court was wrong to deny Petitioner's application for relief under 28 U.S.C. § 2255 without first holding an evidentiary hearing. Notwithstanding the ineffective assistance claims, Petitioner is permitted to argue that he is actually innocent. *Bousley v. United States*, 523 U.S. 614, 622 (1998). The district court noted in its decision that "dispositions by guilty plea are accorded a great measure of finality." App. 8 (quoting *Blackledge*, 431 U.S. at 71). Under this authority, the district court

concluded that the allegations in Petitioner's motion could not overcome the factual basis of his plea. However, a guilty plea is not "treated with *greater* finality." *Benboe*, 157 F.3d at 1183.

The facts pulled out of Petitioner during his change of plea must not be given enough weight to render those alleged but disputed facts immutable when other credible and persuasive factual evidence casts serious doubt on the factual basis underlying Petitioner's guilty plea. A guilty plea has no more finality than a judgment reached by judge or jury. A plea's factual basis must be assessed similarly to factual findings in any other proceeding. It would be absurd to suggest that no factual basis may be challenged by new allegations in a habeas petition—habeas relief would all but nullified by such an extreme position. Instead, the factual basis underlying guilty pleas must be examined in light of other evidence, as is true with every other motion to vacate that does not involve a guilty plea.

The district court should have, at minimum, granted an evidentiary hearing to evaluate Petitioner's claims of ineffective assistance of counsel, involuntary plea, and actual innocence. After it failed to do so, in direct conflict with *Schriro* and *Machibroda*, both the district court and the Eighth Circuit were required by *Buck*, *Simmons*, and *Thomas* to grant Petitioner a COA. The lower courts failures to grant a COA demand reversal.

CONCLUSION

Petitioner respectfully requests the Court grant this petition for writ of certiorari.

Alternatively, Petitioner requests that, pursuant to Supreme Court Rule 16.1, the Court issue a summary disposition on the merits of this petition and remand this case back to the Eighth Circuit with instructions to grant Petitioner's application for a Certificate of Appealability.

Respectfully submitted,

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