

No. 19-\_\_\_\_\_

**IN THE  
SUPREME COURT OF THE UNITED STATES**

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**JAMES L. STYERS,**

**Petitioner**

**v.**

**David Shinn, Warden,**

**Respondent**

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**Petition for Writ of Certiorari**

**To the United States Court of Appeals for the Ninth Circuit**

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## **QUESTIONS PRESENTED**

### **Capital Case**

1. Whether the Arizona Supreme Court, during reweighing on collateral review to correct its error under *Eddings v. Oklahoma*, 455 U.S. 104 (1982), is required to consider all available mitigation evidence, or may its review be limited to only the specific mitigation evidence that caused the initial *Eddings* error?
2. Whether the Ninth Circuit Court of Appeals applied an erroneous, heightened standard for issuance of a Certificate of Appealability when it held that no reasonable jurist could debate whether the question presented above was previously decided, and thus procedurally barred as a second or successive petition for writ of habeas corpus?

PARTIES TO THE PROCEEDING BELOW

Petitioner James Styers, appellant below, is a prisoner incarcerated in the Arizona Department of Corrections, Rehabilitation and Reentry.

Respondent, David Shinn, is the director of the Arizona State Department of Corrections, Rehabilitation and Reentry.

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### OPINIONS BELOW

The order of the Ninth Circuit Court of Appeals denying a certificate of appealability is unreported. *Styers v. Ryan*, No. 17-17356 (9<sup>th</sup> Cir. Nov. 28, 2018). Ex. A. The denial of Petitioner’s request for panel rehearing and rehearing *en banc* is also unreported, as is the accompanying amended order denying a certificate of appealability. Ex. B; C. The order of the United States District Court for the District of Arizona denying a certificate of appealability is attached as Exhibit D.

### JURISDICTION

The order of the Ninth Circuit Court of Appeals denying Mr. Styers’ motion for certificate of appealability was filed on November 28, 2018. Following Mr. Styers’ petition for rehearing and rehearing *en banc*, the panel issued an amended order on March 11, 2020. Rehearing was otherwise denied on that date. This petition is due on August 10, 2020, pursuant to the emergency circumstances identified in this Court’s March 19, 2020, order that “the deadline to file any petition for a writ of certiorari due on or after the date of this order is extended to 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing.” United States Supreme Court, *Order List: 589 U.S.* (visited May 28, 2020.) <[https://www.supremecourt.gov/orders/courtorders/031920zr\\_d1o3.pdf](https://www.supremecourt.gov/orders/courtorders/031920zr_d1o3.pdf)>. This Court’s jurisdiction is invoked under 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. Amend. VIII

U.S. Const. Amend. XIV

28 U.S.C. § 2253(c)(2)

INTRODUCTION

Petitioner James Styers is an Arizona prisoner whose death sentence was affirmed without consideration of compelling mitigation that was in the record at the time the Arizona Supreme Court conducted its independent review to correct an *Eddings* error. This case asks the question left open by the Court’s decision in *McKinney v. Arizona*, 140 S.Ct. 702 (2020), thus its resolution will affect numerous capital cases that are set to be reweighed on collateral-review in Arizona. *McKinney v. Ryan*, 813 F3d 798, 815-16 (9<sup>th</sup> Cir. 2015) (listing cases subject to Arizona Supreme Court’s initial *Eddings* error).

In *McKinney*, this Court resolved a procedural question, holding the Arizona Supreme Court could correct an *Eddings* error on collateral review, consistent with *Clemons v. Mississippi*, 494 U.S. 738 (1990). When the Arizona Supreme Court conducted Mr. Styers’ re-weighing, it expressly refused to consider substantial mitigation evidence that was not presented during its initial collateral review twenty years ago but was before it once Mr. Styers’s death sentence was overturned by the Ninth Circuit Court of Appeals. Instead, the Arizona Supreme Court limited its reweighing only to include evidence of Mr. Styers’ Post-Traumatic Stress Disorder (PTSD), which it had previously excluded in violation of *Eddings*. Thus, in correcting one *Eddings* error, the Arizona Supreme Court committed another. As this Court stated in *McKinney*, “[i]n *Eddings*, this Court held that a capital sentencer may not refuse as a matter of law to consider



relevant mitigating evidence. *McKinney*, 140 S.Ct. at 706 (citing *Eddings v. Oklahoma*, 455 U.S. 104, 113–114, 102 S.Ct. 869 (1982)).

The Ninth Circuit refused to grant a certificate of appealability on this question, first by wrongly agreeing with the district court that the matter was previously decided, and then by applying a heightened standard for granting the certificate of appealability. Mr. Styers and other capital Arizona inmates will remain under an unconstitutional sentence of death if these decisions are left uncorrected by this Court.

### STATEMENT OF THE CASE

#### *A. Procedural History*

In Mr. Styers' first appeal to the Ninth Circuit, that court determined that the Arizona Supreme Court had failed to properly reweigh the aggravating and mitigating circumstances after striking the pecuniary gain aggravating factor, as required by *Clemons v. Mississippi*, 494 U.S. at 748-49, and *Eddings v. Oklahoma*, 455 U.S. at 115. *Styers v. Schriro*, 547 F.3d 1026, 1034-35 (9th Cir. 2008) ("*Styers I*"). As it had when it reviewed McKinney's death sentence, the Arizona Supreme Court refused to consider Styers's PTSD evidence after finding that condition bore no causal nexus to the crime. *Styers II*, 547 F.3d at 1035-36; *McKinney*, 140 S.Ct. at 706. Pursuant to the Ninth Circuit's mandate, the district court entered judgment granting the writ of habeas corpus unless the State of Arizona, within 120 days of the judgment, "initiates proceedings either to correct the constitutional error in Petitioner's death sentence or to vacate the sentence and impose a lesser sentence consistent with the law."

At the request of the State and over Mr. Styers' objection, the Arizona Supreme Court ordered briefing and argument and then conducted a new independent review of Mr. Styers'

capital sentence. Although additional mitigation was before the court, it refused to consider any evidence other than PTSD, and again found that the additional evidence of PTSD was not sufficient to warrant leniency. *See State v. Styers*, 227 Ariz. 186, 254 P.3d 1132 (2011) (en banc) (“*Styers III*”). This Court denied a petition for certiorari. *Styers v. Arizona*, 132 S. Ct. 540 (2011).

Mr. Styers then moved the district court to grant an unconditional writ releasing him from his capital sentence, arguing *inter alia* that the Arizona Supreme Court erred by conducting a new independent review and not remanding for a new sentencing hearing before a jury. The court denied the motion but granted a COA on the question of whether Mr. Styers was entitled to a new sentencing hearing to correct the *Clemons/Eddings* error. The Ninth Circuit affirmed. *See Styers v. Ryan*, 811 F.3d 292 (9<sup>th</sup> Cir. 2015) (*Styers IV*).

Mr. Styers filed a second-in-time habeas petition in the district court on October 30, 2012, alleging facts and claims which could not have been raised in the first-in-time habeas petition because they did not arise until the Arizona Supreme Court’s new independent review occurred in 2011. On April 25, 2013, and August 24, 2017, the district court denied Petitioner’s second-in-time petition, entering final judgment against him. On October 24, 2017, that court denied Petitioner’s motion to alter or amend the judgment and declined to issue a certificate of appealability (“COA”) as to any claims. Petitioner filed a timely Notice of Appeal in the Ninth Circuit and applied to a panel of that court for a COA. The circuit court denied the application on November 28, 2018 and denied rehearing and rehearing *en banc* on March 11, 2020 with the issuance of an amended order denying the COA.

*B. Statement of Facts*

James Styers' life is replete with extremely powerful mitigating factors weighing heavily on the side of life. The Arizona Supreme Court precluded, either directly or indirectly, most of that evidence from consideration when it imposed his current death sentence. The precluded evidence included Mr. Styers's indisputable history of severe, chronic mental illness, for which he sought treatment repeatedly; that his mental illness resulted from his honorable and courageous service to his country in time of war; that he suffered a major head injury during his service to our country, which rendered him first comatose and then severely disabled; that he has been incarcerated almost thirty years for this crime, most of it on death row and in solitary confinement; that he has been a model prisoner, with no disciplinary infractions in twenty years; and that he is seventy-one years old and will serve the rest of his life in prison while posing no threat of harm to officers, other prisoners, or the public.

James Styers was convicted and sentenced to death for his role in the murder of four-year-old Christopher Milke on December 3, 1989. His appointed defense lawyer (distracted by bar disciplinary proceedings at the time) filed only one pretrial motion, an *uncontested* motion to sever the co-defendants' trials. He failed to propose any voir dire or jury instructions; failed to respond to a pretrial memorandum filed by the state on the evidentiary ramifications of the conspiracy charge; failed to respond to the state's legal memorandum in support of the death penalty; and failed to file a defense death penalty memorandum setting forth any factual or legal grounds why the death penalty should not be imposed. Chief among these grounds was Mr. Styers' well documented, extensive record of mental illness and neurological disabilities. In 1967 at age 19, Jim Styers volunteered for service in the United States Marine Corps, where he served honorably in the Vietnam theater of combat operations during 1968-1969. At this

young age, during the height of the conflict, Mr. Styers participated in at least twelve different combat operations, including those in the northern-most portion of the former South Vietnam, in Quang Tri Province. Mr. Styers suffered multiple severe traumas during his war service. He shot and killed a young Vietnamese boy when the boy jumped onto a truck carrying marines. It was common for children to be wired with explosives and Mr. Styers could not risk the lives of his fellow soldiers. He is also tormented by the belief that he neglected to protect his friend from being shot and killed by the enemy during combat, because Mr. Styers had the enemy shooter in his sights, but failed to fire his weapon in time to save his friend. He witnessed the killing of another friend near the DMZ in northern South Vietnam in 1969. Mr. Styers left Vietnam a broken man, plagued by mental illness forever thereafter.

Shortly after leaving the field of combat, Mr. Styers began having symptoms of Post-Traumatic Stress Disorder (“PTSD”). He slept poorly, he began experiencing auditory, visual and tactile hallucinations, and he dreamed of combat operations nightly. These symptoms never abated during the decades-long interval between leaving Vietnam and his arrest for the subject offense.

Not long after his military discharge, Mr. Styers attempted suicide. What is more, despite his decades long effort to obtain help from the Veterans Administration (“VA”), and the VA’s apparent effort to help, the record shows that the offered treatment was not successful; Mr. Styers continually suffered from symptoms of PTSD, depression, survivor guilt, anxiety, as well as ongoing auditory, visual and tactile hallucinations. During the 18 years after his military discharge, Mr. Styers’ records are replete with evidence of these frequent hallucinatory symptoms, which are well recognized indicia of an ongoing active psychosis. Everywhere he went, the voices and ghostly images that only he could hear, see and feel followed him

throughout his nights and days. That his problems had reached psychotic proportions is indisputable; for during the two years preceding and through the time of his arrest for the subject offense, Mr. Styers was treated with a combination of drugs, including the strong anti-psychotic drug Navane, as well as Lithium.

Mr. Styers continued to be depressed in 1977, when his wife left him and took his children away. Shortly after, he reported “episodes of loss of contact with the environment.” By 1983, he reported more seizure activity. The next year, Mr. Styers was hospitalized by the Veterans’ Administration for four months for treatment of his post-traumatic stress disorder. Six months later, he returned to the VA because he wanted to “learn to control his temper so not to hurt his three kids[.]” Thus, even before Christopher Milke was born, James Styers was afraid of what he might do, and searching for help that he never received.

Over the next two or three years, Mr. Styers told mental health professionals that he did not like to be around people and that he was having auditory and tactile hallucinations. In May of 1988, he told doctors that he was “concerned about being upset by daughters [sic] crying. It brings back crying of kids from Nam.” He also reported having blackouts. By July of 1988, Mr. Styers was “tired of hearing the voices.” By January, 1989, James Styers felt like he was “battling the world.” He was depressed about his isolation and lack of work, and his depression had become more severe since the deaths of his mother and brother. A month later, he shared with his therapy group that he feared “losing control.” He told mental health professionals he was “tired of feeling tired.” A progress note made just a few weeks before Christopher Milke’s death relates: “Has been irritable & short tempered. These things are getting worse. Sleeps 3-4 hrs/nite. Hears voices regularly. Doesn’t pay attention to it. Feels like quitting trying anymore.”

The record shows that Mr. Styers’ psychiatric difficulties were compounded by a

disabling head injury, another trauma he suffered during his military service, after leaving Vietnam, when he fell from a moving vehicle and suffered a right occipital skull fracture and a cerebral contusion. As a result of these injuries, Mr. Styers was declared disabled and discharged from the military. Following the accident, he “continued to be slow and had a flat affect and would repeat questions which had been answered adequately previously.”

Thus, overlaying a severe psychiatric condition, which was being actively treated with antipsychotic medication, the record also reflects that his head injuries left him with serious, chronic neurological problems, including seizure activity, memory problems, “residual deficits compatible with old head injury; e.g., losses in immediate attention span, sustained concentration, incidental and systematic new learning” and “organic brain syndrome with mixed features.”

All of this impactful mitigation evidence was at the ready for any lawyer who wished to present it during the state court proceedings. None did. The only information presented to the state court was contained in two competency evaluations by court-appointed (i.e. neutral) doctors, not defense experts, who were directed to opine only on mental state at the time of the crime and not asked to address mitigation at all. There is no evidence that trial counsel acted on this information, by investigating further or even consulting with the doctors who prepared the reports. Mr. Styers testified about his mental condition at his trial, but without credible expert medical testimony to explain the nature of Mr. Styers’ impairments, trial counsel left the jury to infer that Mr. Styers was a deranged man. The entire mitigation presentation during the penalty phase consisted of 1) approximately thirteen transcript pages of witness testimony; 2) four pages of argument; and 3) an eleven-page psychologist’s report addressing whether Mr. Styers was competent to stand trial. There was not, and never has been, a mitigation investigation in this

case. There has been no attempt by any counsel to paint a complete picture and tell the full story of James Styers.

Nevertheless, by the time of its review in 2010-2011, the Arizona Supreme Court had all of this information before it. Additionally, the undisputed facts before the Court showed that Mr. Styers had already served two decades in prison for his crime and would never be released, was seventy years old, had been a model prisoner for twenty years and posed no threat to anyone inside or outside of the prison system. The State Court refused to consider this evidence, instead only weighing the scant evidence presented at the original trial and the PTSD diagnosis it was required to add to the analysis. Even as to the PTSD evidence, however, the State Court adhered to its post-*Tennard* Eighth and Fourteenth Amendment barrier, under which it treats any evidence that is not causally connected to the crime as *de minimus*. Without consideration of the additional, compelling evidence, the Arizona Supreme Court again sentenced Mr. Styers to death.

#### REASONS FOR GRANTING THE WRIT

I. The Ninth Circuit Panel Held Styers to an Erroneous, Heightened Standard for Granting a COA.

Mr. Styers requested a COA as to eight constitutional claims that were dismissed by the District Court on procedural grounds or, in some cases, alternatively as meritless. The panel's first order was supported by only a single citation, to 28 U.S.C. § 2253(c)(2). That statute merely sets forth the standard for issuing a COA; that is, where "the applicant has made a substantial showing of the denial of a constitutional right." The panel's decision failed to set forth any reasoning or analysis or even mention the extensive briefing or record before it or the district court.

In its March 11, 2020, amended order, the panel agreed with the district court's ruling

that Mr. Styers' habeas petition contained "improper second or successive claims. . .or were meritless." Ex. C, p. 2. The panel's reliance on its belief that the claims were meritless to deny a COA conflicts with this Court's holdings in *Buck v. Davis*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 759 (2017) and *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). In *Buck*, the Court emphasized the limited nature of the COA inquiry, while underscoring its deliberative nature:

The COA inquiry ... is not coextensive with a merits analysis. 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. This threshold question should be decided without full consideration of the factual or legal bases adduced in support of the claims. When a court of appeals sidesteps the COA process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits, it is in essence deciding an appeal without jurisdiction.

*Buck*, 137 S.Ct. at 773 (citations and internal quotations omitted).

Further, by agreeing with the district court's reasoning, the panel repeated the lower court's error. The district court's analysis was that it had "already discussed" and "previously found" against or "previously rejected" Petitioner's arguments and, therefore, no reasonable jurist could find otherwise. Ex. D, p. 3. The *Buck* majority rejected this approach, explaining:

Of course when a court of appeals properly applies the COA standard and determines that a prisoner's claim is not even debatable, that necessarily means the prisoner has failed to show that his claim is meritorious. But the converse is not true. That a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable. Thus, when a reviewing court (like the Fifth Circuit here) 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. *Miller-El*, 537 U.S., at 336-337, 123 S.Ct. 1029. *Miller-El* flatly prohibits such a departure from the procedure prescribed by § 2253. *Ibid*.

*Buck*, 137 S.Ct. at 774.

The panel's failure to apply the proper COA standard was particularly harmful as to Mr.



Styers' Claim 3. There, he alleged "that the Arizona Supreme Court conducted a constitutionally insufficient review of his sentence in *State v. Styers*, 227 Ariz. 186, 254 P.3d 1132 , and by failing to consider additional mitigating information beyond the evidence of Styers's Post-Traumatic Stress disorder." Ex. C, p. 3-4. The panel found it had "rejected these same arguments with respect to the constitutional sufficiency of the Arizona Supreme Court's review of his sentence in *Styers III*." *Id.*, p. 4. The panel thus determined "no reasonable jurist could debate whether claim 3 was properly dismissed. . . ." *Id.*

First, that determination is contrary to the record. Despite the lengthy procedural history of this case, the questions raised before the panel were not addressed in its previous decision, *Styers IV*. There, the panel decided only "whether a state court's constitutional error in failing to consider certain evidence offered in mitigation of a death sentence can be corrected by the court that committed the error, rather than require the convicted murderer to be sentenced anew, but before a jury[,]" *id.* 811 F.3d at 293-94, and whether the Arizona Supreme Court's treatment of the mitigation evidence as *de minimis* in its second independent review necessarily violated *Eddings*. *Id.* at 298. Thus, like the district court before it, the panel considered only the narrow question of whether the state court complied with the mandate of the conditional writ pursuant to the specific error the panel had earlier identified. The panel did not decide in *Styers IV* any claim relating to the Arizona Supreme Court's failure to consider other mitigating evidence apart from the PTSD. Instead, it considered only whether the Arizona Supreme Court could correct, and had corrected, the *Eddings* error related to the PTSD mitigation. Nothing beyond that is contained in *Styers IV*. In fact, the issue was raised in the 2012 habeas petition because the facts supporting it did not exist at the time of the filing of the first-in-time habeas petition which was the subject of *Styers IV*. Because the Ninth Circuit panel's finding that this claim was decided in

*Styers IV* is contradicted by the opinion itself, it is at least debatable among jurists of reason.

Second, the panel's view of what the outcome would be after full briefing was not a proper consideration at the COA stage. Instead, as instructed by *Buck* and *Miller-El*, Mr. Styers was entitled to proceed on his claim. The district court found that Claim 3 was not second or successive<sup>1</sup> and the claim presents a question the merits of which are debatable among jurists of reason, as further described below.

II. The Panel Failed to Consider that the Arizona Supreme Court's Procedure Prevents the Consideration of Mitigation from Half of Styers' Life, Resulting in a Distinct *Eddings* Error That Must Be Corrected.

The Arizona Supreme Court purported to conduct an independent review of Mr. Styers' sentence, after which it alone determined that he would be put to death. Nevertheless, that Court refused to consider much of the powerful evidence weighing on the side of life, instead considering only the minimal evidence presented at Mr. Styers' original trial and sentencing twenty years before. The State Court's failure to consider over twenty years of additional mitigating evidence is offensive to the Eighth and Fourteenth Amendments. This Court should address that error here because it will affect every *Styers/McKinney* re-review (as it already has in *McKinney* and *Hedlund*'s cases) and continue to plague cases coming before this Court.

The Arizona Supreme Court decided to ignore any mitigation that was not presented in the original sentencing proceeding. In *Styers*' case, this meant the state court refused to consider two categories of extremely weighty evidence: 1) evidence of traumatic brain injury and resulting damage *Styers* suffered during his military service; and 2) any evidence from *Styers*' life after the original sentencing almost 30 years ago which speaks to one of the most important considerations in capital sentencing: future dangerousness (or, as in this case, the complete lack

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<sup>1</sup> See Ex. D, p. 1-3 (district court discussing its merits decision on multiple claims, including

thereof). The state court opinion expressly limited its independent review to “whether the evidence of PTSD alters our earlier determination that the mitigating evidence presented in this case is not sufficient to warrant leniency in light of the aggravating factors.” *State v. Styers*, 227 Ariz. at 188, 254 P.3d at 1134. The State Court therefore did not consider Petitioner’s substantial, current mitigation as part of its independent review, as it is required to do under the Eighth and Fourteenth Amendments. *Eddings v. Oklahoma*, 455 U.S. at 115-16; *Penry v. Johnson (Penry II)*, 532 U.S. 782, 797 (2001) (Eighth Amendment satisfied only if sentencer both considers and gives effect to defendant’s mitigating circumstances).

In determining the presence or absence of mitigating or aggravating circumstances, the Arizona Supreme Court’s independent review requires it to scrutinize the record to determine whether the aggravating factors have been proven beyond a reasonable doubt. *State v. Stokley*, 182 Ariz. 505, 516, 898 P.2d 454, 465 (1995). It determines whether aggravating factors are constitutional and whether the mental state required for them exists. *See State v. Wood*, 180 Ariz. 53, 68-70 (1994). The court also determines whether all of the mitigating circumstances have been properly considered. *State v. Fierro*, 166 Ariz. 539, 551, 804 P.2d 72, 84 (1990). It independently determines the weight to be given to each of the aggravating and mitigating factors and weighs them against each other. *State v. Lavers*, 168 Ariz. 376, 391, 814 P.2d 333, 348 (1991) (citations omitted). “In carrying out this duty, we have stated that the ‘question before us is not whether the trial court properly imposed the death penalty, but whether, based upon the record before us, we believe that the death penalty should be imposed.’” *State v. Carlson*, 202 Ariz. 570, 587, 48 P.3d 1180, 1197 (2002) (citation omitted) (reducing a death

sentence to life on independent review). In the newly-created procedure utilized in the case, none of those critical steps were followed.

Recent decisions from the Arizona Supreme Court clarify its position that, although it claimed to provide James Styers with a new independent review of the aggravating and mitigating evidence in his case, it did not do so. In *State v. Hedlund*, the state court explicitly refused to weigh all of the mitigating evidence presented, stating, “. . .we decline Hedlund’s invitation to include the evidence newly developed in PCR and habeas proceedings as part of our independent review.” 245 Ariz. 467, 470, 431 P.3d 181, 184 (2018). The state court instructed that “Hedlund should seek additional PCR if he believes the evidence he presented in the federal habeas proceedings entitles him to it.” *Id.*, at 185. Styers, however, attempted to do precisely that following his post-remand-independent-review reweighing procedure, and his notice of postconviction relief was summarily dismissed without an opportunity to file a petition.

As discussed above, contrary to the Ninth Circuit’s belief that it had already addressed this issue in its previous *Styers* opinion, this claim (found by the district court to be not second or successive) was not subject there to a COA and is addressed nowhere in the opinion. At minimum, reasonable jurists could disagree that a claim not even mentioned in the opinion had been decided. Further, reasonable jurists could disagree that the Constitution permits a state court to avoid the Eighth Amendment’s operation by simultaneously invoking a procedure established to satisfy the Eighth Amendment and ignoring the fundamental, Eighth Amendment-based components of that procedure.

#### CONCLUSION

The amended order of the circuit panel denied a COA because it found Mr. Styers’ claims were second and successive or meritless. These are ultimate determinations that are not

appropriate to the COA inquiry. Further, these determinations are entirely contrary to the record before the court, which fails to show that claims the panel deemed decided had been previously ruled upon. These errors resulted in the failure to correct the Arizona Supreme Court's refusal to consider substantial mitigating evidence in violation of the Eighth Amendment's mandate that all mitigating evidence be considered in the life and death analysis of a capital case. Because these errors have persisted, and will continue, through reviews of numerous death sentences in Arizona, this Court should grant the petition for writ of certiorari to clarify that, when an appellate court reviews a death sentence, it must consider all mitigation in the record before it, rather than limiting its review only to mitigation that was subject to a previously-identified constitutional error.

Respectfully submitted this 10<sup>th</sup> day of August, 2020.

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CERTIFICATE OF SERVICE

I hereby certify that on this 10<sup>th</sup> day of August, 2020, one copy of the attached document was deposited in the United States mailbox, first-class postage prepaid, and addressed to counsel for the State of Arizona, Ginger Jarvis, Office of the Attorney General, 1275 West Washington, Phoenix, AZ 85007. I further certify that all parties required to be served have been served.

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