No. _____

IN THE

Supreme Court of the United States

DERRICK ARNOLD JOHNSON,

Petitioner,

v.

RAYBON JOHNSON, WARDEN,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

CUAUHTÉMOC ORTEGA
Federal Public Defender
AJAY V. KUSNOOR
ASHLEY S. MAHMOUDIAN*
Deputy Federal Public Defender
321 East 2nd Street
Los Angeles, California 90012
Telephone: (213) 894-2854
Facsimile: (213) 894-0081
Ashley_Mahmoudian@fd.org

Attorneys for Petitioner
DERRICK ARNOLD JOHNSON

**Counsel of Record*

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MISCELLANEOUS

QUESTION PRESENTED

Did the Ninth Circuit misapply the standard for the issuance of a certificate of appealability (COA) articulated by this Court in cases such as *Buck v. Davis*, 137 8. Ct. 759 (2017), *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and *Slack v. McDaniel*, 529 U.S. 473 (2000), in denying Petitioner's request for a COA on the trial court's failure to conduct a competency hearing, and Petitioner's incompetence to stand trial, where Petitioner made a substantial showing that he was denied his rights?

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

ORDERS AND OPINIONS BELOW

The Ninth Circuit issued an order on October 2, 2020, denying Petitioner's request for a Certificate of Appealability (COA) on his claims of substantive and procedural incompetence, both of which were denied on the merits in proceedings before the United States District Court for the Central District of California. Pet. App. 1 . The district court adopted the Report and Recommendation of the magistrate judge, dismissed Johnson's habeas corpus petition with prejudice, and entered judgment against him. Pet. App. 3.

JURISDICTION

The district court had jurisdiction under 28 U.S.C. §§ 2241 and 2254. The Ninth Circuit had jurisdiction under 28 U.S.C. §§ 1291 and 2253. This Court has jurisdiction under 28 U.S.C. § 1254(1). This petition is timely under Supreme Court Rule 13 and this Court's Order on March 19, 2020 because Johnson is filing his petition within 150 days of the Ninth Circuit's October 2, 2020 final order.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Fourteenth Amendment of the U.S. Constitution

The Fourteenth Amendment to the United States Constitution provides, in pertinent part: "No State shall ... abridge the privileges ... of citizens of the United

States ... nor shall any State deprive any person of life, liberty, or property, without due process of law."

28 U.S.C. § 2253(c)

(1) Unless a circuit judge issues a certificate of appealability, an appeal may not be taken to the courts of appeal 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 substantial showing of the denial of a constitutional right.

STATEMENT OF THE CASE

A. Trial

On the night of November 17, 1992, Pasadena police officers responded to gunfire in a restaurant parking lot. (I RT 127-29; II RT 276, 341; III RT 436-37.) Upon arrival, they saw a Cadillac driving erratically. (I RT 129, 134; II RT 277, 281-82, 341; III RT 437.) Two police cars pursued the Cadillac through a residential neighborhood, then on and off a freeway. (I RT 138-62; II RT 284-98, 346-55.) The four officers who pursued the Cadillac claimed to have identified Johnson as its driver. (I RT 130-31; II RT 277-78; II RT 341-42; III RT 437-38.) The chase concluded when the Cadillac exited the freeway in the city of Monrovia. (I RT 160-61.) There, the Cadillac collided with a compact Toyota. (I RT 167, II RT 307.) German Basulto, Jr., the driver of the Toyota, was ejected from his car. (II RT 311;

III RT 373.) He sustained fatal injuries and expired en route to a local hospital. (III RT 419-22, 425-28, 432-34.)

The Cadillac landed on a retaining wall. (II RT 310.) One of its occupants fled and was never captured. (II RT 312.) The car caught on fire. (II RT 315.) The police arrested Johnson and two other men in the car. (II RT 315-16.)

On February 17, 1993, the Los Angeles County District Attorney filed an information charging Johnson with one count of murder under California Penal Code section 187(a) and one count of causing death while evading a police officer under California Vehicle Code section 2800.3. The prosecution further alleged sentence enhancements based on Johnson's prior criminal convictions under Penal Code sections 667(a) and 667.5(b). (CT 86-89.)

The jury found Johnson guilty of second-degree murder (Penal Code section 187(a)) and causing a death while evading a police officer (California Vehicle Code section 2800.3). (CT 127, 194; V RT 725.) The trial court imposed three sentence enhancements for prior convictions (Penal Code section 667(a) and 667.5(b)) and sentenced Johnson to twenty-two years to life in state prison. (V RT 766-69, 788-91.)

After Johnson was convicted and sentenced, he was sent to state prison, where medical staff diagnosed him as psychotic. (Dkt. 49, Petition Exhibit ("Pet. Ex.") 5, 1993-07-28 Psychiatric Evaluation.) Johnson suffers from chronic schizophrenia, and he has had at least 11 inpatient admissions to California Department of Mental Health facilities since 1985. (Dkt. 49, Pet. Ex. 6, 2015 Verified Petition for Involuntary Medication Order, at 47.) Johnson has been subject

to involuntary medication orders in prison since December 2001. (Dkt. 49, Pet. Ex. 6, at 47.)

B. Direct Appeal

Johnson was appointed counsel to represent him on direct appeal to the California Court of Appeal. In an unpublished opinion, the Court of Appeal affirmed Johnson's convictions in full, but reduced his sentence to twenty-one years-to-life. Pet. App. 106-118. Johnson's appellate counsel did not file a petition for review in the California Supreme Court.

C. State Habeas

Acting pro se, and with the assistance of another inmate, Johnson filed a series of habeas petitions at each level of the California court system. The Superior Court, Court of Appeal, and California Supreme Court denied relief. Pet. App. 99-105.

D. Federal Habeas

1. The District Court

On December 9, 2014, Johnson, acting pro se, submitted a habeas petition to the District Court for the Central District of California. (Dkt. 1- 1, at 20.) The court appointed the Federal Public Defender to represent Johnson on February 13, 2015. (Dkt. 11.) With the assistance of counsel, Johnson filed an amended petition, the operative pleading here. (Dkt. 47.) The magistrate judge granted Johnson's request to amend the petition and granted him a stay under *Rhines v. Weber*, 544 U.S. 269 (2005), to exhaust claims in state court. (Dkt. 59.) In state court, Johnson was again

denied relief in the Superior Court, Court of Appeal, and California Supreme Court. Pet. App. 94-98.

After he returned to federal court, the magistrate judge recommended that the district court deny relief on each of his claims. Pet. App. 49-93. Johnson objected and requested a certificate of appealability. (Dkt. 85, 88.) The district court adopted the magistrate judge's amended report and recommendation and denied a certificate of appealability. Pet. App. 2-48. The judgment was entered on June 28, 2019.

2. The Ninth Circuit Court of Appeals

Johnson moved in the Ninth Circuit Court of Appeals for a COA on two of the claims he raised in his federal habeas petition: his claims of procedural and substantive incompetency. The Ninth Circuit denied Johnson's request for a COA on October 2, 2020. Pet. App. 1.

REASONS FOR GRANTING THE WRIT

In *Slack v. McDaniel*, 529 U.S. 473 (2000), this Court explained that: "a COA may not issue unless the applicant has made a substantial showing of the denial of constitutional right." *Id*. at 483-84 (internal quotation marks omitted). The "substantial showing" standard is "relatively low." *Id*. at 483. A petitioner can make "a substantial showing" when "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner." *Slack*, 529 U.S. at 484 (citing *Barefoot v. Estelle*, 463 U.S. 880, 893, n.4 (1983)). A "substantial showing" is also made when "jurist could conclude that the issue presented [is] adequate to deserve encouragement to proceed further." *Miller-El v.*

Cockrell, 537 U.S. 322, 327 (2003). Following *Miller-El*, this Court reversed the Fifth Circuit's denial of a petitioner's request for a certificate of appealability because the court only "pa[id] lip service to the principles guiding the issuance of a COA[.]" *Tennard v. Dretke*, 542 U.S. 274, 282 (2004). Most recently the Court reiterated in *Buck v. Davis*, 137 S. Ct 759 (2017), that the "COA inquiry is not coextensive with a merits analysis." *Id*. at 773-74. The Court emphasized that a circuit court of appeals cannot "invert[] the statutory order of operations and first [decide] the merits of an appeal, ... then [justify] the denial of a COA"' because that would amount to the court "deciding an appeal without jurisdiction." *Id*.

This Court may grant certiorari when "a United States court of appeal has decided an important federal question in a way that conflicts with relevant decisions of this Court." Supreme Court Rule l0(c). Here, the Ninth Circuit only paid lip service to this Court's COA principles when it denied Johnson a COA on his procedural and substantive incompetence claims. *See Tennard*, 542 U.S. at 282. At the very least, Johnson has met the relative low substantial showing standard with regard to his claim that he was denied his rights. Reasonable jurists could debate whether the court should have intervened and determined Johnson was incompetent to stand trial. Put another way, reasonable jurists could conclude that Petitioner's claims of substantive and procedural incompetence deserve encouragement to proceed further.

At Johnson's arraignment on March 2, 1993, he informed the court that he wished to proceed in pro per. Pet. App. 144. The court reviewed the charges against

him and advised Johnson of his potential sentence, if he was convicted. Pet. App. 144-149. Johnson told the court he had represented himself in two previous cases in which he pleaded guilty. Pet. App. 149. Johnson then waived his right to counsel. Pet. App. 150-153.

During the waiver colloquy, the court inquired about Johnson's education. Johnson stated that he had only reached the 10th grade in high school. Pet. App. 152. The prosecutor requested that Johnson read the information aloud. Pet. App. 153. Johnson objected, and the court did not require him to do so. *Id*. Johnson informed the court that another inmate had written the motion he just filed, but he represented that he was able to read and write. Pet. App. 153-154. Johnson also told the court he had still not seen a doctor, even though he had previously been granted an order for a medical evaluation. Pet. App. 154. The court stated it would fax an order for a medical evaluation to the jail. *Id*. The court also ordered a pre-plea probation report. Pet. App. 156. Johnson expressed confusion about the purpose of an arraignment and the difference between an arraignment and a preliminary hearing. Pet. App. 155, 157. The trial court attempted to explain the function of these two proceedings and urged Johnson not to represent himself. *Id*.

Probation officers prepared a pre-plea probation report and submitted it to the court. (Dkt. 49, Ex. 10, Probation Report.) Probation did not interview Johnson in preparing the report. (*Id*. at 80.) The report summarizes Johnson's prior criminal record. (*Id*. at 78-79.) This includes Johnson's 1984 arrest and prosecution for robbery. (*Id*. at 78.) In that case, the Torrance Superior Court suspended the

proceedings against Johnson on December 3, 1984, at which point Johnson was "committed" as "mentally incompetent per 1370 PC." (California Penal Code section 1370(a)(1)(B) states that "[i]f the defendant is found mentally incompetent, the trial . . . shall be suspended until the person becomes mentally competent.")

The report stated that Johnson had suffered from epilepsy since birth and had grand mal seizures, and that previous probation records stated he was on medication for seizures. The report did not specify which medication Johnson had been prescribed. (*Id*. at 80.)

After the evidence phase of Johnson's trial began, he informed the court that the proceedings were moving too quickly for him. This was because he was under the influence of a medication called Thorazine. Johnson claimed this medicine was used to treat his seizures. Pet. App. 159. Advisory counsel also told the court that Johnson was experiencing confusion and that he was having trouble keeping up with the proceedings. Pet. App. 160.

Without consulting a physician or any other medical authority, the court concluded that Johnson's claim was just a ruse and that the Thorazine was not affecting his ability to participate in the proceedings. Pet. App. 161-162. The court insisted that Johnson "was always oriented to time, place and person. He knew what the time was. He knew where he was, and he knew who the parties were. This has always been the case including this morning." (II RT 257.) Johnson informed the court that Thorazine was new to his medication regimen. Although he had

represented himself previously, he was not on Thorazine at that time. Pet. App. 163.

The court then claimed that the pre-plea report mentioned he had previously been prescribed Thorazine for his seizures. *Id*. It is well-established that Thorazine is a drug used to treat psychotic disorders. As noted above, the probation report only indicated that Johnson had taken seizure medication and did not specify whether he had taken Thorazine. (Dkt. 49, Ex. 10, Probation Report, at 80.)

The court said it would permit Johnson to talk to a doctor regarding his Thorazine dosage. On May 13, 1993, the court apparently faxed an order to the county jail "for [an] examination re dosage of thorazine . . . ." (CT 123; see also II RT 247, 249.) The court stated that it expected to hear results on or about May 20. (II RT 254.) However, five days later, Johnson still had not seen a doctor. (III RT 393.) Johnson asked for a continuance so that he could be evaluated. The court denied it, indicating that Johnson did not need to be evaluated because he was "responsive" to what was happening in court. (III RT 394.) There is no indication in the record that Johnson ever received a medical evaluation following this appearance. Johnson took the stand in his own defense. On cross-examination, the prosecutor elicited testimony about Johnson's prior convictions. Johnson testified that he was prosecuted for robbery in 1985 and sent to Patton State Hospital. Pet. App. 165.

A criminal defendant is competent to stand trial if he has "sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding" and has "a rational as well as factual understanding of the

proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960). "A person whose mental condition is such that he lacks the capacity to understand the nature and object of the proceedings against him, to consult with counsel, and to assist in preparing his defense may not be subjected to a trial." *Drope v. Missouri*, 420 U.S. 162, 171 (1975).

"[A] state court must follow adequate procedures to protect against the conviction of a criminal defendant who is incompetent to stand trial." *McMurtrey v. Ryan*, 539 F.3d 1112, 1118 (9th Cir. 2008) (citing *Pate v. Robinson*, 383 U.S. 375, 386 (1966)). The trial court must hold a competency hearing sua sponte where "the evidence raises a 'bona fide doubt' as to a defendant's competence to stand trial . . . ." *McMurtrey*, 539 F.3d at 1118 (quoting *Pate*, 383 U.S. at 385). Factors to consider in the competence assessment include "a defendant's irrational behavior, his demeanor at trial, and any prior medical opinion on competence to stand trial . . . ." *Drope*, 420 U.S. at 180. "Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial." *Id*. at 181. Johnson need not show prejudice in order to prevail on this claim, as it amounts to structural error. *See Pate*, 383 U.S. at 386-87 (no inquiry into prejudice once Court concludes trial court erred in failing to conduct a competence hearing); *Maxwell v. Roe*, 606 F.3d 561, 576-77 (9th Cir. 2010) (same).

There was ample evidence before the trial court that should have raised a bona fide doubt about Johnson's competence to stand trial. During trial, Johnson

revealed that he dropped out of high school. Johnson also had difficulty grasping simple legal concepts, such as the difference between an arraignment and a preliminary hearing. Pet. App. 152; *Id*.155, 157. The trial court ordered a pre-plea probation report which revealed Johnson was previously found to be incompetent to stand trial and was actually committed to a mental hospital in a separate criminal case. This alone should have raised doubts about Johnson's competence. *See Drope*, 420 U.S. at 180 (evidence of prior psychiatric hospitalization indicative of incompetence).

Moreover, the trial court was aware that Johnson suffered from seizures and took medication. Johnson informed the court that he had been recently put on new medication, Thorazine and that this medication greatly affected his ability to focus on the court proceedings. Again, the fact that Johnson's medication recently changed should have prompted the court to act and order a competency hearing. *Id*. at 181 ("Even when a defendant is competent at the commencement of his trial, a trial court must always be alert to circumstances suggesting a change that would render the accused unable to meet the standards of competence to stand trial."). The Ninth Circuit previously remanded a similar case where trial counsel allowed a client to plead while under the influence of drugs that dulled his mental faculties. *See United States v. Howard*, 381 F.3d 873 (9th Cir. 2004); *see also People v. Kaplan*, 149 Cal. App. 4th 372, 386-89 (2007) (evidence of recent change in defendant's psychotropic medication required a renewed competency hearing).

The trial court stated that because Johnson was always "oriented to time, place and person" a competency hearing was unnecessary. (II RT 257.) Here, the trial court applied the wrong legal standard. The test for the trial court was not whether Johnson was oriented to time and place and had recollection of events, but rather "whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. at 402 (internal quotation marks omitted). To be competent under *Dusky* and its progeny, a defendant must have the "mental acuity to see, hear and digest the evidence." *Odle v. Woodford*, 238 F.3d 1084, 1089 (9th Cir. 2001). This entails a more rigorous inquiry than the mere assessment of a defendant's orientation to time, place, and person.

In denying Johnson's procedural incompetence claim, the district court ruled that "evidence of mental illness does not, by itself, raise" a bona fide doubt about a defendant's competency to stand trial. (Dkt. 77 at 15 (*citing Triggs v. Chrones*, 346 F.App'x 173, 175 (9th Cir. 2009)). But Johnson's claim does not rely solely on evidence of his mental illness. Rather, Johnson pointed to evidence of: (1) multiple instances of bizarre behavior, including appearing at his jury trial in jailhouse clothing; (2) psychotropic medication that impacted his ability to focus; (3) Johnson's lack of education, possible illiteracy, and poor grasp of basic legal terms; and (4) a prior incompetency finding and psychiatric hospitalization. Given this record, jurists of reason could debate whether the trial court should have conducted a

competency hearing, and a COA should have issued. *See Payton v. Davis*, 906 F.3d 812, 820 (9th Cir. 2018) (emphasizing "the limited nature of the [COA] inquiry.")

A "substantive" incompetence claim alleges that the defendant was, in fact, incompetent at the time of trial, and therefore his due process rights were violated regardless of whether a competency hearing was held. This claim may be based on new evidence of incompetence outside the trial record. *Drope*, 420 U.S. at 172; *Boyde v. Brown*, 404 F.3d 1159, 1165 & n.6 (9th Cir. 2005). In the district court, Johnson presented significant evidence of his incompetence at the time of trial, which included medical records and a psychiatrist's declaration. In light of this evidence, reasonable jurists could debate whether Johnson was competent at trial.

Johnson had serious mental illness well before his trial in this case. He had previously been found incompetent to stand trial and admitted for in-patient treatment at Patton State Hospital. Pet. App. 165. Johnson had also previously experienced psychotic symptoms, including hallucinations. Pet. App. 140. These conditions persisted at trial, during which Johnson was treated with Thorazine, a medication used to control the symptoms of schizophrenia and other psychotic disorders. Johnson's sister recalls that his mental functioning slowed after the jail started giving him Thorazine: "He became much slower. He had to write notes to himself to remember to tell me things." Pet. App. 141-142. His ability to communicate was also impaired. "He . . . began to talk to me in code, using slang lingo when trying to communicate. Sometimes I could not understand him. It made it increasingly difficult to know what we need[ed] to do for him." (*Id.*)

Immediately after his trial, prison medical records show that Johnson continued to suffer from psychotic symptoms. On July 8, 1993, prison medical staff prescribed Johnson the anti-psychotic drug chlorpromazine (the generic name for Thorazine). (Dkt. 49, Pet. Ex. 2, 1993 Medication Records, at 22; Dkt. 48, Pet. Ex. 11, 1992 Physicians' Desk Reference, at 90.) Johnson's counselor referred him to the prison psychiatrist because he reported auditory hallucinations. (Dkt. 49, Pet. Ex. 4, 1993 Progress Notes, at 39.) Johnson received a psychiatric evaluation on July 28, 1993. A prison psychiatrist diagnosed him as suffering from "Psychosis, NOS with depression, probable schizoaffective disorder." The psychiatrist also noted his history of grand mal seizures. He recommended that Johnson be treated with another anti-psychotic drug Haldol. His previous medication had only resulted in "partial relief of auditory hallucinations" and he had also developed a rash as a result of "an allergic reaction to Thorazine." Johnson was prescribed the anti-psychotic medication Haldol the next day, July 29, 1993. (Dkt. 49, Pet. Ex. 5, 1993 Psychiatric Evaluation, at 41.) Despite this prescription for anti-psychotic medicine, Johnson continued to report psychotic symptoms, including hallucinations, over the following months. (Dkt. 49, Pet. Ex. 1, Psych Orders, at 1-3.)

In a post-conviction declaration, Dr. Nathan Lavid explains that Johnson's condition, schizophrenia, is a severe mental illness that has required extensive medical treatment throughout his incarceration. Pet. App. 120. Johnson had many risk factors for the development of mental illness, given his history of head trauma, his seizure disorder, his traumatic childhood, and his history of drug and alcohol

abuse. *Id*. 120. He was 32 years old at the time of his trial, which is within the age range in which schizophrenia may develop. *Id*. 123. Johnson most likely had symptoms of schizophrenia at the time of his trial. *Id*. Dr. Lavid's declaration elaborates on the symptoms associated with this condition:

> Schizophrenia is a chronic and severe mental illness with psychotic episodes. Psychosis is a collective term that refers to symptoms where patients are unable to interpret reality correctly. Psychotic symptoms of schizophrenia include delusions, which are fixed false beliefs; hallucinations, which are perceptions of the senses occurring without any external stimulus; disorganized speech and grossly disorganized behavior, which is a result of psychosis, that impairs a person's rational thinking such that illogical thinking is persistent. Illogical thinking is the loss of the normal connections and associations between ideas. This leads to the observed psychotic symptoms in schizophrenia of disorganized speech and disorganized behavior.

Id. 121.

Johnson's schizophrenia diagnosis is genuine, as "there is a clear consensus among the mental health professionals who have evaluated Mr. Johnson that he is not malingering mental illness." *Id*. 121-122.

Johnson has had at least 11 inpatient admissions to Department of Mental Health facilities since 1985. (Dkt. 49, Ex. 6, 2015 Verified Petition for Involuntary Medication Order, at 47.) Johnson has been subject to involuntary medication orders since December 2001. The first of these came about because Johnson was found "smearing feces, urinating on the floor, filling his toilet with trash, not grooming and sleeping on the floor." (*Id*.) Due to an oversight by prison staff, the order was allowed to lapse in 2008. Johnson's psychiatric condition decompensated

rapidly. "Johnson was again engaging in bizarre behaviors, including spreading feces in his cell." (*Id.*) The involuntary medication order was renewed in 2010 and has been renewed on a yearly basis since then. (*Id.*)

Based on the totality of the record and extra-record evidence, Johnson was incompetent to stand trial. Had the trial court conducted a competency hearing, the court would have discovered that Johnson suffered from a psychotic disorder and that the medication Johnson took at the time of trial impaired his ability to focus on the proceedings. Johnson reported to the court that he suffered from seizures and that he had been prescribed Thorazine. The court concluded on its own that Thorazine was effectively controlling Johnson's seizure disorder. However, had the court actually conducted a competence inquiry or at the very least, appointed a doctor to evaluate Johnson, the court would have learned that Thorazine is an antipsychotic drug, not an anti-seizure medication. The court also would have learned that Thorazine has a number of side effects, including drowsiness and dizziness. Johnson's prison medical records from July through December of 1993, which are summarized above, support the conclusion that Johnson suffered from psychosis at his trial. As Dr. Lavid explains, individuals with psychosis are unable to interpret reality correctly or think rationally, and they often exhibit "disorganized speech and disorganized behavior." Pet. App. 121.

In light of Johnson's psychotic condition, and the fact that he was taking sedating psychotropic medication at trial, it is at the very least debatable that he

lacked "the capacity to understand the nature and object of the proceedings against him . . . and to assist in preparing his defense . . . ." *Drope*, 420 U.S. at 171.

At the very least, Johnson has met the standard to be granted a COA on his claims. In 2016, it was reported that 146 of 1,335 COA requests were granted, about 5%.[1] The Ninth Circuit's denial of Johnson's COA request is apparently a result of the court sidestepping this Court's standard for the issuance of a COA, and instead denying the request based on its determination of the merits of the claim. *Buck*, 137 S. Ct at 759. Because this Court has clearly prohibited such a misapplication of the COA standard, the Court should grant certiorari.

CONCLUSION

For the foregoing reasons, Johnson respectfully requests that this Court grant his petition for a writ of certiorari to review the Ninth Circuit's denial of his motion for a certificate of appealability.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: February 26, 2021

By: _____
ASHLEY S. MAHMOUDIAN*
AJAY V. KUSNOOR
Deputy Federal Public Defenders

Attorneys for Petitioner
DERRICK ARNOLD JOHNSON
**Counsel of Record*

[1] United States Court Of Appeals For The Ninth Circuit, *2254 Noncapital Habeas Training Pasadena,* October 27, 2016, at 27, http://cdn.ca9.uscourts.gov/datastore/uploads/guides/habeas_training/2016.10.27%20materials%20revised_2.pdf

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CERTIFICATE PURSUANT TO RULE 33

Pursuant to Rule 33.2, I hereby certify that this petition is less than 40 pages, and therefore complies with the page limit set out in Rule 33. This brief was prepared in 12-point Century Schoolbook font.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: February 26, 2021

By: _____
ASHLEY S. MAHMOUDIAN*
*Counsel of Record