No. _____

IN THE

Supreme Court of the United States

JEFFREY GLENN HUTCHINSON,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

THIS IS A CAPITAL CASE

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CAPITAL CASE

QUESTIONS PRESENTED

1. Does a court of appeals violate the threshold certificate of appealability (COA) standard when it adopts the district court's merits rulings as its own COA analysis?

2. May a court of appeals categorically forbid granting a COA to any petitioner who challenges existing circuit precedent, even when there is an unresolved circuit split on the issue the petitioner seeks to appeal?

LIST OF DIRECTLY RELATED PROCEEDINGS

Direct Review

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC01-500
Decided: July 1, 2004
Published: 882 So. 2d 943 (Fla. 2004)

State Collateral Review

Caption: *State v. Hutchinson*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1998 CF 001382 AC
Decided: January 3, 2008 (Initial State Postconviction Motion)
Published: 2008 WL 8948638 (Fla. Cir. Ct. Jan. 3, 2008)

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC08-99
Decided: July 9, 2009 (Initial State Postconviction Appeal)
Published: 17 So. 3d 696 (Fla. 2008)

Caption: *State v. Hutchinson*
Court: Circuit Court of the First Judicial Circuit, Okaloosa County, Florida
Docket: 1998 CF 001382 AC
Decided: November 11, 2011 (Motion for DNA Testing)
November 19, 2013 (First Successive Postconviction Motion)
May 30, 2017 (Second Successive Postconviction Motion)
December 4, 2020 (Third Successive Postconviction Motion)
Published: N/A

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC11-2301 (Appeal re Motion for DNA Testing)
Decided: February 8, 2012
Published: N/A

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC13-1005 (Appeal re First Successive Postconviction Motion)
Decided: January 19, 2014
Published: N/A

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC17-1229 (Appeal re Second Successive Postconviction Motion)
Decided: March 15, 2018
Published: 243 So. 3d 880 (Fla. 2018)

Caption: *Hutchinson v. State*
Court: Supreme Court of Florida
Docket: SC21-18 (Appeal re Third Successive Postconviction Motion)
Decided: *Pending*
Published: *Pending*

Federal Habeas Review

Caption: *Hutchinson v. Florida*
Court: United States District Court for the Northern District of Florida
Docket: 5:09-cv-261-RS
Decided: September 28, 2010 (Initial Federal Habeas Petition)
Published: 2010 WL 3833921 (N.D. Fla. Sep. 28, 2010)

Caption: *Hutchinson v. Florida*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 10-14978 (Initial Federal Habeas Appeal)
Decided: April 19, 2012
Published: 677 F.3d 1097 (11th Cir. 2012)

Caption: *Hutchinson v. Crews*
Court: United States District Court for the Northern District of Florida
Docket: 3:13-cv-128-MW
Decided: April 24, 2013 (Second Federal Habeas Petition)
June 12, 2013 (Rule 59(e) Motion)
January 15, 2021 (Rule 60(b) Motion)
Published: 2013 WL 1765201 (N.D. Fla. Apr. 24, 2013)
2013 WL 2903530 (N.D. Fla. June 12, 2013)
[Rule 60(b) Decision Not Published]

Caption: *Hutchinson v. Florida*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 13-12296 (Appeal re Second Federal Habeas Petition, Rule 59(e) Motion)
Decided: August 15, 2013
Published: N/A

Caption: *Hutchinson v. Florida*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 21-10508 (Appeal re Rule 60(b) Motion)
Decided: March 24, 2021
Published: N/A

Certiorari Review

Caption: *Hutchinson v. Florida*
Court: Supreme Court of the United States
Docket: 12-5582 (Appeal re Initial Federal Habeas Petition)
Decided: October 9, 2012
Published: 568 U.S. 947 (2012)

Caption: *Hutchinson v. Florida*
Court: Supreme Court of the United States
Docket: 18-5377 (Appeal re Third Successive State Postconviction Motion)
Decided: October 1, 2018
Published: 139 S. Ct. 261 (2018)

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DECISIONS BELOW

The Eleventh Circuit's orders denying a certificate of appealability (COA) and denying reconsideration are unpublished. They are included in the appendix (App.) at 1a (order denying reconsideration) and 7a (order denying COA).

JURISDICTION

The Eleventh Circuit denied a COA on March 24, 2021, and reconsideration on April 29, 2021. App. 1a, 7a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

28 U.S.C. § 2253(c) provides, in relevant part:

> (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 the process issued by a State court . . .

STATEMENT OF THE CASE

Petitioner Jeffrey Hutchinson is a prisoner on Florida's death row. The Florida Supreme Court affirmed his convictions and sentences in 2004, *Hutchinson v. State*, 882 So. 2d 943 (Fla. 2004), and upheld the denial of state postconviction relief in 2009, *Hutchinson v. State*, 17 So. 3d 696 (Fla. 2009).

In 2010, the Northern District of Florida dismissed Petitioner's federal habeas petition as time-barred because his appointed state counsel had miscalculated the AEDPA statute of limitations and filed his state postconviction motion—which they believed would trigger federal statutory tolling under 28 U.S.C. § 2244(d)(2)—after the federal deadline had already expired. The district court denied equitable tolling

and dismissed the petition without considering any of Petitioner's claims. *Hutchinson v. Florida*, 2010 WL 3833921, at *1-2 (N.D. Fla. Sept. 28, 2010).

The Eleventh Circuit granted a COA and affirmed, holding that although Petitioner filed a pro se federal petition immediately after his state postconviction proceedings ended and asked for state counsel's miscalculation to be excused, the diligence necessary for equitable tolling required him to file a placeholder or "shell" federal petition years earlier, while the state proceedings were still ongoing, after first realizing that his attorneys missed the AEDPA deadline. *Hutchinson v. Florida*, 677 F.3d 1097, 1101-03 (11th Cir.), *cert. denied,* 548 U.S. 947 (2012). Concurring in the result only, Judge Barkett disagreed with the majority's diligence reasoning, emphasizing that the record showed that Petitioner "did everything any reasonable client would do to assure that his lawyers protected his interests, including imploring his lawyers to file his post-conviction pleadings in a timely matter." *Id.* at 1103-04.[1]

In 2014, Petitioner filed a pro se motion to reopen his federal habeas proceedings under Federal Rule of Civil Procedure 60(b). *Hutchinson v. Crews*, N.D. Fla. No. 3:13-cv-128, ECF No. 17. The district court appointed counsel, who filed an amended motion. *Id.*, ECF No. 78. The motion sought relief under Rule 60(b)(6) from the judgment dismissing Petitioner's federal habeas petition, and merits review of his

[1] Two years later, the Eleventh Circuit expressed concern with the "largely Florida problem" of missed AEDPA deadlines in dozens of capital cases, including Petitioner's. *See Lugo v. Secretary, Fla. Dep't of Corr.*, 750 F.3d 1198, 1212-22, 1224 (11th Cir. 2014). The court also cast doubt on the idea of avoiding future missed deadlines by requiring petitioners to file placeholder or shell federal petitions while their state postconviction proceedings are still ongoing. *See id.* at 1214-15.

original claims for the first time, due to extraordinary circumstances that created a defect in the continuing integrity of the time-bar dismissal. Petitioner relied on, among other things, the intersection of factual developments in his case and changes in decisional law, including *McQuiggin v. Perkins*, 569 U.S. 383 (2013).

In January 2021, the district court denied Petitioner's Rule 60(b) motion. App. 8a-33a. The district court ruled that Petitioner's arguments based on *McQuiggin* were foreclosed by existing circuit precedent and did not warrant Rule 60(b)(6) relief. *Id.*

At the end of its 26-page order denying relief, the district court denied a COA, providing this analysis:

> Mr. Hutchinson has failed to show an abuse of discretion in denial of the Rule 60(b) motion and has failed to make a substantial showing of the denial of a constitutional right. Issuance of a COA is therefore not warranted.

App. 32a-33a.

Petitioner sought a COA from the Eleventh Circuit, arguing that reasonable jurists could debate the district court's decision, and separately that his issues are adequate to be encouraged to proceed to a full appeal.

On March 24, 2021, the Eleventh Circuit denied a COA. The court's single-judge order, by Judge Luck, stated:

> Appellant's motion for a certificate of appealability is DENIED for the same reasons the district court denied his amended Rule 60(b) motion and motion for a COA in its thorough and detailed twenty-six page order.

App. 7a.

Petitioner moved for reconsideration, arguing that Judge Luck's order had violated the threshold COA standard by adopting the district court's underlying merits rulings as its own COA analysis. The reconsideration motion was assigned to a three-judge panel, comprised of Judges Luck, Branch, and Jordan. App. 1a.

On April 29, 2021, the panel denied reconsideration by a 2-to-1 vote, with Judge Jordan dissenting. App. 1a-6a. Judge Jordan wrote that the court had overstepped the threshold COA standard. He emphasized that "[w]e cannot base our COA decision on a full determination of the merits." App. 6a. Citing that standard, as well as a conflict between the Eleventh Circuit and the Third Circuit on the law applicable to Petitioner's *McQuiggin* arguments, Judge Jordan concluded that (1) "the district court's ruling is debatable," and (2) "[a]lternatively," Petitioner's appeal "'deserve[s] encouragement to proceed further.' *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003)." App. 6a. Judge Jordan would have granted a COA based on *McQuiggin* as well as the "other asserted circumstances" in Petitioner's COA application. *Id.*

Judges Luck and Branch responded to Judge Jordan's dissent, but only as to the *McQuiggin* arguments Petitioner sought to appeal. App. 1a-5a. Judges Luck and Branch stated that Petitioner's *McQuiggin* arguments were foreclosed by the Eleventh Circuit rule that a COA must be denied to any petitioner who challenges existing circuit precedent, even when there is an unresolved circuit split on the issue the petitioner seeks to appeal. App. 2a. They also stated that, even if Petitioner's *McQuiggin* arguments could receive a COA, they would fail because of the evidence of guilt described in the Florida Supreme Court's postconviction opinion and the

district court's underlying order denying Rule 60(b) relief. App. 2a-5a. The order denying reconsideration did not amend or replace Judge Luck's order denying a COA "for the same reasons" the district court denied Rule 60(b) relief.

REASONS FOR GRANTING THE WRIT

For two reasons, the Court should grant a writ of certiorari, vacate the Eleventh Circuit's denial of a COA, and remand for application of the correct standard. First, the Court should clarify that a court of appeals violates the threshold COA standard when it adopts the district court's underlying merits rulings as its own COA analysis. Second, the Court should invalidate the Eleventh Circuit rule that forbids granting a COA to all petitioners who challenge existing circuit precedent, even when there is an unresolved circuit split on the issue the petitioner seeks to appeal. The decisions below offer a chance to address both of those important issues and improve the overall fairness and uniformity of the COA process.

I. The Court should grant review to clarify that a court of appeals violates the threshold COA standard when it adopts the district court's underlying merits rulings as its own COA analysis

One sentence from this Court's precedent explains why the Eleventh Circuit's March 24, 2021 denial of a COA was wrong: "The COA inquiry, we have emphasized, is not coextensive with a merits analysis." *Buck v. Davis*, 137 S. Ct. 759, 773 (2017). The Eleventh Circuit not only denied Petitioner a COA for reasons coextensive with a merits analysis, it fully adopted the district court's underlying merits rulings as its own COA analysis. App. 7a ("Appellant's motion for a certificate of appealability is

DENIED for the same reasons the district court denied his amended Rule 60(b) motion and motion for a COA in its thorough and detailed twenty-six page order.").

The Eleventh Circuit's adoption of the district court's merits rulings was more than a minor violation; it was jurisdictional error. The Eleventh Circuit's COA jurisdiction was limited to a threshold assessment of Petitioner's appeal and determination of whether any jurists of reason could debate the district court's ruling. *See Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The court was forbidden from basing its COA decision on full consideration of the factual or legal bases for Petitioner's appeal, including through adoption of the district court's merits order. *See Miller-El*, 537 U.S. at 336. That is because when a court "inverts the statutory order of operations and first decides the merits of the appeal, then justifies 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*." *Buck*, 137 S. Ct. at 774 (internal quotations omitted) (emphasis in original). By sidestepping the COA standard, and affirming the merits "for the same reasons" the district court denied Rule 60(b) relief, the Eleventh Circuit committed error under the COA statute and exceeded its jurisdiction. *See id.* at 773. Those were the violations that drew the dissent of Judge Jordan, who explained that application of the correct threshold standard should result in a COA grant under these circumstances. App. 6a.

In *Buck*, this Court addressed a similar inversion of the statutory order of operations in a Rule 60(b)(6) case. *Buck* reversed the denial of a COA because the Fifth Circuit's decision had "phrased its determination in proper terms—that jurists

of reason would not debate that Buck should be denied relief—but it reached that conclusion only after essentially deciding the case on the merits." *Id.* at 773. This Court highlighted the second sentence of the Fifth Circuit's erroneous decision: "Because [Buck] has not shown extraordinary circumstances that would permit relief under Federal Rule of Civil Procedure 60(b)(6), we deny the application for a COA." *Id.* (quoting *Buck v. Stephens*, 623 F. App'x 668, 669 (5th Cir. 2015)). Reversing that COA denial, this Court emphasized that "the question for the Fifth Circuit was not whether Buck had shown 'extraordinary circumstances'" under Rule 60(b)—that was "an ultimate merits determination[] the panel should not have reached." *Id.* at 774.

The Eleventh Circuit's order closely tracks the Fifth Circuit order rebuked in *Buck*. The Fifth Circuit stated that a COA was denied because the petitioner could not establish "extraordinary circumstances"—the standard for relief under Rule 60(b)(6). *Id.* at 773. The Eleventh Circuit denied Petitioner a COA "for the same reasons" in the district court's underlying order, which found that Petitioner had not established extraordinary circumstances under Rule 60(b)(6). App. 7a, 31a-32a. The Eleventh Circuit's decision is actually a clearer violation than the Fifth Circuit's. In *Buck*, the court of appeals at least "phrased its determinations in proper terms—that jurists of reason would not debate that Buck should be denied relief," even though the court had pre-decided the merits. The Eleventh Circuit's order did not even reference the COA standard in fully adopting the district court's merits rulings.

Although the Eleventh Circuit's order also purported to deny Petitioner a COA "for the same reasons the district court denied his . . . motion for a COA," that does

not cure the jurisdictional defect.[2] The district court's order stated only that a COA was denied because Petitioner "has failed to show an abuse of discretion in denial of the Rule 60(b) motion and has failed to make a substantial showing of the denial of a constitutional right." App. 32a-33a. Even if the Eleventh Circuit intended to adopt that limited COA analysis, it would not cure the jurisdictional violation arising from the accompanying adoption of the district court's merits rulings. A reviewing court cannot reach beyond its jurisdiction to address the merits, and then use its merits decision to justify denying a COA. That is the precise inversion of the statutory order of operations disavowed in *Buck*. *See* 137 S. Ct. at 773-74.

Even if the Eleventh Circuit had adopted *only* the district court's barebones COA denial, that would still violate the COA standard. The district court's statement that Petitioner "failed to show an abuse of discretion in denial of the Rule 60(b) motion" contradicts the COA standard—Petitioner was not required to show an abuse of discretion, the standard that would apply if the appeal were certified. Adopting the district court's first COA statement still means adopting a rationale that is coextensive with a merits ruling.

The district court's only other statement about a COA, that Petitioner failed to "make a substantial showing of the denial of a constitutional right," merely repeated the statutory language without applying it. The district court did not explain how

[2] Petitioner did not actually file a separate motion for a COA in the district court, although the conclusion of his amended Rule 60(b) motion did request one if relief was denied. The district court summarily ruled on a COA at the end of its order, with no briefing from the parties as to the debatability of the order's merits rulings.

either of the scenarios this Court has found that statutory language to embody—debatability by jurists of reason or adequacy of the issues to deserve encouragement to proceed further—were inapplicable here. Because the district court provided no explanation, it was not even possible for the Eleventh Circuit to adopt "the same reasons" the district court gave for denying a COA.

Whether the Eleventh Circuit denied a COA "for the same reasons the district court denied his amended Rule 60(b) motion," or for the same reasons the district court denied "his motion for a COA," the result is the same: the Eleventh Circuit violated the COA standard and exceeded its jurisdiction. When presented with such a clear violation, this Court should take the opportunity to "remind lower courts not to unduly restrict this pathway to appellate review." *McGee v. McFadden*, 139 S. Ct. 2608, 2611 (2019) (Sotomayor, J., dissenting from the denial of certiorari). The Court has vacated COA denials under similar circumstances. *See, e.g.*, *Tharpe v. Sellers*, 138 S. Ct. 545 (2018); *Buck*, 137 S. Ct. 759; *Tennard v. Dretke*, 542 U.S. 274 (2004).

This Court should grant a writ of certiorari not only to correct the Eleventh Circuit's decision, but also to clarify that a court of appeals violates the COA standard when it adopts the district court's merits rulings as its own COA analysis. The federal courts handle thousands of COA requests each year, most of which do not lead to published decisions or further review. Although any given application "may feel routine to the judge who plucks it from the top of a large stack, it could be the petitioner's last, best shot at relief from unconstitutional imprisonment." *McGee*, 139

S. Ct. at 2611.[3] If this Court is not vigilant in enforcing the jurisdictional boundaries of COA processing, ensuring that "judges take care to carry out the limited COA review with the requisite open mind, the process breaks down." *Id.* Left to stand, decisions like the Eleventh Circuit's will push the COA review process further towards becoming a rubber stamp.

II. The Court should also grant review to invalidate categorical rules that forbid granting a COA to any petitioner who challenges existing circuit precedent, even when there is an unresolved circuit split on the issue the petitioner seeks to appeal

Responding to Judge Jordan's dissent from the denial of reconsideration, Judges Luck and Branch provided more reasons why a COA was denied on Petitioner's *McQuiggin* arguments. App. 1a-5a. They explained that Petitioner cannot be granted a COA to appeal those arguments given that, under the rule announced in *Hamilton v. Sec'y, Fla. Dep't of Corr.*, 793 F.3d 1261, 1266 (11th Cir. 2015), "no COA should issue where the claim is foreclosed by binding circuit precedent because reasonable jurists will follow controlling law." The Eleventh Circuit precedent that foreclosed Petitioner's *McQuiggin* arguments, according to the majority's response, was *Arthur v. Thomas*, 739 F.3d 611 (11th Cir. 2014). App. 2a.

The majority emphasized that *Hamilton* barred a COA for Petitioner's *McQuiggin* arguments despite the existence of Third Circuit precedent disagreeing with *Arthur*. App. 2a (citing *Satterfield v. Dist. Att'y Phila.*, 872 F.3d 152, 160-63 (3d

[3] Low COA grant rates are particularly concerning in the Eleventh Circuit. *See, e.g.*, Z. Payvand Ahdout, *Direct Collateral Review*, 121 Colum. L. Rev. 159, 213 & n. 198 (2021) (citing empirical research).

Cir. 2017)). Under *Hamilton*, the majority explained, "that disagreement does not present a debatable question" because "[w]e are bound by our Circuit precedent, not by Third Circuit precedent . . . *Arthur* is controlling on us and ends any debate among reasonable jurists about the correctness of the district court's decision under binding precedent." App. 2a (quoting *Hamilton*, 793 F.3d at 1266; *Lambrix v. Sec'y, Fla. Dep't of Corr.*, 851 F.3d 1158, 1171 (11th Cir. 2017)). In other words, the court found that *Hamilton* barred a COA for Petitioner's arguments despite a circuit split on the issue.

The court's application of the *Hamilton* rule to Petitioner violated the COA standard by deciding the merits before conducting a threshold analysis. The best evidence of this is the court's selection of *Arthur* as the "binding circuit precedent" that would inevitably cause Petitioner's appeal to fail. It is one thing to deny a COA based on precedent that would clearly be dispositive of an appeal, but by any objective measure, *Arthur* does not fit that description with respect to Petitioner's *McQuiggin* arguments. Reading *Arthur* as foreclosing Petitioner's arguments takes more than a threshold analysis—it requires full consideration of the factual and legal bases for Petitioner's appeal, including application of precedent that is not squarely on point.

First, *Arthur* was a pre-*McQuiggin* appeal that addressed whether *Martinez v. Ryan*, 566 U.S. 1 (2012), applied in a Rule 60(b) case, and therefore could not directly resolve any of Petitioner's actual *McQuiggin* arguments. Second, the proposition in *Arthur* that the court said was dispositive of Petitioner's proposed appeal—"the U.S. Supreme Court has already told us that a change in decisional law is insufficient to create the 'extraordinary circumstances' necessary to invoke Rule 60(b)(6)," *Arthur*,

739 F.3d at 631—would not foreclose Petitioner's *McQuiggin* arguments, even if it were true. Petitioner's arguments did not rely exclusively on the change in decisional law brought about by *McQuiggin*; he also argued that several case-specific factors warranted relief in the context of a post-*McQuiggin* landscape. Third, *Arthur*'s suggestion that this Court held, in *Gonzalez v. Crosby*, 545 U.S. 524, 535-38 (2005), that changes in law can *never* be considered in a Rule 60(b)(6) analysis, is not true. In *Gonzalez*, this Court only emphasized its prior observation that intervening legal developments alone will rarely constitute extraordinary circumstances under Rule 60(b)(6), but then went on to examine the individual circumstances of the case. *See also Tennard*, 542 U.S. at 284 (concluding that court of appeals erred in denying COA based on circuit precedent that had "no foundation" in Supreme Court precedent).

Based on an appropriate threshold COA analysis, the majority could not have reasonably concluded that *Arthur* is so clearly dispositive of Petitioner's appeal that a COA must be denied. To deny a COA despite all the distinctions between Petitioner's arguments and *Arthur*, a more in-depth analysis was required. The court's ultimate conclusion that *Arthur* would cause Petitioner's appeal to fail was more akin to a merits ruling in a close case than a broad overview of Petitioner's arguments. By applying a rule that required a merits instead of threshold analysis, the court violated the COA statute. *See Buck,* 137 S. Ct. at 773-74.

Even if Petitioner's *McQuiggin* arguments were directly foreclosed by *Arthur*, the *Hamilton* rule independently violates the COA standard by assuming that "jurists of reason" as used in *Slack* refers only to judges bound by local circuit

precedent. In *Hamilton*, the court reasoned that no COA should issue where the claim is foreclosed by binding circuit precedent "because reasonable jurists will follow controlling law." 793 F.3d at 1266. But this Court has not indicated that jurists who could debate the district court's decision must reside in the same circuit. In fact, *Slack*, 529 U.S. at 483, which adopted the COA standards from the old certificate of probable cause (CPC) standards summed up in *Barefoot v. Estelle*, 463 U.S. 880, 893 n. 4 (1983), suggests the opposite. *Barefoot* explained that to obtain a CPC, a petitioner must show "that the issues are debatable among jurists of reason; that *a court* could resolve the issues [in a different manner]; or that the questions are 'adequate to deserve encouragement to proceed further." *Id.* (emphasis added). The term "a court" suggests reasonable jurists on *some* court, not just the courts within the same circuit as the reviewing court. In fact, "jurists of reason" must include more than just the judges who are bound by panel precedent, given that it also presumably includes the en banc Eleventh Circuit. The basic premise for the *Hamilton* rule, that reasonable judges will obey their circuit precedent, has no basis in the COA standard.

The most obvious indicator that application of the *Hamilton* rule to Petitioner violated the COA standard is that it disregarded a circuit split on both the categorical change-in-decisional-law prohibition suggested by *Arthur*, and even more directly, the applicability of *McQuiggin* in the Rule 60(b)(6) context. In *Cox v. Horn*, 757 F.3d 113, 123 (3d Cir. 2014), the Third Circuit found that "the Eleventh Circuit extracts too broad a principle from *Gonzalez*," which does not hold that changes in decisional law are "*always* insufficient to sustain a Rule 60(b)(6) motion." In *Satterfield*, 872

F.3d at 160-63, the Third Circuit reiterated that "*Gonzalez* leaves open the possibility that a change of law may—when accompanied by appropriate equitable circumstances—support Rule 60(b)(6) relief," and went on to consider the petitioner's *McQuiggin* arguments in the context of a Rule 60(b)(6) appeal. *See id.* at 162 ("*McQuiggin* cannot be divorced from the Rule 60(b)(6) inquiry . . . . *Cox* requires a reweighing of the equitable factors at play in a particular case, and the nature of [*McQuiggin*'s] change in law itself is highly relevant to that analysis."). Those conclusions align with the arguments that Petitioner sought to present in his appeal.

Under the COA standard, the Third Circuit's position on *Arthur*, and its decision applying *McQuiggin* in the Rule 60(b)(6) context, are reasonable and sufficient to grant Petitioner a COA to appeal his arguments, even though his appeal may ultimately fail under *Arthur* or other existing Eleventh Circuit precedent. The COA standard is not outcome-focused. "Meritorious appeals are a subset of those in which a certificate should issue, not the full universe of such cases." *Jordan v. Fisher*, 576 U.S. 1071 (2015) (Sotomayor, J., dissenting from the denial of certiorari) (internal quotation omitted). A COA does not "require a showing that the appeal will succeed." *Miller-El*, 537 U.S. at 337. A claim is debatable enough for a COA "even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that the petitioner will not prevail." *Id.* at 338. Under those standards, the Third Circuit's decisions in *Cox* and *Satterfield* are not only relevant, contrary to what *Hamilton* says, they should be sufficient for a COA here.

After applying the *Hamilton* bar to Petitioner's *McQuiggin* arguments, the panel majority stated that a COA was also not warranted because of the evidence of Petitioner's guilt, which prevented him from satisfying whatever standard for actual innocence *McQuiggin* might require here. App. 2a-5a. That analysis does not cure the damage done by the *Hamilton* ruling, however, because it also oversteps the threshold COA standard. To demonstrate the evidence of Petitioner's guilt, the panel simply quoted the Florida Supreme Court's postconviction opinion summarizing the trial evidence, and the district court's order denying Rule 60(b) relief. The panel concluded the evidence showed "the outcome of [Petitioner's] trial is solid and not debatable," a merits conclusion that goes beyond a general overview of Petitioner's *McQuiggin* arguments, and should not have been reached without a COA.

The conflict between the *Hamilton* rule and the COA standard is not limited to Petitioner's case. Because only petitioners require a COA to appeal, and the Eleventh Circuit's local rules prohibit seeking rehearing en banc from the denial of a COA, *see* 11th Cir. R. 22-1(c), the practical effect of the *Hamilton* rule will be to prevent the court from ever reconsidering or distinguishing precedent to benefit petitioners, even when there are good reasons to do so, such as when persuasive contrary precedent develops in other circuits.[4] In contrast, the *Hamilton* rule still allows state respondents to challenge existing circuit precedent with no barriers at all. The result is a freeze on any Eleventh Circuit precedent that does not favor

[4] The Eleventh Circuit's rule prohibiting en banc rehearing from COA denials also means that the *Hamilton* rule itself will only ever be overruled by this Court.

petitioners, while precedent that does will be subject to continual challenges by state respondents. Under this regime, legions of cases that should receive a COA under the appropriate threshold standard will instead receive summary merits denials, in contravention of the COA statute, while appeals by state respondents to overturn precedent will continue unabated. *See, e.g.*, *Zack v. Tucker*, 704 F.3d 917 (11th Cir. 2013) (en banc) (overruling precedent in favor of respondent).[5]

The Eleventh Circuit's reliance on *Arthur* to apply the *Hamilton* rule to Petitioner shows just how dangerously malleable *Hamilton*'s term "binding circuit precedent" could become without this Court's intervention and reiteration of the threshold COA standard. If *Arthur* can be considered dispositive of Petitioner's appeal, the Eleventh Circuit will continue to exercise broad latitude in deciding which of its "existing binding precedents," whether or not they address the specific arguments raised in the case, are enough to end a petitioner's appeal in its infancy. Other courts will likely follow. This Court should grant a writ of certiorari not only to invalidate the Eleventh Circuit's *Hamilton* rule, but also to clarify that a court of appeals cannot categorically withhold COAs from any petitioner who challenges existing circuit precedent, especially when the issue the petitioner seeks to appeal is dividing the circuits.

[5] By withholding all COAs once panel precedent is set, the *Hamilton* rule also reduces the possibility that habeas-related circuit splits involving the Eleventh Circuit will resolve themselves, perhaps demanding more frequent intervention by this Court. *See, e.g.*, Wayatt G. Sassman, *How Circuits Can Fix Their Splits*, 103 Marq. L. Rev. 1401, 1451-53 & n.311 (2020) (addressing how rigid law-of-the-circuit doctrines may prevent courts of appeals from reducing reliance on this Court to resolve conflicts).

CONCLUSION

The Court should grant the petition for a writ of certiorari and review the Eleventh Circuit's decisions.

Respectfully submitted,

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