CASE NO._____

In The
Supreme Court of the United States

JOHN CHARLES EICHINGER,

***Petitioner*,**

v.

SECRETARY, PENNSYLVANIA DEPARTMENT OF CORRECTIONS, ET AL.,

Respondents.

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

THIS IS A CAPITAL CASE

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CAPITAL CASE

QUESTION PRESENTED

Petitioner John Eichinger faced a capital trial involving three homicides as well as a severed non-capital trial involving a fourth homicide. He steadfastly insisted on going to trial in both cases. Nevertheless, after jury selection was completed in the non-capital trial and already underway in the capital trial, defense counsel persuaded Petitioner to waive the guilt phase of both trials and to stipulate to the prosecution's evidence, based on counsel's understanding that the prosecution would refrain from contesting the defense's use of remorse as a mitigating circumstance. In fact, the prosecution's offer stated only that the prosecution would refrain from objecting to the admissibility of evidence that Petitioner was not contesting the charges. But that evidence was admissible with or without the prosecution's agreement, and the prosecution vigorously contested the issue of remorse during the ensuing penalty phase trial at which Petitioner was sentenced to death.

The question presented is as follows:

> In upholding counsel's overall remorse-based strategy as reasonable, did the Third Circuit violate the rule of *Hill v. Lockhart*, 474 U.S. 52 (1985), and wrongly deny a certificate of appealability on Petitioner's claim that counsel induced Petitioner to waive the guilt phase of two trials by misstating the terms of the prosecution's plea offer?

PARTIES TO THE PROCEEDING

Petitioner JOHN CHARLES EICHINGER was the appellant in the court below and is an indigent death-sentenced prisoner within the Pennsylvania Department of Corrections.

Respondent Secretary of the Pennsylvania Department of Corrections oversees the state agency having custody of Petitioner.

Respondent Superintendent State Correctional Institute (SCI) Phoenix exercises supervisory and managerial authority over the prison in which Petitioner is currently incarcerated; because Petitioner was moved from SCI Greene to SCI Phoenix while the appellate proceedings were pending in the Court of Appeals, Respondent Superintendent SCI Phoenix is automatically substituted for Respondent Superintendent SCI Greene pursuant to Fed. R. App. P. 43(c)(2) and U.S. Sup. Ct. R. 35.3.

Respondent Superintendent SCI Rockview exercises supervisory and managerial authority over the prison in which Pennsylvania executions take place.

No party is a corporation.

RELATED PROCEEDINGS

United States Court of Appeals for the Third Circuit:

> *John Charles Eichinger v. Secretary, Pennsylvania Department of Corrections, et al.*, No. 19-9000

United States District Court for the Eastern District of Pennsylvania:

> *John Charles Eichinger v. Secretary, Pennsylvania Department of Corrections, et al.*, Civil Action No. 07-4434

Supreme Court of Pennsylvania:

> *Commonwealth v. John Charles Eichinger*, No. 503 CAP (direct appeal)
>
> *Commonwealth v. John Charles Eichinger*, No. 657 CAP (post-conviction appeal)

Court of Common Pleas of Montgomery County, Pennsylvania:

> *Commonwealth v. John Charles Eichinger*, No. CR-0002785-2005

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PETITION FOR WRIT OF CERTIORARI

John Charles Eichinger respectfully petitions for a writ of certiorari to review a judgment and decision of the Third Circuit Court of Appeals.

OPINIONS BELOW

The December 1, 2021, order and judgment of the Third Circuit Court of Appeals, denying Eichinger's application for a certificate of appealability (COA) is unpublished and appears in the Appendix at App. 1. The Third Circuit's March 30, 2022, order denying panel and en banc rehearing is unpublished and appears in the Appendix at App. 5. The District Court's memorandum decision denying habeas corpus relief as well as a COA is unpublished and appears in the Appendix at App. 7.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1), including the jurisdiction to review the Third Circuit's denial of a COA. *See Hohn v. United States*, 524 U.S. 236, 253 (1998). The Third Circuit denied a COA on December 1, 2021, then denied Eichinger's petition for panel and en banc rehearing on March 30, 2022. App. 1, 5. The instant petition is timely filed.

RELEVANT CONSTITUTIONAL AND STATUTORY PROVISIONS

Title 28 United States Code § 2253(c)(1) provides, in part: "Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ·(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court." Section 2253(c)(2) provides: "A [COA] may issue under paragraph (1) only if the applicant

has made a substantial showing of the denial of a constitutional right."

STATEMENT OF THE CASE

This case arises from two separate but simultaneous murder prosecutions in Montgomery County, Pennsylvania. One was a capital prosecution for the first-degree murder of Heather Greaves, her sister Lisa Greaves, and her daughter Avery Johnson in March 2005. The second was for the unrelated murder of Jennifer Still in 1999, for which the Commonwealth did not seek the death penalty.

The trial court appointed William McElroy to represent Eichinger in both murder cases, and it severed the cases for trial. NT 10/17/05 at 101; Dist. Dkt. #52-33 at 63–64. One day after his appointment, McElroy reviewed the prosecution's probable cause statement, concluded that the evidence against Eichinger was "overwhelming," and decided – without independent investigation – that his strategy would be to forego a trial on all charges. NT 2/8/11 at 23, 33, 44, 90–91; NT 6/15/11 at 43–44, 47; NT 11/29/11 at 79. The court appointed co-counsel Paul Bauer some two weeks before the beginning of the Still trial, which started on October 17, 2005. Dist. Dkt. #52-33 at 63–64. A jury was empaneled for that case before the end of the day, and the parties immediately began voir dire for the capital case. NT 10/17/05 at 95, 238–39, 280.

Rather than continue with jury selection, counsel announced the next morning that Eichinger had agreed to withdraw the granted severance, to dismiss all empaneled jurors in both cases, to consolidate all charges into a single case, to waive a jury trial, and to stipulate to the Commonwealth's evidence supporting guilt on all charges. NT 10/18/05 at 3. Based on that stipulation, the court found

Eichinger guilty of four counts of first-degree murder and related charges, excused all previously-empaneled jurors, and ordered an entirely new venire empaneled for penalty phase purposes only. *Id.* at 20, 31–32.

The defense's stipulation reflected its acceptance of an offer from prosecutor Bruce Castor, who wrote to trial counsel as follows:

> [I]n order to provide an incentive for the defendant to withdraw his Motion for Severance, the Commonwealth has offered to permit the jury to hear that he did not contest his guilt in the four murders. Normally, all that is admissible is the fact of conviction, not the lack of contesting.

App. 184 (letter of Sept. 28, 2005). Although Eichinger had steadfastly insisted on going to trial in both cases, counsel called the prosecutor in the midst of voir dire to ask whether the deal was still available. NT 10/25/11 at 28–29. The prosecutor confirmed that it was and reiterated that, in exchange for the defense agreeing to consolidate the cases and stipulating to the facts on all charges, the Commonwealth would "let the penalty phase jury hear from the outset that [Eichinger] w[as] not contesting the charges and w[as] offering no defense to the charges." *Id.* at 29.

Counsel then advised Eichinger to accept the offer, telling him that it conferred a "huge benefit" because it would allow the defense "to say you've accepted responsibility for your actions in front of a jury," without objection from the Commonwealth. NT 2/8/11 at 91–92; NT 6/15/11 at 80 (counsel told Eichinger that the offer would allow the defense "to say to the jury that he accepted responsibility without it being contested by the Commonwealth"); NT 6/15/11 at 62 (counsel told Eichinger that "if he forwent trial, he would be able to say he accepted responsibility"). Counsel also told Eichinger, who had made clear to counsel that he did not want to plead guilty, NT 7/21/11 at 5, that remorse "was the number-one

thing jurors wanted to hear," *id.* at 11.

Defense counsel viewed the agreement as a benefit because – under counsel's understanding – the agreement would allow them to present Eichinger's factual stipulation to the jury "as if it was a [guilty] plea," and that was "how they were going to argue remorse." NT 6/17/11 at 63–64 (per attorney Bauer). Without the agreement, counsel claimed, the prosecutor "could have easily gotten up there and said it wasn't a plea, it was a stipulated trial." *Id.*; *accord* NT 6/15/11 at 80 (McElroy insisting that, without the agreement, the Commonwealth could have highlighted for the jury the difference between Eichinger admitting his guilt versus allowing the judge to find him guilty, which "would have really negated" any proffer that Eichinger "accepted responsibility"). Counsel, then, believed that the agreement allowed the defense to argue "remorse" and that it disabled the prosecution from disputing whether the stipulation genuinely demonstrated Eichinger's remorse and acceptance of responsibility. NT 6/17/11 at 63–64; NT 6/15/11 at 80. But the agreement itself made no such assurances, *see* App. 184–85, and the prosecutor later affirmed that the agreement was limited to the document's terms and that no additional agreements were discussed, NT 3/14/11 at 7–9.

Counsel's conduct at the time of trial corroborated the prosecutor's understanding of the agreement. The Commonwealth robustly challenged the suggestion that Eichinger was remorseful, with no objection from defense counsel, by emphasizing the difference between not contesting the charges and affirmatively pleading guilty. For instance, after defense psychologist Gillian Blair, Ph.D., testified that Eichinger told her he "pled guilty," the prosecutor engaged her in the

following exchange:

> Q. Pleading guilty has a special meaning in the law, . . . right?
>
> A. Right.
>
> Q. That means accepting responsibility for doing something wrong, true?
>
> A. Yes.
>
> Q. And that is admitting in court and in public that you did something bad, right?
>
> A. Yes.
>
> Q. In this case, you took from that that he had admitted to the Court and in public that he had murdered these people, right?
>
> A. Correct.
>
> Q. In fact, I am telling you now that is not true.
>
> A. Okay.

NT 11/2/05 at 64–65.

The Commonwealth repeated the same inquiry with defense psychiatrist Kenneth Weiss, M.D., saying: "You now know that the defendant did not plead guilty to these offenses, and if he told you that, he was not telling the truth, don't you?" *Id.* at 120. Additionally, the prosecutor mocked Dr. Blair's statement that Eichinger "expressed a deep remorse for his victims," by asking her rhetorically whether she had ever heard of "crocodile tears." *Id.* at 83–84.

The Commonwealth did not even refrain from deriding the defense for arguing to the jury that Eichinger did not contest the evidence against him. The prosecutor argued as follows:

> The defendant didn't contest the evidence against him. Well, there's a big surprise. We had DNA that linked him conclusively to four killings.

> What is he going to do, say "I didn't do it," when scientifically there is a one in seven trillion chance he didn't do it?

NT 11/3/05 at 10.

After finding Eichinger guilty of first-degree murder and related charges on the parties' stipulation, the trial court conducted a two-day long penalty trial before a jury. The jury returned a death verdict on all three capitally-charged homicides on November 3, 2005. The Pennsylvania Supreme Court subsequently affirmed Eichinger's convictions and sentences on direct appeal. *See Commonwealth v. Eichinger*, 915 A.2d 1122 (Pa.), *cert. denied*, 552 U.S. 894 (2007) (App. 120).

Eichinger then sought relief under Pennsylvania's Post-Conviction Relief Act (PCRA). Among other claims, Eichinger asserted the one that he brings now: trial counsel provided factually and legally erroneous advice in order to convince him to waive his trial rights. The PCRA court rejected the claim. It reasoned that "counsel had a reasonable basis for their strategy in advising Appellant to waive his right to a jury trial," because the evidence against Eichinger was "overwhelming" and the defense could "focus[] on saving Appellant's life by being able to argue remorse to the penalty phase jury and to preserve appellate issues." *Commonwealth v. Eichinger*, No. CR-0002785-2005, 2012 WL 9515423, at *20 (Pa. Com. Pl. Jul. 25, 2012).

Eichinger appealed the PCRA court's ruling to the Pennsylvania Supreme Court, but without success. *See Commonwealth v. Eichinger*, 108 A.3d 821 (Pa. 2014) (App. 146). The Pennsylvania Supreme Court did not address the issue of counsel's plea advice, even though Eichinger briefed it. App. 146–83; Dist. Dkt. #52-27 at 166–71 (post-conviction appellate brief). Without specifically addressing the

deficient advice claim, the Pennsylvania Supreme Court ruled that Eichinger failed to establish that any aspect of counsel's advocacy was ineffective. App. 174.

The District Court also rejected the claim when it denied habeas corpus relief. App. 23–34. Like the PCRA court, the District Court reasoned that counsel performed effectively by urging Eichinger to stipulate to the prosecution's evidence, because counsel thereby strengthened their argument that Eichinger was remorseful and accepted responsibility. App. 30–32. The court also observed that the stipulated trial preserved Eichinger's suppression claims for appeal, App. 32, although the defense could have stipulated to the prosecution's evidence with or without Mr. Castor's offer, or it could have preserved the suppression claims by going to trial as Eichinger had intended. The District Court thus concluded that the PCRA court had reasonably determined that counsel had a sound basis for advising Eichinger to accept the prosecution's offer. App. 33. The District Court did not acknowledge that the offer was limited to "allowing" the defense to inform the jury that Eichinger did not contest the charges, while promising nothing about the ability of the defense to argue acceptance of responsibility or remorse. App. 184.

The court denied habeas relief and a COA on all of Eichinger's claims. App. 6, 116. Without further elaboration, the court stated that "no claim raised by Eichinger has any merit," that Eichinger "has failed to make a substantial showing of the denial of a constitutional right," and that "no reasonable jurist would reach different conclusions." App. 116.

Eichinger timely appealed the District Court's judgment and sought a COA from the Third Circuit. The Court of Appeals denied a COA on all claims. App. 1–2.

Concerning the trial waiver claim, the court stated:

> Regardless of whether Claim I in its current form was exhausted in the PCRA proceedings, Eichinger has not made an arguable showing that counsel's performance fell below an objective standard of reasonableness. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *see also Florida v. Nixon*, 543 U.S. 175, 190–91 (2004).

App. 1. The Commonwealth had never argued, and no previous court ruling had suggested, that the trial waiver claim was unexhausted or defaulted. *See, e.g.*, Response to Application for Certificate of Appealability, *Eichinger v. Secretary, Pa. Dept. of Corr.*, No. 19-9000 (3d Cir. June 23, 2021), at 17–21. Eichinger sought rehearing from the panel as well as the court en banc, which the Court of Appeals denied March 30, 2022. App. 5. This petition follows.

REASONS FOR GRANTING THE PETITION

The Third Circuit ruled that trial counsel performed reasonably in advising Eichinger to waive two trials in order to show his remorse and acceptance of responsibility during the penalty phase of the capital case, citing *Florida v. Nixon*, 543 U.S. 175, 190–91 (2004), and *Strickland v. Washington*, 466 U.S. 668, 687 (1984). But the Court of Appeals ignored counsel's obligation to provide factually and legally accurate advice in plea negotiations regardless of whether the chosen course is objectively reasonable. *See Hill v. Lockhart*, 474 U.S. 52, 57–58 (1985). The ruling below "depart[s] from the accepted and usual course of judicial proceedings," U.S. Sup. Ct. R. 10(a), because it defies binding precedent under which Eichinger's claim depends on "not the fairness or reliability of the trial but the fairness and regularity of the processes that preceded it, which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective

assistance." *Lafler v. Cooper*, 566 U.S. 156, 169 (2012). The court below refused even to certify the claim for appeal. At the very least, "reasonable jurists" could find it "debatable" that Eichinger brings a viable *Hill* claim concerning inaccurate plea advice, as opposed to a *Nixon* or *Strickland* claim concerning the reasonableness of counsel's ultimate strategy. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

I. BY WRONGLY DENYING A COA ON PETITIONER'S INEFFECTIVE-ASSISTANCE CLAIM, AND BY EXCUSING COUNSEL'S PLEA PERFORMANCE AS REASONABLE WITHOUT REGARD TO WHETHER IT WAS FACTUALLY AND LEGALLY ACCURATE, THE THIRD CIRCUIT VIOLATED THE PLAIN LETTER OF MULTIPLE PRECEDENTS FROM THIS COURT.

Eichinger always made clear to trial counsel that he desired to go to trial on his two separate cases. NT 12/2/11 at 74. In direct contrast, starting the day after appointment, counsel decided Eichinger should not contest guilt in either case. NT 2/8/11 at 23, 33; NT 6/15/11 at 43, 44. But Eichinger had a constitutionally-protected right to go to trial that counsel could not override. "[I]t is the [capital] defendant's prerogative, not counsel's, to decide on the objective of his defense: to admit guilt in the hope of gaining mercy at the sentencing stage, or to maintain his innocence, leaving it to the State to prove his guilt beyond a reasonable doubt." *McCoy v. Louisiana*, 138 S. Ct. 1500, 1505 (2018); *Jones v. Barnes*, 463 U.S. 745, 751 (1983) ("[T]he accused has the ultimate authority to make certain fundamental decisions regarding the case, as to whether to plead guilty, waive a jury, testify in his or her own behalf, or take an appeal[.]").

Ultimately, counsel succeeded in imposing their will on Eichinger only by misrepresenting the terms and significance of the Commonwealth's plea offer. After

jury selection was underway, counsel's incorrect advice "finally . . . broke down [Eichinger]," and led him to acquiesce to counsel's position. NT 7/21/11 at 10. Because counsel's errors about the plea offer caused Eichinger to forfeit his constitutional rights as to both trials, counsel were ineffective in the plea bargaining process, aside from any ineffectiveness at Eichinger's penalty trial itself. For one thing, counsel misrepresented the prosecution's offer as allowing the defense to argue "remorse" and "acceptance of responsibility" without refutation, even though the offer ensured only that the prosecution would not object to the *admissibility* of the fact that Eichinger was "not contesting" the charges against him. App. 184–85; NT 6/17/11 at 63–64 NT 6/15/11 at 80. For another, the offer gave Eichinger no additional legal right to present mitigating evidence. Eichinger did not need the prosecutor's agreement to argue that he did not contest the charges, because the Eighth Amendment already allowed him to offer as a mitigating factor "any aspect of a defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Lockett v. Ohio*, 438 U.S. 586, 604 (1978). Counsel's advice was erroneous in both fact and law.

The Third Circuit wrongly concluded that trial counsel reasonably pursued the ultimate goal of a life sentence, regardless of whether counsel accurately advised their client or whether that misadvice induced Eichinger to forgo the two trials that were already underway. *See Hill*, 474 U.S. at 59; *Lafler*, 566 U.S. at 169; *Lee v. United States*, 137 S. Ct. 1958, 1966–67 (2017) (rejecting government's contention that a defendant must demonstrate "a viable defense" in order to "show

prejudice from the denial of his right to trial"). Throughout post-conviction proceedings in state and federal court, Eichinger has argued that his claim of counsel's ineffectiveness in misadvising a client about a plea offer is governed by *Hill*. Yet no post-conviction court decision – whether the PCRA court, the Pennsylvania Supreme Court, the District Court, or the Third Circuit – has analyzed the issue as a *Hill* claim. Instead, the Third Circuit, like the District Court, treated the claim as a challenge to counsel's decision to concede guilt before the jury. The Court of Appeals relied on *Nixon* to support its view that Eichinger "has not made an arguable showing that counsel's performance fell below an objective standard of reasonableness." App. 1; App. 33–34 (District Court upholding state court determination that counsel "reasonably" pursued a stipulated trial in order to argue remorse and preserve suppression issues, citing *Strickland* and *Nixon*).

The Third Circuit cited *Nixon* at pages 190–91 without quoting from the opinion directly. App 1. At those pages, this Court was assessing whether trial counsel acted reasonably in conceding a capital defendant's guilt before the jury during the contested guilt phase of trial. *Nixon*, 543 U.S. at 190. The Court held that counsel's concession was not unreasonable because "[a]ttorneys representing capital defendants face daunting challenges in developing trial strategies . . . [and] therefore may reasonably decide to focus on the trial's penalty phase." *Id.* at 190–91.

The Third Circuit's reliance on *Nixon* instead of *Hill* is patently erroneous. *Nixon* concerns the reasonableness of counsel's acknowledgment of a client's guilt to

the jury "at the guilt phase of the trial." *Id.* at 178. When, as here, the question is the accuracy of trial counsel's advice about the prosecution's plea offer before any adversarial testing was underway, the controlling standard is *Hill*, not *Nixon*. As this Court has explained, in the *Hill* context "the question is not the fairness or reliability of the trial but the fairness and regularity of the *processes that preceded it*, which caused the defendant to lose benefits he would have received in the ordinary course but for counsel's ineffective assistance." *Lafler*, 566 U.S. at 169 (emphasis added). Rather than assess Eichinger's *Hill* claim on its own reasonable terms, the Third Circuit addressed the straw-man version urged by the Commonwealth: an ineffective-assistance claim based on counsel's ultimately "reasonable" strategy for a life sentence, regardless of whether counsel provided Eichinger with accurate advice before they implemented that strategy.[1]

Because the appropriate focus of a *Hill* claim is on "the process that led to [a defendant] forfeiting a constitutional right . . . he otherwise would have invoked," *Vickers v. Superintendent Graterford SCI*, 858 F.3d 841, 855–56 (3d Cir. 2017), *as amended* (July 18, 2017), this Court has specifically rejected the "contention [that] [a] fair trial wipes clean any deficient performance by defense counsel during plea bargaining," *Lafler*, 566 U.S. at 169. The Third Circuit therefore erred by reasoning that *Nixon*'s rule on what constitutes reasonable attorney performance at a

[1] *See* Response to Application for Certificate of Appealability, *Eichinger v. Secretary, Pa. Dept. of Corr.*, No. 19-9000 (3d Cir. June 23, 2021), at 19 ("Counsel reasonably decided that contesting the overwhelming evidence at trial would serve no purpose, and that it was in his client's best interest to instead focus on the penalty phase and argue that his client had attempted to avoid further inflicting pain and hardship on the families of the victims. *See Florida v. Nixon*, 543 U.S. 175, 192 (2004).").

contested capital guilt trial governs the reasonableness of counsel's advice here about the Commonwealth's plea offer. Those are two discrete issues and, under *Hill*, any purportedly "reasonable" strategy at Eichinger's penalty phase does not cure trial counsel's antecedent constitutional errors in the plea bargaining stage.

Nixon is also inapposite because Nixon, unlike Eichinger, had a contested guilt phase trial, *Nixon*, 543 U.S. at 182–83, and there is no evidence Nixon's counsel ever gave him erroneous advice or that Nixon opposed counsel's strategy, *id.* at 181. By contrast, Eichinger adamantly opposed counsel's strategy of conceding guilt, wanted to proceed to trial on both cases, and then "broke down" and relinquished his right to do so based only on counsel's legally and factually erroneous advice. NT 7/21/11 at 5, 10.

Worse still, the court below refused even to certify Eichinger's claim for appeal. A COA requires only "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). That showing is satisfied when "jurists of reason could disagree with the district court's resolution of [any] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El*, 537 U.S. at 327; *Slack*, 529 U.S. at 484. The standard is not burdensome: "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El*, 537 U.S. at 338.

Moreover, in a capital case, "the nature of the penalty is a proper consideration" to weigh in favor of granting a COA. *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983); *see also Slack,* 529 U.S. at 483–84 (holding that the COA requirement

codified the pre-AEDPA *Barefoot* standard). And in *this* capital case, the defendant insisted on going to trial and was in the middle of jury selection when counsel misadvised him about the terms of the prosecution's plea offer. That showing alone creates a "plausible claim of ineffective assistance of counsel," regardless of the prospects of success at trial. *Lee*, 137 S. Ct. at 1974 (Thomas, J., dissenting, and observing that the standard "does not appear to be particularly demanding" and may be satisfied even when the defendant faces the "'smallest chance of success at trial'—relying on nothing more than a 'Hail Mary'") (quoting majority opinion, *id.* at 1966–67). Eichinger is entitled to appellate review of his colorable claim for habeas corpus relief.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully Submitted,

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