22-7211 ORIGINAL

No. 22A512

IN THE SUPREME COURT
OF THE UNITED STATES

Marco Antonio Aguilar-Medina

v.

David Shinn, Director, Arizona Department of Corrections, Rehabilitation and Reentry, et al.

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

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PETITION FOR WRIT OF CERTIORARI

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I.

QUESTION(S) PRESENTED

1. Is the Ninth Circuit Court's ORDER, denying Petitioner a Certificate of Appealability, a) a violation of Petitioner's constitutional due process rights, as afforded by the 14th Amendment, b) a fundamental error of judiciary application, and/or c) contrary to established federal doctrine?

II.

LIST OF PARTIES

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

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

RELATED CASES

- Aguilar-Medina v. Shinn, et al, No. CV-20-08068-PCT-MTL (JZB); US District Court for the District of Arizona. Judgment Date: 02-25-22

- Aguilar-Medina v. Shinn, et al, No. 22-15653; US Court of Appeals for the Ninth Circuit. Judgment Date: 10-27-22

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V

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix "A" to the petition and is UNPUBLISHED.

The opinion of the United States district court appears at Appendix "B" to the petition and is UNPUBLISHED.

VI.

JURISDICTION

[X] For cases from federal courts:

The date on which the United States Court of Appeals decided my case was 10-27-22.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: 10-27-22, and a copy of the order denying rehearing appears at Appendix "A".

[X] An extension of time to file the petition for a writ of certiorari was granted to and including 02-24-22 on 12-09-22 in Application No. 22A512.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

VII.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- The district court and the U.S. Court of Appeals for the 9th Circuit denied Petitioner's request for a Certificate of Appealability. In Hohn v US, 524 US 236 (1998), this Court held that pursuant to 28 USC 1254(1) the U.S. Supreme Court has jurisdiction, on Certiorari, to review a denial of a request for Certificate of Appealability by a circuit judge or a panel of a federal court of appeals.
- The right of a state prisoner to seek federal habeas corpus relief is guaranteed in 28 USC § 2254. The time for appeal is set forth by 28 USC § 2107 and Federal Rules of Appellate Procedure, Rule 4(A)(1)(A).
- Ninth Circuit precedent Rule 22-1(d) states "if the district court denies a Certificate of Appealability (COA) as to all issues, Appellant may file a request for a COA, in the Court of Appeals, within 35 days of the filing... of the district court's denial of a COA in full, whichever is later.

VIII.

STATEMENT OF THE CASE

On April 15, 2020, Petitioner timely filed a writ of habeas corpus in the United States District Court for the State of Arizona.

On Febuary 25, 2022 the United States District Court dismissed Petitioner's writ with prejudice. It was further ORDERED by the District Court that it would not issue a Certificate of Appealability.

On or about April 24, 2022, Petitioner timely filed a Motion/Request for Issuance of Certificate of Appealability, pursuant to FRAP 22-1.

On or about October 24, 2022, Petitioner submitted a Motion to Amend Request for Issuance of COA, with the United States' Court of Appeals, Ninth Circuit.

On October 27, 2022 the United States' Court of Appeals issued an Order denying Petitioner a Certificate of Appealability.

On December 01, 2022, Petitioner timely filed a Motion for Extension of Time to File Request for writ of certiorari.

On December 09, 2022 the Honorable Justice Kagan granted Petitioner a thirty (30) day extension to file a writ of certiorari.

IX.

WHY THIS WRIT SHOULD BE GRANTED

1. Is the Ninth Circuit Court's ORDER, denying Petitioner a Certificate of Appealability, a) a violation of Petitioner's constitutional due process rights, as afforded by the 14th Amendment, b) a fundamental error of judiciary application, and/or c) contrary to established federal doctrine?

I. Introduction -

Mr. Aguilar-Medina timely filed a petition and motions detailing several constitutional issues in violation of the Petitioner's 5th, 6th and 14th Amendment rights.

In an ORDER of 02.25.22, (Appendix, (APX) B), the 9th District Court dismissed with prejudice Petitioner's writ of habeas corpus, in whole. (APX. E). Subsequently, in an ORDER of 10.27.22, (APX. A), Petitioner was erroneously denied a Certificate of Appealability (COA), by the 9th Circuit Court of Appeals, "because appellant has not made a 'substantial showing of the denial of a constitutional right.'" 28 U.S.C §2253(c)(2)."

The latter ruling imposed despite its obvious conflict with that of the established amendments, laws, statutes and regulations, within that of both the United States Code of Service and, most importantly, the 'rule of law', as decreed and consecrated by the United States Constitution.

The contentions herein first fostered and delineated by Petitioner, within a Motion/Request for Issuance of COA[1] and again, in a Motion to Amend

[1] Appendix "C"

Request for Issuance of COA, to the Ninth Circuit Courts. (Apx. C, D).

II. COA Overview -

The amendment of 28 U.S.C. §2253, by the Antiterrorism and Effective Death Penalty Act (AEDPA) in 1996, revised section 2254, wherein it was established that there is no appeal of right for prisoners in habeas corpus cases. Instead, prisoners must first seek and obtain a COA, a procedural device of the AEDPA, by making a "substantial showing of the denial of a constitutional right." Barefoot v. Estelle, 463 U.S. 880, 893 (1983); 28 U.S.C. § 2253(c)(2). This COA requirement applies exclusively to appeals of "the final order in a habeas corpus proceeding... [or] proceedings under section (2254)." Id. (c)(1)(A), (B).

As this Court clarified, the statute "codified our standard announced in Barefoot v. Estelle, 463 U.S. 880 (1983), for determining what constitutes the requisite showing" for obtaining leave to appeal a district court's denial of habeas corpus relief. This Court further stated that this standard, although not codified by the statute, requires a prisoner,

> "show[w] that reasonable jurists could debate whether... the petition could have been resolved in a different manner... or that the issues presented were 'adequate to deserve encouragement to proceed further.'" [Slack v. McDaniel,] 529 U.S. [473], at 484 [(2000)] quoting Barefoot, supra, at 893, n.4)... "the COA determination... requires an overview of the claims and a general assessment of their merits... We... ask whether that resolution

was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases... In fact, the statute expressly forbids it... [A] COA does not require a showing that the appeal will succeed." Accordingly, a court of appeals should not decline the application merely because it believes the applicant will not demonstrate an entitlement to relief. Miller v. Cockrell, 537 U.S. 336-38 (2003); Accord Thaper v. Sellers, 139 S.Ct. 545-47 (2018) (per curiam).

Wherein a district court or court of appeals denies a COA, this Court has determined in Hohn v. United States, that denials of COAs are appealable via Certiorari — overruling its previous decision in House v. Mayo, this Court has held it holds jurisdiction under 28 U.S.C. § 1254(1) to review denials of an application for COA by a circuit judge or panel. Hohn v. United States, 524 U.S. 238, 252 (1998); House v. Mayo, 324 U.S. 42 (1945) (per curiam).

III. The Centric Argument As Tendered

It is heretofore contended, by this Petitioner, there exist two distinct principle requirements for determining the issuance of a COA. Both of which are deeply rooted in the "plain language" of the predicate statutory provisions for § 2253, as amended by the AEDPA, and as applicable towards the issuance of a COA.

First and foremost, the core component, for issuing or denying a COA, must be qualified as being exclusively a matter of constitutionality. A fact most difficult for this or any court to disagree with, as practically every federal court, inclusive of this Court, has affirmed this statutory principle in ruling, as the definitive law. That Petitioner must make a "substantial showing of the denial of a constitutional right," 28 U.S.C. § 2253(c)(2), is an incontrovertible absolute.

Therefore, it is to be reasoned that the most discerning elements of any alleged habeas claim centers upon whether an issue of constitutional magnitude exists. This Petitioner herein stipulates that any claim which does not rise to any level of constitutionality fails this primary initial legal requisite for granting a COA. A requirement this Petitioner demonstrated, in at least three claims.

Corollary to the primary legal requisite, the secondary qualifier for the issuance of a COA, cannot be predicated upon the subjective and purely speculative interpretations of jurists of reason and/or reasonable jurists. The next compulsory determinant must conjunctively reside and be rooted in the same tenets of statutory integrity as that found in the core element of constitutionality. Therefore, the follow-up inquiry, most consistent with and also rooted in the statutory legal prescription of constitutionality is logically in whether <u>any singular claim</u> of the Petitioner, <u>if proven true, would warrant relief consideration</u>, <u>due to a constitutional violation.</u> This can be the only natural and objective progressive step in making a qualifiable COA determination.

Just as is stipulated by 2253(c)(2), this adjunct does not and should not require a "threshold inquiry or any consideration for the factual basis" of the allegation(s) presented. Of necessity for granting a COA, should simply reside in the fact that a reasonable presumption of a substantial infringement upon a petitioner's constitutional rights potentially exists.

Electing to draft authoritative opinion premised upon the wholly subjective, while eschewing a practice which is both objective and reasonable is highly illogical and completely outside the realm of legal prudence.

Within Petitioner's writ for habeas corpus and subsequent filings seeking a COA, several elements of constitutional proportion were divulged and documented for that of the 9th Circuits dissemination. And, thus, whether this Petitioner alleged claims, if proven to be true, would have been in violation of a constitutional right, should have been the only factor of consequence and significance, after the primary issue towards constitutionality had been established, in denying or granting a COA.

It is therefore contended, herein, that when a prima facie case premised upon issues of constitutionality have been proffered, any determination, by any district court, refusing to issue a COA, arbitrarily denies the petitioner the full protection of judicial inquiry, which thereby represents a denial of immeasurable due process consequence and is thus a constitutional issue of fundamental concern and relevance to and for this Court's just adjudication.

IV. Constitutionality

The original focus of the Bill of Rights was in constraining the federal government and protecting the rights of the individual states. It wasn't until 1868 that the 14th Amendment and its statutory principles of "due process of law" became enforceable upon the states.

Of those principles, substantive due process, concerns the deliberate decision of the government in depriving a person of life, liberty or property; the notion for liberty represents more than mere physical restraint, and includes the concept of "fundamental rights". Thus, the role of substantive due process is to protect and ensure the fundamental rights of the individual from arbitrary deprivation by the government.

As such, the original construct of both the federal and habeas appellate processes represented a compulsory component of the 14th Amendment's Due Process Clause, in that its primary compensatory function rested in assuring and ~~assuring~~ ensuring that the People, were afforded their rightful constitutional deference.

This Court recognizing the importance of these fundamental rights, especially for those seeking relief from it, whereas, this Court's relevant legal understanding has been well documented in numerous rulings. As in Glasser, this Court expressed its concerns towards preserving the protections of the Bill of Rights for hard pressed defendants, assuring the People that it would always "indulge every reasonable presumption against the waiver of fundamental rights." Glasser v. United States, 315 U.S. 60, 70-71, 62 S.Ct. 457, 86 L.Ed. 680 (1942).

However, it is offered that the adoption of the AEDPA, and the standards imposed by it, have manifestly altered the landscape of both the habeas process and subsequently, how the federal courts review, disseminate and adjudicate these cases. And in this change of conduct, the court's conditional infringements represent an attack upon the fundamental due process rights of this Petitioner.

It is further offered the AEDPA does not simply restrict and diminish the due process rights of all habeas petitioners, but effectively subverts the very premise and promise of equanimity in the eyes of the rule of law, as the associated conditional subsidiary provisions, established by the courts, have proven themselves to be adverse to the very fabric, edicts and principle intent of the Constitution of the United States — most specifically, the 14th Amendment's Due Process Clause:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny any person within its jurisdiction the equal protections of the law." (U.S. Const, Amend. 14, Sect. 1)(Emphasis added).

Within habeas proceedings, "... until the prisoner secures a COA, the Court of Appeals may not rule on the merits of his case." Buck v. Davis, 137 S. Ct. 759, 773-75 (2017). Therefore, the granting of a COA is central and critical to due process, given that a COA must be obtained before an appeal can be taken from the denial of a §2254 petition. 28 U.S.C. §2253. This is the statutory requisite of the habeas process — unrecognized in any other federal appellate process — irrespective of whether the petitioner has been granted relief, in whole or in part, or denied, by the district court. As such, due process in federal habeas proceedings rise, fall and potentially die, with that of the district court's determination.

Effectively, the denial of a COA, by the district court, abridges the due process rights of this Petitioner, given it deprives Mr. Aguilar-Medina of "the equal protections of the law," and it fundamentally ends any hope for proper and just relief, given the majority of circuit courts of appeals perfunctorily side with that of the district court judge's findings, in their own de novo rulings. This a highly disconcerting, and, just as importantly, an erroneous misapplication of process — a byproduct of the AEDPA — given that this Petitioner has never been afforded the benefit of any evidentiary hearing, in furtherance of his constitutional claims, at either the state or federal appellate level.

» COA Primary and Secondary Qualifiers of Condition

Although the threshold for granting a COA is relatively low, very few petitions, alleging constitutionally relevant violations, ever receive permission to justly and properly address their claims in a circuit court of appeals.

It is offered the mechanism behind such a dearth of acceptance, again, resides in that the applicable standard for issuance of a COA unreasonably requires that federal courts first determine whether "reasonable jurists could debate" whether a petition states a valid claim of a denial of a constitutional right.

In rulings such as Miller-El, where the origins of the jurists of reason standard are centered, this subjective standard of reasoning has attributed to denial, after denial, after denial of constitutional claims, premised upon the impractical and improper applications of these secondary detached factors.

It is once again tendered that the only controlling, conditional and objective standard relevant towards the issuance of a COA, rests exclusively within the statutory provisions that a "Petitioner is simply required to 'demonstrate a substantial showing of a denial of a constitutional right.' 28 U.S.C. §2253(c)(2).

The dependent elemental qualifiers of Miller-El designating that "jurists of reason could disagree with the district court's resolution... or... conclude the issue(s) presented are adequate to deserve encouragement to proceed further," are, in and of themselves, purely subjective factors, which do not address the grander issue of constitutionality, nor do they come close to representing an appropriate subordinate inquiry predicated upon the controlling mechanism of constitutionality. Miller-El v. Cockrell, 537 U.S. 322 (2003). Theoretically, Miller-El is suggestive of the recognition and acknowledgment that the associated opinions of the fact-finder may indeed be susceptible to error.

It is thereby contended that the secondary qualifying inquiry to that of constitutionality cannot center upon what "jurists of reason" might find debatable, arguable or deserve encouragement, but, again, whether, if proven true, would the claim be in violation of the U.S. Constitution, entitling the Petitioner to relief, in some form or capacity.

One example supportive of this contention is found in Frost v. Gilbert. Therein, the 9th Circuit Court granted petitioner a COA, stating the "issues are at least debatable and implicate Frost's constitutional rights." Frost v. Gilbert, 835 F.3d 883, 888-889 (9th Cir. 2016).

The significance of this finding most integral, given the presiding court's decision is predicated upon an initial inquiry as to whether the issue at hand is "at least debatable." However, of even greater import is that only then does the court consider whether the claim has implicated the petitioner's "constitutional rights". This is not at all uncommon; as in this instance, many other rulings, utilizing this exact process of determination, exist in the pantheon world that is today's AEDPA approach to jurisprudence. The only difference being for every citation we found granting a COA, there were <u>over 100 citations denying</u> the petitioner <u>a COA</u>.

First and foremost, the question posed and answered, in this example of the Frost court, was <u>not</u> the 'objectively reasonable' equivalent of the constitutional question asking, "Does petitioner's claim address an issue of constitutionality?" An inquiry, requiring of the court, little more than an elementary 'yes or no' and the <u>only</u> question of consequence that goes <u>directly</u> to the core principle of the statutory provisions "plain language" edict for establishing a "... denial of a constitutional right." <u>28 U.S.C. §2253</u>(c)(2).

As an aside, this application of process, by the court, is equally erroneous. Its assessment of the claim's issues as being debatable is a merit based ruling; one expressly precluded by the statutory provisions for issuing a COA. <u>Miller v. Cockrell</u>, 537 U.S. 322, 326 (2003). Accord <u>Slack v. McDaniel</u>, 529 U.S. 473, 483-84 (2000).

Petitioner further extends that the Frost example is neither how §2253 is meant to be applied nor is it the intent of the provision. This current process for decision making most disconcerting given it injects degrees of subjectivity into the proceedings before ever addressing the issue of constitutionality, objectively. Additionally, the process elevates, rather than attenuates, the individual subjectivity of this particular jurist's opinion, above that of the principle tenets of the rule of law.

This Court has ostensibly aligned itself with that of this Petitioner's contentions, as the denial of a COA has been found to be unqualified "when a reviewing court inverts the statutory order of operations." See, Buck v. Davis, 137 S.Ct. 759, 773-75 (2017). The statutory order referenced in Buck stipulates what this Petitioner has been arguing from inception, constitutionality before that of any other conditional factor. It is again reinforced, any subsequent complimentary component, to that of the core principles, and necessary to the qualified completion of the practice of discernment, must be consistent and analogous to that of the controlling element — constitutionality.

Moreover, this Court has shown again, its full and complete understanding of the constitutional import and intent, as it has, on numerous occasions, addressed and obtusely acknowledged the prominence of constitutionality. Within Slack — one of the citations proponents, of the 'jurists of reason' standard, point to in support of their arguments — the primary, overarching determinant of this Court's ruling was predicated upon constitutionality.

> "... the Court has addressed the application of the statute, holding that 'when the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue." Slack v. McDaniel, 529 U.S. 489-90 (2000).

In light of the plain language of 28 U.S.C § 2253, it should now be obvious to this Court that the primary and only applicable legal standard binding, objectively real compulsory to the issuance of a COA, resides within that of a presented claims constitutionality. Any secondary, fundamental inquires by a court must demonstrate a direct nexus and dependency with that of the controlling and dominant qualifier.

Thus, Petitioner defines a favorable determination, informing a district court's COA finding, requires only these two qualifying factors;

1) a singular claim of constitutional magnitude, and

2) recognition of a potential infringement of a constitutional element.

Petitioner offers that any determination, by any court, premised upon the 'reasonable jurist' standard, which denies any petitioner the full protection of judicial inquiry, represents a denial of immensurable due process consequence and is, therefore, a constitutional issue of fundamental concern and of relevant magnitude to and for this Court's just review.

V. Statutes and Rules Governing

Adversaries would be inclined to argue the contentions of this Petitioner herein to be baseless, but the merits of constitutionality as being the only precedent of reason is self-evident. The existing rule of law, process and procedure support Petitioner's claims of constitutionality superseding All other rulings, doctrines and/or standards. This particularly true given it is commonly accepted by this Court that the language of the statute controls and governs opinion and authority. Connecticut Nat'l Bank v. Germain, 503 U.S. 249, 253-54 (1992).

Within Chapter 153 of the federal statutes pertaining to the Rules Governing Section 2254, 2255 in the U.S. District Court and in the Federal

Rules of Appellate Procedure encompassing § 2241 thru § 2266, there are references to that of "violations of the constitution" or "violations of the Constitutional law(s) or treatises of the United States," which are singled out, expressed and defined on at least eight (8) distinct and unmistakable occasions.

Nowhere, outside of case law authority, are the phrases "jurists of reason" or "reasonable jurists" introduced, defined, discussed or even encouraged.

Nowhere within the aforementioned statutory provisions are these two terms — prominent and proverbial within countless COA denials since the adoption of the AEDPA — referenced, inferred or even suggested should serve as the controlling, requisite, applicable legal standard of the decision-making process for COA determinations.

Again, the plain language edict of federal statute speaks unequivocally to the primary determinant, in habeas proceedings, being a distinction that resides exclusively in that of the principle tenets of constitutionality.

VI. Case Law As Guiding Principle

As it pertains to the issuance of a COA by any court, the reliance upon the jurists of reason standard in seeking review and consideration from a higher court, is not without considerable consequence and immeasurable prejudice to that of any petitioner, who has brought forth claims carrying constitutional implications.

As this Petitioner has contended and developed throughout, the jurist of reason standard is a direct effect of the AEDPA's prejudicial intrusion upon a distinct segment of the populations' constitutional protections.

However, just as instrumental in allowing this jurists of reason standard to prevail, above that of Constitutionality, has been the courts' persistence and insistence in establishing pervasive case law authority and its willingness in allowing this wholly subjective practice to become the primary hindrance in thwarting Petitioner's 14th Amendment Due Process rights. The courts have incorporated and relied upon antithetical case law to both establish and promote the jurists of reason model, utilizing this brand of subjectivity as a means of incumbrance, which has served as nothing less than a prohibitive barrier to just relief, in countless cases. As such, case law has placed layer upon layer of like conditional provisions between that of a Petitioner's claims and the underlying measure of constitutional infringement.

Demonstrative of Petitioner's arguments, in fact, is that of Tennard, wherein the very essence of the pure subjectivity and fluidity of case law is on full display; a wholly imperfect and impractical exercise of application for assessing whether a petition warrants further encouragement.

Therein, this Court enlisted the "reasonable jurists" standard in reversing the 5th Circuit's denial of a COA. However, in overturning the 5th Circuit's ruling, this Court's determination was not simply subjective, it was admittedly premised upon its own interpretation of what the 5th Circuit's interpretation of how "reasonable jurists" might interpret the court's reasoning. See, Tennard v. Dretke, 542 U.S. 274, 276, 282 (2004). Within this precedential decision, three separate jurists of reason — the district court, the court of appeals and SCOTUS – while addressing the very same evidence and facts, of the very same case, arrived at conflicting judgments.

The district court, concurring with the magistrate judge, discerning that the court of appeals – reasonable jurist #2 – would not find its opinion to be "debatable or wrong". The district court was indeed correct, as "reasonable jurist #2" ultimately concurred with "reasonable jurist #1", determining that "reasonable jurist #3" – this Court – equally would not find the opinions of reasonable jurists #1 or #2 to be "debatable or wrong". However, this Court DID find the opinions of both lower courts to not only be "debatable or wrong, it even went as far as to denounce the 5th Circuit for having "merely paid lipservice to the principles guiding issuance of a COA." (Id.).

And, therein lies the dilemma, the true dilemma, in predicating such decisions upon the subjectivity of both case law and the jurists of reason standard, before that of the pure objectivity of a standard which addresses the actual plain language authority of the presiding law for Constitutionality.

If case law, as is generally accepted, represents judicial precedent generated as a by-product of the decisions which courts have made in resolving unique disputes, then case law is, simply put, a principle of law; a functional rule or doctrine defining an abstract generalization concerning the legal consequences, which should be assigned as the result of facts. In establishing case law, the courts decide those unique factual disputes, through the development of concrete facts, and in doing so, either apply former generalizations or generate new ones.

As a by-product of abstract generalizations, no matter the extent of the factual elements from which it derives, it must be reasoned that case law is not only singularly interpretive, but is a completely subjective conceptual process of application, susceptible to influence, exigency and exertion. This most relative given that case law is neither immune, from the abject prejudices, biases and/or political and religious leanings of its presiding fact-finders; nor is immutable from that of time, environmental conditioning or sociological mores and norms.

Case law, therefore, cannot exist as the definitive rule of thumb and sole arbiter for deducing what cases, actions, rules, principles, factors, et al, rise to an appropriate level of acceptance and distinction, in all conceivable instances. And, given such implicit ambiguity abounds throughout, and the potential for misapplication, due to such fluidity, it must be reasoned case law exists as the intrepid and wholesome offspring of useful intent, but must, none the less, be afforded its true deference as simply a guiding principle of instruction and not the presiding factor for what is or is not constitutional, whenever any discussion upon the issuance of a COA arises.

This Petitioner asserts that because case law, as implemented through the jurist of reason standard, is a distinctive component of a particular set of unique circumstances, within a particularly unique instance and dependent upon even more unique and specific facts, it should not be utilized to reflect the "rule of law", on the whole. And, as such, both elements of legal initiative should be regarded as the imperfect sciences that they indeed are. Neither of which should be heeded as anything more or less utilitarian than a guiding principle of instruction for jurists to consider when adjudicating meaningfully, impactful decisions of individual life and liberty.

Contrary to Petitioners aforementioned school of reasoning, this Court once decreed its decisions, as case law authority, "remain binding precedent until we see fit to reconsider them, regardless of whether subsequent cases have raised doubts about their continuing vitality." Hohn v. United States, 524 U.S. 236, 252-53, 118 S.Ct. 1969, 141 L.Ed. 2d 242 (1998)(emphasis added).

This Court's pontification exemplifying exactly that which this Petitioner has extended regarding case law subjectivity and the dependence upon the interpretive reasoning and particular leanings of the presiding fact finders. This of intrinsic significance given that any jurist of reason could easily interpret such a declaration to mean, "we determine, what we want to determine, when we want to determine it, irrespective of any imposition upon that of the rule of law."

Can it be acknowledged just how slippery a slope such pronouncements could be for any entity to tread, much less from the preeminent authority regarding Constitutionality?

No declaration, by any court, could be any more disconcerting to the People, than that which ostensibly inters the shunning of Constitutionality while promoting such abject subjectivity.

Therefore, it is again tendered that case law must be recognized for that of its true intended purpose as a practical, yet limited, application of guidance and not as the foundation of common law practice, in all cases, and despite any rationale and necessity towards comity.

Moreover, given that case law is unenforceable upon the States, it is further contended it cannot be reflective of the rule of law for constitutional values, in all instances, prevailing and existing only as an <u>advisory guideline</u> for ensuring that the legal framework of jurisprudence remains logically consistent, and until that time when case law is constitutionally substantive and becomes enforceable within all States.

Accordingly, this Court has since reestablished its position, affirming its understanding of the import of preserving the integrity of both its own status and that of Constitutionality, concluding that the "principles of comity and finality that inform the concepts of cause and prejudice 'must yield to the imperative of correcting a fundamentally unjust incarceration.'" See, House v. Bell, 547 U.S. 518, 536, 126 S. Ct. 2064, 2076 (2006).

VII. The De Novo Standard and the AEDPA

When it comes to the final rulings of judgment by the courts, the prevailing concern should always rest with that of the findings being accurate, objective, impartial, proper and just. Equally, these decisions should seek to embody the integrity and virtues of the judicial system, while embracing the confidence of the People.

This is a fundamental reason why the jurists of reason standard, for determining viability and meritocracy in COA determinations, is, again, a wholly imperfect and impractical science and exercise of application for assessing a petition warrants further encouragement, given such a standard is ripe with and reliant upon the subjectiveness of the presiding individual jurists of reason.

In furtherance of this proposition, it is offered that the pre-AEDPA standard of de novo review of habeas petitions, represents one of the most compelling arguments of this Petitioner, regarding the matters of Constitutionality, subjectivity and jurists of reason.

Prior to the AEDPA of 1996, the de novo standard for review of habeas petitions was compulsory to the federal courts primary focus of adjudication. At every level of the process the presiding courts were required to evaluate a petitioner's writ from scratch or without regard to the State court's prior Decisions. This allowed the courts to address the core issues of the petition, while equally qualifying those claims regarding Constitutionality.

The principle purpose for imposing such an absolute mandate upon the federal appellate was predicated upon two prominent factors; a) ensuring constitutionally protected rights, and, b) maintaining the integrity and standing of the appellate system, on the whole.

The predominant factor of the de novo standard was to ensure that all proffered claims within a petition were afforded the benefit of independent assessment, through a fresh set of qualified discerning eyes, in a conscious effort toward providing a just review and determination that was unquestionably discretionary, impartial, and without undue bias and/or prejudice to that of the petitioner's cause.

In relative terms, de novo review was predicated upon assuring that undue influence did not permeate the adjudication of claims, and wherein petitioners were at least afforded the appearance of equitable deference and fairness.

The second factor was in protecting the integrity, credibility, reputation and legitimacy of the judicial branch, given these traits are wholly dependent upon the court's obvious impartiality and nonpartisanship. See, Mistretta v. United States, 488 U.S. 361, 407, 109 S.Ct. 647, 102 L.Ed.2d 714 (1989).

Thus, the logical reason for prescribing de novo review, at every successive level of adjudication, was to assure the alleged claims were given the full measure of the court's due diligence and that the final disposition of judgement was consistent with that of established rule of law.

De novo review represented a compulsory safeguard necessary for upholding both the integrity and objectivity of the courts, while properly attending to the legal constitutional issues of the presented petition.

De novo review represented a conscious endeavor for assuring and maintaining public confidence in that of the courts' abilities for justice.

These factors, all integral elements of judicial virtue, practically stripped away by the onerous and grievous tenets of the AEDPA.

After the AEDPA's adoption in 1996, the prior system of truly de novo review of a petitioner's claims was replaced. As currently articulated within Rules Governing Section 2254, Rule 8(b), it is established that only upon the initial submission of a petition for writ of habeas corpus, is the presiding court required to evaluate a petitioner's writ de novo. See, Rules Governing Section 2254 Cases; Fed. R. Civ. P. 72(b); 28 U.S.C. § 636(b).

And therein lies the legal initiative for both the jurists of reason standard and the subjectivity which accompanies it, superceding Constitutionality. In limiting the de novo standard, the AEDPA has practically stripped away the integral elements and factors of judicial virtue, effectively replacing these essential characteristics with nonstatutory, noncompulsory, nonstandardized and nonenforceable 'rules of procedure' antithetical to the principle tenets of Constitutionality.

After replacing the former system with independent review of the State courts' "decision", while limiting relief to a "decision [that] was contrary to, or involved an unreasonable application of clearly established federal law, as determined by the Supreme Court of the United States," or "resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceedings," 28 U.S.C. §2254, the rationale and necessity for addressing issues of Constitutionality became secondary considerations veiled behind that of the courts subjective interpretations of case law authority as determined by the jurists of reason.

Evidentiary of Petitioner's assertions, we again enlist Tennard, bringing to the forefront the jurist of reason standard and the intrinsic consideration of the Court's subjective interpretation. Petitioner fervently contending that had either the district court or the court of appeals reviewed the Tennard claims de novo, had they applied this Petitioner's Constitutional Deference standard, it is reasoned that one or the other of these courts would have latched onto that which SCOTUS concluded, given the extent of the admonishment leveled upon it. See, Tennard v. Dretke, 542 U.S. 274, 276, 282 (2004).

Those 'principles' alluded to by this Court being either that of the plain language edict of Constitutionality, as statutorily written, or the impractical and subjectivity jurists of reason standard, improperly rendered by case law authority. It is offered this Court's lean favors the former, but, if it be the latter, then the courts need look no further than themselves in addressing the ambiguity and subjectiveness of such decisions. If not for this subjective standard of appraisal, the necessity for this Court's intervention would have been greatly ameliorated, if not completely negated.

Unfortunately, Tennard does not represent an isolated instance, but is a reflection of commonality within the courts' dominion towards denying a petitioner rightful appeal and due process — the rule and not the exception. Thus, this is the relevant issue of concern behind this impractical exercise for determination, in bringing Petitioner's contentions to bear.

What Tennard does effectively demonstrate, however, akin to that of Petitioner's Constitutional Deference standard, is that this Court distinctly recognizes the imperative of that which is foremost elemental and consequential of its determination, that "the applicant 'made a substantial showing of a constitutional right'," and, thus the import of its observation self-evident, within the context of Petitioner's arguments.

In relegating the Constitutional Deference standard to second-class status, only relevant when jurists of reason can disagree or debate, the AEDPA has effectively diminished and cheapened the Constitution's value as an instrument of equitable reason for and of the People.

VII. Synopsis

It is most evident that which the founding father's had in mind within their careful and deliberate development of the United States Constitution. And, even as abstract as the Constitution can prove itself to be at times, its principle tenets are rooted within both its simplicity and the framework of its architecture.

Not only were both Jefferson and Franklin understanding and in recognition of the necessity for a flexible, living, breathing document of instruction and resolve, they likewise truly and fully comprehended that the protections afforded by the Constitution to the People, should not so easily trifled with, either. This easily discerned within that of its Fifth Article, which specifically defines the substantial collective of the House required before Amendments are to be repealed or ratified. United States Constitution, Art. V

It is thus contended that the AEDPA represents a concerted effort, of the powers that be, to subvert the mandate of Article V, in order to effectively infringe upon the constitutional rights of those wrongfully tried and incarcerated; doing so without the necessity of bringing about unwarranted attention to that of issues of Constitutionality or that of their underlying cause.

It is further contended that the AEDPA also violates ¶ Two of the Ninth section of the First Article, which expressly imparts upon the People, "the Privilege of the Writ of Habeas Corpus," wherein it is firmly established that this right of the People, "shall not be suspended," unless circumstances of public safety require such. Id, Art. I, Sect. 9. The AEDPA effectively infringes upon the 14th Amendments due process and equal protections clauses, as it denies petitioners the "right of appeal" upon denial of their writ, which thereby 'suspends' the habeas process, until that time the requisite certificate of appealability issues, allowing the petitioner to then and only then, advance their cause before the court of appeals.

Furthermore, the AEDPA is equally in violation of Section Two of Article Four of the Constitution, which expressly establishes that "the citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States." Id., Art. IV, Sect. 2. The AEDPA's exclusion of habeas petitioner from 'right of appeal' is a discriminatory practice, as they are the ONLY civil litigants required to a COA, in order to proceed forth to a court of appeals![1]

And, as previously denoted within this writ, Amendment XIV decrees that, "No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protections of the law." Id., Amend. 14, Sect. 1.

Within these specific Articles and Amendments lie the impetus and imperative of the Constitution's protections, relative to that which this Petitioner has presented herein, and as it pertains to the arbitrary denial of a COA to Mr. Aguilar-Medina, and others like him whom have alleged constitutional violations within habeas proceedings.

Petitioner again asserts that the measures imposed by the AEDPA, the associated case law authority justifying and emboldening the jurists of reason standard, and the courts continued reliance upon subjective and interpretive reasoning for determining the merits of this Petitioner's COA request, represent direct violations to and abridgements of the U.S. Constitution, as reflected above.

Moreover, as it pertains to affording petitioners of habeas corpus that

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[1] Respondents captioned in habeas writs are precluded from seeking COA's before advancing to a court of appeal. See, Garcia v. Dretke, 388 F.3d 496 (5th Cir. 2004).

which All other civil litigants are entitled to and due — the formal right of appeal — the AEDPA and its efficacious powers have permitted the courts' subjective interpretations as jurists of reason to supersede the mandated elemental protections of due process, by elevating the self-appointed, inter-dependent and corollary by-product of transmutable case law authority, above and even beyond that of the constitutional earnestness of the founding fathers.

This form of prejudice imposed upon habeas petitioners is self-evident, given they are the only faction of the population required to subscribe to a standard promoting jurists of reason. In other civil litigation, success or failure is subject to proof by preponderance of evidence.

While it will be argued Mr. Aguilar-Medina's assertions lack merit of substance, then it only need be answered, why it is that All other civil litigants are afforded their right of appeal, but those in habeas proceedings are precluded from advancing their judicial interests, void a certificate of appealability?

By denying the issuance of a COA, Petitioner's Fourteenth Amendment constitutional right to due process is not only abridged, but the habeas process is perpetually suspended, effectively terminated, predicated exclusively upon a wholly subjective, imperfect, unreasonable and subordinate standard of inferior measure. Said denial of a COA represents a 'legally acceptable; lethal blow, to any and all petitioners like Mr. Aguilar-Medina, whom present constitutional claims of injustice, but are summarily denied under the false pretense that Constitutionality is within the subjective purview of jurists of reason and not that of Constitutional convention and deference.

The jurists of reason standard for determining the viability and meritocracy in COA decisions is, again, a wholly imperfect and impractical exercise of application in assessing whether a petition warrants further encouragement, given the standard is ripe with, reliant upon, nonspecificity and subjectivity to reach its conclusions. This especially true given this Court's own recognition and acknowledgment that the AEDPA is marred by careless drafting. See, Lynch v. Murphy, 521 U.S. 320, 336 (1997).

There is absolutely no question of this Petitioner, as to whether the courts are permitted to interpret the law. The courts possess complete and absolute autonomy and are encouraged to do so in resolving unique disputes relative to both constitutional and nonconstitutional issues. However, Petitioner asserts the findings of these courts must not and cannot re-legislate, rewrite, re-codify, redefine, nor offer opinions and interpretations which strip, deprive, diminish, alter, influence or prejudice the fundamental purposefulness, intent and/or inherent rights, assigned to the People, from that of the presiding legal authority of Constitutionality, on the whole or in part.

This Court has weighed in repeatedly and spoken to that of Petitioner's arguments of Constitutionality as the plain language edict of the statutory provisions, which of themselves state nothing to the contrary.

In Begay v. United States, the Respondent's therein argued there was not a constitutional claim presented and thus, the courts were barred by the plain language edict of § 2253(c)(2). The Court held that the Begay error was debatably constitutional, and therefore, the word "constitutional in § 2253 is no bar to a COA," even if COA's are limited to claims of constitutional error. Begay v. United States, 553 U.S. 137 (2005); United States v. Doe, 810 F.3d

132, 147 (3rd 2015) (see *infra* notes 33-45).

The two points of significant emphasis to extract from Begay are 1) the obvious testament to that of Constitutionality, and 2) the Court's affirmation that "COA's are limited to claims of constitutional error."

Within Petitioner's writ of habeas corpus claims of constitutional error were distinctly divulged and documented, for that of the 9th Circuit's dissemination. That Mr. Aguilar-Medina presented at least three claims to violations of his 5th, 6th and 14th Amendment constitutional rights – with due process the most significant factor contended, as it encompasses double jeopardy and multiple IAC claims. Whether any singular claim would rise to a constitutional violation, if proven true, should have been the only other factor of consequence towards a COA determination.

Any incorporated practice of process which falls short of upholding judicial integrity and the principle tenets of Constitutionality absolutely flies in the face of both legal reasoning and common sense.

The adopted reasoning of the AEDPA, according to this Court, is to further the principles "of comity, finality and federalism." Yet, Petitioner contends the AEDPA's pure intent is not to inform and shape, but to "limit the scope of federal intrusion into state criminal adjudications." And, even more so, as has been fervently held herein, the AEDPA's true underlying motive has been to circumvent, marginalize and legally infringe upon the rights of prisoners and impede their efforts in securing federal habeas relief. See, Childers v. Floyd, 568 U.S. 1190, 133 S.Ct. 1452, 185 L.Ed.2d. 358, 2013.

Less it be forgotten, this Court once warned against this type of continued deprivation and infringement upon prisoner's rights and that of the federal courts function of duty for protecting those rights, when it declared, pre-AEDPA, "If authority of federal courts to use habeas corpus procedure to test question whether one confined under state process has been deprived of his constitutional rights, is to be more limited than that provided by statute, such limitations must be made by congress." United States ex rel., Eliot v. Hendricks, 213 F.2d. 922, 1954.

If it is the ardent intent and belief, of the States, that the jurists of reason standard, predicated upon measures of such subjectivity and dependent upon the trier of facts individual perception of legal interpretation, should prevail above that of the 14th Amendment's protections and the U.S. Constitution, then it should be insisted that Congress invoke Article V and either repeal the 14th Amendment, in favor of that which has been defined and instituted, through the AEDPA, as being better aligned with their ideals of due process or equal protections. Otherwise, simply accept that Constitutional Deference IS the rule of law and allow the tenets of Constitutionality define the actions of the courts, as intended, and not the converse.

In the interim, until that time when Congress acts accordingly with the tenets of the Constitution, Petitioner remains resolute in his claims he is entitled to relief. What has preceded, as to this Question for Review, by this Court, comprehensively illustrates why the constitutional issues presented to and denied by the 9th district court deserve further encouragement and are in need of proper resolution by this Court or the Ninth Circuit.

Petitioner urges that at the very least a Certificate of Appealability be granted by this Court, or, in the alternative, remanded back to the Ninth Circuit for issuance of a COA.

X.

CONCLUSION

This petition for writ of certiorari should be granted.

Respectfully submitted this 31st day of March, 2023

Marco Aguilar

MARCO ANTONIO AGUILAR-MEDINA