No. _____

In The

Supreme Court of the United States

CHRISTOPHER PAUL GEORGE,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

EZEKIEL E. CORTEZ
LAW OFFICES OF
EZEKIEL E. CORTEZ
550 West C Street, Suite 620
San Diego, California 92101
(619) 237-0309
lawforjustice@gmail.com

Attorney for Petitioner Christopher Paul George

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED FOR REVIEW

1. Did the Ninth Circuit ignore the process re-emphasized by this Court in *Buck v. Davis* and *Miller-El*,[1] by refusing to issue Cristopher P. George a COA,[2] thereby requiring him to make a far more demanding showing, as the court also affirmed the district court's disregard of George's *prima facie* showing of IAC[3] and entitlement to relief in his 2255[4] *habeas*?

---

[1] *Buck v. Davis*, 580 U.S. 100, 115 (2017) and *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

[2] Certificate of Appealability.

[3] Ineffective assistance of counsel.

[4] 28 U.S.C. § 2255.

PARTIES TO THE PROCEEDING

Petitioner Christopher Paul George was the Petitioner-defendant in the district court proceedings and appellant in the court of appeals proceedings. Respondent United States of America was the plaintiff in the district court proceedings and appellee in the court of appeal proceedings.

RULE 14(B) STATEMENT OF RELATED CASES

- *USA v. Christopher Paul George*, No. 5:12CR00065-VAP, U.S. District Court for the Central District of California. Judgment entered November 3, 2017.
- *USA v. Christopher Paul George*, 15-50435, U.S. Court of Appeals for the Ninth Circuit. Judgment entered February 27, 2018.
- *USA v. Christopher Paul George*, No. 5:12CR00065-VAP, U.S. District Court for the Central District of California. Re-Sentencing, Judgment entered August 9, 2018.
- *USA v. Christopher Paul George*, No. 18-50268, U.S. Court of Appeals for the Ninth Circuit, Rehearing and *En Banc* Denied. Judgment entered April 13, 2020.
- *Christopher Paul George*, 20-5669, Supreme Court of the United States, Petition for Cert Denied October 13, 2020.

TABLE OF CONTENTS

TABLE OF CONTENTS – Continued

TABLE OF AUTHORITIES

PETITION FOR WRIT OF CERTIORARI

In *Miller-El*, this Court held of the type of showing necessary from a Petitioner like Mr. George to be entitled to a COA:

> [O]ur opinion in *Slack*[5] held that a COA ***does not*** require a showing ***that the appeal will succeed***. Accordingly, a court of appeals should not decline the application for a COA ***merely because it believes the applicant will not demonstrate an entitlement to relief***.

Miller-El, 537 U.S. at 337, emphasis added. In *Miller-El*, this Court also specifically noted: "A prisoner seeking a COA must prove 's***omething more than the absence of frivolity***' or the existence of mere 'good faith' on his or her part." *Id.* at 338, emphasis added. The record here unquestionably shows that George proved far more than "the absence of frivolity." This is so because the district court, in its threshold gatekeeping function, did not initially dismiss George's *habeas* because all he had shown was merely "the absence of frivolity." Instead, the court ordered the government to file a Return. App.36.

The record also shows that as the Ninth Circuit denied Mr. George's request for a COA, the court exhibited a belief that "[George] will not demonstrate an entitlement to relief." Exactly what *Miller-El* forbids.

---

[5] *Slack v. McDaniel*, 529 U.S. 473 (2000).

> In *Buck v. Davis*, this Court explicitly noted:
>
> We ***reiterate*** what we have said before: A "court of appeals should limit its examination [at the COA stage] to ***a threshold inquiry*** into the underlying merit of [the] claims," ***and ask "only*** if the District Court's decision was debatable."[Quoting *Miller-El* at 327 and 348.]

Buck, 580 U.S. at 116, emphasis added.

With the preceding as backdrop, Christopher Paul George (Mr. George), respectfully petitions for a *Writ* of *Certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit, refusing him a COA on August 30, 2023, and then declining *en banc* review, entered on October 25, 2023. App.1, and App.2, respectively. Christopher George brings a unique case where the Ninth Circuit palpably ignored the lenient standard established by this Court in *Buck v. Davis* and *Miller-El* for petitioners seeking a COA like him. Instead, the lower court, by logical implication, required that he make a showing by a far more demanding standard for relief, in the face of the *prima facie* showing of IAC and entitlement to relief in his fully corroborated *habeas*.

ORDERS BELOW

On August 30, 2023, the Court of Appeals for the Ninth Circuit issued its Order affirming the District Court's denial of George's *habeas* petition. App.2. Then,

on October 25, 2023, the Ninth Circuit denied rehearing *en banc*. App.1.

JURISDICTION

On August 30, 2023, the Ninth Circuit Court of Appeals issued its Order denying Petitioner a Certificate of Appealability (COA). App.2. Denying Petitioner's request for a COA, the Ninth Circuit refused to review the District Court's Memorandum and Order of February 16, 2022, summarily denying George's *habeas*. App.38. Then, on October 25, 2023, the Ninth Circuit issued its Order denying a timely petition for rehearing *en banc*. App.1. Jurisdiction of this Court is invoked under Title 28 U.S.C. §§ 1651(a) and 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED IN THIS CASE

United States Constitution, Fifth Amendment:

> "No person shall . . . be deprived of life, liberty or . . . without due process of law. . . ."

United States Constitution, Sixth Amendment:

> "In all criminal prosecutions, the accused shall enjoy the right to . . . have the assistance of counsel for his defense."

INTRODUCTION AND STATEMENT OF THE CASE

1. Introduction

This case presents two interrelated issues implicating the most fundamental cornerstones of the criminal justice system in America – the right to the effective assistance of counsel and the right to due process of law in post-conviction 2255 *habeas* proceedings.

For Mr. George, the district court and then the Ninth Circuit disregarded this Court's explicit petitioner-lenient standard for entitlement of a COA. The record here readily shows that Mr. George presented the district court, and later the Ninth Circuit, a corroborated and meritorious *habeas* entitling him to relief. He also showed that he was entitled to a COA. His case also highlights case-specific facts and the need for this Court to step in and to clarify the lenient standard for petitioners like Mr. George required under *Buck* and *Miller-El*.

The uncontradicted record in the district court, and later the Ninth Circuit, make it self-evident that Mr. George's Fifth and Sixth Amendment rights were denied when the lower courts disregarded the applicable lenient standard. George's unique facts also bring to light the disregard by the district court of George's due process rights under *RULES GOVERNING SECTION 2255 PROCEEDINGS*. And his rights under Central District Court Local Rule 7-6. App.7.

2. Statement of the Case

Mr. George was indicted in the Central District of California, and a number of co-codefendants, with multiple counts of mail and wire fraud. Describing the complexity of the case against George, his CJA counsel noted in one of his two uncontradicted declarations:

> In April of 2014, I was appointed under the CJA to take over representation of Petitioner from his then CJA counsel [ ]. The case ***had been classified as complex from the outset*** and contained at that time ***vast quantities*** of discovery, ***"1.5 million pages of documents", and thousands of witnesses***. See Docket 16 7.

Declaration of Trial Counsel, October 7, 2021. App.30-31, emphasis added. In his still uncontradicted declaration, trial counsel explicitly asserted as the trial fast approached:

> I informed the Court that ***I was not ready for trial***. I specifically stated, among other things, "If we have to go to trial, I'm going to go to trial, but I really could use more time . . . ***there just is a lot of discovery***, and unfortunately, I did have some other cases I had to get rid of. I stopped taking cases when I got assigned to this case. . . ."

Id., emphasis added. App.31. Embattled trial counsel added:

> I was worried because by April 2015, ***only one month before trial***, I had been able to review ***only "a fraction" of the massive discovery***.

> And that was the main reason why I knew I needed the help of a paralegal during trial.

Id., emphasis added. App.31-32. The trial would prove itself to be overwhelming for trial counsel. He added in his declaration:

> Predictably, during trial, ***I was caught by surprise*** at a critical point on May 21, 2015, when the Government suddenly pulled a surprise move ***by cross-examining Mr. George about the existence of office leases***, purportedly for Mr. George's office, signed by a ***co-operating co-defendant and lawyer Hamid Shalviri***, who had been given a sweetheart deal by the government. ***Neither I, nor Mr. George, had prior knowledge of the specific leases the government was referring to because of my inability, as I tried to warn the Court many times, to review the discovery***. The lease that the government contended was signed by Shalviri was not in the Government's Exhibit list and Shalviri was not in the Government's witness list.

Id., emphasis added. App.32. Trial counsel characterized his lack of preparation for trial and the result as follows: "*My inability to review a large part of the discovery caused me to also be unable to interview most of the witnesses.*" App.34.

Despite the lack of preparation by his trial counsel, George had to proceeded to trial as scheduled. After an approximately one month long trial, George was acquitted by the jury on Counts 1-5 of the indictment.

App.42. He was convicted of Counts 6-12. App.38. The district court then sentenced him on the counts of conviction to 240 months custody. App.38.

In his Request for *En Banc* Rehearing to the Ninth Circuit, George noted:

> The trial itself ended up lasting thirteen days, with the jury deliberating for several days. ***Significantly, the jury acquitted George on Counts 1-4 – the principal conspiracy allegations*** – and convicted him of Counts 6-12, the counts related to the two co-defendants jointly tried with George. Dockets 733. Clearly not a case of overwhelming evidence of guilt at all.

App.13, emphasis added.

George appealed his convictions and sentence to the Ninth Circuit. App.39. The Ninth Circuit affirmed George's convictions but found error in the sentencing process and remanded for re-sentencing. App.39. At the re-sentencing, the district court sentenced George to 235 months custody – five months less than the original sentence of 240 months. App.39.

Mr. George again appealed his re-sentencing and convictions to the Ninth Circuit. The second round of appeal to the Ninth Circuit resulted in George's sentence and convictions being affirmed. App.39. He then filed the instant *habeas* before the district court. App.39.

REASONS FOR GRANTING THE PETITION

A. The Court must grant George's *writ* to clarify for lower courts the exact, lenient standard required of a petitioner for entitlement of a COA in a 2255 *habeas*.

This case presents a recurring question regarding a need for the Court's supervisory powers relative to the proper standard appellate courts must apply when considering a request for a Certificate of Appealability in a *habeas* petition. In *Miller-El* this Court elaborated about the lenient standard for the showing required of a petitioner to be entitled to a COA:

> The holding in *Slack* would mean very little ***if appellate review were denied because the prisoner did not convince a judge, or, for that matter, three judges, that he or she would prevail***. It is consistent with [28 U.S.C.] § 2253 that a COA will issue in some instances where there is no certainty of ultimate relief. After all, when a COA is sought, the whole premise is that the prisoner "'has already failed in that endeavor.'" [Citation omitted]

Miller-El, 537 U.S. at 337, emphasis added. This Court added "When a court of appeals sidesteps this process by first deciding the merits of [a *habeas*] appeal, and then justifying its denial of a COA based on its adjudication ***of the actual merits***, it is in essence deciding an appeal without jurisdiction." *Id.* at 336-37, emphasis added. Mr. George respectfully submits that this is

exactly what the Ninth Circuit panel did to his meritorious *habeas*.

B. The Court must allow this *writ* because the Ninth Circuit created a conflict with this Court's precedent when it denied George a COA, thereby also denying him his due process and effective assistance rights.

In his corroborated *habeas*, Christopher P. George, provided the district court two uncontradicted critical documents – two sworn declarations from his trial counsel confessing ineffective assistance of counsel (IAC).[6] It is obvious from the record that the district court failed to meaningfully consider the contents of trial counsel's uncontradicted declarations. The district court's act also caused deprivations of George's Sixth Amendment Right to the effective assistance of counsel, and his Fifth Amendment Right to basic equal treatment and due process of his *habeas*.

Trial counsel's declarations were critical to George's *habeas* because they raised strong, precise, non-conclusory facts compelling the district court to do one of two things: 1) either accept George's facts as true and grant his Petition; or 2) resolve central credibility issues by an evidentiary hearing. The court did neither. The record also shows that the district court tipped the scales by excusing the government from supporting its

[6] The first was a post-trial, pre-sentencing declaration; the second was a post-conviction declaration supporting George's 2255 *habeas*.

Opposition to George's *habeas* with its own sworn declaration.[7]

The district court's obvious failure to treat Mr. George fairly and equally is palpable because an opposing declaration from the Government was textually mandated by the district court's own Central District of California's Local Rules, Rule 7-6. The Rule explicitly mandates: "Evidence on Motions. ***Factual contentions*** involved in any motion and opposition to motions ***shall be*** presented, heard, and determined ***upon declarations*** and other written evidence. . . ." Emphasis added. App.7. The government was mandated to support its Opposition with a declaration. But the district court excused the Government's *procedural failure*.

One of the central facts in trial counsel's first declaration was the following critical admission of his lack of preparation:

> On February 2, 2015, at a status hearing when the defense was requesting a continuance of ***the March 2015*** trial date, ***I informed the Court that I was not ready for trial***. I specifically stated, among other things, "If we have to go to trial, I'm going to go to trial, but I really could use more time . . . there just is ***a lot of discovery***, and unfortunately, I did have some other cases I had to get rid of. I stopped taking cases when I got assigned to this case. . . ."

---

[7] The Government failed to support its Opposition as required by Local Rule 7-6.

Quoting *Declaration of Attorney Dana Cephas ISO Motions for Judgment of Acquittal or New Trial*, July 6, 2015, pages 24-27, paragraph 2, emphasis added. App.12-13. Reacting to Cephas, the district court granted only a brief continuance of the trial.

Just as trial counsel predicted and kept alerting the court, approximately six weeks later, trial counsel gave the court one more of his multiple compelling reasons why he was *still* not ready, and could not get ready, for the impending trial that was to start on May 5, 2015:

> At a status hearing on ***April 20, 2015***, I requested CJA authorization for funds for a trial paralegal to assist me during trial. I requested such authorization ***because I felt I was overwhelmed with the massive amount of discovery and had been unable to review a vast amount of it***.

Id., emphasis added. App.13. Trial counsel still had a "massive amount of discovery" to review, assess, and competently digest in a two-week period because the trial was to start on *May 5, 2015*. As feared, the trial turned out to last for *thirteen days*, with the jury deliberating *for several days until June 9, 2015*. Significantly, the jury acquitted Mr. George on Counts 1-5 – the principal conspiracy allegations – and convicted him of Counts 6-12, the counts related to the two co-defendants who went to trial with him. App.13.

At paragraph 2 of trial counsel's *July 6, 2015*, declaration, he included the following illuminating admission:

> As I informed the Court ***on several occasions***, I was only able to review ***a fraction*** of the discovery prior to trial, because over ***780,000 bates-numbered pages were produced***, and there were over ***a million other pages*** of un-numbered pages of documents in this case. As a result, ***the Government was able to present false arguments that I was not aware of and/or was unable to challenge at the time***.

Id., emphasis added. App.14-15.

The *uncontradicted* admissions by trial counsel underscored the government's exploitation of his lack of preparation when the government was able to introduce "false arguments" of which trial counsel was "not aware of and/or was unable to challenge at the time." *Id.* None of these critical admissions by trial counsel would be meaningfully discussed by the district court in its Order Denying the Petition and refusing to issue a COA. App.38-49. *See* discussion of district court's Order denying the 2255, below.

In his post-trial July 6, 2015, declaration, trial counsel cited to two examples of how the Government was able to exploit his lack of preparation. The first:

> For example, when the Government asked Mr. George (during [cross-examination of] his direct testimony) why ***Hamid Shalviri***

> ***[a government witness and alleged co-conspirator]*** had signed a lease for RC Mortgage (Mr. George's separate business), I was unaware of the lease the Government was referring to.
>
> The second example was:
>
> Along the same lines, the Government encouraged/requested Agent Carol Mace [case agent] to provide testimony suggesting that Agent Mace had never heard of RC Mortgage Quest until the second interview of Mr. George – that occurred in October 2010 (a year after the raid) when in fact documents in discovery (***that I was unfamiliar with) prove that Agent Mace had conducted several interviews concerning RC Mortgage Quest prior to the raid***, and Agent Mace participated in the search of RC Mortgage Quest on the day of the raid.

Id., emphasis added. App.15-16.

Trial counsel's second uncontradicted declaration, the one submitted on October 7, 2021, at App.30-35, was critical to the court's fair consideration of George's Request for a COA. This was so because the district court wrote in its Order Denying the *habeas* without an evidentiary hearing, in part:

> ***Post-hoc complaints about the strategy or tactics employed by defense counsel*** are typically found insufficient to satisfy the first prong of *Strickland*. See 466 U.S. at 690; see also *People of Territory of Guam v. Santos*, 741

> F.2d 1167, 1169 (9th Cir. 1984) ("***A tactical decision by counsel*** with which the defendant disagrees cannot form the basis of a claim of ineffective assistance of counsel."); *United States v. Simmons*, 923 F.2d 934, 956 (2d Cir. 1991) (***appellant's displeasure with strategy employed by trial counsel insufficient to establish ineffectiveness***).

Id., page 4, emphasis added. App.30-35.

Dispelling the district court's comments, the record shows that Mr. George's *habeas* petition was *not* one of the typical cases illogically invoked by the district court, where a petitioner was simply providing "Post-hoc complaints about the strategy or tactics employed by defense counsel." Nor was it a case where a "defendant disagrees" with "[a] tactical decision by counsel." Instead, Mr. George's robust facts included credible, *uncontradicted* admissions by trial counsel *himself.* There was no "*post-hoc"* second-guessing by George because shortly after trial, trial counsel *himself* had already filed his own declaration on July 6, 2015.

Yet, the district court's Order is devoid of any meaningful discussion or analysis of the specific facts raised in the two separate declarations by trial counsel. Instead, the district court *speculated* that because trial counsel had not requested another continuance of the trial, counsel "Proceeding to trial thus was a tactical choice considering the Court's disposition to granting continuances, and any post-hoc complaints about this strategy are insufficient to satisfy the first prong of *Strickland.*" App.43, lines 3-7. The district court's

speculated "tactical choice" was directly dispelled by the two separate uncontradicted declarations from trial counsel.

Mr. George respectfully submits that it can fairly be said that jurists of reason can easily disagree with the district court's resolution of trial counsel's two separate declarations.

In its Order adverse to George's *habeas*, the district court also disregarded facts and misapplied the lenient standard governing issuance of a COA. In *Buck*, this Court reaffirmed that in issuance of a COA – "the ***only*** question is whether the applicant has shown that 'jurists of reason ***could disagree*** with the district court's resolution of his constitutional claims ***or*** that jurists could conclude ***the issues presented*** are ***adequate*** to deserve encouragement to proceed further." Quoting *Miller-El*, 537 U.S. at 336, emphasis added.

Christopher P. George respectfully submits that the uncontradicted facts and constitutional issues raised below compelled relief at the district and appellate court levels; and, pursuant to *Buck*, firmly supported issuance of a COA by the Ninth Circuit.

C. District Court's Deficient Order Denying George's *Habeas*.

1. Despite ordering the Government to file a Return, the District Court swiftly issued its denial without an evidentiary hearing.

In its Opinion, the district court noted that George filed his *habeas* on October 7, 2021. *Id.*, App.38, first

paragraph, page one. Upon the district court's order, the Government filed its unsupported Opposition on November 3, 3021. *Id.* Petitioner filed his Reply on November 23, 2021. App.18-19.

In George's *habeas*, the district court was faced with the following corroborated issues:

a. Petitioner was denied effective assistance of counsel and fair trial by the Government's bad-faith cross-examination of Petitioner, without defense objection or motion for mistrial, misrepresenting a forged document as authentic.

b. Petitioner was denied effective assistance of counsel and fair trial by the Government's willful introduction of misleading, material testimony through Agent Carol Mace. *Napue/Alcorta* issues.[8]

c. Defense counsel failed to identify or investigate antagonistic defenses or pursue severance of defendants, exposing Petitioner to prejudicial evidence introduced at trial against his co-defendants.

d. Defense Counsel failed to explicitly move pretrial for suppression of George's proffer statements, depriving him of effective assistance and confrontation rights; and the Government misled Ninth Circuit.

---

[8] *Napue v. Illinois*, 360 U.S. 264 (1959) and *Alcorta v. Texas*, 355 U.S. 28 (1957).

> e. Trial Counsel neither identified, investigated, nor pursued obvious multiple conspiracies/duplicity motions pretrial; predictably, the issues prejudicially arose during trial.

App.19. For each of these corroborated issues, George provided facts in specific statements in declarations, transcripts, and documents. It cannot be overstated that the district court failed to order the Government to file an opposing sworn declaration as required by Local Rule 7-6.

Of George's first issue – the Government's introduction at trial of false testimony – the district court simply wrote – "***According to George***, trial counsel also was unprepared for trial." *Id.*, page 5, emphasis added. App.42. But this fact was not some *post-hoc* conclusory claim "according to George." Trial counsel's own admitted lack of preparation was in his own multiple admissions, and in the supporting transcripts George provided in his *habeas*.

In this context, the district court also erroneously concluded:

> George's arguments lack merit. The jury acquitted George of the counts related to the conduct of Hamid Shalviri and thus he was not prejudiced by any questioning referencing the Shalviri lease. (Cr. Doc. No. 811.) Moreover, as detailed in this Court's Order denying the motion for a new trial, the government's cross-examination of George about the Shalviri lease was harmless "***because this***

> ***evidence tended to show 'the existence of a close relationship' between [George] and Shalviri***."

Id., emphasis added. App.42. Contrary to the court's conclusion, the record shows that there was no "evidence" showing any close relationship between Petitioner and Shalviri. In fact, the Government engaged in the misleading cross-examination using the *forged* Shalviri lease precisely to misleadingly show that there was that "close relationship. *See* App.33-34. But the trial transcript establishes that even the district court contemporaneously corrected Government counsel – "The Court: How can you argue that you weren't using the documents to show that Shalviri signed them? That is what you were using them for." Trial Transcript, May 22, 2015, page 28, lines 20-22 and in George's 2255, page 8. App.21.

Regarding the second issue in the *habeas* – introduction of Agent Mace's false testimony to argue recent fabrication by George – the district court again visibly distorted the actual record:

> As to Agent Mace's testimony, the Court noted that references to RC Mortgage ***were brief***, Agent Mace ***did not testify falsely***, and that any "argument that the jury from [Agent Mace's] testimony drew an inference that George fabricated evidence regarding the existence of RC Mortgage Quest is, at best, entirely speculative."

Id. at page 6, emphasis added. App.43-44. But George provided the very transcript of the direct and

cross-examination of Agent Mace testifying to the jury that she had *never* heard George say anything about RC Mortgage (Petitioner's new office) in his first interview. Therefore, that he was fabricating, lying, in his direct testimony to the jury. Contrary to the district court's speculation, the record showed this exact testimony by Agent Mace:

> Q: Now, during this interview, the second interview, did Christopher George mention RC Mortgage?
>
> A: Yes.
>
> Q: And was that ***the first time you had heard Mr. George discuss RC Mortgage***?
>
> A. ***Yes.***

Exhibit N in George's 2255, Docket 1, page 13, lines 15-28, emphasis added. App. 22-23. This transcript explicitly dispelled the court's incorrect interpretation that Agent Mace did not "testify falsely."

To no avail, George noted this in his *habeas*:

> Government counsel did not ask whether Agent Mace recalled or whether George in fact mentioned RC Mortgage at the first interview. The Government explicitly provided the jury this misleading colloquy on direct, ***leaving a false impression from an official Government witness – Agent Mace – that George had fabricated his resignation and move to RC Mortgage***.

Emphasis added. App.22-23.

Following its theme, the district court failed to consider, or in some instances, even failed to acknowledge, the rest of George's facts and constitutional issues. By then refusing to issue a COA, the district court presumably intended its biased resolution of George's well-developed issues to remain unreviewed.

Two additional examples from the district court's Order are: 1) the available "critical corroborating witness" Esther Garibay; and 2) the failure by trial counsel to identify antagonistic defenses and seek severance. As to the critical corroborating witness, the district court held:

> George cannot prevail by showing that calling Garibay to testify would have been a reasonable decision, or that counsel failed to pursue it. Instead, he must allege facts supporting an inference that his trial counsel's strategy or the execution of it was unreasonable. Strickland, 466 U.S. at 689.

Opinion, page 7. App.44. Expressly the court ignored, even in the absence of a contrary opposing declaration from the Government, that trial counsel's declaration noted of Garibay:

> My inability to review a large part of the discovery caused me to also be unable to interview most of the witnesses. But I . . . [was] able to interview one of those witnesses – Esther Garibay. Ms. Garibay was a critical witness corroborating Mr. George's defense and one of my prospective trial witnesses.

> ***Because I was overwhelmed during trial by the Shalviri surprise, I decided not to call her as a witness***.

Cephas second declaration dated September 29, 2021, noted above, emphasis added. App.34-35.

As to the second example, for George's antagonistic defenses/failure to move for severance of defendants and introduction at trial of his co-defendants' statements, at footnote 5, page 9 of its Opinion, the district court writes this facile conclusion:

> To the extent George argues that trial counsel failed to move for severance based on antagonistic defenses with Ramirez, this argument fails. (Motion at 16.) ***Ramirez did not proceed to trial and George fails to identify any of Ramirez's testimony that would have affected the outcome of the trial***. See Strickland, 466 U.S. at 694

Opinion, emphasis added. App.46. What the district court did with this issue was to fail to meaningfully consider the co-conspirator statements admitted at trial of Ramirez's co-conspirators and employees – Buck and DiRoberto – who proceeded jointly to trial with George. The court also failed to meaningfully consider the admissions by George's trial counsel in his second declaration. App.32-35.

The district court's obvious failure to directly address the uncontested facts provided by George in his *habeas* certainly should raises questions among jurists of reason that the court's resolution of the

constitutional issues presented by George, support issuance of a COA.

Concluding Comment

Mr. George respectfully submits that this Court's guidance is still required in the unique area of COAs for cases like his. This is so because George's uncontradicted record shows that he provided the district court, and later the court of appeals, far more than what this Court requires for entitlement of a COA. However, despite George having undeniably proved more than the absence of frivolity – all that is required under *Miller-El*, 537 U.S. at 338 – the district court concluded that George "failed to demonstrate a substantial showing of the denial of a constitutional right." App.49.

George comfortably demonstrated that the issues and uncontradicted facts he provided in his *habeas*, demonstrate that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to proceed further." *Miller-El*, 537 U.S. at 327. George submits that the uncontradicted declarations from his trial counsel and his corroborative evidence comfortably made the grade. This very Court noted in *Miller-El*: "Indeed, 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." *Id.* at 338.

CONCLUSION

For the foregoing reasons, Mr. George respectfully requests this Court grant a writ of *certiorari* to review the judgment of the United States Court of Appeals for the Ninth Circuit.

Respectfully submitted,

Dated: January 23, 2024.

EZEKIEL E. CORTEZ
LAW OFFICES OF
EZEKIEL E. CORTEZ
550 West C Street, Suite 620
San Diego, California 92101
(619) 237-0309
lawforjustice@gmail.com

Attorney for Petitioner
Christopher Paul George