***** CAPITAL CASE *****

No. 24-1034

In the Supreme Court of the United States

ULYSSES CHARLES SNEED,
Petitioner,

v.

WARDEN, HOLMAN CORRECTIONAL FACILITY,
Respondent.

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

REPLY BRIEF OF PETITIONER

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INTRODUCTION

The State's brief in opposition fails to refute the compelling grounds for certiorari presented in Mr. Sneed's petition. Rather than contest the improper merits determinations that the court of appeals reached in denying a certificate of appealability—in direct contravention of the COA Statute, 28 U.S.C. § 2253(c), and this Court's precedents—the State doubles down with a full-throated (but inaccurate) merits argument for why Mr. Sneed's ineffective-assistance claims should fail. That argument, which the State maintains is supported by existing law, is the most profound illustration on why this Court must intervene. If the State has it right, the circuit conflict is indeed entrenched, with this Court's "reasonable jurist" screening standard existing in name only in some circuits. Just as significantly, the State's rejection of one circuit judge as a reasonable jurist leaves another entrenched conflict on what the COA Statute commands. Either way, the federal law addressing a critical issue in our system of justice is in disarray and in a death sentence case like this one, these inconsistencies are intolerable. This Court should grant the petition and resolve these conflicts now.

ARGUMENT

I. This Court Should Grant Certiorari To Resolve The Entrenched Conflict On Whether Merits Review Can Be Relied On To Deny A COA

The State's opposition does not address, much less deny, that substantial, substantive inconsistencies exist in how lower courts analyze requests for a COA. The controlling COA Statute and decisions from this Court provide that the merits of underlying habeas claims are relevant to a COA application only to determine whether those claims are reasonably debatable—a screening function that facilitates the certification of an appeal without a definitive determination on whether a petitioner will ultimately prevail. (Pet.21-22.) But despite that, a contrary view, vigorously endorsed by the State, has taken hold in decisions in the Eleventh Circuit and certain other courts of appeal. That approach authorizes a deeper dive into the merits where an appeal can be denied even when the underlying constitutional claims are debatable.

This departure from this Court's precedents is intolerable given the context and the right of appeal at stake. Here, it means that Mr. Sneed will be condemned to death without an appellate court ever having considered the merits of his appeal in the typical fashion—following full, adversarial merits briefing, three-judge-panel evaluation of the entire

record, and oral argument. This manifestly unjust outcome is, moreover, the product of the fortuity of where Mr. Sneed is imprisoned, making the need for the Court's intervention that much greater.

In fact, the compulsion for this Court to intervene comes directly from what it previously held with respect to the standard for evaluating COA applications—something the State again does not address or attempt to dispute. Specifically, this Court has expressly recognized that an application for COA entails only "a threshold inquiry"—one that merely examines whether "jurists of reason could disagree with the district court's resolution of [the underlying] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Under this standard, the Court has emphasized, "[t]hat a prisoner has failed to make the ultimate showing that his claim is meritorious does not logically mean he failed to make a preliminary showing that his claim was debatable." *Buck v. Davis*, 580 U.S. 100, 116 (2017).

This "reasonable jurist" standard plainly does not turn on an analysis of who is most likely to prevail if an appeal is allowed. Rather, it is intended only to "screen[] out issues unworthy of judicial time and attention and ensure[] that frivolous claims are not assigned to merits panels." *Gonzalez v. Thaler*, 565 U.S. 134, 145 (2012). And so, "[w]hen a court of

appeals side steps this process by first deciding the merits of an 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," *Miller-El*, 537 U.S. at 336-37, and imposing "too heavy a burden on the prisoner *at the COA stage*" where full briefing and argument is not guaranteed, *Buck*, 580 U.S. at 117.

Beyond that, when lower courts erroneously have engaged in full merits adjudications at the COA stage, this Court has not hesitated to intervene, reverse, and "emphasize[]" that COA review "is not coextensive with a merits analysis." *Id.* at 115. Yet, as the State's opposition underscores, that is exactly what happened when the divided Eleventh Circuit denied the COA in this case, by making specific (but disputed and unfounded) determinations on how petitioner's claims would be resolved after a merits analysis on appeal. (*See* Pet.23-24.) Making matters worse, that merits determination expressly rejected a dissenting judge's reasoned decision that adhered to the threshold inquiry this Court has laid down. (*See* Pet.17-18.)

Worse still, the eliding of the controlling standard here was not a one-off. The Eleventh Circuit's decision is merely the latest in a series of lower court rulings that ignore the explicit constraints on the COA determination. (Pet.33-34 (collecting cases).) That departure from precedent,

and the conflicting circuit rulings that follow from it, alone provide compelling reason for review.

But that is by no means the only reason for this Court to act. This case also presents a deeply entrenched circuit split on a question it has not yet decided—whether a circuit court may deny a COA where a circuit judge reasonably determines, after a proper threshold examination, that the requirements for a COA are met, as dissenting Eleventh Circuit Judge Adalberto Jordan did here. *See Shockley v. Vandergriff*, 145 S. Ct. 894, 897 (2025) (Sotomayor, J., joined by Jackson, J., dissenting from the denial of certiorari) (noting the "entrenched Circuit split over an important question of statutory interpretation: Can a [COA] be denied notwithstanding a circuit judge's vote to grant it?"). In the Third, Fourth, Seventh, and Ninth Circuits, a single circuit judge's determination that a petitioner's claims are debatable is enough for a COA to issue. That commonsense conclusion comports with the text of the COA Statute and this Court's precedents. *See Beard v. Banks*, 542 U.S. 406, 415-16 (2004) (concluding *a fortiori* that "reasonable jurists" could disagree where members of this Court have). But half a dozen circuits, including the Eleventh, have rejected this proposition and continue to reject it. (Pet.27-28.)

There is no reason to wait for further seasoning on this fundamental appealability issue. The conflict is extant, apparent, and intolerable, most significantly in cases like this one involving a death

sentence. It is time to put an end to this arbitrariness and Mr. Sneed's petition is the perfect vehicle for doing so.

Significantly, the State's brief in opposition only reinforces the need for this Court's immediate guidance on what the controlling law commands. It does not seriously contest that a merits-based disposition was made at the COA stage. On the contrary, its brief endorses that very type of inquiry, building its case for denying review by devoting two-thirds of its opposition to a factual exposition aimed at establishing that petitioner's counsel was not ineffective. (BIO.1-19.) From the State's perspective, because of what its merits-based analysis reveals, there is no reason for concern. Yet that is the very reason this Court should be concerned given the explicit limitations on full merits inquiries espoused in *Buck* and *Miller-El*. Absent intervention now, this Court's screening standard for determining COAs will continue to be bypassed or displaced by evaluations that should be left for a later appeal.

The State nevertheless attempts to minimize the import of the error and deprivation of petitioner's opportunity to be heard as an issue unworthy of this Court's concern. But the State's effort to bury the lead only heightens the case for review.

First, the State argues that the Eleventh Circuit's premature merits adjudication does not implicate "an actual conflict among the courts of

appeals" or an issue "of exceptional or widespread importance." BIO.26. That is wrong on both counts. As far as the conflict is concerned, though several circuits properly adhere to *Buck's* less rigorous screening standard,[1] others have departed. (*See* Pet.33-34 (collecting cases and certiorari petitions arising out of the Third, Fourth, Seventh, Eleventh, and D.C. Circuits).) As for exceptional importance, the exercise of judicial power by these courts in excess of their statutory jurisdiction and in contravention of this Court's precedent undeniably is a matter of significant concern, thereby warranting certiorari. (*See* Pet.25 (citing S. Ct. R. 10(c), which deems cert-worthy lower court decisions that "conflict[] with relevant decisions of this Court," which the State ignores)); *Lambert v. Wicklund*, 520 U.S. 292, 293 (1997) (per curiam) ("Because the Ninth Circuit's

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[1] *See, e.g.*, *Nelson v. Williams*, No. 22-1085, 2023 U.S. App. LEXIS 11024, *2 (10th Cir. Feb. 15, 2023) (granting COA and "emphasiz[ing], as did the Supreme Court in *Buck* [ ], 'the limited nature of the [COA] inquiry,' which 'is not coextensive with a merits analysis.'"); *Dickerson v. Boyd*, No. 21-5299, 2022 U.S. App. LEXIS 12515, *15 (6th Cir. May 9, 2022) ("Mindful of the standard for issuing a COA, which 'does not require a showing that the appeal will succeed,' *Miller-El*, 537 U.S. at 337, merely a showing that the issue is 'adequate to deserve encouragement to proceed further,' *id.* at 327, this court concludes that a COA should issue"); *Wesbrook v. Quarterman*, 318 F. App'x. 265, 266 (5th Cir. 2009) (explaining that "[w]e cannot deny a COA because we believe the petitioner ultimately will not prevail on the merits" and after conducting the requisite "limited, threshold inquiry" issuing a COA).

holding is in direct conflict with our precedents, we grant the petition for a writ of certiorari and reverse."); *Presley v. Georgia*, 558 U.S. 209, 209 (2010) (similar).

Second, the State pushes its case for full merits review unabashedly when it insists that the relevant "question" in evaluating a COA request is "*not* whether reasonable jurists could debate the merits of his underlying claims." (BIO.27 (emphasis added).) Here, the State's observation illustrates just how entrenched the conflict has become. Whether a reasonable debate exists is *precisely* the question; in fact it is the "*only* question" to be asked in considering whether a COA should be granted. *Buck*, 580 U.S. at 115 (emphasis added); *see Miller-El*, 537 U.S. at 342 ("True, to the extent that the merits of this case will turn on the agreement or disagreement with a state-court factual finding, the clear and convincing evidence and objective unreasonableness standards will apply. At the COA stage, however, a court need not make a definitive inquiry into this matter.").

The wisdom of the screening standard that Congress chose versus the State's contrary merits-based approach is apparent on several levels. The threshold COA determination only opens the door to an appeal; it does not determine the outcome. A more limited screening inquiry to determine what a reasonable jurist would think, rather than prejudging the merits, rightly leaves often complex and record-intensive merits questions for a full work-up by a

three-judge panel. In that manner, potentially meritorious constitutional claims are determined on an adequate record following full adversarial evaluation—not by the premature and truncated analysis endorsed by the State. Where the issue is debatable, Congress has expressed that an appeal should be allowed and our system of justice should endorse that result as well.[2]

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[2] There is, by comparison, a substantial risk of error in purporting to resolve the merits prematurely as the State's briefing illustrates here. The "factual narrative" it recites is incomplete and inaccurate. For example, the State claims "defense counsel made a strategic decision not to present mitigation, such as good character evidence, that would open the door for the prosecution to introduce Sneed's prison disciplinary records." (BIO.13.) But no decision was made to take mitigation off the table; the parties merely agreed "the State would not introduce evidence of [prison] disciplinary reports so long as trial counsel did not open the door" with positive character evidence during incarceration. (Pet.App.178a-79a.) The State also claims that petitioner's trial counsel failed to call lay witnesses only because they were unavailable. (BIO.14-15.) But this "argument was never presented to any lower court and is therefore forfeited." *OBB Personenverkehr AG v. Sachs*, 577 U.S. 27, 37 (2015). The State also neglects to mention that (i) counsel had multiple opportunities over a five-year span to obtain the testimony of lay witnesses or at least submit affidavits from them but did not, (ii) many of the later-identified lay witnesses were *not* unavailable, (R.1104-05, State Ct. Collateral App. Trans., Vol. 15, *Sneed v. Dunn*, No. 5:16-cv-1446, ECF No. 26-15 at 166 ¶¶ 152-53), and (iii) counsel's decision to

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In *Buck* and *Miller-El*, the Court sent a clear message on the governing legal standard for determining whether a COA should be granted. But many circuits—and many appellate judges and panels in those circuits—have moved away from the reasonable jurist screening standard in favor of improper merits inquiries. The State's brief is just the latest illustration of the depth of that departure and shows how far certain courts have veered off the proper course. In this context in particular, the right to appeal should be facilitated, not curtailed, just as the controlling COA Statute provides.

II. This Court Should Grant Certiorari To Resolve The Entrenched Conflict On Whether A COA Should Be Granted Where One Circuit Judge, Relying On The Record, Finds It Should Be

As noted, the circuits are deeply divided on the question of whether courts may deny a COA where "a circuit justice or judge" finds the requirements for a COA are met, 28 U.S.C. § 2253(c)(1), as was the case here when Judge Jordan, with ample record support,

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spotlight the lack of lay testimony further evidences ineffectiveness. Additionally, though the State suggests the missing evidence was cumulative of that adduced, it omits that the jury never learned that petitioner tried to commit suicide as a teen, heard voices, and suffered from two major mental illnesses at the time of the crime. (*See* Pet.12-13, 17-18; Pet.App.224a-235a (charts detailing the minimal testimony presented versus that which could have been had missing lay witnesses been called).)

found the COA standard satisfied. (Pet.25-28.) In several circuits, a vote to grant on such a reasoned analysis would be enough for a COA to issue. *See Shockley*, 145 S. Ct. at 894-95, 897 (Sotomayor, J., joined by Jackson, J., dissenting from the denial of certiorari) (noting the "entrenched" conflict where "[s]everal Circuits have interpreted" the COA Statute's requirement that "'a circuit justice or judge issues a'" COA "to mean that a [COA] must issue so long as 'one of the judges to whom the application was referred' votes to grant it.") (quoting 28 U.S.C. § 2253(c)(1) and *Thomas v. United States*, 328 F.3d 305, 309)); *Reid v. True*, 349 F.3d 788, 796 (4th Cir. 2003) ("If any member of the panel determines that the appellant has made the requisite showing as to any issue, the court will grant a COA as to that issue.").

The State does not deny the conflict. Instead, it says there is no reason for concern because circuit courts are free to adopt their own procedural rules. (BIO 21-25.) But the COA screening standard is not a procedural rule; it is a substantive statutory command. (Pet. 25-26.) And decisional disparities that flow from some circuits' failure to adhere to a statutory command—here, the controlling COA standard under 28 U.S.C. § 2253(c)(1) itself calls for this Court's review. Simply put, the courts of appeals cannot evade, by local rule, a substantive legal standard this Court lays down anymore than they can use a local rule to evade what the COA Statute

commands. *See* 28 U.S.C. § 2071(a) (mandating that court "rules shall be consistent with Acts of Congress"); Fed. R. App. P. 47(a)(1) (same).

Pointing to a handful of decisions from the pre-COA certificate-of-probable-cause era, the State makes a half-hearted attempt to support its view that no reviewable split of authority exists. (BIO.23-24.) Yet those cases do not purport to analyze the statutory constraints that control when a COA should be granted. Nor do they support the proposition that individual circuits can deny COA applications—whether by local rule or otherwise—in a manner that violates 28 U.S.C. § 2253(c)(1).

In *In re Application of Burwell*, for example, this Court simply noted that procedurally, circuit courts may "determine whether [a COA] application to the court is to be considered by a panel of the Court of Appeals, by one of its judges, or in some other way deemed appropriate by the Court of Appeals *within the scope of its powers*." 350 U.S. 521, 522 (1956) (emphasis added). The *Burwell* Court did not find, however, that the COA Statute afforded circuits courts the power to deny a COA where a dissenting judge believes it should issue. The divergent constructions in this instance raise a distinct and more compelling issue.

Here, there is no denying the importance of the question presented and the conflict with decisions rendered by this Court is apparent as well. *Buck*

called for a screening evaluation—no matter what procedures a circuit employs—that ensures a COA should issue in circumstances where constitutional claims are reasonably debatable. And as multiple circuits have concluded, where one circuit judge would grant a COA, that reasonable debate exists and the appeal should be heard on its merits. That is reason enough for this Court to take up the matter to ensure that a statutory standard is uniformly applied as Congress envisioned it would be.

Finally, the need for that uniformity to be declared and pronounced is beyond compelling where the issuance of a COA otherwise depends on where in the 50 states an individual is imprisoned. This Court should grant this petition and rectify that profound injustice.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

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