24-6360

ORIGINAL

Case No. 23A1087

October Term, 2024

IN THE
SUPREME COURT OF THE UNITED STATES

MAXIMO DIAZLEAL-DIAZLEAL, PETITIONER,

VS.

RONALD HAYNES, Superintendent, Respondent.

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

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

I. Whether The District Court's Pro-Forma And Blanket Denial of A COA Order Adopting The Magistrate's Report and Recommendation (R & R) Manifestly Erred By Relaying On Federal Rule of Civil Procedure (FRCP) 72(b) That Does Not Apply To Habeas Corpus Petitions Violates Due Process?

II. Whether The Ninth Circuit Court of Appeals' Pro-Forma, Non-Reasoned, And Blanket Denial of A COA Pursuant to 28 U.S.C. § 2253(c) Violates The Gate-Keeping Function of COA's Contrary To This Court's Precedents?

III. Whether The Ninth Circuit's Pro-Forma, And Blanket Denial of A COA That Merely Pays Lip Service To The Language of 28 U.S.C. §2253(c) is Sufficient And Violates Due Process?

LIST OF PARTIES

The parties are the same as those listed in the Caption.

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PETITION FOR WRIT OF CERTIORARY

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The Memorandum Opinion and Order of the district Court denying petitioner DiazLeal-DiazLeal's petition for a writ of habeas corpus and also denying without analysis any certificate of appealability is included in **Appendix - A.**

The District Court issued its order without conducting a de novo review of those portions of petitioner's objections to the Magistrate's report and recommendation (R & R) and adopting the report.

That the Court also erroneously concluded that the arguments in the objections "reiterated the merits of his claims" and "Summarized arguments previously presented" in the Reply when in fact the objections contained at least four discrete, detailed arguments about analytical errors in the R & R, which were neither relevant to the Reply nor previously briefed by counsel for either party. The Court also manifestly erred by relying on Federal Rule of Civil Procedure (FRCP) 72 (b) and related case law when the advisory notes to FRCP 72 and Ninth Circuit precedent specifically state that the rule does not apply to habeas petitions. See, **Appendix - A. at 2.**

The Order of the two-judge panel of the Court of Appeals for the Ninth Circuit, filed 03/01/2024, which issued a pro forma and blanket denial of petitioner DiazLeal-DiazLeal's 28 U.S.C.¶ 2254 petition, subsequent Federal Rule of Civil Procedure 59 (e) motion, and COA is reported at: **DiazLeal-DiazLeal v. Key, Case No. 23-35472, filed March 1, 2024, and reproduced as Appendix - B.**

JURISDICTIONAL STATEMENT

Petitioner DiazLeal-Diazleal, pro se, filed a petition for writ of habeas corpus in the United States District Court, Western District of WASHINGTON, Seattle, on January 17, 2021. On January 17, 2023, the district court denied relief on DiazLeal-DiazLeal's petition by Adopting the Magistrate's Report and Recommendation without conducting a de novo review in violation of 28 U.S.C. § 636, and manifestly erred by relying on FRCP 72 that does not apply to habeas petitions, denying any Certificate of Appalability (COA).

On March 1, 2024, the Ninth Circuit Court of Appeals issued a pro forma blanket denial of petitioner's request for a COA and subsequent FRCP rule 59 (e) motion, affirming the district court's denial of a COA.

On April 26, 2024, Ann K. Wagner, Federal Public Defender abandoned DiazLeal-Diazleal, despite petitioner's repeated requests to proceed to this Honorable United States Supreme Court via a Writ of Certiorari. Federal Public Defender Ann Wagner, in a brief letter containing a "Sample" Writ of Certiorari advised this petitioner to plagirize the Sample Cert. Petition and Motion to Extend time to file a Certiorari petition, with a departing "GoodLuck." See, Criminal Justice Act, 18 U.S.C. §§ 3006A (a)(2)(B), 18 U.S.C. § 3599(a)(2). (formally codified at 21 U.S.C. § 848 (q)(5-8)("when a district court appoints counsel, the appointment 'extends throughout any proceedings in the Supreme Court.'" "Unless replaced by similarly qualified counsel upon the attorney's own motion or upon motion of the defendant, each attorney so appointed shall represent the defendant throughout every subsequent stage of available

judicial proceedings, including....'applications for writ of certiorari to the Supreme Court of the United States'...." 21 U.S.C. § 848 (q)(8).

This petition timely follows. Petitioner DiazLeal-DiazLeal, Now pro se, asks this Court to grant this petition, Vacate the Ninth Circuit's pro forma Order issuing a blanket denial of Petitioner DiazLeal's request for a COA, and remand this case with instructions to conduct a proper COA analysis consistent with the gate-keeping function mandated by 28 U.S.C. § 2253 (C) and this Court's precedents. **Jurisdiction is appropriate under 28 U.S.C. § 1254(1).**

CONSTITUTIONAL AND STATUTORY PROVISIONS

Title 28 U.S.C. § 2253, as amended in the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), reads as follows:

> (a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> (b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.
>
> (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ---
>
> > (A) the final order in a habeas corpus proceeding in which the detention complained or arises out of process issued by a State court; or
> >
> > (B) the final order in a proceeding under 2255.
>
> (c)(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.
>
> (c)(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

INTRODUCTION

When President William J. Clinton signed AEDPA into law in 1996, the President issued a Statement saying he would not have "signed this bill" if he thought the federal courts would "interpret[][it] in a manner that would undercut meaningful Federal habeas corpus review." (Statement of the President of the United States upon Signing the Antiterrorism Bill (available in LEXIS, 32 Weekly Comp. Pres. Doc. 719 (White House, April 24, 1996))). He called upon "the Federal courts...[to] interpret these provisions to preserve independent review of Federal legal claims and the bedrock constitutional principle of an independent judiciary." Id.

Consistent with this directive and understanding, this Court has repeatedly issued decisions that have construed or applied provisions of AEDPA in ways that respect and safeguard the core nature and functions of the Writ. And this has been particularly true in this Court's jurisprudence. In this now significant body of jurisprudence, a majority of the Court have time and again demonstrated its commitment to the principle that AEDPA should not be interpreted so as to deny a habeas corpus petitioner at least "one full bite" - i.e., at least one meaningful opportunity for post-conviction review in a district court, a court of appeals, and via certiorari, the Supreme court. (Randy Hertz and James S. Leibman, Federal Habeas Corpus Practice and Procedure, Seventh Edition § 3.2 (Matthew Bender)) (applying "one full bite" metaphor in AEDPA context and citing cases.) As Justice Breyer observed, the decision in Stewart v. Martinez-Villareal, 523 U.S. 637 (1998) and Slack v. McDaniel, 529 U.S. 473 (2000), relect this Court's tendency to "assume that Congress did not want to deprive state prisoners of first federal habeas corpus review" and

the Court's practice of "interpret[ing] statutory ambiguities accordingly." Duncan v. Walker, 533 U.S. 167, 192 (2001) (Breyer, J., dissenting)(citing Martinez-Villareal, and Slack).

In construing AEDPA's "certificate of appealability" provision, this Court has similarly ensured that habeas corpus petitioners who are denied relief in the district court have meaningful opportunity for appellate review of the district court's ruling. So, in Slack v. McDaniel, when the state asked the Court to interpret the "certificate of appealability" provision to limit appeals to "constitutional" merits rulings and thus forbid the issuance of a certificate of appealability when a district court denies a claim on procedural grounds, the Court "reject[ed] this interpretation" because of the restrictive effect on the writs ability to fulfill its "vital role in protecting constitutional rights." Slack, 529 U.S. at 483.

Consistently, in Miller-El v. Cockrell, 537 U.S. 322 (2003), and referencing its decision in Slack, "reiterat[ing]" the limited nature of the burden a habeas corpus petitioner must satisfy at the COA stage, this Court again soundly rejected a circuit court's attempt to "sidestep" proper COA procedures and construe AEDPA's COA provision in a manner that would unduly limit habeas corpus petitioner's ability to appeal an adverse ruling by the district court. Id. at 335-36. Noting that it "may or may not be the case" that, as the state contended, "petitioner will not be able to sustain his burden" on the merits, this Court declared that this "is not...the question before us" at the COA stage. The Court rejected the 5th Circuit's procedure of "[d]eciding the substance of an appeal in what should only be a threshold inquiry," precisely because it "undermines the concept of a

COA." Id. at 342. "It follows that issuance of a COA must not be pro forma or a matter of course." Id. at 337.

It is amidst this precedent that the Ninth Circuit Court of Appeals' pro forma decision denying Petitioner DiazLeal-DiazLeal any COA consideration stands anathema. The Ninth Circuit's Order stands particularly egregious given that upon review of a district court decision that itself sua sponte DiazLeal-DiazLeal a pro forma, unreasoned and blanket denial of a COA by failing to conduct the required de novo review, by not considering specific objections, and by citing to an inapplicable standard without ever addressing any specific claim (defaulted or otherwise).

Peitioner DiazLeal remains incarcerated having been denied the right to appeal any issue, whether defaulted or denied on the merits, and without any habeas court ever having analyzed any single claim pursuant to AEDPA'a statutory COA procedure. To date Petitioner has been offered no understanding by any habeas court why he has not been allowed to appeal anything. If allowed to stand, the Ninth Circuit Court of Appeals decision will eviscerate the idea that a habeas petitioner is entitled to "one full bite" of the apple. Rather, the Ninth Circuit's outlier ruling makes clear, contrary to its own precedent, there is no right to any habeas review at all in the federal court of appeal. The perfunctory ruling by the Ninth Circuit Court of Appeals is unique and new precedent for the proposition that AEDPA's COA provisions have no minimal requirements for a habeas court to follow.

STATEMENT OF THE CASE

I. Procedural History

In state court, following a direct appeal on other grounds, Mr. Diazleal-Diazleal filed a personal restraint petition asserting an insufficiency claim as to two of his two rape convictions. D.Ct. Dkt. 14-1, Ex. 9 at 223-24. The state court of appeals dismissed the petition as follows:

> R.R.'s mother testified that the family moved to the little house when R.R. was in first grade, and to the big house when R.R. was in third grade. R.R., on the other hand, testified that she moved to the big house in the fifth grade, and the incident forming the basis for count II occurred when she was 10 or 11....[Diazleal-Diazleal] appears to argue [that] the State did not prove beyond a reasonable doubt that count II occurred during the charging period [when the victim was under 12]. But the jury was entitled to believe R.R.'s mother's timeline, and this court does not review a jury's credibility determinations.

Dkt. 14-1, Ex. 15 at 375. This passage contains a clear mistake of fact: the victim testified that she was 11 or 12 during the first rape in the little house, which formed the basis for count I - never that she was 10 or 11 during the second, later rape, which formed the basis for count II (as the opinion states). D.Ct. Dkt. 20 at 632-33; cf. id at 826 (prosecution at closing arguing she was 10 or 11 during the first rape in the little house, another distortion of the relevant testimony). If the court had relied on an accurate quotation of the victim, it would have found she was 11 or 12 during the first rape, and concluded she would not have been under d12 during the second rape, which was in a later year. The source of the "10 or 11" quotation is unclear, but the record reflects that the victim referred to being 10 or 11 when she moved to the big house, id. at 567, as well as

being 10 or 11 when she moved to the little house, id. at 619. She never testified she was "10 or 11" during either rape, much less the second rape in the big house. (As discussed further in the argument below, the mother's timeline confirmed, rather than excluded, the possibility that she was 12 during the second rape in the big house.)

Mr. Diazleal-Diazleal filed a motion for discretionary review, again raising a sufficiency argument as to the first-degree child rape conviction. He pointed out that the victim had testified she moved to the big house (the location of the second rape) in the fifth grade, when she would have been 11, and that she stated she was in that house through age 13. Dkt. 14-1, Ex. 16 at 383-84. the state supreme court denied review as follows:

> Mr. Diazleal-Diazleal also argues the evidence of the first degree child rape is insufficient, specifically as to when they occurred in relation to the time period charged (February 11, 2007, through February 10, 2009). But he relies wholly on the child's testimony. As the acting chief judge observed, the timelines the State alleged were supported by the child's mother's testimony. Once again, Mr. Diazleal-Diazleal does not address this aspect of the acting chief judge's resoning and thus does not show the acting chief judge's decision merits this court's review.

Dkt. 14-1, Ex. 17 at 395-97. Because the last decision defers entirely to the lower court's reasoning and does not independently analyze the claim, the court of appeals decision is the last reasoned decision for the purpose of habeas review. Barker v. Fleming, 423 F.3d 1085, 1093 (9th Cir. 2005).

II. Review in Federal District Court

A. The habeas petition and the district court's blanket denial of a COA.

Mr. Diazleal-Diazleal filed a federal habeas petition, including a sufficiency challenge to the two rape convictions. Counsel was appointed

Only after the state filed its answer, which argued only that the claim was not exhausted because the sufficiency claim in state court had allegedly been based on the (identical) state sufficiency standard. D.Ct. Dkt. 13 at 17-19. The Counseled reply accordingly argued that the sufficiency claim was exhausted. D.Ct. Dkt. 28 at 1-3. Without deciding whether the claim was exhausted or seeking additional breifing, the magistrate judge recommended denying the petition on the merits. D.Ct. Dkt. 29 at 15-17. See, Appendix-C. Mr. Diazleal-Diazleal objected to both the magistrate's non-resolution of the exhausted issue and submitted a new, detailed argument that the sufficiency claim met the 2254(d)(1) and (2) standards and that the petition should be granted on the merits. D.Ct. Dkt. 33. See, Appendix-D.

The District Court overruled the objections and adopted the report and recommendation of the magistrate judge. D.Ct. Dkt. 44. See, Appendix-A. The Court issued its Order without conducting a de novo review of those portions of the report to which Petitioner Diazleal objected, in violation of 28 U.S.C.§ 636. The court also erroneously concluded that the arguments in the Objections "reiterated the merits of his claims" and "Summarized arguments previously presented" in the Reply when in fact the objections contained at least four discrete, detailed arguments about analytical errors in the R & R, which were neither relevant to the Reply nor previously briefed by counsel for either party. The Court also manifestly erred by relying on Federal Rule of Civil Procedure (FRCP) 72(b) and related case law when the advisory notes to FRCP 72 and Ninth Circuit precedent specifically state that the rule does not apply to habeas petitions. See, Appendix-E.

III. Review in Ninth Circuit Court of Appeals.

On July 14, 2023, in a detailed 13-page pleading. Petitioner Diazleal-Diazleal timely sought a COA from the Ninth Circuit Court of Appeals. **See, Appendix-F.** Citing the appropriate COA satandards (i.e., Slack v. McDaniel, 529 U.S. 473 (2000); Barefoot v. Estelle, 463 U.S. 880 (1983)), he challenged the district court's Order without conducting a de novo review, in violation of 28 U.S.C.§ 636, the court's erroneous conclusion that the arguments in the Objections "reiterated the merits of petitioner's claims" and "Summarized aarguments previously presented" in the Reply when in fact the objections contained at least four discrete detailed arguments about analytical errors in the R & R, which were neither relevant to the Reply nor previously briefed by counsel for either party, and that the district court manifestly erred by relying on Federal Rule of Civil Procedure (FRCP) 72(b) and related case law when advisory notes to FRCP 72 state that the rule does not apply to habeas petitions. **see, Appendix-F.**

On March 1, 2024, After the proper COA standard, the two-judge panel for the Ninth Circuit Court of Appeals, Western District of Washington, Seattle, issued a pro-forma, perfunctory and non-specific blanket denial of Petitioner Diazleal-Diazleal's request. The entire analysis is as follows:

> The request for a COA (Docket Entry Nos. 2-2 & 3) is denied because appellant has not shown that "jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the distict court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000); See also 28 U.S.C.§ 2253(c)(2); Gonzalez v. Thaler, 565 U.S. 134, 140-41 41 (2012); Miller-El v. Cockrell, 537 U.S. 322, 327 (2003); Martinez v. Shinn, 33 F.4th 1253, 1261 (9th Cir. 2022), cert. denied,

143 S.Ct. 584 (2023).

Any remaining motions are denied as moot.

DENIED.

Appendix-F.

On April 26, 2024, Petitioner Diazleal-Diazleal's court appointed attorney, Ann K. Wagner, Assistant Federal Public Defender, abandoned Petitioner Diazleal, despite his repeated requests to proceed to this Honorable U.S. Supreme Court via a writ of certiorari. Federal Public Defender, Ann Wagner, in a letter containing a "Sample" Motion to Extend Time to file a Certiorari petition, advised this petitioner to Plagiarize the Sample Motion with a departing, "Good Luck." See, Appendix-G. [1].

On June 7, 2024, Justice Kagan extended the time to file a petition for a writ of certiorari to July 29, 2024. This pro se petition for certiorari timely follows.

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT CERTIORARI TO CLARIFY THE MINIMAL REQUIREMENTS OF A HABEAS COURT'S STATUTORY GATE-KEEPING FUNCTION PURSUANT TO 28 U.S.C.§ 2253(c).

A. The District Court's Pro-Forma and Blanket Denial of a COA Order Adopting The Magistrate's Report and Recommendation (R & R) Manifestly Erred By Relying On Federal Rule of Civil Procedure (FRCP) 72(b) That Does Not Apply To Habeas Corpus Petitions.

1. On May 28, 2024, due to time constraints, Petitioner submitted a motion to extend the time to file a writ of certiorari and attached attorney Ann K. Wagner's letter of abandonment in support of Motion.

The District Court issued its order without conducting a de novo review of those portions of the report to which Mr. Diazleal-Diazleal objected, in violation of 28 U.S.C.§ 636. The Court also erroneously concluded that the arguments in the Objections "reiterated the merits of his claims" and "summarized arguments previously presented" in the Reply when in fact the Objections contained at least four discrete, detailed arguments about analytical errors in the R&R, which were neither relevant to the Reply nor previously briefed by counsel for either party. The Court also manifestly erred by relying on Federal Rule of Civil Procedure (FRCP) 72(b) and related case law when the advisory notes to FRCP 72 and Ninth Circuit precedent specifically state that the rule does not apply to habeas corpus petitions.

Magistrate Judge Fricke issued her R&R and declined to decide the only squarely disputed issue: **exhaustion.** Instead, without asking for additional briefing, she based her recommendation on the merits, which had not been briefed by either the Respondent or petitioner's then appointed counsel. D.Ct. Dkt. 29 at 16-17.

Petitioner Diazleal timely objected to the R&R's failure to make a recommendation regarding the exhaustion issue and to the merits recommendation in the R&R, arguing that the magistrate judge:

a. incorrectly failed to reach a conclusion as to whether the sufficiency claimwas exhausted, Dkt. 43 at 11;

b. had "misapprehended" the basis of Mr. Diazleal's sufficiency claims by confusing the factual distinctions between the two counts with the question of whether the age element for each count was proved beyond a reasonable doubt by that distinct evidence. Dkt. 34 at 1-2;

c. had overlooked a particular route to merits review under AEDPA for state court decisions that are based upon an "unreasonable determination of the facts in light of the evidence presentedd," 28 U.S.C.§ 2254(d)(2), as opposed to an unreasonable application of the clearly established law,

and pointed to a specific, false statement of fact in the relevant state court opinion that met the §2254(d)(2) standard, apparently because it had confused one court's evidence for the other count. Dkt. 34 at 5;

d. had wrongly analyzed an alternative argument that the state court opinion was an unreasonable application of Jackson v. Virginia and other clearly established federal law interpreting Jackson in the habeas context, namely McDaniel v. Brown, 558 U.S. 120, 131 (2010);

...and made other errors in the R&R's treatment of a separate vouching claim. Dkt. 34 at 9.

The District Court then issued an order adopting the R&R while addressing none of the specific, detailed arguments outlined above and without any citation to the trial transcript, the relevant statutory provisions, and supporting case law. The Court instead summarily found that "Petitioner objected to Judge Fricke's R&R, but failed to identify any specific issues for review" Dkt. 44 at 2. It stated that a comparison of the Reply brief (containing none of the above, bulleted merits arguments) with the Objections revealed that the "Objections reiterated the merits of his claims, are filled with conclusory statements, summarized arguments previously presented, [and] point to no specific error by Judge Fricke." Dkt. 44 at 2. It therefore declined to perform "a de novo review of the portions of a R&R to which a party objects." Id. (quoting 28 U.S.C.§ 636(b)(1)).

B. ARGUMENT

The District Court made a manifest error of law by failing to conduct a de novo review of the portions of the R&R to which Petitioner objected, as required by 28 U.S.C.§ 636(b)(1). In addition, the court made a manifest error of fact when, comparing Petitioner's Reply and his

Objections, it stated that the "objections reiterate the merits of his claims, are filled with conclusory statments, summarized arguments previously presentedd, [and] point to no specific error by Judge Fricke." Dkt. 44 at 2. The court's reading of the Petitioner's pleadings was clearly erroneous because the Objections raised at least four discrete, detailed arguments about analytical errors made in the R&R, See supported by case law and citations to the record, that were absent from the Reply, Notably, neither party had addressed the "merits of [Petitioner's sufficiency] claims" before the R&R was issued, so the related legal argument were never "previously presented."

the Court further manifestly erred by basing much of its reasoning on Federal Rule of Civil Procedure 72(b). See Dkt. 44 at 2 ("A party properly objects by timely filing a "specific written objections" to the magistrate judge's R&R as required under Federal Rule of Civil Procedure 72 (b)(2)."). The advisory notes to FRCP 72(b) specifically state,

> **Subdivision(b).** This subdivision governs court-ordered referrals of dispositive pretrial matters and prisoner petitions challenging conditions of confinement, pursuant to statutory authorization in 28 U.S.C.§ 636(b)(1)(B). This rule does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28.

Rule 72 advisory committee's note to 1983 addition. Relying on a rule that is facially inapplicable to the case according to binding Ninth Circuit precedent is a manifest error of law. **Cavanaugh v. Kincheloe**, 877 F.2d 1449 (9th Cir. 1989)("Rule 72(b) does not apply to habeas corpus petitions filed under 28 U.S.C.§ 2254."); See also **Nara v. Frank**, 488 F.3d 187, 195 (3rd Cir. 2007)("The relevant civil procedure rule, however, is inapplicable to habeas corpus cases. Fed. R. Civ. P. 72(b) advisory committee's note

(2007)."); **Carter v. Lumpkin**, No. 6:21-CV-00031, 2022 WL 3030568, at (S.D. Tex. 2022)("Rule 72 normally governs review of a magistrate judge's M&R. the comment to Rule 72 of the Federal Rules of Civil Procedure, however, states that Rule 72 is inapplicable in the habeas corpus context. See Fed. R. Civ. P. 72(b) advisory committee's note to 1983 addition.").

Besides the specific, irrelevant citations to FRCP 72(b), the Court also manifestly erred by citing case law interpreting inapplicable provisions. **Simpson v. Lear Astronics** concerns a case outside the habeas context that relies solely on FRCP 72(a) regarding non-dispositive orders. 77 F.3d 1170, 1173 (9th Cir. 1996). Nor did it involve the filing of objections. Rather, it concerned a stray comment complaining about a magistrate judge's resolution of an issue, contained in a separate stipulation by both parties. It thus provides no insight into the standard for objections, labeled as such and timely filed,d that directly disputes the magistrate judge's findings and conclusions. Id. at 1175. **Djelassi v. ICE Field Office Director** is a district court immigration case in which the petitioner filed a § 2241 petition - which is neither a § 2254 or a § 2255 petition, the two types of filings exempted by the advisory committee comment and covered by separate Rules Governing Section 2254 Proceedings. 434 F.Supp. 3d 917, 919 (W.D. Wash. 2020).

The The District Court did not hold that detailed arguments or the type presented in Diazleal-Diazleal on his sufficiency claims are insufficient to preserve de novo review by the district court judge. Instead, it held that a boilerplate document that incorporated by reference a nonexistent summary judgment brief, that appeared to have been created for another case because it named a different magistrate judge, and that contained no

argument but only a general objection to the entire report, was insufficient to preserve any objections for appeal. Howard, 932 F.2d at 507-09.

Petitioner Diazleal-Diazleal did not file a general objection to the entire report. He objected to the specific resolutions of a narrowed-down set of claims, including a separate discussion of the magistrate judge's resolution of the merits of the sufficiency claims (which he had no opportunity to brief with the help of counsel previously, since the Respondent confined his Answer to exhaustion issues) and the nonresolution of the exhaustion issue.

Petitioner Diazleal-Diazleal was entitled to de novo review of his detailed objections to the R&R's resolution of his sufficiency and vouching claims and the nonresolution of the exhaustion issue under 28 U.S.C. § 636(b)(1). Certiorari should be granted, the Order dismissing the habeas petition should be vacated.

C. The Ninth Circuit's Pro-Forma, Non-Reasoned, and Blanket Denial Of A COA Splits From Decisions Of Other Circuit Courts As To How To Determine Whether A Certificate of Appealability Should Issue.

The Ninth Circuit's blanket denial of Mr. Diazleal-Diazleal's request for a certificate of appealability creates a split among the circuits as to whether the blanket denial (or grant) of a COA is permissible under 28 U.S.C. § 2253(c), which provides:

> (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from ---
>
> (A) the final order in a habeas corpus proceeding in which the

detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(c)(2) A certificate of appealability under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(c)(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

28 U.S.C.A. §§ 2253 (c)(1)-(c)(3).

Rule 11 of the Rules Governing 2254 Cases in the United States District Court also provides that, "[I]f the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2)." See Hertz and Liebman, 2 Federal Habeas Corpus Practice and Procedure § 35.4b at 1574, n. 40 (5th Ed. 2005)(discussing See 28 USC § 2253(c)(3) and citing cases to effect that an issuing court may not simply find that the overall petition meets (or not) the standard; also Ryan Hagglund,Review and Vacatur of Certificates of Appealability Issued After the Denial of Habeas Corpus Petitions, 72 U.Chi. L.Rev. 989, 1024 (2005).

This Rule requiring some reasoned gate keeping explanation be provided in the granting or denial of a certificate of appealability has been applied in the Fifth, Sixth, Tenth, Eleventh and D.C. Circuits. for example, in **Muniz v. Johnson**, 114 F.3d 43, 46 (5th Cir. 1997), the Court held that "When a distict court issues a CPC or COA that does not specify the issue or issues warranting review, as required by 28 U.S.C. § 2253(c(3), the proper course of action is to remand to allow the district

court to issue a proper COA, if one is warranted."

In **Porterfield v. Bell**, 258 F.3d 484, 486 (6th Cir. 2001) the Sixth Circuit Court of Appeals previously held that:

> Both [blanket grants and blanket denials] undermine the gate keeping function of certificates of appealability, which ideally should separate the constitutional claims that merit the close attention of counsel and this court from those claims that have little or no viability. Moreover, because the district court is already deeply familiar with the claims raised by petitioner, it is a far better position from an institutional perspective than this court to determine which claim should be certified.

See also **Murphy v. Ohio**, 263 F.3d 466 (6th Cir. 2001)("Such a blanket denial of a COA by the district court in this case is at least as objectionable as the blanket grant of a COA by the lower court in **Porterfield**, if not more so.")

The Tenth Circuit has also construed the statute in the same way. See **Lafevers v. Gibson**, 182 F.3d 705, 710 (10th Cir. 1999)("It is equally important, however, that district courts do not proceed to the other end of the jurisdictional spectrum and make a blanket denial of a certificate of appealability unless the court is convinced there is nothing in the petition that is of debatable constitutional magnitude."); **Herrera c. Payne**, 673 F.2d 307 (10th Cir. 1982)("Clearly the rule imposes a responsibility on the district judge to issue a certificate or a statement detailing his reasons for declining to confer one.")

In **Spencer v. United States**, 773 F.3d 1132, 1138 (11th Cir. 2014), the Eleventh Circuit Court of Appeals stated, "We will not be so lenient in future appeals when a certificate fails to conform to the gate-keeping requirements imposed by Congress. Going forward, a certificate of appealability, whether issued by this Court of a district court, must

specify what constitutional issue jurist of reason would find debatable. Even when a prisoner seeks to appeal a procedural error, the certificate must specify the underlying constitutional issue." In addition to **Spencer**, the Eleventh Circuit in **Franklin v. Hightower**, 215 F.3d 1196 (11th Cir. 2000), noted that pursuant to AEDPA's amended 28 U.S.C. §2253, a COA must indicate which specific issues show a denial of a constitutional right. In discussing the blanket denial of a COA, the court held that, "[b]y applying AEDPA's standards to this appeal and issuing a proper COA (if warranted), this panel may 'fix' the inadequacies of the present [certificate or probable cause]." Id. at 1199. see also, **Rostan v. United States**, 213 F. Appx. 943 (11th Cir. 2007)(remanding to the district court a grant of a COA that did not specify reasons for the grant.)

Similarly, in **United States v. Weaver, 195 F.3d 52, 53 (D.C. Cir. 1999)**, the D.C. Circuit remanded to the district court "to specify the issue or issues for appeal," where the lower court "didd not...specify the issue or issues as to which Weaver made a substantial showing he was denied a constitutional right."

Such a generalized blanket denial of a COA by the Ninth Circuit court on all of Diazleal-Diazleal's issues effectively delegated the COA determination process to this Court, thereby undermining the gate keeping function of certificates of appealability that is reflected in all the above decisions. Such statements do not comport with the proper review process.

Yet not all circuit courts interpret the gatekeeping function in such a uniform manner. The Eight Circuit, for example, has interpreted 28 U.S.C. §2253 and this Court's precedent very differently. In **Dansby v. Hobbs**, 691

F.3d 934 (8th Cir. 2012), that court stated:

> We do not think § 2253(c) or the Supreme Court's decisions regarding certificates of appealability dictate that a court of appeals must or must not publish a statement of reasons when it denies an application for a certificate. Whether to issue a summary denial or an explanatory opinion is within the discretion of the court.

Id. at 936.

Thus, it is imperative that this Court clarify whether there are any minimal requirements for the grant or denial of a certificate of appealability. Petitioner Diazleal-Diazleal is in the unique position of having been granted no issues to litigate in this habeas appeal, in spite of having asserted numerous viable constitutional claims to the district court. See Petitioner-Appellant's Redacted Motion for Certificate of Appealability, Appendix-F. And at this point, he has no idea why not.

D. The Ninth Circuit's Pro-Forma, Non-Reasoned, And Blanket Denial Of A COA Runs Contrary To Its Own Circuit Precedent.

The pro forma and unreasoned denial of any COA by the Ninth Circuit Court of Appeals in Petitioner Diazleal-Diazleal's case, is also contrary to its own circuit precedent.

In order to obtain a certificate of appealability, the petitioner must make a "Substantial Showing of the denial of a Constitutional right." 28 U.S.C. § 2253(c)(2). As explained by the Ninth Circuit in **Jennings v. Woodford**, 290 F.3d 1006 (9th Cir. 2002), the substantial showing standard is "relatively low." Id. at 1011. Moreover, "[t]he Court must resolve doubts about propriety of a COA in the petitioner's favor." Id. (citing **Lambright v. Stewart, 220 F.3d 1022, 1025 (9th Cir. 2000)(en banc))**.

Accordingly, Petitioner Diazleal-Diazleal need not show that he should

prevail on the merits. Lambright, 220 F.3d at 1025. Rather, resolving any doubts in his favor, the Court simply asks whether Diazleal met the "modest-standard," id. at 1024, that the issue is "debatable amoungst jurist of reason" or deserves "encouragement to proceed Further." MIller-El v. Cockrell, 537 U.S. 322, 326 (2003).

Here, in Diazleal-Diazleal's habeas case, not only did the district court fail to perform the mandated gate-keeping function, and proper legal standard in habeas cases, but the Ninth Circuit's two-judge panel, contrary to its own longstanding Ninth Circuit precedent, engaged in precisely the same inadequate and improper behavior in denying Petitioner Diazleal a COA. The Ninth Circuit's pro forma adjudication of extensive COA requests warrants this Honorable Supreme Court's attention. Because Mr. Diazleal-Diazleal made a substantial showing of the denial of his due process rights, this Court should grant the Writ of Certiorari. The blanket denial should be vacated and this case should be remanded to the lower court to provide a properly reasoned review consistent with AEDPA's standards.

E. The Ninth Circuit's Pro-Forma, Non-Reasoned, and Blanket Denial of A COA Does Not Comply With the Minimum Requirements of 28 U.S.C. § 2253(c) And Thus Violates Due Process.

The perfunctory ruling by the Ninth Circuit Court of Appeals is unique precedent for the proposition that AEDPA's COA provisions have no minimal requirements for a habeas court to follow. The Ninth Circuit Court of Appeals rendered meaningless its statutory duty to independently assess Peitioner Diazleal's COA application, denying him due process of law. The ultimate question for the Ninth Circuit Court of Appeals to decide under

the Slack standard was whether the district court's assessment of the constitutional claims and procedural issues was debatable amoung reasonable jurist. **Slack v. McDaniel**, 529 U.S. 473, 483-84 (2000). The assessment was not made.

As noted, in its two-page Order, the Ninth Circuit Court of Appeals identified the correct standard to assess whether a COA should issue, but after stating the standard, the court abruptly and perfunctorily denied Petitioner Diazleal's application, stating "the request for a COA (Docket Entry Nos. 2-2 & 3) is denied because appellant has not shown that jurist of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that jurist of reason would find it debatable whether the district court was correct in its procedural ruling." **See, Appendix-B.** The Court supplied no reasoning or analysis to inform Diazleal why he had failed to meet this standard.

The Ninth Circuit Court of Appeals' failure to apply its own reasoned analysis to Petitioner's COA application infringed on his right to due process. As a threshold matter, it does not matter that Petitioner Diazleal has "no right," constitutional or otherwise, to a habeas appeal. **See, 28 U.S.C. §2253(b).** Relevant by analogy, in **Evitts v. Lucey**, 469 U.S. 387, 405 (1985), this Court held that constitutional principles of fundamental fairness apply even when "the Constitution does not require States to grant appeals of right to criminal defendants seeking to review alleged trial errors." Id. at 393 (quoting **McKane v. Durston**, 153 U.S. 684 (1894)). Due Process rights apply because state legislatively-created appeals are "an integral part of the system for finally adjudicating the guilt or innocence

of a defendant." Id (quoting **Griffin v. Illinois**, 351 U.S. 12, 18 (1956)).

Consistent with the underlying reasoning of **Evitts**, is longstanding precedent in which this Court has ruled that defendants who had no federal constitutional right to an appeal satill possessed a due process right to a fundamentally fair appeal process once such an appeal was legislatively provided. Compare **Evitts**, 469 U.S. at 401 (reasoning States may choose to "institute...Welfare program[s]" or "set[] policies governing [discretionary] parole decisions" but such State action must comport with fairness strictures and "dictates" of the Due Process Clause.) **Griffin V. Illinois**, 351 U.S. 12, 18 (1956)(holding that a state's denial of a trial transcript for an indigent's appeal violated due process and acknowledging that although there is no federal right to appeal a state-imposed conviction, "[a]ppellate review has now become an integral part of the Illinois trial system for finally adjudicating the guilt or innocence of a defendant" such that "all stages of the proceeding" are protected from "invidious" discrimination by "the Due Process and Equal Protection Clauses."; **also Douglas v. California** 372 U.S. 353, 355-58 (1963)(finding due process violation resulting from the state's refusal to appoint appellate counsel to indigent defendants where under California'a system, "the state appellate courts...[made] an independent investigation of the record [to] determine whether it would be of advantage to the defendant or helpful to the appellate court to have counsel appointed," such that it had become a "meaningless ritual." **Cf. Ohio Adult Parole Authority v. Woodard**, 523 U.S. 272, 283-85 (1998)(distinguishing **Evitts, Douglas,** and **Griffin**, as inapplicable to the context of executive clemency, and reasoning that "function and significance" of executive clemency differed substantially

from the "function and significance" of the appeal rights at issue in the **Evitts** line of cases.)

Petitioner Diazleal-Diazleal's due process rights were violated by the Ninth Circuit Court of Appeals' phantom review of his COA application, and the "function and significance" of the gatekeeping provisions in 28 U.S.C. §2253(c) lead to that conclusion. **See, Woodard**, 523 U.S. at 283-85. The focus falls on the important function and significance of federal habeas review and not on whether a habeas appeal is required by §2253. As a result "[t]he writ of habeas corpus plays a vital role in protecting Constitutional rights." **Slack**, 529 U.S. at 483. Given the importance and historical role of the Great Writ, **Boumediene v. Bush**, 553 U.S. 723, 745 (2008), habeas review is "an integral part of the system for finally adjudicating the guilt or innocence of a defendant." **See Evitts**, 469 U.S. at 393 (citing **Griffin** 351 U.S. at 18).

"The importance of the writ is it protects those detained by providing a tool to call their jailer into account." **Boumediene**. 553 U.S. at 745. This Court "[h]as made clear that, unless Congress acts to suspend it, the Great Writ of habeas corpus allows the Judicial Branch to play a necessary role in maintaining this delicate balance of governance, serving as an important judicial check on the Executive's discretion in the realm of detentions." **Hamdi v. Rumsfeld**, 542 U.S. 507, 536 (2004)(plurality opinion).

Habeas appeals are obviously far more "structured" than the largely discretionary, clemency proceeding reviewed in **Woodard**, 523 U.S. at 284. The structured nature of habeas appeals includes a statutory mandated review of a COA application by the Court of Appeals. The requirement to obtain a COA in order to appeal is part and parcel of the structure of

habeas review, 28 U.S.C. §2253(c), and the requirement includes the Court's precedent as discussed in **Slack**. Under the Slack standard, the petitioner's burden is not steep. For merit review, the petitioner satisfies that standard if he states a valid claim alleging the denial of a constitutional right. **Slack**, 529 U.S. at 844. For review of procedural default found by the district court, the petitioner satisfies the standard if he states a valid claim alleging the denial of a constitutional right, and a question exists as to the correctness of the district court's procedural ruling. Id. And the appellate court's COA review is not deferential because it may also issue a COA to the petitioner if it simply finds the district court's conclusions to be debatable among jurists of reason. Id. But in this case there were no articulate findings by the circuit court whatsoever.

The federal habeas scheme includes a standard for determining when an appeal may be taken from the district court. Given the historically important role habeas review plays in our criminal justice system, **see Boumediene**, 553 U.S. at 739-46, due process requires that this standard must be applied to Petitioner Diazleal-Diazleal's case. By analogy, depriving Diazleal of the proper appellate standard is like depriving a defendant of transcript in an appeal or the right to hearing when welfare benefits are terminated because deprivation renders the proceeding meaningless. **see, Griffin**, 351 U.S. at 18-19; **Goldberg v. Kelly**, 397 U.S. 254, 261-64 (1970).

The Ninth Circuit of Appeals' failure to apply any standards deprived this petitioner a meaningful appellate review of his habeas claims. Simply put, Diazleal-Diazleal was denied 'the opportunity to be heard at a meaningful time and in a meaningful manner." **Matthews v. Eldridge**, 424 U.S.

319, 333 (1976)(citing **Armstrong v. Manzo**, 380 U.S. 545, 552 (1965). That is the antithesis of fundamental fairness. See id.

CONCLUSION

The Court should grant this pro se petition for certiorari. The Ninth Circuit Court of Appeal's pro forma and perfunctory Order should be vacated and this case should be remanded for a full and proper COA review consistent with AEDPA's statutory standards.

Respectfully Submitted

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