NO. 25-_____

In the Supreme Court of the United States

HONG THU NGUYEN,

Petitioner,

v.

CHRIS MCBEE, WARDEN,
CHILLICOTHE CORRECTIONAL CENTER ET AL.,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Hong Thu Nguyen was charged with arson at two of her places of business. Over objection, the state presented financial evidence that after other business fires, she had received insurance proceeds. She was convicted. At sentencing, trial counsel failed to present available evidence of the spousal abuse and childhood trauma and deprivation which Ms. Nguyen had suffered. After affirmance on appeal, and denial of post-conviction relief, she filed a petition for federal habeas corpus. Relief and a certificate of appealability were denied. The case thus presents the following questions.

1. Whether a certificate of appealability should be issued to review the decision of the U.S. District Court that the Missouri Court of Appeals reasonably applied the Due Process Clause as recently construed in *Andrew v. White*, 145 S.Ct. 75 (2025), when it affirmed the overruling of Ms. Nguyen's objection to financial evidence showing that she had profited from previous insurance claims made after fires in her establishments.

2. Whether a certificate of appealability should be issued to review the decision of the U.S. District Court that "significant" evidence of spousal abuse and childhood trauma and deprivation was presented at Ms. Nguyen's sentencing and that she was therefore not prejudiced by trial counsel's ineffective assistance.

LIST OF PARTIES

Petitioner and Petitioner-Appellant below

- Hong Thu Nguyen

  Represented in the Court below
  by Elizabeth Unger Carlyle.

Respondents and Defendants-Appellees below

- Chris McBee,
  Warden of Chillicothe Correctional Center
- Andrew Bailey,
  Missouri Attorney General

  Respondents represented in the court below by
  Asst. Missouri Atty. Gen. Katherine Griesbach

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 29.6, the petitioner is not a corporation.

LIST OF PROCEEDINGS

Proceedings in Federal Courts

U.S. Court of Appeals for the Eighth Circuit

No: 25-1041

Hong Thu Nguyen, *Petitioner-Appellant,* v. Chris McBee, Warden, Chillicothe Correctional Center; Andrew Bailey, Attorney General State of Missouri, *Defendants-Appellees.*

Final Judgment: March 26, 2025

U.S. District Court, WD Missouri

No. 24-cv-00432-SRB

Hong Thu Nguyen, *Petitioner,* v. Chris McBee, Warden of the Chillicothe Correctional Center, et al., *Respondents.*

Final Order: November 21, 2024

Judgment: November 22, 2024

Order Denying 59(b) Motion: December 19, 2024

Proceedings in Missouri State Courts

Missouri Court of Appeals Western District

No. WD 85341

Thu Hong Nguyen, *Appellant.* v. State of Missouri, *Respondent*

Final Order: June 27, 2023

16th Circuit Court, Jackson County, Missouri
No. 2016-CV13140
Thu Hong Nguyen v. State of Missouri
Judgment: March 15, 2022

Missouri Court of Appeals Western District
No. WD 82141
State of Missouri, *Respondent,* v.
Thu Hong Nguyen, *Appellant.*
Final Order: May 20, 2020

16th Circuit Court, Jackson County, Missouri
No. 1516-CR03754-01
State of Missouri, v. Thu Hong Nguyen
Judgment: September 21, 2018

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner, Hong Thu Nguyen[1], respectfully prays that a Writ of Certiorari issue to review the judgment and order of the United States Court of Appeals, Eighth Circuit rendered in these proceedings on March 26, 2025.

OPINIONS BELOW

The unpublished order of the United States Court of Appeals denying a certificate of appealability is reprinted in the Appendix at App.1a. The unpublished order of the United States District Court, Western District of Missouri, denying habeas corpus relief, is reprinted in the Appendix beginning at App.5a. The docket order of the United States District Court, Western District of Missouri, denying Ms. Nguyen's motion under Fed. R. Civ. P. 59(e) is reprinted in the appendix at App.3a. The unpublished order of the Missouri Court of Appeals, affirming Ms. Nguyen's conviction on direct appeal, is reprinted in the Appendix beginning at App.38a. The opinion of the Missouri Court of Appeals, affirming the denial of Ms. Nguyen's motion for state post-conviction relief, is reprinted in the Appendix beginning at App.27a and is published at 670 S.W.3d 256 (Mo. App. 2023).

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[1] In state court, Ms. Nguyen was incorrectly identified as Thu Hong Nguyen. In federal court, she used her correct legal name, Hong Thu Nguyen.

JURISDICTION

The judgment of the United States Court of Appeals, Eighth Circuit, was entered March 26, 2025. No petition for rehearing was filed. On June 12, 2025, an extension of time until July 24, 2025 was granted for the filing of the petition for writ of certiorari. Sup. Ct. No. 24A1224.

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

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. Amend VI

> In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

U.S. Const. Amend. XIV, Sec. 1

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State

wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. § 2253(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.

(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.

(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. § 2254(d)

An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on

the merits in State court proceedings unless the adjudication of the claim—

(1) resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or

(2) resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

A. Summary

This petition concerns the denial of a certificate of appealability to examine the questions of denial of due process of law because of the improper admission of evidence and ineffective assistance of counsel for failure to present mitigating evidence at sentencing.

B. Facts and procedural history

In October, 2015, there was a fire in a building in Kansas City, at 2608 Independence Ave. The building had five businesses on the ground floor, including LN Nails and Spa, a nail salon. Above the businesses were sixteen apartments, at least one of which was occupied only by squatters. It was an older building with an inadequate electrical system. Sometimes the apartment manager found smoke detectors with no batteries in

them, because people would steal them. The building had failed fire inspection on ten occasions.

Ms. Nguyen and Long Tham were working at the salon the day of the fire, and decided to close early because they were out of clients. Long Tham walked outside to smoke and waited for Ms. Nguyen while she locked up. The only exit from the shop was the front door. Long Tham did not see a fire or smell anything unusual. The two left.

Shortly after that, a woman who worked at the grocery store in the next building saw smoke and then flames; everyone began running out of the building into the alley. As the firefighters fought the blaze, a side wall of the building collapsed and bricks buried one of the fire trucks. Two firefighters died and two were seriously injured.

Ms. Nguyen waived her right to trial by jury. At trial, the state presented evidence from an arson investigator reflecting his opinion that the fire was caused by an accelerant. Evidence was also presented of a possible electrical cause unrelated to Ms. Nguyen.

In connection with this fire, Ms. Nguyen was charged with and convicted of two counts of second degree felony murder, one count of first degree arson, and two counts of second degree assault.

Ms. Nguyen was also charged, in the same proceeding, with setting a fire at a nail salon in Lee's Summit, Missouri, in 2013. This fire was initially classified as accidental. However, after the Kansas City fire, an investigator reviewed the testing conduct at the time of the Lee's Summit fire and conducted additional experiments. He testified at Ms. Nguyen's trial that

the Lee's Summit fire was also intentionally set. It originated at Ms. Nguyen's work station.

Ms. Nguyen was convicted of one count of arson in connection with this fire.

The trial judge ruled prior to trial that the state could present a financial expert, over defense objection. She ruled that the financial evidence would be admitted only for motive, and she would not consider it for propensity.

Forensic auditor Nicole Poirier testified that she had reviewed property records, banking records, insurance records, and tax records of Ms. Nguyen and Nhat Pham. (Tr. 1127). She testified that before the October, 2015 fire, there had been a January 2015 fire in the apartment above LN Nails. (Tr. 1131). Nhat Pham, the owner of the salon, received a $40,000 payout from the January fire (Tr. 1131).

Poirier testified that Nhat Pham had contributed fifty percent of the purchase price of LN Nails, but Poirier could not find he had any other role in the business. Ms. Nguyen directed day-to-day activities at LN Nails, and used the business account for her personal expenses as well as business ones. None of the records showed that Nhat Pham got a payment from the salon There were no paychecks to Ms. Nguyen, but some checks to employees such as Long Pham.

Ms. Nguyen had been involved in business at five nail salons. All of them suffered a catastrophic event of some sort and closed; all were purchased for cash, and none of them reopened. Ms. Nguyen's financial records showed employment gaps from seven months to one year. During those times, Ms. Nguyen seemed to be living off the insurance proceeds from the previous

insurance events. The total insurance proceeds received for the businesses and additional personal claims was about $267,000. According to Poirier, Ms. Nguyen owned, operated or had control over all five of these entities, because they were used for personal expenses and she had no other income from outside sources.

According to Poirier, Ms. Nguyen was able to go lengthy periods of time with no employment and live off insurance payouts, then use the money to purchase a new nail salon and start over (Tr. 1160).

C. Sentencing evidence

At sentencing, the state presented several victim family members who testified about the impact of the offenses on them and their families. The state also presented testimony concerning additional uncharged fires and insurance claims relating to them. The state's evidence comprised 35 pages of the sentencing transcript.

The defense presented brief testimony from Davis Nguyen, the son of Ms. Nguyen. Mr. Nguyen expressed frustration with the demonization of his mother, and mentioned that she grew up on a farm in Vietnam without education and, after coming to the United States as a refugee, had to raise her children alone when her husband left her. The defense also presented a letter from a Buddhist nun who knew Ms. Nguyen. The letter described Ms. Nguyen's service to others through the Buddhist temple, and also spoke about the hardships of her life in the United States.

The state argued for sentences totaling 89 years. The court imposed a sentence of 74 years.

D. Direct appeal

Ms. Nguyen raised as a ground for appeal the improper admission of the financial evidence. In an unpublished opinion, the court of appeals found that the evidence was relevant to motive, and that the fact that it also suggested a propensity of Ms. Nguyen to commit arson for financial gain was insufficient to overcome the relevance of the evidence. App.54a.

E. Post-conviction proceedings

Ms. Nguyen filed a timely motion in Jackson County, Missouri, circuit court for post-conviction relief.

At the post-conviction hearing, a psychologist testified concerning the trauma of Ms. Nguyen's early life, and its effect on her. He explained that Ms. Nguyen was born in 1972 to a Vietnamese mother and an American solider serving in the Vietnam War. She was raised in an impoverished, rural environment in Vietnam. After she was born, her mother had four children with her stepfather, and her mother and stepfather were emotionally neglectful towards her, favoring her step-siblings. Her stepfather was abusive, including beating her with a blunt object and forcing her to eat spicy food. From ages 8 to 10 years, she was required to raise her step-brothers. She did not attend school, and from the age of 10 to 18, she was required to work long hours on a farm. Her earnings were given to her parents to provide for the family. She experienced little social interaction. She was taunted by her peers for being half American with taunts such as, "Go back to your country."

When she was 18 years old, Ms. Nguyen married Michael Nguyen, and her first son was born when she

was 19. Immigration to the United States was offered to Ms. Nguyen because she was half American, and the family moved to the United States in 1991, when she was 19 years old. Ms. Nguyen came to later suspect that Michael Nguyen married her to immigrate to the United States. After they moved to the United States, Mr. Nguyen controlled the finances and sent a significant portion back to his family in Vietnam, rather than spending the money to improve their family's life in America. After they had four children together, Mr. Nguyen abruptly left the family with the savings in 2006. He left Ms. Nguyen to raise the four boys, who were all still juveniles at the time, and did not pay child support for a lengthy period of time. Ms. Nguyen was lonely and depressed during this period of time. Ms. Nguyen was a good provider and mother to her four boys. Her primary employment was as a nail technician and nail salon operator, and she worked extensive hours and continued her homemaking duties as well.

Trial co-counsel Lexi Nguyen testified at the post-conviction hearing that she was aware of much of this information, which was not presented to the sentencing court. However, she did not inform lead counsel Molly Hastings about it and did not ensure that it was presented to the sentencing judge because she believed it would not make a difference. Lexi Nguyen stated that she did not believe she had represented Ms. Nguyen effectively in this respect. Neither counsel considered hiring an expert psychologist to evaluate Ms. Nguyen for sentencing.

The post-conviction court found that failure to investigate and present this evidence was not reasonably effective assistance of counsel, but that the omission

of the evidence was not prejudicial to Ms. Nguyen because most of it was presented at sentencing.

F. Post-conviction appeal

On appeal, the court of appeals affirmed the circuit court's judgment, finding that the additional evidence was so similar to the evidence presented that it would not have affected the outcome. App.35a.

G. Habeas corpus proceedings

In her habeas corpus petition, Ms. Nguyen re-urged her claim that the financial evidence was improperly admitted. The district court found no evidence of a due process violation.

Ms. Nguyen also challenged the state court finding regarding ineffective assistance of counsel at sentencing.

The district court denied relief, finding that the state court's decisions were reasonable interpretations of clearly established federal law. In the same order, the court denied a certificate of appealability. App.25a. Ms. Nguyen's motion under Fed. R. Civ. P. 59(e) was denied by docket entry. App.3a.

H. Habeas corpus appeal

Ms. Nguyen filed notice of appeal to the Eighth Circuit. That Court, without explanation, declined to grant a certificate of appealability. This petition follows.

REASONS FOR GRANTING THE PETITION

I. This Court should Grant Review and Issue a Certificate of Appealability to Correct the Due Process Standard Used Here to Deny Relief for Improper Admission of Evidence

In determining that the Missouri court did not act unreasonably when it affirmed the admission of the financial evidence, the district court relied on the wrong standard. Notably, it did not cite, or refer to, this Court's decision in *Payne v. Tennessee*, 501 U.S. 808, 825 (1991). While this case was pending on appeal, this Court decided *Andrew v. White*, 145 S.Ct. 75 (2025). That decision established that it is a matter of clearly established federal law that *Payne* governs the improper admission of evidence, and requires relief when the introduction of prejudicial evidence "renders [a] trial fundamentally unfair." 501 U.S. at 825.

The district court here did not cite *Payne* and of course did not consider *Andrew*, since that case had not yet been decided. The standard actually used by the district court was that of *Anderson v. Goeke*, 44 F.3d 675 (8th Cir. 1995), and *Hamilton v. Nix*, 809 F.2d 463 (8th Cir. 1987). *Hamilton* predated *Payne*, and *Anderson* did not cite it. The standard of *Anderson* and *Hamilton* was that reversal is required only when "the alleged improprieties were 'so egregious that they fatally infected the proceedings and rendered [the] entire trial fundamentally unfair.'" 44 F.3d. at 679. This is a more stringent standard than required by *Payne*, which is now established as the governing law for habeas corpus claims seeking to attack the improper

admission of evidence. Because the district court could not have been aware of *Andrew* and did not cite *Payne*, this Court should grant certiorari, vacate the judgment, and remand to the district court.

Alternatively, this Court should grant review and remand to the U.S. Court of Appeals for the Eighth Circuit with instructions to grant a certificate of appealability and review this issue. While the trial judge here promised that she would not consider the evidence of repeated fires and insurance claims in Ms. Nguyen's establishments (which were not otherwise explained at the trial) as propensity evidence, that is simply not something which is within human ability to do. As this Court explained in *Old Chief v. United States*, 519 U.S. 172, 181 (1997):

> Although . . . propensity evidence is relevant, the risk that a jury will convict for crimes other than those charged—or that, uncertain of guilt, it will convict anyway because a bad person deserves punishment—creates a prejudicial effect that outweighs ordinary relevance.

As motive evidence, the financial evidence had little additional persuasive power. Ms. Nguyen would have been expected to file insurance claims after an accidental fire. And she did so in connection with the two fires in which she was charged. The only rational conclusion to be drawn from the financial evidence was that Ms. Nguyen had a propensity for setting fires and collecting insurance, exactly the type of evidence disparaged by *Old Chief*.

The district court's contrary conclusion raises "a substantial showing of the denial of a constitutional

right." 28 U.S.C. § 2253(c)(2). The decision is one which is "debatable among jurists of reason; that a court could resolve . . . [in a different manner]; [and] that the questions are 'adequate to deserve encouragement to proceed further.'" *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983) (citations omitted).

This Court should direct that a COA be granted.

II. This Court should Grant Review and Issue a Certificate of Appealability to Clarify the Standard for Review of Failure to Present Sentencing Evidence

The state court found that trial counsel was not reasonably effective in failing to investigate and present sentencing evidence, but denied relief because of lack of prejudice. The decision of the state court on which the court below relied was erroneous in two respects. First, it held that the omitted evidence was similar to that actually presented by counsel, and therefore no prejudice was shown. But in *Sears v. Upton*, 561 U.S. 945, 955 (2010), this Court held, "We certainly have never held that counsel's effort to present some mitigation evidence should foreclose an inquiry into whether a facially deficient mitigation investigation might have prejudiced the defendant." The fact that minimal evidence was presented does not foreclose a holding that had an adequate investigation been performed and more evidence presented, there is a reasonable probability of a different outcome.

Second, it held that because the sentencing court had opined, in post-conviction, that the new evidence would not have changed her decision on sentencing, no prejudice was shown. However, the sentencing habits of the particular judge cannot be substituted

for the *Strickland v. Washington*, 466 U.S. 668 (1984), prejudice analysis. That would violate the Equal Protection Clause.

The district court held that the state court had reasonably applied *Strickland*, and that its factual findings were not clearly erroneous. But the state court's analysis of the facts was erroneous. The post-conviction evidence included the testimony of a neutral expert, who discussed Ms. Nguyen's traumatic background in detail and the effect this had on her. Before sentencing, the court only heard from Ms. Nguyen's son, who mentioned her background in passing, and reviewed a letter from a witness who did not appear in court. The state, on the other hand, presented extensive, moving testimony from victim families and expert testimony. While this testimony was admissible, it is notable that Ms. Nguyen was never charged with having any intent to cause physical injury to anyone. The state's evidence comprised 35 pages of the transcript. The defense evidence comprised 5 pages. The contrast is stark.

Under the standard of *Wiggins v. Smith* 539 U.S. 510 (2003), and *Williams v. Taylor*, 529 U.S. 362 (2000), the state court decision resulted from both an unreasonable determination of the facts and unreasonable application of clearly established federal law.

Moreover, this Court's recent decision in *Loper Bright Enterprises v. Raimondo*, 144 S.Ct. 2244 (2024), throws into question the deference provisions of 28 U.S.C. § 2254.

In *Loper*, this Court considered challenges to the constitutionality under U.S. Const. Article III of

"*Chevron*[2] deference" to federal executive agencies' interpretations of federal law. In overruling *Chevron*, the Court held that only Article III courts are equipped to "construe the law with '[c]lear heads . . . and honest hearts,' not with an eye to policy preferences that had not made it into the [law]." *Loper* at 2257, 2268 (quoting THE FEDERALIST No. 78). As a result, "[s]ince the start of our Republic," federal courts "have 'decide[d] questions of law' and 'interpret[ed] constitutional and statutory provisions' by applying their own legal judgment." *Id.* at 2261 n.4 (quoting 5 U.S.C. § 706). This "traditional conception of the judicial function" compelled the Court in *Loper* to overrule *Chevron* deference because the doctrine required judges to disregard their responsibility to interpret and apply the law. *Id.* at 2262, 2270.

Just as Article III courts cannot defer to Congress' interpretation of federal law, *see City of Boerne v. Flores*, 521 U.S. 507, 536 (1997), or executive agencies, *Loper*, 144 S. Ct. at 2269-70, they cannot defer to state courts' federal law interpretations without violating their essential independent duty to maintain the supremacy and unity of federal law. *See Norris v. Alabama*, 294 U.S. 587, 590 (1935) (stating that it is "incumbent" upon federal courts to review mixed questions of law and fact; "[o]therwise, review by this Court would fail of its purpose in safeguarding constitutional rights"). In fact, over two hundred years ago, in *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264 (1821), the Court defended against similar encroachments in the judicial power by a state court. In *Cohens*, the Common-

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[2] *Chevron, U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-45, 865-67 (1984).

wealth of Virginia argued that federal courts should defer to state court interpretations of the Constitution unless the case presented an "extreme" violation of federal law – much as the AEDPA limits federal courts to reversing only "objectively unreasonable" state court applications of federal law. *Id.* at 386. Virginia reasoned that given the many instances in which federal courts do not have the power and jurisdiction to remedy Constitutional violations, federal courts should not feel obliged to remedy such violations in cases in which the courts do have jurisdiction. *Id.* at 404-05. Justice Marshall rejected Virginia's reasoning, ruling instead that the Congressional grant of jurisdiction carries with it not only the power of the court to decide for itself a relevant constitutional question, but the duty to do so. *Id.* (noting that federal court must decide a relevant constitutional issue and "cannot pass it by because it is doubtful.").

The constitutional violation at issue here is more serious than that in *Loper Bright*. The standard in § 2254(d) not only requires a *policy* of disregarding the judges' constitutional duty to independently interpret the Constitution and decisions construing it, it creates a statutory mandate requiring them to abstain from that duty. Thus, the issue of the continuing viability of the standard of review in § 2254(d) is ripe for review by this Court.[3]

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[3] Pursuant to Rule 29.4(b), Petitioner notes that 28 U.S.C. § 2403(a) may apply in this proceeding. To petitioner's knowledge, neither the district court nor the court of appeals certified to the Attorney General the fact that the constitutionality of an Act of Congress was drawn into question.

The authorities regarding COA above require equally that this Court remand the case to the Eighth Circuit and direct that Court to issue a certificate of appealability to review this issue.

III. This Court should Grant Review to Address Whether the Eighth Circuit's Practice of Issuing Unexplained Denials of Certificate of Appealability Conflicts with this Court's Decisions in *Miller-el v. Cockrell* and *Barefoot*

After the district court denied relief and a COA, Ms. Nguyen filed with the court of appeals a motion for COA, specifically arguing for a COA on the two issues raised in this petition. The Eighth Circuit then issued its order, which read in toto as follows:

> This appeal comes before the court on appellant's application for a certificate of appealability. The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed.

App.2a.

This practice, which is almost universal in the Eighth Circuit, is contrary to the principles of the COA statute and precedent.

To obtain a COA, the petitioner need only make "a substantial showing of the denial of a constitutional right." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003) ("*Miller-El I*") (quoting 28 U.S.C. § 2253(c) (2)). That showing is satisfied when "jurists of reason could disagree with the district court's resolution of [any] constitutional claims or that jurists could conclude the issues presented are adequate to deserve encourage-

ment to proceed further." *Id.*; *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The standard is not burdensome: "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Miller-El I*, 537 U.S. at 338.

As this Court noted in *Miller El I*: "the COA determination under § 2253(c) *requires* an overview of the claims in the habeas petition and *a general assessment of their merits*." 537 U.S. at 336 (emphasis added). This Court further noted that the COA process "must not be *pro forma* or a matter of course." *Id.* at 337. Accordingly, this Court reversed the Fifth Circuit's COA denial in *Miller El I* because it had "sidestep[ped]" the appropriate procedure. *Id.* at 336.

In *Slack*, this Court held: "The COA statute establishes procedural rules and requires a threshold inquiry into whether the circuit court may entertain an appeal." *Slack*, 529 U.S. at 482; *see also Hohn v. United States*, 524 U.S. 236, 248 (1998). In *Tennard v. Dretke*, 542 U.S. 274, 283 (2004), this Court also reversed the Fifth Circuit for "paying lip service" to the COA standard and remanded the case for further proceedings.

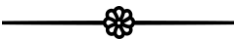
Other circuits regularly issue reasoned opinions denying COA. *See, e.g.*, *Swisher v. True*, 325 F.3d 225 (4th Cir. 2003); *Chanthakoummane v. Stephens*, 816 F.3d 62 (5th Cir. 2016); *Smith v. Mays*, No. 18-5133, 2018 WL 7247244 (6th Cir. Aug. 22, 2018); *Dickens v. Ryan*, 552 F. Appx 770 (9th Cir. 2014); *Lafferty v. Benson*, 933 F.3d 1237 (10th Cir. 2019); *Woods v. Holman*, No. 18-14690, 2019 WL 5866719 (11th Cir. Feb. 22, 2019) (all providing reasons for denying COA);

cf. Woods v. Buss, 234 F. Appx 409 (7th Cir. 2007) (reasoned denial in successive posture).

The Sixth Circuit, which regularly issues reasoned decisions denying COA, explained the importance of reasoned opinions in *Murphy v. Ohio*, 263 F.3d 466 (6th Cir. 2001). There, the court reversed a blanket denial of a COA, remanding to the district court for analysis of the individual issues presented in the petition. Citing its earlier decision in *Porterfield v. Bell*, 258 F.3d 484 (6th Cir. 2001), the court held that remand was required because "The district court here failed to consider each issue raised by Murphy under the standards set forth by the Supreme Court. . . . " *Murphy*, 263 F.3d at 467.

Under *Hohn*, 524 U.S. 236, this Court has jurisdiction to review the denial of a COA by a lower court. But when there is an unexplained denial, this Court is left with the responsibility of reviewing unexplained COA denials *de novo*. Stated another way, the availability of review presupposes something for the Court to review in the first place. By omitting any reasoning on the merits of any claim, the Eighth Circuit's practice insulates a conviction from the additional review to which the petitioner is entitled.

If relief is not otherwise granted, this Court should grant review and remand to the Eighth Circuit for a reasoned opinion on the denial of COA.



CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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