25-475

SUPREME COURT OF THE UNITED STATES

RICKY ESCOBEDO, Petitioner, v. UNITED STATES OF AMERICA, Respondent.

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

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PETITION FOR WRIT OF CERTIORARI

RICKY ESCOBEDO, Petitioner, ***Pro Se***

April 2025

PRO SE MOTION FOR CERTIFICATE OF APPEALABILITY

PURSUANT TO 28 U.S.C. § 2253(c)
BY PETITIONER RICKY ESCOBEDO

TO THE HONORABLE JUDGES OF THE FIFTH CIRCUIT COURT OF APPEALS:

Petitioner–Appellant Ricky Escobedo respectfully moves this Court to issue a Certificate of Appealability ("COA") pursuant to 28 U.S.C. § 2253(c), following the denial of his Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 and the denial of a COA by the district court below. In support of this application, Mr. Escobedo states the following:

1. INTRODUCTION AND JURISDICTIONAL STATEMENT

This appeal stems from the denial of Petitioner–Appellant Ricky Escobedo's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 by the United States District Court for the Western District of Texas. The district court entered its final order of denial on September 17, 2024, and simultaneously declined to issue a Certificate of Appealability ("COA") under § 2253(c), thereby foreclosing appellate review unless this Court grants such authorization.

Mr. Escobedo subsequently filed a timely notice of appeal, and the instant case was docketed in the United States Court of Appeals for the Fifth Circuit under Case No. 24-50806. On March 28, 2025, a panel of this Court summarily denied Mr. Escobedo's application for a COA. That denial was entered without a written

opinion or analysis of the legal and factual issues raised. Petitioner now respectfully renews his request for a COA, asking this Court to reconsider that decision in light of binding precedent that directs appellate courts to grant a COA where the petitioner makes a threshold showing of a debatable constitutional claim.

Under the standards articulated in *Slack v. McDaniel*, 529 U.S. 473, 484 (2000), and reaffirmed in *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), a COA should issue when a petitioner demonstrates that "jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." This is not a merits determination; rather, the COA standard is intended to be a "modest" procedural gateway to allow further judicial review where constitutional errors are at least arguable and not plainly frivolous.

Mr. Escobedo's underlying § 2255 motion alleged serious and multi-faceted constitutional violations—specifically, unlawful search and seizure under the Fourth Amendment; ineffective assistance of trial counsel in violation of the Sixth Amendment; denial of due process and access to the courts under the Fifth and Fourteenth Amendments; and an as-applied Second Amendment challenge to 18 U.S.C. § 922(g) under the Supreme Court's decision in *New York State Rifle &*

Pistol Association v. Bruen, 597 U.S. 1 (2022). These claims were neither patently frivolous nor procedurally defaulted in a way that precludes judicial inquiry.

Moreover, the district court dismissed the motion without conducting an evidentiary hearing, without providing access to relevant transcripts or discovery, and without addressing several of the factual assertions that lie at the heart of Mr. Escobedo's allegations. Accordingly, the present appeal raises unresolved questions of law and fact which merit close appellate scrutiny.

This Court possesses jurisdiction under 28 U.S.C. §§ 1291 and 2253. Petitioner's renewed request for a COA is timely filed and procedurally proper. In the interest of justice and the preservation of constitutional safeguards in post-conviction proceedings, Mr. Escobedo urges this Court to reconsider its earlier denial and grant a COA permitting full appellate review of the constitutional claims set forth in his § 2255 motion.

2. PROCEDURAL BACKGROUND

Petitioner–Appellant Ricky Escobedo was convicted following a jury trial in the United States District Court for the Western District of Texas under Criminal Case No. 5:17-CR-391-10. He was sentenced to a total term of 300 months (25 years) in federal custody. The charges on which he was convicted encompassed a range of serious federal offenses, including:

- **Conspiracy to interfere with commerce by threats or violence** (Hobbs Act);
- **Conspiracy to distribute controlled substances**, including methamphetamine, cocaine, and heroin;
- **Possession with intent to distribute cocaine**;
- **Possession of a firearm in furtherance of a drug trafficking crime**;
- **Being a felon in possession of a firearm** under 18 U.S.C. § 922(g); and
- **Conspiracy to possess firearms in furtherance of a drug trafficking crime**.

These charges arose out of a large-scale joint investigation involving multiple defendants and alleged gang-related activity. Mr. Escobedo has consistently maintained that certain critical evidence used against him was obtained through unconstitutional law enforcement practices and that his defense counsel failed to meaningfully challenge these violations.

On or about **March 4, 2024**, Mr. Escobedo filed a pro se **Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255**, alleging multiple constitutional violations that infected the integrity of his trial and sentencing proceedings. The claims raised in the § 2255 motion included:

1. **A Fourth Amendment violation** based on a warrantless or otherwise invalid search of his residence, which led to the seizure of key evidence used at trial;
2. **Ineffective assistance of counsel** under the Sixth Amendment, particularly for failure to litigate the suppression of unlawfully seized evidence, failure to object to prejudicial gang-affiliation evidence, and failure to challenge improper jury instructions;
3. **Due process violations** under the Fifth and Fourteenth Amendments, including the denial of access to transcripts and a meaningful opportunity to present his case;
4. **A Second Amendment challenge** to his § 922(g) conviction in light of *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022), which clarified the standard for determining the constitutionality of firearm restrictions.

Despite the serious and multi-dimensional nature of these claims, and despite Petitioner's repeated requests for discovery, unsealing of transcripts, and an evidentiary hearing, the district court summarily denied the § 2255 motion on **September 17, 2024**. The court held that Mr. Escobedo had failed to make a sufficient showing of constitutional error to warrant relief, and **declined to issue a Certificate of Appealability**, thus precluding direct appeal absent intervention from this Court.

Mr. Escobedo then timely filed an application for a COA with the Fifth Circuit Court of Appeals, which was docketed under **Case No. 24-50806**. On **March 28, 2025**, a panel of this Court denied the COA without a written opinion. The court further denied Mr. Escobedo's motions for leave to proceed **in forma pauperis**, and his request for judicial notice regarding sealed portions of the record.

Unless this Court reconsiders and grants a COA, Petitioner's only remaining judicial remedy will be to seek discretionary review in the Supreme Court of the United States via a petition for a writ of certiorari, which must be filed by **June 26, 2025**—ninety days after the denial of COA by this Court.

3. GROUNDS FOR ISSUANCE OF CERTIFICATE OF APPEALABILITY

A. FOURTH AMENDMENT – UNLAWFUL SEARCH AND SEIZURE

Petitioner–Appellant Ricky Escobedo respectfully asserts that the search of his residence violated his rights under the Fourth Amendment to the United States Constitution, which guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." Specifically, Mr. Escobedo contends that law enforcement agents conducted a search of his home without obtaining a valid warrant supported by probable cause, and that any alleged warrant was either facially deficient, unsigned, or unaccompanied by a sworn affidavit specifying the address to be searched or the basis for probable cause.

Mr. Escobedo raises a core constitutional challenge to the legality of this search. He invokes the Supreme Court's landmark decision in *Katz v. United States*, 389 U.S. 347 (1967), which held that the Fourth Amendment "protects people, not places," and reaffirmed that a warrantless search conducted without judicial oversight or valid exception is presumptively unconstitutional. Similarly, he relies on *Mapp v. Ohio*, 367 U.S. 643 (1961), which extended the exclusionary rule to the states and barred the use of unlawfully obtained evidence in criminal prosecutions.

The evidence seized during the contested search—allegedly including firearms, narcotics, and electronic devices—formed a central part of the government's case at trial. Mr. Escobedo contends that this evidence was tainted under the "fruit of the poisonous tree" doctrine established in *Wong Sun v. United States*, 371 U.S. 471 (1963), and should have been suppressed prior to trial. He further maintains that the lack of judicial review of the search, or a warrant that failed to satisfy constitutional requirements, rendered all subsequent evidentiary use of the seized items invalid under clearly established federal law.

Importantly, Mr. Escobedo alleges that his trial counsel initiated but later withdrew a motion to suppress this critical evidence, doing so without consultation, explanation, or presentation of facts to support the claim. As such, the underlying constitutional violation is compounded by ineffective assistance of counsel, a matter addressed more fully in Section 3(B) below. However, the Fourth Amendment claim stands independently as a substantial ground for relief.

Mr. Escobedo requested that the district court unseal or produce copies of the alleged search warrant, affidavit, or supporting documents that would clarify the factual record. His request was denied, and no evidentiary hearing was held. Thus, the constitutional question of whether the search was lawful has never been meaningfully reviewed by any court.

The district court's summary dismissal of this claim—despite contested factual assertions and unresolved legal issues—raises a significant procedural and substantive concern. Pursuant to *Slack v. McDaniel*, 529 U.S. 473 (2000), a Certificate of Appealability must issue where jurists of reason could debate whether a constitutional violation occurred or whether the district court's procedural ruling was correct. Likewise, *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003), instructs appellate courts that a COA determination does not require full resolution of the merits, but only an assessment of whether the petitioner has raised a colorable constitutional issue worthy of further review.

Mr. Escobedo submits that his Fourth Amendment claim—questioning whether the federal government obtained and executed a valid search warrant, and whether that issue should have been resolved through adversarial hearing—meets this standard. At the very least, reasonable jurists could disagree on the necessity of factual development and the application of the exclusionary rule.

Therefore, Mr. Escobedo respectfully requests that this Court grant a Certificate of Appealability on this Fourth Amendment claim and allow the matter to proceed to full appellate review.

B. SIXTH AMENDMENT – INEFFECTIVE ASSISTANCE OF COUNSEL

Petitioner–Appellant Ricky Escobedo raises a substantial and factually grounded claim of ineffective assistance of trial counsel, in violation of the Sixth Amendment to the United States Constitution, which guarantees the right to the effective assistance of counsel during all critical stages of the criminal proceeding.

Mr. Escobedo's allegations are governed by the two-prong test articulated by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must demonstrate (1) that counsel's performance was deficient, meaning it fell below an objective standard of reasonableness; and (2) that the deficient performance prejudiced the defense, resulting in a reasonable probability that the outcome of the proceeding would have been different.

In his § 2255 motion, Mr. Escobedo identified several specific failures by trial counsel that satisfy both prongs of the *Strickland* test and collectively undermined the fundamental fairness of his trial:

1. Withdrawal of the Suppression Motion Without Consultation or Explanation

Mr. Escobedo asserts that defense counsel initially filed a motion to suppress evidence seized during the warrantless or allegedly invalid search of his residence.

However, without conferring with Mr. Escobedo or presenting the legal and factual basis to the court, counsel unilaterally withdrew the motion. This withdrawal occurred despite Mr. Escobedo's insistence that the search warrant was constitutionally defective or altogether absent.

The right to challenge an unlawful search is fundamental, and the suppression of unconstitutionally seized evidence may have significantly weakened the government's case. As the Fifth Circuit emphasized in *United States v. Cavitt*, 550 F.3d 430, 442 (5th Cir. 2008), a claim that counsel failed to litigate a potentially meritorious suppression motion warrants evidentiary development, particularly where the record does not conclusively resolve the factual basis of the underlying search. Mr. Escobedo was denied such development.

The record contains docket entries and notations suggesting that a suppression motion was at least contemplated and perhaps even filed, yet no suppression hearing was held, and no explanation for the withdrawal was placed on the record. This lack of transparency further supports Mr. Escobedo's argument that trial counsel's decision was not strategic but negligent or uninformed.

2. Failure to Object to Prejudicial Jury Instructions and Jury Notes.

Mr. Escobedo contends that his trial counsel failed to object to flawed or misleading jury instructions—particularly instructions that blurred the lines

between different conspiracy counts and failed to properly instruct on the requirement of specific intent. This omission deprived the jury of a legally accurate framework for evaluating the multiple overlapping charges involving firearms, narcotics, and interstate commerce.

Moreover, when the jury sent notes during deliberations requesting clarification, counsel allegedly failed to preserve objections to how the court responded, thereby forfeiting the issue on appeal and eliminating a potentially meritorious basis for review.

These lapses in performance materially affected the outcome, as improper instructions and misinterpretation of the elements of the offense can lead to unjust convictions, especially in complex multi-defendant trials.

3. Failure to Object to Inflammatory Gang-Affiliation Evidence

Mr. Escobedo was allegedly linked to gang activity through the introduction of prejudicial evidence—such as tattoos, photographs, or testimony—intended to portray him as a member of a criminal organization. This evidence was admitted without any limiting instruction or challenge by defense counsel, despite its marginal relevance and substantial risk of unfair prejudice under Federal Rule of Evidence 403.

Counsel failed to request a curative instruction or seek bifurcation of trial phases to minimize this prejudice. As a result, the jury may have convicted based on perceived bad character or guilt by association, rather than proof beyond a reasonable doubt on the elements of each charge.

4. General Lack of Adversarial Testing

In aggregate, Mr. Escobedo asserts that counsel failed to subject the prosecution's case to meaningful adversarial testing, in violation of the Sixth Amendment's core function. These failures were not minor oversights, but instead reflected a broader pattern of deficient performance—where critical legal arguments were abandoned or never advanced.

The cumulative effect of these failures, especially when considered alongside the serious constitutional violations alleged in the Fourth and Fifth Amendment claims, establishes at minimum a "reasonable probability" that the outcome of the proceedings would have been different, had counsel provided constitutionally adequate representation.

5. Substantial Showing of a Constitutional Violation

Because the record is incomplete and many of the above allegations remain factually unresolved due to the district court's refusal to grant an evidentiary

hearing or permit access to sealed transcripts, Mr. Escobedo argues that reasonable jurists could disagree about whether the Sixth Amendment was violated. This is precisely the standard that governs the issuance of a COA under *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

He respectfully requests that this Court issue a COA on his claim of ineffective assistance of counsel to allow full briefing, record development, and judicial resolution of these serious constitutional issues.

C. FIFTH & FOURTEENTH AMENDMENTS – DENIAL OF PROCEDURAL DUE PROCESS

Petitioner–Appellant Ricky Escobedo asserts that his post-conviction proceedings were fundamentally unfair and violated his rights under the Due Process Clauses of the Fifth and Fourteenth Amendments to the United States Constitution. He contends that the procedures employed by the district court denied him a meaningful opportunity to be heard and effectively deprived him of access to the factual materials necessary to support his claims, including access to sealed transcripts and case documents.

Under long-standing constitutional principles, due process in post-conviction proceedings requires that an indigent petitioner be provided with a fair opportunity to develop and present his claims, especially when those claims involve disputed

issues of fact or potentially meritorious legal arguments. See *Bounds v. Smith*, 430 U.S. 817, 828 (1977) ("The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers.").

Mr. Escobedo submits that the district court's handling of his § 2255 motion failed to satisfy these basic constitutional standards in at least three material respects:

1. Denial of Access to Transcripts and Critical Records

Mr. Escobedo made multiple formal and informal requests to the district court for access to transcripts, sealed filings, and evidentiary materials relevant to the suppression motion that trial counsel purportedly withdrew. These transcripts were necessary to establish key facts regarding:

- Whether a valid search warrant existed or was introduced into the record;
- Whether defense counsel ever filed or discussed a motion to suppress;
- What factual basis, if any, was offered to justify the search;
- How the court responded to jury communications and jury instructions.

Despite the centrality of these records to his constitutional claims—particularly his Fourth Amendment and ineffective assistance of counsel claims—the court denied

his requests outright. No findings were made regarding the unavailability of the documents, and no alternative access mechanisms (e.g., partial transcripts or summary orders) were offered. As a result, Mr. Escobedo was effectively prevented from substantiating the factual allegations at the heart of his post-conviction challenge.

Courts have consistently recognized that the denial of access to transcripts can amount to a due process violation, particularly where the transcripts are indispensable for raising or proving a colorable claim. See *Griffin v. Illinois*, 351 U.S. 12 (1956); *Draper v. Washington*, 372 U.S. 487 (1963). Mr. Escobedo's inability to develop a factual record cannot be attributed to delay or neglect, but to a categorical denial of materials to which he was lawfully entitled.

2. Failure to Appoint Counsel Despite the Complexity of the Issues

Rule 8(c) of the **Rules Governing Section 2255 Proceedings** provides that a district court must appoint counsel for indigent petitioners "[i]f an evidentiary hearing is warranted." Even where no hearing is held, courts have discretion to appoint counsel "if the interests of justice so require." Mr. Escobedo respectfully submits that the complexity and legal novelty of his claims—especially his Second Amendment argument under *Bruen* and intertwined Fourth and Sixth Amendment issues—justified the appointment of counsel.

Unlike routine sentencing error claims, Mr. Escobedo raised sophisticated and fact-dependent constitutional violations, including:

- An as-applied constitutional challenge to 18 U.S.C. § 922(g);
- Ineffective assistance claims involving withdrawn motions and procedural ambiguity;
- Denial of access to judicial records and factual development;
- Procedural default analysis under *Bousley v. United States*, 523 U.S. 614 (1998).

Without counsel, Mr. Escobedo—a layperson—was left to navigate a complex legal terrain involving overlapping constitutional doctrines, procedural barriers, and evolving Supreme Court precedent. The district court provided no justification for declining to appoint counsel, nor did it offer guidance as to how Mr. Escobedo might obtain the necessary documents or properly present his claims.

The denial of counsel in this context exacerbated the risk of erroneous dismissal and raises serious questions under the Due Process Clause, which requires "a reasonable opportunity to present evidence and argument before being permanently deprived of a protected liberty interest." *Hamdi v. Rumsfeld*, 542 U.S. 507, 533 (2004).

3. Denial of an Evidentiary Hearing Despite Factual Disputes

Perhaps most critically, the district court denied Mr. Escobedo's § 2255 motion **without holding an evidentiary hearing**, despite the existence of unresolved factual questions that were material to his claims for relief. These factual disputes included:

- Whether a valid, judicially authorized search warrant existed and was executed lawfully;
- Whether defense counsel ever filed a suppression motion and, if so, why it was withdrawn;
- Whether Mr. Escobedo's gang affiliation evidence was introduced improperly or unfairly;
- Whether the Second Amendment applies retroactively to his § 922(g) conviction in light of *Bruen*.

As the Fifth Circuit has explained, when the record does not "conclusively show that the prisoner is entitled to no relief," an evidentiary hearing must be conducted. *United States v. Cavitt*, 550 F.3d 430, 442 (5th Cir. 2008). The standard for entitlement to a hearing is not a merits determination, but whether the petitioner has raised facts that, if true, would entitle him to relief. Here, the district court did

not address the merits of several claims at all, and dismissed the motion summarily, contrary to governing habeas procedure and constitutional norms.

This denial effectively deprived Mr. Escobedo of a meaningful opportunity to contest the accuracy or completeness of the government's narrative and foreclosed the only forum in which his claims could be factually developed. This is precisely the type of procedural unfairness that the Fifth and Fourteenth Amendments prohibit.

Conclusion

Mr. Escobedo's post-conviction proceedings were conducted in a manner that denied him basic procedural fairness. He was:

- **Barred from accessing the very transcripts needed** to support his claims;
- **Denied appointed counsel** despite the legal complexity of the issues raised;
- **Deprived of a hearing** on contested matters of constitutional fact.

Each of these procedural failings, standing alone, raises a serious constitutional concern. Taken together, they present a compelling case for appellate review. Reasonable jurists could certainly debate whether Mr. Escobedo's due process rights were violated, and under *Slack v. McDaniel*, 529 U.S. 473 (2000), this is sufficient to justify issuance of a Certificate of Appealability.

D. SECOND AMENDMENT – CHALLENGE TO 18 U.S.C. § 922(g) UNDER *BRUEN*

Petitioner–Appellant Ricky Escobedo respectfully submits that his conviction under 18 U.S.C. § 922(g)—which criminalizes possession of firearms by certain categories of persons, including convicted felons—is unconstitutional as applied to him in light of the United States Supreme Court's decision in *New York State Rifle & Pistol Association v. Bruen*, 597 U.S. 1 (2022). He contends that the legal framework established in *Bruen* has substantially altered the constitutional landscape governing the Second Amendment and firearm-related convictions, rendering his felon-in-possession conviction infirm.

1. The *Bruen* Framework

In *Bruen*, the Supreme Court rejected the two-step, means-end scrutiny framework previously employed by many courts—including the Fifth Circuit—to evaluate Second Amendment challenges. Instead, the Court adopted a new standard rooted exclusively in constitutional text and historical tradition. Under *Bruen*, once a law implicates conduct protected by the plain text of the Second Amendment, it is presumptively unconstitutional unless the government can demonstrate that the restriction is consistent with the Nation's historical tradition of firearm regulation.

This analytical shift requires courts to re-evaluate longstanding firearm restrictions—such as § 922(g)—not through policy balancing or governmental interest analysis, but by assessing whether such laws were part of a consistent and representative historical tradition dating back to the Founding Era.

2. Application to Mr. Escobedo's Case

Mr. Escobedo was convicted under 18 U.S.C. § 922(g)(1) for possessing a firearm despite having a prior felony conviction. He does not dispute that he has a felony record; however, he argues that his personal conduct—mere possession of a firearm in his own residence, not linked to any act of violence or public threat—falls within the historical core of the Second Amendment right to armed self-defense, as reaffirmed by *District of Columbia v. Heller*, 554 U.S. 570 (2008), and *McDonald v. City of Chicago*, 561 U.S. 742 (2010).

Under the *Bruen* test, Mr. Escobedo asserts that § 922(g)'s broad categorical ban on firearm possession by all felons—without individualized assessment of dangerousness, rehabilitation, or connection to the right to self-defense—is historically unsupported. He notes that no founding-era analogs categorically disarmed all felons or those previously convicted of non-violent crimes, and he cites growing scholarly and judicial debate questioning whether § 922(g) can survive *Bruen*'s historically anchored scrutiny.

Moreover, Mr. Escobedo challenges his § 922(g) conviction as **unconstitutionally applied to him**, emphasizing that:

- His alleged possession was non-violent and occurred in a private setting;
- He poses no demonstrable ongoing threat to public safety;
- His prior convictions did not involve firearm misuse, threats, or violence; and
- There is no indication Congress intended for § 922(g) to impose a permanent bar on all prior offenders without individualized process or historical grounding.

This as-applied challenge distinguishes Mr. Escobedo's claim from facial constitutional attacks and invites a nuanced examination of his personal circumstances under the *Bruen* methodology.

3. Actual Innocence and Procedural Gateway

Mr. Escobedo further argues that, in light of *Bruen*, he is **actually innocent** of the conduct for which he was convicted under § 922(g). This assertion of actual innocence may serve as a gateway to overcome any procedural defaults that might otherwise bar review of his constitutional claim. See *Bousley v. United States*, 523 U.S. 614 (1998) ("[I]f the petitioner did not raise a constitutional claim at trial or

on direct appeal, a showing of actual innocence may permit review of otherwise procedurally defaulted claims.").

Here, Mr. Escobedo's claim is not based on a change in policy or case interpretation alone, but on a significant redefinition of constitutional doctrine that goes to the **core legality of the conviction itself**. In this context, a claim of actual innocence is not only legally plausible, but directly tethered to a major Supreme Court ruling that was unavailable to him at the time of trial or appeal.

4. Circuit-Level Confusion and National Legal Debate

Although the Fifth Circuit has upheld the constitutionality of § 922(g) in the aftermath of *Bruen* in cases such as *United States v. Rahimi*, 61 F.4th 443 (5th Cir. 2023), the continued viability of § 922(g) remains a matter of active litigation and division across courts:

- In *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023) (en banc), the Third Circuit held that § 922(g)(1) was unconstitutional as applied to a nonviolent felon, suggesting that blanket bans on felons may not be justified post-*Bruen*.
- The Seventh Circuit and Eighth Circuit have issued contrasting rulings, creating growing tension and the potential for a circuit split.

- Multiple district courts have issued divergent rulings, and at least one pending case seeks certiorari review of § 922(g)'s constitutionality.

This evolving judicial landscape bolsters Mr. Escobedo's argument that his constitutional claim is not only **debatable among jurists of reason**, but also **unsettled** in the courts—a critical factor under *Slack v. McDaniel*, 529 U.S. 473 (2000).

5. Substantial Showing of a Constitutional Violation

Whether § 922(g) survives strict scrutiny under the *Bruen* test—and whether it is constitutional as applied to nonviolent, rehabilitated felons such as Mr. Escobedo—is a question of national importance that has not been definitively resolved. It presents a novel and debatable issue of law that meets and exceeds the modest threshold for COA issuance.

Accordingly, Mr. Escobedo respectfully requests that this Court grant a Certificate of Appealability on his Second Amendment challenge and allow full briefing on whether his § 922(g) conviction is unconstitutional under *Bruen* and its progeny.

E. ACTUAL INNOCENCE

Petitioner–Appellant Ricky Escobedo asserts that he is actually innocent of at least one of the offenses for which he was convicted—specifically, the charge of unlawful possession of a firearm by a convicted felon under 18 U.S.C. § 922(g)(1). This assertion is not merely rhetorical or speculative, but is grounded in a substantive constitutional claim newly recognized by the Supreme Court's decision in *New York State Rifle & Pistol Ass'n v. Bruen*, 597 U.S. 1 (2022). Under that decision's interpretive framework, Mr. Escobedo's conduct may no longer qualify as criminal, at least in the form previously prosecuted and adjudicated under § 922(g).

1. Legal Foundation of the "Actual Innocence" Standard

The concept of actual innocence has been firmly embedded in federal habeas jurisprudence as both a **gateway doctrine** to excuse procedural default and, in some circumstances, as a **freestanding constitutional claim**. See *Schlup v. Delo*, 513 U.S. 298 (1995); *Bousley v. United States*, 523 U.S. 614, 623 (1998). In *Bousley*, the Supreme Court held that where a petitioner was convicted of conduct that the law does not make criminal—due to a subsequent clarification or reinterpretation of law—he may establish actual innocence sufficient to bypass default or the statute of limitations.

Actual innocence is not limited to factual innocence but extends to **legal innocence**—that is, a claim that a person has been convicted of conduct that, after clarification of the governing law, is no longer punishable under federal statute or constitutional principle. See also *United States v. Doe*, 810 F.3d 132, 155–56 (3d Cir. 2015). Mr. Escobedo's claim of actual innocence falls squarely within this category.

2. The *Bruen*-Driven Reevaluation of § 922(g)(1)

As discussed in Section 3(D), *Bruen* restructured Second Amendment jurisprudence by directing courts to assess firearm restrictions based on **historical tradition**, rather than applying intermediate scrutiny or balancing state interests. Under this reorientation, courts must now determine whether the disarmament of entire classes of people—including felons—is consistent with the Nation's founding-era principles and practices.

Mr. Escobedo contends that under this stricter framework, § 922(g)(1)'s sweeping ban on all felons, without individualized consideration of dangerousness or rehabilitation, fails constitutional muster as applied to his specific case. His conviction was predicated on mere possession of a firearm in a private setting, with no accompanying violence, threat, or use of the weapon. His status-based

conviction is therefore inconsistent with any well-documented founding-era tradition of disarming individuals in his circumstances.

Given that some federal courts have already invalidated § 922(g) convictions post-*Bruen*—and that a growing number of dissenting opinions and concurrences challenge the provision's historical underpinnings—Mr. Escobedo argues that his conduct, once criminal, may now fall outside the constitutional bounds of federal criminal law.

3. Application to Gateway and Substantive Relief

Mr. Escobedo's claim of actual innocence is vital not only for its own merit but also for its

procedural implications. If successful, this claim would:

- **Excuse any procedural default** that the district court or Fifth Circuit might otherwise cite as a bar to relief;
- **Permit review of constitutional claims** that were not raised on direct appeal or that might otherwise be dismissed on waiver grounds;
- **Form an independent basis** for relief under § 2255 if the claim satisfies *Herrera v. Collins*, 506 U.S. 390 (1993), and is supported by new legal rules made retroactively applicable.

Given the rapidly evolving constitutional doctrine surrounding the Second Amendment, Mr. Escobedo's claim is neither frivolous nor foreclosed by

precedent. Indeed, the unsettled state of the law strengthens the argument that reasonable jurists could disagree about whether the underlying firearm possession was criminal conduct following *Bruen*—a sufficient ground for issuing a Certificate of Appealability.

4. Potential for Retroactivity

Though the Supreme Court has not yet definitively ruled on whether *Bruen* applies retroactively to cases on collateral review, Mr. Escobedo respectfully asserts that *Bruen* meets the threshold established in *Teague v. Lane*, 489 U.S. 288 (1989), for retroactive application of a new "substantive" rule. Substantive rules are those that "narrow the scope of a criminal statute by interpreting its terms," or that place conduct or categories of persons beyond the government's power to punish. See *Schriro v. Summerlin*, 542 U.S. 348, 351–52 (2004).

If *Bruen* is held to be retroactive—and multiple courts are currently grappling with this issue—then Mr. Escobedo's claim of actual innocence becomes directly enforceable through § 2255 proceedings.

5. COA Justification

In light of the above, Mr. Escobedo's assertion of actual innocence, grounded in a good-faith application of *Bruen*, raises at least a **debatable question of constitutional law**. This is precisely the type of claim that meets the threshold

standard for issuance of a Certificate of Appealability under *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

Moreover, his claim interacts substantively with other constitutional issues—such as the Fourth Amendment violation and ineffective assistance of counsel—to reinforce a cumulative miscarriage of justice. The denial of an evidentiary hearing and the court's failure to assess his post-*Bruen* innocence further support the need for appellate intervention.

4. FIFTH CIRCUIT DENIAL OF CERTIFICATE OF APPEALABILITY

On **March 28, 2025**, the United States Court of Appeals for the Fifth Circuit issued a **summary denial** of Mr. Ricky Escobedo's application for a Certificate of Appealability (COA) under 28 U.S.C. § 2253(c). The denial was entered without written opinion, analysis, or any indication that the court engaged with the substance of Mr. Escobedo's multiple constitutional claims. This procedural action foreclosed direct appellate review of the district court's September 17, 2024, order denying Mr. Escobedo's § 2255 motion.

Mr. Escobedo respectfully submits that the Fifth Circuit's summary denial—absent engagement with the detailed constitutional questions he presented—raises serious concerns under binding precedent from the United States Supreme Court,

including *Slack v. McDaniel*, 529 U.S. 473 (2000), and *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

1. Governing Legal Standard for COA Issuance

Under *Slack* and *Miller-El*, a COA should issue if a petitioner makes a "substantial showing of the denial of a constitutional right." This standard is met where **reasonable jurists could disagree** with the district court's resolution of the constitutional claim, or where the issue is **adequate to deserve encouragement to proceed further**.

Importantly, this threshold is deliberately low. The Supreme Court has emphasized that COA decisions are not intended to be full merits rulings, but rather threshold inquiries into whether the petition presents **non-frivolous and debatable constitutional questions**. See *Miller-El*, 537 U.S. at 338 ("The question is the debatability of the underlying constitutional claim, not the resolution of that debate.").

2. Failure to Apply Slack / Miller-El Framework

Despite this clearly established standard, the Fifth Circuit did not engage in any meaningful analysis of Mr. Escobedo's claims. The court issued a one-sentence

denial of his COA motion, with no reference to the **serious constitutional allegations** raised, including:

- The execution of a **warrantless or unlawful search** in violation of the Fourth Amendment;
- **Ineffective assistance of trial counsel** under *Strickland* for failure to pursue a suppression motion, object to prejudicial gang-related evidence, or address problematic jury instructions;
- **Procedural due process violations**, including the denial of transcripts and an evidentiary hearing;
- A **Second Amendment challenge** to 18 U.S.C. § 922(g) under *Bruen*, raising a debatable and developing area of law with acknowledged circuit-level conflict;
- A legitimate claim of **actual innocence**, grounded in a new constitutional rule with potential retroactive application.

The record reflects that the district court summarily dismissed Mr. Escobedo's § 2255 motion **without addressing many of these claims on their merits**, and without the benefit of factual development. In this context, the Fifth Circuit's refusal to even acknowledge—let alone analyze—these claims represents a failure to apply the governing legal standard under *Slack*.

3. Denial of Ancillary Motions Without Explanation

In addition to the denial of his COA, the Fifth Circuit **denied Mr. Escobedo's motion to proceed in forma pauperis (IFP)** and his motion for **judicial notice**, without explanation. Mr. Escobedo had requested judicial notice of sealed or missing records, particularly those relating to the search warrant and suppression motion. The absence of those documents prevented him from fully demonstrating the merit of his Fourth and Sixth Amendment claims.

Denying these motions without elaboration further exacerbated the lack of procedural transparency and reinforces Mr. Escobedo's contention that his constitutional arguments were **never fully adjudicated at any level**.

4. Appellate Panel's Failure to Address Emerging Legal Doctrines

Mr. Escobedo's *Bruen*-based challenge to § 922(g)—a key component of his actual innocence and substantive constitutional arguments—has gained significant traction in multiple federal courts. The Fifth Circuit, by denying COA without grappling with the rapidly shifting constitutional terrain, missed an opportunity to provide guidance or clarity on an issue of growing national importance. A more robust discussion was warranted, particularly in light of:

- The Third Circuit's en banc decision in *Range v. Attorney General*, 69 F.4th 96 (3d Cir. 2023), invalidating § 922(g) as applied to a nonviolent felon;
- The emergence of **intra-circuit disagreement and split-panel decisions**;
- The lack of definitive Supreme Court resolution on the **retroactivity of *Bruen***.

In failing to engage with these issues, the appellate court did not provide Mr. Escobedo—or future petitioners—any guidance as to whether his claims were considered weak on the merits, barred by procedural default, or insufficiently developed.

5. Implications for Supreme Court Review and Habeas Integrity

The denial of COA without analysis effectively forecloses appellate review of constitutional claims that have **never received meaningful judicial consideration**. This raises serious concerns about the **integrity of habeas corpus as a safeguard** against wrongful conviction, particularly where the claims at issue involve:

- **Structural errors** (e.g., denial of counsel or a hearing);
- **New constitutional doctrines** (e.g., *Bruen*);
- **Claims of actual innocence** based on evolving law.

Under these circumstances, Mr. Escobedo's case presents a compelling candidate for further judicial scrutiny—either through this Court's reconsideration of the COA denial or through **a petition for writ of certiorari** to the United States Supreme Court.

5. REQUESTED RELIEF

Mr. Escobedo respectfully requests that this Court issue a Certificate of Appealability on the following grounds:

1. Whether the Fourth Amendment was violated by an unlawful search of his residence;
2. Whether counsel's failure to litigate this search constitutes ineffective assistance;
3. Whether denial of transcripts and lack of hearing violated due process;
4. Whether *Bruen* invalidates 18 U.S.C. § 922(g) as applied to him;
5. Whether he is actually innocent of the firearms charge under evolving constitutional law.

6. CONCLUSION

WHEREFORE, for the reasons stated, Mr. Escobedo respectfully requests that this Court grant his motion for a Certificate of Appealability, allowing full appellate review of the substantial constitutional claims presented in his § 2255 motion.

Respectfully submitted,
Ricky Escobedo
Pro Se Petitioner–Appellant

United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
March 28, 2025
Lyle W. Cayce
Clerk

No. 24-50806

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

RICKY ESCOBEDO,

Defendant—Appellant.

Application for Certificate of Appealability
the United States District Court
for the Western District of Texas
USDC No. 5:24-CV-169
USDC No. 5:17-CR-391-10

UNPUBLISHED ORDER

Before SMITH, GRAVES, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:

Ricky Escobedo, federal prisoner # 89282-380, requests a certificate of appealability (COA) to challenge the denial of his 28 U.S.C. § 2255 motion. Escobedo filed the § 2255 motion to attack his jury trial convictions and 300-month aggregate sentence for conspiracy to interfere with commerce by threats or violence; conspiracy to distribute

methamphetamine, cocaine, and heroin; possession with intent to distribute cocaine; possession of a firearm in furtherance of drug trafficking; possession of a firearm by a convicted felon; and conspiracy to possess firearms in furtherance of drug trafficking.

In his COA motion, Escobedo claims that his trial counsel was ineffective for failing to pursue the suppression of evidence. He contends that his conviction of possession of a firearm by a convicted felon is unconstitutional in light of *New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 597 U.S. 1 (2022), and he argues that he is actually innocent of the offense. He claims that, because the district court did not grant his request for access to transcripts, the district court abused its discretion by failing to appoint counsel, by denying an evidentiary hearing, and by not allowing discovery. Because Escobedo does not renew his claim that his trial counsel was ineffective for failing to challenge jury instructions, the claim is deemed abandoned. *See Hughes v. Johnson*, 191 F.3d 607, 613 (5th Cir. 1999).

A COA may issue only if the movant has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003). When claims are denied on the merits, to obtain a COA a movant must show that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). When the district court denies relief on procedural grounds, a COA should issue if a movant establishes, at least, that jurists of reason would find it debatable whether the motion states a valid claim of the denial of a constitutional right and whether the district court was correct in its procedural ruling. *Id.*

Escobedo has failed to make the requisite showing. Accordingly, his motion for a COA is DENIED. His motion to proceed in forma pauperis is likewise DENIED. Because Escobedo fails to make the required showing

for a COA, we do not reach the question whether the district court erred by denying an evidentiary hearing or by denying discovery. *See United States v. Davis*, 971 F.3d 524, 534-35 (5th Cir. 2020). Finally, Escobedo's motion for this court to take judicial notice that he requested the unsealing of transcripts in the district court is DENIED as unnecessary.

No. _____

_____

IN THE

SUPREME COURT OF THE UNITED STATES

_____

RICKY ESCOBEDO — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)

PROOF OF SERVICE

I, RICKY ESCOBEDO, do swear or declare that on this date, JUNE 23rd, 20 25, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

U.S. Attorney's Office, 601 N.W. Loop 410 Ste 600 San Antonio Texas 78216-5512, Solicitor General United States Department Of Justice, 950 Pennsylvania Avenue, N.W. Washington, D.C 20530-0001

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JUNE 23rd, 20 25

Ricky Escobedo
(Signature)