

DOCKET NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2024

DANIEL OWEN CONAHAN, JR.

Petitioner,

vs.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS
AND FLORIDA ATTORNEY GENERAL.

Respondent.

**On Petition For A Writ of Certiorari To
The United States Court of Appeals For The Eleventh Circuit**

CAPITAL CASE

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December 18, 2024

CAPITAL CASE

QUESTIONS PRESENTED

1) There is a circuit split among the courts of appeal in the procedures a court applies when reviewing applications for a certificate of appealability. The differing approaches result in widely disparate rulings by circuit. Notwithstanding the rights of the courts of appeal to set their own internal rules, does this disparity and conflict among the circuits rise to a level of a due process violation, and, if so, should this Court intervene and establish uniform standards for the procedural assessment of an application for a certificate of appealability.

2) Does a court of appeals violate due process when it denies a capital defendant a certificate of appealability without a reasoned decision.

PARTIES TO THE PROCEEDINGS

Petitioner Daniel Owen Conahan, Jr. was the petitioner/appellant in the United States District Court and the Court of Appeals.

Respondent Secretary, Florida Department of Corrections, and Florida Attorney General, were the respondents/appellees in the United States District Court and the Court of Appeals.

RELATED PROCEEDINGS

Underlying Trial:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, No. 97-166-CF
Judgment Entered: August 17, 1999

Direct Appeal:

Florida Supreme Court
Conahan v. State, 844 So. 2d 629 (Fla. 2003)
Opinion Issued: January 16, 2003

Supreme Court of the United States
Conahan v. Florida, 540 U.S. 895 (2003)
Opinion Issued: October 6, 2003

First Postconviction Proceeding:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, No. 97-CF-166
Opinion Issued: January 31, 2011

Florida Supreme Court
Conahan v. State, 118 So. 3d 718 (Fla. 2013)
Opinion Issued: March 21, 2013

Second Postconviction Proceeding:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Opinion Issued: May 5, 2016

Florida Supreme Court
Conahan v. State, No. SC16-1153, 2017 WL 656306 (Feb. 17, 2017) (rehearing denied, May 1, 2017)

Third Postconviction Proceeding:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
Opinion Issued: December 11, 2017

Florida Supreme Court
Conahan v. State, 258 So. 3d 1237 (Fla. 2018)
Opinion Issued: October 19, 2018

Fourth Postconviction Proceeding:

Circuit Court in and for Charlotte County, Florida,
State v. Conahan, 97-166-CF
(February 2, 2023, pending)

Federal Habeas Review

United States District Court (M.D. Fla.):

Conahan v. Sec’y, Dep’t of Corr., 2:13-cv-428-JES-KCD, 2023 WL 2648168 (Mar. 27, 2023)

Conahan v. Sec’y, Dep’t of Corr., 2:13-cv-428-JES-KCD (Feb. 13, 2024)

United States Court of Appeals (11th Cir.):

Conahan v. Sec’y, Dep’t of Corr., No. 24-10844, 2024 WL 2950845 (May 31, 2024)
(reconsideration denied, Aug. 20, 2024)

TABLE OF CONTENTS

QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDINGS	ii
RELATED PROCEEDINGS.....	iii
INDEX TO APPENDIX	vi
TABLE OF AUTHORITIES	vii
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT	3
I. Background	6
II. Facts and Procedural History.....	8
a. The crime and subsequent investigation.....	8
b. Trial Proceedings	10
c. Direct Appeal	15
d. State Postconviction Proceedings	15
e. District Court	16
f. Eleventh Circuit Court of Appeals	16
REASONS FOR GRANTING THE PETITION	17
I. THE COURTS OF APPEAL ARE SPLIT AND EMPLOY WIDELY DISPARATE PROCEDURES TO ASSESS AND GRANT COA APPLICATIONS.....	17
II. THE QUESTION PRESENTED IS OF GREAT IMPORTANCE BECAUSE IT IS A RECURRING ISSUE THAT AFFECTS HABEAS PETITIONERS NATIONWIDE	21
III. THE DECISION BELOW IS WRONG AND DIRECTLY CONFLICTS WITH A COA PRECEDENT.	22
a. History of the COA.....	22
b. COA Application to Capital Cases and Modern Rates of Denial.....	23
c. Consequences of an Unreasoned COA Denial.....	26
CONCLUSION	36

INDEX TO APPENDIX

A.	<i>Conahan v. Sec’y, Dep’t of Corr.</i> , No. 24-10844, 2024 WL 2950845 (11 th Cir. May 31, 2024) (Unreported Eleventh Circuit Court of Appeals Opinion Denying Application for Certificate of Appealability).....	A3
B.	<i>Conahan v. Sec’y, Dep’t of Corr.</i> , No. 24-10844 (11 th Cir. Aug. 20, 2024) (Unreported Eleventh Circuit Court of Appeals Opinion Denying Motion for Reconsideration).....	A7
C.	<i>Conahan v. Sec’y, Dep’t of Corr.</i> , No. 2:13-cv-428-JES-KCD, 2023 WL 2648168 (M.D. Fla. Mar. 27, 2023) (Unreported Middle District of Florida Court Opinion Denying Amended Habeas Corpus Petition).....	A11
D.	<i>Conahan v. Sec’y, Dep’t of Corr.</i> , No. 2:13-cv-428-JES-KCD (M.D. Fla. Feb. 13, 2024) (Unreported Middle District of Florida Court Opinion Denying Motion to Amend Judgment).....	A68
E.	Petitioner-Appellant’s Application for Certificate of Appealability, filed in the Eleventh Circuit Court of Appeals, No.24-10844, April 4, 2024	A73
F.	Petitioner-Appellant’s Amended Motion for Reconsideration of Order Denying Certificate of Appealability, filed in the Eleventh Circuit Court of Appeals, No. 24-10844, July 5, 2024.....	A135
G.	<i>Conahan v. State</i> , 118 So. 3d 718 (Fla. 2013) (Florida Supreme Court Opinion Denying Motion for Postconviction Relief and Petition for Writ of Habeas Corpus).....	A167
H.	<i>Conahan v. State</i> , No. SC16-1153, 2017 WL 656306 (Fla. Feb. 17, 2017) (Unreported Florida Supreme Court Opinion Denying Motion for Postconviction Relief.....	A179

TABLE OF AUTHORITIES

Cases

<i>Arrowood v. Fla. Dep’t of Corr.</i> , 2023 WL 7635611 (No. 23-505) (2023)	21
<i>Banks v. Dretke</i> , 540 U.S. 668 (2004).....	23, 34
<i>Barefoot v. Estelle</i> , 463 U.S. 880 (1983)	7, 24
<i>Brady v. Maryland</i> , 373 U.S. 83 (1963)	3, 28, 29, 32
<i>Buck v. Davis</i> , 580 U.S. 100 (2017)	passim
<i>Conahan v. Florida</i> , 540 U.S. 895 (2003).....	3
<i>Conahan v. Sec’y, Dep’t of Corr.</i> , 2:13-cv-428-JES-KCD, 2023 WL 2648168 (Mar. 27, 2023). 4	
<i>Conahan v. Sec’y, Dep’t of Corr.</i> , No. 24-10844, 2024 WL 2950845 (May 31, 2024)	4
<i>Conahan v. State</i> , 258 So. 3d 1237 (Fla. 2018)	16
<i>Conahan v. State</i> , 844 So. 2d 629 (Fla. 2003)	3
<i>Davis v. Terry</i> , 465 F.3d 1249 (11th Cir. 2006).....	29
<i>Downs v. Sec’y, Fla. Dep’t of Corr.</i> , 738 F.3d 240 (11th Cir. 2013).....	29
<i>Ford v. Hall</i> , 546 F.3d 1326 (11th Cir. 2008).....	28, 30
<i>Ford v. Wainwright</i> , 477 U.S. 399 (1986).....	23
<i>Furman v. Georgia</i> , 408 U.S. 238 (1972).....	6
<i>Giglio v. United States</i> , 405 U.S. 150 (1972).....	passim
<i>Gonzalez v. Thaler</i> , 565 U.S. 134 (2012)	22
<i>Hall v. Florida</i> , 572 U.S. 701 (2014)	23
<i>Heidler v. Emmons</i> , 144 S. Ct. 2565 (2024) (No. 23-6721)	21
<i>Johnson v. Vandergriff</i> , 143 S. Ct. 2551 (2023)	22
<i>Jordan v. Fisher</i> , 135 S. Ct. 2647 (2015).....	34
<i>Kyles v. Whitley</i> , 514 U.S. 419 (1995).....	28
<i>Lott v. Att’y Gen., Fla.</i> , 594 F.3d 1296 (11th Cir. 2010).....	19, 34

<i>Lozada v. Deeds</i> , 498 U.S. 430 (1991)	34
<i>Michigan v. Bay Mills Indian Cmty.</i> , 572 U.S. 782 (2014)	21
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003)	passim
<i>Mills v. Comm’r, Ala. Dep’t of Corr.</i> , 102 F.4th 1235 (11th Cir. 2024)	6, 23
<i>Mooney v. Holohan</i> , 249 U.S. 103 (1935)	27
<i>Murphy v. Ohio</i> , 263 F.3d 466 (6th Cir. 2001)	20
<i>Napue v. Illinois</i> , 360 U.S. 264 (1959)	27, 31, 32
<i>Pippin v. Dretke</i> , 434 F.3d 782 (5th Cir. 2005)	7
<i>Ross v. Moore</i> , 246 F.3d 1299 (11th Cir. 2001)	19, 34
<i>Sawyer v. Whitley</i> , 505 U.S. 333 (1992)	35
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000)	7, 22, 24, 25
<i>Smith v. Sec’y, Dep’t of Corr.</i> , 572 F.3d 1327 (11th Cir. 2009)	28
<i>Spencer v. State</i> , 615 So. 2d 688 (Fla. 1993)	15
<i>State v. Conahan</i> , No. 97-166-CF (May 5, 2016)	4
<i>State v. Conahan</i> , No. 97-CF-166 (Jan. 31, 2011)	4
<i>Strickler v. Greene</i> , 527 U.S. 263 (1999)	29
<i>Tennard v. Dretke</i> , 542 U.S. 274 (2004)	25
<i>Tharpe v. Sellers</i> , 583 U.S. 33 (2018)	24
<i>Tisius v. Blair</i> , 143 S. Ct. 177 (No. 21-8153) (2022)	20
<i>Tomlin v. Patterson</i> , 140 S. Ct. 2829 (No. 19-7127) (2020)	21
<i>United States v. Agurs</i> , 427 U.S. 97 (1976)	28
<i>United States v. Bagley</i> , 473 U.S. 667 (1985)	29
<i>Welch v. United States</i> , 578 U.S. 120 (2016)	23, 24, 34
<i>Williams v. State</i> , 110 So. 2d 654 (Fla. 1959)	9

Woods v. Holman, No. 18-14690-P, 2019 WL 5866719 (11th Cir. Feb. 22, 2019).....34

Woodson v. North Carolina, 428 U.S. 280, 305 (1976).....6, 35

Statutes

28 U.S.C. § 207117

28 U.S.C. § 2071(a)-(b).....18

28 U.S.C. § 22532, 6, 35

28 U.S.C. § 2253(c)(1) 6

28 U.S.C. § 2253(c)(2)22

28 U.S.C. § 2254 2

Anti-Terrorism and Effective Death Penalty Act of 1996, Pub.L.No. 104-132, 110 Stat. 1214
(1996)..... 6

Habeas Corpus Act of 1867, ch. 28, 14 Stat. 385 (1867), 6

Other Authorities

Comm. on Identifying the Needs of the Forensic Sci. Cmty., STRENGTHENING

FORENSIC SCIENCE IN THE UNITED STATES 161-62 (2009).....12

Rules

10th Cir. R. 22.119

10th Cir. R. 22.1(A).....19

10th Cir. R. 22.219

11th Cir. R. 22-1(c)3, 18, 19, 26

11th Cir. R. 22-219

11th Cir. R. 27-1(d)..... 3

1st Cir. Internal Operating P. VII(J)(1).....18

1st Cir. R. Appendix19

2d Cir. Internal Operating P. 47.1(c)	18
3d Cir. R. 22.1(a).....	19
3d Cir. R. 22.3.....	18
4th Cir. R. 22(a)(1)(A).....	18, 19
4th Cir. R. 22(a)(3) note.....	18
5th Cir. R. 22	19
7th Cir. Internal Operating P. 1(a)(1).....	19
7th Cir. Internal Operating P. 1(c)(3)	19
9th Cir. Ct Structure and P. E(5).....	19
9th Cir. R. 22-1(d).....	19
Fed. R. App. P. 22(b).....	18
Fed. R. App. P. 27	19
Fed. R. App. P. 27(c)	3
Fed. R. App. P. 29	19
Fed. R. App. P. 32(a).....	19
Fed. R. App. P. 5(c)	19
 Constitutional Provisions	
U.S. Const. amend. V	1
U.S. Const. amend. VI.....	1
U.S. Const. amend. VIII	2

PETITION FOR A WRIT OF CERTIORARI

Petitioner Daniel Owen Conahan respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eleventh Circuit in this case.

OPINIONS BELOW

The opinion of the court of the appeals is unreported. (A3-A6)¹. The order denying reconsideration is unreported. (A7-A10). The opinion of the district court denying habeas relief is unreported. (A11-A67). The opinion of the district court denying Petitioner's Motion to Amend Judgment is unreported. (A68-A72). The opinion of the Florida Supreme Court denying postconviction relief is unreported. (A179-A181).

JURISDICTION

The court of appeals entered its Order denying a certificate of appealability ("COA") on May 31, 2024. The court of appeals denied Petitioner's Motion for Reconsideration on August 20, 2024. (A3-A6, A7-A10). On November 8, 2024, the Honorable Clarence Thomas extended the date for the filing of this petition to December 18, 2024. (Application – 24A464). This Court has jurisdiction pursuant to 28 U.S.C. § 1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment to the United States Constitution provides in relevant part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence."

The Fifth Amendment to the United States Constitution provides in relevant part:

¹ Citations to the Appendix will be designated as (A__). Citations to Petitioner's trial will be designated as (T. __) for transcript cites and (R. Vol. __, __) for record cites. Citations to Petitioner's 2011 postconviction record on appeal will be designated as (PCR. __).

“No person shall be . . . deprived of life [or] liberty . . . without due process of law[.]”

The Eighth Amendment to the United States Constitution provides in relevant Part:

“[C]ruel and unusual punishments [shall not be] inflicted.”

The Fourteenth Amendment to the United States Constitution provides in relevant part: “No State . . . shall . . . 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 provides in relevant part:

(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[.]

28 U.S.C. § 2254 provides in relevant part:

(a) The Supreme Court, a Justice thereof, a circuit judge, or a district court shall entertain an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.

* * * * *

(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.

(e)(1) In a proceeding instituted by an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court, a determination of a factual issue made by a State court shall be presumed to be correct. The applicant shall have the burden of rebutting the presumption of correctness by clear and convincing evidence.

STATEMENT

This case arises from the Eleventh Circuit Court of Appeals' denial without written explanation of a COA by a single judge and then, on rehearing, by a three-judge panel.² Petitioner, a state inmate sentenced to death, raised issues of blatant *Brady*³ and *Giglio*⁴ violations that warranted the granting of a COA.

Petitioner, Daniel Owen Conahan, Jr., was wrongfully convicted of and sentenced to death for the tragic and gruesome 1997 murder of Richard Montgomery. Petitioner has maintained, and continues to maintain, his innocence. There was no DNA evidence linking Petitioner to the crime, nor eyewitnesses to the murder. The State presented a circumstantial case with inconclusive forensic evidence and the testimony of its two star witnesses who testified falsely on the stand.

On direct appeal, the Florida Supreme Court affirmed Petitioner's conviction and sentence of death. *See Conahan v. State*, 844 So. 2d 629 (Fla. 2003). This Court denied Petitioner's Petition for Writ of Certiorari. *Conahan v. Florida*, 540 U.S. 895 (2003).

Petitioner timely challenged his judgment and sentence on October 1, 2004, filing a state postconviction motion pursuant to Florida Rule of Criminal Procedure 3.851. He amended his motion on September 23, 2009. Postconviction counsel presented evidence that the State allowed Mrs. Montgomery-West's material false testimony to go uncorrected even though the State knew, or should have known, her testimony was false in violation of *Giglio*. The state postconviction court denied Petitioner's postconviction motion. *State v.*

² Eleventh Circuit Rule 22-1(c) permits a motion for reconsideration by a three-judge panel of a single judge's denial of a COA. *See also* Fed. R. App. P. 27(c) ("[t]he court may review the actions of a single judge."); 11th Cir. R. 27-1(d) (a single judge's actions on a certificate for appealability is "subject to review by the court").

³ *Brady v. Maryland*, 373 U.S. 83 (1963).

⁴ *Giglio v. United States*, 405 U.S. 150 (1972).

Conahan, No. 97-CF-166 (Jan. 31, 2011). The Florida Supreme Court affirmed. (A177).

Petitioner timely filed for habeas relief in the district court on June 10, 2013. While his habeas petition was pending, on February 2, 2016, Petitioner timely filed an amended 3.851 motion in state court, based on newly discovered evidence that the State made Stanley Burden promises in exchange for his testimony and failed to correct Mr. Burden's disavowal of those promises during trial. On February 15, 2016, Petitioner filed a motion to stay and abey his federal proceedings in district court, which the district court granted on March 21, 2016.

On May 5, 2016, the state postconviction court denied Petitioner's amended 3.851 motion. *State v. Conahan*, No. 97-166-CF (May 5, 2016). The Florida Supreme Court affirmed. (A180).

Petitioner was allowed to amend his habeas petition to include the *Brady* and *Giglio* violations concerning Mr. Burden's testimony. Ultimately, the district court denied his petition. *Conahan v. Sec'y, Dep't of Corr.*, 2:13-cv-428-JES-KCD, 2023 WL 2648168 (Mar. 27, 2023); (A67). The district court determined that the Florida Supreme Court reasonably applied *Brady* and *Giglio* in determining Petitioner failed to prove Mr. Burden's testimony was material. (A56-59). The district court also determined that the Florida Supreme Court reasonably applied *Giglio* in reference to Mrs. Montgomery-West's testimony. (A32-37).

Petitioner timely filed a COA with the Eleventh Circuit, asserting that the district court's assessment that the Florida Supreme Court unreasonably applied federal law when deciding his *Brady* and *Giglio* claims was debatable among jurists of reason and a COA was warranted. (A74-134). A single-judge of the Eleventh Circuit summarily denied Petitioner's COA without explanation. *Conahan v. Sec'y, Dep't of Corr.*, No. 24-10844, 2024 WL 2950845 (May 31, 2024); (A5-6). Petitioner timely filed an amended motion for reconsideration by a

three-judge panel, which was denied, again without explanation. (A9-10, 136-166).

To obtain a COA, a petitioner need only demonstrate the threshold inquiry of a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(C)(2). “[T]he only question” the lower court must answer is whether “jurists of reason could disagree with the district court’s resolution of his constitutional claims or . . . could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Buck v. Davis*, 580 U.S. 100, 115 (2017) (quoting *Miller-El v. Cockrell*, 537 U.S. 322, 326 (2003)). “When a court of appeals sidesteps the COA process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the merits, it is in essence deciding an appeal without jurisdiction.” *Buck*, 580 U.S. at 115.

It is well established that a decision on a COA is not and should not be a merits-based decision. This low threshold standard ensures claims that raise serious constitutional questions are addressed by merits courts. The Eleventh Circuit Court of Appeals was objectively wrong in denying Petitioner’s COA, particularly so in a capital case, without offering a reasoned explanation. Petitioner made a clear and substantial showing of the *Brady* and *Giglio* violations which so prejudiced his trial that his conviction should be overturned. The Eleventh Circuit’s denial of Petitioner’s COA without providing a reasoned decision not only differs from the conclusion of reasonable jurists, but also funnels Petitioner’s case into a stream of meritorious cases rejected by courts of appeals under the guise of a threshold review in violation of federal law. Each circuit considers a COA application based on their own procedural rules, a process which this Court has allowed, but has now been shown to create disparate results within the courts of appeal. This Court should grant the writ, address the split among the circuits as to the procedure to assess COA applications, and reverse and remand for further proceedings where Petitioner may seek appellate review with a reasoned explanation for the denial or granting of a COA.

I. Background

This court has long recognized that the death penalty “is in a class by itself.” *Furman v. Georgia*, 408 U.S. 238, 289 (1972) (Brennan, J., concurring). Indeed, the death penalty is a criminal punishment “unusual in its pain, in its finality, and in its enormity.” *Id.* at 287. As a consequence, death sentences carry with them a heightened “need for reliability.” *Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (plurality opinion). This heightened reliability is achieved, in part, through the postconviction process where counsel is required to robustly reinvestigate and present evidence on collateral review in state court, with review of constitutional claims in federal court. In congruence with this mandate for heightened reliability, postconviction courts are required to provide more than a cursory review of death-sentenced petitioners’ claims. *Mills v. Comm’r, Ala. Dep’t of Corr.*, 102 F.4th 1235, 1241 (11th Cir. 2024) (Abudu, J. concurring). Rather, postconviction courts must review death-sentenced petitioners claims in accordance with the legal standards set at each stage of the proceeding.

In 1996, Congress enacted the Anti-Terrorism and Effective Death Penalty Act (“AEDPA”), Pub. L. No. 104-132, 110 Stat. 1214 (1996),⁵ revising the habeas statute first passed in 1867, the Habeas Corpus Act of 1867, ch. 28, 14 Stat. 385 (1867). The purpose of AEDPA was to expedite capital cases and limit the scope of habeas review. AEDPA bars federal appellate courts from hearing appeals from federal district courts’ denials of claims in habeas petitions unless a circuit judge issues a COA. 28 U.S.C. § 2253(c)(1). A COA should issue only if the applicant has made a substantial showing of the denial of a constitutional right. *Id.* at 2253(c)(2). This process “screens out issues . . . and ensures that frivolous claims are not assigned to merits panels.” *Gonzalez v. Thaler*, 565 U.S. 134, 145

⁵ Portions of AEDPA applicable to capital cases are found in 28 U.S.C. § 2254.

(2012).

While the COA was a new statutory restriction on federal appellate courts' ability to review district court denials of habeas relief, this Court affirmed that it was essentially a codification of the pre-AEDPA standard for appellate review found in *Barefoot v. Estelle*, 463 U.S. 880, 894 (1983). *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The standard remained essentially unchanged: a petitioner must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Id.* at 484 (quoting *Barefoot*, 463 U.S. at 893, n.4). However, this standard is a mere "threshold inquiry." *Id.* at 485. This Court has emphasized that the COA inquiry "is not coextensive with a merits analysis." *Buck*, 580 U.S. at 115. Rather, "[t]his threshold question should be decided without 'full consideration of the factual or legal bases adduced in support of the claims.'" *Id.* (quoting *Miller-El*, 537 U.S. *v. Cockrell*, 537 U.S. 322, 323 (2003)). Further, "any doubt as to whether a COA should issue in a death-penalty case must be resolved in favor of the petitioner." *Pippin v. Dretke*, 434 F.3d 782, 787 (5th Cir. 2005) (citing *Medellin v. Dretke*, 371 F.3d 270, 275 (5th Cir. 2004)).

Though the statute forbids extending this standard past a threshold inquiry⁶, the Eleventh Circuit Court of Appeals has increasingly denied COAs that meet the threshold inquiry standard at an alarming rate, a denial rate which includes this case. Further, the Eleventh Circuit denied Petitioner's COA without a reasoned decision, consequently precluding review by this Court. The Eleventh Circuit's COA procedure is also incongruent to the COA procedures of other courts of appeal. To the extent that COA decisions are informed in part by the procedure set within each Circuit, intervention by this Court is

⁶ *Miller-El v. Cockrell*, 537 U.S. 322, 336 (2003).

necessary to establish uniformity among the courts of appeal and correct the Eleventh Circuit's misapplication of federal law. This case presents an excellent vehicle for doing so.

II. Facts and Procedural History

Petitioner Daniel Owen Conahan, Jr. was charged with the murder, kidnapping, and sexual battery of Richard Montgomery in 1997. (R. Vol. 1, 10-11). After being advised by trial counsel to waive a jury trial, Judge William L. Blackwell found Conahan guilty of first-degree murder and kidnapping. (T. 647, 2016). The penalty phase jury rendered an advisory recommendation of death by a vote of 12 to 0. (R. Vol. 17, 3235). Petitioner has consistently denied committing the murder of Mr. Montgomery and has maintained his innocence to this day.

a. The crime and subsequent investigation

On April 17, 1996, during an unrelated search in a heavily wooded, garbage dumping area in Charlotte County, Florida, local sheriffs located the recently deceased body of Mr. Montgomery. (T. 752, 792). Mr. Montgomery was found naked, on the ground, beneath a roll of carpet padding (T. 792). Mr. Montgomery's genitalia had been removed from his body and ligature marks were present on his neck, wrists, abdomen, and legs. (T. 922-25, 931-934). For months the Charlotte County Sheriff's Office was unable to locate a suspect.

Nearly two years prior, on August 15, 1994, Stanley Burden reported a sexual assault to the Fort Myers Police Department in Lee County, Florida. (T. 1200). Mr. Burden claimed that Petitioner offered to pay him money in exchange for nude photos. (T. 1156-57). Mr. Burden agreed and went with Petitioner to a secluded wooded area. (T. 1157, 1159). After taking several photos, Mr. Burden agreed to take bondage-theme photos. (T. 1162). Mr. Burden alleged Petitioner directed him towards a tree, draped the rope on him,

tightened the rope to restrain him, and proceeded to sexually assault him. (T. 1162-64). Mr. Burden alleged Petitioner hit him over the head multiple times and attempted to strangle him for thirty minutes, but eventually got tired and gave up. (T. 1166, 1168). Petitioner then allegedly collected all of his belongings except for his clippers on the ground and offered to still pay Mr. Burden. (T. 1168-69). According to Mr. Burden,⁷ he used his feet to drag the clippers towards himself and managed to cut himself free. (T. 1168-69). This case was not investigated further because the detectives could not determine who committed the crime. (T. 1228). Detective Pedro Soto also did not believe Mr. Burden conveyed the full story. (T. 1126).

Mr. Burden's report was brought to the attention of the task force investigating Mr. Montgomery's death. (T. 1120-21). Two detectives from the task force went to an Ohio prison, where Mr. Burden was serving a 15-25 year sentence for child molestation, and interviewed Mr. Burden about his account. (T. 1205, 2679). Based on this information, police fixated on Petitioner as a suspect.

On May 17-18, 1996, the Charlotte County Sheriff's Office initiated an undercover investigation of Petitioner. (T. 1304, 1307). Deputy Raymond Wier was selected to portray a homeless person near a highway in an attempt to solicit Petitioner's attention. (T. 1304, 1307). On May 17th, Petitioner noticed Deputy Weir, gave him a dollar, and asked if he was

⁷ The State presented Mr. Burden as a *Williams* Rule witness in Mr. Montgomery's case. *See Williams v. State*, 110 So. 2d 654, 662 (Fla. 1959) ("[E]vidence revealing other crimes is admissible if it casts light upon the character of the act under investigation by showing motive, intent, absence of mistake, common scheme, identity or a system or general pattern of criminality so that the evidence of the prior offenses would have a relevant or a material bearing on some essential aspect of the offense being tried.").

Mr. Burden testified that he was not sure if Petitioner saw him attempt to free himself. During his direct and cross examination, Mr. Burden stated that Petitioner offered to pay him while Mr. Burden attempted to free himself. (T. 1169, 1213-14). When asked if Petitioner saw him cutting himself free, he stated he did not know. (T. 1169, 1213-14).

interested in any work. (T. 1306-07). The following day, Petitioner again gave Deputy Weir a dollar and offered to pay him money in exchange for nude modeling photos. (T. 1307-09). On May 23, 1996, Deputy Scott Clemens, a then-27-year-old white man, was brought into the investigation and instructed to solicit a conversation with Petitioner in Kiwanis Park, a location known to be frequented by gay men. (T. 1285, 1288). Deputy Clemens located Petitioner and led the conversation towards his interest in making some money, at which point Petitioner offered to pay Clemens money in exchange for oral sex. (T. 1293, 1295). Petitioner had another conversation with Deputy Clemens the following day about payment in exchange for nude modeling. (T. 1296, 1299).

Petitioner was soon after charged in the Burden case. (T. 1076, 1985). On February 27, 1997, Petitioner was transferred to Charlotte County Jail from Lee County and indicted for Mr. Montgomery's murder. *Conahan*, 844 So. 2d at 633. The next day, when Petitioner had his first appearance in Mr. Montgomery's case, the State nolle prossed all charges in the Burden case without explanation. (R. Vol. 1, 12).

b. Trial Proceedings

Petitioner's trial began on August 9, 1999. (T. 645). The prosecuting attorney on the case, Robert A. Lee, presented the theory that Petitioner, who is gay, lured Mr. Montgomery to the woods under the pretense of photographing Mr. Montgomery in nude bondage themes, and instead strangled and dismembered him. (T. 725). Petitioner waived his right to a jury trial for the determination of guilt. (T. 647). Judge Blackwell, who appointed himself following the disqualification of Judge Cynthia A. Ellis, presided over the case. (T. 624, 645).

With no direct evidence linking Petitioner to the crime, no explanation for obvious

holes in its theory⁸, and Petitioner's repeated denials of involvement in Mr. Montgomery's murder, the State's case rested primarily on questionable and limited fiber and paint chip analysis, and the deeply unreliable testimony of two witnesses.

i. Fiber and paint testimony

Law enforcement collected fibers from debris on Mr. Montgomery's body, the foam found over his body, a towel placed over his face, and a sheet used to transport his body. (T. 876, 1688). They also collected fibers from items near the scene, including a rope from a trash pile, the two cars which Petitioner had access to, Petitioner's bedroom, and Petitioner's belongings (T. 1410-11, 1477). Paula Sauer, a former Florida Department of Law Enforcement (FDLE) analyst conducted the analysis of the fibers and concluded none of the fibers collected from Mr. Montgomery's hairs and combings matched fibers from any of Petitioner's property. (July 11, 1996 FDLE Report, 3). In a second round of testing, Sauer compared hundreds of fibers of sixteen variations and determined that only five fibers⁹ *could* be consistent with the fibers found in Petitioner's items and home. (Oct. 28, 1998 Report). On cross-examination, Sauer could not definitively conclude that the fibers associated with the crime scene originated from Petitioner's items. (T. 1727-28). Nor could she conclude that the five fibers came from the same source. (T. 1727-28). Further, Sauer testified that her fiber analysis was limited to microscopic comparison. (T. 1727-28).

The State also presented the testimony of FDLE Analyst Janice Taylor. Taylor

⁸ The State did not explain how Petitioner, who suffered from back spasms, could have strangled Mr. Montgomery against a tree and dragged him to a different location. (T. 1933). The State also did not explain why none of Petitioner's DNA was found on any part of Mr. Montgomery's body despite the likelihood of DNA production in such a crime involving close contact with the victim and assailant.

⁹ See Defendant's Third Successive Motion to Vacate Judgments of Conviction, filed February 2, 2023 in the Circuit Court of the Twentieth Circuit in and for Charlotte County, Florida for an in-depth discussion.

performed an analysis of a small paint chip found in the combings from Mr. Montgomery's groin and thigh area. (T. 1765). This paint chip was made up of four layers, which Taylor opined to be "typical of an automotive finish." (October 9, 1996 Report, 2). Taylor compared that to paint chips taken from Petitioner's Mercury Capri. (October 9, 1996 Report, 3). Taylor could not definitively conclude that the single paint chip found on Mr. Montgomery originated from Petitioner's vehicle as it could have originated from a vehicle with a similar paint composition. (T. 1782-83).

The State overstated the weight and value of the results of testing both fiber and paint chip evidence used to connect Petitioner to the crime scene of Mr. Montgomery's murder. (T. 1473, 1977). For example, forensic analysis of the fibers at trial did not include a study of other potential sources of the referenced fiber variations, nor the prevalence of these fiber variations in the general population.¹⁰ Instead, Sauer inaccurately stated that Petitioner's items were the source of several fibers found on or near Montgomery because of the prevalence of that fiber type in Petitioner's items. (T. 1732). In its closing, the State built on this inaccurate assessment in stating that "hundreds and hundreds" of fibers linked Petitioner to the crime scene. (T. 1976). Further, despite hearing testimony from Taylor that the paint chip found on Mr. Montgomery could have originated from a vehicle with a similar paint composition, at closing the State asserted that the paint chip came from Petitioner's vehicle. (T. 1782-83, 1977). It is understood in the forensic science community that fiber and paint chip analysis are unreliable beyond mere association.¹¹ Accordingly, the State's presentation of this evidence contributed to the unreliability of

¹⁰ See Attachments to Defendant's Third Successive Motion to Vacate Judgments of Conviction, p. 6, filed February 2, 2023 in the Circuit Court of the Twentieth Circuit in and for Charlotte County, Florida.

¹¹ Comm. on Identifying the Needs of the Forensic Sci. Cmty., *STRENGTHENING FORENSIC SCIENCE IN THE UNITED STATES* 161-62, 169 (2009).

Petitioner's conviction and sentence. Petitioner filed a successive postconviction motion in state court challenging the reliability of this evidence on February 2, 2023.

ii. Stanley Burden

Over the Defense's continued objection, Judge Blackwell allowed the State to introduce *Williams* rule evidence, including Mr. Burden's testimony that two years earlier, Petitioner lured him into the woods under similar pretenses, attempted to strangle him, and then simply gave up. (T. 1156-69). Rather than address the admissibility of the *Williams* rule evidence before trial, Judge Blackwell allowed the state to proffer the evidence as it presented its entire case. (T. 1123). At the end of the State's case, the trial court made a finding that the *Williams* rule evidence was admissible and that Mr. Burden's testimony was indicative of a modus operandi that identified Petitioner as the perpetrator in Mr. Montgomery's death. (T. 2499). However, Petitioner was never convicted of the charges filed in the Burden case; rather, the State dropped all charges against him without explanation.

During the *Williams* rule proffer, Mr. Burden was asked directly whether he had been promised "anything in exchange for [his] testimony," to which Mr. Burden responded "No." (T. 1182). On cross he was asked again if "anybody from local law enforcement told you that they're going to send a letter to the parole board about your participation in this case?" (T. 1204). Mr. Burden again answered "No." (T. 1204).

In 2015, postconviction counsel obtained letters written by Mr. Burden complaining that the State failed to follow through on its promise to write a letter to the parole board in exchange for his testimony against Petitioner. (A117). Mr. Burden agreed to two interviews with the postconviction investigator, during which he stated, "Prosecutor Lee told me if asked [to say] that I wasn't promised anything on the stand." (A118). Mr. Burden signed an

affidavit and declaration affirming he lied at Petitioner's trial about the promises made to him in exchange for his testimony and Prosecutor Lee's awareness of his false testimony. (A118).

iii Mary Montgomery-West

Mary Montgomery-West, Richard Montgomery's mother, gave a recorded statement to the FDLE just two days after her son was murdered, in which she provided candid details about her son's life. (A82). Mrs. Montgomery-West told FDLE Investigator John Gaconi that Mr. Montgomery lived with his sister, did not have a particular problem with anyone, struggled with drug and alcohol abuse, and was molested as a child. (PCR. 904-912). Mrs. Montgomery-West also gave Gaconi a list of Mr. Montgomery's known associates and advised she did not like the people Mr. Montgomery was hanging out with. (PCR. 907-909, 915, 918). At no point did Mrs. Montgomery-West describe or name Petitioner as a known associate of Mr. Montgomery or identify him by name in any way.

At trial, Mrs. Montgomery-West repeated most of what she told police in that statement. (T. 1097-1101). Specifically, Mrs. Montgomery-West testified that Mr. Montgomery lived with his sister around the time of his murder, went to therapy for mental health concerns, struggled with drug and alcohol abuse, and was sexually abused as a young child. (T. 1097, 1100-01).

On cross-examination—for the first time in the entire case—Mrs. Montgomery-West alleged not only that her son had spoken of Petitioner by name, but also that her son described Petitioner as his new friend. (T. 1103-06). When asked why she did not provide this pertinent information to the police, Mrs. Montgomery-West first claimed she told police during her recorded statement, but many things she said were not in the transcript. (T. 1107). She later changed her testimony and claimed that the “inaudible” entries throughout

her statement were actually where she told police about the conversation. (T. 1114). In light of the record in this case¹², Mrs. Montgomery-West's statements are demonstrably false and unreliable.

The trial court convicted Petitioner of first-degree murder and kidnapping. (T. 2016). On November 1, 1999, Petitioner proceeded to a jury trial on penalty and received an advisory recommendation of death by a unanimous vote. (R. Vol. 17, 3235). The jury was not required to and did not make any factual findings about Petitioner's death eligibility. (R. Vol. 17, 3235). On November 5, 1999, the trial court held a *Spencer*¹³ hearing and on December 10, 1999, Petitioner was sentenced to death for first-degree murder and to fifteen years imprisonment for kidnapping. *Conahan*, 844 So. 2d at 634.

c. Direct Appeal

Petitioner challenged his conviction on direct appeal, continuing to maintain his innocence. The Florida Supreme Court affirmed Petitioner's conviction and sentence. *Id.* This Court denied certiorari. *Conahan*, 540 U.S. at 895.

d. State Postconviction Proceedings

On state postconviction appeal, Petitioner raised a number of claims, including,

¹² In her interview with the FDLE on April 18, 1996, Mrs. Montgomery-West was directly asked to verbally list Mr. Montgomery's associates. (PCR. 908). Mrs. Montgomery-West lists and described at least eleven who were associated with or would have information about Mr. Montgomery. (PCR. 908-20). None of those listed were Petitioner.

Mrs. Montgomery-West's sudden remembrance on the stand that Mr. Montgomery told her Petitioner's last name, that he clarified the pronunciation of Petitioner's last name (despite normally "never [telling her] people's last names"), told her where Petitioner lived, told her of Petitioner's military service, told her Petitioner's occupation, and told her he was offered money to pose for nude photographs, clearly demonstrates she lied on the stand. (T. 1106, 1109-10; PCR. 909). In fact, Mrs. Montgomery-West admitted that Mr. Conahan was already arrested and in the news when she asked the police why she was not questioned further despite allegedly providing Petitioner's name. (T. 1107).

¹³ *Spencer v. State*, 615 So. 2d 688 (Fla. 1993).

relevant to this Petition, the *Giglio* claim concerning Mrs. Montgomery-West's false testimony and the *Brady-Giglio* claim concerning Mr. Burden's false testimony denying he received a promise of a benefit for his testimony. As to the former, Petitioner argued Mrs. Montgomery-West's assertion that her son told her of his new friend "Conahan" was pure fabrication which the State knew or should have known to be false testimony. (A171-72). The State's failure to correct and further development of this false testimony amounted to a *Giglio* violation.

As to the latter claim, Petitioner argued Mr. Burden's sworn statement that the State promised him a letter of recommendation to the Ohio Parole Board in exchange for his testimony against Petitioner and that he lied on about this fact on the stand with the State's knowledge amounted to a *Brady* and *Giglio* violation. (A180).

The state postconviction court denied both motions. The Florida Supreme Court affirmed the denial of both of postconviction motions. *Conahan*, 118 So. 3d at 737; (A180-81); *Conahan v. State*, 258 So. 3d 1237 (Fla. 2018).

e. District Court

Petitioner timely filed a habeas petition and raised several claims including: (1) a *Giglio* violation concerning the State's use of Mrs. Montgomery-West's false testimony and (2) a *Brady-Giglio* violation concerning the State's failure to disclose promises of assistant made to Mr. Burden. The district court denied Petitioner's habeas petition and a COA, (A11-67), and Petitioner's Motion to Alter Judgment. (A68-72).

f. Eleventh Circuit Court of Appeals

In arguing for a COA, Petitioner asserted that the Florida Supreme Court unreasonably applied clearly established federal law when deciding his *Brady* and *Giglio* claims. Petitioner argued reasonable jurists could disagree with the district court's

assessment of his claims because the state postconviction court misapplied the *Giglio* materiality standard and unreasonably applied *Brady* and *Giglio*. (A74-134). Because the state postconviction court misapplied the materiality standard and unreasonably applied *Brady* and *Giglio*, AEDPA deference would not apply and the district court should review Petitioner's claim de novo.

A single judge on the Eleventh Circuit Court of Appeals summarily denied Petitioner's Application for a COA without explanation. (A5-6).

Petitioner timely filed an Amended Motion for reconsideration by a three-judge panel to review the denial. (A136-166). Petitioner asserted that applying the lesser standard required to issue a COA, compared to the higher standard required to prevail on appeal, demonstrates he has made a sufficient showing for a COA to issue. Further, Petitioner asserted that federal courts maintain a responsibility to conduct appropriate merits judicial review, particularly in capital cases, and alerted the court to its alarming rate of disposal of capital cases via COA denials. Forty-five days later, the three-judge panel of the Court of Appeals denied Petitioner's Motion without explanation. (A9-10).

REASONS FOR GRANTING THE PETITION

I. THE COURTS OF APPEAL ARE SPLIT AND EMPLOY WIDELY DISPARATE PROCEDURES TO ASSESS AND GRANT COA APPLICATIONS

The Federal Rules of Appellate Procedure, first adopted by this Court in 1967, were established to govern the federal appellate process and ensure consistent and uniform procedure in United States courts of appeals.¹⁴ Federal circuit courts, in turn, are permitted to craft their own local rules so long as they remain consistent with Acts of Congress and

¹⁴ 28 U.S.C. § 2071 ("Recognition by Congress of the broad rule-making power of the courts will make it possible for the courts to prescribe complete and *uniform* modes of procedure . . .") (emphasis added).

the Federal Rules of Practice and Procedure. 28 U.S.C. § 2071(a)-(b). While the legislative goal of the local rules has been and remains to be consistency, the circuits are undeniably fractured in their administration of COA decisions.

Federal Rule of Appellate Procedure Rule 22(b) governs the procedure for the issuance of COAs. This Rule states that: (1) a COA must be issued before the applicant may appeal; (2) an applicant may, after a district judge has denied it, request the circuit judge to issue the COA; (3) a single judge or panel of judges may consider a request addressed to it; (4) a notice of appeal constitutes a request to the circuit court; and (5) a COA is not required when a state or the United States appeals. Notably, no mention is made of the exact number of circuit judges required to unanimously decide a COA application, the procedure for reconsideration of a COA denial by the circuit court, nor a requirement that the court explain its decision to deny a COA. All of these critical procedures are left to the judgment of the circuit courts and have resulted in disparate treatment for habeas petitioners.

The First, Third, Fourth, Fifth, Sixth, and Eighth¹⁵ circuits require a three-judge panel to decide an initial COA application. However, some circuits allow a COA to issue if at least one of the three judges believe the applicant made the proper showing.¹⁶ Other circuits make no comment on what happens if a panel is split on the grant of a COA.¹⁷ The Second and Eleventh Circuits do not afford an applicant a three-judge panel for the initial review of a COA application. The applicant must first have his COA denied by a single-judge, then request that a three-judge panel reconsider his application.¹⁸ The Seventh

¹⁵ 1st Cir. Internal Operating P. VII(J)(1); 3d Cir. R. 22.3; 4th Cir. R. 22(a)(1)(A); 5th Cir. R. 27.2.3; 6th Cir. R. 203; 8th Cir. R. 27A(c).

¹⁶ 3d Cir. R. 22.3; 4th Cir. R. 22(a)(3) note.

¹⁷ 1st Cir. Internal Operating P. VII(J)(1); 2d Cir. Internal Operating P. 47.1(c); 11th Cir. R. 22-1(c).

¹⁸ 2d Cir. Internal Operating P. 47.1(c); 11th Cir. R. 22-1(c).

Circuit only requires a two-judge panel to decide on a COA application.¹⁹ Other circuits—Ninth, and Tenth—do not specify the number of judges required to review a COA application.²⁰

No circuit appears to require that the assigned panel issue a reasoned COA denial with an explanation of why the applicant failed to meet the threshold inquiry standard. In the Seventh Circuit a judge or panel may provide detailed reasons for the grant or denial, but is not required to do so.²¹ And the Eleventh Circuit is inconsistent in its approach to issuing reasoned denials of COAs. (A3-6); *Ross v. Moore*, 246 F.3d 1299 (11th Cir. 2001); *Lott v. Att’y Gen., Fla.*, 594 F.3d 1296 (11th Cir. 2010).

The circuits also vary in their allowance of an opportunity for reconsideration or rehearing following a COA denial. The Ninth and Eleventh Circuits explicitly provide an avenue for applicants to request reconsideration on their initial COA denial by the circuit.²² The Eleventh Circuit, however, has been marked as an outlier in its COA denial rates, which raises the question of whether this secondary review is little more than cursory. Furthermore, these two circuits do not describe how this procedure differs from the initial review.

Finally, discrepancies exist across the length limitations for COA applications, with the First, Third, and Fourth Circuits²³ relying on Federal Rule of Appellate Procedure 5(c), 27, and 29 to establish a word limit of 5,200 and the Fifth, Tenth, and Eleventh Circuits²⁴ relying on Rule 32(a)’s limit of 14,000 words.

¹⁹ 7th Cir. Internal Operating P. 1(a)(1).

²⁰ 9th Cir. Ct Structure and P. E(5); 10th Cir. R. 22.1, 22.2.

²¹ 7th Cir. Internal Operating P. 1(c)(3).

²² 9th Cir. R. 22-1(d); 11th Cir. R. 22-1(c).

²³ 1st Cir. R. Appendix; 3d Cir. R. 22.1(a); 4th Cir. R. 22(a)(1)(A).

²⁴ 5th Cir. R. 22; 10th Cir. R. 22.1(A); 11th Cir. R. 22-2.

The lack of consistency in a procedure which, for capital habeas petitioners, often reflects a final meaningful opportunity to challenge their conviction before execution is inconsistent with rudimentary standards of justice and process. The Federal Rules of Appellate Procedure were established with the goal of uniformity in mind; the circuits have strayed considerably from that goal. A reasoned decision or an opportunity for reconsideration, among other COA procedural elements, are essential to the function of proper COA analysis. *See Murphy v. Ohio*, 263 F.3d 466, 467 (6th Cir. 2001) (acknowledging the importance of a reasoned decision that would allow it to evaluate the lower court's analysis and the "disturbing lack of uniformity" throughout its districts in determining how COA's should issue); Petition for Writ of Certiorari at 33, *Tisius v. Blair*, 143 S. Ct. 177 (No. 21-8153) (2022) (arguing the need for a COA standard that can be applied uniformly in light of the Eighth Circuit's denial of Tisius' COA, despite granting a COA on an identical issue the year prior).

Data analyzing the percentage of capital cases disposed of by COA denials magnifies the incongruencies across circuits. Between 2008 and 2019, the First, Second, Third, Fourth, Sixth, Seventh, Ninth, and Tenth Circuits issued COA denials at a rate under 5%: 0%, 0%, 5.3%, 2.1%, 2.6%, 3.1%, 1.9%, and 4.1%, respectively. The Fifth, Eighth, and Eleventh Circuits, however, issued denials at much higher rates of 20.6%, 15.8%, and 11.1%, respectively. And, the Eleventh Circuit's COA denial rate has markedly increased in the last few years. There is seemingly no explanation for such a disparity in denials rates, particularly in light of the fact that many petitioners tend to raise similar constitutional claims, regardless of their circuit. Such inconsistencies reveal that the limited federal COA standard and the innumerable distinctions in the COA standards of the federal circuit courts must be addressed by this Court.

Wildly disparate decisions have issued as a result of the loose approach to COA

procedure outlined in Federal Rule of Appellate Procedure 22. The goal of the rules is to create uniformity in the issuance of COA decisions, not to allow circuit-specific opinions on a what should be a uniform procedure. This Court has emphasized the importance of *stare decisis*²⁵ and this Court’s obligation to ensure states and circuits are in uniform compliance with federal standards. Accordingly, Petitioner asks that this Court grant certiorari on this case to address and set minimal standards for COA procedure, particularly in capital cases. At minimum, in addressing COA procedure, this Court should require a reasoned decision, a consistent three-judge panel, and the opportunity for rehearing.

II. THE QUESTION PRESENTED IS OF GREAT IMPORTANCE BECAUSE IT IS A RECURRING ISSUE THAT AFFECTS HABEAS PETITIONERS NATIONWIDE

The Question Presented is important and effects hundreds of habeas petitioners nationwide. This is a particular problem in the Eleventh Circuit, which has become an outlier in this area, as reflected by the many recent cases that have challenged the Eleventh Circuit’s COA procedure. Petition for Writ of Certiorari at iii, *Heidler v. Emmons*, 144 S. Ct. 2565 (No. 23-6721) (2024) (asked “whether the Eleventh Circuit imposed an erroneously high standard when it denied COA to address [the petitioner’s] claims”); Petition for Writ of Certiorari at i, *Arrowood v. Fla. Dep’t of Corr.*, 2023 WL 7635611 (No. 23-505) (2023) (asked “whether the [Eleventh Circuit] employs a process for the issuance or denial of [certificates of appealability] that violates fundamental due process”); Petition for Writ of Certiorari at I, *Tomlin v. Patterson*, 140 S. Ct. 2829 (No. 19-7127) (2020) (asked “the Eleventh Circuit impose[d] an improper, too demanding, and unduly burdensome COA

²⁵ *Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 798 (2014) (“*Stare decisis* . . . ‘is the preferred course because it promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process.’”) (quoting *Payne v Tennessee*, 501 U.S. 808, 827 (1991)).

standard”).

Furthermore, this issue is recurring because neither the Federal Rules of Appellate Procedure, nor the Eleventh Circuit Rules, require that a circuit judge or panel issue a reasoned denial of a COA application. Thus, there is no existing directive that will stop the Eleventh Circuit from continuing to issue one-sentence denials and perform quasi-merits analyses without review, and this issue will continue to be raised. Without guidance from this Court requiring consistency in structure and application of COA procedure, each circuit will continue to issue widely disparate COA decisions, defeating the purpose of this threshold inquiry, which “ensures that frivolous claims are not assigned to merits panels,” *Gonzalez*, 565 U.S. at 145, but providing habeas petitioners, particularly capital litigants, a merits review of their substantial claims. Accordingly, Petitioner asks that this Court grant his Petition to address this important and recurring issue.

III. THE DECISION BELOW IS WRONG AND DIRECTLY CONFLICTS WITH A COA PRECEDENT.

a. History of the COA

The standard for issuing a COA is less than that required to prevail on appeal: an applicant need only demonstrate “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). In practice, a COA grant requires a showing that “jurists of reason could disagree with the district court’s resolution of his constitutional claims or . . . could conclude the issues presented are adequate to deserve encouragement to proceed further.” *Buck*, 580 U.S. at 115 (quoting *Miller-El*, 537 U.S. at 327).

Time and again, this Court has maintained that the COA standard is a threshold inquiry. *Slack*, 529 U.S. at 482; *Miller-El*, 537 U.S. at 327; *Buck*, 580 U.S. at 115. Though the COA is an “important” barrier, it is not an “insurmountable” one. *Johnson v. Vandergriff*, 143 S. Ct. 2551, 2554 (2023) (Sotomayor, J., dissenting). The reviewing court is

tasked with conducting an “overview” of the claims and “a general assessment of their merits.” *Miller-El*, 537 U.S. at 336. “This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims.” *Id.*; see *Buck*, 580 U.S. at 115. Rather, “the statute forbids it” and the petitioner *need not show* that his “appeal will succeed” for a COA to issue. *Miller-El*, 537 U.S. at 336-37. Petitioner must only demonstrate that his “claim is reasonably debatable” among jurists. *Buck*, 580 U.S. at 117. “[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*, 537 U.S. at 338.

This Court has taken repeated steps to ensure the courts of appeal comply with this standard. See *Miller-El*, 537 U.S. at 327; *Banks v. Dretke*, 540 U.S. 668, 705 (2004); *Welch v. United States*, 578 U.S. 120, 127 (2016); *Buck*, 580 U.S. at 774. In *Buck*, Justice Roberts emphasized that a failure to show a claim will *win* does not equate to a failure to show a claim is *debatable*. *Buck*, 580 U.S. at 116. Such an inquiry is “too heavy a burden [. . .] at the COA stage.” *Id.* at 117. The COA inquiry is restricted to a threshold analysis, and any review or adjudication on the merits is improper.

b. COA Application to Capital Cases and Modern Rates of Denial

Capital cases demand heightened constitutional protections from the courts. *Ford v. Wainwright*, 477 U.S. 399, 414 (1986) (This Court’s consideration of capital cases has been characterized by “heightened concern for fairness and accuracy.”); *Hall v. Florida*, 572 U.S. 701, 724 (2014) (Because “the death penalty is the gravest our society may impose,” capital defendants must have a fair opportunity to show that the Constitution prohibits their execution.”); see also *Mills*, 102 F.4th at 1241 (Abudu, J. concurring) (“[I]t is of vital importance to the defendant and to the community that any decision to impose the death

sentence be, and appear to be, the consequence of scrupulously fair procedures.”) (quoting *Sawyer v. Whitley*, 505 U.S. 333, 361 (1992)) (Stevens, J., concurring)). Further, in 1983, prior to AEDPA’s enactment, this Court held that “in a capital case, the nature of the penalty is a proper consideration in determining whether to issue a certificate of probably cause[.]” *Barefoot*, 463 U.S. at 893.²⁶

This is the second mandate placed on the Eleventh Circuit in its review of COA applications; the first being the threshold COA inquiry. Despite these minimal requirements, this Court has had to correct the Eleventh Circuit twice for its misapplication of the COA threshold inquiry. *See Welch*, 578 U.S. at 135 (holding that “reasonable jurists at least could debate whether Welch is entitled to relief” in his collateral challenge to his conviction); *see also Tharpe v. Sellers*, 583 U.S. 33, 35 (2018) (holding that “jurists of reason could debate whether Tharpe has shown by clear and convincing evidence that the state court’s factual determination was wrong[.]” and “[t]he Eleventh Circuit erred when it concluded otherwise”).

Even more, a review of the applications for COA filed in the Eleventh Circuit between 2008 and the present reveals an alarming trend. Between 2008 and 2019, the Eleventh Circuit disposed of capital cases by COA denials by a rate of 11%, a rate higher than all other circuits at the time except the Fifth Circuit. Today, this denial rate has more than tripled. Between January 1, 2020 and December 10, 2024, the Eleventh Circuit disposed of capital cases by COA denials at a rate of 34%.²⁷ These numbers are particularly

²⁶ See also *Slack*, 529 U.S. at 483, in which this Court held that AEDPA incorporates earlier habeas principles, including its codification of the *Barefoot* standard

²⁷ The data considers applications for COAs in properly filed appeals for which the Court of Appeals’ decision on the COA is dispositive and does not include State initiated appeals in which a COA is not required, litigation under warrant, interlocutory appeals, cases rendered moot, or improperly filed appeals.

disturbing when viewed in conjunction with data of the overall disposition of capital cases in the Eleventh Circuit in the last five years. Of the approximately 64 capital cases disposed of between January 1, 2020 and the present²⁸, the Eleventh Circuit has granted relief in only 3 cases.

This unexplained boom in COA denials in the Eleventh Circuit positions the Eleventh Circuit, similar to the Fifth Circuit, as an outlier among circuits, a status which becomes even more alarming in lieu of the Fifth Circuit's notorious denial rates. Between 2008 and 2019, the Fifth Circuit disposed of capital cases by COA denials at a rate of approximately 21%. Between January 1, 2020 and December 11, 2024, the Fifth Circuit disposed of capital cases by COA denials at a rate of approximately 64%. Further, it was in this backdrop of inordinate COA denials that this Court intervened to correct the Fifth Circuit on four separate occasions for denying a COA in capital cases.²⁹

The decline in the Eleventh Circuit's willingness to review state court action is unprovoked by data or research showing death penalty convictions and sentences are somehow more reliable. Rather, the Eleventh Circuit's outlier status goes unexplained with no signal of change. Such a denial rate suggests the Eleventh Circuit is conducting a

²⁸ This data excludes the same categories noted *supra*, note 15; however, this data also considers cases in which the district court granted relief and the State or Government appealed.

²⁹ In 2000, this Court reaffirmed the proper legal standard to issue a COA. *Slack*, 529 U.S. at 484. In 2003, this Court granted certiorari to critique and reverse the Fifth Circuit for applying a merits analysis to deny the petitioner's COA, despite reciting to proper standard. *Miller-El*, 537 U.S. at 327. In 2004, only a year later, this Court again rebuked and reversed the Fifth Circuit for its improper analysis of the petitioner's claim under the COA standard. *Banks*, 540 U.S. at 705. In the same year, this Court rebuked and overturned another Fifth Circuit COA denial. *Tennard v. Dretke*, 542 U.S. 274, 288 (2004). Finally, in 2017 this Court overturned yet another Fifth Circuit COA denial, notably remarking that the Circuit "phrased its determination in proper terms . . . but [reached] that conclusion only after essentially deciding the case on the merits." *Buck*, 580 U.S. at 115.

greater-than threshold inquiry analysis in its review of COA applications or is failing to properly apply the COA standard. Consequently, in light of the severity of a capital sentence and the incredible denial rate of COA applications, this Court must intervene to correct the Eleventh Circuit’s denial of COA without a reasoned explanation in this case and set nationwide standards on a circuit court’s procedural obligations when assessing a COA application in a capital case.

c. Consequences of an Unreasoned COA Denial

i. Petitioner Met the Threshold Inquiry Standard

On April 4, 2024, Petitioner timely filed a comprehensive application for a COA. (A74-134). On May 31, 2024, a single-judge on the Eleventh Circuit filed a one-sentence order denying the sum of Petitioner’s claims. (A5-6) (“Appellant’s motion for certificate of appealability is DENIED.”). The state court record in petitioner’s case comprises 12,217 pages. On July 5, 2024, Petitioner timely moved for reconsideration of the denial by a three-judge panel in accordance with Eleventh Circuit procedure.³⁰ (A136-166). On August 20, 2024, the three-judge panel filed a duplicative one-sentence order denying Petitioner’s motion. (A9-10) (“Appellant’s motion for reconsideration of the May 31, 2024 order denying motion for certificate of appealability is DENIED.”)

The Eleventh Circuit’s denial of Petitioner’s COA application was wholly incorrect, and a presumptively merits-based assessment of Petitioner’s claims or was the result of the court’s misapplication of the COA standard. Petitioner established a sufficient showing of the denial of his constitutional rights to meet the threshold required to obtain a COA on his claims that: (1) the State presented Mrs. Montgomery-West’s false testimony in violation of *Giglio* and (2) the State presented Mr. Burden’s false testimony in violation of *Brady* and

³⁰ 11th Cir. R. 22-1(c).

Giglio. Petitioner alleged specific facts at trial demonstrating that the State—knowing that Mrs. Montgomery-West was testifying to never-before-said information about her son mentioning Petitioner by name without explanation as to why she was mentioning it for the first time—intentionally elicited critical additional testimony from Mrs. Montgomery-West to tie her testimony to its theory of the case. Petitioner also presented expert testimony at postconviction confirming Mrs. Montgomery-West did not raise this information during her April 1996 recorded statement. Petitioner presented sworn documentation from Mr. Burden admitting that he lied on the stand, at the State’s behest, in exchange for the State’s promise to write him a letter of recommendation to the Ohio Parole Board. This evidence uncovered by postconviction is critical as it goes to the central issues in the case, the identity of the individual who killed Mr. Montgomery and the similarity between Mr. Montgomery’s murder and the crime Mr. Burden lied about. This evidence presented a credible claim that the state court misapplied clearly established federal law and that Petitioner had presented sufficient evidence to proceed further.

For decades this Court has recognized that the knowing and deliberate presentation of false evidence by the prosecution to a court or jury is a violation of due process. “[R]udimentary demands of justice” are incompatible with the State’s intentional use of false testimony to procure a defendant’s conviction and sentence. *Mooney v. Holohan*, 249 U.S. 103, 112 (1935). This Court extended this principle twenty-five years later, holding that “the same result obtains when the [s]tate, although not soliciting false evidence, allows it to go uncorrected when it appears.” *Napue v. Illinois*, 360 U.S. 264, 269 (1959). Further:

[This] principle . . . does not cease to apply merely because the false testimony goes only to the credibility of the witness. The jury’s estimate of the truthfulness and reliability of a given witness may well be determinative of guilt or innocence, and it is upon such subtle factors as the possible interest of the witness in testifying falsely that a defendant’s life or liberty may depend.

Id.

Four years later in *Brady v. Maryland*, 373 U.S. 83, 87 (1963), this Court held that “the suppression by the prosecution of evidence favorable to an accused upon request violates due process where the evidence is material either to guilt or punishment, *irrespective of the good faith or bad faith of the prosecution.*” (emphasis added). *Giglio* expands this principle to include “evidence affecting [the] credibility” of a witness when the reliability of said witness may be determinative of guilt or innocence. 405 U.S. at 154 (citing *Napue*, 360 U.S. at 269). Further, a “prosecutor has a duty to learn of any favorable evidence known to the others acting on the government’s behalf in the case, including the police.” *Kyles v. Whitley*, 514 U.S. 419, 437 (1995).

A *Giglio* claim has two components: a habeas petitioner must prove “(1) the prosecutor knowingly used perjured testimony or failed to correct what he subsequently learned was false testimony; and (2) such use was material, i.e., that there is any reasonable likelihood that the false testimony could . . . have affected the judgment.” *Ford v. Hall*, 546 F.3d 1326, 1332 (11th Cir. 2008) (quotation marks omitted). Unless the prosecution can “persuade[] the court that the false testimony was ‘harmless beyond a reasonable doubt,’”³¹ the defendant is entitled to a new trial “if there is *any* reasonable likelihood that the false testimony could have affected the judgment of the jury.” *United States v. Agurs*, 427 U.S. 97, 103 (1976) (emphasis added). “[The *Giglio*] standard favors granting relief.” *Smith v. Sec’y, Dep’t of Corr.*, 572 F.3d 1327, 1333 (11th Cir. 2009).

A *Brady* claim has three components: a habeas petitioner must prove (1) “[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or

³¹ *Smith v. Sec’y, Dep’t of Corr.*, 572 F.3d 1327, 1333 (11th Cir. 2009) (quoting *Ford*, 546 F.3d at 1332).

because it is impeaching”; (2) “that evidence must have been suppressed by the State, either willfully or inadvertently”; and (3) “prejudice must have ensued.” *Strickler v. Greene*, 527 U.S. 263, 281-82 (1999); *see also Downs v. Sec’y, Fla. Dep’t of Corr.*, 738 F.3d 240, 258 (11th Cir. 2013).

Both *Giglio* and *Brady* claims require proof that the evidence at issue is material. However, the materiality analysis for each claim is different. Under *Giglio*, materiality requires the petitioner to prove “that there is ‘any reasonable likelihood’ that the false testimony ‘could . . . have affected the judgment.’” *Davis v. Terry*, 465 F.3d 1249, 1253 (11th Cir. 2006) (quoting *Giglio*, 405 U.S. at 154); *see also Ford*, 546 F.3d at 1331-32. Under *Brady*, materiality requires proof that “there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceedings would have been different.” *United States v. Bagley*, 473 U.S. 667, 682 (1985). “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Id.*

1. Mrs. Montgomery-West’s False Testimony

Petitioner met the threshold inquiry COA standard as to his claim about Mrs. Montgomery-West’s testimony. In his habeas petition to the district court, Petitioner argued he was entitled to a new trial because the State presented false testimony from Mrs. Montgomery-West. (A32). In rejecting this claim, the district court affirmed, finding that the Florida Supreme Court reasonably applied clearly established federal law when it determined that Petitioner failed to meet all three *Giglio* prongs. (A34-37). However, the Florida Supreme Court misapplied the *Giglio* materiality standard. Jurists of reason could debate whether the Florida Supreme Court reasonably applied clearly established federal law in denying Petitioner’s claim.

The Florida Supreme Court found that Mrs. Montgomery-West’s testimony was

immaterial using a heightened standard— “there is no reasonable possibility that it could have affected the verdict as it was harmless beyond a reasonable doubt.” (A172). However, evidence is material under *Giglio* if there is any “reasonable likelihood that the false testimony *could . . . have affected the judgment.*” *Ford*, 546 F.3d at 1332. Mrs. Montgomery-West testified that her son mentioned Petitioner by name, his former military service, his occupation as a nurse, —all of which would strongly suggest to the trier of fact that Mr. Montgomery knew Petitioner well—and in the same conversation, that he was offered money to pose for nude photographs. (T. 1106, 1109-10; PCR. 909). Accordingly, Mrs. Montgomery-West’s testimony was critical to the State’s theory, in a case with no direct evidence, that Petitioner killed Mr. Montgomery and reasonable jurists could agree or disagree whether the Florida Supreme Court’s analysis of this claim was objectively reasonable.

In her recorded statement, Mrs. Montgomery-West said her son “*never* [told her] people’s last names,” yet alleged at trial that Mr. Montgomery made sure to tell her of and emphasize the pronunciation of Petitioner’s last name. (A104; T. 1106) (emphasis added). When confronted on cross-examination with the fact that she never mentioned these facts to the police, Mrs. Montgomery-West asserted that she several of her statements were not in her written statement. (T. 1107) However, Detective Hobbs testified that the police first learned of Petitioner’s name in May of 1996. (A105). Mrs. Montgomery-West’s recorded statement took place in April of 1996. (A92).

On postconviction review, rather than squarely address the evidence that Mrs. Montgomery-West clearly falsified her testimony, and that the State used the perjured testimony and failed to correct it, the Florida Supreme Court proposed a theory that “perhaps” she relayed the information before her recorded interview began, though the transcript refutes this idea. (A172). Jurists of reason could debate the district court’s

resolution of this issue. Jurists of reason could agree or disagree that Mrs. Montgomery-West's testimony was material in that it was palpably false based on the record and it bolstered the State's empty theory that Petitioner knew Mr. Montgomery and that Mr. Montgomery's death was linked to Mr. Burden's assault based on alleged requests for nude photos. In fact, jurists of this Court ruled that a trier of fact's estimate of a witness's reliability is relevant to a defendant's conviction and sentence. *Napue*, 360 U.S. at 269. Accordingly, jurists of reason could debate that the State's failure to correct and decision to expound upon Mrs. Montgomery-West's testimony did not permit the trier of fact to wholly evaluate her truthfulness and reliability and contributed greatly to Petitioner's conviction and sentence.

Furthermore, the postconviction court found Mrs. Montgomery-West's testimony immaterial because Petitioner admitted to seeing Mr. Montgomery three times. (A113). This is simply untrue and an unreasonable determination of the facts in light of the state court record. Petitioner testified that he visited Robert Whittaker's trailer, where Mr. Montgomery lived at one point, to see Jeff Dingman, but he never met Mr. Montgomery at any point. (T. 1940). Though Whittaker testified that Petitioner came to his trailer and asked Carla Montgomery for Mr. Montgomery, Carla Montgomery herself testified that this never occurred. (T. 987, 1581). Accordingly, Mrs. Montgomery-West's testimony was patently material to the State's case, and her false testimony had a substantial and injurious effect on the outcome of Petitioner's trial. Based on the misapplied materiality standard, misconstrued facts, and record evidence, reasonable jurists could agree or disagree with the district court's resolution of this claim. "Indeed, a claim can be debatable even though every jurist of reason might agree, after the COA has been granted . . . that petitioner will not prevail." *Miller-El*, 537 U.S. at 338.

2. The State's Offers of Assistance and Mr. Burden's False Testimony

Here, Petitioner also met the threshold inquiry COA standard. In Ground VIII of his habeas petition, Petitioner argued his trial was fundamentally unfair and in violation of his due process rights because the State failed to disclose its offer of assistance to Mr. Burden in violation of *Brady* and *Giglio*. (A56). In rejecting this claim, the district court held the Florida Supreme Court reasonably determined that the State carried its burden of proving the newly discovered evidence was immaterial because Mr. Burden “did not claim Lee’s promise influenced the substance of his testimony[,]” and the evidence only went to Mr. Burden’s credibility which had already been questioned by the fact-finder. (A56-59). However, *Brady* and *Giglio* violations can occur even when the withheld evidence goes only to credibility.

“It is of no consequence that the falsehood bore upon the witness’ credibility rather than directly upon defendant’s guilt. A lie is a lie, no matter what its subject, and, if it is in any way relevant to the case, the district attorney has the responsibility and duty to correct what he knows to be false and elicit the truth.”

Napue, 360 U.S. at 269-70 (quoting *People v. Savvides*, 1 N.Y.2d 554, 557 (1956)).

Accordingly, reasonable jurists could still debate whether Mr. Burden’s testimony and the State’s failure to disclose its offer of assistance were material, even if the suppressed evidence only concerns the Mr. Burden’s credibility. *Giglio*, 405 U.S. at 154 (citing *Napue*, 360 U.S. at 269) (“when the ‘reliability of a given witness may well be determinative of guilt to innocence,’ nondisclosure of evidence affecting credibility falls within this general rule.”). The Florida Supreme Court misapplied the *Brady* and *Giglio* materiality standards and jurists of reason could debate the district court’s resolution of this claim.

Mr. Burden reported an assault and battery to the police in August 1994, but it was

not pursued because detectives did not believe Mr. Burden conveyed the full story. (T. 1126). Petitioner was charged for these allegations two years later, but on the day of Petitioner's first appearance, all charges against him in the Burden case were dropped. Mr. Burden appeared in the Montgomery trial as a State witness and explicitly testified on direct that he had not "been promised anything in exchange for his testimony." (T. 1182). On cross, Mr. Burden, given another opportunity to tell the truth, again testified that nobody "from local law enforcement told [him] that [they were] going to send a letter to the parole board about [his] participation in this case." (T. 1204). Mr. Burden testified to being lured into the woods by Petitioner to take nude photos in exchange for payment and subsequently strangled against a tree and assaulted. (T. 1156-69). Without Mr. Burden's testimony, the State could not reinforce its empty theory that Petitioner had a *modus operandi* of strangling his victims against trees and assaulting them. (T. 2499).

Though Mr. Burden *admitted* to lying about being offered state assistance in exchange for his testimony against Petitioner, the Florida Supreme Court found that Mr. Burden did not disclaim the substance of his testimony. The Florida Supreme Court, again, sidestepped any acknowledgment that Mr. Burden lied under oath, which proved that the State blatantly violated its *Brady and Giglio* obligation to disclose this evidence to the defense. Accordingly, reasonable jurists could conclude that this evidence was material—meaning, under *Giglio*, it was false and likely to cast greater doubt on Petitioner's involvement in this circumstantial case, and under *Brady*, it was likely, had the defense been aware, to be effectively argued by the defense at trial to the extent of weakening Mr. Burden's credibility further before the trier of fact. In fact, Mr. Burden's testimony was so important to the State's case, in closing it referred to the "Burden event" as "our signature crime." (T. 2005). Accordingly, in light of the significant impact of Mr. Burden's testimony, the fact that it was obtained under false pretenses, and record evidence establishing Mr.

Burden's lack of credibility, reasonable jurists could determine the district court may or may not have come to the wrong conclusion.

Further, reasonable jurists could still debate whether this evidence was material, even if the suppressed evidence only concerns the witness's credibility. *Giglio*, 405 U.S. at 154 (citing *Napue*, 360 U.S. at 269).

ii. Importance of a Reasoned COA Decision

It is possible to accurately recite the standard for issuing a COA, but incorrectly apply it. *Jordan v. Fisher*, 135 S. Ct. 2647, 2651 (2015) (Sotomayor, J., dissenting). Indeed, this Court has reversed numerous circuit decisions for this reason. *Miller-El*, 537 U.S. at 348 (Fifth Circuit Reversed); *Banks*, 540 U.S. at 705-06 (Fifth Circuit reversed); *Lozada v. Deeds*, 498 U.S. 430, 432 (1991) (Ninth Circuit reversed); *Welch*, 578 U.S. at 135 (Eleventh Circuit reversed). Yet, the only clear way for this Court to evaluate whether a circuit court has correctly applied a threshold inquiry in denying a COA is if that court provides a reasoned opinion outlining why the applicant failed to meet this minimal standard.

Here, the Eleventh Circuit failed to do just that. In response to Petitioner's 57-page COA application and 27-page motion for reconsideration raising claims on a state court record that comprised 12,217 pages, the Court of Appeals offered one-sentence denials that did not address the court's reasoning of why Petitioner did not meet the threshold inquiry standard required for a COA denial. The Eleventh Circuit Rules of Procedure do not require that capital panels offer a reasoned denial or grant of a COA application.³² However, the Eleventh Circuit has offered reasoned denials before, and does so inconsistently. *Ross*, 246 F.3d 1299; *Lott*, 594 F.3d 1296; *Woods v. Holman*, No. 18-14690-P, 2019 WL 5866719 (11th Cir. Feb. 22, 2019).

³² 11th Cir. R. 22-1.

As established in *Hohn v. United States*, 524 U.S. 236, 253 (1998), this Court has jurisdiction to review COA denials by a circuit judge or panel. Reasoned denials are pertinent for capital habeas petitioners because they provide the petitioner with an avenue to directly confront any specific findings that he failed to meet the threshold inquiry. Otherwise, a petitioner can only presume why the circuit court issued a denial. In practice, this prevents the petitioner from presenting direct proof that his COA denial was based on a merits analysis or that he met the threshold inquiry in the ways the court seeks. Furthermore, when a circuit issues a COA denial without a reasoned decision, the capital defendant, already burdened on both ends, is stripped of his right that his death sentence “be, and appear to be, the consequence of scrupulously fair procedures.” *Sawyer v. Whitley*, 505 U.S. 333, 361 (1992).

This Court has issued several rebukes to the Fifth Circuit for its failure to limit its review of COAs to a threshold inquiry. However, this Court’s ability to correct the Fifth Circuit’s overreach is due in part because the Fifth Circuit issued reasoned denials to COA applicants. Thus, the Fifth Circuit’s misapplication of 28 U.S.C. § 2253 and unexplained rise in COA denials is curbed by this Court’s periodic intervention. Petitioner, however, has been placed in a far more egregious situation which warrants this Court’s attention. Because it is not mandated to issue reasoned denials, the Eleventh Circuit may freely denial COAs using an onerous, quasi-merits analysis and likely never face correction from this Court so long as it fails to issue a reasoned denial. When viewed against the backdrop of the Eleventh Circuit’s now-tripled COA denial rate, this case and capital cases like it do not receive appropriate adjudication under due process. And this reality carries the most severe consequence for death-sentenced petitioners, such as Daniel Conahan. *Woodson*, 428 U.S. at 305.

Petitioner met the minimal threshold standard required to receive a COA grant,

considering reasonable jurists could debate the district court's unreasonable application of the facts in light of the record. Accordingly, Petitioner asks that this Court grant this Petition, and require that the Eleventh Circuit issue a reasoned decision that may be subject to this Court's review.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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