No.

In the
United States Supreme Court

MARLON EDGARDO SIGUENZA,

Petitioner,

v.

DOMINGO URIBE, Jr.,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

In this noncapital habeas case, Marlon Siguenza alleges that his trial attorney was constitutionally ineffective for failing to investigate and present evidence at his murder trial that he suffered from post-traumatic stress disorder, which the defense psychiatrist never screened him for.

In support of the claim in state court while pro se, Siguenza alleged the symptoms he'd experienced, explained how they satisfied the diagnostic criteria for PTSD, and presented the letter of a psychiatrist who believed that Siguenza, if clinically examined, "might qualify" for the diagnosis.

The state court denied Siguenza's claim without a hearing because "nothing … anywhere … in the record … support[ed]" Siguenza's allegation that he had PTSD. The federal district court did the same, speculating that there were other reasons to doubt that Siguenza had PTSD.

Without analysis, the Ninth Circuit denied a certificate of appealability—effectively holding that the district court's disposition of Siguenza's claim was "not even debatable." *Buck v. Davis*, 580 U.S. 100, 116 (2017).

Did the Ninth Circuit's unreasoned denial of even a COA here so clearly misapply *Buck*'s modest standard as to call for summary reversal?

RELATED PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit
Siguenza v. Uribe, No. 24-1616 (January 23, 2025)

U.S. District Court for the Central District of California
Siguenza v. Uribe, No. CV 11-8020 (February 14, 2024)

California Supreme Court (on habeas)
In re Siguenza, No. S191248 (August 17, 2011)

California Court of Appeal (on habeas)
In re Siguenza, No. B227320 (November 10, 2010)

Los Angeles County Superior Court (on habeas)
In re Siguenza, No. BA289665 (June 30, 2010)

California Supreme Court (on appeal)
People v. Siguenza, No. S165420 (September 10, 2008)

California Court of Appeal (on appeal)
People v. Siguenza, No. B197757 (June 30, 2008)

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PETITION FOR WRIT OF CERTIORARI

Marlon Siguenza petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit, number 24-1616, entered on January 23, 2025.

OPINIONS BELOW

No opinions or orders were reported.

JURISDICTION

The Ninth Circuit denied a certificate of appealability on January 23, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides:

> In all criminal prosecutions, the accused shall enjoy the right to … have the assistance of counsel for his defense.

The Due Process Clause of the Fourteenth Amendment provides:

> [N]or shall any State deprive any person of life, liberty, or property, without due process of law.

28 U.S.C. § 2253(c) provides:

> **(1)** Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> > **(A)** the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or
> >
> > **(B)** the final order in a proceeding under section 2255.

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

28 U.S.C. § 2254 provides:

> **(d)** An application for a writ of habeas corpus on behalf of a person in custody pursuant to the judgment of a State court shall not be granted with respect to any claim that was adjudicated on the merits in State court proceedings unless the adjudication of the claim—
>
> > **(1)** resulted in a decision that was contrary to, or involved an unreasonable application of, clearly established Federal law, as determined by the Supreme Court of the United States; or
> >
> > **(2)** resulted in a decision that was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding.

STATEMENT OF THE CASE

One night in 2005, Marlon Siguenza fatally shot his friend Richard Wright, for reasons no one could fathom.

The answer given at trial by the prosecution was that Siguenza shot Wright out of annoyance that another friend he didn't want to share his drugs with had stopped by—an answer the jury rejected, by dint of rejecting the prosecution's first-degree murder allegations.

The answer given by Siguenza's defense counsel was that Siguenza had acted on a cocaine-induced delusion that shooting Wright would save victims of an unfolding natural disaster they'd been watching on television, hundreds of miles away. But the jury rejected that answer too, finding Siguenza guilty of second degree murder.

This petition arises out of Siguenza's habeas challenge to that conviction under 28 U.S.C. § 2254, alleging that the outcome at his jury trial owed to trial counsel's unreasonable failure to investigate and present evidence that he suffered from post-traumatic stress disorder, acquired while he was a child in war-torn El Salvador—and triggered that night by his drug use and by the troubling images the three friends had just seen in news coverage of an unfolding disaster.

A. A childhood in a time of civil war.

From 1979 until 1992, El Salvador was engaged in civil war. Tens of thousands were murdered or "disappeared." As the U.N. Truth Commission concluded, the pervasive violence touched "[a]ll Salvadorians, without exception."

Marlon Siguenza was one of them. Born amid the tumult in 1983, his first seven years were marked by scenes of violence and personal threats, and he "witnessed … many deaths." "On many nights he and his family would … hid[e] under beds in the middle of all night gunfire and grenade blasts which nearly took their lives."

These events left young Siguenza with feelings of helplessness, horror, and intense fear. He persistently reexperienced them in thoughts, perceptions, and dreams. It affected his behavior. He avoided thoughts and conversations about the war and about death, avoided movies about war, grew detached from others, lost interest in important activities. He found it hard to concentrate, would become irritable, hypervigilant, easily startled.

In 1990, Siguenza moved to the U.S. as a seven-year-old, and reunited with his mother. But his symptoms would persist for years, into his early 20s. Over time he became withdrawn, started using alcohol toward the end of seventh grade and drugs in his early teens. His symptoms began to interfere with his coursework while he was at Santa Monica College in the early to mid-2000s.

But that these experiences might be symptoms of post-traumatic stress disorder, or PTSD, never occurred to Siguenza—not until after his trial here.

B. The shooting and Siguenza's surrender.

In August 2005, Hurricane Katrina slammed the Gulf of Mexico. Catastrophic flooding in New Orleans left hundreds dead. Grim images of the disaster were broadcast on Larry King Live one night in the immediate aftermath, with scenes of looting, shooting, and "dead bodies floating in the water."

Watching the show from an apartment in Los Angeles were Richard Wright, Justin Turman, and Siguenza. The apartment was Wright's. He and Turman had been watching the show for hours when Siguenza arrived, around one in the morning.

Siguenza and Turman started talking about the hurricane while seated at a table, with Wright nearby on a couch, mostly just silently watching the show. The topics were heavy: the terrible events in New Orleans; the need for "black and brown" people to unite rather than hurt each other.

After about an hour and a half and a brief lull in the conversation, Turman and Wright went outside for a short cigar break. Turman invited Siguenza to join them outside, but Siguenza shook his head, as if about to cry. To Turman it "felt kind of funny," because Siguenza was fine when he first got there, and he'd "usually … want to come out and be involved."

When Turman and Wright came back inside from their break, the television was still on. Siguenza was at the table, prepping some cocaine. Siguenza would later testify that the three had been trading lines of coke the whole time while watching the hurricane footage on Larry King, though Turman would deny having any or seeing Wright partake.

In any event, once all were inside, Wright got a call from their mutual friend Erika Breitkoph, who'd earlier told Wright she'd be stopping by. (3 RT 709–10.) There was some dispute about what happened next. But suffice it for now that shortly after the call, Siguenza stood, pulled a gun from his waist, shot Wright five times, then fled the apartment. Wright would die from his wounds about an hour later.

After the first shot Turman had run toward the back of the apartment and later, with Wright's girlfriend (who'd been sleeping), called the police. But by the time police arrived, Turman was gone.

Siguenza had fled the area on foot, "fe[eling] lost," his heart racing from the cocaine, and he made it all of two blocks before collapsing among some bushes. He didn't understand "what the hell just

happened." He fell asleep, and woke up around seven or eight a.m. in the same patch of grass, crying, incredulous and uncomprehending at what he'd done.

For the next week and a half, he "just walked lost," homeless, getting high on the rest of his cocaine. He finally called his mom, who told him to turn himself in, and gave him contact for a defense attorney named Arthur Greenspan. Siguenza spoke to Greenspan, and they planned to have Siguenza surrender as soon as Greenspan got back into town.

Police meanwhile kept up the search for Siguenza. Despite searches of his car and apartment, they had no luck. They were also at a loss about motive, according to local news reports, though "leaning" toward the theory that Siguenza was "just … mentally unstable."

Finally, two days after Siguenza had spoken to Greenspan, the two went together to the police station where Siguenza surrendered to detectives and he was charged with first degree murder.

C. Pretrial: Trial counsel consults psychiatrist Ron Markman, who fails to screen Siguenza for PTSD.

With Siguenza's mental state a key issue, Greenspan had psychiatrist Ron Markman assess Siguenza's mental condition and potential criminal responsibility for the shooting.

How that assessment should have been handled is informed by the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*. According to the revised fourth edition, pages of which Siguenza attached to his habeas petitions, people like Siguenza

who've "recently emigrated from areas of considerable social unrest and civil conflict" may have "elevated rates of [PTSD]." Yet they "may [also] be especially reluctant to divulge experiences." They therefore "[need] specific assessments of traumatic experiences and concomitant symptoms."

Yet no such assessment was made, even though Markman noted Siguenza's 1990 emigration from El Salvador. Markman's expert gloss on the facts he'd gathered about Siguenza's childhood—brought up in El Salvador by single mother who left him there when he was five before they were reunited two years later in the States—was merely that they reflected a "rather unstable, insecure support system" and "dysfunctional childhood."

D. Trial

1. Testimony by the two eyewitnesses—Siguenza and Justin Turman.

Both Turman and Siguenza testified at trial, and their accounts of the evening mostly dovetailed as recounted above. The key difference was about the moments right before the shooting.

On Turman's account, while getting water from the kitchen, he'd heard Wright's phone ring and Wright say to Siguenza, "They're outside," meaning Breitkopf. As Turman returned to sit down, Siguenza got up and went for his gun. Turman immediately jumped back and ran into a doorway to the kitchen and looked back around. He saw Siguenza pull a bullet from his pocket and load it into the

chamber—a detail Turman failed to mention in prior statements and detailed preliminary hearing testimony.

Wright was still on the couch, and both he and Turman addressed Siguenza at the same time—Turman saying, "Marlon, what are you doing, this is your friend," and Wright something similar. Siguenza (still on Wright's telling) responded, "Shh. Be quiet. I have to do this real quick and I'll leave." Turman and Wright repeated their entreaties. Siguenza pointed the gun and fired.

On Siguenza's account, the shooting was instead a reaction to something Wright said. Siguenza and Turman had been intensely discussing Katrina—"What can we do to help? There's people out there dying"—when Wright replied, "Fuck that. Struggle doesn't matter. It's bullshit."

Siguenza at this point was "[h]igh as hell" and emotional from the scenes on television. And "something" in Wright's reply "struck deep inside [him] with fear." He rose "impulsively, without thinking," in one movement, "just one long blur," raised the gun, then heard the "thunder" of the gunshots. He didn't recall pulling the trigger. But contrary to Turman's testimony, he couldn't have separately loaded a bullet from his pocket because all he'd had in his pockets were drugs and a phone.

Siguenza otherwise testified about his history of drug use, from early casual marijuana use to ever-accelerating use of cocaine and methamphetamine, which by the day of the shooting he was using at least every other day. He also explained how in 2003 he'd started

dealing as well. The gun was something he'd bought later, for protection, when he started getting "paranoid."

As for *why* he'd shot Wright, Siguenza testified that in that moment, he believed that Wright would cause others in New Orleans to die, and that by shooting him he was saving their lives—though now he understood that the idea made no sense.

2. Markman's testimony about Siguenza's mental state.

Markman was a forensic and clinical psychiatrist who'd testified before both as a defense and prosecution witness. He assessed Siguenza for about six hours spread over four meetings. He'd also given Siguenza a personality test, which corroborated his findings.

He believed that Siguenza had been "very forthcoming" during their interviews, and testing suggested that the information he gave was not exaggerated. Based on these interviews, Markman diagnosed Siguenza with alcohol and polysubstance abuse dependence, adult antisocial disorder, adjustment disorder with depressed mood, cocaine-induced paranoid disorder, and personality disorder with paranoid and antisocial traits.

Asked a series of hypotheticals, he stated that someone regularly using cocaine, meth, ecstasy, mushrooms, and marijuana in combination had started using drugs in their formative years, we would expect that by age 21 the person would suffer effects to their central nervous system and would tend to react abnormally. If the person was disturbed already, they'd become more disturbed.

If the drug use was constant, if the person was with others while they watched violent images on television and had some sort of verbal exchange, the person's reactions would likely to be irrational or delusional, though he might honestly believe that what he perceives is true.

More generally, use of multiple drugs like cocaine and methamphetamine can cause a psychotic episode—a break with reality "indistinguishable from … schizophrenia." The effects on memory can vary. If experiencing multiple traumatic events, then the events can be mixed, changed, altered, or confused in the mind.

But when asked whether he'd tried in any of his interviews to understand what Marlon meant when he said he'd been "trying to prevent the further disaster," Markman was categorical: "No."

3. Deliberations and verdict

Jury deliberations spanned from Tuesday afternoon until Thursday morning. During deliberations, the jury twice asked for readback of "all questions and answers" related to "what [Siguenza] thought at the time of the killing."

In the end, the jury rejected the first-degree murder charge, but found Siguenza guilty of murder second, and found the undisputed gun allegation true. He was sentenced by statute to 40 years to life.

4. Appeal and postconviction review

The state court of appeal affirmed against challenges not relevant here (Pet. App. 118a), and the state supreme court silently denied review in September 2008 (Pet. App. 117a).

Siguenza then began a full round of state habeas proceedings, raising among other claims the *Strickland* claim here.

In superior court, Siguenza alleged among other claims that Markman had been constitutionally ineffective by failing to investigate and present PTSD evidence in his defense. After informal briefing on those issues, the superior court denied Siguenza's claims in a reasoned decision. (Pet. App. 108a–116a.) More on those reasons below. *See infra* pp. 14–16.

Siguenza alleged the same grounds next in the state court of appeal, which rejected them in a silent denial. (Pet. App. 107a.)

He finally alleged the same grounds in the state supreme court, now including a letter from psychiatrist David Rudnick, who explained that while he couldn't give a forensic opinion without personally examining Siguenza, he "certainly believe[d]" that Siguenza "may well qualify for a diagnosis of chronic PTSD" and that "scenes from Hurricane Katrina could have triggered retraumatization." (USDC ECF No. 24-3 at 12; *see also* ECF No. 19-10 at 76 (quoting letter); ECF No. 19-11 at 106 (listing letter among exhibits).)

But this petition too met with a silent denial, in January 2012. (Pet. App. 106a.)

5. Federal habeas review

Siguenza timely filed an amended federal petition in federal district court. After years of proceedings that included reversal of an erroneous procedural denial, the magistrate judge recommended denying Siguenza's petition on the merits (Pet. App. 9a–105a), for

reasons addressed below. *See infra* pp. 13–16. Over Siguenza's objections, the district judge adopted the recommendation, denied relief, and denied a certificate of appealability. (Pet. App. 3a–8a.)

Siguenza timely appealed and moved for a certificate of appealability, which two judges of the Ninth Circuit summarily denied. (Pet. App. 1a.)

This petition follows.

REASONS FOR GRANTING THE WRIT

Review should be granted because the Ninth Circuit's unreported summary denial of a certificate of appealability plainly misapplied the modest standard applicable.

Siguenza alleges a violation of his Sixth and Fourteenth Amendment rights to the assistance of counsel under *Strickland v. Washington*, 466 U.S. 668 (1984). To win under *Strickland*, Siguenza must show that his trial counsel Arthur Greenspan rendered (1) deficient performance (2) that prejudiced his defense. *Id.* at 687. Greenspan's performance was "deficient" if objectively unreasonable under professional norms. *Id.* at 693–94. The deficiency "prejudiced" Siguenza if it reasonably likely led at least one juror to vote for guilt. *Id.* at 687–96; *Buck v. Davis*, 580 U.S. 100, 120 (2017).

Siguenza is entitled to a certificate of appealability on his *Strickland* claim if he makes "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). The test is whether he can show that *any* reasonable jurist could "disagree with the district court's

resolution of his constitutional claim[]." *Buck*, 580 U.S. at 115. In the claim, in other words, "reasonably debatable"? *Id*. at 117.

This standard is modest—one that Siguenza can meet even if "every jurist of reason might agree … that [he] will [lose]." *Id*.

No jurist could reasonably conclude that he's failed to meet it here.

A. AEDPA is no bar to relief on Siguenza's claim.

AEDPA (the Antiterrorism and Effective Death Penalty Act of 1996) applies because Siguenza's petition was filed after its enactment. *Lindh v. Murphy*, 521 U.S. 320, 336 (1997). He can therefore win federal habeas relief on his *Strickland* claim only if in adjudicating it the state court either (1) contravened or unreasonably applied *Strickland* or (2) unreasonably determined the facts on the evidence before it. 28 U.S.C. § 2254(d). These standards are applied to the last reasoned state court decision to decide the claim, *Wilson v. Sellers*, 584 U.S. 122, 125 (2018)—here, the superior court's decision on habeas review.

But that decision was unreasonable.

1. The state court unreasonably rejected Siguenza's allegations of deficient performance by ignoring or incoherently analyzing the evidence.

To start, the state court found that "nothing … anywhere … in the record … support[s]" Siguenza's allegation that he had PTSD. (LD 6 at 8.) This ruling was objectively unreasonable, for at least two reasons.

First, as a statement about the *trial* record, it makes no sense: The whole point of Siguenza's claim is that Markman and Greenspan failed

to screen him for PTSD, and therefore developed no evidence of it. The DSM IV, quoted in Siguenza's petition (U.S. District Court ECF No. 19-5 at 51), showed that Markman should have known emigrants like Siguenza, "recently emigrated from areas of considerable social unrest and civil conflict," not only may have "elevated rates of [PTSD]," but "may be *especially reluctant to divulge*" their experiences (*id.* at 119 (emphasis added). Upon learning that Siguenza had been raised in war-torn El Salvador, then, Markman should have screened him for PTSD. That he instead "made no mention" of it even in his reports, as the state court noted, isn't a defect in Siguenza's claim; it's the dog that didn't bark in the night.

And a clue that trial counsel Greenspan should have spotted. Again, the DSM is recognized by courts as the diagnostic Bible among psychiatric professionals. Familiarity with its contents is thus "indispensible [*sic*] to the effective representation of a mentally ill client." 27 Am. Jur. Trials 1 (May 2023 Update). Even a quick review of the DSM's sections on PTSD would have alerted Greenspan to the issue—putting him on notice that Markman's analysis was less than complete.

Second, as a ruling about the entire record, the state court's analysis ignores the extra-record evidence in Siguenza's petition. His own allegations, for one: that he was traumatized by his childhood experiences in El Salvador (U.S. District Court ECF 19-5 at 47, 51); that the images of Katrina retriggered that past trauma (*id.* at 47–51); and that the DSM's diagnostic criteria for PTSD tracked these

allegations (*id*. at 117, 121). But also the tentative views of Dr. Rudnick, who "certainly believe[d]" that Siguenza "may well qualify for a diagnosis of chronic PTSD" and that "scenes from Hurricane Katrina could have triggered retraumatization." While short of a full-fledged diagnosis of PTSD by a *retained* expert, then—which, obviously, no court could reasonably expect an indigent pro se inmate to offer—Siguenza's verified allegations and supporting documents were far from "nothing."

2. The state court's rejection of Siguenza's prejudice showing was unreasonable for much the same reason.

The state court's analysis of prejudice was just as unreasonable, for at least three reasons.

First, again, by unreasonably discounting Siguenza's evidence of PTSD as "nothing," *supra*, the state court could not have gauged its likely effect on the outcome.

Second, despite stating the correct legal standard in passing—a "reasonable probability" of a different outcome "but for counsel's professional errors" (Pet. App. 115a)—the standard the state court *applied* was one of sufficiency: whether, on the trial record as it stood, the "jury" "plausibly could" have rendered the verdict it did (Pet. App. 114a). The state court thus "failed to apply the proper prejudice inquiry." *Sears v. Upton*, 561 U.S. 945, 954 (2010).

Third, the state court treated as a given Justin Turman's testimony that Siguenza had "methodically loaded his gun" and stated his intention to shoot despite entreaties from Turman and Wright. (LD

6 at 8.) Doing so was unreasonable, and the presumption of correctness thus clearly and convincingly rebutted, 28 U.S.C. § 2254(e)(1), because that very testimony was what the prosecution staked its premeditation argument on (5 Tr. 1944–45), and what the jury—by dint of its not guilty verdict on first degree murder—must have rejected.

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In sum, the state court unreasonably adjudicated both prongs of Siguenza's *Strickland* claim. AEDPA is thus no bar to relief.

B. On de novo review, Siguenza alleges facts that if proven would entitle him to relief—and thus entitle him to a hearing.

For related reasons, Greenspan's assistance on Siguenza's mental state defense was constitutionally ineffective.

1. Greenspan's failure to investigate PTSD was uninformed and thus unreasonable.

Greenspan "ha[d] a duty to make reasonable investigations or to make a reasonable decision that ma[de] particular investigations unnecessary." *Strickland*, 466 U.S. at 691. And he knew—or should have known—that Siguenza should have been screened for PTSD but that Markman never mentioned it. *See supra* p. 14. Yet Greenspan failed to investigate the matter further.

The omission couldn't have been strategic. PTSD evidence would have advanced Markman's strategy of challenging the prosecution's mental state evidence. *Cf. Woods v. Etherton*, 578 U.S. 113, 116 (2016) (holding counsel's decision to forgo objection reasonable because consistent with counsel's strategy). Screening for it would have

required no new expert or additional resources. *Cf. Hinton v. Alabama*, 571 U.S. 263, 275 (2014) (holding counsel constitutionally ineffective for his "unreasonable failure to understand the resources that state law made available to him"). The evidence would have been admissible. *People v. Herrera*, 247 Cal.App.4th 467, 478 (2016); *People v. Cortes*, 192 Cal.App.4th 873, 912 (2011). And, indeed, critical. *See*, *e.g.*, *Cortes*, *supra*, at 910 (holding that exclusion of expert's testimony that defendant had "entered a dissociative state" due to PTSD "robbed" defense of relevant mental state evidence).

Having never ensured that Siguenza was screened for PTSD, then, Greenspan's failure to investigate and develop this line of defense was uninformed—and thus no strategy at all. *See Strickland*, 466 U.S.at 690–91 ("[S]trategic choices made after less than complete investigation are reasonable to the extent that reasonable professional judgments support the limitations on investigation.").

2. The omission prejudiced Siguenza's defense by depriving jurors of evidence that well could have raised reasonable doubt about intent.

Siguenza's unrebutted allegations, "if true," *Schriro v. Landrigan*, 550 U.S. 465, 474 (2007), show that but for Greenspan's omission, it's at least reasonably likely that one of the twelve jurors, competently presented with evidence that Siguenza suffered from PTSD, would have harbored doubt about his intent.

To start, the prosecution's mental state evidence was weak. For motive, the prosecutor could only float that Siguenza was "really upset" with Wright because he'd invited Breitkoph over—a suggestion

at best only loosely based on Turman's actual testimony. (*See* 2 Tr. 345 (testifying that Siguenza told Wright and Turman that he didn't want Breitkoph to come over).) Aside from which, and again, it's not like these jurors found Turman credible to begin with. *See supra* pp. 15–16.

Just as important, jurors were struggling to grasp what was going on in Siguenza's mind in those fateful seconds, twice asking for readback of "all questions and answers" related to "what [Siguenza] thought at the time of the killing." And according to Greenspan himself, *after* the verdict, jurors approached him and expressed residual doubts that the prosecution had met its burden to disprove imperfect self-defense beyond a reasonable doubt. (5 Tr. 3002–03.)

At least one of the jurors was thus at least reasonably likely to have been moved by competently presented evidence of Siguenza's PTSD, evidence that would have unlocked the meaning of Siguenza's dream-like ideation during the shooting: that he was in "a dissociated state" in response to an "extreme stress of a perceived life-threatening danger," "experiencing the sense of unreality that occurs during a dissociated mental state evoked by traumatic stress." *Cortes*, 192 Cal.App.4th at 893. By failing to investigate and present such evidence, Greenspan may well have deprived them of this critical evidence.

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In sum, Siguenza alleges facts that if proven would entitle him to relief—and thus entitle him to a hearing or futher fact development. *Schriro*, *supra*.

C. The district court's ad hoc reasons for rejecting Siguenza's claim are plainly debatable.

Aside from recapitulating many of the state court's own errors in rejecting Siguenza's claim, the district court added several of its own.

For example, the district court faulted Siguenza for failing to include a "specific allegation that he ever asked counsel to explain the failure to present a PTSD defense" (Pet. App. 4a), a requirement that, aside from being arbitrary,[1] ignores that Siguenza's state pleadings made clear that Greenspan had been "unresponsive to [Siguenza's] letters" (ECF No. 19-5 at 25:13–14), failing to communicate with him even after the state bar ordered him to (ECF No. 19-12 at 15:13–14).

More distressingly, the district court held that Siguenza's PTSD allegations were "based only on speculation" (Pet. App. 6a), when what they were based on was Siguenza's experienced symptoms, the contents of the DSM, and a tentative, qualified opinion from a psychiatrist. The district court otherwise held it against Siguenza that he'd failed to present a full-fledged expert diagnosis. (Pet. App. 7a, 43a.) But he was in that predicament because he'd been pro se while litigating his claims in state court and was unreasonably denied an evidentiary hearing. *See supra* pp. 13–16.

The right response isn't to perpetuate that Catch-22, but to order an evidentiary hearing or expansion of the record so that Siguenza,

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[1] "This Court has never … required that a defendant present evidence of his counsel's actions or reasoning in the form of testimony from counsel, nor has it ever rejected an ineffective-assistance claim solely because the record did not include such testimony." *Reeves v. Alabama*, 583 U.S. 979 (2017) (Sotomayor, J., dissenting from denial of cert.) (discussing decisions granting relief despite counsel's proffered justifications).

having diligently sought to develop his claim in state court, 28 U.S.C. § 2254(e)(2), can now consult an expert and make a threshold showing of PTSD. Rule 7, Rules Governing § 2254 Cases in the U.S. District Courts; *see Schriro*, *supra* (holding that petitioners raising claim colorable under AEDPA are entitled to an evidentiary hearing).

The irony in all of this is that if anything is "speculative," it's the district court's own analysis of Siguenza's PTSD allegations: It bracketed away the symptoms Siguenza experienced *during the shooting* (*see* Pet. App. 43a (limiting analysis to symptoms during periods "before or … after" Wright's shooting)). It cited Siguenza's failure to allege *other* episodes of PTSD-induced unconsciousness (*id.*), ignoring that recurrence is no diagnostic criterion. And it stated that Siguenza's symptoms weren't "exclusive" to PTSD (*id.*)—when the DSM itself makes "no assumption that each category of mental disorder is … completely discrete." American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* xxxi (4th ed. text rev. 2000).

Given these considerations, it is all but impossible to see how a jurist of reason could *fail* to find the district court's resolution of Siguenza's claim at least "debatable." *Buck*, 580 U.S. at 115.

Because nothing about Siguenza's *Strickland* claim was "insubstantial." *Schriro*, 550 U.S. at 475; because nothing in the record refuted his factual allegations, *id.* at 474; and because nothing suggests that he "could not develop a factual record that would entitle him to habeas relief," *id.* at 475, this Court should have "no difficulty

concluding that a COA should have issued." *Miller-El v. Cockrell*, 537 U.S. 322, 341 (2003). That the Ninth Circuit refused one "is as inexplicable as it is unexplained." *Felkner v. Jackson*, 562 U.S. 594, 598 (2011).

CONCLUSION

For all these reasons, the Court should grant the petition, vacate the Ninth Circuit's order, and remand so that the court of appeals can hear Siguenza's appeal.

Respectfully submitted,
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April 16, 2025

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