

25-6276

No. 25-A-267

IN THE

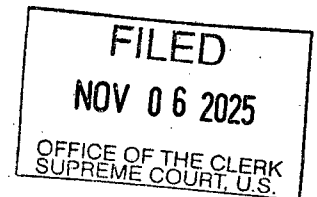
SUPREME COURT OF THE UNITED STATES

ORIGINAL

HISAN LEE — PETITIONER  
(Your Name)

VS.

UNITED STATES OF AMERICA — RESPONDENT(S)



ON PETITION FOR A WRIT OF CERTIORARI TO

SECOND CIRCUIT COURT OF APPEALS  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Hisan Lee (Pro-se)  
(Your Name)

Federal Correctional Complex USP 1  
(Address)

P.O. Box 1033, Cdeman Florida 33521  
(City, State, Zip Code)

\_\_\_\_\_  
(Phone Number)

~~CONFIDENTIAL~~

1. Due Process and False Evidence:  
Whether due process is violated when a federal court relies on a demonstrably false affidavit from defense counsel, and then uses that false affidavit to summarily reject multiple constitutional claims without granting an evidentiary hearing.

Whether a district court abuses its discretion and violates due process by mischaracterizing substantial constitutional claims, adopting government arguments unsupported by the record, and denying discovery and an evidentiary hearing despite the existence of material factual disputes.

Whether the court of appeals' denial of a Certificate of Appealability without addressing the district court's due process errors conflicts with *Slack v. McDaniel*, 529 U.S. 473 (2000), and improperly insulates serious constitutional violations from further judicial review.

**LIST OF PARTIES**

All parties appear in the caption of the case on the cover page.

**RELATED CASES**

United States v. Hisan Lee, No. 07-cr-03 (S.D.N.Y.)  
Lee v. United States, No. 17-cv-8567 (S.D.N.Y.)  
Lee v. United States, No. 24-2338 (2d Cir. 2024)

**TABLE OF CONTENTS**

Opinions below.....	1
Jurisdiction.....	1
Constitutional and Statutory Provisions Involved.....	1
Statement of The Case.....	1
Reasons For Granting the Petition.....	2
1. Jurist of Reason Could Unquestionably Debated the District Courts Assessment of Lees Claims.....	4
A. Failure to Investigate and Present Maxin Clark's Non-Identification.....	4
B. Failure to Cross-Examine Detective Coffey.....	5
C. Prosecutorial Misconduct Suppression of Maxine Clarks Identification Evidence.....	8
D. Failure to Investigate Oniel Johnson's Dying Declaration.....	10
E. Failure to Investigate and Present Jasmine Parra and Other Witnesses.....	12
F. Improper Summation (Bunny Campbell).....	12
G. Brady Violation 3370 Decatur Avenue Robbery.....	13
H. Failure to Investigate Paul Love and Anthony Diaz.....	14
I. Improper Denial of Discovery.....	16
2.The District Court Reliance on a False Affidavit Violates Due Process.....	18
3. The Lower Court Mischaracterized Claims Adopting Post Hoc Rationalizations.....	18
4.The Refusal to Grant Discovery or an Evidentiary Hearing Is an Abuse of Discretion.....	18
5. The Court of Appeals Denial of a Certificate of Appealability Conflicts With this Courts Precedents.....	18
6. Review is Needed to Preserve the Integrity of the Judicial Process.....	18
7. Corrected Misapplication of a COA standard.....	19
Conclusion.....	20

**INDEX TO APPENDICES**

Appendix A Decision of the United States Court of Appeals Denying COA

Appendix B Decision of the United States District Court Denying 2255

Appendix C Decision of the United States Court of Appeal Denying Reconsideration and Rehearing en Banc

Appendix D Governments 2008 Disclosure of DD5 reports relative to Patrick Taylor and Oniel Johnson

Appendix E Lee's Rebuttal Affidavit (Doc. 14) and Updated request for Discovery (Doc. 15)

## TABLE OF AUTHORITIES

### Cases

### Page

Banks v. Dretke, 540 US 668 (2003).....	18, 19
Berger v United States, 295 U.S. 78 (1935).....	13
Brady v Maryland, 373 US 83 (1963).....	8, 9, 12, 13, 14, 17
Bracy v. Gramley, 520 U.S. 899, 909 (1997).....	16
Buck v. Davis 580 US 100 (2017).....	2, 18
Darden v. Wainright 477 U.S. 168 (1986).....	13
Gallego v United States 174 F.3d 1196 (11th Cir.).....	5, 15
Green v. United States 260 F.3d 78 (2d Cir. 2001).....	12
Jordan v. Fisher 135 S. Ct. 264 (2015).....	19
Kyles v. Whitley 514 U.S. 419 (1995).....	8
Machibroda v. United States 368 U.S. 487 (1962).....	18
McGee v. McFadden 139 S. Ct. 2608 (2019).....	19
Miller-El v. Cockrell 537 U.S. 322 (2003).....	2, 18
Modica 663 F.2d 1173 (2d. Cir. 1981).....	13
Montgomery v. Peterson, 846 F.2d 407 (7th Cir. 1988).....	5
Mooney v. Holohon 294 U.S. 103 (1935).....	18
Napue v. Illinois 360 U.S. 264 (1959).....	18
Puglisi v. United States 586 F.3d 209, 213 (2d Cir. 2009).....	5
Rompila v. Beard 545 U.S. 374 (2005).....	18
Slack v. McDaniel, 529 U.S. 473 (2000).....	2, 18
Strickland v. Washington 466 U.S. 668 (1984).....	4, 5, 6, 11, 15
Tennard v. Dretke, 542 U.S. 274(2004).....	3, 19
Tharpe v. Sellers 138 S.Ct 545 (2018).....	19
Townsend v. Sain 372 U.S. 293 (1963).....	18
Welch v. United States 577 US 1210 (2016).....	19
Wiggins v. Smith 539 U.S. 510 (2003).....	4, 5, 11, 15, 18

### STATUTES

28 U.S.C. 2253(c).....	Passim
28 U.S.C. 2255.....	Passim
28 U.S.C. 1254(1).....	1

IN THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

I. OPINIONS BELOW

The opinion of the United States Court of Appeals appears at Appendix ("App.") A to the petition and is unpublished. The opinion of the United States District Court appears at Appendix B to the petition and is reported at 2022 U.S. Dist. LEXIS 48087.

II. JURISDICTION

The United States Court of Appeals decided petitioner's case on March 20, 2025. (App. A). A timely petition for rehearing was denied on June 13, 2025. (App. C). An extension of time to file this petition for a writ of certiorari was granted to and including November 10, 2025, by order dated September 8, 2025, in Application No. 25-A-267. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

III. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. V:

"No person shall be deprived of life, liberty, or property, without due process of law."

U.S. Const. amend. VI:

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

28 U.S.C. § 2253(c):

- (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from
- (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.

IV. STATEMENT OF THE CASE

This case concerns the misapplication of the standard for issuing a Certificate of Appealability ("COA"), which foreclosed appellate review of several substantial and debatable constitutional claims.

Petitioner Hisan Lee ("Lee") is serving concurrent life sentences plus 30 years (Doc. 500 at 3-4) following a 2010 multi-defendant RICO jury trial (Doc. 411) involving robberies and two homicides (Doc. 93 at 24-26, 35). His conviction rested entirely on government cooperator testimony and was affirmed on direct appeal. *United States v. Hisan Lee*, 843 F.3d 145 (2d Cir. 2016).

In November 2017, Lee filed a motion under 28 U.S.C. § 2255, raising multiple constitutional violations under the Fifth and Sixth Amendments, including ineffective assistance of counsel and prosecutorial misconduct. (See Doc. 6 in 17-cv-8567). His claims

centered on:

1. Government Suppression of Exculpatory Evidence

Maxine Clark Non-Identification (Patrick Taylor): The prosecution withheld or misrepresented whether Lee's photo was shown to Clark, falsely claiming Detective Smith would be made available, knowing his testimony was exculpatory, and misled the court on whether photo-array records could be recovered. (Id. at 27).

Hannaniah Nicholas Statement (Decatur Avenue Robbery): The government failed to disclose that Nicholas told law enforcement Lee was not present, while knowingly suggesting the opposite at trial. (Id. at 11).

2. Ineffective Assistance of Counsel by Trial Attorney Michael Sporn

Failure to Investigate Prior NYPD Findings and to present Oniel Johnson's dying declaration, which directly contradicted the government's theory and cooperator testimony. (Id. at 29 38).

Failure to Present Detective Coffey's Testimony regarding Kaseem Wellington's confession, despite knowing Wellington was deceased and had confessed in writing. (Id. at 23 26).

Failure to Challenge Inflammatory Summation implying Lee's involvement in an uncharged murder ("Bunny Campbell"), uncorrected by defense or appellate counsel. (Id. at 42 50).

Failure to Elicit Clark's Non-Identification: Sporn did not subpoena Detective Smith, despite the court's invitation, and failed to elicit testimony from Clark confirming she did not recognize Lee. (Id. at 15 29).

Failure to Investigate Exculpatory Witnesses: Sporn ignored affidavits from Paul Love and Anthony Diaz, both offering first-hand accounts contradicting the cooperators' narrative. (Id. at 50 52).

Pursuant to court order (Doc. 738), Sporn submitted an affidavit addressing Lee's claims. (Doc. 751). Lee rebutted this affidavit (Doc. 14 in 17-cv-8567), filed an updated discovery motion (Doc. 15), and moved twice to expand the record (Docs. 22, 29).

On March 17, 2022, the district court denied relief (App. B), despite:

Relying on a demonstrably false affidavit from trial counsel;

Mischaracterizing and minimizing Lee's claims;

Treating unsupported government assertions as fact;

Presuming strategy where none was evident; and

Denying discovery and an evidentiary hearing despite material factual disputes.

Lee moved for reconsideration (Doc. 52; Doc. 1007), later amending his motion based on *United States v. Taylor*, 596 U.S. 845. The court vacated one count (Count 22) but otherwise denied relief on July 24, 2024. (Doc. 1021, 07-cr-0003).

Appeal to the Second Circuit

Lee applied for a Certificate of Appealability (Case No. 24-2336; DktEntry 17.1), challenging both the district court's findings and its legal conclusions under *Miller-El v. Cockrell*, 537 U.S. 322 (2003). His arguments included:

1. Maxine Clark (IAC & Misconduct): The court credited Sporn's false claim that Clark identified Lee and ignored prosecutorial misrepresentations regarding Detective Smith and the photo array. (Id. at 7 15).

2. Oniel Johnson Dying Declaration: The court wrongly stated Sporn "presented" the declaration; no witness ever relayed Johnson's exculpatory statement. (Id. at 19 22).

3. Bunny Campbell Summation: The prosecutor repeatedly implied Lee's guilt in an uncharged murder ("we think it's Hisan Lee"), contrary to the district court's finding that no such allegation was made. (Id. at 23 24).

4. Wellington Confession: The court relied on Sporn's vague recollection while ignoring evidence showing Wellington had confessed and was deceased pre-trial. (Id. at 15 17).

5. Failure to Investigate Exculpatory Witnesses: The court disregarded witness affidavits crucial to assessing cooperator credibility. (Id. at 27).

6. Decatur Avenue Brady Violation: The court ignored suppressed exculpatory evidence from Nicholas contradicting the government's trial theory. (Id. at 25 26).

7. Discovery and Evidentiary Hearing: Despite narrowly tailored requests, the district court denied both, precluding factual development. (Id. at 7 18, 28).

The Second Circuit summarily denied the COA, holding that Lee failed to make a "substantial showing of the denial of a constitutional right." (App. A). This conclusion disregarded clear, debatable constitutional issues under the Fifth and Sixth Amendments. Lee's motion for reconsideration and rehearing en banc was denied on June 13, 2025. (App. C). This petition for a writ of certiorari follows.

~~CONFIDENTIAL - 20000004 4322, HISSAN - UNIN - GCP - DA~~

---

## V. REASONS FOR GRANTING THE WRIT

This case presents a recurring and nationally significant question: whether federal courts are properly applying the Certificate of Appealability standard under 28 U.S.C. § 2253(c).

The courts below misapplied this Court's precedents in *Miller-El v. Cockrell*, 537 U.S. 322 (2003); *Slack v. McDaniel*, 529 U.S. 473 (2000); and *Buck v. Davis*, 580 U.S. 100 (2017). Each holds that the COA inquiry is a threshold, non-merits determination focused solely on whether reasonable jurists could debate the correctness of the district court's resolution.

By summarily denying a COA, the Second Circuit effectively held that no reasonable jurist could find any of Lee's substantial constitutional claims debatable—a conclusion wholly inconsistent with the record and with this Court's directives. This approach transforms the COA into a merits determination and denies access to appellate review, contrary to *Miller-El* and *Buck*.

Moreover, the underlying errors are grave. The district court denied relief based on false attorney affidavits, prosecutorial misrepresentations, and factual findings contradicted by the record, while denying discovery that could have resolved these disputes. The Second Circuit's refusal to issue a COA not only conflicts with established precedent but also undermines the fundamental fairness of federal collateral review.

This Court has repeatedly intervened to correct lower courts applying an unduly high bar for COAs. See *Buck*, *Miller-El*, *Tennard v. Dretke*, 542 U.S. 274 (2004). The same correction is urgently needed here.

1. Jurors Of Reasons Could Unquestionable Debate The District Court Assessment Of Lee's Claims.

Each of the following constitutional issues independently and collectively establishes that reasonable jurists could debate the district court's conclusions, warranting both a Certificate of Appealability and certiorari review.

A. Failure to Investigate and Present Maxine Clark's Non-Identification

(i) Claim

Mr. Lee alleged that his trial counsel, Michael Sporn, rendered constitutionally ineffective assistance by failing to investigate and present critical exculpatory evidence: Maxine Clark's inability to identify Mr. Lee as one of the men she saw during the Patrick Taylor homicide.

This omission was particularly damaging because:

1. Clark testified that she saw the intruders' faces clearly. (Trial Tr. 1687:2 20).
2. The Government's theory was that Lee and British were the intruders. (Id. at 4695 96).
3. Clark was a disinterested eyewitness whose rejection of Lee as a suspect would have been powerful exculpatory evidence creating reasonable doubt.

Missed Investigative Opportunities

Pre-Trial: Mr. Lee informed counsel that Clark had viewed his photograph during the NYPD investigation but did not identify him. Despite repeated instructions and corroborating correspondence, Sporn never verified this claim or investigated NYPD's early suspect-identification process following the anonymous September 2, 2000 call naming Lee. (Doc. 6, Ex. D; Doc. 14 at 3; Doc. 22, Exs. D E).

At Trial: Clark testified she saw the intruders' faces but was never asked whether she recognized Lee. Lee specifically instructed Sporn to draw out that she did not recognize him, but Sporn ignored this direction. (Doc. 6 at 16; Trial Tr. 1687:2 20).

Photo Array Evidence: Clark testified she reviewed approximately 1,000 photographs during the August 25, 2000 PIMS process. (Trial Tr. 1699). Sporn suspected Lee's photo was included, given his prior arrests in precincts that supplied the PIMS system. (Id. 1805:16 24). Detective Puska confirmed that arrest photos were entered into PIMS and that the array could be recreated using numerical identifiers. (Id. 3346:9 16). Yet, Sporn never subpoenaed Detective Smith, who supervised the array (Id. 1807:10 13), and even declined the court's offer to facilitate his appearance. (Id. 1808:23 25).

Despite recognizing the evidentiary value of this testimony, (Id. 3342:21 25; 3343; 4758:7 15), Sporn failed to act. Clark also indicated she had multiple interviews regarding the identifications. (Id. 1699:7 12).

(ii) District Court's Erroneous Findings: Mischaracterization and Reliance on False Assertions

The district court mischaracterized Lee's claim by stating that Sporn "never saw" the DD-5 reports, instead of assessing whether he misunderstood or failed to act upon them. (App. B at 5; Doc. 1007 at 5 6). This distinction is critical under *Strickland v. Washington*, 466 U.S. 668, 691 (1984), and *Wiggins v. Smith*, 539 U.S. 510, 527 (2003), both of which require evaluating whether competent counsel would have pursued further investigation.

The court's conclusions rest on unsupported assertions in Sporn's declaration, ignoring contradictory record evidence:

1. The court claimed Sporn "admitted" reviewing the DD-5 (App. B at 5) but overlooked that Sporn misrepresented its contents, asserting falsely that Clark had identified Lee (Doc. 751 ¶13). The report actually cited an anonymous 911 caller. Clark testified she never identified the intruders. (Trial Tr. 1708:22 24; Doc. Ex. D; Doc. 1007 ¶¶9 11). Sporn even told the jury that NYPD's investigation "never pointed to Mr. Lee" inconsistent with his later claim of having reviewed an inculpatory DD-5.



~~CONFIDENTIAL - PRELIMINARY DRAFT~~

-----

(Trial Tr. 696:16 18).

2. The court incorrectly found that the defense learned of the PIMS array only after Clark testified (App. B at 5), despite trial records showing Sporn used the relevant 3500 material and was aware of the PIMS process. (Trial Tr. 1699:12 19).

3. The court concluded there was "no way" to determine if Lee's photo had been shown (App. B at 5), ignoring testimony that Detective Smith could have confirmed this and that the PIMS array could be reconstructed. (Trial Tr. 1807:10 13; Doc. 1007 at 10; Id. 3346:9 16).

4. The court conflated two distinct events the August 25 PIMS array and the September 2 DD-5 entry naming Lee and wrongly dismissed the failure to investigate after Lee became a suspect, the core of the claim. (Doc. 1007 at 8; Doc. 52 at 9).

5. Finally, the court minimized the PIMS issue as "insignificant," though it was key to verifying whether Clark had rejected Lee's photo potentially decisive exculpatory evidence.

By crediting Sporn's false assertions over the objective record and Lee's rebuttal affidavit (Doc. 14), the district court failed to resolve material factual disputes, constituting an abuse of discretion. See *Gallego v. United States*, 174 F.3d 1196, 1198 99 (11th Cir. 1999); *Puglisi v. United States*, 586 F.3d 209, 213 (2d Cir. 2009).

### (iii) Counsel's "Strategy" Was Not Reasonable

Even assuming Sporn had reviewed the DD-5 reports, the record shows he received them two years before trial (Doc. 1007, Ex. A) and misinterpreted them. His mistaken belief that Clark had identified Lee fatally infected subsequent decisions. Deference to such a misunderstanding violates *Strickland* and *Wiggins*, which reject post hoc rationalizations as a substitute for objectively reasonable investigation. (*Strickland*, 466 U.S. at 689 91).

### (iv) Prejudice Analysis Was Flawed

The district court found no prejudice because "the jury heard Clark say she hadn't identified anyone" and because Sporn "argued Lee's photo was probably shown but not recognized." (App. B at 6). This analysis collapses the distinction between non-identification and affirmative exculpation. Had the jury heard Clark affirmatively testify that Lee was not one of the men she saw, it would have dramatically altered the evidentiary landscape. See *Montgomery v. Petersen*, 846 F.2d 407, 415 (7th Cir. 1988) (testimony from a disinterested witness can transform jurors' perception of credibility).

In a credibility-driven trial, Sporn's failure to elicit this testimony deprived Lee of crucial exculpatory context. As Sporn himself acknowledged in closing:

"That would have been some helpful convincing evidence. Of course. We don't have that either." (Trial Tr. 4758:7 15).

### (v) Omission of Clark's Rejection of British

Clark rejected co-defendant British's photo at trial (Trial Tr. 1726 28). Despite its obvious relevance, Sporn failed to alert the jury, and the district court ignored this omission entirely. (Doc. 6 at 16).

### Conclusion (Clark Issue)

Sporn's failure to investigate Clark's non-identification, his misinterpretation of investigative records, and his refusal to call Detective Smith constituted constitutionally deficient performance under *Strickland*. The district court's findings were both legally and factually debatable among jurists of reason. At minimum, an evidentiary hearing was required. See *Wiggins*, 539 U.S. at 534 ("tantalizing indications" of exculpatory evidence create a duty to investigate).

### B. Failure to Cross-Examine Detective Coffey

(Ineffective Assistance Virginia Drug Case)

5

~~CONFIDENTIAL - ATTORNEY EYES ONLY~~

---

(i) Claim

The prosecution relied on a prior Virginia drug arrest to suggest that Mr. Lee had stolen narcotics from Patrick Taylor for resale in Virginia. Lee consistently denied this, explaining that Kassem Wellington had confessed to Detective Coffey that the drugs were his and belonged to his girlfriend, Latisha. (Doc. 6, Ex. E).

Despite knowing this, counsel failed to cross-examine Detective Coffey regarding Wellington's confession even after:  
Sending investigator Dwyer to Virginia to retrieve court transcripts (07-CR-003-BSJ, Feb. 19, 2010);  
Confirming the confession during suppression-hearing preparation; and  
Knowing that Wellington had been deported and later died, while co-defendants Ava Bright and Nueron Christie who could corroborate Lee's defense were incarcerated at MCC New York and readily available. (Doc. 52, Ex. A; Doc. 6 at 24 n.8).

Under 28 U.S.C. § 2255, Lee argued that counsel failed to:

1. Cross-examine Coffey about Wellington's confession; and
2. Interview Bright and Christie, both potential exculpatory witnesses. (Doc. 6 at 24).

(ii) District Court's Findings Were Unsupported

The district court adopted Sporn's declaration wholesale, concluding he pursued a "counter-narrative" by tracking transcripts and witnesses. (App. B at 6; Doc. 751 ¶6). This finding is unsustainable.

1. Misreading of Sporn's Declaration

The court conflated two distinct events: efforts to retrieve Virginia transcripts and references to "witnesses" mentioned in the petition. (Doc. 52 at 12). This conflation created the false impression that Wellington's status was discovered after retrieving transcripts, when in fact Wellington's deportation and death were already known. (Doc. 52, Ex. A).

The court further inferred Wellington was one of the witnesses who "couldn't be found, refused to testify, or made inconsistent statements" (App. B at 6), though the record shows:

- Wellington had already confessed to Detective Coffey (Doc. 6, Ex. E);
- He made no inconsistent statements (Doc. 751 ¶6);
- He did not refuse to testify (he was deceased); and
- His unavailability was long known to counsel (Doc. 52, Ex. A).

Thus, the court's factual assumptions were plainly erroneous.

2. Misidentification of Witnesses

The court's analysis recast Sporn's mention of "uncooperative witnesses" as referring solely to Wellington, when it actually encompassed Bright and Christie both available but never contacted.

3. No Strategic Justification

The district court accepted the speculative notion that Sporn's omission might have been strategic. But the record offers no basis for such deference. Sporn possessed Wellington's confession, knew Coffey could confirm it, and failed to act without any articulated reason. (Doc. 52, Ex. A).

4. Inadequate Assessment of Facts Known to Counsel

The court asserted Sporn acted "in light of facts known to him at the time." (App. B at 6). Yet it never identified what those facts were or how they informed counsel's conduct. The record shows that Sporn knew of Wellington's confession and of the existence of two corroborating witnesses, yet failed to pursue any of them contrary to Strickland's requirement of a context-specific evaluation of counsel's knowledge and investigation.

---

(iii) Flawed Prejudice Analysis

The district court reasoned that no prejudice existed because Lee's former girlfriend "testified about how she packaged the drugs and identified the package recovered in Virginia." (App. B at 6). This finding is factually false: Ms. Hastings never testified that she packaged drugs for Lee or identified any Virginia package. (Trial Tr. 1788-1790).

~~CONFIDENTIAL~~

---

By relying on this misstatement, the court minimized the significance of Wellington's confession and the corroborating testimony that could have been offered by Bright and Christie. Given the prosecution's central narrative that Lee transported stolen drugs south failure to contradict it with available, admissible evidence was constitutionally deficient and prejudicial.

#### Conclusion (Detective Coffey Issue)

The district court's rejection of this ineffective-assistance claim was both factually unsupported and legally debatable. Counsel's failure to impeach Detective Coffey with Wellington's confession, and his neglect to interview two available exculpatory witnesses, deprived Lee of a complete defense. In light of these record-based errors and the overall credibility issues in the government's case, reasonable jurists could and would disagree with the district court's denial of relief.

FROM: Waite, Zaire  
TO: 59908054  
SUBJECT: Up  
DATE: 10/29/2025 09:21:02 AM

### C. PROSECUTORIAL MISCONDUCT SUPPRESSION OF MAXINE CLARK IDENTIFICATION EVIDENCE

#### (i) The Claim

Mr. Lee raised a distinct Fifth Amendment claim of prosecutorial misconduct, alleging that the government:

1. Withheld exculpatory evidence showing that Maxine Clark failed to identify Lee in a photo array;
2. Misrepresented to the court and defense that Lee was not a suspect in the Patrick Taylor investigation; and
3. Misled the defense about its ability and intent to produce Detective Smith, who supervised the photo array.

(Doc. 6 at 27).

Because of these misrepresentations, defense counsel Sporn reasonably relied on the prosecution's assurances reliance that caused him to forgo critical investigative and evidentiary steps.

#### (ii) District Court Error A Doubly Flawed Analysis

The district court dismissed the prosecutorial misconduct claim, reasoning that it "fails for the same reasons" as the ineffective assistance claim. (App. B at 7).

That conclusion is incorrect for two reasons:

1. Independent Constitutional Basis:

Prosecutorial misconduct is a stand-alone constitutional violation; it does not hinge on defense counsel's effectiveness. Under *Kyles v. Whitley*, 514 U.S. 419, 432 (1995), the prosecution bears a non-delegable duty to disclose favorable evidence known to anyone acting on the government's behalf.

2. Reliance on Erroneous Findings:

The court's rejection of the ineffective assistance claim was itself based on factual errors and conflation of distinct events. Incorporating those same errors into the misconduct analysis renders the decision doubly flawed. (See Section A(ii)).

#### (iii) The Government Suppressed Material Exculpatory Evidence

##### 1. Pretrial Request Ignored

Before trial, Sporn specifically asked whether Clark had been shown Lee's photograph and whether she failed to identify him. (Doc. 22, Ex. A).

The prosecution never answered directly and failed to disclose that Clark did not identify Lee, withholding evidence squarely within *Brady v. Maryland*, 373 U.S. 83 (1963).

##### 2. Misleading Explanation of the PIMS Photo Array

At trial, Clark testified that she viewed approximately 1,000 photographs on August 25, 2000. (Trial Tr. 1699).

Sporn argued that Lee's photograph was likely among them, given his prior bookings in the relevant precincts. (Trial Tr. 1805 08).

The government responded that:

There was "no suspect in mind" during the viewing; and  
Therefore, "the photos shown could not be reproduced."

Those explanations were misleading. A suspect need not be "in mind" for PIMS photographs to be traceable. Detective Puska later testified that arrest photos were logged in PIMS and could be retrieved using numerical codes entered by the supervising officer. (Trial Tr. 3346:9 16).

By withholding this information, the prosecution prevented the defense from establishing that Clark was shown Lee's

photograph and failed to identify him an omission constituting a clear Brady violation.

(iv) The Government's "Offer" to Produce Detective Smith Was Illusory

The prosecution represented that it would "make [Detective Smith] available." (Trial Tr. 1808:23 25). Sporn later asked whether the government's efforts to locate Smith had changed. (Id. 3343:2 6). The district court relied on that assurance when rejecting Lee's claim. (App. B at 7).

That "offer," however, was illusory, because:

The government already had Smith's contact information and had spoken with him;  
Smith, though retired, remained in contact with the NYPD; and  
The government could have compelled his appearance or placed his availability on the record. (Trial Tr.

1809:10 11).

Sporn's failure to subpoena Smith stemmed in part from the prosecution's misleading assurances assurances that did not fulfill its disclosure obligations under Brady.

(v) The District Court Misread the Record on Detective Testimony

The district court declined to authorize discovery, reasoning it would not conduct discovery on a "witness who doesn't know anything about PIMS." (App. B at 7). That remark referred to Detective Puska, not Detective Smith.

This confusion is pivotal:

Smith, not Puska, supervised the photo array with Maxine Clark; and  
Puska testified that the supervising officer could retrieve the photo set using numerical codes. (Trial Tr. 3346:9

16).

By conflating these detectives, the district court's credibility assessment and factual conclusions were materially unsound.

(vi) Detective Smith's Testimony Was Likely to Be Favorable

The court concluded that even if Smith had testified, "there is no guarantee" he would have supported Sporn's position. (Doc. 42 at 18).

That finding is contradicted by the record.

Evidence shows it is more likely than not that Smith would have corroborated Clark's non-identification:

Lee's prior arrest photos were in the PIMS database;  
Clark viewed approximately 1,000 such photos;  
DD-5 reports later documented that Clark was shown Lee's photo and failed to identify him;  
Smith supervised both the PIMS viewing and follow-up investigation; and  
Smith signed the relevant reports.

On these facts, Smith's testimony was not speculative it was probatively exculpatory and withheld from the defense.

Conclusion Prosecutorial Misconduct (Clark Identification)

The district court's findings were erroneous both factually and legally. The government:

Suppressed Maxine Clark's non-identification of Lee;  
Misled the defense about the reproducibility of the PIMS photo array; and  
Provided hollow assurances regarding Detective Smith's availability.

These actions violated Brady and denied Mr. Lee a fair trial. Because reasonable jurists could debate the district court's conclusions, a Certificate of Appealability should have issued.

#### D. FAILURE TO INVESTIGATE ONIEL JOHNSON'S DYING DECLARATION

##### (i) The Claim

Mr. Lee asserted that trial counsel Sporn rendered ineffective assistance by failing to investigate and present a dying declaration made by victim Oniel Johnson. (Doc. 6 at 30-38, Ex. F).

Police and EMS reports document that Johnson stated, in his final moments, that Shanikwa Burke opened the door to the men who shot him.

This statement directly contradicted the prosecution's theory that:

Burke was at the movies with Jasmine Parra at the time of the murder; and

The shooting was a preplanned ambush involving Lee waiting inside the apartment.

If Johnson and Burke were alone in the apartment and Burke opened the door to the shooters there could have been no ambush, no planning session, and no "waiting party." Johnson's statement would have dismantled the government's central theory. (Doc. 6 at Ex. F, 34).

##### Missed Investigative Opportunities

Pretrial: Counsel was informed of an altercation between Johnson and Gabriel (Doc. 6 at 36) and was directed to review DD-5 reports and the NYPD's state investigation (Doc. 22, Ex. E), both available two years before trial. (Doc. 1007, Ex. A). Sporn took no action.

At Trial: Detective Dowling testified that he discussed Johnson's statement with Detective Coneely when questioned by co-defendant's counsel. (Trial Tr. 2208-2211; Doc. 29 at 2). Sporn ignored this line of testimony.

##### (ii) District Court Error - Improper Narrowing of the Claim

The district court acknowledged this ineffective assistance claim but mischaracterized it as solely impeachment of Burke. (App. B at 7-8).

That narrow reading ignored that Johnson's dying declaration undermined the prosecution's entire theory, not merely Burke's credibility, and contradicted the accounts of multiple cooperating witnesses.

##### (iii) The Significance of Johnson's Dying Declaration

Credibility was the core issue at trial. The prosecution told the jury:

"The only question will be whether [these witnesses] are telling you the truth." (Trial Tr. 683:16-18).

And defense counsel conceded:

"If you believe them, I'm wasting my breath." (Trial Tr. 698:6-12, 4733:21-23).

If Burke opened the door while Johnson was inside:

There could have been no planning session inside the apartment. (Trial Tr. 2312-2330);

Burke's claim that she left a key and went to the movies with Parra was false; and

The government's ambush theory collapses. (Trial Tr. 2320:11-18).

Johnson's declaration thus eviscerated the government's version of events and the credibility of its key witnesses Gabriel, Harry, Sharp, and Burke.

(iv) The District Court's Three Justifications Fail

The district court denied relief on three grounds, each unsustainable:

1. "Sporn Highlighted These Inconsistencies."

The court conflated unrelated inconsistencies (e.g., shooter identity) with Johnson's dying declaration, which was never investigated or presented. (Doc. 6 at 34; Doc. 817 at 8-11).

Under Strickland, counsel must investigate when evidence suggests an alternative account. Pretrial, Sporn knew:

Gabriel and Johnson had fought;

Gabriel gathered others for retaliation;

DD-5s documenting Johnson's statement were available two years before trial; and

Detective Dowling confirmed discussing the statement with Detective Coneely. (Trial Tr. 2208-2211).

Sporn's inaction was a clear Strickland violation.

2. Labeling Witnesses "Unreliable" Is Not a Substitute for Presenting Evidence.

Merely arguing that witnesses were "potentially unreliable" cannot substitute for presenting objective, contemporaneous police evidence contradicting the prosecution's theory.

Johnson's dying declaration, corroborated by EMS and police reports, would have fundamentally altered the jury's assessment of credibility.

3. Failure to Cross-Examine Detective Coneely Was Not Strategic.

There is no evidence Sporn's omission was strategic. He admitted he did not recall researching the material. (Doc. 751 ¶8).

Under Strickland and Wiggins v. Smith, 539 U.S. 510 (2003), a decision not to investigate cannot be deemed strategic when the investigation never occurred.

Conclusion Johnson's Dying Declaration

Sporn's failure to investigate and present Johnson's dying declaration a statement that collapsed the prosecution's timeline, theory, and witness credibility constituted constitutionally deficient performance under Strickland.

The district court's contrary ruling relied on mischaracterization, conflation, and unwarranted deference. Because reasonable jurists could debate these findings, a Certificate of Appealability should have issued.

FROM: Waite, Zaire  
TO: 59908054  
SUBJECT: Up  
DATE: 10/28/2025 11:21:02 AM

## E. FAILURE TO INVESTIGATE AND PRESENT TESTIMONY FROM JASMINE PARRA AND OTHER WITNESSES

### (i) The Claim

Mr. Lee alleged that trial counsel failed to investigate and present testimony from critical witnesses whose accounts could have corroborated Johnson's version of events or exposed government coercion. These included:

1. Jasmine Parra, who stayed at Johnson's apartment the night before the incident. Parra was recorded stating that federal agents were pressuring her to lie and had already "lined up five witnesses to lie on Lee" and she would be "the sixth." (Doc. 6 at 36).
2. Neighbors, as reflected in DD-5 reports and police interviews, who could have testified about who was present in the apartment and the events immediately before and after the shooting. (Trial Tr. 2193).
3. Rear-yard witnesses, referenced in reports from Sgt. Bellari, who spoke with individuals at the scene.

### (ii) District Court's Misconstruction

The district court improperly fragmented this argument into two unrelated issues one involving "Burke and Gabriel," and another about an alleged "party" the night before the murder. (App. B at 8).

By doing so, the court failed to confront the actual claim: that counsel neglected clearly identified and potentially exculpatory witnesses whose statements corroborated Johnson's account and suggested government misconduct.

### (iii) Factual and Legal Errors

#### 1. Witnesses' Identities Were Known

Parra was specifically named, and her recorded statement described in the record. Yet the court dismissed her relevance without analysis.

#### 2. Government's "No Party" Stipulation Is Irrelevant

The government's stipulation that no "party" occurred does not excuse counsel's failure to investigate. The term "party" originated with cooperator Mark Gabriel, not Lee. (Trial Tr. 2453-54). The critical issue was witness coercion, not whether a party occurred.

#### 3. Failure to Apply the Pro Se Standard

Because Mr. Lee was proceeding pro se, the court was required to read his pleadings liberally to raise the strongest arguments they suggest. See *Green v. United States*, 260 F.3d 78, 83 (2d Cir. 2001). The court did not.

### Conclusion (Witness Investigation Issue)

Testimony from Parra, the police-identified neighbors, and the rear-yard witnesses could have corroborated Johnson's dying declaration, contradicted the prosecution's timeline, and exposed witness coercion. Counsel's failure to investigate these known leads was constitutionally deficient under *Strickland v. Washington*, 466 U.S. 668 (1984).

The court's misreading of the claim was debatable, if not clearly erroneous. A COA should have issued.

## F. IMPROPER SUMMATION BUNNY CAMPBELL MURDER

### (i) The Claim

Mr. Lee was charged only with conspiracy to commit the Campbell robbery not with the actual robbery or murder.

Nevertheless, during summation, the prosecutor repeatedly implied Lee's direct participation:

"We think it's Hisan Lee." (Trial Tr. 4713:13-19)

"[Lee], Delroy Lee, Selbourne Waite one of those people killed [Campbell]." (Id. 4715:21-23)

"He's not home anymore, he's out doing the robbery." (Id. 4719:17-19)

"[They] are all together doing the robbery and murder." (Id. 4720:23-24)



Trial counsel made no objection. Appellate counsel also failed to challenge these statements on direct appeal.

(ii) District Court's Findings Are Debatable

The district court found that:

1. "The government did not allege Mr. Lee killed Mr. Campbell";
2. "The government stated Lee wasn't charged with the murder"; and
3. "The jury knew Lee was charged with other murders, so the comments weren't prejudicial." (App. B at 10-11).

These findings are inaccurate and constitutionally flawed.

Repeated insinuations of guilt in an uncharged murder violated *Berger v. United States*, 295 U.S. 78 (1935), and *Darden v. Wainwright*, 477 U.S. 168 (1986), which forbid inflammatory comments and guilt-by-association arguments.

The prosecutor's single disclaimer that Lee was "not charged" was immediately undermined by three direct accusations.

The court's reasoning that prejudice was minimal because Lee faced other murder charges misunderstands due process: uncharged allegations uniquely risk inflaming a jury.

(iii) Prejudice Was Significant

These statements:

- Implied Mr. Lee was a murderer without charge or trial;
- Invited conviction based on character and propensity; and
- Tainted the fairness of the proceeding.

Such misconduct violated the Fifth Amendment right to a fair trial, compounded by trial counsel's failure to object and appellate counsel's failure to raise the issue.

See *United States v. Modica*, 663 F.2d 1173, 1181-83 (2d Cir. 1981) (reversing where prosecutorial summation inflamed the jury and distorted the trial focus).

Conclusion (Improper Summation)

Reasonable jurists could debate whether the prosecutor's repeated insinuations of Lee's guilt in an uncharged murder violated due process. The district court's reliance on the existence of "other murder charges" is legally unsound. A COA should have issued.

G. BRADY VIOLATION 3370 DECATUR AVENUE ROBBERY

(i) The Claim

Mr. Lee asserted a *Brady v. Maryland*, 373 U.S. 83 (1963) violation. The government:

1. Falsely alleged Lee's direct participation in the 3370 Decatur Avenue robbery;
2. Withheld exculpatory evidence, including Hananiah Nicholas's statement confirming Lee was not present; and
3. Relied on Mark Gabriel's false testimony placing Lee at the scene. (Doc. 6 at 11-15; Doc. 22 at 3-6; Ex. B).

During § 2255 proceedings, the government conceded that "Lee [did not] directly participate[] in the robbery." (Doc. 764 at 27).

(ii) District Court's Justifications Both Flawed

1. "Lee Was Not Alleged to Have Participated Directly."

That is contradicted by the record:

- 404(b) Filing: "Lee attempted to commit a gunpoint robbery at 3370 Decatur Avenue." (Doc. 791 at 4; Ex. B)
- Trial Testimony (Gabriel): "[Lee] was directly involved in the robbery." (Trial Tr. 2278-84)
- Prosecutor's Summation: "This is exactly what Hisan Lee was trying to steal that day." (Trial Tr. 4668:2-18)

At every phase, the government portrayed Lee as a direct participant, later contradicting itself in § 2255 litigation.

2. "Gabriel's Testimony Showed Potential Involvement."

That argument itself demonstrates the Brady violation:

The government knew Gabriel's testimony was false,  
Failed to correct the record, and  
Withheld Nicholas's exculpatory statement showing Lee's absence.

Under Brady, the government must disclose all favorable or impeaching evidence regardless of the defense's diligence. 373 U.S. at 87.

(iii) Due Process Violation

By misrepresenting facts, relying on false testimony, and suppressing exculpatory evidence, the government violated due process.

Although defense counsel objected to admission of the robbery evidence (Doc. 22 at 3-6), the withheld Brady material prevented full rebuttal, tainting the trial's fairness.

Conclusion (Decatur Avenue Issue)

The district court's finding that Lee "was never alleged" to have participated in the Decatur robbery is demonstrably false. The record shows:

The government knowingly presented false evidence,  
Withheld Nicholas's exculpatory statement, and  
Later contradicted its own theory in post-conviction filings.

This Brady violation prejudiced the defense and denied a fair trial. Reasonable jurists could debate the denial; a COA should have issued.

H. INEFFECTIVE ASSISTANCE FAILURE TO INVESTIGATE PAUL LOVE AND ANTHONY DIAZ

(i) The Claim

Mr. Lee alleged that counsel Michael Sporn rendered ineffective assistance by failing to investigate or interview two exculpatory witnesses:

Paul Love, who submitted a sworn affidavit stating that government cooperators Keith Harry, Andrea Davidson, Mark Gabriel, Shanikwa Burke, and Bobby Moore had conspired to lie in exchange for leniency. (Doc. 6 at 55; Ex. I).

Anthony Diaz, who wrote directly to Sporn offering to testify that these cooperators fabricated stories about Lee to gain \$ 5K1.1 reductions. (Doc. 6, Ex. J).

Despite the clear exculpatory value and accessibility of both witnesses, Sporn did not follow up.

(ii) District Court's Findings Were Unsupported

The court denied the claim based on Sporn's vague assertion:

"Our investigator attempted to contact both individuals neither was willing to speak nor confirm Petitioner's assertions." (App. B at 14; citing Sporn Decl. ¶ 15).

(iii) Sporn's Declaration Lacked Specificity

Sporn's declaration merely stated that "our investigator reached out either to lawyers for inmates or interviewed inmates." (Doc. 751. ¶ 15). It did not:

Identify who was contacted,  
Indicate when or how,  
Mention Love or Diaz by name, or  
Provide notes, results, or dates.

Such generalities fail to demonstrate reasonable diligence under Strickland, 466 U.S. 668.

(iv) Prior Declarations Equally Deficient

In his prior Rule 33 response, Sporn vaguely stated:

"I had a conversation with at least one co-defendant lawyer." (Doc. 6 at 83)

"Our investigator interviewed many inmates." (Id. ¶ 4)

No specifics, documentation, or identification of Love or Diaz were provided.

(v) Contrary Evidence from Mr. Lee

Mr. Lee submitted:

A sworn affidavit from Paul Love confirming knowledge of the cooperators' conspiracy and his willingness to testify.

A letter from Anthony Diaz identifying the same cooperators and stating they fabricated stories for sentencing benefits.

These submissions were detailed and verifiable, yet the district court ignored them, crediting Sporn's conclusory declaration instead.

(vi) Legal Error: Improper Deference to Counsel

By accepting counsel's vague assertions over the petitioner's documentary evidence, the district court violated *Gallego v. United States*, 174 F.3d 1196, 1198-99 (11th Cir. 1999) ("courts cannot adopt a per se 'credit counsel' rule where the record shows conflicting testimony without adequate support").

Under *Wiggins v. Smith*, 539 U.S. 510 (2003), reasonable counsel must investigate credible exculpatory leads. Sporn's failure to pursue Love and Diaz who were identified, reachable, and offered cooperation was objectively unreasonable.

Conclusion (Love and Diaz Issue)

The failure to investigate Love and Diaz deprived the jury of compelling impeachment evidence exposing a coordinated effort by multiple cooperators to fabricate testimony in exchange for leniency.

The district court's reliance on vague defense declarations over sworn, corroborated evidence was clearly erroneous. Reasonable jurists could debate this issue; a COA should have issued.

## I. DISCOVERY REQUEST MISCHARACTERIZED AND WRONGLY DENIED

### (i) Overview of the Claim

Mr. Lee sought specific discovery to support his constitutional claims of ineffective assistance, Brady violations, and prosecutorial misconduct. His requests included:

- Detective Smith's rough notes;
- State and federal police reports and notes documenting interactions with Ms. Maxine Clark related to identification procedures particularly whether Ms. Clark had been shown Mr. Lee's photograph and failed to identify him. (See Doc. 14 at 13; Doc. 15).

These materials were not speculative; they were tied directly to trial testimony and existing DD-5 reports referencing the PIMS photo array process.

### (ii) The District Court Mischaracterized the Discovery Request

In denying discovery, the district court framed Lee's motion (citing Doc. 13) as a request for:

"Any and all information the government or Mr. Sporn has or had in their possession concerning the identification of the perpetrators."  
(App. B at 14 15)

This characterization was inaccurate and misleading. It ignored Lee's updated and narrowed discovery requests (Docs. 14 and 15), which:

1. Identified specific materials sought (Detective Smith's notes, photo array records, DD-5 reports);
2. Targeted law enforcement agencies directly involved in Ms. Clark's identification procedures; and
3. Focused on a discrete factual issue whether Ms. Clark had been shown Mr. Lee's photograph and failed to identify him prior to trial.

The court's restatement of the request as a generalized "fishing expedition" distorted its purpose and improperly broadened its scope.

### (iii) The Requested Discovery Was Legally Justified

Under *Bracy v. Gramley*, 520 U.S. 899, 909 (1997), a habeas petitioner is entitled to discovery where there is "reason to believe that the requested material may well contain favorable evidence."

Mr. Lee easily met this standard. He alleged, with factual support, that:

- Ms. Clark had viewed his photograph and did not identify him as a perpetrator;
- The police and prosecution suppressed that fact; and
- Defense counsel failed to investigate or present this exculpatory evidence.

These allegations were specific, credible, and grounded in the record, including:

- Trial testimony suggesting Clark was shown multiple arrays;
- DD-5 police reports referencing early identification procedures; and
- Detective Puska's testimony that PIMS photos could be retrieved through officer-entered numerical codes.

(Trial Tr. 3346:9 19).

(iv) Discovery Was Essential to Core Constitutional Claims

The requested materials were not collateral; they were central to Lee's claims. Access to Detective Smith's notes and PIMS records could have demonstrated:

1. That Ms. Clark failed to identify Mr. Lee despite multiple opportunities;
2. That trial counsel (Sporn) failed to investigate or present that fact; and
3. That the government withheld exculpatory evidence and failed to correct the record.

Lee explicitly tied his discovery requests to these constitutional issues, citing:

- Suppressed photo array records;
- Missing police notes and reports; and
- The government's refusal to produce Detective Smith for examination.

(Doc. 6 at 27; Doc. 774 at 13 14).

Thus, the discovery was not an attempt to relitigate facts, but to obtain the documentary foundation for claims already pled.

(v) The District Court's Denial Was Debatable and Unreasonable

The district court dismissed Lee's request as overly broad without engaging with the Bracy standard or the specificity of the materials sought. It further ignored that:

- The discovery targeted identified and existing documents already referenced in trial records;
- The materials were essential to evaluating claims of ineffective assistance and Brady suppression; and
- The denial effectively foreclosed factual development of Lee's constitutional claims.

Reasonable jurists could readily debate whether denying access to this limited discovery when it directly implicated Brady and Strickland issues was proper.

Conclusion (Discovery)

The district court misstated the scope of Mr. Lee's discovery request and failed to apply controlling law under *Bracy v. Gramley*.

Mr. Lee sought narrowly tailored, material evidence critical to his claims of:

- Ineffective assistance of counsel;
- Brady violations; and
- Governmental misconduct.

The denial of discovery was factually unsupported and legally unsound.

Because reasonable jurists could debate the propriety of that denial, a Certificate of Appealability should have issued.

[REDACTED]

2. The District Court's Reliance on a False Affidavit Violates Due Process

The district court relied upon a conclusory and demonstrably false affidavit from trial counsel to reject multiple ineffective-assistance-of-counsel claims. Such reliance violates the fundamental fairness required by the Due Process Clause. See *Mooney v. Holohan*, 294 U.S. 103 (1935); *Napue v. Illinois*, 360 U.S. 264 (1959).

False or misleading evidence regardless of its source cannot constitutionally serve as the basis for denying a prisoner the opportunity to prove a violation of his constitutional rights. The district court's wholesale adoption of Attorney Sporn's materially false affidavit (Doc. 751) without permitting confrontation or a hearing deprived Mr. Lee of the right to a fair and meaningful adjudication. The use of such false declarations to dispose of constitutional claims offends the most basic notions of due process and judicial integrity.

3. The Lower Court Mischaracterized Claims and Adopted Post Hoc Rationalizations

The district court repeatedly reframed Mr. Lee's constitutional claims, disregarding their factual and legal foundation. Instead of evaluating the claims as presented, the court substituted diluted, incomplete versions, and then adopted rationalizations offered by the government after the fact. See, e.g., Doc. 764 at 27 (government falsely asserting "Lee was not alleged to have directly participated in the Decatur Avenue robbery"); *id.* at 31 (falsely asserting "the government did not allege that Lee killed Campbell"); *id.* at 18 (narrowing Lee's claim to only the August 25, 2000 PIMS array); *id.* at 21 (recategorizing the dying-declaration claim as merely concerning "inconsistencies").

The district court accepted these mischaracterizations wholesale, contrary to this Court's directives in *Wiggins v. Smith*, 539 U.S. 510 (2003), and *Rompilla v. Beard*, 545 U.S. 374 (2005), which require faithful consideration of the record and the petitioner's actual allegations. Due process demands meaningful adjudication not the rubber-stamping of government rationalizations that contradict the evidentiary record.

4. The Refusal to Grant Discovery or an Evidentiary Hearing Was an Abuse of Discretion

Despite clear and material factual disputes including whether exculpatory evidence was suppressed (*Brady*), whether trial counsel failed to investigate, and whether the prosecution misled the jury the district court denied discovery and refused to hold an evidentiary hearing. This refusal conflicts with long-established precedent requiring evidentiary development where substantial factual issues remain unresolved. See *Townsend v. Sain*, 372 U.S. 293 (1963); *Machibroda v. United States*, 368 U.S. 487 (1962).

Where allegations are specific, well-supported, and material to constitutional claims, courts cannot constitutionally resolve them "on paper alone." The denial of an evidentiary hearing under such circumstances is itself a violation of due process, as it deprives the petitioner of any meaningful opportunity to establish the factual basis of his claims.

5. The Court of Appeals' Denial of a Certificate of Appealability Conflicts with This Court's Precedents

This Court has made clear that a Certificate of Appealability ("COA") must issue whenever "jurists of reason could disagree with the district court's resolution of [a] constitutional claim" or where "the issues presented are adequate to deserve encouragement to proceed further." *Slack v. McDaniell*, 529 U.S. 473, 484 (2000). The threshold is intentionally low. *Miller-El v. Cockrell*, 537 U.S. 322, 338 (2003).

Yet the Court of Appeals denied a COA without addressing the constitutional significance of the district court's reliance on false declarations and misrepresentations. That denial directly contravenes *Slack* and *Miller-El*, and effectively insulated serious constitutional violations from appellate review. As this Court emphasized in *Buck v. Davis*, 580 U.S. 100, 115-16 (2017), denials

of a COA raise independent constitutional concerns when substantial constitutional questions are present but summarily dismissed.

#### 6. Review Is Needed to Preserve the Integrity of the Judicial Process

The legitimacy of the judicial process depends on courts adjudicating cases based on accurate records and truthful evidence. When district courts rely on false or misleading materials, and appellate courts refuse to allow review, the integrity of the judicial system is imperiled. As this Court observed in *Banks v. Dretke*, "prosecutors' dishonest conduct or unwarranted concealment should attract no judicial approbation." 540 U.S. 668, 696 (2004).

This case exemplifies that danger. If the decision below stands, it will sanction a process in which constitutional claims can be dismissed on the basis of falsehoods, and appellate review foreclosed in contravention of this Court's precedents. Review is warranted to restore uniformity among the lower courts, safeguard due process, and preserve public confidence in the fairness and integrity of federal post-conviction proceedings.

#### 7. Corrected Misapplication of COA Standard

This Court has previously corrected misapplications of the COA standard in other circuits on a case-by-case basis. In *Tharpe v. Sellers* for instance, this Court recently found that the Eleventh Circuit erroneously denied a COA and failed to apply the proper standard whether jurists of reason could debate the question presented. 138 S. Ct. 545, 546 (2018). In another recent case questioning the retroactive applicability of a new rule, this Court reversed the Eleventh Circuit's decision to deny a COA on the basis that the debatable question "Implicated a broader legal issue", *Welch v. United States*, 1365 S. Ct. 1257, 1264 (2016). In *Miller-El v. Cockrell*, this Court found that the Fifth Circuit used "too demanding a standard" in denying a COA. 537 U.S. 322, 341 (2003). This court further reiterated that the COA standard is meant as a "threshold" determination and only requires a showing of a debatable issue among jurists. *Id.* at 327. A year after *Miller-El*, this Court reversed two Fifth Circuit COA denials because the petitioner's made "substantial showings of the denial of a constitutional right" and that their issues presented were debatable. See *Tennard v. Dretke*, 542 U.S. 274, 252 (2004) (Quoting 18 U.S.C. subsection 2253(c)(2)(2012); *Banks v. Dretke*, 540 U.S. 668, 674 (2004). In 2017, this Court applied reasoning from *Miller-El* to find that the petitioner met the threshold for receiving a COA and reversed the decision of the lower Court. See *Buck* 137 S. Ct. at 773-74.

This Court has emphasized the importance of maintaining uniformity in upholding the COA standard when granting Certificates of Appealability. In *McGee McFadden*, Justice Sotomayor acknowledged that "unless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down." 139 S. Ct. 2608, 26 (Mem)(2019) (Sotomayor, J.) dissenting from denial of certiorari ("Any given filing, though it may feel routine to the judge who plucks it from the top of a large stack--could be the petitioner's last, best shot at relief from an unconstitutional imposed sentence"). Justice Sotomayor also warned against using the COA standard as a "rubber stamp" *Id.* ("The large volume of COA request, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp"). Justices of this Court have also emphasized that the COA standard is meant only as a threshold inquiry for appellate review. *Jordan v. Fisher*, 135 S. Ct. 2647, 2652 (Mem)(2015) (Sotomayor, J., joined by Ginsburg and Kagan, JJ. dissenting from denial of certiorari) ("In cases where a habeas petitioner makes a threshold showing that his constitutional rights were violated, a COA should issue")

The courts treatment of Lee's COA application, improperly prohibited him from challenging violations of his constitutional rights. The Second Circuit has "unduly restricted the pathway to appellate review" for Mr. Lee by denying his COA application and the reconsideration on that denial. *Id.* Mr. Lee's case exemplifies the breakdown of the COA process that this Court has previously remedied on a case-by-case basis but should now address in this instance and more systematically.

CONCLUSION

Mr. Lee respectfully submits that reasonable jurist could disagree with the district courts conclusion regarding:

1. Ineffective assistance of counsel due to failures to:
  - investigate exculpatory witnesses
  - Present dying declarations
  - Cross examine key detectives
  - Subpoena available corroborating testimony
  - Act on exonerating police records
2. Prosecutorial misconduct, including:
  - Suppression of exculpatory evidence (Brady violations)
  - False implications of Lee's involvement in uncharged murder
  - Misleading the court about witness availability and evidence traceability
3. Mischaracterization of factual and procedural claims, such as:
  - Down playing the dying declaration of Oniel Johnson
  - Misstating the nature of the discovery request
  - Accepting vague, unsupported defense declarations over sworn affidavits and record evidence
4. Due process violations, resulting from:
  - Improper summation
  - Use of knowingly false testimony
  - Withholding exculpatory evidence
  - Failing to correct material misrepresentations.

This case presents multiple, substantial constitutional claims supported by the record and documentary evidence. The Second Circuits refusal to grant a COA in the face of these claims violate the spirit and letter of this courts precedent in Slack, Miller-El, and Buck. It also represents a broader systemic concern: that district courts can insulate erroneous habeas denials from appellate review by relying on mischaracterizations, false declarations, and procedural shortcuts.

This court should intervene to correct that error, clarify the COA standard, and reaffirm that collateral review must remain a meaningful safeguard of constitutional rights.

PRAYER FOR RELIEF

For the foregoing reasons Petitioner Hisan Lee respectfully prays that the Court grants this petition for writ of certiorari and remand with instructions to issue a certificate of appealability of all raise claims.

In the alternative, Lee seeks the Court's extraordinary intervention under its supervisory powers, given the repeated misconduct, record misreading, and clear break down of adversarial process in this case.

Respectfully & Sincerely submitted,

Hisan Lee

Hisan Lee (Pro Se)

November 6 2025