No. _____

IN THE

Supreme Court of the United States

EMANUEL JOHNSON, SR.,

Petitioner,

v.

SECRETARY, FLORIDA DEPARTMENT OF CORRECTIONS,

Respondent.

On Petition for a Writ of Certiorari to the Eleventh Circuit Court of Appeals

PETITION FOR WRIT OF CERTIORARI

CAPITAL CASE

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CAPITAL CASE

QUESTIONS PRESENTED

Emanuel Johnson, Sr., has been convicted and sentenced to die for two unrelated murders. Despite Mr. Johnson already having tried to discharge his postconviction counsel (CCRC-M) in state court due to an alleged conflict of interest, CCRC-M remained on his case and carried it into federal court. Faced with a history of his attorneys' shortcomings, Mr. Johnson attempted to preserve all reasonably meritorious federal claims for relief by timely filing two pro se 28 U.S.C. § 2254 petitions (one per capital case). These petitions contained claims CCRC-M had previously failed to raise, and which Mr. Johnson had presented to the state court via pro se filings. When CCRC-M timely filed two § 2254 petitions (one per capital case) the following day, an administrative anomaly inadvertently resulted in the creation of four separate dockets (two per capital case). One docket per capital case contained Mr. Johnson's pro se claims, and one contained the counseled claims. Thus, what should be one holistic 28 U.S.C. § 2254 action per capital case has instead been separated into two actions that are inextricably intertwined, not only in terms of the underlying convictions and sentences implicated, but also the claims and procedural arguments at issue.

Further complicating matters, Mr. Johnson was appointed conflict-free counsel to represent him on the pro se dockets, because the district court recognized CCRC-M's performance was critical to resolution of the claims. However, even though the same issues regarding CCRC-M's representation in state court were similarly applicable to the two counseled § 2254 petitions, conflict-free counsel was not substituted in those actions.

Despite being repeatedly warned that continued docket separation would cause chaos and impede fair review of Mr. Johnson's claims, the lower courts failed to take corrective action because the district court considered consolidation "unwieldy" and it would lay bare the conflict of interest possessed by prior state postconviction counsel. As a result, Mr. Johnson is in the uniquely harmful position of having exhausted § 2254 review in one habeas action per conviction and sentence—which is now being used to disadvantage his still-pending initial § 2254 proceedings challenging the same convictions and sentences.

The questions presented are:

1. Under the threshold certificate of appealability standard, could reasonable jurists debate a district court's refusal to consolidate inextricably intertwined initial 28 U.S.C. § 2254 dockets pertaining to the same underlying convictions and death sentences, where failure to do so frustrates his opportunity for a full, fair, and complete round of initial habeas review?

2. Given this Court's precedent in *Martel v. Clair*, 565 U.S. 648 (2012), and *Christeson v. Roper*, 574 U.S. 373 (2015), could reasonable jurists debate the district court's failure to appoint conflict-free counsel where the court's own rulings indicated present counsel's prior performance and conflict-free representation was at issue?

LIST OF DIRECTLY RELATED PROCEEDINGS

Per Supreme Court Rule 14.1(b)(iii), the following cases relate to this petition:

Proceedings Related to Iris White Capital Case

Trial and Sentencing

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-3199-CF-A-N1 (First-Degree Murder)
88-3198-CF-A-N1 (Armed Burglary)
Decided: May 24, 1991 (conviction)
June 28, 1991 (sentence imposed)
Published: Unreported

Direct Review

Caption: *Johnson v. State*
Court: Florida Supreme Court
Docket: SC60-78336
Decided: July 13, 1995 (affirming)
Published: 660 So. 2d 637 (Fla. 1995)

State Collateral Review

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3199 (First-Degree Murder)
88-CF-3198 (Armed Burglary)
Decided: September 16, 2010 (denying Initial State Postconviction Motion)
Published: Unreported

Caption: *Johnson v. State*
Court: Florida Supreme Court
Docket: SC10-2008
Decided: November 8, 2012 (affirming)
Published: 104 So. 3d 1010 (Fla. 2012)

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3199 (First-Degree Murder)
88-CF-3198 (Armed Burglary)
Decided: March 30, 2016 (denying Motion to Vacate based on newly discovered

evidence)
Published: Unreported

Caption: *Johnson v. State*
Court: Florida Supreme Court
Docket: SC2016-0959
Decided: December 9, 2016 (affirming)
Published: 2016 WL 7176765 (Fla. 2016) (Unreported in So. Rptr.)

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3199 (First-Degree Murder)
88-CF-3198 (Armed Burglary)
Decided: April 24, 2017 (denying Motion to Vacate based on *Hurst v. Florida*)
Published: Unreported

Caption: *Johnson v. State*
Court: Florida Supreme Court
Docket: SC2017-1401
Decided: February 2, 2018 (affirming)
Published: 236 So. 3d 232 (Fla. 2018)

Certiorari Review

Caption: *Johnson v. Florida*
Court: United States Supreme Court
Docket: 95-7969
Decided: April 22, 1996 (denying certiorari)
Published: 517 U.S. 1159 (1996)

Caption: *Johnson v. Florida*
Court: United States Supreme Court
Docket: 18-5088; Linked with 17A985
Decided: October 1, 2018 (denying certiorari)
Published: 586 U.S. 882 (2018)

Federal Habeas Review

Caption: *Johnson v. Secretary, Department of Corrections*
Court: United States District Court for the Middle District of Florida
Docket: 8:13-cv-381
Decided: March 27, 2024 (denying habeas relief on pro se petition)
Published: 2024 WL 1299281 (M.D. Fla. Mar. 27, 2024)

Caption: *Johnson v. Florida*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 25-10943
Decided: August 8, 2025 (denying certificate of appealability)
Published: Unreported

Caption: *Johnson v. Secretary, Department of Corrections et al.*
Court: United States District Court for the Middle District of Florida
Docket: 8:13-cv-392
Decided: Pending (counseled petition)
Published: N/A

Proceedings Related to Jackie McCahon Capital Case

Trial and Sentencing

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-3200-CF-A-N1 (First-Degree Murder)
88-3438-CF-A-N1 (Armed Burglary)
Decided: June 7, 1991 (conviction)
June 28, 1991 (sentence imposed)
Published: Unreported

Direct Review

Caption: *Johnson v. State*
Court: Florida Supreme Court
Docket: SC60-78337
Decided: July 13, 1995 (affirming)
Published: 660 So. 2d 648 (Fla. 1995)

State Collateral Review

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3200 (First-Degree Murder)
88-CF-3438 (Armed Burglary)
Decided: September 16, 2010 (denying Initial State Postconviction Motion)
Published: Unreported

Caption: *Johnson v. State*
Court: Florida Supreme Court

Docket: SC10-2219
Decided: November 8, 2012 (affirming)
Published: 104 So. 3d 1032 (Fla. 2012)

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-3200-CF-A-N1 (First-Degree Murder)
88-3438-CF-A-N1 (Armed Burglary)
Decided: April 24, 2017
Published: Unreported (denying Motion to Vacate based on *Hurst v. Florida*)

Caption: *Johnson v. State*
Court: Florida Supreme Court
Docket: SC2017-1402
Decided: February 2, 2018 (affirming)
Published: 236 So. 3d 232 (Fla. 2018)

Certiorari Review

Caption: *Johnson v. Florida*
Court: United States Supreme Court
Docket: 95-7970
Decided: April 22, 1996 (denying certiorari)
Published: 517 U.S. 1159 (1996)

Caption: *Johnson v. Florida*
Court: United States Supreme Court
Docket: 17A985; Linked with 18-5088
Decided: October 1, 2018 (denying certiorari)
Published: 586 U.S. 882 (2018)

Federal Habeas Review

Caption: *Johnson v. Secretary, Department of Corrections*
Court: United States District Court for the Middle District of Florida
Docket: 8:13-cv-382
Decided: March 27, 2024 (denying habeas relief on pro se petition)
Published: 2024 WL 1299281 (M.D. Fla. Mar. 27, 2024)

Caption: *Johnson v. Secretary, Department of Corrections*
Court: United States Court of Appeals for the Eleventh Circuit
Docket: 25-10947
Decided: August 8, 2025 (denying certificate of appealability)
Published: Unreported

Caption: *Johnson v. Secretary, Department of Corrections et al.*
Court: United States District Court for the Middle District of Florida
Docket: 8:13-cv-393
Decided: Pending (counseled petition)
Published: N/A

Proceedings Related to Kate Cornell Noncapital Case

Trial and Sentencing

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3202
Decided: April 26, 1991
Published: Unreported

Direct Review

Caption: *Johnson v. State*
Court: Florida Second District Court of Appeals
Docket: 2D1991-2368
Decided: October 6, 1995 (affirming)
Published: 662 So. 2d 349 (Table) (Fla. 2d DCA 1995)

State Collateral Review

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3202
Decided: September 16, 2010 (denying postconviction motion)
Published: Unreported

Caption: *Johnson v. Florida*
Court: Florida Second District Court of Appeals
Docket: 2D10-5482
Decided: May 23, 2012 (affirming)
Published: 100 So. 3d 692 (Table) (Fla. 2d DCA 2012)

Federal Habeas Review

Caption: *Johnson v. Secretary, Department of Corrections*
Court: United States District Court for the Middle District of Florida
Docket: 8:13-cv-895

Decided: July 26, 2013 (granting motion to dismiss)
Published: Unreported

Proceedings Related to Lawanda Giddens Non-Capital Case

Trial and Sentencing

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3246
Decided: May 14, 1991
Published: Unreported

Direct Review

Caption: *Johnson v. State*
Court: Florida Second District Court of Appeals
Docket: 2D1991-02373
Decided: October 6, 1995 (affirming)
Published: 662 So. 2d 349 (Table) (Fla. 2d DCA 1995)

State Collateral Review

Caption: *State v. Johnson*
Court: Circuit Court of the Twelfth Judicial Circuit, Sarasota County, Florida
Docket: 88-CF-3246
Decided: September 16, 2010 (denying postconviction motion)
Published: Unreported

Caption: *Johnson v. State*
Court: Florida Second District Court of Appeals
Docket: 2D10-5481
Decided: May 23, 2012 (affirming)
Published: 100 So. 3d 692 (Table) (Fla. 2d DCA 2012)

Federal Habeas Review

Caption: *Johnson v. Secretary, Department of Corrections*
Court: United States District Court for the Middle District of Florida
Docket: 8:13-cv-894
Decided: December 4, 2013 (granting motion to dismiss)
Published: Unreported

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DECISION BELOW

The Eleventh Circuit's denial of Mr. Johnson's application for a certificate of appealability (COA) is reproduced in the Appendix at A2..

JURISDICTION

On August 8, 2025, the Eleventh Circuit denied Mr. Johnson's motion for COA. App. A2. Rehearing was denied on September 19, 2025. App. A1. This Court granted an extension of time to file a petition for writ of certiorari until January 16, 2026. *See* No. 25A671. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment provides, in relevant part:

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

28 U.S.C. § 2253 provides, in relevant part:

> (a) In a habeas corpus proceeding…before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.
>
> * * * * *
>
> (c)(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—
>
> (A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court[.]
>
> * * * * *
>
> (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.

STATEMENT OF THE CASE[1]

I. Introduction

Throughout Emanuel Johnson's capital appellate process, he has been forced to self-advocate due to his appointed attorneys' shortcomings. In diligent efforts to preserve all reasonably meritorious issues available, Mr. Johnson presented issues pro se when his attorneys failed to raise or adequately present those issues to the state and federal courts. In the context of federal habeas review, in which his state-court postconviction attorneys (CCRC-M[2]) continued to represent him, Mr. Johnson endeavored to preserve claims, including those excusable under *Martinez v. Ryan*,

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[1] Mr. Johnson has two separate convictions and death sentences, with both a pro se and counseled docket for each, making a total of four federal habeas dockets. Because the claims regarding each underlying conviction/sentence are often nearly identical, citations to both will be provided, except for where they expressly deviate. The following citations will be used: "Pro Se-IW" refers to Mr. Johnson's pro se filings in Case No. 8:13-cv-381 (M.D. Fla.); "Pro Se-JM" refers to his pro se filings in Case No. 8:13-cv-382 (M.D. Fla.); "CCRC-IW" refers to the counseled filing in Case No. 8:13-cv-392 (M.D. Fla.); and "CCRC-JM" refers to the counseled filing in Case No. 8:13-cv-393. State postconviction records will be cited as "[volume number] [IW or JM]-PCR [page number]". Likewise, the two state-court records on appeal ("ROA") will be referenced by volume and page number, with the first letter of the victim's last name immediately following the volume number (e.g., "1 W ROA 12"). Citations to the state court postconviction records ("PCR") follow the same format. The district court denials from the pro se dockets are included in the appendix to this petition. The Eleventh Circuit decisions underlying this petition are included in the appendix to this petition and are further located at: Case No. 10-10943 (11th Cir.), ECF 15, 17, and Case No. 10-10947 (11th Cir.), ECF 15, 17. The dockets in the Eleventh Circuit are essentially identical; thus, citations to filings there will simply be referred to as "CA11-ECF [#]".

[2] Capital Collateral Regional Counsel – Middle Region.

566 U.S. 1 (2012), by advancing pro se arguments his attorneys would not raise. Due to an administrative anomaly, two dockets per habeas case were created—one for the counseled claims, and one for the associated pro se filings.

Recognizing that CCRC-M was conflicted from evaluating the effectiveness of their own performance, the district court appointed the Capital Habeas Unit of the Federal Public Defender for the Northern District of Florida (CHU-N) to represent Mr. Johnson regarding the pro se dockets. CHU-N filed a memorandum in support of the pro se claims, which in addition to supplementing his arguments raised concerns that CCRC-M had a conflict of interest pervading both the counseled and pro se litigation. Because the two tracks of litigation in each case were inextricably intertwined, CHU-N advocated for the consolidation of the pro se and counseled dockets, and CCRC-M's replacement with conflict-free counsel to represent Mr. Johnson regarding the entirety of his claims. But the district court failed to meaningfully engage with this issue and simply denied Mr. Johnson's pro se "applications for the writ of habeas corpus[.]" A2 at 20. Neither the district court nor the Eleventh Circuit granted a certificate of appealability (COA).

The final orders and judgments below have placed Mr. Johnson in an unacceptable procedural position. Habeas petitions pertaining to the same underlying convictions and sentences remain pending in federal district court on the counseled dockets. These pending petitions contain claims that are inextricable from those filed on the pro se dockets, and the pro se orders are presently being utilized by opposing counsel to defeat numerous aspects of Mr. Johnson's counseled petitions. All

the while, Mr. Johnson's counsel in the pending § 2254 proceedings labors under a conflict of interest that was detailed out in the pro se proceedings and precludes them from making Mr. Johnson's strongest procedural and constitutional arguments in the open dockets. Thus, without this Court's intervention, Mr. Johnson will be deprived of access to one full and fair round of habeas review.

II. Relevant factual and procedural history

In 1991, Mr. Johnson was sentenced to death in Sarasota County, Florida, for the unrelated murders of Iris White and Jackie McCahon. From the date Mr. Johnson's capital sentences were imposed, the two capital cases have been on identical tracks, including pleading deadlines for nearly verbatim filings; consolidated hearings on essentially the same claims; and decisions being issued in each case simultaneously—often in a joint opinion.

On direct appeal, the Florida Supreme Court affirmed Mr. Johnson's convictions and death sentences. *Johnson v. State*, 660 So. 2d 637 (Fla. 1995); *Johnson v. State*, 660 So. 2d 648 (Fla. 1995), *cert. denied*, *Johnson v. Florida*, 517 U.S. 1159 (1996) (both cases). The Florida Supreme Court appointed CCRC-M to represent Mr. Johnson in state postconviction proceedings. In 2008, prior to an evidentiary hearing on his postconviction motions, Mr. Johnson filed a pro se motion raising a conflict of interest and implying ineffective assistance of postconviction counsel due to CCRC-M's failure to plead certain claims. Mr. Johnson raised the claims pro se and moved for CCRC-M's removal. However, Mr. Johnson acquiesced to CCRC-M remaining as state-court counsel after all parties and the court agreed to adopt and

include his pro se claims at the evidentiary hearing. 3 IW-PCR 256-358; 9 IW-PCR 1602-08; 10 IW-PCR 1701-02, 1772; 21 IW-PCR 3822; 5 JM-PCR 597-699; 16 JM-PCR 2915-16; 16 JM-PCR 2972-98; 19 JM-PCR 3495.

When the trial court ultimately denied relief, CCRC-M appealed to the Florida Supreme Court but failed to file an accompanying state habeas petition. Mr. Johnson attempted to file both separate pro se appeals and state habeas petitions, which together presented such claims as ineffective assistance of trial counsel, ineffective assistance of direct appeal counsel, prosecutorial misconduct, and judicial bias. The Florida Supreme Cout dismissed the pro se appeals and state habeas petitions without engagement—presumably because Mr. Johnson was represented by counsel. Then, the Florida Supreme Court affirmed his convictions and sentences. *Johnson v. State*, 104 So. 3d 1010 (Fla. 2012); *Johnson v. State*, 104 So. 3d 1032 (Fla. 2012). CCRC-M did not seek certiorari review of these decisions.

On February 11, 2013, Mr. Johnson timely filed a pro se § 2254 petition in federal district court, raising four constitutional claims challenging his convictions and death sentences in the White case. On the same date, he filed a separate but identical pro se § 2254 petition in the McCahon case. Mr. Johnson explained in the petitions that although he had sufficiently pleaded those claims pro se in the Florida Supreme Court, that court had dismissed the filings. He also alleged that CCRC-M's failure to include his four pro se claims in the counseled Florida Supreme Court filings—and failure to file state habeas petitions at all—constituted ineffective assistance of counsel at initial review collateral proceedings under *Martinez*. Pro Se-

IW, ECF 1; Pro Se-JM, ECFs 1, 2.

The next day, CCRC-M filed separate § 2254 petitions—in the same court but under different docket numbers—raising various other claims challenging Mr. Johnson's convictions and death sentences. The CCRC-M petitions did not include the pro se claims. CCRC-IW, ECF 1; CCRC-JM, ECF 1.

Shortly after Mr. Johnson's counseled and pro se claims were separately docketed, Mr. Johnson (pro se) filed a "Notice of Pendency of Other Actions" pursuant to the local court rules, noting that the pro se cases related to the counseled filings by CCRC-M. Pro Se-IW, ECF 5. Rather than consolidating all of Mr. Johnson's habeas claims in one counseled docket each for the White and McCahon cases—which could easily have been accomplished by dismissing the pro se dockets without prejudice and entering Mr. Johnson's pro se petitions onto the counseled dockets and construing them as amendments—the district court instead kept all four docket numbers open.

Despite recognizing that the pro se and counseled petitions were inextricable, the district court kept them on separate tracks for review. On September 30, 2013, the court stayed and administratively closed the counseled proceedings pending *Martinez* review of the pro se claims, explaining:

> A conflict of interest might exist if, as Johnson alleges in his pro se applications, present counsel rendered ineffective assistance during the state post-conviction proceedings. **Additionally, an applicant must pursue all challenges to a judgment in a single federal application.** As a consequence, the two applications filed by counsel (13-cv-392 and 13-cv-393) must await a determination of Johnson's allegations in his pro se applications that present counsel rendered ineffective assistance.

CCRC-IW, ECF 17 at 3; CCRC-JM, ECF 14 at 3 (emphasis added). The court

determined that separate counsel should be appointed to conduct a *Martinez* review of the pro se claims, CCRC-IW, ECF 8; CCRC-JM, ECF 7, and after difficulties in obtaining qualified conflict-free counsel, ultimately appointed CHU-N for this explicitly limited purpose. Pro Se-IW, ECF 62, 80; Pro Se-JM, ECF 58, 76.

In a December 16, 2019, memorandum in support of Mr. Johnson's pro se petitions, CHU-N asserted that CCRC-M performed deficiently or worse in its presentation of his pro se state-court claims. Acknowledging that the scope of its appointment was limited to *Martinez* review of the four pro se claims, CHU-N explained that in the course of such review, it had discovered numerous deficiencies related to CCRC-M's state and federal representation that, if left unaddressed at that juncture, would bleed over into adjudication of the counseled claims. *See, e.g.*, Pro Se-IW, ECF 81 at 60-74, 76, 113-566; Pro Se-JM, ECF 77 at 60-74, 76, 113-566. CHU-N urged the district court to consolidate the pro se and counseled dockets, explaining that:

> [F]ull and fair adjudication of Mr. Johnson's federal habeas claims would be best facilitated by consolidating his four dockets in this Court, and appointing new counsel to replace CCRC-M as Mr. Johnson's sole federal habeas counsel under 18 U.S.C. § 3599, with instructions for new counsel to file a single amended petition that includes both Mr. Johnson's pro se claims as well as the claims raised in CCRC-M's counseled petition and any other appropriate claims that may have been exhausted during Mr. Johnson's state litigation. Substitute counsel would be in the best position to litigate Mr. Johnson's federal habeas case as a whole, without the myriad issues of conflict raised by CCRC-M's representation in the state courts and Mr. Johnson's pro se § 2254 allegations.

Pro Se-IW, ECF 81 at 186-87; Pro Se-JM, ECF 77 at 186-87.

On March 27, 2024, the district court denied the pro se § 2254 petitions and

denied a COA regarding the claims contained within. App. A4. The court noted that "review is complicated because four actions challenge [Mr. Johnson's] two convictions, specifically, [he] challenges each conviction both pro se and by postconviction counsel." *Id*. at 2. However, the court did not address Mr. Johnson's request to consolidate the dockets and provide conflict-free counsel to litigate the whole of his habeas claims. Instead, the court continued splitting the proceedings. To wit, the court denied pro se Ground One—without making any determination as to whether, as Mr. Johnson alleged, postconviction counsel was ineffective—yet ordered that the same underlying claim "may proceed as alleged in the Section 2254 applications filed by [that same] post-conviction counsel and based on the factual basis presented to the state courts" in the counseled habeas dockets. *Id*. at 11.

On April 23, 2024, CHU-N filed a motion to alter or amend the district court's judgment pursuant to Fed. R. Civ. P. 59(e). The motion urged the district court to reconsider its denial of the request to consolidate and ensure conflict-free counsel, explaining that failure to do so would be detrimental to full and fair adjudication of Mr. Johnson's habeas claims, as well as judicial economy. In particular, CHU-N warned of significant procedural impediments that would arise if Mr. Johnson was put in a position of seeking a COA relating to the district court's adjudication of Ground One of the pro se petitions (related to trial counsel ineffectiveness) while portions of the same claim were still pending in the counseled cases. Pro Se-IW, ECF 96 at 3-4; Pro Se-JM, ECF 92 at 3-4.

The district court denied the 59(e) motion on February 11, 2025. App. A3. As to the consolidation issue, the court stated as the reason for its refusal:

> In the two *pro se* cases Johnson alleges that his state post-conviction counsel – the attorneys who filed and represent Johnson in the other two cases (13-cv-392 and 13-cv-393) – rendered ineffective assistance in the post-conviction proceedings. What Johnson suggests would create an obvious conflict because, in an unwieldy single action, appointed counsel's position would be that co-counsel in the consolidated action—that is, state post-conviction counsel—was ineffective.

Id. at 2. Thus, without conducting any balancing tests or further review of the consolidation issue or CCRC-M's conflict, the district court simply ruled that "[c]onsolidation of the four actions is impracticable." *Id.*

On April 8, 2025, Mr. Johnson filed a motion in the Eleventh Circuit Court of Appeals to remand to the district court, citing the extraordinary obstacles to a single round of full and fair habeas review put in place by the district court's refusal to consolidate. CA11-ECF 4. That motion was denied on May 6, 2025. CA11-ECF 10. Mr. Johnson then applied for a COA on June 13, 2025, on procedural rulings regarding consolidation and counsel's conflict, as well as the underlying constitutional violations alleged in his pro se habeas petitions. A single judge denied the application on August 8, 2025. App. A2. In denying a COA, the Eleventh Circuit ruled that jurists of reason would not debate whether the district court was correct in dismissing Mr. Johnson's claims, and the district court's refusal to consolidate the petitions could not be a basis for a COA because it did not involve the denial of a constitutional right. A2 at 2-3. Mr. Johnson moved for reconsideration on August 29, 2025, largely focused on the court's misapplication of COA law by confusing the

interplay between procedural rulings and underlying substantive claims. CA11-ECF 16. Specifically, Mr. Johnson explained that he was not required to show the district court's failure to consolidate and address CCRC-M's conflict *itself* violated any specific constitutional right, only that his petition as a whole made a substantial showing of the denial of a constitutional right (*i.e.*, that one or more of his underlying habeas claims had at least some merit):

> The August 8 order misapplied [COA] law in finding dispositive that Johnson could not establish that "the lack of consolidation violated any constitutional right." (CA11-ECF 15-1 at 17.) Johnson was not required to show that the district court's failure to consolidate violated any specific constitutional right, only that his petition as a whole made a substantial showing of the denial of a constitutional right, *i.e.*, that one or more of his underlying habeas claims had at least some merit.

CA11-ECF 16 at 12. The Eleventh Circuit denied reconsideration on September 19, 2025. App. A1.

REASONS FOR GRANTING THE WRIT

I. The Eleventh Circuit's order conflicts with this Court's COA precedent.

In *Slack v. McDaniel*, 529 U.S. 473, 478 (2000), this Court explained that a district court's § 2254 procedural rulings are subject to the same COA review as claim-merit rulings—where "jurists of reason could disagree with the district court's resolution[.]" *Buck v. Davis*, 580 U.S. 100, 115 (2017). "When the district court denies a habeas petition on procedural grounds without reaching the prisoner's underlying constitutional claim, a COA should issue when the prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a valid claim of

the denial of a constitutional right[.]" *Slack*, 529 U.S. at 484; *see also Miller-El v. Cockrell*, 537 U.S. 322, 342 (2003) ("The question is the debatability of the underlying constitutional claim, not the resolution of that debate"). The same standard applies here, where the lower courts' rulings dealt with procedural aspects of each claim, rather than finding that the underlying constitutional claims would fail on their merits.

The Eleventh Circuit itself tacitly acknowledged the existence of at least debatable constitutional claims underlying the district court's procedural rulings. See A2 at 10 ("Because the district court did not address the merits of whether trial counsel was ineffective, the only ruling on review is its conclusion that the *Martinez* exception does not apply…"), 13 (recognizing no merits ruling on appellate counsel ineffectiveness claim due to procedural default), 15 (same regarding prosecutorial misconduct due process claim), 16 (recognizing that judicial bias claim outcome relied upon procedural issues below). While in Mr. Johnson's case there are two layers of procedural rulings (the consolidation and conflicted-counsel issue, and the underlying procedural bar rulings), nothing remotely suggests there is not a substantial constitutional claim at the heart of those rulings.

Mr. Johnson's pro se § 2254 petitions presented substantial underlying constitutional claims—including ineffective assistance of direct appeal counsel, prosecutorial misconduct, and judicial bias—that were fairly presented to the state courts through Mr. Johnson's pro se efforts. It also includes an ineffective assistance of trial counsel claim describing how Mr. Johnson's trial counsel impermissibly

waived attorney-client privilege in violation of his Fifth, Sixth, Eighth, and Fourteenth Amendment rights, by inviting the State to depose their confidential experts. CA11-ECF 15 at 27-29. And, whether the *Martinez* arguments excusing state-court default had merit is also a debatable question by reasonable jurists.

The Eleventh Circuit's order and judgment denying a COA are in conflict with this Court's precedent, because whether a district court's procedural denial involves a "substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253 does not turn on whether the procedural ruling *caused* the denial of such a right. All an applicant must show is that the procedural ruling in question arguably impacted the court's adjudication of—or ability to adjudicate—a constitutional claim. It is irrelevant for COA purposes whether the refusal to consolidate and appoint conflict-free counsel *itself* violated Mr. Johnson's constitutional rights.

Rather, what is relevant is whether that refusal arguably impacted adjudication of his underlying habeas claims. The district court's refusal to recognize CCRC-M's conflict and consolidate Mr. Johnson's habeas actions with conflict-free counsel directly implicates resolution of all of the underlying constitutional claims in his petition, because it impacts his ability to receive review of the claims at all. This is much akin to a district court's procedural dismissal on statute of limitations grounds, which involves the categorical denial of the underlying constitutional claims.

As there are clearly substantial constitutional claims underlying Mr. Johnson's pro se petitions, the relevant inquiry for a COA on procedural issues is simply

whether reasonable jurists could debate the district court's procedural rulings. In this case, that low threshold was clearly surpassed.

II. The district court's § 2254 resolution is reasonably debatable.

From the inception of Mr. Johnson's federal court proceedings, the district court has been on notice that the counseled and pro se dockets concerned the same convictions. Though it recognized the procedural complication that resulted, the district court refused to take corrective action because in its view, "[c]onsolidation of the four actions is impracticable." Pro Se-IW, ECF 97 at 2; Pro Se-JM, ECF 93 at 2.

Reasonable jurists could certainly debate this ruling. They could debate whether consolidation is not only appropriate in Mr. Johnson's case, but critical to protecting the federal rights he has diligently sought to preserve. *See Banister v. Davis*, 590 U.S. 504, 507, 509 (2020) (under AEDPA a state prisoner is always entitled to one "fair opportunity to seek federal habeas relief"); *see also Jones v. Hendrix*, 599 U.S. 465, 510 (2023) (Jackson, J., dissenting) (detailing congressional intent a habeas petitioner's "one bite out of the apple" under AEDPA consists of a "full, fair chance" to present their claims to the federal courts) (citations omitted). Indeed, this Court has instructed that "piecemeal" habeas litigation should be avoided. *See Rose v. Lundy*, 455 U.S. 509, 520 (1982) (by reducing piecemeal litigation, "both the courts and the prisoners should benefit, for as a result the district court will be more likely to review all of the prisoner's claims in a single proceeding, thus providing for a more focused and thorough review"); *Duncan v. Walker*, 533 U.S. 167, 180 (2001) (federal requirements are designed to reduce piecemeal litigation); *McFarland v. Scott*, 512

U.S. 849, 860 (1994) (O'Connor, J., concurring in the judgment in part) (limitations on federal review "make it especially important" that a single habeas petition "adequately set forth all of a state prisoner's colorable grounds for relief.").

Further, by any reasonable barometer, consolidation would not make proceedings any more unwieldy. Quite the opposite, as the failure to consolidate has already created chaos regarding record citations; confused the actions; and necessitated a flurry of additional pleadings (resulting in the district court's grant of Fed. R. Civ. P. 60 relief) after the district court inadvertently lifted a stay and reopened proceedings in the counseled cases rather than the pro se cases. *See* CCRC-JM, ECF 18. Now, because the district court has issued a final order and judgment denying § 2254 relief in Mr. Johnson's pro se cases, and because the Eleventh Circuit denied a COA on any issue, his pro se litigation is fully exhausted in the lower federal courts. Yet, § 2254 petitions pertaining to the same underlying convictions and death sentences remain pending on the counseled dockets. Further complicating matters, the pending petitions contain claims that have now already been partly adjudicated on the pro se dockets. And, over Mr. Johnson's repeated objections, he remains represented in the counseled dockets by counsel laboring under an actual conflict of interest. Reasonable jurists could surely debate the district court's handling of the procedural problem, and whether it has substantially impaired Mr. Johnson's ability to get full and fair habeas review.

This debatability is especially pronounced where counsel at the helm of the still-pending habeas proceedings possess a conflict. And reasonable jurists could

surely debate the district court's determination that—by refusing to consolidate the proceedings—CCRC-M may continue representing Mr. Johnson in his counseled § 2254 claims. This Court has made clear that lower courts have the responsibility to ensure that § 2254 petitioners have conflict-free counsel. *See Martel v. Clair*, 565 U.S. 648, 657-62 (2012); *see also Christeson v. Roper*, 574 U.S. 373, 379 (2015) (stating that "a district court would be compelled 'to appoint new counsel if the first lawyer developed a conflict'") (quoting *Clair*, 565 U.S. at 661). In *Christeson*, the Court emphasized that a "significant conflict of interest" arises when counsel's interest in avoiding reputational damage is "at odds with" a client's strongest federal argument. *Christeson*, 574 U.S. at 378 (quoting *Maples v. Thomas*, 565 U.S. 266, 285-86 (2012)).

Even reasonable jurists in the lower court's district have come to alternate conclusions in cases with similar issues. *See, e.g., Valentine v. Secretary,* 8:13-cv-30, ECF No. 44 (M.D. Fla. Jun. 7, 2017) (substituting existing counsel with conflict-free counsel after capital defendant moved for substitution in federal habeas proceedings); *Merck v. Secretary,* 8:13-cv-1285, ECF No. 28 (M.D. Fla. Feb. 12, 2014) (replacing CCRC-M with new counsel after finding that "[a] determination of whether Petitioner can demonstrate cause for the procedural default and prejudice under *Martinez v. Ryan* will require that CCRC-M counsel's actions be scrutinized… that inquiry would necessarily require CCRC-M counsel to defend against their client's allegations, putting them at odds with their client.").

As was clear from its order denying reconsideration, the district court mischaracterized the interplay between consolidation and counsel's conflict, stating

that consolidation would "would create an obvious conflict because, in an unwieldy single action, appointed counsel's position would be that…state post-conviction counsel[] was ineffective." Pro Se-IW, ECF 97 at 2; Pro Se JM, ECF 93 at 2. But this was an inverted view. A conflict would not be created by consolidation; rather, it presently exists and has existed for years—ever since Mr. Johnson made viable allegations of CCRC-M's ineffectiveness in defaulting his claims. That conflict remains pervasive and reasonable jurists could certainly debate the district court's attempt to skirt it.

III. Mr. Johnson is entitled to a complete round of initial federal habeas review, but this continues to be obstructed by the parsing of his dockets.

The harm presented by the lower courts' procedural rulings is not hypothetical. Since the district court's denial of the pro se actions, the failure to consolidate and substitute conflict-free counsel for CCRC-M has continued to deleteriously impact the pending § 2254 litigation. For instance, when denying a claim in Mr. Johnson's pro se § 2254 petition, the district court also ordered that the claim "may proceed as alleged in the Section 2254 applications filed by post-conviction counsel and based on the factual basis presented to the state courts" in the counseled habeas dockets. In other words, a final judgment had issued regarding a claim; yet it is also still pending on another docket. And, the district court's ruling on the pro se claim included a comment on the merits of a claim that—on the counseled docket—had not then even been answered by Respondent. This, in turn, put Mr. Johnson in the position of seeking a COA relating to the district court's adjudication of a claim while portions

of the same claim were still pending in the counseled cases. *Compare, e.g.*, Pro Se-JM, ECF 92 at 4 *with* CA11-ECF 14 at 27-40.

As another example, on February 13, 2025, two days after the district court's Fed. R. Civ. P. 59(e) denials regarding the pro se petitions, Respondent filed a motion to dismiss multiple claims in the counseled petitions. In support, Respondent asked the court to take judicial notice of the order denying the pro se petitions,

> insofar as it is relevant to claims addressed in the instant Application-specifically, Johnson's Fourth Amendment claims that are barred by *Stone v. Powell* **as well as those claims arising out of postconviction counsel's failure to challenge the effectiveness of direct appeal counsel**.

CCRC-IW, ECF 64 at 10 (footnote omitted) (emphasis added); *see also id.* at 13. In the counseled docket related to the McCahon case, Respondent used CHU-N's filings on the pro se docket to argue Mr. Johnson had conceded a dispositive fact for one of the underlying counseled claims:

> Johnson here contends that his confession should have been suppressed.…The Secretary notes, however, that Johnson has apparently conceded that the federal constitutional dimensions of this claim were not raised in state court, and [the district court] entered an order denying relief based in part on that concession. *See* case number 13-cv-382 Doc. 77 p. 69 and Doc. 90 p. 17. The Secretary…accepts Johnson's concession regarding counsel's failure to advise the state court of the constitutional dimensions of this claim. The Secretary asks [the district court] to take judicial notice of its conclusions in case number 13-cv-382 Doc. 90 as this Court's resolution of this claim in Johnson's *pro se* Application resolves the claim in the instant Application as well.

CCRC-JM, ECF 60 at 13-14. Ultimately, Mr. Johnson's ability to obtain merits review of *eighteen federal habeas claims* between the two counseled petitions depends at least in part on issues litigated in the pro se petitions, which implicate the

performance of CCRC-M. *See, e.g.*, CCRC-IW, ECF 64 at 19; CCRC-JM, ECF 60 at 21. And, as the postconviction counsel in question, CCRC-M cannot ethically pursue such a course.[3]

The district court's mishandling of the procedural problem has profoundly impeded Mr. Johnson's ability to access meaningful constitutional review thus far. Absent this Court's intervention, Mr. Johnson will not receive access to a full and "fair opportunity to seek federal habeas relief[.]" *Banister*, 590 U.S. at 507.

CONCLUSION

The Court should grant the petition for a writ of certiorari and review the Eleventh Circuit's decision below.

Respectfully submitted,

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[3] This situation is especially concerning given that CHU-N advised the district court in 2019 that CCRC-M had not included even basic federal law regarding certain claims in the counseled habeas petitions.