No. 25-6707

IN THE

Supreme Court of the United States

ELIJAH DWAYNE JOUBERT,
Petitioner,

v.

ERIC GUERRERO, Director,
Texas Department of Criminal Justice,
Correctional Institutions Division
Respondent.

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

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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CAPITAL CASE

QUESTION PRESENTED

Whether, under 28 U.S.C. § 2254(d)(1), there is clearly established federal law requiring the State to prove beyond a reasonable doubt that false evidence did not affect the jury's verdict, even where no majority of the Court has placed that burden on the State and many courts require the petitioner to prove the false evidence was material?

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BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Petitioner Elijah Joubert and two co-defendants robbed a check-cashing business, killing the responding police officer, Charles Clark, and the clerk, Alfredia Jones, for surreptitiously alerting authorities. Joubert was tried for capital murder on several liability theories, convicted, and sentenced to death. After the state courts denied relief, Joubert challenged his conviction and sentence through federal habeas proceedings. The district court denied all the claims and refused to issue a certificate of appealability (COA). The Fifth Circuit also denied Joubert's request for a COA.

Joubert now requests certiorari review of the Fifth Circuit's denial of a COA, arguing that under this Court's recent decision in *Glossip v. Oklahoma*, 604 U.S. 226, 246 (2025), the Texas Court of Criminal Appeals (CCA) misapplied this Court's precedent on collateral review by requiring him to prove false evidence was material instead of placing the burden to prove the error did not contribute to the verdict on the State. But even assuming *Glossip* purports to resolve a long-standing ambiguity on who has the burden on the materiality of a false evidence claim, Joubert still fails to show a reasonably debatable claim that the CCA misapplied clearly established federal law at the time it denied his false evidence claim. Indeed, multiple courts have recognized prior to *Glossip* that there was no clearly established federal law identifying

whether the petitioner or State has the burden on materiality. And regardless of who bears the burden of establishing materiality, this case presents a poor vehicle to decide this issue because the state court reasonably concluded, there is no reasonable likelihood that the identified false testimony could have affected the jury's decision. Because Joubert fails to show the CCA misapplied clearly established federal at the time of its decision, certiorari review is not appropriate here and Joubert's petition should be denied.

STATEMENT OF THE CASE

I. Facts at the Trial

At trial, the evidence showed that "Dashan Glaspie recruited his longtime friend, [Elijah Joubert], and another friend, Alfred Brown, to help him commit robbery at a check-cashing business." *Joubert v. State*, 235 S.W.3d 729, 730 (Tex. Crim. App. 2007). "Glaspie was to act as a lookout while [Joubert] and Brown went inside." *Id*. The next morning, the trio tried to rob one check-cashing business but abandoned the attempt "because the owner had displayed a weapon." *Id*.

The group then went to another check-cashing business. *Id*. "When Alfredia Jones arrived to open the store, [Joubert] approached her at gunpoint and walked her into the store." *Id*. Glaspie and Brown followed afterward. *Id*. While inside, Jones made a call to another store and provided them a surreptitious code indicating a robbery. *Id*. "Police Officer Charles Clark

arrived at the scene and entered the store. [Joubert] accused Jones of tipping off the police, and he shot her. The evidence suggested that Brown shot Officer Clark. Jones and Clark both died as a result of the gunshot wounds." *Id*. Joubert was found guilty of capital murder. ROA.9575.

II. Facts Relevant to Punishment

A. State's punishment case

At fourteen, Joubert was convicted as a juvenile for aggravated assault with a deadly weapon and unlawfully carrying a weapon, and he received a year of probation. ROA.9714; 11828–36. Later that same year, Joubert engaged in a physical altercation with a thirteen-year-old girl that ended with him hitting her in the eye "like . . . a man." ROA.9896–903. Less than a year later, and while still on probation, Joubert participated in the armed robbery of a grocery store during which an employee was shot in the stomach. ROA.9735, 9757.

He was convicted as a juvenile for this, along with possession of cocaine and marijuana, and sentenced to youth detention. ROA.9739, 11819–27. While in a youth placement facility, Joubert absconded. ROA.9785. And while on parole, he failed to check in with his parole officer, which resulted in the issuance of a warrant. ROA.9806–09.

A couple of years later, Joubert shot a man in the leg and then continued to threaten the man for weeks by making hand gestures in the shape of a gun

and pointing it toward him. ROA.9767–78. He was convicted of aggravated assault for the shooting and sentenced to four years' imprisonment. ROA.9780; 11837–84. While incarcerated, Joubert continued his violent ways. He yelled at other inmates, fought with other inmates, tampered with a cell door, refused to work on multiple occasions, argued with a teacher, threatened to beat and rape correctional officers, destroyed state property, and masturbated in public numerous times. ROA.11845–55.

About five years later, Joubert traded drugs to borrow a pickup truck. ROA.9818. Joubert would not return it, so the owner, with the help of neighbors, took it back. ROA.9822. Joubert stole the truck, but the owner was again able to retrieve it. ROA.9823–27. So Joubert approached him at a fast-food restaurant and beat him. ROA.9827. That same month, Joubert was a passenger during a high-speed chase with police. ROA.9909–11. After stopping the vehicle, an officer smelled marijuana and discovered a pistol in the vicinity of where Joubert was reaching. ROA.9911–13.

The following month, Joubert participated in a revenge killing. ROA.10099, 10129, 10192; ROA.10296–97. Joubert repeatedly shot and killed one man, putting what one witness called a fist-size hole in the victim's head, while a co-conspirator shot another man causing his hospitalization for more than a month. ROA.10026, 10119–20, 10193, 10254; ROA.10351. The mother

of the deceased victim testified that he had a young son and was killed on her birthday. ROA.10371–72.

A few months later, Joubert was driving a vehicle with an expired registration. ROA.9841. A chase ensued, and when he was stopped, officers noted he was intoxicated and had marijuana and cocaine on him. ROA.9842–47. That same month, Joubert participated in an armed robbery of a convenience store. ROA.9926, 9930, 9945. The store manager was struck in the head with a gun and several thousand dollars were stolen. ROA.9930, 9935.

A month later, Joubert shot and killed Jones during the check cashing-store robbery. Her brother testified that Jones had two children, a ten-year-old son and a three-month-old daughter, at the time of her death. ROA.10383. As a result, Jones's mother, in her sixties, was raising two children. 10385. Her loss deeply affected her mother, brother, and son. ROA.10388–91.

B. Joubert's punishment case

Joubert's grandmother testified about the hardships of raising her children, including Joubert's mother, whom she had when she was young. ROA.10392–411. She said that Joubert's mother started doing drugs decades before the trial started and was doing them up to that point. ROA.10409. Joubert's mother confirmed what his grandmother stated—that she was impregnated at a young age and had been doing drugs since her teens.

ROA.10537–42. She discussed difficult conditions of Joubert's childhood, including when she was convicted of cocaine possession. ROA.10546–55.

Joubert's older sister added more detail to Joubert's youth. ROA.10565. They were poor and lived on government assistance. ROA.10594. They witnessed drug dealing and murder. ROA.10567. Family members, including their mother, abused and dealt drugs ROA.10569–80. Joubert's friends were either locked up or dead. ROA.10581.

She testified that they received little to no affection or support from their mother. ROA.10582–84. Rather, their mother beat them with switches, verbally abused them, and would leave them alone, locking them in their apartment. ROA.10586–91. To help supplement income, Joubert began selling drugs around the age of ten. ROA.10594–95. He once bought his mother a gift basket and bought the family clothes to attend a funeral. ROA.10597. Despite helping his family, Joubert's mother stole from him. ROA.10598.

To contextualize this background, Joubert first called Bettina Wright, a master's level social worker. ROA.10416. She described the stages of development and how the failure to achieve milestones in earlier stages impedes development in the latter. ROA.10416–24. She interviewed Joubert, reviewed volumes of documents, and spoke with multiple family members. ROA.10425. She opined that Joubert was neglected during childhood, his parents being mostly absent, he never had limits placed on him, he never felt

cared for or loved, and he modeled the negative behaviors of those around him. ROA.10440–43. Wright believed that Joubert did not complete any developmental stage completely or appropriately, and that his neglect was so widespread that he did not develop psychologically to a place where he could become a functioning, productive adult. ROA.10451.

Joubert then called Dr. Mark Cunningham, a clinical and forensic psychologist. ROA.10760–31. He too reviewed many documents and interviewed Joubert, numerous family members, and an expert who conducted psychological testing of Joubert. ROA.10779–80. He pointed out numerous risk factors in Joubert's youth, including prenatal exposure to drugs, attention deficit hyperactivity disorder, and delayed development and brain functioning problems. ROA.10826–31. He also noted Joubert's young mother was emotionally neglectful and abusive, and he lacked a father figure. ROA.10848–59. Joubert also observed family violence, and there was criminality in his extended family. ROA.10864–69.

Because of this, Joubert had significant vulnerability to drug and alcohol abuse, certain criminal behaviors were normalized, and so was aggressive behavior. ROA.10878–88. Consequently, Joubert began abusing drugs at a very young age and had less self-control and regard for himself and others. ROA.10888–95. In short, Joubert had no protective factors in his life and was "simply profoundly developmentally damaged as a child and a teen."

ROA.10903–05. Finally, Larry Fitzgerald, a prison conditions specialist, testified that Texas prisons are incredibly secure, if Joubert received life imprisonment his custody level would be high, and he could be safely housed. ROA.11134–61, 11176–88.

II. Appellate and Postconviction Proceedings

Joubert's conviction and sentence were upheld on direct appeal by the CCA. *Joubert*, 235 S.W.3d at 730–35. This Court denied him a writ of certiorari. *Joubert v. Texas*, 552 U.S. 1232 (2008). The CCA also denied Joubert's initial state habeas application. *Ex parte Joubert*, No. WR-78,119-01, 2013 WL 5425127, at *1 (Tex. Crim. App. Sept. 25, 2013).

Joubert filed his initial federal habeas petition. ROA.91–227. He then filed an amended petition several months later. ROA.1123–314. Because several of the claims raised in this amended petition were never presented in state court, including claims now before this Court, the lower court stayed and placed in abeyance the proceeding to permit exhaustion. ROA.1604–05.

Accordingly, Joubert filed a subsequent state habeas application. ROA.13299–472. Relevant here, Joubert alleged that "[t]he State violated . . . Due Process of Law by presenting false and misleading testimony through co-defendant Dashan Glaspie relating to Alfred Brown's participation in the robbery, and by falsely vouching for Glaspie's credibility based on the zero-tolerance plea agreement which was premised upon Glaspie's complete

truthfulness."[1] ROA.13349; see also ROA.13341–57. The CCA found that Joubert overcame the bar on subsequent applications concerning two claims: (1) the State suppressed evidence; and (2) the State presented false testimony. *Ex parte Joubert*, No. WR-78,119-02, 2016 WL 5820502, at *1 (Tex. Crim. App. Oct. 5, 2016). The CCA thus remanded the claims to the SHC for further consideration. *Id.*

On remand, after the parties presented arguments, ROA.14842–66, the trial court entered findings of fact and conclusions of law recommending the denial of relief. ROA.14540–66. While pending before the CCA, the State twice moved for remand to consider new evidence attached to its motions, although not taking a position on whether the new evidence would affect the trial court findings. ROA.14891–94; 14920–22. The CCA stayed the proceeding, directed the State to file the new evidence in the trial court, and ordered the trial court to enter findings about whether the evidence should be considered and whether it would affect the recommended disposition of the two authorized claims. ROA.14647–51. The trial court withdrew its prior recommendation that relief be denied, recommended a grant of relief, and suggested that the CCA should consider the new evidence. ROA.14770–838.

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[1] As the Fifth Circuit noted, in April 2013, phone records that arguably supported Brown's alibi and claim of innocence came to light, and his conviction and death sentence were overturned based on the suppressed evidence. The Harris County District Attorney then dismissed the charges against Brown. Pet. App'x 5–6.

The CCA "disagree[d]" with the trial court's findings of fact and conclusions of law and, unlike during the first state habeas proceeding, it did not adopt them, nor did the CCA agree to consider the new evidence proffered by the State. *Ex parte Joubert*, No. WR-78,119-02, 2021 WL 2560170, at *2 (Tex. Crim. App. June 23, 2021); Pet. App'x 126. Instead, the CCA denied the two authorized claims on the merits, only "[b]ased upon [its] own review." *Id.* With respect to Joubert's claims that the State knowingly used false evidence in violation of *Napue v. Illinois*, 360 U.S. 264 (1959), the CCA laid out the legal standard: "[Joubert] must show by a preponderance of the evidence that (1) false testimony was presented at his trial and (2) the false testimony was material to the jury's verdict." *Id*. It then held that it was "not reasonably likely that Glaspie's false testimony about Brown's participation in the offense affected the judgment of the jury in [Joubert's] case." *Id*. In so holding, it reiterated the materiality standard: "false testimony is 'material' only if there is a 'reasonable likelihood' that it affected the judgment of the jury." *Id*. (citing *Ex parte Weinstein*, 421 S.W.3d 656, 665 (Tex. Crim. App. 2014)). As such, on its "own review, [the court] den[ied] relief." *Id*. The court then dismissed the remaining seven claims "as an abuse of the writ without reviewing the merits of those claims." *Id.* This Court again denied Joubert a writ of certiorari. *Joubert v. Texas*, 142 S. Ct. 2679 (2022).

Returning to federal district court, Joubert filed a second amended petition. ROA.1990–204. Extensive briefing followed. ROA.2240–443 (Director's Answer), 2469–678 (Joubert's Reply), 2679–81 (order for response to new arguments raised in reply), 2696–769 (Director's Surreply). Considering all this, the lower court ultimately denied relief and a COA. ROA. 2770–868; Pet. App'x 27–124.

The Fifth Circuit denied Joubert a COA. *Joubert v. Guerrero*, No. 24-70007, 2025 WL 2643182 (5th Cir. Sept. 15, 2025); Pet. App'x 1–24. As to Joubert's *Napue* claim, the Fifth Circuit determined that reasonable jurists would not debate the district court's conclusion that Joubert had failed to show the CCA's decision was contrary to, or an unreasonable application of, clearly established federal law as determined by this Court. Pet. App'x 8–17, 24. Noting that Joubert had confessed to involvement in the crime and also implicated Brown himself, the Fifth Circuit declined to grant a COA concerning the materiality issue. Pet. App'x 11–17.

REASONS FOR DENYING THE WRIT

I. Joubert Provides No Compelling Reason to Expend Limited Judicial Resources on This Case.

The question that Joubert presents for review is unworthy of the Court's attention. Supreme Court Rule 10 provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only for

"compelling reasons." Sup. Ct. R. 10. Joubert fails to present any such reason as he was not entitled to COA on his claim.

There is no automatic entitlement to appeal in federal habeas corpus. *Miller-El v. Cockrell*, 537 U.S. 322, 335 (2003). Joubert needed to obtain a COA as a jurisdictional prerequisite to obtaining appellate review by the Fifth Circuit. 28 U.S.C. § 2253 (c)(1)(A); *Miller-El*, 537 U.S. at 335–36; *Slack v. McDaniel*, 529 U.S. 473, 483 (2000). The COA statute requires the circuit court to make only a "threshold inquiry into whether the circuit court may entertain the appeal," and permits issuance of a COA only where petitioner "has made a substantial showing of the denial of a constitutional right." *Miller-El*, 537 U.S. at 336 (citing *Slack,* 529 U.S. at 482–83; 28 U.S.C. § 2253 (c)(2)); *see also Buck v. Davis,* 580 U.S. 100, 115–16 (2017). This standard "includes showing that reasonable jurists could debate (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further." *Slack*, 529 U.S. at 484 (internal quotation marks and citation omitted). When the district court rejects a claim on the merits, "[t]he petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Id*. And when the district court denies a habeas petition on procedural grounds, a COA should issue when the petitioner shows that reasonable jurists would debate whether the petition

states a valid claim of the denial of a constitutional right *and* whether the district court was correct in its procedural ruling. *Id.* at 484–85.

Here, Joubert's petition presents no compelling reason to justify this Court's exercise of its certiorari jurisdiction. Although lower courts have taken different approaches in allocating the materiality burden for false evidence claims, this case is not a good vehicle to address the issue because the result would be the same regardless of who bears the materiality burden. Due to Joubert's confession to his involvement in the murders, his own implication of Brown, and the other evidence and theories before the jury, the lower courts reasonably found Glaspie's testimony was not material at either the guilt or punishment phases. *See* Pet. App'x 11–17. The district court properly deferred to the CCA's denial of relief under AEDPA[2] because the false evidence at issue in this case was not material, and the Fifth Circuit properly concluded that this determination was not debatable. For this reason, this case presents a poor vehicle to resolve any purported ambiguity in who bears the burden of proving materiality, and certiorari review must be denied.

[2] Anti-Terrorism and Effective Death Penalty Act of 1996.

II. Certiorari Review Should Be Denied Where the CCA's Rejection of Joubert's False Evidence Claims Was Not Unreasonable or Contrary to Clearly Established Federal Law.

Joubert claims the CCA misapplied the law on false evidence claims by placing the burden of proving materiality on him. Pet. 11–29. Citing last year's decision in *Glossip*, he asserts the CCA misapplied this Court's precedent on habeas review by requiring him to prove false evidence was material instead of placing the burden to prove the error did not contribute to the verdict on the State, consistent with *Chapman v. California*, 386 U.S. 18, 24 (1967). Pet. 12–13, 17–18. But because no clearly established federal law allocated the materiality burden at the time of the CCA's decision as he claims, no reasonable jurist would debate the rejection of Joubert's meritless claim under AEDPA's deferential standard of review, 28 U.S.C. § 2254(d). Therefore, this Court should deny certiorari.

As the Fifth Circuit and Eleventh Circuit have held, at the time of the CCA's decision in 2021, no majority of this Court had indicated *Napue*'s materiality standard was the same as *Chapman*'s harmless error standard. *Uvukansi v. Guerrero*, 126 F.4th 382, 390–91 (5th Cir. 2025), *cert. denied*, 146 S. Ct. 96 (2025); *Ventura v. Att'y Gen. of Fla.*, 419 F.3d 1269, 1279 n.4 (11th Cir. 2005); Pet. App'x 125–27. As those courts recognized, the closest this Court has come to placing the materiality burden on the State is in a footnote in *United States v. Bagley*, 473 U.S. 667, 679 n.9 (1985), but that portion of the

opinion was joined by only two Justices. *Uvukansi*, 126 F.4th at 390; *Ventura*, 419 F.3d at 1279 n.4. *Chapman* itself is the general standard for constitutional harmless error review on direct appeal, and it did not dictate or clearly establish who has the materiality burden on a false evidence claim raised on habeas. *Chapman*, 386 U.S. at 22; *Ventura*, 419 F.3d at 1279 n.4. Moreover, *Chapman* 368 U.S. at 18–20, as a direct review matter, was also not decided in a habeas context.

Furthermore, in *Kyles v. Whitley*, 514 U.S. 419, 434–35 (1995), a habeas case, a majority of the Court discussed the materiality requirement under *Bagley* in terms of "a showing of materiality" and what the defendant must demonstrate, likening the test for materiality to what a defendant must show for ineffective assistance of counsel claims. Reviewing courts could reasonably interpret *Kyles* to require a habeas petitioner to show materiality.

Consequently, at least at the time of the CCA's 2021 decision, where the burden on materiality belonged was ambiguous at best. Many courts, consistent with the approach discussed in *Kyles*, placed the burden on the petitioner by treating materiality as an element to prove a *Napue* violation. *See, e.g., United States v. Straker*, 800 F.3d 570, 606 (D.C. Cir. 2015) (rejecting defendant's false evidence claim when he failed to show "any reasonable probability that the misleading testimony influenced the jury's verdict"); *United States v. Collins*, 799 F.3d 554, 587 (6th Cir. 2015) ("The defendant

must establish that "(1) the statement was actually false; (2) the statement was material; and (3) the prosecution knew it was false."); *Summers v. Dretke*, 431 F.3d 861, 872 (5th Cir. 2005) (to prevail under *Napue/Giglio*, a habeas petitioner must prove that the testimony was "(1) false, (2) known to be so by the state, and (3) material."); *Uvukansi*, 126 F.4th at 390–91 (noting a leading treatise indicated many courts have treated materiality as an element of Napue, suggesting this Court "has not clearly placed the burden of proof on the State."); *Perkins v. State*, 144 So. 3d 457, 469 (Ala. Crim. App. 2012) (petitioner must show the testimony was material); *State v. Cummings*, 400 S.W.3d 495, 505 (Mo. Ct. App. S.D. 2013) (defendant failed to meet his burden to show that false testimony was material).

Due to the lack of clarity in the law, Joubert cannot meet his burden on federal habeas. AEDPA's deferential standard forecloses relief unless the prisoner can show the state court was so wrong that the error was "'well understood and comprehended in existing law beyond any possibility for fairminded disagreement.'" *Shoop v. Hill*, 586 U.S. 45, 48 (2019) (per curiam) (quoting *Harrington v. Richter*, 562 U.S. 86, 103 (2011)). Divergent approaches in the lower courts can reflect a lack of guidance from this Court, indicating that federal law is not clearly established. *See Carey v. Musladin*, 549 U.S. 70, 76–77 (2006). Under AEDPA, "[a] federal court may not overrule a state court

. . . when the precedent from this Court is, at best, ambiguous." *Mitchell v. Esparza,* 540 U.S. 12, 17 (2003).

Here, as indicated by all the above-cited opinions, the placement of the materiality burden was not clearly established or beyond the possibility for fairminded disagreement, and was at best, ambiguous. Joubert even admits this Court's decisions have resulted in "confusion" about the proper allocation of the *Napue* materiality burden and it is the minority view that places it on the State. Pet. 19–21. Accordingly, even assuming *Glossip*'s later statement regarding the materiality burden was not simply dicta and actually decided the issue, Joubert cannot obtain relief here because he has not shown clearly established law at the time of the CCA's decision as required by § 2254(d).

It is also unclear if the CCA even placed the burden on Joubert in any meaningful way. Although the CCA mentioned Joubert must establish the false testimony was material, the CCA has also cited the *Bagley* footnote to indicate the reasonable likelihood standard is equivalent to the *Chapman* standard. *See Ex parte Ghahremani*, 332 S.W.3d 470, 478 (Tex. Crim. App. 2011). Thus, the CCA may see no meaningful distinction between the two and clarifying the matter would not change its analysis.

Moreover, in his previous petition to this Court directly off the CCA's state habeas decision, Joubert noted that many states have placed the burden on defendants to show *Napue* materiality. Pet. for Writ of Cert., *Joubert v.*

Texas, 142 S. Ct. 2679 (No. 21-6424), at 31. Yet despite recognizing this, Joubert did not claim the burden placement alone was key to the CCA's decision, instead he downplayed the importance of the distinction and argued the result would be the same regardless of where the materiality burden resides. *Id.* at 32 ("Whether courts require the State to prove harmlessness of the false testimony beyond a reasonable doubt, or have the defendant show 'any reasonable likelihood' that the false testimony 'could have affected the judgment of the jury,' the net result is the same."). Given all his other complaints about the CCA's decision throughout the years, this suggests Joubert did not see a clear error concerning burden placement at that time, otherwise he would have attacked the CCA's decision on that basis. Only now, after *Glossip*, does he press the issue in this Court. But in federal habeas, the courts are bound by AEDPA and Joubert cannot overcome its deferential standard for the reasons addressed. Indeed, in *Glossip*, the Court reviewed the case directly from state court—not as a federal habeas case. *See Glossip*, 604 U.S. at 241–42. Therefore, to the extent the Court even meant to clarify who has the burden to show materiality of false testimony in *Glossip*, there was no AEDPA hurdle it had to overcome.

Additionally, as recognized by the Fifth Circuit, given that Joubert confessed to his involvement in the murders and also implicated Brown, as well as the other evidence and theories before the jury, the lower courts reasonably

found Glaspie's testimony was not material at either the guilt or punishment phases. Pet. App'x 11–17. That determination would be reasonable no matter where the burden is placed.

Ultimately, because the Fifth Circuit had already recognized there was no clearly established law allocating the materiality burden (at least prior to *Glossip*), a COA was not warranted on the issue because no reasonable jurist could find the district court's assessment of his claim debatable or wrong. *See Slack*, 529 U.S. at 484. Nothing in the cases cited by Joubert proves the district court's ultimate conclusion is reasonably debatable, particularly where he must show under AEDPA "that the state court's ruling on the claim being presented in federal court was so lacking in justification that there was an error well understood and comprehended in existing law beyond any possibility for fairminded disagreement." *Richter*, 562 U.S. at 103; *see also Johnson v. Vandergriff*, 143 S. Ct. 2551, 2554 (2023) (Sotomayor, J., dissenting) (recognizing that the question of debate "depends on whether reasonable jurists could debate whether the [state court] contravened or unreasonably applied clearly established federal law). Further, Joubert presents no compelling reason for the Court to expend its limited resources and grant certiorari where AEDPA forecloses relief. Therefore, certiorari should be denied.

CONCLUSION

For all these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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