

No. **25-7609**

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SUPREME COURT, U.S.

In the Supreme Court of the United States

DAVID EDWARD JACKSON III

Petitioner,

v.

INDIANA PAROLE BOARD

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a court of appeals, in denying a certificate of appealability in a 28 U.S.C. § 2254 case dismissed on procedural grounds, may rely solely on the merits formula of § 2253(c)(2) without separately determining whether jurists of reason could debate the correctness of the procedural ruling — the two-step inquiry required by *Slack v. McDaniel*, 529 U.S. 473 (2000), and *Miller-El v. Cockrell*, 537 U.S. 322 (2003).

2. Whether a federal habeas claim is "fairly presented," and any further state remedy "unavailable," for purposes of exhaustion and procedural default, when the petitioner raised all of his federal grounds through the State's only remaining vehicle — a discretionary successive-post-conviction gateway whose denial the State's highest court will not review.

PARTIES TO THE PROCEEDING / RELATED CASES (Rule 14.1(b))

Petitioner: David Edward Jackson III. Respondent: Indiana Parole Board.

Corporate Disclosure Statement (Rule 14.1(b)(ii); Rule 29.6). Petitioner is a natural person. There is no parent corporation or publicly held company that owns any interest in petitioner, and no corporate disclosure statement is required.

Directly related: *Jackson v. Indiana Parole Board*, No. 2:24-cv-10-PPS-AZ (N.D. Ind.) (judgment Apr. 17, 2025); No. 25-1797 (7th Cir.) (COA denied Dec. 18, 2025; reh'g denied Jan. 8, 2026; mandate Jan. 16, 2026). State proceedings: 45G02-1803-F4-9; 45G02-2204-PC-10; 23A-PC-583; 24A-SP-02220 (Ind. Ct. App.).

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

OPINIONS BELOW

The Seventh Circuit's order denying a certificate of appealability (Dec. 18, 2025) is unreported and appears at App. 4. The United States District Court's Opinion and Order denying the petition (ECF 36, Apr. 17, 2025) is unreported and appears at App. 6; that court's order denying a certificate of appealability (ECF 44, May 12, 2025) is unreported and appears at App. 31. The Indiana Court of Appeals' order declining successive-post-conviction authorization (No. 24A-SP-02220, Oct. 11, 2024) is unreported and appears at App. 37.

JURISDICTION

The Seventh Circuit denied a certificate of appealability on December 18, 2025 (App. 4), and denied panel rehearing on January 8, 2026 (App. 33). On April 8, 2026, in Application No. 25A1101, Justice Barrett extended the time within which to file this petition to and including June 7, 2026 (App. 42). Because June 7, 2026 is a Sunday, the petition is due the next day that is not a Saturday, Sunday, or legal holiday — Monday, June 8, 2026. Sup. Ct. R. 30.1. This petition is timely. This Court has jurisdiction under 28 U.S.C. § 1254(1). *Hohn v. United States*, 524 U.S. 236 (1998).

CONSTITUTIONAL, STATUTORY, AND RULE PROVISIONS INVOLVED

U.S. Const. amends. V, VI, XIV; 28 U.S.C. §§ 1254(1), 2253(c), 2254(a),(b),(c) [text reproduced at App. 48]; Ind. App. R. 57(B); Ind. Post-Conviction Rule 1 § 12.

STATEMENT OF THE CASE

A. The convictions and the (second) plea. The State charged petitioner¹ in 2018 with sex offenses allegedly committed at a Hobart game store. The lead detective testified at a September 13, 2018 deposition that, apart from the complaining witnesses' statements, there was no physical evidence; that he had not investigated the scene, obtained video, or interviewed other store employees; that the two additional accusers came forward only after a police social-media post about the arrest; and that the probable-cause affidavit misstated the date he met the first witness. (Brazil Dep. (Sept. 13, 2018); lower-court record) In March 2021 petitioner pleaded guilty. After he obtained post-conviction relief on a registration-term breach, the parties entered a second plea agreement; on November 23, 2021 the Lake Superior Court vacated the first convictions and sentenced petitioner under the new agreement to three years, suspended to probation, with credit for time served. The agreement provided for ten-year sex-offender registration and that petitioner's probation would be supervised in Porter County. (App. 6 (ECF 36); plea agreement) Petitioner asserts the second plea was not voluntary: he says he was held in protracted solitary confinement on suicide watch and denied prescribed psychiatric medication before pleading, and that the court conducted no competency evaluation. (ECF 15, Ground 13)

B. Probation, the immunity order, and the revocation. As a probation condition petitioner underwent court-ordered sex-offender therapy and polygraph

¹ Petitioner is self-represented and proceeds in forma pauperis, and has diagnosed mental and physical disabilities that substantially limit reading, writing, and sustained cognitive processing. He respectfully requests that the Court construe his filings liberally and excuse any minor, non-prejudicial defect of form. *Haines v. Kerner*, 404 U.S. 519 (1972) (per curiam); *Erickson v. Pardus*, 551 U.S. 89 (2007) (per curiam). This request does not seek relaxation of any jurisdictional, exhaustion, preservation, or substantive standard.

examinations. On November 1, 2021 the deputy prosecutor furnished a written grant of immunity providing that his statements in those sessions "will not be used against him in any future re-trial proceedings." (immunity letter (Nov. 1, 2021); lower-court record) In April 2022 a petition to revoke probation was filed; petitioner contends the revocation was retaliatory (filed after his post-conviction filing) and that he was jailed roughly 98 days before an evidentiary hearing. The Porter Superior Court later found (April 28, 2025) that only supervisory authority had been transferred to Porter County and that the Lake Superior Court retained sanctioning authority, while "technically agree[ing]" that the intrastate-transfer guidelines were not strictly followed, though holding any error harmless. (Porter Sup. Ct. order (Apr. 28, 2025); lower-court record)

C. State post-conviction review and the successive-PCR bar. The Indiana Court of Appeals affirmed the denial of post-conviction relief on February 29, 2024, holding the issues raised on appeal waived because not raised at the post-conviction hearing, and reaching only a registration claim. The Indiana Supreme Court denied transfer on June 20, 2024. (Ind. transfer denial, No. 23A-PC-583; lower-court record) On September 16, 2024 petitioner filed an application to file a successive petition for post-conviction relief presenting the same twenty-four federal grounds later raised in his federal petition. That application expressly stated that the conviction and sentence were "in violation of the Constitution of the United States" (§ 8) and expressly invoked the United States Constitution and identified federal provisions and theories for the grounds presented — including the First Amendment (retaliation), the Sixth Amendment (denial of appellate counsel), and the Fourteenth Amendment's Due Process and Equal Protection Clauses, together with the prosecution's disclosure duty under *Brady* and probable-

cause/charging-document defects under *Franks* — thereby fairly presenting the federal nature of the claims; representative excerpts are reproduced in Appendix L. (App. 52 (Appendix L, excerpts of the 24A-SP-02220 application, §§ 8–9).) On October 11, 2024 the Court of Appeals "decline[d] to authorize the filing" on the ground that he had not shown "a reasonable possibility" of relief. (App. 37 (24A-SP-2220 Order)) The Clerk of the Appellate Courts then advised petitioner, quoting Indiana Appellate Rule 57(B), that an order declining to authorize a successive petition "shall not be considered an adverse decision for the purpose of petitioning to transfer" — i.e., no Indiana Supreme Court review of that denial is available. (App. 39 (Clerk letter))

D. The federal habeas proceeding. Petitioner filed a § 2254 petition on January 5, 2024, while on parole, and amended it to assert twenty-four grounds. Because he was on parole when he filed, petitioner was "in custody" for purposes of § 2254. *Jones v. Cunningham*, 371 U.S. 236 (1963). Jurisdiction is determined as of the time of filing, so his subsequent discharge did not defeat it. *Carafas v. LaVallee*, 391 U.S. 234 (1968). The State first argued the court lacked jurisdiction because petitioner had been discharged in June 2023; that was incorrect — he was discharged in June 2024 — and the District Court found the Assistant Attorney General had made "a material misrepresentation on a readily ascertainable fact." (App. 6 (ECF 36)) The State's response addressed only the first post-conviction appeal and did not mention or include the successive-PCR application (No. 24A-SP-2220) in its exhibits. (ECF 23) On April 17, 2025 the District Court denied the petition: it reached the merits of one claim (a registration-website breach, finding none) and held the remaining twenty-three grounds procedurally defaulted. It denied a certificate of appealability. (App. 6, 35 (ECF 36/44))

E. **The order under review.** On December 18, 2025 the Seventh Circuit denied a certificate of appealability in a one-paragraph order reciting only that it found "no substantial showing of the denial of a constitutional right. See 28 U.S.C. § 2253(c)(2)." It did not address the *Slack* debatability standard for the procedural dismissal. (App. 4) Rehearing was denied January 8, 2026; the mandate issued January 16, 2026.

F. **Present collateral consequence (live controversy).** Although petitioner's parole was discharged June 24, 2024, he remains an actively registered sex offender through March 26, 2031 (Porter County Sheriff OffenderWatch record: Reg. #10662004; "Lifetime Registration: No"; single offense Ind. Code 35-42-4-9). (App. 45 (registry record)) That ongoing registration is a present, concrete, non-speculative consequence flowing from the conviction under attack, supplying a live case or controversy for the plea- and conviction-attacking claims and distinguishing the speculative consequences found insufficient in *Spencer v. Kemna*, 523 U.S. 1 (1998).

REASONS FOR GRANTING THE PETITION

Preservation of all grounds. Petitioner continues to seek review of each of the federal grounds raised in his amended habeas petition and presented to the court of appeals in his certificate-of-appealability filings (App. 58, 63, 98); those grounds are listed for the Court's convenience in an Index of Federal Grounds Presented Below (App. 109). This petition nonetheless presents a single question — the certificate-of-appealability standard; it identifies the other grounds only to satisfy *Slack's* requirement that at least one underlying claim be debatable and to avoid any inference of relinquishment, not to ask this Court to adjudicate them. This petition develops the procedural-default question and one representative underlying constitutional claim only

because that is what the threshold inquiry for a procedurally dismissed case requires — debatability of the procedural ruling and of at least one constitutional claim. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Miller-El v. Cockrell*, 537 U.S. 322 (2003). Petitioner does not relinquish any other ground; each was pressed below — in his amended petition, his successive-post-conviction application, and his certificate-of-appealability filings — and each remains within the certificate-of-appealability application he asks the court of appeals to reconsider. Consistent with this Court's practice of deciding only the question presented and what is fairly included within it, *Yee v. City of Escondido*, 503 U.S. 519 (1992), petitioner does not ask this Court to resolve the individual grounds; he asks only that the judgment be vacated and the case remanded so the court of appeals can reconsider his certificate-of-appealability application — as filed, on all of the issues presented in his Seventh Circuit certificate-of-appealability motion and supplemental memorandum and reiterated in his rehearing petition (App. 58, 63, 98) — under the correct threshold standard.

I. The Seventh Circuit denied a COA by treating a threshold inquiry as a merits disposition, contrary to this Court's COA cases.

A COA is a gateway. When a district court dismisses a habeas petition on a procedural ground, a COA should issue if reasonable jurists could debate both (1) whether the petition states a valid constitutional claim and (2) whether the district court was correct in its procedural ruling. *Slack v. McDaniel*, 529 U.S. 473 (2000). The Seventh Circuit itself articulates the standard as this two-part inquiry. *Moreland v. Eplett*, 18 F.4th 261 (7th Cir. 2021). The COA inquiry is a threshold screening, not a substitute for merits review; a court of appeals errs when it merges the COA question into a

demanding merits decision instead of asking only whether the issue is reasonably debatable. *Barefoot v. Estelle*, 463 U.S. 880 (1983); *Miller-El v. Cockrell*, 537 U.S. 322 (2003); *Tennard v. Dretke*, 542 U.S. 274 (2004); *Buck v. Davis*, 580 U.S. 100 (2017) (a court of appeals that "inverts the statutory order of operations" by "first decid[ing] the merits of an appeal . . . then justif[ying] its denial of a COA based on its adjudication of the actual merits" has "placed too heavy a burden on the prisoner at the COA stage").

Here the Seventh Circuit denied a COA in a one-paragraph order reciting only the general statutory formula and did not conduct the *Slack* analysis for a procedural dismissal, even though the district court dismissed twenty-three of twenty-four grounds as procedurally defaulted.

Petitioner himself squarely invoked that framework at every stage. His application for a certificate cited *Slack* and asked the court to determine whether reasonable jurists could debate whether the petition should have been resolved differently, expressly tying his documented mental-health conditions to overcoming procedural default. (App. 58 (Motion for Certificate of Appealability).) He reinforced the point in a supplemental memorandum addressed to the COA standard. (App. 63 (COA Supplemental Memorandum).) And on rehearing he set out the two-step procedural-dismissal standard in terms — that, where relief is denied on procedural grounds, a certificate requires debate on both the validity of the constitutional claim and the correctness of the procedural ruling, *Miller-El v. Cockrell*, 537 U.S. 322 (2003) — and asked the panel to apply it. (App. 98 (Petition for Panel Rehearing).) The court's order, and its denial of rehearing, did not engage that standard. The defect is not the order's brevity — *Slack* imposes no reason-giving requirement — but the absence of the two-step inquiry it

requires: reciting only the general § 2253(c)(2) formula in a procedural-dismissal posture, where petitioner had squarely placed the *Slack* framework before the court. Nor is the denial saved by the rule that, because each component is a threshold inquiry, a court "may ... dispose of the application ... if it proceeds first to resolve the issue whose answer is more apparent from the record and arguments." *Slack*, 529 U.S. at 485. That discretion lets a court deny a certificate by finding an underlying constitutional claim not debatable; it cannot justify this denial, because at least one underlying claim *is* reasonably debatable (Part III), so a summary denial reflects either a debatable error in resolving that prong or a failure to undertake the two-step inquiry at all — and either way the application of the threshold standard is itself debatable. Because the order is summary, petitioner does not contend he can know the panel's internal reasoning; the certworthy question is whether a COA denial that articulates only § 2253(c)(2)'s merits formulation, in a case dismissed on procedural default, reflects application of an incomplete, merits-only standard rather than the two-step inquiry *Slack* requires. That is the type of COA denial this Court has warned against. *See also Gonzalez v. Thaler*, 565 U.S. 134 (2012) (addressing the statutory requirements governing certificates of appealability).

II. The procedural-default ruling is, at minimum, debatable.

The default questions are debatable at three independent steps, and reasonable jurists need agree on only one: (i) petitioner exhausted state remedies because no further state review of the successive-authorization denial was available, Ind. App. R. 57(B); (ii) even if that denial is treated as a state procedural bar, its adequacy and independence as applied are debatable; and (iii) even if a default is assumed, cause and prejudice and the *Martinez* substantiality gateway are debatable. Petitioner presented all twenty-four

federal grounds to the Indiana Court of Appeals in September 2024 through the only remaining vehicle — the successive-post-conviction authorization process — which that court denied on October 11, 2024 on the state-law "reasonable possibility" screen — the gatekeeping threshold the Indiana courts apply to authorize a successive petition. Ind. Post-Conviction Rule 1 § 12(b); *Wrinkles v. State*, 915 N.E.2d 963 (Ind. 2009). Exhaustion turns on whether state remedies were "available" and properly invoked. 28 U.S.C. § 2254(b)(1)(B), (c); *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). Indiana Appellate Rule 57(B) makes the denial of successive-PCR authorization unreviewable by the State's highest court, so no further state remedy was available. Exhaustion and procedural default are distinct: even if the unreviewable successive-PCR denial means no further state review is "available" (satisfying exhaustion), the State may contend the discretionary screen is itself a state procedural ground (default). At the COA stage the point is narrower — reasonable jurists can debate which characterization is correct and what follows from it. Whether presentation through that vehicle satisfied fair presentation — and whether claims should be treated as defaulted for not pursuing an unavailable step — is debatable among reasonable jurists. *Gray v. Netherland*, 518 U.S. 152 (1996); *Baldwin v. Reese*, 541 U.S. 27 (2004). The State may invoke *Castille v. Peoples*, 489 U.S. 346 (1989), for the rule that presenting a claim in a posture in which its merits will not be considered is not fair presentation; but whether the successive-authorization process — petitioner's only remaining avenue, which the Indiana courts screen for a "reasonable possibility" of relief — is such a posture, or instead a genuine vehicle through which petitioner did present his federal claims, is itself debatable among reasonable jurists, which is all the certificate stage requires. Petitioner did more than

attach federal labels: for representative grounds the successive application set out the operative facts, the federal provision, and the federal theory — the Sixth Amendment denial of appellate counsel; the Fourteenth Amendment due-process challenge to a plea entered amid protracted solitary confinement and denial of prescribed medication; and the Fifth Amendment use-immunity claim — which is what fair presentation requires. *Picard v. Connor*, 404 U.S. 270 (1971); *Duncan v. Henry*, 513 U.S. 364 (1995) (per curiam). (App. 52.) And because that application raised the same federal grounds petitioner later pressed in his § 2254 petition, this is not a case of a federal theory first surfaced in a forum that could not consider it. *Cf. Gray v. Netherland*, 518 U.S. 152 (1996). To the extent the State invokes the screen as an adequate and independent state ground, its adequacy as applied is itself debatable, *Lee v. Kemna*, 534 U.S. 362 (2002); *Ford v. Georgia*, 498 U.S. 411 (1991) — an argument for plenary review, not for terminating the case at the COA gate. Petitioner does not contend the district court was unaware of the successive application; the court acknowledged it. (App. 6 (ECF 36)) The narrower point is that the court treated the successive-PCR denial as merely another procedural defeat rather than as petitioner's only later-available route to present every federal ground. *Coleman v. Thompson*, 501 U.S. 722 (1991), bars federal review of a claim defaulted on an independent and adequate state ground absent cause and prejudice; but whether the Indiana waiver and successive-authorization rulings supply such a ground here, and whether the unavailability of any further state review bears on the cause inquiry, are themselves debatable among reasonable jurists. *Murray v. Carrier*, 477 U.S. 478 (1986); *Edwards v. Carpenter*, 529 U.S. 446 (2000). At the COA gate *Slack* requires only that debate, not its resolution. Were a certificate to issue, the court of appeals would

decide whether the conviction claims are defaulted at all and, if so, whether cause and prejudice or the miscarriage-of-justice gateway excuse any default — questions a certificate opens, not ones this Court need resolve now.

The debatability has a concrete mechanism. The District Court held the conviction claims defaulted because the first post-conviction appeal pressed arguments different from those raised at the post-conviction hearing, and because the successive-authorization request did not lift that bar. (App. 9–14 (ECF 36, at 4–5)) But petitioner presented those federal claims through the successive application — his only later-available vehicle — and Indiana Appellate Rule 57(B) rendered its denial final and unreviewable. Whether, on that structure, petitioner completed "one complete round" of the State's established review process, *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999), and whether the successive screen is an adequate and independent state ground as applied — firmly established and regularly followed — are questions reasonable jurists could resolve either way. That a state rule affords discretion does not by itself make it inadequate, *Walker v. Martin*, 562 U.S. 307 (2011); the debatable point is the interplay of the gatekeeping screen with the no-transfer bar as applied here, *Lee v. Kemna*, 534 U.S. 362 (2002). That interplay — a screen that is petitioner's only avenue for these claims, that turns on a merits-tinged "reasonable possibility" assessment, and whose denial the State's highest court will not review — is the kind of exceptional application that under *Lee* can render a state ground inadequate as applied; whether it does so here is itself debatable. Petitioner does not dispute that a discretionary state rule can be adequate, *Beard v. Kindler*, 558 U.S. 53 (2009); *Walker v. Martin*, 562 U.S. 307 (2011); *Johnson v. Lee*, 578 U.S. 605 (2016) (per curiam) — the narrow point at the certificate stage is only

that reasonable jurists could debate adequacy on this unusual combination of a merits-tinged screen, a no-transfer bar, and federal claims labeled and presented on the same theory below.

And to the extent the State relies on the state courts' silence or on a look-through to the last reasoned decision, those doctrines too leave the procedural ruling debatable. *Harris v. Reed*, 489 U.S. 255 (1989); *Ylst v. Nunnemaker*, 501 U.S. 797 (1991). The Seventh Circuit itself has held, on materially similar terrain, that an Indiana Court of Appeals' denial of leave to file a *successive* post-conviction petition did not "clearly and expressly" rest on a state procedural bar, so that under *Harris* the denial did not effect a procedural default of the federal claims. *Newell v. Hanks*, 283 F.3d 827 (7th Cir. 2002). Whether the October 11, 2024 order declining authorization here — which recites only that petitioner had not shown "a reasonable possibility" of relief — likewise fails to rest "clearly and expressly" on an independent state procedural ground is, at the very least, a question reasonable jurists could resolve in petitioner's favor.

Reasonable jurists could also debate whether petitioner has shown cause to excuse any default of his plea-stage ineffective-assistance claim. That claim was litigated at the post-conviction *hearing*, but the later waiver occurred at the post-conviction-*appeal* stage; petitioner — indigent, self-represented, and with documented mental-health limitations — contends he lacked meaningful assistance to preserve and present it on collateral appeal. Petitioner acknowledges *Davila v. Davis*, 582 U.S. 521 (2017), which declined to extend *Martinez v. Ryan*, 566 U.S. 1 (2012), and *Trevino v. Thaler*, 569 U.S. 413 (2013), to claims of ineffective assistance of appellate counsel, and he does not ask this Court to enlarge that equitable exception. *Davila* does not, however, foreclose the

distinct certificate-stage proposition that reasonable jurists could debate whether the district court's no-cause determination was correct on this record, or whether the default characterization itself is contestable; attorney abandonment, as distinct from mere negligence, can constitute cause. *Maples v. Thomas*, 565 U.S. 266 (2012). At the certificate gate petitioner need not prove cause — only that the question is debatable. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Miller-El v. Cockrell*, 537 U.S. 322 (2003). Independently, the district court's *Martinez* "substantiality" determination is itself debatable on this record. The state post-conviction court construed the petition as raising ineffective assistance because trial counsel misadvised petitioner that the plea would permit him to reside with his family, together with an involuntary-plea claim arising from misrepresentations about visitation. (App. 6 (ECF 36) (recounting the Lake Superior Court's construction of the petition, ECF 24-12 at 161-69).) The district court, however, assessed *Martinez* substantiality against a *different* theory — that counsel was ineffective for "fail[ing] to request a *Franks* hearing to challenge the probable cause charging documents" (ECF 15 at 4-5) — and rejected it on the ground that a *Franks* hearing tests the probable-cause basis of a search warrant, not the sufficiency of the charging documents, without separately assessing the residence-misadvice and involuntary-plea theory the state court had construed. (App. 6 (ECF 36).) Whether a no-cause ruling that measures *Martinez* substantiality against an ineffective-assistance theory the state court did not construe — while leaving unassessed the residence-misadvice theory that, if credited, satisfies the prejudice standard of *Hill v. Lockhart*, 474 U.S. 52 (1985) (Part III-A, *infra*) — is a debatable error is itself a question reasonable jurists could resolve differently, and thus one the certificate stage exists to open.

Independently, the miscarriage-of-justice (actual-innocence) gateway is at least debatable. A petitioner may overcome procedural default by showing that, in light of all the evidence — old and new — it is more likely than not that no reasonable juror would have convicted him. *Schlup v. Delo*, 513 U.S. 298 (1995); *House v. Bell*, 547 U.S. 518 (2006). That gateway requires a cumulative assessment of the whole record. Reasonable jurists could debate whether the district court performed that cumulative assessment, or instead discounted the combined force of the proffered evidence — including the complaining witness's initial false account and delayed disclosure, the related law-enforcement-credibility concerns, and petitioner's medical and mental-health records — in rejecting actual innocence. That debate alone suffices at the certificate stage.

III. One representative underlying constitutional claim — the validity of the plea — is at least debatable (Slack's first prong).

Because *Slack* requires debatability of only one underlying constitutional claim (together with the procedural ruling), petitioner develops one representative claim here and continues to press every other ground presented below; none is relinquished. Petitioner's principal representative claim for this prong is the record-anchored ineffective-assistance claim set out in Part III-A; the plea-voluntariness and competency theory developed in this Part is an independent alternative. This representative claim is itself among the grounds petitioner presented through the successive-post-conviction application (App. 52) and documented in the record (App. 111), and which the District Court treated as defaulted; the debatable procedural-default question set out in Part II therefore governs whether it may be reached, so *Slack's* two prongs here rise and fall on the same record. A guilty plea does not foreclose review where the plea itself is alleged to

be constitutionally invalid. A plea must be knowing and voluntary, and is invalid if the product of coercion or rendered by a defendant lacking capacity to choose among alternatives. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Brady v. United States*, 397 U.S. 742 (1970). A trial court has a due-process duty to inquire into competency when on notice of facts raising a bona fide doubt. *Pate v. Robinson*, 383 U.S. 375 (1966); *Drope v. Missouri*, 420 U.S. 162 (1975). The governing competency standard, *Dusky v. United States*, 362 U.S. 402 (1960) (per curiam), applies to a defendant's decision to plead guilty, *Godinez v. Moran*, 509 U.S. 389 (1993).

Petitioner alleges a coercive, deteriorating mental-health and confinement situation at the time of the plea — protracted solitary confinement on suicide watch and denial of prescribed psychiatric medication — with no competency evaluation, averring that he "was not in the right state of mind when he was coerced into the plea agreement," that "prior to being placed in [s]olitary [c]onfinement [he] stressed his desire to fight the charges," and that he "would not have accepted the [p]lea [a]greement ... as he stated right before he was placed in [s]olitary [c]onfinement." (App. 111 (Amended Petition, Ground 13).) Whether those facts, as alleged and proffered in his filings, raised a bona fide doubt requiring a competency inquiry is itself debatable. Petitioner relies on the allegations in his habeas pleadings and the materials already before the habeas court; he does not contend the existing record conclusively establishes that the plea court made a competency finding, and he does not ask this Court to resolve any disputed fact — only to recognize debatability for certificate purposes. The state-court record nonetheless bears on the notice question. Weeks before the plea, the same magistrate who accepted it had before her a licensed therapist's letter and counsel's sentencing memorandum

documenting a severe post-traumatic-stress-disorder diagnosis, a mental state that had "continued to decline" in custody, the denial of "his medications that he has been prescribed," and difficulty maintaining "clear thought patterns." (App. 125 (Defendant's Sentencing Mem., filed Oct. 26, 2021); App. 130 (Broshar Letter).) Whether that contemporaneous, on-record documentation — even though offered as sentencing mitigation rather than in a formal competency motion — sufficed to raise the bona fide doubt that obligates further inquiry under *Pate* and *Drope* is itself a question reasonable jurists could resolve either way. Those allegations, taken as true at the threshold, state a debatable constitutional claim; and antecedent events bear on whether the plea was knowing and voluntary. *Tollett v. Henderson*, 411 U.S. 258 (1973). Petitioner's allegations are detailed and specific and were presented in his state filings; their summary rejection at the threshold is at least debatable. Sworn statements at a plea colloquy carry a strong presumption of verity, but that presumption is not insurmountable; specific allegations that, if true, would render a plea involuntary ordinarily warrant a hearing rather than summary rejection. *Blackledge v. Allison*, 431 U.S. 63 (1977); *Machibroda v. United States*, 368 U.S. 487 (1962). Petitioner alleges that, but for the protracted solitary confinement, suicide-watch conditions, and denial of prescribed psychiatric medication, he would not have pleaded guilty — a reasonable probability that, but for those conditions, he would have insisted on going to trial, which supplies the prejudice a plea challenge requires. *Cf. Hill v. Lockhart*, 474 U.S. 52 (1985). These are two independent routes to *Slack*'s first prong: (1) a due-process challenge that the plea was involuntary and that the court failed to inquire into competency despite a bona fide doubt (*Boykin*, *Brady*, *Pate*, *Drope*, *Dusky*, *Godinez*); and (2) in the alternative, ineffective assistance in the plea

process, *Strickland v. Washington*, 466 U.S. 668 (1984); *Hill v. Lockhart*, 474 U.S. 52 (1985). Either, if debatable, satisfies the threshold.

For COA purposes petitioner does not seek merits relief — only a ruling that reasonable jurists could debate both the procedural bar and the plea/competency claim.

III-A. A second, record-anchored representative claim — plea-stage ineffective assistance on the residence consequence — is at least debatable.

To establish ineffective assistance a petitioner must show deficient performance and prejudice, *Strickland v. Washington*, 466 U.S. 668 (1984); in the plea context the prejudice inquiry asks whether there is a reasonable probability that, but for counsel's errors, the defendant would not have pleaded guilty and would have insisted on going to trial, *Hill v. Lockhart*, 474 U.S. 52 (1985). The post-conviction record reflects an affirmative representation, communicated to petitioner, that given the level of his convictions there would be no restriction preventing him from residing with his minor child. (App. 114 (PCR Hearing Tr., Oct. 4, 2022).) Plea counsel confirmed this representation under oath. He testified that he personally contacted the Porter County probation officer responsible for sex-offender supervision before the plea and that, based on those conversations, "I did not believe it was going to be an issue for him to reside at his residence ... with his wife and child"; asked whether he "tell[] Mr. Jackson that ... before he signed the plea agreement," counsel answered "Yes." (App. 116 (PCR Hearing Tr., Oct. 4, 2022, at 14).) On this record reasonable jurists could debate whether counsel's plea advice was constitutionally adequate where residence with the child was treated as a central inducement to the plea, yet the post-plea regime petitioner faced — probation-department discretion and program conditions — foreseeably could negate that

promised practical consequence. *Cf. Padilla v. Kentucky*, 559 U.S. 356 (2010) (counsel must competently advise as to consequences that are clear, significant, and central to the plea decision). Petitioner does not contend *Padilla* squarely governs; whether the residence consequence is characterized as direct or collateral, reasonable jurists could debate whether competent advice was owed where, on this record, it was the central inducement to the plea. Prejudice is likewise at least debatable: petitioner testified at the post-conviction hearing that he "would not have agreed to the plea deal if [he] could not live with [his] kid," and confirmed that this factor "would have caused [him] not to sign [his] plea agreement" — concrete testimony from which reasonable jurists could debate a reasonable probability he would have rejected the plea and insisted on trial. (App. 121 (PCR Hearing Tr., Oct. 4, 2022, at 40).) *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). That residence with his child was a genuine and central inducement — not a post-hoc rationalization — is corroborated by the contemporaneous record of the child's acute need for paternal contact. (App. 133 (Letter of Daniel Doan, LMHC, filed Oct. 26, 2021).) Counsel's affirmative advice that, given the level of his convictions, there would be no restriction on residing with his minor child stands in direct tension with the plea agreement's own term — recited in the plea colloquy and acknowledged by petitioner — that visitation with his children would be "subject to Porter County probation's discretion." Whether the plea was knowing and voluntary as to that residence consequence, where counsel's affirmative advice contradicted the agreement's express discretionary term, is itself a question reasonable jurists could debate.

The residence-misadvice claim shares the same procedural-default posture as the plea/competency claim (Part II): it was litigated at the post-conviction *hearing* but the

post-conviction *appeal* pressed different issues, so any default arose at the collateral-appeal stage — the posture petitioner addresses through the cause-debatable discussion below.

III-B. A breach-of-plea-agreement claim going to the plea's validity is likewise at least debatable. Among the exhausted federal grounds, petitioner alleges the State breached material terms that induced his guilty plea. As the State's own filing recounts, the agreement required "probation to be transferred to Porter County" and that his "visitation with his children ... be at the discretion of the Porter County Probation Department." (App. 138 (State's Resp. to Mot. of Contempt); see App. 109 (Index of Federal Grounds, Grounds 4, 18, 19).) Petitioner alleges those inducements were not honored. The District Court adjudicated one breach-of-plea claim on the merits under *Santobello v. New York*, 404 U.S. 257, 262 (1971) (a plea resting "in any significant degree" on a prosecutorial promise requires that the promise be fulfilled), while treating petitioner's remaining breach claims as procedurally defaulted solely because his post-conviction appeal pressed different issues — the very ruling Part II shows to be debatable. (App. 9–14 (ECF 36).) The plea record, though weighty, is not conclusive where specific allegations, if true, would show the plea lacked a constitutionally adequate basis. *Blackledge v. Allison*, 431 U.S. 63 (1977). Petitioner further alleges the State disseminated information arising from his compelled-treatment immunity arrangement into a collateral proceeding (App. 136 (correspondence of Dec. 22, 2021); App. 138 (State's response acknowledging the communication)) — a breach he diligently sought to raise in state court but was structurally foreclosed from litigating: his request to file a successive post-conviction petition was first turned away as "premature" while his first

post-conviction appeal remained pending — though the governing rule's sole stated authorization standard is whether the petitioner shows "a reasonable possibility" of relief, not ripeness — and then, once that appeal concluded, his renewed request was denied under that discretionary screen (App. 37). Because he could neither amend the first petition (then pending on appeal) nor obtain leave for the successive one, that sequence left no avenue to present the breach at any time the State would entertain it, supporting cause to excuse any default and rendering the adequacy of the state procedural ground, as applied, at least debatable. *Lee v. Kemna*, 534 U.S. 362 (2002).

Whether these allegations, if true, render the plea constitutionally infirm is a question reasonable jurists could resolve either way — all the certificate stage requires. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *Miller-El v. Cockrell*, 537 U.S. 322, 336–37 (2003).

IV. This petition asks only for correct application of the COA threshold.

Petitioner does not seek to *expand* any narrow exception to procedural default (e.g., *Martinez v. Ryan*, 566 U.S. 1 (2012)) or to extend any immunity doctrine; as developed in Part II, he invokes the cause doctrines only for the certificate-stage proposition that their application here is *debatable*, candidly confronting *Davila v. Davis*, 582 U.S. 521 (2017). He asks this Court to enforce the proper COA framework in a procedurally dismissed habeas case where the default ruling is debatable on the face of the record and where the court of appeals ended the case at the threshold. Because the order under review is summary, this Court need not resolve any underlying question itself: the appropriate disposition is to grant the petition, vacate the judgment, and remand for application of the correct certificate-of-appealability standard. 28 U.S.C. § 2106; *cf.*

Lawrence v. Chater, 516 U.S. 163 (1996) (per curiam). Petitioner does not contend this is a classic intervening-development remand; the point is only that, the order being summary, this Court need not reach the merits to direct application of the correct threshold standard.

The harm from the COA denial is concrete and stage-appropriate. Had a certificate issued, the court of appeals would have had to decide substantial, outcome-affecting questions: whether the interplay of Indiana's discretionary successive-post-conviction screen and its no-transfer bar left any further state remedy "available" and whether the conviction claims were therefore defaulted at all; and whether petitioner's guilty plea was knowing and voluntary where he alleges he was held in protracted solitary confinement on suicide watch and denied prescribed psychiatric medication when he pleaded, with no competency inquiry. The denial of any appellate consideration of those debatable questions — not the ultimate merits — is the injury the COA threshold exists to prevent.

Petitioner does not ask this Court to decide, claim by claim, that a certificate must issue on each ground; he asks that the judgment be vacated and the case remanded so the court of appeals may reconsider his certificate-of-appealability application — which sought a certificate as to all of his federal grounds — under the correct threshold standard. Each ground accordingly remains preserved for that reconsideration. Because the conviction under attack is the source of petitioner's ongoing registration, a certificate as to the conviction- and plea-related grounds would redress that collateral consequence, and the remaining grounds — pleaded and presented as one set in the successive-post-conviction application — remain part of the application to be reconsidered on the same

record. The plea-voluntariness and competency claim is set out in Part III both as an independently debatable constitutional claim and as illustrative of the debatable underlying claims that a certificate of appealability would permit the court of appeals to review; petitioner's remaining grounds, presented in full through the successive-post-conviction application, are preserved for that same review.

Why this matters beyond this case. The question can arise wherever two features combine: a district court dismisses federal grounds on procedural default, and the State's final post-conviction step is a discretionary gatekeeping denial that the State's highest court does not review. When a court of appeals then denies a COA on the bare statutory formula, a debatable procedural ruling is insulated from any appellate testing — the precise harm the COA threshold exists to prevent. Left unchecked, a one-line § 2253(c)(2) recital in a procedural-dismissal posture can collapse the threshold COA inquiry into an unstated merits determination — the error this Court identified in *Miller-El v. Cockrell*, 537 U.S. 322 (2003), and *Buck v. Davis*, 580 U.S. 100 (2017) — without the two-step analysis *Slack* requires. Members of this Court have recently observed that courts of appeals continue to treat as "not even debatable" claims that reasonable jurists could in fact debate. *Shockley v. Vandergriff*, No. 24-517 (U.S. Mar. 31, 2025) (Sotomayor, J., dissenting from denial of certiorari). This is not an Indiana peculiarity: many States channel later claims through discretionary successive-collateral gateways whose denials the State's highest court does not review, so the same merits-only COA recital recurs across jurisdictions and falls hardest on the pro se and indigent habeas petitioners least equipped to detect it. The question is one this Court reviews and has repeatedly corrected. *Hohn v. United States*, 524 U.S. 236 (1998) (this Court has

jurisdiction to review a court of appeals' denial of a certificate of appealability); *Tennard v. Dretke*, 542 U.S. 274 (2004) (correcting a court of appeals' imposition of too-demanding a COA standard). Clarifying that a procedurally dismissed petition warrants a COA whenever the procedural ruling is reasonably debatable would guide the courts of appeals in a class of recurring habeas cases, not merely resolve this one.

CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, the judgment should be vacated and the case remanded for reconsideration of the certificate-of-appealability application under *Slack v. McDaniel* and *Miller-El v. Cockrell*.

Respectfully submitted,



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