

26-5119

No: _____

In The
Supreme Court of the United States

SARI ALQSOUS,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

QUESTION ONE: Whether a court of appeals departs from the proper certificate-of-appealability inquiry described in Hohn v. United States, Slack v. McDaniel, and Miller-El v. Cockrell when it concludes that no reasonable jurist could debate the denial of a motion under 28 U.S.C. § 2255, even though the district court resolved disputed, off-the-record allegations of ineffective assistance of counsel on a paper record without an evidentiary hearing under 28 U.S.C. § 2255(b).

QUESTION TWO: Whether a defendant's sworn declaration alleging that counsel's material misadvice regarding sentencing exposure induced him to proceed to trial may be treated as conclusively refuted by later statements made during a court colloquy, thereby eliminating the need for an evidentiary hearing under 28 U.S.C. § 2255(b) and this Court's precedent in Blackledge v. Allison.

QUESTION THREE: Whether a court of appeals may invoke the discretionary concurrent sentence doctrine to decline review of a substantial post-conviction challenge to bribery-related convictions in light of Snyder v. United States, particularly where the challenged convictions are alleged to carry meaningful collateral consequences beyond the aggregate term of imprisonment.

PARTIES TO THE PROCEEDING

Petitioner Sari Alqsous was the Petitioner-Appellant in the proceedings below.

Respondent United States of America was the Respondent-Appellee in the proceedings below.

TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
APPENDIX TABLE OF CONTENTS.....	iv
TABLE OF AUTHORITIES.....	v
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE.....	3
REASONS FOR GRANTING THE PETITION	7
I. The Combined Procedural Rulings Below Warrant This Court's Review.....	7
II. The Underlying Constitutional Claims Are Substantial and Debatable.....	10
A. Ineffective Assistance During Plea Negotiations	10
B. The Improper Use of the Concurrent Sentence Doctrine	12
CONCLUSION	14
APPENDIX.....	15

APPENDIX TABLE OF CONTENTS

Appendix A: Order, Sari Alqsous v. United States, No. 25-3285 (6th Cir. Dec. 18, 2025)

Appendix B: Memorandum Opinion and Order Denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence Pursuant to 28 U.S.C. § 2255, Sari Alqsous v. United States, No. 1:23-cv-01885-DAP (N.D. Ohio Mar. 24, 2025)

Appendix C: Order Granting Petitioner's Motion for Extension of Time

TABLE OF AUTHORITIES

Cases

<i>Benton v. Maryland</i> , 395 U.S. 784 (1969).....	12
<i>Blackledge v. Allison</i> , 431 U.S. 63 (1977)	i, 8, 10, 11
<i>Hohn v. United States</i> , 524 U.S. 236 (1998).....	i, 8
<i>Lafler v. Cooper</i> , 566 U.S. 156 (2012).....	10, 11
<i>Machibroda v. United States</i> , 368 U.S. 487 (1962).....	8
<i>Miller-El v. Cockrell</i> , 537 U.S. 322 (2003).....	i, 7, 9
<i>Missouri v. Frye</i> , 566 U.S. 134 (2012).....	4, 10
<i>Slack v. McDaniel</i> , 529 U.S. 473 (2000).....	i, 7, 9
<i>Snyder v. United States</i> , 144 S. Ct. 1947 (2024).....	i, 5, 12, 13
<i>Strickland v. Washington</i> , 466 U.S. 668 (1984).....	10, 11
<i>Yates v. United States</i> , 354 U.S. 298 (1957).....	6

Constitution and Statutes

U.S. Const. amend. VI.....	2
18 U.S.C. § 371	7
18 U.S.C. § 666	7, 15
18 U.S.C. § 1951	7
28 U.S.C. § 1254(1)	1
28 U.S.C. § 2253(c)	2
28 U.S.C. § 2255(b)	i, 2, 7, 11

PETITION FOR A WRIT OF CERTIORARI

Petitioner respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

OPINIONS BELOW

The order of the Court of Appeals denying a Certificate of Appealability is unreported but is reproduced in Appendix "A." The order of the United States District Court for the Northern District of Ohio denying Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255 is unreported but is reproduced in Appendix "B."

JURISDICTION

On December 18, 2025, the United States Court of Appeals for the Sixth Circuit entered a judgment denying Petitioner's application for a Certificate of Appealability. See: *Appendix "A."* The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Alqsous sought and was granted by this Court a thirty-day extension of time to file this petition. See: *Appendix "C."* As such, this petition is timely filed.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. **The Sixth Amendment to the United States Constitution provides, in relevant part:**

In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defense. See: *U.S. Const. amend. VI*.

2. **Title 28, United States Code, Section 2253(c) provides, in relevant part:**

(1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from— ... (B) the final order in a proceeding under section 2255. (2) A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right.

3. **Title 28, United States Code, Section 2255(b) provides, in relevant part:**

Unless the motion and the files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall ... grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto.

STATEMENT OF THE CASE

This case arrives before the Court following a sequence of rulings that, taken together, prevented further review of substantial constitutional claims raised in post-conviction proceedings. Petitioner Sari Alqsous ("Alqsous") presented the district court with sworn and specific claims that his Sixth Amendment rights were violated by trial counsel. Among the most serious of those claims was that counsel materially misadvised him regarding his sentencing exposure during plea-related decision-making, allegedly assuring him that his "maximum custodial sentence would be 3 years." See: *Appendix "A," at 4*. The district court declined to conduct an evidentiary hearing and denied relief on the written record. The court of appeals then denied a certificate of appealability, concluding that no reasonable jurist could debate the district court's disposition. See: *Appendix "A."* The result was that the underlying constitutional claims, as well as the hearing issue itself, received no further review.

In 2018, a jury found Alqsous and his co-defendants guilty of various fraud and fraud-related counts arising from their employment as dentists at a public hospital receiving federal funding. He was sentenced to an aggregate prison term of 151 months. The Sixth Circuit affirmed on direct review. See: *United States v. Hills*, 27 F.4th 1155, 1170 (6th Cir. 2022). Thereafter, Alqsous, through counsel, filed a motion under 28 U.S.C. § 2255, later supplemented and amended, asserting several grounds for relief, including claims that trial counsel was ineffective for failing to investigate and present certain witnesses, for failing to properly advise him during plea

negotiations, and for failing to retain a particular expert witness. See: *Appendix "A," at 1-2.*

As relevant here, Alqsous alleged in a sworn declaration that counsel materially misadvised him regarding the sentencing consequences of proceeding to trial. Specifically, he alleged that counsel told him that his "maximum custodial sentence would be 3 years." See: *Appendix "A," at 4.* He further alleged that had he been made aware of his actual sentencing exposure—which he described as the possibility of "12 or more years"—he would have chosen to plead guilty. See: *id.* The United States later stated at the pretrial Frye colloquy that Alqsous's estimated advisory Guideline range, if convicted on all counts, was 292 to 365 months' imprisonment. See: *Appendix "A," at 5.* On Alqsous's account, counsel's earlier advice materially distorted his understanding of the risks associated with trial and undermined his ability to make an informed plea-related decision.

Before trial, the district court conducted a colloquy pursuant to Missouri v. Frye, 566 U.S. 134 (2012). At that proceeding, it was established that the United States had not extended a formal plea offer. See: *Appendix "A," at 4-5.* Alqsous nevertheless confirmed during the colloquy that he understood the statutory maximum penalties and the United States's estimate of the advisory Guideline range, and he further confirmed that he wished to proceed to trial in light of what may have been offered, the maximum potential advisory sentence, and the statutory penalties. See: *Appendix "A," at 5.* In the post-conviction proceedings, however, Alqsous maintained that the earlier private advice he received from counsel had already

shaped his decision-making and that the record did not conclusively resolve the dispute over what counsel told him off the record.

Alqsous's § 2255 motion also asserted additional ineffective-assistance claims. He alleged that counsel failed to investigate and present certain witnesses who, in his view, would have supported his defense concerning his work hours, employment practices, and the absence of loss. See: *Appendix "A," at 2-4*. He further alleged that counsel was ineffective for failing to retain an expert regarding dental billing practices and related employment matters. See: *Appendix "A," at 6-7*. In his COA application, Alqsous argued that the district court's denial of an evidentiary hearing was debatable because the motion had presented specific and non-frivolous factual allegations and had been supported, at least at one stage, by expert material.

Alqsous also sought relief under *Snyder v. United States*, 144 S. Ct. 1947 (2024), arguing that *Snyder* undermined certain bribery-related convictions. In the court of appeals, Claim Five was described as a *Snyder* challenge to Counts 2, 3, and 5. See: *Appendix "A," at 7*. The Sixth Circuit, however, explained that *Snyder* affected only Counts 3 and 5, not Count 2, because the challenged gratuities language appeared only in the instructions for Counts 3 and 5. See: *Appendix "A," at 7-8*. The district court and the court of appeals further concluded that the concurrent sentence doctrine barred relief because the aggregate 151-month sentence would remain unaffected by other valid counts, including Count 2, and because Alqsous had not shown unique collateral consequences flowing from Counts 3 and 5 independent of

the unaffected RICO and Hobbs Act convictions and sentences. See: *Appendix "A,"* at 7-8.

The district court denied Alqsous's § 2255 motion in its entirety and also denied a certificate of appealability. See: *Appendix "A,"* at 1-2. As summarized by the Sixth Circuit, the district court concluded that Alqsous's claims were meritless, untimely, procedurally defaulted, barred by the concurrent-sentencing doctrine, or not cognizable on collateral review. See: *Appendix "A,"* at 2. On appeal, proceeding *pro se*, Alqsous sought a COA on his first, second, third, and fifth claims. The Sixth Circuit held that because he had not requested a COA on his fourth, sixth, seventh, or eighth claims, and review of those claims was forfeited. *Appendix "A,"* at 2. The court then addressed the requested claims one by one and concluded that no reasonable jurist could debate the district court's rejection of those claims or its denial of an evidentiary hearing. See: *Appendix "A,"* at 2-9.

Finally, the lower court stated that, to the extent Alqsous attempted to raise new and unrelated claims for the first time on appeal—including a claim based on *Yates v. United States*, 354 U.S. 298 (1957)—it would not consider them. See: *Appendix "A,"* at 9.

This timely petition follows the decision of the United States Court of Appeals for the Sixth Circuit.

REASONS FOR GRANTING THE PETITION

This Court's review is warranted because the rulings below present an important question regarding the proper operation of post-conviction review under 28 U.S.C. §§ 2253 and 2255. The district court declined to conduct an evidentiary hearing despite sworn, specific allegations concerning off-the-record attorney misconduct during plea-related decision-making. The court of appeals then denied a certificate of appealability by concluding that no reasonable jurist could debate the district court's disposition. Together, those rulings raise substantial concerns regarding the proper role of an evidentiary hearing under § 2255(b) and the proper threshold inquiry governing a COA under *Slack* and *Miller-El*.

This case presents questions of recurring importance concerning both the integrity of post-conviction procedure and the substance of the Sixth Amendment right to effective assistance of counsel. A petitioner is entitled to a COA if he shows that "reasonable jurists could debate whether (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." See: *Slack v. McDaniel*, 529 U.S. 473, 484 (2000). The COA inquiry is a threshold inquiry, not a final merits determination. See: *Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). The rulings below raise a serious question whether that distinction was maintained here.

I. The Combined Procedural Rulings Below Warrant This Court's Review.

This case presents a sequence of procedural rulings that, in combination, prevented factual development of substantial constitutional claims and then

foreclosed further review of whether that course was proper. First, the district court denied an evidentiary hearing despite specific, sworn allegations concerning off-the-record attorney misconduct during plea-related decision-making. Second, the court of appeals denied a COA by treating the district court's resolution as beyond reasonable debate. This Court has jurisdiction to review the denial of a COA, and it should exercise that authority to clarify the proper interaction between § 2255(b) and the COA framework. See: *Hohn v. United States*, 524 U.S. 236 (1998).

The district court's threshold ruling raises an important question under 28 U.S.C. § 2255(b). That statute does not make a hearing optional whenever a court is unpersuaded by a petitioner's allegations. Rather, it requires a hearing unless the motion and record conclusively show that the prisoner is not entitled to relief. This Court's decision in *Machibroda v. United States*, 368 U.S. 487, 494-95 (1962), explains that where a petitioner presents specific factual allegations regarding off-the-record events which, if true, would entitle him to relief, summary dismissal is inappropriate unless the claims are plainly incredible or legally insufficient on their face.

Here, Alqsous presented the kind of factual dispute for which § 2255(b) hearings are designed: a sworn assertion that counsel materially misadvised him regarding his sentencing exposure, and that this misadvice shaped his decision to proceed to trial. The district court nevertheless concluded that the later *Frye* colloquy and existing record foreclosed relief. That ruling raises a substantial question whether the district court treated formal in-court statements as conclusive in circumstances where *Blackledge* and *Machibroda* counsel caution. The denial of a

hearing also created a serious practical problem. The court found the claim insufficiently supported while declining to permit the evidentiary development through which testimonial detail, credibility testing, and factual clarification ordinarily occur.

The Sixth Circuit's COA denial compounded that difficulty. Rather than asking whether jurists of reason could debate the district court's refusal to conduct a hearing and its disposition of the constitutional claims, the court of appeals concluded that the district court's resolution was not debatable at all. That approach raises a serious question whether the court of appeals collapsed the distinction between threshold COA review and merits review. Under *Slack* and *Miller-El*, the relevant question was not whether the court of appeals agreed with the district court, but whether the claims and procedural rulings were sufficiently substantial to deserve encouragement to proceed further.

The issue is important beyond this case. Post-conviction proceedings frequently involve allegations about private attorney-client communications and other off-the-record events. If formal colloquies may be treated as categorically dispositive against later sworn allegations, and if COA review may then be denied on the ground that no reasonable jurist could debate that result, the hearing mechanism established by § 2255(b) risks being narrowed in practice in precisely the kinds of cases where it is most needed. This Court's review is warranted to restore clarity to the proper roles of the hearing requirement and the COA threshold.

II. The Underlying Constitutional Claims Are Substantial and Debatable.

The procedural rulings below are not abstract or harmless. They prevented further review of constitutional claims that are, at a minimum, substantial and debatable among jurists of reason. This case therefore presents not merely a disagreement about case management, but a significant question about whether substantial Sixth Amendment claims may be resolved without factual development and then screened out on appeal under an unduly restrictive understanding of the COA standard.

A. Ineffective Assistance During Plea Negotiations

The Sixth Amendment right to effective assistance of counsel applies fully during plea negotiations and plea-related decision-making. See: Strickland v. Washington, 466 U.S. 668 (1984); Lafler v. Cooper, 566 U.S. 156 (2012); See also: Missouri v. Frye, 566 U.S. 134 (2012). Alqsous's claim that counsel's material misadvice regarding sentencing exposure caused him to proceed to trial rather than pursue a plea-based resolution presents a substantial claim under those decisions.

The lower courts concluded that this claim was refuted by the record because, during the Frye colloquy, Alqsous acknowledged that he understood the statutory maximum penalties and the government's estimate of the advisory Guideline range. See: Appendix "A." But that conclusion raises substantial tension with Blackledge v. Allison, which teaches that formal in-court statements do not invariably dispose of later specific allegations regarding prior advice or inducements. A defendant's understanding of a formal court colloquy may itself be shaped by the private

assurances of counsel. At a minimum, whether such a colloquy conclusively defeats a sworn allegation of materially inaccurate plea advice is debatable and warrants factual development.

The lower courts also treated the absence of a formal plea offer as a substantial obstacle to relief. But that reasoning takes an unduly narrow view of the prejudice inquiry under Lafler and Frye. Alqsous's contention was not simply that he rejected a formal written offer. His allegation was that counsel's advice was so materially inaccurate that it deprived him of any meaningful incentive to seek, pursue, or seriously entertain a negotiated resolution. If a defendant is told he faces only a limited sentence by proceeding to trial, he may have little reason to press counsel to pursue a plea-based outcome. If, however, he is correctly advised that he faces a dramatically greater sentence, the plea decision looks very different. Whether there is a reasonable probability that accurate advice would have altered the course of plea-related decision-making is a fact-bound inquiry that ordinarily should not be resolved without a hearing where the allegation is specific and sworn.

This case therefore presents an important and recurring question: when a petitioner specifically alleges material off-the-record misadvice about plea consequences, may the district court deny a hearing and the court of appeals deny a COA based principally on later formal colloquy statements? That question implicates the practical enforcement of Strickland, Lafler, Frye, Blackledge, and § 2255(b), and it warrants this Court's review.

B. The Improper Use of the Concurrent Sentence Doctrine

The courts below also invoked the concurrent sentence doctrine to decline further review of Alqsous's challenge to bribery-related convictions in light of Snyder v. United States, 144 S. Ct. 1947 (2024). That ruling presents a separate and substantial question regarding the proper use of a discretionary doctrine in post-conviction litigation involving convictions that may carry meaningful collateral consequences.

Alqsous argued that subsequent developments in this Court's bribery jurisprudence cast doubt on convictions obtained under legal theories that were broader than Snyder now permits. He further maintained that those challenged convictions carried consequences distinct from the aggregate prison term itself. The courts below nevertheless treated further review as unnecessary because other counts supported the same total sentence and because the asserted collateral consequences were viewed as insufficiently immediate or substantial to justify review.

That use of the concurrent sentence doctrine warrants this Court's attention. The doctrine is one of convenience, not jurisdiction, and this Court has cautioned against using it to avoid adjudicating substantial legal questions where a conviction may produce consequences apart from the raw term of imprisonment. See: Benton v. Maryland, 395 U.S. 784, 790-91 (1969). Criminal convictions carry consequences beyond months of custody. They may affect professional standing, future legal proceedings, reputational interests, and other civil or regulatory burdens. Where a

petitioner seeks to challenge convictions that may rest on legal theories later narrowed by this Court, the discretionary decision to withhold review should be undertaken with great care.

This concern is especially pronounced in a case involving bribery-related and racketeering-associated counts, where the nature of the conviction itself may carry consequences beyond sentence length. Whether the concurrent sentence doctrine may be used on collateral review to avoid scrutiny of such convictions after an intervening decision like Snyder is a question of continuing importance. At a minimum, that issue is substantial enough that the denial of all further review warrants this Court's attention.

CONCLUSION

For the foregoing reasons, the rulings below raise substantial and reviewable questions concerning the proper operation of post-conviction review, the hearing requirement of 28 U.S.C. § 2255(b), the threshold inquiry governing certificates of appealability, and the protection of the Sixth Amendment right to effective assistance of counsel. Alqsous respectfully prays that this Honorable Court grant his Petition for a Writ of Certiorari.

Respectfully Submitted,



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