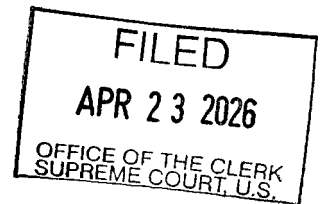


No. 26-5427



\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

TERRANCE BRASHER — PETITIONER  
(Your Name)

vs.

UNITED STATES — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

UNITED STATES APPEALS COURT FOR THE 7th CIRCUIT  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

TERRANCE ANTON BRASHER SR.  
(Your Name)

USP McCreary, P.O. Box 3000  
(Address)

Pine knot, KY, 42635  
(City, State, Zip Code)

N/A  
(Phone Number)

### QUESTION(S) PRESENTED

- 1) Whether the Seventh Circuit and District Court applied the improper standard for a COA in conflict with this Court's decisions in *Miller-El v. Cockrell*, 537 U.S. 322 (2003); *Slack v. McDaniel*, 529 U.S. 473 (2000); and *Buck v. Davis*, 580 U.S. 100 (2017)?
- 2) Whether the Court of Appeals erred in denying COA by ruling opposite of other "COA granted" cases that was under *Webb v. Texas*, 409 U.S. 95 (1972)?
- 3) Whether the Court of Appeals erred in denying COA by ruling opposite of other "COA granted" cases that was in conflict with this Court's decision in *Pinkerton*, 328 U.S. 640, *Stromberg*, 283 U.S. 359, and *Yates*, 354 U.S. 298?

## LIST OF PARTIES

A list of all parties to the proceeding in the court whose judgment is the subject of this petition is provided below. If a party is a corporation with a stock ticker symbol, that symbol is also included.

The Petitioner is Terrance Anton Brasher, the defendant-Appellant in the courts below.

The Respondent is the United States of America, the Plaintiff and Plaintiff-Appellee in the courts below.

## RELATED CASES

- \* United States v. Terrance Brasher, No. 4:15-cr-00028-TWP-VTW-7; Southern District of Indiana, New Albany Division. Judgment entered April 20, 2018.
- \* United States v. Brasher, No. 18-1997, United States Court of Appeals for the Seventh Circuit. Judgment entered June 11, 2020.
- \* United States v. Brasher, No. 4:21-cv-00096-TWP-KMB, U.S. Dist. Court Southern Dist. of Indiana, New Albany Division. (2255 motion- Judgment entered May 23, 2023) (Reconsideration for COA denied August 3, 2023).
- \* Brasher v. United States, No. 23-2230, U.S. Court of Appeals for the Seventh Circuit. Judgment entered Jan. 26, 2026. (COA Request).

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

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

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix C to the petition and is

☒ reported at 2023 U.S. Dist. LEXIS 162131; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

## JURISDICTION

☐ For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was Jan. 26, 2026.

☒ No petition for rehearing was timely filed in my case.

☐ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

☐ For cases from **state courts**:

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_ A \_\_\_\_.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).



## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- \* The Fifth and Fourteenth Amendments provides in relevant part:  
No person shall be deprived of life, liberty, or property without due process of law. Nor shall they be denied equal protection of the laws.
- \* The Sixth Amendment guarantees us the right to have Assistance of counsel in all criminal prosecutions, and the right to obtain witnesses in our favor.
- \* Title 28 U.S.C. Sect. 2253(c) allows a Certificate of Appealability to be issued just by showing "jurist of reason could disagree with the District Court's resolution of a defendant's constitutional claims."
- \* Webb v. Texas, 409 U.S. 95, is a clear due process violation because judge's conduct drove witness from the stand.
- \* Pinkerton, 328 U.S. 640, deals with the fundamental elements of co-conspirator liability and how "foreseeability" is one of those fundamental elements.
- \* Miller-El, 537 U.S. 322, elaborates on COA standards, as well as Slack, 529 U.S. 473, emphasizing "debatability" not whether one would prevail on merits/issues.

## STATEMENT OF THE CASE

This case stems from defendant's January 25, 2018 conviction of Conspiracy to Distribute Controlled Substances; specifically: 500 grams or more of a mixture containing methamphetamine, one kilogram or more of a mixture containing heroin, and five kilograms or more of a mixture containing cocaine, all in violation of 21 U.S.C. Sect. 846 and 841(a)(1), (b)(1)(A). The jury made specific findings that the conspiracy involved these quantities and substances. Mr. Brasher was sentenced on April 20, 2018. He faced a mandatory minimum of life (which would be 25 years if he was sentenced today) due to 21 U.S.C. 841(b)(1)(A)'s double 851 filings, therefore, the judge could not deter from life imprisonment.

The Seventh Circuit affirmed Brasher's conviction and sentence on July 6, 2020. Brasher, by attorney, filed a 2255 motion on June 9, 2021. The Sect. 2255 was denied without a COA on May 23, 2023. Appendix C. Brasher filed a timely motion to the District Court for reconsideration to issue a COA. Brasher again was denied on Aug. 3, 2023. App. B. Mr. Brasher then filed a timely appeal asking the Circuit Court to find that the Dist. Court erred in denying him a COA. The Court of Appeals for the Seventh Circuit denied Brasher without any specifics. Appendix A. Brasher now seeks certiorari.

Relevant here, when Brasher's 2255 was denied, the District Court did not issue a COA. Appendix C. The District

Court delivered a very harsh opinion highlighting it's disdain for Brasher's lawyer and basically rejected every merit based on that disdain. Appendix C. When denying the COA, Brasher feels the District Court never considered the "debatability" of the claims, only the attorney's mediocrity and poor performance.

The Court of Appeals accepted the District Courts wrong standard of COA review with zero elaborations. Appendix A.

Also, neither Court considered the prior cases that's been granted a COA for the exact same claims Brasher presented, nor did they consider the Supreme Court precedents and case laws on "threatening witnesses with incarceration" and "Pinkerton instructions/Wrong theory instructions."

## REASONS FOR GRANTING THE PETITION

### I. The lower court's COA denials conflicts with this Court's COA standard

The COA standard is satisfied upon showing that reasonable jurist would find that assessment of the constitutional claims by the Court is debatable or wrong and that any dispositive procedural ruling is likewise debatable. *Miller-El v. Cockrell*, 537 U.S. 322, 336-38, 123 S.Ct. 1029 (2003); *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1595. (2000). Indeed, a claim can be debatable even though every jurist of reason may agree that Petitioner's claims will not prevail. *Miller-El*, at 338. A COA determination is a separate proceeding, one distant from the underlying merits. *Slack*, 529 U.S. at 481; *Hohn*, 524 U.S. at 241.

In this case, the District Court denied COA issuance based on an attorney's mediocre articulation and delivery of Petitioner's 2255 claims. Appedix C. The Court of Appeals, later, adopted the denial and agreed. Appendix A. The lower Courts should not have denied COA on those merits, but instead, should have looked passed the attorney's mediocrity and questioned "whether reasonable jurists could debate" the constitutional claims or conclude it deserves encouragement to proceed. *Slack v. McDaniel*, 529 U.S. 473 (2000); *Miller-El*, 537 U.S. 322 (2003).

This error is even highlighted more in the District Court's order denying reconsideration for COA when the Court said, "The question before the Court is..." "...whether the Court

manifestly erred in denying the motion that his attorney presented in the first place." Appendix B at pg. 3..Importantly, the COA inquiry is not whether the District Court's earlier ruling was "manifest error", nor is it suppose to be a full merits determination. Buck v. Davis, 580 U.S. 100 (2017) Ironically, as petitioner pled for the Court's scrutiny on ineffective assistance of counsel, the Court instead scoldingly highlighted his current attorney's ineffectiveness. Appendix C. This is an injustice, because if Courts continue to be allowed to ignore reasonable debatable issues due to lackluster attorneys on every level of a defendant's appeal process, the integrity and fairness of the judicial system will become just as lackluster as the attorneys they scold.

Under Miller-El/Slack/Buck the Courts below should have issued the petitioner a COA because it's not about the factuality and legal merits of the claims, but it's about "the debatability of the underlying constitutional claims..." Miller-El, 537 U.S. at 342. By not issuing petitioner a COA, petitioner's due process has been violated.

II. WEBB V. TEXAS, 409 U.S. 95 (1972), SOLIDIFIES  
DUE PROCESS AND A DEFENDANT'S SIXTH  
AMENDMENT RIGHT TO CALL WITNESSES, WHEN  
VIOLATED, A COA, AT MINIMUM, SHOULD BE ISSUED  
TO ENCOURAGE FURTHER PROCEEDINGS.

This Court, as well as the Court of Appeals, has decided not to tolerate a judge or the government threatening a witness with incarceration in a way that could deter, alter, or stop testimony. Webb v. Texas, 409 U.S. 95, 93 S.Ct. 351, 34 L.Ed. 2d 330 (1972); United States v. Arthur, 949 F.2d. 211 at 216 (6th Cir. 1991); United States v. Smith, 478 F.2d 976, at 979 (D.C. Cir. 1973).

"It is well-settled that substantial government interference with a defense witness's free and unhampered choice to testify violates the defendant's due process rights." Newell v. Hanks, 283 F.3d 827, 837 (7th Cir. 2002).

In the instant case, petitioner was involved in a separate, distinct conspiracy with his nephew, in another district and State. His nephew was found in possession of drugs in this separate district and State. Both nephew and uncle was charged, but later the uncle was taken off the State case and then charged federally in another State/District with separate co-conspirators. The nephew decided to plead guilty to the substantive drug offenses in his State case, but/and in the process finds out that his uncle is in another State being held liable for the same exact drugs. He then decides to come to his uncle's trial to give the jury the transparency they're suppose to have so they would know the drugs were not only his, and secured in his locked safe

in his bedroom, but to also tell the jury he'd already pled guilty to the same exact drugs in a completely different State. The judge was not going to allow this to happen. No matter how many times this 24 year old man told the judge he understood what he was doing and still wanted to testify to get the truth out, the judge would not let up from her over-zealous admonition. And when she noticed the nephew's inflexibility and steadfastness, she scared him and the defense with incarceration. The defense was not going to allow him to admit to those drugs after that.

At minimum, this incident prompted a COA just as it did in: Caffey v. Harrington, 2013 U.S. Dist. LEXIS 144561, at 104-105 (7th Cir.)(prosecution agreed not to charge witness if witness kept quiet); and, Sullivan v. Stewart, 2020 U.S. Dist. LEXIS 101860 (6th Cir.)(prosecution engaged in witness intimidation) which was the only issue Sullivan was granted a COA on; Newell v. Hanks, 283 F.3d. 827, 832 (COA granted on whether Newell was violated by prosecutor offering to dismiss witness's charges if witness did not testify).

The inter-circuit and outer-circuit conflict with Webb is apparent. There seems to be an "intimidation barometer" that measures differently in every courtroom. I will not bore the honorable Justices with loads of differentiating COA opinions and case law, besides the ones already given/mentioned, however, I will speak one last grumble. No man or woman desires their freedom to be taken, so when threats of incarceration are thrown at witnesses, or when Courts allow incarceration to become an ultimatum for a witness testifying or not testifying, harm has already settled. Regardless of if that harm prevails on its merits,

a defendant still deserves those merits to proceed and to be further heard. A determination of whether one should issue a certificate neither requires nor permits full consideration of the factual and legal merits of the claims. "The question is the debatability on the underlying constitutional claim, not the resolution of that debate." Miller-El, 537 U.S. at 342.



III. A JURY ISN'T COMPACT WITH CITIZENS WHOM  
PASSED THE BAR, SO ACCORDINGLY, THEY  
TRUST AND LEAN ON A JUDGE'S INSTRUCTIONS  
TO GUIDE THEM. WHEN THOSE INSTRUCTIONS ARE  
FLAWED OR PRESENTS A WRONG THEORY, PREJUDICE  
OFTEN OCCURS.

Under the rule first pronounced in *Pinkerton v. United States*, 328 U.S. 640, "each conspirator is liable for the criminal act of a coconspirator if: 1) the substantive offense was committed in furtherance of the conspiracy, and 2) the offense could reasonably have been foreseen..." *Id.* at 647-48. "The foreseeability concept underlying *Pinkerton* is also the main concern underlying a possible due process violation." *United States v. Castaneda*, 9 F.3d 761, 766 (9th Cir. 1993), (quoting, *United States v. Christian*, 942 F.2d 363, 367 (6th Cir. 1991)).

In the instant case, petitioner had a jury trial on a drug conspiracy charge. The jury was given an instruction on co-conspirator liability, but that particular instruction lacked the essential element/theory of "foreseeability". The lower Courts refused to accept the mistake, and also, declined to issue the matter a COA.

Honorable Justices has specifically stated that a "...verdict is subject to challenge if the jury was instructed on alternative theories of guilt and may have relied on the invalid one." *California v. Roy*, 519 U.S. 2, 136 L.Ed. 2d 266, 117 S.Ct. 337 (1997); *Yates v. United States*, 354 U.S. 298, 1 L. Ed. 2d 1356, 77 S.Ct. 1064 (1957); *Stromberg v. California*, 283 U.S. 359, 75 L.Ed. 1117, 51 S.Ct. 532 (1931).

Lower Courts like the Court of Appeals for the Ninth Circuit also agree; *Castaneda*, 9 F.3d 761, at 765 (9th Cir. 1993) ("...the jury instructions misstated the law of co-conspirator liability..."); and Seventh Circuit's *Elizondo*, 920 F.2d 1308, at 1317 (expressing disfavor for "Half-Pinkerton" instructions).

Decisions in petitioner's own circuit, the Court of Appeals for the Seventh Circuit, also conflicts with the denial of petitioner's CoA request; *United States v. Cruse*, 805 F.3d 795 (7th Cir. 2015) (the court ruled that it should not have "omitted the Pinkerton principal that coconspirator's liability only extends" to reasonably foreseeable acts); *United States v. Garcia*, 754 F.3d 460, 481 (7th Cir. 2013) (an incomplete Pinkerton instruction isn't fixed with the addition of a separate complete Pinkerton instruction); *United States v. Elizondo*, 920 F.2d 1308, 1317 (7th Cir. 1990) ("Half-Pinkerton" instructions are inadequate).

The above cases exemplifies the importance of "Pinkerton" instructions and how petitioner's circuit agrees on that importance; therefore, petitioner's CoA request should have been granted just as

the Seventh Circuit granted the others.

co-Conspirator liability for substantive crimes or acts done out of the presence of another does and can not exist without the foreseeability element. I pray the Justices settle this Pinkerton inconsistency. Every defendant on trial for conspiracy deserves for their jurors to be instructed on the full-scope of Pinkerton and coconspirator liability, and when/if that instruction is missing an element, (even if that element is given in a separate instruction) automatic reversal should be required because no one knows or can "trust the jury to have chosen the legally sufficient theory and to have ignored the insufficient one." *Griffin v. United States*, 502 U.S. 46, 59; 112 S.Ct. 466; 116 L.Ed 2d 371 (1991).

Petitioner's request for a COA was/is not far-fetched. Numerous COAs have been granted in the lower courts for jurors receiving invalid theories in their instructions. *Reyes v. United States*, 998 F.3d 753 (7th Cir. 2021); *Czech v. Melvin*, 2017 U.S. Dist. LEXIS 42981 (7th Cir. 2017); *Hernandez v. Ducart*, 2018 U.S. Dist. LEXIS 216956 (E.D. Cal.). Petit-

ioner's jury was instructed that they could find him guilty of his coconspirator's acts without establishing those acts had to be foresaw. Denying petitioner his right to proceed in litigation is violative of petitioner's 5th and 14th Amendment (his right to due process of law and his right to equal protection of the laws).

Petitioner is not a lawyer and therefore knows this writ for cert may not be prepared as well as this honorable court desires it to be. He thanks you all for your time and patience with this and apologizes for any unintentional mistakes and inconveniences he has presented.

**CONCLUSION**

The petition for a writ of certiorari should be granted.

Respectfully submitted,

T. Brasher

Date: April 22, 2026