

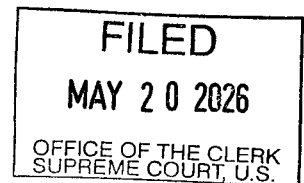
No. **26-5469**

ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

MAY TERM 2026



TATIANA LEIBEL

Petitioner

v.

WILLIAM REUBART, et al

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT case No. 24-2212

TATIANA LEIBEL, 1137908
Florence McClure Women's
Correctional Center (FMWCC)
4370 Smiley Road
Las Vegas, NV 89115

QUESTION PRESENTED

Whether the question presented is of great importance because it affects to obtain a certificate of appealability (COA)

"the court of appeals should LIMIT its examination to a threshold inquiry into the underlying MERIT..., a prisoner seeking a COA need ONLY demonstrate a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2).

Constitutes for Petitioner's exercising statutory right to appeal and thus CONTRAVENTED the DUE PROCESS CLAUSE of the Fourteenth Amendment to the United States Constitution.

PARTIES

Petitioner is TATIANA LEIBEL, pro-se litigant, a prisoner at Florence McClure Women's Correctional Center (FMWCC), the State of Nevada.

The Respondents are William Reubart, the Warden at Florence McClure Women's Correctional Center (FMWCC), and Attorney General of the State of Nevada.

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Cases:

Carriger v. Stewart, 132 F.3d 463 (9th Cir. 1997).....

Herrera v. Collins, 506 U.S. 390 (1993).....

Miller-Et v. Cockrell, 537 U.S. 322 (2003).....

Rivas v. Fischer, 687 F.3d 514 (2nd Cir. 2012).....

Slack v. McDaniel, 529 U.S. 473 (2000).....

Souter v. Jones, 395 F.3d 577 (6th Cir. 2005).....

Fed. R. Evid. 201 (b), (d).....

Fed. R. Evid. 703.....

DECISIONS BELOW

The decision of the United States Court of Appeals for the 9th Circuit No. 24-2212 is denied on February 25, 2026, a copy is attached as Appendix A to this PETITION.

The appeal from the United States District Court District of Nevada is entered on October 28, 2025, a copy is attached as Appendix B to this PETITION.

The order of the United States District Court District of Nevada No. 2:23-cv-00691-GMN-DIA is denied on March 28, 2024, a copy is attached as Appendix C to this PETITION.

JURISDICTION

The Judgment of the United States Court of Appeals for the 9th Circuit No. 24-2212 was entered on December 5, 2025. An order denying a petition for reconsideration and reconsideration en banc was entered on February 25, 2026, and a copy of that order is attached as Appendix A. to this petition.

The dates of all judgments and orders to be review is attached as Appendix A-C to this petition.

Jurisdiction is conferred by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Amendment XIV to the United States Constitution, which provides: (Section 1) "...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (Section 5) "The Congress shall have power to enforce by appropriate legislation, the provisions of this article".

The statutory authority of federal court to issue habeas corpus for persons in state custody is provided by 28 U.S.C. § 2254, as amended by the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA). The AEDPA amendment to 28 U.S.C. § 2253(c) is governed by the certificate of appealability (COA), which governs proceedings in the federal appellate courts. A COA should issue.

STATEMENT OF THE CASE

On writ of Certiorari, Petitioner who has FIRST TIME BEEN CONVICTED of second-degree murder, appealed from a Judgment of the United States Court of Appeals for Ninth Circuit denial by two Judges of a certificate of appealability (COA) on her federal petition for writ of habeas corpus under 28 U.S.C. § 2253(c) and § 2254.

A. On February 23, 2014, Petitioner's theory of defense was that her husband Harry had shot himself following an argument regarding her plans to visit her daughter and grandchildren in Los Angeles, as Harry sat on a reclinable couch had suicide in their home in Zephyr Cove, Lake Tahoe, Nevada.

The State witnesses testified that Petitioner had called 911 and that she looked "somewhat

panicked and possibly hyperventilating" when first responders arrived at her home. Petitioner explained that she had heard a gunshot while in her kitchen and that she had then returned to the living room to find her husband holding the firearm towards his torso as another shot rung out. (ECF No. 19-18 at 11).

Defense witness Dr. Bennet Omalu, an expert in forensic pathology, testified that Harry's death was attributable to an "ATYPICAL" suicide that resembles homicide. (ECF No. 19-27 at 5, 8).

Contrary, the prosecution's expert-ballistics Matthew Noedel, who testified "to a degree of scientific certainty" that Petitioner shot the victim at close range while he sat on the couch.

His conclusion depended entirely on a

PHOTOGRAPH created by law enforcement after moved the coffee table from front of the couch, this photograph DID NOT REFLECT THE ORIGINAL CRIME scene and rendered the State's ballistics expert testimony UNRELIABLE UNDER Fed. R. Evid. 703.

*The State's failure to include the initial crime-scene diagram in the FEDERAL RECORD violated due process, Fed. R. Evid. 201(b), (d).

The federal district court acknowledged that Petitioner's claim under 28 U.S.C. § 2254 was EXHAUSTED, NOT PROCEDURALLY DEFAULTED, and that the ACTUAL-INNOCENCE GATEWAY should be addressed on the merits. But the court denied relief because the initial crime-scene diagram was missing from THE RECORD, a failure caused solely by the State.

Based on the RECORD that was testimony

at the trial that the paramedics moved a table to attend to Petitioner's husband Harry and first photograph made by first responders that "shows the coffee table" was located directly in front of the couch - rather than at the outer reaches of the couch - during the shooting would NEGATE a finding that Petitioner was the shooter because Petitioner would have had DIFFICULTY ACCESSING to Harry, who was shot at a close range on the couch, due to the presence of the coffee table.

Reasonable jurists could debate whether this evidence that the COFFEE TABLE DIRECTLY IN FRONT of the couch is new, reliable, exculpatory evidence establishes FREESTANDING ACTUAL INNOCENCE.

This evidence:

- contradicts the prosecution's theory;
- undermines the expert's testimony;

- shows Petitioner could not physically have shot the victim at close range;
- was never shown to the jury; and
- was never transmitted to the federal district court.

Reasonable jurists could debate whether Petitioner is actually innocent.

1. Reasonable jurists could debate whether the State violated Fed. R. Evid. 201(b), (d).

The Ninth Circuit refused to take judicial notice of the diagram even after Petitioner supplied it through to her appointment counsel. Federal Rule 201(b)(d) requires courts to take notice of facts "not subject to reasonable dispute" and "supplied by a party".

Reasonable jurists could debate whether the Ninth Circuit's refusal violated Rule 201 and due process.

11. Reasonable jurists could debate whether

the ballistics expert's testimony was inadmissible under Fed. R. Evid. 703.

Expert testimony must be based on SUFFICIENT FACTS OR DATA. Prosecution's ballistic-expert testimony relied on a TAMPERED PHOTOGRAPH, not the original scene. His conclusion was scientifically unreliable and misleading.

Reasonable jurists could debate whether this violated Rule 703 and Petitioner's right to a fair trial.

III. Reasonable jurists could debate whether the State's withholding of the diagram violated due process.

The State's failure to include the diagram in the federal record prevented meaningful review. The federal district court denied relief because the diagram was missing - yet the State was responsible for the OMISSION.

Reasonable jurists could debate whether this constitutes a due-process violation and interference with the course of Justice.

Petitioner - send the diagram to FBI laboratory division for future investigation.

Petitioner has made a substantial showing of the denial of a constitutional right. A Certificate of Appealability should issue.

B. On April 21, 2015, the Ninth Judicial District Court for Douglas County ("state court") entered a Judgment of Conviction, sentencing to 10 to 15 years for the Second-Degree murder conviction plus a consecutive term of 2 to 5 years for the use of a deadly weapon enhancement. (ECF No. 19-47 at 3) The Nevada Supreme Court affirmed on December 18, 2015. (ECF No. 27-18).

On November 14, 2016, Petitioner filed a state Petition for Post-Conviction Relief. (ECF No. 34-1). The state court denied on December 20, 2018. (ECF No. 22-2). Petitioner appealed, and the Nevada Supreme Court affirmed on June 24, 2020. (ECF No. 22-26). Remittitur issued on July 10, 2020. (ECF No. 22-27).

On November 9, 2020, Petitioner filed a second state Petition for Post-Conviction Relief. (ECF No. 22-30). The state court denied post-conviction relief on January 22, 2021 (ECF No. 30-14). The Nevada Supreme Court affirmed on December 17, 2021 (ECF No. 34-36). After denying a Motion for Reconsideration and a Motion for En Banc Reconsideration, Remittitur issued on February 7, 2022 (ECF No. 34-44).

On March 21, 2022, Petitioner filed a third state Petition for Post-Conviction and Factual innocence relief. (ECF No. 33-24). The

state court denied on June 6, 2022. (ECF No 25-4). The Nevada Supreme Court affirmed on February 16, 2023. (ECF No. 25-16). After denying a Motion for Rehearing and a Motion for En Banc Reconsideration, Remittitur issued on May 9, 2023. (ECF No. 25-25).

On May 2, 2023, Petitioner commenced the federal habeas corpus under 28 U.S.C. § 2254. (ECF No. 1). Petitioner raises sole ground for relief a "due process claim of actual innocence based on newly discovered evidence". (ECF No. 5). The federal district court denied the Respondents the Motion to Dismiss "1) cognizability and the actual-innocence gateway would be more appropriately addressed in connection with the merits of the Petition, and 2) Leibel's claim was exhausted and not procedurally defaulted. (ECF No 43).

On March 28, 2024, the federal district

court denied petition for writ of habeas corpus relief and also denied a certificate of appealability (COA). (ECF No. 49 at 15). Petitioner filed a timely Notice of Appeal (ECF No. 51), and then various pro se motions for relief pursuant to Rule 60 of the Federal Rule of Civil Procedure, which were denied. (ECF Nos. 57, 60, 64, 67, 68, 71, 75, 79, 81, 82). The Federal Public Defender was appointed following the denial of the above-noted post-judgment motions, on September 17, 2024. (ECF No. 84).

On October 28, 2024, Petitioner through her federal counsel filed a Application for Certificate of Appealability. The Ninth Circuit denied on December 4, 2025. An order denying a petition for rehearing was entered on February 25, 2026.

BASIS FOR FEDERAL JURISDICTION

This case raises a question of interpretation of the Fourteenth Amendment to the United States Constitution. The federal district court had jurisdiction under the general federal question jurisdiction conferred by 28 U.S.C. § 1331.

REASONS FOR GRANTING THE WRIT

A. Conflicts with Decisions of other Courts
("to be entitled to relief, a habeas petitioner asserting a freestanding innocence claim must go beyond demonstrating doubt about his guilt, and must affirmatively prove that he is probably innocent")
Carriker v. Stewart, the Ninth Circuit, 132 F. 3d 463, 476 (9th Cir. 1997) (en banc) (citing Herrera, 506 U.S. at 441-42 (Blackmun, J., dissenting)).

("the Eighth Circuit's second mistake was failing to 'limit its examination to a threshold inquiry'")

Miller El v. Cockrell, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

("the Fifth Circuit exceeded the limited scope of COA analysis. The COA statute sets forth a two-step process: an initial determination whether a claim is reasonably debatable, and, is so, an appeal in the normal course")

Buck v. Davis, 580 U.S. 100 137 S. Ct. 739, 197 L. Ed. 2d 1 (2017).

("the COA statute establishes procedural rules are requires a threshold inquiry into whether the circuit court may entertain an appeal".)

Hohn v. United States, 524 U.S. 236, 248, 141 L. Ed 2d 242, 118 S. Ct. 1969 (1998).

("this includes the use of testimony whether elicited or left uncorrected, that the prosecutor knows or should know is false") Giglio v. United States, 405 U.S. 150, 153-54, 92 S. Ct. 763, 311 Ed 2d 104 (1972).

B. IMPORTANCE OF THE QUESTION PRESENTED

This case presents a fundamental question of the interpretation of this Court's decision in *Miller-El v. Cockrell*, 537 U.S. 322, 342, 154 L. Ed. 2d 931, 123 S. Ct. 1029 (2003). This requires a petitioner "only had to make a substantial showing of the denial of a constitutional right by showing that a jurist of reason could disagree with the district court's resolution of his constitutional claims or could conclude the issues were adequate to deserve encouragement to proceed further. A COA should have issued." *Miller-El v. Cockrell*, 537 U.S. 322, 327, 123 S. Ct. 1029, 154 L. Ed. 2d 931 (2003).

In view of the large amount of litigation over COA proceedings, guidance on the question is also of great importance to appellants because it affects their ability to receive fair decisions that *Miller-El* held the relevant analysis for a habeas petition is different and distinct from

the analysis for a COA determination.

Miller-EI explaining that the "consideration underlying a COA" is the "debatability of the underlying constitutional claim, not the resolution of that debate [.] which is the consideration underlying a habeas petition, and that "[a] district court's COA inquiry is itself, therefore, a 'separate proceeding'" (citing Miller-EI, 537 U.S. at 342).

This Court has explained that the showing required under § 2253(c)(2) is straight forward when a district court has rejected a petitioner's constitutional claims on the merits. The petitioner must demonstrate "that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong". *Slack v. McDaniel*, 529 U.S. 473, 484, 120 S.Ct. 1545, 146 L.Ed.2d. 542 (2000).

The issue's importance is enhanced by the fact in this case have seriously misinterpreted Miller-El. The certificate of appealability (COA) determination under 28 U.S.C. § 2253(6) requires an overview of the claims in the habeas petition and a general assessment of the merits. An appellate court looks to the district court's application of the Antiterrorism and Effective Death Penalty Act of 1996 to a petitioner's constitutional claims and asks whether that resolution was debatable amongst jurists of reason. This threshold inquiry does not require full consideration of the factual or legal bases adduced in support of the claims. In fact, the statute forbids it, when a court of appeals side steps this process by first deciding the merits of an appeal, and then justifying its denial of a COA based on its adjudication of the actual merits (free standing actual innocence) is in essence deciding and appeal without jurisdiction.

Schlep v. Delo, 513 U.S. 298, 324 (1995) ("[A] claim... must be based on reliable evidence not presented at trial", see also Rivas v. Fischer, 687 F.3d 514, 543, 546-47 (2nd Cir. 2012) (explaining "new evidence" is "evidence not heard by the jury"; and Sweeter v. Jones, 395 F.3d 577, 595 n.9 (6th Cir. 2005) (same). This case is WARRANTED.

CONCLUSION

Petitioner has made a compelling demonstration that the issues presented to this Court are debatable among jurists of reason and/or could be resolved in a different manner. A Certificate of Appealability should issue.