26-6007 ORIGINAL

No. _____

FILED
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SUPREME COURT, U.S.

IN THE SUPREME COURT OF THE UNITED STATES

JORGE L. LEAL,

Petitioner,

v.

UNITED STATES OF AMERICA,

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

JORGE L. LEAL
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QUESTIONS PRESENTED

1. Whether the court of appeals applied the certificate-of-appealability threshold consistently with 28 U.S.C. § 2253(c), Miller-El v. Cockrell, 537 U.S. 322 (2003), and Buck v. Davis, 580 U.S. 100 (2017), where Petitioner's Sixth Amendment claim presented questions on which reasonable jurists could debate the district court's prejudice determination.

2. Whether reasonable jurists could debate prejudice under Strickland v. Washington, 466 U.S. 668 (1984), where counsel made entrapment the central defense but failed to object to or seek modification of a deceptive-investigative-techniques instruction that the Pattern Committee expressly cautioned could "implicitly modify or undercut the entrapment instruction," in a case also involving missing communications surrounding the Government's initial age disclosure and preserved evidence of reluctance and reassurance.

PARTIES TO THE PROCEEDING

Petitioner Jorge L. Leal was the petitioner-appellant in the United States Court of Appeals for the Seventh Circuit.

Respondent United States of America was the respondent-appellee.

There are no corporate parties.

DIRECTLY RELATED PROCEEDINGS

United States v. Jorge L. Leal, No. 4:19-cr-40069-JPG-1, United States District Court for the Southern District of Illinois.

United States v. Leal, No. 22-1808, United States Court of Appeals for the Seventh Circuit, judgment affirming Petitioner's conviction entered June 29, 2023; rehearing denied August 2, 2023; reported at 72 F.4th 262.

Leal v. United States, No. 3:24-cv-02254-JPG, United States District Court for the Southern District of Illinois, order denying relief under 28 U.S.C. § 2255 and denying a certificate of appealability entered October 28, 2025.

Leal v. United States, No. 25-3052, United States Court of Appeals for the Seventh Circuit, order denying a certificate of appealability entered July 2, 2026; panel rehearing and rehearing en banc denied August 17, 2026.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Jorge L. Leal, proceeding pro se, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit denying a certificate of appealability from the denial of relief under 28 U.S.C. § 2255.

OPINIONS AND ORDERS BELOW

The Seventh Circuit's July 2, 2026 order denied Petitioner's application for a certificate of appealability and motion for appointment of counsel. After reviewing the district court's final order and the record, the court concluded that Petitioner had made "no substantial showing of the denial of a constitutional right."

The Seventh Circuit denied panel rehearing and rehearing en banc on August 17, 2026. The district court's October 28, 2025 order denied Petitioner's motion under 28 U.S.C. § 2255 and denied a certificate of appealability.

Petitioner's underlying conviction was affirmed in United States v. Leal, 72 F.4th 262 (7th Cir. 2023).

JURISDICTION

The Seventh Circuit denied Petitioner's application for a certificate of appealability on July 2, 2026.

Petitioner timely sought panel rehearing and rehearing en banc, which the court denied on August 17, 2026.

Because a timely petition for rehearing was filed, the time for filing this petition runs from the denial of rehearing.

This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Sixth Amendment provides, in relevant part:

"In all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence."

Title 28 U.S.C. § 2253(c)(2) provides:

"A certificate of appealability may issue ... only if the applicant has made a substantial showing of the denial of a constitutional right."

Title 28 U.S.C. § 2255 authorizes a federal prisoner to seek relief from a sentence imposed in violation of the Constitution or laws of the United States.

STATEMENT OF THE CASE

The United States District Court for the Southern District of Illinois had original jurisdiction over Petitioner's federal criminal prosecution under 18 U.S.C. § 3231. Petitioner's collateral proceeding arose under 28 U.S.C. § 2255.

A. The investigation began through a profile representing an adult

Petitioner's prosecution arose from an FBI undercover operation conducted through Grindr.

The initial undercover profile, "Clay," represented its user as an adult. Petitioner's interaction therefore began as an interaction with an ostensibly adult user.

The Government subsequently represented that Clay disclosed that he was fifteen.

That transition was critical to the entrapment defense. Entrapment required the jury to distinguish between a criminal predisposition existing independently of government intervention and willingness that developed through the Government's interaction.

But the communications surrounding that transition were not preserved.

B. The communications surrounding the initial age disclosure were missing

Petitioner's original § 2255 memorandum specifically raised the preservation problem.

It alleged that the early Clay chats were not preserved, identified conflicting testimony concerning when Clay disclosed being fifteen, described the loss of communications after Grindr disabled the undercover account, and challenged the Government's reliance upon agent recollection to reconstruct communications that no longer existed.

The original memorandum further argued that Government witnesses described what supposedly occurred in those missing chats even though testimony concerning preservation practices created substantial questions about what had actually been saved.

The missing evidence was not collateral.

It concerned the period in which an interaction initiated with an ostensibly adult profile became an interaction with a purported fifteen-year-old—the period most directly relevant to Petitioner's contemporaneous response to the Government's age disclosure.

C. The Government's explanation for the ultimate loss of those communications contained a material factual distinction

The criminal record also contains a discrepancy concerning the Government's explanation for why the Clay communications could not later be recovered from Petitioner's side.

The Government asserted that Petitioner deleted his Grindr account.

But the interview passage quoted by the Government records a materially different statement:

> Hart: "Do you still have the chat logs in here?"
> Leal: "I deleted the app."
> Hart: "You deleted it?"
> Leal: "uh hum."
> Hart: "Just now?"
> Leal: "Just now."

The Government's own filing consequently moved between describing deletion of the app and deletion of the account when explaining the disappearance of the communications. The Government also invoked its characterization of the deletion when arguing that Petitioner's conduct supported an inference of consciousness of guilt.

Petitioner does not ask this Court to decide the technical consequences of deleting the Grindr application, nor does he present the app/account distinction as a separately preserved § 2255 ground.

Its relevance is narrower.

It illustrates the factual uncertainty surrounding the Government's explanation for why communications bearing directly on the initial age disclosure were permanently unavailable. The interview also records investigators requesting Petitioner's Grindr identifying and access information and Petitioner providing that information. The record therefore contained facts bearing upon whether counsel adequately investigated the Government's explanation for the disappearance of the communications.

D. The preserved Corey communications contained affirmative evidence relevant to inducement

After the Clay account became unavailable, the Government created another undercover profile, "Corey."

The preserved Corey communications contained evidence the Government used to demonstrate Petitioner's eventual willingness.

But those same communications also contained evidence of hesitation and Government reassurance.

Petitioner expressed concern about Corey's age and about going to jail. The record contains statements including:

"I want to but I'm really concern about your age bro,"

and:

"not trying to go to jail."

Corey reassured Petitioner that he would not go to jail and portrayed himself as sufficiently mature to make his own decisions.

Later Petitioner asked:

"How do I know this is not a trap?"

Corey responded:

"Babe I would NEVER do that."

Petitioner replied:

"Not sure."

Corey then responded:

"You have to trust me."

Those communications permitted competing inferences.

The Government could argue that Petitioner's eventual conduct demonstrated predisposition.

The defense could argue that hesitation followed by reassurance and persistence supported an inference that Petitioner's eventual willingness developed through the Government's interaction.

That factual dispute was at the heart of entrapment.

E. Petitioner's interview contained additional evidence of reluctance and alleged persistence

Petitioner's post-arrest interview likewise contained evidence relevant to both sides of the entrapment inquiry.

Petitioner stated that he had been:

"really very hesitant,"

that the purported minor:

"kept insisting,"

and:

"I wasn't wanting to. I wasn't wanting to."

Those statements were directly relevant to whether Petitioner's eventual willingness reflected predisposition existing independently of government intervention or willingness developing after government persistence.

The Government nevertheless relied upon the interview as evidence defeating entrapment.

Its appellate presentation argued that the interview demonstrated Petitioner was not someone the Government had cajoled or convinced into committing an offense he otherwise was reluctant to commit.

The Government also relied upon Petitioner's "as far as I know" response concerning whether this was his first encounter with a minor as evidence supporting predisposition.

Thus the interview itself contained competing evidence bearing upon the central defense.

F. Counsel made entrapment the central defense

Petitioner's ineffective-assistance claim does not depend upon portraying trial counsel as having ignored entrapment altogether.

Counsel did substantial work to present the defense.

He challenged weaknesses in the investigation, questioned preservation practices, attacked the reconstruction of the early communications, obtained an entrapment instruction, and argued inducement and lack of predisposition to the jury.

Counsel also recognized the legal distinction between generally permissible undercover deception and entrapment.

He argued:

"they're allowed to pretend that they're not 18, but they can't entrap you."

Petitioner's original § 2255 memorandum quoted counsel's recognition that the Government's general authority to use deceptive techniques did not eliminate an entrapment defense.

That makes what occurred with Instruction 3.19 especially important.

G. The jury was instructed that the Government was permitted to use deceptive investigative techniques

The court instructed Petitioner's jury:

> "You have heard evidence obtained from the government's use of undercover agents and deceptive investigative techniques. The government is permitted to use these techniques."

The Seventh Circuit Pattern Committee had expressly cautioned about the relationship between that instruction and entrapment.

The Committee Comment stated that where an entrapment instruction is given, consideration should be given to rewording Instruction 3.19 so that it does not:

"implicitly modify or undercut the entrapment instruction."

The § 2255 court expressly recognized that warning. It also recognized that the Government proposed the instruction and that counsel did not object.

Indeed, Petitioner's original § 2255 memorandum expressly designated this issue:

"Ground 2: Ineffective Assistance of Counsel by failing to object to a Deceptive Investigative Techniques Instruction."

Thus the Instruction 3.19 ineffective-assistance claim was squarely presented in the original collateral proceeding.

H. Petitioner had specifically alerted counsel to the Committee's warning before trial

The failure to object did not occur in the absence of notice.

Before trial, Petitioner wrote counsel concerning the precise interaction between Instruction 3.19 and entrapment.

In his August 25, 2021 letter, Petitioner quoted the Committee warning:

> "In addition, in a case in which an entrapment instruction is given and Instruction 3.19 is requested, consideration should be given to whether instruction 3.19 should be reworded so that it does not implicitly modify or undercut the entrapment instruction."

App. 47-48.

Petitioner does not attribute additional deceptive-investigative-techniques discussion to that letter beyond the language actually identified and verified.

Nevertheless, counsel did not object to Instruction 3.19, request its omission, seek the modification contemplated by the Committee Comment, or request clarification explaining the distinction between generally permissible undercover deception and inducement for purposes of entrapment.

The § 2255 court acknowledged that counsel "did not object" and that the trial court therefore "had no occasion to explain on the record its decision to give it."

I. Keane confirms that the Committee's concern was concrete, not hypothetical

The significance of the Committee warning is reinforced by the closely related prosecution of United States v. Keane.

Petitioner's original § 2255 memorandum presented the Keane comparison to the district court.

During the Keane instruction conference, the district judge expressly discussed the Committee Comment and observed that the deceptive-investigative-techniques instruction could undercut entrapment.

The judge explained that if the instruction were given, rewording should be considered because it:

"sort of steps on the feet of entrapment."

The court further expressed concern about possible confusion and stated:

"I'm not sure we need this."

The prosecutor responded:

"I'll withdraw it, Judge."

The instruction consequently was not given in Keane.

Petitioner does not contend that Keane's eventual acquittal proves that Petitioner's jury would have acquitted him.

Nor does Petitioner contend that two district judges were required to make identical instructional decisions.

The significance of Keane is narrower and directly relevant to the COA inquiry: another federal district judge confronted the very interaction identified by the Pattern Committee, considered the concern sufficiently substantial to question the instruction, and the Government withdrew it.

That history supports the proposition that reasonable jurists can debate counsel's handling of the issue in Petitioner's case.

J. Counsel's failure to object foreclosed ordinary appellate review

Counsel's failure had a concrete procedural consequence.

Petitioner challenged the simultaneous use of Instruction 3.19 and the entrapment instructions on direct appeal.

The Seventh Circuit held that the instructional argument had been waived because counsel did not object at trial despite making substantive objections concerning other instructions.

The Government itself emphasized on direct appeal that counsel had affirmatively stated he had "no objection" to the instruction.

The Government did not mention Instruction 3.19 itself during closing argument. Petitioner therefore does not contend otherwise.

The constitutional issue is counsel's failure to protect the entrapment defense from the potentially confusing interaction between the instructions and the resulting forfeiture of ordinary appellate merits review.

K. The district court denied § 2255 relief and a COA

The district court rejected Petitioner's ineffective-assistance claims.

As to Instruction 3.19, the court recognized the Pattern Committee's warning but concluded that the jury could reconcile the instructions: undercover deception could generally be permissible while the jury still considered whether the Government induced the offense.

The district court ultimately denied § 2255 relief and a certificate of appealability. Immediately before denying the COA, the court expressed its certainty that Petitioner had received a fair trial and that any errors were harmless.

Petitioner does not contend merely from that language that the district court formally recited an incorrect COA standard.

The significance is different.

A judge may be convinced—even certain—that his merits determination is correct while the constitutional question nevertheless remains debatable among reasonable jurists.

That distinction lies at the center of this Court's COA jurisprudence.

L. The Seventh Circuit denied appellate merits review at the COA threshold

Petitioner sought a certificate of appealability from the Seventh Circuit.

On July 2, 2026, the court denied the application, finding "no substantial showing of the denial of a constitutional right."

Petitioner timely sought panel rehearing and rehearing en banc.

The court denied rehearing on August 17, 2026.

No appellate court therefore conducted ordinary merits review of Petitioner's ineffective-assistance claim.

This petition follows.

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS ENDED THIS CASE AT THE COA GATEWAY EVEN THOUGH THE SIXTH AMENDMENT PREJUDICE QUESTION WAS REASONABLY DEBATABLE

Section 2253(c) does not require a prisoner seeking a certificate of appealability to prove that his constitutional claim ultimately will prevail. Miller-El v. Cockrell, 537 U.S. 322 (2003), describes the COA inquiry as a threshold determination: the question is whether reasonable jurists could debate the district court's resolution of the constitutional claim. Buck v. Davis, 580 U.S. 100 (2017), likewise emphasizes that the COA inquiry is not coextensive with a merits determination.

That distinction controls here. Petitioner does not ask this Court to hold that he was entrapped as a matter of law, that Instruction 3.19 was itself unconstitutional, or that counsel's omissions necessarily changed the verdict. The narrower question is whether reasonable jurists could debate the district court's conclusion that counsel's handling of the central entrapment defense caused no prejudice under Strickland v. Washington, 466 U.S. 668 (1984).

The district court expressed certainty that Petitioner received a fair trial and that any errors were harmless. Petitioner does not contend that this language, standing alone, proves that the district court formally applied the wrong COA standard. The point is that merits confidence and COA debatability are different inquiries. A judge may be convinced that his merits

determination is correct while the constitutional question nevertheless remains debatable among reasonable jurists.

The Seventh Circuit denied a COA after concluding that Petitioner had made "no substantial showing of the denial of a constitutional right." No appellate court therefore conducted ordinary merits review of Petitioner's ineffective-assistance claim. The circumstances described below were more than sufficient to make the district court's prejudice determination reasonably debatable.

II. THE PATTERN COMMITTEE'S EXPRESS WARNING, PETITIONER'S PRETRIAL NOTICE TO COUNSEL, AND COUNSEL'S FAILURE TO OBJECT MADE THE INSTRUCTIONAL CLAIM DEBATABLE

Entrapment was not a peripheral defense. Counsel challenged weaknesses in the investigation, questioned preservation practices, attacked the reconstruction of the early communications, obtained an entrapment instruction, and argued inducement and lack of predisposition to the jury. Counsel also recognized the distinction between permissible undercover deception and entrapment, arguing that "they're allowed to pretend that they're not 18, but they can't entrap you."

Against that background, Instruction 3.19 mattered. The jury was told: "You have heard evidence obtained from the government's use of undercover agents and deceptive investigative techniques. The government is permitted to use these techniques." The Seventh Circuit Pattern Committee expressly cautioned that, when an entrapment instruction is given, consideration should be given to rewording Instruction 3.19 so that it does not "implicitly modify or undercut the entrapment instruction."

This was not a concern first invented after conviction. Before trial, Petitioner's August 25, 2021 letter to counsel quoted that precise Committee warning. App. 47-48. Nevertheless, counsel did not object to Instruction 3.19, request its omission, seek the modification contemplated by the Committee Comment, or request clarification distinguishing generally permissible undercover deception from inducement for purposes of entrapment. The § 2255 court itself recognized the Committee warning, recognized that the Government proposed the instruction, and recognized that counsel did not object.

Petitioner's original § 2255 memorandum expressly presented "Ground 2: Ineffective Assistance of Counsel by failing to object to a Deceptive Investigative Techniques Instruction." The instructional ineffective-assistance claim therefore was squarely preserved.

The issue is not whether undercover deception is categorically unlawful. It is whether reasonable jurists could debate counsel's failure to protect an entrapment defense from an instructional interaction the Pattern Committee itself warned could undercut that defense. On this record, they could.

III. KEANE PROVIDES CONCRETE CONFIRMATION THAT THE INSTRUCTIONAL INTERACTION WAS REASONABLY DEBATABLE

The closely related prosecution of United States v. Keane reinforces that conclusion. Petitioner's original § 2255 memorandum presented the Keane comparison to the district court. During the Keane instruction conference, the district judge discussed the same Committee concern, observed that the deceptive-investigative-techniques instruction could undercut entrapment, stated that it "sort of steps on the feet of entrapment," and questioned whether the instruction was necessary: "I'm not sure we need this." The prosecutor responded, "I'll withdraw it, Judge." The instruction consequently was not given.

Petitioner does not contend that Keane's eventual acquittal proves that his own jury would have acquitted him, or that two district judges were required to make identical instructional decisions. Keane matters for the narrower COA question. Another federal judge confronted the precise interaction identified by the Pattern Committee and considered the concern substantial enough to question the instruction, after which the Government withdrew it.

That history is unusually concrete evidence that the interaction between Instruction 3.19 and entrapment was open to reasonable judicial debate. Counsel's failure to object also had a direct procedural consequence in Petitioner's case: when Petitioner challenged the simultaneous use of the deceptive-techniques and entrapment instructions on direct appeal, the Seventh Circuit held the argument waived because counsel had not objected at trial. Thus no appellate court ever conducted ordinary merits review of the warned-of instructional interaction.

IV. THE MISSING INITIAL COMMUNICATIONS AND THE PRESERVED EVIDENCE OF RELUCTANCE MADE COUNSEL'S HANDLING OF ENTRAPMENT CONSEQUENTIAL

The instructional issue did not arise in a factual vacuum. Petitioner's interaction began with the undercover "Clay" profile representing an adult. The Government later represented that Clay disclosed being fifteen. The communications surrounding that transition were not preserved.

Petitioner's original § 2255 memorandum raised the missing-chat problem, identified conflicting testimony concerning the timing of the age disclosure, described the loss of communications after Grindr disabled the undercover account, and challenged reliance on agent recollection to reconstruct communications that no longer existed. Those communications

concerned the period most directly relevant to Petitioner's contemporaneous response when an ostensibly adult interaction became one involving a purported fifteen-year-old.

The criminal record also contains a narrower factual discrepancy concerning the ultimate unavailability of the communications. The interview records Petitioner saying, "I deleted the app," while Government filings also characterized the event as deletion of his Grindr "account." Petitioner does not present that distinction as a separately preserved § 2255 ground and does not ask this Court to decide the technical consequences of deleting the application. It is relevant only as part of the factual uncertainty surrounding the missing communications and counsel's presentation of that issue.

The evidence that remained was not one-sided on inducement. In the preserved Corey communications Petitioner expressed concern about age and going to jail, asked "How do I know this is not a trap?", and received the responses "Babe I would NEVER do that" and "You have to trust me." In his post-arrest interview, Petitioner described himself as "really very hesitant," stated that the purported minor "kept insisting," and said, "I wasn't wanting to. I wasn't wanting to."

Those facts did not compel acquittal. They did, however, provide evidence from which a jury could evaluate reluctance, persistence, reassurance, inducement, and predisposition. Because the most contemporaneous communications surrounding the initial age disclosure were missing, the framework through which the jury evaluated the remaining evidence of government conduct was especially consequential.

V. STRICKLAND PREJUDICE HAD TO BE ASSESSED IN LIGHT OF THE COMBINED CIRCUMSTANCES, NOT BY DEMANDING PROOF THAT ACQUITTAL WAS CERTAIN

The relevant circumstances reinforced one another. The jury lacked the contemporaneous Clay communications surrounding the initial age disclosure and instead heard reconstructed testimony concerning that period. The preserved Corey communications contained evidence of hesitation followed by Government reassurance. Petitioner's interview contained evidence of reluctance and alleged persistence. At the same time, the jury was instructed that the Government was permitted to employ deceptive investigative techniques.

Counsel had been alerted before trial to the Pattern Committee's warning that the instruction could undercut entrapment, yet did not object or seek modification. In Keane, another federal judge confronted that same warning and questioned the instruction. And in Petitioner's case counsel's non-objection caused waiver of the instructional challenge on direct appeal. This Court's entrapment precedents reinforce why those circumstances mattered. Jacobson v. United States, 503 U.S. 540 (1992), emphasizes predisposition independent of the Government's efforts, while Sherman v. United States, 356 U.S. 369 (1958), illustrates the relevance of reluctance followed by government persistence. Petitioner does not contend that post-contact conduct can never provide circumstantial evidence of earlier predisposition or that Jacobson and Sherman compelled acquittal. The point is that the jury had to distinguish predisposition existing independently of government intervention from willingness developing through the undercover interaction.

Strickland asks whether there is a reasonable probability sufficient to undermine confidence in the result; it does not require certainty that the verdict would have been different. And the COA inquiry is narrower still: whether reasonable jurists could debate the district court's prejudice determination. Given the missing evidence, the preserved evidence of

reluctance and reassurance, the Committee warning, Petitioner's pretrial notice to counsel, Keane, and the resulting appellate waiver, that question was reasonably debatable.

VI. A NARROW VACATUR AND REMAND WOULD PERMIT THE COURT OF APPEALS TO APPLY THE PROPER COA INQUIRY WITHOUT THIS COURT DECIDING THE ULTIMATE § 2255 MERITS

This case permits a narrow disposition. The Court need not determine that Petitioner was entrapped as a matter of law. It need not determine what the missing Clay communications would have shown. It need not decide the technical consequences of deleting the Grindr application. It need not hold Instruction 3.19 unconstitutional. And it need not conclusively resolve either prong of Strickland in the first instance.

The antecedent question is whether Petitioner's Sixth Amendment claim warranted appellate consideration. The record presented a central entrapment defense; missing communications surrounding the initial age disclosure; preserved evidence of hesitation, reassurance, and alleged persistence; an express Pattern Committee warning that Instruction 3.19 could undercut entrapment; Petitioner's pretrial communication of that warning to counsel; counsel's failure to object or seek modification; another federal judge's concrete concern about the same instructional interaction in Keane; and waiver of Petitioner's direct appellate challenge because counsel failed to object.

Whatever the ultimate merits, those circumstances permit reasonable jurists to debate the district court's prejudice determination. Under Miller-El and Buck, that was enough to cross the COA threshold.

The Court may therefore grant the petition, vacate the judgment below, and remand for reconsideration of Petitioner's request for a certificate of appealability under the threshold

inquiry required by 28 U.S.C. § 2253(c), Miller-El, and Buck. Such a disposition would not establish that Petitioner is entitled to § 2255 relief. It would establish only that a constitutional claim reasonably open to debate should receive appellate consideration rather than be terminated at the gateway.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted. Alternatively, the Court should grant the petition, vacate the judgment below, and remand for reconsideration of Petitioner's application for a certificate of appealability under 28 U.S.C. § 2253(c), Miller-El v. Cockrell, and Buck v. Davis.

Respectfully submitted,

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Date: October 26, 2026