26-6218 ORIGINAL

SUPREME COURT NO. _____

NINTH CIRCUIT CASE NO. 26-791

FILED
SEP 22 2026
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

SUPREME COURT OF THE UNITED STATES

STEVEN PAUL KOZOL,
Petitioner,

vs.

RON HAYNES,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO

THE NINTH CIRCUIT COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

STEVEN P. KOZOL
Petitioner, in Propria Persona
DOC# 974691
Stafford Creek Corr. Center
Unit H1-A24
191 Constantine Way
Aberdeen, WA 98520
Ph: (360)537-1800

QUESTION(S) PRESENTED

1. Where a district court dismisses a habeas petition on procedural grounds without reaching the merits, is Slack v. McDaniel's first prong satisfied when the petition facially alleges facts constituting the denial of a constitutional right, or, may the court of appeals additionally assess whether the underlying constitutional claim has arguable merit?

2. Where a court of appeals recites application of Slack v. McDaniel's first prong in denying a certificate of appealability, can it nevertheless be manifest that the court impermissibly applied a heightened standard?

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.

1. Steven Paul Kozol - Petitioner

2. Ron Haynes - Respondent

RELATED CASES

Barefoot v. Estelle, 463 U.S. 880 (1983)
Slack v. McDaniel, 529 U.S. 473 (2000)
Miller-El v. Cockrell, 537 U.S. 322 (2003)
Buck v. Davis, 580 U.S. 100 (2017)
Lambright v. Stewart, 220 F.3d 1022 (9th Cir. 2000)
Dufresne v. Palmer, 876 F.3d 248 (6th Cir. 2017)

TABLE OF CONTENTS

QUESTIONS PRESENTED i

PARTIES ii

RELATED CASES ii

OPINIONS BELOW iii

JURISDICTION iv

TABLE OF CONTENTS v

TABLE OF AUTHORITIES viii

I. IDENTITY OF PETITIONER.....1

II. INTRODUCTION 1

III. PROCEDURAL HISTORY 3

IV. FACTS OF THE CASE 5

1. Overview 5

2. The Crime 7

3. The Trial 8

4. Uncontested Facts Underlying Kozol's Claims 9

V. REASONS FOR GRANTING CERTIORARI 13

A. Issuing a Certificate of Appealability for Procedurally Dismissed Claims is Governed by Slack v. McDaniel 13

B. There is a Divide Among Circuits in the Interpretation of Slack 15

C. Slack: Facial Allegation or Arguable Merit? 17

1. Rule 4 Practice is a Supporting Inference for Civil Rule 12(b)(6) Inquiry under Lambright v. Stewart 20

2. "Arguable Merit" Standard 21

D. The Ninth Circuit Inconsistently Applies Slack 22

E. It is Manifest That the Ninth Circuit Impermissibly Applied a Heightened Standard When Denying Mr. Kozol a COA 27

1. Evidentiary Issues Underpinning Kozol's Claims 27

2. Ground Three - Valid Claim 28

3. Ground Four - Valid Claim 30

4. Ground Five - Valid Claim 30

F. Certiorari is Warranted on This Issue 32

VI. CONCLUSION 33

VERIFICATION 34

CERTIFICATION OF SERVICE 35

INDEX TO APPENDICES

Appendix A - Petitioner's Motion for Certificate of Appealability

Appendix B - June 25, 2026 Order Denying Request for Certificate of Appealability

Appendix C - Petitioner's Petition for Panel Rehearing and Petition for Rehearing En Banc

Appendix D - July 16, 2026 Omnibus Order (denying reconsideration and reconsideration en banc)

TABLE OF AUTHORITIES

Supreme Court Cases

Arizona v. Hicks, 480 U.S. 321 (1989).....10

Arizona v. Youngblood, 488 U.S. 51 (1988) 28, 30

Barefoot v. Estelle, 463 U.S. 880 .....passim

Blackledge v. Allison, 431 U.S. 63 (1977) 20

Brady v. Maryland, 373 U.S. 83 (1963) 29

Buck v. Davis, 580 U.S. 100 (2017) .....passim

Cone v. Bell, 556 U.S. 449 (2009) 27

Coolidge v. New Hampshire, 403 U.S. 443 (1971) 10

Estelle v. McGuire, 502 U.S. 62 (1991) 18

Harrington v. Richter, 562 U.S. 86 (2011) 7

Hohn v. United States, 524 U.S. 236 (1998) 21

Mayle v. Felix, 545 U.S. 644 (2005) 18

McFarland v. Scott, 512 U.S. 849 (1994) 19

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

Schlup v. Delo, 513 U.S. 298 (1995) 28

Sears v. Upton, 561 U.S. 945 (2010) 26

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

Strickland v. Washington, 466 U.S. 668 (1984) 31

United States v. Rutherford, 442 U.S. 544 (1979) 32

Wearry v. Cain, 577 U.S. 385 (2016) 26

Court of Appeals Cases

Allen v. Schuyler, 2026 U.S. App. LEXIS 18740 (9th Cir. June 25, 2026)..23

Atkins v. Cnty. of Riverside, 151 Fed.Appx. 501 (9th Cir. 2005).....30, 31

Dufresne v. Palmer, 876 F.3d 248 (6th Cir. 2017) 16

Eaves v. Stancil, 2025 U.S. App. LEXIS 13445 (10th Cir. 2025) 16

Franklin v. Hightower, 215 F.3d 1196 (11th Cir. 2000) 16

Gibson v. Klinger, 232 F.3d 799 (10th Cir. 2000) 16

Griffin v. Lamanna, 174 F.4th 318 (2nd Cir. 2026) 16

Hardy v. Chappell, 849 F.3d 803 (9th Cir. 2017) 26

Jefferson v. Welborn, 222 F.3d 286 (7th Cir. 2000) 15

Kozol v. Haynes, 2026 U.S. App. LEXIS 18771 (9th Cir. June 25, 2026)....24

Lambright v. Stewart, 220 F.3d 1022 (9th Cir. 2000) .....passim

Landrum v. Thornell, 2026 U.S. App. LEXIS 5835 (9th Cir. Feb. 26, 2026) 24

Leon v. IDX Sys. Corp., 464 F.3d 951 (9th Cir. 2006) 11

Mateo v. United States, 310 F.3d 39 (1st Cir. 2002) 15

McElmeel v. Rayfield, 2026 U.S. App. LEXIS 3209 (9th Cir. Jan. 30, 2026) 23

Milke v. Ryan, 711 F.3d 998 (9th Cir. 2013) 29

Nardi v. Stewart, 354 F.3d 1134 (9th Cir. 2004) 1

Neiss v. Bludworth, 114 F.4th 1038 (9th Cir. 2024) 20, 21

Park v. California, 202 F.3d 1043 (9th Cir. 2000) 18

Paters v. United States, 159 F.3d 1043 (7th Cir. 1998) 19

Rivas v. Fischer, 687 F.3d 514 (2nd Cir. 2012) 19, 20

Robinson v. Craddock, 2026 U.S. App. LEXIS 3215 (9th Cir. Jan. 29, 2026) 1, 15, 24

Rutland v. Warden, Smith State Prison, 2018 U.S. App. LEXIS 29312 (11th Cir. 2018) 16

Sease v. United States, 2023 U.S. App. LEXIS 11950 (6th Cir. 2023) 17

Sherbondy v. Salmonson, 2026 U.S. App. LEXIS 18746 (9th Cir. June 25, 2026) 24

United States v. Henthorn, 2023 U.S. App. LEXIS 23492 (10th Cir. 2023)..16

United States v. McLevain, 310 F.3d 434 (6th Cir. 2002) 10

United States v. Prach, 2026 U.S. App. LEXIS 5644 (9th Cir. Feb. 25, 2026) 23, 25

United States v. Zazueta, 2026 U.S. App. LEXIS 11791 (9th Cir. Apr. 29, 2026) 24

Voss v. Russell, 2026 U.S. App. LEXIS 5654 (9th Cir. Feb. 25, 2026) 23

Walton v. Michelle Floyd, Warden, 2026 U.S. App. LEXIS 20548 (6th Cir. 2026) 21

Williams v. Supt. Fayette St. Corr. Inst., 2023 U.S. App. LEXIS 31957 (3rd Cir. 2023) 16, 22

District Court Cases

Eaddy v. Delbalso, 2024 U.S. Dist. LEXIS 32450 (E.D. PA. 2024) 29

Giles v. Beckstrom, 2014 U.S. Dist. LEXIS 157719 (W.D. KY. 2014) 15

Lazar v. A.G. of Penn., 659 F.Supp.3d 599 (D.C. PA. 2023) 29

Tillman v. Burge, 813 F.Supp.2d 946 (N.D. IL. 2011) 29

United States v. Dreyer, 2016 U.S. Dist LEXIS 75549 (D.C. WA. 2016) 29

Ware v. Shinn, 2023 U.S. Dist. LEXIS 91771 (D.C. AZ. 2023) 1, 15

Statutes

28 U.S.C. §2243 19

28 U.S.C. §2253(c)(1) 13

28 U.S.C. §2253(c)(2) 13, 32

Rules

Supreme Court Rule 10(a) 2, 14, 32

Supreme Court Rule 10(c) 2, 14, 32

Habeas Corpus Rule 2(c) 18

Habeas Corpus Rule 4 .....19, 21

Federal Rule of Civil Procedure 8(a) 18

Federal Rule of Civil Procedure 12(b)(6) 17

Additional Authorities

Black's Law Dictionary (12th ed. 2014) 20

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

[X] For cases from **federal courts**:

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

[ ] reported at _____; or,
[ ] has been designated for publication but is not yet reported; or,
[X] is unpublished.

The opinion of the United States district 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.

[ ] 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

[X] For cases from **federal courts:**

The date on which the United States Court of Appeals decided my case was June 25, 2026.

[ ] No petition for rehearing was timely filed in my case.

[X] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 16, 2026, and a copy of the order denying rehearing appears at Appendix D.

[ ] 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).

I. IDENTITY OF PETITIONER

The petitioner, STEVEN P. KOZOL, appearing in propria persona, respectfully submits this petition for writ of certiorari. Mr. Kozol is a Washington state prisoner, currently confined within the Washington Department of Corrections.

II. INTRODUCTION

This case involves a timely, non-successive 28 U.S.C. § 2254 habeas petition, the dismissal of claims in said petition as procedurally defaulted, and the Ninth Circuit Court of Appeals' failure to apply the correct standard when determining whether to issue a Certificate of Appealability (COA) to Mr. Kozol.

In Slack v. McDaniel, 529 U.S. 473 (2000) this Court set forth a two-part test for issuing a COA in a habeas case where the claims have been procedurally dismissed by the district court. This petition addresses the courts of appeals' materially different approaches to interpreting Slack's first prong. The various circuits currently disagree about how deeply they may examine the underlying constitutional claim. In the wake of Slack, several Circuits adopted what was termed the "quick look" method, to meet Slack's first-prong test of whether the habeas "petition states a valid claim of the denial of a constitutional right." Id. at 484. Slack's first prong is a low bar.

The Ninth Circuit was one of the first circuits to employ the "quick look" method, which simply looks to whether a habeas petition has "facially alleged the denial of a constitutional right." Lambright v. Stewart, 220 F. 3d 1022, 1026 (9th Cir 2000); Nardi v. Stewart, 354 F. 3d 1134, 1139-40 (9th Cir. 2004). Lambright remains the law of the circuit. See e.g., Ware v. Shinn, 2023 U.S. Dist. LEXIS 91771, at *56 (D.C. AZ, 2023). The Ninth Circuit still applies Lambright's "quick look" interpretation of Slack to grant COAs. See Robinson v. Craddock,

2026 U.S. App. LEXIS 3215 (9th Cir. Jan. 29, 2026) (granting COA; citing to Lambright, supra, at 1026).

When Mr. Kozol requested a COA by citing to Slack and Lambright's "quick look" method, the Ninth Circuit denied a COA on the basis Kozol's § 2254 petition did not state a valid constitutional claim under Slack's first prong. However, it is manifest from Kozol's petition that the Ninth Circuit departed from Slack, as Kozol most certainly has asserted valid claims, and especially so when compared to claims in other cases upon which the Ninth Circuit used Lambright and Slack to grant a COA.

As this petition demonstrates, the Ninth Circuit impermissibly applies a heightened standard when denying some appellants a COA, yet uses the correct lower standard when granting COAs to other appellants, which contravenes its law of the circuit, the Supreme Court's holding in Slack, and Congressional intent.

All federal habeas petitioners, and their counsel, should be properly given notice of how to initially present claims in a habeas petition so as to meet Slack's first prong, should it become necessary to request a COA. Mr. Kozol respectfully requests that the Court grant certiorari in this case, as the conflict among circuits, and within the Ninth Circuit, is a recurring and important issue.

This issue is of significant constitutional implication, and directly relates to a prisoner's ability to obtain meaningful review of constitutional claims, and the congressional intent of the habeas process. Because there are similarly situated state and federal prisoners who are receiving different access to appellate review, depending upon how a particular circuit, or a different panel in the same circuit, interprets Slack, this is an issue of broad importance that is worthy of this Court's attention. Supreme Court Rule 10(a), 10(c).

III. PROCEDURAL HISTORY

Petitioner Steven Kozol was tried and convicted of one count first degree attempted murder, one count first degree burglary, and two firearm enhancements. Kozol was sentenced on August 3, 2001 to a 479-month standard range sentence. ECF 26-2 at 4-11.[1] Mr. Kozol appealed, but the Washington Court of Appeals affirmed. ECF 26-2 at 209-226. The Washington Supreme Court denied discretionary review. ECF 26-2 at 227.

Mr. Kozol filed a pro se state collateral attack. On December 30, 2005 the Washington Court of Appeals denied relief. ECF 26-2 at 230-238. Mr. Kozol filed a pro se § 2254 petition in the district court, Kozol v. Payne, C06 - 1074 - MJP - MJB. Ultimately Kozol's claims were rejected, either on the merits or because of lack of exhaustion. ECF 26-2 at 241-280. The district court granted a COA as to all seven of Kozol's claims. ECF 26-2 at 281-285. The Ninth Circuit affirmed. ECF 26-2 at 286-290.

In 2018 Mr. Kozol moved the Washington State Superior Court for resentencing. ECF 26-2 at 12-28. The State agreed to resentencing. ECF 26-2 at 479. Kozol was resentenced on November 13, 2020, with a new sentence of 390 months being imposed. ECF 26-2 at 50-60. Kozol appealed but then voluntarily withdrew the appeal, which was dismissed on June 8, 2021. ECF 26-2 at 292-293.

Within a year of the dismissal of the appeal of the new judgment, on June 1, 2022, Kozol filed a state post-conviction Personal Restraint Petition (PRP) attacking the 2020 judgment. In the Matter of the Personal Restraint of Steven Paul Kozol, WA. COA No. 84098-3-I. ECF 3-1 and 3-2. He also filed this habeas petition on June 2, 2022. ECF 1.

---

[1] "ECF" citations are to the district court file. "Dkt. Entry" citations are to the Ninth Circuit filings.

This federal petition was "stayed and abeyed" under Rhines v. Weber, 544 U.S. 269 (2005), pending decision of the state PRP. ECF 9.

On April 1, 2024 the Washington Court of Appeals dismissed the PRP, ruling it "time-barred" under RCW 10.73.090. In re Pers. Restraint of Kozol, 547 P. 3d 260, 30 Wa.App.2d 548 (2024). Mr. Kozol filed a timely motion for discretionary review to the Washington Supreme Court. In re Pers. Restraint of Stephen Paul Kozol, aka Steven Paul Kozol, WA. Sup. Ct. No. 103015-1. On June 17, 2024, the Deputy Commissioner denied review, ECF 26-6, and Kozol moved to modify. On September 4, 2024 the Washington Supreme Court denied the motion to modify. ECF 26-7. The Washington Court of Appeals issued the Certificate of Finality on September 25, 2024. ECF 26-8. The stay of this case was lifted. ECF 22.

After the parties submitted their briefings, District Court Magistrate Judge David Christel issued a Report and Recommendation (R&R) on August 12, 2025, recommending Kozol's petition be dismissed, and that no certificate of appealability be issued. ECF 46. (Although, while finding Kozol's claims to be procedurally defaulted, Magistrate Christel applied the Barefoot standard for a COA on claims denied on the merits. ECF 46 at 35-36.) Mr. Kozol timely filed an Objection to Report and Recommendation. ECF 49. Respondent Haynes filed a Response to Petitioner's Objections. ECF 50. On January 15, 2026 District Court Judge Barbara Rothstein entered an Order Adopting Report and Recommendation. ECF 53.

Mr. Kozol timely filed a notice of appeal on February 6, 2026. ECF 55. On March 11, 2026 Kozol filed a Motion for Certificate of Appealability to the Ninth Circuit. Kozol v. Haynes, Case No. 26-791 (9th Cir. 2026), Dkt. Entry 5.1.

On June 25, 2026, a two-judge motion panel of the Ninth Circuit entered an Order denying Mr. Kozol's request for a COA. Dkt. Entry 6.1. Mr. Kozol filed an Unopposed Motion

for Extension of Time, Dkt. Entry 7.1, and the supporting Declaration of Neil M. Fox, Dkt. Entry 7.2. Kozol also filed a Motion to Withdraw as Counsel, Dkt. Entry 8.1, and the Declaration of Neil Fox, Dkt. Entry 8.2. Kozol also filed a pro per Petition for Panel Rehearing (Reconsideration) and Petition for Rehearing En Banc. Dkt. Entry 10.1. On July 16, 2026, a different two-judge motion panel denied Mr. Kozol's motion for reconsideration. Dkt. Entry 11.1.

This timely Petition for Writ of Certiorari ensues.

IV. FACTS OF THE CASE

This is a rare and extraordinary case. Petitioner Kozol is a wrongfully convicted person who has gone to remarkable lengths to diligently investigate this case and try to simply obtain review of constitutional claims based upon an entire body of newly obtained evidence. Some of this evidence exposes the multi-decade misconduct history of a lead detective who worked on thousands of major-crime prosecutions in Washington state without defendants or juries knowing of his misconduct. Yet no lower court has ever addressed the merits of Kozol's claims, even though respondent Haynes has conceded them.

Because this petition deals with the factual sufficiency of Kozol's habeas claims in his petition, a moderately thorough recitation of facts is necessary. The following facts are in the record, and are uncontested.

1. Overview

The underlying conviction was obtained without Mr. Kozol's attorney conducting any of the necessary investigation to prepare for trial, and no physical evidence was presented to corroborate the bare defense testimony. The lead detective was found to have given false pre-trial testimony to conceal the fact that he had unlawfully assembled items into, i.e., manufactured, evidence when executing a search warrant of Kozol's residence. The State withheld from the

defense this lead detective's extensive misconduct history, including dishonesty, corruption, and evidence tampering. The State withheld from the defense the fact that three pieces of forensic crime scene evidence were seized that linked to the perpetrator, and some had latent prints that were known to not match Mr. Kozol. The State withheld from the defense witness statements that undercut a key piece of the State's trial evidence.

After Kozol's conviction, an anonymous person confessed in writing to the crime and revealed facts about the case never disclosed by the police. Some of those facts are corroborated by newly obtained police photos that had never been disclosed to the defense at trial. The State agreed to DNA test the confession letter and its envelope. The letter contained fingerprints, which could have provided "touch DNA." Yet no DNA testing was ever performed on the letter/fingerprints. The envelope's sealed glue flap contained an initial DNA sample, but required further, more advanced testing.

The lead detective in this case violated established Sheriff's office evidence retention requirements/policy, and had the letter and envelope destroyed before Kozol could complete the DNA testing, despite multiple notices that the evidence was to be preserved.

When investigating the wrongful destruction, Mr. Kozol learned for the first time about the three pieces of crime scene evidence potentially containing the actual perpetrator's DNA. Mr. Kozol then learned that the lead detective had also wrongfully authorized this evidence to be destroyed, while Kozol's appeals were pending, and in violation of established retention requirements.

Mr. Kozol subsequently investigated and obtained multiple pieces of exculpatory evidence that corroborate the defense's trial testimony, including an additional alibi witness.

All State courts in this case, and the District court, have avoided addressing the merits of Mr. Kozol's constitutional claims. The District court improperly found Kozol's claims to be procedurally defaulted, and did not address several of Kozol's arguments regarding default. The Ninth Circuit refused to even find the meager basis to issue a COA. And significantly, Respondent Haynes has conceded Kozol's claims by never meaningfully challenging them.

In sum, many pieces of DNA evidence that could have proven Kozol's innocence were intentionally destroyed by the corrupt lead detective. All the evidence that Kozol's jury should have heard is now presented in this petition. Yet the lower courts created roadblocks to Kozol's claims.

This is a case requiring the extraordinary remedy of habeas corpus, to "guard against extreme malfunctions in the state criminal justice system." Harrington v. Richter, 562 U.S. 86, 102 (2011.)

2. The Crime

Thomas Walter and Steven Kozol were friends, and occasional business associates, who lived together in Walter's house from December 1999 until Kozol moved out in late June 2000. On November 15, 2000, at around 10:00 p.m., Mr. Walter was attacked inside his home, interrupting a burglary in progress. During a struggle with the perpetrator, Walter was shocked with a tazer, and shot once in the arm, and twice in the lower body. Walter did not recognize the masked assailant, and said his voice was not Steven Kozol's.

At the crime scene, police found parts from a taser with serial numbers that would later be traced to the purchaser, Steven Kozol. Police also found spent 9 mm. bullet casings that matched a brand of pistol that Mr. Kozol freely admitted he owned.

Based on the taser registration, police arrested Mr. Kozol and obtained warrants to search his residence and his rented storage unit. When searching Kozol's home garage, the lead detective, Denny Gulla, claimed to find what he purported to be items to make a gun silencer, along with a technical book on silencers, a few spots of blood inside Kozol's Audi sedan that matched Walter's DNA, as well as a black nylon briefcase that in one pocket contained some old blank checks from an old bank account of Walter's, and a one-page bank statement for Walter's account dated for the period of mid-May 2000 to mid-June 2000.

When interviewed by police, Kozol said he was home with his girlfriend, Vanessa Henderson, at the time of the crime. Ms. Henderson was questioned by police, gave the alibi for Kozol's whereabouts, and passed a police polygraph exam.

The police never investigated any of the numerous construction workers who had recently worked on Walter's house. Despite no forensic evidence placing Kozol at the scene, he was charged with this crime.

3. The Trial

Walter and Kozol each testified they were friends who lived together as roommates from December 1999 until Kozol moved out in late June 2000. Kozol testified the few blood spots of Walter's must have come from an event in Spring 2000, when Walter had stepped on a nail just a few yards from Kozol's car, and Kozol used a clean cloth to help Walter stop the bleeding.

Kozol testified he had stored his pistol and taser in his rented storage unit. The defense's theory was that someone must have stolen the weapons from Kozol's storage, then used them to rob Walter. Walter admitted he had dozens of construction workers who accessed the house with a key Walter provided. Kozol testified that he kept his lease agreement for this storage unit,

along with extra sets of keys, in his desk in Walter's home office. Walter and Kozol each testified there were periods when they would be away from the house for days.

Kozol testified that Walter let him borrow the briefcase when he moved out in late June 2000, and Walter's items must have been in the briefcase when Kozol borrowed it. Kozol and his girlfriend each testified they were home in bed watching television at the time of the crime.

Walter testified he did not "recall" stepping on the nail as Kozol described, nor recalled loaning him the briefcase, but conceded such events could have happened.

Kozol's trial attorney presented no physical evidence to corroborate the defense testimony. As such, prosecutors called Kozol and Henderson "liars," told the jury "we know" and "you know" Kozol is guilty, called Kozol a "spy," a "James Bond-type figure," and "international man of mystery," and on its closing PowerPoint slide vouched to the jury in giant lettering that Kozol was "GUILTY."

The jury returned a verdict of guilty for one count of attempted first degree murder, one count of first degree burglary, and two firearm enhancements.

4. Uncontested Facts Underlying Kozol's Claims

After Kozol's direct appeal was denied, he filed a pro se state PRP, presenting evidence that, while the trial court initially found the alleged "silencer" evidence inadmissible, Det. Denny Gulla's subsequent pre-trial testimony that he seized the evidence under the plain-view doctrine, was false. Gulla's pre-trial testimony was that he found all the alleged "silencer" items configured "together" in Kozol's garage "as a whole," and that it was immediately apparent as items to make a silencer. RP 4/5/01, at 86.

But at trial, Det. Gulla admitted to moving and assembling the items into a collection he called "silencer parts," before seizing them. Contrary to his sworn pre-trial testimony, Gulla later

admitted under oath that the items were taken from "different areas of the garage" and some were "five feet apart." RP 4/11/01, at 101-02. Mr. Kozol also showed that police warrant returns revealed much of the purported "silencer" items were never in Kozol's garage. Rather, they were seized on a later date, at a different location, by a different detective, i.e., Gulla never found them in Kozol's garage. Further, Gulla admitted that the purported "silencer" evidence was actually various everyday household items that could be used for countless purposes.[2] RP 4/11/01, at 73-74.

While Washington state courts rejected Kozol's arguments, the federal district court agreed with Kozol, that Det. Gulla and the prosecutors clearly should have known Gulla's plain-view testimony was "erroneous," calling it "false" several times. ECF 1.1 at 45-46, 59-60. Ultimately though, habeas relief was denied in that first habeas petition, due to the blood in Kozol's car, the tazer and bullet casings being linked to him, and Walter's briefcase. Id. at 46.

Shortly before filing his first § 2254 habeas petition, and in the ensuing next few years, Mr. Kozol learned for the first time that the lead detective on his case, Denny Gulla, had a long history of serious on-the-job misconduct. This included falsifying and tampering with evidence in other cases, making false statements, coercing witnesses, a stated willingness to plant evidence, assaulting suspects in custody, sexually assaulting multiple underage girls, and having a prosecution dismissed because prosecutors know Gulla "can't testify truthfully." ECF 27 at 14-15.

In March 2009, an anonymous confession letter was sent to the Seattle media in which a "repenting drug addict" stated he had obtained keys from a construction worker, stole items from

[2] It is well established police cannot go from "one object to another until something incriminating at last emerges." Coolidge v. New Hampshire, 403 U.S. 443, 466 (1971). This includes moving an item "even a few inches." Arizona v. Hicks, 480 U.S. 321, 325 (1989). Moreover, plain-view items must be "intrinsically incriminating." U.S. v. McLevain, 310 F. 3d 434, 441 (6th Cir. 2002).

a storage unit, and committed the crime for which Kozol was convicted. To corroborate the confession the addict revealed he had lost a blue and stainless-steel Rolex wristwatch at the crime scene, and implied that DNA testing of the watch could prove Kozol did not commit the crime. This letter, and its envelope, were forwarded to the prosecutor's office. The State agreed to DNA test the letter, and the envelope's sealed glue flap.

While Kozol or his attorney had never known about any watch seized at the crime scene, the State revealed in 2009 that police had seized a watch matching the description in the confession letter, and agreed to DNA test the watch as well. The State agreed that a DNA match between the confession letter and the watch would go to show Kozol's innocence, and that someone else's DNA on the confession letter and the watch would corroborate the confession.[3]

In this period, from 2009 to 2011, Mr. Kozol for the first time learned the following:

1. His trial attorney never hired the investigator Kozol had paid for to obtain exculpatory evidence to present at trial. ECF 27 at 13-14.
2. Kozol learned that a Rolex watch had been seized at the crime scene. ECF 27 at 15-17.
3. Kozol learned that a hair had been seized that was found on top of papers Mr. Walter dropped when he was attacked in the home office. Id.
4. Kozol learned that fingerprints were found on items the perpetrator touched, and the prints did not match Kozol. Id.
5. Kozol learned that the confession letter, and envelope's sealed glue flap were initially examined, and the letter contained low-detail latent fingerprints, and the glue flap contained initial DNA material. The letter

[3] Based upon his mere speculation, Magistrate Christel opined that Kozol knew the facts of the crime as the perpetrator and could have sent the letter. ECF 46 at 29. Yet this ignores the fact that the police had not yet revealed to anyone that the watch from the crime scene had been destroyed in 2004. And Kozol and his attorney were never told about the watch. Thus, it makes no sense that Kozol sought DNA testing of the watch, if purportedly it had his DNA on it. Moreover, because adverse inferences from the spoliation of the crime scene items and confession letter support Kozol's innocence, the Magistrate's conclusion is precluded by law, as one "can hardly assert any presumption of irrelevance" when the evidence no longer exists to examine. Leon v. IDX Sys. Corp., 464 F3d 951, 959 (9th Cir. 2006).

was never DNA tested, and the glue flap DNA required further, more advanced testing. Id.

6. Kozol learned that the lead detective in his case, Denny Gulla, had authorized the wrongful destruction of the hair, the watch, the fingerprints, confession letter and envelope. Of these destroyed items, only the envelope's glue flap had been DNA tested, and it required more advanced testing. Sheriff's Office retention policy, and other notices, clearly required all this evidence in Kozol's case to be preserved until his prison sentence was completed. Id.
7. Kozol learned that police had photographed the inside of his locked storage unit on the day Kozol was arrested. The photos show the unit had been accessed with a key and contents ransacked and rummaged through, and items stolen, which corroborated the account given in the confession. ECF 42 at 22-23.
8. Kozol learned that his two upstairs neighbors had told police just days after the crime, that Kozol had not driven his Audi for several months, and instead had been driving a Ford Mustang. This corroborates defense testimony. ECF 41-1 at 473.
9. Kozol obtained a new declaration from a second alibi witness, Ms. Amal Osman, who attested to seeing Kozol in front of his house sometime around 10:00 p.m., at the same time the crime occurred in another city. ECF 27 at 20.

All of this evidence goes to squarely corroborate the trial testimony of Mr. Kozol and his girlfriend. This evidence goes to undermine key pieces of the State's case. This evidence goes to show that Mr. Kozol did not commit the crime.

Kozol's primary claims in Grounds Three, Four, and Five in his § 2254 petition are based upon the State's wrongful withholding of this evidence, the State's wrongful destruction of this evidence, and the failure of Kozol's trial attorney to investigate this evidence. Therefore, these

claims certainly have merit, especially under de novo review, and with Respondent Haynes having conceded the claims by presenting no meaningful opposition argument, and with the State's case being entirely circumstantial.

V. REASONS FOR GRANTING CERTIORARI

A. Issuing a Certificate of Appealability for Procedurally Dismissed Claims is Governed by Slack v. McDaniel

A state prisoner whose petition for a writ of habeas corpus is denied does not enjoy an absolute right to appeal. Federal law requires to first obtain a COA from a circuit justice or judge. 28 U.S.C. § 2253 (c)(1). A COA may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." § 2253 (c)(2). Until the prisoner secures a COA, the court of appeals may not rule on the merits of his case. Miller-El v. Cockrell, 537 U.S. 322, 336 (2003).

There are two contexts of assessing a COA for denial of a § 2254 habeas petition. Claims were either dismissed on the merits, or the claims were dismissed on procedural grounds and the merits never reached.

For claims denied on the merits, the COA inquiry is whether "jurists of reason" could disagree with the district court's ruling on the claim or conclude the issue is "adequate to deserve encouragement to proceed further." Buck v. Davis, 580 U.S. 100, 115 (2017) (quoting Miller-El, 537 U.S. at 327).

Importantly, this "threshold" question is to be decided "without full consideration of the factual or legal basis adduced in support of those claims." Id. at 115. This inquiry is referred to as the Barefoot standard, as announced in Barefoot v. Estelle, 463 U.S. 880 (1983).

The second context of assessing a COA request, as relevant to Mr. Kozol's case, is where the district court dismissed habeas claims on procedural grounds. In that situation, a COA should issue if:

> "the prisoner shows, at least, that (1) jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right and that (2) jurists of reason would find it debatable whether the district court was correct in its procedural ruling." Slack v. McDaniel, 529 U.S. 473, 484 (2000).

The marginally higher Barefoot standard has been refined and clarified several times by this Court. See Slack, 529 U.S. at 483, 484; Miller-El, 537 U.S. at 336-338, 342; Buck, 580 U.S. at 115. Yet this Court's only description of Slack's first prong is the singular phrase "if the prisoner shows at least, that (1) jurists of reason would find it debatable whether the petition states a valid claim of the denial of a constitutional right." Slack, 529 U.S. at 484.

The paucity of further guidance is likely two-fold. First, the petitioner in Slack did not attempt to make a substantial showing of a denial of a constitutional right, and instead argued "only that the District Court's procedural rulings were wrong." Id. at 485. Thus, the Court did not conduct deeper analysis into any underlying facial allegation of a substantive claim. Id. As such the "petition states a claim" question stands alone, and simply announced in concise terms what the two-part analysis should be. Id. at 484.

Second, it is perhaps because of the concise nature of Slack's "petition states a claim" standard that it was believed to be self-evident, and generally understood.

Yet, as now presented, different courts, and different circuits, are interpreting Slack inconsistently, and this significant issue should be granted certiorari. Supreme Court Rule 10(a), 10(c).

B. There is a Divide Among Circuits in the Interpretation of Slack

When Slack was announced in 2000, several circuits adopted an interpretation of Slack's literal language to simply confirm that on the face of the habeas "petition" a "valid claim" of a constitutional violation has been asserted. This became known as the "quick look" standard. See Jefferson v. Welborn, 222 F. 3d 286, 289 (7th Cir. 2000) (As the Supreme Court suggested in Slack [...] we have taken a quick look at the claims ... in his petition ... some of these claims facially allege the denial of a constitutional right") (cleaned up); Lambright v. Stewart, 220 F. 3d 1022, 1026 (9th Cir. 2000) (determining Slack's first prong requires to "simply take a quick look at the face of the complaint to determine whether the petitioner has facially alleged the denial of a constitutional right.") (cleaned up); Mateo v. United States, 310 F. 3d 39, 41 (1st Cir. 2002) (adopting method where other circuits recognized the emphasis is "to protect nascent constitutional claims" that do not "appear utterly without merit after a quick look").

As recognized in 2014, the Ninth Circuit's Lambright "quick look" method became the "majority approach of the federal circuits" as it was "well-grounded in Slack's literal language" that it only looks to the face of the "petition" to locate a claim of a constitutional violation. Giles v. Beckstrom, 2014 U.S. Dist. LEXIS 157719, at *13-*14, n. 9 (W.D. KY, 2014) (citation omitted) (identifying the First, Fourth, Fifth, Seventh, Ninth and Tenth Circuits).

The Ninth Circuit still applies Lambright's "quick look" method to assess a COA request under Slack. See Robinson v. Craddock, 2026 U.S. App. LEXIS 3215 (9th Cir. Jan. 29, 2026) (Order granting COA; citing Lambright 220 F. 3d at 1026 {"quick look" method}). And Lambright remains the law of the circuit. See Ware v. Shinn, 2023 U.S. Dist. LEXIS 91771, at *56 (D.C. AZ. 2023) (describing "broad view" of Slack and applying Lambright's "quick peek" method).

The Tenth Circuit currently uses the "quick look" standard. Eaves v. Stancil, 2025 U.S. App. LEXIS 13445, at *7-*8, n.8 (10th Cir. 2025) ("quick peek" to identify if petition "facially alleged the denial of a constitutional right"); United States v. Henthorn, 2023 U.S. App. LEXIS 23492, at *6 (10th Cir. 2023) (using "quick look") (quoting Gibson v. Klinger, 232 F. 3d 799, 803 {6th Cir. 2000}).

At the time of Lambright, the Eleventh Circuit applied Civil Rule 12 (b)(6) element of taking petitioner's "allegation as true" when assessing a COA request. Franklin v. Hightower, 215 F. 3d 1196, 1199-2000 (11th Cir. 2000). As of 2018, the Eleventh Circuit conducted no legal analysis of a claim's merit under AEDPA's deferential standard, and instead accepted a petitioner's allegations as true to find Slack's first prong was met. Rutland v. Warden, Smith State Prison, 2018 U.S. App. LEXIS 29312, at *8-*9 (11th Cir. 2018).

Yet, currently there is still a divide in how the Circuits interpret Slack. The Third Circuit reads Slack's first prong to require a claim to have "arguable merit," looking deeper than just the petition's facial allegations. Williams v. Supt. Fayette St. Corr. Inst., 2023 U.S. App. LEXIS 31957, at *1 (3rd Cir. 2023). "Arguable merit" is not shown where, for example, a specific claim is directly foreclosed by a Supreme Court or Court of Appeal's opinion. Id.

The Second Circuit has now nudged Slack's first prong to the heightened criteria for the second prong, now requiring both the underlying claim and the district court's procedural ruling to have "arguable merit." Griffin v. Lamanna, 174 F. 4th 318, 322 (2nd Cir. 2026) (citing Slack, 529 U.S. at 484-85).

As the Sixth Circuit views Slack's first prong, the key question remains "the debatability of the underlying constitutional claim - not the debatability of how the claim was stated in the petition." Dufresne v. Palmer, 876 F.3d 248, 254 (6th Cir. 2017). The interpretation remains

current. Sease v. United States, 2023 U.S. App. LEXIS 11950, at *5 (6th Cir. 2023) (valid claim under Slack's first prong is "arguably valid or meritorious.") (citing Dufresne, supra).

And, as the Sixth Circuit recognized, at least six circuits interpret Slack as requiring some assessment of a claim's merit, while other circuits maintain the "quick look" method derived in Jefferson and Lambright. Dufresne, supra.

These different approaches to applying Slack now rise to this important question: For a COA on a procedurally dismissed claim, does Slack v. McDaniel permit a court of appeals to conduct a preliminary assessment of the arguable merits of those constitutional claims before issuing a certificate of appealability, or, is Slack's first prong satisfied when the petition facially alleges facts constituting the denial of a constitutional right?

C. Slack: Facial Allegation or Arguable Merit?

Unlike a Barefoot inquiry, Slack's first prong does not assess a claim that was denied on the merits. This distinction is an important one, but appears to have been largely diluted by the circuits applying the "arguable merit" interpretation of Slack.

A key factor of the "quick look" standard is that it adopts elements of Civil Rule 12 (b)(6) analysis, taking all factual allegations in a claim as true, and resolving any doubt in favor of the petitioner. Lambright, 220 F. 3d at 1026, n.5. The Ninth Circuit reasoned this to be a sound approach because,

> "[f]requently, as in this case, the district court has dismissed a claim on a procedural ground without providing the petitioner an opportunity to develop its factual or legal basis through full briefing and an evidentiary hearing." Id. at 1026.

Conversely, it seems self-evident that the assessment of a claim's "arguable merit" could not be adequately determined in the absence of complete evidence supporting the merits of a

claim. To apply an "arguable merit" analysis based on an undeveloped record creates a Catch-22: prove the merits sufficiently to obtain appellate review, even though the procedural ruling prevented the development of the evidence needed to prove "arguable merit."

This highlights the significance of taking factual allegations as true, and taking all inferences, and resolving any doubts, in favor of the petitioner. As this Court most recently clarified in Buck, the COA process is merely an initial determination "whether a claim is reasonably debatable," emphasizing "the limited nature of the inquiry" under Barefoot for a claim denied on the merits. Buck, 580 U.S. at 117 (emphasis added). Slack's first prong actually requires less, since there is no merits decision to assess. Instead, it is Slack's second prong that assesses the debatability of the procedural ruling from the district court. Slack, at 484.

And while this Court made clear that the COA stage is "a threshold, or gateway, test," Miller-El, at 337, to be sure, the "quick look" is not a virtual certainty of receiving a COA. There are several types of claims where - with little, if any analysis - it can be readily identified as not a "valid claim" under Slack. For example, "a violation of state law standing alone is not cognizable in federal court on habeas." Park v. California, 202 F. 3d 1146, 1149 (9th Cir. 2000) (citing Estelle v. McGuire, 502 U.S. 62, 67 {1991}).

Thus, the "quick look" standard's tie-in to Civil Rule 12 (b)(6) harmonizes with the pleading requirements of Habeas Rule 2 (c) and the mandatory dismissal requirement of Habeas Rule 4, and serves the COA purpose to weed out frivolous appeals. Habeas Rule 2 (c) requires a relatively "more demanding" claim pleading than Civil Rule 8 (a) notice pleading requirements. Mayle v. Felix, 545 U.S. 644, 655 (2005). Rule 2 (c) requires a petitioner to state "all the grounds for relief available to the prisoner," and "state the facts supporting each ground." Id. at 655 (quoting § 2254 U.S.C. Habeas Corpus Rule 2 {c}).

Rule 2 (c) is purposed to assist the district court in determining whether a claim is valid, and whether the state should be ordered to "show cause why the writ should not be granted." Id. (quoting 28 U.S.C. § 2243). Rule 4 dismissal is mandatory, as a district court "must dismiss" a petition if it "plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court." Habeas Rule 4.

Because frivolous claims must be dismissed sua sponte, including claims "legally insufficient on its face," McFarland v. Scott, 512 U.S. 849, 856 (1994), it follows as a matter of law that any claim surviving Habeas Rule 4 scrutiny has some merit, and is not factually or legally insufficient.

As such, the Circuits have found the standards in Civil Rule 12 (b)(6) are instructive when screening a petition under Habeas Rule 4. See, e.g., Paters v. United States 159 F. 3d 1043, 1059 (7th Cir. 1998) (Coffey, C.J., dissenting and concurring) ("Rule 4, like Fed R. Civ. P. 12 (b)(6), acts as a screening device to weed out meritless claims from the federal court system"); Rivas v. Fischer, 687 F. 3d 514, 535 (2nd Cir. 2012) ("The facts vital to a habeas claim are those without which the claim would necessarily be dismissed under Rule 4 ... or Rule 12 (b)(6) of the Federal Rules of Civil Procedure.").

Lambright's "quick look" standard and its use of Civil Rule 12 (b)(6) principles, in combination with Habeas Rule 4, serve the COA mechanism's primary purpose to weed out the truly frivolous claims, while still protecting nascent claims of constitutional violations that deserve "encouragement to proceed further." Slack, 529 U.S. at 484 (quoting Barefoot, 463 U.S. at 893, n.4).

1. Rule 4 Practice is a Supporting Inference for Civil Rule 12 (b)(6) Inquiry Under Lambright

If a claim complies with Habeas Rule 2 (c) and has not been dismissed under Habeas Rule 4, then the claim has "potential merit" and is not frivolous to warrant summary dismissal. "Frivolous" is defined as "[l]acking a legal basis or legal merit; manifestly insufficient as a matter of law." Neiss v. Bludworth, 114 F.4th 1038, 1044-1046 (9th Cir. 2024) (quoting Black's Law Dictionary {12th ed. 2014}); Blackledge v. Allison, 431 U.S. 63, 75-76 (1977). Circuits addressing this issue are aligned; Rule 4 dismissal is not warranted if it cannot be said "solely on the face of the petition that the petitioner will be unable to establish a constitutional violation." Neiss, supra, at 1045-46 (citing collective cases).

Federal courts recognize that the facial sufficiency principles operating at Rule 4 screening bear directly upon whether a petition states a constitutional claim for purposes of Slack's first prong. As the Sixth Circuit recently addressed, a facially conclusory habeas petition fails Rule 4 scrutiny, and for essentially the same "conclusory" deficiency fails to meet Slack's first prong. Walton v. Michelle Floyd, Warden, 2026 U.S. App. LEXIS 20548, at *2-*4 (6th Cir. 2026) (citing Dufresne, 876 F. 3d at 254 {discussing Slack's first prong}).

Walton demonstrates the relationship from the negative direction, and where no response was ordered from the state and no state court record or briefing from the parties was filed. Id. But viewed from the opposite procedural history - Kozol's claims surviving Rule 4 scrutiny, the state directed to respond to the petition, and parties' full briefing, but claims then dismissed as procedurally defaulted - while not rising to a rule of automatic entitlement, it does corroborate what the face of the petition already demonstrates. Again, the "vital facts" are those that survive dismissal under Rule 4 or Civil Rule 12 (b)(6). Rivas, supra.

Objectively, Rule 4, and the "quick look" method's incorporation of 12 (b)(6) elements, toe opposite sides of the same line, all but overlapping. Very little daylight separates the "without a doubt ... can prove no set of facts which would entitle him to relief" standard under Rule 4, Neiss, 114 F. 4th at 1046, and Slack's literal test if it is "at least ... debatable whether the petition states a valid claim of the denial of a constitutional right." Slack, at 484.

To be sure, survival of Rule 4 does not itself satisfy Slack's first prong, but it is consistent with the conclusion that the petition is not facially conclusory, plainly noncognizable, or obviously frivolous. Such a procedural history reinforces but does not replace the facial examination required by Slack and Lambright.

As explained in Miller-El, a COA should not be denied "merely because [the court of appeals] believes the applicant will not demonstrate an entitlement to relief." Miller-El, 537 U.S. at 337. The "quick look" standard comports with that mandate, while recognizing the need to further develop a claim, before "arguable merit" can be assessed. A COA determination is purposed to weed out frivolous appeals; it is not supposed to become the appellate review itself. "[A] COA determination is a separate proceeding, one distinct from the underlying merits." Miller-El, at 342 (citing Slack, 529 U.S. at 481; Hohn v. United States, 524 U.S. 236, 241 {1998}).

2. "Arguable Merit" Standard

Conversely, the "arguable merit" standard used by some Circuits is doing more than Slack prescribed. Claims not supported by a complete record are being assessed for "arguable merit," which does not typically - if ever - take a petitioner's allegations as true and draw all reasonable inferences in petitioner's favor. This higher standard is using judicial clairvoyance to portend how a claim could be decided. Going beyond the facial allegations in a petition is

certainly necessary, to a "threshold" degree, when analyzing whether "among jurists of reason, that another court could resolve the issues differently." Miller-El, at 330. The "concept of a COA" under Barefoot is "only [ ] a threshold inquiry" into the "debatability of the underlying constitutional claim, not resolution of that debate." Id. at 342. But that is the Barefoot test; it is not Slack's first prong.

If Barefoot and Slack's substantive prong were the same test, this Court would have so held. Instead, each test uses different language. That is a distinction with a difference.

As explained in the Sixth Circuit's approach, there can be no "arguable merit" where a claim for relief is foreclosed by a Supreme Court or Court of Appeals opinion. Williams, supra, at *1. Yet by contrast, the "quick look" standard serves Slack's purpose by expressly accounting for the possibility to "reconsider circuit law that apparently forecloses relief." Lambright, 220 F. 3d at 1026 (citing Slack, 120 S.Ct. at 1606-07). Quick look supports evolution of law.

The rigors of the "arguable merit" approach not only overreach Slack's intention of "at least" an arguably "valid" constitutional claim, but in effect blur the line between a separate COA proceeding and an appeal determination. Because this important issue affects a significant number of people's ability to access the courts, where "habeas corpus plays a vital role in protecting constitutional rights," Slack, at 483, the Court should grant certiorari and decide: At what point does Slack's screening a constitutional claim for frivolousness or facial insufficiency turn into adjudicating whether the constitutional claim would actually, or likely, succeed?

D. The Ninth Circuit Inconsistently Applies Slack

In cases where it grants a COA, the Ninth Circuit applies the law of the circuit in Lambright, using the "quick look" method to conclude Slack's first prong was satisfied.

In United States v. Prach, 2025 U.S. Dist. LEXIS 119832, at *2-*4 (E.D. WA. June 24, 2025) the 28 U.S.C. § 2255 motion was dismissed under Rule 4, and a COA was denied; petitioner claimed ineffective assistance of counsel, "but her motion provides no evidence or argument concerning ineffective assistance of counsel." A COA was denied under the Barefoot standard. Yet the Ninth Circuit concluded a COA was appropriate, citing to Lambright, 220 F. 3d at 1026 (explaining the "quick look" method), because the § 2255 motion "states at least one federal constitutional claim ... namely whether trial counsel was ineffective for failing to inform appellant of the immigration consequences of her guilty plea." United States v. Prach, 2026 U.S. App. LEXIS 5644 (9th Cir. Feb. 25, 2026).

In Voss v. Russell, 2025 U.S. Dist. LEXIS 16742 (D.C. NV. Aug. 27, 2025) a 28 U.S.C. § 2254 petition was dismissed as untimely. Id. at *12-*14. The petitioner had an extremely long post-conviction litigation history including multiple state and federal habeas petitions. Id. at *2-*7. The most recent petition asserted 10 constitutional claims. Id. at *6. The Ninth Circuit, citing Lambright, 220 F. 3d at 1026 ("quick look" method) found Slack's first prong was met because the "petition" stated at least one constitutional claim, "namely whether trial counsel was ineffective." Voss v. Russell, 2026 U.S. App LEXIS 5654 (9th Cir. Feb. 25, 2026.)

See also McElmeel v. Rayfield, 2026 U.S. App. LEXIS 3209, (9th Cir. Jan. 30, 2026) (citing "quick look" method at Lambright, 220 F. 3d at 1026, and finding petition stated constitutional claim of "whether appellant's guilty plea was knowing, voluntary, and intelligent.").

Yet when denying a COA under Slack, sometimes the Ninth Circuit does not apply the law of the circuit in Lambright's "quick look" standard. See Allen v. Schuyler, 2026 U.S. App. LEXIS 18740 (9th Cir. June 25, 2026) (COA denied under Slack's first prong); Allen v. Schuyler,

2025 U.S. Dist. LEXIS 197870, at *42-*44 (N.D. Cal. Oct. 2, 2025) (claims procedurally defaulted). See Sherbondy v. Salmonsen, 2026 U.S. App. LEXIS 18746 (9th Cir. June 25, 2026) (COA denied under Slack's first prong); Sherbondy v. Salmonsen, 2025 U.S. Dist. LEXIS 224524, at *1 (D.C. MT. Nov. 14, 2025) (petition dismissed as untimely). See Kozol v. Haynes, 2026 U.S. App. LEXIS 18771 (9th Cir. June 25, 2026) (COA denied under Slack's first prong); Kozol v. Haynes, 2026 U.S. Dist. LEXIS 8284, at *5-*8 (D.C. WA. Jan. 15, 2026) (claims dismissed as procedurally defaulted).

These case examples show that similarly situated appellants are having different standards applied when the Ninth Circuit determines whether to grant a COA.

Most recently, the Ninth Circuit cited to the "quick look" interpretation of Slack, "Lambright, 220 F. 3d 1022, 1026," and granted a COA upon valid claims of "namely whether trial counsel was constitutionally ineffective for failing to present testimony regarding appellant's mental health diagnosis," Robinson v. Craddock, 2026 U.S. App. LEXIS 3215 (9th Cir. Jan. 29, 2026); whether "appellant was deprived of his right to a trial by a fair and impartial jury when a juror failed to disclose during voir dire that she had been a victim of child molestation," Landrum v. Thornell, 2026 U.S. App. LEXIS 5835 (9th Cir. Feb. 26, 2026); and whether "appellant's plea waiver bars review of the ineffective assistance of counsel claim raised in the § 2255 motion." United States v. Zazueta, 2026 U.S. App. LEXIS 11791 (9th Cir. April 29, 2026).

Yet these "valid" claims are just as valid as the claims in Mr. Kozol's petition:

> "GROUND ONE: Prosecutorial misconduct during closing argument denied Mr. Kozol a fair jury trial in violation of the Sixth and Fourteenth Amendments." ECF 1 and 5. Kozol presented two paragraphs of supporting facts. ECF 1 at 20.

"GROUND TWO: The admission of Tr. Ex. 30, a silencer manual, violated Mr. Kozol's right to due process and freedom of speech protected by the First and Fourteenth Amendments." ECF 1 at 7. Kozol presented one paragraph of supporting facts. Id.

"GROUND THREE: The suppression of material impeachment evidence about Det. Denny Gulla violated Brady v. Maryland and the due process clause of the Fourteenth Amendment." ECF 1 at 8. Kozol presented one paragraph of supporting facts. Id.

"GROUND FOUR: Mr. Kozol was denied due process of law in violation of the Fourteenth Amendment when the state destroyed exculpatory or potentially exculpatory evidence." ECF 1 at 10. Kozol presented one paragraph of supporting facts. Id.

"GROUND FIVE: Mr. Kozol was denied effective assistance of counsel at trial and on direct appeal in violation of the right to counsel and due process provisions of the Sixth and Fourteenth Amendments." ECF 1 at 20. Kozol presented two paragraphs of supporting facts. ECF 1 at 20-21.

By any objective measure, Kozol's claims are "at least ... debatable" as "valid claims of the denial of a constitutional right." Slack, 529 U.S. at 484. And Kozol's claims certainly meet Lambright's "quick look" standard, applying 12 (b)(6) elements. Lambright, 220 F. 3d at 1026, n.5.

To be sure, the Ninth Circuit's inconsistent application of 28 U.S.C. § 2253 (c), and the holding in Slack, is producing manifestly unreasonable, if not absurd, results. In United States v. Prach, the claim was dismissed under Habeas Rule 4 as legally and factually insufficient, i.e., "frivolous," but the Ninth Circuit applied Lambright's "quick look" standard and still granted a

COA. See ante at 23. To the stark opposite, Mr. Kozol's claims easily survived Rule 4 scrutiny, were supported by ample evidence, yet were denied a COA and not given the benefit of the "quick look" standard.

Yet while Kozol's COA request cited to Slack's first prong, Appendix A, at 15, and comprehensively cited to Lambright's "quick look" standard, Appendix C, at 5-8, it is manifest that the Ninth Circuit impermissibly applied a heightened standard in denying Kozol a COA. Merely because Slack's first prong was recited by the Ninth Circuit, Appendix B, does not mean Slack was applied.

As this Court has made clear, it is the application, not the recitation of a standard that matters for § 2254 habeas purposes. See Sears v. Upton, 561 U.S. 945, 952 (2010) (per curiam) ("Although the court appears to have stated the proper [Strickland] prejudice standard, it did not correctly conceptualize how that standard applies to the circumstances of this case.") (footnote omitted).

When it is apparent on the surface that a court applied an incorrect standard, no inferences need be, nor can be drawn, that could result in finding the court applied the proper standard. Hardy v. Chappell, 849 F. 3d 803, 819 (9th Cir. 2017). And, this Supreme Court "has not shied away from summarily deciding fact-intensive cases where, as here, lower courts have egregiously misapplied settled law." Wearry v. Cain, 577 U.S. 385, 395 (2016).

Of further comparability value, it seems incongruent that in Kozol's 2006 habeas petition he was granted a COA under either the Slack or Barefoot standard on all seven of his claims, ECF 26-2 at 281-85, yet now in the 2022 petition, with claims based upon an entirely new body of evidence that undercuts the state's case, according to the Ninth Circuit none of his claims

supposedly have even a scintilla of "debatable" merit. That conclusion is manifestly unreasonable.

Upon the totality of factors, it is manifest that the Ninth Circuit departed from Slack when denying Kozol a COA, and conducted something closer to a full-blown merits determination - which is, of course, forbidden by statute. Miller-El, 537 U.S. at 336. Whatever standard was actually applied, it was more demanding than what Slack requires.

E. It is Manifest That the Ninth Circuit Impermissibly Applied a Heightened Standard When Denying Kozol a COA

Under the Ninth Circuit's binding facial standard in Lambright, Kozol's claims clearly qualify. To the extent a minimal nonfrivolousness check is permissible, Grounds Three, Four, and Five particularly meet that test. The Ninth Circuit's unexplained contrary result illustrates why clarification is necessary to realign circuit practices to conform with Supreme Court holdings. A brief review of Kozol's claims show that Slack's first prong is satisfied.

First, the correct standard must be used to assess the claims. Because no state court ever ruled on the merits of Kozol's claims, AEDPA's deferential standard does not apply, and review is de novo. Cone v. Bell, 556 U.S. 449, 472 (2009).

1. Evidentiary Issues Underpinning Kozol's Claims

Several claims require an evidentiary hearing. ECF 27 at 23-24. As explained, an evidentiary hearing could develop evidence that victim Walter had a nail-puncture injury, which Kozol testified to be the source of the blood spots in his car. ECF 26-2 at 508-509. This is necessary to support Ground Five.

Because the district court found new alibi witness Amal Osman's declaration was not credible because it purportedly contradicted Kozol's timeline of his whereabouts, an evidentiary

hearing could establish Osman's credibility, by clarifying any temporal discrepancy. Appendix C, at 14-15.[4] This supports Ground Five.

As to Ground Four and the bad-faith destruction of potentially exculpatory evidence under Arizona v. Youngblood, 488 U.S. 51 (1988), Mr. Kozol requires an evidentiary hearing to establish the destructions were done in bad faith. While the destructions violated clearly established evidence retention requirements, ECF 27 at 38-44, respondent offered no explanation for the destructions. ECF 36. It is Mr. Kozol's burden to show "bad faith." Youngblood, at *58.

Additionally, Mr. Kozol properly requested imposition of adverse inferences for the state's willful spoliation of potentially exculpatory evidence. ECF 27 at 44-45; ECF 42 at 23-24. These inferences go to support each of Kozol's habeas claims, and would support any showing of prejudice, as the inferences would be that DNA testing of the hair, Rolex watch, and perpetrator's fingerprints (already found to not match Kozol) from the crime scene and DNA testing of the confession letter and the envelope's glue flap, would all match a third party. This would prove the confession true, and support Kozol's innocence. ECF 27 at 15-18.

And the requested inference for the willful spoliation of Kozol's Audi would be that the car was damaged as the defense testified, and was not used in the crime. ECF 27 at 18-19.

2. Ground Three - Valid Claim

Assessing de novo Ground Three, it would be "at least ... debatable," Slack, at 484, that had Kozol's jury learned of Det. Gulla's misconduct history including dishonesty and evidence tampering, and a willingness to "plant" evidence, and had they known Det. Gulla unlawfully

[4] The Magistrate's conclusion was in the context of the Schlup v. Delo actual innocence inquiry. ECF 46 at 26-28. But this ruling would carry over to a merits context.

configured, i.e., fabricated, everyday household items into purported "silencer" evidence and then falsely testified about it, the jury would likely have reached a different verdict.

Brady relief is available upon a failure to disclose a detective's misconduct history. Compare Gulla's misconduct, ECF 27 at 33-37; ECF 26-2 at 295-412, with Milke v. Ryan, 711 F. 3d 998, 1012-1019 (9th Cir. 2013). Then see United States v. Dreyer, 2016 U.S. Dist. LEXIS 75549 (D.C. WA. 2016) where a Brady violation was found for the withholding of the misconduct history of another King County Sheriff's Office detective, who had violations of the "KCSO's dishonesty policy," id. at *5; had testified untruthfully pertaining to a search warrant in the case, id. at *6-*8; a post trial newspaper story revealed the detective's misconduct in another case, and at another police department, id. at *8-*9; and a misconduct history that included a pattern of dishonesty, false statements, and even a case being dismissed because prosecutors knew the detective was dishonest, id. at *9-*10.

All these exact same issues were revealed in Kozol's case pertaining to lead detective Denny Gulla. ECF 27 at 33-37; ECF 26-2 at 295-412. Kozol's Brady claim is certainly "debatable" as to its potential merit, under the authority in Milke and Dreyer. See also, Lazar v. A.G. of Penn., 659 F. Supp. 3d 599 (D.C. PA. 2023) (withheld misconduct history included "willingness to testify falsely to buttress prosecution's case"); Eaddy v. Delbalso, 2024 U.S. Dist. LEXIS 32450, at *59 (E.D. PA. 2024) (misconduct history of "disgraced" detective); Tillman v. Burge, 813 F. Supp. 2d 946, 964 (N.D. IL. 2011) (misconduct history could have resulted in acquittal).

All the more, the Ninth Circuit has recognized a Brady violation from a lead detective's fabrication of evidence "early in the investigation," concluding it would have "undermined the credibility" of the entire case, would have "cast a shadow" across the entire police investigation

and "instantly upset the credibility" of the rest of the investigation. Atkins v. Cnty. of Riverside, 151 Fed. Appx. 501, 504, 505 (9th Cir. 2005).

In this entirely circumstantial case against Kozol, learning of Det. Gulla's extensive misconduct history, as well as his fabrication of alleged "silencer" evidence and the "false" testimony to get it admitted under plain-view, when viewed against the backdrop of adverse inferences as to third party guilt, would have certainly created a reasonable probability of a different outcome. Thus, Ground Three is "at least ... debatable" as a valid claim. Slack, at 484, and it is therefore manifest the Ninth Circuit impermissibly applied a heightened standard when denying Kozol a COA. The Ninth Circuit did not apply Slack's first prong.

3. Ground Four - Valid Claim

Ground Four asserts Arizona v. Youngblood, 488 U.S. 51 (1988) applies to the state's post-trial bad-faith destruction of exculpatory and potentially exculpatory evidence. ECF 27 at 38-45. While the Ninth Circuit has not yet addressed Youngblood in the context of post-trial destruction of new origin evidence, other circuits have applied Youngblood in the post-trial context. ECF 27 at 38-45. The validity of Kozol's claim is "at least ... debatable." Slack, at 484. Therefore it is manifest that the Ninth Circuit impermissibly applied a higher standard than Slack's first prong when denying Kozol a COA.

4. Ground Five - Valid Claim

Kozol's attorney never investigated the necessary evidence for trial. ECF 27 at 13-14. Eyewitness statements, and a sales receipt for a new car battery two days after the crime, go to corroborate defense testimony the Audi was not able to have been used in the crime. ECF 42 at 25 n. 17.

The requested evidentiary hearing can corroborate defense testimony of how Walter's blood spots got in the Audi. ECF 27 at 24. Had counsel investigated the construction workers at Walter's house, it would have revealed one of the workers stole keys to Kozol's storage unit and gave those, and a key to Walter's house, to someone who stole Kozol's weapons and robbed Walter. ECF 27 at 15-16. Had counsel investigated the evidence and DNA-tested the hair, Rolex watch, and fingerprints (known to not be Kozol's) from the crime scene, the adverse inference from the spoliation of this evidence would be a DNA match from the three items belonging to a third party. ECF 27 at 16-18.

Under the requested adverse inference for the state's spoliation of Kozol's Audi, had counsel investigated he could have shown the jury that the car could not have been used in the crime, and therefore the victim's blood spots came from another event. ECF 27 at 18-19. Had counsel investigated, the jury would have freshly heard the alibi testimony of Amal Osman. ECF 27 at 21; ECF 42 at 21-22; Appendix C, at 14-15.

Additionally, had counsel investigated, he would have been able to present the jury with lead detective Denny Gulla's extensive misconduct history, including using the evidence to impeach Gulla's plain-view ("false") testimony upon which the manufactured evidence was admitted at trial, undermining the credibility of the case.[5]

In this circumstantial case, and upon a jury hearing the totality of this evidence, when viewing the Strickland claim under the de novo standard, it is "at least ... debatable" under Slack that Kozol could demonstrate the prejudice prong of Strickland. Therefore, it is manifest that the

[5] Det. Gulla's fabrication of evidence was more egregious than the false police report in Atkins, supra. And the Ninth Circuit's conclusions of prejudice were not considering the compounded effect of a lengthy misconduct history, such as Gulla's.

Ninth Circuit impermissibly applied a heightened standard when denying Kozol a COA. The Ninth Circuit did not apply Slack's first prong.

F. Certiorari is Warranted on this Issue

Deviating from Slack contravened Congressional intent. The Slack Court recognized Congress codified the Barefoot standard for determining what constitutes the requisite showing of the denial of a constitutional right. Miller-El, 537 U.S. at 336.

The Order denying Kozol a COA cited 28 U.S.C. § 2253 (c)(2) - (3) as authority that Kozol's petition did not state a constitutional claim. Appendix B. Because that conclusion is manifestly wrong, the Ninth Circuit's construction of the statute is manifestly unreasonable. See United States v. Rutherford, 442 U.S. 544, 552, 555 (1979) (statutes are to be interpreted to avoid "absurd results" or "consequences obviously at variance with the policy of the enactment as a whole;" "when a literal construction of a statute yields results so manifestly unreasonable that they could not fairly be attributed to Congressional design ...").

Impermissibly applying a heightened standard for a COA, and ignoring Slack's low bar, contravened Congressional intent because "the statute forbids" a higher-degree COA inquiry into "factual or legal bases adduced in support of the claims." Miller-El, 537 U.S. at 336.

Due to the different ways the various Circuits are interpreting Slack's first prong, and the different ways the Ninth Circuit is applying Slack to similarly situated appellants, or not applying Slack in certain cases, this is an appropriate case for the Court to grant certiorari. Supreme Court Rule 10 (a), 10 (c).

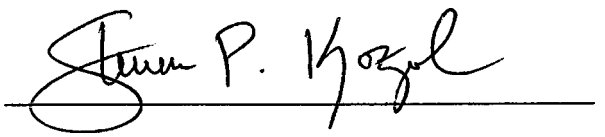
This case is a material extension of this Court's holdings in Barefoot, Slack, Miller-El, and Buck, and granting certiorari will provide necessary clarification of this important issue to a large number of people in the United States.

VI. CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,

DATED this 21st day of September, 2026



Steven P. Kozol
Petitioner, in Propria Persona
DOC #974691
Unit H1-A24
Stafford Creek Correction Center
191 Constantine Way
Aberdeen, WA 98520