(ORDER LIST: 588 U.S.)

FRIDAY, JUNE 28, 2019

CERTIORARI -- SUMMARY DISPOSITIONS

17-8390 SPERLING, SCOTT A. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *United States* v. *Haymond*, 588 U. S. ___ (2019).

17-9221 HALL, DONOVAN L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Rehaif* v. *United States*, 588 U. S. ___ (2019).

18-294 HONCHARIW, NICHOLAS V. COUNTY OF STANISLAUS, CA, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Knick* v. *Township of Scott*, 588 U. S. ___ (2019).

18-351 PENSACOLA, FL, ET AL. V. KONDRAT'YEV, AMANDA, ET AL.

The petition for a writ of certiorari is granted. The judgment is vacated, and the case is remanded to the United

States Court of Appeals for the Eleventh Circuit for further consideration in light of *American Legion* v. *American Humanist Assn.*, 588 U. S. ___ (2019).

18-557 DEPT. OF COMMERCE, ET AL. V. USDC SD NY, ET AL.

The case is remanded to the United States Court of Appeals for the Second Circuit with instructions to vacate that court's orders dated September 25, 2018 and October 9, 2018. See *United States* v. *Munsingwear, Inc.*, 340 U. S. 36 (1950).

18-1214 ROSS, SEC. OF COMMERCE, ET AL. V. CALIFORNIA, ET AL.

The motion of Fair Lines America Foundation for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari before judgment is granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Ninth Circuit for further consideration in light of *Department of Commerce* v. *New York*, 588 U. S. ___ (2019).

18-5234 RODRIGUEZ, MARCOS V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *United States* v. *Davis*, 588 U. S. ___ (2019).

18-5306 JEFFERSON, RAMIAH V. UNITED STATES

The motion of petitioner for leave to proceed *in forma* pauperis and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Sixth Circuit for further consideration in light of *United States* v. *Davis*, 588 U. S. ___

(2019).

18-6985 BARRETT, DWAYNE V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *United States* v. *Davis*, 588 U. S. ___ (2019).

18-7123 ALLEN, DERRICK M. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fourth Circuit for further consideration in light of *Rehaif* v. *United States*, 588 U. S. ___ (2019).

18-7166 MANN, GERARD V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *United States* v. *Davis*, 588 U. S. ___ (2019).

18-7331 DOUGLAS, ISHMAEL V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the First Circuit for further consideration in light of *United States* v. *Davis*, 588 U. S. ___

(2019).

18-7439 WARD, GREGORY M. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further consideration in light of the position asserted by the Solicitor General in his letter for the United States filed on June 18, 2019.

18-7490 REED, DAN V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eleventh Circuit for further consideration in light of *Rehaif* v. *United States*, 588 U. S. ___ (2019).

18-7996 WATKINS, EMORY V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Second Circuit for further consideration in light of *United States* v. *Davis*, 588 U. S. ___ (2019).

18-9071 MOODY, JASON V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated, and the case is remanded to the United States Court of Appeals for the Fifth Circuit for further

consideration in light of *Rehaif* v. *United States*, 588 U. S. ___ (2019).

ORDER IN PENDING CASE

18-7739 HOLGUIN-HERNANDEZ, GONZALO V. UNITED STATES

K. Winn Allen, Esquire, of Washington, D.C., is invited to brief and argue this case, as *amicus curiae*, in support of the judgment below.

CERTIORARI GRANTED

17-1268 OPATI, MONICAH O., ET AL. V. SUDAN, ET AL.

The petition for a writ of certiorari is granted limited to Question 2 presented by the petition. Justice Kavanaugh took no part in the consideration or decision of this petition.

17-1712 THOLE, JAMES J., ET AL. V. U.S. BANK, N.A., ET AL.

The petition for a writ of certiorari is granted. In addition to the questions presented by the petition, the parties are directed to brief and argue the following question: Whether petitioners have demonstrated Article III standing.

18-587) DEPT. OF HOMELAND, ET AL. V. REGENTS OF UNIV. OF CA, ET AL.
)
18-588) TRUMP, PRESIDENT OF U.S., ET AL. V. NAACP, ET AL.
)
18-589) McALEENAN, SEC. OF HOMELAND V. VIDAL, MARTIN J., ET AL.

The petition for a writ of certiorari in No. 18-587 is granted. The petitions for writs of certiorari before judgment in No. 18-588 and No. 18-589 are granted. The cases are consolidated, and a total of one hour is allotted for oral argument.

18-882 BABB, NORIS V. WILKIE, SEC. OF VA

The petition for a writ of certiorari is granted limited to the following question: Whether the federal-sector provision of

the Age Discrimination in Employment Act of 1967, which provides that personnel actions affecting agency employees aged 40 years or older shall be made free from any "discrimination based on age," 29 U. S. C. §633a(a), requires a plaintiff to prove that age was a but-for cause of the challenged personnel action.

18-1048 GE ENERGY POWER CONVERSION V. OUTOKUMPU STAINLESS, ET AL.

18-1059 KELLY, BRIDGET A. V. UNITED STATES

18-1086 LUCKY BRAND DUNGAREES, INC. V. MARCEL FASHIONS GROUP, INC.

The petitions for writs of certiorari are granted.

18-1195 ESPINOZA, KENDRA, ET AL. V. MONTANA DEPT. OF REVENUE, ET AL.

The motion of The Cato Institute for leave to file a brief as *amicus curiae* is granted. The motion of Liberty Justice Center, et al. for leave to file a brief as *amici curiae* is granted. The motion of Georgia Goal Scholarship Program, Inc. for leave to file a brief as *amicus curiae* is granted. The motion of Pioneer Institute, Inc. for leave to file a brief as *amicus curiae* is granted. The petition for a writ of certiorari is granted.

18-1233 ROMAG FASTENERS, INC. V. FOSSIL, INC., ET AL.

18-1269 RODRIGUEZ, SIMON E. V. FEDERAL DEPOSIT INSURANCE CORP.

The petitions for writs of certiorari are granted.

18-6662 SHULAR, EDDIE L. V. UNITED STATES

The motion of petitioner for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted.

CERTIORARI DENIED

18-664 BAUERLY, CYNTHIA V. FIELDING, WILLIAM, ET AL.

18-832 PETERSEN, ANN W. V. NCL LTD.

18-954 SPEELMAN, CORY V. OHIO

18-1013) WINSTEAD, EDWARD, ET AL. V. JOHNSON, ANTHONY
)
18-1186) JOHNSON, ANTHONY V. WINSTEAD, EDWARD, ET AL.

18-6286 CHAMBERLIN, LISA JO V. HALL, COMM'R, MS DOC

18-6755 LACY, DAEDERICK V. UNITED STATES

18-7094 SMITH, FLOYD D. V. CALIFORNIA

18-7594 ROGERS, JAMES R. V. FORD, WARDEN

The petitions for writs of certiorari are denied.

18-428 UNITED STATES V. SALAS, CLIFFORD R.

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied. Justice Gorsuch took no part in the consideration or decision of this motion and this petition.

18-989 UNITED STATES V. LEWIS, MARVIN

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

18-1093 JOLIET, IL, ET AL. V. MANUEL, ELIJAH

The motion of respondent for leave to proceed *in forma pauperis* is granted. The petition for a writ of certiorari is denied.

SUPREME COURT OF THE UNITED STATES

SCOTT HARRIS, IN HIS OFFICIAL CAPACITY AS STATE HEALTH OFFICER, ET AL. *v.* WEST ALABAMA WOMEN'S CENTER, ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

No. 18–837. Decided June 28, 2019

The petition for a writ of certiorari is denied.

JUSTICE THOMAS, concurring.

In 2016, Alabama adopted a law prohibiting "dismemberment abortion[s]." Ala. Code §26–23G–3(a). The law does not prohibit women from obtaining an abortion, but it does prevent abortion providers from purposefully "dismember[ing] a living unborn child and extract[ing] him or her one piece at a time from the uterus through use of clamps, grasping forceps, tongs, scissors, or similar instruments" that "slice, crush, or grasp . . . a portion of the unborn child's body to cut or rip it off." §26–23G–2(3). As the Court of Appeals explained, this method of abortion is particularly gruesome:

> "In this type of abortion the unborn child dies the way anyone else would if dismembered alive. It bleeds to death as it is torn limb from limb. It can, however, survive for a time while its limbs are being torn off. . . . At the end of the abortion—after the larger pieces of the unborn child have been torn off with forceps and the remaining pieces sucked out with a vacuum—the abortionist is left with a tray full of pieces." *West Alabama Women's Center* v. *Williamson*, 900 F. 3d 1310, 1319–1320 (CA11 2018) (citations and internal quotation marks omitted).

Dismembering a child alive is—in respondents' words—"the most commonly used second-trimester abortion method,"

and it "account[s] for 99% of abortions in the state from [15 weeks] onward." Brief in Opposition 1. Put differently, the more developed the child, the more likely an abortion will involve dismembering it.

The notion that anything in the Constitution prevents States from passing laws prohibiting the dismembering of a living child is implausible. But under the "undue burden" standard adopted by this Court, a restriction on abortion—even one limited to prohibiting gruesome methods—is unconstitutional if "the 'purpose or effect' of the provision 'is to place a substantial obstacle in the path of a woman seeking an abortion before the fetus attains viability.'" *Whole Woman's Health* v. *Hellerstedt*, 579 U. S. ___, ___ (2016) (slip op., at 1) (quoting *Planned Parenthood of Southeastern Pa.* v. *Casey*, 505 U. S. 833, 878 (1992) (plurality opinion); emphasis deleted). Here, abortion providers persuaded the District Court—despite mixed medical evidence—that other abortion methods were too risky, and the lower courts therefore held that Alabama's law had the *effect* of burdening abortions even though it did not prevent them. Ordinarily, balancing moral concerns against the risks and costs of alternatives is a quintessentially legislative function. But as the Court of Appeals suggested, the undue-burden standard is an "aberration of constitutional law." 900 F. 3d, at 1314; *Stenberg* v. *Carhart*, 530 U. S. 914, 982 (2000) (THOMAS, J., dissenting) (explaining that the standard "was constructed by its authors out of whole cloth").

This case serves as a stark reminder that our abortion jurisprudence has spiraled out of control. Earlier this Term, we were confronted with lower court decisions *requiring* States to allow abortions based solely on the race, sex, or disability of the child. *Box* v. *Planned Parenthood of Indiana and Kentucky, Inc.*, 587 U. S. ___, ___ (2019) (THOMAS, J., concurring) (slip op., at 2). Today, we are confronted with decisions *requiring* States to allow

abortion via live dismemberment. None of these decisions is supported by the text of the Constitution. *Gonzales* v. *Carhart*, 550 U. S. 124, 169 (2007) (THOMAS, J., concurring). Although this case does not present the opportunity to address our demonstrably erroneous "undue burden" standard, we cannot continue blinking the reality of what this Court has wrought.

SUPREME COURT OF THE UNITED STATES

SHANNON D. MCGEE, SR. *v.*
JOSEPH MCFADDEN, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 18–7277. Decided June 28, 2019

The petition for a writ of certiorari is denied.

JUSTICE SOTOMAYOR, dissenting from denial of certiorari.

Pro se petitioner Shannon McGee has a strong argument that his trial and resulting life sentence were fundamentally unfair because the State withheld material exculpatory evidence. See *Brady* v. *Maryland*, 373 U. S. 83, 87 (1963). The state courts offered flawed rationales for rejecting that claim. Nevertheless, the District Court denied McGee federal habeas relief, and both the District Court and the U. S. Court of Appeals for the Fourth Circuit summarily declined to grant McGee a "certificate of appealability" (COA), 28 U. S. C. §2253(c), concluding that his claim was not even debatable. Without a COA, McGee cannot obtain appellate review on the merits of his claim. See *ibid.* Because the COA procedure should facilitate, not frustrate, fulsome review of potentially meritorious claims like McGee's, I would grant the petition for writ of certiorari and reverse the denial of a COA.

I

McGee is serving a life sentence without possibility of parole in a South Carolina state prison, having been convicted in 2006 of sexually abusing his minor stepdaughter. The State's case at his trial featured testimony from a jailhouse informant named Aaron Kinloch, who claimed that McGee confessed the abuse to him while the two men were incarcerated together. The prosecutor trumpeted Kinloch's apparent altruism in his closing argument:

> "[N]ormally you will hear a defendant—a defense lawyer get up here and scream about a deal, what he got out of it, or, you know, some kind of expectation of reward for this lie, but again, the defense is really going to have to search for a really, sort of hidden agenda of this Aaron Kinloch. . . . I don't know what motive he would have to come in here and fabricate this awful story." App. in *McGee* v. *State*, No. 2014–000297 (S. C.), pp. 152–153.

As it turns out, that was not the full story. Shortly after the trial ended, the prosecutor turned over a letter from Kinloch not previously disclosed to the defense in which Kinloch volunteered his testimony in exchange for the prosecutor's "help" with pending charges. Kinloch wrote: "I'm willing to help, if you are cause I do need your help. . . . P.S. If Need Be I WILL Testify!" *Id.*, at 524. Kinloch sent the letter three days after learning of the charges against him.[1]

Ever since the belated disclosure of the letter, McGee has persistently but unsuccessfully argued that he is entitled to a new trial at which he could use the letter to call into question Kinloch's testimony. See generally App. to Pet. for Cert. 57–61. The state courts denied McGee's claim on both direct and postconviction review. The District Court denied McGee's *pro se* petition for federal habeas corpus relief under 28 U. S. C. §2254 and declined to issue a COA. The Court of Appeals likewise denied a COA. McGee, still *pro se*, petitioned for a writ of certiorari to review that denial.

II

Withholding Kinloch's letter could be a classic violation

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[1] Although the letter shows that Kinloch had in mind a *quid pro quo* when he first approached the prosecutor with his account of McGee's confession, there is no indication that any deal was ever struck.

of the prosecutor's constitutional duty to disclose material evidence favorable to the defense. See *Kyles* v. *Whitley*, 514 U. S. 419, 432–433 (1995); *Giglio* v. *United States*, 405 U. S. 150, 153–155 (1972); *Brady*, 373 U. S., at 87. The trial court said unequivocally that the letter should have been turned over. See App. C to Brief in Opposition 4 (describing the prosecutor's decision as showing "clear disregard for his responsibility as a prosecutor to seek justice"). The main question throughout the history of McGee's case has been whether the letter was "material" to the jury's guilty verdict. See, *e.g., Wearry* v. *Cain*, 577 U. S. ___, ___ (2016) (*per curiam*) (slip op., at 7).

To establish that the letter was "material" (and thus to prevail in the state courts), McGee had to show only that the letter would "'undermine confidence' in the verdict," not that he would have been acquitted with it. *Ibid.* That is, he had to show a "'"reasonable likelihood"'" that the letter "could have '"affected the judgment of the jury."'" *Ibid.*; see also *Kyles*, 514 U. S., at 434–435. Under the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), McGee must further show on federal habeas review that the state court's adjudication of his *Brady* claim was (1) "contrary to, or involved an unreasonable application of, clearly established Federal law, as determined, by the Supreme Court," or (2) "was based on an unreasonable determination of the facts in light of the evidence presented in the State court proceeding." 28 U. S. C. §2254(d).

The lower courts should have granted McGee a COA to allow review of the District Court's conclusion that the AEDPA standard was not met, because McGee has at least made "a substantial showing of the denial of a constitutional right." §2253(c)(2). "At the COA stage, the only question is whether the applicant has shown that 'jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude

the issues presented are adequate to deserve encouragement to proceed further.'" *Buck* v. *Davis*, 580 U. S. ___, ___ (2017) (slip op., at 13) (quoting *Miller-El* v. *Cockrell*, 537 U. S. 322, 327 (2003)). This "threshold" inquiry is more limited and forgiving than "'adjudication of the actual merits.'" *Buck*, 580 U. S., at ___ (slip op., at 13) (quoting *Miller-El*, 537 U. S., at 337); see also *id.,* at 336 (noting that "full consideration of the factual or legal bases adduced in support of the claims" is not appropriate in evaluating a request for a COA).

Indications abound that McGee's *Brady* claim "deserve[d] encouragement to proceed further." *Miller-El*, 537 U. S., at 327. First, Kinloch's letter evinces a particularized motive to lie, one distinct from and potentially more probative than any generalized doubts about Kinloch's credibility that McGee was able to sow without it. See *Davis* v. *Alaska*, 415 U. S. 308, 316–318 (1974).

Second, the state-court determinations that Kinloch's letter was immaterial rested on dubious premises. The state trial court saw no likelihood that the letter would have impacted the outcome of McGee's trial because, "while this evidence could have been favorable to [McGee], it did not indicate that in fact a deal for the testimony had been reached." App. C to Brief in Opposition 4.[2] The State Court of Appeals affirmed that conclusion without further analysis. But the trial court's reasoning was doubtful, given that this Court has said that "a witness' attempt to obtain a deal before testifying" can be material "even though the State had made no binding promises." *Wearry*, 577 U. S., at ___ (slip op., at 9) (citing *Napue* v. *Illinois*, 360 U. S. 264, 270 (1959)).

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[2] See also App. C to Brief in Opposition. ("In light of all the evidence and testimony, and in particular, the lack of any facts indicating any deal struck between the witness and the [prosecutor], it is this court's finding that the defendant received 'a fair trial resulting in a verdict worthy of confidence'").

When McGee again raised his *Brady* claim on state collateral review, the state postconviction court rejected it primarily because the claim had been addressed already on direct review. In the alternative, however, the court offered the new ground that the claim lacked merit because McGee's counsel had attacked Kinloch's credibility in other ways and the "jury was aware of Kinloch's prior conviction and pending charges." App. D to Brief in Opposition 14. That rationale appears to rest in part on an "unreasonable determination of the facts," 28 U. S. C. §2254(d)(2); I see no indication in the trial transcript that the jury was in fact made aware of the pending charges.

Third, the federal-court decisions reviewing McGee's claims were thinly reasoned. The Magistrate Judge offered little explanation beyond reciting the state courts' reasoning, describing the relevant legal standards, and stating that the "state courts reviewed the standard by which materiality must be judged" and "correctly applied the standard." App. to Pet. for Cert. 76. The District Court for its part recognized that McGee had put forth "a strong argument as to the *Brady* issue," but adopted the magistrate judge's recommendation anyway. *Id.*, at 48. It deferred to the state postconviction court's statement that the jury was aware of Kinloch's pending charges, then reasoned that the postconviction court's factual findings "completely undermine[d]" McGee's argument. *Ibid.* Yet, as noted above, the postconviction court's conclusion that the jury was aware of the pending charges appears to have been unreasonable. The District Court offered only a conclusory statement that deference on that point was appropriate, and only careful review of the trial record could permit the Court of Appeals meaningfully to evaluate McGee's contrary assertion that he could not, in fact, "effectively cross-examine Kinloch concerning pending charges," Informal Brief for Appellant in No. 18–6211 (CA4), pp. 5–6.

Finally, the District Court's was the last of four opinions (two state and, including the Magistrate Judge's recommendation, two federal) to discuss the merits of McGee's *Brady* claim. Not one of those decisions discussed the evidence against McGee apart from Kinloch's testimony or concluded that the other evidence was so overwhelming that discrediting Kinloch would not have called the jury's verdict into doubt.[3]

For all these reasons, the District Court's decision was certainly "debatable." The Court of Appeals' resolution of the case in an unreasoned order denying a COA compounded the error. This case instead should have gone to a merits panel of the Fourth Circuit for closer review.

III

The federal courts handle thousands of noncapital habeas petitions each year, only a tiny fraction of which ultimately yield relief. See N. King, Non-Capital Habeas Cases After Appellate Review: An Empirical Analysis, 24 Fed. Sentencing Reporter 308, 309 (2012) (Table 2) (less than 1% of randomly selected cases in an empirical study). While the volume is high, the stakes are as well. Federal judges grow accustomed to reviewing convictions with sentences measured in lifetimes, or in hundreds of months. Such spans of time are difficult to comprehend, much less to imagine spending behind bars. And any given filing—though it may feel routine to the judge who plucks it from the top of a large stack—could be the peti-

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[3] The other evidence came from three witnesses: (1) McGee's teenage stepdaughter, who offered a detailed account of McGee's alleged molestations, but who also admitted to having previously recanted her allegations; (2) her 9-year-old brother, who generally corroborated that his sister had told him that "somebody did something nasty" to her but did not name McGee, App. in No. 2014–000297 (S. C.), p. 87; and (3) a doctor who diagnosed the stepdaughter with a partially torn hymen but could not say "what caused that injury," *id.*, at 131.

tioner's last, best shot at relief from an unconstitutionally imposed sentence. Sifting through the haystack of often uncounseled filings is an unglamorous but vitally important task.

COA inquiries play an important role in the winnowing process. The percentage of COA requests granted is not high, see *id.*, at 308 (study finding that "more than 92 percent of all COA rulings were denials"), but once that hurdle is cleared, a nontrivial fraction of COAs lead to relief on the merits, see *id.,* at 309 (Table 2) (approximately 6%). At its best, this triage process focuses judicial resources on processing the claims most likely to be meritorious. Cf. *Miller-El*, 537 U. S., at 337 (AEDPA's COA requirement "confirmed the necessity and the requirement of differential treatment for those appeals deserving of attention from those that plainly do not").

Unless judges take care to carry out the limited COA review with the requisite open mind, the process breaks down. A court of appeals might inappropriately decide the merits of an appeal, and in doing so overstep the bounds of its jurisdiction. See *Buck*, 580 U. S., at ___ (slip op., at 13); *Miller-El*, 537 U. S., at 336–337. A district court might fail to recognize that reasonable minds could differ. Or, worse, the large volume of COA requests, the small chance that any particular petition will lead to further review, and the press of competing priorities may turn the circumscribed COA standard of review into a rubber stamp, especially for *pro se* litigants. We have periodically had to remind lower courts not to unduly restrict this pathway to appellate review. See, *e.g., Tharpe* v. *Sellers*, 583 U. S. ___ (2018) (*per curiam*); *Buck*, 580 U. S. ___; *Tennard* v. *Dretke*, 542 U. S. 274 (2004).

This case provides an illustration of what can be lost when COA review becomes hasty. It is not without complications: There may be good arguments, yet unexplored, why McGee's claim may fall short of meeting AEDPA's

strict requirements. See §2254(d). And of course, even a finding that McGee's constitutional rights clearly were violated would not necessarily imply that he is innocent of the serious crimes of which he was convicted; McGee could be reconvicted after a fairer proceeding. See *Kyles*, 514 U. S., at 434–435. But the weighty question whether McGee is "in custody in violation of the Constitution," §2254(a), appears to have gotten short shrift here. With a lifetime of lost liberty hanging in the balance, this claim was ill suited to snap judgment.