THIS IS A CAPITAL CASE

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

CHRISTOPHER COLLINGS, Petitioner,

v.

DAVID VANDERGRIFF,
Warden, Potosi Correctional Center, Respondent.

On Petition for Writ of Certiorari
to the U.S. Court of Appeals, Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

1. Is a COA required to appeal a district court's denial of a motion for stay of the habeas proceedings made under *Rhines v. Weber,* 544 U.S. 269 (2005), for exhaustion purposes?

2. Whether the Eighth Circuit's *pro forma,* non-reasoned, and blanket denial of a COA in a capital case insufficient under 28 U.S.C. § 2253(c); *Slack v. McDaniel,* 529 U.S. 473 (2000); *Miller-El v. Cockrell,* 537 U.S. 322 (2003); and the heightened due process standard for capital cases?

LIST OF PARTIES AND CORPORATE DISCLOSURE STATEMENT

Christopher Collings is the petitioner in this case and was represented in the Court below by Jeremy S. Weis and Daniel E. Kirsch of the Federal Public Defender's Office for the Western District of Missouri.

David Vandergriff, Warden of Potosi Correctional Center is the Respondent. He and his predecessors in that position, were represented in the court below by Assistant Missouri Attorney General Michael Spillane.

Pursuant to Rule 29.6, no parties are corporations.

RELATED PROCEEDINGS

Supreme Court of the United States:

Collings v. Missouri, 574 U.S. 1160 (2015)

Collings v. Missouri, 139 S.Ct. 247 (2018)

United States Court of Appeals for the Eighth Circuit:

Collings v. Griffith, 2023 WL 9231488 (8th Cir. July 28, 2023)

United States District Court for the Western District of Missouri:

Collings v. Griffith, 2022 WL 4677562 (W.D.Mo. Sep. 30, 2022)

Supreme Court of Missouri:

State v. Collings, 450 S.W.3d 741 (Mo. 2014)

State v. Collings, 543 S.W.1 (Mo. 2018)

Circuit Court of Phelps County, Missouri:

State v. Collings, 2012 WL 12974028 (Mo. Cir. May 11, 2012)

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PETITION FOR WRIT OF CERTIORARI

Christopher Collings prays that a writ of certiorari be granted to review the judgment of the United States Court of Appeals for the Eighth Circuit Court entered on June 28, 2023.

OPINIONS BELOW

The June 28, 2023, order of the Eighth Circuit Court of Appeals summarily denying a Certificate of Appealability (COA) and dismissing Mr. Collings's appeal is unpublished and appears in the Appendix (hereinafter "A__.") at A1. The Eighth Circuit's September 8, 2023, order denying panel and *en banc* rehearing is unpublished and appears at A2. The memorandum and order of the district court denying habeas relief is unpublished and appears at A81. The order denying the motion to stay the habeas proceedings is unpublished and appears at A123. The order denying relief under Fed. R. Civ. P. 59(e) is unpublished and appears at A127.

JURISDICTION

On June 28, 2023, the Eighth Circuit Court of Appeals summarily denied Mr. Collings's application for a COA and dismissed his appeal. A1. The Eight Circuit denied a timely petition for panel and *en banc* rehearing on September 8, 2023. A2. Upon application of Mr. Collings under Rule 31 in Case No. 23A447, Associate Justice and Eighth Circuit Justice Brett M. Kavanaugh extended the time for filing the petition for writ of certiorari in this cause on or before February 5, 2024. A130; A134. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Sixth Amendment to the Constitution of the United States, which reads in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, . . . to be confronted with the witnesses against him; . . . and to have the Assistance of Counsel for his defence." U.S. Const. amend. VI.

This case also involves the Fourteenth Amendment to the United States Constitution that states, in pertinent part: "no state shall. . . deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. amend. XIV.

This case also involves 28 U.S.C. § 2253 that states, in pertinent part:

(a) In a habeas corpus proceeding or a proceeding under section 2255 before a district judge, the final order shall be subject to review, on appeal, by the court of appeals for the circuit in which the proceeding is held.

(b) There shall be no right of appeal from a final order in a proceeding to test the validity of a warrant to remove to another district or place for commitment or trial a person charged with a criminal offense against the United States, or to test the validity of such person's detention pending removal proceedings.

(c) (1) Unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken to the court of appeals from—

(A) the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court; or

(B) the final order in a proceeding under section 2255.

(2) A certificate of appealability may issue under paragraph (1) only if the applicant has made a substantial showing of the denial of a constitutional right.

(3) The certificate of appealability under paragraph (1) shall indicate which specific issue or issues satisfy the showing required by paragraph (2).

STATEMENT OF THE CASE

Background Facts

Nine-year-old Rowan Ford lived with her mother, Colleen Munson, and stepfather, David Spears, in Stella, Missouri. *State v. Collings*, 450 S.W.3d 741, 747 (Mo. banc 2014). On November 2, 2007, Spears, Christopher Collings, and Nathan Mahurin were drinking alcohol and smoking marijuana together at Spears's house. *Collings v. State*, 543 S.W.3d 1, 5 (Mo. 2018). Later in the evening, the three men went to Collings's trailer and left Rowan home alone. *Id.* On the way, they stopped at a convenience store and purchased more alcohol. *Id.* They continued drinking and smoking at Collings's trailer for about an hour, and then Mahurin and Spears left. *Id.* Mahurin took back roads to take Spears home and then Mahurin returned to his home. *Id.*

The next morning, Munson returned from her overnight work shift and could not find Rowan. *Id.* Munson woke Spears and asked him where Rowan was. *Id.* Spears said Rowan was staying with a friend, but he could not identify the friend; his insistence that Rowan was with a friend prevented Munson from immediately calling the police. *Collings*, 450 S.W.3d at 747. Later that afternoon, Munson contacted the local sheriff's department to report Rowan missing. *Id.* Law enforcement began to investigate Rowan's disappearance. *Id.*

Spears met with investigators on several occasions in the following days. He told an officer he recalled Rowan waking him and asking permission to go to a friend's house. Depo. of Scott Stanley at 20, *State v. Collings*, No. 08PH-CR01205 (Jul. 12, 2010). This information was not true.

On November 3, 2007, Spears called and left a voicemail for Mahurin. R. Doc. 8-4, at 257. Spears told Mahurin to confirm to law enforcement that Spears left his home with Mahurin to assist Collings with gassing up his vehicle. *Id.*

Spears then tried to convince investigators that he only left his residence on the night his stepdaughter disappeared for a few minutes. *Id.* at 258-59. He said he and Mahurin departed the residence to take gas to Collings as Collings had run out on his drive home. *Id.* However, Munson informed law enforcement that Collings did not have a vehicle at the house that night. *Id.* Mahurin also had provided Spears's voicemail to law enforcement. *Id.* When law enforcement confronted Spears about the lie, he then admitted Collings did not have a vehicle at his home that night. *Id.* Spears acknowledged he left Rowan at home alone when the three men traveled to Collings's home. *Id.*

After hearing about Rowan's disappearance, a childhood friend of Spears, Amber Walters, went to see Spears and check on how he was doing. Spears was focused on his relationship with Munson and lamented that the disappearance negatively impacted his marriage. Spears did not express any concern for Rowan. Spears offered that he didn't know where Rowan was located, but if he were going to dispose of a body, he would do it in the Fox Sinkhole.

On November 7, 2007, Spears agreed to ride with Mark Bridges, Newton County Coroner, to search for Rowan. Bridges was friendly with Spears. Investigators believed Spears would be willing to speak openly with Bridges during the ride-along, so they had Bridges wear a recording device.

Spears directed Bridges to the Fox Sinkhole despite its remote location. R. Doc. 8-4, at 131-33. Spears was familiar with the sinkhole and believed that would be an ideal location to hide a body. *Id.* at 133. Once there, Spears located the opening, and both Bridges and Speers peered into the cave. *Id.* at 138. Bridges mentioned that he thought he could see something at the bottom of the hole. *Id.* at 138-39. On November 9, 2007, law enforcement returned to that location and discovered Rowan's body.

Spears was taken into custody the next day. He then confessed to having raped and murdered Rowan. R. Doc. 22-34, at 3. He said he drove to the Collings property and found Rowan and Collings together. *Id.* Spears admitted he had intercourse with Rowan and then used a string or cord to strangle her to death. *Id.* He did so after Collings purportedly stated, "It's gotta be done." *Id.* at 3, 4. Spears loaded Rowan into the back of his mother's Chevrolet Suburban and drove her to the Fox Sinkhole to dispose of her body. *Id.* at 4. Spears claimed that Collings was with him at the sinkhole. *Id.*

Spears's confession matched the investigative timeline. Mahurin dropped Spears off at his residence near midnight on November 2, 2007. R. Doc. 19, at 60. Spears then called his mother and left his residence shortly after she arrived. R.

Doc. 28, at 9. After departing, Spears's whereabouts were unknown, and he did not return home until just before 7:00 AM on November 3, 2007. *Id.*

Spears's confession also matched with the cadaver dog evidence. Spears stated Rowan's body was in the Suburban Spears drove that night. R. Doc. 22-34, at 3-4. Investigators used a cadaver dog to search various locations thought to be associated with the murder. R. Doc. 28, at 14, 16-17. The only positive identification were two locations in the Chevrolet Suburban. *Id.* The trained cadaver dog positively identified locations at the driver's side door as well as in the cargo area of the vehicle. *Id.*

On this evidence, law enforcement charged Spears with Rowan's murder. Spears challenged his confession, but the trial court ruled held that he voluntarily provided a statement to law enforcement. The State later struck a deal with him in which he pleaded guilty to endangering the welfare of a child and hindering a felony prosecution and received consecutive four- and seven-year sentences. *State of Missouri v. David Wesley Spears*, Pulaski County Circuit Court No. 08PU-CR00681-01.

Law Enforcement's Investigation of Collings

While law enforcement naturally focused the bulk of their attention on Spears, law enforcement also repeatedly questioned Collings about his potential involvement because Collings was one of the last people to see Rowan alive. Wheaton Police Chief Clinton Clark viewed Collings as a suspect and actively pursued questioning of Collings with the express purpose of extracting a confession.

R. Doc. 10-14, at 934, 1012; R. Doc. 10-4, at 1219; R. Doc. 10-1, at 71; R. Doc. 10-15, at 1219. Clark affirmatively reached out to law enforcement handling the investigation seeking to be involved in the investigation and to pursue a confession from Collings. R. Doc. 10-3, pp. 567-69; R. Doc. 10-4, at 935-36.

Clark obtained authorization to make additional approaches to Collings, and Clark did so on several occasions in the week following Rowan's disappearance. Clark then reported back his findings to the lead agents. On November 9, 2007, Collings made three statements to Clark. The first was an unrecorded statement made at the Muncie Bridge outside of Wheaton, Missouri. The second and third were recorded statements that occurred at the Wheaton Police Department. In the recorded statements, Collings said he raped Rowan and killed her.

Clark testified during the suppression hearing that he provided Collings with the written *Miranda* waiver prior to taking Collings to the Muncie Bridge for questioning. R. Doc. 10-6, at 31-32. However, Clark's report reflected the *Miranda* form was signed *after* the initial interrogation at 3:00 PM. R. Doc. 10-6, at 667; R. Doc. 10-3, at 45, 89. This timing was consistent with the *Miranda* form signed and dated by Collings as well as corroborating testimony from two law enforcement officers that observed Collings sign the form after he returned from the initial interrogation. R. Doc. 10-4, at 258, 321, 326-27; R. Doc. 10-8, at 1247-48. Further, the timing was consistent with Chief Clark's call log that had he and Collings arriving back at the station following the Muncie Bridge interrogation at approximately 3:00 PM. R. Doc. 10-4, at 609-610, 665.

The only evidence the State offered to support Clark's timing of the *Miranda* warnings was Clark's testimony itself. All the other available evidence regarding the timing of the *Miranda* warnings contradicted Clark's testimony.

The State Failed to Disclose Clark's Convictions

The State charged Collings with Rowan's murder, and the State's case heavily depended on the statements Clark obtained from Collings on November 9, 2007. Prior to the suppression hearing and trial, Collings requested impeachment information under *Brady v. Maryland* regarding the State's witnesses, including Clark. On or about March 11, 2011, after the suppression hearing but before the trial, the State disclosed a single-page report regarding Clark:

> Chief Clint Clark, Wheaton Police Department, had one reported incident being arrested in Barry County on January 6, 1968 for Desertion from the U.S. Army with the charge amended to AWOL and an investigative arrest in Rogers, Arkansas on November 5, 1968 for investigation of forgery with no disposition shown on either charge.

R. Doc. 8-2, at 283.

However, the State suppressed additional information about Clark, specifically that his arrest led to a desertion conviction and sentence and that he had three other convictions and sentences for desertion. The State continued to suppress this information throughout Collings trial, direct appeal, and state post-conviction proceedings. However, after Collings raised a *Brady* claim in his federal habeas petition, the State finally disclosed it. R. Doc. 8-2, at 283; R. Doc. 10-43.

As part of is pleading in response to Mr. Collings's habeas petition, the State disclosed a redacted copy of Clark's military records. R. Doc. 10-43. The State's

records acknowledged that Clark's arrest led to a conviction and sentence following his arrest on January 6, 1968. *Id.* The records also revealed three additional convictions for the same offense. R. Doc. 10-43, at 3-6, 9-10). Clark was ordered to serve a sentence of six months of hard labor in the Post Stockade at Fort Leonard Wood, Missouri. Clark was then released in January 1969, and within three weeks of his release, he deserted his post again until he was apprehended on or about May 9, 1969. R. Doc. 10-43, at 13-14, 16. Clark was again sentenced to six months imprisonment in the Post Stockade at Fort Leonard Wood, Missouri until his discharge "under conditions other than honorable" on October 23, 1969. R. Doc. 10-43, at 16. The records indicate Clark was absent or in-custody for 726 of the 890 days of his service in the military. (*Id.*).

In other words, prior to trial, the State did not disclose that Clark's charge of desertion from the U.S. Army resulted in a criminal conviction, that he had three additional convictions for desertion, and nor that he had been sentenced to two separate terms of imprisonment. R. Doc. 8-2, at 281-82. Clark deserted his post on four separate occasions beginning on September 9, 1967, four months after joining the Army. R. Doc. 8-2, at 282. Clark continued to desert his post after being returned to the Army. R. Doc. 8-2, at 282. He again deserted his post on April 29, 1968, July 11, 1968, and for the final time on November 23, 1968. R. Doc. 8-2, at 282. Clark was court martialed for his repeated violations of military law and was sentenced on July 23, 1969. R. Doc. 8-2, at 643. He was held at the Correctional

Housing Dispatch his "Undesirable Disch[arge]" on October 23, 1969. R. Doc. 8-2, at 282.

Procedural History of Collings's Claims

The State's case against Collings was based primarily on Collings's November 3, 2007 statements and Clark's testimony about them. However, due to the State's suppression of Clark's convictions and other impeaching information, Collings did not have this information and was unable to use it to discredit Clark.

Collings argued that reasonable doubt existed as to whether he deliberated. R. Doc. 10-44, at 242-43, 264-65. Collings had drunk to acute intoxication more than once before and had a history of alcoholic blackouts. R. Doc. 10-45, at p. 395-60. On the night of the offense, Collings had consumed "six six-packs of Smirnoff Ice Triple Black over the course of six hours with no food after lunch[,]" *Collings*, 543 S.W.3d at 9-10, and had smoked marijuana. *Collings*, 450 S.W.3d at 747. However, under Mo. Rev. Stat. § 562.076.3 and its associated jury instruction, Collings could not argue—and the jury could not consider—that due to his intoxication, a reasonable doubt existed as to whether he formed the requisite mental state for first-degree murder. On March 23, 2012, a jury convicted Collings of first-degree murder. R. Doc. 10-29, at 78.

For the mitigation case, one of trial counsel's principal theories at resentencing was residual doubt. R. Doc. 10-44, at 355, 391. Counsel wanted to offer evidence supporting statutory (or non-statutory) mitigating circumstances. R. Doc. 10-45, at 244, 255. Counsel knew Mr. Collings had consumed large amounts of

alcohol on the night of the offense. R. Doc. 10-44, at 230; R. Doc. 10-44, at 355, 391. Counsel also knew about Mr. Collings's long-standing alcohol and marijuana addiction and knew about the nature of addiction and that intoxication impairs a person's mental state. R. Doc. 10-44, at 230; R. Doc. 10-45, at 355, 356. Another principal mitigating circumstance counsel wished to establish was the unstable and troublesome childhood Mr. Collings experienced. *Collings*, 543 S.W.3d at 20; R. Doc. 10-45, at 360.

Defense counsel knew that Collings had been sexually abused as a child and teenager and had disclosed that molestation to his stepmother, Julie Pickett, well before the offense. Counsel was not aware of any other witness who could testify about this pre-offense disclosure. Pickett also had observed Collings's alcoholic blackouts, and counsel was not aware of any other witness could testify about witnessing those. Accordingly, counsel planned to have Pickett testify.

Ultimately, however, counsel did not present her testimony to the jury. As a result, the jury did not hear her observations of Collings's alcoholic blackouts. Furthermore, the State was able to argue that Collings's later disclosure of the sexual abuse to defense expert Dr. Draper was untruthful and merely a post-hoc justification for the commission the offense. R. Doc. 10-29, at 6321, 6342-25, 6341. The jury recommended a sentence of death, and the court imposed the death sentence on May 11, 2012. R. Doc. 10-33, at 177-78.

On direct appeal, Collings argued that Clark obtained the November 9, 2007 statements in violation of his Fifth, Sixth, and Fourteenth Amendment rights. The

Missouri Supreme Court held that Collings was neither a suspect nor a under a custodial interrogation. *Collings,* 450 S.W.3d at 753-54. The Missouri Supreme Court held that Collings was provided with the appropriate warnings prior to giving a statement to Clark at the Muncie Bridge. *Id.* at 755. The court affirmed Collings's conviction and sentence.

In state post-conviction proceedings, Collings challenged the constitutionality of the Missouri statute and instruction prohibiting the jury from considering the effect of his intoxication on his mental state. *Collings*, 543 S.W.3d at 8. The Missouri Supreme Court ruled that the statute was constitutional. *Id.* at *11; R. Doc. 58, at 23; R. Doc. 10 at 38-39.

Collings also raised ineffective assistance of counsel for the failure to present evidence of Collings's prior disclosure of his sexual victimization and his alcoholic blackouts. The Missouri Supreme Court concluded that Pickett's testimony would have been cumulative of the testimony of other family members and Dr. Draper; thus, any decision not to call her could not have been deficient performance. *Collings*, 543 S.W.3d at 20. The court also concluded that counsel made a reasonable strategic decision not to call Pickett after a verbal exchange between Collings's biological father and the jurors. *Id.* The court affirmed the denial of post-conviction relief.

Collings next filed his habeas corpus petition, which included his *Brady* claim. Shortly after this Court issued its decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022), Collings sought a stay of the habeas proceedings in the federal district court

under *Rhines v. Weber*, 544 U.S. 269 (2005), so he could return to state court to comply with the new obligations of *Ramirez*. The State opposed the motion and further contended that, because the suppressed *Brady* evidence was not a part of the state court record, the district court could not consider it. R. Doc. 49, at 9.

On September 30, 2022, the district court denied the *Rhines* motion and entered a separate order denying habeas relief. A81; A123. The court found that for claims that had not been previously presented to the state court, "[t]he Eighth Circuit has stated that the standard of prejudice is higher than that required to establish ineffective assistance of counsel under *Strickland*." A73 (citing *Charron v. Gammon*, 69 F.3d 851, 858 (8th Cir. 1995)). The court applied this standard to the *Brady* claim and ruled, "Petitioner cannot show a reasonable probability the outcome of the proceeding was changed, even if a failure to disclose occurred (which has not been proven)." A80.

Collings filed a timely notice of appeal with the district court specifically referencing his appeal of the denial of the habeas petition as well as the motion to stay. A128. On April 26, 2023, Collings filed his application for a certificate of appealability. A3. This application included eight claims. The application also provided authority establishing that the district court's denial of the *Rhines* stay was not subject to the certificate of appealability requirements and stated again that Collings intended to appeal the denial of the *Rhines* stay. On June 28, 2023, the Eighth Circuit issued the following order with respect the COA request and appeal of the denial of the *Rhines* stay: "The court has carefully reviewed the

original file of the district court, and the application for a certificate of appealability is denied. The appeal is dismissed." A1. In his petition for *en banc* review, Collings again argued that a COA is not required to appeal the denial of *Rhines* stay. A61. The Eighth Circuit denied that petition in another unexplained order. A2.

REASONS FOR GRANTING THE WRIT

I. A CERTIFICATE OF APPEALABILITY IS UNNECESSARY FOR A HABEAS PETITIONER TO APPEAL A COURT'S DENIAL OF A STAY OF THE HABEAS PROCEEDINGS IN CONFORMANCE WITH THIS COURT'S DECISION IN *HARBISON V. BELL*, 556 U.S. 180 (2009).

This Court should grant certiorari to resolve the conflict in the circuit courts concerning whether 28 U.S.C. § 2253 requires habeas petitioners to obtain a COA on motions to stay where the motion does not challenge the lawfulness of the habeas petitioner's detention. The circuit courts are split on whether a COA is a prerequisite for the court of appeals to consider the merits of the district court's denial of a stay request. *See e.g., Lave v. Dretke*, 416 F.3d 372, 382 (5th Cir. 2005) ("Since a COA is not a prerequisite to review the denial of a motion to stay proceedings, we may at this stage address the merits of Lave's contention."); *but see Wolfe v. Bryant*, 678 Fed. Appx. 631, 632 (10th Cir. 2017) (a COA is required to appeal the denial of a *Rhines* stay). In this case, the Eighth Circuit treated petitioner's appeal from the denial of a *Rhines* stay as part and parcel of the application for a COA. A1. The Eighth Circuit's approach is inconsistent with the plain language of 28 U.S.C. § 2253 and this Court's holdings in *Harbison* and *Slack* holding that the COA standards only apply to substantive challenges to petitioner's incarceration.

A. Factual Background

Shortly after this Court issued its decision in *Shinn v. Ramirez*, 596 U.S. 366 (2022), petitioner Collings sought a stay of the habeas proceedings in the federal district court pursuant to this Court's decision in *Rhines v. Weber*, 544 U.S. 269 (2005). The district court denied petitioner Collings's motion while also denying habeas relief. A81; A123. Petitioner Collings's filed a timely notice of appeal with the district court specifically referencing his appeal of the issues in the underlying habeas petition as well as the denial of the motion to stay. A128. The United States Court of Appeals for the Eighth Circuit considered the entirety of petitioner's appeal pursuant to the certificate of appealability standards outlined in 28 U.S.C. § 2253 and denied petitioner Collings a COA on his habeas issues as well as his appeal from the denial of a stay. A1. Petitioner sought review from the court *en banc* and that request was denied by the full court. A2.

B. Argument

1. The COA standards outlined in 28 U.S.C. § 2253 do not apply to final orders that do not implicate the merits of the petitioner's detention.

Appellate jurisdiction in proceedings brought under 28 U.S.C. § 2241 are governed by 28 U.S.C. § 2253(c)(1)(A). An appeal may not be taken from "the final order in a habeas corpus proceeding in which the detention complained of arises out of process issued by a State court" unless a circuit justice or judge issues a COA. *Id.* "This provision governs final orders that dispose of the merits of a habeas corpus proceeding—a proceeding challenging the lawfulness of the petitioner's detention."

Harbison v. Bell, 556 U.S. 180, 183 (2009) (citing *Slack v. McDaniel,* 529 U.S. 473, 484-85 (2000); *Wilkinson v. Dotson,* 544 U.S. 74, 78-83 (2005)).

This Court held in *Harbison* that a non-final order that does not dispose of the merits of the underlying habeas petition does not fall within the ambit of Section 2253. *Harbison,* 556 U.S. at 183. This Court considered whether Harbison's appeal from the district court's denial of his request for appointment of clemency counsel required the issuance of a COA for the court of appeals to hear the appeal. *Id.* In reversing the Sixth Circuit, this Court held that "An order that merely denies a motion to enlarge the authority of appointed counsel (or that denies a motion for appointment of counsel) is not such an order and is therefore not subject to the COA requirement." *Id.* Rather, it is appealable under 28 U.S.C. § 1291. *Id.*

This Court's holding is consistent with the plain language of the statute and clearly delineates final order requiring a COA from those orders that are collateral to the final judgment. The plain meaning of the phrase "the final order in a habeas corpus proceeding" is the order finally disposing of the habeas petition challenging the petitioner's detention. *Miller-El v. Cockrell,* 537 U.S. 322, 327 (2003) ("Congress mandates that a prisoner seeking post-conviction relief under 28 U.S.C. § 2254 has no automatic right to appeal a district court's denial or dismissal of the petition. Instead, petitioner must first seek and obtain a COA").

2. The Eighth Circuit's ruling conflicts with Harbison.

The Eighth Circuit has, despite this Court's clear statement in *Harbison*, misapplied the COA requirements in § 2253. The Eighth Circuit appears to have treated Collings's appeal from the denial of his request for a stay as subject to a

COA request. A1. However, Collings expressly noticed in his notice of appeal his intent to appeal the district court's order denying his stay request and again referenced this in his application for a COA on some of his underlying habeas claims. A128. The Eighth Circuit nevertheless denied the COA and dismissed the appeal. A1. The court's approach to petitioner's appeal of the stay request is fundamentally at odds with this Court's jurisprudence.

The district court's denial of Collings's request for a stay of his habeas proceedings did not end the habeas litigation. The district court's order was collateral to the underlying habeas issues because the order did not conclusively resolve petitioner's habeas claims. The district court still had to evaluate petitioner's habeas claims pursuant to 28 U.S.C. § 2254 as the court did in a separate order denying habeas relief. A81. Moreover, Collings's request to stay, had it been granted, would only have provided petitioner the opportunity to return to state court to present the unexhausted claims and facts. The request for a stay, even if treated as a final order, would not have impacted all of petitioner's habeas claims. A123. Under *Harbison*, the court of appeals had an obligation under § 1291 to hear petitioner's appeal from the denial of his request for a stay regardless of whether the court granted a COA on any of his habeas claims. See also *Johnson v. Steele*, 999 F.3d 584, 585-89 (8th Cir. 2021) (summary denial of COA but permitting appeal of the district court's denial of a recusal motion); Order, *Rhines v. Young*, No. 18-2376 (8th Cir. Sep. 7, 2018) (conlcuding that a COA was not required to appeal the district court's denial of the petitoner's motion for expert access).

3. The federal appellate courts are split in their application of COA standards as applied to motions for stay of habeas proceedings.

This Court should grant certiorari to resolve the circuit split created by the inconsistent application of 28 U.S.C. § 1291 and 2253. While this Court's previous decisions interpreting these sections have been consistent, the lower court application of these two statutes have led to a significant split in the way these statutes are applied leading to confusion and unequal treatment across the circuits.

The Fifth and Ninth Circuits have adopted an approach to these issues consistent with this Court's prior case law. In *Lave v. Dretke*, the Fifth Circuit held that a "COA is not a prerequisite to review the denial of a motion to stay proceedings . . .." 416 F.3d 372, 382 (5th Cir. 2005); *see also Dunn v. Cockrell,* 302 F.3d 491, 492 (5th Cir.2002) (holding that a COA is only required when the petitioner is appealing "from the merits of his habeas petition"); *Young v. Stephens*, 795 F.3d 484, 494 (5th Cir. 2015), *as revised* (July 30, 2015) ("A COA is not required to review the district court's ruling on a non-merits issue such as a stay."). Similarly, the Ninth Circuit in *Blake v. Baker* considered the district court's denial of a stay of the habeas proceedings without requiring the petitioner to obtain a COA. 745 F.3d 977, 979–80, 983–84 (9th Cir.2014); *see also Smith v. Chappell*, 584 F. App'x 790, 790–91 (9th Cir. 2014) ("District court orders denying motions to stay federal habeas proceedings to allow the exhaustion of state remedies are reviewable on appeal after the district court enters a final judgment.").

The Tenth Circuit, consistent with the Eighth Circuit in this case, appears to treat the appeal from the denial of a stay as requiring a COA to proceed. *See Wolfe*

v. Bryant, 678 F. App'x 631, 632 (10th Cir. 2017). In *Wolfe*, the Tenth Circuit denied the petitioner a COA on his underlying habeas claims as well as the denial of his request for a *Rhines* stay. *Id.* While the court did not expressly hold that a COA was necessary for consideration of Wolfe's appeal from the denial of a stay, the court's opinion doesn't distinguish the claims that require a COA from the one that would not. The practical effect of the court's decision is same as the petitioner was denied consideration the right of appeal.

This Court should grant certiorari to review this important issue and resolve the clear circuit split.

II. THIS COURT SHOULD GRANT REVIEW TO SETTLE THE SPLIT AMONG THE FEDERAL COURTS OF APPEALS ON WHETHER 28 U.S.C. § 2253(C) REQUIRES AN INDIVIDUALIZED DETERMINATION OF EACH CLAIM IN A CERTIFICATE OF APPEALABILITY REQUEST AS OPPOSED TO A *PRO FORMA*, NON-REASONED, BLANKET DENIAL.

Under 28 U.S.C. § 2253(c)(2), a court must grant a certificate of appealability ("COA") when an appellant makes "a substantial showing of the denial of a constitutional right." A COA does not require a showing that the appeal will succeed. *Miller-El v. Cockrell*, 537 U.S. 322, 377 (2003). Instead, a COA should issue when the district court's decision is "debatable among jurists of reason" or "the issues presented are adequate to deserve encouragement to proceed further." *Id.* at 336.[1]

[1] This Court has explained that this standard is minimal: "[A] claim can be debatable even though every jurist of reason might agree, after the COA has been granted and the case has received full consideration, that petitioner will not prevail." *Id.* at 338. A claim is "debatable" when it is "open to dispute on any logical

In *Slack*, this Court held that in addition to establishing procedural rules, the COA statute "*requires* a threshold inquiry into whether the circuit court may entertain an appeal." *Slack*, 529 U.S. at 482 (emphasis added); see also *Hohn v. United States*, 524 U.S. 236, 248 (1998). Subsequently, this Court held in *Miller El* that the COA process "must not be *pro forma* or a matter of course." 537 U.S. at 337. Rather, "the COA determination under § 2253(c) *requires* an overview of the claims in the habeas petition and *a general assessment* of their merits." 537 U.S. at 336 (emphasis added). "[A] court of appeals should not decline the application for a COA merely because it believes the applicant will not demonstrate an entitlement to relief." *Id.* at 337.

Despite this precedent, the federal courts of appeals are divided on whether 28 U.S.C. § 2253(c) permits blanket COA denials. In most circuits, blanket denials are not permitted or issued. *See*, *e.g.*, *Murphy v. Ohio,* 263 F.3d 466, 467 (6th Cir. 2001) (remanding COA to district court because its "blanket denial" did not comport with § 2253(c)). But the Eighth Circuit routinely issues blanket denials without any analysis of the issues or any explanation of how the claims presented failed to meet

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basis. The focus is on the existence of a debatable issue, not on which party was correct." *Adam v. Stonebridge Life Ins. Co.*, 612 F.3d 967, 974 (8th Cir. 2010).

The nature of the penalty "is a proper consideration in determining whether to issue a certificate[.]" *Barefoot v. Estelle*, 463 U.S. 880, 893 (1983). Capital cases demand heightened standards of reliability because of the unique severity and finality of the death penalty. *See*, *e.g.*, *Beck v. Alabama*, 447 U.S. 625, 637-38 (1980). Thus, in death-penalty cases, a court must resolve in favor of the habeas petitioner any doubts regarding whether a COA should issue. *See Barefoot*, 463 U.S. at 893; *see also Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000) (holding that the COA requirement codified the pre-AEDPA *Barefoot* standard).

§ 2253(c)'s minimal standards. This Court should resolve this conflict regarding this important question of federal law.

A. The federal courts of appeals are divided.

In *Murphy*, the Sixth Circuit held that § 2253(c) and *Slack* require an "individualized determination of each claim presented by [a] petitioner[.]" 263 F.3d at 467. Thus, blanket denials of a COA request do not satisfy this standard. *Id.*

Consistent with this interpretation of § 2253(c), the courts of appeals in the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Ninth, Tenth, and Eleventh circuits regularly issue reasoned opinions denying COA. *See, e.g., MocGonalge v. United States,* 137 F. App'x 373 (1st Cir. 2005); *Middleton v. Attorneys General of States of N.Y, Pennsylvania,* 396 F.3d 207 (2nd Cir. 2005); *Tomlin v. Britton,* 448 F. App'x 224 (3d Cir. 2011); *Swisher v. True*, 325 F.3d 225 (4th Cir. 2003); *Chanthakoummane v. Stephens*, 816 F.3d 62 (5th Cir. 2016); *Smith v. Mays*, No. 18-5133, 2018 WL 7247244 (6th Cir. Aug. 22, 2018); *Dickens v. Ryan*, 552 F. App'x 770 (9th Cir. 2014); *Lafferty v. Benson*, 933 F.3d 1237 (10th Cir. 2019); *Woods v. Holman*, No. 18-14690, 2019 WL 5866719 (11th Cir. Feb. 22, 2019); *cf. Woods v. Buss*, 234 F. App'x 409 (7th Cir. 2007) (reasoned denial in successive posture).

In contrast, the Eighth Circuit has determined that neither "§ 2253(c) [n]or the Supreme Court's decisions regarding certificates of appealability dictate that a court of appeals must or must not publish a statement of reasons when it denies an application for a certificate." *Dansby v. Hobbs,* 691 F.3d 934, 936 (8th Cir. 2012). However, the court recognized that particularly in capital cases, the court should "explain [] to some degree its decision to deny the application." *See id.* The court

explained that when a habeas petitioner has filed a lengthy explanation of why a certificate of appealability is warranted, "and when a petition for writ of certiorari is sure to ensue, nothing in the governing statutes or decisions prevents a court of appeals from explaining to some degree its decision to deny the application." *Id.* The Court further noted that "it may require several paragraphs to explain why a particular ruling is not debatable . . . ." *Id.*

Despite this recognition of the need for explanation and in direct contrast with this the practices of the circuits listed above, the Eighth Circuit routinely issues blanket, *pro forma*, cut-and-paste denials of COAs, even in capital cases. These orders—like the one in this case—are unexplained and merely state: "The court has carefully reviewed the original file of the district court, and the application for a certificate of appealability is denied." A1; *see also*, *e.g.*, Order, *Hosier v. Crews*, No. 22-2516 (8th Cir. Jan. 6. 2023); Order, *Tisius v. Blair*, No. 21-1682 (8th Cir. Nov. 9, 2021); Order, *McLaughlin v. Precythe*, No. 18-3628 (8th Cir. Apr. 22, 2019); Order, *Montgomery v. United States*, No. 17-1716 (8th Cir. Jan. 25, 2019) (§ 2255 case); Order, *Barton v. Griffith*, No. 18-2241 (8th Cir. Dec. 21, 2018); Order, *Deck v. Steele*, No. 18-1617 (8th Cir. Aug. 20, 2018).[2] Other COA denial

[2] This Court has previously been informed of the disparity between circuits in the granting of certificates of appealability in capital cases. See Petitioner's Br., Appendix A, *Buck v. Davis*, No. No. 15–8049 (2017) (showing that, between 2011 and 2016, "[A] COA was denied on all claims in 58.9% (76 out of 129) of the cases arising out of the Fifth Circuit, while a COA was only denied in 6.3% (7 out of 111) and 0% of the cases arising out of the Eleventh and Fourth Circuits respectively."). The data for the Eighth Circuit have been compiled for this Court through 2016 in the case of *Greene v. Kelley*, No. 16-7425 (2017). This data showed that from 2011-

orders in capital cases have contained minimal variance on the language but still no legal analysis. *See*, *e.g.*, Order, *Lee v. United States*, No. 19-2432 (8th Cir. Nov. 4, 2019) (§ 2255 case); *Johnson*, 999 F.3d at 585-89 (opinion on a procedural issue including summary denial of COA).

The Eighth Circuit also routinely issues blanket denials even when there were state-court dissents or when fellow Eighth Circuit judges have voted to grant a COA. This Court has recognized that a dissenting opinion shows that a claim at issue is debatable among jurists of reason. *See*, *e.g.*, *Biden v. Nebraska*, 143 S. Ct. 2355, 2375 (2023) ("Reasonable minds may disagree with our analysis-in fact, at least three [such minds of the dissenting justices] do."); *Johnson v. Vandergriff*, 143 S. Ct. 2551, 2553 (2023) (Sotomayor, J., dissenting from denial of application for stay and certiorari, joined by Kagan, Jackson, JJ.) (finding that the state-court dissent and dissent of three circuit judges showed that reasonable jurists could debate—and had debated—on the resolution of the petitioner's claim); *Jordan v. Fisher*, 576 U.S. 1071 (2015) (Sotomayor, J., dissenting from denial of certiorari, joined by Ginsburg, Kagan, JJ.) (concluding that the conclusions of two judges finding that a claim was highly debatable and another circuit court's grant of relief on a similar claim in a comparable procedural posture indicated that reasonable minds could differ, and had differed, on the resolution of the petitioner's claim). However, even in when there is clear evidence of debate among jurists of reason, the

2016, the Eighth Circuit denied a COA in 47.6% of capital cases. As the cases cited above show, since that time, the disparity in capital cases has only gotten worse.

Eighth Circuit nonetheless issues unexplained blanket denials. Order, *Johnson v. Blair*, No. 20-3529 (8th Cir. Jan. 21, 2022) (blanket denial despite dissent of Eighth Circuit judge as to whether COA should issue); Order, *Lee v. United States*, No. 19-2432 (8th Cir. Nov. 4, 2019) (blanket denial despite dissent of Eighth Circuit judge as to whether COA should issue); Order, *Barton v. Griffith*, No. 18-2241 (8th Cir. Dec. 21, 2018) (blanket denial despite dissent of three state-court judges); Order, *Rhines v. Young*, No. 18-2376 (8th Cir. Sep. 7, 2018) (blanket denial despite dissent of Eighth Circuit judge as to whether COA should issue).[3]

In this case, the Eighth Circuit continued its practice of blanket denial even though the court previously had granted a COA on the *exact same issue* this case presents. For several of his claims, Collings argued that he satisfied *Martinez*'s "some merit" standard, which he contended was equivalent to the COA standard. The district court disagreed and determined that, for these claims, "[t]he Eighth Circuit has stated that the standard of prejudice is higher than that required to establish ineffective assistance of counsel under *Strickland*." A93 (citing *Charron v. Gammon*, 69 F.3d 851, 858 (8th Cir. 1995)).

[3] In *Johnson v. Vandergriff*, a competency-to-be-executed case, the court again issued its typical blanket denial. No. 23-2664, 2023 WL 4851623, at *1 (8th Cir. July 29, 2023). Although one judge of the court did issue a concurring opinion providing reasons for the denial of the COA, which six other judges joined, the only purpose of the concurring opinion was "to address the points made by the dissenting judges." *Id.* Thus, had the dissenting judges not provided reasoned dissents, the court likely would have just followed its regular course of issuing a *pro forma* denial.

In *Dorsey v. Vandergriff* 30 F.4th 752, 756 (8th Cir. 2022), the district court similarly held that *Martinez*'s substantiality standard was higher than the COA standard. 30 F.4th 752, 756 (8th Cir. 2022). The Eighth Circuit granted the COA and held on appeal "that *Martinez*'s some-merit requirement means that whether [the claimant's] trial counsel was ineffective ... must at least be debatable among jurists of reason." (internal quotation omitted). This standard is the same as the COA standard, the court explained, which is lower than a merits-relief standard. *Dorsey*, 30 F.4th at 756; *Buck v. Davis*, 580 U.S. 100, 115-16 (2017); *Miller-El*, 537 U.S. at 338. Thus, the Eighth Circuit found that district court's application of a higher standard was erroneous. *Dorsey*, 30 F.4th at 756.

However, despite its COA grant in *Dorsey*, the Eighth Circuit in this case did not explain how Dorsey satisfied the COA standard but Collings did not. Rather, the court simply issued its typical *pro forma* denial.

Court of appeals in every other circuit have interpreted or applied § 2253(c) differently than the Eighth Circuit. Unlike the Eighth Circuit's practice of issuing blanket denials, these courts—in recognizing their obligations under § 2253(c)—have undertaken (or directed a lower court to undertake) an individualized determination of each claim for which the petitioner requested a COA. This Court should resolve this conflict among the courts of appeals.

B. Reasoned appellate review is important.

This Court has jurisdiction to review the denial of a COA by a lower court. *Hohn*, 524 U.S. 236. The availability of review presupposes something for the Court to review in the first place. However, by omitting any reasoning on the merits of a

COA request, the Eighth Circuit's blanket-denial practice unfairly insulates a conviction and death sentence from necessary review. *See Herrera v. Payne*, 673 F.2d 307, 307 (10th Cir. 1982) ("[The proper exercise of [the lower court's] discretion cannot be adequately reviewed where no reasons for the determination have been given."). Unexplained denials are particularly troublesome in capital cases given this Court's repeated statements that "death is different" and that a heightened standard of due process applies to capital cases. *See, e.g., Woodson v. North Carolina,* 428 U.S. 280, 305 (1976); *Dansby,* 691 F.3d at 936.

Under *Lonchar v. Thomas*, 517 U.S. 314 (1996), a habeas petitioner has an absolute right to have his conviction and death sentence reviewed by the federal courts. *Lonchar's* holding is rooted in the full and fair consideration of the merits of first habeas petitions. "The great writ of *habeas corpus* has been for centuries esteemed the best and only sufficient defence of personal freedom." *Ex parte Yerger*, 75 U.S. 85, 95 (1869). As the Court explained in *Lonchar*, "dismissal of a *first* federal habeas petition is a particularly serious matter, for that dismissal denies the Petitioner the protections of the Great Writ entirely, risking injury to an important interest in human liberty." *Id.* at 324 (citing *Yerger*, 75 U.S. at 95).

Given the heightened standard of due process courts must apply in capital cases, review of first habeas petitions is essential. Meaningful appellate review of first habeas petitions is further necessary in capital cases because subsequent federal remedies have become disfavored as the prisoner's execution draws near. *See, e.g., Bucklew v. Precythe*, 139 S. Ct. 1112, 1134 (2019) (urging courts to

"dismiss or curtail suits that are pursued in a 'dilatory' fashion or based on 'speculative' theories") (quoting *Hill v. McDonough*, 547 U.S. 573, 584-85 (2006)). That disfavor, of course, rests on the availability of meaningful habeas corpus remedies during earlier stages of review. But when a court of appeals issues a blanket denial and takes refuge under a cloak of secrecy, a petitioner does not receive meaningful review in the court of appeals. The act of completely insulating its reasoning from this Court also hampers the petitioner's ability to obtain meaningful review in this Court.

The practice of issuing blanket denials of COA requests permits potentially unconstitutional convictions and sentences to evade judicial scrutiny. This Court should clarify whether this practice is permissible under § 2253(c). The great disparity between the rates at which COAs are granted in the various circuits makes the need for clarification by the courts of appeals even more important. The COA standard should be clear enough that any court reviewing a habeas case will be able to apply it uniformly. However, uniformity across the federal courts of appeals is not occurring. As the blanket denial of the COA in this case despite the COA grant in *Dorsey* involving the same lower court error, uniformity is not even happening even within the courts of appeals themselves.

C. The Eighth Circuit misapplied the COA standard.

The Eighth Circuit wrongly issued a blanket denial of the COA request in this case. *Slack* and *Miller-El* establish that COA process requires an individualized assessment of each claim, and the denial of a COA request "must not be *pro forma* or a matter of course." *Miller El*, 537 U.S. at 337; *see also Murphy*, 263 F.3d at 467.

Especially in capital cases, a court should "explain [] to some degree its decision to deny the application." *See Dansby,* 691 F.3d at 936. Thus, the Eighth Circuit's blanket denial of the COA request in this case was a misapplication of the COA standard and violated the heightened due process capital cases require.

In several other circumstances involving a lower court's misapplication of § 2253(c), this Court has granted review. *See*, *e.g.*, *Buck*, 580 U.S. at 128 (reversing court of appeals for applying an incorrect COA standard); *Miller-El,* 537 U.S. at 348 (reversing court of appeals for side-stepping the appropriate COA procedure); *Tennard v. Dretke,* 542 U.S. 274, 283 (2004) (reversing due to the court of appeals misapplication of the COA standard, despite the fact the court paid "lipservice to the principle guiding issuance of a COA."). This Court should do the same here.

The error of the Eighth Circuit's blanket denial is particularly glaring in this case because for multiple claims, Collings has satisfied the minimal standard for appellate review. Collings presented the exact same error this Court previously had deemed worthy of a COA. See discussion of *Dorsey*, *supra*. Other examples showing that Collings satisfied § 2253(c) are included below.

1. Reasonable jurists could disagree whether the state investigators engaged in illegal unconstitutional interrogation tactics to obtain a statement from Mr. Collings.

The State's case against Collings depended on statements obtained from him on November 9, 2007, that were the product of unconstitutional police tactics that denied Collings his Fifth, Sixth, and Fourteenth Amendment rights. The Missouri Supreme Court denied relief but only after ignoring evidence presented in the trial court that substantiated the unconstitutional police interrogation tactics. The

district court denied relief on Collings's claim by adopting the Missouri Supreme Court's reasoning but ignoring the challenges raised in Collings's habeas petition. R. Doc. 58, at 13-14. Collings's habeas claim challenges the Missouri Supreme Court's decision on its application of established Supreme Court precedent as well as its decision not being supported by the record developed in the state court. These factors, when taken as a whole, demonstrate Collings's basis for relief and entitlement to a COA in this Court.

a) The district court opinion is not supported by the state court record.

Collings was in custody at the time of his initial interrogation requiring law enforcement to advise him of his constitutional rights. *See*, *e.g., Miranda v. Arizona*, 384 U.S. 436, 444 (1966). "A custodial interrogation is defined as 'questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom in any significant way.'" *United States v. Johnson*, 619 F.3d 910, 919 (8th Cir. 2010) (quoting *United States v. Flores–Sandoval,* 474 F.3d 1142, 1146 (8th Cir.2007). This Court outlined some factors relevant to whether the suspect is in custody in *Flores-Sandoval,* 474 F.3d at 1146-47. The district court overemphasized one factor while ignoring relevant evidence supporting a finding that Collings was in a custodial interrogation before being *Mirandized.* Reasonable jurists could disagree as to the application of these factors.

The trial court held – and the federal district court affirmed – that the circumstances of the interrogation was not custodial and, therefore, did not require Chief Clark to provide the *Miranda* warnings. R. Doc. 10-32, at 173. The trial

court's analysis, though, ignored most of the factual considerations in determining the custodial nature of the interrogation. The trial court emphasized a single factor – that Chris Collings initiated the contact – while ignoring all other relevant factual issues at play. R. Doc. 10-32, at 172-73.

The circumstances of the initial interrogation support a finding that Collings was in custody at the time of his initial statement. Collings agreed to meet Clark and did so by meeting with him at his home. R. Doc. 10-6, at 662-665. Collings traveled with Clark in his squad car to the Police Department. R. Doc. 10-5, at 743-44. Collings departed the police station in Clark's vehicle and then traveled to a remote bridge a few miles away. R. Doc. 10-6, at 709. Collings was not free to leave because he had no way to depart the scene. The circumstances of this interrogation – the remoteness of the location combined with Collings having no way to depart – weigh heavily in favor of finding a custodial interrogation situation mandating that he be advised of his *Miranda* rights.

Similarly, the conduct of Clark during the Muncie Bridge interrogation supports finding that it was custodial. Clark was aware Collings was feeling threatened by people in the community and Clark, by his own admission, conditioned his ability to "protect" Collings on his willingness to cooperate and confess. R. Doc. 10-6, at 743-44; R. Doc. 10-8, at 1206. Clark's actions reinforced the coercive nature of the encounter that occurred in a remote location and in a setting where Collings was dependent on Clark for transportation. That Collings initiated

the contact does not override all other circumstances establishing a custodial interrogation.

b) The district court opinion conflicts with well-established precedent.

The district court's decision upholding the Missouri Supreme Court's decision conflicts with the Supreme Court's decisions in *Spano v. New York*, 360 U.S. 315 (1959) and *Arizona v. Fulminante*, 499 U.S. 279 (1991). These cases involve coercive police interrogation tactics designed to play on the vulnerabilities of the defendant to prevent him from invoking his constitutional rights.

In this case, law enforcement officers repeatedly engaged Collings in discussions that played upon his friendship with Clark and Collings's fears of reprisal from members of the community. R. Doc. 10-5, at 604; R. Doc. 10-6, at 935-36, 1037. Collings expressed his fear of people in the community coming after him and recounted an incident where he believed he was being followed through town. R. Doc. 10-6, at 588-89, 663, 899; R. Doc. 10-6, at 1289-90. Clark encouraged Collings to continue to cooperate with the FBI when Collings's expressed an interest in speaking with a lawyer. R. Doc. 10-5, at 567-69; R. Doc. 10-6, at 937. Clark emphasized to Collings that cooperation was the only way for Clark to protect him. R. Doc. 10-6, at 595-96. Another officer told Collings he might be released from custody and that if they did, they would be "looking for your body" in the morning and that "You would have to get out of this area to stay alive." R. Doc. 10-4, at 306.

These facts demonstrate that law enforcement played on Collings's long-standing friendships and fear of reprisals from members of the community to obtain

a confession in violation of his constitutional rights. This issue is debatable among reasonable jurists and this Court should issue a COA.

2. Reasonable jurists could disagree whether the State violated their discovery obligations to disclose evidence favorable to the defense related to the lead law enforcement investigator's criminal convictions and incarcerations.

The Sate violated its constitutional obligations to disclose evidence favorable to the defense by withholding evidence that Chief Clark, the State's primary law enforcement witness, had multiple prior criminal convictions that resulted in him serving time in a military prison for desertion during the Vietnam War. The State failed to disclose Clark's prior criminal convictions until Collings raised the issue in his habeas petition. R. Doc. 8-2, at 283; R. Doc. 10-43. The State's failure to fully disclose the impeachment evidence in a timely manner denied Collings his right to due process of law and a fair trial as the trial court and jury lacked the information necessary to accurately assess Clark's credibility and qualifications to serve as a law enforcement officer.

Brady v. Maryland 373 U.S. 83, 87 (1963) requires disclosure of evidence that is both favorable to the accused and "material either to guilt or to punishment." *Brady* extends to the disclosure of evidence affecting the credibility of a witness. *United States v. Bagley*, 473 U.S. 667, 676 (1985).

The State disclosed a single page report detailing the relevant criminal records for the Barry County witnesses. R. Doc. 8-2, at 283. The report stated:

> Chief Clint Clark, Wheaton Police Department, had one reported incident being arrested in Barry County on January 6, 1968 for Desertion from the U.S. Army with the charge amended to AWOL and

> an investigative arrest in Rogers, Arkansas on November 5, 1968 for investigation of forgery with no disposition shown on either charge.

R. Doc. 8-2, at 283. This was the full extent of the information provided to the defense at the time of trial. Clark's criminal record while in the military was extensive but was never disclosed by the prosecution.

Military records available to the State reveal that Clark deserted his post four times beginning on September 9, 1967, four months after joining the Army. R. Doc. 8-2, at 282. He again deserted his post on April 29, 1968, July 11, 1968, and for the final time on November 23, 1968. R. Doc. 8-2, at 282. Clark was court-martialed for his repeated violations of law and was sentenced twice to terms of six-month imprisonment. R. Doc. 8-2, at 643. He was given an "Undesirable Disch[arge]" on October 23, 1969. R. Doc. 8-2, at 282.

Clark's credibility as a law enforcement officer was central to the trial court's determination of the motion to suppress. Clark took the lead role in engaging with Collings in the days following the disappearance. Clark's criminal history would have been relevant in assessing his credibility as a law enforcement officer. *See* R.S.Mo. § 491.050; *see also, M.A.B. v. Nicely*, 909 S.W.2d 669, 671 (Mo. 1995). Evidence of Chief Clark's lack of commitment to his service obligations – especially during a time of war – would have highlighted his similar lack of commitment to Collings's constitutional rights.

Given the importance of Collings's confession to the State's case, Clark's convictions provided important impeachment information. In addition to the impeachment effect of his multiple convictions, Clark's desertion during a time of

war carried a potential death sentence had he not successfully entered into a plea bargain. *See* 10 U.S.C. § 885(c).

These factors provide this Court with a substantial basis to grant Collings's application for a COA on this claim. Reasonable jurists could disagree with the district court's conclusion that Collings did not show that the State suppressed Clark's convictions; the State has not provide any evidence indicating that it disclosed this information prior to trial. R. Doc. 10, at 33. Furthermore, the district applied an incorrect and overly burdensome prejudice standard. *Wearry v. Cain*, 577 U.S. 385, 392 (2016) (concluding that a petitioner must only show that the new evidence is sufficient to undermine confidence in the verdict). Thus, Collings satisfied § 2253(c), and a COA was warranted.

3. Reasonable jurists could find that Missouri law considers evidence of voluntary intoxication relevant to a defendant's mental state and therefore find that the exclusion of such mental-state evidence establishing Collings's defense to first-degree murder violated due process.

Collings's principal defense was that reasonable doubt existed as to whether he formed the requisite mental state for first-degree murder. R. Doc. 10-44, at 242-43, 264-65. Collings had drunk to acute intoxication more than once before and had a history of alcoholic blackouts. R. Doc. 10-45, at p. 395-60. On the night of the offense, Collings had consumed "six six-packs of Smirnoff Ice Triple Black over the course of six hours with no food after lunch[,]" *Collings*, 543 S.W.3d at 9-10, and had smoked marijuana. *Collings*, 450 S.W.3d at 747. But under Mo. Rev. Stat. § 562.076.3 and its associated jury instruction, Collings could not argue—and the jury

could not consider—whether due to his intoxication a reasonable doubt existed as to whether he deliberated.

Collings challenged the constitutionality of the Missouri statute and instruction prohibiting the jury from considering the effect of his intoxication on his mental state. *Collings*, 543 S.W.3d at 8. The Missouri Supreme Court ruled that the statute was constitutional. *Id.* at *11; R. Doc. 58, at 23; R. Doc. 10 at 38-39.

In most jurisdictions, factfinders may consider evidence of voluntary intoxication for the purposes of negating the mental state element of the offense in question. *Montana v. Egelhoff*, 518 U.S. 37, 47 (1996). Laws in other jurisdictions that exclude voluntary intoxication evidence may violate due process. *Egelhoff*, 518 U.S. at 57 (Ginsburg, J., concurring). The test for such unconstitutionality is whether the law is an evidentiary bar or a redefinition of the offense. *Id.* A law that renders a certain category of evidence irrelevant to the crime defined by the State is a permissible redefinition of the crime's offense elements. *Id.*; *see also Egelhoff*, 518 U.S. at 71-72 (O'Connor, J., dissenting). However, a law that excludes a certain category of evidence, but still considers that evidence relevant to the requisite mental state, is an unconstitutional evidentiary bar. *Egelhoff*, 518 U.S. at 57 (Ginsburg, J., concurring); *see also Egelhoff*, 518 U.S. at 71-72 (O'Connor, J., dissenting).

Reasonable jurists could conclude under *State v. Walkup,* 220 S.W.3d 748, 758 (Mo. banc. 2007), that Missouri excludes evidence of voluntary intoxication but still considers it relevant to a defendant's mental state. *See* R. Doc. 8, at 108-14; R.

Doc. 33, at 113-14. In *Walkup*, the Missouri Supreme Court reaffirmed that, given a defendant's fundamental right to present a defense, evidence affecting the defendant's ability to deliberate is "both legally and logically relevant to the issue of whether the jury should believe the state's evidence that he acted with deliberation." *Walkup,* 220 S.W.3d at 758. *Walkup* further indicates that evidence of an alcoholic blackout would be admissible for its *effect* on the defendant's mental state. *See id.* at 754-58.

Walkup unequivocally recognizes that any evidence negating the deliberation element of first-degree murder is legally and logically relevant to the question of the defendant's mental state. *Id.* at 758. Thus, reasonable jurists could conclude that the state court's decision was contrary to or an objectively unreasonable application of Supreme Court law recognizing (1) the fundamental right to present a defense and (2) under *Montana v. Egelhoff*, 518 U.S. 37 (1996), Missouri's rule acts as an evidentiary bar violating due process.

The district court relied on *Gary v. Dormire*, 256 F.3d 753, 759 (8th Cir. 2001), to find that in Missouri evidence of voluntary intoxication has no relevance to the mental elements of a crime, including the specific-intent offense of first-degree murder. R. Doc. 58, at 23-24. But *Gary* preceded *Walkup*, and *Walkup* found that evidence of an alcoholic blackout is legally and logically relevant to the question of whether a defendant deliberated. *Walkup,* 220 S.W.3d at 758. Thus, *Gary*'s conclusion is incorrect. At minimum, whether *Gary* dispositively resolves this claim is debatable. Reasonable jurists could conclude that because Missouri's intoxication

proscription barred Collings from presenting exculpatory evidence relevant to his alleged deliberation, it impermissibly infringed on his fundamental right to present a defense.

4. Reasonable jurists could disagree that trial counsel's failure to present to the jury known evidence establishing Collings's prior disclosure of his sexual victimization when he was a child and teenager was reasonable, particularly when counsel wanted to present this information and the failure to do so allowed the State to undermine the mitigation case by relying on the absence of the pre-trial disclosure.

Although counsel knew that (1) Collings had been sexually abused as a child and teenager and had disclosed that molestation to his stepmother, Julie Pickett, well before the offense, and (2) no other witness could testify about this pre-offense disclosure, counsel did not present this disclosure to the jury. As a result, the state was able to argue that Collings's later disclosure of these facts to Dr. Draper was untruthful and was a post-hoc justification for the commission the offense. R. Doc. 10-29, at 6321, 6342-25, 6341. Pickett also had observed Collings's alcoholic blackouts, and no other witness testified about those.

The state court concluded that Pickett's testimony would have been cumulative of the testimony of other family members and Draper; thus, any decision not to call her could not have been deficient performance. *Collings*, 543 S.W.3d at 20. The court also concluded that counsel made a reasonable strategic decision not to call Pickett after a verbal exchange between Collings's biological father and the jurors. *Id.*

The district court appears to have concluded that because Draper testified about the sexual abuse of Collings, Collings's prior disclosure of abuse to Pickett—

well before the crime occurred—was cumulative of Draper's testimony. R. Doc. 58, at 30. The district court further concluded that trial counsel made this decision "after [Julie Pickett] and other Collings' family members engaged in a verbal exchange with members of the jury in a hallway." *Id.* Thus, the court determined, the state court decision was a reasonable application of *Strickland*. *Id.*

Because Julie Pickett's testimony regarding Collings's prior disclosure of his sexual abuse nor his blackouts *was not presented to the jury*, reasonable jurists could find it was not cumulative of the evidence presented. *Southard v. Russell*, 57 U.S. 547, 554 (1853); *Simmons v. Luebbers*, 299 F.3d 929, 937 (8th Cir. 2002). In the court below, Respondent did not present any evidence or argument suggesting that another trial witness discussed Collings's prior disclosure of his sexual abuse nor his alcoholic blackouts. Because no other witness discussed a prior disclosure of sexual abuse, the State argued that Dr. Draper's testimony was untrue. R. Doc. 10-29, at 6324-25, 6341. Reasonable jurists could conclude that the Missouri Supreme Court's decision on this point rests on an unreasonable determination of the facts or is contrary to or an objectively unreasonable application of clearly established federal law. *Simmons*, 299 F.3d at 937.

Reasonable jurists also could conclude that the state court unreasonably assumed that trial counsel made a strategic decision not to call Pickett due to the jury incident. Attorney Moreland and Ms. Pickett's testimony shows counsel decided not to call her before the jury incident. R. Doc. 10-45, at 361; R. Doc. 10-44, at 162-63. Counsel first learned of the jury incident the morning after it allegedly occurred,

R. Doc. 10-44, at 236; R. Doc. 10-29, at 6229-30, and at that point, counsel had begun the testimony of their last witness, Draper. R. Doc. 10-28, at 6120. Respondent contests none of these facts.

Although Attorney Zembles speculated that the jury incident *may have affected* Moreland's decision, R. Doc. 10-44, at 234-38, the record does not support her speculation. Thus, reasonable jurists could conclude that the state court's decision is an improper post-hoc rationalization inconsistent with the available record evidence, *see Harrington v. Richter*, 562 U.S. 86, 109 (2011); *Simmons*, 299 F.3d at 937, and therefore is based on an unreasonable determination of the facts. *See Gabaree v. Steele*, 792 F.3d 991, 999 (8th Cir. 2015) ("We cannot impute to counsel a trial strategy that the record reveals she did not follow.").

Because the Missouri Supreme Court did not reach the prejudice component, § 2254(d) does not apply. *Wiggins v. Smith*, 539 U.S. 510, 534 (2003). Evidence of a troubled childhood, particularly one involving sexual abuse, is meaningful mitigating evidence. *See*, *e.g.*, *id.* at 536-37. Because Pickett's testimony would have established that Collings *did* disclose his sexual abuse when he was in his twenties, well before the crime occurred, the State would not have argued that Collings's sexual abuse was illegitimate due to Collings's "late" disclosure to Draper. The disclosure similarly would have countered the general theme of the State's cross-examination of Draper: that because information was not stated the records, it was untrue and merely a post-hoc explanation or disingenuous request for sympathy. Also, without Pickett's testimony, the jury did not know that Collings's addiction

was so severe that he suffered from blackouts—a fact that is mitigating on its own, *see Kenley v. Armontrout*, 937 F.2d 1298, 1308 (8th Cir. 1991), but also casts doubt on whether the offense unfolded as relayed in Collings's statement. Reasonable jurists could conclude that counsel's failure prejudiced Collings.

Collings—like other capital petitioners in the Eighth Circuit—has never received a reasoned analysis of whether his claims meet the standard for COA due to the Eighth Circuit's blanket-denial practice. However, similar claims in other judicial circuits do receive such analysis. The Eighth Circuit's practice diverges from that of other courts of appeals, and this Court should settle the question of what § 2253(c) requires.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully Submitted,

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